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WILLIAM M. TAM
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 16, 2011
Honolulu, Oahu

Island Dairy, Inc.
APPLICATION FOR AN AFTER-THE-FACT PUMP INSTALLATION PERMIT
Island Dairy Well (Well No. 6016-01)
Pump Installation: 90 gpm for Irrigation use
TMK 3-9-001:002, Hawaii

APPLICANT:

Island Dairy, Inc.
P.O. Box 2626
Kamuela, HI 96743

LANDOWNER:

State of Hawaii
1151 Punchbowl Street
Honolulu, HI 96813

DESCRIPTION:

Location: (See Exhibit 1)

Dimensions: (See Exhibit 2)

BACKGROUND:

On November 28, 2000, a Well Construction Permit was issued to Island Dairy, Inc. (See Exhibit 5)

On February 13, 2002, Turner Well Drilling, as licensed contractor to Island Dairy, Inc., submitted a Well Completion Report Part I describing the construction of the well and a request to send him an application for a Pump Installation Permit.

On February 25, 2002, staff advised Turner Drilling that the Well Completion Report Part I was deficient because the report did not include the required plot plan and elevation report.

Soon thereafter, Turner Drilling stopped doing business in the State of Hawaii and never filed the missing information.

In February of 2004, the Commission on Water Resource Management (CWRM) adopted the revisions to the Hawaii Well Construction and Pump Installation Standards. Among other things, through this adoption, the CWRM allowed concurrent permit issuance of Well Construction and Pump Installation Permits to licensed well drillers only.

On February 13, 2009, as part of a routine pump replacement, Derrick's Well Drilling inquired about the well, to which staff replied that no pump installation permit was ever issued, and that an after-the-fact Pump Installation Permit application would need to be submitted.

On February 18, 2009, Island Dairy, Inc., with the assistance of Derrick's Well Drilling, submitted an incomplete application for an after-the-fact Pump Installation Permit.

On March 18, 2009, Derrick's Well Drilling submitted a revised application for an after-the-fact Pump Installation Permit, which included pump tests and a Well Completion Report describing the installed pump. Staff requested the plot plan and elevation report to be submitted as part of the application.

On May 26, 2009, the plot plan and elevation report were submitted by Derrick's Well Drilling.

ISSUES/ANALYSIS:

VIOLATION:

HAR §13-168-12(a) states that:

No well shall be constructed, altered, or repaired and no pump or pumping equipment shall be installed, replaced, or repaired without an appropriate permit from the commission.

Discussion with Derrick's Well Drilling indicated that a pump was installed in the well prior to their replacement of the pump. A follow-up conversation with Bahman Sadeghi of Island Dairy indicated that the original pump was installed by Turner Drilling. Mr. Sadeghi stated that he assumed that the permits were obtained by Turner Drilling and that he now wants to make sure that everything is in compliance.

Derrick's Well Drilling merely replaced what they thought was a legally permitted pump. Replacement of a pump does not require a pump installation permit. Therefore, Derrick's Well Drilling should not be held responsible for the initial violation.

Staff considers both Island Dairy, Inc. and Turner Drilling to be responsible for knowing that a pump installation permit was required. However, since Turner Drilling is no longer in Hawaii, the only entity to find in violation is Island Dairy, Inc.

FINE CALCULATION:

Staff adheres to the CWRM's penalty policy G-01-01, which is summarized in Exhibit 3.

Minimum Penalty:

An initial minimum penalty figure for daily fines for settlement purposes is based on the following:

1. *Finding of violation = \$250 per day/incident*
2. *Occurring in Water Management Area = \$250 per day/incident*
3. *Repeat Violation = \$250 per day/incident*
(A repeat violation is deemed to occur when the party has previously been found to be a violator by the Commission. A repeat violation is tied to the party involved and is irrespective of the nature of the violation.)

In this case, for Island Dairy, Inc., the finding of violation warrants an initial base fine of \$250 per day/incident fine. The area is not a Water Management Area and this is not a repeat violation for Island Dairy, Inc.

Mitigation Component:

Mitigative factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more mitigative factors can reduce or eliminate the fine or alternative penalty recommendation. Mitigative factors include but are not limited to: insignificant impact on the resource, attempt to remedy the violation without notice, good faith effort to remedy violation once noticed, self reporting in a timely manner, and diligent and speedy effort to remedy the violation once noticed.

Staff considers the timely submission of an after-the-fact Pump Installation Permit immediately upon finding that there was no permit issued was a good faith effort to remedy the violation once noticed, and deserves a \$100 mitigation component.

Gravity Component:

Gravity factors can be considered in the recommendation of any fine or alternative penalty. Presence of one or more gravity factors can enhance the fine or alternative penalty recommendation. Gravity factors include but are not limited to: significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations, evidence that the violator should have known about the violation, refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff.

Staff does not consider any gravity components to be applicable in this case.

Duration:

Because no gravity components were found and compliance (the initial application sent in less than 30 days from the first conversation), no daily component is being applied. Rather, the fine is being calculated for a one-day duration.

Therefore, staff is recommending a fine of $\$250 - \$100 = \$150$, for Island Dairy, Inc.

AGENCY REVIEW AND COMMENTS

Copies of the application were sent to the Department of Health's Safe Drinking Water and Wastewater Branches. Additionally, notice of the application was published in the Commission's monthly bulletin.

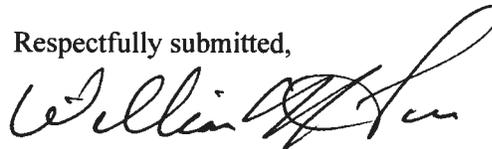
No objections to this application were submitted. However, the State Department of Land and Natural Resources' Land Division has indicated that a water lease is required but has not yet been obtained by the applicant. A copy of the final pump installation permit will be forwarded to the Land Division for their follow up.

RECOMMENDATION:

That the Commission:

- A. Find Island Dairy, Inc. in violation of HAR §13-168-12(a).
- B. Impose a fine of \$150 on Island Dairy as summarized in Exhibit 3, payable within 30 days.
- C. That the Commission approve the issuance of an after-the-fact pump installation permit for the Island Dairy Well (Well No. 6016-01), subject to the standard conditions in Exhibit 4, and the following special conditions:
 - 1. That the permit will be issued after the fine described in Item B is paid by the applicant.

Respectfully submitted,



WILLIAM M. TAM
Deputy Director

- Exhibit(s):
- 1. (Location Map)
 - 2. (Proposed Well Section)
 - 3. (Penalty Calculations)
 - 4. (Standard Pump Installation Permit Conditions)
 - 5. (Well Construction Permit)

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Interim Chairperson

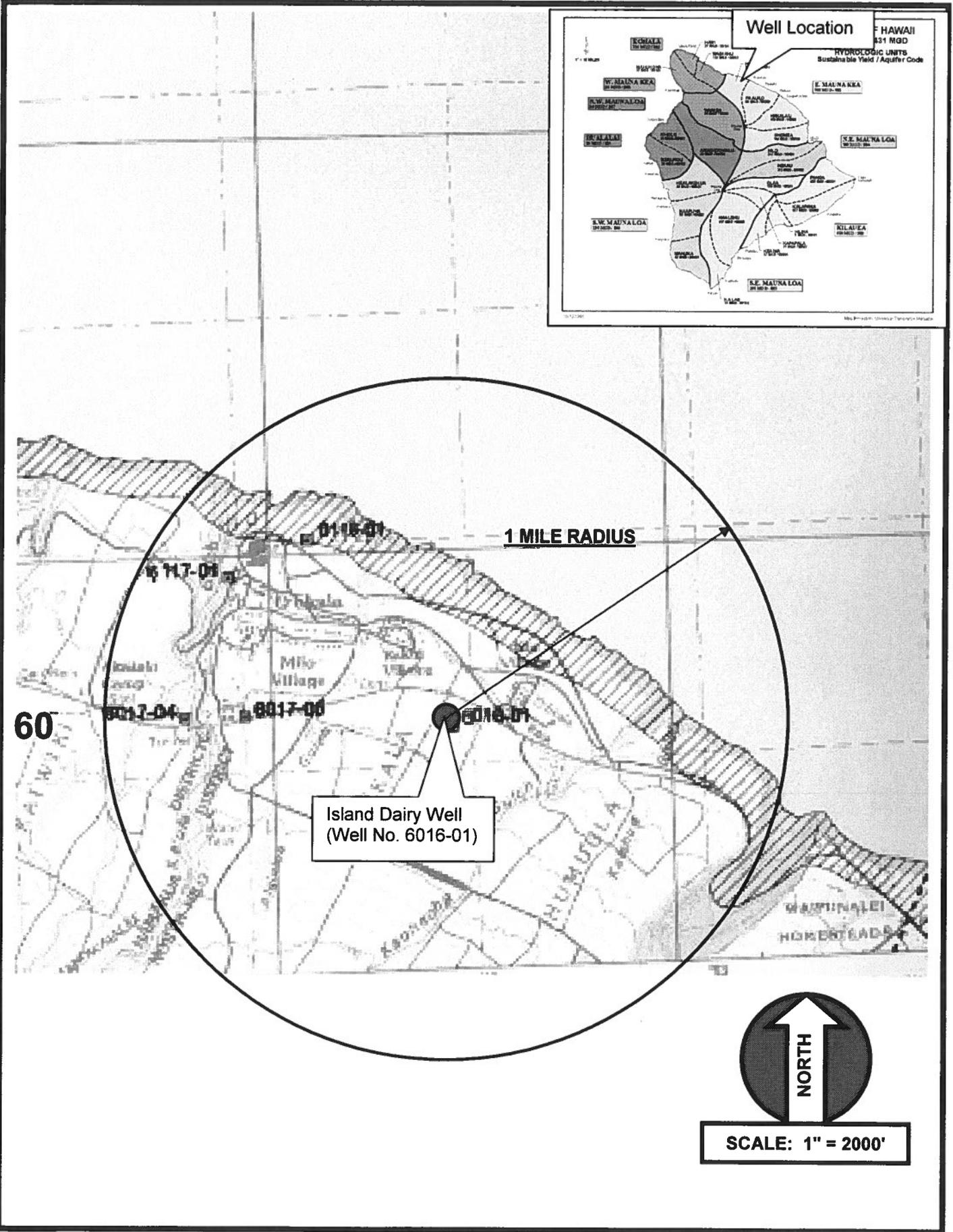
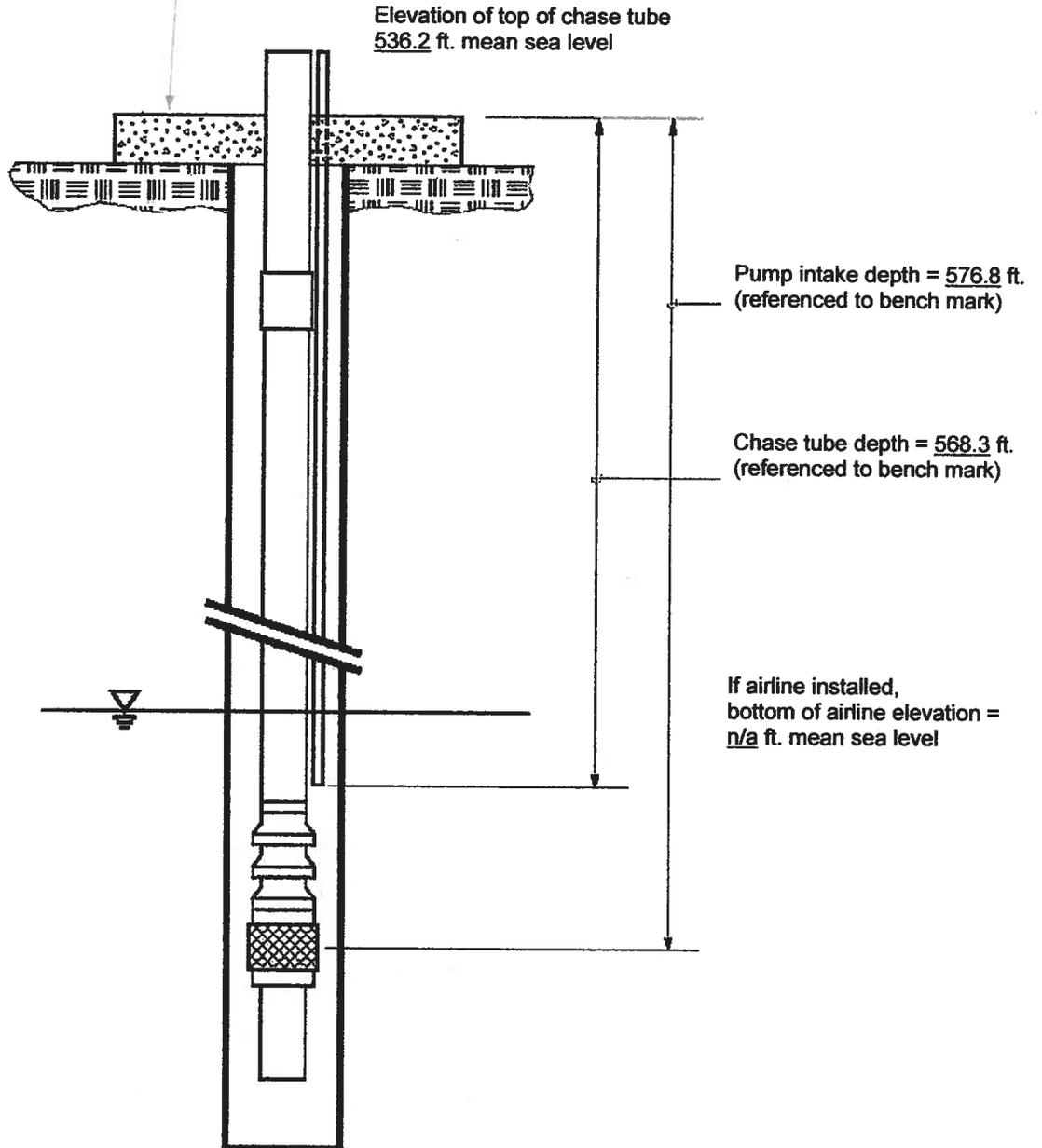


EXHIBIT 1 – LOCATION MAP

7. AS-BUILT PUMP SECTION (Please attach as-built if different from diagram provided below)

Bench mark elevation
surveyed to nearest 0.01 ft. =
537.80 ft. mean sea level



A	B	C	D	E DAILY FINES			H	J K L M N DURATION CALCULATION				O	P	Q	R		
				F	G	Mitigative component		TOTAL DAILY FINES	Total Days Tolled	No. of days (yes/no)	Compliance within 30 days					Total duration of violation	Alternate settlement
Item No.	Description	Finding of violation (min \$250)	Occurring in WMA (min \$250)	Repeat violation (min \$250)	Gravity component	Mitigative component	TOTAL DAILY FINES	Start date	End date	Total Days Tolled	No. of days (yes/no)	Compliance within 30 days	Total duration of violation	Alternate settlement	Subtotal fine for one incident	No. of incidents	Subtotal fines
1	Installation of pump	\$250	\$0	\$0	\$0	-\$100	\$150				0		1		\$150	1	\$150
TOTAL FINES																	

NOTES

- A Item No
- B Description - description of the violation, see submittal text for specific rules violated
- C Finding of violation (min. \$250) - where there is a violation, there is a minimum daily fine of \$250
- D Occurring in WMA (min. \$250) - When the violation is in a designated Water Management Area, there is a minimum additional daily fine of \$250
- E Repeat violation (min. \$250) - When the violator has committed violations in the past, there is a minimum additional daily fine of \$250
- F Gravity component - allows for the increase of the daily fine
- G Mitigative component - allows for the decrease of the daily fine
- H TOTAL DAILY FINES - the sum of the values in columns C through G
- I Start date - the date where calculation of daily fines begins (date of notice of violation, or permit approval, or permit fully signed, or violation occurred, or CWRM order)
- J End date - the date of the end of the violation or latest CWRM meeting or completed permit application
- K Days tolled - the amount of days that are tolled, to be subtracted from the total duration of the violation
- L No. of days - calculated between start and end dates and subtracting the tolled days
- M Compliance within 30 days (yes/no) - if the applicant complies with the Commission staff's notice of violation requirements within 30 days
- N Total duration of violation - if there was compliance with staff notice of violation within 30 days, the duration shall be one (1) day. If there was no compliance with staff notice of violation within 30 days, the duration shall be the total days of the violation. However, gravity circumstances can increase the total days even if the 30 day compliance is met.
- O Alternate settlement (yes / no) - an alternate settlement in lieu of the daily fine was recommended
- P Subtotal fine for one incident - per incident fine
- Q No. of incidents - of violation that occurred for this investigation
- R Subtotal fines - the subtotal of fines, calculated by multiplying (per incident fine) * (no. of incidents)

EXHIBIT 3 – FINE CALCULATIONS (PENALTY POLICY G-01-01)

STANDARD PUMP INSTALLATION PERMIT CONDITIONS

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the pump installation for **Island Dairy Well (Well No. 6016-01)** at **TMK 3-9-001:002, Hawaii**, subject to the Hawaii Well Construction & Pump Installation Standards (HWCPIS - February 2004) which include but are not limited to the following conditions:

1. The Chairperson to the Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work covered by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-168-15, Hawaii Administrative Rules (HAR).
2. No withdrawal of water shall be made other than for testing until a Certificate of Pump Installation Completion has been issued by the Commission.
3. This permit shall be prominently displayed, or made available, at the site of construction work until work is completed.
4. The pump installation permit shall be for installation of a 90 gpm rated capacity, or less, pump in the well. This permanent capacity may be reduced in the event that the pump test data does not support the capacity.
5. A water-level measurement access shall be permanently installed, in a manner acceptable to the Chairperson, to accurately record water levels.
6. The permittee shall install an approved meter or other appropriate means for measuring and reporting withdrawals and appropriate devices or means for measuring chlorides and temperature at the well head.
7. Well Completion Report Part II shall be submitted to the Chairperson within sixty (60) days after completion of work (please contact staff or visit www.hawaii.gov/dlnr/cwrm/resources_permits.htm for current form).
8. The permittee, well operator, and/or well owner shall comply with all applicable laws, rules, and ordinances, and non-compliance may be grounds for revocation of this permit.
9. The pump installation permit application and, if relevant, any related staff submittal approved by the Commission are incorporated into this permit by reference.
10. If the HWCPIS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result.
11. Any variances from the HWCPIS shall be approved by the Chairperson **prior** to invoking the variance.
12. The work proposed in the pump installation permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Chairperson upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Chairperson no later than the date the permit expires.
13. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.
14. Special conditions in the attached cover transmittal letter are incorporated herein by reference.

WELL CONSTRUCTION PERMIT
Island Dairy Well, Well No. 6016-01

5/10/01

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the construction and testing of Island Dairy Well (Well No. 6016-01) at Kamuela, Hawaii, TMK 3-9-1: 002, subject to the Hawaii Well Construction & Pump Installation Standards (1/23/97) which include but are not limited to the following conditions:

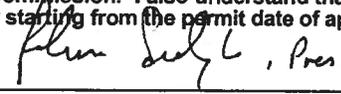
1. The Chairperson of the Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work authorized by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-168-15, Hawaii Administrative Rules.
2. The well construction permit shall be for construction and testing of the well only. A minimum 1 1/4-inch diameter monitor tube shall be permanently installed, in a manner acceptable to the Chairperson, to accurately record water levels. The permittee, well operator, and/or well owner shall coordinate with the Chairperson and conduct a pumping test in accordance with the Standards (a pump testing worksheet is attached). The permittee, well operator, and/or well owner shall submit to the Chairperson the test results as a basis for supporting an application to install a permanent pump and withdraw water for use. No permanent pump may be installed until a pump installation permit is approved and issued by the Chairperson.
3. In basal ground water, the depth of the well may not exceed one-fourth (1/4) of the theoretical thickness (41 times initial head) of the basal ground water unless otherwise authorized by the Chairperson.
4. The permittee, well operator, and/or well owner shall incorporate mitigation measures to prevent construction debris from entering the aquatic environment, to schedule work to avoid periods of high rainfall, and to revegetate any cleared areas as soon as possible.
5. In the event that subsurface cultural remains such as artifacts, burials or concentrations of shells or charcoal are encountered during construction, the permittee, well operator, and/or well owner shall stop work and contact the Department's Historic Preservation immediately.
6. The proposed well construction shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. This permit or the authorization to construct the well shall not constitute a determination of correlative water rights.
7. The following shall be submitted to the Chairperson within sixty (60) days after completion of work:
 - a. Well completion report, (attached - Part I, Well Construction Report).
 - b. Elevation (referenced to mean sea level, msl) survey by a Hawaii-licensed surveyor.
 - c. As-built sectional drawing of the well.
 - d. Plot plan and map showing the exact location of the well.
 - e. Complete pumping test records, including time, pumping rate, drawdown, chloride content, and other data.
8. The permittee, well operator, and/or well owner shall comply with all applicable laws, rules, and ordinances; non-compliance may be grounds for revocation of this permit.
9. The well construction permit application is incorporated into this permit by reference and is subject to the Hawaii Well Construction & Pump Installation Standards (January 23, 1997; HWCPLS). If the HWCPLS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result.
10. The permit may be revoked by the Commission if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The work proposed in the well construction permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Chairperson upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Chairperson no later than three (3) months prior to the date the permit expires. If the commencement date is not met, the Commission may revoke the permit after giving the permittee, well operator, and/or well owner notice of the proposed action and an opportunity to be heard.
11. If the well is not to be used it must be properly capped. If the well is to be abandoned then the permittee, well operator, and/or well owner must apply for a well abandonment permit in accordance with §13-168-12(f) prior to any well sealing or plugging work.
12. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.
13. Special conditions in the attached cover transmittal letter are incorporated herein by reference.


 TIMOTHY E. JOHNS, Chairperson

Date of Approval: **November 20, 2000**
 Expiration Date: **November 20, 2002**

Commission on Water Resource Management

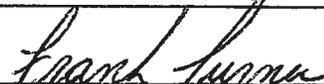
I have read the conditions and terms of this permit and understand them. I accept and agree to meet these conditions as a prerequisite and underlying condition of my ability to proceed and understand that I shall not commence work until I and the driller have signed, dated, and returned the permit to the Commission. I also understand that non-compliance with any permit condition may be grounds for revocation and fines of up to \$1000 per day starting from the permit date of approval.

Permittee's Signature: 

Date: 4/19/01

Printed Name: BANMAN SADEGHI

Firm or Title: ISLAND DAIRY

Driller's Signature: 

C-57 License #: 22597 Date: 5-7-01

Printed Name: FRANK TURNER

Firm or Title: Owner

Please sign both copies of this permit, return one to the Chairperson, and retain the other for your records.

Attachment
 c: USGS
 Department of Health/ Safe Drinking Water, Wastewater, and Clean Water Branches
 Hawaii Department of Water Supply

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