

April 30, 2015

Ms. Suzanne Case, Chairperson  
State of Hawai'i  
Department of Land and Natural Resources  
Attention: Mr. Roy W. Hardy, Acting Deputy Director  
Commission on Water Resource Management  
P.O. Box 621  
Honolulu, HI 96809

**COMMISSION ON WATER RESOURCE MANAGEMENT PRELIMINARY ORDER,  
PETITION TO DESIGNATE KEAUHOU AQUIFER SYSTEM AREA AS A GROUND  
WATER MANAGEMENT AREA**

In response to the State Department of Land and Natural Resources, Commission on Water Resource Management (CWRM), Preliminary Order, dated December 29, 2014, Subsection C. 5., the County of Hawai'i (COH), the National Park Service (NPS) and CWRM Staff met in good faith on March 3, 2015 and again on March 31, 2015 to explore and negotiate alternative paths of action other than ground water designation of the Keauhou aquifer. We submit the following joint summary of progress.

The March 3, 2015 meeting was productive and positive. CWRM staff provided technical information about existing procedures for water resource management, encouraged the group to utilize the current process to update the Water Resource Protection Plan and reminded the parties of other aspects of the preliminary order the Commission requested—namely the need to quantify cultural needs, and authorized planned use information. NPS offered to amend their petition to designate a smaller area of concern by first submitting a request for declaratory ruling on whether this is allowable under the Water Code. The Department of Water Supply (DWS) offered that there are no plans by DWS to drill new wells in basal aquifer within the Keauhou aquifer system area. COH offered available resources to help clean up as well as enhance cultural activities at Kaloko-Honokōhau National Historical Park (Park).

During the weeks leading up to the March 31, 2015 meeting several actions were taken: the NPS submitted a petition for declaratory orders to CWRM on March 25, 2015 and submitted draft settlement concepts to COH and CWRM on March 26, 2015, and COH and NPS co-coordinated a Park clean up date for April 18, 2015 with the COH cabinet members as volunteers.

At the March 31, 2015 meeting, NPS clarified their settlement concepts. Although no formal agreement was reached, parties were engaged in healthy dialogue about continuing collaborative clean up days and the possible development of a monitoring plan. In addition, all agreed to put together a joint summary report by the May 4, 2015 deadline, hence this letter.

On Saturday, April 18, 2015 32 of COH cabinet members and their families met at the Park and along with Park employees, helped clear an area of the Park of invasive plant species.

Looking forward, the parties will continue to dialogue and discuss possible options and alternatives to ground water designation of the Keauhou aquifer.

Should you have any questions, please contact any of the signors below at the following contact information: COH (808) 961-8211, NPS (970) 225-3532.

Sincerely,



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William P. Kenoi, Mayor  
County of Hawai'i



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William R. Hansen, Chief, Water Rights Branch  
National Park Service

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Goal: Protect public trust resources and uses of water by maintaining the current flow of fresh groundwater through Kaloko-Honokōhau National Historical Park while maintaining long-term operational flexibility and economic viability for the County of Hawai‘i.

Background:

- Groundwater withdrawals are two times higher in the park’s four ahupua‘a (279 gallons per day/acre) than in the Keauhou Aquifer System as a whole (138 gallons per day/acre).
- In terms of sustainable yield, groundwater withdrawals are 38% of the sustainable yield of the Keauhou Aquifer System, but 77% of the sustainable yield of the park’s four ahupua‘a.
- The Keauhou Aquifer System is larger than the geographic area that contributes fresh water to the park; clarification is needed from CWRM to confirm that a smaller geographic area within the aquifer system can be designated a water management area.

Terms & Conditions:

- 1) Using the best available information, the NPS will identify a geographic area (that is at least 50% smaller than the Keauhou Aquifer System) within which existing and future groundwater withdrawals will adversely affect the current flow of fresh groundwater through the park;
- 2) Following the issuance of declaratory orders confirming that geographic areas other than hydrologic units may be designated water management areas, the NPS will amend its petition for a water management area to identify the geographic area needed to protect public trust resources and uses of water in the park; and
- 3) Within 90 days of filing the amended petition, CWRM will hold a public hearing on the amended petition. The hearing will constitute the administrative record for the following terms of this agreement. CWRM staff will recommend that:
  - a. CWRM calculate and report the 2014 12-month moving average of pumpage in the coastal basal portion and in the inland high-level portion of the geographic area described in the amended petition, on a monthly basis;
  - b. An increase in pumping above the 2014 12-month moving average in the coastal basal portion of the geographic area will trigger designation of the geographic area;
  - c. An increase in pumping above the 2014 12-month moving average in the inland high-level portion of the geographic area will trigger designation of the geographic area;
  - d. Designation will occur at the first monthly CWRM meeting following the determination by CWRM that criteria b) and/or c) have been met;
    - Following designation, CWRM will limit the issuance of water use permits within the geographic area to the 2014 12-moving average of pumpage.
    - Withdrawals for domestic consumption of water by individual users shall not trigger designation.

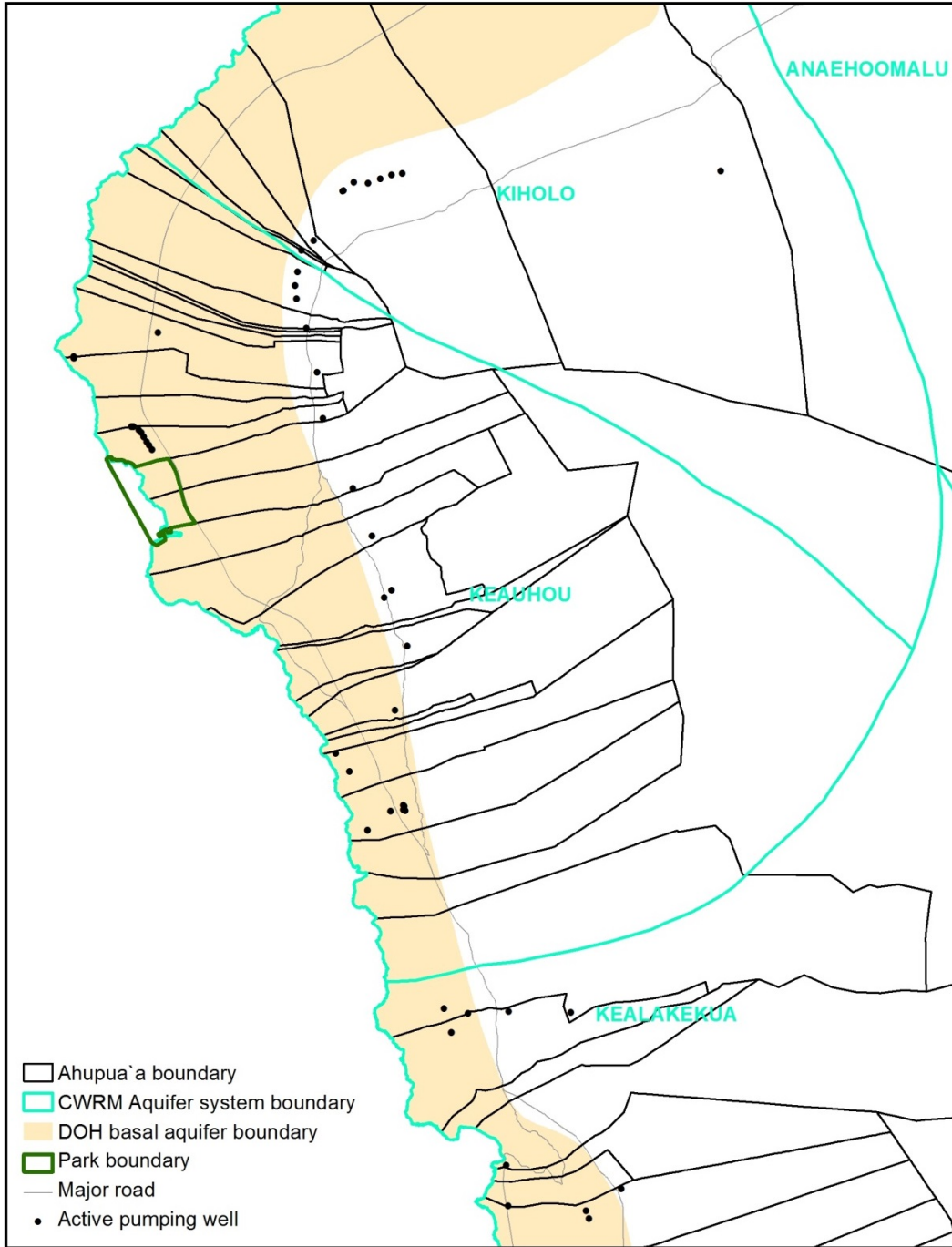
**Why did the National Park Service submit a petition for declaratory orders?**

- The NPS is requesting that the Commission clarify whether an area other than a “hydrologic unit” can be designated a water management area, because state law does not specify what type of “geographic area” can be designated.
- The geographic area that contributes fresh water to Kaloko-Honokōhau National Historical Park is smaller than the area of the Keauhou Aquifer System.
- In December, 2014, the Commission on Water Resource Management issued a Preliminary Order requesting that the County of Hawai‘i and the NPS meet, with participation of the Commission staff, and explore and negotiate alternative paths of action, other than ground water designation of the Keauhou aquifer.
- The NPS, the county, and Commission staff met on March 3 and are scheduled to meet again on March 31. One of the alternative paths being explored involves identifying a smaller geographic area within which additional groundwater withdrawals will adversely affect non-consumptive public trust uses of water in the park.
- A declaratory order clarifying whether withdrawals within this smaller area can be regulated to protect public trust uses and resources within the park would greatly aid the county, the Commission staff, and the NPS in exploring alternatives to the designation of the entire Keauhou Aquifer System.

**What benefits do the county and the state receive from adopting the terms of the settlement agreement proposed by NPS?**

- Protects public trust uses and resources
- Takes designation of the entire Keauhou Aquifer System Area “off the table”
- Maintains operational flexibility for county and state water managers
  - New wells can be constructed as needed
  - County and state decide how to distribute pumping among wells
  - County can continue to issue water meters
- Reduces the area of concern by over 50%
- Gives the development community more certainty about the NPS area of concern
- Maintains existing legal remedies and due process for all stakeholders
  - No changes to the well construction/pump installation permitting process
  - Public hearing is an opportunity for public to comment on amended petition
- Does not delay UH Palamanui campus or the Kona Judiciary Complex
- The agreement sets pumping triggers for designation, which is a mechanism that has been used by the Commission before on Maui

This map shows ahupua`a and the coastal basal aquifer boundaries. The geographic area identified by the NPS will likely be a combination of these units.



March 31, 2015

