STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 21, 1996
Honolulu, Hawaii

Water Use Permit Applications
Koolauloa Ground Water Management Area, Oahu

Applicant:

(Hwell Nos. 3554-01 & 02, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05)
Hawaii Reserves Inc. (HRI)
(Formerly Zion's Security Corp.)
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well Nos. 3855-06 to 08, 3956-03)
Laie Water Company (LWC)
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well No. 3855-09)
Polynesian Cultural Center (PCC)
55-370 Kamehameha Hwy.
Laie, HI 96762

Landowner:

Property Reserves, Inc.
102 East Social Hall Ave.
Salt Lake City, UT 84111

BYU Hawaii Campus
55-220 Kualanie St.
Laie, HI 96762

The Islands Foundation
55-220 Kualanie St.
Laie, HI 96762

Background:

On June 23, 1993, the applicants submitted completed water use permit applications (WUPAs) to the Commission for existing ground water withdrawals in compliance with the Koolauloa Aquifer System designation as a ground water management area.

On October 13, 1993 and October 27, 1993, the applications were withdrawn from the Commission meeting agendas at the request of the applicants.
On October 27, 1993, in response to prior unresolved disputes filed by Dawn K. Wasson and other landowners in the area, objections filed by Hawai‘i - La‘ieikawai Association, Hui Malama ‘Aina O La‘ie and the Native Hawaiian Advisory Council, and other concerns raised by the Division of Aquatic Resources and Honolulu Board of Water Supply, staff requested authorization to hire a special master to initiate mediation proceedings. The mediation proceeding was anticipated to be completed within three months and was to proceed prior to any request by the staff to hold a public hearing on the matter. The Commission approved the mediation process, in accordance with §13-167-23, and 83 to 92 HAR. Upon completion of the mediation process, the Commission was to revisit the public hearing issue.

By March 1994, the parties had not yet reached agreeable terms to the mediation process, but both the objectors and the applicants indicated their desire to continue to the attempt to reach agreeable terms. On March 16, 1994, the Commission decided to defer action on these WUPAs until the mediation process was completed.

On August 1, 1994, the parties reached agreeable terms to mediation. The parties to the mediation were Dawn K. Wasson and HRI/LWC/PCC. Attorney Walter H. Ikeda was selected to be the mediator.

Due to various deadlines specified in these rules and the desire of the mediator and parties to continue the proceedings, the Commission authorized extensions of the proceedings on November 5, 1994, December 9, 1994, and February 28, 1995. Over this extended period, the parties met face-to-face at least seven different times, made site visits, and had several other negotiation sessions with counsel.

On March 10, 1995, the mediator submitted his final report and recommendations to the Commission. Mediator Walter H. Ikeda reported that, by the end of the period allowed for mediation, a negotiated settlement could not be achieved. However, the mediator felt that the parties were close to a settlement and recommends that, pending a contested case hearing, they be encouraged to talk further even without a mediator.

On August 16, 1995, the Commission approved a public hearing on the applications.

On September 12, 1995, the Commission received a request from Ms. Wasson to convene a meeting similar to the meeting held in Honokohau, Maui, on Honokohau Valley Water Rights.

On September 29, 1995, the Chairperson responded that the public hearing would be held, tentatively on November 28, 1995, for the purposes of information gathering and exchange and that the notice for the hearing would be sent to the Office of Hawaiian Affairs, Native Hawaiian Legal Corporation, Native Hawaiian Advisory Council, and Honolulu Board of Water Supply. The letter also indicated that testimony would be structured in a manner similar to the Honokohau format.
On November 9, 1995, notice of the hearing was published in the Honolulu Star Bulletin and on November 21, 1995, copies were sent to the above agencies.

On November 14, 1995, Laie Water Company filed water use permit applications and pump installation permit applications for Quarry Wells E and F (Well Nos. 3856-05,06). These wells would be connected to the Laie Water Company system to provide existing municipal and commercial uses in the Laie Municipal Water System Service Area. Quarry Wells E and F would not increase the total water use requested in Laie Water Company’s pending water use permit applications for existing uses from Well Nos. 3855-06, 07, 08, and 3956-03.

On November 28, 1995, the public hearing was held to gather additional testimony on the proposed water uses. The Commission received a "Brief in Opposition to Public Hearing and Notice and Comments" ("Brief in Opposition") by attorneys on behalf of Dawn K. Wasson (Exhibit 1). Before the close of the public hearing oral requests for a contested case hearing on the applications were made by James M. Anthony, on behalf of himself and seventeen (17) others who were not present (Exhibit 2), Dawn K. Wasson, and Harry F. Wasson.

On November 28, 1995, a letter was received from HRI notifying the Commission of the withdrawal of the water use permit application for Kapaka Farm 3 (Well No. 3654-03). This application was submitted on June 23, 1993 with the other subject WUPAs.

By December 8, 1995, written petitions requesting a contested case hearing were received from twenty-three (23) persons. Dawn Wasson also submitted an application to be a party in a contested case hearing. These petitions are summarized in Exhibit 3.

On December 8, 1995, a letter was received from attorneys for HRI/LWC/IPCC objecting to the procedure by which Dr. Anthony was allowed to orally request a contested case hearing on behalf of persons who were not present at the public hearing. On December 18, 1995, attorneys on behalf of HRI/LWC/IPCC filed a formal objection to all the petitions.

On December 19, 1995, attorneys on behalf of Ms. Wasson and other parties responded to the December 8, 1995 letter regarding the validity of the oral requests for contested case hearing.

On December 21, 1995 and December 28, 1995, notice of the permit applications for Quarry Wells E and F (Well Nos. 3856-05,06) was published in the Honolulu Star Bulletin.

On January 10, 1996, a written objection to Quarry Wells E and F was received from Dr. Anthony (Exhibit 4). On January 12, 1996 a written objection was received from attorneys on behalf of Ms. Wasson (Exhibit 5).

On January 17, 1996, attorneys on behalf of Ms. Wasson filed a response to the December 18, 1995 objection to the petitions for contested case hearing.
On January 17, 1996, a letter was received from attorneys for HRI/LWC/PCC requesting that the permit applications for Quarry Wells E and F be consolidated with the subject water use permit applications if it is determined that a contested case hearing is required (Exhibit 6).

On January 29, 1996, a "Brief in Support of Issuance of Water Use Permits" for Quarry Wells E and F was received from attorneys for HRI/LWC/PCC in response to the objections that were raised. (Exhibit 7).

Analysis & Issues:

In accordance with §13-167-52(a), HAR, an oral or written request for a contested case hearing on the subject water use permit applications must have been made by the close of the November 28, 1995 public hearing. The person requesting the contested case hearing must then, in addition, have filed a written petition not later than ten days after the close of the public hearing, or by December 8, 1995.

Attorneys on behalf of HRI/LWC/PCC raised a procedural objection to allowing oral requests for contested case hearing to be made through a representative, such as Dr. Anthony, on behalf of persons not present at the public hearing. The objection was also made that Dr. Anthony was not authorized by those persons to request a contested case hearing.

It was confirmed that Dr. Anthony's requests were made by on behalf of those seventeen (17) persons whose signatures were submitted (Exhibit 2) at the November 28, 1995 public hearing and should be accepted in addition to the requests by Dr. Anthony, Ms. Wasson, and Mr. Harry Wasson. However, three of the petitioners, Gerald J. Avilla, Henry W. Wasson, Sr., and Dwayne Purcell submitted written petitions but failed to make either an oral or written request by the close of the public hearing. Their requests are therefore invalid since they did not authorize Dr. Anthony to represent them. The other twenty (20) petitioners met both procedural conditions for making a request for a contested case hearing.

§13-167-52(b), HAR, states that a petition requesting a contested case hearing shall contain a concise statement of the petitioner's interest that may be affected. All the petitions, by reference to the "Brief in Opposition" submitted at the November 28, 1995 public hearing, indicate TMK 1-5-08:43 as the property to be considered in this issue and kuleana rights to surface water flow from Kahawainui Stream, and springs in the vicinity, as the interest that may be affected by ground water withdrawals at the subject wells.

The parcel TMK 1-5-08:43 and all the subject wells lie within the Koolauloa Aquifer System (Exhibit 8). Review of records from the Department of Land Utilization show that only the following eight (8) petitioners have property interest in TMK 1-5-08:43: James M. Anthony, Dawn K. Wasson, Allen L. Kamauoha, Burke C. Kamauoha, Sr., Eileen P. Avilla, Rodney P. Kamauoha, Maylani Kamauoha, and Winifred Kamauoha (Exhibit 9). However, all twenty (20) petitioners have some property interest and/or lawfully reside within the Koolauloa Aquifer.
System. Therefore, pursuant to §13-167-54(a)(3), HAR, and upon consultation with the Attorney General’s Office, these twenty (20) petitioners are determined to have standing to request a contested case hearing on the subject water use permit applications.

Attorneys on behalf of HRI/LWC/PCC raised objections that the petitions are defective because they do not include concise statements and rely on the "Brief in Opposition" which only addresses the claims of Ms. Wasson. The objection was also made that the petitioners do not have standing because they failed to demonstrate their interests that will be directly and immediately affected by ground water withdrawals from the subject wells.

Despite these objections, §13-167-51, HAR, states that, "When required by law, the commission shall hold a contested case hearing upon its own motion or on the written petition of any government agency or interested person who is properly admitted as a party pursuant to section 13-167-54." Accordingly, §13-167-54(a)(3), HAR, states:

"All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application." (emphasis added)

Therefore, in this case, the Commission clearly must hold a contested case hearing; the matter is non-discretionary since the petitioners have some property interest and/or lawfully reside within the hydrologic unit. Pursuant to §13-167-54(a), HAR, the twenty (20) petitioners shall be admitted as parties.

Those individuals who did not establish standing may still apply to intervene. Under §13-167-54(d), HAR, written petitions to intervene must be filed with the Commission by a date established by the Commission. A proposed contested case hearing date or schedule will not be set until the parties are determined and adequate prehearing conferences and motions are completed.

Exhibit 8 shows the locations of the wells in relation to TMK 1-5-5-08:43 and Kahawainui Stream. Except for Well Nos. 3856-07, 3956-03, and 3956-05, staff does not feel that ground water withdrawals from the other subject wells would have the potential to reduce streamflow in Kahawainui Stream due to their proximity to the ocean and other streams. These other ground water discharge points would have to be depleted before the cone of depression could reach Kahawainui Stream. There are no gaging stations in this area and so no evidence of whether or not these other discharge points have been depleted. However, in accordance with the administrative rules, all the wells should be included in the contested case hearing because they are in the same hydrologic unit as the property of interest.
RECOMMENDATION:

Staff recommends that the Commission:

1. Direct staff to begin proceedings for the contested case hearing. This will include publishing a notice which will identify a deadline for filing written petitions to intervene.

2. Approve the request to consolidate the water use permit applications for Laie Water Company for Quarry Wells E and F (Well Nos. 3856-05, 06) into the contested case hearing.

Respectfully submitted,

RAE M. LOUI
Deputy Director

Attachments

APPROVED FOR SUBMITTAL:

MICHAEL D. WILSON, Chairperson

3. Recognize that, since mediation efforts have failed, due to the intractable nature associated with the WPRAs, the issues related to Dwyer Wilson's dispute against HRI will be resolved through the contested case proceeding.
BRIEF IN OPPOSITION TO PUBLIC HEARING AND NOTICE AND COMMENTS

SUMMARY OF THE ARGUMENT

COMES NOW, Dawn Kahalaomapuana Wasson ("Mrs. Wasson"), by and through the undersigned attorneys, and hereby:

- objects to the notice provided for this hearing because such notice failed to provide adequate notice of the location of the hearing pursuant to the requirements of H.R.S. § 92-41.
objects to the propriety of this hearing because respectfully requests that this hearing be vacated because the Commission on Water Resource Management ("COWRM") has an affirmative duty pursuant to H.A.R. § 13-167-82 to investigate and resolve the issues raised in Mrs. Wasson's April 22, 1993 Complaint before addressing the pending water use permit applications ("WUPA"). COWRM cannot avoid its duty pursuant to H.A.R. § 130167-82 to investigate and adjudicate the issues raised in Mrs. Wasson's Complaint simply by choosing to adjudicate the issues raised by the pending WUPAs. Moreover, applicants' cannot possibly carry their statutory burden pursuant to H.R.S. § 175C-49(a) of demonstrating that granting the requested permits would not violate existing legal uses of water when a Complaint alleging the same is pending before COWRM.

submits comments supporting Mrs. Wasson's opposition to the pending WUPA urging COWRM to deny the WUPAs based on the applicants' inability to carry their statutory burdens pursuant to H.R.S. § 174C-49(a) to demonstrate that water is available for the water uses for which the permits are sought, that such water uses do not injure existing legal uses of water and that the water uses are in the public interest.

Finally, to the extent that COWRM fails to vacate the hearing and determines not to deny the pending WUPAs, this document shall act as a formal request for a contested case hearing on this matter.
L. PROCEDURAL CONTEXT FOR THE PENDING WATER USE PERMIT APPLICATIONS

On May 15, 1992, the Commission on Water Resource Management ("COWRM") designated the Koolauloa aquifer system beneath Windward O'ahu as a water management area for groundwater pursuant to H.R.S. § 174C-42.⁠¹ Thus, H.R.S. § 174-48 requires all persons making withdrawals, diversions, impoundments or consumptive use of water in Windward Oahu to obtain a permit from COWRM.

On April 22, 1993, Mrs. Wasson filed a Complaint with COWRM pursuant to H.A.R. § 13-167-82 alleging, among other things, that:

- she had been, and is being, denied water for wetland taro lo'i which her family has relied on for many generations;

- such water had been, and is being, diverted and/or otherwise denied to her land by Zions Securities, Inc. ("Zions") and other entities associated with the Church of Jesus Christ of Latter Day Saints (the "Church") by:
  - closing off auwai and/or diverting the same;
  - taking groundwater in quantities sufficient to diminish surface water supplies, the source of water for wetland taro farming, and, thereby impairing Mrs. Wasson's water rights;

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¹ Mrs. Wasson's position continues to be that COWRM also must designate the relevant surface watersheds in windward Oahu as water management areas due to the intimate hydrogeologic connection between ground and surface water resources. It makes little scientific sense to attempt to regulate either of these resources separately. In any case, Mrs. Wasson, along with Hui Malama 'Aina 'O Lā'ie ("HMAL") and other organizations with similar interests and viewpoints, plan to submit a petition requesting COWRM to designate Lā'ie as a water management area in the next few days.
taking groundwater in quantities sufficient to decrease dramatically the instream flow standards for streams and springs in the Läl‘ie ḥupua‘a;

- taking groundwater in quantities sufficient to constitute a violation of complainant’s correlative rights;

- Zions is selling water that is contaminated by, among other things, pesticides that leach into the aquifer after having been applied to overlying and adjacent agricultural lands.

On June 23, 1993, several entities related to the Church filed WUPA pursuant to H.R.S. § 174C-51. These WUPAs include, but may not be limited to, the following:

- WUPA submitted by Hawai‘i Reserves, Inc. ("HRI"), a Hawai‘i Corporation, as successor in interest to Zions Securities, Inc. ("Zions"), a Utah Corporation, for Well Nos. 3554-01, 3554-02, 3654-03, 3755-04, 3755-06, 3855-04, 3856-04, 3856-07 and 3956-05;

- WUPA submitted by Läl‘ie Water Company ("LWC") for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-09;

- WUPA submitted by the Polynesian Cultural Center ("PCC") for Well No. 3855-09.

These WUPAs were withdrawn by the respective applicants on October 13, 1993 and October 27, 1993.

On March 16, 1994, COWRM decided to defer action on the WUPAs until completion of mediation that was recommended by COWRM pursuant to H.A.R. § 13-167-23. On or about June 8, 1994, the parties agreed to submit the dispute raised by Mrs. Wasson to mediation.

2 There may be other WUPAs submitted by Zions or other entities associated with the Church pending before COWRM. Due to the nature of Mrs. Wasson’s complaint, she also objects to all other pending WUPA's for wells in the Läl‘ie ḥupua‘a and requests that COWRM treat all such WUPAs in the same manner as the applications specifically enumerated in the body of these comments.
before the Center for Alternative Dispute Resolution. Despite significant efforts and what appeared to be substantial progress that led to several extensions from COWRM, mediation was terminated without result on or about March 10, 1995 when the mediator submitted his final report to COWRM pursuant to H.A.R. § 13-167-91. The mediator's report recommended, among other things, that "pending the hearing, the parties be encouraged to talk further even without a mediator." Although Ms. Wasson has made efforts to reinitiate this mediation after receiving indications from the Applicants, as well Councilmember Steve Holmes, that Applicants were willing to do the same, such efforts have proven fruitless.

On August 16, 1995, COWRM authorized staff to initiate public hearing notice and proceeding for the above-referenced WUPAs. In late September 1995, Mrs. Wasson sent a letter to Mr. Michael Wilson, Chairman of COWRM, requesting an informal public meeting on the issues raised by her opposition to these WUPAs. On September 29, 1995, Mr. Wilson

3 COWRM extended the term of the mediation on 11/5/95, 12/9/95 and 2/28/95.


5 The Staff Submittal for the August 16, 1995 COWRM meeting suggested that Mrs. Wasson may only have standing to object to the WUPAs for Well Nos. 3856-07 and 3956-05. The basis for this statement is entirely unclear. As explained in these comments, Mrs. Wasson's objections to WUPAs pending for all wells in the Lā'ie ahupua'a are based on the assertion that groundwater withdrawals from all such wells have a collective and individual adverse effect on surface streamflows and springs in the Lā'ie ahupua'a. Accordingly, as an owner of land in the hydroteogic unit (the Lā'ie ahupua'a), Mrs. Wasson has standing to object to all WUPAs for wells in the Lā'ie ahupua'a. See H.A.R. §13-167-54(a). To the extent that Mrs. Wasson may have failed to perfect such opposition procedurally, such failure resulted directly from the insufficiency of the notice of such WUPAs that Mrs. Wasson may or may not have received in a timely manner. Accordingly, Mrs. Wasson requests that COWRM interpret Mrs. Wasson's objection and Complaint to apply to all WUPAs pending for wells in the Lā'ie ahupua'a.
Informed Mrs. Wasson that COWRM would be holding a public hearing on November 28, 1995 "for the purpose of information gathering and exchange."

We now understand that the scope of this hearing has been increased to be a rulemaking hearing on the pending WUPAs pursuant to H.A.R. 92-41. Accordingly, for the reasons set forth below, Mrs. Wasson respectfully requests that COWRM:

- vacate this hearing for failure to provide adequate notice of its location;
- vacate this hearing until it has determined the determine the issues raised in her April 22, 1993 complaint;
- deny, or at least stay determination of, all WUPAs pending for wells in the Lā'ie ahupua'a subject to determination of the issues raised in Mrs. Wasson's complaint.

II. SUMMARY OF THE POSITION OF MRS. WASSON AND OTHER KULEANA LANDOWNERS IN LĀ'IE

COWRM has an affirmative duty pursuant to the laws of the State of Hawai'i to protect the water and related rights of native Hawaiians. The aforementioned WUPAs, if approved, would cloak the groundwater extractions in Lā'ie with a veil of state approval. Accordingly, this is the final and the appropriate administrative forum for a thorough analysis of the effect that the groundwater wells and other diversions for which LWC, HRI, Zions, PCC, Brigham Young University of Hawai'i ("BYUH") and other entities associated with the Church seek approval

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would have on what is left of the flow of Kahawainui stream and on springs in the vicinity of that stream (which now are mostly destroyed), upon which Mrs. Wasson's property and the property of other kuleana landowners depend. Specifically, this is the forum for COWRM to determine the issues raised in Mrs. Wasson's complaint:

- whether the groundwater diversions made from these wells prevent Mrs. Wasson and other kuleana landowners in Lā'ie from realizing their rights to use and enjoy surface water flows for the practice of their native Hawaiian culture, including, but not limited to, the cultivation of wetland taro pursuant to Hawaiian Constitutional, Statutory, Regulatory and case law;

- whether Zions and or LWC is distributing contaminated water in violation of state and federal law; and

- whether Mrs. Wasson and other kuleana landowners have a right to compensation for the period during which they have been deprived of water as a result of the groundwater withdrawal activities of the Church-related entities.

Mrs. Wasson will submit expert testimony that indicates that the diversions made for the wells that are the subject of the pending WUPAs have contributed in the past, and continue to contribute, to decreasing substantially surface water flows to which Mrs. Wasson and other kuleana landowners have a right. COWRM has a constitutionally-based affirmative duty both to review this information and conduct, or order the applicants to conduct, such studies as are necessary to establish the significance of these adverse effects and their implications for kuleana landowners' rights. Such a review no doubt will indicate that groundwater withdrawals have prevented, and will continue to prevent, Mrs. Wasson from being able to obtain the water to which she has a legal right.

\footnote{Id.}
Should COWRM determine not to address the issues raised by Mrs. Wasson's complaint and/or not deny the pending WUPAs, this document shall act as Mrs. Wasson's official petition for a contested case hearing on this matter pursuant to H.R.S. §§ 91-9, 174C-60 and H.A.R. § 13-167-51.

III. HISTORICAL BACKGROUND OF MRS. WASSON

Mrs. Wasson and her family own and occupy Kuleana lands in the Lā'ie ahupua'a. Mrs. Wasson's property is located on the north bank of Kahawaiinui stream directly mauka from its confluence with Laiiewai ditch. The map key number of this property is 5-5-08-43.

For several generations, many Hawaiians, including Mrs. Wasson, and her ancestors, have peaceably endured the encroachment of their lands by non-native settlers. Because native Hawaiian culture holds at its heart the concept of trust and openness, they believed that these new settlers would treat the land and water with the same respect as they had for generations. Unfortunately, this has not been the case.

Activities of the Church, its agents and lessees have, among other things, destroyed native Hawaiian religious sites, polluted the local environment, altered the course of the naturally flowing streams, obliterated the once-plentiful springs and destroyed the intricate system of a'wai in the ahupua'a upon which native Hawaiians depended for, among other things, wetland taro cultivation. All of this has crippled the ability of the past several generations of native Hawaiians in Lā'ie to continue their cultural heritage, including the cultivation of wetland taro -
a practice which once dominated this ahupua'a. Without this wetland taro, and the culturally-binding farming lifestyle that is traditional and essential to the native Hawaiian culture, their people and their heritage have declined.

IV. PHYSICAL DESCRIPTION OF THE AREA THAT IS THE SUBJECT OF THIS DISPUTE

A review of the maps of the Lā'ie area, as well as a tour of the relevant streams, dramatically reveals the altered hydrology that results in the depletion of Kahawainui stream. First and foremost, there are many stream diversions, most of which have existed for decades. In fact, Laiewai ditch itself is a diversion of water and appears not to be a natural stream. It is unclear at this time exactly where this diversion originates. Additionally, springs close to Kahawainui stream that lie mauka of Mrs. Wasson's property, from which the auwal that traditionally served Mrs. Wasson's property originated, now are completely dry.

A walk along Kahawainui stream from Mrs. Wasson's property reveals an erratic and inexplicable streamflow. At various intervals along the stream there are intervening sections of constant but minimal flow, stagnant water and dry creek bed. There are no apparent diversions or inputs that would explain these fluctuations. There is no other explanation for the insufficient flow of Kahawainui stream than the massive groundwater extractions introduced since the missionaries associated with the Church settled in Lā'ie. It is these extractions and their resultant diminishment of the surface stream flows and springs which have, most significantly,

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See Handy & Handy, Native Planters in Old Hawai'i, 1972, p. 461.
made it impossible for Mrs. Wasson and other local Kuleana landowners to exercise the water rights they possess.

Finally, the course of Kahawaiouui, as well as other ditches and tributaries in the region, have been either redirected or otherwise altered. In fact, along the bank of Kahawaiouui towards Lāʻie, a road has been graded, leading to significant filling and deepening of the stream channel. It is not clear that this grading has been conducted pursuant to the necessary federal and state approvals, but this channelization certainly is evident. What is certain, too, is that because of the current lack of a sufficient quantity of water and the degradation of the quality of the water that still flows in the stream, Mrs. Wasson now is unable to grow wetland taro on her property -

property that as recently as her childhood grew some wetland taro.

V. MRS. WASSON'S COMPLAINT IS A CLASSIC HAWAIIAN STORY

The circumstances that prompted Mrs. Wasson's Complaint are not unlike that of many native Hawaiians throughout the long history of disputes over water in these islands. The property which is the subject of Mrs. Wasson's Complaint has been occupied and used by her ancestors for generations prior to 1778. It is undisputed that the native Hawaiians in Lāʻie have grown wetland taro in this ʻahupuaʻa since at least the mid 1800's. Additionally, it is undisputed that wetland taro has been grown on the property currently inhabited by

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See Handy & Handy, Native Planters in Old Hawai‘i, 1972, p. 461; March 1995 Final Supplemental Environmental Impact Statement on Lāʻie Water Reclamation Facility at 5-1 through 5-3.
Mrs. Wasson. To the best of our knowledge, all of the land now held by the Wasson family was lo‘i on which wetland taro was grown since well before the days of the Mahele in 1848; Thus, during this period, there must have been sufficient water to cultivate wetland taro both on the property inhabited by Mrs. Wasson and her family and on other property in the Lā‘ie ahupua‘a.

It is equally undisputed that in 1865 missionaries associated with the Church purchased most of the ahupua‘a of Lā‘ie. These missionaries increased in numbers steadily and rapidly. Over the years, the Church, its agents and lessees took larger and larger quantities of groundwater and diverted surface water flows, primarily for sugar cultivation and "domestic" consumption for water-depandant facilities in Lā‘ie such as housing, the establishment of BYUH and the PCC. In fact, as stated in the final environmental impact statement for the Lā‘ie Water Reclamation Facility, the developments created by these missionaries have "dramatically altered the original landforms in the area."

Simultaneous with this rapid and steady development, the traditional native Hawaiian lifestyle that centered around the cultivation of wetland taro decreased and, finally, was all but eliminated. As groundwater takings and surface water diversions by the Church and its related entities, lessees and agents increased, springs incrementally dried up, stream flow levels were reduced dramatically, and the ʻauwai which bring water to lo‘i were annihilated. Thus, the sugar agriculture, educational and other land uses of the Church and its lessees and agents increasingly involved the taking of groundwater, streams and springs were impacted, and less and less water was available for wetland taro production. This decrease in traditionally available water
increased and the resultant negative effect on wetland taro production introduced disruptive pressure on Hawaiian families, such as Mrs. Wasson's ancestors, whose subsistence depended on wetland taro agriculture. As has been documented in numerous Hawaiian water cases and the history of water taking in Hawai'i, this pressure resulted in internal disharmony among Hawaiian families, immense and destructive frustration and eventually led to the migration of Hawaiian families from rural to urban areas. Unable to cultivate the one crop that was central to their ancestral lifestyle, Hawaiians moved from a sustainable, self-sufficient lifestyle to one of dependence on urban wage labor. As opposed to surviving based on what the land provided, they were forced into the mainstream economy and depend, first on the corner grocery store, and later on the supermarket for their food supply. Thus, the activities of the Church for the last 130 years completely have undermined the traditional lifestyle dependent on wetland taro cultivation guaranteed to Hawaiians at the time of the Mahāle.

At the public hearing, Mrs. Wasson will present both written and oral history of her ancestors' use of the land that is the subject of this dispute. This history will substantiate the foregoing chronology of events.

VI. PATTERN OF DENIAL BY APPLICANTS AND ASSOCIATED ENTITIES

Contrary to assertions made by HRI, Zions and the other Church-related entities, Hawaiians actively have attempted to redress the loss of water and resultant radical lifestyle disruption which they have suffered. Both public documents and anecdotal history of Mrs. Wasson and her ancestors are replete with evidence of complaints made by Hawaiians to officials of organizations associated with the Church about the decreased water supply and their inability to continue to cultivate wetland taro. Mrs. Wasson will describe this pattern of denial in detail, both in writing and orally at the public hearing. This description will demonstrate how these complaints invariably were dismissed, redirected or simply ignored. More recently, such complaints have been met with flat refusals to address the issue and suggestions to bring legal action with full knowledge of the minimal financial resources that the Hawaiians possess to bring such action. While the recently completed mediation gave reason for optimism by all parties that these issues could be addressed, the inability of HRI to acknowledge responsibility for historical stream depletions and the resultant injuries and deprivations suffered by native Hawaiians and kuleana landowners like Mrs. Wasson was one of the primary reasons that the mediation was terminated unsuccessfully.

The typical response of the various Church-related entities to Hawaiian's complaints about lack of water was to redirect the complaint to some other party. For instance, if the complaint was directed at Zions, it would point the finger at the PCC, who in turn would blame BYUH. It appears that this routine is being repeated again in response to this more formal Complaint. As was evidenced in the August 15, 1994 mediation meeting, it is unclear whether La'ie Water Company, HRI, Descret Management Corporation ("DMC") or the as-yet-
unrevealed parent entity of these corporations, if any, will take responsibility for the depletion of Kahawainui stream, the disappearance of the numerous springs in its vicinity and the calculated annihilation of the auwai. In sum, the persistent attempts by Mrs. Wasson and her ancestors to raise informally and peaceably the issues regarding the depleted water supply have been met with a uniquely ha'ole response — a shell game of corporate entities and little or no genuine concern for the underlying cause of the problem.

Compounding this repeated failure to address these issues is the position of the Church-related entities that they have no knowledge of the circumstances leading to this complaint. Several actions by entities associated with the Church, including HRL, reveal that they are aware of these problems including the positions taken by these entities during the negotiations of the 1990 Consent Decree entered into as part of the federal Clean Water Act action brought by HMAL and discussions of water use patterns in environmental disclosure documents published by the entities over the past several years. In general, the behavior of the entities associated with the Church involved in this dispute demonstrates a manifest and calculated effort to avoid the issue of the effect that groundwater withdrawals and other diversions have on the flow of Kahawainui stream and the impact of such withdrawals on springs in the vicinity. A poignant example of this is the complete failure to address the scientifically-proven relationship between groundwater withdrawal and consequential effect on surface water

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11 Based on information and belief, this parent entity is the Church.
VII. LEGAL PREREQUISITES FOR APPROVING THE PENDING WATER USE PERMIT APPLICATIONS

A. COWRM MUST ACT FIRST ON THE ISSUES RAISED IN DAWN WASSON’S APRIL 22, 1993 COMPLAINT

Mrs. Wasson filed her Complaint more than 18 months ago, before any WUPAs were filed by the entities associated with the Church. H.A.R. § 13-167-82 requires COWRM to "cause an investigation to be made, take appropriate action and notify the complainant thereof." While COWRM generously has provided for the issues raised in Mrs. Wasson’s Complaint to be mediated, that mediation has failed. Accordingly, COWRM must address the issues raised in Mrs. Wasson’s Complaint by investigating the same and taking appropriate action.

The law of the State of Hawaii, including the Water Code, is replete with specific provisions designed to protect the water rights of native Hawaiians and kuleana and taro lands. Primarily, the Hawaiian State Constitution provides that:

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

Haw. Const. art XII, § 7. H.R.S. § 1-1 states that "[t]he common law of England ... is declared to be the law of the State of [Hawaii] in all cases, except as otherwise ... established by Hawaiian usage." H.R.S. § 174C-101(c) mandates that:
Traditional and customary rights of the akupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by [the provision of the Water Code].

Finally, H.R.S. § 174C-101(d) mandates that:

The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.

The recent decision of the Hawai‘i Supreme Court only reaffirmed this duty. In Public Access Shoreline Hawai‘i v. Hawai‘i County Planning Commission, the Supreme Court interpreted Haw. Const. art. XII, § 7 to require that administrative agencies of the State of Hawai‘i have an affirmative duty to “protect the reasonable exercise of customary or traditional rights” of native Hawaiians. While this decision focused on land access issues, it applies equally to established water rights guaranteed to native Hawaiians by state law.

Mrs. Wasson owns and occupies kuleana lands that were used as wetland taro lo‘i during the Mahele, or at times subsequent thereto, and, most likely, prior to 1778. Hawaiian law is clear that owners of kuleana lands have the right to the use of water utilized by such parcels at the time of their original conversion into fee simple. H.R.S. § 7-1, Reppun v. Board of Water Supply, 65 Haw. 531, 656 P.2d 57 (1982), cert. denied, 471 U.S. 1014 (1985). While these


13 Id. at 52-53.

14 Appurtenant rights attach to kuleana parcels regardless of whether water was used on that parcel for wetland taro cultivation, as long as water was used on the particular parcel. Carter v. Territory, 24 Haw. 47, 59 (1917); Territory v. Gay, 31 Haw. 376, 383 (1930).
appurtenant rights may not always have been usable on Mrs. Wasson's property, primarily due to the lack of availability of water about which Mrs. Wasson has complained, Mrs. Wasson has never sold such rights. Therefore, Mrs. Wasson has existing legal rights to use water in Kahawainui stream which COWRM has an obligation to protect. Failure of COWRM to investigate and adjudicate this Complaint, especially in light of this issues raised in Mrs. Wasson's Complaint, would be contrary to the law.

The key to resolving the issues raised by Mrs. Wasson's Complaint is to abandon the myth that the Church and its related entities, including applicants, have engaged in to date that the ground and surface water systems in the Lā'ie ahupua'a are distinct. This simply is scientifically incorrect. In fact, the Hawai'i Supreme Court itself has recognized this fact. Mrs. Wasson is prepared to submit evidence demonstrating that the surface and groundwater systems in Lā'ie are part of a single system. COWRM must review this evidence carefully. After having done so, it will have no alternative but to determine that the subject groundwater withdrawals dramatically affect surface water flows and, therefore, can act to deprive Mrs. Wasson of her right to surface water flows in Kahawainui stream.

Resolution of the issues raised in Mrs. Wasson's Complaint will require similar investigations as will be required to determine whether the pending WUPAs can be approved. However, COWRM cannot simply shirk its duties pursuant to H.A.R. § 13-167-82 to both

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15 Repun, 65 Haw. at 555.

16 See Groundwater Resource Management, Robert Willis, Ph.D., to be submitted for COWRM's information.
investigate and adjudicate this Complaint by deciding to address first the simply adjudicatory duty raised by the WUPAs. In fact, because applicant must demonstrate pursuant to H.R.S. § 174C-49(a) that the use of water for which it seeks a permit will not injure existing legal uses of water, it is legally impossible for COWRM to approve the permits before it has determined the issues raised in Mrs. Wasson's Complaint - namely that the same uses for which applicants are seeking permits are causing injury to her rights.

The investigations that are required to resolve Mrs. Wasson's Complaint include verification of the character of Mrs. Wasson's rights to surface water and quantification of the effect that groundwater withdrawals, surface diversions and other "water management" activities of the entities associated with the Church and their lessees, agents and others in the La'ie ahupua'a and within the confines of the Ko'olau'a aquifer have on surface water flows in the La'ie ahupua'a and, more specifically, the water available to the parcel occupied by Mrs. Wasson and her family. Accordingly, COWRM must fulfill its constitutional and statutory duties to protect and preserve the rights of native Hawaiians by resolving the issues raised in Mrs. Wasson's Complaint before making any determination on the pending WUPAs.

B. COWRM CANNOT APPROVE THE PENDING WUPAS

The Water Code establishes several specific items that an applicant must establish to obtain a water use permit. See H.R.S. § 174C-49(a). COWRM must determine whether those conditions have been established before issuing a water use permit. H.R.S. § 174C-53(a). Included among those conditions are:
whether the proposed use of water can be accommodated with available water supply;

• whether the proposed use of water will interfere with any existing legal use of water; and

• whether the proposed water use is consistent with the public interest.

H.R.S. § 174C-49(a). The Applicants for the pending WUPAs have failed to establish these conditions. Thus, even assuming COWRM could address these WUPAs before resolving the issues raised in Mrs. Wasson's Complaint, COWRM would be required to deny the WUPAs because of applicants' failure.

First, Applicants have failed to establish that the proposed use of water will not interfere with the existing legal uses of water by native Hawaiians and kulana landowners such as Mrs. Wasson. As described above, Mrs. Wasson clearly has prior legal rights to use water in the Laie ahupua'a based on her ownership of kulana. These rights are expressly preserved by the Water Code. See H.R.S. § 174C-101(c) and (d). No provision of the Water Code or act of COWRM can diminish these rights. Id. Pursuant to H.R.S. § 174C-49(a), applicants have the burden of demonstrating that such existing legal uses have will not be injured by the proposed uses. The mere fact that an unresolved Complaint is still pending before COWRM makes it impossible for the applicants carry the requisite burden. Furthermore, the evidence as described above, is overwhelming in indicating that the uses for which applicants seek WUPA, in fact, have injured Mrs. Wasson's rights by completely depriving her of the ability to have water for, among other things, wetland taro cultivation. Accordingly, applicants must be put to the strict test of demonstrating that the uses for which the permits are sought do not injure Mrs. Wasson's
superior legal right to use water, a task they simply have not accomplished and cannot accomplish until the issues raised in Mrs. Wasson’s Complaint are resolved.

Additionally, applicants have not demonstrated that there is sufficient supply to allow for the uses for which they seek WUPAs. As described above, the evidence is clear that Mrs. Wasson, and possible many other owners of kuleana lands, currently are unable to obtain sufficient water to fulfill their traditional needs. Absent demonstration by the applicants that these rights can be satisfied before their proposed uses are made, COWRM cannot approve the pending WUPAs.

Finally, applicants clearly have not demonstrated that issuance of the requested permits is in the public interest. The Hawai‘i Supreme Court has recognized that:

a public trust was imposed upon all waters of the kingdom. That is, we find the public interest in the waters of the kingdom was understood to necessitate a retention of authority and the imposition of a concomitant duty to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial uses.17

The Court further stated that “[u]nderlying every private diversion and application there is, as there always has been a superior public interest in this natural bounty.”18

This trust is expressly recognized in both the Hawai‘i Constitution and the Water Code which guides COWRM. The Hawai‘i Constitution expressly states that “All public natural


18 Id. at 677, 658 P.2d at 312.
resources are held in trust by the State for the benefit of the people." Additionally, the Constitution declares that

the State has an obligation to protect, control, and regulate the use of Hawai‘i’s water resources for the benefit of its people. . . protect ground and surface water resources, watersheds and natural stream environments. . . and establish procedures for regulating all uses of Hawai‘i’s water resources.20

Amplifying this theme, the legislature expressly recognized the public trust responsibilities of COWRM in establishing the Water Code which states that, "it is recognized that the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are beneficiaries and have a right to have the waters protected for their use."21 In regards to COWRM’s water allocation responsibilities, the Water Code declares that adequate protection shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance of scenic beauty, the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.22

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20 Id at § 9.
21 H.R.S. § 174C-2(a).
22 H.R.S. § 174C-2(c). See also H.R.S. § 174C-5(3) (requiring COWRM to "protect, enhance and reestablish where practicable, beneficial instream uses of water in the State"), H.R.S. § 174C-71(1) (requiring COWRM to "establish instream flow standards. . . to protect the public interest in waters of the state"), H.R.S. § 174C-71(3) (requiring COWRM to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic and other beneficial instream uses) and H.R.S. § 174C-71(4) (requiring COWRM to "establish an instream flow program to protect, enhance, and reestablish, where practicable, beneficial instream uses of water" by considering water requirements for "fishing, wildlife, aesthetic[s], recreation[1], water quality, and [the ecology]."
This duties outlined by these provisions requires COWRM to allocate water under the authority of the Water Code in a way that ensures that this sacred public trust of the States waterways and the biota and people that depend thereon are preserved. Such action is the public's interest that COWRM is duty-bound to protect.

All of the evidence described above, which Mrs. Wasson is prepared to substantiate, indicates that the water uses for which the pending WUPAs are sought clearly have combined to decimate the natural streamflow of the waters in the Lā'ie ahupua'a and, accordingly, decimate or threaten the stream life that depends on those waters. COWRM must take seriously its role in protecting these streamflows and their dependent lifeforms and require strict proof from applicants that the water uses for which the WUPAs are sought have not resulted in the almost complete destruction of the natural stream system in the Lā'ie ahupua'a. Mrs. Wasson is confident that the applicants have not, and will not, be able to meet this burden.

VIII. CONCLUSION

As stated above, COWRM has a unique opportunity to take an affirmative step to resolve this issue. Although the issues raised by the pending WUPAs involve only a limited number of landowners in one ahupua'a, the significance of COWRM's position on this matter will have important implications for other kuleana landowners throughout the State of Hawai'i. Ms. Wasson and the other kuleana landowners look forward to COWRM's enforcement of the law by ensuring that Ms. Wasson gets water before anyone else gets a water use permit in Lā'ie.
Please keep in mind that the Church, through one of several or its entities, also operates a private water system in Lā‘ie. This water system has operated for decades outside of the laws of the State of Hawai‘i because it is not covered by the requisite certificate of public convenience and necessity. While an application for such a certificate currently is pending, it is unlikely it will be granted unconditionally due to the apparent sub-standard state of this water system. This is yet another instance where these entities continue to mistreat their neighbors and native Hawaiian people.

Accordingly, Ms. Wasson prays that COWRM takes its responsibility in this matter seriously. Groundwater cannot be viewed in isolation, especially when the physical and scientific evidence of the adverse impact such well diversions have on surface water flows and those who depend on those flows is so clear. Development pressure has exacerbated these problems to the extent that COWRM no longer can avoid them. The trend throughout the State of Hawai‘i, and the United States in general, is in favor of finally recognizing and enforcing the legal rights of indigenous persons. This is the opportunity for COWRM to take the initiative and restore to Ms. Wasson what is legally, and rightfully, hers - the simple right to sufficient water to perpetuate the cultural traditions that have sustained her people in dignity and without which her people will remain marginalized. Thus, Mrs. Wasson respectfully requests that COWRM resolve the issues raised by Mrs. Wasson’s complaint, deny the pending WUPAs or, in the alternative, attach such conditions to such permits that will ensure Mrs. Wasson’s ability...

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See Groundwater Resource Management, Robert Willis, Ph.D., to be submitted for COWRM’s information.
to exercise her senior water rights as well as the ability to rehabilitate the decimate stream conditions that now exist in the Lāʻie ahupuaʻa.

Respectfully submitted this 28th day of November, 1995.

LAW OFFICES OF
JOHN D. MUSICK, JR. & ASSOCIATES

BY: John D. Musick, Jr.
Don P. Brown, Jr.
P.O. Box 4579
4141 Arapahoe Avenue, Suite 200
Boulder, CO 80306-4579
Telephone: 303/447-1974
Facsimile: 303/447-1977

ATTORNEYS FOR
DAWN KAHALAOMAPUANA WASSON
The Chair and Members:
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96813

Gentlemen

We, the undersigned, are owners of Kuleana lands in La‘ie. We hereby indicate our opposition to any water use permits being issued to any of the Mormon Church related applicants whose case for water use permits will be heard at a public hearing conducted by you on November 28, 1995. Furthermore, we believe that the Commission on Water Resource Management has an affirmative responsibility to ensure that our water rights, long denied us by the actions of the agents and lessees of the Mormon Church, be restored to us before any water use permit is issued to them.

Thank you for your attention to this letter.

Sincerely yours

[Signatures]

EXHIBIT - 2
November 20, 1995

The Chair and Member:
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i  96809

Gentlemen

We, the undersigned, are owners of Kuleana lands in La‘ie. We hereby indicate our opposition to any water use permits being issued to any of the Mormon Church related applicants whose case for water use permits will be heard at a public hearing conducted by you on November 28, 1995. Furthermore, we believe that the Commission on Water Resource Management has an affirmative responsibility to ensure that our water rights, long denied us by the actions of the agents and lessees of the Mormon Church, be restored to us before any water use permit is issued to them.

Thank you for your attention to this letter.

Sincerely yours

MELITAME Unga

Anitiose Unga

Anitirose Unga
November 20, 1995

The Chair and Members
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai’i 96809

Gentlemen

We, the undersigned, are owners of Kuleana lands in La’ie (TMK 5:5:08:43). We hereby indicate our opposition to any water use permits being issued to any of the Mormon Church related applicants whose case for water use permits will be heard at a public hearing conducted by you on November 28, 1995. Furthermore, we believe that the Commission on Water Resource Management has an affirmative responsibility to ensure that our water rights, long denied us by the actions of the agents and lessees of the Mormon Church, be restored to us before any water use permit is issued to them.

Thank you for your attention to this letter.

Sincerely yours,

Burke C. Kamaunoa Sr.
Burke C. Kamaunoa Sr.

Allen L. Kamaunoa
ALLEN L. KAMAUNOA

Mary A.K. Kamaunoa
MARY A.K. KAMAUNOA

Wanda K. Kamaunoa
Wanda K. Kamaunoa

Eileen P. Avilla
Eileen P. Avilla

May L. Kamaunoa
May L. Kamaunoa

Winifred L. Kamaunoa
Winifred L. Kamaunoa

Rodney P. Kamaunoa
Rodney P. Kamaunoa

President: Dawn K. Wasson • Vice-President: Winifred M. Miller • Treasurer: Witt Akana • Secretary: Kēkela Miller
REQUESTS FOR CONTESTED CASE HEARING
related to the Water Use Permit Applications of
Hawaii Reserves, Inc., Laie Water Company, and Polynesian Cultural Center

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<th>Name</th>
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<td>Dr. James M. Anthony</td>
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<td>Wanda Kamauoha</td>
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<td>Eileen P. Avilla</td>
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<td>Rodney P. Kamauoha</td>
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<td>Maylani Kamauoha</td>
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<td>Winifred Kamauoha</td>
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<td>Epenesa R. Purcell</td>
<td>YES (by Anthony)</td>
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<td>Anitilose Unga</td>
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<td>Meliame Unga</td>
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<td>Edward Sinilau Fa</td>
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<td>Miulan P. Nihipali</td>
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<td>Gerald M. Nihipali</td>
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<tr>
<td>Herbert A. Kamakeeaina, Jr.</td>
<td>YES (by Anthony)</td>
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<tr>
<td>Harry F. Wasson</td>
<td>YES (by self)</td>
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<tr>
<td>Witt K. Akana</td>
<td>YES (by Anthony)</td>
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<tr>
<td>Henry W. Wasson, Sr.</td>
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<td>YES</td>
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<tr>
<td>Dwayne Purcell</td>
<td>NO</td>
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Applicants to be a party in a contested case hearing:

1. Dawn K. Wasson

EXHIBIT - 3
TO: Interested Parties

FROM: The M. Loui, Deputy Director, Commission on Water Resource Management

SUBJECT: Request for Comment
Water Use Permit Application
Koolauloa Groundwater Management Area, Oahu

Transmitted for your review and comments are copies of water use permit applications for Laie Water Co., Inc./Brigham Young University - Hawaii Campus and Laie Water Co., Inc./Property Reserves Inc. for Well Nos. 3856-05 & 06, respectively. Public notice of these applications will be published in the Honolulu Star Bulletin issues of December 21, 1995 and December 22, 1995.

We would appreciate your review of the attached applications for any conflicts or interferences with the programs, plans, and objectives of the organization or agency that you represent. Written objections should be made in accordance with Section 13-171-18 of our Administrative Rules and must be filed by the January 12, 1996 deadline.

If you have any questions, require additional information, or would like to request an extension of the review period for these applications, please contact Lenore Nakama at 587-2118.

Response:

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

Contact Person: [Signed]  Phone: 237-7015
Signed: [Signed]  Date: 1-9-96
With reference to your letter of December 13, 1995, you are hereby informed that I am unalterably opposed to the water use permit applications by LAIE WATER COMPANY for Quarry Wells E and F (State Nos. 3856-05 & 06, Lā'ie, Oahu, Hawaii).

My objections to the granting of such water use permits are based on the very same objections I raised with respect to similar applications made by Mormon Church related entities BYU-Hawaii; HRI, Polynesian Cultural Center, and others. These objections were filed before the Commission at its formal hearing on November 28, 1995. These objections are referred to and incorporated herein by reference.

Furthermore, as grounds for objection to the same 2 water use permit
My objections are based on the extensive and frequent contact Professor Feltre had with his student, Counts, and the widespread influence of his ideas. The university's failure to investigate these allegations and take appropriate action undermines its mission and integrity.

In summary, my objections are based on the university's failure to act upon the evidence presented. I urge the university to conduct a thorough investigation and take the necessary steps to ensure accountability.

Professor Feltre's actions have affected my career and the careers of my colleagues. The university's inaction is unacceptable and must be addressed.

Applications made by myself and other colleagues to the university's Ethics Committee have been ignored. The university's failure to address these concerns is a grave concern for the academic community.

The university's failure to act in accordance with ethical standards and principles undermines its reputation and the trust of its stakeholders.
destroyed by the applicants, their agents or their predecessors in interest or by agents of their principals, the Mormon or LDS Church, or by the LDS Church itself.

The applicants have no right to water-use permits until the prior rights of Pulewa landowners, or when I am no., are restored + settled.

The Commission has a responsibility, particularly since this is a designated water management area, to ensure that it has a complete understanding of the effect of issuing water-use permits additional to those already granted on the entire aquifer system (as Puy Wells argues). I support that argument.

As you know the water-use permits which were before the Commission on Nov. 28, 1995—were the subject of strenuous objections, and they are now the subject of contested case hearings requested. I hereby give you notice that I shall also request a contested case hearing on these permit applications for Wells 3856-05 & 06.
These objections are made pursuant to 513-171-18 of your Administrative Rules.

I regret that this formal notification of my objections had to be handwritten; our computer is out for repair. Your understanding is appreciated.

Very sincerely yours,

J. M. Anthony, Ph.D

Enclosure

cc: Applicant: Lake Water Company
55-510 Kennected Hwy
Lake, Oklahoma 96762
Ms. Rae Loui, Deputy Director  
Hawaii Commission on Water  
Resource Management  
P.O. Box 621  
Honolulu, HI 96809

Re: Applications of La’ie Water Company/Brigham Young University-Hawaii and La’ie Water Company/Property Reserves, Inc., Well Nos. 3856-05 and 3856-06

Dear Ms. Loui:

Transmitted following this letter is the Statement and Brief in Opposition to Water Use Permit Applications filed on behalf of Dawn K. Wasson to the above-referenced water use permit applications. Via mail, we will forward to you an original and one copy of this pleading. We would appreciate you filing the original of this document and returning a date-stamped copy of it in the self-addressed, stamped envelope which we have enclosed for your convenience.

Thank you for your assistance in handling this matter. If you have any questions regarding this letter or the enclosed statement, please call me at the Boulder office.

Sincerely,

LAW OFFICES OF  
JOHN D. MUSICK, JR. & ASSOCIATES

By:

Don P. Brown, Jr.

DPB: mkj  
Enclosures  
c: (w/encls.)  
Douglas W. MacDougal, Esq.
STATEMENT AND BRIEF IN OPPOSITION TO
WATER USE PERMIT APPLICATIONS

COMES NOW, Dawn Kahalaomapuana Wasson ("Mrs. Wasson"), by and through the undersigned attorneys, and hereby objects to the above-referenced water use permit applications. As grounds for such objections, Mrs. Wasson states as follows:
A. COMMISSION ON WATER RESOURCE MANAGEMENT ("COWRM")
FIRST MUST ACT ON THE ISSUES RAISED IN DAWN WASSON'S
APRIL 22, 1993 COMPLAINT

Mrs. Wasson's filed a complaint on April 22, 1993. This complaint, among other things, alleges that the subject wells owned or controlled by Applicant are depriving her of her water rights. COWRM cannot avoid its duty pursuant to H.A.R. § 13-167-82 to investigate and adjudicate the issues raised in Mrs. Wasson's Complaint simply by choosing to adjudicate the issues raised by the pending Water Use Permit Applications ("WUPA"). Moreover, applicants cannot possibly carry their statutory burden pursuant to H.R.S. § 175C-49(a) of demonstrating that granting the requested permits would not violate existing legal uses of water when a Complaint alleging the same is pending before COWRM.

Mrs. Wasson file her Complaint more than 18 months ago, before any WUPAs were filed by the entities associated with the Church of Jesus Christ of Latter Day Saints (the "Church"). H.A.R. § 13-167-82 requires COWRM to "cause an investigation to be made, take appropriate action and notify the complainant thereof." While COWRM generously has provided for the issues raised in Mrs. Wasson's Complaint to be mediated, that mediation has failed. Accordingly, COWRM must address the issues raised in Mrs. Wasson's Complaint by investigating the same and taking appropriate action.

The law of the State of Hawaii, including the Water Code, is replete with specific provisions designed to protect the water rights of native Hawaiians and kuleana and taro lands. Primarily, the Hawaiian State Constitution provides that:
The State reaffirms and shall protect all rights, customarily and traditionally exercised for the subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

Haw. Const. art XII, § 7. H.R.S. § 1-1 states that "[t]he common law of England . . . is declared to be the law of the State of [Hawai'i] in all cases, except as otherwise . . . established by Hawaiian usage." H.R.S. § 174C-101(c) mandates that:

Traditional and customary rights of the ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by [the provision of the Water Code].

Finally, H.R.S. § 174C-101(d) mandates that:

The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.

The recent decision of the Hawai'i Supreme Court only reaffirmed this duty. In Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission,1 the Supreme Court interpreted Haw. Const. art. XII, § 7 to require that administrative agencies of the State of Hawai'i have an affirmative duty to "protect the reasonable exercise of customary or traditional rights" of native Hawaiians.2 While this decision focused on land access issues, it applies equally to established water rights guaranteed to native Hawaiians by state law.

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2 Id., at 52-53.
Mrs. Wasson owns and occupies kuleana lands that were used as wetland taro lo'i during the Mahele, or at times subsequent thereto, and, most likely, prior to 1778. Hawaiian law is clear that owners of kuleana lands have the right to the use of water utilized by such parcels at the time of their original conversion into fee simple. H.R.S. § 7-1, Reppun v. Board of Water Supply, 65 Haw. 531, 656 P.2d 57 (1982), cert. denied, 471 U.S. 1014 (1985). While these appurtenant rights may not always have been usable on Mrs. Wasson's property, primarily due to the lack of availability of water about which Mrs. Wasson has complained, Mrs. Wasson has never sold such rights. Therefore, Mrs. Wasson has existing legal rights to use water in Kahawainui stream which COWRM has an obligation to protect. Failure of COWRM to investigate and adjudicate this Complaint, especially in light of this issues raised in Mrs. Wasson's Complaint, would be contrary to the law.

The key to resolving the issues raised by Mrs. Wasson's Complaint is to abandon the myth that the Church and its related entities, including applicants, have engaged in to date that the ground and surface water systems in the Lā'ie ahupua'a are distinct. This simply is scientifically incorrect. In fact, the Hawai'i Supreme Court itself has recognized this fact. Mrs. Wasson is prepared to submit evidence demonstrating that the surface and groundwater

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3 Appurtenant rights attach to kuleana parcels regardless of whether water was uses on that parcel for wetland taro cultivation, as long as water was used on the particular parcel. Carter v. Territory, 24 Haw. 47, 59 (1917); Territory v. Gay, 31 Haw. 376, 383 (1930).

4 Reppun, 65 Haw. at 555.
systems in Lā‘ie are part of a single system.\(^5\) COWRM must review this evidence carefully. After having done so, it will have no alternative but to determine that the subject groundwater withdrawals dramatically affect surface water flows and, therefore, can act to deprive Mrs. Wasson of her right to surface water flows in Kahawainui stream.

Resolution of the issues raised in Mrs. Wasson’s Complaint will require similar investigations as will be required to determine whether the pending WUPAs can be approved. However, COWRM cannot simply shirk its duties pursuant to H.A.R. § 13-167-82 to both investigate and adjudicate this Complaint by deciding to address first the simply adjudicatory duty raised by the WUPAs. In fact, because applicant must demonstrate pursuant to H.R.S. § 174C-49(a) that the use of water for which it seeks a permit will not injure existing legal uses of water, it is legally impossible for COWRM to approve the permits before it has determined the issues raised in Mrs. Wasson’s Complaint - namely that the same uses for which applicants are seeking permits are causing injury to her rights.

The investigations that are required to resolve Mrs. Wasson’s Complaint include verification of the character of Mrs. Wasson’s rights to surface water and quantification of the effect that groundwater withdrawals, surface diversions and other "water management" activities of the entities associated with the Church and their lessees, agents and others in the Lā‘ie ahupua‘a and within the confines of the Ko‘olauloa aquifer have on surface water flows in the Lā‘ie ahupua‘a and, more specifically, the water available to the parcel occupied by Mrs. Wasson.

\(^5\) See Groundwater Resource Management, Robert Willis, Ph.D., to be submitted for COWRM’s information.
Wasson and her family. Accordingly, COWRM must fulfill its constitutional and statutory duties to protect and preserve the rights of native Hawaiians by resolving the issues raised in Mrs. Wasson’s Complaint before making any determination on the pending WUPAs.

B. COWRM CANNOT APPROVE THE PENDING WUPAS

The Water Code establishes several specific items that an applicant must establish to obtain a water use permit. See H.R.S. § 174C-49(a). COWRM must determine whether those conditions have been established before issuing a water use permit. H.R.S. § 174C-53(a).

Included among those conditions are:

- whether the proposed use of water can be accommodated with available water supply;
- whether the proposed use of water will interfere with any existing legal use of water; and
- whether the proposed water use is consistent with the public interest.

H.R.S. § 174C-49(a). The Applicants for the pending WUPAs have failed to establish these conditions. Thus, even assuming COWRM could address these WUPAs before resolving the issues raised in Mrs. Wasson’s Complaint, COWRM would be required to deny the WUPAs because of applicants’ failure.

First, Applicants have failed to establish that the proposed use of water will not interfere with the existing legal uses of water by native Hawaiians and kuleana landowners such as Mrs. Wasson. As described above, Mrs. Wasson clearly has prior legal rights to use water in the Lā‘ie ahupua‘a based on her ownership of kuleana. These rights are expressly preserved by the
STATEMENT AND BRIEF OF DAWN K. WASSON
January 12, 1996
Page 7

Water Code. See H.R.S. § 174C-101(c) and (d). No provision of the Water Code or act of COWRM can diminish these rights. Id. Pursuant to H.R.S. § 174C-49(a), applicants have the burden of demonstrating that such existing legal uses have will not be injured by the proposed uses. The mere fact that an unresolved Complaint is still pending before COWRM makes it impossible for the applicants carry the requisite burden. Furthermore, the evidence as described above, is overwhelming in indicating that the uses for which applicants seek WUPA, in fact, have injured Mrs. Wasson's rights by completely depriving her of the ability to have water for, among other things, wetland taro cultivation. Accordingly, applicants must be put to the strict test of demonstrating that the uses for which the permits are sought do not injure Mrs. Wasson's superior legal right to use water, a task they simply have not accomplished and cannot accomplish until the issues raised in Mrs. Wasson's Complaint are resolved.

Additionally, applicants have not demonstrated that there is sufficient supply to allow for the uses for which they seek WUPAs. As described above, the evidence is clear that Mrs. Wasson, and possible many other owners of kuleana lands, currently are unable to obtain sufficient water to fulfill their traditional needs. Absent demonstration by the applicants that these rights can be satisfied before their proposed uses are made, COWRM cannot approve the pending WUPAs.

Finally, applicants clearly have not demonstrated that issuance of the requested permits is in the public interest. The Hawai‘i Supreme Court has recognized that:

a public trust was imposed upon all waters of the kingdom. That is, we find the public interest in the waters of the kingdom was understood to necessitate a retention of authority and the imposition of a concomitant duty to maintain the
purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial uses.\textsuperscript{6}

The Court further stated that "[u]nderlying every private diversion and application there is, as there always has been a superior public interest in this natural bounty."\textsuperscript{7}

This trust is expressly recognized in both the Hawai‘i Constitution and the Water Code which guides COWRM. The Hawai‘i Constitution expressly states that "All public natural resources are held in trust by the State for the benefit of the people."\textsuperscript{8} Additionally, the Constitution declares that

the State has an obligation to protect, control, and regulate the use of Hawai‘i’s water resources for the benefit of its people... protect ground and surface water resources, watersheds and natural stream environments... and establish procedures for regulating all uses of Hawai‘i’s water resources.\textsuperscript{9}

Amplifying this theme, the legislature expressly recognized the public trust responsibilities of COWRM in establishing the Water Code which states that, "it is recognized that the waters of the State are held for the benefit of the citizens of the State. It is declared that the people of the State are beneficiaries and have a right to have the waters protected for their use."\textsuperscript{10} In regards to COWRM’s water allocation responsibilities, the Water Code declares that

\begin{itemize}
  \item \textsuperscript{6} Robinson v. Ariyoshi, 65 Haw. 641, 647, 658 P.2d 287, 310 (1982).
  \item \textsuperscript{7} Id. at 677, 658 P.2d at 312.
  \item \textsuperscript{8} Haw. Const. art. XI, § 1.
  \item \textsuperscript{9} Id at § 9.
  \item \textsuperscript{10} H.R.S. § 174C-2(a).
\end{itemize}
adequate protection shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance of scenic beauty, the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.\textsuperscript{11}

This duties outlined by these provisions requires COWRM to allocate water under the authority of the Water Code in a way that ensures that this sacred public trust of the States waterways and the biota and people that depend thereon are preserved. Such action is the public’s interest that COWRM is duty-bound to protect.

All of the evidence described above, which Mrs. Wasson is prepared to substantiate, indicates that the water uses for which the pending WUPAs are sought clearly have combined to decimate the natural streamflow of the waters in the Lā'ie ahupua'a and, accordingly, decimate or threaten the stream life that depends on those waters. COWRM must take seriously its role in protecting these streamflows and their dependent lifeforms and require strict proof from applicants that the water uses for which the WUPAs are sought have not resulted in the almost complete destruction of the natural stream system in the Lā'ie ahupua'a. Mrs. Wasson is confident that the applicants have not, and will not, be able to meet this burden.

\textsuperscript{11} H.R.S. § 174C-2(c). See also H.R.S. § 174C-5(3) (requiring COWRM to "protect, enhance and reestablish where practicable, beneficial instream uses of water in the State"), H.R.S. § 174C-71(1) (requiring COWRM to "establish instream flow standards... to protect the public interest in waters of the state"), H.R.S. § 174C-71(3) (requiring COWRM to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic and other beneficial instream uses) and H.R.S. § 174C-71(4) (requiring COWRM to "establish an instream flow program to protect, enhance, and reestablish, where practicable, beneficial instream uses of water" by considering water requirements for "fishing, wildlife, aesthetic[s], recreation[], water quality, and [the ecology]).
C. JOINDER

Objector respectfully requests that COWRM join consideration of these WUPAs with the other pending WUPAs submitted by Applicant and the other entities related to the Church. These permits all involve the same legal and factual issues and, therefore, it serves administrative efficiency to consider them in together.

D. RESERVATION OF RIGHTS

Mrs. Wasson expressly reserves the right to supplement these objections at a later date pursuant to the Administrative Rules of the State of Hawai‘i.

E. CONCLUSION

As Mrs. Wasson has previously expressed to COWRM, it has a unique opportunity to take an affirmative step to resolve all of the water issues in the Lā‘ie ahupua‘a. Although the issues raised by these and other pending WUPAs involve only a limited number of landowners in one ahupua‘a, the significance of COWRM’s position on this matter will have important implications for other kuleana landowners throughout the State of Hawai‘i. Ms. Wasson and the other kuleana landowners look forward to COWRM’s enforcement of the law by ensuring that Ms. Wasson gets water before anyone else gets a water use permit in Lā‘ie.

Please keep in mind that the Church, through one of several or its entities, also operates a private water system in Lā‘ie. This water system has operated for decades outside of the laws
of the State of Hawai'i because it is not covered by the requisite certificate of public convenience and necessity. While an application for such a certificate currently is pending, it is unlikely it will be granted unconditionally due to the apparent sub-standard state of this water system. This is yet another instance where these entities continue to mistreat their neighbors and native Hawaiian people.

Accordingly, Ms. Wasson prays that COWRM takes its responsibility in this matter seriously. Groundwater cannot be viewed in isolation, especially when the physical and scientific evidence of the adverse impact such well diversions have on surface water flows and those who depend on those flows is so clear. Development pressure has exacerbated these problems to the extent that COWRM no longer can avoid them. The trend throughout the State of Hawai‘i, and the United States in general, is in favor of finally recognizing and enforcing the legal rights of indigenous persons. This is the opportunity for COWRM to take the initiative and restore to Ms. Wasson what is legally, and rightfully, hers - the simple right to sufficient water to perpetuate the cultural traditions that have sustained her people in dignity and without which her people will remain marginalized. Thus, Mrs. Wasson respectfully requests that COWRM resolve the issues raised by Mrs. Wasson's complaint, deny the pending WUPAs or, in the alternative, attach such conditions to such permits that will ensure Mrs. Wasson's ability to exercise her senior water rights as well as the ability to rehabilitate the decimate stream conditions that now exist in the La‘ie ahupua‘a.

12 See Groundwater Resource Management, Robert Willis, Ph.D., to be submitted for COWRM's information.
Respectfully submitted this 12th day of January, 1996.

LAW OFFICES OF
JOHN D. MUSICK, JR. & ASSOCIATES

BY:

John D. Musick, Jr.
Don P. Brown, Jr.
P.O. Box 4579
4141 Arapahoe Avenue, Suite 200
Boulder, CO 80306-4579
Telephone: 303/447-1974
Facsimile: 303/447-1977

ATTORNEYS FOR
DAWN KAHALAOMAPUANA WASSON
January 16, 1996

Ms. Lenore Nakama  
Commission on Water Resource Management  
P.O. Box 621  
Honolulu, Hawaii 96809

Re: Hawaii Reserves, Inc.; Consolidation of Applications

Dear Ms. Nakama:

As we discussed, Hawaii Reserves, Inc. ("HRI") would like to consolidate its recently filed well permit applications for quarry wells E and F into the possible contested case hearing on HRI, Laie Water Company, and Polynesian Cultural Center's thirteen other pending well use permit applications.

Please call me if you have any questions.

Sincerely yours,

[Signature]

Douglas S. Appleton

cc: Jace McQuivey, Esq.  
John D. Musick, Jr., Esq.
Of Counsel:

DOUGLAS W. MACDOUGAL 1325-0
MICHAEL W. GIBSON 1382-0
DOUGLAS S. APPLETON 6241-0
Ashford & Wriston
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: (808) 539-0400

Attorneys for Laie Water Company, Inc.

THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of Water Use Permit
Applications Filed by Hawaii Reserves, Inc.,
Laie Water Company, Inc. and Polynesian Cultural Center

BRIEF IN SUPPORT OF WATER USE PERMIT APPLICATIONS;
CERTIFICATE OF SERVICE

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS

LAIE WATER COMPANY, INC., a Hawaii corporation (the "Applicant"), hereby files with the Commission on Water Resource Management of the State of Hawaii (the "Commission") Applicant’s Brief in Support of Issuance of Water Use Permits pursuant to HAR § 13-171-18(c). Applicant submits that the objections filed on behalf of Dawn Wasson ("Wasson") and James Anthony ("Anthony") should be disregarded and Applicant’s application for water use permits for Well Nos. 3856-05 and 3856-06 (the "Quarry Wells")
should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I.

Background

On April 22, 1993, Wasson filed a complaint with the Commission alleging, among other things, that the Applicants' existing wells are depriving her of her water rights.

On June 23, 1993, Applicant filed applications for water use permits now before the Commission for four potable wells (3855-6, 7 & 8, and 3956-03) (the "LWC Wells"). The LWC Wells would provide for municipal service for over 635 residential and commercial water users in the Laie community. Applicant is requesting the continuation of this use.

The Quarry Wells are "back-up" wells. That is, Applicant is not seeking to enlarge its water consumption in the area, but to provide an emergency source of municipal water for Laie.

II.

Wasson and Anthony Lack Standing to Object

Wasson and Anthony have failed to demonstrate the sort of interest in this proceeding that is required to establish standing under the HRS chapter 174C (the "Water Code") or 13 HAR chapter 167 (the "Rules"). The lack of adequate grounds for standing by the purported objectors requires that their statements in opposition be disregarded in the present proceeding.

Section 53(b) of the Water Code provides:

In acting upon any application, the commission need consider only those objections filed by a person who has some property interest in any land within
not have to duplicate efforts which are very burdensome and time consuming. In the interest of administrative efficiency, this procedure makes the most sense. The issues are the same, the parties are the same and the procedure for processing the applications is the same. A consolidated procedure will allow the Commission to expeditiously decide upon all pending well issues in Laie: The existing uses and the back-up needs.

V.

Conclusion

For the above reasons, Applicant respectfully requests that the objections filed on behalf of Wasson and by Anthony be disregarded, and Applicant's applications for water use permits for Well Nos. 3856-05 and 3856-06 be granted as requested without a hearing.

Honolulu, Hawaii, January 29, 1996

DOUGLAS W. MACDOUGAL
MICHAEL W. GIBSON
DOUGLAS S. APPLETON

Attorneys for Laie Water Company, Inc.
THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of Water Use Permit
Applications Filed by Hawaii Reserves, Inc.,
Laie Water Company, Inc. and Polynesian Cultural Center

DOCKET NO. __________

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of the foregoing document was duly served upon the following parties:

Michael D. Wilson, Chairman
Commission on Water Resource Management
c/o William Tam, Esq.
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

John D. Musick, Jr., Esq.
Don P. Brown, Jr., Esq.
Law Offices of John D. Musick, Jr. & Associates
4141 Arapahoe Avenue, Suite 200
P.O. Box 4579
Boulder, CO 80306-4579

James M. Anthony
P.O. Box 629
Kaaawa, Hawaii 96730


DOUGLAS W. MACDOUGAL
MICHAEL W. GIBSON
DOUGLAS S. APPLETON
Attorneys for Laie Water Company, Inc.
INSTR-DESC: GUITCLAIM DEED

INST-NO: 95-00032664
INST-DATE: 03/03/95
REC-DATE: 03/09/95
INST-NO: 96017831

AREA: 13.20000 ACRE
STATE-CONV-TAX: $0.00

FROM: DAWN KAHALAGAHARUHA TAGATAPA KAILIHUE WASSON (H)
TO: JAMES MICHAEL ANTHONY - T/E (AS GIVEN) - UND 3/100 INT
LOAN 0050-0:1 13.20 AC

*NOTE: GRANTOR HAS 1/35 INT IN PROPERTY.

OWNERSHIP: NAME F TC %-OWNER TITLE-DESC
F 0011 KAMAOUHA,REID 14.28 1/7
F 0021 KAKALIA,KAAEA K DEC'D 14.28 1/7
F 0031 RAMOS,FACINE A L M JT 14.28 1/7
F 0041 GRAYCOCHEA,ALBERTA K P M
F 0051 TEJADA,FRANCISCO JR M
F 0061 TEJADA,ALLAN D M
F 0071 GRAYCOCHEA,BEN A U
F 0081 GRAYCOCHEA,DEVI ANN L U
F 0091 GRAYCOCHEA,DURRAN A U
F 0101 PUKAHI,KALAIKAU R 14.28 1/7
F 0111 PUKAHI,HALOLO K 14.28 1/7
F 0121 HAWS,VERINE K 2.65 1/35
F 0131 WASSON,HENRY W SR 2.65 1/35
F 0132 WASSON,DAYN K K 2.65 1/35
F 0141 KAILIHUE,ERIC
F 0151 ANTHONY,JANES M 2.65 1/35
F 0161 KAILIHUE,GEORGE 2.65 1/35
F 0171 AYILLA,EILEEN P 1.58 1/62
F 0181 KAMAOUHA,ALLEN L 1.58 1/62
F 0191 KAMAOUHA,BURKE C 1.58 1/62
F 0201 KAMAOUHA,RIDNEY P 1.58 1/62
F 0211 KAMAOUHA,JANICE 1.58 1/62
F 0221 KAMAOUHA,WINIFRED 1.58 1/62
F 0231 MCGUIRE,ANNETTE M 1.58 1/62
F 0241 KAMAOUHA,HAY LAMI 1.58 1/62
F 0251 HOOPAI,STELLA M 1.58 1/62

SITE ADDRESS: 55-740 KAM HWY

SITE ADDRESS: 55-740/A KAM HWY

MAILING ADDRESS: KAMAOUHA,REID
C/O KAMAOUHA,CRYSTALARDIS
P.O. BOX 4872
HILO, HI 96720

MAILING ADDRESS: KAKALIA,KAAEA K DEC'D
C/O KAKALIA,LEO
401/C KALAYA ST
KAILUA, HI 96734

MAILING ADDRESS: GRAYCOCHEA,ALBERTA K
P.O. BOX 16
KHAKOKU, HI
MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: February 21, 1996
TIME: 9:00 a.m.
PLACE: DLNR Board Room, 1st Floor
Kalanimoku Building

Chairperson Michael Wilson called the meeting of the Commission on Water Resource Management to order at 9:12 a.m.

The following were in attendance:

MEMBERS: Mr. Michael Wilson
Mr. Richard Cox
Mr. Robert Giraldo
Mr. David Nobriga
Mr. Herbert Richards, Jr.

EXCUSED: Dr. Lawrence Miike

STAFF: Ms. Rae Loui
Mr. Edwin Sakoda
Mr. Roy Hardy
Ms. Lenore Nakama
Mr. David Higa
Mr. Charley Ice
Ms. Lyann Mizuno
Ms. Janis Uwaine

COUNSEL: Mr. Jordan Wagner
Mr. William Tam

OTHERS:
Kan Yang
Andrew Monden
Marshall Ando
John F. Mink
Yvonne Izu
Joan Scanlan
Harry Murakami
Dawn K. Wasson
Douglas MacDougal

Dorothy I. Cornell
Kathleen Hoff
Toni Bissen
Alan Suwa
Susan Hagan
Lea Hong
Barry Edwards
Dwayne Purcell
Robert Clark

Suzie Agraan
David Atkin
Don Tiernan
Vicki Gaynor
Lawana Collier
Tom Nance
Guy Nakamoto
Henry Wasson, Sr.

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

Item 1
1. Authorize staff to initiate public hearing proceedings on the water use permit applications for Honouliuli 7, 8, 9 Wells (Well Nos. 2302-07 to 09).

2. Defer action on the well construction/pump installation permit application for Honouliuli Well 7 (Well No. 2302-07) pending a decision by the Commission on the water use permit applications for Well Nos. 2302-07 to 09.

Staff informed the Commission that Mr. Moses Haia, III of the Native Hawaiian Advisory Council faxed a letter to the Commission stating that Mr. Herring offered to withdraw his request for a contested case hearing contingent upon the following conditions:

1. The Commission hold a public hearing on these three water use permit applications in accordance with staff's recommendations;

2. The Commission defer action on the well construction/pump installation application for Honouliuli Well 7 (Well No. 2302-07) pending a decision by the Commission on the water use permit applications for Well Nos. 2302-07 to 09;

3. Mr. Herring not be required to submit another request for a public hearing in this matter and;

4. Mr. Herring reserves his right to request a contested case hearing on the above permit applications at a later time.

TESTIMONIES:

Mr. Barry Edwards, Gentry Development, testified that Mr. Charles Herring filed an objection on two grounds: 1) the well would be used for agriculture, and 2) the available sustainable yield was not adequate. In regards to the first objection, Mr. Edwards stated that the wells are potable drinking water wells. Regarding the second objection, he explained that the CWRM staff has determined that the sustainable yield issue has been resolved because Oahu Sugar and Campbell Estate are no longer using the water. He concluded by stating that there is no basis for the objections that were filed, and thus, there is no need for a public hearing.

MOTION: (COX/GIRALD)

To approve staff's recommendation.

UNANIMOUSLY APPROVED.

2. Water Use Permit Applications, Koolauloa Ground Water Management Area, Oahu
Applicants:

(Well Nos. 3554-01 & 02, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05)
Hawaii Reserves Inc. (HRI), (Formerly Zion’s Security Corp.)/Landowner,
Property Reserve Inc.

(Well Nos. 3855-06 to 08, 3956-03)
Laie Water Company (LWC)/Landowner, BYU Hawaii Campus

(Well No. 3855-09)
Polynesian Cultural Center (PCC)/Landowner, The Island’s Foundation

PRESENTATION OF SUBMITTAL: Ms. Lyann Mizuno

STAFF RECOMMENDATION:

Staff requested to amend the recommendation as follows:

Staff recommends that the Commission:

1. Direct staff to begin proceedings for the contested case hearing. This will include publishing a notice which will identify a deadline for filing written petitions to intervene.

2. Approve the request to consolidate the water use permit applications for Laie Water Company for Quarry Wells E and F (Well Nos. 3856-05, 06) into the contested case hearing.

3. Recognize that, since mediation efforts have failed and due to the inseparable nature associated with the water use permit applications, the issues related to Dawn Wasson’s dispute against Hawaii Reserves Inc. will be resolved through the contested case proceeding.

TESTIMONY BY APPLICANT:

Mr. Douglas MacDougal, attorney for the applicant, distributed a copy of their brief, which was filed last December. He also testified that he does not agree with staff’s position that everyone who resides or has any property within the Koolauloa Aquifer has standing. He further stated that the aquifer runs from Punaluu to Kawela Bay, is 12 miles long, and there are thousands of people who live there. He further stated that if §13-167-54(a)(3) of the Hawaiian Administrative Rules, which the staff has relied on, is taken literally, then the test for standing is no longer meaningful. He also stated that to admit 20 parties to the contested case hearing would make the proceedings unwieldy.

MOTION: (NOBRIGA/GIRALD)

To approve staff’s recommendation as amended.

UNANIMOUSLY APPROVED AS AMENDED.
Ms. Dawn Wasson thanked the Commission.

Mr. Douglas MacDougal requested that in regards to #3 of the amended staff recommendation, they would like to reserve the right to make an argument at the appropriate time.

Mr. Robert Clark, attorney for Ms. Wasson, also requested to reserve the right to make an argument as they have not had a chance to review that amendment [staff recommendation #3].

3. Other Business

None.

ADJOURNMENT: Chairperson Wilson adjourned the meeting at 12:40 p.m.

Respectfully submitted,

JANIS F. UWAINE
Secretary

APPROVED AS SUBMITTED:

RAE M. LOUI
Deputy Director
STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 21, 1996
Honolulu, Hawaii

Water Use Permit Applications
Koolauloa Ground Water Management Area, Oahu

Applicant:

(Well Nos. 3554-01 & 02, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05)
Hawaii Reserves Inc. (HRI)
(Formerly Zion's Security Corp.)
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well Nos. 3855-06 to 08, 3956-03)
Laie Water Company (LWC)
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well No. 3855-09)
Polynesian Cultural Center (PCC)
55-370 Kamehameha Hwy.
Laie, HI 96762

Landowner:

Property Reserves, Inc.
102 East Social Hall Ave.
Salt Lake City, UT 84111

Property Reserves, Inc.
102 East Social Hall Ave.
Salt Lake City, UT 84111

BYU Hawaii Campus
55-220 Kulanui St.
Laie, HI 96762

The Islands Foundation
55-220 Kulanui St.
Laie, HI 96762

Background:

On June 23, 1993, the applicants submitted completed water use permit applications (WUPAs) to the Commission for existing ground water withdrawals in compliance with the Koolauloa Aquifer System designation as a ground water management area.

On October 13, 1993 and October 27, 1993, the applications were withdrawn from the Commission meeting agendas at the request of the applicants.
On October 27, 1993, in response to prior unresolved disputes filed by Dawn K. Wasson and other land owners in the area, objections filed by Hawai‘i - La‘ieikawai Association, Hui Malama 'Aina O La‘ie and the Native Hawaiian Advisory Council, and other concerns raised by the Division of Aquatic Resources and Honolulu Board of Water Supply, staff requested authorization to hire a special master to initiate mediation proceedings. The mediation proceeding was anticipated to be completed within three months and was to proceed prior to any request by the staff to hold a public hearing on the matter. The Commission approved the mediation process, in accordance with §13-167-23, and 83 to 92 HAR. Upon completion of the mediation process, the Commission was to revisit the public hearing issue.

By March 1994, the parties had not yet reached agreeable terms to the mediation process, but both the objectors and the applicants indicated their desire to continue the attempt to reach agreeable terms. On March 16, 1994, the Commission decided to defer action on these WUPAs until the mediation process was completed.

On August 1, 1994, the parties reached agreeable terms to mediation. The parties to the mediation were Dawn K. Wasson and HRI/LWC/PCC. Attorney Walter H. Ikeda was selected to be the mediator.

Due to various deadlines specified in these rules and the desire of the mediator and parties to continue the proceedings, the Commission authorized extensions of the proceedings on November 5, 1994, December 9, 1994, and February 28, 1995. Over this extended period, the parties met face-to-face at least seven different times, made site visits, and had several other negotiation sessions with counsel.

On March 10, 1995, the mediator submitted his final report and recommendations to the Commission. Mediator Walter H. Ikeda reported that, by the end of the period allowed for mediation, a negotiated settlement could not be achieved. However, the mediator felt that the parties were close to a settlement and recommends that, pending a contested case hearing, they be encouraged to talk further even without a mediator.

On August 16, 1995, the Commission approved a public hearing on the applications.

On September 12, 1995, the Commission received a request from Ms. Wasson to convene a meeting similar to the meeting held in Honokohau, Maui, on Honokohau Valley Water Rights.

On September 29, 1995, the Chairperson responded that the public hearing would be held, tentatively on November 28, 1995, for the purposes of information gathering and exchange and that the notice for the hearing would be sent to the Office of Hawaiian Affairs, Native Hawaiian Legal Corporation, Native Hawaiian Advisory Council, and Honolulu Board of Water Supply. The letter also indicated that testimony would be structured in a manner similar to the Honokohau format.
On January 17, 1996, a letter was received from attorneys for HRI/LWC/PCC requesting that the permit applications for Quarry Wells E and F be consolidated with the subject water use permit applications if it is determined that a contested case hearing is required (Exhibit 6).

On January 29, 1996, a "Brief in Support of Issuance of Water Use Permits" for Quarry Wells E and F was received from attorneys for HRI/LWC/PCC in response to the objections that were raised. (Exhibit 7).

Analysis & Issues:

In accordance with §13-167-52(a), HAR, an oral or written request for a contested case hearing on the subject water use permit applications must have been made by the close of the November 28, 1995 public hearing. The person requesting the contested case hearing must then, in addition, have filed a written petition not later than ten days after the close of the public hearing, or by December 8, 1995.

Attorneys on behalf of HRI/LWC/PCC raised a procedural objection to allowing oral requests for contested case hearing to be made through a representative, such as Dr. Anthony, on behalf of persons not present at the public hearing. The objection was also made that Dr. Anthony was not authorized by those persons to request a contested case hearing.

It was confirmed that Dr. Anthony’s requests were made by on behalf of those seventeen (17) persons whose signatures were submitted (Exhibit 2) at the November 28, 1995 public hearing and should be accepted in addition to the requests by Dr. Anthony, Ms. Wasson, and Mr. Harry Wasson. However, three of the petitioners, Gerald J. Avilla, Henry W. Wasson, Sr., and Dwayne Purcell submitted written petitions but failed to make either an oral or written request by the close of the public hearing. Their requests are therefore invalid since they did not authorize Dr. Anthony to represent them. The other twenty (20) petitioners met both procedural conditions for making a request for a contested case hearing.

§13-167-52(b), HAR, states that a petition requesting a contested case hearing shall contain a concise statement of the petitioner’s interest that may be affected. All the petitions, by reference to the "Brief in Opposition" submitted at the November 28, 1995 public hearing, indicate TMK 1-5-5-08:43 as the property to be considered in this issue and kuleana rights to surface water flow from Kahawainui Stream, and springs in the vicinity, as the interest that may be affected by ground water withdrawals at the subject wells.

The parcel TMK 1-5-5-08:43 and all the subject wells lie within the Koolauloa Aquifer System (Exhibit 8). Review of records from the Department of Land Utilization show that only the following eight (8) petitioners have property interest in TMK 1-5-5-08:43: James M. Anthony, Dawn K. Wasson, Allen L. Kamauoha, Burke C. Kamauoha, Sr., Eileen P. Avilla, Rodney P. Kamauoha, Maylani Kamauoha, and Winifred Kamauoha (Exhibit 9). However, all twenty (20) petitioners have some property interest and/or lawfully reside within the Koolauloa Aquifer.
On November 9, 1995, notice of the hearing was published in the Honolulu Star Bulletin and on November 21, 1995, copies were sent to the above agencies.

On November 14, 1995, Laie Water Company filed water use permit applications and pump installation permit applications for Quarry Wells E and F (Well Nos. 3856-05,06). These wells would be connected to the Laie Water Company system to provide existing municipal and commercial uses in the Laie Municipal Water System Service Area. Quarry Wells E and F would not increase the total water use requested in Laie Water Company’s pending water use permit applications for existing uses from Well Nos. 3855-06, 07, 08, and 3956-03.

On November 28, 1995, the public hearing was held to gather additional testimony on the proposed water uses. The Commission received a “Brief in Opposition to Public Hearing and Notice and Comments” ("Brief in Opposition") by attorneys on behalf of Dawn K. Wasson (Exhibit 1). Before the close of the public hearing oral requests for a contested case hearing on the applications were made by James M. Anthony, on behalf of himself and seventeen (17) others who were not present (Exhibit 2), Dawn K. Wasson, and Harry F. Wasson.

On November 28, 1995, a letter was received from HRI notifying the Commission of the withdrawal of the water use permit application for Kapaka Farm 3 (Well No. 3654-03). This application was submitted on June 23, 1993 with the other subject WUPAs.

By December 8, 1995, written petitions requesting a contested case hearing were received from twenty-three (23) persons. Dawn Wasson also submitted an application to be a party in a contested case hearing. These petitions are summarized in Exhibit 3.

On December 8, 1995, a letter was received from attorneys for HRI/LWC/PCC objecting to the procedure by which Dr. Anthony was allowed to orally request a contested case hearing on behalf of persons who were not present at the public hearing. On December 18, 1995, attorneys on behalf of HRI/LWC/PCC filed a formal objection to all the petitions.

On December 19, 1995, attorneys on behalf of Ms. Wasson and other parties responded to the December 8, 1995 letter regarding the validity of the oral requests for contested case hearing.

On December 21, 1995 and December 28, 1995, notice of the permit applications for Quarry Wells E and F (Well Nos. 3856-05, 06) was published in the Honolulu Star Bulletin.

On January 10, 1996, a written objection to Quarry Wells E and F was received from Dr. Anthony (Exhibit 4). On January 12, 1996 a written objection was received from attorneys on behalf of Ms. Wasson (Exhibit 5).

On January 17, 1996, attorneys on behalf of Ms. Wasson filed a response to the December 18, 1995 objection to the petitions for contested case hearing.
Therefore, pursuant to §13-167-54(a)(3), HAR, and upon consultation with the Attorney General's Office, these twenty (20) petitioners are determined to have standing to request a contested case hearing on the subject water use permit applications.

Attorneys on behalf of HRI/LWC/PCC raised objections that the petitions are defective because they do not include concise statements and rely on the "Brief in Opposition" which only addresses the claims of Ms. Wasson. The objection was also made that the petitioners do not have standing because they failed to demonstrate their interests that will be directly and immediately affected by ground water withdrawals from the subject wells.

Despite these objections, §13-167-51, HAR, states that, "When required by law, the commission shall hold a contested case hearing upon its own motion or on the written petition of any government agency or interested person who is properly admitted as a party pursuant to section 13-167-54." Accordingly, §13-167-54(a)(3), HAR, states:

"All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application." (emphasis added)

Therefore, in this case, the Commission clearly must hold a contested case hearing; the matter is non-discretionary since the petitioners have some property interest and/or lawfully reside within the hydrologic unit. Pursuant to §13-167-54(a), HAR, the twenty (20) petitioners shall be admitted as parties.

Those individuals who did not establish standing may still apply to intervene. Under §13-167-54(d), HAR, written petitions to intervene must be filed with the Commission by a date established by the Commission. A proposed contested case hearing date or schedule will not be set until the parties are determined and adequate prehearing conferences and motions are completed.

Exhibit 8 shows the locations of the wells in relation to TMK 1-5-5-08:43 and Kahawaiinui Stream. Except for Well Nos. 3856-07, 3956-03, and 3956-05, staff does not feel that ground water withdrawals from the other subject wells would have the potential to reduce streamflow in Kahawaiinui Stream due to their proximity to the ocean and other streams. These other ground water discharge points would have to be depleted before the cone of depression could reach Kahawaiinui Stream. There are no gaging stations in this area and so no evidence of whether or not these other discharge points have been depleted. However, in accordance with the administrative rules, all the wells should be included in the contested case hearing because they are in the same hydrologic unit as the property of interest.
Staff Submittal  

February 21, 1996

RECOMMENDATION:

Staff recommends that the Commission:

1. Direct staff to begin proceedings for the contested case hearing. This will include publishing a notice which will identify a deadline for filing written petitions to intervene.

2. Approve the request to consolidate the water use permit applications for Laie Water Company for Quarry Wells E and F (Well Nos. 3856-05, 06) into the contested case hearing.

Respectfully submitted,

[Signature]

RAE M. LOUI
Deputy Director

Attachments

APPROVED FOR SUBMITTAL:

[Signature]

MICHAEL D. WILSON, Chairperson
REQUESTS FOR CONTESTED CASE HEARING
related to the Water Use Permit Applications of
Hawaii Reserves, Inc., Laie Water Company, and Polynesian Cultural Center

Name (in order of rec'd written petition) | Oral or written request rec'd by 11/28/95 | Written petition rec'd by 12/08/95
--- | --- | ---
1. Dr. James M. Anthony | YES (by self) | YES
2. Dawn K. Wasson | YES (by self) | YES
3. Allen L. Kamaouha | YES (by Anthony) | YES
4. Mary A.K. Kamaouha | YES (by Anthony) | YES
5. Burke C. Kamaouha, Sr. | YES (by Anthony) | YES
6. Wanda Kamaouha | YES (by Anthony) | YES
7. Eileen P. Avilla | YES (by Anthony) | YES
8. Gerald J. Avilla | NO | YES
9. Rodney P. Kamaouha | YES (by Anthony) | YES
10. Maylani Kamaouha | YES (by Anthony) | YES
11. Winifred Kamaouha | YES (by Anthony) | YES
12. Epenesa R. Purcell | YES (by Anthony) | YES
13. Anitolose Unga | YES (by Anthony) | YES
14. Meliame Unga | YES (by Anthony) | YES
15. Edward Sinilau Fa | YES (by Anthony) | YES
16. Miulan P. Nihipali | YES (by Anthony) | YES
17. Gerald M. Nihipali | YES (by Anthony) | YES
18. Herbert A. Kamakeeaina, Jr. | YES (by Anthony) | YES
19. Amy Ann P. Kamakeeaina | YES (by Anthony) | YES
20. Harry F. Wasson | YES (by self) | YES
21. Witt K. Akana | YES (by Anthony) | YES
22. Henry W. Wasson, Sr. | NO | YES
23. Dwayne Purcell | NO | YES

Applicants to be a party in a contested case hearing:

1. Dawn K. Wasson
PUBLIC NOTICE
PUBLIC HEARING
for
WATER USE PERMIT APPLICATIONS
KOOLAULOA GROUND WATER MANAGEMENT AREA, OAHU

COMMISSION ON WATER RESOURCE MANAGEMENT

The Commission on Water Resource Management will be holding a public hearing to gather testimony, including but not limited to documentation of kuleana water rights, appurtenant water rights, and facts concerning harm done by disputed activity, with respect to proposed approval of uses existing as of July 15, 1992, for the following applications in the Koolauloa Ground Water Management Area of Oahu. In accordance with Department of Land and Natural Resources Administrative Rules 13-171, objections filed by persons having standing to file an objection require that a public hearing be held before the Commission may proceed to approve or reject the permit application. Notice is hereby given in accordance with HRS Sec.92-41.

Call 587-0225 or 1-800-468-4644, extension 70225 for more information on the water use permit applications.
The public is encouraged to attend and provide testimony.

DATE: November 28, 1995
TIME: 9:00 a.m.
PLACE: BOARD ROOM, KALANIMOKU BLDG.
1151 PUNCHBOWL STREET
HONOLULU, HAWAII

Applicant: Hawaii Reserves, Inc.
55-510 Kamehameha Highway
La‘ie, HI 96762

Landowner: Property Reserves, Inc.
102 East Social Hall Av.
Salt Lake City, UT 84111

Date Completed Applications Received: June 23, 1993

Aquifer: Koolauloa System, Windward Sector, Oahu

<table>
<thead>
<tr>
<th>Well Name &amp; No.</th>
<th>Location(TMK)</th>
<th>Source</th>
<th>Gal/day Requested</th>
<th>Water Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kapaka Farm 1 (3564-01)</td>
<td>Kaluanui (5-3-12:1)</td>
<td>108,000</td>
<td>33 ac banana, papaya, garden (5-3-12:1)</td>
<td></td>
</tr>
<tr>
<td>Kapaka Farm 2 (3564-02)</td>
<td>Kaluanui (5-3-12:1)</td>
<td>108,000</td>
<td>33 ac banana, papaya, garden (5-3-12:1)</td>
<td></td>
</tr>
<tr>
<td>Kapaka Farm 3 (3654-03)</td>
<td>Kaluanui (5-3-12:1)</td>
<td>108,000</td>
<td>33 ac banana, papaya, garden (5-3-12:1)</td>
<td></td>
</tr>
<tr>
<td>La'ie-Maloo (3755-04)</td>
<td>La‘ie (5-5-6:11)</td>
<td>5,000</td>
<td>livestock supply (5-5-6:11)</td>
<td></td>
</tr>
<tr>
<td>Truck Farm (3755-06)</td>
<td>La‘ie (5-5-6:1)</td>
<td>167,000</td>
<td>51 ac grass (5-5-6:1)</td>
<td></td>
</tr>
<tr>
<td>Welfare Farm (3855-04)</td>
<td>La‘ie (5-5-6:1)</td>
<td>128,000</td>
<td>39 ac banana, papaya, grass (5-5-6:1)</td>
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<tr>
<td>Quarry Well D (3856-04)</td>
<td>La‘ie (5-5-6:1)</td>
<td>334,000</td>
<td>51 ac banana, papaya, grass (5-5-5:1)</td>
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</tr>
<tr>
<td>Prawn Farm (3856-07)</td>
<td>La‘ie (5-5-8:5)</td>
<td>475,000</td>
<td>103 ac prawns (5-5-5:1)</td>
<td></td>
</tr>
<tr>
<td>Egg Farm (3956-05)</td>
<td>La‘ie (5-5-8:51)</td>
<td>62,000</td>
<td>chicken/egg farm supply (5-5-8:51)</td>
<td></td>
</tr>
</tbody>
</table>

Applicant: La‘ie Water Company
55-510 Kamehameha Highway
La‘ie, Hawaii 96762

Landowner: BYU Hawaii Campus
55-220 Kulani St.
La‘ie, Hawaii 96762

Date Completed Applications Received: June 23, 1993

Aquifer: Koolauloa System, Windward Sector, Oahu

<table>
<thead>
<tr>
<th>Well Name &amp; No.</th>
<th>Location(TMK)</th>
<th>Source</th>
<th>Gal/day Requested</th>
<th>Water Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campus (3855-06)</td>
<td>La‘ie (5-5-6:5)</td>
<td>1,071,000</td>
<td>municipal (5-5-6:5, 5-5-1 to 4,6,9 to 17)</td>
<td></td>
</tr>
<tr>
<td>Ceramics (3855-07)</td>
<td>La‘ie (5-5-6:5)</td>
<td>(b)</td>
<td>municipal (5-5-6:5, 5-5-1 to 4,6,9 to 17)</td>
<td></td>
</tr>
<tr>
<td>Library (3855-08)</td>
<td>La‘ie (5-5-6:5)</td>
<td>(b)</td>
<td>municipal (5-5-6:5, 5-5-1 to 4,6,9 to 17)</td>
<td></td>
</tr>
<tr>
<td>Temple (3956-03)</td>
<td>La‘ie (5-5-6:5)</td>
<td>390,000</td>
<td>municipal (5-5-6:5, 5-5-1 to 4,6,9 to 17)</td>
<td></td>
</tr>
</tbody>
</table>

(b: wells in battery)
**Applicant:** Polynesian Cultural Center  
55-370 Kamehameha Highway  
La‘ie, Hawaii 96762

**Landowner:** The Islands Foundation  
55-220 Kulani St.  
La‘ie, Hawaii 96762

**Date Completed Applications Received:** June 23, 1993

**Aquifer:** Koolauloa System, Windward Sector, Oahu

<table>
<thead>
<tr>
<th>Well Name &amp; No.</th>
<th>Location(TMK)</th>
<th>Source and Use</th>
<th>Gal/day</th>
<th>Water Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCC Lagoon (3855-09)</td>
<td>La‘ie (5-5-6:28)</td>
<td>Aquifer</td>
<td>691,000</td>
<td>water feature circulation/ recharge (5-5-6:28)</td>
</tr>
</tbody>
</table>

Any person may testify or present information on the public hearing subject matter. If you have a legal interest that may be adversely affected, you have a right to request an administrative contested case hearing. However, you must make the request either orally or in writing by the close of this public hearing and file a written petition for a contested case hearing within 10 days after the date of this public hearing. If you do not make such a request or fail to file a timely written petition with the Commission, the consequence is that you will be precluded from later obtaining a contested case hearing and seeking judicial review of the adverse decision. See Chapter 13-167, Hawaii Administrative Rules of the Department of Land and Natural Resources. Also, disabled persons planning to attend the public hearing are asked to contact the Commission at 587-0214 to indicate if they have special needs which require accommodation.

COMMISSION ON WATER RESOURCE MANAGEMENT

[Signature]

RAE M. LOUI for

MICHAEL D. WILSON, Chairperson

**Dated:** 9/22/95

**Publish in:** Honolulu Star Bulletin issue of November 9, 1995
Applicant:

(Well Nos. 3554-01 & 02, 3654-03, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05)
Hawaii Reserves Inc. (HRI)
(Formerly Zion's Security Corp.)
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well Nos. 3855-06 to 08, 3956-03)
Laie Water Co. (LWC)
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well No. 3855-09)
Polynesian Cultural Center
55-370 Kamehameha Hwy.
Laie, HI 96762

Landowner:

Property Reserves, Inc.
102 East Social Hall Ave.
Salt Lake City, UT 84111

BYU Hawaii Campus
55-220 Kulanui St.
Laie, HI 96762

The Islands Foundation
55-220 Kulanui St.
Laie, HI 96762

Background:

The applicants submitted completed water use permit applications (WUPAs) to the Commission on June 23, 1993 for existing ground water withdrawals in compliance with the Koolauloa Aquifer System designation as a ground water management area. These applications were withdrawn from the October 13, 1993 and October 27, 1993 Commission meetings at the request of the applicants. However, in response to prior unresolved disputes filed by Dawn K. Wasson and

AGENDA 1
Item 5
other land owners in the area, objections filed by Hawai'i La'ieikawai Association, Hui Malama 'Aina O La'ie and the Native Hawaiian Advisory Council, and other concerns raised by the Division of Aquatic Resources and Honolulu Board of Water Supply, staff requested authorization to hire a special master to initiate mediation proceedings. This mediation proceeding was anticipated to be completed within three months and prior to any request by staff to send these WUPAs to public hearing. The Commission authorized the mediation process, in accordance with §13-167-23, and 83 to 92 HAR, and that upon completion of the mediation process, the public hearing issue would be revisited.

By March 1994, mediation had not yet reached agreeable terms to initiate this particular mediation process, but both the objectors and the applicants desired to continue to the mediation process. On March 16, 1994, the Commission decided to defer action on these WUPAs until the mediation process was completed.

On August 1, 1994, the agreeable terms to mediation had been reached. Parties involved included Dawn K. Wasson and HRI/LWC/PCC and the mediator selected was attorney Walter H. Ikeda.

Mediation proceedings were held in accordance with §13-167-83 to 92 HAR. Due to various deadlines specified in these rules and the desire of the mediator and parties to continue the proceedings, the Commission extended the proceedings three separate times; to 11/5/94, 12/9/94/ and 2/28/95. Over this extended period, the parties met face-to-face at least seven different times, made site visits, and had several other negotiation sessions with counsel.

On March 10, 1995, the mediator submitted his final report and recommendations to the Commission (Attachment A).

Analysis & Issues:

Section 174C-49(a) of the State Water Code establishes seven (7) criteria that must be met to obtain a water use permit. These criteria include, but are not limited to, water availability, reasonable-beneficial use, interference with other existing legal uses and Hawaiian home lands rights, and consistency with public interest, state & county general plans, county land use plans and policies. However, except for the Waiahole Ditch WUPAs, HRI/LWC/PCC WUPAs are the only ones to have gone through the mediation process. For this reason, staff feels that it is more important to discuss the mediation findings and that it is premature to analyze these the applicant's WUPAs according to the seven (7) criteria in this submittal.
In accordance with §13-167-91, the mediator submitted a report containing recommendations to the Commission and parties upon the completion of the mediation proceedings. The report stated that the parties were not able to resolve their differences. Ultimately, the issues revolved around surface water diversions, assertions of surface/ground water interaction, and kuleana water rights. Additionally, the mediator makes two (2) recommendations which state that if the matter were to go to a contested case hearing matters be should to:

1. The assertion that Kahawainui Stream has been impacted by the existing uses to the detriment of Dawn K. Wasson's kuleana water rights.

2. That the parties be encouraged to talk further without a mediator.

With the completion of the mediation proceedings, the October 27, 1993 directive by the Commission to return to the issue of a public hearing upon completion of the mediation process is now addressed. In holding a public hearing, the major issue concerns objections from individuals who have proper standing. §13-171-14(b) states:

"Whether the existing use is a reasonable-beneficial use and is allowable under the common law of the State shall be determined by the commission after a hearing; provided that even if the commission finds that the existing use is not allowable under the common law of the state, such finding of itself shall not constitute a bar to the granting of the permit. The commission may make such a determination without a hearing, if the quantity of water applied for does not exceed 25,000 gallons per month or if the quantity of water applied for exceeds said amount per month, but no objection to the application is filed by any person having standing to file an objection...."

Likewise, §13-171-19(e) states:

"In acting upon any application, the commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application...."

Original objections to these WUPAs covered least seventeen (17) other people besides Dawn K. Wasson who claim to have kuleana water rights in the area. The validity of these claims is not clear. These other claimants were not party to the mediation process. Also, objection deadlines were not met in accordance with §13-171-18 HAR, but, the dispute resolution process had already been underway prior to the filing of the WUPAs and such assertions were already known and under investigation. Additionally, the Commission has taken applications to public hearing
in the past if the objecting person simply resides in the area. It would appear that Dawn K. Wasson fits this situation clearly for Well Nos. 3856-07 and 3956-05 (Attachment B). Again, the mediator concurs with this assessment by stating that if the matter goes to a contested case hearing then the matter be confined to Kahawainui Stream. Therefore, it is clear that two (2) of the fourteen (14) wells warrant a public hearing in accordance with the rules.

Given the failure to reach an agreement despite a long and exhaustive mediation effort, the objections and assertions of surface/ground water impacts and corresponding interference with existing legal kuleana water rights by Dawn K. Wasson and other potential kuleana rights holders in the area, and the concerns raised by other entities to these WUPAs, staff proposes to initiate public hearing proceedings for all the WUPAs for HRI/LWC/PCC. This public hearing would allow other individuals in the management area the opportunity to submit documentation regarding kuleana water rights, surface/ground water interaction, and to provide another avenue for information to be submitted to the Commission prior to its final action on these WUPAs. Also, the Commission is not precluded from holding a public hearing as may be necessary and proper in the aid of its jurisdiction and consistent with law, as specified in § 13-167-3(5).

**RECOMMENDATION:**

That the Commission authorize staff to initiate public hearing notice and proceedings for the applications listed in this submittal. Tentative public hearing dates are anticipated to be in October or November 1995.

Respectfully submitted,

\[Signature\]

RAE M. LOUI
Deputy Director

Attachments

**APPROVED FOR SUBMITTAL:**

\[Signature\]

MICHAEL D. WILSON, Chairperson
Re: 93-57 Dawn Wasson vs. Hawaii Reserves, Inc.

Dear Commission Members:

The undersigned was selected as the mediator for the parties on August 1, 1994 through the procedure established by the Commission on Water Resource Management and the Center for Alternative Dispute Resolution, Hawaii Judiciary, the agency selected by the commission to administer the mediation. The mediation occurs as a result of a complaint filed by Dawn Wasson, a kuleana landowner, against Hawaii Reserves Inc. originally dated April 27, 1993 and filed on May 12, 1993 with the commission. I am making this report pursuant to Hawaii Administrative Rules, Chapter 13, Section 13-167-91.

I regret to inform the commission that despite substantial progress and several extensions based on the progress and the good faith of the parties, that ultimately a negotiated settlement could not be accomplished within the time limit permitted. I was appointed as mediator on August 1, 1994. Originally pursuant to Section 13-167-87 the mediation period would have ended on September 29, 1994. The commission extended the period initially to November 5, a second time to December 19, and a third time to February 28, 1995.

There were face to face mediation sessions usually lasting all day held on August 15, August 29, October 3, October 17, October 24, December 12, and January 20. In addition a site visit was conducted to the kuleana owned by the petitioner. In addition, there were several negotiation sessions held between counsel for the petitioner and the respondent after proposals and counterproposals were made. In addition, the mediator also made suggestions to the parties throughout the process, and ultimately towards the end of the mediation session, made private assessments of each party's positions to try to close the final gap between the positions and accomplish a workable settlement. In this mediation, all of the techniques that seemed useful for accomplishing a settlement were used.

Attachment A
The petitioner's complaint alleged that the respondent had through the drawing of substantial quantities of ground water from the Koolauloa Aquifer and some alteration of the channel and banks of Kahawainui Stream, did greatly diminish the water flow in the stream which abuts the kuleana of the petitioner described as Tax Map Key 5-5-08-43. The respondent is organizationally linked to the Church of Jesus Christ of Latter Day Saints and operates a number of agricultural and business enterprises as well as a residential water system in and around the Laie, Oahu area. It has applications pending before the commission for renewal of permits to draw ground water from existing wells. The petitioner believes that the diminished flow and the blockage of an auwai by reason of stream changes and altered banks made it impossible to draw water sufficient for taro lo'i cultivation. She also alleged that historically such cultivation had occurred. She also alleged that the action of the respondent are a violation of her traditional native rights which accrue to a kuleana owner.

Both parties provided extensive information on water usage, ground water pumped from wells, estimates and projections of the amount of water now and in the future in the Koolauloa Aquifer, and the daily requirement of water for wetland taro cultivation on a per acre basis. which I reviewed as the mediator. Because of the uncertainty as to whether the cessation of pumping water from the Koolauloa Aquifer would restore a useable flow to Kahawainui Stream and the routing of water via an auwai to loi cultivation on the complainant's land, the direction that the mediation took was to determine if a substitute source of water could be provided to the petitioner.

It proved to be difficult to isolate the problem of providing water only to the petitioner when a more universal solution was sought by the respondent. Besides the petitioner, there was the possibility that other water users may be equally affected and if a remedy was provided directly to one user such as the petitioner, conceivably it would have to be provided to other similar users.

During the mediation, discussion of matters that were related but outside of the limits placed on the mediation were alluded to but could not be used for the purpose of trying to accomplish a settlement. A related proceeding before the Public Utilities Commission involving the same parties over approval of a water system for residential landowners was sought by the respondent to be figured in an overall settlement.

Another difficulty was the uncertainty over the limits if any of native rights appurtenant to kuleana lands. While both the Hawaii Constitution and the Water Code clearly recognize such rights, there is an unanswered question as to whether taro cultivation for subsistence and religious purposes extends to cultivation for the purpose of providing a commercial crop.

Attachment A
One of the other difficulties was the use of entities that could be worked into a viable settlement as was sought in this case. Creating new organizations and using existing nonprofit organizations were considered. This created additional issues such as getting preliminary approvals of other organizations and determining the role of such organizations.

While I did not believe that I could ask for another mediation extension from the commission based on the unwillingness of the parties to alter their last positions, I do think that a settlement could be reached with a generous time allowance. The parties had modified their initial positions significantly and were engaged in civil dialogue. The mediation time span provided under the commission rules seems adequate but for cases like this one, a generous time span where the parties are able to step back and take a broad contemplative view of things in between mediation sessions and seek preliminary approvals where other organizations may be involved would be beneficial.

Although the parties did come in my opinion close to achieving a settlement, there was always the overhanging factor of long standing friction over a number of years as a result of perceived indifference of the entities that were related to the Mormon Church to respond to direct complaints made by the petitioner over water usage. Sometimes the present representatives of the respondent were unaware of these earlier complaints through no fault on their part because of the change in leadership over the years.

If this matter goes to a contested hearing before the Commission, it is likely to be extremely time consuming. Therefore I would recommend that the matter be confined to:

1. The assertion of the petitioner that the respondent did somehow cause the lessening of flow of Kahwainui Stream sufficient to diminish water to the petitioner's kuleana. For mediation purposes, it is useful to have some broad flexibility and leeway in bringing in additional matters for the purpose of making a settlement but for a hearing, permitting other matters would create the risk of an hearing that consumes for more time than the commission would want.
2. That pending the hearing, the parties be encouraged to talk further even without a mediator. They were very close to a settlement although there was some eroding of their willingness at the end of the mediation period. The parties are still far more likely to settle this now than they were in July, 1994.

Sincerely yours,

Walter H. Ikeda
Mediator

cc: Dawn Wasson, Hawaii Reserves Inc.

Attachment A
Applicant:

(Well Nos. 3554-01 & 02, 3654-03, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05) Hawaii Reserves Inc. (HRI) (Formerly Zion's Security Corp.) 55-510 Kamehameha Hwy. Laie, HI 96762

(Well Nos. 3855-06 to 08, 3956-03) Laie Water Co. (LWC) 55-510 Kamehameha Hwy. Laie, HI 96762

(Well No. 3855-09) Polynesian Cultural Center 55-370 Kamehameha Hwy. Laie, HI 96762

Landowner:

Property Reserves, Inc. 102 East Social Hall Ave. Salt Lake City, UT 84111

BYU Hawaii Campus 55-220 Kulanui St. Laie, HI 96762

The Islands Foundation 55-220 Kulanui St. Laie, HI 96762

Background:

The applicants submitted completed water use permit applications (WUPAs) to the Commission on June 23, 1993 for existing ground water withdrawals in compliance with the Koolauloa Aquifer System designation as a ground water management area. These applications were withdrawn from the October 13, 1993 and October 27, 1993 Commission meetings at the request of the applicants. However, in response to prior unresolved disputes filed by Dawn K. Wasson and
other land owners in the area, objections filed by Hawai‘i - La‘ieikawai Association, Hui Malama ‘Aina O La‘ie and the Native Hawaiian Advisory Council, and other concerns raised by the Division of Aquatic Resources and Honolulu Board of Water Supply, staff requested authorization to hire a special master to initiate mediation proceedings. This mediation proceeding was anticipated to be completed within three months and prior to any request by staff to send these WUPAs to public hearing. The Commission authorized the mediation process, in accordance with §13-167-23, and 83 to 92 HAR, and that upon completion of the mediation process, the public hearing issue would be revisited.

By March 1994, mediation had not yet reached agreeable terms to initiate this particular mediation process, but both the objectors and the applicants desired to continue to the mediation process. On March 16, 1994, the Commission decided to defer action on these WUPAs until the mediation process was completed.

On August 1, 1994, the agreeable terms to mediation had been reached. Parties involved included Dawn K. Wasson and HRI/LWC/PCC and the mediator selected was attorney Walter H. Ikeda.

Mediation proceedings were held in accordance with §13-167-83 to 92 HAR. Due to various deadlines specified in these rules and the desire of the mediator and parties to continue the proceedings, the Commission extended the proceedings three separate times; to 11/5/94, 12/9/94/ and 2/28/95. Over this extended period, the parties met face-to-face a least seven different times, made site visits, and had several other negotiation sessions with counsel.

On March 10, 1995, the mediator submitted his final report and recommendations to the Commission (Attachment A).

**Analysis & Issues:**

Section 174C-49(a) of the State Water Code establishes seven (7) criteria that must be met to obtain a water use permit. These criteria include, but are not limited to, water availability, reasonable-beneficial use, interference with other existing legal uses and Hawaiian home lands rights, and consistency with public interest, state & county general plans, county land use plans and policies. However, except for the Waiahole Ditch WUPAs, HRI/LWC/PCC WUPAs are the only ones to have gone through the mediation process. For this reason, staff feels that it is more important to discuss the mediation findings and that it is premature to analyze these the applicant’s WUPAs according to the seven (7) criteria in this submittal.
In accordance with §13-167-91, the mediator submitted a report containing recommendations to the Commission and parties upon the completion of the mediation proceedings. The report stated that the parties were not able to resolve their differences. Ultimately, the issues revolved around surface water diversions, assertions of surface/ground water interaction, and kuleana water rights. Additionally, the mediator makes two (2) recommendations which state that if the matter were to go to a contested case hearing matters be should to:

1. The assertion that Kahawainui Stream has been impacted by the existing uses to the detriment of Dawn K. Wasson's kuleana water rights.

2. That the parties be encouraged to talk further without a mediator.

With the completion of the mediation proceedings, the October 27, 1993 directive by the Commission to return to the issue of a public hearing upon completion of the mediation process is now addressed. In holding a public hearing, the major issue concerns objections from individuals who have proper standing. §13-171-14(b) states:

"Whether the existing use is a reasonable-beneficial use and is allowable under the common law of the State shall be determined by the commission after a hearing; provided that even if the commission finds that the existing use is not allowable under the common law of the state, such finding of itself shall not constitute a bar to the granting of the permit. The commission may make such a determination without a hearing if the quantity of water applied for does not exceed 25,000 gallons per month or if the quantity of water applied for exceeds said amount per month, but no objection to the application is filed by any person having standing to file an objection...."

Likewise, §13-171-19(e) states:

"In acting upon any application, the commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application...."

Original objections to these WUPAs covered least seventeen (17) other people besides Dawn K. Wasson who claim to have kuleana water rights in the area. The validity of these claims is not clear. These other claimants were not party to the mediation process. Also, objection deadlines were not met in accordance with §13-171-18 HAR, but, the dispute resolution process had already been underway prior to the filing of the WUPAs and such assertions were already known and under investigation. Additionally, the Commission has taken applications to public hearing
in the past if the objecting person simply resides in the area. It would appear that Dawn K. Wasson fits this situation clearly for Well Nos. 3856-07 and 3956-05 (Attachment B). Again, the mediator concurs with this assessment by stating that if the matter goes to a contested case hearing then the matter be confined to Kahawainui Stream. Therefore, it is clear that two (2) of the fourteen (14) wells warrant a public hearing in accordance with the rules.

Given the failure to reach an agreement despite a long and exhaustive mediation effort, the objections and assertions of surface/ground water impacts and corresponding interference with existing legal kuleana water rights by Dawn K. Wasson and other potential kuleana rights holders in the area, and the concerns raised by other entities to these WUPAs, staff proposes to initiate public hearing proceedings for all the WUPAs for HRI/LWC/PCC. This public hearing would allow other individuals in the management area the opportunity to submit documentation regarding kuleana water rights, surface/ground water interaction, and to provide another avenue for information to be submitted to the Commission prior to its final action on these WUPAs. Also, the Commission is not precluded from holding a public hearing as may be necessary and proper in the aid of its jurisdiction and consistent with law, as specified in §13-167-3(5).

RECOMMENDATION:

That the Commission authorize staff to initiate public hearing notice and proceedings for the applications listed in this submittal. Tentative public hearing dates are anticipated to be in October or November 1995.

Respectfully submitted,

W. Ray Hardy

RAE M. LOUI
Deputy Director

Attachments

APPROVED FOR SUBMITTAL:

MICHAEL D. WILSON, Chairperson
AGENDA 1

FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: August 16, 1995
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
       Board Room

1. Old Business/Announcements

2. City and County of Honolulu, Department of Public Works, Extension Request for a Stream Channel Alteration Permit, Kahaluu Multi-Purpose Lagoon, Kaneohe, Oahu

3. Del Monte Fresh Produce (Hawaii) Inc. - Applications for Water Use Permits, Requests to Increase Permitted Uses for Del Monte Wells 3 & 4 (Well Nos. 2803-05 & 07) and Kunia Well (Well No. 2703-01), TMK 9-2-005:002, Wahiawa and Waipahu-Waiawa Groundwater Management Areas, Oahu

4. Honolulu Board of Water Supply - Applications for Water Use Permits, Requests to Continue Existing Municipal Uses for Well Nos. 2348-02,03,05, 2349-01,02, 2450-01,02, 2549-01, 2651-01 to 03, 2652-01 to 04, 2751-02,03, Koolaupoko Groundwater Management Area, Oahu

5. Water Use Permit Applications - Koolauloa Ground Water Management Area, Oahu

   Hawaii Reserves Inc. (HRI), (Formerly Zion's Security Corp.) (Well Nos. 3554-01 & 02, 3654-03, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05)

   Laie Water Co. (LWC) (Well Nos. 3855-06 to 08, 3956-03)

   Polynesian Cultural Center (Well No. 3855-09)

7. **EXECUTIVE SESSION** - The Commission will convene an executive session in order to consult with counsel on matters pertaining to the duties and liabilities of the Commission and its staff pursuant to HRS Sec. 92-5(a)(4).

---

Any person may testify or present information on the public hearing subject matter or meeting agenda items. If you have a legal interest that may be adversely affected, you have a right to request an administrative contested case hearing. However, you must make the request either orally or in writing by the close of this public hearing or meeting and file a written petition for a contested case hearing within 10 days after the date of this public hearing or meeting. If you do not make such a request or fail to file a timely written petition with the Commission, the consequence is that you will be precluded from later obtaining a contested case hearing, and seeking judicial review of the adverse decision. See Chapter 13-167, Hawaii Administrative Rules of the Department of Land and Natural Resources.

Also, disabled individuals planning to attend the public hearing or meeting are asked to contact the Commission (at the above address or phone 587-0214) to indicate if they have special needs which require accommodation.
Chairperson and Members
Commission on Water Resource Management
Honolulu, Hawaii

Gentlemen:

After-the-Fact Approval
Extension Request #3 - Laie Water Dispute Resolution
Mediation Dawn K. Wasson vs. Hawaii Reserves, Inc.

Action Requested: After-the-fact approval for the mediator (Walter Ikeda) requesting that the Commission approve an additional extension for the subject mediation.

Background and Analysis: The initial mediation session was held on August 14, 1994 and in accordance with Section 13-167-87 HAR: "The mediation period shall not extend more than forty-five days after the initial mediation session, except by order of the commission." (Emphasis added).

Previous extension requests by Mr. Ikeda were approved by the Commission on September 15 and November 16, 1994, with the mediation to close by December 19, 1994. Attached is a self-explanatory letter from Mr. Ikeda requesting an additional extension and a summary of the mediation proceedings to date for the Commission’s consideration.

Due to the timing of Mr. Ikeda’s request for extension and the Commission’s new 1995 schedule of meeting dates, staff provided Mr. Ikeda with tentative approval to allow the mediation to continue until the Commission’s scheduled January 1995 meeting date (see attachment A). Tentative approval was granted contingent upon that the parties seem to be mediating in good faith and also to avoid losing the momentum of the mediation efforts over the past four months.

RECOMMENDATION:

That the Commission approve an extension to February 28, 1995 for the subject mediation. If denied, the mediator shall be so notified by staff and instructed to submit his report within ten days of said notification in accordance with Section 13-167-91 HAR.

Respectfully submitted

RAE M. LOUI
Deputy Director

Attachment

APPROVED FOR SUBMITTAL

MICHAEL D. WILSON
Chairperson
Ms. Rae Loui  
Deputy Director  
Department of Land and Natural Resources  
Commission on Water Resource Management  
P. O. Box 621  
Honolulu, HI 96809  

Re: 93-57 Dawn K. Wasson vs. Hawaii Reserves Inc.

Dear Ms. Loui:

As the appointed mediator pursuant to the Commission's Rule 13-167-86, I am making this unusual request for a third extension of 45 days from December 19, 1994 to February 3, 1995 to complete this mediation. The Commission had earlier granted two extensions of the original ending date of the mediation period of September 28 first to Nov. 4, and then to December 19, 1994. This request is made pursuant to Section 13-167-87 of the Commission Rules.

Both parties have indicated to me that they support this request. In my earlier status letters of September 1 and November 4, I indicated that meetings have been held on August 15, 29, October 3, 17 and October 24. A site visit to the kuleana of Dawn Wasson was also conducted. Since then, the parties have had several phone conferences and an all day negotiating session on December 12.

Earlier progress had been the basis for the Commission granting the previous extensions. Those requests in general centered on Hawaii Reserves providing a substitute in lieu of restoring water flow in Kahawainui Stream through the providing of water from an existing well it owns or drilling a new well to kuleana landowners adjoining Kahawainui Stream including Dawn Wasson. The obstacle to further progress was determining the nature of an entity to receive a conveyance of the well and assuring viable amounts of water to provide the complainant sufficient water to do some taro cultivation and provide an equitable way of other kuleana owners to share in water should they also wish to pursue taro cultivation.

Since the last negotiating session on December 12, Hawaii Reserves has indicated a willingness to provide further concessions which it believes addresses the Ms. Wasson's remaining concerns. Ms. Wasson has also made some concessions as to the
amount of water she believes to be necessary for her purposes. The additional extension would be needed to refine and finalize this proposal. Any proposal affecting water use would be submitted to the Commission for approval.

If the Commission believes that progress seems excruciatingly slow, I would agree. As a general proposition, if progress is measured in just marginal improvement, it may be better to end the mediation and have the Commission determine the parties' respective rights. As the mediator, I wish to bring this matter to a conclusion and would not seek an extension in the light of the previous extensions unless I believed that an agreement is close to achievement. I believe that the changes in the parties' relative positions have been so great since the first session and the major change in the position of Hawaii Reserves since December 12, that it would be worthwhile to grant the extension. I believe that an agreement is on the verge of being finalized if an extension is granted. Should the Commission decide not to grant the extension, I will be submitting a report with recommendations within ten days of the notification pursuant to Section 13-167-91 of the Rules.

Sincerely yours,

Walter H. Ikeda

cc: Dawn Wasson, Hawaii Reserves, Center for ADR
Mr. Walter H. Ikeda  
Haseko Center  
829 Millilani Street  
Suite 620  
Honolulu, Hawaii 96813  

Dear Mr. Ikeda:  

93-57 Dawn K. Wasson vs.  
Hawaii Reserves, Inc.  

This is to confirm your telephone conversation with Eric Hirano of my staff to continue the subject mediation as requested in your December 20, 1994 letter.  

Unfortunately, due to the timing of your request and the next scheduled Water Commission meeting (January 25, 1995) formal approval by the Commission cannot be obtained in a timely manner. Please note that we will be presenting your extension request for an after-the-fact approval before the Commission on January 25, 1995.  

Tentative approval to extend the subject mediation is valid till January 25, 1995, based upon that the parties seems to be mediating in good faith and also to avoid losing the momentum of the mediation efforts over the past four months.  

If there are any questions, please call Eric Hirano of my staff at 587-0216.  

Sincerely,  

Eric Hirano  
for RAE M. LOUI  
Deputy Director  

EH:ky  

c:  
Ma. Dawn K. Wasson  
Mr. Lucky Fonolmoana
the Commission to deny the application. They felt the property was topographically unsuitable for the growing of fruit trees and questioned the actual intent of the water use.

Ms. Nakama stated that, since the request is for 37,000 gpd, and the sustainable yield for the area is 39 mgd, there should be limited impact on the resource. She added that the water use permit being issued is interim and is tied specifically to the actual usage.

Unanimously approved (Cox/Nakata).

**ITEM 6**

**WATER USE PERMIT APPLICATIONS, KOOLOULOA GROUND WATER MANAGEMENT AREA, OAHU**

Unanimously approved (Fujimura/Nakata).

**ITEM 7**

**WATER USE PERMIT APPLICATIONS, KOOLAUPOKO GROUND WATER MANAGEMENT AREA, OAHU**

In regards to the water use permit for the Valley of the Temples, Mr. Cox suggested that the Department of Health’s requirement for water testing be added since the water is nonpotable and it will be used for domestic use.

Unanimously approved as amended (Nakata/Cox).

**ITEM 8**

**GROVE FARM PROPERTIES, INC., PETITION FOR A DECLARATORY RULING, PUALI STREAM CHANNEL ALTERATION WORK, PUHI, KAUAI**

Mr. Gregg Kamm, Vice President of Grove Farm Properties, Inc., had no objections to the staff report.

Mr. Don Heacock, a taro farmer and aquaculturist who lives on Puali Stream, was concerned about the protection of the stream ecosystem. He felt that the staff report was flawed and inadequate. Through a contested case hearing in 1983, Mr. Heacock had recommended to the County of Kauai that a detailed water budget should be conducted on Puali Stream and that all appurtenant and native water rights users be listed. The Stream Protection and Management Task Force had recommended no net loss of stream habitat. This project would represent a net loss.

Mr. Ing understood Mr. Heacock’s concern regarding the staff report but asked if he accepted Recommendation 1 that Puali is determined to be a stream therefore an after-the-fact stream channel alteration permit (SCAP) is required. Further, the information gathered from the after-the-fact permit process would allow the Commission to evaluate the ecosystem issues.

Mr. Fujimura questioned if Recommendations 2 and 3 are an appropriate part of the declaratory ruling.

The following amendments were made:

Delete: 2) That Grove Farm Properties, Inc. submit an after-the-fact stream channel alteration permit application for the channelization work at Puhi Industrial Park.
Facsimile Transmittal

To Facsimile Number: 587-0219
Pages including this cover: 2
Please deliver directly to:
Ms. Lenore Nakama
Commission on Water Resource Management
Department of Land & Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

Date of Transmission: March 10, 1994
Regarding: HIR/LWC
Client Matter Number:

From:
Douglas W. MacDougal, Esq.
Ashford & Wriston
Telephone Direct Line (808) 539-0420
Facsimile Direct Line (808) 599-1506

Comments:

See accompanying letter.

owed called 3/14, wants to withdraw from
3/16 agenda. Adh advises CWRM vote on
deferral request.

The information contained in this facsimile message is attorney privileged and confidential information intended only for use by the individual or entity named above. If the reader of this message is not the intended recipient, or employee or agent responsible to deliver it to the intended recipient, you are hereby notified that dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.
VIA FACSIMILE

Ms. Lenore Nakama
Commission on Water Resource Management
Department of Land & Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Re: Permit Applications for Laie Water Company, Inc., Polynesian Cultural Center, and Hawaii Reserves, Inc. (successor in interest to Zions Securities Corporation)

Dear Ms. Nakama:

As a follow up to our previous correspondence, Hawaii Reserves, Inc. and Laie Water Company, Inc. ("HRI/LWC") still believe there may be room for mediation with Ms. Dawn Wasson. Notwithstanding the negative tone of the letter of January 11, 1994 from John D. Musick, Jr., Esq. to Ms. Rae Loui, we think that mediation can provide a forum to discuss our differences. If mediation can go forward, which we hope it can, then we request that the permit applications filed by the above-referenced parties be further deferred until any mediation proceedings with Dawn Wasson are concluded. If mediation cannot get going or seems to be unproductive in resolving issues of concern within a reasonable time, HRI/LWC may change its position, and HRI/LWC reserves its right at any time to request that the Commission take action on the permit applications. For now, however, HRI/LWC is willing to do what it can to facilitate mediation on the terms outlined in HRI/LWC's letter of November 29, 1993.

Please advise us if you have any questions on this request for deferral. Thank you for your attention to this matter.

Very truly yours,

ASHFORD & WRISTON

By

Douglas W. MacDougal

DWM:net
cc Daniel T. Dino, Esq.
Mr. Lucky Fonoimoana
Mr. Sid Allsop
Jonathan S. Durrett, Esq.
Chairperson and Members
Commission on Water Resource Management
State of Hawaii
Honolulu, Hawaii

Gentlemen:

Water Use Permit Applications
Koolauloa Ground Water Management Area, Oahu

Applicant:
(Well Nos. 3554-01 & 02, 3654-03, 3755-04 & 06, 3855-04, 3856-04 & 07, 3956-05)
Zion's Security Corp.
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well Nos. 3855-06 to 08, 3956-03)
Laie Water Co.
55-510 Kamehameha Hwy.
Laie, HI 96762

(Well No. 3855-09)
Polynesian Cultural Center
55-370 Kamehameha Hwy.
Laie, HI 96762

Landowner:
Property Reserves, Inc.
102 East Social Hall Ave.
Salt Lake City, UT 84111

BYU Hawaii Campus
55-220 Kulanui St.
Laie, HI 96762

The Islands Foundation
55-220 Kulanui St.
Laie, HI 96762

Background

The applicants submitted completed water use permit applications to the Commission on June 23, 1993. These applications were withdrawn from the October 13, 1993 and October 27, 1993 Commission meetings at the request of the applicants. In response to objections filed by Hawai'i - La'ieikawai Association, Hui Malama 'Aina O La'ie and the Native Hawaiian Advisory Council, a public hearing was held on December 8, 1993 to gather testimony on these proposed water use permits. Written and oral testimony from the objecting parties is for deferral of final action on the permit applications pending resolution of the disputes through mediation efforts.

Analysis & Issues

On March 7, 1994, the applicants stated their desire for continued deferral of the permit applications pending the outcome of the dispute resolution process. This is in concurrence with the wishes of the objectors. Staff finds there is no reason to deny the applicants' request for deferral as it is amenable to all concerned parties.

RECOMMENDATION

That the Commission defer action on the pending water use permit applications listed above for Zion's Security Corp., Laie Water Co., and the Polynesian Cultural Center pending completion of the mediation proceedings between Dawn Wasson and Hawaii Reserves, Inc., or not reaching agreement on the terms to begin the mediation process.

Respectfully submitted,

APPROVED FOR SUBMITTAL:

KEITH W. AHUE, Chairperson
Facsimile Transmittal

To Facsimile Number: 587-0219
Pages including this cover: 2
Please deliver directly to:
Mr. Roy Hardy

Date of Transmission: November 24, 1993
Regarding:
Client Matter Number:

From:
OWEN H. MATSUNAGA
Ashford & Wriston
Telephone Direct Line (808) 539-0477
Facsimile Direct Line (808) 528-1523

Comments:

Ltr. to you dated November 23, 1993 re Permit Application for Laie Water Company, Inc. and Polynesian Cultural Center and Hawaii Reserves, Inc. (successor in interest to Zions Securities Corporation)

SPOKE TO OWEN 11:00 & 11/24/93.
They do not want to be on the agenda—just confirming.

The information contained in this facsimile message is attorney privileged and confidential information intended only for use by the individual or entity named above. If the reader of this message is not the intended recipient, or employee or agent responsible to deliver it to the intended recipient, you are hereby notified that dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.
November 23, 1993

VIA TELEFAX 587-0219

Mr. Roy Hardy
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809


Dear Mr. Hardy:

This letter will confirm our telephone conversation regarding the status of the water-use permit applications submitted separately by the above-referenced parties. In previous correspondence, the applicants had requested a deferral by the Commission on Water Resource Management (the "Commission") of its deliberations on the subject applications until December, 1993. This meant that the applications would have been taken up at the Commission's December 8, 1993 meeting.

It is now our understanding that all of such applications are being removed from the Commission's agenda for the December 8, 1993 meeting.

Please advise us if our understandings concerning this matter are not correct. Thank you for your assistance.

Very truly yours,

ASHFORD & WRISTON

By Owen H. Matsunaga

cc: Daniel T. Ditto, Esq.
    Mr. Lucky Fonoimoana
    Mr. Sid Allsop
ROLL CALL: Chairperson Ahue called the meeting of the Commission on Water Resource Management to order at 9:06 a.m.

The following were in attendance:

MEMBERS: Mr. Keith Ahue  
Mr. Richard Cox  
Dr. John L. Lewin  
Mr. Robert Nakata  
Mr. Guy Fujimura  

EXCUSED: Mr. Douglas Ing  

STAFF: Ms. Rae Loui  
Mr. Edwin Sakoda  
Mr. Roy Hardy  
Ms. Lenore Nakama  
Ms. Sharon Kokubun  

OTHERS:  
Cynthia Thielen  
Barry Ching  
Dave Martin  
Sam Keala  
Brenda Lumeng  
John Mink  
John Wei  
Martha Black  
Jim Anthony  
Alwyn Morisako  
Tom Nance  
Bary Usagawa  
Jack Hitchcock  
Max Shoura  
Neil Hulbert  
Andrew Yanoviak  
Edsel Yamada  

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. Some items were taken out of sequence to accommodate requests by applicants or interested parties.

ITEM 1  OLD BUSINESS/ANNOUNCEMENTS  
Ms. Loui announced that Agenda 3, Item 5 water use permit for Zions Security, was withdrawn per the applicant's request.

ITEM 2  POAMOHO VENTURE, L.P., APPLICATION FOR A PUMP INSTALLATION PERMIT, POAMOHO A WELL (WELL NO. 3205-02), WAIALUA, OAHU  
Unanimously approved (Nakata/Cox).
ITEM 3
DEFERRAL OF WATER USE PERMIT APPLICATIONS, WINDWARD OAHU GROUND WATER MANAGEMENT AREAS

Unanimously approved (Nakata/Cox).

ITEM 4
DUDLEY W.A. CHANG, APPLICATION FOR WATER USE PERMIT, KAHALUU WELL (WELL NO. 2750-09), KOOLAUPOKO GROUND WATER MANAGEMENT AREA, OAHU

Mr. Cox asked what the timeframe was for the completion of the review of applications for this area. Ms. Nakama said there are still quite a number of outstanding applications (mostly BWS) for which additional information was required and has just been received. These have gone out for public notice and should be scheduled within the next few months.

Discussion followed whereby the applicant explained that the well was dug in 1972 but was never used.

Ms. Nakama explained that because it was not in use at the time of designation, the applicant's request was being treated as a new use. Ms. Loui suggested an interim permit be approved so he can use the water.

Mr. Fujimura agreed that an interim permit could be issued as long as the applicant understands that it is an interim permit and the long term usage will be determined after all the applications have been reviewed and the existing uses are established.

Unanimously approved as amended as an interim permit (Fujimura/Cox).

ITEM 5
WATER USE PERMIT APPLICATIONS, KOOLAULOA GROUND WATER MANAGEMENT AREA, OAHU

Mr. Hardy reconfirmed that the Zions Security submittals were withdrawn per the applicant's request but requested the authority to hire a special master to address the concerns in regards to this applicant and other issues in this area. Ms. Loui added that the special master would be hired for fact-finding in view of the many issues surrounding this application and the need to sort out the facts. She requested two to three months for the fact-finding, after which initiation of a public hearing would be requested.

Dr. Jim Anthony supported the "appointment of a master who need not necessarily be an attorney".

The following was recommended by staff:

1) Campbell Estate Fresh and Salt Water Uses - Action be deferred so for further evaluation of the aquacultural needs.

2) Campbell Estate Non-Existing Pumpage - Deny without prejudice the non-existing uses for Wells Nos. 4258-06, 07, 10, 15, 16, & 17.

Unanimously approved as recommended by staff (Cox/Nakata).
Chairperson and Members
Commission on Water Resource Management

October 27, 1993

ITEM 6
WELL CONSTRUCTION AND WATER USE PERMIT APPLICATIONS, EWAPROCK GROUND WATER MANAGEMENT AREA, OAHU

Mr. Barry Edwards, Vice President for Gentry Hawaii Ltd., noted that the wells were included in the Caprock Water Use Plans submitted to the Commission on May 4, 1990. A permit was secured earlier but was not constructed since they were not needed at that time.

Unanimously approved with the following amendments (Fujimura/Nakata):

1) Include amendments made to the Standard Conditions as approved in Agenda 2, Item 1

2) Deletion of staff Recommendation 2 to deny without prejudice the water use permits being requested.

3) Amended as follows:

"3. That the Commission approve the issuance of a well construction and water use permit until April 28, 1994 for the Geiger Apartment Well (Well No. 2001-04) and the Soda Creek III Well (Well No. 2001-04) for possible future use of irrigation water, ..."

ITEM 7
STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF WATER AND LAND DEVELOPMENT, WATER USE PERMITS AND WELL CONSTRUCTION PERMITS APPLICATION, KAWAIHAPA & MOKULEIA WELLS (WELL NOS. 3309-01 & 02), MOKULEIA GROUND WATER MANAGEMENT AREA, OAHU

Mr. Hardy added Special Condition 2b. requiring the addition of a 1" diameter galvanized pipe.

Unanimously approved as amended (Cox/Nakata).

ADJOURNMENT The meeting was adjourned at 3:25 p.m.

Respectfully submitted,

SHARON S. KOKUBUN, Secretary

APPROVED AS SUBMITTED:

RAE M. LOUI
Deputy Director
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
Honolulu, Hawaii

October 27, 1993

Chairperson and Members
Commission on Water Resource Management
State of Hawaii
Honolulu, Hawaii

Gentlemen:

Water Use Permit Applications
Koolauloa Ground Water Management Area, Oahu

Applicant:  
(Well Nos. 4258-06, 07, 10, & 15 to 17).
Campbell Estate
1001 Kamokila Blvd.
Kapolei, HI 96707

Landowner:  
Same

(Wells Nos. 3554-01 & 02, 3654-03, 3755-04 & 06, 3855-04 & 06, 3956-05 & 07, 3956-05)
Zions Security Corp.
55-510 Kamehameha Hwy.
Laie, HI 96762

Property Reserves, Inc.
102 East Social Hall Ave.
Salt Lake City, UT 84111

(Wells Nos. 3855-06 to 08, and 3856-03)
Laie Water Co.
55-510 Kamehameha Hwy.
Laie, HI 96762

BYU Hawaii Campus
55-220 Kulanui St.
Laie, HI 96762

(Well No. 3855-09)
Polynesian Cultural Center
55-370 Kamehameha Hwy.
Laie, HI 96762

The Islands Foundation
55-220 Kulanui St.
Laie, HI 96762

Background

Completed applications for water use permits in the Koolauloa Ground Water Management Area submitted to the Commission to date are shown in Exhibit 1. Specific information regarding the source, use, notification, objections, and field investigation(s) are described in Attachment A and the attached exhibits.

Analysis & Issues

Overall Koolauloa Ground Water Management Area Conditions

Exhibit 1 provides an update in the Koolauloa Ground Water Management Area for completed applications since the Commission's last action meeting on October 13, 1993 and the concern of an overpumpage situation. The sustainable yield of the Koolauloa Aquifer System is 35 million gallons per day (mgd). As of October 19, 1993 Exhibit 1 shows a total requested demand of 80.265 mgd. Of this total, only about 31.590 mgd is a reasonable estimate of the existing demands on the aquifer and is calculated according to Table 1 as follows:
TABLE 1.
Calculation for Reasonable Estimate of Existing Uses

<table>
<thead>
<tr>
<th>Quantity (mgd)</th>
<th>Description</th>
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<tr>
<td>80.265</td>
<td>Total from Exhibit 1.</td>
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<tr>
<td>-13.880</td>
<td>Applications field investigated verified with no existing use.</td>
</tr>
<tr>
<td>-34.795</td>
<td>Applications for salt water wells (limited effect on aquifer).</td>
</tr>
<tr>
<td>31.590</td>
<td>Reasonable estimate of existing aquifer uses from applications.</td>
</tr>
</tbody>
</table>

This table updates the previous October 13, 1993 9 mgd estimate for existing uses from the aquifer with little ocean water contribution. A double counting of salt water and non-use salt water wells occurred which led to the lower 9 mgd. Still, this figure is within the aquifer system's sustainable yield of 35 mgd. Another point worth mentioning is that the active Campbell Estate and Honolulu Board of Water Supply requests are generally for pump capacities rather than the actual average use. Additionally, the 1992 draft of the Oahu Water Management Plan estimated 1990 actual use to be 13.6 mgd which would be well within the system's sustainable yield which probably incorporates some salt water use. Finally, staff estimates the 12-month moving average, as of August 1993, is 24.289 mgd based on water use reports submitted to the Commission which includes significant salt water pumpage. Therefore, short of a complete field verification and analysis of the potential existing uses and of their reasonable and beneficial use, there does not appear to be an existing overpumpage situation.

Given this status, and the complexity of the salt and fresh water aquaculture uses, staff needs more time to analyze the existing uses from Campbell Estate applications to make reasonable recommendations, but sees no reason to delay action on other smaller users in the management area.

1. **Campbell Estate Non-Existing Pumpage** - From the various field investigations listed in Exhibit 2, the following wells have not been pumped and in many cases were identified by the applicant for future uses. They do not qualify as existing uses and should be denied at this time until all existing uses are accounted. Well Nos. 4258-06, 07, 10, 15, 16, & 17.

2. **Zion's Securities Corp., Laie Water Co., Polynesian Cultural Center** -
Originally separate applicants, these requests for existing uses are apparently now under the umbrella of the Hawaii Reserves Inc. Application(s) pending for action under these applicants are: 1) Zion's with nine (9) wells servicing various irrigation needs, Laie Water Co. with four (4) wells servicing a private municipal system, and the Polynesian Cultural Center with one (1) well servicing a commercial tourist attraction. The applicant(s) had requested deferral on the October 13, 1993 meeting. This action was due, in part, by the change in the applicant(s) title to Hawaii Reserves, Inc. Additionally, there are disputes regarding these uses and objections (Attachments B to D) surrounding these particular applications. Staff is attempting to initiate mediation proceedings between the applicants and the objectors concerned with water rights. Under §13-167-83, mediation may be used prior to the initiation of formal proceedings upon the agreement of affected persons.

There are additional concerns from the Division of Aquatic Resources (DAR) for the applicant's wells near the Kaluanui, Koloa, Kahawainui, and Wailele Streams which support a variety of native freshwater species. DAR is concerned that proliferation of wells near these streams could detrimentally affect native species. However, DAR states that any existing pumpage impacts on species would have already occurred.

A brief in support has been filed for the Laie Water Co. and the Polynesian Cultural Center in rebuttal of the objection listed in Attachments B to D. A synopsis of this brief in support is that the objections are invalid, as specified in the rules, and that the Commission should act on this particular
Chairperson and Members
Commission on Water Resource Management

application for water use permit. Additionally, the brief states that employment benefits of the cultural center must not be held hostage to invalid objections. Staff agrees with the brief in support as to the objector's deficiency in meeting the rules regarding objections. However, the current rights dispute mentioned by the objectors does relate to an individual who has property interests in the area. Aside from this technicality, the rules do not preclude the Commission from holding a hearing as may be necessary and proper in aid of its jurisdiction consistent with law, as specified in §13-167-3(5).

Given the issues, objections, and changes associated with the applications filed with the Commission, staff feels that it is prudent to take these applications to public hearing. Staff will attempt to initiate mediation processes between agreeable parties so that the concerns regarding these applications can be discussed and perhaps settled before the public hearing.

RECOMMENDATION

Staff recommends:

1. **Campbell Estate Fresh and Salt Water Uses** - The Commission defer action on Campbell Estate actual existing use applications listed in Exhibit 1 and not covered under Recommendation 2 to afford staff more time to make a comprehensive evaluation of the aquacultural needs of the individual operators.

2. **Campbell Estate Non-Existing Pumpage** - That the Commission deny without prejudice the issuance of water use permits to Campbell Estate for Well Nos. 4258-06, 07, 10, 15, 16, & 17 and their requested amounts shown in Exhibit 1 since these uses are not existing. The applicant may submit new permit applications once existing uses in the Koolauloa Aquifer System have been established.

3. **Zion's Securities Corp., Laie Water Co., Polynesian Cultural Center** - That the Commission:
   a. Authorize staff to initiate public hearing proceedings for all applications from these applicants, as specified in Exhibit 1, with the tentative hearing date to be December 8, 1993.
   b. Ask that petitions to be a party in mediation efforts prior to the public hearing for these applications be submitted no later than November 3, 1993.
   c. Allow applicants to continue their existing uses of ground water until final Commission actions on these applications.

Respectfully submitted,

for: RAE M. LOUI
Deputy Director

APPROVED FOR SUBMITTAL:

KEITH W. AHUE, Chairperson
Chairperson and Members
Commission on Water Resource Management

WATER USE PERMIT DETAILED INFORMATION

Source Information

AQUIFER: Koolauloa System, Windward Sector, Oahu
Sustainable Yield: 35 mgd
Existing Water Use Permits: 0.002 mgd
Available Allocation: 35 mgd
Total of other pending allocations: 98.109 mgd

WELLS: Refer to well index. When action on wells is to be taken, information from index will be compiled.

Use Information

Current 12-Month Moving Average Withdrawal: 24.289 gpd
(69% of SY)

See Exhibit 3 for individual applications use descriptions.

Nearby Surrounding Wells and Other Registered Ground Water Use

Information from the registration program indicates there are possibly 84 existing wells in the Koolauloa Aquifer System. Several of these wells have been initially field checked but many of the declarants, including the larger users, have not been completely field verified. Several are not in use or are rights claims. However, the Oahu Water Management Plan estimated that the existing withdrawals from the Koolauloa Aquifer System is 13.6 mgd as of 1990.

Public Notice

In accordance with HAR §13-171-17, a public notice was published in the Star-Bulletin according to Exhibit 2. Copies of the notice were sent to the Mayor’s office and the Board of Water Supply. Additional notice copies were sent to the County Council and Department of Water Supply. Copies of the completed application were sent to the Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, Aquatic Resources & Historic Preservation Divisions of the Department of Land and Natural Resources, and other interested parties for comments. Written comments and objections to the proposed permit were to be submitted according to Exhibit 2.

Objections

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

To the best of staff’s knowledge there are no objectors who have property interest within the Koolauloa Aquifer System or who will be directly and immediately affected by the applications in this submittal. All objections and/or comments to the application are summarized as follows:

<table>
<thead>
<tr>
<th>Objection</th>
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<tbody>
<tr>
<td>General</td>
<td>General process of water use permit applications. No specific objections to this application. Concur with kuleana water rights dispute. See</td>
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</table>

ATTACHMENT A
Chairperson and Members
Commission on Water Resource Management

October 27, 1993

Attachment B.

DHHL

Comparison of actual existing uses to requested amounts should be made.

DAR

For Zions Securities Inc., Laie Water Co., and Polynesian Cultural Center wells near the Kaluanui, Koloa, Kahawainui, and Wailele Streams which support a variety of native freshwater species. Any reduction in streamflow would be environmentally damaging to these species. However, existing uses should have already made their impact.

Hawai'i la'iekawai Assoc., Inc.

Kuleana water rights dispute. Existing withdrawals decrease flows to Kuleana land owners. See Attachment C.

Hui Malama 'Aina 'O Laie

Kuleana water rights dispute. Existing withdrawals decrease flows to Kuleana land owners. See Attachment D.

Briefs in Support

Responses to objections, or briefs in support, regarding the application are required to be filed with the Commission ten (10) days after an objection is filed and, presumably, copies are served to the applicant. No briefs in support were filed with the Commission. The following briefs in support are summarized as follows:

Supporter

Attorney for Applicant

Brief in Support

09/16/93 Brief in support submitted for both Laie Water Co. and Polynesian Cultural Center by Ashford and Wriston (Owen Matsunaga) supporting WUPA. points are:

1. unknown property owners who are being represented by NHAC and J.A. NHAC and J.A. lack standing.
2. missed deadline for objections.
3. applicant did not receive copies of objections from objectors or other referenced material all of which are deficient.
4. Applicant's use is long standing and beneficial for employment in the north shore area.
5. In light of above, WUP should be granted without hearing. (See Attachment E).

Field Investigation

Campbell Estate applications were investigated according to Exhibit 4. Other applications are under continued field investigative work.

ATTACHMENT A
+

10/19/93

UATER USE PERMIT APPLICATION NOTICE STATUS REPORT
UUPA
NO

APPLICANT

UElL NO

-

UEll NAME

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AGENDA

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ISLAND OF OAHU
Aquifer System: KOOLAULOA

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KUAlOA RANCH, INC.
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GEORGE N. NIHIPAll, JR.
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ZIONS SECURITIES CORP.
CAMPBElL ESTATE
lAIE UATER CO., INC.
ZIONS SECURITIES CORP.
JACOB I. KAla, SR.
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HAWlA UELl
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TRUCK FARM
UElFARE FARM
CAMPUS UElL
CERAMICS UEll
LIBRARY UElL
PCC LAGOON UEll
NIHIPALI
QUARRY UEU 0
PRAUN FARM
MALAEKAHANA
TEMPLE UELl
EGG FARM
KAla ARTESIAN UE
PUMP 6
KAUANANAKOA
PUMP 1
SUGAR MILL PUMP
PUMP 8
PUMP 12
PUMP 12'A
KAHUKU BATTERY
KAHUKU BATTERY
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<th>WPNA No.</th>
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68 Applications Totaling 80.265
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<th>WELL #</th>
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<th>IS WELL IN USE?</th>
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<td>3956-01</td>
<td>YES</td>
<td>Malaekahana Dom Sys</td>
<td>363, Pump 7 Campbell Est. is op of Malaekahana Domestic Water Sys (fresh)</td>
<td>YES</td>
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<td>3957-01-06</td>
<td>YES</td>
<td>Pump 3.17 Battery</td>
<td>Campbell extended the casings to ground level, no pumps installed</td>
<td>NO-no pumps</td>
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<td>3957-01</td>
<td>YES</td>
<td>Max Smith and another rancher</td>
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<td>YES (fresh)</td>
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<td>4056-01</td>
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<td>KAWANAKA WELL</td>
<td>A Kawanaka Ranch 142 acres, only irrigate 30-50 acres, 65 head livestock</td>
<td>YES (fresh)</td>
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<td>4057-01.2.8.13.</td>
<td>14 353 A-E prev</td>
<td>KAHHUKU FARM ASSOC</td>
<td>354 Kaauk Hi Campbell Estate not able to locate casing</td>
<td>YES</td>
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<td>4057-04.09.11.12</td>
<td>YES</td>
<td>KAHHUKU MILL WELL</td>
<td>355-A Kaahuku Mill Campbell Estate/truck farmers, Xapaphat &amp; Huong 20 acres each</td>
<td>YES, well &quot;04&quot; in use</td>
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<td>4057-08</td>
<td>YES</td>
<td>Pump B Southern Turf Nurseries</td>
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<td>YES</td>
<td>Pump 12 Campbell Estate/Various subleases to truck farmers</td>
<td>361-a. Pump B</td>
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<td>4100-01</td>
<td>YES</td>
<td>Pump 12 A PALMER GOLF (at KUILLIMA RES) - well owned by Campbell - (clarity 160 or 800 acres)</td>
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<td>Unused well on Opana Road, overgrown</td>
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<td>346 Sealed in 1964</td>
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<td>4157-03</td>
<td>YES</td>
<td>Note: AMORIENT reports casing buried under roadway.</td>
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<td>YES</td>
<td>Pump 15 AMORIENT (fresh water well pumped 24 hours/day for 35 prawn ponds, several bldgs)</td>
<td>YES</td>
<td>inspected 4/91 &amp; 5/21/93</td>
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<td>Pump 15 AMORIENT, pump operated for Air Force in use for 6 buildings</td>
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<td>4157-05.06.07</td>
<td>YES</td>
<td>Fish &amp; Wild 1,2,3 US Fish &amp; Wildlife three artesian wells, used as necessary to maintain water levels in wildlife refuge to promote good feeding and nesting environments for endangered birds. No meters, no pumps. Flow controlled by valves</td>
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<td>YES</td>
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<td>AMORIENT SALT WATER WELL (aka &quot;IKKO WELL&quot;)</td>
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<td>Pump # 5 battery Site overgrown and unused—owner believes the State wants this well</td>
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<td>YES</td>
<td>Kauhika Airbase Dom KAUHUKU AIRBASE DOMESTIC SYSTEM, 15 service connections, 75 people</td>
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<td>KUILLIMA Resort owners</td>
<td>Irrigate new 18 hole golf course mixed w/ treated effluent.</td>
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<td>Pump 2 Campbell Estate is operator/truck farmers are users</td>
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<td>PUNAHOU WELL US ARMY operates for Air Force - current users only 2 Kulaena Houses</td>
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<td>Recently leased to HI Aquaculture Inc. Facilities not built yet.</td>
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October 5, 1993

By Fax Transmission

Department of Land & Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96813

Attn: Ms. Rue Loui

re: Zions & al. Water Use Permit Applications

Ladies and Gentlemen:

October 5, 1993, is the apparent deadline for yet another round of water use permit applications being made by Mormon Church controlled entity Zions Securities Corporation, adding to a previous cluster of applications made by other Mormon Church fronts, Property Reserves, Inc., Polynesian Cultural Center and La‘ie Water Company.

On August 30, 1993, I sent your office a memo on behalf of Kuleana landowners in La‘ie signalling the objection to the aforementioned applications. These objections are incorporated herein by reference and are made a part hereof and apply with equal force to the most recent cluster of applications for water use permits by Zions Securities Corporation.

I draw your attention once again to the fact that we served you formal notice of disputes existing between Kuleana landowners and the aforementioned Mormon Church controlled entities. Until these disputes are settled all water use permit applications made by all Mormon Church fronts in La‘ie should be held in abeyance. There is, as I have repeatedly stated, a direct connection between the disputes I have detailed and the pending applications. See my letter of May 10, 1993, especially paragraphs 5 and 6. Please reread my letter of September 29, 1993.

If I may, I now turn to your letter of September 29, 1993. There are several points in your letter that require correction:

Paragraph 2:

The dispute goes well beyond concerns expressed by Mrs. Dawn K. Wasson. In separate letters also dated May 10, 1993, two sets of Kuleana landowners totalling 17 persons, joined Mrs. Wasson in notifying you that their water rights have been
"denied, violated and infringed." The problems go beyond "certain stream channel alterations performed by the Corporation," as you put it in your letter. You seemed to have missed the point: the "taking" of water by Zions has adversely impacted correlative, riparian and appurtenant rights of native Hawaiians. The details on which these charges are based will be made explicit at the proper time.

I have already indicated that we are agreeable to mediation and reiterate that position here.

Aloha,

J. M. Anthony, Ph.D.

xc: Yoshi Shiroma
    Roy Hardy
    Zions Securities - By Fax and by Certified Mail
Memo to: Mr. Yoshi Shiroma
From: Dr. Jim Anthony
Subject: Kuleana Landowners vs. Zion's, La'ie Water Company, Polynesian Cultural Center, Property Reserves Incorporated: Water Dispute

Further to our recent telephone conversation concerning the abovementioned matter I wish to confirm that we are agreeable to mediation. Pending the outcome of mediation and the submission of this dispute for resolution according to the provisions of the Code, if that becomes necessary, no water use permits ought to be issued to any of the above applicants or even considered.

Our view is that the totality of rights and needs of Kuleana landowners must first be determined before any water use permit is considered, much less issued, to the aforementioned applicants. The term, "totality of rights and needs", here refers to appurtenant, riparian and correlative rights for present and future needs including water needed to grow taro.

This case also involves groundwater/surface water issues, diversion of streams, destruction of auwai and issues related, inter alia, to damages suffered by Kuleana landowners because they have been prevented from growing taro as a result of the activities of some or all of the entities listed above.

Time is moving on: let's determine if the other side will accept mediation. If they do, let us give that a fair try and see whether a settlement can be reached. If mediation fails, or if the other side rejects mediation, let us proceed with speed to a dispute resolution process to which Kuleana landowners are entitled and for which they have long been waiting.


President Dawn K. Wasson • Vice-President Winfred M. Miller • Treasurer Wili Akana • Secretary Kuleana Miller

Attachment C
resources. Permitted use of these wells should be restricted to avoid affecting subsurface flows required to maintain the productivity of nearby fishponds and nearshore ecosystems, and to honor the rights of Native Hawaiians to utilize these resources for traditional and customary practices.

Wells 3309-01 & -02

The proposed exploratory well locations appear dangerously close to springs and seeps which irrigate traditional taro lo'i in gulches along the base of the cliffs shown on the maps. These appear to be inappropriate well sites for municipal supply as well as for other water resource management purposes. At the very least, the water use permit application process should be halted until environmental review of the projects under HRS 343 is completed. We also question whether development of these well sites is included in the BWS five-year CIP budget and what water commitments, if any, have been granted for water from the aquifer.

Wells 3856-04, 3554-01 & -02, 3856-07, 3956-05, & 3755-06

NHAC supports the previously-stated objections of Hawai'i-La'ieikawai Association and Hui Malama 'Aina O La'ie to any and all water use permitting for Zion Securities prior to the resolution of pre-existing complaints and disputes in the area.

Applicant has not definitely established within the application that the proposed use of water meets the requirements of HRS 174C-49, particularly conditions 3 and 4. Applicant's proposed uses as requested within this set of permits total 1,146,000. We are presently unable to determine what percentage of total aquifer capacity this request represents when combined with applicant's previous requests.

Well 3856-07 is a source of water for aquacultural operations occurring on properties owned by Albertina K. Roberts, an NHAC client who has also applied for a water use permit for water from this well. COWRM policy appears to be unclear or non-existent concerning issuance of water use permits among source-site owners, source-site operators, on-site users, off-site users of these sources, and associated off-site landowners. Because of this confusion, Ms. Roberts' filed her application in order to seek protection for existing and continuing use of groundwater on her properties and to preserve her standing in all water matters pertaining to these properties.

The subject wells may also influence the discharge of groundwater from natural springs throughout this area, as well as the extraction of groundwater by artesian and pumped wells on
privately-owned kuleana lands. Any permitted use of water from the subject sources should be subject to restoration of pre-development natural flows and subsidiary to extractions by Native Hawaiians on kuleana lands.

Mahalo,

David L. Martin, Water Claims Manager

pc: Hawaiian Research Ltd.
    Campbell Estate
    DLNR DOWALD
    Zions Securities
    Maui Electric
ASHFORD & WRISTON
Owen H. Matsunaga, Esq.
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: 539-0400
Attorneys for Petitioners

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application
of
LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS;
CERTIFICATE OF SERVICE.


* COVER TO SIMILAR BRIEF FOR LAIE WATER CO.
ONLY DIFFERENCE IS THAT BENEFICIAL END USE IS 4,000 RESIDENCE, PUBLIC FACILITIES, AND A SCHOOL.
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application
of
POLYNESIAN CULTURAL CENTER
For Water Use Permit pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well No. 3855-09

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS;
CERTIFICATE OF SERVICE.

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMIT
BY POLYNESIAN CULTURAL CENTER
and CERTIFICATE OF SERVICE

POLYNESIAN CULTURAL CENTER, a Hawaii nonprofit corporation ("Applicant"), hereby files with the Commission on Water Resource Management of the State of Hawaii ("Commission") Applicant's Brief in Support of Issuance of Water Use Permit pursuant to 13 Hawaii Administrative Rules, Section 13-171-18(c)(1988)(Chapter 171 of 13 Hawaii Administrative Rules is hereinafter referred to as the "Commission's Water

0044704.01
Management Area Regulations\textquotedblright). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council (\textquotedblright NHAC\textquotedblright) and the Hui Malama 'Aina 'O La'ie should be disregarded and Applicant's application for a water use permit for Well No. 3855-09 (\textquotedblright Well\textquotedblright) should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I.

\textbf{Background}

Applicant filed its application for a water use permit for the Well on June 23, 1993, for use in connection with Applicant's operation of the Polynesian Cultural Center (\textquotedblright Cultural Center\textquotedblright) in Laie, Oahu. The average pumpage from the Well is approximately 691,000 gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

On September 1, 1993, a J.M. Anthony filed a letter (\textquotedblright September 1, 1993 letter\textquotedblright) with the Commission purportedly on behalf of Hui Malama 'Aina 'O La'ie stating his opposition to the applications of Applicant and the Cultural Center. (J. M. Anthony and Hui
Malama 'Aina 'O La'ie are herein collectively referred to as "Anthony".) In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony's May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant's pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

On September 3, 1993, NHAC filed a letter with the Commission stating that it "supports the objections filed by Hui Malama 'Aina 'O La'ie on August 30, 1993." NHAC further objected to "current COWRM [Commission] water use permit application processing and decision making practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93)."

Applicant did not receive copies of Anthony's September 1, 1993 letter or NHAC's letters of August 30, 1993 and September 3, 1993, until Tuesday, September 7, 1993, when the Commission sent such copies to Applicant. Applicant did not receive a copy of Anthony's correspondence dated May 10, 1993, until it was telefaxed to Applicant's attorneys by the Water Commission on Friday, September 10, 1993. Applicant has yet to receive copies of the five additional items of correspondence or memoranda cited by NHAC which apparently form additional bases for NHAC's objections. Applicant to this day has
not seen much of the objecting material supposedly incorporated by reference into the objections of Anthony/NHAC.

Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant's applications.

II.

Anthony and NHAC Lack Standing to Object

Anthony and NHAC have failed to demonstrate the sort of interest in this proceeding that is required to establish standing under the State Water Code (Chapter 174C, Hawaii Rev. Stat.) ("Water Code") or 13 Hawaii Administrative Rules, Chapter 167 (1988) (Chapter 167 of 13 Hawaii Administrative Rules being hereinafter referred to as the "Commission's Rules of Practice").

As provided in § 174C-53(b) of the Water Code, "[i]n acting upon any application, the Commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application." Neither Anthony nor NHAC have provided any proof that they have the requisite property interest in this case or that they will be directly and immediately affected by the requested permits.
Section 13-167-54 of the Commission’s Rules of Practice specifies who may be admitted as a party to a proceeding. In addition to the petitioner and relevant government agencies, subsections 13-167-54(a)(3) and (4) of the Commission’s Rules of Practice list the following as the only other persons that may be recognized as parties:

(3) All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

(4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the commission may approve the application only if the applicant’s participation will substantially assist the commission in its decision making.

Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission's decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant's applications at all until his own matters are first considered: that the entire community's water supply should be held up pending resolution of Anthony's private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission's decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission's deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

The lack of adequate grounds for standing by the purported objectors requires that the letters filed by Anthony and NHAC be disregarded in the present proceeding.

III.

The Purported "Written Objections" by Anthony and NHAC were Not Timely

Section 13-171-18 of the Commission's Water Management Area Regulations sets forth the criteria for objections to proposed water use permits. Section 13-171-18(a) states as follows:

Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant. [emphasis added]
The last Public Notice in the present case was published in the Honolulu Star Bulletin on August 13, 1993, and stated that written objections had to be filed with the Commission, with a copy to the applicant by "August 30, 1993."

Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993. and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission's Water Management Area Regulations, Applicant believes that Anthony's and NHAC's letters should be disregarded by the Commission.

IV.

The Purported "Written Objections" by Anthony and NHAC are Deficient

Section 13-171-18(b) of the Commission's Water Management Area Regulations establishes clear requirements for any written objections filed with the Commission:

(b) The written objection shall:

(1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and
(2) State all grounds for objections to the proposed permit. The grounds not cited or specifically urged are waived.

Neither NHAC nor Anthony specify any questions of procedure, fact, law or policy to which they object with respect to Applicant's requested permits.

NHAC's August 30, 1993 letter merely requests an exception to the Commission's deadlines for filing and states NHAC's general objections to the Commission's water use
permit application processing and decision-making practices. Similarly, NHAC's September 3, 1993 letter merely reiterates its general dissatisfaction with this Commission's processing and decision-making practices. As to specific questions or grounds for objecting to Applicant's present applications, NHAC simply states that it supports Anthony's objections. Given NHAC's glaring lack of any specific basis for objecting to Applicant's applications, NHAC's purported "written objections" should be dismissed by the Commission.

As to Anthony's "objections," he also fails to set forth any questions or grounds for his objections. While he attempts to incorporate by reference his May 10, 1993 letter that he submitted to the Commission in a separate proceeding, such letter is likewise deficient and fails to state any basis for objecting to the present applications. Anthony's May 10, 1993 letter merely chastises the Commission for not resolving Kuleana landowners' water rights in the state.

While Anthony's May 10, 1993 letter cites a Dispute/Complaint Information Request form signed by Dawn K. Wasson ("Wasson"), Wasson is not an objector in the present case. Moreover, Wasson's complaints appear to relate to surface water matters that are not at issue in the present proceeding. The permit requested by Applicant, however, does not include any request for use of surface water for Applicant's system and the Well does not fall within any surface water management area. Finally, any alleged complaint regarding surface waters should not be allowed to delay the issuance of the permits requested in this case for permits of pre-existing, beneficial uses.
If Wasson has any grounds for complaint, which Applicant doubts exist, Wasson could raise such concerns with the Commission through a separate proceeding, in which Wasson clearly would have the burden to prove the interim instream flow standards effects, if any, of Applicant's use. A continuation permit proceeding is not the proper forum for the type of dispute resolution suggested by Anthony. Neither the Water Code nor the rules and regulations of the Commission permit an outsider to "stay" the permit process on the basis of mere allegations that an unspecified dispute exists as to surface water issues.

The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant's Request Covers a Long-Established, Beneficial Use

Applicant is the current operator of the Cultural Center, which is one of the premier cultural and tourist attractions on the Island of Oahu and arguably within the State of Hawaii. The pending applications in this proceeding are an important aspect of Applicant's operations at the Cultural Center. The Well in question has been in use for close to a century by Applicant and its predecessors, and is critical to Applicant's ability to provide the high quality of service currently rendered at the Cultural Center. Should the requested permits be denied, the Cultural Center operations would be seriously and negatively affected. This could result in a major setback to a highly popular tourist attraction and could significantly affect a major source of employment in the North Shore area. Under such circumstances,
the existing use for which Applicant hereby seeks a permit is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission's Water Management Area Regulations.

Also, because of the long-established use of the Well by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission's Water Management Area Regulations.

VI.

The Commission Should Grant the Permit Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commissions rules and regulations because of their failure to provide any basis to challenge Applicant's applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of by Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant's
applications for a water use permit for Well No. 3855-09 be granted as requested without hearing.

DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application of
POLYNESIAN CULTURAL CENTER
For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well No. 3855-09
CERTIFICATE OF SERVICE.

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMIT BY POLYNESIAN CULTURAL CENTER to be served upon the following persons at the following addresses by depositing a copy thereof in the mail, postage prepaid:

J.M. Anthony
Pacific Research, Information and Consultant Services
P.O. Box 720
Ka‘a‘awa, Hawai‘i 96730

Native Hawaiian Advisory Council
1088 Bishop Street, Suite 1204
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii; September 16, 1993.

OWEN H. MATSUNAGA
Attorney for Applicant

0044704.01
The Honorable Keith W. Ahue  
Chairperson  
Commission on Water Resource Management  
Department of Land and Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809  

Dear Mr. Ahue:  

Withdrawal of Objections  

The Department of Hawaiian Home Lands has been in a position to raise objections to various applications for water use permits, particularly in Windward O'ahu, on the basis that water reservations were yet required to meet statutory obligations to Hawaiian home lands.  

Please be advised that as the proposed water reservations in O'ahu and Moloka'i water management areas are finalized, our objections for this reason are thereby withdrawn.  

Warmest aloha,  

Hoaliku L. Drake, Chairman  
Hawaiian Homes Commission  

HLD:BH:ci/1608L.77
Facsimile Transmittal

To Facsimile Number: 587-0219
Date of Transmission: October 25, 1993
Pages including this cover: 3
Regarding:
Please deliver directly to:
Client Matter Number:
From:
Mr. Roy Hardy
Owen Matsunaga
Commission on Water Resource
Ashford & Wriston
Management
Telephone Direct Line (808) 539-0477
Facsimile Direct Line (808) 528-1523

Comments:

Our letter dated October 25, 1993, re. deferral of consideration of applications.
October 25, 1993

VIA TELEFAX (687-0218)

Mr. Roy Hardy
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, Hawaii 96809

Re: Well Applications for Polynesian Cultural Center,
Laie Water Company and Hawaii Reserves, Inc.

Dear Mr. Hardy:

This letter concerns the requested deferral until December, 1993, of any action on the water use permit applications submitted separately by the above referenced parties regarding the following wells in the Laie, Oahu area:

3855-06
3855-07
3855-08
3956-03
3855-09
3856-04
3755-04
3554-01
354-02
354-03
3856-07
3956-05
3855-04
3755-06

Although the applicants previously requested in writing that action on their applications be deferred until the meeting of the Commission on Water Resource Management ("Commission") to be held in December, it appeared that the Commission might be taking limited action on such applications at its October 27, 1993 meeting.
Mr. Roy Hardy  
Commission on Water Resource Management  
October 25, 1993  
Page 2  

Last week we sought clarification on this issue and renewed the request to defer all action on such matters until December, 1993. This letter will confirm our recent discussions in which you indicated that such matters would be "pulled" from the October 27 meeting and that there would be no consideration of such applications until December. You further indicated that in light of such deferral, the applicants will not be prejudiced if they do not attend the October 27, 1993 Commission meeting.

Thank you for your assistance in this matter. Please call the undersigned at 539-0477 if the above does not correspond to your understanding of our discussions.

Very truly yours,

ASHFORD & WRISTON

By

Owen H. Matsunaga
Attorneys for the applicants

OHM:emh

cc: Mr. Lucky Fonoimoana  
Daniel Ditto, Esq.  
Jonathan Durrett, Esq.  
Mr. Tom Nance
October 14, 1993

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

Dear Mr. Ahue:

Withdrawal of Objections

The Department of Hawaiian Home Lands has been in a position to raise objections to various applications for water use permits, particularly in Windward O'ahu, on the basis that water reservations were yet required to meet statutory obligations to Hawaiian home lands.

Please be advised that as the proposed water reservations in O'ahu and Moloka'i water management areas are finalized, our objections for this reason are thereby withdrawn.

Warmest aloha,

Hoaliku L. Drake, Chairman  
Hawaiian Homes Commission

HLD: BH: ci/1608L.77
MINUTES FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 13, 1993
TIME: 9:00 a.m.
PLACE: Board Room
Kalanimoku Building
1151 Punchbowl Street
Honolulu, Hawaii

ROLL CALL: Chairperson Ahue called the meeting of the Commission on Water Resource Management to order at 9:09 a.m.

The following were in attendance:

MEMBERS: Mr. Keith Ahue
Mr. Richard Cox
Dr. John L. Lewin
Mr. Robert Nakata
Mr. J. Douglas Ing

EXCUSED: Mr. Guy Fujimura

STAFF: Ms. Rae Loui
Mr. Edwin Sakoda
Mr. Roy Hardy
Mr. Eric Hirano
Ms. Lenore Nakama
Ms. Sharon Kokubun

COUNSEL: Mr. William Tam

OTHERS:

Winifred Miller
Guy Nakamoto
Creighton Mattoon
Warren Iwasa
Conrad Shiroma
Dave Martin
Wright Hiatt
George Young
Kent Smith
Garrett Goo
Chester Lao
Norman Quon
Edsel Yamada
Reynolds Burkland
Mr. Iida

Kahalaomapanuawa Wasson
Jim Anthony
Karen Piltz
Barry Ching
Elizabeth Martin
Wayne Akana
Keith Krueger
Laverne Higa
Ruby & Gene Montogomery
Laura Thielen
Ken Ishizaki
Peter Lenhart
David Taogoshi
Keith Haugen

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. Some items were taken out of sequence to accommodate requests by applicants or interested parties.

AGENDA 1

ITEM 1 MINUTES OF THE SEPTEMBER 15, 1993 MEETING

Unanimously approved (Cox/Nakata).
ITEM 6  BIG ISLAND COUNTRY CLUB ESTATES, APPLICATION FOR A PUMP INSTALLATION PERMIT, BIG ISLAND COUNTY CLUB WELL 1 (WELL NO. 4950-01), PUU ANAHULU, NORTH KONA, HAWAII

Mr. Sakoda added the following to Condition 2:

"The applicant shall coordinate with the Commission and conduct a pumping test in accordance with the protocol established by the Commission."

Unanimously approved as amended (Cox/Nakata).

ITEM 7  CLAYTON HAUMEA, APPLICATION FOR A PUMP INSTALLATION PERMIT, MAILI-TOMITA WELL (WELL NO. 2409-24), MAILE, OAHU

Unanimously approved (Cox/Nakata).

ITEM 8  EXTENSION: NANSAY HAWAII, INC WEL CONSTRUCTION PERMIT, OULL-NANSAY WELL 2 (WELL NO. 6146-01), OULL, SOUTH KOHALA, HAWAII

Mr. Ing was excused from acting on this permit since his law firm represents the company.

Unanimously approved (Lewin/Cox).

ITEM 9  EXECUTIVE SESSION: KOOLAU AGRICULTURAL CO., LTD. VS. THE COMMISSION ON WATER RESOURCE MANAGEMENT.

The Commission adjourned to an executive session to discuss Koolau Agricultural vs. the Commission litigation (Cox/Nakata).

AGENDA 3  The meeting was called to order at 1:11 p.m.

ITEM 1  DEFERRAL OF WATER USE PERMIT APPLICATIONS, OAHU WATER MANAGEMENT AREAS

Unanimously approved (Nakata/Cox).

ITEM 2  RUBY MONTGOMERY, APPLICATION FOR WATER USE PERMIT, RL MONTGOMERY WELL (WELL NO. 2751-08), KOOLAUPOKO GROUND WATER MANAGEMENT AREA, OAHU

Unanimously approved with staff's deletion of Recommendation 1d regarding DHHL reservation (Ing/Lewin).

ITEM 3  KAHALA HILTON, WATER USE PERMIT APPLICATIONS, KAHALA HILTON #1 AND #2 WELLS (WELLS NOS. 1646-05 & 06), WAIALAE-WEST GROUND WATER MANAGEMENT AREA, OAHU

Mr. Ing asked to be excused from acting on this permit since his firm represents the applicant. Standard Condition #11 will be amended to require a yearly submission.
Chairperson and Members  
Commission on Water Resource Management  
State of Hawaii  
Honolulu, Hawaii

Gentlemen:

Deferral of Water Use Permit Applications  
Oahu Ground Water Management Areas

<table>
<thead>
<tr>
<th>Applicants</th>
<th>Landowner</th>
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<tr>
<td>Honolulu Board of Water Supply</td>
<td>Same</td>
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<tr>
<td>630 S. Beretania St.</td>
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<td>Honolulu, HI 96843</td>
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<td>Waiahole Irrigation Co., Ltd.</td>
<td>Same</td>
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<td>677 Queen St. 3rd floor</td>
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<td>Honolulu, HI 96813</td>
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<td>Kapolei, HI 96707</td>
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<td>Zion's Security, Corp.</td>
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<td>Polynesian Cultural Center</td>
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</tr>
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<td>Laie, HI 96762</td>
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<tr>
<td>MRTC/HIMB/UH</td>
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<td>Dudley W.A. Chang</td>
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<tr>
<td>11-590 Ahilama Rd.</td>
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<tr>
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<tr>
<td>U.S. Fish and Wildlife Services</td>
<td>U.S. Navy, Pacific Division</td>
</tr>
<tr>
<td>P. O. Box 50167</td>
<td>NAVFAC Eng. Cmd.</td>
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<tr>
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<td>Pearl Harbor, HI 96860</td>
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<tr>
<td>Gentry Development Co.</td>
<td>Same</td>
</tr>
<tr>
<td>P. O. Box 295</td>
<td></td>
</tr>
<tr>
<td>Honolulu, HI 96809</td>
<td></td>
</tr>
</tbody>
</table>

Background

The Commission designated Windward Oahu and the island of Molokai, with their corresponding aquifer systems as ground water management areas, on May 5, & 13, 1992, respectively. All registered ground water users have been sent an initial notification of the official date, July 15, 1992, on which the Commission would begin accepting water use permit applications for existing water use permits.
These applicants require Commission action to satisfy the ninety (90) day requirement for action but for various reasons staff wishes to defer action on the applications listed in Table 1.

### TABLE 1

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Reason for Deferral</th>
</tr>
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<tbody>
<tr>
<td>Honolulu Board of Water Supply</td>
<td>No response to CWRM request for more information on future projects.</td>
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<tr>
<td>Wells 1744-05</td>
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<tr>
<td>1848-01</td>
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<td>2250-03</td>
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<tr>
<td>2348-06</td>
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</tr>
<tr>
<td>Total 4 WUPAs</td>
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<tr>
<td>Waiahole Irrigation Co., Ltd.</td>
<td>No response to CWRM request for more information on OSGCo. withdrawal impacts on future needs. Field investigation for use not complete.</td>
</tr>
<tr>
<td>Wells 2853-01</td>
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<tr>
<td>2953-01 &amp; 02</td>
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<td>3053-01</td>
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<td>Total 4 WUPAs</td>
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<td>State HFDC Wells</td>
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<td>2853-04 &amp; 05</td>
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<td>Campbell Estate Wells</td>
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<td>4158-12 &amp; 13</td>
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<td>4258-05 thru 17</td>
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<td>Total 13 WUPAs</td>
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<tr>
<td>Laie Water Co., Inc.</td>
<td>Request of applicant.</td>
</tr>
<tr>
<td>Wells 3855-06 to 08</td>
<td></td>
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<tr>
<td>3956-03</td>
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<tr>
<td>Total of 1 WUPA</td>
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<td>Zion’s Security, Corp. Wells</td>
<td>Request of applicant.</td>
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<td>3554-01 &amp; 02</td>
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<td>3654-03</td>
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<td>3755-04 &amp; 06</td>
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<td>3956-05</td>
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<tr>
<td>Total 8 WUPAs</td>
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<tr>
<td>Polynesian Cultural Center Well</td>
<td>Request of applicant.</td>
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<tr>
<td>3855-09</td>
<td></td>
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<td>MKTC/HIME/UII Well 3051-02</td>
<td>Objection deadline is 10/18/93.</td>
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<tr>
<td>Dudley W.A. Chang Well 2750-09</td>
<td>Objection deadline is 10/18/93.</td>
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<td>U.S. Fish &amp; Wildlife Service</td>
<td>More staff analysis necessary.</td>
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<td>Well 2101-14</td>
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<tr>
<td>Gentry Development Co. Well 2001-04 &amp; 05</td>
<td>More staff analysis necessary.</td>
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</tbody>
</table>
Chairperson and Members
Commission on Water Resource Management

October 13, 1993

RECOMMENDATION:

That the Commission defer action on the applications listed in Table 1.

Respectfully submitted,

[Signature]

RAE M. LOUI
Deputy Director

APPROVED FOR SUBMITTAL:

[Signature]
KEITH W. AHUE, Chairperson
Memo to: Mr. Yoshi Shiroma
From: Dr. Jim Anthony
Subject: Kuleana Landowners vs. Zions, La‘ie Water Company, Polynesian Cultural Center, Property Reserves
Incorporated: Water Dispute

Further to our recent telephone conversation concerning the abovementioned matter I wish to confirm that we are agreeable to mediation. Pending the outcome of mediation and the submission of this dispute for resolution according to the provisions of the Code, if that becomes necessary, no water use permits ought to be issued to any of the above applicants or even considered.

Our view is that the totality of rights and needs of Kuleana landowners must first be determined before any water use permit is considered, much less issued, to the aforementioned applicants. The term, "totality of rights and needs", here refers to appurtenant, riparian and correlative rights for present and future needs including water needed to grow taro.

This case also involves groundwater/surface water issues, diversion of streams, destruction of auwai and issues related, inter alia, to damages suffered by Kuleana landowners because they have been prevented from growing taro as a result of the activities of some or all of the entities listed above.

Time is moving on: let’s determine if the other side will accept mediation. If they do, let us give that a fair try and see whether a settlement can be reached. If mediation fails, or if the other side rejects mediation, let us proceed with speed to a dispute resolution process to which Kuleana landowners are entitled and for which they have long been waiting.

September 30, 1993

Rae M. Loui
Deputy Director
Commission on Water Resource Management
P. O. Box 621
Honolulu, Hawaii 96809

Re: Water Use Permit Application. Koolauloa Ground Water Management Area, Oahu

Dear Ms. Loui:

In connection with the pending water use permit applications for Laie Water Co., Inc., wells (Well Nos. 3855-06 to 08 and 3956-03), we request that consideration of this matter be deferred on the calendar of the Commission until the December, 1993 meeting of the Commission, or later.

We also request that the consideration of the permit application for Polynesian Cultural Center well (Well No. 3855-09) be similarly deferred.

Thank you.

Sincerely,

LAIE WATER CO., INC.

cc: Owen Matsunaga, Esq.
    Dan Ditto, Esq.
August 30, 1993

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

Dear Mr. Ahue:

Water Use Permits

Thank you for the opportunity to respond to these applications for the following water use permits:

O'ahu
Malaekahana-Campbell (3957-01 thru 07, 3956-01)
Laie-White (3855-05)
Laie-BYU (3855-06 thru 08, 3956-03)
Moloka'i
Waikolu-Dept Ag (0855-01 thru 06)
Ualapue-County (0449-01)

O'ahu
The Windward O'ahu wells are all pre-existing, and we ask only that the requested pumpage be compared with existing pumpage to determine whether use is expected to increase.

Moloka'i
The Waikolu source for the Moloka'i Irrigation System is primarily for service to Hawaiian home lands, and we favor their approval. Three wells are existing, but three are new; the impact of the new wells is not fully understood.

Our primary concern is that the groundwater not be overpumped to the detriment of stream flows. The application indicates that normally low summer flows would be interrupted (the stream would be dewatered during those periods). We support management efforts in conservation, leak prevention, adequate maintenance, and adequate storage of higher winter flows. We
suggest that pumpage and streamflows be carefully monitored for further information and understanding of the aquifer characteristics.

We have no objections to continued County use of the Ualapue Shaft. Homesteaders at Kapaakea and Kamiloloa are served by this system.

Warmest aloha,

Hoaliikaua L. Drake, Chairman
Hawaiian Homes Commission
August 30, 1993

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

Dear Mr. Ahue:

Water Use Permits

Thank you for the opportunity to respond to these applications for the following water use permits:

O'ahu
Malaekahana-Campbell (3957-01 thru 07, 3956-01)
Laie-White (3855-05)
Laie-BYU (3855-06 thru 08, 3956-03)
Moloka'i
Waikolu-Dept Ag (0855-01 thru 06).
Ualapue-County (0449-01)

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The Windward O'ahu wells are all pre-existing, and we ask only that the requested pumpage be compared with existing pumpage to determine whether use is expected to increase.

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The Waikolu source for the Moloka'i Irrigation System is primarily for service to Hawaiian home lands, and we favor their approval. Three wells are existing, but three are new; the impact of the new wells is not fully understood.

Our primary concern is that the groundwater not be overpumped to the detriment of stream flows. The application indicates that normally low summer flows would be interrupted (the stream would be dewatered during those periods), and we object to this as a matter of policy, preferring to focus on conservation, leak prevention, adequate maintenance, and adequate storage of higher winter flows. We request that permits be conditioned
accordingly, and that pumpage and streamflows be carefully monitored for further information and understanding of the aquifer characteristics.

We have no objections to continued County use of the Ualapue Shaft.

Warmest aloha,

[Signature]

Hoaliku L. Drake, Chairman
Hawaiian Homes Commission
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application
of
LAIE WATER COMPANY, INC.
For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS; CERTIFICATE OF SERVICE.

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS
BY LAIE WATER COMPANY, INC.
and CERTIFICATE OF SERVICE

Area Regulations"). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council ("NHAC") and the Hui Malama 'Aina 'O La’ie should be disregarded and Applicant’s application for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 ("Wells") should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I.

Background

Applicant filed its applications for water use permits for the Wells on June 23, 1993, for municipal service for over 635 residential and commercial water users in the Laie community. The average combined pumpage from all four Wells is approximately 1.46 million gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

On September 1, 1993, a J.M. Anthony filed a letter ("September 1, 1993 letter") with the Commission purportedly on behalf of Hui Malama 'Aina 'O La’ie stating his opposition to the applications of Applicant and the Polynesian Cultural Center. (J. M.
Anthony and Hui Malama 'Aina 'O La'ie are herein collectively referred to as "Anthony". In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony’s May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant’s pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

On September 3, 1993, NHAC filed a letter with the Commission stating that it "supports the objections filed by Hui Malama 'Aina 'O La'ie on August 30, 1993." NHAC further objected to "current COWRM [Commission] water use permit application processing and decision making practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93)."

Applicant did not receive copies of Anthony’s September 1, 1993 letter or NHAC’s letters of August 30, 1993 and September 3, 1993, until Tuesday, September 7, 1993, when the Commission sent such copies to Applicant. Applicant did not receive a copy of Anthony’s correspondence dated May 10, 1993, until it was telefaxed to Applicant’s attorneys by the Water Commission on Friday, September 10, 1993. Applicant has yet to receive copies of the five additional items of correspondence or memoranda cited by NHAC which apparently form additional bases for NHAC’s objections. Applicant to this day has
not seen much of the objecting material supposedly incorporated by reference into the objections of Anthony/NHAC.

Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant's applications.

II.

Anthony and NHAC Lack Standing to Object

Anthony and NHAC have failed to demonstrate the sort of interest in this proceeding that is required to establish standing under the State Water Code (Chapter 174C, Hawaii Rev. Stat.)("Water Code") or 13 Hawaii Administrative Rules, Chapter 167 (1988)(Chapter 167 of 13 Hawaii Administrative Rules being hereinafter referred to as the "Commission's Rules of Practice").

As provided in § 174C-53(b) of the Water Code, "[i]n acting upon any application, the [C]ommission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application." Neither Anthony nor NHAC have provided any proof that they have the requisite property interest in this case or that they will be directly and immediately affected by the requested permits.
Section 13-167-54 of the Commission’s Rules of Practice specifies who may be admitted as a party to a proceeding. In addition to the petitioner and relevant government agencies, subsections 13-167-54(a)(3) and (4) of the Commission’s Rules of Practice list the following as the only other persons that may be recognized as parties:

(3) All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

(4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the commission may approve the application only if the applicant’s participation will substantially assist the commission in its decision making.

Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission's decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant's applications at all until his own matters are first considered: that the entire community's water supply should be held up pending resolution of Anthony's private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission's decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission's deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

The lack of adequate grounds for standing by the purported objectors requires that the letters filed by Anthony and NHAC be disregarded in the present proceeding.

III.

The Purported "Written Objections" by Anthony and NHAC were Not Timely

Section 13-171-18 of the Commission's Water Management Area Regulations sets forth the criteria for objections to proposed water use permits. Section 13-171-18(a) states as follows:

Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant. [emphasis added]
The last Public Notice in the present case was published in the *Honolulu Star Bulletin* on August 13, 1993, and stated that written objections had to be filed with the Commission, with a copy to the applicant by "August 30, 1993."

Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993. and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission’s Water Management Area Regulations, Applicant believes that Anthony’s and NHAC’s letters should be disregarded by the Commission.

IV.

**The Purported "Written Objections" by Anthony and NHAC are Deficient**

Section 13-171-18(b) of the Commission’s Water Management Area Regulations establishes clear requirements for any written objections filed with the Commission:

(b) The written objection shall:

(1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and

(2) State all grounds for objections to the proposed permit.

The grounds not cited or specifically urged are waived.

Neither NHAC nor Anthony specify any questions of procedure, fact, law or policy to which they object with respect to Applicant’s requested permits.

NHAC’s August 30, 1993 letter merely requests an exception to the Commission’s deadlines for filing and states NHAC’s general objections to the Commission’s water use
permit application processing and decision-making practices. Similarly, NHAC's September 3, 1993 letter merely reiterates its general dissatisfaction with this Commission's processing and decision-making practices. As to specific questions or grounds for objecting to Applicant's present applications, NHAC simply states that it supports Anthony's objections. Given NHAC's glaring lack of any specific basis for objecting to Applicant's applications, NHAC's purported "written objections" should be dismissed by the Commission.

As to Anthony's "objections," he also fails to set forth any questions or grounds for his objections. While he attempts to incorporate by reference his May 10, 1993 letter that he submitted to the Commission in a separate proceeding, such letter is likewise deficient and fails to state any basis for objecting to the present applications. Anthony's May 10, 1993 letter merely chastises the Commission for not resolving Kuleana landowners' water rights in the state.

While Anthony's May 10, 1993 letter cites a Dispute/Complaint Information Request form signed by Dawn K. Wasson ("Wasson"), Wasson is not an objector in the present case. Moreover, Wasson's complaints appear to relate to surface water matters that are not at issue in the present proceeding. The permits requested by Applicant, however, do not include any request for use of surface water for Applicant's system and none of the related Wells fall within any surface water management area. Finally, any alleged complaint regarding surface waters should not be allowed to delay the issuance of the permits requested in this case for permits of pre-existing, beneficial uses.
If Wasson has any grounds for complaint, which Applicant doubts exist, Wasson could raise such concerns with the Commission through a separate proceeding, in which Wasson clearly would have the burden to prove the interim instream flow standards effects, if any, of Applicant’s use. A continuation permit proceeding is not the proper forum for the type of dispute resolution suggested by Anthony. Neither the Water Code nor the rules and regulations of the Commission permit an outsider to “stay” the permit process on the basis of mere allegations that an unspecified dispute exists as to surface water issues.

The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant’s Request Covers a Long-Established, Beneficial Use

Applicant is the current owner and operator of the water system serving the needs of the Laie community residents. The pending applications in this proceeding are an important aspect to Applicant’s service for the area. The Wells in question have been in use for at least a half-century by Applicant’s predecessor, and are critical to Applicant’s ability to supply potable water to the residents of the Laie community. Should the requested permits be denied, the community of about 6,000 or more residents, including such public facilities as an elementary school, would largely be left without potable water. Under such circumstances, the existing use for which Applicant hereby seeks permits is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission’s Water Management Area Regulations.
Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission's Water Management Area Regulations.

VI.

The Commission Should Grant the Permits Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commissions rules and regulations because of their failure to provide any basis to challenge Applicant's applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of by Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant's
applications for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 be granted as requested without hearing.

DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application

of

LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03

CERTIFICATE OF SERVICE.

I hereby certify that I have caused the foregoing BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS BY LAIE WATER COMPANY, INC., to be served upon the following persons at the following addresses by depositing a copy thereof in the mail, postage prepaid:

J.M. Anthony
Pacific Research, Information and Consultant Services
P.O. Box 720
Ka’a’awa, Hawaii 96730

Native Hawaiian Advisory Council
1088 Bishop Street, Suite 1204
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii; September 16, 1993.

[Signature]
JOHN H. MATSUNAGA
Attorney for Applicant
Mr. Lucky Fonoimoana  
Laie Water Co., Inc.  
55-510 Kamehameha Hwy  
Laie, HI 96762  

Dear Mr. Fonoimoana:

Notice of Objection(s) to Your Water Use Permit Application  
Koolauloa Ground Water Management Area, Oahu

We have received the attached objection(s) to your pending water use permit applications for the Laie Water Co., Inc. Wells (Well Nos. 3855-06 to 08 and 3956-03) by the August 27, 1993 deadline for filing (via FAX). This letter serves as your notice of objection(s) to your application(s) as required by Rule §13-171-17(c).

For your information, HAR §13-171-18(c) states that:

"Within ten working days after the filing of an objection with the Commission, any party may file with the Commission a brief in support of the proposed permit. Such party shall serve copies of the brief in support upon the objecting party."

As such, we request that any briefs in support be filed with us and copies sent to the objector(s) by September 13, 1993 to meet the provisions of HAR §13-171-18(c).

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

Sincerely,

[Signature]

RAE M. LOUI  
Deputy Director

RH:fc  
Attach.
By Fax Transmission and U.S. Mail

Ms. Rae Loui
Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96813

Dear Ms. Loui

re: Public Notice in Honolulu Star Bulletin, August 6, 1993
re Applications for Water Use Permits - Ground Water Management Area: specifically Applicants La‘ie Water Company, Inc. and Polynesian Cultural Center

On behalf of Hui Malama ‘Aina ‘O La‘ie I am instructed to resolutely oppose the granting of any water use permit/s to the aforementioned applicants. As you know I wrote to you on May 10, 1993 about this matter. I now restate the objections contained in that letter and incorporate all of its terms by reference in this letter.

I must say that I cannot understand why it is that it is taking so long to activate the dispute resolution process. Until that process is completed and settled no water use permit should even be considered, much less granted, to these applicants.

Please note this objection.

Sincerely yours,

J.M. Anthony, Ph.D.
The Honorable Keith W. Ahue  
State of Hawaii  
Department of Land and Natural Resources  
Commission of Water Resource Management  
P.O. Box 621  
Honolulu, Hawaii 96809  
Attn: Mr. Manabu Tagomori, Deputy

Dear Mr. Ahue:

We have received the following water permit applications. Thank you for the opportunity to review these applications:

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<th>Applicant Name</th>
<th>Water Mgt. Area</th>
<th>Amount Requested (gpd)</th>
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<td>Koolauloa</td>
<td>100,000</td>
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<td>Est. Campbell</td>
<td>Koolauloa</td>
<td>1,000,000</td>
<td>5-2-06:18</td>
<td>3957-01</td>
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<td>Koolauloa</td>
<td>100,000</td>
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<td>3956-01</td>
</tr>
<tr>
<td>Est. Campbell</td>
<td>Koolauloa</td>
<td>2,000,000</td>
<td>5-5-06:18</td>
<td>3957-03</td>
</tr>
<tr>
<td>R.E. White, Jr.</td>
<td>Koolauloa</td>
<td>87,140</td>
<td>5-5-01:21</td>
<td>3855-05</td>
</tr>
<tr>
<td>Laie Water Co.</td>
<td>Koolauloa</td>
<td>357,000</td>
<td>5-5-06:05</td>
<td>3855-06</td>
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<td>390,000</td>
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<td>Maui Dept.</td>
<td>Moikai</td>
<td>1,080,000</td>
<td>Various</td>
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</tr>
<tr>
<td>Agric. Res.</td>
<td>Hoolehua</td>
<td>3,360,000</td>
<td>Various</td>
<td>0855-01</td>
</tr>
<tr>
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<tr>
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<td></td>
<td>0855-06</td>
</tr>
</tbody>
</table>
Our records indicate that wells Nos. 0449-01 and 0855-01 through 0855-06 are on ceded land. We have no objections in granting water permits to the Maui Department of Water Supply and the Agricultural Resource Management Division providing that: (i) DHHL's priority for water usage is met, and (ii) water needs of Kuleana users are fully guaranteed.

We have continuing concern over the increasing use of the Koolauloa aquifer system to meet increasing demands for water in windward Oahu. We must caution that water is a commodity in short supply and the granting of water permits for large developments may jeopardize current or future water demands of small landholders.

Sincerely yours,

Clayton H.W. Hee
Chairperson
Office of Hawaiian Affairs

LM:sk
The Honorable Keith W. Ahue, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Ahue:

Water Use Permits

Thank you for the opportunity to respond to these applications for the following water use permits:

O'ahu
- Malaekahana-Campbell (3957-01 thru 07, 3956-01)
- Laie-White (3855-05)
- Laie-BYU (3855-06 thru 08, 3956-03)

Moloka'i
- Waikolu-Dept Ag (0855-01 thru 06)
- Ualapue-County (0449-01)

O'ahu
The Windward O'ahu wells are all pre-existing, and we ask only that the requested pumpage be compared with existing pumpage to determine whether use is expected to increase.

Moloka'i
The Waikolu source for the Moloka'i Irrigation System is primarily for service to Hawaiian home lands, and we favor their approval. Three wells are existing, but three are new; the impact of the new wells is not fully understood.

Our primary concern is that the groundwater not be overpumped to the detriment of stream flows. The application indicates that normally low summer flows would be interrupted (the stream would be dewatered during those periods), and we object to this as a matter of policy, preferring to focus on conservation, leak prevention, adequate maintenance, and adequate storage of higher winter flows. We request that permits be conditioned
accordingly, and that pumpage and streamflows be carefully monitored for further information and understanding of the aquifer characteristics.

We have no objections to continued County use of the Ualapue Shaft.

Warmest aloha,

Hoaliku L. Drake, Chairman
Hawaiian Homes Commission
1993 August 30

State of Hawaii Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

OBJECTIONS TO AND COMMENTS ON WATER USE PERMIT APPLICATIONS
(Public notice of July 27, 1993/Comments due August 30, 1993)

GENERAL OBJECTIONS

We reiterate our general objections to current COWRM water use permit application processing and decisionmaking practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93).

We also have specific comments on and objections to several of the applications listed in this notice, particularly those of Maui Department of Water Supply, State Department of Agriculture, Maui Water Co., Inc., and Campbell Estate. In each case Ni'ihau Advisory Council (NAC) represents water source registrants, water use declarants, water use permit applicants, and others with property interest in land within the hydrologic unit of the source of water supply who would be directly and immediately affected by the proposed water use.

Because of the complexity, importance, and late arrival of some of these applications to our office, we are requesting an extended review period (as provided on your memorandum) to September 3, 1993, when we will submit all objections and comments for both this set of applications and those whose objections due date is September 3.

Thank you for your consideration of this request.

David L. Martin

David L. Martin, Water Claims Manager
State of Hawaii Commission on Water Resource Management  
P.O. Box 621  
Honolulu, HI 96809

OBJECTIONS TO AND COMMENTS ON WATER USE PERMIT APPLICATIONS  
(Public notice of July 27, 1993/Comments due August 30, 1993)  
(Extension to September 3, 1993 requested on August 30, 1993)

GENERAL OBJECTIONS  
We reiterate our general objections to current COWRM water use  
permit application processing and decisionmaking practices as  
previously submitted on numerous occasions (10/12/92, 10/21/92,  
12/1/92, 6/22/93, & 7/8/93).

SPECIFIC OBJECTIONS  
NHAC represents water source registrants, water use declarants,  
water use permit applicants, and others with property interest in  
land within the hydrologic units of the sources of water supply who  
would be directly and immediately affected by the proposed water  
uses.

1. Ualapue Shaft 0449-0:  
14.(c) Hawaiian Home Lands uses affected

In its final report dated July 1993, the Molokai Working Group  
recommends that "..., DHHL's demonstrable needs which are currently  
tied to lands at Hoolehua and Kalamaula through 2010, be reserved  
first."

Since reservations of water to Hawaiian Home Lands have not yet  
been accomplished, this application should be deferred until that  
time. Additionally, mechanisms for bulk allocation of water to the  
Maul Department of Water Supply, similar to those being developed  
for O'ahu, should be implemented, rather than processing each  
individual County source under separate water use permit  
applications.

14.(d) The Molokai Working Group recommends that "Other  
rights which may exist pertaining to Hawaiians not residing on DHHL  
lands must also be honored" (Final Report page 6).
The proximity of the Ualapue shaft to shoreline fishponds and Loipunawai raises questions of its impacts upon groundwater flows which nourish these resources. Permitted use of the shaft should be restricted to avoid affecting subsurface flows required to maintain the productivity of nearby fishponds, Loipunawai, and nearshore ecosystems, and to honor the rights of Native Hawaiians to utilize these resources for traditional and customary practices.

2. Waikolu Wells 0055-01 to -06

The combined application for existing and proposed sources is confusing and requires further explanation before objections and comments can be completed. Specific items requiring clarification include:

1. SOURCE LOCATION

While wells 01-03 can be located using existing groundwater indices, new wells 04-06 cannot be located except within a 270' elevational range. In order to assess potential restrictions on use, more detailed locations for the new wells are required.

8. QUANTITY OF WATER REQUESTED

What is the quantity requested from each individual source? From the existing sources combined? From the new sources combined?

15.(a) Impact on Sustainable yield

The entry of "7,488,000 GPD" on this line requires further explanation.

15.(b) Permanent or Interim Instream Flow Standards affected

Applicant should specify which sources affect which streams. Permitted use should be restricted to end and avoid any such effects.

15.(c) Hawaiian Home Lands uses affected

Operation of the Molokai Irrigation system was originally intended to be solely for the benefit of Molokai Hawaiian Home Lands. Subsequent State legislation which allowed 1/3 of the system capacity to be used for other purposes violates the spirit and intent of the original enacting federal legislation. Thus use of existing and new sources by the Department of Agriculture affects Hawaiian Home Lands uses, and permitted use should be restricted to avoid any such effects.
15. (d) Other existing legal uses affected

When instream flow standards are affected, other legal uses of streams are also affected. Permitted use should be restricted to end and avoid any such effects.

16. REMARKS, EXPLANATIONS

The Molokai Working Group recommends:

III.I. ... all additional water supply should first be sought in the sector for which it shall be used.

III.P. ... new water supplies should be sought first through conservation.

IV.A.1. The development of new water resources from the undeveloped portions of the Northeast Sector should be held in reserve to maintain the 39 mgd developable yield.

IV.A.3. Development beyond the existing water systems in the Northeast Sector should not be allowed, unless assessments indicate more water can be withdrawn without further impacts to the natural ecosystems.

NHAC believes that applicant's request for proposed new source does not follow the Molokai Working Group recommendations and thus should not be permitted. However, we defer our objections to those of Molokai Hawaiian Home Lands beneficiaries and of the Molokai Working Group.

3. Lani Water Co., Inc. Wells 3855-06 to 08 & 3956-03
   Polynesian Cultural Center Lagoon Well 3855-09

NHAC supports the objections filed by Hui Malama 'Aina 'O'La'io on August 30, 1993.

4. Campbell Estate Well 3957-01

3. (a) EXISTING SOURCE NAME AND STATE NUMBER

The Public Notice only covers Well 01, while the completed application is for a battery of wells also including Well 02 and 04 to 06. It seems that the Commission must republish this notice with the complete information and allow additional time for objection and comment.

8. QUANTITY OF WATER REQUESTED
13. TOTAL ACRES PROPOSED FOR IRRIGATION AND TYPE OF CROP

One million gpd for 80 acres of various unspecified crops works out to 12,500 gpd. Without greater specification of the proposed crops, it is impossible to compare proposed use with Water Plan
guidelines and to determine if the proposed use is reasonable and beneficial.

Mahalo

David L. Martin, Water Claims Manager

pc: Maui Department of Water Supply
    State Department of Agriculture
    R.B. White, Jr.
    Laie Water Co, Inc.
    Polynesian Cultural Center
    Campbell Estate
By Fax Transmission and U.S. Mail

Ms. Rae Loui  
Deputy Director  
Commission on Water Resource Management  
P.O. Box 621  
Honolulu, Hawai‘i 96813

Dear Ms. Loui

re: Public Notice in Honolulu Star Bulletin, August 6, 1993  
re Applications for Water Use Permits - Ground Water Management Area: specifically Applicants La‘ie Water Company, Inc. and Polynesian Cultural Center

On behalf of Hui Malama ‘Aina ‘O La‘ie I am instructed to resolutely oppose the granting of any water use permit/s to the aforementioned applicants. As you know I wrote to you on May 10, 1993 about this matter. I now restate the objections contained in that letter and incorporate all of its terms by reference in this letter.

I must say that I cannot understand why it is that it is taking so long to activate the dispute resolution process. Until that process is completed and settled no water use permit should even be considered, much less granted, to these applicants.

Please note this objection.

Sincerely yours

J.M. Anthony, Ph.D.
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: 8/21
FILE IN:

INIT:

G. Matsumoto
E. Sakoda
Y. Shiroma
E. Hirano
D. Higa
G. Bauer
R. Hardy

FOR YOUR:

F. See Me
Call
Review & Comment
Take Action
Investigate & Report
Draft Reply
Acknowledge Receipt
Type Draft
Type Final
Xerox _____ copies

I assume there are
for the WRA's that
went to Pub Not
8/16 & 8/13 8/27/93
and
8/12 & 8/19 9/02/93
copies for files.

R. LOUI
S. KOKUBUN
M. TAGOMORI
L. NANBU

FOR YOUR:

Approval
Signature
Information

3955-06 + 00
3956-03
1993 August 30

State of Hawaii Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

GENERAL OBJECTIONS

We reiterate our general objections to current COWRM water use permit application processing and decisionmaking practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93).

We also have specific comments on and objections to several of the applications listed in this notice, particularly those of Maui Department of Water Supply, State Department of Agriculture, Laie Water Co., Inc., and Campbell Estate. In each case NHAC represents water source registrants, water use declarants, water use permit applicants, and others with property interest in land within the hydrologic unit of the source of water supply who would be directly and immediately affected by the proposed water use.

Because of the complexity, importance, and late arrival of some of these applications to our office, we are requesting an extended review period (as provided on your memorandum) to September 3, 1993, when we will submit all objections and comments for both this set of applications and those whose objections due date is September 3.

Thank you for your consideration of this request.

David L. Martin

David L. Martin, Water Claims Manager
FAX TRANSMITTAL

DATE:  8/30/93

TO:  COUTRM

FAX NO.:  587-0219

FROM:  Elizabeth Martin
       David L. Martin
       David C. Penn
       Eric Yamamoto
       Tina

PHONE:  (808) 523-1445  FAX NO:  (808) 599-4380

Description of Items FAXED:  Total Number of Pages 2

Objection & Comments on Water Use Permit Apple.
(8/30/93)

The information contained in the accompanying transmission is or may be protected by the attorney-client and/or the attorney work product privilege and is CONFIDENTIAL. It is intended only for the use of the individual or entity identified above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination or distribution of the accompanying communication is prohibited. No applicable privilege is waived by the party sending the accompanying document(s). If you have received this communication in error, please notify us immediately by telephone (collect) and return the original message to us at the above address via the U.S. Postal Service. We will reimburse you for postage. Thank you.
1993 August 30

State of Hawaii Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

OBJECTIONS TO AND COMMENTS ON WATER USE PERMIT APPLICATIONS
(Public notice of July 27, 1993/Comments due August 30, 1993)

GENERAL OBJECTIONS

We reiterate our general objections to current COWRM water use permit application processing and decisionmaking practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 11/1/92, 6/22/93, & 7/8/93).

We also have specific comments on and objections to several of the applications listed in this notice, particularly those of Maui Department of Water Supply, State Department of Agriculture, Lale Water Co., Inc., and Campbell Estate. In each case NHAC represents water source registrants, water use declarants, water use permit applicants, and others with property interest in land within the hydrologic unit of the source of water supply who would be directly and immediately affected by the proposed water use.

Because of the complexity, importance, and late arrival of some of these applications to our office, we are requesting an extended review period (as provided on your memorandum) to September 3, 1993, when we will submit all objections and comments for both this set of applications and those whose objections due date is September 3.

Thank you for your consideration of this request.

David L. Martin, Water Claims Manager
FIELD INSPECTION INFORMATION CHECKLIST  
(Ver 4/3/91)

PART I: USE OF WATER

Declarant’s File Reference: ZIONS SEC CORP

1. Tax Map Key where the water is used: 5 - 5 - 06:05. Does the declarant own this land? NO If not, who does? ____________________________

2. What is the water used for? DOMESTIC - LAIE COMMUNITY - BYU CAMPUS

For irrigation, how many acres are being irrigated by crop type? LAWN

If for livestock, how many and what kind? NA
If for drinking, at how many houses? ____________________________ by how many people?

3. Is the quantity of water use being measured? YES 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? NA

What is the capacity for taking (gpm)? NA

How often is it taken (used)? NA

PART II: WATER SOURCE

Source #: 3856-06 Name: BYU CAMPUS

LAT 213847 LONG 1575546

1. Where does the water come from / what kind of source is this? 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? ELECTRIC PUMP

What is the capacity for taking (gpm)? 10 HP, 210 GAL/MIN 1750 RPM PUMP

How often is it taken (used)? DAILY ALSO METERED

3. Tax Map Key at the source: 5 - 5 - 06:05. Determine declarant’s relation to source. Does the declarant:

1) Operate and maintain the source? YES If not, who does? ____________________________
2) Own the land at the source? YES If not, who does? ____________________________
3) Use the water from this source? YES If not, who does? ____________________________
4) Own the land where the water is being used? YES MAJORITY
5) None of the above? If so, why did they file? ____________________________

4. Does any one else also use water from this source? If yes, is their use included in this user’s declaration? Who are the other users? Did they file?

NOTE: 1 OF 5 wells that serve the LAIE COMMUNITY OF 5000 & 2000 ON CAMPUS

VERIFIED BY: RICHARD JUNNA DATE: 6/17/93
FIELD INSPECTION INFORMATION CHECKLIST  
(Ver 4/3/91)

PART I: USE OF WATER  
Declarant's File Reference:  ZIONS SEC CORP

1. Tax Map Key where the water is used:  5 - 5 - 06 - 05.  Does the declarant own this land?  Yes If not, who does? 

2. What is the water used for?  DOMESTIC - LATE COMMUNITY, ØJU CAMPUS  
If for irrigation, how many acres are being irrigated by crop type?  LAWN  
If for livestock, how many and what kind?  N/A  
If for drinking, at how many houses?  by how many people?  

3. Is the quantity of water use being measured?  Yes 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?  USE  
   What is the capacity for taking (gpm)?  USE  
   How often is it taken (used)?  USE

PART II: WATER SOURCE  
Source #:  385 - 07  
Name:  CEROMIC  
LAT 21° 30' 43"  
LON 137° 55' 50"  

1. Where does the water come from / what kind of source is this?  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?  ELECT PUMP  
   What is the capacity for taking (gpm)?  USE  
   How often is it taken (used)?  DAILY - ALSO METERED  

3. Tax Map Key at the source:  5 - 5 - 06 - 05.  Determine declarant’s relation to source.  
   Does the declarant:  
   1) Operate and maintain the source?  Yes If not, who does?  
   2) Own the land at the source?  Yes If not, who does?  
   3) Use the water from this source?  Yes If not, who does?  
   4) Own the land where the water is being used?  Yes - VAPOATDUS  
   5) None of the above?  If so, why didn’t they file?  

4. Does any one else also use water from this source?  Yes If yes, is their use included in this user’s declaration?  Who are the other users?  Did they file?  

NOTE: ONE OF 5 WELLS THAT SERVES THE LATE COMMUNITY OF 5000 & 2000 ON CAMPUS  

VERIFIED BY:  RICHARD JINPAI  
DATE:  8/17/93
FIELD INSPECTION INFORMATION CHECKLIST
(Ver 4/3/91)

PART I: USE OF WATER
Declarant’s File Reference: 2IONS SEC CORP

1. Tax Map Key where the water is used: S. 5 W. 00: 05. Does the declarant own this land? YES If not, who does? 

2. What is the water used for? DOMESTIC - LAKE COMMUNITY, OYU CANAL
   If for irrigation, how many acres are being irrigated by crop type? LAWN
   If for livestock, how many and what kind? NA
   If for drinking, at how many houses? ___________ by how many people?

3. Is the quantity of water use being measured? YES 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? NA
   What is the capacity for taking (gpm)? NA
   How often is it taken (used)? NA

PART II: WATER SOURCE
Source #: 3865-05 Name: LIBRARY
Lat 21.3091 Long 157.5645

1. Where does the water come from / what kind of source is this? 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? ELECTRIC PUMP
   What is the capacity for taking (gpm)? NOT
   How often is it taken (used)? DAILY - METERED

3. Tax Map Key at the source: S. 5 W. 06: 05. Determine declarant’s relation to source. Does the declarant:
   1) Operate and maintain the source? YES If not, who does? 
   2) Own the land at the source? YES If not, who does?
   3) Use the water from this source? YES If not, who does?
   4) Own the land where the water is being used? YES OYU JOINT
   5) None of the above? ___ If so, why did they file?

4. Does any one else also use water from this source? ___ If yes, is their use included in this user’s declaration? ___ Who are the other users? Did they file? 

NOTE: 1 OF 5 WELLS SERVES 5000 PEOPLE IN COMMUNITY & 2000 STUDENT ON CAMPUS
VERIFIED BY: RICHARD JINNOLI DATE: 8/17/93
FIELD INSPECTION INFORMATION CHECKLIST (Ver 4/3/91)

PART I: USE OF WATER

1. Tax Map Key where the water is used: 5 - 5 - 06: YES. If not, who does?

2. What is the water used for? DOMESTIC - (SEE BELOW). If for irrigation, how many acres are being irrigated by crop type? BNY LAWN CAMPUS

If for livestock, how many and what kind? If for drinking, at how many houses? BNY CAMPUS by how many people?

3. Is the quantity of water use being measured? YES. 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? NA
   What is the capacity for taking (gpm)?
   How often is it taken (used)?

PART II: WATER SOURCE

Source #: 3956 - 03 Name: TEMPLE WELL

1. Where does the water come from / what kind of source is this? WELL WITH

   LOT LINE TO PUMP HOUSE

   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? FROM WELL VIA LOT LINE TO PUMP HOUSE

   What is the capacity for taking (gpm)? 40 HP, 3550 RPM ELEC PUMP
   How often is it taken (used)? DAILY

3. Tax Map Key at the source: 5 - 5 - 06: 58. Determine declarant's relation to source. Does the declarant:

   1) Operate and maintain the source? YES If not, who does?
   2) Own the land at the source? YES If not, who does?
   3) Use the water from this source? YES If not, who does?
   4) Own the land where the water is being used? YES
   5) None of the above? If so, why did they file?

4. Does any one else also use water from this source? YES If yes, is their use included in this user's declaration? YES Who are the other users? Did they file?

NOTE: LOT OF SOWS SERVES THE LINE COMMUNITY OF 5000 & 2000 ON CANUS

VERIFIED BY: RICHARD JUNIO DATE: 8/11/93
MEMORANDUM

TO: Rae M. Loui, Deputy Director
Commission on Water Resource Management

FROM: Don Hibbard, Administrator
Historic Preservation Division

SUBJECT: Application for Water Use Permit, Laie Water Co., Inc.
for Well No. 3855-06, 07, 08 and 3956-03
Laie, Ko‘olauloa, O‘ahu
TMK 5-5-06:005,-032 and 5-5-08:058

Thank you for the opportunity to review this project. The applicant proposes to use water from an existing source. Since an approved permit will not authorize any ground disturbing activities we believe that there will be "no effect" on historic sites.

EJ:jt
Mr. Keith Ahue, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Ahue:

Subject: Your Letter of August 5, 1993 Regarding the Water Use Permit Applications for the Laie Water Co., Inc., Well Nos. 3855-06, 07, 08, 3956-03; Campbell Estate Well Nos. 3956-01, 3957-01, 02, 04 to 06, 3957-03, 3957-07; and the R. E. White, Jr. Well No. 3855-05

Thank you for the opportunity to comment on these water use permit applications.

We have no objections to these permit applications for the existing wells which as indicated are for agriculture, aquaculture, commercial and domestic uses.

Very truly yours,

KAZU HAYASHIDA
Manager and Chief Engineer
August 17, 1993

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

Dear Mr. Ahue:

Subject: Your Letters of August 4, 1993 and August 5, 1993 Regarding the Water Use Permit Applications for the Laie Water Co., Inc., Well Nos. 3855-06, 07, 08, 3956-03; Campbell Estate Well Nos. 3956-01, 3957-01, 02, 04 to 06, 3957-03, 3957-07; and the R. E. White Jr. Well No. 3855-05

Thank you for the opportunity to comment on these water use permit applications.

We have no objections to these permit applications for the existing wells which, as indicated, are for agriculture, aquaculture, commercial and domestic uses.

Sincerely,

[Signature]

FFF:js
MEMORANDUM

TO: Aquatic Resources
    Forestry and Wildlife
    Historic Preservation
    Land Management
    Natural Area Reserve System
    Office of Conservation and Environmental Affairs
    State Parks
    Water and Land Development
    Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments
          Water Use Permit Applications
          Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

LN:ko
Attachment(s)

Response: Contact person: [Signature]

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: [Signature] Date: 8/10/93
Oahu District Office has no objections provided that the applicant obtain the required Federal, State and County permits prior to initiating the proposed work.

Should you have any questions, please call John Dooling at 7-0433.
State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
Honolulu, Hawaii

MEMORANDUM

TO: Aquatic Resources
Forestry and Wildlife
Historic Preservation
Land Management
Natural Area Reserve System
Office of Conservation and Environmental Affairs
State Parks
Water and Land Development
Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments
Water Use Permit Applications
Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

LN:ko
Attachment(s)

Response: Contact person: __________________________________________________________________________

☐ We have no comments
☐ We have no objections
☒ Comments attached
☒ Additional information requested
☐ Extended review period requested

Signed: Henry M. Schwartz
Date: 8/13/93
MEMORANDUM

TO:     Rae M. Loui, Deputy Director
        Commission on Water Resource Management

FROM:  Henry Sakuda, Administrator
        Division of Aquatic Resources

SUBJECT: Comments on Water Use Permit Applications for Laie Water Company,
         Inc. for Well Nos. 3855-06, 3855-07, 3855-08, and 3956-03 in the
         Koolauloa Ground Water Management Area, Oahu

The applications are for existing wells on the BYUH campus at Laie. Approximately 1,461,000 gallons of basal water are pumped per day for domestic use. Because these are existing wells, we presume that the status quo flow in nearby streams would be retained. If there was a dewatering effect attributable to pumping, the flows would have been reduced before the status quo instream flow condition was imposed. In any case, since basal water is being utilized, any dewatering effect would probably be small. We do not believe these wells are imperiling native aquatic biota and have no objections to the applications.
MEMORANDUM

TO: Aquatic Resources
    Forestry and Wildlife
    Historic Preservation
    Land Management
    Natural Area Reserve System
    Office of Conservation and Environmental Affairs
    State Parks
    Water and Land Development
    Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments
          Water Use Permit Applications
          Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

Response: Contact person: ___________________________ Phone: ___________________________

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: ___________________________ Date: AUG 10 1993
MEMORANDUM

TO:   Aquatic Resources
       Forestry and Wildlife
       Historic Preservation
       Land Management
       Natural Area Reserve System
       Office of Conservation and Environmental Affairs
       State Parks
       Water and Land Development
       Other Interested Parties

FROM:    Rae M. Loui, Deputy Director

SUBJECT:    Request for Comments
             Water Use Permit Applications
             Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

LN:ko

Attachment(s)

Response: Contact person: ________________________________ Phone: __________

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: ___________________________ Date: AUG 6 1993
MEMORANDUM

TO: Aquatic Resources  
Forestry and Wildlife  
Historic Preservation  
Land Management  
Natural Area Reserve System  
Office of Conservation and Environmental Affairs  
State Parks  
Water and Land Development  
Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments  
Water Use Permit Applications  
Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

LN:ko
Attachment(s)

Response: Contact person: ___________________________ Phone: ___________

( ) We have no comments  
( ) We have no objections  
( ) Comments attached  
( ) Additional information requested  
( ) Extended review period requested

Signed: ___________________________ Date: ___________
MEMORANDUM

TO: Aquatic Resources
    Forestry and Wildlife
    Historic Preservation
    Land Management
    Natural Area Reserve System
    Office of Conservation and Environmental Affairs
    State Parks
    Water and Land Development
    Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments
         Water Use Permit Applications
         Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

LN:ko
Attachment(s)

Response: Contact person: Steve Tagawa
Phone: 587-0385

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: [Signature]  Date: 8/26/93
MEMORANDUM

TO: Aquatic Resources
    Forestry and Wildlife
    Historic Preservation
    Land Management
    Natural Area Reserve System
    Office of Conservation and Environmental Affairs
    State Parks
    Water and Land Development
    Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments
Water Use Permit Applications
Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

Response: Contact person: Phone: 587-0290

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: Date: 8/12/93
MEMORANDUM

TO: Aquatic Resources
    Forestry and Wildlife
    Historic Preservation
    Land Management
    Natural Area Reserve System
    Office of Conservation and Environmental Affairs
    State Parks
    Water and Land Development
    Other Interested Parties

FROM: Rae M. Loni, Deputy Director

SUBJECT: Request for Comments
          Water Use Permit Applications
          Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

Response: Contact person: Gordon Akita
          Phone: 587-0227

(✓) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: MANABU TAGOMORI
Date: 8/5/93
Dear Mr. Fonoimoana:

Enclosed is a copy of the public notice for your water use permit applications for Well Nos. 3855-06, -07, -08, and 3956-03, which will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

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

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

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

Sincerely,

[Signature]

RAE M. LOUI
Deputy Director
MEMORANDUM

TO: Aquatic Resources
    Forestry and Wildlife
    Historic Preservation
    Land Management
    Natural Area Reserve System
    Office of Conservation and Environmental Affairs
    State Parks
    Water and Land Development
    Other Interested Parties

FROM: Rae M. Loui, Deputy Director

SUBJECT: Request for Comments
          Water Use Permit Applications
          Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

LN:ko
Attachment(s)

Response: Contact person: ___________________________ Phone: ___________

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: ___________________________ Date: ___________
INTERESTED OTHERS LIST

ADDITIONAL STANDARD CORRESPONDENCE

Mr. David Martin
Native Hawaiian Advisory Council
1164 Bishop St., Suite 1205
Honolulu, Hawaii 96813

ADDITIONAL STANDARD MAILING LIST FOR HOLOKAI

Mr. Brian Miske
County of Maui
Department of Planning
200 South High Street
Wailuku, Hawaii 96793

Mr. David Craddock, Director
Maui Department of Water Supply
200 South High St.
Wailuku, HI 96793
MEMORANDUM

TO: Mrs. Hoaliku L. Drake, Director
    Department of Hawaiian Home Lands

          Dr. John C. Lewin, Director
          Department of Health

          Mr. Clayton H. W. Hee, Chairperson
          Office of Hawaiian Affairs

          Mr. Kazu Hayashida, Manager & Chief Engineer
          Honolulu Board of Water Supply

FROM: Keith W. Ahue, Chairperson
      Commission on Water Resource Management

SUBJECT: Water Use Permit Applications
         Koolauloa Ground Water Management Area, Oahu

Transmitted for your review and comment are copies of water use permit applications for Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03. Public notice of these applications will be published in the Honolulu Star Bulletin issues of August 6, 1993 and August 13, 1993.

We would appreciate your review of the attached applications and please return this form by August 30, 1993.

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

Attachment(s)
Memorandum to:
Mrs. Hoaliku L. Drake
Dr. John C. Lewin
Mr. Clayton H.W. Hee
Mr. Kazu Hayashida

Page 2

Response: Contact person: ___________________________ Phone: ____________

( ) We have no comments
( ) We have no objections
( ) Comments attached
( ) Additional information requested
( ) Extended review period requested

Signed: ___________________________ Date: ______________
Honorable Frank F. Fasi, Mayor  
City & County of Honolulu  
City Hall  
Honolulu, HI 96813  

Attn: Mr. Jeremy Harris  

Dear Mayor Fasi:  

Notice of Applications for a Water Use Permit  
Koolauloa Ground Water Management Area, Oahu  

In accordance with the Department of Land and Natural Resource Administrative Rules, Section 13-171-17(a), we are sending you a copy of the public notice for the water use permit applications for the Laie Water Co., Inc. for Well Nos. 3855-06, -07, -08, and 3956-03, which will be published in the Honolulu Star Bulletin.  

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

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

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

Very truly yours,  

Keith W. Ahue  
Chairperson

Enc.
Applications for the following water use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".

Ualapue Shaft (Well No. 0449-01)

**Applicant:** Maui Department of Water Supply
P.O. Box 1109
Wailuku, Maui, HI 96793

**Date Completed Application Received:** June 9, 1993

**Applications for the following Water Use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".**

**Place of Water Use:** Ualapue Shaft, Well No. 0449-01, at Ualapue, Molokai, Hawaii. Tax Map Key: 5-6-6.28

**Quantity Requested:** 1,080,000 gallons per day.

**Existing Water Use:** Municipal for Maui Department of Water Supply Ualapue Water System

**Applications for the following Water Use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".**

**Well #4 (Well No. 0855-06)**

**Applicant:** Agricultural Resource Management Division
State Department of Agriculture
P.O. Box 205
Hoomana, HI 96713

**Date Completed Application Received:** June 8, 1993

**Applications for the following Water Use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".**

**Well #5 (Well No. 0855-05)**

**Well #6 (Well No. 0855-04)**

**Well #22 (Well No. 0855-01)**

**Well #23 (Well No. 0855-02)**

**Well #24 (Well No. 0855-03)**

**Existing Water Use:** Agricultural for State Department of Agriculture Molokai

**Applications for the following Water Use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".**

**White Well (Well No. 3855-05)**

**Applicant:** R.E. White Jr.
3656 Tantalus Drive
Honolulu, HI 96822

**Date Completed Application Received:** June 26, 1993

**Applications for the following Water Use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".**

**Well Source:** Vinyl tubing, Well No. 3855-05, at 33-202 Kamalamea Hwy., Oahu, Tax Map Key: 5-5-1.21

**Quantity Requested:** 87,140 gallons per day.

**Existing Water Use:** Irrigation of 9 acres of banana trees

**Applications for the following Water Use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 18-171, "Designation and Regulation of Water Management Areas".**

**TRANSMISSION REPORT**

**THIS DOCUMENT (REDUCED SAMPLE ABOVE) WAS SENT**

**COUNT**

**# 4**

**SEND***

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XEROX TELECOPIER 7020
PUBLIC NOTICE

Applications for Water Use Permits
Ground Water Management Areas

Applications for the following water use permits have been received and are hereby made public, in accordance with Department of Land and Natural Resources Administrative Rules 13-171, "Designation and Regulation of Water Management Areas".

Ualapue Shaft (Well No. 0449-01)
Applicant: Maui Department of Water Supply
P.O. Box 1109
Wailuku, Maui, HI 96793
Date Completed Application Received: June 9, 1993
Aquifer: Ualapue System, Southeast Sector, Molokai
Well Source: Ualapue Shaft, Well No. 0449-01, at Ualapue, Molokai, Hawaii, Tax Map Key: 5-6-628
Quantity Requested: 1,080,000 gallons per day.
Existing Water Use: Municipal for Maui Department of Water Supply Ualapue Water System
Place of Water Use: Ualapue Water System

Well #4 (Well No. 0855-06)
Well #5 (Well No. 0855-05)
Well #6 (Well No. 0855-04)
Well #22 (Well No. 0855-01)
Well #23 (Well No. 0855-02)
Well #24 (Well No. 0855-03)
Applicant: State Department of Agriculture
Agricultural Resource Management Division
P.O. Box 205
Hoolehua, HI 96813
Date Completed Application Received: June 8, 1993
Aquifer: Waikolu System, Northeast Sector, Molokai
Well Sources: Wells #4, #5, #6, #22, #23, and #24, Well Nos. 0855-06, 05, 04, 01, 02, and 03, at Waikolu Valley, Tax Map Key: 6-1-1:2
Quantity Requested: 3,360,000 gallons per day.
Existing Water Use: Agricultural irrigation needs of Molokai Irrigation System
Place of Water Use: Hoolehua at various Tax Map Keys

White Well (Well No. 3855-05)
Applicant: R.E. White Jr.
3665 Tantalus Drive
Honolulu, HI 96822
Date Completed Application Received: June 28, 1993
Aquifer: Koolauloa System, Windward Sector, Oahu
Well Source: White Well, Well No. 3855-05, at 55-202 Kamehameha Hwy., Oahu, Tax Map Key: 5-5-1:21
Quantity Requested: 87,140 gallons per day.
Existing Water Use: Irrigation of 9 acres of banana trees
Place of Water Use: Kamehameha Highway at Tax Map Key: 0-0-0:0

(more)
Campus Well (Well No. 3855-06)
Ceramics Well (Well No. 3855-07)
Library Well (Well No. 3855-08)
Temple Well (Well No. 3956-03)
Applicant: Laie Water Co., Inc.
55-510 Kamehameha Hwy.
Laie, HI 96762
Date Completed Application Received: June 23, 1993
Aquifer: Koolauloa System, Windward Sector, Oahu
Well Sources: Campus Well, Ceramics Well, Library Well and Temple Well, Well Nos. 3855-06, 07, 08 and 3956-03, at Brigham Young - UH Campus, Oahu, Tax Map Key: 5-5-6:various
Quantity Requested: 357,000 gallons per day.
Existing Water Use: Municipal service for over 635 residential and commercial service meter connections in Laie
Place of Water Use: Laie Municipal Water System Service Area at numerous Tax Map Keys

PCC Lagoon Well (Well No. 3855-09)
Applicant: Polynesian Cultural Center
55-370 Kamehameha Hwy
Laie, HI 96762
Date Completed Application Received: June 23, 1993
Aquifer: Koolauloa System, Windward Sector, Oahu
Well Source: PCC Lagoon Well, Well No. 3855-09, at Polynesian Cultural Center, Oahu, Tax Map Key: 5-5-6:28
Quantity Requested: 691,000 gallons per day.
Existing Water Use: Provides circulation supply for large scale water feature at Polynesian Cultural Center
Place of Water Use: 55-370 Kamehameha Highway at Tax Map Key: 5-5-6:28

Malaekahana Well (Well No. 3956-01)
Applicant: Campbell Estate
828 Fort St., Ste. 500
Honolulu, HI 96813
Date Completed Application Received: June 16, 1993
Aquifer: Koolauloa System, Windward Sector, Oahu
Well Source: Malaekahana Well, Well No. 3956-01, at Malaekahana, Oahu, Tax Map Key: 5-6-6:6
Quantity Requested: 100,000 gallons per day.
Existing Water Use: Domestic service to 31 homes and Malaekahana Park
Place of Water Use: Malaekahana Bay at Tax Map Key: 5-6-6:1

Pump 3 (Well No. 3957-01, 02 and 04 to 06)
Applicant: Campbell Estate
828 Fort St., Ste. 500
Honolulu, HI 96813
Date Completed Application Received: June 16, 1993
Aquifer: Koolauloa System, Windward Sector, Oahu
Well Source: Pump 3, Well No. 3957-01, at Kahuku, Oahu, Tax Map Key: 5-6-6:18
Quantity Requested: 1,000,000 gallons per day.
Existing Water Use: Domestic service and irrigation of 80 acres of various crops
Place of Water Use: Kahuku at Tax Map Key: 5-6-6:18

(more)
Pump 3A (Well No. 3957-03)

Applicant: Campbell Estate
828 Fort St., Ste. 500
Honolulu, HI 96813

Date Completed Application Received: June 16, 1993

Aquifer: Koolauloa System, Windward Sector, Oahu

Well Source: Pump 3A, Well No. 3957-03, at Kahuku, Oahu, Tax Map Key: 5-6-6:18

Quantity Requested: 2,000,000 gallons per day.

Existing Water Use: Aquaculture (60 acres of prawns)

Place of Water Use: Kahuku at Tax Map Key: 5-6-6:18

Pump 6 (Well No. 3957-07)

Applicant: Campbell Estate
828 Fort St., Ste. 500
Honolulu, HI 96813

Date Completed Application Received: June 17, 1993

Aquifer: Koolauloa System, Windward Sector, Oahu

Well Source: Pump 6, Well No. 3957-07, at Kahuku, Oahu, Tax Map Key: 5-6-6:6

Quantity Requested: 100,000 gallons per day.

Existing Water Use: Irrigation for 150 acres of cattle and pasture

Place of Water Use: Kahuku at Tax Map Key: 5-6-6:6

Written objections or comments on the applications for water use permits may be filed by any person who has property interest in any land within the hydrologic unit of the source of water supply, any person who will be directly and immediately affected by the proposed water use, or any other interested person. Written objections shall:

(1) state property or other interest in the matter;
(2) set forth questions of procedure, fact, law, or policy, to which objections are taken; and
(3) state all grounds for objections to the proposed permits.

Send written objections by August 30, 1993 to 1) the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809, and 2) a copy of the objection letter(s) to the applicant at the above address.

COMMISSION ON WATER RESOURCE MANAGEMENT

KEITH W. AHUE
Chairperson

JUL 27 1993

Dated:

STATE OF HAWAII
REQUISITION & PURCHASE ORDER

DEPARTMENT OF LAND AND NATURAL RESOURCES

NOTICE TO VENDORS
Conditions of purchase are listed on the back side of this purchase order. Please read carefully. Payments may be delayed if all steps are not followed.

Hawaii Newspaper Agency
Honolulu Star Bulletin
P.O. Box 3350
Honolulu, HI 96801

The State of Hawaii is an EQUAL EMPLOYMENT OPPORTUNITY and AFFIRMATIVE ACTION employer. We encourage the participation of women and minorities in all phases of employment.

PUBLIC NOTICE
Applications for Water Use Permits, Ground Water Management Areas

Roy/Kay
587-0225

AUTHORIZED SIGNATURE
A. FURUUCHI

GOODS/SERVICES RECEIVED IN GOOD ORDER AND CONDITION BY DATE

FOR DEPARTMENT USE ONLY

REQUISITION NO.
00166517

VENDOR

NUMBER

SFX

117494

00

QUAN

UNIT DESCRIPTIO:

OBJECT

UNIT PRICE

AMOUNT

Estimated

$1,000.00

01 621 G 044 C 4000 0726 000000 00 075 1,000.00

STATE ACCOUNTING FORM C-03
11/21/93 REVISED
REGULATION BRANCH
Commission on Water Resource Management

FROM: R
TO: E. SAKODA
K. Oshiro
D. Higa
R. Hardy
J. Zhang

INIT: 

DATE: 7/13
FILE IN: 

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

FOR YOUR:

R. LOUI
S. Kokubun
G. MATSUMOTO
Y. SHIROMA

Approval
Signature
Information

REMARKS:

Tom Name called to change applicant name from Zion's Securities Corp. to Laie Water Co., Inc. All info remains unchanged.
Mr. Keith Ahue  
Commission on Water Resource Management  
Department of Land and Natural Resources  
State of Hawaii  
P. O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Ahue:

Water Use Applications for Existing  
Laie Water System Wells in the  
Windward Oahu Water Management Area

Enclosed are Water Use Permit applications and filing fees for the four existing wells which supply the Laie Water System. The private water system, which is owned and operated by Zions Securities Corporation (ZSC), supplies drinking water to more than 635 residential and commercial service meter connections in Laie. Three of the four wells (State Nos. 3855-06, -07, & -08) are on the BYUH Campus. They operate as a battery of wells which deliver water by artesian pressure to a common wet well and booster pumping station. The fourth well (State No. 3956-03) is located behind the LDS Temple and is known as the Temple well.

Attachments to these applications identify the well locations and the system's service area on the USGS quadrangle map and the appropriate TMKs. Present water use averages 1.46 MGD; 1.07 MGD is supplied by the BYUH battery of wells and 0.39 MGD from the Temple well. The enclosed applications seek preserved use allocations for these amounts.

In a separate submittal, ZSC is also applying for Water Use Permits for eight other wells in Laie which are used for agriculture and aquaculture by ZSC and its lessees. If you have any questions or require additional information, please feel free to call Lucky Fonoimoana or Bill Cannon at ZSC (ph. 293-9201) or me. Thank you for your attention to this matter.

Sincerely,

[Signature]

Tom Nance

cc: Lucky Fonoimoana - Zions Securities Corporation

Enclosures
APPLICATION FOR WATER USE PERMIT

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

APPLICATION FOR WATER USE PERMIT

5-27-93

PERMITTEE INFORMATION

1. (a) APPLICANT
Zions Securities Corporation
Firm/Name
Lucky Fonomoana
Contact Person
55-510 Kamehameha Highway
Address
E. Oahu, Hawaii 96782

(b) LANDOWNER OF SOURCE
Brigham Young University - Hawaii Campus
Firm/Name
Judd Whetten
Contact Person
55-220 Kulanui Street
Address
E. Oahu, Hawaii 96782

SOURCES INFORMATION

2. WATER MANAGEMENT AREA: (Koolauloa Aquifer System) ISLAND: Oahu

3. (a) EXISTING WELL/DIVERSION NAME AND STATE NUMBER: Ceramics Well 3855-07
(b) PROPOSED (NEW) WELL/DIVERSION NAME:
(c) LOCATION: Address: On the BYUH Campus Tax Map Key 5-5-6:32
(Attach a USGS map, scale 1" = 2000", and a property tax map showing source location referenced to established property boundaries.)
4. SOURCE TYPE (check one): ☐ Stream ☐ Well ☐ Dike-confined ☐ Perched ☐ Diverted Surface ☐ Other (explain)
5. METHOD OF TAKING WATER (check one): ☐ Artesian ☐ Well & Pump ☐ Other (explain)

USE INFORMATION

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
(a) Proposed use of water is: ☐ Existing ☐ New ☐ Both existing & new uses
(b) Tax Map Key: See Back (If location of use is over multiple TMKs, please complete Table 1 on back of application)
(c) Address: Late Municipal Water System Service Area
(d) Current Land Use District (check one): ☐ Urban ☐ Agriculture ☐ Conservation ☐ Rural
(e) Current County Zoning Code: R-5, R-7.5, R-1, R-2, P-2, Resort, and Country
7. QUANTITY OF WATER REQUESTED: 357,000 gallons per day

8. METHOD OF MEASUREMENT: ☐ Flowmeter ☐ Open-pipe ☐ Weir ☐ Orifice ☐ Other (explain)
9. QUALITY OF WATER REQUESTED: ☐ Fresh ☐ Brackish ☐ Saline ☐ Potable ☐ Non-Potable
10. PROPOSED USE: ☐ Municipal (including hotels, stores, etc.) ☐ Individual Domestic ☐ Irrigation
☐ Industrial ☐ Military ☐ Other (explain)

For questions 12 & 13: If multiple TMKs are involved, please complete Table 1 on back of application.
11. TOTAL NUMBER OF RESIDENCES TO BE SERVED: 607 Residences, BYUH, Commercial, Late School
12. TOTAL ACRES TO BE IRRIGATED AND TYPE OF CROP: ☐ No Agricultural Use
☐ (acres) ☐ (crop) On Demand Throughout The Day
☐ (Daytime hours of operation, ex. 7 a.m. to 2 p.m.)
13. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION:
14. APPLICANT MUST BRIEFLY DESCRIBE FOLLOWING POTENTIAL RESTRICTIONS ON WATER USE:
(a) Impact on Sustainable yield (?): ☐ Requested Use is Within the Aquifer's Sustainable Yield
(b) Instream Flow Standards affected (?) ☐ No
(c) Hawaiian Home Lands use affected (?) ☐ No
(d) Other existing legal uses affected (?) ☐ No
(e) Other (pending permits, EIS, etc.) (?): ☐ No
15. REMARKS, EXPLANATIONS: (On Back)

(Late Municipal Water System Service Area)

(Signature) Judy Whetten
Date 5-15/93

For Official Use Only:
Date Received
Hydrologic Unit No.
Diversions Works No.
State Well No.

NOTE: Signing below indicates that the applicant understands that, if a water use permit is granted by the Commission on Water Resource Management, a permit is subject to prior permits, existing sustainable yields and increased flow standards, reserved uses as defined by the Commission, and Hawaiian Home Lands future uses. In addition, applicant understands that, upon permit approval, a water shortage plan must be submitted to the Commission before use.

Applicant (print) LUCKY FONOMOANA
Signature

Landowner (print) JUDD WHETTEN
Signature

Zions Securities Corporation Brigham Young University-

Lucky Fonomoana Judd Whetten Hawaii
Applicant (print)
Signature
Date June 2, 1993

STATE OF HAWAII
COUNTY OF MAUNA LOA

I, LUCKY FONOMOANA, of the County of Maui and State of Hawaii, do hereby certify that I am the duly authorized agent of Zions Securities Corporation, the Applicant herein, for the purpose of executing this application.

I certify that the information submitted is true and correct to the best of my knowledge and belief.

Dated this 2nd day of June, 1993.

LUCKY FONOMOANA
Authorized Agent

STATE OF HAWAII
COUNTY OF MAUNA LOA

I, JUDD WHETTEN, of the County of Maui and State of Hawaii, do hereby certify that I am the duly authorized agent of Brigham Young University, the Landowner herein, for the purpose of executing this application.

I certify that the information submitted is true and correct to the best of my knowledge and belief.

Dated this 15th day of June, 1993.

JUDD WHETTEN
Authorized Agent
16. REMARKS, EXPLANATIONS (cont'd):

This well is one of a battery of three wells on the BYUH Campus which provide a portion of the supply for the private Laie Water System. The three wells deliver water to a common wet well. A booster pumping station at the wet well delivers the water directly into the system. Flowrate is measured on the discharge line of the booster pumping station, not on the individual well influent lines to the wet well. Combined use of the three wells averages 1.071 MGD. For this and the accompanying BYUH well applications, the combined flow is proportioned equally among the three wells at 0.357 MGD.

The service area of the Laie Water System is shown on the attached Tax Map. There are more than 635 service meter connections on numerous TMKs throughout the system. At the present time, all service is within the Urban land use district, although interior lands in the Agriculture district are within the system’s service pressure area.

### TABLE 1. MULTIPLE TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>Project Name</th>
<th>TMK</th>
<th>Current County Zoning Code</th>
<th>Net Acres</th>
<th>GPD/Acre</th>
<th>Total GPD</th>
<th>% of Total To Be Used Over Next 4 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>BYUH Campus</td>
<td>5-5-6:5</td>
<td>R-5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Polynesian Cultural Center</td>
<td>5-5-6:28 &amp; 30</td>
<td>B-2</td>
<td>Refer to attached Water Use Table</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Laie Community</td>
<td>5-5-1 (portion)</td>
<td>R-5</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>5-5-2</td>
<td>R-7.5</td>
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<tr>
<td></td>
<td>5-5-3'</td>
<td>B-1</td>
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<td></td>
<td>5-5-4</td>
<td>P-2</td>
<td></td>
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<tr>
<td></td>
<td>5-5-6 (portion)</td>
<td>Country</td>
<td></td>
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<tr>
<td></td>
<td>5-5-9 (portion)</td>
<td>Resort</td>
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<td>5-5-10 to 16</td>
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<td></td>
<td>5-5-17 (portion)</td>
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<td></td>
</tr>
</tbody>
</table>
APPLICATION FOR WATER USE PERMIT

5-27-93

PERMITTEE INFORMATION

1. (a) APPLICANT
   Firm/Name: Zions Securities Corporation
   Address: 55-510 Kamehameha Highway
   Phone: 293-9201

   (b) LANDOWNER OF SOURCE
   Firm/Name: Brigham Young University - Hawaii Campus
   Address: 2000 Library Avenue
   Phone: 293-3499

2. WATER MANAGEMENT AREA: Windward Oahu
   ISLAND: Oahu

3. (a) EXISTING WELL/DIVERSION NAME AND STATE NUMBER:
   (b) PROPOSED (NEW) WELL/DIVERSION NAME:
   LOCATION: On the BYUH Campus
   Tax Map Key: 5-5-6.5:

(c) LOCATION: Address: On the BYUH Campus
      Tax Map Key: 5-5-6.5:
      (Attach a USGS map, scale 1" = 2000", and a property tax map showing source location referenced to established property boundaries.)

4. SOURCE TYPE (check one): Stream 
   (d) LANDOWNER 
   (ID)
   (c) HM NOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
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   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 
   (a) LANDOWNER 
   (b) LANDOWNER 
   (c) LANDOWNER 
   (d) LANDOWNER 

5. METHOD OF TAKING WATER (check one):
   DETAIL: 357,000 gallons per day

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as sources location. Otherwise, attach similar maps)
   (a) Proposed use of water by:
   (b) Proposed use of water by:
   (c) Proposed use of water by:
   (d) Proposed use of water by:
   (e) Proposed use of water by:
   (f) Proposed use of water by:
   (g) Proposed use of water by:
   (h) Proposed use of water by:
   (i) Proposed use of water by:
   (j) Proposed use of water by:
   (k) Proposed use of water by:
   (l) Proposed use of water by:
   (m) Proposed use of water by:
   (n) Proposed use of water by:
   (o) Proposed use of water by:
   (p) Proposed use of water by:
   (q) Proposed use of water by:
   (r) Proposed use of water by:
   (s) Proposed use of water by:
   (t) Proposed use of water by:
   (u) Proposed use of water by:
   (v) Proposed use of water by:
   (w) Proposed use of water by:
   (x) Proposed use of water by:
   (y) Proposed use of water by:
   (z) Proposed use of water by:

7. QUANTITY OF WATER REQUESTED:
   357,000 gallons per day

8. METHOD OF MEASUREMENT:
   Open-pipe
   Flowmeter
   Other (explain)

9. QUALITY OF WATER REQUESTED:
   Potable
   Non-Potable
   Other (explain)

10. PROPOSED USE:
    Municipal (including hotels, stores, etc.)
    Industrial
    Other (explain)

11. TOTAL NUMBER OF RESIDENCES TO BE SERVED:
    607

12. TOTAL ACRES TO BE IRRIGATED AND TYPE OF CROP:
    Agricultural Use
    Non-Agricultural Use

13. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION:
    On Demand Throughout The Day

14. APPLICANT MUST BRIEFLY DESCRIBE FOLLOWING POTENTIAL RESTRICTIONS ON WATER USE:
    (a) Impact on Sustainable yield (?):
    Requested Use is Within the Aquifer's Sustainable Yield
    No

    (b) Instream Flows Standards affected (?):
    No

    (c) Hawaiian Home Lands use affected (?):
    No

    (d) Other existing legal uses affected (?):
    No

    (e) Other (pending permits, EIS, etc.) (?):
    No

15. REMARKS, EXPLANATIONS:
    (On Back):

NOTES: Signing below indicates that the applicant understands that:
1. A Water Use Permit is granted by the Commission on Water Resources Management, a permit is subject to prior
serving of potential use, changes in sustainable yields and irrigation flow standards, reserved uses as defined by the Commission, and Hawaiian Home Lands future uses. In addition, applicant 
understands that, upon permit approval, a water shortage plan must be submitted should the Commission require use.

Zions Securities Corporation
Signature: [Signature]
Date: [Date]

Brigham Young University
Signature: [Signature]
Date: [Date]

For Official Use Only:

Hydrologic Unit No.

Diversion Works No.
This well is one of a battery of three wells on the BYUH Campus which provide a portion of the supply for the private Laie Water System. The three wells deliver water to a common wet well. A booster pumping station at the wet well delivers the water directly into the system. Flowrate is measured on the discharge line of the booster pumping station, not on the individual well influent lines to the wet well. Combined use of the three wells averages 1.071 MGD. For this and the accompanying BYUH well applications, the combined flow is proportioned equally among the three wells at 0.357 MGD.

The service area of the Laie Water System is shown on the attached Tax Map. There are more than 635 service meter connections on numerous TMKs throughout the system. At the present time, all service is within the Urban land use district, although interior lands in the Agriculture district are within the system's service pressure area.

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<td>5-5-6:5</td>
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<td>[ ]</td>
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</tr>
<tr>
<td>Polynesian Cultural Center</td>
<td>5-5-6:28 &amp; 30</td>
<td>B-2</td>
<td>[ ]</td>
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<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Laie Community</td>
<td>5-5-1 (portion)</td>
<td>R-5</td>
<td>[ ]</td>
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<tr>
<td></td>
<td>5-5-2</td>
<td>R-7.5</td>
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<tr>
<td></td>
<td>5-5-3</td>
<td>B-1</td>
<td>[ ]</td>
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<tr>
<td></td>
<td>5-5-4</td>
<td>P-2</td>
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</tr>
<tr>
<td></td>
<td>5-5-6 (portion)</td>
<td>Country Resort</td>
<td>[ ]</td>
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<td>[ ]</td>
</tr>
<tr>
<td></td>
<td>5-5-9 (portion)</td>
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</tr>
<tr>
<td></td>
<td>5-5-10 to 16</td>
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<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td></td>
<td>5-5-17 (portion)</td>
<td></td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

Refer to attached Water Use Table: 100%
APPLICATION FOR WATER USE PERMIT

5-27-93

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

APPLICATION FOR WATER USE PERMIT

5-27-93

State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

5-27-93

STATE OF HAWAII
COMMISSION ON WATER RESOURCE MANAGEMENT
5-27-93

In accordance with the provisions of Chapter 131, Hawaii Revised Statutes, the undersigned applicant applies for
a permit to use water for the purpose(s) described below.

APPLICANT INFORMATION

Lucky Fonolomea

Address:

55-510 Kamehameha Highway

Laie, Oahu, Hawaii 96762

STATE INFORMATION

WINDWARD OAHU

Koolauloa Aquifer System

ISLAND:

Oahu

USE INFORMATION

1. APPLICANT

Lucky Fonolomea

Address:

55-510 Kamehameha Highway

Laie, Oahu, Hawaii 96762

2. WATER MANAGEMENT AREA:

(WINDWARD OAHU)

Koolauloa Aquifer System

ISLAND:

Oahu

3. (a) EXISTING WELL/DIVERSION NAME AND STATE NUMBER:

Temple Well No. 3956-03

(b) PROPOSED (NEW) WELL/DIVERSION NAME:

--

(c) LOCATION:

Address:

55-510 Kamehameha Highway

Laie, Oahu, Hawaii 96762

Tax Map Key:

5-5-8-5: 5-5-8:58

(Attach a USGS map scale 1: "COO", and a property tax map showing source location referenced to established property boundaries.)

4. SOURCE TYPE (check one):

☐ Stream

☐ Borehole

☐ Diverted Surface

☐ Other (explain)

5. METHOD OF TAKING WATER (check one):

☐ Artesian

☐ Well & Pump

☐ Diverted Surface

☐ Other (explain)

6. LOCATION OF PROPOSED WATER USE: (if possible, show on same maps as source location. Otherwise, attach similar maps)

(a) Proposed use of water is:

☐ Existing

☐ New

☐ Both existing & new uses

(b) Tax Map Keys:

(Assign a USGS map scale 1: "COO", and a property tax map showing source location referenced to established property boundaries.)

(c) Address:

Laie Municipal Water System Service Area (See Attached Map)

(d) Current Land Use District (check one):

☐ Urban

☐ Agriculture

☐ Conservation

☐ Rural

(e) Current County Zoning Code:

R-5, R-7.5, B-1, B-2, R-2, Resort, and Country

7. QUANTITY OF WATER REQUESTED:

390,000 gallons per day

8. METHOD OF MEASUREMENT:

☐ Flowmeter

☐ Open-pipe

☐ Weir

☐ Orifice

☐ Non-Potable

☐ Other (explain)

9. QUALITY OF WATER REQUESTED:

☐ Fresh

☐ Brackish

☐ Salt

☐ Potable

☐ Non-Potable

10. PROPOSED USE:

☐ Municipal (including hotels, stores, etc.)

☐ Individual Domestic

☐ Irrigation

☐ Industrial

☐ Military

☐ Other (explain)

11. TOTAL NUMBER OF RESIDENCES TO BE SERVED:

607 Residences, BYUH, Late School, Commercial

12. TOTAL ACRES TO BE IRRIGATED AND TYPE OF CROP:

No Agricultural Use

13. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION:

On Demand Throughout The Day

14. APPLICANT MUST BRIEFLY DESCRIBE FOLLOWING POTENTIAL RESTRICTIONS ON WATER USE:

(a) Impact on Sustainable yield (?): Requested Use is Within the Aquifer's Sustainable Yield

(b) Instream Flow Standards affected (7):

(c) Hawaiian Home Lands use affected (7):

(d) Other existing legal uses affected (7):

(e) Other (pending permits, EIS, etc.) (7):

15. REMARKS, EXPLANATIONS:

On Back

ZIONS SECURITIES CORPORATION

Applicant (print):

Lucky Fonolomea

Signature:

June 2, 1993

PROPERTY RESERVE, INC.

Landowner (print):

Kent Money

Signature:

June 10, 1993

For Official Use Only:

Hydrologic Unit No.

Date Received

State Well No.

Diversions Works No.
16. REMARKS, EXPLANATIONS (cont’d):

This well is one of four wells which provide supply for the private Laie Water System. Draft from the well is measured by a meter on the discharge line. The service area of the Laie Water System is shown on the attached Tax Map. There are more than 635 service meter connections on numerous TMKs throughout the system. At the present time, all service is within the Urban land use district, although interior lands in the Agriculture district are within the system’s service pressure area.

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<td>BYUH Campus</td>
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<tr>
<td>Laie Community</td>
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<td>R-5</td>
<td></td>
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<tr>
<td>5-5-2</td>
<td>R-7.5</td>
<td>B-1</td>
<td>P-2</td>
<td>Country Resort</td>
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<td>5-5-6 (portion)</td>
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<td>5-5-17 (portion)</td>
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</tr>
</tbody>
</table>
APPLICATION FOR WATER USE PERMIT

5-27-93

Ground Water or Surface Water

[Signature]

Permittee Information
1. (a) APPLICANT: Zions Securities Corporation
   Firm/Name Firms/Name
   Address: 3855-06 Kamehameha Highway
   Late, Oahu, Hawaii 96762
   Contact Person: Lucky Fonasho, Phone: 293-3499
   (b) LANDOWNER OF SOURCE: Brigham Young University - Hawaii Campus
   Address: 293-9201
   Late, Oahu, Hawaii 96762

Source Information
2. WATER MANAGEMENT AREA: Koolauloa Aquifer System
   ISLAND: Oahu
   Address: 3855-06 Kamehameha Highway
   Late, Oahu, Hawaii 96762
   Contact Person: Lucky Fonasho, Phone: 293-3499

Use Information
3. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar map)
   (a) Proposed use of water in: Existing [ ] New [ ] Both existing & new use
   (b) Tax Map Key: 5-5-6-5:
   (c) LOCATION: Address: On the BYUH Campus
       Tax Map Key: 5-5-6-5:
       (Attach a USGS map, scale 1" = 2000", and a property tax map showing source location referenced to established property boundaries.)

4. SOURCE TYPE (check one): Stream [ ] Groundwater [ ] Well & Pump [ ] Diverted Surface [ ] Other (explain)

5. METHOD OF TAKING WATER (check one): Artesian [ ] Well & Pump [ ] Diverted Surface [ ] Other (explain)

6. QUANTITY OF WATER REQUESTED: 357,000 gallons per day

7. METHOD OF MEASUREMENT: Flowmeter [ ] Open-pipe [ ] Weir [ ] Onsite [ ] Other (explain)

8. QUALITY OF WATER REQUESTED: Fresh [ ] Brackish [ ] Salt [ ] Potable [ ] Non-Potable [ ] Other (explain)

9. PROPOSED USE: Municipal (Including hotels, stores, etc.) [ ] Individual Domestic [ ] Irrigation [ ] Other (explain)

10. For questions 12 & 13: If multiple TMKs are involved, please complete Table 1 on back of application.

11. TOTAL NUMBER OF RESIDENCES TO BE SERVED: 607 residences, BYUH, Commercial, Laie School

12. TOTAL ACRES TO BE IRRIGATED AND TYPE OF CROP: No Agricultural Use (acre) [ ] Military (acre) [ ] Other (acre) [ ]

13. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: On Demand Throughout The Day
    (daytime hours of operation, ex. 7 a.m. to 2 p.m.)

14. APPLICANT MUST BRIEFLY DESCRIBE FOLLOWING POTENTIAL RESTRICTIONS ON WATER USE:
    (a) Impact on Sustainable yield (7?): Requested Use is Within the Aquifer's Sustainable Yield
    (b) Instream Flows Standards affected (?): No
    (c) Hawaiian Home Lands use affected (?): No
    (d) Other existing legal uses affected (?): No
    (e) Other (pending permits, EIS, etc.) (7?): No

15. REMARKS, EXPLANATIONS:
    (On Back)

STATE OF HAWAII
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

Note: Signing below indicates that the applicant understands that, if a water use permit is granted by the Commission on Water Resource Management, the permit is subject to any current permitted uses, changes in sustainable yields and minimum flow standards, reserved uses as defined by the Commission, and Hawaiian Home Lands future use. In addition, applicant understands that, upon permit approval, a water shortage plan must be submitted should the Commission require one.

Zions Securities Corporation
Landowner (print): Brigham Young University
Applicant (print): Lucky Fonasho
Signature: Judd Whetten
Date: June 9, 1993

For Official Use Only: Hydrologic Unit No. Division Works No. State Well No.
This well is one of a battery of three wells on the BYUH Campus which provide a portion of the supply for the private Laie Water System. The three wells deliver water to a common wet well. A booster pumping station at the wet well delivers the water directly into the system. Flowrate is measured on the discharge line of the booster pumping station, not on the individual well influent lines to the wet well. Combined use of the three wells averages 1.071 MGD. For this and the accompanying BYUH well applications, the combined flow is proportioned equally among the three wells at 0.357 MGD.

The service area of the Laie Water System is shown on the attached Tax Map. There are more than 636 service meter connections on numerous TMKs throughout the system. At the present time, all service is within the Urban land use district, although interior lands in the Agriculture district are within the system's service pressure area.

### TABLE 1. MULTIPLE TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>Project Name</th>
<th>TMK</th>
<th>Current County Zoning Code</th>
<th>Net Acres</th>
<th>GPD/Acre</th>
<th>Total GPD</th>
<th>% of Total To Be Used Over Next 4 Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>BYUH Campus</td>
<td>5-5-6:6:5</td>
<td>R-5</td>
<td>Refer to attached Water Use Table</td>
<td></td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Polynesian Cultural Center</td>
<td>5-5-6:28 &amp; 30</td>
<td>B-2</td>
<td>Refer to attached Water Use Table</td>
<td></td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Laie Community</td>
<td>5-5-1 (portion)</td>
<td>R-5</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5-5-2</td>
<td>R-7.5</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
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<tr>
<td></td>
<td>5-5-3'</td>
<td>B-1</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
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<tr>
<td></td>
<td>5-5-4</td>
<td>P-2</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
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<tr>
<td></td>
<td>5-5-6 (portion)</td>
<td>Country Resort</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
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<tr>
<td></td>
<td>5-5-9 (portion)</td>
<td>Resort</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5-5-10 to 16</td>
<td>Resort</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5-5-17 (portion)</td>
<td>Resort</td>
<td>Refer to attached Water Use Table</td>
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<td>100%</td>
<td></td>
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</table>
Pumpage From the Temple and Campus Wells,
April 1991 to September 1992

<table>
<thead>
<tr>
<th>Date</th>
<th>Days</th>
<th>Temple Booster Pump (Ave. MGD)</th>
<th>Campus Booster Pumps (Ave. MGD)</th>
<th>Total Pumpage (Ave. MGD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>04/29</td>
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<tr>
<td>06/16</td>
<td>19</td>
<td>0.358</td>
<td>1.156</td>
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<td>06/24</td>
<td>8</td>
<td>0.348</td>
<td>0.947</td>
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<td>12/02</td>
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<td>1.206</td>
<td>1.606</td>
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<td>7</td>
<td>*</td>
<td>0.991</td>
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<td>1992</td>
<td></td>
<td></td>
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</tr>
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<td>0.336</td>
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<td>1.483</td>
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<tr>
<td>04/06</td>
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<td>0.429</td>
<td>1.102</td>
<td>1.531</td>
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<td>04/13</td>
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<td>0.390</td>
<td>1.145</td>
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<td>1.512</td>
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<td>05/04</td>
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<td>1.108</td>
<td>1.394</td>
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<td>05/11</td>
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<td>0.328</td>
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<td>1.302</td>
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<td>1.129</td>
<td>1.580</td>
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<tr>
<td>09/03</td>
<td>34</td>
<td>*</td>
<td>1.029</td>
<td>1.429</td>
</tr>
</tbody>
</table>

* Problems with the Temple meter; readings not available or obviously not correct. An average of 0.40 MGD assumed for these periods.
Average Well Pumpage of the Lale Water System,
April 1991 to August 1992
## Average Water Use of the Zions Securities Corporation Laie Water System 1992

<table>
<thead>
<tr>
<th>Water User</th>
<th>Basis of Use Rate</th>
<th>Average Use (GPD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Service Connections - 607 Meters</td>
<td>Meter</td>
<td>359,800</td>
</tr>
<tr>
<td>Laie Shopping Center</td>
<td>Meter</td>
<td>32,990</td>
</tr>
<tr>
<td>Polynesian Cultural Center (2 Meters)</td>
<td>Meter</td>
<td>141,730</td>
</tr>
<tr>
<td>LDS Temple (2 Meters)</td>
<td>Meter</td>
<td>75,880</td>
</tr>
<tr>
<td>Malaekahana State Park</td>
<td>Meter</td>
<td>12,600</td>
</tr>
<tr>
<td>City &amp; County Yard</td>
<td>Meter</td>
<td>2,060</td>
</tr>
<tr>
<td>Other Commercial Users (15 Meters)</td>
<td>Meter</td>
<td>44,300</td>
</tr>
<tr>
<td>Laniloa Lodge</td>
<td>Meter</td>
<td>7,800</td>
</tr>
<tr>
<td>Laie Elementary School</td>
<td>7.5 Acres @ 4000 GPD/Acre</td>
<td>30,000</td>
</tr>
<tr>
<td>BYUH Campus and Related Facilities</td>
<td>Meters and Calculation</td>
<td>575,000</td>
</tr>
<tr>
<td>Sewage Treatment Plant</td>
<td>Estimated</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>1,292,160</strong></td>
</tr>
</tbody>
</table>

Notes:

1. The meter for Laie Elementary School does not provide reliable readings; an estimated use is given above.

2. Use at BYUH includes farm irrigation, the quarry, and other minor uses. The figure in the table is based on use from April 1991 through November 1992.
COMMISSION ON WATER RESOURCE MANAGEMENT

FROM: [Signature]  DATE: 5/18  FILE IN: 

TO: [Checkmark] G. Matsumoto  E. Sakoda  Y. Shiroma  E. Hirano  D. Higa  G. Bauer  R. Hardy
[Checkmark] R. LOUI  S. KOKUBUN  M. TAGOMORI  L. NANBU

PLEASE:

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

FOR YOUR:

Approval
Signature
Information

Please make 2 copies and file in D. Kodan Ap file 3452-02

Zions Station
3855-07

[Signature]
Ms. Rae Loui  
Deputy Director  
DLNR, Commission on Water Resource Management  
P.O. Box 621  
Honolulu, Hawai‘i 96813

Dear Ms. Loui,

re: Request for activation of Dispute Resolution Process: LDS Church/Zions Securities, La‘ie

I append hereto a duly completed copy of your Dispute/Complaint Information Request form signed by Dawn K. Wasson and dated April 27, 1993.

The matter of resolving Kuleana landowners’ water rights in La‘ie has been outstanding for perhaps as long as one hundred years. The time has come to resolve them because justice has long been delayed to Kuleana landowners in La‘ie. Justice delayed, as you well know, is justice denied.

As I understand it your office is responsible for setting up the machinery to process disputes. It is not the function of your office to decide whether a dispute exists or not. The rule seems to be a simple one: we say that there is a dispute and we provide you with plausible information to substantiate that - as we have done in the attached form prepared by your office.

In another case involving a dispute - that brought by the Punalu‘u Community Association - you have suggested mediation (your letter of May 4, 1993). While our position is not one that would reject mediation outright before we got to that threshold I must signal quite strongly that there may well be serious obstacles to our accepting mediation. Please keep this in mind.

May I also draw your attention to a form letter sent out under your signature and dated April 22, 1993. The letter to which I refer addresses the subject of Ground Water Management Area Designations, Windward O‘ahu. In that letter you say:

In accordance with the State Water Code, Section 174C-48, no person, except individual domestic home users, shall make any withdrawal, diversion, impoundment, or consumptive use in any designated water management area without obtaining a water use permit. Thus, ground water
use permits are required for all non-domestic home uses of ground water on the Windward side of O'ahu. If you are presently using ground water for non-domestic purposes, or act as a private purveyor of water to multiple domestic needs (many homes), you must apply for a ground water use permit by July 15, 1993, or within one (1) year of the effective date of designation, to continue your existing withdrawal and use of ground water.

As you know LDS Church/Zions has long been selling water without a PUC permit. Now that these "private purveyors of water to domestic needs" are required by law to apply for a ground water use permit by July 15, 1993, we hereby formally request that no permit be issued to said LDS Church/Zions Securities until all of the disputes raised by Hui Malama 'Aina 'O La'ie are addressed and settled. Furthermore, all of the water needs of Kuleana landowners in La'ie must be addressed and settled before any ground water use permits are issued to this particular "private purveyor of water". By reference we incorporate this issue as one of the disputes that must be settled as part of the dispute resolution process for which application is being made here.

Time is of the essence in this matter - a point that I hope you readily concede. May I request, therefore, that this matter be handled as expeditiously as your busy schedule permits. Aloha.

Jim Anthony
Consultant

Encl.

xc: Public Utilities Commission
Punalu'u Community Association
All members of the Water Commission
Dave Martin, Native Hawaiian Advisory Council
Dawn Wasson


WATER USE PERMIT NO. 739

This report has been prepared in accordance with 13-171-22(b) of the Hawaii Revised Statutes requiring a 20-year review of issued water use permits to determine permit compliance. Following is a summary of permit information, site characteristics, methodology, findings, and recommendations for this State permit file.

**Permit Information**

| Water User: | Laie Water Company, Inc.  
|  | 55-510 Kamehameha Hwy.  
|  | Laie, HI 96762 |
| Landowner of Source: | BYU Hawai‘i Campus  
|  | 55-220 Kulanui St.  
|  | Laie, HI 96762 |
| Permitted Withdrawal Rate: | 1.375 mgd (Based upon a 12-month moving average) |
| Water Management Area: | Ko‘olauloa |
| Island: | Oahu |
| Aquifer Sector/System: | Windward/Ko‘olauloa |
| System Sustainable Yield: | 35 mgd |
| Water Type: | Fresh, Brackish |
| Original CWRM Date: | December 7th, 1998 |
| Standard Conditions: | 1-19 |
| Special Conditions: | 1-2 |

**Water Source**

| State Well Number(s): | 3855-06, 3855-07, 3855-08, 3856-05, 3856-06 |
| Well Name: | BYU Campus, BYU Ceramic, BYU Library, Quarry E, Quarry F |
| Water Source TMK Number(s): | 1st Division, 5-5-006:001, 5-5-006:005 |
| State Land Use Classification(s): | Agriculture/Conservation/Urban |
| County Zoning Classification(s): | AG-1/AG-2/P-1 |
| Geographical Coordinates: |  |
| Well No. 3855-06 | Latitude 21° 38’ 34.7” North  
|  | Longitude 157° 55’ 36.0” West |
| Well No. 3855-07 | Latitude 21° 38’ 30.1” North  
|  | Longitude 157° 55’ 40.6” West |
| Well No. 3855-08 | Latitude 21° 38’ 28.2” North |
End Use

End Use TMK Number(s): 1st Division, 5-5-ALL:ALL
State Land Use Classification(s): Various
County Zoning Classification(s): Various
Beneficial Use Explanation: Use for municipal purposes in Laie area

Background Information

State Well Nos. 3855-06, 3855-07, 3855-08, 3856-05, and 3856-06 were originally governed by Water Use Permit 384, which had a total permitted allocation of 0.985 mgd. In 2005, the permitted allocations for Water Use Permit 384 (0.985 mgd from the five aforementioned wells) and Water Use Permit 388 (0.390 mgd from State Well No. 3956-03) were combined. Both permits were supersede by Water Use Permit 739, which was issued for a total allocation of 1.375 mgd.

Consistent water use reporting records are available for at least the past four years. The permittee's 12-month moving average has not exceeded the permitted amount of 1.375 mgd during this time. In January of 2006, however, reported water usage dropped to zero and has not increased since. Although this is mostly likely a result of records not being updated, it is recommended that this issue be revisited to ensure that monthly water use is being reported to the Commission. Reference the permit file for additional information on reporting history.

Water Use Permit 739 was approved on June 8th, 2005 by the Commission on Water Resource Management. Standard conditions 1-19 and special conditions 1-2 are the governing conditions for this water use permit. A complete list of all standard and special conditions is given in the final summary report to the Legislature for this 20-year Water Use Permit Review.

Field Investigation Information

Contact: Jeffrey Tyau
Site Address: 55-320 Kamehameha Hwy.
Laie, HI 96762
Brown and Caldwell conducted a field investigation on March 31st, 2008 from 8:00 a.m. until 12:00 p.m. with Mr. Jeffrey Tyau. During this time, type of water usage was verified, GPS coordinates of well head(s) were recorded, flow meter installation and functionality were documented, and property TMK information was verified. The wellhead, its related appurtenances, and water usage area were visually inspected to assess compliance with permit conditions. Visual inspection of water loss/waste was limited to outdoor areas within the usage boundary. The physical location of this site is at the BYU Hawaii Campus in Laie. Reference the TMK and GIS maps in the permit file for a visual representation of the site.

**Summary of Findings for Water Use Permit No. 739**

State Well Nos. 3855-06, 3855-07, and 3855-08 are located on TMK parcel 5-5-006:005 and State Well Nos. 3856-05 and 3856-06 are located on TMK parcel 5-5-006:001. GPS coordinates of the wells are given in previous sections of this report. Water from State Well Nos. 3855-06, 3855-07, and 3855-08 is driven via artesian flow to a pumphouse that is adjacent to the BYU Hawaii ceramic room. The pumphouse is also the site for flowmetering and treatment of the well water. Booster pumps send the water to two large storage tanks located in the hills above the Laie area. The two tanks have capacities of 2,000,000-gal and 200,000-gal, respectively. Water from State Well Nos. 3856-05 and 3856-06 is metered at each individual well head and is pumped directly into the two storage tanks, which are located on TMK parcel 5-5-007:001. Reference the Appendix for photographs of the previously described system components.

Based upon visual inspection of the system, all components appear to be in full working order. The permittee demonstrated functionality of an installed flowmeter and provided access to the site grounds where no wasting of water or water loss was observed. Visual inspection also confirmed that water use was within the permitted TMK boundaries. Water use is currently being reporting on a monthly basis with no recent evidence of overpumpage violations.

The following are a list of standard condition(s) that the permittee is found to be in non-compliance with:

10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a monthly basis.

Since no salinity reports are being submitted to the Commission, the permittee is found to be in violation of Standard Condition (10).
Recommendations

- Address the following discrepancies between the Commission's electronic database and actual field investigation findings:
  - State land use and county zoning classifications
- Address violation of Standard Condition (10) regarding non-reporting of salinity levels.
20-Year Water Use Permit Review
Water Use Permit No. 739

APPENDIX

Field Investigation Photographs
Figure 1 – State Well No. 3855-06

Figure 2 – State Well No. 3555-07
Figure 5 – State Well No. 3856-06

Figure 6 – Pump house
Figure 7 – Booster pumps

Figure 8 – Chlorine treatment
Figure 9 – Flowmeter for State Well Nos. 3855-06, 3855-07, and 3855-08

Figure 10 – Flowmeter for State Well No. 3856-05
Figure 11 – Flowmeter for State Well No. 3856-06

Figure 12 – Storage tank (200,000 gallon capacity)
Figure 13 – Storage tank (2,000,000 gallon capacity)
**Standard Conditions List**

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

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

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

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

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

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

7. The water use permit application and submittal, as amended, approved by the Commission at its <Insert Date> meeting are incorporated into this permit by reference.

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

**Variations of Standard Condition (8) are as follows:**

i. Modification of any permit condition shall be approved by the Commission. Modification of any permit condition without notification may result in the revocation of the water use permit.
9. This permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to:
   a. Protect the water sources (quantity or quality);
   b. Meet other legal obligations including other correlative rights;
   c. Insure adequate conservation measures;
   d. Require efficiency of water uses;
   e. Reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
   f. Meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
   g. Carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

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

10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a monthly basis (attached).

Variations of Standard Condition (10) are as follows:

i. The applicant shall keep monthly pumpage estimates to be submitted annually to the Commission.

ii. An approved flowmeter(s) need not be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a yearly basis (attached).

iii. An approved flowmeter(s) must be installed to measure withdrawals and a monthly record of withdrawals, water-levels, salinity, and temperature must be kept and reported to the Commission on a monthly basis in accordance with the Commission's September 16, 1992 action on reporting requirements.

iv. Approved flowmeters must be installed to measure monthly withdrawals and a monthly record of withdrawals must be kept and reported to the Commission on Water Resource Management on a monthly basis.

v. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a quarterly/yearly basis (attached).

vi. An approved flowmeter shall be installed to measure water withdrawals

vii. An approved flowmeter(s) must be installed to measure withdrawals; and a record of the withdrawals must be kept and reported to the Department of
Land and Natural Resources, Division of Water and Land Development, P.O. Box 373, Honolulu, HI 96809, on a monthly basis.

viii. Although not stated as a condition of the permit § 13-168-7 HAR requires you to keep a record of your monthly total pumpage, water level, salinity, and water temperature. This information must be submitted to the Commission on a regular monthly basis using the enclosed water use report form.

ix. An approved flowmeter shall be installed and the withdrawal from Well 1851-73 shall be recorded and reported to DLNR on a monthly basis by the owner and/or operator of the well.

x. The withdrawals from these wells shall be recorded and reported to the DLNR on a monthly basis by the BWS.

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

xii. The applicant shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage. Water usage shall be measured on a monthly basis and reported to the Commission.

xiii. The applicant shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage. Water usage shall be measured on a monthly basis and reported to the Commission along with water level and salinity measurements.

11. This permit shall be subject to the Commission's periodic review of the <Aquifer> Aquifer System's sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the <Aquifer> Aquifer System, or relevant modified aquifer(s), is reduced.

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

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

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

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

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

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

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

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

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

20. If the ground-water source does not presently exist, the new well shall be completed, i.e. able to withdraw water for the proposed use on a regular basis, within twenty-four (24) months from the date the water use permit is approved.

Variations of Standard Condition (20) are as follows:

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

21. This permit may not be transferred or the use rights granted by this permit sold or in any other way alienated. Pursuant to HRS § 174C-59 and the requirements of Chapter 174C, the Commission on Water Resource Management has the authority to allow the transfer of the permit and the use rights granted by this permit in a manner consistent with HRS § 174C-59. Any such transfer shall only occur with the Commission’s prior express written approval. Any sale, assignment, lease, alienation, or other transfer of any interest in this permit shall be void.

22. The water use permit granted shall be an interim water use permit, pursuant to HRS § 174C-50. The final determination of the water use quantity shall be made within five (5) years of the filing of the application to continue the existing use.

23. The water use permit shall be issued only after agricultural review.

24. That scheduled adjustments to Oahu Sugar Co. permitted use shall be initiated upon discontinuance of agricultural uses.
25. The issuance of this permit was approved by the Commission on Water Resource Management at its meeting on <Insert Date>.

26. The permit shall be subject to the review by the Attorney General.

27. The permit holder may be required to relinquish this permit at any time or specified time after issuance to the Board of Land and Natural Resources in accordance with Chapter 166 of Title 13.

28. The applicant shall obtain the necessary land acquisition documents from the Hawaii Housing Authority.
Special Conditions List

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

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

3. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning “GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII” date <Insert Date & Version #>.

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

5. The applicant may continue this existing use of ground water within the limits approved by the Commission, and the actual issuance of the interim permit shall not be a reason to interrupt this existing use.

6. This interim water use permit shall cease to become interim and shall be subject to HRS § 174C-55 upon administrative review of the quantity within five (5) years, provided that all conditions of the use (including the review of the quantity which shall not be greater than the amount initially granted) remain the same. Enforcement of the allocation limit shall be stayed pending staff's review and issuance of a permanent water use permit.

7. As-built drawings of the well and pump, and a complete pumping test record shall be submitted within sixty (60) days.

8. In the event the pump tests show that aquifer boundary conditions do not support the requested withdrawals, the Commission reserves the right to amend this permit, after a hearing, to a level that is supported by the pump tests.

9. The existing use may be continued within the levels approved by the Commission, and the actual issuance of the permit document shall not be a reason to interrupt the approved level of use.

10. The filing of an application by Kukui, Inc. for a new or modified water use permit for the Kualapuu Aquifer in excess of 2.0 mgd (total system withdrawal) shall be just cause for re-consideration of this interim permit by the Commission.

11. Upon completion of a new transmission line for the transport of water use by Well #17, the permit shall be modified to reduce the allocation amount by the additional 79,220 gallons per day allocated for use of the Molokai Irrigation System.

12. Within six (6) months from the date of approval of a water use permit for the well, the applicant shall conduct a feasibility study and submit a report describing
alternative sources of nonpotable water for irrigation uses at the resort area. It is suggested that the developer consider use of dual lines in the subdivisions so that effluent may be used in the existing reuse system. Another consideration is the development of brackish water wells in the Kaluakoi Aquifer system for mixing with the effluent generated at the resort.

13. Within six (6) months from the date of approval of a water use permit for the well, the application shall evaluate the filter back discharges into Kakaako Gulch to determine if excessive preventable waste is occurring and identify possible measures to eliminate or reduce such waste. The evaluation shall be conducted in cooperation with the Commission staff and staff of the Department of Health’s Safe Drinking Water Branch, which regulates the drinking water system.

14. Within six (6) months from the date of approval of a water use permit for the well, the applicant shall 1) implement a leakage control and detection system and compete repairs to prevent such leakage and 2) implement use of xeriscaping and low-flow fixtures.

15. Action on the future use portion of the water use permit application for Well #17 (Well No. 0901-01) is deferred pending the establishment of existing uses in the aquifer. Kukui Inc.‘s application for uses in excess of those uses existing on July 15, 1992 will be considered “new” uses and will be taken up by the Commission as soon as other existing use applications have been decided. In the interim,
   a. The Commission shall recognize that there is disagreement between the applicant’s staff calculations of reasonable-beneficial existing use
   b. The Applicant will have the burden of proof to show within six (6) months reasonable-beneficial existing use calculations that support the applicant’s request as opposed to staff’s calculations.
   c. The Commission’s enforcement of the approved existing use allocation will be suspended for six (6) months.

16. The permittee shall submit a notice of intent and written request to continue the use at least ninety (90) days prior to the expiration of the interim five-year permit.

17. The Commission shall delegate to Maui Department of Water Supply the authority to allocate the use of water for municipal purposes, as provided in §174C-48(b).

18. Maui Department of Water Supply shall be exempt from the requirements for permit modifications, as provided in §174C-57(c).

19. The permittee must meter water use and monitor chloride concentrations on a monthly basis and submit monthly reports of water use and chloride concentrations to the Commission.

20. Standard Condition 16 is waived for saltwater wells.

21. The permit will be revoked if (1) stream monitoring shows that pumping the well reduces stream flow, or (2) the electromagnetic resistivity survey indicates that the
well was drilled into a dike compartment, unless the applicant submits a petition for an amendment to the interim instream flow standard with the well completion report. However, no use of the water may be made without a Pump Installation Permit, which cannot be issued during consideration of the amendment of the interim instream flow standard.

22. The applicant shall present the results of the electromagnetic resistivity survey, pump tests, and stream monitoring to a community meeting as well as to the Commission.

23. A final determination of water use quantity shall be made within five (5) years of the filing date of the application (<Insert Date>) to continue existing use.

24. The applicant shall implement, by December 31, 1995, a biological and hydraulic monitoring program for a minimum 2-year period that: 1) documents the existing operating procedure, 2) seeks to identify the impacts of all operating alternatives on Waikolu Stream, and 3) seeks to identify the effectiveness of weir modifications (Dam No. 1). This program shall incorporate the three new wells, Wells #4-6 (Well Nos. 0855-06, -05, &-04, respectively), which may be pumped within the approved limits, for monitoring and testing purposes only. Further, semi-annual reports summarizing data and preliminary findings shall be submitted to the Commission. It is suggested that the Department of Agriculture work with the State Division of Aquatic Resources and other affected agencies to prepare the monitoring program in light of the difficult technical questions raised by this application. A particular concern is the coordination of this monitoring program with the ongoing National Park Service study by Anne Brasher. A draft of this plan shall be submitted to the Commission staff within ninety (90) days for technical review and comment. Results of the monitoring program shall be used to make recommendations to the Commission on any additional use of the wells, and shall be made readily available to all interested parties.

25. That the Commission approves the well construction permit for the Kamiloloa-Waiola Well (Well No. 0759-01), subject to the standard well construction conditions and the special conditions for the pumping well for the aquifer tests.

26. That the Commission authorizes the Chairperson to approve and issue a pump installation permit upon acceptance of adequate pump test result, subject to the standard pump installation conditions.

27. Should the well be used for back-up domestic supply, applicant is advised to contact DOH or otherwise ensure safe drinking water quality is maintained.

28. The applicant shall follow the agreed monitoring plan.

29. If pesticides used by the applicant are found in ground or surface water and can be traced to the applicant's use, the CWRM may revoke the permit immediately upon such finding.
30. Issuance of the interim permit shall be withheld until the reservation of water for DHHL is set by rule. Applicant may continue this existing use within the approved limits.

31. The applicant shall submit well modification and pump installation permit applications for administrative approval by chairperson prior to beginning any work required to complete well.

32. Should any stream flow impacts result from use, petition to amend interim instream flow standards shall be submitted.

33. Should any dewatering result from use, pumping shall cease immediately.

34. Shall submit accurate schematic diagram of distribution system for the battery of 5 wells.

35. Shall be subject to a 6-month independent audit & monitoring.

36. Final pump capacity shall be determined from pump test results & approved administratively by signature of chair.

37. The permittee shall seek and submit to the Commission within ninety (90) days written confirmation from the Department of Land Utilization of the non-conforming use.

38. Pumping shall cease immediately if the chloride reports show that the brackish water developed in the well exceeds 1,000 mg/l of chloride, unless a variance from the chloride limit has been granted. The authority to approve future variance requests is delegated to the chairperson.

39. The duration of the interim permit shall be:
   a. To July 1, 2006, or
   b. Until treated wastewater is available and acceptable for use, or
   c. Until such time that a significant change in permitted, actual, or projected uses or water supply occurs.

40. Action on any interim permit may be initiated by the Commission or any permittee upon letter request or pursuant to §174C-57 Haw. Rev. Stat. (Modification of permit terms).

41. This permit is approved under the assumption that wastewater will become available for reuse as an alternative supply source.

42. Require adherence to the chloride sampling protocol and the submittal of weekly chloride data. The authority to approve variances from the weekly reporting requirement is delegated to the Chairperson.

43. Require adherence to the Conservation Conditions.
44. In the event a water shortage is declared by the Commission, permittees in the <Insert Aquifer System> shall comply with the <Insert Aquifer System> water shortage plan adopted by the Commission.

45. The permittee shall contact the Department of Health, Clean Water Branch and obtain the necessary discharge permit(s).

46. Permit shall be interim and replaces existing WUP for 2051-07 & 11.

47. Applicant shall submit an acceptable archaeological inventory survey report to DHP. If historic sites affected, a plan to mitigate these affects must be accepted by DHP and completed by applicant.

48. Should the well be used for back-up domestic supply, applicant is advised to contact DOH or otherwise ensure safe drinking water quality is maintained.

49. (The permittee) may report monthly pumpage on yearly basis.

50. Prior to issuance of any permits, must submit filing fee for after-the-fact pump installation permit.

51. The term of this permit shall be twenty years from the date of issuance of the permit with a five-year Board review to determine compliance with the provisions of the permit.

52. The amount of water to be withdrawn under this permit shall be 0.19 mgd, averaged annually, for irrigation use. This permitted use of 0.19 mgd when added to a preserved use of 0.27 mgd amounts to a total of 0.46 mgd, averaged annually, which may be withdrawn from well 1646-01.

53. The use authorized by the permit must not interfered substantially and materially with existing individual household uses and existing uses.

54. The use of this well shall be subject to the shortage and emergency powers of the Board of Land and Natural Resources (BLNR).

55. This permit may be suspended or revoked, in accordance with Chapter 166.

56. The permit holder may be required to relinquish this permit to BLNR, in accordance with Chapter 166.

57. The withdrawal from Well 1646-10 shall be recorded and reported to DLNR on a monthly basis by the permittee.

58. In the event that emergency water use occurs, the permittee shall notify the Commission in writing within one (1) day of pumping, to in form the Commission as to the nature of the emergency and the expected duration of the emergency. A water
use report shall also be filed pursuant to Standard Condition 10 and Administrative Rule 13-168-7.

59. Note DOH's requirements related to non-potable water systems (attached to original permit).

60. Standard Condition 16 requiring the submittal of a water shortage plan is waived.

61. All non-potable spigots and piping shall be clearly labeled as "DO NOT DRINK, NON-POTABLE" to prevent direct human consumption.

62. Standard Condition 10 is modified. Due to the inability to take water level measurements, the requirement to measure monthly water levels is waived. In addition, as long as the U.S. Geological Survey is collecting and analyzing the chloride content of the well water, the requirement for the permittee to measure and report chlorides is also waived.

63. Well elevation components must be surveyed by a licensed surveyor and this information must be submitted to commission prior to issuance of permanent permit.

64. The permittee shall obtain approvals from the Department of Health and the U.S. Environmental Protection Agency prior to use of the water.

65. This water use permit, WUP No. <Insert #>, shall supersede WUP No. <Insert #>.

66. WUP No. <Insert #> is revoked

67. Standard Condition 17 is waived.

68. Standard Condition 22 for interim water use permits shall not apply.

69. To supplement our records, we request that you provide a map of the Galbraith Est. lands west of Wahiawa (2100 ac+) and the associated TMK's for use area.

70. Deferred action on portion requested for golf course irrigation pending further refinement of irrigation requirement and a feasibility study for utilization of surface water sources, including Wahiawa Reservoir.

71. Written justification be provided for any 'cushion' of 0.5 mgd.

72. The water use permit shall be an interim permit. The duration of the interim permit shall be until treated wastewater is available and acceptable for use. The permittee shall continue discussions with Honolulu Board of Water Supply regarding the use of reclaimed water.

73. The permittee is put on notice that this is a qualified approval in that this permit may be modified or revoked prior to the expiration of the interim permit if the
Commission decides that the use of additional basal ground water for dust control and landscape irrigation is not reasonable-beneficial use.

74. The permittee encouraged to use drought-tolerant landscaping to conserve water.

75. Should the applicant provide written evidence that the county DHCD approves a 201E exemption for the elderly affordable housing project then the applicant may modify a corresponding portion of their existing aquacultural use to be used by the exemption approved project within the Commission approved water use permit limits under recommendation 5.

76. The applicant shall obtain a water lease/permit from Land Division prior to actual use of the well water.

77. Require the permittee to sign a contract by May 14, 1998 with the City Department of Wastewater Management to buy and use 0.400 mgd of R-1 water for a corresponding reduction in allocation for Well Nos. 1900-02, 17 to 20, and 1901-03.

78. Standard Condition 9 is waived.

79. Standard Condition 10 is modified to exempt the permittee from monthly measurements of salinity and temperature.

80. Standard Condition 10 is waived.

81. Applicant must seek a determination from BLNR and Land Mgt Div as to whether water license required. If required, license must be obtained prior to issuance of permit. If not, permit will be issued w/o further action.

82. Commission defers action on use in excess of 452,000 gpd pending additional info from BWS and further staff analysis.

83. The permit shall be subject to the Commission’s sustainable yield review by December 1990.

84. The Commission shall delegate to the Honolulu Board of Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.

85. Honolulu Board of Water Supply shall be exempt from the requirements of permit modifications as provided in §174C-57.

86. BWS must participate in discussions, to be coordinated by Commission Staff, regarding a monitoring program to address impacts to Kaneohe Bay water quality, prior to any action on applications for future municipal uses.

87. A pump installation permit application must be made and approved prior to the installation of a permanent pump.
88. The water withdrawn shall be 0.7 mgd for municipal use.

89. The installed pump capacity of the well shall not be more than 700 gpm or 1.01 mgd.

90. The term of permit shall automatically expire twelve months from the date of issuance.

91. The Honolulu Board of Water Supply may continue to submit monthly water data on their own form, provided that the data are submitted in a format that is acceptable to the Commission staff.

92. Standard Condition 7 shall not apply.

93. Standard Condition 22 shall not apply.

94. Standard Condition 10 is modified to exempt the permittee from monthly measurements of salinity and temperature.

95. This permit shall be subject to conditions providing for stream restoration if the Commission determines that additional water should be returned to the streams.

96. HECO 1 mgd for industrial use

97. Campbell Estate 1 mgd for municipal use through BWS, by separate agreement with HECO

98. BWS 1 mgd for municipal use.

99. The permit shall be subject to the Commission's sustainable yield review by <Insert Date>.

100. The applicant shall obtain the current version of the Department of Health's Guidelines Applicable to Golf Courses in Hawaii. Where relevant and viable, items of the guidelines should be implemented and sustained appropriately. To obtain the current version, contact the Safe Drinking Water Branch, Environmental Management Division at 808-586-4258 (Honolulu).

101. The future use portion of the application shall be deferred until existing uses in the Koolauloa area are established.

102. The water to be withdrawn under this permit shall be a total of 0.03 mgd (0.02 mgd preserved plus an additional 0.01 mgd permitted use), averaged annually, for domestic and irrigation use.

103. Existing well 1851-09 shall be properly sealed by a licensed drilling contractor. A well modification permit application, enclosed, shall be submitted to the Department for approval of the well sealing. A filing fee for sealing the well will not be required.
104. The permittee is required to test the source using a certified private laboratory and submit the test results to the Commission within three (3) months. The Commission will then forward the results to the Department of Health for their review. The Department of Health recommends that the well be routinely tested for microbiological and chemical parameters thereafter.

105. The permittee is required to submit a completed Registration of Well and Declaration of Water use by <Insert Date>.

106. The permittee shall contact the Department of Health for a written determination on the status of their water system and comply with any Department of Health requirements for monitoring and testing.

107. In the event that the original spring source decontaminates, the new well authorized will be shut down.

108. That within each aquifer the total permitted use shall not exceed the sustainable yield.

109. That any water available for allocation shall be for in-district use.

110. That scheduled reductions to Oahu Sugar Co. permitted use shall be initiated upon final termination of an Osco lease or sub-lease, whichever occurs later.

111. That permits for water use issued in accordance with the proposed schedule shall be interim permits subject to review and adjustment by 1995.

112. That the permit shall be an interim permit for a new use which is afforded to existing users as specified in §13-171-20.

113. That the original allocation of 0.200 mgd shall be taken to hearing for possible revocation at a later date to complete the transfer of the water use permit entirely to Well No. 3407-02. This revocation would reduce the current allocation afforded to the Kunihiro Well (Well No. 3406-06) to zero.

114. This allocation incorporates the unspecified domestic needs of the applicant and therefore necessitates a single meter be installed at the well.

115. Should any impacts to nearby wells or streams be established by the use of this well, the applicant shall address these issues to the satisfaction of the Commission.

116. If an economically feasible nonpotable source is identified, the applicant shall convert to the alternative nonpotable source.

117. The permit shall be subject to the Chairperson’s approval of a water use plan recommending possible measures to prevent or minimize saltwater contamination and establish courses of action to follow should the aquifer become to saline to use.
118. Permittee shall provide the necessary end-use information on the 10th residence to allow regulation of the use under Chapter 174C.

119. Standard Conditions 10 & 18 shall not apply.

120. Standard Condition 10 is modified to exempt the permittee from the requirement to install a flowmeter. Salt water withdrawals may instead be estimated based on pumping capacity and run time.

121. The applicant shall review the existing year long period of pumpage and streamflow data and provide analysis on ground and surface water interaction. Deadline is January 25, 1994.

122. The water use permit for Well Nos. 2301-27 to -32 for 0.75 mgd (WUP No. 419) shall be revoked upon issuance of a pump installation permit for the well.

123. The permittee shall use mulching to decrease evaporative losses and manage irrigation scheduling to minimize water demand.

124. The permittee shall submit a detailed agricultural plan to support any future water use permit application for increased agricultural use at this parcel.

125. If not already obtained, the permittee shall seek and obtain any necessary permits from the Department of Health for the proposed discharge to Malaekahana Stream.

126. Standard Condition 10 is modified to waive the requirement for installing a water meter on Well Nos. 2358-21, 22, and 29. The permittee shall install a water meter on Well No. 2358-26 to measure total monthly flow through the discharge line. This quantity should then be assumed to be the rate of natural flow from the other three wells for monthly reporting purposes.

127. The permit shall be effective upon submittal of documentation by Navy that it has met the DOH requirements for a public system.

128. This WUP shall be subject to Army's application for a WUP to reduce the permitted use of the Army's Schofield Shaft (2901-02 to 04, 10) by 0.208 mgd to a new total of 5.648 mgd. The Army's application shall be submitted within 60 days after the approval of this WUP or this WUP shall be void. Approval of the modification request shall be obtained from the CWRM prior to use of Well No. 3100-02 and issuance of this WUP.

129. Navy shall submit an after-the-fact PIPA, and approval of the permit shall be obtained prior to use of the well.

130. The well shall not be used for drinking water purposes unless it is properly tested and treated.
131. This permit is approved subject to reclaimed water becoming a practical alternative and provided that the Department of Health approves the reuse application.

132. Should any opae ula be recovered in the well water, the permittee shall notify the Division of Aquatic Resources and provide specimens to the Division of Aquatic Resources for analysis.

133. If a single meter at the well is used, the Commission shall allow an additional 1,000 gallons per day to the water use permit amount for the domestic needs of two residences, although a permit for individual domestic consumption is not required. Otherwise, the applicant must provide a meter to separately measure the irrigation consumption.

134. This permit is approved under the requirement that conversion to either: 1) treated wastewater becoming available for reuse as an alternative supply source, provided that Department of Health concerns over the use of treated effluent over the potable water aquifer have been addressed; and/or 2) other nonpotable source becoming available will occur in a timely manner.

135. These permits shall be subject to a review of actual use within four years for possible modification of the permitted amount.

136. The permit shall be reviewed in two (2) years for possible additional revocation due to nonuse.

137. The allocation is based on the projects listed in Exhibit 5 (of Item 10 of the May 20, 1998 Staff Submittal), except for the Queen’s Beach GC (TMK 139-11-2,3), Lot 9 (TMK 139-17-51), and Varsity Place (TMK 128-24-35).

138. Kamehameha Schools Bishop Estate/Honolulu Board of Water Supply shall transfer the water use permit within ninety (90) days of the effective date of the transfer of the pump station to the Honolulu Board of Water Supply, pursuant to §174C-59 Hawaii Revised Statutes.

139. The permittee shall ensure that the water is recycled by either directing it into the Waiahole Ditch for use by downstream farmers (subject to the approval of the Agribusiness Development Corporation’s Board) or into Waikele Farm’s existing irrigation system.

140. The permittee shall file a completed application to modify WUP No. 758 to reduce the allocation by 0.100 mgd within 60 days. If a completed water use permit modification application is not received within 60 days from this submittal’s date, then the subject water use permit application (WUPA No. 767) shall be deemed denied without prejudice without the need for another hearing.

141. The water withdrawn shall be for municipal use. No improvements to the existing sources are required as the existing source capacities are greater than the increase.
142. Water license must be determined through I.M.

143. Proposed other uses will be considered at a later date.
March 5, 2008

VIA USMAIL AND EMAIL AT: mcsmith@brwncald.com

Mr. Milo Smith
Brown & Caldwell
1099 Alakea Street Suite 2400
Honolulu HI 96813


Dear Mr. Smith:

Please find attached the above referenced Survey Reports collectively filed on behalf of Hawaii Reserves, Inc. (HRI), and Laie Water Company, Inc. (LWC). LWC is a wholly owned subsidiary of HRI. This follows our earlier discussion by phone and the subsequent February 20th letter from the Department.

I look forward to coordinating the site inspections for these wells. The best days of the week generally are Wednesdays, Thursdays or Fridays in the morning. However we’ll be glad to work with your schedule to find a convenient time.

Please contact me once you have an idea when you’d like to visit.

Sincerely,

Jace McQuivey
Vice President
Office: 808.293.6431

Attachments
Water Use Permit Survey
(Please complete one survey form for each WUP)

WUP Number: 739  Well Number(s): 3856-05 Quarry Well E, 06 Quarry Well F

Contact Information (of the person who will be present at site visit):
Name: Jeffrey Tyau
Phone (for phone interview): 293-6432  Fax: 293-6532
Email: tyauj@hawaiireserves.com
Best time to reach for phone interview: work day

Property Information (of the water use/well location):
Address: Quarry Pump Station, 55-320 Kam Hwy
City: Laie  Zip: 96762
Well Location TMK (list all if multiple wells present): 5-5-6:5 for -05 and 5-5-6:1 for -06
Water Use TMK (list all if used on multiple lots): Laie Area Drinking Water System for most of 5-5 area

Water Use/Well Information:
Is the water source currently in use?  Yes  ☒  No  ☐
If no, please explain:

What are you currently using the water for? (example: "Use for 45 acres of diversified agriculture and 3 residences"):  
Public Drink water

Is a flow meter installed and working properly?  Yes  ☒  No  ☐
If no, please explain:

Do you submit monthly water use reports to the State?  Yes  ☒  No  ☐
If no, please explain:

Field Investigations:
A representative from Brown and Caldwell will be visiting wells in your area over the next several months between the times of 9:00 am and 5:00 pm. Each site investigation will take approximately 1-2 hours. Please indicate up to three potential days of the week and availability times for an on-site inspection of the well location and verification of water use compliance. The permit holder must provide Brown and Caldwell with at least five (5) working days notice of the need to reschedule.

Option #1  Date (M-F):  Time: 9:00 am  ☐  12:00 pm  ☐  3:00 pm  ☐
Option #2  Date (M-F):  Time: 9:00 am  ☐  12:00 pm  ☐  3:00 pm  ☐
Option #3  Date (M-F):  Time: 9:00 am  ☐  12:00 pm  ☐  3:00 pm  ☐

Once this survey is returned, a Brown and Caldwell representative will be contacting you to conduct a phone interview and finalize the exact date and time of your field investigation. Please fax/mail completed surveys by March 5th, 2008 and direct any questions related to this survey to Mr. Milo Smith of Brown and Caldwell at:
1099 Alakea Street, Suite #2400
Honolulu, HI 96813
Tel: (808) 203-2661
Fax: (808) 533-0226
mcsmith@brwncald.com

For Official Use Only
Received: 3/5/2008  Information Updated: 3/11/2008  Phone Interview Complete: 3/21/2008
Notes/Comments:
## Phone Interview

<table>
<thead>
<tr>
<th>WUP Number:</th>
<th>739</th>
<th>Well Number(s):</th>
<th>3656-06-07-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Name:</td>
<td>Jeffrey Yang</td>
<td>Phone Number:</td>
<td>293-6432</td>
</tr>
<tr>
<td>Attempt #1: Date/Time:</td>
<td>3/2/06 (11:00)</td>
<td>Result:</td>
<td>Reached</td>
</tr>
<tr>
<td>Attempt #2: Date/Time:</td>
<td>N/A</td>
<td>Result:</td>
<td>N/A</td>
</tr>
<tr>
<td>Well Location TMK(s):</td>
<td>5-5-006:005</td>
<td>Water Use TMK(s):</td>
<td>N/A (Lake Area)</td>
</tr>
<tr>
<td>Water Source Address:</td>
<td>55-220 Kulanui St. (Bay Campus)</td>
<td>City:</td>
<td>Kane</td>
</tr>
<tr>
<td>Zip Code:</td>
<td>96762</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Currently using water source?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Notes/Comments:</td>
<td>Public drinking water</td>
<td></td>
<td></td>
</tr>
<tr>
<td>How often is the water source being used?</td>
<td>Daily</td>
<td>Weekly</td>
<td>Monthly</td>
</tr>
<tr>
<td>Notes/Comments:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>How long have you been using this water source?:</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Has there been any rezoning of the water source/water use properties?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Have you reported the rezoning to the State?</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>If no, explain:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Scheduled field investigation day/time:</td>
<td>3/3/06 @ 7:00 a.m</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Notes (Special directions, site conditions, potential hazards, general notes, etc.):</td>
<td>Meet at Hauula 7-11 54-13'6 Kam. Hwy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Comments To Make:**
- Although we prefer that you do not change your scheduled field investigation time, if you require a reschedule, you must provide Brown and Caldwell with at least five (5) working days notice of the need to reschedule.
- A representative from Brown & Caldwell will be making a reminder phone call to you sometime during the week prior to your scheduled field investigation.
- It is very important that you provide access to the site at the day and time agreed upon. Due to a very tight schedule, if you fail to provide access at the agreed upon time and/or do not reschedule with at least a five (5) working day notice, a makeup date will not be allowed.
- If for some reason you don’t know where your well head is located, it would be a good idea to locate it prior to your field investigation to help make the visit go quickly and smoothly.

Interviewed By: | M.S. | Date: | 3/2/06 | Time: | 11:00 am |
Field Investigation Checklist

WUP Number: __

Water Source
Well Location TMK(s): 5-5-006:005
Well Head GPS Coordinates: Latitude: Below Longitude: Below
Well Type: Artesian
Currently using water source?  Yes ☒ No ☐
Notes/Comments: ___________________________________

Is there a flow meter installed?  Yes ☒ No ☐
Is the flow meter operational?  Yes ☒ No ☐
Notes/Comments: ___________________________________

Water Use
Water Use TMK(s): Various (Lake Area), 5-5-ALL: ALL
What is the water being used for? Municipal water in Lake Area
Is the water being used within the permitted boundaries?  Yes ☒ No ☐
If no, explain: ___________________________________
Is there any observed wasting of water or water loss?  Yes ☐ No ☒
If no, explain: ___________________________________
Are the permit conditions being complied with?  Yes ☒ No ☐
If no, explain: ___________________________________

Other
Photographs of: Water Source ☒ Usage Area ☒ Water Meter ☒ Pump/Motor ☒

General Notes/Comments:

Investigated By: M.S.  Date: 3/31/07  Time: 9:00 a.m.
June 8, 2005

Mr. Jace McQuivey
Laie Water Company, Inc.
55-510 Kamehameha Highway
Laie, HI 96762

Dear Mr. McQuivey:

Approval of Water Use Permit (WUP No. 739) for
Well No. 3855-06, 3855-07, 3855-08, 3856-05, 3856-06
Koolauloa Ground-Water Management Area, Oahu

This letter transmits your water use permit for Campus, Ceramics, Library, Quarry E and Quarry F Wells (Well No.3855-06, 3855-07, 3855-08, 3856-05, 3856-06) for use of 1.375 million gallons per day (mgd) of water on a 12-month moving average basis that was administratively approved by the Chairperson via the request of invocation of Declaratory Ruling DEC-ADM97-A1 on your letter dated April 22, 2005. As part of the Commission's approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

Special Conditions

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

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

Enclosed with this letter of approval are the following:

1. Your water use permit

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

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

Additionally, this letter cancels your Water Use Permits 384 & 388, and combines them into this permit. Please note that as a result, the Temple Well (Well No. 3956-03) does not have an allocation. If you wish to use the Temple Well in the future, you will need to apply for a Water Use Permit as a new use.

If you have any questions, please call Ryan Imata of the Commission staff at 587-0255.

Sincerely,

Peter T. Young
Chairperson

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

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

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

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

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

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

7. The water use permit application and submittal, as amended, approved by the Commission via the Laie Contested Case Decision & Order are incorporated into this permit by reference.

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

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

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

10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a monthly basis (attached).

11. This permit shall be subject to the Commission’s periodic review of the Koolauloa Aquifer System’s sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the Koolauloa Aquifer System, or relevant modified aquifer(s), is reduced.

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

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

13. The use(s) authorized by law and by this permit do not constitute ownership rights.
14. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee’s water use.

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

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

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

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

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

Attachment

c: BYU Hawaii Campus
ASHFORD & WRISTON
Owen H. Matsunaga, Esq.
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: 539-0400
Attorneys for Petitioners

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application

of

LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS;
CERTIFICATE OF SERVICE.

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS
BY LAIE WATER COMPANY, INC.
and CERTIFICATE OF SERVICE

LAIE WATER COMPANY, INC., a Hawaii corporation ("Applicant"), hereby files with the Commission on Water Resource Management of the State of Hawaii ("Commission") Applicant's Brief in Support of Issuance of Water Use Permits pursuant to 13 Hawaii Administrative Rules, Section 13-171-18(c)(1988)(Chapter 171 of 13 Hawaii Administrative Rules is hereinafter referred to as the "Commission's Water Management...
Area Regulations"). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council ("NHAC") and the Hui Malama 'Aina 'O La'ie should be disregarded and Applicant's application for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 ("Wells") should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I. Background

Applicant filed its applications for water use permits for the Wells on June 23, 1993, for municipal service for over 635 residential and commercial water users in the Laie community. The average combined pumpage from all four Wells is approximately 1.46 million gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

On September 1, 1993, a J.M. Anthony filed a letter ("September 1, 1993 letter") with the Commission purportedly on behalf of Hui Malama 'Aina 'O La'ie stating his opposition to the applications of Applicant and the Polynesian Cultural Center. (J. M.
Anthony and Hui Malama 'Aina 'O La'ie are herein collectively referred to as "Anthony"). In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony's May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant's pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

On September 3, 1993, NHAC filed a letter with the Commission stating that it "supports the objections filed by Hui Malama 'Aina 'O La'ie on August 30, 1993." NHAC further objected to "current COWRM [Commission] water use permit application processing and decision making practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93)."

Applicant did not receive copies of Anthony's September 1, 1993 letter or NHAC's letters of August 30, 1993 and September 3, 1993, until Tuesday, September 7, 1993, when the Commission sent such copies to Applicant. Applicant did not receive a copy of Anthony's correspondence dated May 10, 1993, until it was telefaxed to Applicant's attorneys by the Water Commission on Friday, September 10, 1993. Applicant has yet to receive copies of the five additional items of correspondence or memoranda cited by NHAC which apparently form additional bases for NHAC's objections. Applicant to this day has
not seen much of the objecting material supposedly incorporated by reference into the objections of Anthony/NHAC.

Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant's applications.

II.

Anthony and NHAC Lack Standing to Object

Anthony and NHAC have failed to demonstrate the sort of interest in this proceeding that is required to establish standing under the State Water Code (Chapter 174C, Hawaii Rev. Stat.) ("Water Code") or 13 Hawaii Administrative Rules, Chapter 167 (1988) (Chapter 167 of 13 Hawaii Administrative Rules being hereinafter referred to as the "Commission's Rules of Practice").

As provided in § 174C-53(b) of the Water Code, "[i]n acting upon any application, the Commission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application." Neither Anthony nor NHAC have provided any proof that they have the requisite property interest in this case or that they will be directly and immediately affected by the requested permits.
Section 13-167-54 of the Commission’s Rules of Practice specifies who may be admitted as a party to a proceeding. In addition to the petitioner and relevant government agencies, subsections 13-167-54(a)(3) and (4) of the Commission’s Rules of Practice list the following as the only other persons that may be recognized as parties:

(3) All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

(4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the commission may approve the application only if the applicant’s participation will substantially assist the commission in its decision making.

Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission's decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant's applications at all until his own matters are first considered: that the entire community's water supply should be held up pending resolution of Anthony's private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission's decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission's deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

The lack of adequate grounds for standing by the purported objectors requires that the letters filed by Anthony and NHAC be disregarded in the present proceeding.

III.

The Purported "Written Objections" by Anthony and NHAC were Not Timely

Section 13-171-18 of the Commission's Water Management Area Regulations sets forth the criteria for objections to proposed water use permits. Section 13-171-18(a) states as follows:

Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant. [emphasis added]
The last Public Notice in the present case was published in the *Honolulu Star Bulletin* on August 13, 1993, and stated that written objections had to be filed with the Commission, with a copy to the applicant by "August 30, 1993."

Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993, and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission's Water Management Area Regulations, Applicant believes that Anthony's and NHAC's letters should be disregarded by the Commission.

IV.

**The Purported "Written Objections" by Anthony and NHAC are Deficient**

Section 13-171-18(b) of the Commission's Water Management Area Regulations establishes clear requirements for any written objections filed with the Commission:

(b) The written objection shall:
(1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and
(2) State all grounds for objections to the proposed permit. The grounds not cited or specifically urged are waived.

Neither NHAC nor Anthony specify any questions of procedure, fact, law or policy to which they object with respect to Applicant's requested permits.

NHAC's August 30, 1993 letter merely requests an exception to the Commission's deadlines for filing and states NHAC's general objections to the Commission's water use
permit application processing and decision-making practices. Similarly, NHAC’s September 3, 1993 letter merely reiterates its general dissatisfaction with this Commission’s processing and decision-making practices. As to specific questions or grounds for objecting to Applicant’s present applications, NHAC simply states that it supports Anthony’s objections. Given NHAC’s glaring lack of any specific basis for objecting to Applicant’s applications, NHAC’s purported "written objections" should be dismissed by the Commission.

As to Anthony’s "objections," he also fails to set forth any questions or grounds for his objections. While he attempts to incorporate by reference his May 10, 1993 letter that he submitted to the Commission in a separate proceeding, such letter is likewise deficient and fails to state any basis for objecting to the present applications. Anthony’s May 10, 1993 letter merely chastises the Commission for not resolving Kuleana landowners’ water rights in the state.

While Anthony’s May 10, 1993 letter cites a Dispute/Complaint Information Request form signed by Dawn K. Wasson ("Wasson"), Wasson is not an objector in the present case. Moreover, Wasson’s complaints appear to relate to surface water matters that are not at issue in the present proceeding. The permits requested by Applicant, however, do not include any request for use of surface water for Applicant’s system and none of the related Wells fall within any surface water management area. Finally, any alleged complaint regarding surface waters should not be allowed to delay the issuance of the permits requested in this case for permits of pre-existing, beneficial uses.
If Wasson has any grounds for complaint, which Applicant doubts exist, Wasson could raise such concerns with the Commission through a separate proceeding, in which Wasson clearly would have the burden to prove the interim instream flow standards effects, if any, of Applicant's use. A continuation permit proceeding is not the proper forum for the type of dispute resolution suggested by Anthony. Neither the Water Code nor the rules and regulations of the Commission permit an outsider to "stay" the permit process on the basis of mere allegations that an unspecified dispute exists as to surface water issues.

The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant's Request Covers a Long-Established, Beneficial Use

Applicant is the current owner and operator of the water system serving the needs of the Laie community residents. The pending applications in this proceeding are an important aspect to Applicant's service for the area. The Wells in question have been in use for at least a half-century by Applicant's predecessor, and are critical to Applicant's ability to supply potable water to the residents of the Laie community. Should the requested permits be denied, the community of about 6,000 or more residents, including such public facilities as an elementary school, would largely be left without potable water. Under such circumstances, the existing use for which Applicant hereby seeks permits is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission's Water Management Area Regulations.
Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission's Water Management Area Regulations.

VI.

The Commission Should Grant the Permits Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commissions rules and regulations because of their failure to provide any basis to challenge Applicant's applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of by Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant's
applications for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 be granted as requested without hearing.

DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

OF THE STATE OF HAWAII

In the Matter of the Application of
LAIE WATER COMPANY, INC.
For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03

CERTIFICATE OF SERVICE.

I hereby certify that I have caused the foregoing BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS BY LAIE WATER COMPANY, INC., to be served upon the following persons at the following addresses by depositing a copy thereof in the mail, postage prepaid:

J.M. Anthony
Pacific Research, Information and Consultant Services
P.O. Box 720
Ka’a’awa, Hawaii 96730

Native Hawaiian Advisory Council
1088 Bishop Street, Suite 1204
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii; September 16, 1993.

OWEN H. MATSUNAGA
Attorney for Applicant
ASHFORD & WRISTON
Owen H. Matsunaga, Esq.
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: 539-0400
Attorneys for Petitioners

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application )
) )
of ) Well Nos. 3855-06, 3855-07, 3855-08
LAIE WATER COMPANY, INC. ) and 3956-03
) BRIEF IN SUPPORT OF ISSUANCE )
) OF WATER USE PERMITS; )
For Water Use Permits pursuant to Section ) CERTIFICATE OF SERVICE.
174C-51, Hawaii Revised Statutes, affecting )
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BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS
BY LAIE WATER COMPANY, INC.
and CERTIFICATE OF SERVICE

LAIE WATER COMPANY, INC., a Hawaii corporation ("Applicant"), hereby files
with the Commission on Water Resource Management of the State of Hawaii
("Commission") Applicant's Brief in Support of Issuance of Water Use Permits pursuant to
13 Hawaii Administrative Rules, Section 13-171-18(c)(1988)(Chapter 171 of 13 Hawaii
Administrative Rules is hereinafter referred to as the "Commission's Water Management

0044704.01
Area Regulations"). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council ("NHAC") and the Hui Malama 'Aina 'O La'ie should be disregarded and Applicant's application for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 ("Wells") should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I.

Background

Applicant filed its applications for water use permits for the Wells on June 23, 1993, for municipal service for over 635 residential and commercial water users in the Laie community. The average combined pumpage from all four Wells is approximately 1.46 million gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

On September 1, 1993, a J.M. Anthony filed a letter ("September 1, 1993 letter") with the Commission purportedly on behalf of Hui Malama 'Aina 'O La'ie stating his opposition to the applications of Applicant and the Polynesian Cultural Center. (J. M.
Anthony and Hui Malama 'Aina 'O La'ie are herein collectively referred to as "Anthony".)
In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony’s May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant’s pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

On September 3, 1993, NHAC filed a letter with the Commission stating that it "supports the objections filed by Hui Malama 'Aina 'O La'ie on August 30, 1993." NHAC further objected to "current COWRM [Commission] water use permit application processing and decision making practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93)."

Applicant did not receive copies of Anthony’s September 1, 1993 letter or NHAC’s letters of August 30, 1993 and September 3, 1993, until Tuesday, September 7, 1993, when the Commission sent such copies to Applicant. Applicant did not receive a copy of Anthony’s correspondence dated May 10, 1993, until it was telefaxed to Applicant’s attorneys by the Water Commission on Friday, September 10, 1993. Applicant has yet to receive copies of the five additional items of correspondence or memoranda cited by NHAC which apparently form additional bases for NHAC’s objections. Applicant to this day has
not seen much of the objecting material supposedly incorporated by reference into the objections of Anthony/NHAC.

Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant's applications.

II.

Anthony and NHAC Lack Standing to Object

Anthony and NHAC have failed to demonstrate the sort of interest in this proceeding that is required to establish standing under the State Water Code (Chapter 174C, Hawaii Rev. Stat.)("Water Code") or 13 Hawaii Administrative Rules, Chapter 167 (1988)(Chapter 167 of 13 Hawaii Administrative Rules being hereinafter referred to as the "Commission's Rules of Practice").

As provided in § 174C-53(b) of the Water Code, "[i]n acting upon any application, the [C]ommission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application." Neither Anthony nor NHAC have provided any proof that they have the requisite property interest in this case or that they will be directly and immediately affected by the requested permits.
Section 13-167-54 of the Commission’s Rules of Practice specifies who may be admitted as a party to a proceeding. In addition to the petitioner and relevant government agencies, subsections 13-167-54(a)(3) and (4) of the Commission’s Rules of Practice list the following as the only other persons that may be recognized as parties:

(3) All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

(4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the commission may approve the application only if the applicant’s participation will substantially assist the commission in its decision making.

Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission’s decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant’s applications at all until his own matters are first considered: that the entire community’s water supply should be held up pending resolution of Anthony’s private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission’s decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission’s deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

The lack of adequate grounds for standing by the purported objectors requires that the letters filed by Anthony and NHAC be disregarded in the present proceeding.

III.

The Purported "Written Objections" by Anthony and NHAC were Not Timely

Section 13-171-18 of the Commission’s Water Management Area Regulations sets forth the criteria for objections to proposed water use permits. Section 13-171-18(a) states as follows:

Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant. [emphasis added]
The last Public Notice in the present case was published in the *Honolulu Star Bulletin* on August 13, 1993, and stated that written objections had to be filed with the Commission, with a copy to the applicant by "August 30, 1993."

Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993. and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission’s Water Management Area Regulations, Applicant believes that Anthony’s and NHAC’s letters should be disregarded by the Commission.

**IV. The Purported "Written Objections" by Anthony and NHAC are Deficient**

Section 13-171-18(b) of the Commission’s Water Management Area Regulations establishes clear requirements for any written objections filed with the Commission:

(b) The written objection shall:
   (1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and  
   (2) State all grounds for objections to the proposed permit.  
   The grounds not cited or specifically urged are waived.

Neither NHAC nor Anthony specify any questions of procedure, fact, law or policy to which they object with respect to Applicant’s requested permits.

NHAC’s August 30, 1993 letter merely requests an exception to the Commission’s deadlines for filing and states NHAC’s general objections to the Commission’s water use
permit application processing and decision-making practices. Similarly, NHAC’s September 3, 1993 letter merely reiterates its general dissatisfaction with this Commission’s processing and decision-making practices. As to specific questions or grounds for objecting to Applicant’s present applications, NHAC simply states that it supports Anthony’s objections. Given NHAC’s glaring lack of any specific basis for objecting to Applicant’s applications, NHAC’s purported "written objections" should be dismissed by the Commission.

As to Anthony’s "objections," he also fails to set forth any questions or grounds for his objections. While he attempts to incorporate by reference his May 10, 1993 letter that he submitted to the Commission in a separate proceeding, such letter is likewise deficient and fails to state any basis for objecting to the present applications. Anthony’s May 10, 1993 letter merely chastises the Commission for not resolving Kuleana landowners’ water rights in the state.

While Anthony’s May 10, 1993 letter cites a Dispute/Complaint Information Request form signed by Dawn K. Wasson ("Wasson"), Wasson is not an objector in the present case. Moreover, Wasson’s complaints appear to relate to surface water matters that are not at issue in the present proceeding. The permits requested by Applicant, however, do not include any request for use of surface water for Applicant’s system and none of the related Wells fall within any surface water management area. Finally, any alleged complaint regarding surface waters should not be allowed to delay the issuance of the permits requested in this case for permits of pre-existing, beneficial uses.
If Wasson has any grounds for complaint, which Applicant doubts exist, Wasson could raise such concerns with the Commission through a separate proceeding, in which Wasson clearly would have the burden to prove the interim instream flow standards effects, if any, of Applicant's use. A continuation permit proceeding is not the proper forum for the type of dispute resolution suggested by Anthony. Neither the Water Code nor the rules and regulations of the Commission permit an outsider to "stay" the permit process on the basis of mere allegations that an unspecified dispute exists as to surface water issues.

The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant's Request Covers a Long-Established, Beneficial Use

Applicant is the current owner and operator of the water system serving the needs of the Laie community residents. The pending applications in this proceeding are an important aspect to Applicant's service for the area. The Wells in question have been in use for at least a half-century by Applicant's predecessor, and are critical to Applicant's ability to supply potable water to the residents of the Laie community. Should the requested permits be denied, the community of about 6,000 or more residents, including such public facilities as an elementary school, would largely be left without potable water. Under such circumstances, the existing use for which Applicant hereby seeks permits is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission's Water Management Area Regulations.
Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission's Water Management Area Regulations.

VI.

The Commission Should Grant the Permits Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commission's rules and regulations because of their failure to provide any basis to challenge Applicant's applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of by Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant's
applications for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 be granted as requested without hearing.

DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

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LAIE WATER COMPANY, INC.
For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

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Telephone: 539-0400
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OF THE STATE OF HAWAII

In the Matter of the Application
of
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BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS; CERTIFICATE OF SERVICE.

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Applicant states as follows:

I.

Background

Applicant filed its applications for water use permits for the Wells on June 23, 1993, for municipal service for over 635 residential and commercial water users in the Laie community. The average combined pumpage from all four Wells is approximately 1.46 million gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

On September 1, 1993, a J.M. Anthony filed a letter ("September 1, 1993 letter") with the Commission purportedly on behalf of Hui Malama 'Aina 'O La'ie stating his opposition to the applications of Applicant and the Polynesian Cultural Center. (J. M.
Anthony and Hui Malama 'Aina 'O La’ie are herein collectively referred to as "Anthony".

In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony’s May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant’s pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

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Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant’s applications.

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Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission’s decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant’s applications at all until his own matters are first considered: that the entire community’s water supply should be held up pending resolution of Anthony’s private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission’s decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission’s deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

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Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission’s Water Management Area Regulations.

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DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application of

LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

CERTIFICATE OF SERVICE

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OWEN H. MATSUNAGA
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OF THE STATE OF HAWAII

In the Matter of the Application

of

LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS;
CERTIFICATE OF SERVICE.

LAIE WATER COMPANY, INC., a Hawaii corporation ("Applicant"), hereby files with the Commission on Water Resource Management of the State of Hawaii ("Commission") Applicant’s Brief in Support of Issuance of Water Use Permits pursuant to 13 Hawaii Administrative Rules, Section 13-171-18(c)(1988)(Chapter 171 of 13 Hawaii Administrative Rules is hereinafter referred to as the "Commission’s Water Management 004704.01
Area Regulations"). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council ("NHAC") and the Hui Malama 'Aina 'O La'ie should be disregarded and Applicant's application for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 ("Wells") should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I.

Background

Applicant filed its applications for water use permits for the Wells on June 23, 1993, for municipal service for over 635 residential and commercial water users in the Laie community. The average combined pumpage from all four Wells is approximately 1.46 million gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

On September 1, 1993, a J.M. Anthony filed a letter ("September 1, 1993 letter") with the Commission purportedly on behalf of Hui Malama 'Aina 'O La'ie stating his opposition to the applications of Applicant and the Polynesian Cultural Center. (J. M. 
Anthony and Hui Malama 'Aina 'O La'ie are herein collectively referred to as "Anthony".

In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony's May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant's pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

On September 3, 1993, NHAC filed a letter with the Commission stating that it "supports the objections filed by Hui Malama 'Aina 'O La'ie on August 30, 1993." NHAC further objected to "current COWRM [Commission] water use permit application processing and decision making practices as previously submitted on numerous occasions (10/12/92, 10/21/92, 12/1/92, 6/22/93, & 7/8/93)."

Applicant did not receive copies of Anthony's September 1, 1993 letter or NHAC's letters of August 30, 1993 and September 3, 1993, until Tuesday, September 7, 1993, when the Commission sent such copies to Applicant. Applicant did not receive a copy of Anthony's correspondence dated May 10, 1993, until it was telefaxed to Applicant's attorneys by the Water Commission on Friday, September 10, 1993. Applicant has yet to receive copies of the five additional items of correspondence or memoranda cited by NHAC which apparently form additional bases for NHAC's objections. Applicant to this day has
not seen much of the objecting material supposedly incorporated by reference into the objections of Anthony/NHAC.

Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant's applications.

II.

Anthony and NHAC Lack Standing to Object

Anthony and NHAC have failed to demonstrate the sort of interest in this proceeding that is required to establish standing under the State Water Code (Chapter 174C, Hawaii Rev. Stat.)("Water Code") or 13 Hawaii Administrative Rules, Chapter 167 (1988)(Chapter 167 of 13 Hawaii Administrative Rules being hereinafter referred to as the "Commission's Rules of Practice").

As provided in § 174C-53(b) of the Water Code, "[i]n acting upon any application, the [C]ommission need consider only those objections filed by a person who has some property interest in any land within the hydrologic unit from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application." Neither Anthony nor NHAC have provided any proof that they have the requisite property interest in this case or that they will be directly and immediately affected by the requested permits.
Section 13-167-54 of the Commission’s Rules of Practice specifies who may be admitted as a party to a proceeding. In addition to the petitioner and relevant government agencies, subsections 13-167-54(a)(3) and (4) of the Commission’s Rules of Practice list the following as the only other persons that may be recognized as parties:

(3) All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

(4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the commission may approve the application only if the applicant’s participation will substantially assist the commission in its decision making.

Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission's decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant's applications at all until his own matters are first considered: that the entire community's water supply should be held up pending resolution of Anthony's private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission's decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission's deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

The lack of adequate grounds for standing by the purported objectors requires that the letters filed by Anthony and NHAC be disregarded in the present proceeding.

III.

The Purported "Written Objections" by Anthony and NHAC were Not Timely

Section 13-171-18 of the Commission's Water Management Area Regulations sets forth the criteria for objections to proposed water use permits. Section 13-171-18(a) states as follows:

Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant. [emphasis added]
The last Public Notice in the present case was published in the *Honolulu Star Bulletin* on August 13, 1993, and stated that written objections had to be filed with the Commission, with a copy to the applicant by "August 30, 1993."

Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993, and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission’s Water Management Area Regulations, Applicant believes that Anthony’s and NHAC’s letters should be disregarded by the Commission.

IV.

The Purported "Written Objections" by Anthony and NHAC are Deficient

Section 13-171-18(b) of the Commission’s Water Management Area Regulations establishes clear requirements for any written objections filed with the Commission:

(b) The written objection shall:
(1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and
(2) State all grounds for objections to the proposed permit. The grounds not cited or specifically urged are waived.

Neither NHAC nor Anthony specify any questions of procedure, fact, law or policy to which they object with respect to Applicant’s requested permits.

NHAC’s August 30, 1993 letter merely requests an exception to the Commission’s deadlines for filing and states NHAC’s general objections to the Commission’s water use
permit application processing and decision-making practices. Similarly, NHAC’s September 3, 1993 letter merely reiterates its general dissatisfaction with this Commission’s processing and decision-making practices. As to specific questions or grounds for objecting to Applicant’s present applications, NHAC simply states that it supports Anthony’s objections. Given NHAC’s glaring lack of any specific basis for objecting to Applicant’s applications, NHAC’s purported “written objections” should be dismissed by the Commission.

As to Anthony’s “objections,” he also fails to set forth any questions or grounds for his objections. While he attempts to incorporate by reference his May 10, 1993 letter that he submitted to the Commission in a separate proceeding, such letter is likewise deficient and fails to state any basis for objecting to the present applications. Anthony’s May 10, 1993 letter merely chastises the Commission for not resolving Kuleana landowners’ water rights in the state.

While Anthony’s May 10, 1993 letter cites a Dispute/Complaint Information Request form signed by Dawn K. Wasson (“Wasson”), Wasson is not an objector in the present case. Moreover, Wasson’s complaints appear to relate to surface water matters that are not at issue in the present proceeding. The permits requested by Applicant, however, do not include any request for use of surface water for Applicant’s system and none of the related Wells fall within any surface water management area. Finally, any alleged complaint regarding surface waters should not be allowed to delay the issuance of the permits requested in this case for permits of pre-existing, beneficial uses.
If Wasson has any grounds for complaint, which Applicant doubts exist, Wasson could raise such concerns with the Commission through a separate proceeding, in which Wasson clearly would have the burden to prove the interim instream flow standards effects, if any, of Applicant's use. A continuation permit proceeding is not the proper forum for the type of dispute resolution suggested by Anthony. Neither the Water Code nor the rules and regulations of the Commission permit an outsider to "stay" the permit process on the basis of mere allegations that an unspecified dispute exists as to surface water issues.

The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant's Request Covers a Long-Established, Beneficial Use

Applicant is the current owner and operator of the water system serving the needs of the Laie community residents. The pending applications in this proceeding are an important aspect to Applicant's service for the area. The Wells in question have been in use for at least a half-century by Applicant's predecessor, and are critical to Applicant's ability to supply potable water to the residents of the Laie community. Should the requested permits be denied, the community of about 6,000 or more residents, including such public facilities as an elementary school, would largely be left without potable water. Under such circumstances, the existing use for which Applicant hereby seeks permits is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission's Water Management Area Regulations.
Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission’s Water Management Area Regulations.

VI.

The Commission Should Grant the Permits Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commission's rules and regulations because of their failure to provide any basis to challenge Applicant’s applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant’s
applications for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 be
granted as requested without hearing.

DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application of

LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS BY LAIE WATER COMPANY, INC., to be served upon the following persons at the following addresses by depositing a copy thereof in the mail, postage prepaid:

J.M. Anthony
Pacific Research, Information and Consultant Services
P.O. Box 720
Ka’a’awa, Hawai’i 96730

Native Hawaiian Advisory Council
1088 Bishop Street, Suite 1204
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii; September 16, 1993.

OWEN H. MATSUNAGA
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

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BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS;
CERTIFICATE OF SERVICE.

Area Regulations*). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council ("NHAC") and the Hui Malama 'Aina 'O La'ie should be disregarded and Applicant's application for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 ("Wells") should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

I.

Background

Applicant filed its applications for water use permits for the Wells on June 23, 1993, for municipal service for over 635 residential and commercial water users in the Laie community. The average combined pumpage from all four Wells is approximately 1.46 million gallons per day. Applicant is requesting the continuation of this use.


On August 30, 1993, NHAC filed a request with the Commission to extend the review period for NHAC to Friday, September 3, 1993. Applicant was not informed about any such waiver of the deadline established by the Water Management Area Regulations.

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Anthony and Hui Malama 'Aina 'O La'ie are herein collectively referred to as "Anthony".)

In doing so, Anthony referenced objections he purportedly previously raised with the Commission, on another issue, in his letter of May 10, 1993 with the "LDS Church/Zions Securities".

No reason is given why Anthony's May 10, 1993 complaint against "LDS Church/Zions Securities" is relevant to anything Applicant has ever done, or to Applicant's pending application. Anthony appears simply to have borrowed objections from an earlier claim, filed before Applicant filed its water use applications with the Commission, and to have adopted them as supposed "community" objections against Applicant.

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Finally, NHAC and Anthony both appear to be acting in representational or advisory capacities to persons unknown, but who are alleged to have the property interest required for such objections. No individuals who actually have such property interests appear to be objecting to Applicant’s applications.

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Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
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Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993, and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission’s Water Management Area Regulations, Applicant believes that Anthony’s and NHAC’s letters should be disregarded by the Commission.

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The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant’s Request Covers a Long-Established, Beneficial Use

Applicant is the current owner and operator of the water system serving the needs of the Laie community residents. The pending applications in this proceeding are an important aspect to Applicant’s service for the area. The Wells in question have been in use for at least a half-century by Applicant’s predecessor, and are critical to Applicant’s ability to supply potable water to the residents of the Laie community. Should the requested permits be denied, the community of about 6,000 or more residents, including such public facilities as an elementary school, would largely be left without potable water. Under such circumstances, the existing use for which Applicant hereby seeks permits is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission’s Water Management Area Regulations.
Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission's Water Management Area Regulations.

VI.

The Commission Should Grant the Permits Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commissions rules and regulations because of their failure to provide any basis to challenge Applicant's applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of by Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant's
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DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

ASHFORD & WRISTON

By: Owen H. Matsunaga
Attorney for Applicant
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application of
LAIE WATER COMPANY, INC.
For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03

CERTIFICATE OF SERVICE.

I hereby certify that I have caused the foregoing BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS BY LAIE WATER COMPANY, INC., to be served upon the following persons at the following addresses by depositing a copy thereof in the mail, postage prepaid:

J.M. Anthony
Pacific Research, Information and Consultant Services
P.O. Box 720
Ka'a'awa, Hawai‘i 96730

Native Hawaiian Advisory Council
1088 Bishop Street, Suite 1204
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii; September 16, 1993.

[Signature]
OWEN H. MATSUNAGA
Attorney for Applicant
ASHFORD & WRIGHTSON
Owen H. Matsunaga, Esq.
Alii Place, Suite 1400
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: 539-0400
Attorneys for Petitioners

BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application )
) Well Nos. 3855-06, 3855-07, 3855-08
) and 3956-03
)
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LAIE WATER COMPANY, INC.
)
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For Water Use Permits pursuant to Section )
174C-51, Hawaii Revised Statutes, affecting )
the Koolauloa System Aquifer, Windward )
Sector, Oahu, Hawaii )
)

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS;
CERTIFICATE OF SERVICE.

BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS
BY LAIE WATER COMPANY, INC.
and CERTIFICATE OF SERVICE

LAIE WATER COMPANY, INC., a Hawaii corporation ("Applicant"), hereby files

with the Commission on Water Resource Management of the State of Hawaii

("Commission") Applicant’s Brief in Support of Issuance of Water Use Permits pursuant to

13 Hawaii Administrative Rules, Section 13-171-18(c)(1988)(Chapter 171 of 13 Hawaii

Administrative Rules is hereinafter referred to as the "Commission’s Water Management

0044704.01
Area Regulations"). Applicant submits that the objections filed on behalf of Native Hawaiian Advisory Council ("NHAC") and the Hui Malama 'Aina 'O La'ie should be disregarded and Applicant's application for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 ("Wells") should be granted as requested without the need for a hearing. In support whereof, Applicant states as follows:

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Section 13-167-54 of the Commission’s Rules of Practice specifies who may be admitted as a party to a proceeding. In addition to the petitioner and relevant government agencies, subsections 13-167-54(a)(3) and (4) of the Commission’s Rules of Practice list the following as the only other persons that may be recognized as parties:

(3) All persons within a hydrologic unit who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed change that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

(4) Other persons who can show a substantial interest in the matter may apply to be a party. The presiding officer or the commission may approve the application only if the applicant’s participation will substantially assist the commission in its decision making.

Subsection (3), above, corresponds to § 174C-53(b) of the Water Code and establishes that a person must have a real property interest or other interest that may be directly and immediately affected by the proposed permits. Anthony and NHAC lack any such direct or real property interest, and have failed to assert any such basis for standing with respect to this proceeding. Additionally, neither Anthony nor NHAC have demonstrated any interest in the proceeding that is even remotely distinguishable from the interests, if any, of the general public.

As to subsection (4), above, neither Anthony nor NHAC has submitted an application as required by section 13-167-54(e) for party status. Indeed, Applicant believes that even if such an application were to be submitted, such application should be denied because the
involvement of Anthony or NHAC in the present case will not "substantially assist the commission in its decision making." Rather than seeking to assist the Commission in its decision making, NHAC states in its letters that it objects to the Commission’s decision-making practices altogether. Moreover, Anthony has taken the position that the Commission should not address Applicant’s applications at all until his own matters are first considered: that the entire community’s water supply should be held up pending resolution of Anthony’s private dispute against "LDS Church/Zions Securities". In light of such antagonism to the Commission’s decision making authority, the attempted objection by Anthony and NHAC would be disruptive to the Commission’s deliberative process and unduly interfere with its legislative mandate to adjudicate such applications.

The lack of adequate grounds for standing by the purported objectors requires that the letters filed by Anthony and NHAC be disregarded in the present proceeding.

III.

The Purported "Written Objections" by Anthony and NHAC were Not Timely

Section 13-171-18 of the Commission’s Water Management Area Regulations sets forth the criteria for objections to proposed water use permits. Section 13-171-18(a) states as follows:

Within ten working days after the last public notice of the pending permit application, a party may file with the commission, written objections and a brief in support of such objections. Such party shall serve copies of the objections and brief upon the applicant. [emphasis added]
The last Public Notice in the present case was published in the *Honolulu Star Bulletin* on August 13, 1993, and stated that written objections had to be filed with the Commission, with a copy to the applicant by "August 30, 1993."

Despite such deadlines for filing, Anthony apparently did not file his letter with the Commission until September 1, 1993, and Anthony has yet to serve a copy of such letter upon Applicant. Similarly, NHAC did not file its "objection" letter until at least September 3, 1993.

Because of the failure of Anthony and NHAC to comply with the provisions of section 13-171-18(a) of the Commission’s Water Management Area Regulations, Applicant believes that Anthony’s and NHAC’s letters should be disregarded by the Commission.

IV.

The Purported "Written Objections" by Anthony and NHAC are Deficient

Section 13-171-18(b) of the Commission’s Water Management Area Regulations establishes clear requirements for any written objections filed with the Commission:

(b) The written objection shall:

(1) Set forth questions of procedure, fact, law or policy, to which objections are taken; and

(2) State all grounds for objections to the proposed permit. The grounds not cited or specifically urged are waived.

Neither NHAC nor Anthony specify any questions of procedure, fact, law or policy to which they object with respect to Applicant’s requested permits.

NHAC’s August 30, 1993 letter merely requests an exception to the Commission’s deadlines for filing and states NHAC’s general objections to the Commission’s water use
permit application processing and decision-making practices. Similarly, NHAC's September 3, 1993 letter merely reiterates its general dissatisfaction with this Commission's processing and decision-making practices. As to specific questions or grounds for objecting to Applicant's present applications, NHAC simply states that it supports Anthony's objections. Given NHAC's glaring lack of any specific basis for objecting to Applicant's applications, NHAC's purported "written objections" should be dismissed by the Commission.

As to Anthony's "objections," he also fails to set forth any questions or grounds for his objections. While he attempts to incorporate by reference his May 10, 1993 letter that he submitted to the Commission in a separate proceeding, such letter is likewise deficient and fails to state any basis for objecting to the present applications. Anthony's May 10, 1993 letter merely chastises the Commission for not resolving Kuleana landowners' water rights in the state.

While Anthony's May 10, 1993 letter cites a Dispute/Complaint Information Request form signed by Dawn K. Wasson ("Wasson"), Wasson is not an objector in the present case. Moreover, Wasson's complaints appear to relate to surface water matters that are not at issue in the present proceeding. The permits requested by Applicant, however, do not include any request for use of surface water for Applicant's system and none of the related Wells fall within any surface water management area. Finally, any alleged complaint regarding surface waters should not be allowed to delay the issuance of the permits requested in this case for permits of pre-existing, beneficial uses.
If Wasson has any grounds for complaint, which Applicant doubts exist, Wasson could raise such concerns with the Commission through a separate proceeding, in which Wasson clearly would have the burden to prove the interim instream flow standards effects, if any, of Applicant's use. A continuation permit proceeding is not the proper forum for the type of dispute resolution suggested by Anthony. Neither the Water Code nor the rules and regulations of the Commission permit an outsider to "stay" the permit process on the basis of mere allegations that an unspecified dispute exists as to surface water issues.

The failure by Anthony and NHAC to state any questions or grounds for their objections makes their letters meaningless as written objections.

V.

Applicant's Request Covers a Long-Established, Beneficial Use

Applicant is the current owner and operator of the water system serving the needs of the Laie community residents. The pending applications in this proceeding are an important aspect to Applicant's service for the area. The Wells in question have been in use for at least a half-century by Applicant's predecessor, and are critical to Applicant's ability to supply potable water to the residents of the Laie community. Should the requested permits be denied, the community of about 6,000 or more residents, including such public facilities as an elementary school, would largely be left without potable water. Under such circumstances, the existing use for which Applicant hereby seeks permits is a reasonable-beneficial use as set forth by section 13-171-14 of the Commission's Water Management Area Regulations.
Also, because of the long-established use of the Wells by Applicant, Applicant should be given priority to obtain the requested permits for its continuous water usage levels. This would be analogous to the priority given to continuous reduced water usage users to reobtain their permitted levels of water usage under section 13-171-19(d) of the Commission’s Water Management Area Regulations.

VI.

The Commission Should Grant the Permits Without a Hearing

Requiring a hearing is unnecessary and unwarranted in this instance, and would be wasteful of time and money. Under § 174C-53(a) of the Water Code, the Commission is entitled to make a determination that the conditions for a permit have been established by Applicant without a hearing where "no objection to the application is filed by any person having standing to file an objection." As set forth in the preceding sections, the purported objectors in the present case have no standing to file any objections. Furthermore, the letters submitted by such purported objectors should not be deemed as "objections" for purposes of the Commissions rules and regulations because of their failure to provide any basis to challenge Applicant’s applications.

VII.

WHEREFORE, Applicant respectfully requests that the objections filed on behalf of by Anthony and the Native Hawaiian Advisory Council be disregarded, and Applicant’s
applications for water use permits for Well Nos. 3855-06, 3855-07, 3855-08 and 3956-03 be granted as requested without hearing.

DATED: Honolulu, Hawaii; September 16, 1993.

Respectfully submitted,

By: Owen H. Matsunaga
Attorney for Applicant

ASHFORD & WRISTON

Owen H. Matsunaga
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
OF THE STATE OF HAWAII

In the Matter of the Application

of

LAIE WATER COMPANY, INC.

For Water Use Permits pursuant to Section 174C-51, Hawaii Revised Statutes, affecting the Koolauloa System Aquifer, Windward Sector, Oahu, Hawaii

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing BRIEF IN SUPPORT OF ISSUANCE OF WATER USE PERMITS BY LAIE WATER COMPANY, INC., to be served upon the following persons at the following addresses by depositing a copy thereof in the mail, postage prepaid:

J.M. Anthony
Pacific Research, Information and Consultant Services
P.O. Box 720
Ka‘a‘awa, Hawai‘i 96730

Native Hawaiian Advisory Council
1088 Bishop Street, Suite 1204
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii; September 16, 1993.

OWEN H. MATSUMAGA
Attorney for Applicant