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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

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Honolulu, Hawai'i

Clarification of Policies on Permitting Water Use Transfers for Agricultural Use Where the Transfer Entails a Division of Parcels of End Use, and Pump Replacements for Pumps Greater Than 27 Gallons Per Minute That Have Not Been Used For The Previous Four Years

SUMMARY OF REQUEST

Staff is recommending that the Commission on Water Resource Management (Commission) modify ground water permitting requirements in specific cases pertaining to agricultural uses, where transfers of existing ground water use permits for agriculture shall require Commission approval, and pump replacements for pumps that are equal or greater than 27 gallons per minute that have not been used for four (4) or more years shall require a pump installation permit.

BACKGROUND:

Hawai'i has a history of agricultural uses – primarily pineapple and sugar cane. Throughout the end of the last century and the beginning of this century, Hawai'i agriculture has experienced a shift away from pineapple and sugar cane.

Agricultural lands previously irrigating pineapple and sugar cane have changed over to different uses ranging from diversified agriculture, to seed corn, large scale agriculture of other food crops, and in some instances, large residential lots that contribute very little to food security.

While the Commission cannot regulate land use, the Commission has a fiduciary responsibility to ensure that water is used in the most reasonable and beneficial way, water is not wasted, water is used for its highest and best use, and alternatives are explored in lieu of using groundwater.

Furthermore, the Commission has a mandate to protect public trust resources – water in its natural state, traditional and customary Hawaiian practices, the rights of the Department of Hawaiian Home Lands, and domestic uses.

Clarification of Policies on Permitting Water Use Transfers for Agricultural Use

There are situations that represent loopholes in allowing the Commission to effectively manage water resources as they pertain to agricultural uses. This submittal seeks to address those loopholes.

PROBLEMS:1) Transfers of water use permits

Section §174C-59 of the State Water Code states that:

Transfer of permit. A permit may be transferred, in whole or in part, from the permittee to another, if:

- (1) The conditions of use of the permit, including, but not limited to, *place, quantity, and the purpose of the use, remain the same*; and
- (2) The commission is informed of the transfer within ninety days.

Failure to inform the commission 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 section 174C-57, is also invalid and constitutes a ground for revocation.

Where staff has concerns is in the underlined and italicized portion of (1) above, for two reasons.

First of all, if the “*place*” remains the same (i.e., the footprint) is the same, but say the lots have been subdivided or even sectioned off under a Condominium Property Regime (CPR), there is the likelihood that the agricultural uses will change. This idea was best illustrated when Campbell Estate subdivided and sold off all of the former Del Monte pineapple fields in Kunia. In place of pineapple, land was used for very different agricultural uses like basil and GMO research seed corn.

Second, even if the land is not subdivided, there is the possibility that agricultural use may change. Because of that, a transfer of water use may entail a change in what is considered reasonable and beneficial (i.e. it is a good time to re-evaluate the needs of seed corn vs. pineapple).

For these reasons, staff recommends that any transfer or water use permits where the “*place*” is revised by subdivision, and the “*purpose of the use*” has the potential to change from one type of agriculture to another, that the Commission deems these situations to render §174C-59 non-applicable, and therefore decisions about the transfer need to be addressed by the Commission.

Clarification of Policies on Permitting Water Use Transfers for Agricultural Use

2) Agricultural uses that seek reinstatement, where pumpage has not occurred for a long period of time

A portion of Section 4.1(a) of the Hawai‘i Well Construction and Pump Installation Standards states that:

The replacement, modification, or repair of an existing permanent pump does not require a pump installation permit if such work does not exceed the existing or permitted pump capacity.

In many cases, this standard facilitates the minimization of down-time for wells that have pump failures, and the well operator needs to get the well back into production as soon as they can. For example, the Department of Water Supply on the island of Hawai‘i needs the flexibility to replace their pumps when they go down, and because pumpage prior to the breakdown was continuous, the replacement of the pump will be effectively the same.

For certain large scale agricultural wells, pumpage may not have occurred for a long time. Some wells may not have been pumped for over 20 years. In many cases, there may be changes to return irrigation, thereby changing the aquifer properties.

In seeking a time-duration of non-pumpage, there has been no precedence. However, in water management areas, the State Water Code, section §174C-58 (excerpted) states that:

After a hearing, the commission may suspend or revoke a permit for:

- (4) Partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more. The commission may permanently revoke the permit as to the amount of water not in use unless the user can prove that the user's nonuse was due to extreme hardship caused by factors beyond the user's control. 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 revocation period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section 174C-62 shall not apply towards the four-year period of forfeiture.

Therefore, staff is recommending that if a pump has not been used for 4-years or more, that any pump replacement will need to obtain a pump installation permit from the Commission, even in a non-water management area.

Since a prior Commission action proposes delegation to the Chair for pumps less than 27 gallons per minute, staff is recommending that *pump replacements* less than 27 gpm do not need a pump installation permit.

RECOMMENDATION:

Staff recommends that the Commission establish the following policies:

- 1) Transfers of existing ground water use permits for agriculture from one landowner to another landowner, in ground water management areas, shall require the approval of the Commission.
- 2) Pump replacements of equal to or greater than 27 gallons per minute, regardless of use, where the well has not been used for four (4) or more years, shall require a pump installation permit, even if the pump installation is less than the existing pump capacity.

Respectfully submitted,



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APPROVED FOR SUBMITTAL:



DAWN N. S. CHANG
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