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GOVERNOR OF HAWAII



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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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LENORE N. OHYE
ACTING DEPUTY DIRECTOR

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

November 17, 2010
Honolulu, Oahu

**PROCESS FOR PROPOSING RECOMMENDATIONS ON REVOCATION ACTIONS FOR
WAIAHOLE GROUND WATER USE PERMITS**

(Well Nos. 2657-05, 2853-01, 2953-01 to 03, 3053-01, 3154-01)

GWUP No. 619, 2.130 mgd to Dole / Castle & Cooke / Robinson

GWUP No. 630, 0.150 mgd to the State of Hawaii / Waiawa Correctional Facility

GWUP No. 631, 0.140 mgd to Mililani Memorial Park

GWUP No. 632, 0.250 mgd to Mililani Golf Course

GWUP No. 634, 0.480 mgd to Nihonkai

GWUP No. 636, 0.170 mgd to Kamehameha Schools / Bishop Estate

GWUP No. 775, 0.750 mgd to Puu Makakilo Golf Course

GWUP No. 804, 2.390 mgd to Robinson Kunia Land

GWUP No. 808, 0.470 mgd to Pioneer Hi-Bred International, Inc.

GWUP No. 807, 0.260 mgd to Hawaii Agricultural Research Center

GWUP No. 827, 0.024 mgd to Edmond C. Olson Trust No. 2

GWUP No. 828, 2.636 mgd to Monsanto Co.

GWUP No. 851, 2.030 mgd to Agribusiness Development Corporation

GWUP No. 860, 0.590 mgd to Syngenta Hawaii, LLC

GWUP No. 871, 0.551 mgd to Fat Law's Farms, Inc. et al.

SUMMARY:

At the request of the Commission, staff has reviewed usage by Waiahole Ditch ground water use permit holders and is recommending that the Commission direct staff to continue further fact-finding on potential revocations for Waiahole ground water use permit holders.

BACKGROUND:

Authority:

Hawaii Revised Statutes §174C-58 states that:

[§174C-58] Revocation of permits. After a hearing, the commission may suspend or revoke a permit for:

- (1) Any materially false statement in the application for the water permit, a modification of a permit term, or any materially false statement in any report or statement of fact required of the user pursuant to this part.
- (2) Any willful violation of any condition of the permit.
- (3) Any violation of any provision of this chapter.
- (4) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. 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 revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section 174C-62 shall not apply towards the four-year period of forfeiture.

The commission may cancel a permit, permanently and in whole, with the written consent of the permittee. [L 1987, c 45, pt of §2]

Waiahole Contested Case Hearing Decision and Order I, dated December 24, 1997, states the following:

7. All permits shall be subject to review at any time and shall be reviewed within 5 years, or sooner if deemed necessary, for compliance with conditions of the permits, including evaluation of the reasonableness of the 2500 gad.

Waiāhole Contested Case Hearing Decision and Order III, dated July 13, 2006, states the following:

H. Summary

There is on average 27.0 mgd that is developed in the Waiāhole Ditch and Tunnel System. About 5.0 mgd of this amount is developed in the Main Bore, the tunnel that connects the windward collecting tunnels to the leeward distribution ditch. The Main Bore is leeward of and at lower elevation to the last adjustment gate on the windward side that can divert tunnel waters into the windward streams, so a maximum of 22.0 mgd can be diverted into the windward streams.

Water added to the windward streams under the amended IIFS total 12.0 mgd: 1) 4.8 mgd to Waiāhole Stream, 124% greater than its 1960s flow; 2) 3.0 mgd to Waianu Stream, 600% greater than its 1960s flow; 3) 2.1 mgd to Waikāne Stream, 150% greater than its 1960s flow; and 4) 2.1 mgd to Kahana Stream, 19% greater than its 1960s flow.

Of the 15.00 mgd available for offstream uses, 12.57 mgd has been permitted, including a decrease from 4.74 mgd to 3.98 mgd for Campbell Estate, and 2.03 mgd in system losses for ADC, subject to a decrease to an estimated 1.45 mgd when the linings of Reservoirs 155 and 225 are completed between December 2007 and June 2008, and to 1.42 mgd when the 1000 feet of unlined ditch are enclosed in pipes.

The changes from D&O II are as follows: 1) water added to the windward streams for the amended IIFS increases from 9.9 mgd to 12.0 mgd; 2) water permitted for offstream uses decreases from 13.30 mgd to 12.57 mgd; and 3) water remaining unpermitted, available for future water use permits, and diverted into the streams until permitted, decreases from 3.80 mgd to 2.43 mgd. When system improvements by ADC are completed, its water use permit is projected to decrease by 0.61 mgd, from 2.03 mgd to 1.42 mgd. Thus, water permitted for offstream uses will decrease from 12.57 mgd to 11.96 mgd, and unpermitted water will increase from 2.43 mgd to 3.04 mgd.

The 2.43 mgd in unpermitted water will be diverted into the windward streams until such time as it is permitted for offstream use. The unpermitted water and any permitted water not needed for day-to-day operations will be diverted into the windward streams as previously specified in D&O I and D&O II; i.e., 0.9 mgd into Waikāne Stream and the remainder into Waiāhole Stream (these amounts are in addition to the 2.1 mgd added to Waikāne and 4.8 mgd added to Waiāhole Streams under the amended IIFS).

§174C-56, HRS states that:

Review of permits. At least once every twenty years, the commission shall conduct a comprehensive study of all permits issued under this chapter to determine whether the conditions on such permits are being complied with. The commission shall prepare a formal report to the legislature which shall be available to the public [L 1987, c 45, pt of §2]

Active ground water use permits (GWUPs)

Active permits for various users of the Waiahole Ditch System were issued via the following:

Contested Case Hearing Decision and Order II (December 28, 2001)

GWUP No. 619, 2.130 mgd to Dole / Castle & Cooke / Robinson, for 1,459 acres of agriculture and irrigation.

GWUP No. 630, 0.150 mgd to the State of Hawaii / Waiawa Correctional Facility, for 210 acres of irrigation, and domestic use.

GWUP No. 631, 0.140 mgd to Mililani Memorial Park, for 67 acres of irrigation.

GWUP No. 632, 0.250 mgd to Mililani Golf Course, for 165 acres of irrigation.

GWUP No. 634, 0.480 mgd to Nihonkai, for 190 acres of diversified agriculture.

Contested Case Hearing Decision and Order III (July 13, 2006)

GWUP No. 636, 0.170 mgd to Kamehameha Schools / Bishop Estate, for 69 acres of diversified agriculture.

GWUP No. 775 to Puu Makakilo Golf Course, for 230 acres of golf course irrigation (vacated by the Intermediate Court of Appeals, 10/13/10).

GWUP No. 851 to Agribusiness Development Corporation, for 2.030 mgd of system losses.

Various modifications and transfers

GWUP No. 804, 2.390 mgd to Robinson Kunia Land, for 995 acres of diversified agriculture (modification from previously issued water use permit to reduce allocation because of inclusion of well no. 2602-03).

GWUP No. 807, 0.260 mgd to Hawaii Agricultural Research Center, for 65 acres of agricultural research (transfer from Campbell Estate on November 13, 2007)

GWUP No. 808, 0.470 mgd to Pioneer Hi-Bred International, Inc., for 191 acres of agriculture and irrigation (transfer from Campbell Estate on November 13, 2007)

GWUP No. 827, 0.024 mgd to Edmond C. Olson Trust No. 2, for 75 acres of diversified agriculture (transfer from Campbell Estate on November 13, 2007)

GWUP No. 828, 2.636 mgd to Monsanto Co., for 2,052 acres of diversified agriculture (transfer from Campbell Estate on November 13, 2007)

GWUP No. 860, 0.590 mgd to Syngenta Hawaii, LLC, for 770 acres of irrigation / agriculture (transfer from Campbell Estate on September 8, 2008)

GWUP No. 871, 0.551 mgd to Fat Law's Farms, Inc. (et al.), for 329 acres (new permit application issuance, February 17, 2010)

A summary relationship history of these permits can be found in Exhibit 1.

At the end of 2005, Del Monte, who was leasing property from Campbell Estate, began the transition to stop production on the lands owned by Campbell Estate. Campbell Estate sold off several parcels of land, through which the administrative transfers occurred. These administrative transfers included GWUPs 807 (HARC), 808 (Pioneer), 827 (Edmond Olson Trust), 828 (Monstanto) and 860 (Syngenta).

Additionally, since the issuance of Decision and Order III described above, the modification of the water use permit to Robinson Kunia Land, the issuance of GWUP 871 to Fat Law's Farms et. al., and the vacating of GWUP 775 to Puu Makakilo updates the total amount currently permitted to 12.271 mgd. Based on this new amount, there is currently 2.729 mgd of unpermitted water available for offstream uses.

Table 1. Waiahole Ditch System

<u>ITEM</u>	Waiahole Ditch System (mgd)
Water available for offstream uses	15
Existing Water Use Permits (yellow boxes shown in Exhibit 1)	12.271
Subtotal (Current Available Allocation)	2.729
Less: Syngenta application* (pending) (1.284 - 0.590) = 0.694	0.694
Department of Agriculture application (pending)	0.422
Subtotal (Potential Available Allocation/Allocation Deficit)	1.613

*Syngenta is requesting a total amount of 1.284 mgd, which is 0.694 mgd over their existing GWUP No. 860 of 0.590 mgd.

Revocation initiation

Typically, when staff receives a new GWUP application within an aquifer system area and there is adequate resource available to accommodate the requested amount, staff does not evaluate GWUPs system-wide for revocations. Also, staff would normally only review the 4-year non-use as described in §174C-58(4). There is no competition as all current needs are met and non-use returns to windward streams, and pending applications are within the available resource.

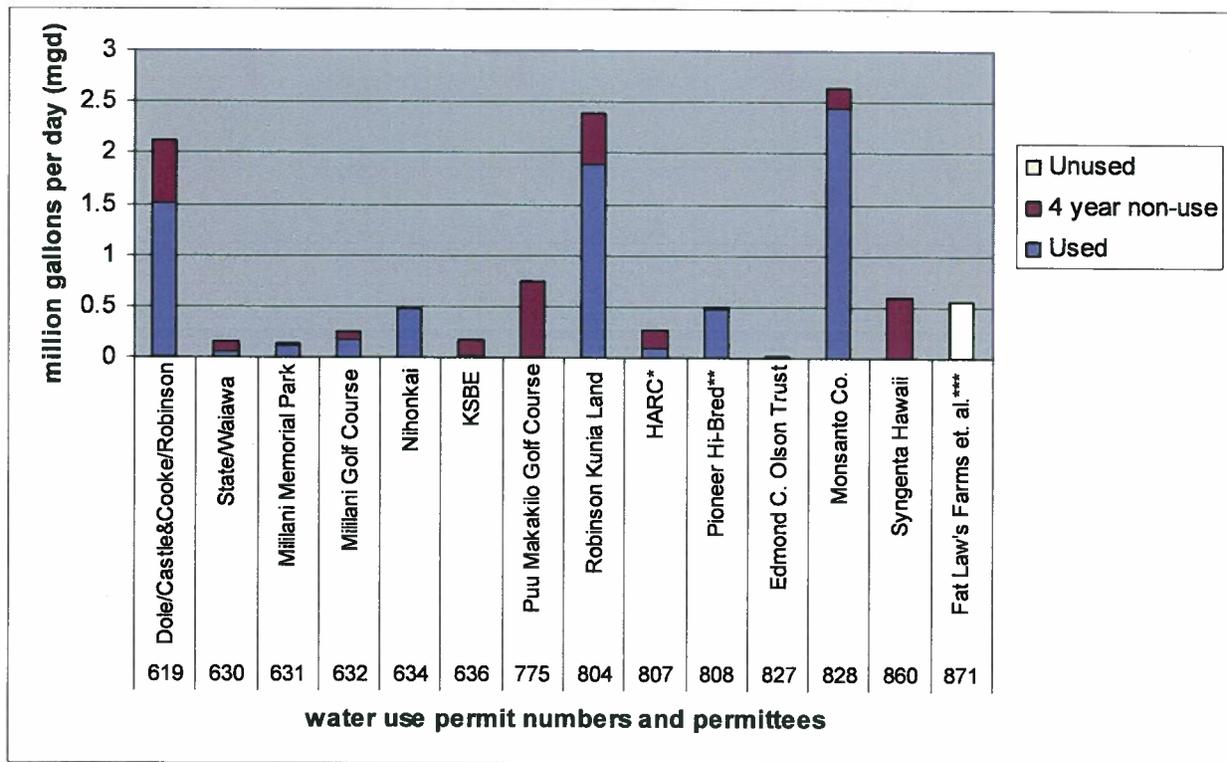
However, during the processing of GWUP No. 871 for Fat Law's Farms, staff had sent out letters on August 3, 2010 to the various permittees, requesting voluntary relinquishment of unused allocation, or if they are unable to, for the applicants to indicate why they would not be able to

relinquish any allocation. The responses can be found in Exhibit 2. This was done in response to issues / objections raised by EarthJustice to provide more factual information in order to address EarthJustice’s concerns regarding non-use and to avoid a contested case hearing with Fat Law Farms.

After the approval of GWUP No. 871 to Fat Law’s Farms at the February 17, 2010 Commission Meeting, the Commission directed staff to initiate revocation proceedings for the 4-year non-use of various users on the Waiahole Ditch System.

ANALYSIS:

The following chart summarizes the allocations issued to each permittee, as well as unused water that is based on the current continuous 4-year period of non-use.



Notes:

*GWUP 807, though transferred in 2007, has continuous use as HARC leased land from Campbell prior to 2007.

**GWUP 808 has no component of 4-year non-use because use is currently exceeding allocation.

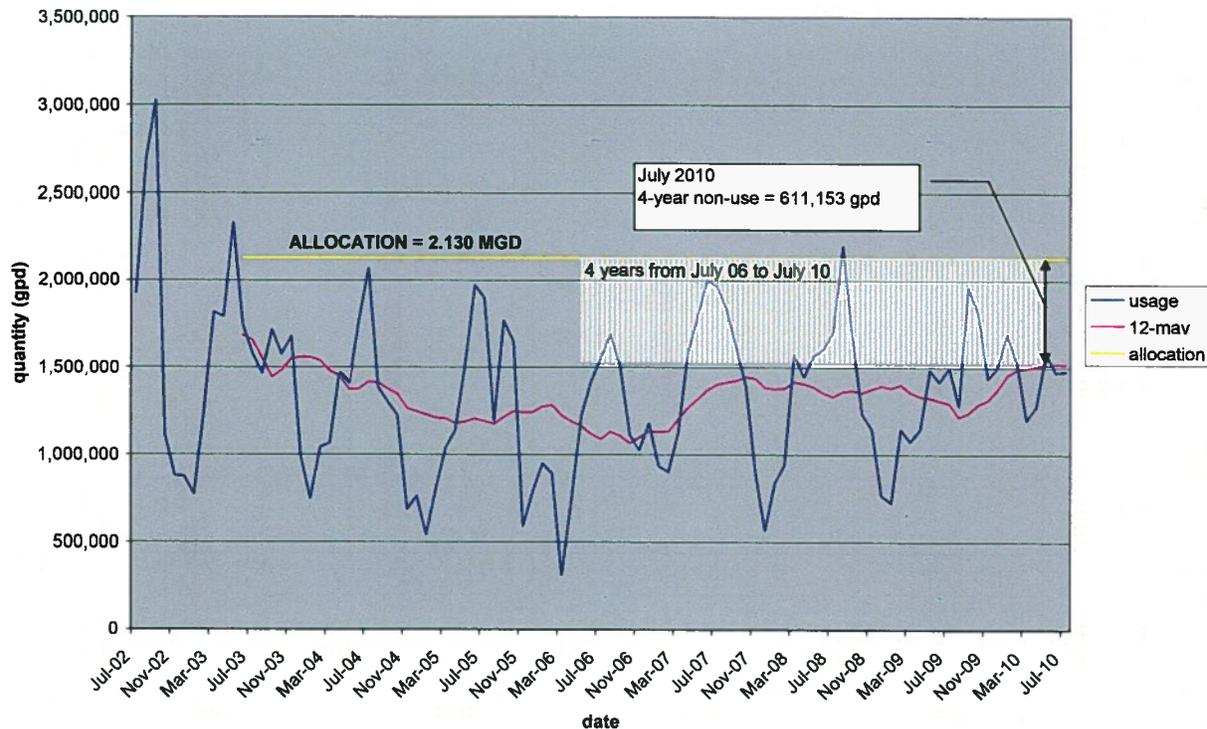
***GWUP 871 has not been used since its issuance.

The three largest allocations are issued to Dole/Castle & Cooke/Robinson (2.130 mgd), Robinson Kunia Land (2.390 mgd), and Monsanto Co. (2.636 mgd). The three largest amounts of unused water are Puu Makakilo (0.750 mgd), Dole/Castle & Cooke/Robinson (0.611 Mgd), and Robinson Kunia Land (0.490 mgd).

More detailed discussion of each permittee follows below.

GWUP No. 619 Dole / Castle & Cooke / Robinson (2.130 mgd)

WUP 619 (Castle & Cooke)



This permit is issued for agriculture and irrigation use. The chart above shows a fairly constant use on a 12-month moving average (12-mav), with actual usage showing typical seasonal variation as would be expected for use in the dryer and wetter periods of rainfall. The non-use for a continuous period of 4 years is 0.611 mgd, which is approximately 29% of the total allocation.

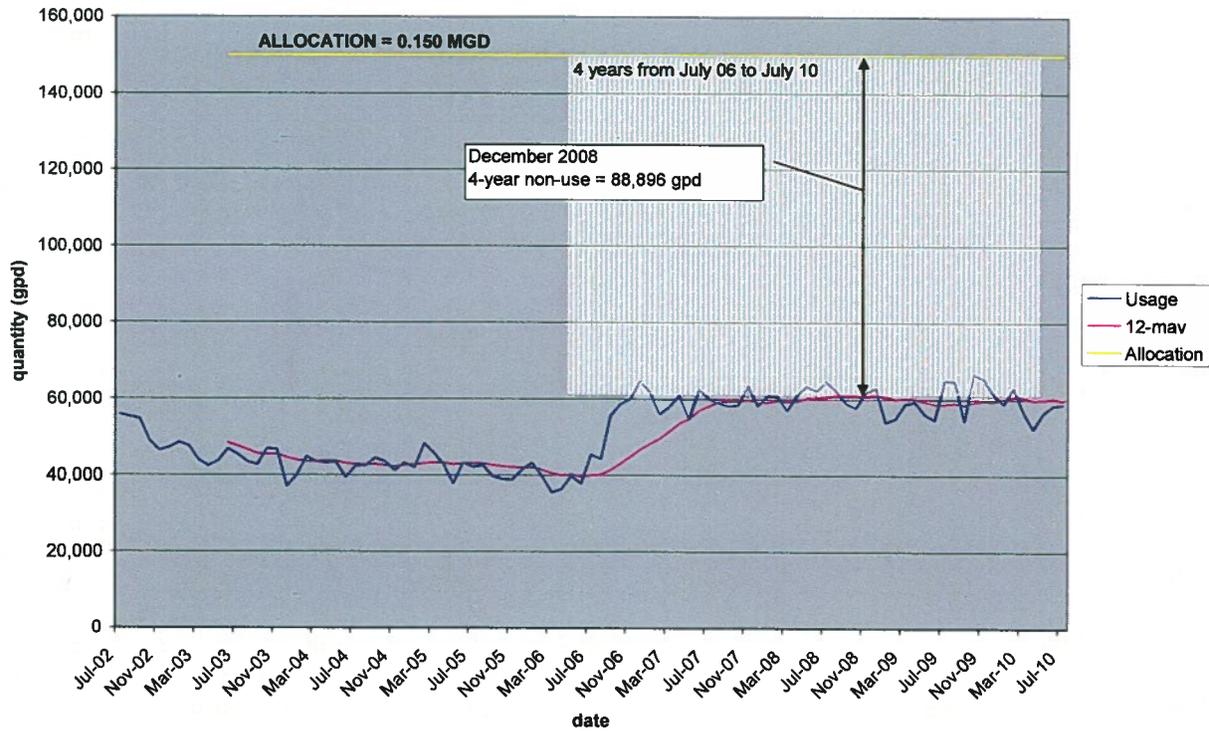
Meter readings from the Agribusiness Development Corporation indicate that meter CC-3, supplying Aloun farms west of the H-2 freeway, accounts for roughly 40% of the total use for this permittee. Recently, Castle and Cooke has obtained approval from the Land Use Commission to develop the Koa Ridge project, which will displace Aloun Farms in this area. This recent state land use approval warrants further discussion regarding the water use impact of Land Use reclassification, conversion from agriculture to urban use, and the subsequent reduction in agricultural water needs from the Waiahole Ditch System.

The permittee responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 29, 2009, stating that they did not have adequate time to evaluate staff’s analysis of use. However, they also claimed that their non-use is due to improved conservation that is not subject to partial revocation under §174C-58(4). To date, no further follow-up formal response of analysis or conservation changes has been received by staff.

No field investigation has been conducted for this use.

GWUP No. 630 State of Hawaii Waiawa Correctional Facility (0.150 mgd)

WUP 630 (State of Hawaii/Waiawa Corr)

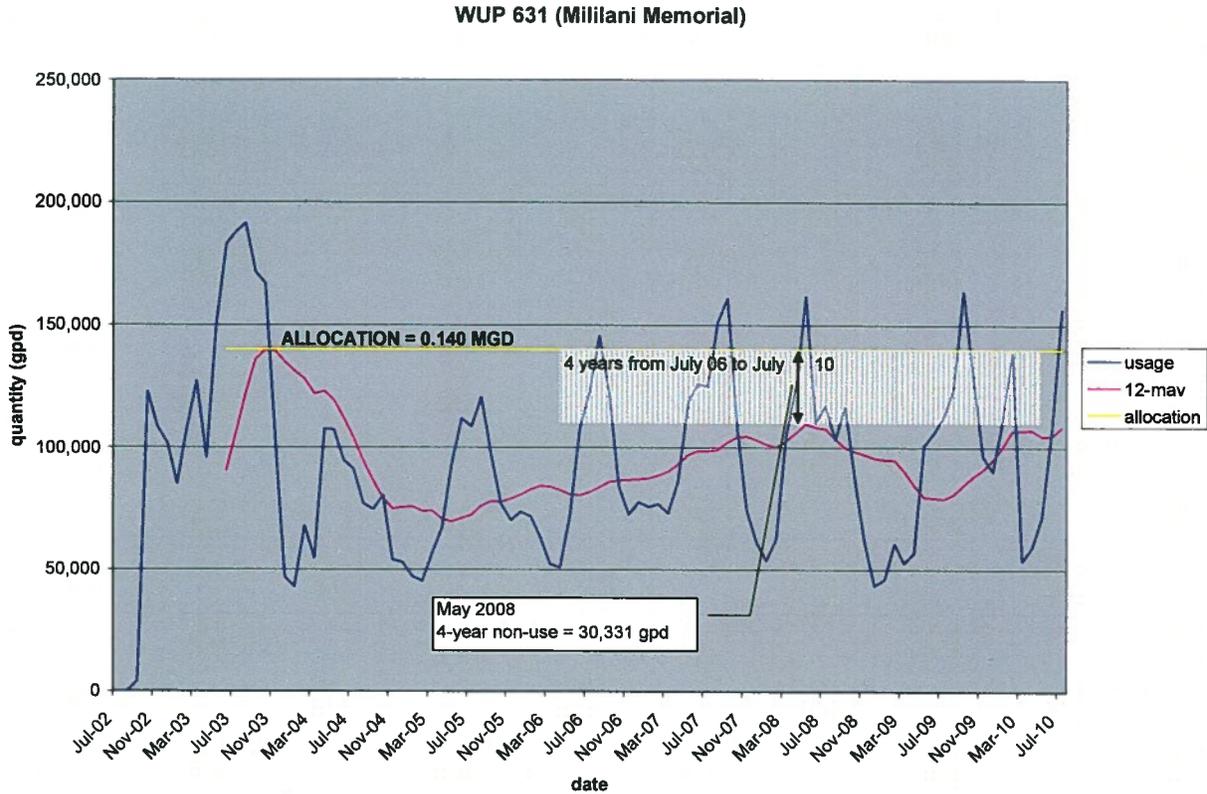


This permit is for irrigation and domestic water needs for the inmates. Discussion with staff at the Waiawa Correctional Facility has indicated that the inmate capacity during the 4-year period described above was approximately 275 inmates, approximately 83% of the full inmate capacity of 330 inmates. The unused amount of 0.089 mgd is approximately 60% of the total allocation of 0.150 mgd.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 12, 2009, stating that a minimum of 0.090 mgd would be required for full inmate capacity of the facility.

A field investigation for the 20-year review by a consultant to the Commission on August 18, 2008, and found no evidence of wasting of water.

GWUP No. 631 Mililani Memorial (0.140 mgd)

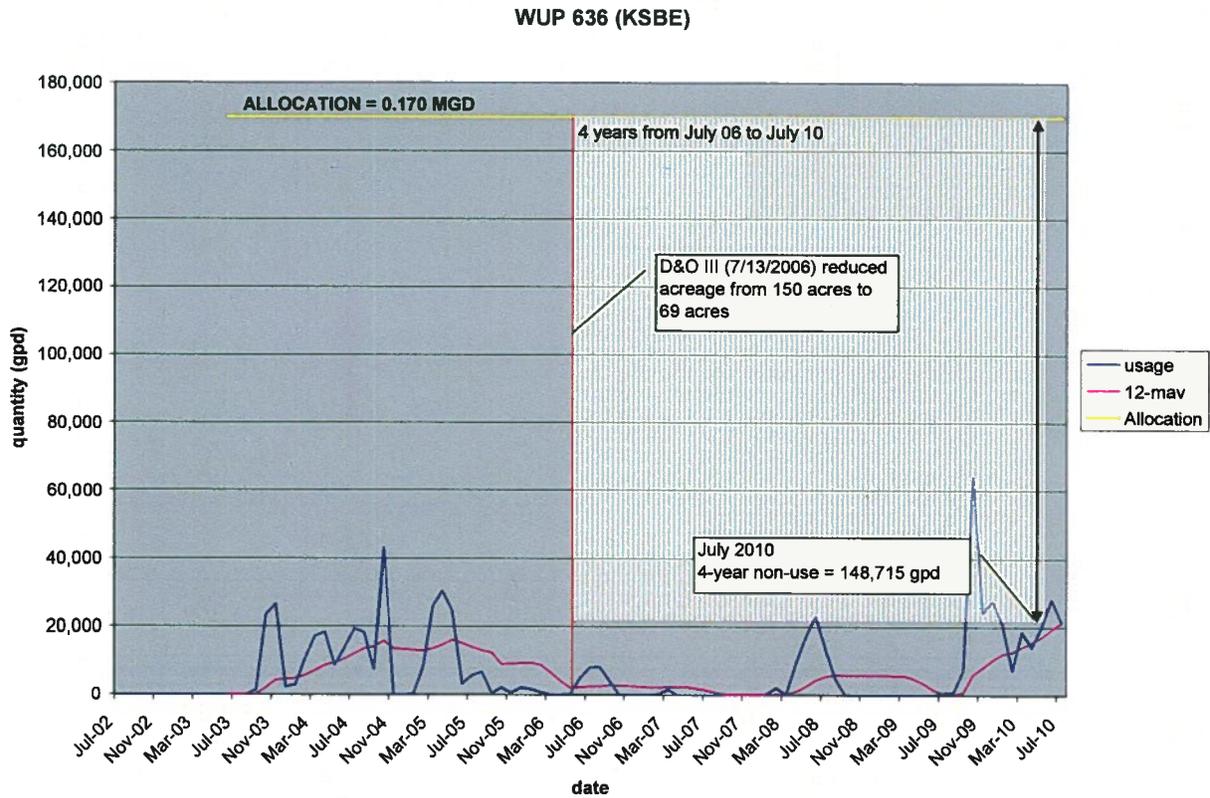


This permit is for irrigation of the memorial park. The 4-year non-use of 0.030 mgd is approximately 21% of the total allocation of 0.140 mgd.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 24, 2009, stating that future expansion of the memorial park will require allocated water not currently being used.

A field investigation was conducted for the 20-year review by a consultant to the Commission on January 14, 2008, and found no evidence of wasting of water.

GWUP No. 636 Bishop Estate (0.170 mgd)

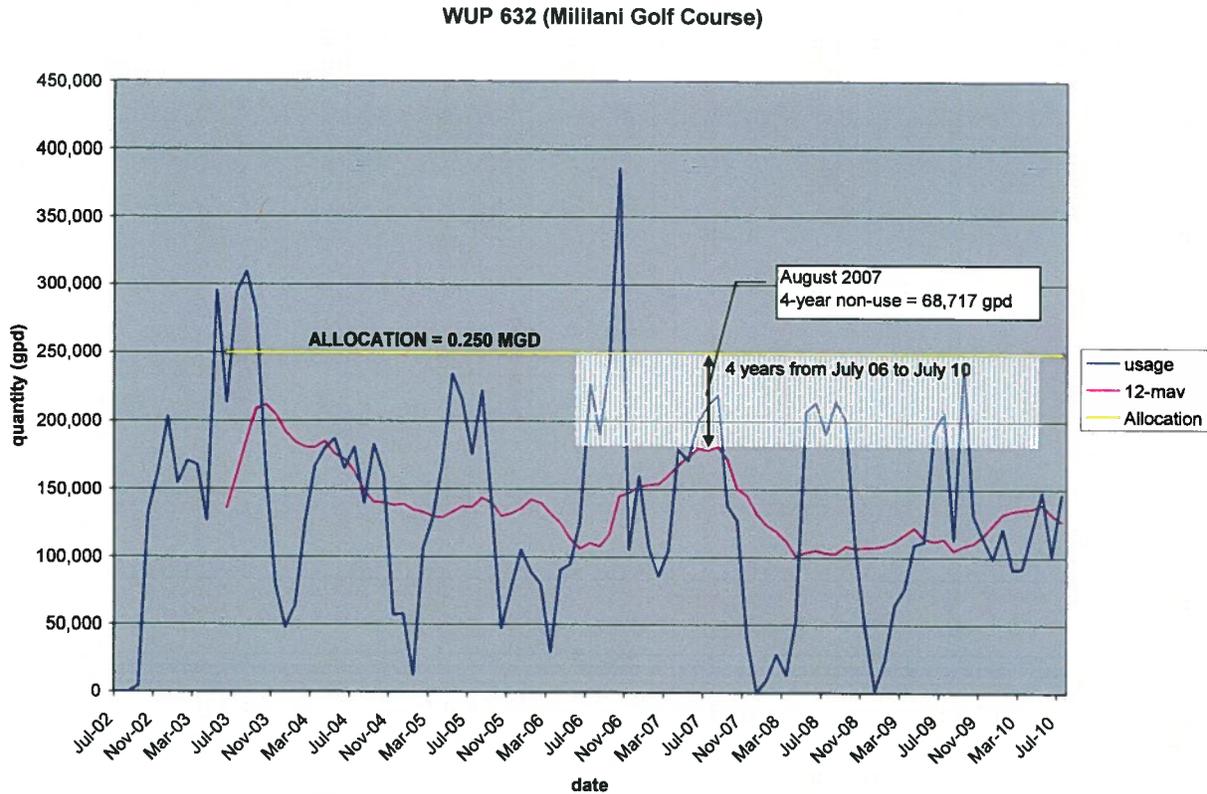


This permit is for agricultural use. The 4-year non-use of 0.149 mgd is approximately 88% of the total allocation of 0.170 mgd.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 24, 2009, stating that they are reassessing their needs for agricultural lands. To date, no further follow-up formal response has been received by staff.

A field investigation was not conducted for this permit.

GWUP No. 632 Millilani Golf Course (0.250 mgd)



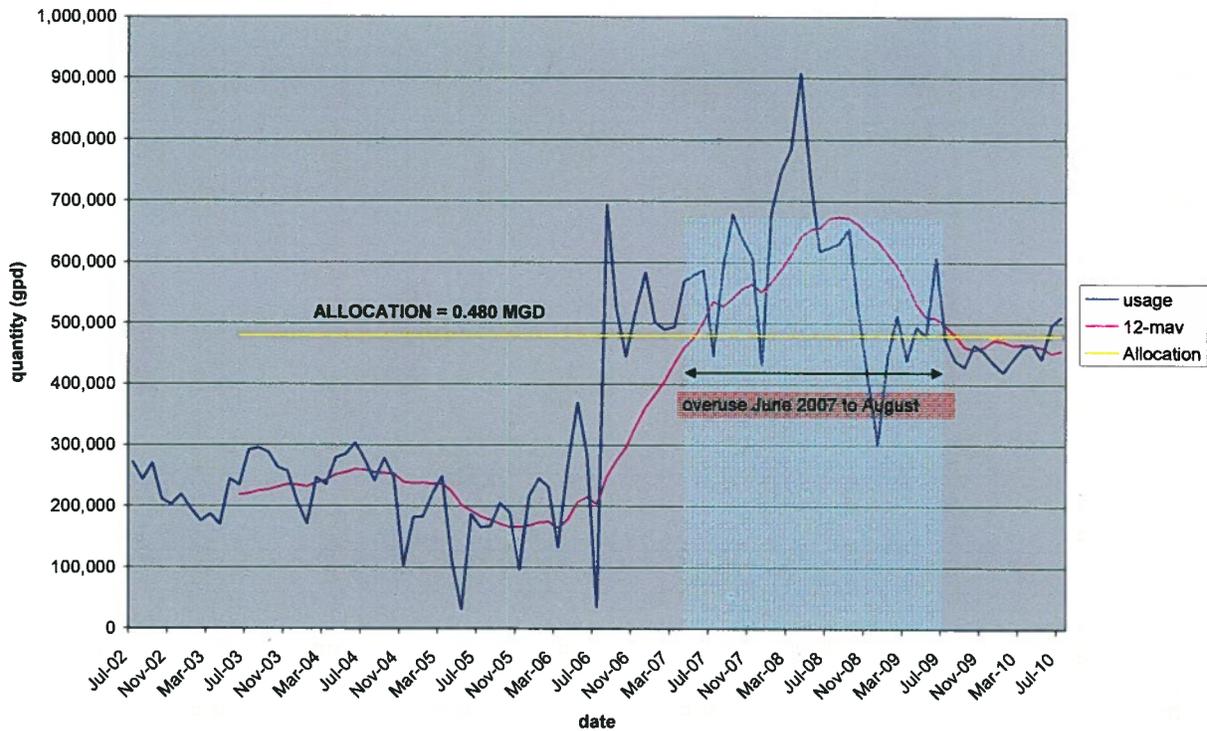
This permit is for irrigation of the golf course. The 4-year non-use of 0.069 mgd is approximately 28% of the total allocation of 0.250 mgd.

The former manager responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 14, 2009, stating that they would not voluntarily relinquish any of their allocation, but offered no reasons why revocation should not occur. A subsequent letter by the new manager on April 1, 2010 indicated that a state of disrepair accounted for the lack of use.

A field investigation was conducted for the 20-year review by a consultant to the Commission on January 16, 2008. This field investigation found two major sources of waste. First was a leak at the base of the irrigation pump. Second was the deteriorated state of the reservoir lining. Given this, the 4-year non-use reported is a minimum amount that could be greater if these sources of waste were fixed.

GWUP No. 634 Nihonkai (0.480 mgd)

634 (Nihonkai)



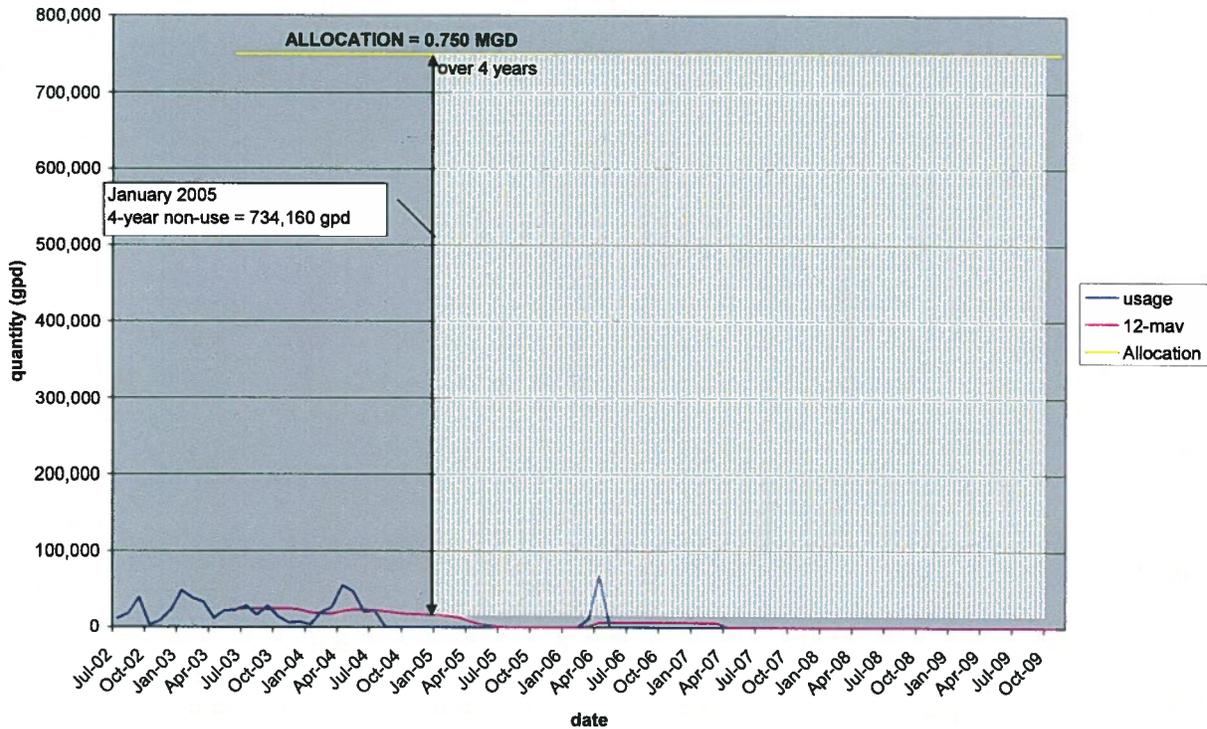
This permit is for agriculture. The tenant on the property is Halm’s Enterprises. Halm’s had significantly increased their usage to the point that they were using more than they were allowed through their allocation. On August 4, 2009, staff sent a letter to Nihonkai, care of Fogerty Realty, to address this overuse. Halm’s Enterprises, as tenant, responded to this letter on August 19, 2009, indicating that they would apply for more water from the Waiahole Ditch System. However, shortly thereafter, the use decreased and they are now back in compliance with their allocated use.

Therefore, there is no continuous 4-year non-use period. Further, current use is very close to the allocation.

A field investigation was conducted for the 20-year review by a consultant to the Commission on January 25, 2008, and found no evidence of wasting of water.

GWUP No. 775 Puu Makakilo (0.750 mgd)

WUP 775 (Puu Makakilo)



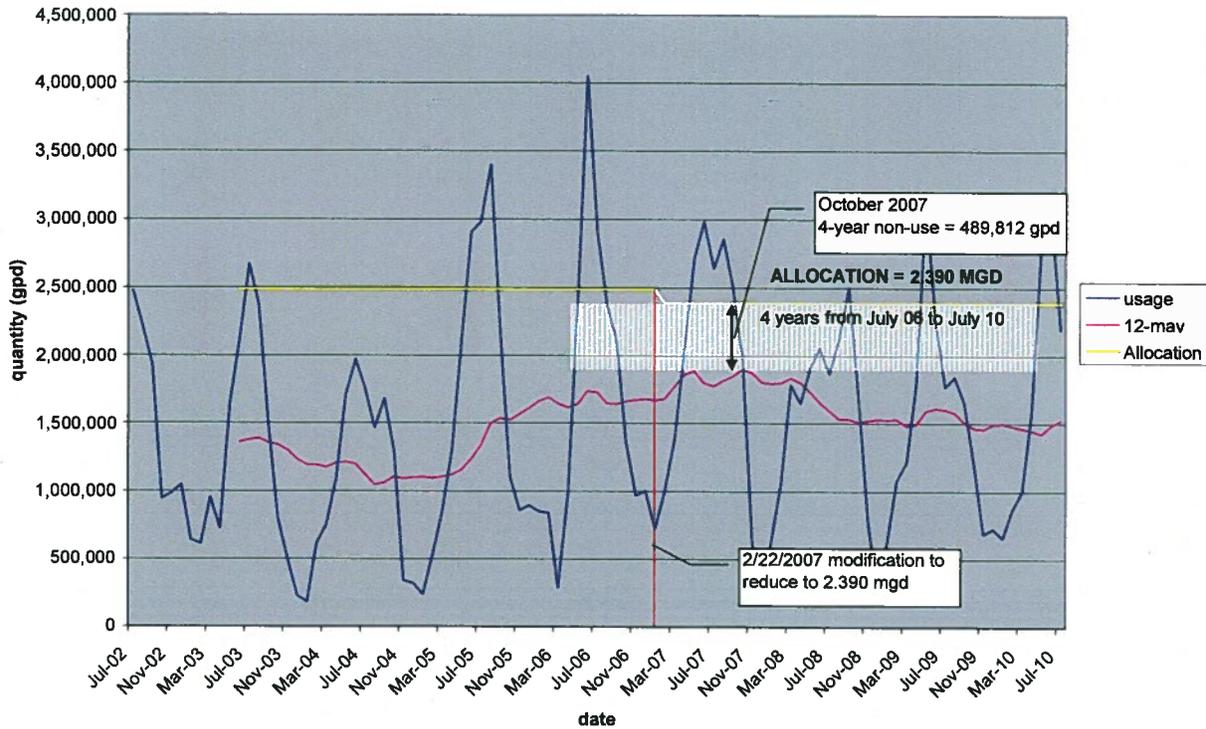
This permit is for golf course irrigation. To date, the golf course has not been constructed and no water has been used for golf course irrigation. However, the permittee, Grace Pacific, has used some water for dust control on the parcel. In general though, water has not been used since June of 2006 amounting to 100% of their 0.750 mgd allocation.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 26, 2009, stating that the allocation is part of the Decision and Order III that is currently in the Intermediate Court of Appeals (ICA), and that they do not wish to invest money to complete the golf course without knowing whether water is available through the pending decision of the ICA.

On October 13, 2010, the ICA remanded that the Commission vacate PMI’s allocation, and that the Commission shall consider whether changed circumstances have affected PMI’s need for water.

GWUP No. 804 Robinson Estate (2.390 mgd)

WUP 804 (Robinson)

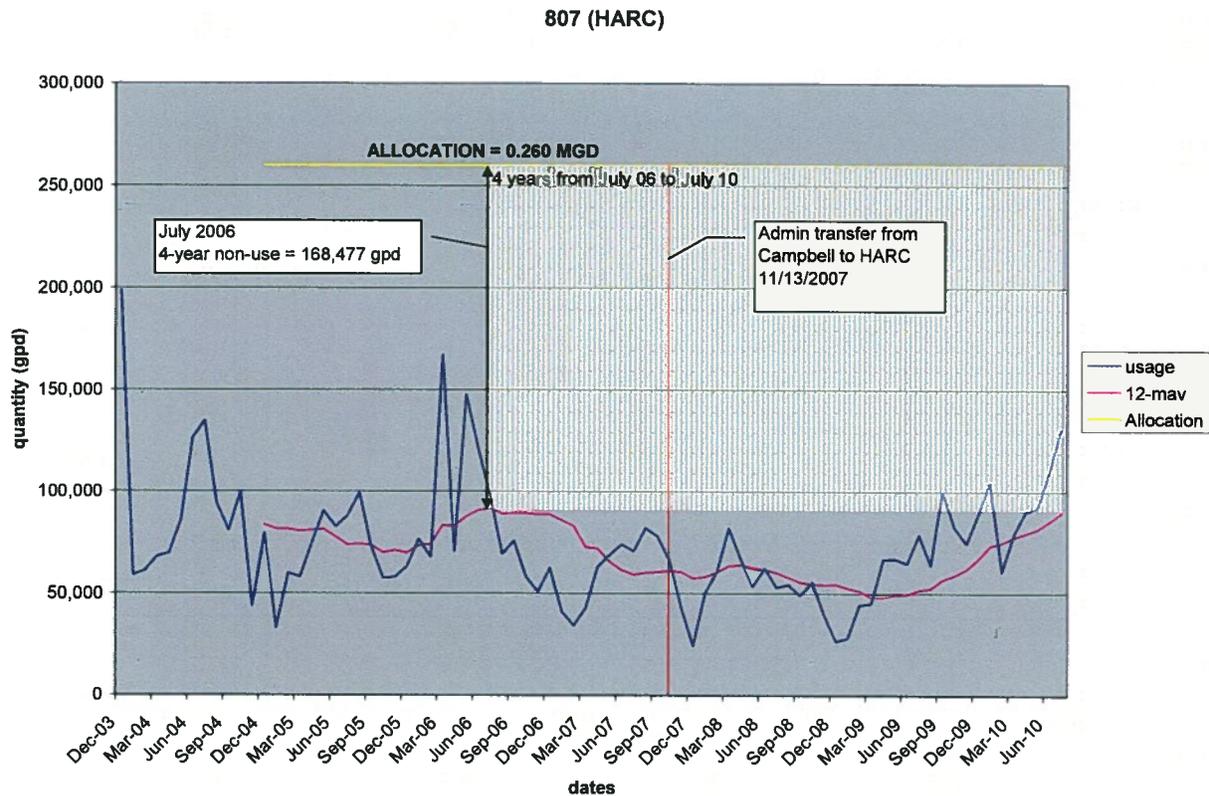


This permit is for diversified agriculture. The 4-year non-use of 0.490 mgd is approximately 20% of the total allocation of 2.390 mgd.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 28, 2009, stating that reduction of their allocation would restrict the expansion of farming operations.

No field investigation was conducted for this permit.

GWUP No. 807 HARC (0.260 mgd)



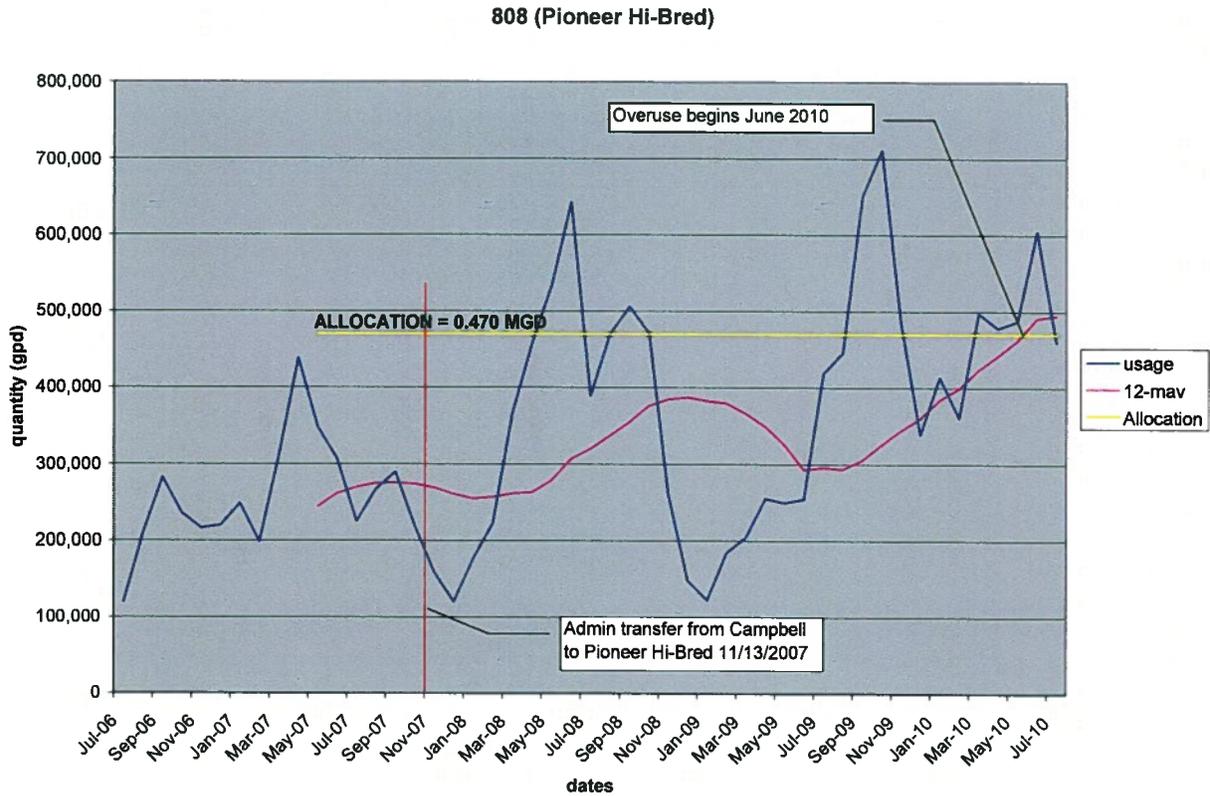
This permit is for agricultural research. The 4-year non-use of 0.168 mgd is approximately 65% of the total allocation of 0.260 mgd.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 19, 2009, stating that there are future plans that will require the use of water not currently being used.

HARC had previously leased the property from Campbell Estate and had established a use prior to the ownership of the land and transfer of the water use permit.

A field investigation was conducted for the 20-year review by a consultant to the Commission on January 25, 2008, and found no evidence of wasting of water.

GWUP No. 808 Pioneer Hi-Bred (0.470 mgd)



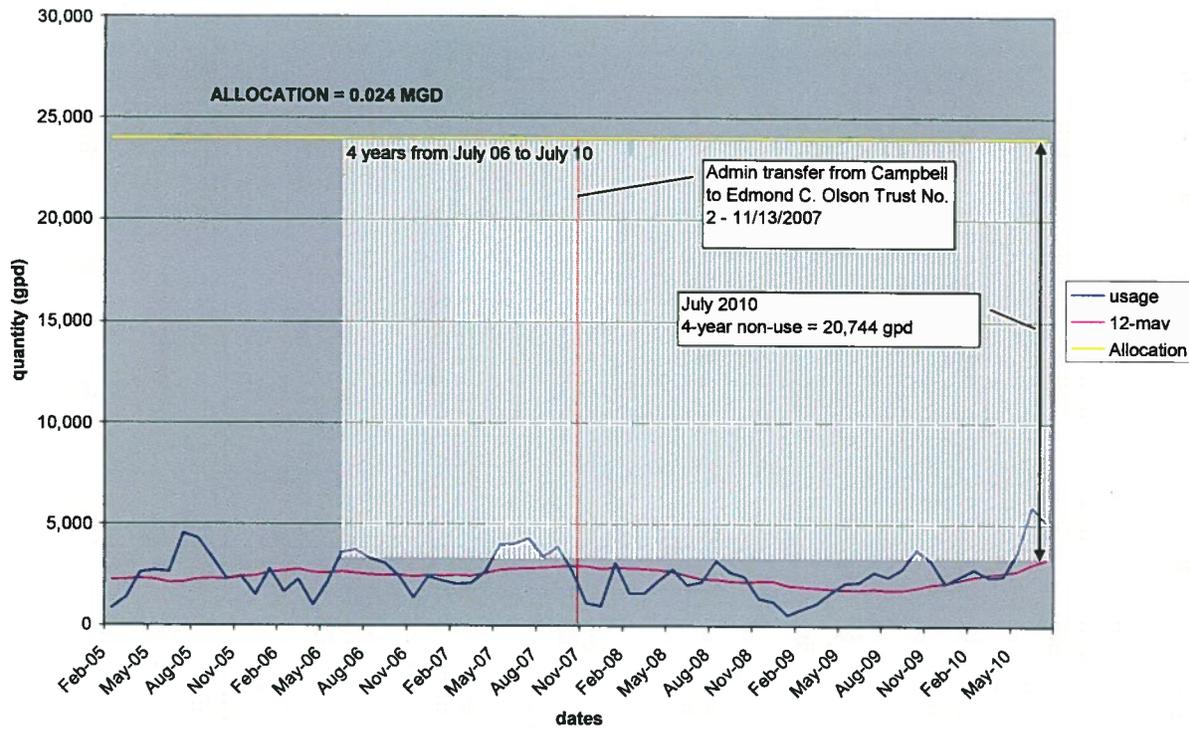
This permit is for agriculture. On a 12-month moving average, the use has exceeded the allocation starting in June 2010. Therefore, there is no 4-year non-use for this permittee.

Staff will be sending a letter to Pioneer to address the overuse.

A field investigation was conducted for the 20-year review by a consultant to the Commission on July 23, 2008, and found no evidence of wasting of water.

GWUP No. 827 Edmund Olson Trust (0.024 mgd)

827 (Edmond Olson)



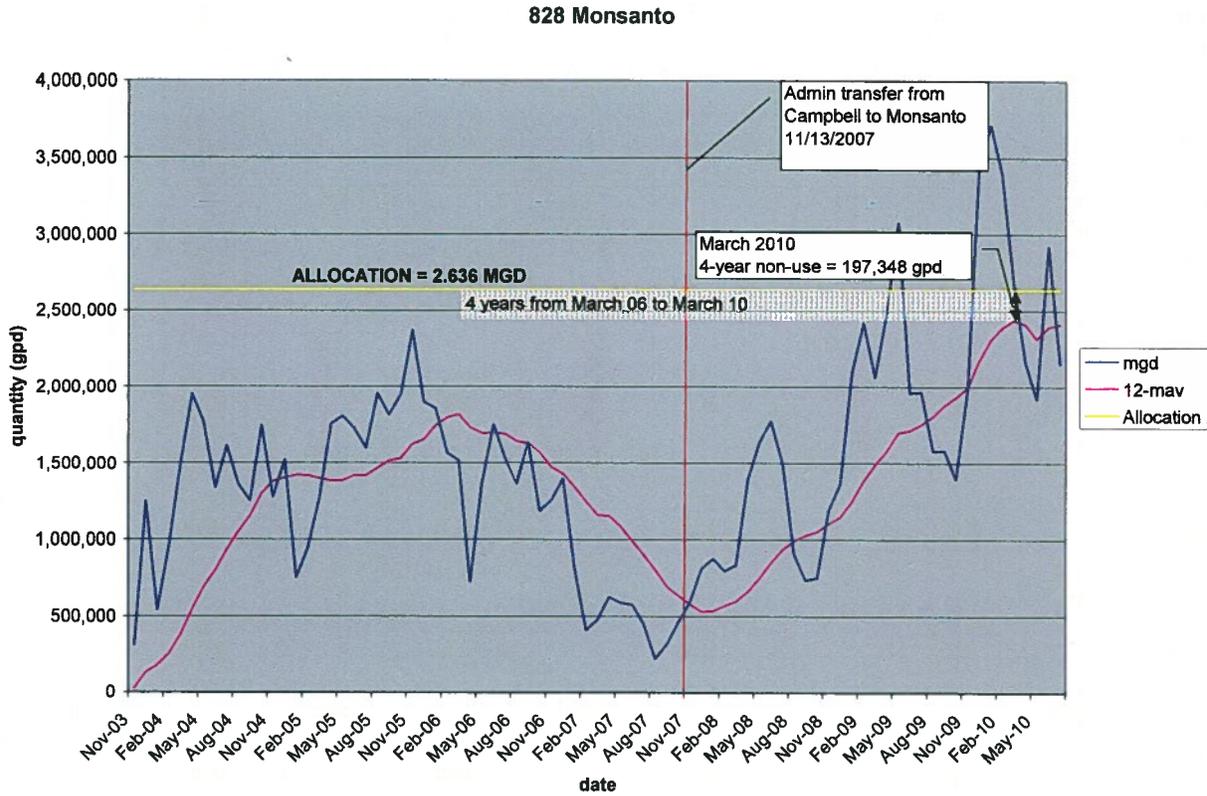
This permit is for diversified agriculture. The 4-year non-use of 0.021 mgd is approximately 88% of the total allocation of 0.024 mgd.

Prior to the transfer of the permit from Campbell Estate to Edmond Olson Trust, the land was being leased and used for agriculture by Del Monte.

The permittee has not responded to the Commission’s August 3, 2009 letter requesting voluntary revocation or the need for unused water.

No field investigation was conducted for this permit.

GWUP No. 828 Monsanto (2.636 mgd)



This permit is for diversified agriculture. The 4-year non-use of 0.197 mgd is approximately 7% of the total allocation of 2.636 mgd. Some of the water used over the past 4 years under this permit has been by Syngenta through lands leased by Monsanto.

Prior to the transfer of the permit from Campbell Estate to Monsanto, the land was being leased and used for agriculture by Del Monte.

The permittee has responded to the Commission’s August 3, 2009 letter requesting voluntary revocation on August 12, 2009, stating that there are future plans that will require the use of water not currently being used.

No field investigation was conducted for this permit.

GWUP No. 851 Agribusiness Development Corporation (ADC) (2.030 mgd)

This ground water use permit is for system losses. Therefore, this GWUP does not have a component of "non-use". However, ADC should update the Commission on the status of projects to reduce system losses but are not subject to 4-year non-use.

GWUP No. 860 Syngenta (0.590 mgd)

This permit is for irrigation and agriculture. The permit was transferred from Campbell Estate and issued to Syngenta on September 8, 2008, and has not since been used by Syngenta. It should be noted that current Syngenta operations on Monsanto lands under GWUP 828 are only for a fixed period of time, and may be suspended in the next few years.

Use on the parcels currently owned by Syngenta, prior to Syngenta's purchase, is not known at this time. Therefore no graph is provided to show this use.

However, Syngenta has applied for a new allocation to accommodate the needs described in the current permit, plus additional needs. The application is currently in the review stage and will be presented to the Commission for action at a future date. It would make more sense to address Syngenta's non-use, during the upcoming presentation on Syngenta's new application to the Commission.

GWUP No. 871 Fat Law's Farms, et. al. (0.551 mgd)

This permit was recently issued and will therefore not have any continuous 4-year non-use.

PROPOSED WAIAHOLE REVOCATION SCHEDULE:

Based on Decision and Order I's special condition of 5-year review and CWRM's directive during Fat Law Farms' GWUPA, staff is proposing the following revocation schedule, with Phases 1 and 2 already completed:

Table 2: Process for Waiahole Ditch revocation

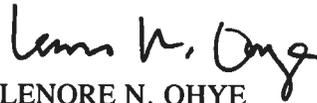
Phase	Date	Days	Deadline	Action
1	4/3/09	NA	NA	Information collection and compilation <ul style="list-style-type: none"> • Review: <ol style="list-style-type: none"> 1. Decision and Order requirement for 5-year review 2. Water use reporting 3. Water use permit and transfer information 4. 20-year permit compliance review 5. Fat Law's Farms Public Hearings (7/7/09) • Convert billing into monthly water usage • Calculate 4-year non-use
2	8/3/09	25	8/28/09	Initial contact with permittees <ul style="list-style-type: none"> • Letters sent out via certified mail, requesting voluntary relinquishment or explanation of why unused allocation is needed
3	11/5/10	30	12/5/10	Review and respond to permittee response letters to address specific information provided by each permittee <ul style="list-style-type: none"> • Request further information / timelines as needed • Set up a time to conduct field investigations not done adequately in 20-year review
4	11/17/10			Submittal on implementation plan to Commission for action <ul style="list-style-type: none"> • Provide background information to date • Delegate authority to appoint hearings officer for Public Hearings, required under HRS 174C-58
5	11/10/10	21	12/1/10	Conduct field investigations
6	12/1/10	30	12/31/10	Notification to permittees and publishing of public notice for hearings <ul style="list-style-type: none"> • Publish Date: 12/3
7	12/15/10			Brief Commission with any updated information
8	1/1/11	59	2/28/11	Conduct required Public Hearings on revocations (HRS 174C-58) <ul style="list-style-type: none"> • By the close of public hearings, requests for Contested Case Hearings will need to be made, if so desired • Deadline for follow-up written requests is 10-days after close of Public Hearing • Staff to review standing of CCH petitioner
9	3/11			Submittal to Commission for action For each permittee: <ul style="list-style-type: none"> • Recommendations to the Commission for revocation • Findings on standing of petitioner, if CCHs are requested

RECOMMENDATION:

Staff recommends that the Commission:

- 1) Approve the proposed revocation schedule in Table 2 above; and
- 2) Delegate authority to the Chairperson to appoint hearings officer(s) for the public hearings per Phase 4 of Table 2.

Respectfully submitted,



LENORE N. OHYE
Acting Deputy Director

Exhibit(s): 1 (Chart of approved permits)
 2 (Response letters)

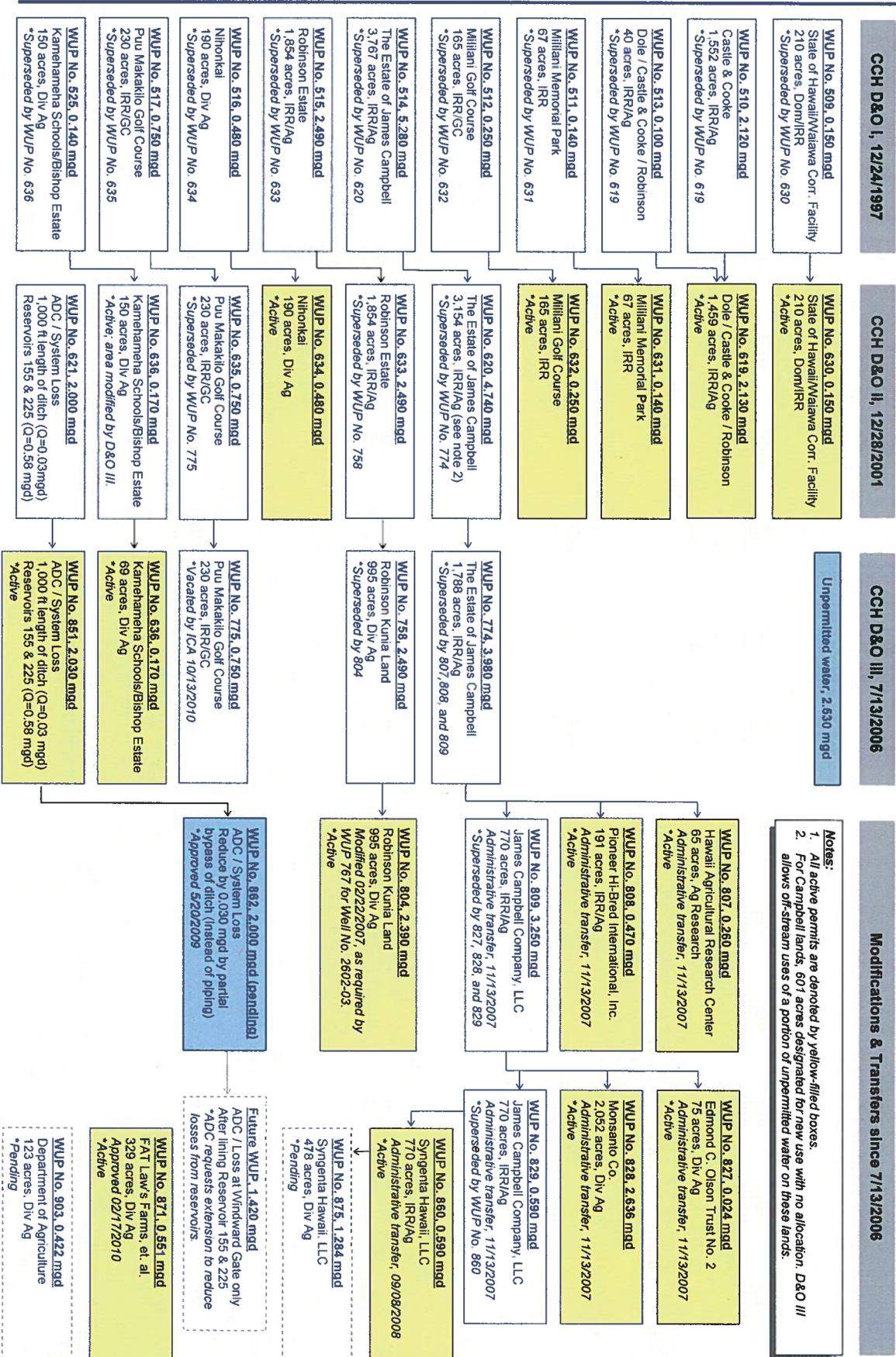
APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson

Waiahole Ditch System, Water Use Permits Issued

Total quantity permitted, 12,271 mgd (D&O III and later modifications)
Tunnel Well Nos. 2657-05, 2853-01, 2953-01, 2953-02, 2953-03, 3053-01, 3154-01





100 Kahalu Avenue
Mililani, Hawai'i 96789-3997
P.O. Box 898900
Mililani, Hawai'i 96789-8900
(808) 548-4811 • Fax (808) 548-6670

August 28, 2009

Laura Thielen
Chairperson
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 AUG 31 AM 10:12

Re: 4-Year Non-Use for Water Use Permit 619

Dear Ms. Thielen:

This responds to your letter of August 3, 2009 regarding the alleged partial 4-year non-use for Water Use Permit 619 ("Permit 619"). For the reasons stated below, Castle & Cooke respectfully asserts that relinquishing water use under the permit would be unfair to our farming tenants who have exercised good conservation practices and invested in efficient water distribution infrastructure, imprudent farming practice and contrary to public policy supporting diversified agriculture in Hawaii. Accordingly, we request that the Commission on Water Resource Management ("Commission") not suspend or revoke Permit 619 in whole or in part.

Lessees of the lands served by Water Use Permit 619 have instituted prudent stewardship and conservation practices in their farming operations. These stewardship and conservation practices contribute to the alleged non-use described in your letter. Reservation of the conserved water use is a prudent farming practice. In times of drought or other unexpected circumstances, having the conserved water available to these farming operations is essential to their continued long-term viability which could be jeopardized by termination of water allocation. Pursuant to HRS 174C-58, the Commission may not suspend or revoke a permit for partial or total nonuse if the reason for that nonuse is conservation. The Commission may not therefore suspend or revoke Permit 619.

The Constitution of the State of Hawai'i mandates that the "State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands." Hawai'i Const. Art. XI § 3. Reducing the allocation of water under Permit 619 would be in direct conflict with the constitutional mandate that diversified agriculture be promoted and that agricultural lands be protected.

Any termination of water allowed under Water Use Permit 619 would also be in conflict with State policy supporting various agricultural endeavors, including the promotion of renewable

2649594.1
8/28/09

Laura Thielen
August 28, 2009
Page 2

energy in the form of biofuel crops. Castle & Cooke has been in discussions with several biofuel and biomass farming companies for use of Castle & Cooke's agricultural lands. Termination of water allocation could preclude or negatively impact this potential. The State's policies and mandates for reducing dependence on fossil fuels, and recognizing "land for energy crops that can be refined into biofuels" is stated in the both the Memorandum of Understanding between the State of Hawaii and the U.S. Department of Energy dated January 31, 2008 and the Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies dated October 20, 2008 ("HCEI Agreement"). The HCEI Agreement specifically requires, "The State, via its State Biofuels Master Plan, [to] identify and implement financial incentives and land use and employment policies to encourage the development of a local biocrop and biofuel production industry." Continued availability of water under Permit 619 is consistent with the development of any biofuel production. Pursuant to Act 253, Session Laws of Hawai'i 2007, "The primary objective of the bioenergy master plan shall (be to) develop a Hawaii renewable biofuels program to manage the State's transition to energy self-sufficiency based in part on biofuels for power generation and transportation." The bioenergy master plan project approach specifically identifies water resources as an issue to be addressed in the master plan. See <http://www.hnei.hawaii.edu/bmpp/approach.asp>. The ability to realize State's interest in potential biofuel crops on large tracts of agricultural lands, such as those served by Permit 619 would be jeopardized by any termination of allotted water.

In addition to the availability of water for biofuel crops, it is State policy to promote diversified agriculture projects and to support the future expansion of viable crops to replace sugar cane and pineapple. Any termination of water allowed by Permit 619 would be in also be direct conflict with these important State's policies and would negatively impact Hawaii's sustainability and food self-sufficiency.

Castle & Cooke has sought to keep its agricultural lands in cultivation, notwithstanding the difficulties facing viable agricultural operations in Hawaii, such as labor, transportation, fuel costs and availability of water. The termination of even a portion of the water under Permit 619 would significantly jeopardize Castle & Cooke's efforts to continue active agricultural cultivation.

Pursuant to State Legislature Act 183 (2005 session) and Act 233 (2008), the legislature has established standards, criteria and mechanisms to identify Important Agricultural Lands ("IAL"), as well as incentives for landowners to voluntarily map and designate IAL. Castle & Cooke is in the process of analyzing and mapping its agricultural lands for voluntary designation as IAL. Loss of water allocation could negatively impact and interfere with this process, and prospects for expansion of future crop production on important agricultural lands, such as those served by Permit 619.

Laura Thielen
August 28, 2009
Page 3

Castle & Cooke has not had adequate time to evaluate the graph attached to your letter regarding the alleged 4-year non-use of 683,971 gpd, and therefore reserves the right to do so at a later time. Castle & Cooke also objects to your letter insofar as it incorrectly quotes from standard permit #15 in the Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated July 13, 2006. Should this matter proceed to a hearing, Castle & Cooke also reserves the right to present other information or defenses at that time.

In conclusion, we request that the Commission not terminate or suspend Permit 619 in whole or in part. We also request that the Commission enter into a written agreement with Castle & Cooke, as allowed by HRS 174C-58(4) that the alleged non-use for Water Use Permit 619 is for reasons satisfactory to the Commission and should not apply towards the four-year revocation period.

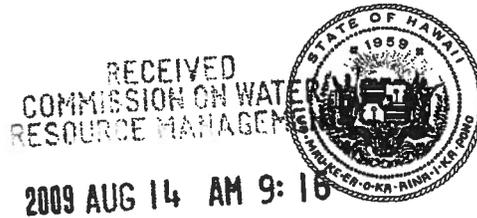
Sincerely,



Richard K. Mirikitani
Sr. Corporate Counsel

cc: Ryan Imata
Lisa A. Bail, Esq.
Harry A. Saunders
Beverly J. Kaku

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

August 12, 2009

The Honorable Laura Thielen
Department of Land and Natural Resources
Commission On Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Dear Chairperson Thielen:

This is in response to your letter dated, August 3, 2009, regarding the four-year non use for Water Use Permit 630 for the Waiawa Correctional Facility (WCF). In the last quarter (April to June of 2009) WCF, was billed for 5,255,600 gallons (gal) of water use which was broken down as follows (See attached copy of the Quarterly Invoice):

03/29/09 to 04/26/09	04/27/09 to 5/31/09	06/01/09 to 06/30/09
1,674,900 gal	1,961,400 gal	1,619,300 gal

It should be noted that WCF has not been at full inmate capacity (330 inmates) for the past 18 months. However, WCF anticipates being at full capacity by the end of September 2009. Thus, there will be an increase of water usage per day in the near future based on population increase.

As such, WCF humbly requests that the Water Use Permit 630 be maintained at no less than 0.90 Million gallons per day to ensure that it is able to sustain its population, agricultural land area and overall operational needs of the Facility.

Should you have any questions or need further information on this matter, please contact Acting Warden Jodie Maesaka-Hirata at 677-6129.

Sincerely,

CLAYTON A. FRANK
Director

Attachment: Quarterly Invoice

2009 AUG 25 AM 9: 11

**MILILANI GROUP, INC.
38 SOUTH KUKUI STREET
HONOLULU, HAWAII 96813
(808) 524-5211 / (808) 533-7389 FAX**

**REX S. KUWASAKI
PRESIDENT**

August 24, 2009

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

Dear Ms. Laura H. Thielen,

We have been advised that upon a recent 20 year permit review under the State Water Code and the Waiahole Contested Hearing Decision and Order, it has been noted that Mililani Group, Inc., doing business as Mililani Memorial Park has not used a portion of the allocation of water for the past four years.

We are herewith requesting that the unused portion of the water allocation not be suspended or revoked for the following reasons:

1. Currently our Park consists of 65 acres of developed lands. We last completed the development of approximately 10 acres of land in 2001, we are now running out of inventory of developed cemetery plots and are completing engineering plans for 17 more acres of adjoining lands to our present cemetery. It is expected that our water usage will definitely increase with the additional development and the unused allocation will be needed.
2. As part of the 17 acres, we are planning to construct a mortuary facility which will accommodate 350 people for services held at this facility. This will increase the need of water usage.
3. Mililani Memorial Park is the only cemetery of substance located on the Leeward side of the island. There are no Leeward cemetery development being planned. The demographics of the Leeward side will show that all of the major residential development has been on the Leeward side and more development of housing is being planned. The need for cemetery usage will definitely increase. The revoking or suspending our unused allocation will definitely hamper our ability to fulfill a definite need of the community.

WUP NO. 631

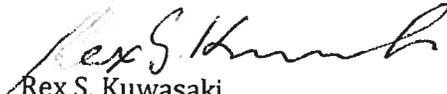
Ms. Laura H. Thielen
August 24, 2009
Page 2

4. Our staff has exercised diligent conservation practices. We have lessened the number of days and hours in watering the grounds of the park, we have cut off usage on rainy days, we have on grounds staff to repair leaks in the pipes, and we use bottled water for our employees and guests for drinking purposes.

For the above reasons we strongly urge that our water allocation permit not be reduced in any way.

Please contact this undersigned at 524-5211 on any question pertaining to the statement of our position.

Very truly yours,


Rex S. Kuwasaki
President

RSK:anh

WUP NO. 631



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

April 1, 2010

Dear Ms. Laura Thielen,

Regarding 4-year non-use for Water Use Permit 632

Please note that there was a change of ownership and seemingly we were not privy to some of the past correspondence. We did follow up with an official letter in December 2009 and more recently phone calls, both were met with no response. Per Ryan Imata's request (4/1/2010) I have prepared the following:

Please accept the following as our official response to your letter dated August 3, 2009.

1. We will not voluntarily reduce our water usage quota.
2. The reasons that don't allow for a reduced water quota are as follows:
 - a. Upon taking over the course it was noted that 35 – 40% of the irrigation wasn't working, thus our usage would be 35 – 40% lower than normal. The new ownership has made a commitment to improving the course conditions and subsequently most of the irrigation has been repaired and usage should return to normal shortly.
 - b. It has been noted by staff that over the past few years there has been problems with the meters either broken or clogged with sticks or debris causing lower than normal readings. This is evident in that the upper meter has been broken for the last 3 months and thus not reporting accurate usage. It has just recently been repaired according to my conversation with Joan 4/1/2010 per our request.
 - c. Under previous ownership the course conditions had deteriorated to the point where they had to implement extreme cost cutting measures including reducing the amount of irrigation used, this will not be the case under the new ownership.
 - d. Under the new ownership we have a commitment to restoring Mililani Golf Club to its former glory. We have plans for installing a new more energy efficient irrigation system in the near future along with added landscaping and improved conditions will require more irrigation thus a reduction in our irrigation quota is not acceptable in our view

95-176 Kuahelani Avenue Mililani Hawaii 96789 Phone (808)623-2222 Fax (808)623-9441

WUP NO 632

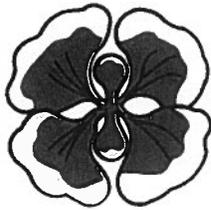


Mililani
GOLF CLUB

Hopefully this more than justifies our position in maintaining our existing water quota. Should you require any further evidence or like to discuss further please don't hesitate to contact me directly.

Respectfully,

Darryl Lambert
Director of Grounds & Golf



Mililani Golf Club

RECEIVED

95-176 Kuahelani Avenue • Mililani Town • Hawaii 96789 • Telephone 681-2222 • FAX 623-9441
 8/17/09 18:39

August 14, 2009

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

Ms. Laura H. Thielen
 Chairperson
 Department Of Land And Natural Resources
 P.O. Box 621
 Honolulu, Hawaii 96809

Dear Ms. Thielen:

Re: 4-Year Non-Use for Water Use Permit 632

This is to acknowledge receipt of your correspondence dated August 3, 2009 regarding non-use for Water Use Permit 632.

Please be advised that the Mililani Golf Club is not willing to voluntarily relinquish any of our 4-year unused water amount.

In order to appeal our case before the Commission On Water Resource Management, we would appreciate your providing us the following information:

- A. Define the 4 continuous years (month/year) used for the calculation.
- B. Furnish copies of each month's water usage.
- C. Disclose the formula or methodology used for the calculation.
- D. Provide date(s) that the water meter was inoperable or malfunctioning.
- E. Any and all information used to determine that 0.069 Mgd was unused for 4 continuous years.

Thank you for your kind attention and response.

Sincerely,

Brian T. Tamamoto
 General Manager

Halms Enterprises, Inc.
966 Robello Lane
Honolulu, Hawaii 96817
(808) 832-9500

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 AUG 20 AM 9:24

August 19, 2009

Mr. Ryan Imata
State of Hawaii DLNR
Commission on Water Resource Management
PO Box 621
Honolulu, Hawaii 96809

Re: Water Use Permit no. 634

Dear Mr. Imata,

Thank you for your letter regarding the water use for the property we are leasing from Nihonkai in Kunia. We were not aware of the overuse of water for the property, however I would like to explain some of the factors involved and some possible solutions.

Initially, when we began leasing the property from Nihonkai, the crops grown were cucumbers, tomatoes, green beans and other various vegetables. We were using a small portion of the allotted land at that time. Over the years, we have added different varieties of vegetables, including Taro and Ti Leaves, which require more water than other varieties and we have also increased the amount of land used. These factors, I believe, has been the result of our increased water usage.

I would like to add that at no time were we aware of any violations and I would like to apologize for any excess usage on our part. Presently, I am in the process of gathering information as to what we need to properly supply our farm with the needed water. We will be applying for an increased allotment of water from the Waiahole Ditch, however I am unsure of the time frame involved. I am hoping to give you a more informed and definite answer in the near future.

Should you have any questions or need additional information, please contact me at the number above, extension 230.

Sincerely,



Kathi Meechan
Vice President

cc: Fogarty Realty, Ms. Jeannie Fogarty

WUP NO. 634



KAMEHAMEHA SCHOOLS

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2009 AUG 27 PM 12: 58

Ms. Laura H. Thielen
Chairperson, Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

August 24, 2009

RE: 4-yr non-use for Water Use Permit 636

Aloha Ms. Thielen:

Mahalo for your letter of August 3, 2009 and a chance to speak to our allocation of water from WUP No. 636. For many years Kamehameha Schools (KS) lands at Waiawa have been subject to a master lease and development agreement (MDA) with Gentry Investment Properties (Gentry). Gentry had in turn sub-leased a portion of those lands to other entities, which includes the nursery operation that uses the majority of the Waiahole Ditch water that is used on KS lands. As we were not directly involved with the user, we do not know the particulars of its use and why it has been using so little.

A termination of the MDA was just recorded this week, and Gentry and KS are in the process of transitioning the management of our lands at Waiawa. We are in a due diligence stage and will be assessing uses for those lands and resource needs. While we are only starting this process, we are fairly certain that a significant portion of those lands will be used for agricultural activities. As an institution dedicated to agriculture in many regions statewide, we know that water will likely be the limiting factor to any such genuine ag uses. As such, we respectfully request that you do not revoke our modest agricultural allocation of 170,000 gallons per day so that we are able to develop agricultural activities that align with both KS and State goals for sustainability. In the very least, please allow us the time to assess these lands that are only now coming back to Kamehameha Schools for active management.

If you have any questions or concerns please e-mail me at kaduarte@ksbe.edu.

Sincerely,

Ka'eo Duarte
Water Resources Manager
Land Assets Division

O'CONNOR PLAYDON & GUBEN LLP

Dennis E. W. O'Connor
George W. Playdon, Jr.*
Jerrold K. Guben
Gilbert D. Butson*
W. Thomas Fagan
Michael J. McGulgan
James A. Kawachika*
Cid H. Inouye
Kelvin H. Kaneshiro
Jeffrey W. Jullano, LL.M.
Dennis E. W. O'Connor Jr.
S. Kalani Bush

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ATTORNEYS AT LAW *Since 1876*

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Honolulu, Hawaii 96813-4070

Telephone: (808) 524-8350 • Fax: (808) 531-8628
email: gdb@opglaw.com

August 26, 2009

Charles S. O'Neill, Jr., LL.M.
Elmira K.L. Tsang
Charles R. Prather
R. Aaron Creps
Jeffery S. Flores
Kristi Makaki

2009 AUG 26 AM 10:32
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COMMISSION ON WATER
RESOURCE MANAGEMENT
COUNSEL
Dennis E. W. O'Connor Jr.

*A Law Corporation

HAND DELIVER

Ms. Laura H. Thielen, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

RE: Water Use Permit 775

Dear Chairperson Thielen:

We are the attorneys for Puu Makakilo, Inc. ("PMI"), a party in CCH-0A-95-1. We have been asked by PMI to respond to your August 3, 2009 letter to Mr. Robert Creps of Grace Pacific Corporation regarding possible revocation of Water Use Permit 775 ("WUP 775") for non-use in accordance with Hawaii Revised Statutes Section 174C-58(4).

By letter dated August 8, 2006 from Dean A. Nakano, Acting Deputy Director of the Commission on Water Resource Management (copy enclosed), PMI was notified that no water use permit document would be issued, and that the Water Commission's Decision and Order dated July 13, 2006 (the "D&O") would serve as the official document allocating 0.75 mgd to PMI.

As you know, the D&O is currently on appeal to the Intermediate Court of Appeals since August 11, 2006, and has yet to be set for oral argument. As a result, PMI is reluctant to make any further improvements to its property until such time as it is assured that WUP 775 can no longer be vacated by an appellate court, and the D&O is affirmed on appeal. Thus, its need for water is minimal at this time.

For this reason, PMI takes issue with your August 3, 2009 letter. Allocated but unused water remains in Windward streams, and no harm has been caused by PMI's non-use of its allocation pending a final non-appealable decision in this contested case hearing which has been pending since 1995. It

WUP NO. 775

Ms. Laura H. Thielen, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
August 26, 2009
Page 2

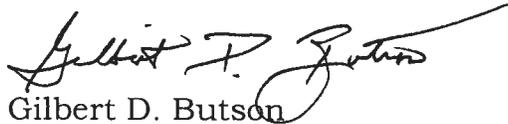
would be illogical for PMI to invest millions of dollars to complete a project without first knowing whether or not it has a non-appealable allocation of water to irrigate its property for the proposed use. Furthermore, HRS § 174C-58(4) has been interpreted by the Hawaii Supreme Court as being permissive, rather than mandatory, based on partial or total non-use. *In re Wai'ola O Molokai, Inc.*, 103 Haw. 401 (2004). PMI believes that both the spirit as well as the letter of this section of the Water Code prohibits revocation (after a hearing) under the circumstances described above, as such a hearing is discretionary and would be inappropriate and premature in our opinion.

Likewise, at this time, PMI does not intend to voluntarily relinquish its allocation per WUP 775.

If you have any questions or concerns regarding this letter, please direct them to the undersigned.

Very truly yours,

O'CONNOR PLAYDON & GUBEN LLP



Gilbert D. Butson

GDB:as
Enclosure

cc: Mr. Robert Creps w/o encl. (via e-mail & U. S. Mail)

RUSH MOORE LLP

A Limited Liability Law Partnership

Attorneys at Law

Offices in Honolulu and Kona

Honolulu Office: 737 Bishop Street, Suite 2400, Honolulu, Hawaii 96813 / Tel. (808) 521-0400 / Fax (808) 521-0497

Direct dial number: 521-0408

E-mail: smau@rmhawaii.com

August 28, 2009

*Via Facsimile (808) 587-0219 and
E-mail: ryan.r.imata@hawaii.gov*

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

Attention: Laura H. Thielen, Chairperson

Re: Water Use Permit 804

Dear Ms. Thielen,

Mr. Bill Paty and Robinson Kunia Land LLC ("RKLLLC") have asked me to respond to your letter dated August 3, 2009 regarding Water Use Permit 804. RKLLLC is not willing to voluntarily relinquish any of its allocation.

Our farmers have indicated that the planning and development of the farming operations have been predicated on the present allocation. We have been told that ideally, our farmers would want their allocation increased, rather than decreased, so as to better and more fully realize the agricultural potential and productivity of the lands in the future. Any reduction of the allocation will affect the present and future planned farm operations. Our farmers have invested heavily in the farming of these lands and any reduction of the water allocation will undermine the efforts and progress made over the past 14 years to develop markets and increase productivity of these lands.

We note that the water usage of our farmers have steadily increased over the years as new and existing markets for their products have developed. Moreover, the 4 year unused amount is only about 20% of the total allocation, an amount that is within a reasonable margin of error or reserve required to operate and expand farm operations to meet the demands in the marketplace.

Virtually all of the products produced on these lands are consumed locally. The economic downturn has delayed some of the expansion of the markets and demand for certain agricultural products. Nevertheless, our farmers predict steady growth for their operation and

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2009 AUG 31 AM 10:12

WUP NO. 804

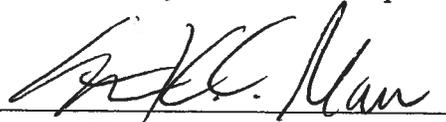
Commission on Water Resource Management
August 28, 2009
Page 2

increased water usage, particularly as the economy recovers. RKLLLC also respectfully requests that no amount of the RKLLLC allocation be revoked.

Both our client and our farmers are available to discuss this matter further and in greater detail, as you may require.

Very truly yours,

RUSH MOORE LLP
A Limited Liability Law Partnership

By 
Stephen K.C. Mau

SKCM:tmm
Cc: Robinson Kunia Land LLC
Aloun Farms
Waikele Farms



Hawaii Agriculture Research Center

P.O. Box 100, Kunia, Hawaii 96759
Ph: 808-621-1350/Fax: 808-621-1359

RECEIVED
COMMISSION ON W.
RESOURCE MANAGE

2009 AUG 24 AM 9

August 19, 2009

Ms. Laura H. Thielen
State of Hawaii Department of
Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

Dear Ms. Thielen:

Subject: Four-year non-use for Water Use Permit 807 (letter dated August 3, 2009)

Water use at the Kunia Substation of the Hawaii Agriculture Research Center has decreased over the past five years for the following reasons:

1. Higher rainfall during our cropping periods in the last four years has significantly reduced the quantity of required irrigation.
2. Conservation efforts to minimize losses and to estimate irrigation amounts more accurately have reduced the amount we irrigated. Irrigation controls have been improved and are continuing to be evaluated. A new weather station was installed in July 2002 to more accurately estimate crop requirement.
3. Decrease of crop acreage from about 45 net acres irrigated to currently 11 net acres (gross area of about 18 acres). The water use per day has decreased from 0.260 to 0.056 mgd (current average from January 2008 to August 2009).

Our water use is expected to increase with additional projects and crops currently being planned. The expected irrigated acreages in crop are as follow:

1. Year 2010 – 17 acres in coffee, papaya, jatropha, sugarcane, corn, rice, sorghum, landscape plants and pineapple.
2. Year 2011 – The acreage is expected to increase to about 25 acres with more plantings of biofuel crops and pineapple.
3. After Year 2012 – About 30 acres will probably be the maximum. We have irrigated 45 acres in the past (about 60 gross acres) but only for periods of four months.

WUP NO. 807

Our current and expected daily irrigation for the next few years is shown in Table A below.

Table A. Water use at Kunia based on an average ET of 0.22 inch per day per acre.

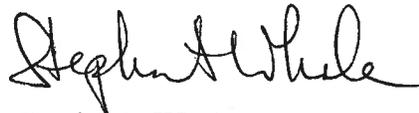
Year	Net Irrigated Acres	Million Gallons/Day
2009	11	0.056
2010	17	0.106
2011	25	0.149
After 2012	30	0.179

For Water Use Permit No. 807 allocation, we could relinquish some water amounts from the current allocation of 0.260 at this time. However, HARC requests that the Water Commission consider the following:

1. Hawaii Agriculture Research Center is a non-profit research organization that is funded through grants and contracts. It is difficult to predict those revenue sources and water needs for projects in the next year, let alone for years in advance.
2. We have recently dedicated the land, all 108.221 acres, to agriculture in perpetuity through an agricultural conservation easement paid for by the USDA Natural Resources Conservation Service and the State's Legacy Land fund.
3. While our current use does not include cultivating all the land year round, the land has been dedicated for agriculture in perpetuity. Land without water is useless for agriculture in the Kunia area.

We respectfully request the acknowledgment of the potential future needs of HARC's agriculture conservation easement. How else are we to save the best agricultural lands in the State for future generations of the citizens of Hawaii?

Respectfully submitted,



Stephanie Whalen
Executive Director

August 12, 2009

2009 AUG 12 PM 1:07

Mr. Ken Kawahara
Deputy Director
Commission on Water Resource Management
P. O. Box 621
Honolulu, Hawaii 96809

RE: Water Use Permit No. 828 – 4-Year Non-Use Period

Dear Mr. Kawahara:

This is in response to your letter dated August 3, 2009 addressed to Mr. Leslie Poland relating to the partial relinquishment or revocation of Monsanto's Water Use Permit (WUP) No. 828 based on Hawaii Revised Statutes (HRS) § 174C-58(4). Monsanto intends to fully use its 2.636 mgd allocation by late 2010 and, therefore, is not willing to voluntarily relinquish any part of its allocation. Additionally, as explained below, there is good cause for not revoking the unused allocation at this time.

HRS § 174C-58(4), in pertinent part, provides:

Revocation of permits. After a hearing, the commission may suspend or revoke a permit for:

* * *

(4) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. 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 revocation period.

The Hawaii Supreme Court has confirmed that the suspension or revocation of a water use permit based on partial or total nonuse is permissive rather than mandatory. *In re Wai`ola O Molokai, Inc.*, 103 Haw. 401, 446, 83 P.3d 664, 709 (2004). In other words, notwithstanding nonuse for a period of four or more years, the Commission may elect, on a case-by-case basis, to not suspend or revoke the permit depending on the circumstances of each case and reasons for nonuse. *Id.* Partial suspension or revocation is clearly not warranted at this time under the facts surrounding Monsanto's WUP No. 828.

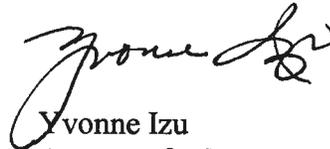
Mr. Ken Kawahara
August 12, 2009
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Waiahole Ditch water allocated under WUP No. 828 is used to irrigate crops grown on property that Monsanto purchased the James Campbell Company LLC in late 2007. Monsanto was not using this land prior to the purchase, and, thus, had no control over water usage through much of the 4-year period in question. Since Monsanto's acquisition of the property, it has been diligently expanding its operations. As can be clearly seen by the graph attached to your August 3 letter, water usage has increased following Monsanto's acquisition of the property. Monsanto is still expanding its Kunia operations and anticipates that the full 2.636 mgd allocation will be required by late 2010.

It is common knowledge that the former Oahu Sugar lands, deemed to be some of the best agricultural lands in the State, have been going through a period of transition following the closure of Oahu Sugar, the closure of Del Monte's pineapple operations, the termination of The Estate of James Campbell, and the subdivision and sale of the lands by the James Campbell Company. Monsanto's acquisition of approximately 2000 acres in Kunia represents a long-term commitment to keep these lands in agriculture and we ask that Waiahole Ditch water continue to be available for this purpose.

Based on the foregoing, Monsanto respectfully submits that there is good cause for the Commission to exercise its discretion in not partially suspending or revoking WUP No. 828 for nonuse at this time.

Very truly yours,



Yvonne Izu
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