



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

November 21, 2012 Meeting  
Honolulu, Oahu

STAFF SUBMITTAL

MONSANTO COMPANY  
APPLICATIONS FOR: 1) GROUND WATER USE PERMIT; 2) WELL CONSTRUCTION  
PERMIT; AND 3) PUMP INSTALLATION PERMIT

For 2.636 mgd.  
For Future Emergency Back-up to an Existing Water Use Permit  
Agricultural Use  
Kunia Farm Well No. 1 (Well No. 2402-06), TMK (1) 9-2-001:001, GWUPA No. 954  
Waipahu-Waiawa Ground Water Management Area, Oahu

And  
Amend Declaratory Ruling (DEC-ADM12-G6) to Allow Issuance of  
Pump Installation Permit Without a Ground Water Use Permit -  
In case of an Emergency in Ground Water Management Areas

**APPLICANT:**

Monsanto Company  
94-529 Kunia Road  
Kunia, HI 96759

**LANDOWNER:**

Same

**SUMMARY OF REQUEST:**

Applicant Monsanto Company ("Monsanto") requests the Commission on Water Resource Management ("Commission") approve a Water Use Permit and allocate 2.636 million gallons per day ("mgd") of potable basal ground water from a new well in the Waipahu-Waiawa Ground Water Management Area. Monsanto requests this new water use permit to provide emergency back-up irrigation water for 2,052 net acres of seed corn and various other crops. These lands are currently irrigated with water from the Waiahole Ditch System under an *existing* Water Use Permit (GWUP No. 828). The new permit would create a second and duplicate allocation for an already permitted water use for the same land and the same crops.

**LOCATION MAP:** See Exhibit 1

**A. BACKGROUND:**

Pursuant to the Waiahole Contested Case Hearing Decision and Orders, and the subsequent transfer of the land and Ground Water Use Permits (“GWUPs”) from the Estate of James Campbell to Monsanto on November 13, 2007, Monsanto currently holds a Ground Water Use Permit for 2.636 mgd of water from the Waiahole Ditch System (GWUP No. 828).

Monsanto is concerned that the Waiahole Ditch System (managed by the State Agribusiness Development Corporation (“ADC”)) could be damaged and leave Monsanto without water for an unknown extended period of time. ADC is planning to make needed repairs to the Waiahole Ditch System (including the siphons).

On May 4, 2012, Monsanto submitted applications for a well construction permit, a pump installation permit, and ground water use permits. Monsanto did not list a contractor for the well and pump applications. The applications are incomplete without a contractor’s signature. The applications have sufficient information to review at this time. Typically, if an application is submitted without a contractor’s signature, staff will review the application and issue a letter of assurance if the review supports the issuance of a permit. This letter of assurance states that the permit will be issued when a contractor signs the application

However, Monsanto did file a completed Ground Water Use Permit Application (GWUPA 954) for the new proposed emergency backup well in the Waipahu-Waiawa Aquifer System Area. Normally, well construction and pump installation permits are handled administratively. New wells in Ground Water Management Areas are usually processed concurrently with a Ground Water Use Permit Application for Commission action. In the situation presented here, the Commission may choose to address the well and pump permits separately and independently. Information regarding the source, use, and notification is provided in Attachment A.

**B. WATER USE PERMIT CRITERIA - Haw. Rev. Stat. § 174C-49(a)**

The State Water Code, Haw. Rev. Stat. § 174C-49(a) establishes seven (7) minimum criteria that must be met before a water use permit may be issued. There are also constitutional, public trust, and common law requirements that must be addressed once all the statutory criteria are met.

(1) **Water Availability**

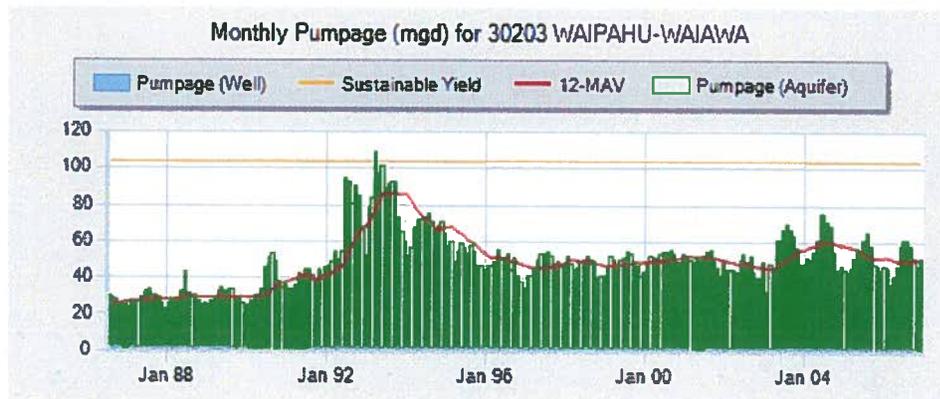
Through the Hawaii Water Plan, the Commission determined the sustainable yield for the **Waipahu-Waiawa** Aquifer System Area is currently 104 million gallons per day (“mgd”).

Individual existing water use permits in this aquifer system area are shown in Exhibit 2. A summary of the current ground water conditions in the aquifer is set forth in Table 1:

**Table 1. Waipahu-Waiawa Aquifer System Area**

| <u>ITEM</u>                                                         | Waipahu-Waiawa<br>Aquifer<br>System Area<br>(mgd) |
|---------------------------------------------------------------------|---------------------------------------------------|
| <b>Sustainable Yield</b>                                            | 104                                               |
| Less: Other Existing Water Use Permits (shown in Exhibit 2)         | 83.498                                            |
| Reservation to DHHL                                                 | 1.358                                             |
| <b>Subtotal (Current Available Allocation)</b>                      | 19.144                                            |
| Less: Other Completed Applications                                  | 0                                                 |
| Less: This Application                                              | 2.636                                             |
| <b>Subtotal (Potential Available Allocation/Allocation Deficit)</b> | 16.508                                            |

Though not all users in the Waipahu-Waiawa Aquifer System are reporting monthly water usage, the data indicates that total 12 month moving average (“mav”) pumpage in the System was at least 50 mgd in 2006 (see chart below)



Based on these figures, more than 2.636 mgd of water is available from the Waipahu-Waiawa Aquifer System.

However, once granted, Water Use Permits do not have fixed terms. They continue into the future without modification or restriction (assuming no shortage or emergency) so long as the location, actual use, and quantity remain unchanged. Haw. Rev. Stat. 174C-55, -56, and -57. Thus, a Water Use Permit is a firm commitment by the Commission that remains indefinitely even though the Applicant claims only a contingent short term need.

There is an additional issue. The sustainable yield used by the Commission for Pearl Harbor is based on data collected as long ago as the early 1980s. The Commission is revisiting that data and the calculations used to generate the sustainable yield. In 2010-11, the Honolulu Board of Water Supply (in conjunction with the Commission and the Army Corps of Engineers) ) contracted with the U.S. Geological Survey, the University of Hawaii, and other professional organizations and scientists to re-examine the Central Oahu recharge and evapo-transpiration rates. Those studies are expected to be finished in 2014. There is evidence that overall rainfall declined more than 10% between the early 1980s and 2011 (*see* Giambelluca, "2011 Rainfall Atlas of Hawai'i"). There is also evidence that base stream flows in Hawaii dropped more than 20% over the last 100 years (Bassiouni and Oki, "Trends and Shifts in Streamflow in Hawai'i, 1913-2008" USGS 2012). These downward trends may change Pearl Harbor's sustainable yield in the years ahead and make water supplies less certain than in the past.

(2) **Reasonable-Beneficial Use**

Haw. Rev. Stat. §174C-3 defines "reasonable-beneficial use" as

*". . . the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest".*

**a. Purpose of Use**

Monsanto requests the use of potable ground water as a backup source for irrigation of 2,052 (net) acres of seed corn and other crops. The use of non-potable water for agriculture is consistent with the purposes of the Water Code. Haw. Rev. Stat. §174C-2(c). The use of *potable* groundwater in the Waipahu-Waiawa Ground Water Management Area, Oahu for agriculture raises questions when alternatives may be available. The Honolulu Board of Water Supply as a matter of policy seeks to retain potable water in the Pearl Harbor aquifer for drinking water purposes.

When the Water Code was adopted in 1987, it required each county to prepare and adopt county-wide Water Use and Development Plans. Twenty-five years later, the City and County of Honolulu and its Honolulu Board of Water Supply finally contracted (this year) to prepare a regional Water Use and Development Plan for Central Oahu. The Plan will not be done for at least two years. As a result, the county has not mapped or integrated its land use plans to the existing and future water sources.

**b. Quantity and Duty for Use**

In the Waiahole Contested Case Hearing, the Commission approved 2.636 mgd of Waiahole water for use on the fields identified here. At the time, the Estate of James Campbell owned the land. That water use permit is not at issue here. The amount needed for agricultural production on a per acre basis (if actually used) is consistent with the duty assigned to diversified agriculture.

**c. Economic and Efficient Use**

The issue of efficiency of water for use on these lands was addressed in Waiahole and will not be re-evaluated here, provided the water is applied for the same purpose and in the same manner.

**d. Analysis of Practical Alternatives**

In the Waiahole Contested Case Hearing, the Commission determined that the highest and best use of groundwater in the Waipahu-Waiawa Aquifer System Area is to meet future municipal potable needs. Agriculture does not require potable water. Monsanto's proposed use would be an alternative back up for Waiahole Ditch water (the Commission's preferred source). Monsanto analyzed alternatives to potable ground water and concluded that municipal sources, wastewater reuse, desalinization, and other water supplies are not available.

This may no longer be correct. Reclaimed water and reused water (treated to R-1 standards) is increasingly available in central Oahu and will be in the near future. The Army at Schofield Barracks is in the process of developing R-1 water for irrigation and landscaping. R-1 water is suitable for many agricultural uses when applied in accordance with DOH and BWS standards. Monsanto has not yet adequately addressed alternative sources that may soon be available.

(3) **No Interference with Other Existing Legal Uses**

There are no other production wells within a mile of the proposed source. State Well No. 2503-04 is located approximately two-thirds of a mile northwest of the proposed well. It is a monitoring well.

There are contaminated Del Monte wells north of the subject well. These are subject of an EPA Consent Decree to clean up the wells. The State of Hawaii Department of Health Hazard Evaluation and Emergency Response Office (HEER) and EPA, indicated they have no concerns about Monsanto's application. The proposed well is outside of the area subject to the EPA Consent Decree. There appear to be no negative impacts on the EPA / DOH mitigation work to remediate the contaminated plume. The proposed well will not be used for potable purposes.

Pump tests will be required for the proposed 2,083 gpm pump. Results of this pump test will be used to evaluate adverse impacts. Well Completion Reports (required under the administratively issued Pump Installation Permit) for the proposed well will not be approved unless the pump tests show no or minimal adverse impacts to the aquifer.

At the present time, the staff does not anticipate adverse impacts due to pumping. However, this judgment depends on acceptable pump tests that show no adverse impacts for the proposed pump capacity.

(4) **Public Interest**

The Water Code, Haw. Rev. Stat. §174C-2, - Declaration of Policy defines "public interest" as follows:

*(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

If a well construction permit and pump installation permit for back-up sources does not affect the long-term availability of potable ground water for other users, then third parties may not be impacted. No objections to the well construction permit and the pump installation permit have been filed.

The Board of Water Supply (“BWS”) is concerned that a duplicate Water Use Permit for 2.636 mgd as a backup source (even if not pumped) will reduce the available allocation for other future uses and create an untenable precedent of water banking.

As discussed more fully below, double allocations for the same use on the same land is inconsistent with the fundamental principles a) of allocating water to an actual, not an hypothetical use, b) of ensuring a fair and equitable distribution of the public’s water resources under the constitution, and c) of the public trust doctrine and the duty to protect water resources for both the present and future generations.

**(5) Consistent with State and County General Plans and Land Use Designations**

The proposed uses are in the State Agricultural District. The County zoning is Agriculture. The proposed use is consistent with these land use designations.

Monsanto’s applications were reviewed by the:

- 1) State Department of Land and Natural Resources (DLNR) and its State Parks, Aquatic Resources, Historic Preservation, and Land divisions;
- 2) Department of Health (DOH) Clean Water, Safe Drinking Water, and Wastewater Branches.
- 3) Department of Hawaiian Home Lands (DDHL);
- 4) Land Use Commission (LUC);
- 5) Office of Hawaiian Affairs (OHA); and.
- 6) City and County of Honolulu Office of the Mayor, Department of Planning and Permitting, and the Board of Water Supply.

The Board of Water Supply raised its concern about issuing water use permits as back up allocations for landowners who already have existing water use permits for the same use. As noted above, The BWS seeks to protect potable ground water in the Pearl Harbor for future municipal drinking water needs.

**(6) Consistent with County Land Use Plans and Policies**

The Office of the Mayor, Department of Planning and Permitting, and the Honolulu Board of Water Supply reviewed Monsanto’s applications.

(7) **No Interference with Hawaiian Home Lands Rights**

All permits are subject to the prior rights of Department of Hawaiian Home Lands (“DHHL”). DHHL and the Office of Hawaiian Affairs (“OHA”) reviewed Monsanto’s applications. DHHL responded that its needs may exceed DHHL’s current 1.358 reservation.

Standard water use permit conditions 3(a), 6 and 9(f) subjects all water use permittees to notice that their permits are subject to and may not interfere with DHHL water rights.

Unless DHHL’s reservation is increased, the 1.358 mgd reservation addresses DHHL’s immediate needs. If the full 2.636 mgd were approved, there would be approximately 16.508 mgd that has not been allocated from this aquifer system area.

This calculation may change after the Central Oahu recharge and evapo-transpiration studies are completed in 2014 and after urban and other agricultural uses are addressed. DHHL’s requests may be considered under a separate action. At the present time, Monsanto’s applications do not appear to interfere with DHHL rights.

C. **COMPLIANCE WITH HAW. REV. STAT. CHAP 343 (Environmental Assessment)** -

In accordance with Haw. Rev. Stat. §343-5(a), the proposed action does not trigger the need for an EA.

D. **ANALYSIS**

Monsanto’s application raises at least three other substantive issues.

1. Should (and may) the Commission allocate a separate and duplicate ground water use permit for water from a different aquifer system area for the same and already permitted end use.
2. If the Commission allows the installation of a pump without a corresponding Ground Water Use Permit in a designated water management area, then the Commission must amend its own Declaratory ruling DEC-ADM92-G0 & DEC-ADM94-G2 to clarify the terms under which such actions may be allowed.
3. How should the Commission address the concern of Monsanto (and others) that the Waiahole Ditch System could be damaged and water supplies (under Monsanto’s existing Water Use Permit No. 828) for agricultural production disrupted? Monsanto seeks a practical alternative water source for “emergency” use should this occur.

We address the questions in order.

**1. WATER USE PERMIT AND ALLOCATION AS BACK-UP FOR ALREADY PERMITTED USE**

In the past, the Commission has allowed modifications to or backup sources for existing wells with water use permits where the wells are part of a battery of wells from an existing source OR are part of an allocation within the same aquifer system area – provided there is no net increase to the allocation. See Declaratory Judgment DEC-ADM97-A1 (Exhibit 3). The Honolulu BWS and Maui Department of Water Supply have backup sources to optimize pumpage within their overall municipal systems, but do not have duplicate water use permits.

Counties are unique in that they are integrated, often regional or island wide, municipal entities with broad *public* obligations. However, this does not apply to Monsanto's situation here. Monsanto proposes a completely different arrangement. Monsanto proposes a *duplicate* water use permit for a private use, from a *new source* in a *different aquifer* system area that is *not* part of a battery of wells.

From an applicant's perspective, a back-up permit is simple, practical, convenient, and precautionary. Why would a landowner *not* seek such insurance and protection? However, from the perspective of the Commission, other water users, and the public, a back-up permit (as proposed here) taken to its logical conclusion would quickly undermine the Water Code and the principles upon which it is founded.

First, Monsanto's permit, if approved, would create a double counting. With double allocations (from the same or different sources), the water available under the sustainable yield would soon be committed and new allocations cut off. Other landowners and potential users would eventually be precluded from obtaining water from one or both sources. The Honolulu BWS is seriously concerned that double counting would eventually prevent it from providing potable drinking water for its municipal users.

Second, granting two water use permits from different aquifers (and different water management areas) for the same end use creates not just a double counting, but a reservation of water for a specific private (not public) use. There is no recognized legal interest in or right to reserve water, by permit, for a use that already has a permitted allocation. That is water banking.

By definition, a reserve of water for future use is not an actual present use. The Water Code authorizes the Commission to reserve water (but not grant a permit) for the future needs of Hawaiian Homes in light of federal law (HHCA §221). Haw. Rev. Stat. §174C-49(e). The Code also authorizes the Commission to reserve water for classes of uses (not individual users),

provided certain conditions are met. Haw. Rev. Stat. §174C-49(d); *In Re Water Use Permits Waiahole Ditch Contested Case (I)*, 94 Haw. 97, 9 P.3d 409 (2000). But none of these reservations are a water use permit. There is no right or authority to issue a present water use permit for a contingent future use.

Third, a double allocation of 2.636 mgd from different sources for the same end use is not a “reasonable beneficial” use of water under the Water Code. A “reasonable beneficial” use of water is that “quantity as is necessary for economic and efficient utilization for a purpose and in a manner which both reasonable and consistent with the state and county land use plans and the public interest.” As discussed above, double counting is not an “economic and efficient [use]” of water. Nor is it “reasonable” or “consistent” with the “public interest.” Haw. Rev. Stat. §174C-49(2).

Fourth, if this permit is approved, any other water use permit holder in a water management area who is concerned about potential system disruption or any other problem could (and probably would) apply for a similar backup permit for their existing uses. There would be no principled basis to differentiate the requests or any logical end to the dispensations. This would lead to a complete breakdown of the reasonable- beneficial use concept, render meaningless the requirement for an actual use of water, preempt other future uses, and create an impossible management problem. There would be no principled stopping point from allocating all the water in water management areas. It would be the equivalent of a land rush. The conclusion would be the breakdown of the Water Code. Arguments to the contrary are simply disingenuous.

Fifth, the highest and best use of water from the Waipahu-Waiawa Aquifer System Area is for potable purposes. Where alternative sources (surface water, reclaimed water, or reused water) are or may be available, a long-term permit for a short term problem (Waiahole Ditch failure) is not appropriate use.

Sixth, a water use permit for 0.000 mgd (a water permit for essentially no water) is a contradiction in terms. It is contrary to the law’s requirement of an actual use in a specific amount that is reasonable-beneficial, consistent with the public interest, and the State’s public trust duties. The “zero” allocation permit is not authorized under the Code or Hawaii water law.

The CWRM staff agrees with the BWS. Double counting is fundamentally unsustainable as a policy, unfair to others, and inconsistent with the Commission’s public trust duties under the State Constitution, Water Code, and existing law. Granting a Water Use Permit that “double counts” water in the manner proposed here would violate the Commission’s constitutional and public trust responsibilities, and exceed the Commission’s legal authority and power (“*ultra vires*”). Actions which exceed the Commission’s power and authority are void from the beginning.

### **ALTERNATIVE APPROACH TO MITIGATE RISK**

There is another approach to mitigate the risk of a short term water system failure.

The Water Code, Haw. Rev. Stat. 174C-62(g) *Declaration of water shortage*, provides a framework to deal with this situation:

(g) If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under subsection (c) are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, *the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area.* Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters. [Emphasis added] [L 1987, c 45, pt of §2]

The Commission's administrative rules, HAR §13-171-50 *Decision by commission*, likewise provides:

§13-171-50 *Decision by commission.* If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under section 13-171-42 are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, *the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area.* [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

At the time of the actual emergency, the Commission may immediately declare a water shortage from the existing systems, and/or the Commission may issue orders to address the emergency by, among other things, "*apportioning, rotating, limiting, or prohibiting the use of the water resources of the area*" including specific terms and conditions appropriate to the circumstances.

The State of Hawaii and the Commission's emergency and police power authority and responsibilities are construed broadly by the courts to protect and carry out the public trust duties under Hawaii's Constitution, Hawaii's statutes, and the common law. *See*, Haw. Constitution, Art XI, §7; Haw. Rev. Stat., chapter 174C (Water Code); *In Re Water Use Permits Waiahole Ditch Contested Case* (I), 94 Haw. 97, 9 P.3d 409 (2000); *In Re Waiahole (II)*, 105 Haw. 1, 93 P.3d 643 (2004); *In Re Waiahole*, 113 Haw. 52, 147 P.3d 836 (2006). While Haw. Rev. Stat. 174C-62(g) and HAR §13-171-50 set forth some of the circumstances under which emergency powers may need to be exercised, those provisions are neither comprehensive, nor exclusive. The courts are absolutely clear on this point. There is no credible argument to the contrary.

A framework under these terms might proceed approximately as follows:

1. The Commission approves a well construction permit and a pump installation permit provided that a specific protocol is adopted, including the approval of an emergency plan in advance and a remedial action plan once the nature and extent of the emergency are known.
2. The Commission requires a short term emergency plan under which the applicant may install a pump and extract water from the well when a covered emergency arises. The pumping may continue until such time as the Commission issues further orders setting out the terms and conditions for continued pumping.
3. The approved emergency plan would be approved only for a prescribed period of time, as determined by the nature of the emergency.

Thus, the emergency measures in the Water Code and the Commission's administrative rules provide a mechanism to address the problem Monsanto poses without contradicting the actual use requirements of the Water Code and the Commission's public trust duties to preserve and protect the water resources for all the people of Hawaii.

Therefore, the Commission should deny Monsanto's application of the Ground Water Use Permit Application (GWUPA). The Commission should require an emergency plan (subject to revision based on the emergency that actually arises).

## **2. GRANTING A PUMP INSTALLATION PERMIT WITHOUT A WATER USE PERMIT IN A GROUND WATER MANAGEMENT AREA (GWMA)**

In **non-designated** areas, where a well is constructed and pump tests show no adverse impacts to existing sources, a pump installation permit may be approved administratively.

In a **designated Water Management Area**, granting a Well Construction Permit **and** a Pump Installation Permit prior to and without a Water Use Permit raises a number of considerations and problems.

In the past, the Commission authorized a *well construction permit* and allowed wells to be constructed in a ground water management area *before* a water use permit is issued. See Declaratory Rulings DEC-ADM92-G0 & DEC-ADM94-G2 (Exhibits 4 & 5).

*However*, the Commission has **not** authorized a *pump installation permit* prior to the approval of a water use permit in a water management area.

The reason for this approach is the “reliance” problem which arises when an applicant constructs a well in “reliance” upon an assumption that a later water use permit and allocation will follow. In a Ground Water Management Area (“GWMA”), applicants have been allowed the option of drilling a well with the express understanding that it is possible they may not be granted a permit (and allocation) later. The purpose of this practice has been to provide the Commission with additional and better information to evaluate subsequent water use permit decisions.

The current status and knowledge about the Waipahu-Waiawa Aquifer System Area suggests that a new well pumping 2.636 mgd would not have an immediate impact on the source. In an emergency, pumping at that rate should not harm third parties. However, it would change the current Commission ruling and practice regarding approval of a pump installation prior to approved GWUP. If the Commission chooses to revise its policy in order to deal with potential emergency situations in designated areas, then the procedure needs to be carefully articulated and circumscribed to avoid over broad applications or abuse.

### **3. EMERGENCY PROCEDURES**

Monsanto seeks prior authority to install a pump and withdraw ground water in a designated water management area as a backup in case Monsanto’s water system (the Waiahole ditch system) should fail.

There is no rule for emergency well construction. However, Hawaii Administrative Rules (“H.A.R.”). §13-169-55 *Emergency work* does provide a framework for ground water well construction emergencies.

H.A.R. §13-169-55, Emergency work addresses emergency situations in the context of stream channel permit alterations.

§13-169-55 Emergency work. (a) *When emergency channel alteration is necessary to prevent or minimize loss of life or damage to property, including the repair or restoration of structures damaged by a sudden and unforeseen event, a person may proceed to effect the channel alteration without a permit.*

(b) *In general, protective, health, and sanitation measures shall be limited to the minimum amount necessary to remove immediate threats to health and safety or to prevent immediate or further damage to property, and emergency repairs or restoration of structures shall be based on their replacement by a minimum facility of the same general type.*

(c) *No later than the first working day after initiation of any emergency work, the person effecting the work shall notify the department and describe the nature and circumstances of the remedial work so that the department may issue an emergency authorization.*

(d) *Within thirty days of his notification to the department, the person effecting the emergency work shall submit to the commission a report describing the nature and extent of the emergency work performed, including relevant maps and diagrams showing the location and details of the channel alteration completed.*

(e) *No fee will be required for the filing of a report for emergency channel alteration work. [Eff. MAY 27, 1988] (Auth: HAW. REV. STAT. §174C-8) (Imp: HAW. REV. STAT. §§174C-5, 174C-71)*

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 create a principle that is untenable if extended to all others similarly situated. A permanent ground water use permit allocation for a relatively short term “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 water system fails is through the “Water Emergency” powers of the Water Commission. See HAR 13-171-50 through -53.

When a specific emergency occurs, Monsanto will be able to describe the specific problem and conditions on the ground. If the Waihole Ditch system fails, many other users will face similar needs. With that specific information, the Commission will be able to use the “Water Emergency” provisions to address Monsanto’s (and others) particular needs.

A plan to provide for emergency ground water pumping may be managed along the following lines:

The “Water Emergency” provision gives the Commission the flexibility to address the problems as they arise. There needs to be some preliminary emergency planning. Prior declaratory rulings on pump installation permits in ground water management areas need to be revised

1. Monsanto shall propose and submit an “Emergency Plan” to address potential failures the water system that currently supplies Monsanto with water.
2. The Emergency Plan shall include and describe the following:
  - a. The time that Monsanto can operate without water if the Waiahole Ditch System (or different parts of the system ) fail;
  - b. The kinds of failures and estimated time to repair each;
  - c. All the information required by a Water Use Permit Application;
  - d. A statement by Monsanto verifying that it will pump its wells in a manner that ensures no harm to any third party.
  - e. Such other terms and conditions as the Chairperson may prescribe.
3. Staff will present Monsanto’s Emergency Plan to the Commission for consideration and approval. If the Commission’s approves the Emergency Plan, the Commission will authorize the Pump Installation Permit.
4. If an emergency occurs (as defined in the “Emergency Plan”), Monsanto shall notify the Commission immediately and request authorization to turn on the pump.
5. Upon such notification, Monsanto shall be able to immediately activate and use the pump to replace Waiahole water not available to Monsanto, provided that the emergency upon which Monsanto is acting, is an emergency covered in Monsanto’s Emergency Plan. The right to pump shall continue until the Commission has the opportunity to act on the Applicant’s Remedial Action Plan (as set forth below).
6. Not later than 10 calendar days (or the next business day if the date falls on a weekend or holiday) after Monsanto notifies the Commission of an “Emergency” under its approved Plan, Monsanto shall submit a “Remedial Action Plan” describing the problem, estimating how long it will take to fix it, alternatives to the lost source, and a plan of action. If the repair is estimated to take longer than one year (and therefore the Waiahole water is no longer actually available), the applicant shall also apply for a water use permit for the well.

7. Monsanto shall conduct any required pump tests on the well, in accordance with the Hawaii Well Construction and Pump Installation Standards, and submit the results within 24 hours of completing the test.
8. Monsanto shall provide and report all information requested by the Commission on a regular and timely basis.
9. If the "emergency" is not one described and covered in an approved emergency plan, then Monsanto shall notify the Commission, submit its Remedial Action Plan within the same 10 calendar day period. However, the Applicant's right to pump shall not extend beyond 45 days unless otherwise approved by the Commission
10. At any time, the Commission reserves the right and may issue orders to cease pumping the well or require additional testing requirements (monitoring water levels in adjacent monitor wells, etc.), to ensure that there are no harmful effects of pumpage on the aquifer and third parties.

**RECOMMENDATION:**

The Commission Staff recommends the Commission act as follows:

- A. DENY Monsanto's Application for a Ground Water Use Permit.
- B. APPROVE Monsanto's applications for a Well Construction Permit and a Pump Installation Permit, but only after Monsanto obtains a contractor who signs the application and SUBJECT TO THE TERMS AND CONDITIONS set forth in this Submittal.
- C. DIRECT AND REQUIRE Monsanto to prepare and file an "Emergency Plan" as set forth in this Submittal.
- D. REVISE EXISTING DECLARATORY RULINGS DEC-ADM 92-G0 and DEC-ADM 94-G2 (Exhibits 4 & 5) and ADOPT A NEW DECLARATORY RULING No. ADM 12-G6 to allow the issuance of a pump installation permit for emergency use in a Ground Water Management Areas without a concurrent water use permit.

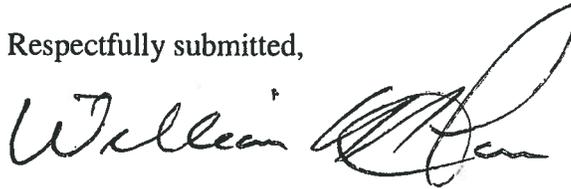
ALL PROVIDED that the following terms and conditions are met:

1. Monsanto shall submit an "Emergency Plan" to address potential failures to the Waiahole water system that currently supplies Monsanto with water.
2. The Emergency Plan shall include and describe the following:

- a. The time that Monsanto can operate without Waiahole water if the Waiahole Ditch System (or different parts of the system ) fail;
  - b. The kinds of failures and estimated time to repair each;
  - c. All the information required by a Water Use Permit Application;
  - d. A statement by Monsanto verifying that it will pump its wells in a manner that ensures no harm to any third party;
  - e. Such other terms and conditions as the Chairperson may prescribe.
3. Staff will present Monsanto's Emergency Plan to the Commission for consideration and approval. If the Commission's approves the Emergency Plan, the Commission will authorize the Pump Installation Permit.
  4. If an emergency (as defined in the "Emergency Plan") occurs, Monsanto shall notify the Commission immediately and request authorization to turn on the pump.
  5. Upon such notification, Monsanto shall be able to immediately activate and use the pump to replace permitted Waiahole water not available to Monsanto, provided that the emergency upon which Monsanto is acting, is an emergency covered in Monsanto's Emergency Plan. The right to pump shall continue until the Commission has the opportunity to act on the Applicant's Remedial Action Plan (as set forth below).
  6. Not later than 10 calendar days (or the next business day if the date falls on a weekend or holiday) after Monsanto notifies the Commission of an "Emergency" under its approved Plan, Monsanto shall submit a "Remedial Action Plan" describing the problem, estimating how long it will take to fix it, alternatives to the lost source, and a plan of action. If the repair is estimated to take longer than one year, the applicant shall also apply for a water use permit for the well.
  7. Monsanto shall conduct any required pump tests in accordance with the Hawaii Well Construction and Pump Installation Standards, and submit the results within 24 hours of completing the test.
  8. Monsanto shall provide and report all information requested by the Commission on a regular and timely basis.
  9. If the "emergency" is not one described and covered in an approved emergency plan, then Monsanto shall notify the Commission, submit its Remedial Action Plan within the same 10 calendar day period. However, the Applicant's right to pump shall not extend beyond 45 days, unless otherwise approved by the Commission.

10. At any time, the Commission reserves the right and may issue orders to cease pumping the well or require additional testing requirements (monitoring water levels in adjacent monitor wells, etc.), to ensure that there are no harmful effects of pumpage on the aquifer and third parties.

Respectfully submitted,



WILLIAM M. TAM  
Deputy Director

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.  
Chairperson  
Commission on Water Resource Management

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Attachment(s): A (Water Use Permit Detailed Information)  
B (Water Use Permit Standard Conditions)  
C (Well Construction Permit Standard Conditions)  
D (Pump Installation Permit Standard Conditions)

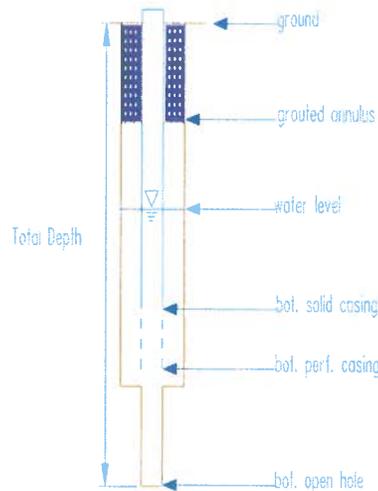
Exhibit(s): 1 (Location Map)  
2 (Existing Water Use Permits and 12-Month Moving Average Withdrawal)  
3 (DEC-ADM97-A1 - Delegation of WUP Modification)  
4 (DEC-ADM94-G2 - Combined WCP & PIP with WUP)  
5 (DEC-ADM94-G2 - Allows exploratory WC prior to WUP in WMAs)  
6 (DEC-ADM12-G6 - Proposed Declaratory Ruling)

**WATER USE PERMIT DETAILED INFORMATION**

**Source Information**

**AQUIFER:** Waipahu-Waiawa System, Pearl Harbor Sector, Oahu  
Sustainable Yield: 104 mgd  
Existing Water Use Permits: 83.498 mgd  
Available Allocation: 19.144 mgd  
Total other pending applications: 0 mgd  
This application: 2.636 mgd

**PROPOSED WELL:** Kunia Farm Well No. 1 (Well No. 2402-06)  
Location: 94-520 Kunia Road, Oahu, TMK: (1) 9-2-001:001  
Casing Diameter: 18 in.  
Elevations (msl= 0 ft.)  
Water Level: 16 ft.  
Ground: 616 ft.  
Bottom of Solid Casing: -20 ft.  
Bottom of Open Hole: -144 ft.  
  
Total Depth: 760 ft.  
Grouted Annulus Depth: 600 ft.  
  
Pump Capacity 2,083 gpm



Use Information

Quantity Requested: 2.636 million gallons per day  
Type of Water Use: future back up agricultural  
Place of Water Use: TMK: (1) 9-2-001:001, 9-2-004:009, 9-2-002:007

Waipahu-Waiawa Aquifer System

Current 12-Month Moving Average Withdrawal (See Exhibit 2): 49.820 mgd

Public Notice

In accordance with HAR §13-171-17, a public notice was published in the Honolulu Star Advertiser on May 18, 2012 and May 25, 2012 and a copy of the notice was sent to the Office of the Mayor. Copies of the completed application were sent to the Department/Board of Water Supply, Department of Planning and Permitting, Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, the various divisions within the Department of Land and Natural Resources, and other interested parties for comments. Written comments and objections to the proposed permit were to be submitted to the Commission by June 11, 2012.

Objections

The public notice specifies that an objector meet the following requirements: (1) state property or other interest in the matter; (2) set forth questions of procedure, fact, law, or policy, to which objections are taken; (3) state all grounds for objections to the proposed permits, (4) provide a copy of the objection letter(s) to the applicant, and (5) submit objections meeting the previous requirements to the Commission by June 11, 2012.

To the best of staff's knowledge there are no objectors who have property interest within the Waipahu-Waiawa Aquifer System or who will be directly and immediately affected by the proposed water use.

Briefs in Support

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

**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 other 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 water must be obtained in the case an area is also designated as a 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 August 15, 2012 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 Waipahu-Waiawa 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 Waipahu-Waiawa 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 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 Waipahu-Waiawa 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.

## Well Construction Permit Standard 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 (HAR).
2. This permit shall be prominently displayed, or made available, at the site of construction work until work is completed.
3. The well construction permit shall be for construction and testing of the well only. The permittee shall coordinate with the Chairperson and conduct a pumping test in accordance with the HWCPIS (the latest pump test worksheet can be obtained by contacting Commission staff or at [www.hawaii.gov/dlnr/cwr/resources\\_permits.htm](http://www.hawaii.gov/dlnr/cwr/resources_permits.htm)). The permittee shall submit to the Chairperson the test results as a basis for supporting an application to install a permanent pump. No permanent pump may be installed until a pump installation permit is approved and issued by the Chairperson. No withdrawal of water shall be made for purposes other than testing without a Certificate of Pump Installation Completion. The permitted pump capacity described on the pump installation permit **may be reduced** in the event that the pump test does not support the capacity.
4. 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. If it can be shown that the well does not tap basal ground water then this condition may be waived after consultation with and acceptance by Commission staff. However, in no instance can the well be drilled deeper than one-half (1/2) of the theoretical thickness without Commission approval.
5. The permittee 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.
6. In the event that historically significant remains such as artifacts, burials or concentrations of shells or charcoal are encountered during construction, the permittee shall stop work and immediately contact the Department of Land and Natural Resources' State Historic Preservation Division. Work may recommence only after written concurrence by the State Historic Preservation Division.
7. 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.
8. The Well Completion Report Part I shall be submitted to the Chairperson within sixty (60) days after completion of work (please contact staff or visit [www.hawaii.gov/dlnr/cwr/resources\\_permits.htm](http://www.hawaii.gov/dlnr/cwr/resources_permits.htm) for current form).
9. The permittee shall comply with all applicable laws, rules, and ordinances; non-compliance may be grounds for revocation of this permit.
10. The well construction permit application and, if relevant, any related staff submittal approved by the Commission are incorporated into this permit by reference.
11. If the HWCPIS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result.
12. Any variances from the HWCPIS shall be approved by the Chairperson prior to invoking the variance.
13. 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 the date the permit expires.
14. If the well is not to be used it must be properly capped. If the well is to be abandoned during the course of the project then the permittee must apply for a well abandonment permit in accordance with §13-168-12(f), HAR, prior to any well sealing or plugging work.
15. 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.

16. This permit shall apply to the location shown on the application only. If the well is to be relocated, the permittee shall apply for a new well construction/pump installation permit in accordance with §13-168-12(f), HAR.
17. Special conditions in the attached cover transmittal letter are incorporated herein by reference.

## Pump Installation Permit Standard 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 2083 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/info\\_permits.htm](http://www.hawaii.gov/dlnr/cwrm/info_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.





Report Parameters

Island: Oahu  
 Applicant: All  
 Well # Prefix: All  
 Date: All  
 Aquifer: 30203 Waipahu-Waiawa  
 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: 30203 Waipahu-Waiawa**  
**Sustainable Yield (mgd): 104**

| WUP No | Approved   | Permittee                              | Well No    | Well Name           | WUP (mgd) | 12-MAV (mgd) | Diff (mgd) | Date Last Reported |
|--------|------------|----------------------------------------|------------|---------------------|-----------|--------------|------------|--------------------|
| 57     | 07/11/1985 | Nazarene Church                        | 3-2358-049 | Pearl City          | 0.003     |              |            |                    |
| 58     | 07/11/1985 | Board of Water Supply, BWS             | 3-2400-001 | Waipahu I P2        | 6.000     | 1.663        | 4.337      | 06/30/2012         |
|        |            |                                        | 3-2400-002 | Waipahu I P1        |           |              |            |                    |
|        |            |                                        | 3-2400-003 | Waipahu I P4        |           |              |            |                    |
|        |            |                                        | 3-2400-004 | Waipahu I P3        |           |              |            |                    |
| 73     | 03/27/1987 | Board of Water Supply, BWS             | 3-2557-003 | Pearl City III      | 0.500     | 0.363        | 0.137      | 06/30/2012         |
| 84     | 05/17/1989 | Harris Rug & Carpet Cleaners           | 3-2201-014 | Pearl Harbor        | 0.003     | 0.000        | 0.003      | 12/31/1992         |
| 90     | 05/17/1989 | AI Watanabe                            | 3-2300-011 | Waipahu             | 0.680     | 0.706        | -0.026     | 06/30/1983         |
| 91     | 05/17/1989 | AI Watanabe                            | 3-2300-020 | Waipahu             | 0.400     |              |            | 05/31/1967         |
| 92     | 05/17/1989 | Board of Water Supply, BWS             | 3-2301-034 | Hoaeae P1           | 6.610     | 6.374        | 0.236      | 06/30/2012         |
|        |            |                                        | 3-2301-035 | Hoaeae P2           |           |              |            |                    |
|        |            |                                        | 3-2301-036 | Hoaeae P4           |           |              |            |                    |
|        |            |                                        | 3-2301-037 | Hoaeae P3           |           |              |            |                    |
|        |            |                                        | 3-2301-038 | Hoaeae P5           |           |              |            |                    |
|        |            |                                        | 3-2301-039 | Hoaeae P6           |           |              |            |                    |
| 108    | 05/17/1989 | Dorothy Yoshimura                      | 3-2459-021 | Waipahu             | 0.006     | 0.002        | 0.004      | 06/30/1993         |
| 111    | 05/17/1989 | Navy Public Works Center 1             | 3-2558-010 | Waiawa Shaft        | 14.977    | 11.537       | 3.440      | 12/31/2010         |
| 454    | 01/30/2002 | Hawaii Country Club                    | 3-2603-001 | Hawaii Country Club | 0.400     | 0.384        | 0.016      | 12/31/2010         |
| 456    | 12/18/1996 | Tadahiro Abe                           | 3-2202-002 | Honouliuli          | 0.009     |              |            |                    |
| 495    | 08/26/1998 | Tadao Abe                              | 3-2201-002 | Honouliuli          | 0.002     |              |            |                    |
| 500    | 08/26/1998 | Gary Takiguchi (Takiguchi Family)      | 3-2201-002 | Honouliuli          | 0.019     |              |            |                    |
| 566    | 06/21/2000 | State Dept. of Haw. Home Lands, DHHL 1 |            | RESERVATION         | 1.358     |              |            |                    |
| 573    | 12/19/2001 | KENNETH SIMON                          | 3-2358-035 | Pearl City          | 0.040     |              |            |                    |
|        |            |                                        | 3-2358-044 | Pearl City          |           |              |            |                    |
| 574    | 12/19/2000 | KENNETH SIMON                          | 3-2358-036 | Pearl City          | 0.004     |              |            |                    |
| 575    | 06/05/1996 | ROYAL KUNIA CC                         | 3-2401-007 | Royal Kunia C C     | 0.600     |              |            | 02/29/2012         |
| 582    | 11/08/2000 | HONOLULU BWS                           | 3-2402-001 | Kunia II P1         | 2.710     | 1.936        | 0.774      | 06/30/2012         |
|        |            |                                        | 3-2402-002 | Kunia II P2         |           |              |            |                    |
|        |            |                                        | 3-2402-003 | Kunia II P3         |           |              |            |                    |
|        |            |                                        | 3-2402-005 | Kunia II P4         |           |              |            |                    |
| 585    | 04/18/2001 | C&C DES, GOLF COURSE DIV               | 3-2201-003 | EP 2                | 0.000     |              |            | 03/21/2003         |
|        |            |                                        | 3-2201-004 | EP 2                |           | 0.899        | -0.899     | 09/18/2000         |
|        |            |                                        | 3-2201-007 | EP 2                |           |              |            |                    |
| 587    | 04/24/2001 | HONOLULU BWS                           | 3-2500-001 | Waipio Hts II-1     | 1.000     | 0.318        | 0.682      | 06/30/2012         |
|        |            |                                        | 3-2500-002 | Waipio Hts II-2     |           |              |            |                    |
| 597    | 08/22/1986 | HONOLULU BWS                           | 3-2400-005 | Waipahu II-1        | 2.100     | 0.705        | 1.395      | 06/30/2012         |



Island of Oahu

Aquifer System Ground Water Management Area:  
Sustainable Yield (mgd):

30203 Waipahu-Waiawa  
104

| WUP No | Approved   | Permittee                        | Well No    | Well Name       | WUP (mgd) | 12-MAV (mgd) | Diff (mgd) | Date Last Reported |
|--------|------------|----------------------------------|------------|-----------------|-----------|--------------|------------|--------------------|
|        |            |                                  | 3-2400-006 | Waipahu II-2    |           |              |            |                    |
|        |            |                                  | 3-2400-008 | Waipahu II-3    |           |              |            |                    |
|        |            |                                  | 3-2400-014 | Waipahu II-4    |           |              |            |                    |
| 608    | 06/21/2000 | HONOLULU BWS                     | 3-2400-009 | Waipahu III-1   | 3.029     | 1.730        | 1.299      | 06/30/2012         |
|        |            |                                  | 3-2400-010 | Waipahu III-2   |           |              |            |                    |
|        |            |                                  | 3-2400-011 | Waipahu III-3   |           |              |            |                    |
|        |            |                                  | 3-2400-012 | Waipahu III-5   |           |              |            |                    |
|        |            |                                  | 3-2400-013 | Waipahu III-4   |           |              |            |                    |
| 626    | 12/18/2002 | Pearl City Community Church      | 3-2359-010 | Trias           | 0.005     | 0.000        | 0.005      | 03/31/2005         |
| 627    | 09/18/2002 | U.S. FISH & WILDLIFE             | 3-2359-019 | PHNWR 1         | 0.180     |              |            | 07/25/2011         |
| 642    | 07/19/1989 | KIPAPA ACRES ASSOC OF OWNERS     | 3-2600-002 | Kipapa Gulch    | 0.100     |              |            | 11/01/2012         |
| 692    | 10/25/2005 | WAIAWA DEVELOPMENT LLC           | 3-2658-007 | GENTRY WAIAWA 1 | 0.524     |              |            |                    |
| 693    | 10/25/2005 | WAIAWA DEVELOPMENT LLC           | 3-2658-008 | GENTRY WAIAWA 2 | 0.458     |              |            |                    |
| 742    | 12/18/1996 | MARK H. ORTIZ                    | 3-2202-001 | Honouliuli      | 0.003     | 0.004        | -0.001     | 05/31/2005         |
| 744    | 06/02/1993 | HONOLULU BWS                     | 3-2600-003 | Mililani III-7  | 1.250     | 0.766        | 0.484      | 06/30/2012         |
|        |            |                                  | 3-2600-004 | Mililani III-8  |           |              |            |                    |
| 745    | 07/28/1993 | HONOLULU BWS                     | 3-2858-001 | Mililani IV-9   | 2.022     | 1.588        | 0.434      | 06/30/2012         |
|        |            |                                  | 3-2858-002 | Mililani IV-10  |           |              |            |                    |
|        |            |                                  | 3-2858-003 | Mililani IV-11  |           |              |            |                    |
|        |            |                                  | 3-2858-004 | Mililani IV-12  |           |              |            |                    |
| 749    | 03/21/2007 | TABA FARM, INC.                  | 3-2358-021 | Pearl City      | 0.864     |              |            |                    |
|        |            |                                  | 3-2358-022 | Pearl City      |           |              |            |                    |
|        |            |                                  | 3-2358-026 | Pearl City      |           |              |            |                    |
|        |            |                                  | 3-2358-029 | Pearl City      |           |              |            |                    |
| 761    | 03/07/2006 | HONOLULU BWS                     | 3-2301-044 | Waipahu IV-2    | 3.000     | 2.447        | 0.553      | 06/30/2012         |
|        |            |                                  | 3-2301-045 | Waipahu IV-3    |           |              |            |                    |
|        |            |                                  | 3-2301-046 | Waipahu IV-1    |           |              |            |                    |
|        |            |                                  | 3-2301-047 | Waipahu IV-4    |           |              |            |                    |
| 762    | 05/17/1989 | HONOLULU BWS                     | 3-2302-001 | Kunia I P1      | 5.000     | 2.527        | 2.473      | 06/30/2012         |
|        |            |                                  | 3-2302-002 | Kunia I P2      |           |              |            |                    |
|        |            |                                  | 3-2302-003 | Kunia I P3      |           |              |            |                    |
|        |            |                                  | 3-2302-004 | Kunia I P4      |           |              |            |                    |
| 764    | 03/07/2006 | HONOLULU BWS                     | 3-2202-021 | BWS Ewa Shaft   | 7.661     |              |            |                    |
| 767    | 10/18/2006 | Robinson Kunia Land, LLC         | 3-2602-003 | Robinson No. 1  | 0.100     |              |            |                    |
| 805    | 01/26/2000 | D.R. Horton - Schuler Homes, LLC | 3-2102-002 | EP 18 Battery   | 7.969     |              |            | 11/05/2012         |
|        |            |                                  | 3-2102-004 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-005 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-006 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-007 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-008 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-009 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-010 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-011 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-012 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-013 | EP 18 Battery   |           |              |            |                    |
|        |            |                                  | 3-2102-014 | EP 18 Battery   |           |              |            |                    |



**Island of Oahu**

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

**30203 Waipahu-Waiawa  
104**

| WUP No | Approved   | Permittee                      | Well No    | Well Name        | WUP (mgd) | 12-MAV (mgd) | Diff (mgd) | Date Last Reported |
|--------|------------|--------------------------------|------------|------------------|-----------|--------------|------------|--------------------|
|        |            |                                | 3-2102-015 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-016 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-017 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-018 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-019 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-020 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-021 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2102-022 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-003 | EP 18 Battery    |           |              |            | 11/05/2012         |
|        |            |                                | 3-2202-004 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-005 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-006 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-007 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-008 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-009 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-010 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-011 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-012 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-013 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-014 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-015 | EP 18 Battery    |           |              |            | 11/05/2012         |
|        |            |                                | 3-2202-016 | EP 18 Battery    |           | 0.000        | 7.969      | 06/30/1996         |
|        |            |                                | 3-2202-017 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-018 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-019 | EP 18 Battery    |           |              |            |                    |
|        |            |                                | 3-2202-020 | EP 18 Battery    |           |              |            |                    |
| 806    | 01/02/2007 | Honolulu BWS                   | 3-2401-004 | Kunia III-1      | 3.050     | 2.987        | 0.063      | 12/31/2006         |
|        |            |                                | 3-2401-005 | Kunia III-2      |           |              |            |                    |
|        |            |                                | 3-2401-006 | Kunia III-3      |           |              |            |                    |
| 814    | 05/17/1989 | Roman Catholic Church - Hawaii | 3-2101-001 | Honouliuli       | 0.110     | 0.010        | 0.100      | 06/30/2005         |
| 831    | 07/28/1993 | Waiawa Ridge Development LLC   | 3-2659-004 | Waiawa 575Ft-2   | 0.300     |              |            | 08/31/2008         |
| 832    | 08/29/2008 | Honolulu BWS                   | 3-2458-001 | Pearl City Shaft | 1.000     | 0.652        | 0.348      | 06/30/2012         |
| 833    | 08/29/2008 | Honolulu BWS                   | 3-2458-003 | Pearl City I-1   | 1.150     | 0.439        | 0.711      | 06/30/2012         |
|        |            |                                | 3-2458-004 | Pearl City I-2   |           |              |            |                    |
| 834    | 08/29/2008 | Honolulu BWS                   | 3-2457-001 | Pearl City II-1  | 1.500     | 1.129        | 0.371      | 06/30/2012         |
|        |            |                                | 3-2457-002 | Pearl City II-2  |           |              |            |                    |
|        |            |                                | 3-2457-003 | Pearl City II-3  |           |              |            |                    |
| 835    | 08/29/2008 | Honolulu BWS                   | 3-2459-019 | Waipio Hts P-2   | 0.500     | 0.359        | 0.141      | 06/30/2012         |
|        |            |                                | 3-2459-020 | Waipio Hts P-1   |           |              |            |                    |
| 836    | 08/29/2008 | Honolulu BWS                   | 3-2459-023 | Waipio Hts. I-1  | 0.500     | 0.131        | 0.369      | 06/30/2012         |
|        |            |                                | 3-2459-024 | Waipio Hts. I-2  |           |              |            |                    |
| 837    | 08/29/2008 | Honolulu BWS                   | 3-2659-002 | Waipio Hts III-2 | 1.250     | 0.602        | 0.648      | 06/30/2012         |
|        |            |                                | 3-2659-003 | Waipio Hts III-1 |           |              |            |                    |
| 838    | 08/29/2008 | Honolulu BWS                   | 3-2800-001 | Milliani I P1    | 2.670     | 2.560        | 0.110      | 06/30/2012         |
|        |            |                                | 3-2800-002 | Milliani I P2    |           |              |            |                    |
|        |            |                                | 3-2800-003 | Milliani I P3    |           |              |            |                    |



**Island of Oahu**

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

**30203 Waipahu-Waiawa**  
**104**

| WUP No | Approved   | Permittee           | Well No    | Well Name      | WUP (mgd) | 12-MAV (mgd) | Diff (mgd) | Date Last Reported |
|--------|------------|---------------------|------------|----------------|-----------|--------------|------------|--------------------|
| 839    | 08/29/2008 | Honolulu BWS        | 3-2800-004 | Mililani I P4  |           |              |            |                    |
|        |            |                     | 3-2859-001 | Mililani II P5 | 1.590     | 0.000        | 1.590      | 06/30/2012         |
|        |            |                     | 3-2859-002 | Mililani II P6 |           |              |            |                    |
| 840    | 08/29/2008 | Honolulu BWS        | 3-2458-005 | Manana 1       | 0.700     | 0.856        | -0.156     | 06/30/2012         |
| 902    | 01/26/2000 | Hoban E&C USA, Inc. | 3-2301-001 | Waipahu WP1    | 0.950     |              |            | 03/31/2010         |
|        |            |                     | 3-2301-002 | Waipahu WP1    |           |              |            |                    |
|        |            |                     | 3-2301-003 | Waipahu WP1    |           |              |            |                    |
|        |            |                     | 3-2301-004 | Waipahu WP1    |           | 2.791        | -1.841     | 06/30/2012         |
|        |            |                     | 3-2301-005 | Waipahu WP1    |           |              |            | 07/31/2010         |
|        |            |                     | 3-2301-006 | Waipahu WP1    |           |              |            | 07/31/2010         |
|        |            |                     | 3-2301-007 | Waipahu WP1    |           |              |            |                    |
|        |            |                     | 3-2301-008 | Waipahu WP1    |           |              |            |                    |
|        |            |                     | 3-2301-009 | Waipahu WP1    |           |              |            |                    |
|        |            |                     | 3-2301-010 | Waipahu WP1    |           |              |            | 03/31/2010         |

Summary for Waipahu-Waiawa (142 detail records)

|                   |               |               |               |
|-------------------|---------------|---------------|---------------|
| <b>Total:</b>     | <b>84.856</b> | <b>42.775</b> | <b>20.540</b> |
| <b>Available:</b> | <b>19.144</b> |               |               |



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

MICHAEL D. WILSC  
CHAIRPERSON

ROBERT G. GIRALI  
DAVID A. NOBRIG,  
LAWRENCE H. MIIK  
RICHARD H. COX  
HERBERT M. RICHARD:

RAE M. LOUI, P.E.  
DEPUTY

**Declaratory Ruling No. DEC-ADM97-A1**

Declaratory Order on:  
Delegation of Water Use Permit Modification Approval  
Meeting Certain Criteria to the Chairperson

**BACKGROUND:**

The Honolulu Board of Water Supply (BWS) requested modifications/adjustments of permitted uses within a water management area to reflect the actual pumpages at existing municipal supply sources which are driven by system demands. Requested increases were small and ranged from 0.012 to 0.390 mgd. To balance these increases, BWS proposed to reduce permitted uses at other sources within the same aquifer system so that no net change occurs. The modification was approved at the Commission meeting on October 22, 1997.

**ANALYSIS/ISSUES:**

Section 174C-57 HRS states:

*"A permittee may seek modification of any term of a permit. A permittee who seeks to change the use of water subject to the permit, whether or not such change in use is of a material nature, or to change the place of use of the water or to use a greater quantity of water than allowed under the permit or to make any change in respect to the water which may have a material effect upon any person or upon the water resource, shall make application pursuant to section 174C-51 in respect to such a change.*

BWS submitted a letter request for these proposed modifications, rather than making application(s) pursuant to §174C-51 HRS that would be subject to the full permitting process, which provides for public notice and objections.

However, §174C-57 HRS also provides:

*"County agencies are exempt from the requirements of this section except where the modification involves a change in the quantity of water to be used or where the new use would adversely affect the quality of the water or quantity of use of another permittee.*

Although BWS' modification request involved increases in the quantity of water used at specific sources, the net change in total permitted municipal uses within the aquifers is zero. The modifications would result in more optimal operation of BWS' interconnected system.

BWS' proposal seeks to optimize pumpage and minimize potential overpumpage violations at these sources. The Commission's records of BWS pumpage supports this proposal. Because the proposed allocation changes result in no net change within the same aquifers, and because the adjustments reflect actual historical pumpages, no adverse impacts to water resources or other existing legal uses are anticipated.

This optimization exercise can and should be extended to non-county agency permittees where the permittees may have multiple wells within the same aquifer system. A declaratory ruling that clarifies the statute and Administrative Rule regarding water use permit modifications and delegates the authority to the Chairperson to approve future such modification requests would be beneficial to the staff.

RECOMMENDATION:

That the Commission adopt the following declaratory order:

DECISION AND ORDER:

The Commission delegates the approval of water use permit modifications to the Chairperson for allocation adjustments that meet the following criteria:

1. The net change in permitted use within an aquifer is zero.
2. The modification would result in more efficient and optimal operation of multiple sources under a single operator.
3. No adverse impacts to water resources or other existing legal uses are anticipated.
4. End use location and type remain unchanged.

Dated: Honolulu, Hawaii January   5  , 1998

APPROVED BY THE COMMISSION ON WATER RESOURCE MANAGEMENT AT  
ITS MEETING ON NOVEMBER 19, 1997

APPROVED AND SO ORDERED:

  
\_\_\_\_\_  
MICHAEL D. WILSON, Chairperson

State of Hawaii  
COMMISSION ON WATER RESOURCE MANAGEMENT  
Department of Land and Natural Resources  
Honolulu, Hawaii

August 19, 1992

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

Gentlemen:

Combined Well Construction & Pump Installation Permits and  
Water Use Permits Prior to Well Construction and Pump Installation Permits

Your approval is requested to adopt the following considerations for the staff in processing construction and pump installation permits. These will be used by the Commission staff in evaluating and processing well permit applications for action by the Commission. These are considerations only; each request will be considered on a case-by-case basis.

COMBINED WELL CONSTRUCTION/PUMP INSTALLATION PERMITS MAY BE ALLOWED WHEN:

1. There is no evidence that it will affect other existing and proposed wells.
2. It is in an area where the hydrology and water quality is known or where the sustainable yield is substantially more than existing and proposed withdrawals.
3. The request is for backup wells in areas where the hydrology and water quality is known.
4. The request is for small capacity wells such as wells drilled for domestic/household uses, small irrigation wells, etc.
5. In water management areas, a water use permit has already been obtained and it is evident that the well will not affect other existing and proposed wells.

IN DESIGNATED WATER MANAGEMENT AREAS, UNLESS THE APPLICANT CAN PROVIDE CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY, WATER USE PERMITS SHOULD BE OBTAINED PRIOR TO APPROVAL OF WELL CONSTRUCTION APPLICATIONS AND PUMP INSTALLATION APPLICATIONS.

IN CASES WHERE A WATER USE PERMIT IS OBTAINED, THE COMMISSION MAY DELEGATE AUTHORITY TO THE CHAIRPERSON TO APPROVE THE WELL CONSTRUCTION AND PUMP INSTALLATION PERMITS.

ITEM 18

August 19, 1992

DISCUSSION

These items were first presented at the June 17, 1992 Commission meeting. Some of the following major concerns were raised:

1. extent to which a rule or code change is required instead of a policy statement;
2. collapsing permits in water management areas does not allow maximum public review and comment, if it is believed that public review should be greatest in water management areas; and
3. well construction and pump installation permits should be allowed prior to water use permits in cases where test pumping is needed to find out more about the resource.

Our analysis is as follows:

1. Although the Commission may delegate authority to the Chairperson by policy, these guidelines will be incorporated in our on-going redraft of the administrative rules.
2. The water use permit procedure allows for public review through the public notice requirements as stated in the Water Code. This public review and comment is not diminished through this recommended policy.
3. The Commission may allow well construction and pump installation prior to water use permits on a case-by-case basis. Again, these are considerations for the staff to utilize in evaluating and processing applications.

Your favorable action and adoption will be appreciated.

Respectfully submitted,



RAE M. LOUI  
Deputy Director

APPROVED FOR SUBMITTAL:



WILLIAM W. PATY, Chairperson

State of Hawaii  
COMMISSION ON WATER RESOURCE MANAGEMENT  
Department of Land and Natural Resources  
Honolulu, Hawaii

March 16, 1994

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

Gentlemen:

Honolulu Board of Water Supply  
Application for a Well Construction Permit  
and Request for a Declaratory Ruling  
Manoa IV Exploratory Well (Well No. 1848-01), Manoa, Oahu

Applicant:

Honolulu Board of Water Supply  
1151 Punchbowl Street  
Honolulu, HI 96843

Landowner:

Department of Parks & Recreation  
650 South King Street  
Honolulu, HI 96813

Background: The applicant has submitted both water use permit and well construction permit applications to the Commission. It has been a practice of the Commission that "in designated water management areas, unless the applicant can provide clear and convincing evidence to the contrary, water use permits shall be obtained prior to approval of well construction applications and pump installation applications" (Approved by Commission on August 19, 1992).

Action Requested: The applicant is requesting that Commission approve a Well Construction Permit to drill the exploratory well prior to the issuance of the water use permit. Information obtained from the drilling and testing of the well will help determine the viability of the project and will determine what the applicant will request in the water use permit.

Commission staff is requesting a declaratory ruling to allow the drilling and testing of an exploratory well prior to obtaining a water use permit for the well, in areas where there is a lack of information.

Well Location/Tax Map Key: The well site is at Manoa, Oahu, at Tax Map Key: 2-9-36: 3 (see attached map).

Well Description:

|                      |             |
|----------------------|-------------|
| Ground elevation:    | 160 ft.     |
| Casing diameter:     | 12 inches   |
| Solid casing depth:  | 100 ft.     |
| Screen casing depth: | 500 ft.     |
| Open hole:           | none        |
| Total depth:         | 500 ft.     |
| Grouted annulus:     | 0 to 95 ft. |

Analysis: The applicant proposes to drill an exploratory well in the alluvium of Manoa Valley. A water use permit application will be submitted if pumping tests show a safe yield worth developing. The applicant recognizes that if pumping the well reduces stream flow, it could have an effect on the aquatic biota of the stream. Should the water level in the well approximate the water level of the stream, they will ask the U.S. Geological Survey to gage the stream during the testing. If pumping affects stream flow the applicant will consider petitioning the Commission to amend the interim instream flow standard for Manoa Stream and will be prepared to conduct any necessary biological reconnaissance survey. The applicant is of the opinion that if the water level in the well is substantially below Manoa Stream, then the stream is perched relative to the aquifer tapped by the well and no gaging or biological reconnaissance should be necessary.

March 16, 1994

Concerning the issuance of a well construction permit prior to a water use permit, the staff is of the opinion that it is reasonable to let the applicant drill the well first, as long as it is made clear that the issuance of the drilling permit shall in no way prejudice any future consideration by the Commission on the issuance or non-issuance of a water use permit. The applicant must understand that even if the well is successful, there is no guarantee that a water use permit will be approved. For exploratory wells, drilling and testing the well first gives the applicant the necessary information on which to base the water use permit request.

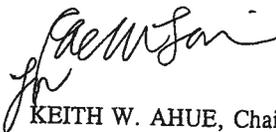
RECOMMENDATIONS:

- A. That the Commission approve the issuance of a well construction permit, subject to the following conditions:
1. The Commission shall be notified before work commences.
  2. The well construction permit shall be for construction and testing of the well only. The applicant shall coordinate with the Commission and conduct a pumping test in accordance with the protocol established by the Commission. A one-inch diameter (minimum) galvanized pipe shall be permanently installed, in a manner acceptable to the Commission, to accurately record water levels. No permanent pump may be installed and no water used from the well without first obtaining a water use permit and a pump installation permit from the Commission.
  3. The applicant shall notify the Commission at least one week prior to conducting the pumping test, and shall coordinate with and notify the Commission of any proposed stream gaging conducted during the testing of the well.
  4. The applicant shall comply with all applicable laws, rules, and ordinances.
  5. The permit application and staff submittal approved by the Commission at its meeting on March 16, 1994 shall be incorporated herein by reference.
  6. The permits may be revoked if work is not started within six months of the date of issuance or if work is suspended or abandoned for six months. The work proposed in the well construction permit application shall be completed within two years from the date of permit issuance.
- B. That the Commission issue a declaratory ruling, effective in designated water management areas, that where there is insufficient information, an applicant may be allowed to drill and test an exploratory well prior to applying for a water use permit. The applicant shall be informed that the issuance of the drilling permit shall in no way prejudice any future consideration by the Commission on the issuance or non-issuance of a water use permit. If the well is successful, the applicant will apply for a water use permit. If the well is not successful, the applicant will apply for a permit to seal/abandon the well, or properly secure it in a manner approved by the Commission.

Respectfully submitted,

  
RAE M. LOUI  
Deputy Director

Attach.  
APPROVED FOR SUBMITTAL:

  
KEITH W. AHUE, Chairperson

## COMMISSION ON WATER RESOURCE MANAGEMENT

November 21, 2012 Meeting  
Honolulu, Oahu

Declaratory Ruling (DEC-ADM12-G6) to Allow Issuance of  
Pump Installation Permit Without a Ground Water Use Permit -  
In Case of an Emergency in a Ground Water Management Area

### **Declaratory Ruling (DEC-ADM12-G6)**

#### BACKGROUND:

The Commission on Water Resource Management (“Commission”) met on November 21, 2012, to consider Monsanto Company’s (“Monsanto”) application for a Ground Water Use Permit (GWUPA 954) to allocate 2.636 million gallons per day (mgd) of potable basal ground water from a proposed new well (Well No. 2402-06) in the Waipahu-Waiawa Ground Water Management Area (Oahu). Monsanto requested the new water use permit to provide emergency back-up irrigation water for 2,052 net acres of seed corn and various other crops. These lands are currently irrigated with water from the Waiahole Ditch System under an *existing* Ground Water Use Permit (GWUP No. 828).

In addition to GWUPA 954, Monsanto applied for well construction and pump installation permits for the new well, although these applications did not yet have the required licensed contractor information (leaving these applications incomplete).

#### ANALYSIS / ISSUES:

Haw. Rev. Stat. §174C-82 through 87 authorize the Commission to review and approve well construction and pump installation activities and permits. Through Declaratory Rulings DEC-ADM92-G0 and DEC-ADM94-G2, the Commission addressed well construction and pump installation activities and permits in Ground Water Management Areas by: 1) allowing new well construction for exploratory purposes without an approved ground water use permit; and 2) not allowing pumps to be installed in wells without an approved ground water use permit.

The reason for this approach is the “reliance” problem that arises when an applicant constructs a well in “reliance” upon an assumption that a later water use permit and allocation will follow. In a Ground Water Management Area, applicants have the option of drilling a well with the express understanding that they may not be granted a Water Use permit (and allocation) later. The purpose of this practice has been to provide the Commission with additional and better information to evaluate subsequent water use permit decisions. However, until a Ground Water Use Permit is approved for such a well, a pump installation permit will not be issued to protect the resource from unpermitted pumping.

## **EXHIBIT 6**

In the Monsanto GWUP 954 application, a question arose how to provide for an emergency use of ground water where a water delivery system from a different water management area (e.g. Waiahole Ditch) might fail. Specifically, the question is whether well construction and pump installation permits may be issued *before* a Water Use Permit (in a water management area) is approved in order to address potential emergencies.

Hawaii Administrative Rules (“H.A.R.”) §13-169-55 Emergency work provides a framework for addressing this situation (albeit in the context of a stream channel).

H.A.R. §13-169-55, Emergency work addresses emergency situations in the context of stream channel permit alterations.

§13-169-55 Emergency work. (a) *When emergency channel alteration is necessary to prevent or minimize loss of life or damage to property, including the repair or restoration of structures damaged by a sudden and unforeseen event, a person may proceed to effect the channel alteration without a permit.*

(b) *In general, protective, health, and sanitation measures shall be limited to the minimum amount necessary to remove immediate threats to health and safety or to prevent immediate or further damage to property, and emergency repairs or restoration of structures shall be based on their replacement by a minimum facility of the same general type.*

(c) *No later than the first working day after initiation of any emergency work, the person effecting the work shall notify the department and describe the nature and circumstances of the remedial work so that the department may issue an emergency authorization.*

(d) *Within thirty days of his notification to the department, the person effecting the emergency work shall submit to the commission a report describing the nature and extent of the emergency work performed, including relevant maps and diagrams showing the location and details of the channel alteration completed.*

(e) *No fee will be required for the filing of a report for emergency channel alteration work. [Eff. MAY 27, 1988] (Auth: HAW. REV. STAT. §174C-8) (Imp: HAW. REV. STAT. §§174C-5, 174C-71)*

For purposes of deciding whether to approve a well construction permit and a pump installation permit prior to and independent of any application for a Water Use Permit, AND setting aside the question (or merits) of whether a Water Use Permit would later be granted, the Commission addressed the need for emergency pumping in the event of a delivery system failure.

The Commission examined the “Water Emergency” powers in the Water Code (Haw. Rev. Stat. 174C-62(g)) and the Code’s Administrative Rules (HAR 13-171-50 through -53)).

The Water Code, Haw. Rev. Stat. 174C-62(g) *Declaration of water shortage*, provides a framework to address such a situation:

(g) If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under subsection (c) are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, *the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area.* Any party to whom an emergency order is directed may challenge such an order but shall immediately comply with the order, pending disposition of the party's challenge. The commission shall give precedence to a hearing on such challenge over all other pending matters. [Emphasis added] [L 1987, c 45, pt of §2]

The Commission's Administrative Rule, HAR §13-171-50 *Decision by commission*, also provides:

§13-171-50 *Decision by commission.* If an emergency condition arises due to a water shortage within any area, whether within or outside of a water management area, and if the commission finds that the restrictions imposed under section 13-171-42 are not sufficient to protect the public health, safety, or welfare, or the health of animals, fish, or aquatic life, or a public water supply, or recreational, municipal, agricultural, or other reasonable uses, *the commission may issue orders reciting the existence of such an emergency and requiring that such actions as the commission deems necessary to meet the emergency be taken, including but not limited to apportioning, rotating, limiting, or prohibiting the use of the water resources of the area.* [Eff. MAY 27, 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-62)

When a specific emergency occurs, the Applicant will be able to describe the particular problems and conditions on the ground. If (as assumed in the Monsanto case) the Waiahole Ditch system fails, many other users will face similar needs. With that specific information, the Commission will be able to fashion specific remedies and closely tailor solutions as described in the Code's "Water Emergency" provisions. The Commission will also be able to craft solutions not just for the Applicant, but for others impacted by the emergency. This will be both more efficient and ensure an equitable distribution of resources.

This or similar situations are likely to arise in the future. Thus, policy and procedures need to put in place before the actual emergencies arise.

The "Water Emergency" powers in the Water Code (Haw. Rev. Stat. 174C-62(g)) and its Administrative Rules (HAR 13-171-50 through -53)) provide a mechanism to address emergency situations in which a well construction permit and a pump installation permit may be approved

before a water use permit is issued. Early planning is important, but the specific remedies will need to be closely tailored to the actual problem that arises.

RECOMMENDATION:

That the Commission adopt the following Declaratory Order:

1. An Applicant which seeks a well construction permit and a pump installation permit in a designated water management area BEFORE a water use permit is issued in order to address potential emergency situations shall propose and submit an "Emergency Plan" to address the potential emergencies or failures to the water system that threaten the Applicant's current water supply.
2. The Emergency Plan shall include and describe the following:
  - a. The time that an applicant can operate without its current water source if the current water system fails or the emergency continues.
  - b. The kinds of failures and estimated time to repair each.
  - c. All the information required by a Ground Water Use Permit Application.
  - d. A statement by the Applicant verifying that it will pump its wells in a manner that ensures no harm to any third party.
  - e. Such other terms and conditions as the Chairperson may prescribe.
3. Staff will present an Applicant's Emergency Plan to the Commission for consideration and approval. If the Commission approves the Emergency Plan, the Commission will authorize the Well Construction Permit and the Pump Installation Permit from a completed application.
4. If an emergency (as defined in the "Emergency Plan") occurs, an applicant shall notify the Commission immediately and request authorization to turn on the pump.
5. Upon such notification, the Applicant may immediately activate and use the pump to replace water not available to the Applicant, provided that the emergency upon which the Applicant is acting, is an emergency covered in the Applicant's Emergency Plan. The right to pump shall continue until the Commission has the opportunity to act on the Applicant's Remedial Action Plan.
6. Not later than 10 calendar days (or the next business day if the date falls on a weekend or holiday) after the Applicant notifies the Commission of an "Emergency" under its approved Plan, the Applicant shall submit a "Remedial Action Plan" describing the problem, estimating how long it will take to fix it, alternatives to the lost source, and a plan of action. If the repair is estimated to take longer than one year (and therefore the water is no longer actually available), the applicant shall also apply for a water use permit for the well.

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7. The Applicant shall run a long term pump test on the well, in accordance with the Hawaii Well Construction and Pump Installation Standards, and submit the results within 24 hours of completing the test.
8. The Applicant shall provide and report all information requested by the Commission on a regular and timely basis.
9. If the "emergency" is not one described and covered in an approved emergency plan, then The Applicant shall notify the Commission, submit its Remedial Action Plan within the same 10 calendar day period. However, the Applicant's right to pump shall not extend beyond 45 days unless otherwise approved by the Commission
10. At any time, the Commission reserves the right and may issue orders to cease pumping the well or require additional testing requirements (monitoring water levels in adjacent monitor wells, etc.) to ensure that there are no harmful effects of pumpage on the aquifer and third parties.

APPROVED BY THE COMMISSION ON  
WATER RESOURCE MANAGEMENT  
AT ITS NOVEMBER 21, 2012 MEETING

APPROVED AND SO ORDERED:

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WILLIAM J. AILA, JR.  
Chairperson  
Commission on Water Resource Management