

# **Kualapuu Ground Water Management Area, Molokai Ground Water Use Permits Briefing**

**Commission on Water Resource Management  
January 28, 2016**

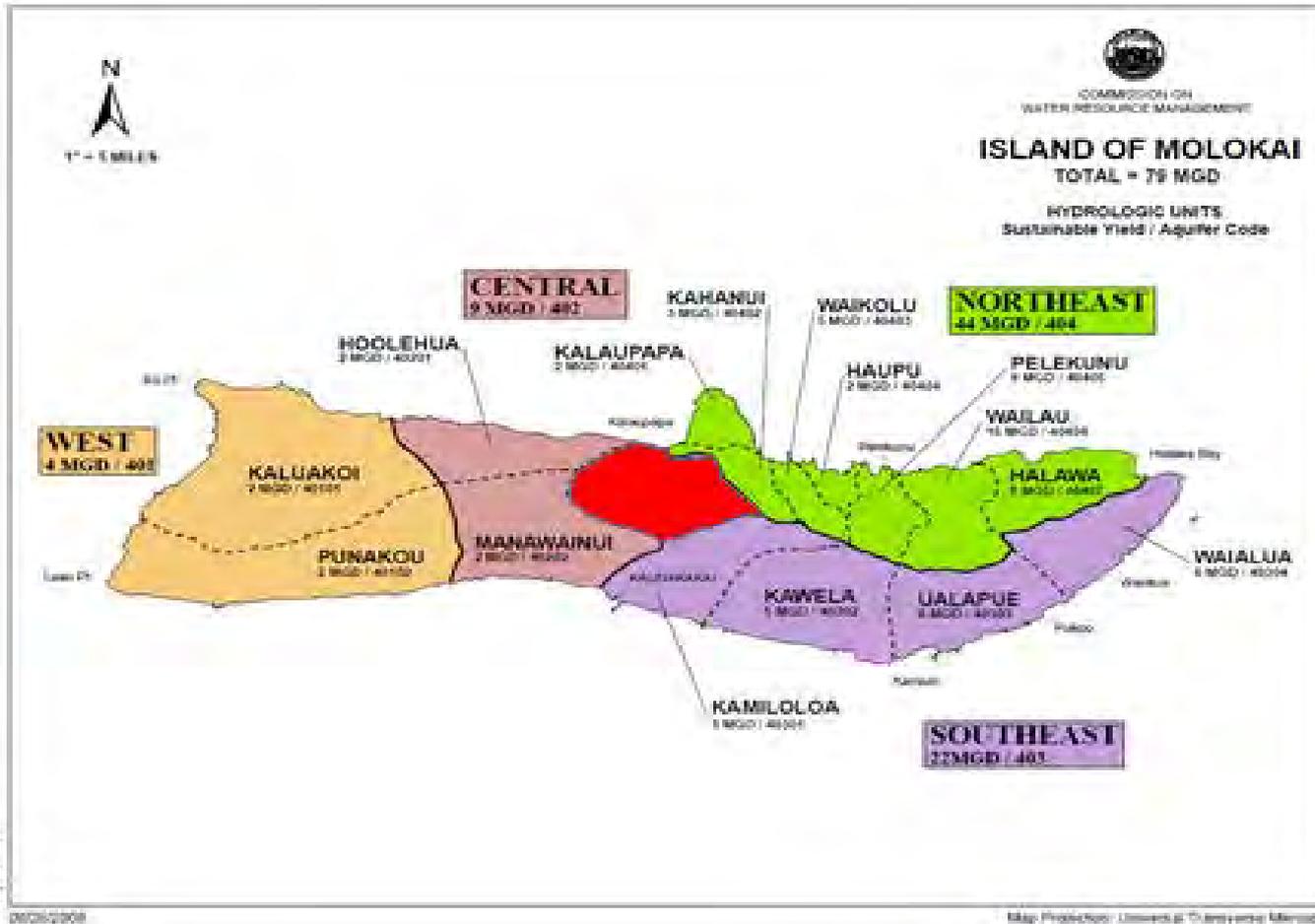


# Briefing Themes

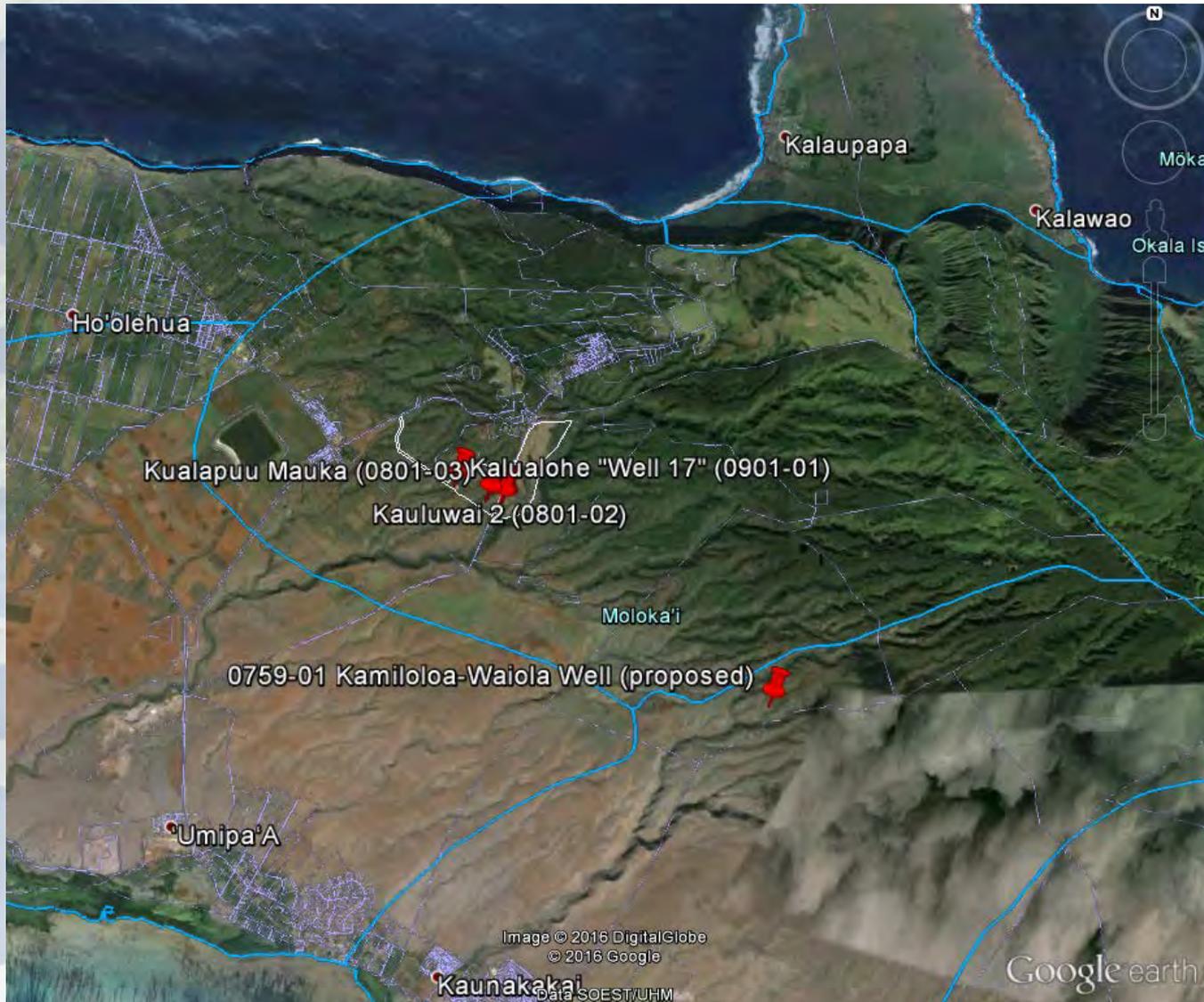
- 1. Ground Water Management Area Designation; applications for permits for existing use
- 2. Molokai Working Group
- 3. Establishing existing use from Well 17 & others
- 4. Issues in Waiola and Kukui contested case hearings
- 5. New use applications from major purveyors
- 6. USGS Ground Water Model
- 7. Moving forward



# Kualapuu Ground Water Management Area



# Central Molokai Well Locations



# *Kualapuu Well Field*



# ***1. Ground Water Management Area Designation***

- **1990 Petition:** the Molokai community strongly supported designating the entire island to assure protection of its limited water resources and native Hawaiian water rights in the face of perceived potential overdevelopment, inadequate planning, and serious disputes. At that time, staff recommended designating only the Kualapuu Aquifer System Area but the Commission decided to designate the entire island.
- **Effective date of designation:** July 15, 1992, triggering one-year period to file for permits to continue existing use.
- **Deadline for submitting applications for existing water use:** July 15, 1993.



## ***2. Molokai Water Working Group***

- **1993: originally convened by Chair William Paty in view of strong community interest in aquifer designation and water planning,**
- **and in lieu of better guidance from the County Water Use and Development Plan**
- **he encouraged:**
- **“good faith deliberations aimed at producing the highest consensus possible on demand forecasts, bulk water allocations, recommendations to manage both supply and demand, and best plans on balancing future water uses.”**



## ***2. Molokai Water Working Group (cont.)***

**2 specified purposes:**

- 1. to recommend a plan for water development on Molokai that assists the county and community in developing its WUDP.**
- 2. to test a community “working group” model that, if it works, could be used elsewhere in the state when communities are faced with tough planning water issues.**
- Reconvened again in 1996 by Chair Mike Wilson, in lieu of county WUDP, following correction of sustainable yield estimate from 7 to 5 mgd.**
- Reconvened again in 2007 by Chair Peter Young, over heightened planning concerns regarding development and lack of WUDP. Staff restated the purpose: to provide community planning guidance in lieu of a county WUDP. The last three meetings were led by Maui Planning to continue as their Water Advisory Committee for the WUDP.**



### ***3. Establishing existing use from Well 17 (Well No. 0901-001)***

- **April 14, 1994: staff recommended amending the amount of existing use as 1.275 mgd. Action deferred pending standing to request contested case.**
- **September 15, 1994: staff recommended amending the amount of existing use as 1.183 mgd. Action again deferred.**
- **March 14, 1995: staff recommended amending the amount of existing use as 0.871 mgd. The Commission approved.**
- **April 6, 1995: KMI moved for reconsideration of the CWRM approval, seeking a larger amount.**
- **June 14, 1995: CWRM denied reconsideration; later appeal to Circuit Court dismissed without prejudice; appeal to Supreme Court dismissed for lack of jurisdiction.**



### ***3. Applications for existing water use***

- **March 9, 1993: Molokai Irrigation System and Molokai Ranch, Ltd. applied for 10% of pumpage (unspecified) from Well 17 (0901-001), a contractual amount set for transporting water to Mahana, intended for treatment and use at Kaluakoi Resort.**
- **June 9, 1993: Maui Department of Water Supply applied for existing and foreseeable use of 0.660 mgd from the Kulapauu Mauka Well (0801-003).**
- **July 6, 1993: the Department of Hawaiian Home Lands applied for existing and foreseeable use of 0.500 mgd from the Kauluwai Wells 1 & 2 (0801-001 & 002).**
- **July 13, 1993: Kukui (Molokai), Inc. (KMI) filed an application for existing water use of 2.000 mgd from Well 17.**



### ***3. Applications for existing water use (cont.)***

- **The MDWS and DHHL applications were accepted as complete by the filing deadline.**
- **The MIS/MRL/KMI application was not accepted as complete, as there were a number of questions about a full accounting of end use.**
- **Distinguishing between “existing use” and existing land use approvals; difficulty accounting for beneficial uses.**



### ***3. Applications for existing water use (cont.) Approvals***

- **September 15, 1993: CWRM approved a DHHL water use permit of 0.367 mgd as existing use, deferring the request for new use pending approval of other existing uses, or the approval of a water reservation.**
- **March 14, 1995: CWRM approved a water reservation for DHHL of 2.905 mgd from the Kualapuu Aquifer System Area.**
- **March 14, 1995: CWRM approved a KMI water use permit of 0.871 mgd for existing uses, deferring new uses pending establishment of all existing uses from the aquifer.**
- **October 20, 1995: CWRM approved a MDWS water use permit of 0.516 mgd as existing use, deferring the request for new uses pending further review of the sustainable yield estimate for the aquifer, providing that the current pumpage could be maintained until CWRM acted upon the application for new uses.**

## ***(Existing use from Well 17)***

- **Continued efforts to provide new information on existing use resulted in two further staff recommendations to modify the water use permit, both denied by the Commission.**
- **May 21, 1996: following last denied recommendation to increase amount of existing water use permit, KMI requested contested case hearing.**
- **April 16, 1997: following AG advice, the Commission ordered a contested case hearing for KMI's reasonable beneficial use of Well 17.**
- **(November-December 1998: contested case hearing conducted; December 19, 2001: decision issued; later appealed)**



# ***5. Issues with New Ground Water Use Applications***

- 1. Kaluako'i Resort (initially by Kukui (Moloka'i), Inc.)  
new uses considered with existing, as other existing uses had been addressed.**
- 2. DHHL: application initially on hold due to well interference.**
- 3. MDWS: application initially on hold due to well interference.**
- 4. Moloka'i Public Utilities LLC re-application competing with DHHL and MDWS for available sustainable yield**



# *Conflicting Applications*

- **1. Competition for sustainable yield**
- **2. Well interference**
- **3. Conflict with public trust purposes**



# ***Conflicting Uses: “Competing”***

## **HRS §174C-54 Competing applications:**

- **“If two or more applications which otherwise comply with section 174C-49 are pending for a quantity of water that is inadequate for both or all,**
- **or which for any other reason are in conflict,**
- **the commission shall first, seek to allocate water in such a manner as to accommodate both applications if possible;**
- **second, if mutual sharing is not possible, then the commission shall approve that application which best serves the public interest.”**



# Competition for Sustainable Yield

Kualapuu Ground Water Management Area  
Sustainable Yield = 5 mgd

	Current		Proposed				
	GWUP	mgd	GWUPA	mgd			
				Existing	New	Total	
DHHL	267	0.367	448	0.367	†0.270	0.637	1.247 *
	568	2.905	?			2.635	2.025 *
MDWS	269	0.036				0.036	
	359	0.516	499	0.516	0.384	0.900	
MPU			973		1.026	1.026	
Totals		3.824				5.234	
Available SY mgd		1.176				-0.234	

\* Effect of DHHL Petition for mediation now claiming 0.880 mgd new use

† Amount that came out of mediation to avoid CCH for GWUP 448

# Competition: Well Interference: DHHL1-MDWS chlorides

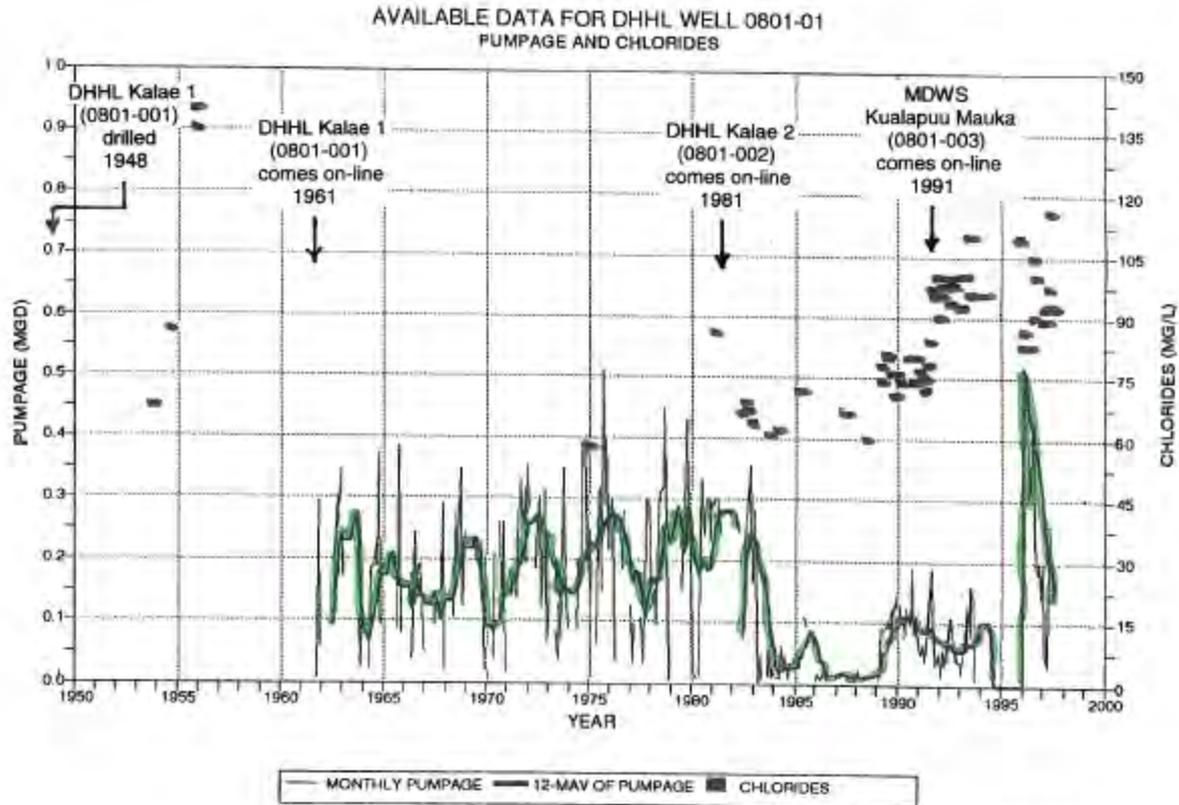
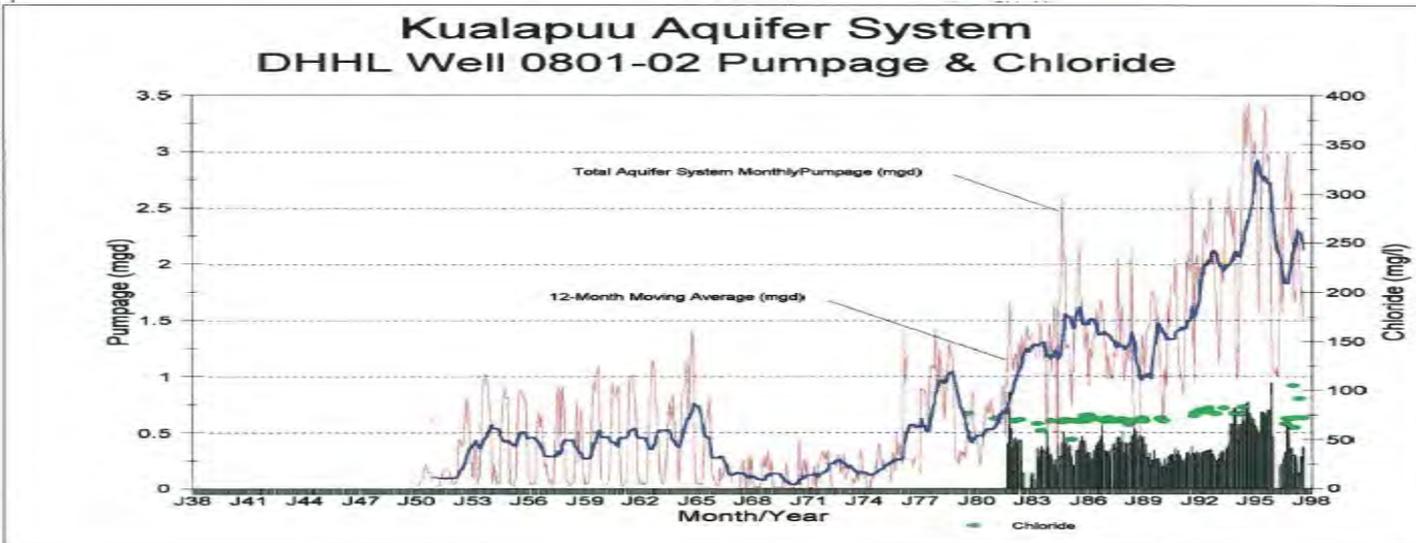
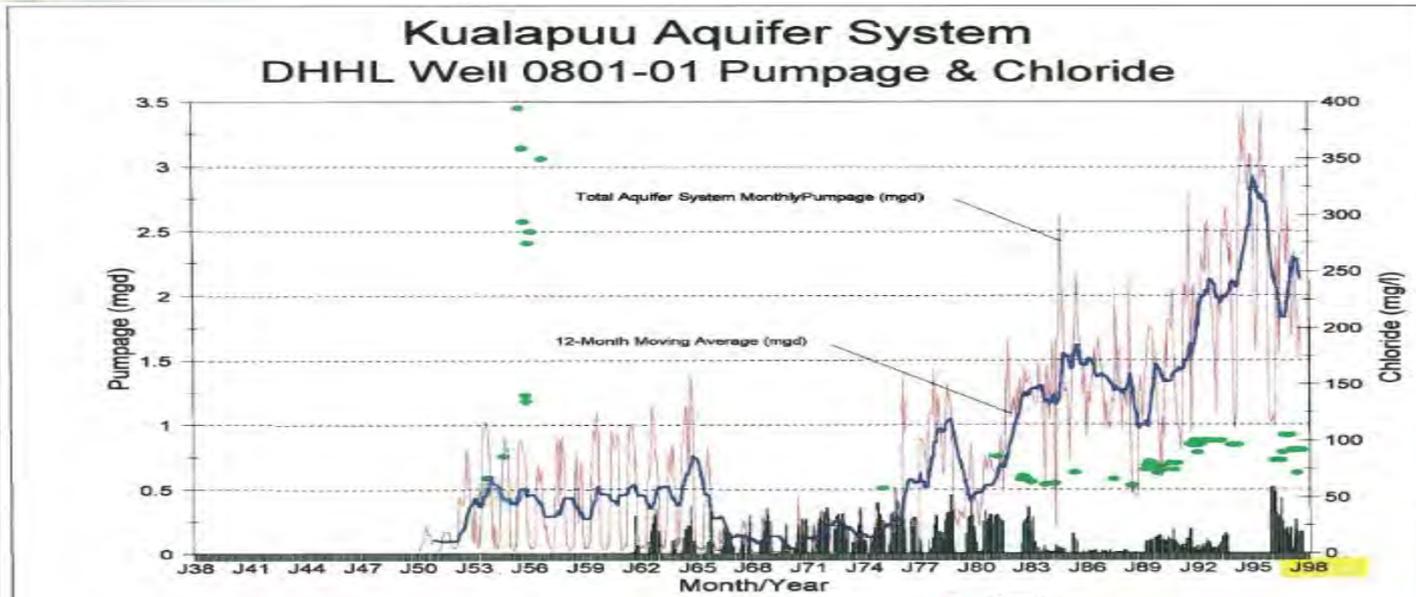
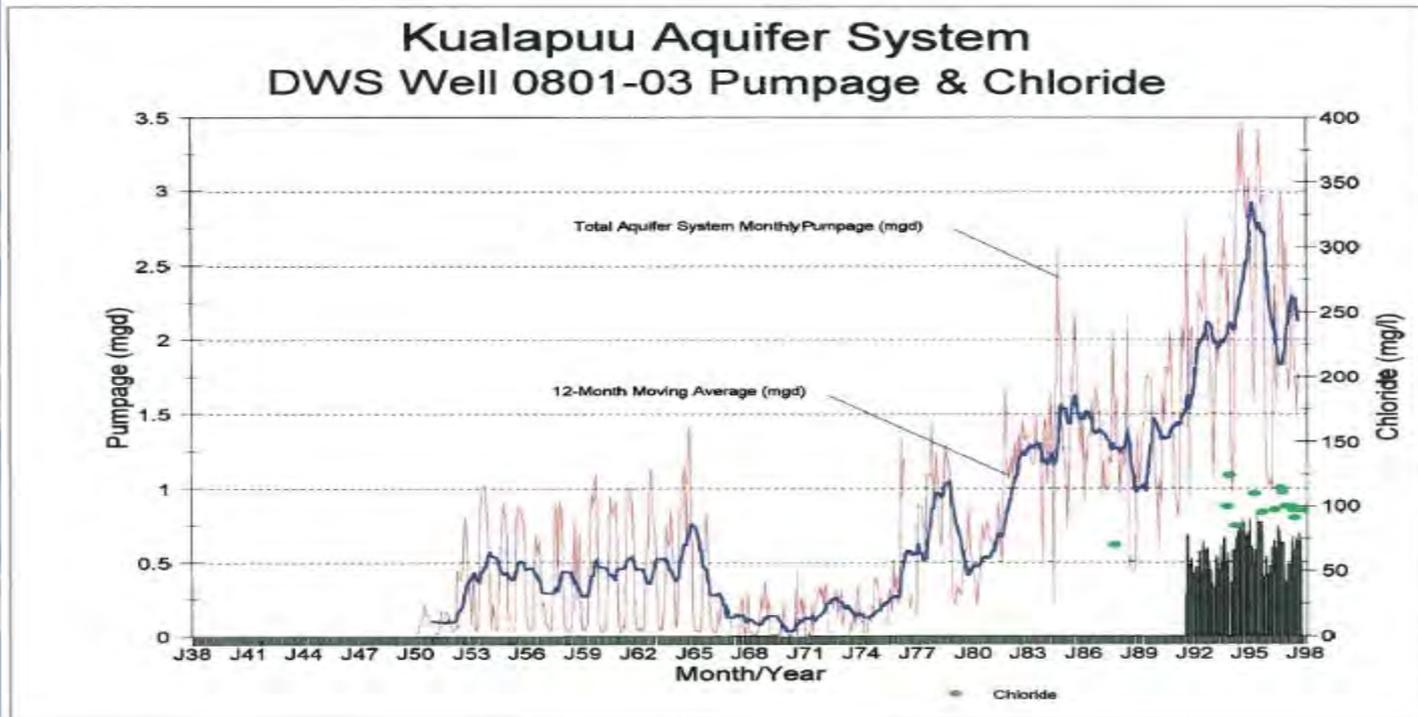


Exhibit 5

# Well Interference: DHHL 1-MDWS chlorides



# Well Interference: DHHL1-MDWS chlorides



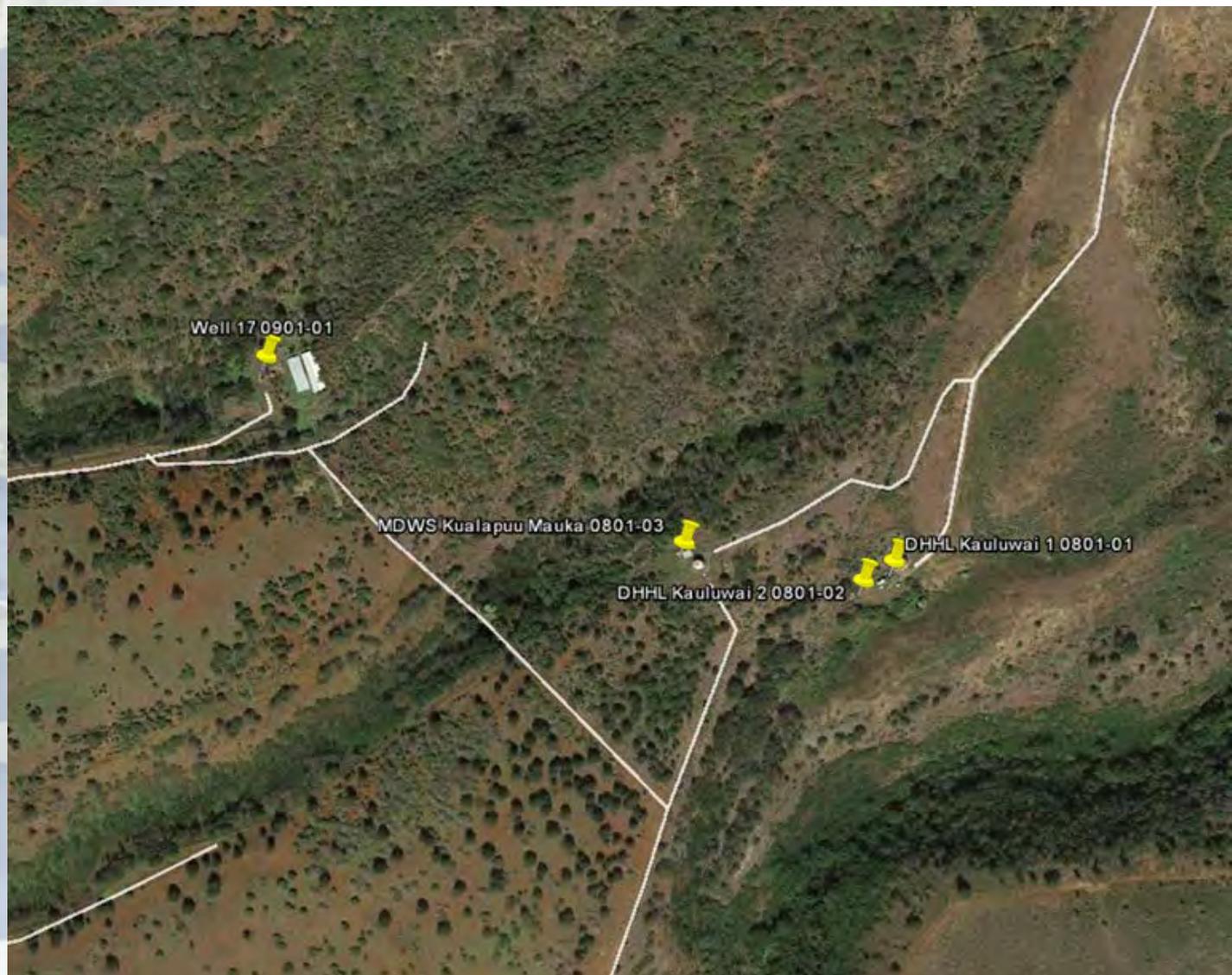
# *Public Trust Purposes*

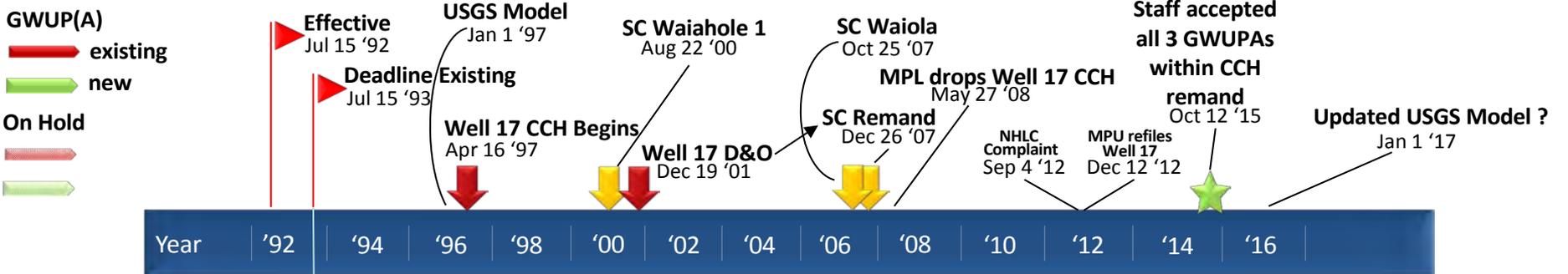
**Waiahole I: “there are no absolute priorities between broad categories of trust uses under the water resources trust”**

- **Maintenance of waters in their natural state (“resource protection”)**
- **Domestic use (primarily drinking water)**
- **Traditional and customary practices (Indigenous practices to maintain and enjoy common resources)**
- **DHHL water reservations for future reasonable-beneficial use**

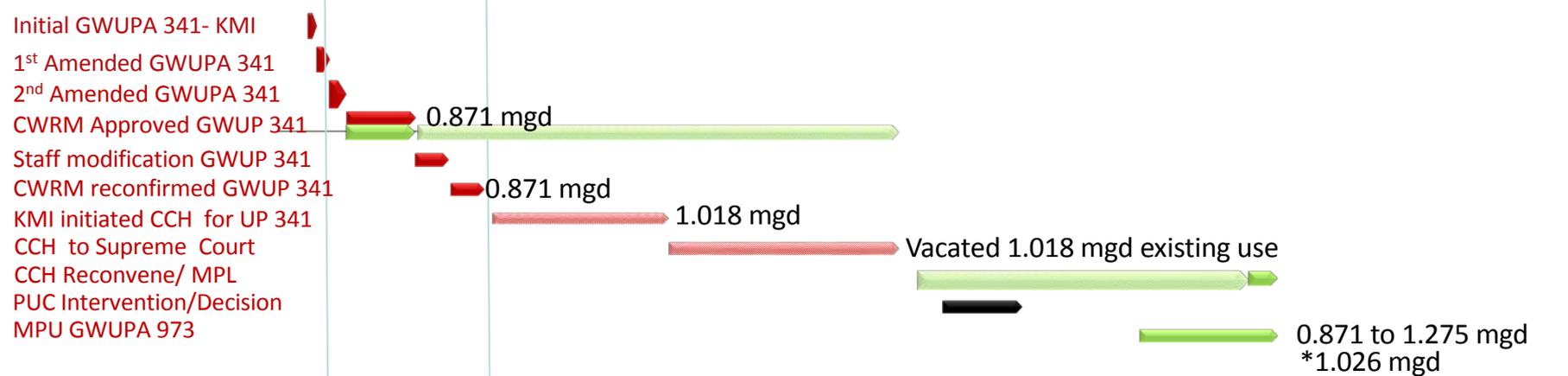


# *Kualapuu Well Field*





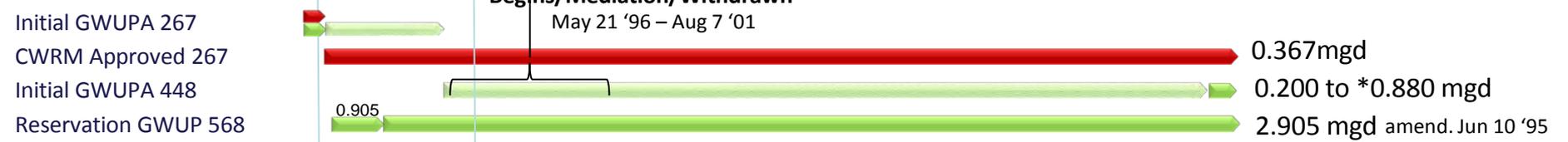
**Well 17 - 0901-001**



**MDWS - 0801-003**



**DHHL - 0801-002 & 003**

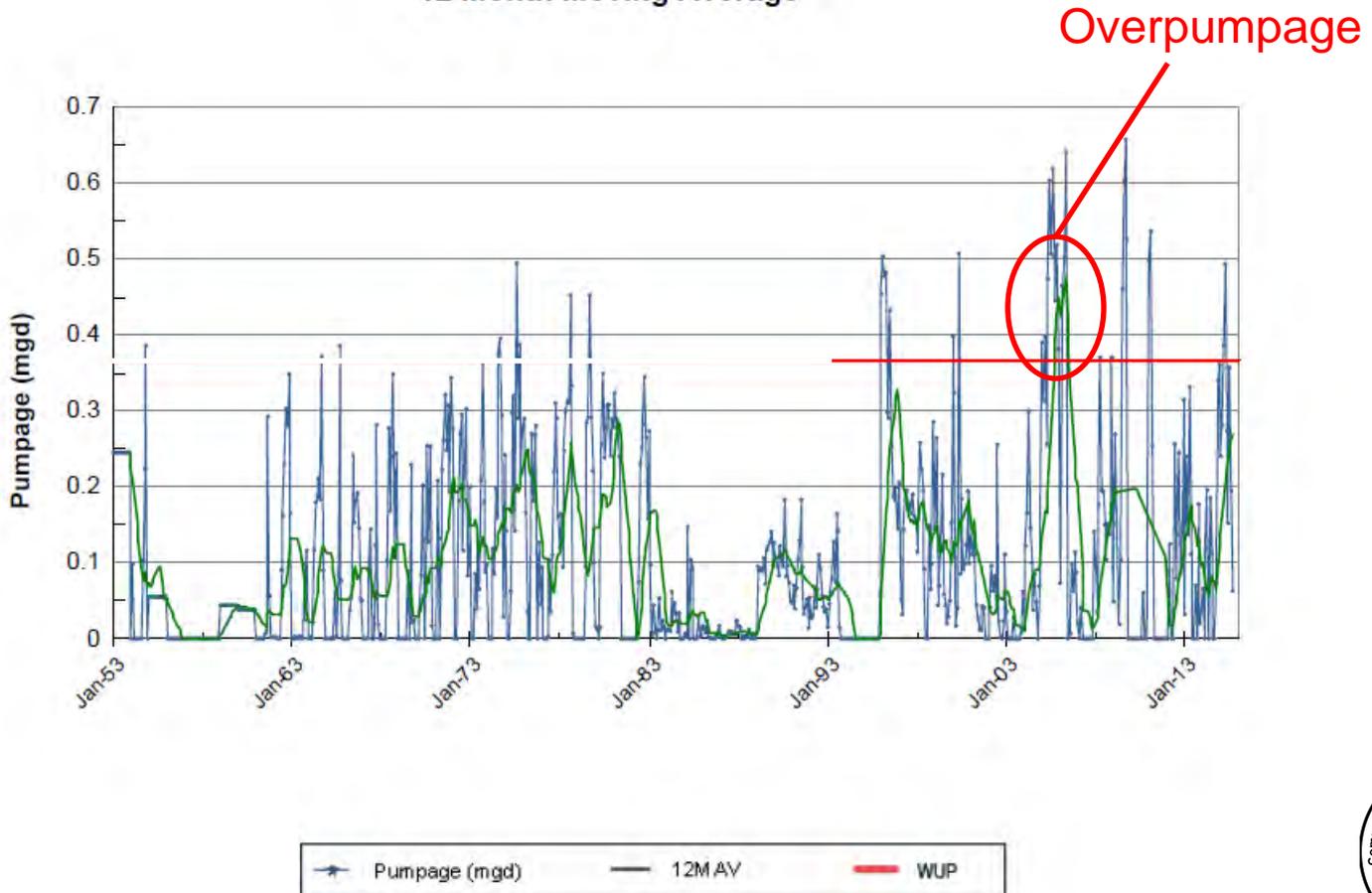


# DHHL Historic Pumpage and GWUP 267



Commission on Water  
Resource Management  
Information Management System

Monthly Pumpage Chart  
12 Month Moving Average

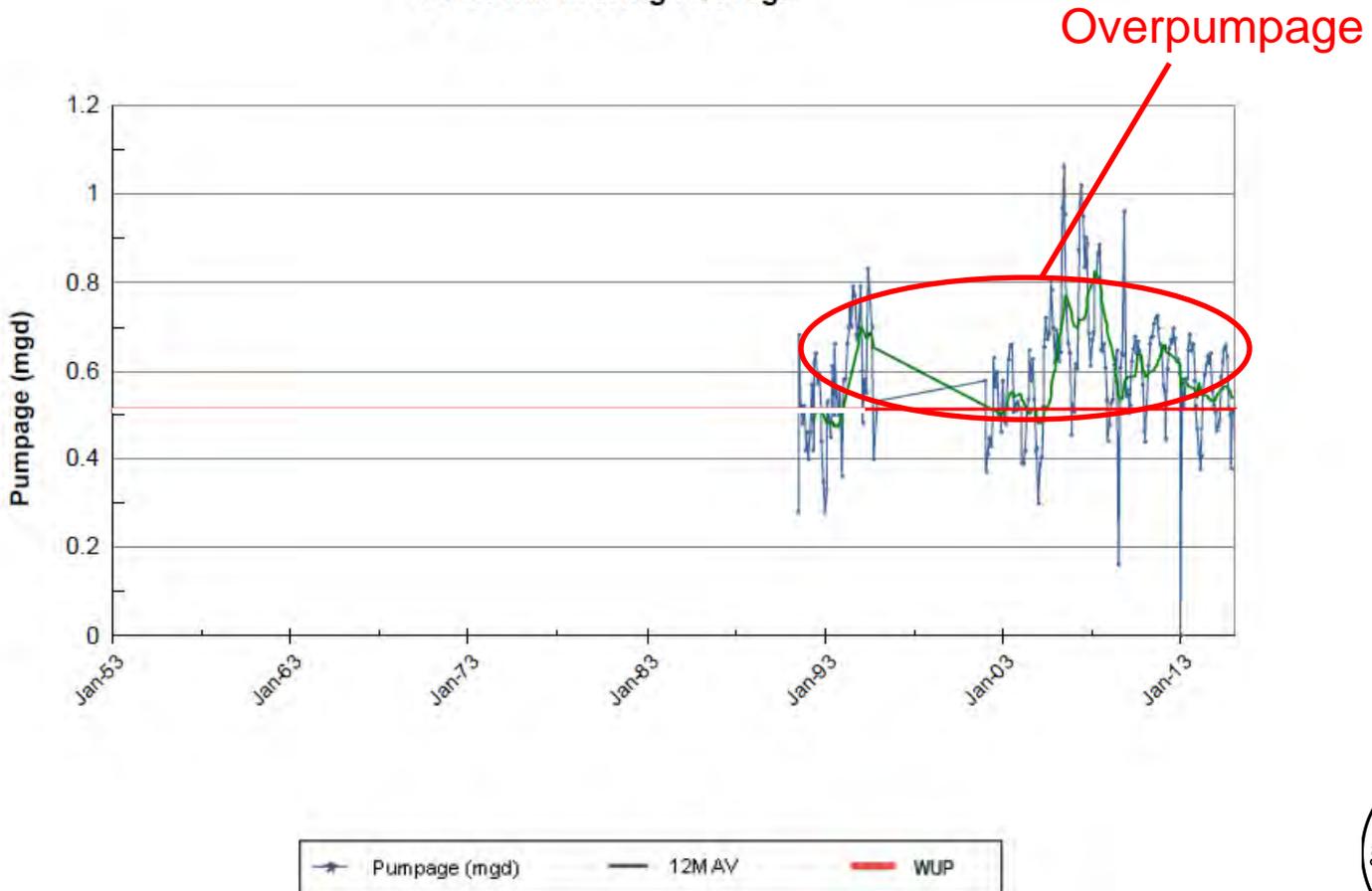


# MDWS Historic Pumpage and GWUP 267



Commission on Water  
Resource Management  
Information Management System

Monthly Pumpage Chart  
12 Month Moving Average

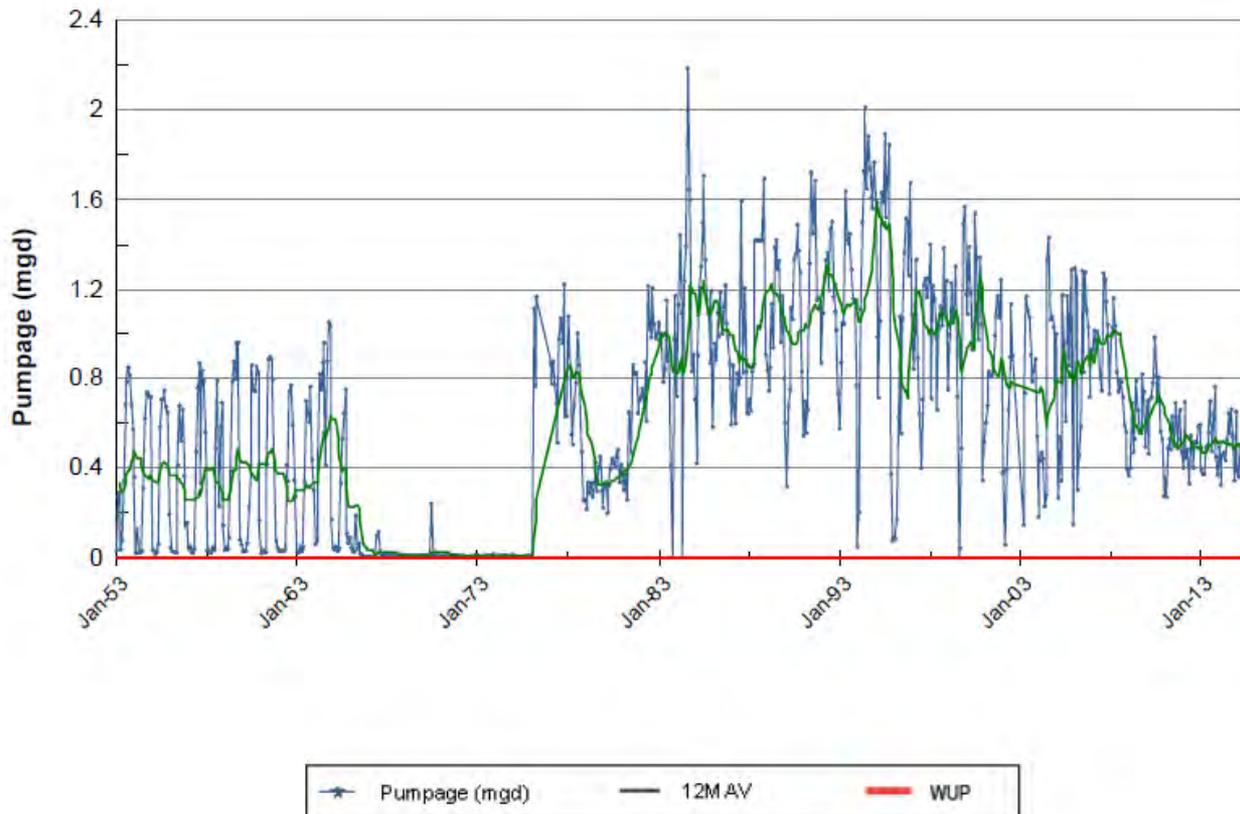


# MPU Historic Pumpage



Commission on Water  
Resource Management  
Information Management System

Monthly Pumpage Chart  
12 Month Moving Average



## ***6. USGS Ground Water Modeling***

**There have been three previous and one current phase to the USGS effort to support decision-making at Kualapuu Aquifer System Area:**

- 1. 1995: Report 95-4180 – Evaluation of Ground Water Resources from Available Data, 1992, East Molokai Volcano**
  - This report summarizes available data and provides a framework for reviewing ground water conditions – prepared in cooperation with CWRM and DHHL.**
- 2. 1997: Report 97-4155 – Water Budget for the Island of Molokai**
  - Ground water recharge is estimated from average rainfall, stream flows, and evapotranspiration data, and with soil characteristics. The water budget is constructed seasonally – prepared in cooperation with DHHL.**

## **6. USGS Ground Water Modeling (cont.)**

### **3. 1997: Report 97-4176 – Geohydrology and Numerical Simulation of Ground Water Flow System of Molokai**

- **A 2-dimensional, steady-state, areal flow model enhances the understanding of:**
  - **ground water flow,**
  - **distribution of hydraulic properties, and**
  - **regional effects of withdrawals on water levels and coastal discharge.**
- **The model was constructed to simulate the effects of pumping of one existing well and one proposed well site.**
- **Limitations listed were the relative scarcity of data due to few wells being available.**

## **6. USGS Ground Water Modeling (cont.)**

**4. 2016: 3-Dimensional modeling of ground water flow from best new available data (recharge, evapotranspiration) on Molokai.**

- **Will only estimate :**
  - **effects of pumping on water levels and chlorides from existing wells and potential new well sites.**
  - **quantity of coastal discharge.**



# ***7. Moving Forward***

## ***Where We Are Now – CWRM decision December 16, 2015***

- **1. Confirm Chair's authority to extend deadline for comment and objection on Moloka'i Public Utilities' application for new ground water use from Well 17 (Well No. 0901-001).**
- **Deadline extended to March 14, 2016.**
- **2. Defer decision on seeking mediation prior to returning to remand contested case hearing.**
- **3. Defer deadlines to take position statements on whether to enter mediation.**
- **4. Defer decision on pending WUPAs 448, 499, & 973 until after March 14 extended deadline for comments/objections, and CWRM has acted on DHHL's petition for mediation.**



# ***7. Moving Forward Mediation?***

- **Parties concur that mediation should be conducted.**
- **CWRM expressed concern that it's jurisdiction should not be bound by agreements made in mediation.**
- **Parties have shown interest in digesting the results of a USGS study, still incomplete, to show impacts of pumping wells on other withdrawals and on ground water discharge to the ocean.**
- **USGS uncertain about timing of completed report, with scenarios exploring pumping effects of potential alternate well sites expected to run in March or April.**

KUALAPUU GROUND WATER MANAGEMENT AREA (MOLOKA'I)  
WATER USE PERMIT APPLICATIONS HISTORY

(COLORS)

Designation and existing ground water use

DHHL water reservation; public outreach meeting

Wai'ola CCH events

New ground water use applications

Supreme Court opinions

BACKGROUND:

- May 13, 1992            The Commission designated the island of Moloka`i as a Ground Water Management Area. Public notice published on July 15, 1992 indicated the effective date of designation to be on July 15, 1992, triggering a one-year filing period for existing water user to file applications for water use permits.
- July 15, 1992            Effective date of designation of Moloka`i as a Ground Water Management Area, requiring all ground water users to apply, within one year, for ground water use permits for such uses existing as of the designation date. Once these "existing legal uses" were recognized, as required by the Water Code, consideration of "proposed uses" (since July 1992) was to follow.
- March 9, 1993            Initial application received from Moloka`i Irrigation System (MIS) and Moloka`i Ranch Ltd (MR - then landowner) for 10% of pumpage from Well #17, the amount agreed by contract as that portion of total pumpage entering the MIS to be subtracted for system loss in the transport of Well #17 water to Mahana for use at the Kaluakoi Resort, owned by Kukui (Molokai), Inc. (KMI).
- Inquiries into the balance of the use of Well #17 uncovered the legal ownership difficulty for Kukui (Molokai), Inc. in filing for the water use permit.
- June 8, 1993            The water use permit application for the use of Well #17 was accepted by Commission staff as timely for the July 15 deadline, but considered incomplete pending further information coming from Kukui (Molokai), Inc.
- June 9, 1993            The Maui Department of Water Supply (MDWS) filed a complete application for existing and foreseeable ground water use of 0.660 mgd from Well No. 0801-003.
- July 2, 1993            The Department of Hawaiian Home Lands requested a water reservation of 1.123 mgd from the Kualapuu Ground Water Management Area. After noting that the Maui Department of Water Supply provided some of this service to existing properties, this amount was reduced to 0.905 mgd.
- July 6, 1993            The Department of Hawaiian Home Lands (DHHL) filed a complete application for existing and foreseeable ground water use of 0.500 mgd from Well Nos. 0801-001 & 002).
- July 13, 1993            Kukui (Molokai), Inc. filed an incomplete application for existing ground water use of 2.000 mgd from Well No. 0901-001.

September 15, 1993 The Commission approved Ground Water Use Permit No. 267 (GWUP 267) for the Department of Hawaiian Home Lands for existing ground water use of 0.367 mgd, and deferred new uses until all existing uses could be addressed or a water reservation for the Department of Hawaiian Home Lands could be approved.

October 1993 Ownership of the Well 17 site was transferred from Moloka`i Ranch to Kukui (Molokai), Inc.

November 17, 1993 The Commission approved a water reservation of 0.905 mgd for the Department of Hawaiian Home Lands from the Kualapuu Ground Water Management Area, after proper notice and a public hearing on Molokai. The reservation became effective February 18, 1994.

December 15, 1993 Kukui (Molokai), Inc. filed an amended water use permit application for 2.0 mgd from Well 17 for existing ground water use, citing the delayed transfer of properties as just cause for the late filing (the Commission accepted this explanation). Staff accepted the amendment as part of the original timely application by Moloka`i Irrigation System /Molokai Ranch, but considered it incomplete as it still did not fully account for the requested amount.

April 14, 1994 Staff recommended approval of 1.275 mgd for “existing use” of Well 17 by Kukui (Molokai), Inc. Action was deferred pending a standing determination of Matthew Adolpho, Jr., who requested and filed a timely request for a contested case hearing.

September 15, 1994 The Commission denied standing to Matthew Adolpho, Jr. Staff amended its recommendation for approval, due to additional new information, reducing it from 1.275 mgd to 1.183 mgd for “existing use”. New requests for a contested case hearing were made orally and the Attorney General opined that the opportunity to request a contested case hearing does not extend to a meeting rescheduled solely for the purpose of determining standing on the first request. Action was again deferred.

Throughout this period, efforts were made to clarify information provided by the applicant as to what uses were in existence as of July 15, 1992.

December 14, 1994 The Maui Department of Water Supply filed an amended ground water use application for existing water use of 0.660 mgd from Well No. 0801-003, based upon the November 1994 12-MAV.

March 14, 1995 At a regular Commission meeting, staff again amended its recommendation for approval, reducing “existing uses” from 1.183 mgd to 0.871 mgd due to better information. The Commission approved Ground Water Use Permit 341 for 0.871 mgd as an interim “existing use” ground water use permit for Kukui (Molokai), Inc.’s reasonable-beneficial uses existing as of July 15, 1992. The Commission, consistent with its past practice in processing permit requests in newly-designated water management areas, the Commission deferred action on Kukui (Molokai), Inc.’s application for proposed new water uses pending the establishment of all existing uses in the aquifer as of July 15, 1992.

Disagreement between applicant and staff concerning the basis for arriving at an estimate of "reasonable-beneficial use" for existing uses resulted in the Commission suspending enforcement of pumpage above the approved water use permit. The applicant was required to provide, within six months, calculations to support its request, information on non-potable alternatives for irrigation, and identification of means to eliminate or reduce wastage of filter backwash water from its water treatment facility.

- March 14, 1995 Also on this date, as a separate agenda item, the Commission approved an amendment to the water reservation to the Department of Hawaiian Home Lands (Ground Water Use Permit 568) of 2.905 mgd from the Kualapuu Ground Water Management Area, with the effective date of amended Hawaii Administrative Rule (HAR 13-171-63) to be June 10, 1995.
- April 6, 1995 Kukui (Molokai), Inc. filed a motion for reconsideration of the approved amount for Ground Water Use Permit 341, seeking a larger amount to serve county-approved but unoccupied parcels.
- June 14, 1995 The Commission denied Kukui (Molokai), Inc.'s motion to reconsider, reaffirming the amount of 0.871 mgd.
- June 22, 1995 In compliance with Special Condition 2b of their approved water use permit for Well #17, Kukui (Molokai), Inc. submitted monthly water readings from Well 17 for the period July 1991 through June 1992 to support their request for an increased existing use allocation. The Commission staff asked Kukui (Molokai), Inc. to provide additional information on previously unclaimed uses as well as an explanation of high use at some of the Papohaku Ranchland Lots.
- July 13, 1995 Kukui (Molokai), Inc. filed an appeal in Second Circuit Court challenging the approval of Ground Water Use Permit 341 and the denial of a Motion to Reconsider. On August 21, the Commission received notification that a similar appeal had been filed with the Hawaii Supreme Court. The Supreme Court dismissed the case for lack of appellate jurisdiction on September 6, and the Second Circuit Court dismissed it without prejudice on October 27, ruling that an existing use permit is not a final appealable decision.
- September 15, 1995 Commission staff conducted another preliminary field investigation, reporting a fourth unmetered existing water use for golf course irrigation from the effluent mixing pond. A site visit to the Papohaku Ranchlands subdivision identified 39 of 324 lots in use. Commission staff requested that Kukui (Molokai), Inc. amend its application for Well #17 to include the three metered existing uses and four unmetered existing uses of the well not previously claimed on the application.
- September 18, 1995 The Commission received a letter from D. Scott MacKinnon, attorney for Kukui (Molokai), Inc., providing information in a timely response to conditions of the interim water use permit. A second letter dated September 21, 1995 provided still further information, reiterated Kukui (Molokai), Inc.'s position that Commission staff had failed to adequately account for particular claimed uses, and acknowledged three unmetered uses of the well existing as of July 15, 1992.

- October 20, 1995 At a regular Commission meeting, the Commission approved Ground Water Use Permit No. 359 for the Maui Department of Water Supply for 0.516 mgd for municipal uses from the Kualapuu Mauka Well (Well No. 0801-003).
- October 20, 1995 At the same meeting, as a separate matter, staff recommended amending the interim ground water use permit Ground Water Use Permit 341, increasing the amount from 0.871 mgd to 1.046 mgd. Action was deferred pending a standing hearing for Sheila Polena Awai, who requested a contested case hearing.
- December 29, 1995 The Commission received a letter from Kukui (Molokai), Inc. attorney MacKinnon providing updated information concerning uses by Moloka'i Ranch Ltd from unmetered interconnections with the Molokai Public Utilities system, the subsequent closing of certain connections and metering of others, notice of the completion of a pipeline routing all filter backwash to the golf course effluent pond, and an updated schedule of water uses for the period beginning June 1992.
- January 25, 1996 Wai'ola o Moloka'i and Moloka'i Ranch filed a complete application for well construction and pump installation of Kamiloloa-Wai'ola Well (Well No. 0759-001) and a water use permit application for 1.250 mgd from the Kamiloloa Ground Water Management Area for existing and new uses.
- May 21, 1996 Staff recommended approval of a water use permit for reasonable-beneficial use of 0.330 mgd for existing and new uses. These included the assumption of existing services to Kipu and Puukolea (then served by the Department of Hawaiian Home Lands), Maunaloa Town (then served by the Maui Department of Water Supply), and Kualapuu Town (then served by Kukui (Moloka'i), Inc.)
- May 21, 1996 At a regular Commission meeting, the Commission amended the Kualapuu sustainable yield from 7 mgd to 5 mgd, based upon discovery of a mathematical error in the original calculation.
- May 21, 1996 Following a hearing to determine standing, the Commission denied Ms. Awai's standing to request a contested case hearing and rejected staff's recommendation to amend the existing ground water use permit Ground Water Use Permit 341. The action reaffirmed the "existing use" amount of 0.871 mgd, set three conditions relating to the Molokai Public Utilities system structure, including additional metering, and invited Kukui (Molokai), Inc. to submit an application for proposed new uses (since July 1992). Prior to the close of the meeting, Kukui (Molokai), Inc. requested a contested case hearing.
- Following this decision but before the close of this Commission meeting, Kukui (Molokai), Inc. attorney MacKinnon requested a contested case hearing on the decision and later submitted a written request as required.
- June 5, 1996 Staff recommended that the Commission deny standing to Kukui (Molokai), Inc. for a contested case hearing as untimely. The Commission deferred action for a legal opinion as to whether the request was timely, and whether an applicant could request a contested case hearing.

- October 3, 1996 The Department of Hawaiian Home Lands filed a timely petition for a contested case hearing on the well construction, pump installation, and water use permit application for the Kamiloloa-Wai'ola Well. This followed a public hearing at which the request for a contested case hearing was recorded.
- Its objections were that the well would impact 1) the capacity of the Hawaiian Homes Commission to carry out its projects supporting advancement of native Hawaiians; 2) current and foreseeable uses of Hawaiian home lands on Moloka'i; 3) the quality and quantity of water required to serve current and foreseeable needs; and 4) major capital investments for infrastructure such as the Department's water system.
- September 13, 1996 The Department of Hawaiian Home Lands filed a new ground water use permit application for 0.394 mgd. The Commission responded with a letter seeking clarification of the standards applied and a confirmation of the new use amount. Both points were accomplished by letter dated May 30, 1997.
- April 1, 1997 The Attorney General responded to the Commission's request for legal opinion on Kukui (Molokai), Inc. standing to request a contested case hearing, stating that a contested case hearing is required for modifications to Ground Water Use Permit 341.
- April 16, 1997 At a regular Commission meeting, the Commission recognized Kukui (Molokai), Inc.'s standing and ordered a contested case hearing, delegating to the chair the authority to select a hearing officer.
- April 24, 1997 Chairperson Michael D. Wilson appointed Peter Adler as hearing officer. On May 20, 1997, the Commission found no conflict of interest, as alleged by contesting parties, and confirmed Adler's appointment.
- April 30, 1997 A public notice of a contested case hearing was published in the Honolulu Advertiser and the Moloka'i Advertiser-News, announcing a May 30, 1997 deadline to apply to be intervening parties. Next day, May 1, the announcement was published in the Moloka'i Dispatch.
- October 27, 1997 The contested case hearing CCH-MO96-1 opened, following the establishment of parties with standing and the filing of briefs and motions.
- September 25, 1997 The Department of Hawaiian Home Lands filed a request amend its pending Ground Water Use Permit Application 448 to modify its existing Ground Water Use Permit 267 an additional 0.2 mgd to account for overpumping the existing Water Use Permit 267 allocation of 0.367 mgd (for a total of 0.567 mgd).
- September 26, 1997 The next day the Department of Hawaiian Home Lands filed a second request to expand its pending New Ground Water Use Permit 448 request from 0.394 mgd an additional 0.485 mgd for a total new use of 0.879 mgd. This would raise their total withdrawals from the Kauluwai Wells 1 & 2 under the new permit to 1.246 mgd, the new uses to be taken from the water reservation of 2.905 mgd. This request arrived with a separate letter noting the release of USGS Report 97-4176 that addressed regional effects of pumpage on water levels and coastal discharge. The letter summarized the view of the report as finding a decrease in

water levels in Kualapuu attributed to a reduction in ground water recharge from pineapple plantation and an increase in withdrawals from Kualapuu wells, and requested CWRM action to investigate and take necessary corrective action to protect DHHL's ground water reservation.

- November 19, 1997 Molokai Ranch objected to the Department of Hawaiian Home Lands' new ground water use application as inconsistent with its position on the KMI's Ground Water Use Permit 341 in the CCH-MO97-1.
- January 28, 1998 A public hearing was held on Molokai in response to Molokai Ranch's objection to the Department of Hawaiian Home Lands' ground water use application. Staff's submittal for consideration at the public hearing included a recommendation of denial without prejudice due to concerns about well interference. The Department of Hawaiian Home Lands indicated it would consider amending the application for a smaller amount. The hearing was continued (see August 10, 1999).
- February 5, 1998 A letter from the Department of Hawaiian Home Lands to the Commission stated that at the January 28 hearing, the Department of Hawaiian Home Lands had proposed reducing their new use request to 0.21 mgd. and asked if an increase of 0.2 could be accomplished without increasing chlorides above the Environmental Protection Agency guideline of 250 mg/l. (June 18, 1998 - response)
- March 4, 1998 The Commission sent a Notice of Overpumpage to the Department of Hawaiian Home Lands, noting that the 12-MAV had exceeded their Ground Water Use Permit 267 allocation of 0.367 mgd for 399 days. The notice also mentioned the need be reporting water levels, temperatures, and chlorides in compliance with their permit.
- April 4, 1998 Staff faxed a request to the Department of Hawaiian Home Lands to provide background information indicating steps anticipated to avoid a reliance on increased pumping from existing wells in order to avoid deterioration of the water source. Suggested was a water development plan with a timeline for alternative source development.
- April 29, 1998 Maui Department of Water Supply filed a new ground water use application for additional amounts of water. Given the previous objections and expressed concerns, staff also deferred action on this request pending a timetable for alternative plans to avoid additional pumpage from the already stressed wellfield between the Department of Hawaiian Home Lands and Maui Department of Water Supply sources and the establishment of Kukui (Molokai), Inc.'s existing uses as of the date of designation.
- June 3, 1998 Hearing Officer Adler held a hearing at the Civic Center on Moloka'i to determine standing to intervene in the contested case hearing.
- June 18, 1998 The Department of Hawaiian Home Lands amended its application for new ground water use to an additional 0.270 mgd above its existing use permit.
- June 24, 1998 Prehearing conference #1 identified protocols for motions, subpoenas, and evidence, a schedule for preliminary motions, opening briefs and responsive briefs, and opening arguments.

June 26, 1998 Minute Order Number 2 (Attachment A) confirmed attorneys representing parties and the prehearing motion schedule, identified the issues to be addressed in the case, and confirmed the burden of proof for meeting the requirements of the Water Use Permit on the applicant (Kukui (Molokai), Inc.).

July 15, 1998 The Commission denied the late entry of the Office of Hawaiian Affairs (OHA).

July 21, 1998 Staff sent Maui Department of Water Supply a notice that they were overpumping their existing use Ground Water Use Permit 359. This was subsequently followed by similar letters October 26, 2001 and March 4, 2002.

August 26, 1998 The Commission reconsidered its denial of entry to OHA, allowing them to be admitted.

September 16, 1998 Hearing Officer Adler issued Minute Order Number 1 (Attachment B), admitting as parties to the contested case Kukui (Moloka`i), Inc., the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and individuals Judy Caparida, Georgina Kuahuia, and Sarah Sykes.

Minute Order #2 ruled on seven motions brought by parties, concerning admission of testimony from another case, continuance pending county decision, applicability of statute and federal principle to this case, and summary denial of the ground water use permit.

October 2, 1998 Kukui (Molokai), Inc.'s opening brief modified its original application by reducing its requested allocation to the amount of its metered 12-MAV withdrawal from Well #17 as of July 15, 1992, which Kukui (Molokai), Inc. calculated as totaling 1.205 mgd.

November 23, 1998 The Contested Case Hearing convened in the conference room of the Moloka`i Irrigation System office in Ho`olehua, Moloka`i. Testimony was presented over the course of eight days (Nov. 23 to 25, and 30, and Dec. 1 and 7 to 9, 1998) in Ho`olehua, and three days (Dec. 2, 11, & 15, 1998) in Honolulu at the Kalanimoku Building. Closing arguments were heard in Honolulu on December 31, 1998.

December 28, 1998 The Decision and Order in the Wai'ola Contested Case Hearing (CCH-MO96-1) was issued by the Commission. The decision was appealed; the Supreme Court issued its opinion January 29, 2004 (see that date for issues on remand)

January 26, 1999 Minute Order #9 set a February 26, 1999 deadline for the parties' proposed Findings of Fact, Conclusions of Law, and Decision and Order for the Kukui Contested Case Hearing (CCH-MO97-1).

February 22, 1999 Minute Order #10 granted a request from Alan Murakami (representing Caparida and Kuahuia), with agreement from the other parties, to have the deadline extended from February 26, 1999 to March 12, 1999.

August 10, 1999 The public hearing continued from January 28, 1998 held in Kaunakakai, Moloka`i. Well interference between Maui Department of Water Supply and the Department of Hawaiian Home Lands sources were discussed, as was the USGS

model results for coastal discharge and the difficulty in understanding its relevance. The Department of Hawaiian Home Lands announced through a memo to the Commission the approval of funds for a water development plan, including constructing a monitor well. At this continued hearing, Kukui (Molokai), Inc. joined in requesting a contested case hearing.

- March 15, 2000 The Commission directed the Department of Hawaiian Home Lands, Molokai Ranch, and Kukui (Molokai), Inc. to enter mediation prior to a contested case hearing on the Department of Hawaiian Home Lands application for new ground water use. The order was sent April 7, 2000. (See subsequent actions August 16, 2001 and February 13, 2002.)
- May 15, 2000 The Commission issued its Proposed Findings of Fact, Conclusions of Law, and Decision & Order for the Kukui Contested Case Hearing (CCH-MO97-1).
- August 22, 2000 The Supreme Court issued its opinion in Waiahole I CCH.
- January 2001 Kukui (Molokai), Inc. closed the Kaluakoi Hotel and Golf Course.
- August 7, 2001 Molokai Ranch withdrew its objection to the Department of Hawaiian Home Lands application for new ground water use.
- September 25, 2001 Minute Order #13 set the date for the Commission to hear oral arguments on the written exceptions for 9:00 a.m., Wednesday, October 17, 2001, at the Department of Hawaiian Home Lands, Molokai District Office, Kalamaula, Molokai.
- October 15, 2001 Intervenors Sykes, Caparida, and Kuahuia, by facsimile, moved for: (1) a reopening of the record in this docket to receive recent material information on the ground water uses being made by Kukui (Molokai), Inc.; and (2) a continuance of the October 17, 2001 hearing until this information can be incorporated by the parties in their arguments for the Commission's consideration of the new data. The Chairperson and presiding officer, Gilbert Coloma-Agaran, scheduled the motion as a non-hearing motion and provided the parties the following schedule:
1. Memorandum in Opposition must be filed and served no later than Tuesday, October 23, 2001.
  2. Response to Memorandum in Opposition must be filed and served no later than Friday, October 26, 2001.
- October 17, 2001 Chairperson Gilbert Coloma-Agaran, and commissioners Robert Girald, Brian Nishida, and Herbert M. Richards, Jr. heard oral arguments on the written exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order at Kalamaula, Molokai. Joel D. Kam represented Kukui (Molokai), Inc., Alan Murakami represented Intervenors Caparida and Kuahuia, Clayton Lee Crowell represented the Department of Hawaiian Home Lands, and Jon Van Dyke represented the Office of Hawaiian Affairs.
- October 23, 2001 Kukui (Molokai), Inc. filed a Memorandum in Opposition to the October 15, 2001 motion to reopen the case.

October 26, 2001 Based on Alan Murakami's phone call representing that Kukui (Molokai), Inc. had no objection to his request for an extension, the deadline to file responses to the Memorandum in Opposition was extended to October 30, 2001.

October 30, 2001 Intervenor Caparida and Kuahuia filed responses to Kukui (Molokai), Inc.'s Memorandum in Opposition.

November 2, 2001 Intervenor Sykes filed a further memorandum in support of her motion.

December 2001 Brierly Investments, parent of Moloka'i Ranch Ltd, announced plans to purchase Kaluakoi Resort, to be completed by early 2002.

December 19, 2001 The Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order ("D&O") in contested case hearing CCH-MO97-1, issuing Ground Water Use Permit 610 for 1.018 mgd as a 12-month moving average ("12-MAV").

January 2, 2002 Water Use Permit 610 transferred from Kukui (Molokai), Inc. to Kaluakoi Land, LLC, a subsidiary of Molokai Properties, Ltd (MPL), which is the parent of Molokai Ranch and commonly called Molokai Ranch. The new Ground Water Use Permit No. was 617. In June, work began on refurbishments to the irrigation system, and by August, the Ranch announced plans to reopen the golf course.

January 17/18, 2002 The intervenors filed appeals from the Commission's D&O in the Kukui Contested Case Hearing (CCH-MO97-1) to the Hawaii Supreme Court.

February 13, 2002 [Kukui \(Molokai\), Inc. withdrew its objection to the Department of Hawaiian Home Lands' application for new ground water use.](#)

January 29, 2004 [The Supreme Court issued its opinion on the Wai'ola Contested Case Hearing \(CCH-MO96-1\), remanding the case for further proceedings to address the following issues:](#)  
[1\) Hawaiian home lands water reservations are a public trust purpose, and the Commission did not adequately show in the record how its decision protected the reservation; 2\) the record did not adequately show how the decision protected traditional and customary native Hawaiian rights; 3\) new uses are not the proper subject of interim permits, which are in the Code only for verifying existing uses – new uses are subject to partial or full revocation after 4 years non-use.](#)

December 28, 2004 [The well construction and pump installation permits for Kamiloloa-Wai'ola Well \(0759-001\) expired. Without taking formal action, Wai'ola o Moloka'i and Moloka'i Ranch have not pursued the remand.](#)

September 4, 2007 The State of Hawaii Department of Attorney General, in response to an inquiry from the Native Hawaiian Legal Corp. (NHLC) regarding Molokai Properties, Ltd.'s continued use of the Molokai Irrigation System (MIS) managed by the Department of Agriculture (DOA), agreed that Chapter 343 is triggered in the matter of the MIS pipeline agreement and will be assisting DOA in getting Molokai Properties, Ltd off the Molokai Irrigation System until 343 is addressed.

December 26, 2007 The Hawaii Supreme Court issued its opinion on the Commission's D&O in the Kukui Contested Case Hearing (CCH-MO97-1), vacating the permit and remanding the decision for further proceedings on selected points.

January 2, 2008 Molokai Properties, Ltd, Kaluakoi Land, LLC, and Molokai Public Utilities, Inc. filed a motion to continue withdrawing water from Well 17, notwithstanding the Supreme Court's vacating of the authorizing permit to do so. Continuation was sought for drinking water, residences in Kaluakoi, Kualapuu Town, irrigation, the golf course, and the beach park, without specifying specific amounts.

March 3, 2008 The Commission Chair held a status conference among the parties involved in the contested case hearing to review the status of the case upon remand. Parties agreed to a schedule for a motion and responses to continue withdrawals from the well, and discussed the scope of the remand and substitutions for intervenors.

March 24, 2008 Molokai Properties, Ltd, announced that it was closing its operations and releasing its employees, offering to sell its assets to the Department of Hawaiian Home Lands.

May 2, 2008 Intervenors filed motions to restrict uses from Well 17 to only reasonable beneficial public trust domestic water use.

May 27, 2008 Molokai Properties announced that it did not intend to pursue the contested case on remand.

June 5, 2008 The Public Utilities Commission (PUC) informed Molokai Public Utilities, Inc. (MPU), the purveyor of water service from Well 17 to the Kaluakoi consumers/ratepayers and that MPU was obligated to maintain service until a third party was identified to continue the operations. It opened a docket to increase the rates paid by customers.

November 9, 2009 Wai'ola O Molokai & Molokai Public Utilities, Inc. notified the Commission that they would assist the Department of Hawaiian Home Lands' emergency situation and temporarily supply between 0.300 and 0.500 mgd for the Department of Hawaiian Home Lands' needs until their pumps are repaired.

September 23, 2010 The Public Utilities Commission approved a final rate increase for Molokai Public Utilities, Inc. The Phase 2 rate increase was to be effective as of January 1, 2011.

March 2, 2012 The Commission sent a letter to Molokai Public Utilities recounting history and requesting a timeline for applying for a new ground water use permit.

March 3, 2012 A status conference among all parties to the contested case hearing discussed the January 2008 Molokai Public Utilities motion to continue water withdrawals and requiring a supplemental memorandum to specify uses, quantities, waste issues, and the 8 original water use permit special conditions (subjection to adverse pumping impacts, backflush reuse, metering requirements, leakage control, feasibility of non-potable alternatives, xeriscaping & low-flow fixtures, water conservation, potential elimination of 10% leakage and evaporative flow through the Molokai Irrigation System).

August 31, 2012	Native Hawaiian Legal Corporation filed a complaint about pumping without a permit, requesting a cease and desist order for pumping except to serve domestic use., asserting impacts on Kualapuu wellfield water quality, the fulfillment of the Department of Hawaiian Home Lands' water reservation, and traditional and customary practices.
December 21, 2012	The Commission responded to the Native Hawaiian Legal Corporation complaint, noting Hawaii Administrative Rules section §13-171-12(a) allowing the continuation of uses existing prior to designation until permitted, and expressing a stay of enforcement of pumping without a permit until there could be resolution of the remand questions.
December 13, 2012	Molokai Public Utilities, Inc. filed an incomplete ground water use permit application (GWUPA) to re-initiate the remand process. Staff identified issues to be resolved to make the application complete.
August 12, 2013	An amended ground water use permit application for Molokai Public Utilities, Inc. was also deemed incomplete.
January 15, 2014	Staff sent letters to the Department of Hawaiian Home Lands and Maui Department of Water Supply requesting updates on plans for their new use and well sources (Ground Water Use Permit Applications 448 & 499, respectively). The letters detailed the competing proposed new uses, quoting §174C-54 defining competing uses, and noting varying requests for new use, the apparent interference between the Department of Hawaiian Home Lands wells and Maui Department of Water Supply wells from existing data and the lack of regular chloride reporting, overpumping from these wells, discussion of constructing new wells, additional requirements for water use permit applications, and the need to update the Department of Hawaiian Home Lands' foreseeable needs.
February 11, 2014	Molokai Public Utilities, Inc. submitted a third revised Ground Water Use Permit Application, which staff again deemed incomplete.
June 30, 2014	Molokai Public Utilities, Inc. filed its fourth amended Ground Water Use Permit Application.
July 22, 2014	Additional clarifications to Molokai Public Utilities, Inc.'s amended Ground Water Use Permit Application were filed.
March 17, 2015	Staff conducted a public outreach meeting on Moloka`i concerning its proposed update of the Water Resource Protection Plan. Both at the public outreach meeting and follow-up written comments, overwhelming concern was expressed by the community in addressing the current uses of Well 17, in getting a Ground Water Use Permit Application accepted and moving forward toward resolving the issues remanded by the Supreme Court.
October 12, 2015	Public notice was made accepting Molokai Public Utilities, Inc., the Department of Hawaiian Home Lands, and Maui Department of Water Supply Ground Water Use Permit Applications for new proposed uses and circulated for review. The deadline for objections was set for November 13, 2015.

- October 30, 2015 The Chair issued a Minute Order Setting a Status Conference for November 9, 2015 to discuss the scope, procedure, and deadlines applicable to the remanded case as rendered by the Supreme Court on December 26, 2007.
- November 9, 2015 The parties at the status conference agreed consensually to seek mediation prior to returning to a contested case hearing on the applications of Molokai Public Utilities, the Maui Department of Water Supply, and the Department of Hawaiian Home Lands. To that end, they requested an extension of the deadline for comment and objections to March 14, 2016, and requested opportunity to
- November 11, 2015 The Chair issued a Minute Order extending the objection deadline for applications noticed on October 12 from November 13, 2015 to March 14, 2016, in view of the anticipated imminent delivery of a USGS report thought to provide information concerning impacts of pumping wells in the Kualapuu wellfield (Exhibit 2).
- December 4, 2015 The Department of Hawaiian Home Lands filed a petition for mediation prior to re-entering the contested case, to discuss the three applications for new ground water use from the Kualapuu Ground Water Management Area. No specific issues were raised and the objectives of mediation were not identified (Exhibit 3)
- December 16, 2015 At its regular meeting the Commission decided as follows:
1. Confirm Chair's authority to extend deadline for comment and objection on Moloka'i Public Utilities' application for new ground water use from Well 17 (Well No. 0901-001). Deadline extended to March 14, 2016.
  2. Defer decision on seeking mediation prior to returning to remand contested case hearing.
  3. Defer deadlines to take position statements on whether to enter mediation.
  4. Defer decision on pending WUPAs 448, 499, & 973 until after March 14, 2016 extended deadline for comments/objections, and CWRM has acted on DHHL's petition for mediation.