



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

**COMMISSION ON WATER RESOURCE MANAGEMENT**

October 10, 2012 Meeting  
Honolulu, Oahu

**STAFF SUBMITTAL**

**HEARING TO REVIEW AND ACT ON  
WATER USE PERMITS IN THE  
WAIALUA GROUND WATER MANAGEMENT AREA, OAHU**

- 1) DOLE FOOD CO. VOLUNTARY REDUCTION OF 13.710 MGD;
  - 2) DOLE FOOD CO.'S PARTIAL MODIFICATION OR REVOCATION TO 9.00 MGD  
EXISTING USES (UNDER CONTINUING INVESTIGATION);  
AND
  - 3) THEO J.P. LOPEZ TRUST VOLUNTARY REDUCTION AND PARTIAL REVOCATION OF  
0.056 MGD, AND CONTINUED USE OF 0.144 MGD
1. GWUP 035 (3307-01 to -10, Pump 2) Waialua Sugar; Well TMK: 6-7-002:014
  2. GWUP 036 (3307-07 and -11 to 14, Pump 2A) Wailua Sugar; Well TMK: 6-7-003:019
  3. GWUP 039 (3404-01, Pump 17) Waialua Sugar; Well TMK: 6-4-001:001
  4. GWUP 046 (3407-04 to 06, -14 & 15, Pump 1) Waialua Sugar; Well TMK: 6-7-002:014
  5. GWUP 136 (3407-18 & 19, Pump 7 B&C) Waialua Sugar; TMK: 6-6-025:001
  6. GWUP 263 (3407-02, Lopez 2 (Kunihiro) Well) Native Hawaiian Advisory Council;  
TMK: 6-6-023:004

**PERMITEES:**

Dole Food Company Hawaii  
1116 Whitmore Avenue  
Wahiawa, HI 96786

Theo J.P. Lopez Trust  
5090 Likini Street  
Honolulu, HI 96818

**LANDOWNER:**

Same

Same

## **SUMMARY OF REQUEST:**

This meeting and submittal is a continuation of the February 15 2012 hearing on Commission-initiated modifications and revocations to existing Ground Water Use Permits (GWUPs) in the Waialua Ground Water Management Area (GWMA). This action was initiated because the Honolulu Board of Water Supply (BWS) requested additional ground water pumping from the Waialua GWMA. BWS's request may not be addressed until unused allocations are revoked and the total allocations reduced below the Sustainable Yield ("SY") for this area.

In 2008, the estimated sustainable yield for the Waialua Aquifer System Area was revised downward. The SY for this area is **25 million gallons per day (mgd)**. The total **outstanding water use permit allocations equal 30.404 mgd**. This results in an **over-allocation of 5.404 mgd**. At the Commission's February, 2012 hearing several existing GWUPs were addressed. However the total revocations did not bring the SY below 25 mgd. The existing, but unused allocations (listed above) must be reviewed and reduced or revoked before any new allocations may be made.

After further investigation, Staff now requests that the Commission approve the following actions::

### **1. DOLE FOOD CO. VOLUNTARY REDUCTION OF 13.710 MGD;**

Dole controls wells with allocations totaling **22.890 mgd**. Dole will voluntary cutback a portion of the Waialua Ground Water Use Permits ("GWUP") totaling **13.710 mgd** (which it has not used for more than 20 years),. These permits were issued to Waialua Sugar, but were never transferred to Dole Foods Company ("Dole") when it acquired the wells.

### **2. DOLE FOOD CO.'S PARTIAL MODIFICATION OR REVOCATION TO 9.00 MGD EXISTING USES (UNDER CONTINUING INVESTIGATION)**

Dole seeks to establish its use of **9.000 mgd**. However, to date, Dole Foods, Co. has failed to identify specifically on what fields the water is being used, in what quantities, or for what crops. Until the actual use information is established and verified, a water use permit may not be issued.

### **3. THEO J. P. LOPEZ TRUST VOLUNTARY REDUCTION AND PARTIAL REVOCATION OF 0.056 MGD, AND CONTINUED USE OF 0.144 (GWUP 263)**

The Theo J. P. Lopez Trust will voluntarily reduce its permitted allocation from 2.000 MGD to 0.144 MGD. The Trust seeks continued use of the 0.144 mgd

If these actions are approved, the revocations for non-use will allow approval of new ground water use permits from this aquifer. The voluntary cutbacks proposed here will make up to **8.306 mgd** available for new uses.

**LOCATION MAP:** See Exhibit 1 – Current WGWMA; Exhibit 1a – Dole Wells

## **BACKGROUND:**

### **A. Current Necessity**

On August 28, 2008, the Commission adopted the updated Water Resource Protection Plan which revised the sustainable yield for ground water aquifers throughout the state. The Waialua Aquifer System Area (Waialua ASA) sustainable yield was reduced from 40 mgd to 25 mgd. The Waialua ASA was first designated in 1981. The current ground water use permit allocations total 30.404 mgd. This creates an over-allocation of 5.404 mgd (see Exhibit 2).

On October 5, 2010, the BWS submitted a ground water use permit application (GWUPA) for 0.270 mgd from the "Waiialua Wells" (Well Nos. 3405-01 & 02, Waiialua GWMA). Although reporting is limited, the current 12-month moving average (12-MAV) for actual pumpage is about 6 mgd. The existing permitted allocations exceed the sustainable yield. Therefore, there is no additional water that may be permitted to meet new applications. If unused portions of existing allocations are not revoked or other modifications to existing uses are not made, then new requests must be denied. The BWS waived the normal 90-day processing for their GWUP application in order for these revocations to be made.

The minimum amount that needs to be revoked to accommodate the BWS is 5.674 mgd. In light of the recent statewide 20-year water use permit review and the carry-over of pre-1987 ground water permits from the Board of Land and Natural Resources, it is appropriate to review all permits in the Waiialua GWMA for a comprehensive update.

The staff did initial fact-finding and field investigations. Letters were sent on August 1, 2011 and August 9, 2011 to all ground water use permittees with wells in the Waiialua Aquifer System area. The staff requested missing information on water use and the permittees' intentions for future use.

## **B. History**

Prior to the Water Code, Haw. Rev. Stat. Chap 174C (1987), the Board of Land and Natural Resources ("BLNR") managed ground water management areas under Haw. Rev. Stat. Chap. 177 (replaced 1987). In 1981, the BLNR designated the Waiialua Ground Water Control Area (GWCA). The BLNR made allocations to existing users. In 1981, Waiialua Sugar's allocation totaled nearly 40 mgd. At that time, the sustainable yield for the area from Mokuleia to Kawaihoa was 60 mgd (see Exhibit 3).

Following the adoption of the Water Code (1987), improved understanding of aquifer boundaries, types, and sustainable yield modeling led to a new set of hydrologic units, aquifer system areas, and sustainable yields. In 1990, the Commission adopted the Waiialua, Mokuleia, and Kawaihoa aquifer system areas (ASA) in the Water Resource Protection Plan. The smaller Waiialua ASA retained 40 mgd of the former 60 mgd sustainable yield for the larger Waiialua GWCA. For comparison, Exhibit 4 shows the current boundaries and sustainable yield of the Waiialua GWMA.

In 1993, new ground water use applications required allocations be reduced in the Waiialua GWMA. Waiialua Sugar voluntarily cutback about 1.5 mgd in June 1993 to make water available for Poamoho Ventures (WUP 175, Well 3205-02). By 1996, the plantation closed operations. In September, 2002 the mill closed. The "Mill Pumps" and "Pump 10" were sealed further reducing pumping by 10.65 mgd. This reduced the then existing allocation in the Waiialua GWMA to approximately 30 mgd. (See Exhibit 5). Although ownership of the Waiialua Sugar production wells changed, the Commission was not notified. The ground water use permits were not transferred as required under Haw. Rev. Stat. 174C-56. Most of those allocations remain unused. The new well owners have some continuing use.

The Commission reviewed and adopted new sustainable yield figures in the 2008 Water Resource Protection Plan. Updated recharge data, loss of return irrigation flow, loss of Wahiawa "spillover," and additional modeling efforts to identify a range of reasonable sustainable yield estimates revised the sustainable yield downward to 25 mgd for the Waiialua GWMA.

Existing ground water use permit allocations exceed the 25 mgd sustainable yield. Revocation of unused allocations is required; 1) to bring the total allocations within the sustainable yield; and 2) to accommodate new applications from this aquifer. Exhibit 6 graphically summarizes these sustainable yields vs. allocation history for the entire Waiialua ASA.

When BWS submitted its Ground Water Use Permit Applications for the Waialua Well batteries, the staff began to review the overall Waialua GWMA situation to resolve the over-allocation issue. The recent 20-year Water Use Permit Review raised a number of gaps and inconsistencies indicating a need for further field investigations and contacts with existing permittees. The 20-year review revealed that the Commission's information about use and non-use is seriously outdated.

Staff made initial inquiries to all existing ground water use permittees within the Waialua GWMA. The majority of ground water use permits applied to former Waialua Sugar wells ( now owned by Dole. Kamehameha Schools held a few permits. Individual owners had the remainder.

Dole assumed ownership of productive wells with a total allocation of about 22.9 mgd. However, the permits were never officially transferred to Dole. This is grounds for revocation under Haw. Rev. Stat. §174C-59. Dole has been delinquent in reporting its use as required by the Commission's Haw. Admin. Rule ("HAR") §13-168-7. Dole agreed to prepare new water use permit applications to forecast ongoing and new uses to help define voluntary cutbacks. After more than one year, Dole finally submitted its new ground water use applications to help define their voluntary cutbacks for revocation purposes.

After the February Commission hearing on revocations, the Commission modified or reaffirmed several GWUPs, but deferred action on those listed in this submittal to allow the opportunity for further discussions. Additional formal discussions have taken place since February.

- February 15, 2012      At a regular Commission meeting, staff presented a summary review of all WGMA water use permits, including those issued to Waialua Sugar, recommending revocations and continuances. The Commission approved continuing use of 4.908 mgd for several small users and revoked 0.359 mgd. Dole presented new information and new estimates of its water requirements. Dole disclosed an agreement with Pioneer Hi-Bred International by which Pioneer could use ground water from Dole wells "as available". The Commission deferred action on Dole GWUPs. (see Exhibits 6a and 6b) and Lopez GWUP 263.
- February 23, 2012      Dole submitted revised ground water use permit application forms to define their voluntary cutbacks for revocation purposes, with general maps showing parcels irrigated by the various pump stations, new use estimates, and explanatory tables.
- March 8, 2012          Staff met with Dole representatives in Wahiawa to review water use application requirements and information. Staff held a second meeting on March 20, 2012.
- May 11, 2012          Staff emailed Dole seeking further clarifications; Dole responded in part.
- May 18, 2012          Louis A. Lopez responded to staff's offer of a requested case by accepting the proposed reduction, but stated that "any further reduction will be challenged" (see Exhibit 7)..
- July 17, 2012          Staff sent Dole (by certified mail) a request to itemize five matters.
- September 11, 2012      Staff sent Dole a letter reiterating efforts to correct overallocations to Waialua Sugar in light of more than four years of non-use. The Staff requested action on several matters necessary to justify continuing allocations and explaining that the Commission would soon address revocations e non-used portions.

**ANALYSIS:**

Staff attempted to further clarify voluntary cutback to both Dole and the Theo Lopez Trust since the February 15, 2012 hearing. Table 1 shows the updated accounting changes proposed here.

Table 1. Waialua Aquifer System Area

<u>ITEM</u>	<b>Waialua Aquifer System Area (mgd)</b>
<b>Sustainable Yield</b>	25
Less: Other Existing Water Use Permits (shown in Exhibit 2)	30.404
Reservation to DHHL	0
<b>Subtotal (Current Available Allocation)</b>	<b>-5.404</b>
Less: Pending Other Completed Applications	0.299
(3405-01 & 02) HBWS Waialua Wells: 0.270 mgd	
(3406-17) Mary Lou Gora 0.029 mgd	
<b>Subtotal (Current deficit)</b>	<b>-5.703</b>
Add: Dole voluntary cutbacks	13.710
Theo Lopez Trust voluntary cutback	0.056
<b>Amount available for new applications (assuming approval of pending applications)</b>	<b>8.063</b>

If the 13.71 mgd and the 0.056 mgd unused allocations are revoked, there will be adequate water available to accommodate pending and some future permits in the Waialua GWUPA.

**Dole**

Dole’s voluntary cutbacks represent the first step in a larger process. The primary goal at this stage is to make water available for BWS’s pending applications (which has been on hold for more than a year). In the second step, Dole must show in detail (by field, by quantity, by crop) a reasonable-beneficial daily use of its Waialua water as required by the Water Code and the Hawaii Supreme Court’s *Waiahole* and *Na Wai Ehe* decisions. Dole has not yet met that standard.

Dole proposes to hold the ground water use permits as a backup in case Dole’s surface water system (the Wahiawa Irrigation Ditch) fails. But water use permits for backup reserves to existing systems (however convenient or desirable for the applicant) are not reasonable beneficial uses, are inconsistent with the actual use requirements of the Water Code (which does not allow water banking), are fundamentally unfair to other applicants, and creates a principle that is untenable if extended to all others similarly situated. A permanent ground water use permit allocation to a “non-use” is contrary to the very concept and nature of a permit under the Code and prevailing law.

The way to address emergency pumping when a surface water system fails is through the “Water Emergency” powers of the Water Commission. See HAR 13-171-50 through -53. The Commission is considering how the emergency response process works in another application. (See October 10, 2012 Staff Submittal on Monsanto Water Use Permit Application).

Because Dole has not yet provided water use information in sufficient detail to proceed on its application for 9.0 mgd, the Commission is not in a position to act and must continue Dole’s application to a later meeting. At such later time as Dole provides the information, the Commission may consider how the “Water Emergency” provisions address Dole’s need for reassurance in the case of a surface water system failure.

**Theo Lopez Trust**

The Trustee of the Theo J.P. Lopez Trust accepted Staff's recommendation to adjust the allocation reflect the natural artesian flow of 100 gpm, as shown by earlier historical measurements. See the Trustee's May 17, 2012 letter (Exhibit 7). The Trustee notes that the water source has been in the family for over 100 years and the revised amount is essential for the family's needs. .

Conditions in the permit support the continued agricultural uses in question. Agriculture is in the public interest and consistent with the land use designations and plans, water use and development plans, and both State and county plans. The rights of Hawaiian home lands are not impacted by this use.

**Compliance with Haw Rev. Stat. Chapter 343 – Environmental Assessment (EA)**

Haw. Rev. Stat. Chapter 343 (Environmental Assessment Compliance) is not an issue where there is a voluntary cutback for non-use of water.

**RECOMMENDATION:**

Staff RECOMMENDS that the Commission:

A. APPROVE DOLE FOOD CO'S VOLUNTARY CUTBACK TOTALING 13.710 MGD as shown in Exhibit 6b. Continued use is subject to the standard water use permit conditions listed in Attachment B and the following 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.

B. DEFER ACTION ON DOLE'S REMAINING 9.00 MGD CLAIM.

By December 3, 2012, Dole shall submit a complete ground water use permit application (with the necessary water use footprint information identifying the field, crop, and water demand) to justify its claims and proposed uses. In the absence of a complete water use permit application, the permit and the claim for 9.0 mgd will be presented to the Commission for action including revocation of the Waialua Sugar Co. permit.

C. APPROVE THEO J. P. LOPEZ TRUST'S VOLUNTARY REDUCTION AND PARTIAL REVOCATION OF 0.056 MGD and CONTINUED USE OF 0.144 MGD

The continued use is subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Require a current end use footprint map.
2. A flow meter must be installed and water use reported starting within 6 months.



**STANDARD WATER USE PERMIT 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." (Haw. Rev. Stat. § 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 Haw. Rev. Stat. § 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 Haw. Rev. Stat. § 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 Haw. Rev. Stat. § 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 June 2, 1993 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.
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 flow meter(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 **Waialua** 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 **Waialua** 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 Haw. Rev. Stat. § 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 which will affect the permittee's water use.
15. The permittee understands that under Haw. Rev. Stat. § 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 Haw. Rev. Stat § 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 Hawaii Administrative Rule ("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 **Waialua** 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. Special conditions in the attached cover transmittal letter are incorporated herein by reference.
19. The permittee understands that any willful violation of any of the above conditions or any provisions of Haw. Rev. Stat. § 174C or HAR § 13-171 may result in the suspension or revocation of this permit.



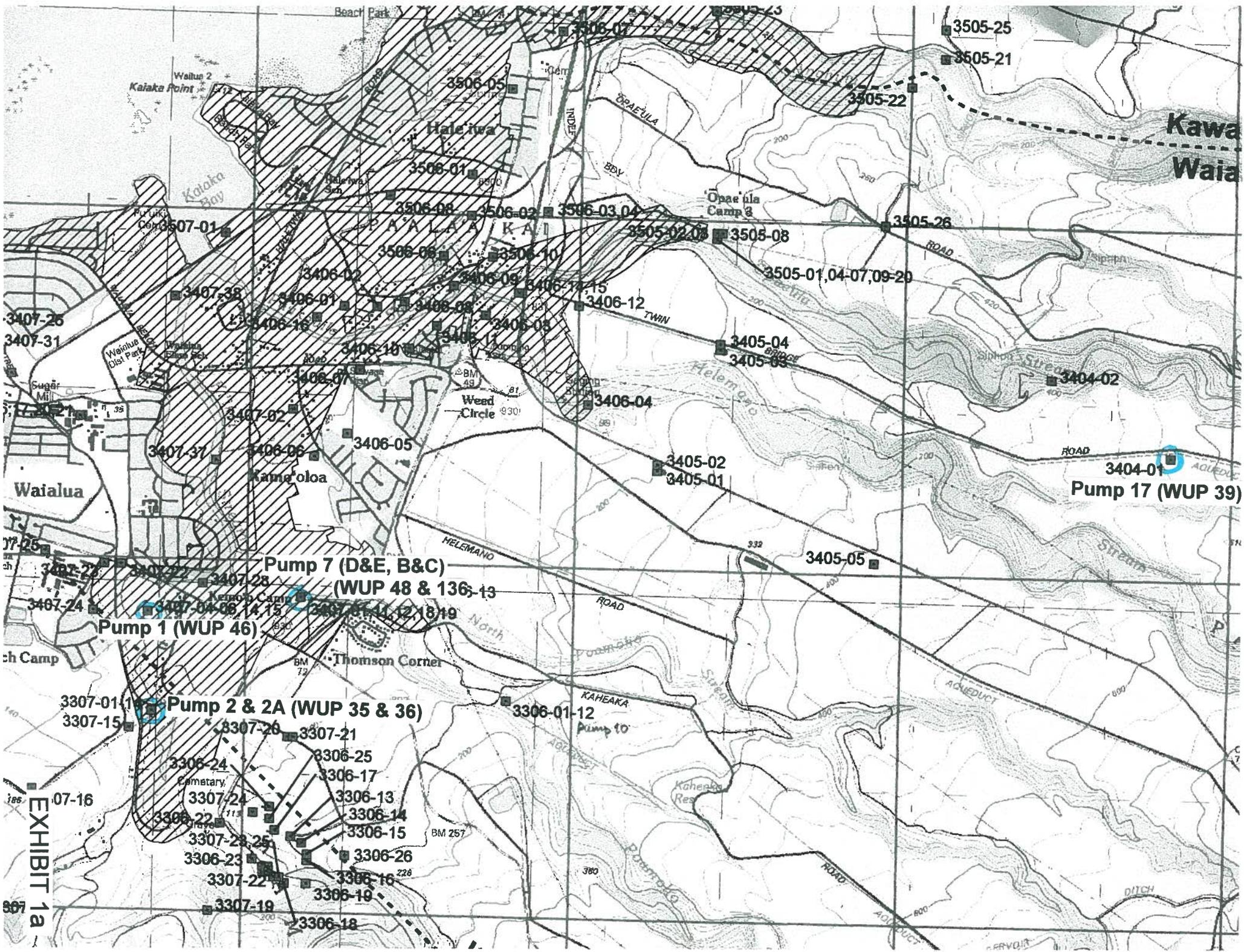


EXHIBIT 1a



**Report Parameters**

Island: Oahu  
 Applicant: All  
 Well # Prefix: All  
 Date: All  
 Aquifer: 30402 Waialua  
 TMK: All  
 Aquifer Type: All

WUP = Water Use Permit, 12-MAV = 12 month moving average, Diff = WUP-12-MAV, mgd = million gallons per day

**Island of Oahu**

**Aquifer System Ground Water Management Area: 30402 Waialua**  
**Sustainable Yield (mgd): 25**

WUP No	Approved	Permittee	Well No	Well Name	WUP (mgd)
35	06/02/1993	Waialua Sugar Co.	3-3307-001	Waialua P2 Batt	4.370
			3-3307-002	Waialua P2 Batt	
			3-3307-003	Waialua P2 Batt	
			3-3307-004	Waialua P2 Batt	
			3-3307-005	Waialua P2 Batt	
			3-3307-006	Waialua P2 Batt	
			3-3307-008	Waialua P2 Batt	
			3-3307-009	Waialua P2 Batt	
			3-3307-010	Waialua P2 Batt	
			36	06/02/1993	
3-3307-011	Waialua P2A Batt				
3-3307-012	Waialua P2A Batt				
3-3307-013	Waialua P2A Batt				
3-3307-014	Waialua P2A Batt				
39	06/02/1993	Waialua Sugar Co.	3-3404-001	Waialua Pump 17	8.630
40	09/11/1981	Board of Water Supply, BWS	3-3405-001	Waialua	1.730
			3-3405-002	Waialua	
41	09/11/1981	Board of Water Supply, BWS	3-3405-003	Haleiwa 1	1.000
			3-3405-004	Haleiwa 2	
46	06/02/1993	Waialua Sugar Co.	3-3407-004	Pump 1	2.330
			3-3407-005	Pump 1	
			3-3407-006	Pump 1	
			3-3407-014	Pump 1	
			3-3407-015	Pump 1	
136	06/02/1993	Waialua Sugar Co.	3-3407-011	Pump 7 B	2.930
			3-3407-012	Pump 7 C	
175	10/13/1993	Poamoho Venture, L.P.	3-3205-002	Poamoho A	0.600
263	10/13/1993	Native Hawaiian Advisory Council 2	3-3407-002	Waialua-Lopez 2	0.200
353	11/16/1994	A.J. LOPEZ SONS, INC.	3-3406-016	Haleiwa-Lopez 1	0.072
643	07/16/2003	Paradise Shrimp Farm	3-3407-038	Paradise Shrimp	0.576
732	06/02/1993	MICHAEL JEWETT & MEGAN WARD	3-3406-002	Waialua Pump 9	0.160
894	06/02/1993	Kamehameha Schools	3-3505-001	Opaeula P3 Battery	1.552
			3-3505-002	Pump 3 Well B	
			3-3505-003	Pump 3 Well C	
			3-3505-004	Opaeula P3 Battery	
			3-3505-005	Opaeula P3 Battery	
			3-3505-006	Opaeula P3 Battery	



**Island of Oahu**

**Aquifer System Ground Water Management Area: 30402 Waialua**

**Sustainable Yield (mgd): 25**

WUP No	Approved	Permittee	Well No	Well Name	WUP (mgd)
			3-3505-007	Opaeula P3 Battery	
			3-3505-008	Pump 3 Well H	
			3-3505-009	Opaeula P3 Battery	
			3-3505-010	Opaeula P3 Battery	
			3-3505-011	Opaeula P3 Battery	
			3-3505-012	Opaeula P3 Battery	
			3-3505-013	Opaeula P3 Battery	
			3-3505-014	Opaeula P3 Battery	
			3-3505-015	Opaeula P3 Battery	
			3-3505-016	Opaeula P3 Battery	
			3-3505-017	Opaeula P3 Battery	
			3-3505-018	Opaeula P3 Battery	
			3-3505-019	Opaeula P3 Battery	
			3-3505-020	Opaeula P3 Battery	
895	06/02/1993	B P Bishop Estate Trust	3-3506-003	Pump 8A	1.660
			3-3506-004	Pump 8B	
898	09/11/1981	Mary Lou Gora	3-3406-008	Gora	0.144
<i>Summary for Waialua (54 detail records)</i>					
					<b>Total:</b> 30.404
					<b>Available:</b> -5.404

16.694  
8.306





WaialuaAqWUP.table

**Exhibit 2: Tabular History of Water Use Permit Allocations and Changing SY Limits**  
**Waialua Aquifer System Area**  
for agriculture irrigation      for domestic use      use not defined

WUP#	Well #	Well Name	Approval dates and Quantities			proposed mgd
			9/11/81 <sup>1</sup> mgd	WGWMA <sup>2</sup> appr. date	mgd	
035	3307-01 to -06 -08 to -10	"Pump 2"	4.37	6/2/93	4.37	0.2623
036	3307-07, -11 to -14	"Pump 2A"	3.586 0.864	6/2/93	3.586 0.864	0.000
039	3404-01	"Pump 17"	8.198 0.432	6/2/93	8.630	0.000
040	3405-01 & -02	"Waialua Wells"	1.73	6/2/93	1.730	1.730
041	3405-03 & -04	"Haleiwa Wells"	1.0	6/2/93	1.000	1.000
043	3406-03	Kawamata	0.1	6/2/93	0.100	0.000
044	3406-06 3407-02 <sup>4</sup>	Kunihiro "	0.2	10/13/93 <sup>3</sup> 6/2/93	0.000 --	0.000
046	3407-04 to -06 -14, -15	"Pump 1"	2.33	6/2/93	2.330	1.047
047	3407-07 to 10, -16-17, 20-21	"Mill Pumps" <sup>4</sup>	4.63	9/18/02	0.000	(sealed)
048	3407-18 & 19	"Pump 7D/E"	0.18	6/2/93	0.180	0.000
135	3306-01 to 12	"Pump 10" <sup>4</sup>	6.02	9/18/02	0.000	(sealed)
136	3407-11 & 12	"Pump 7B/C" <sup>5</sup>	3.75	6/2/93 <sup>6</sup>	2.930	0.361
175	3205-02	Poamoho A <sup>6</sup>		10/13/93	0.600	0.600
263	3407-02	Lopez <sup>3</sup>		10/13/93	0.200	0.144
353	3406-16	Lopez #1 <sup>7</sup>		11/16/94	0.072	0.072
455	3506-10	BG Farm <sup>8</sup>		12/18/96	0.003	0.000
643	3407-38	Paradise Production <sup>9</sup>		7/16/03	0.576*	0.576
732	3406-02	"Pump 9" <sup>10</sup>	0.16	6/2/93	0.160	0.160
894	3505-01 to -20	"Pump 3" <sup>5,11</sup>	3.052 0.108	6/2/93 <sup>6</sup>	1.552	1.552
895	3506-03 & 04	"Pump 8" <sup>11</sup>	1.66	6/2/93	1.660	1.660
898	3406-08	Gora <sup>12</sup>	0.144	6/2/93	0.144	0.144
Totals			42.514		30.111*	9.308
SY (Waialua Aquifer System Area) (8/28/08)			60 (July 1981)		40 (3/17/93)	25

\* Paradise Production is for salt water, not counted against SY

EXHIBIT 5

Notes:

- 1 9/11/81 BLNR action under Waialua Ground Water Control Area (established 2/27/81): allocations preserved 5-year average historical use and were subject to special conditions, were not given water use permit numbers.
- 2 under the Water Code, continuing use is allowed under the Waialua Ground Water Management Area, and assigned permit numbers. New uses are based on the reasonable-beneficial test. Estimated sustainable yields assigned in 1990 Water Resource Protection Plan are depicted retroactively under column showing 1981 continuing allocations, showing an appropriate total allocation under existing conditions. (cont. next p.)
- 3 3407-02 ("Kunihiro Well") owned by Theodore J.P Lopez Trust, aka Lopez Sons, water used in 1981 on separate parcel by S. Kunihiro, original water use declarant. Following Kunihiro disuse, Lopez granted use to Native Hawaiian Advisory Council (NHAC); well name changed to "Lopez Well" to reflect owner. Property and well transferred to Richard Sterman, used by \_\_. Well name to be clarified as "Lopez Well #2". Kunihiro WUP 44 reduced to 0.000 by CWRM action 10/13/93.
- 4 3407-var ("Mill Pumps") WUP revoked by CWRM action 9/18/02; abandonment acknowledged 1/13/03  
3306-01 to -12 ("Pump 10") " " " " " "  
8/05/02
- 5 3407-11 & -12 ("Pump 7 B&C"), and 3505-01 to-20 ("Pump 3"), voluntarily cutback approved by CWRM 6/3/93
- 6 3205-02 (Poamoho Well A) drilled in September 1994; WCR1 not accepted as complete until 2/17/98; WCR2 complete 5/15/98
- 7 3406-16 (Lopez Well #1) apparently dug around 1935, not declared during official window. Registered 8/18/94 to enter system with water use permit.
- 8 3506-10 (BG Farm Well) registered 5/31/89
- 9 3407-38 (Paradise Shrimp Farm Production Well) drilled in November 2003
- 10 3406-02 ("Pump 9") property and water transferred 1/24/05 from Waialua Sugar to M. Jewett & M. Ward
- 11 3505-01 to -20 ("Opae'ula Pump 3") transferred 7/7/10 from Waialua Sugar to Kamehameha Schools  
3506-03 & -04 ("Pump 8") " " " "  
; both sets of wells were assigned new WUP Nos.
- 12 3406-08 (Gora Well) water use permit transferred to person no longer controlling well or end use; to be reassigned.

Initial allocations under the Waialua Ground Water Control Area of the Board of Land and Natural Resources were approved September 11, 1981. Following the creation of the Water Code and the Commission, the existing permits were continued and assigned permit numbers which would change with each new use, owner, or change of allocation. The first Water Resource Protection Plan was approved by the Commission in 1990, setting the estimated sustainable yields.

Commission action on June 2, 1993 reflected the need to reduce overall pumpage (42.514 mgd) from the area defined as the Waialua Ground Water Management Area and assigned a lower sustainable yield (40 mgd). Voluntary cutbacks were offered by Waialua Sugar and accepted by the Commission, affecting three sets of wells, one of which ("Pump 10") was subsequently abandoned and sealed.

The 2008 review of sustainable yields for the revised Water Resource Protection Plan resulted in a still lower sustainable yield estimated for the Waialua Aquifer System (25 mgd). Although this timing followed the closing of sugar production and consequent drop in ground water withdrawals, the 20-year review of all water use permits during this same period suggested strongly that all users should be addressed simultaneously, rather than simply seeking voluntary cutbacks. The trigger for this action is the current proposal by the Honolulu Board of Water Supply to increase pumpage at Well Nos. 3405-01 & 02 ("Waialua Wells") against allocations still in effect, in excess of the adopted sustainable yield.

	<u>Allocation Approved</u> 1993	<u>Proposed Allocation</u>	<u>Requesting</u>	<u>% Reduction</u>	<u>Use</u>
	mgd	mgd	mgd		
<b>WUP #36 Pump 2A</b>	4.450	0.000	2.000	55%	Potential to irrigate over 1007 acres
<b>WUP #35 Pump 2</b>	4.37	0.262	2.000	54%	Domestic water Ag Irrigation
<b>WUP #46 Pump 1</b>	2.33	1.047	2.000	14%	Irrigation - over 278 acres
<b>WUP #136 Pump 7</b>	2.93	0.361	1.000	66%	Irrigation - over 390 acres
<b>WUP #39 Pump 17</b>	8.63	0.000	2.000	77%	Irrigation - over 400 acres

**Retained Allocation & Voluntary Cutback  
Proposed by Dole February 15, 2012**

### Voluntary Cutbacks – Proposal by Dole Food Company

<u>WUP #</u>	<u>Well Name</u>	1993 Allocation to <u>Waialua Sugar</u>	Reported Ditch Use <u>(Backup)<sup>1</sup></u>	Allocation Request <u>2/ 15/ 12</u>	Corresponding Voluntary <u>Reduction</u>	<u>%</u>	<u>New</u> <u>WUP #</u>	<u>Use</u>
		(Mgd)	(Mgd)	(Mgd)	(Mgd)			
35	<b>Pump 2</b> (3307-01)	4.370	0.359 (0.262)	<b>2.000</b>	<b>2.370</b>	<b>54.2 %</b>	<b>942</b>	Domestic water Ag irrigation
36	<b>Pump 2A</b> (3307-07)	4.450	0.555 (0.000)	<b>2.000</b>	<b>2.450</b>	<b>55.1 %</b>	<b>960</b>	Potential to irrigate over 1007 acres
39	<b>Pump 17</b> (3404-01)	8.630	0.453 (0.000)	<b>2.000</b>	<b>6.630</b>	<b>76.8 %</b>	<b>961</b>	Irrigation – over 400 acres
46	<b>Pump 1</b> (3407-04)	2.330	1.047 (1.047)	<b>2.000</b>	<b>0.330</b>	<b>14.2 %</b>	<b>943</b>	Irrigation – over 278 acres
136	<b>Pump 7 B/C</b> (3407-11)	<u>2.930</u>	<u>0.331 (0.361)</u>	<u>1.000</u>	<u>1.930</u>	<b>65.9 %</b>	<b>944</b>	Irrigation – over 390 acres
<b>Totals</b>		<b>22.890</b>	<b>2.745 (1.670)</b>	<b>9.000</b>	<b>13.710</b>	<b>59.9 %</b>		

1. As offered on amended WUP application forms submitted by Dole February 23, 2012 to again clarify voluntary cutbacks. Numbers in parentheses were minimum 4-year 12-Month moving Average reported to & recommended by staff at 2-15-2012 CWRM hearing for partial or total revocations.

Note: Of the original permits, only WUP 36 (Pump 2A) had a domestic component; current proposed preservation of domestic use is from WUP #35 (Pump 2)

**THEODORE J. P. LOPEZ TRUST  
5090 LIKINI STREET  
PH 206  
HONOLULU, HAWAII 96818-2394**

May 17, 2012

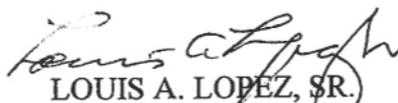
Mr. William Tam, Deputy Director  
Department of Land and Natural Resources  
Commission on Water Resource Management  
P. O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Tam:

Re: Notice of Commission Action dtd May 8, 2012  
Water Use Permit No. 263 (Well No. 3407-02)

1. This acknowledges receipt of your letter and commission action dated May 9, 2012. in which you permit the allocation of 0.144 million gallons per day, on a 12 month moving average basis, as a measure of actual artisan flow. For the present the proposal reduction to 0.144 mgd is acceptable. Any further reduction will be challenged.
2. As you probably know we have a taro crop growing on the property (TMK 6-6-23-04) and the success of this operation depend entirely on the continual flow of water from the existing spring.
3. We intend to defined our rights to this spring water against the world and with every dollar we have. This property has been in the possession of the Lopez Family for over 100 years and is part of the Antone Joaquin Lopez heritage. We love this land and the spring water. It is more than just water coming out of the ground.

Respectfully,

  
LOUIS A. LOPEZ, SR.  
Trustee

cc: Mr. Charley Ice

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COMMISSION ON WATER  
RESOURCE MANAGEMENT  
2012 MAY 18 AM 9:09