

**ADVISORY STUDY COMMISSION ON WATER RESOURCES
STATE OF HAWAII**

Property of
EDWARD M. GORE
UNIVERSITY OF HAWAII

c/o Legislative Reference Bureau
State Capitol, Room 004
Honolulu, Hawaii 96813

The Advisory Study Commission on Water Resources, State of Hawaii will conduct a series of public hearings as required by Act 170, Session Laws of Hawaii 1982 prior to recommending a proposed water code for consideration and possible adoption by the Hawaii Legislature. The Commission welcomes public input and comments on the accompanying Code either at the scheduled public hearings or by writing to the Commission c/o Legislative Reference Bureau, State Capitol, Room 004, Honolulu, Hawaii 96813. Persons testifying at a hearing should submit five copies of their testimony, if possible.

PUBLIC HEARINGS SCHEDULE

Island of Oahu	Date: October 30, 1984, Tuesday Time: 7:00 p.m. Place: State Capitol Auditorium, Honolulu
Island of Molokai	Date: November 1, 1984, Thursday Time: 7:00 p.m. Place: Mitchell Pauole Center, Kaunakakai
Island of Maui	Date: November 8, 1984, Thursday Time: 7:00 p.m. Place: Maui County Council Chambers, Wailuku
Island of Lanai	Date: November 9, 1984, Friday Time: 7:00 p.m. Place: Lanai Community/School Library Meeting Room, Lanai City
Island of Hawaii (East)	Date: November 13, 1984, Tuesday Time: 7:00 p.m. Place: Hawaii County Council Room, Hilo
Island of Hawaii (West)	Date: November 14, 1984, Wednesday Time: 7:00 p.m. Place: Kona Surf Hotel, Kona
Island of Kauai	Date: November 16, 1984, Friday Time: 7:00 p.m. Place: Kauai County Council Chambers, Lihue

PROPOSED WATER CODE

CHAPTER 1

ADMINISTRATIVE STRUCTURE

The legislature of the State of Hawaii makes the following findings of fact: The water resources of the State of Hawaii are in acute need of management and regulation. During the past decades there have been shortages of water and a decline in the groundwater levels. If present trends continue, by the year 2000, demand for water on the Island of Oahu will be greater than supply. Moreover, in recent years, the quality of Hawaii's waters have been severely polluted by a variety of toxic contaminants. Furthermore, there has been a great deal of uncertainty regarding the status of water rights. With these concerns in mind, the 1978 Constitutional Convention mandated the legislature to devise a statutory solution. Therefore, in acting pursuant to its obligations to implement Article XI, Section 7, of the state constitution, this legislature recognizes, as did the 1978 Constitutional Convention, that the State has an obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of its people.

1.01 STATE WATER CODE

This act shall be known and cited as the State Water Code.

1.02 DECLARATION OF POLICY

(1) It is recognized that the waters of the State of Hawaii are held for the benefit of the citizens of the State of Hawaii. It is declared that the people of the state are beneficiaries and have a right to have the waters protected for their use.

(2) There is a need for a program of comprehensive water resources planning to address the problems of supply and conservation of water. The State Water Plan, with such future amendments, supplements, and additions as may be necessary, is accepted as the guide for developing and implementing this policy.

(3) The State Water Code shall be liberally interpreted to obtain maximum beneficial use of the waters of the state for such purposes 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 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.

(4) The State Water Code shall be liberally interpreted to protect and improve the quality of waters of the state and to provide that no substance be discharged into such waters without first receiving the necessary treatment or other corrective action. The people of Hawaii have a substantial interest in the prevention, abatement, and control of both new and existing water pollution, and the maintenance of high standards of water quality.

1.03 DEFINITIONS

When appearing in this code or in any rule or regulation adopted pursuant thereto, the following words shall mean:

(1) Board -- The Board of Land and Natural Resources.

(2) Coastal Waters -- Waters of the Pacific Ocean within the jurisdiction of the State of Hawaii.

(3) Department -- The Department of Land and Natural Resources.

(4) Domestic Use -- Any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, non commercial gardening and sanitation.

(5) Groundwater -- Water beneath the surface of the ground, whether or not flowing through known and defined channels.

(6) Impoundment -- Any lake, reservoir, pond, or other containment of surface water occupying a bed or depression in the earth's surface and having a discernible shoreline.

(7) Nonregulated Use -- Any use of water which is exempted from regulation by the provisions of this code.

(8) Other Watercourse -- Any canal, ditch, or other artificial watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted.

(9) Person -- Any and all persons, natural or artificial, including an individual, firm, association, organization, partnership, business trust, corporation, company, the United States of America, the State of Hawaii, and all political subdivisions, municipalities, and public agencies thereof.

(10) Reasonable-Beneficial Use -- 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 public interest.

(11) Stream -- Any river, creek, slough, or natural watercourse in which water usually flows in a defined bed or channel. It is not essential that the flowing be uniform or uninterrupted. The fact that some part of the bed or channel shall have been dredged or improved does not prevent the watercourse from being a stream.

(12) Surface Water -- Both contained surface water--that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction--and diffused surface water--that is, water occurring upon the surface of the ground other than in contained waterbodies. Water from natural springs shall be classified as surface water when it exists from the spring onto the earth's surface.

(13) Water or Waters of the State -- Any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial water courses, lakes, ponds, or diffused surface water and water percolating, standing or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

1.04 SCOPE

(1) All waters of the state are subject to regulation under the provisions of this code unless specifically exempted.

(2) No state or local government agency may enforce any statute, regulation or order affecting the waters of the state controlled under the provisions of this code, whether enacted or promulgated before or after the effective date of this code, without the written permission of the Board.

(3) No state or local government agency or other person having the power of eminent domain or condemnation under the laws of this state, may exercise the power with respect to condemning property if the condemnation will materially affect water resources in the state, without the written permission of the Board.

1.05 GENERAL POWERS AND DUTIES OF THE DEPARTMENT RELATING TO THIS CODE

In addition to its other powers and duties, the Department is authorized to:

(1) Carry out topographic surveys, research, and investigations into all aspects of water use and water quality.

(2) Contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons.

(3) Enter at all reasonable times upon property other than dwelling places for the purposes of conducting investigations and studies, or enforcing any of the provisions of this code, being liable, however, for actual damage done.

(4) Cooperate with federal agencies, other state agencies, county or other local governmental organizations and all other agencies created for the purpose of utilizing and conserving the waters of this state, and assist such organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with such organizations and agencies. For this purpose the Department shall maintain an advisory staff of experts.

(5) Prepare, publish and issue such printed pamphlets and bulletins as the Board deems necessary for the dissemination of information to the public concerning its activities.

(6) Appoint and remove agents and employees including specialists and consultants.

(7) Acquire, lease and dispose of such real and personal property as may be necessary in the performance of its functions, including the acquisition of real property for the purpose of conserving and protecting water and water related resources as provided in section 1.15.

(8) Identify, by continuing study, those areas of the state where salt water intrusion is a threat to fresh water resources and report its findings to the county councils and the public.

(9) Conduct, either independently or in cooperation with any person or any county, state, federal, or any other agency, a program of study, research, experimentation, and evaluation in the field of weather modification. The Department shall also license and regulate weather modification activities pursuant to the provisions of this code.

(10) Provide such coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the state. The Board shall have the power to approve or disapprove such federal plans or projects on behalf of the state. No other agency or department of the state shall assume the duties delegated to the Department under this subsection.

(11) Conduct an inventory of and catalog all water uses and water resources.

1.06 DEPUTY TO THE CHAIRMAN OF THE BOARD FOR WATER RESOURCE MANAGEMENT

(1) There is established within the Department the position of Deputy to the Chairman of the Board for Water Resource Management ("Deputy for Water Resource Management"). The Deputy for Water Resource Management shall be appointed by the Chairman with the concurrence of a majority of the members of the Board excepting the Chairman. The deputy shall have experience in the area of water resources.

(2) The duties of the Deputy for Water Resource Management shall be to administer and implement the State Water Code and all rules,

regulations and other directives promulgated in accordance therewith by the Board. However, nothing in this provision shall be construed as limiting the authority of the Chairman and the Board as to matters regarding water resources.

(3) The position of Deputy for Water Resource Management shall be designated as a position exempt from the application of Chapter 76 pursuant to Section 76-16.

(4) The salary of the Deputy for Water Resource Management shall be calculated in the manner set forth in Section 26-53 for second deputies or second assistants to the head of any department of the state.

1.07 ADVISORY COMMISSION ON WATER RESOURCE MANAGEMENT

(1) There is established within the Department an advisory commission on water resource management which shall serve in an advisory capacity to the Board in all matters relating to implementation and administration of the State Water Code.

(2) The commission shall be composed of seven (7) members from the general public appointed by the Governor subject to confirmation by the Senate. Each member shall be a resident of the State. There shall be at least one member from each county.

(3) Except as otherwise provided herein, the commission shall be governed by the provisions of Section 26-34, 26-35 and 26-36.

1.08 STATE WATER USE AND PROTECTION PLAN

(1) The Department shall continue to study the existing water resources of the state; the means and methods of conserving and augmenting such water resources; the existing and contemplated needs and uses of water for protection of the environment, procreation of fish and wildlife, recreational use, improvement of water quality, irrigation, power development, geothermal power development, and domestic, municipal, and industrial uses; and all other related subjects including drainage, reclamation, flood-plain zoning, dam safety, and selection of reservoir sites. In assessing the needs of the state and counties, the Department shall carefully consider the objective set forth in the Development and General Plans of the various counties.

The Department shall progressively formulate an integrated, coordinated program for the use and development of the waters of the state based on the above studies and plans. This program, with such amendments, supplements and additions as may be necessary later, shall be known as the State Water Use and Protection Plan.

(2) The plan shall be directed toward the achievement of the following objectives:

(a) the attainment of maximum reasonable-beneficial use of water for such purposes as those referred to in subsection (1) above;

(b) the proper development of the waters of the state;

(c) the control of the waters of the state for such public purposes as navigation, drainage, sanitation and flood control;

(d) the attainment of adequate water quality as expressed in the State Water Quality Plan; and

(e) the implementation of the water resources policies expressed in section 1.02 of this code.

(3) For the purposes of this plan the Department shall divide each county into sections which shall conform as nearly as practicable to a hydrologically controllable area and describe all water resources within the area. The Department shall determine:

(a) presently exercised uses and inchoate rights to the use of water based on riparian and appurtenant rights; and

(b) the quantity of water available for application to reasonable-beneficial uses in the future.

(4) Within each section the Board shall establish the following:

(a) An instream use and protection program for the surface watercourses in the area. The program shall be established in the manner as set forth in Chapter 176D.

(b) Sustainable yield. The sustainable yield shall be the level of withdrawals in an aquifer at which further withdrawals would be harmful to the water resources of the area.

The sustainable yield shall be calculated by the Department using the best information available. Where appropriate the sustainable yield may be calculated to reflect seasonal variations.

(5) The Department shall condition permits under Chapter 2 of this code in such a manner as to protect instream flows and maintain sustainable yields of groundwater established under this section.

(6) The Department shall give careful consideration to the requirements of public recreation, the protection of the environment, and procreation of fish and wildlife. The Board may prohibit or restrict other future uses on certain designated streams which may be inconsistent with these objectives.

(7) The Board may also designate certain uses in connection with a particular source of supply which, because of the nature of the activity or the amount of water required, would constitute an undesirable use for which the Department may deny a permit under the provisions of Chapter 2.

(8) The Board may also designate certain uses in connection with a particular source supply which, because of the nature of the

activity or amount of water required, would result in an enhancement or improvement of the water resources of the area. Such uses shall be preferred over other uses in any action pursuant to section 2.07 of this code.

(9) The Board may add to the State Water Use Plan any other information, directions or objectives it feels necessary or desirable for the guidance of the counties in the administration and enforcement of this code.

(10) During the process of formulating or revising the State Water Use Plan, the Department shall consult with and carefully evaluate the recommendations of concerned federal, state and local agencies.

(11) The Board shall not adopt or modify the State Water Use Plan or any portion thereof without first holding a public hearing on the matter. At least ninety (90) days in advance of such hearing the Board shall notify any affected counties, and shall give notice of such hearing by publication within the affected region.

1.09 STATE WATER PLAN

(1) The State Water Use and Protection Plan and the State Water Quality Plan, taken together shall constitute a single unified plan for water resources use, conservation and development. This overall plan shall be known as the State Water Plan. (2) Respective portions of the State Water Plan and the State Water Quality Plan shall be developed together to achieve maximum coordination.

(3) The development of the State Water Plan or any portion thereof shall proceed in coordination with and with attention to the Hawaii State Plan described in Chapter 226.

(4) The State Water Plan and its constituent parts shall be adopted by the Board no later than three (3) years to the date of the enactment of this code.

1.10 ADOPTION OF REGULATIONS CONCERNING WATER RESOURCES BY THE BOARD

(1) The Board shall adopt, promulgate, and enforce such regulations as may be necessary or convenient to administer the provisions of this code. The initial set of regulations, subject to later amendment, revisions or additions, shall be adopted no later than three (3) years after the enactment of this code.

(2) Regulations shall be adopted in conformity with the provisions contained in Chapter 91 of the Hawaii Revised Statutes.

1.11 PROCEEDINGS BEFORE THE BOARD CONCERNING WATER RESOURCES

All proceedings before the Board concerning the enforcement or application of any provision of this code or any regulation adopted pursuant thereto, or the issuance, modification, or revocation of any permit or license under this code by the Board, shall be conducted in accordance with Chapter 91, the Hawaii Administrative Procedure Act.

1.12 HEARINGS OFFICERS

(1) The Chairman is authorized to appoint hearings officers not subject to Chapters 76 and 77 to hear and reach a preliminary decision on any matters concerning implementation and administration of the State Water Code which the Board shall refer to said hearing officers by rule, regulation or otherwise.

(2) In assigning matters to hearings officers, the Chairman shall make the assignments in a manner which ensures that hearings officers will develop familiarity and expertise as to given geographic areas.

(3) In conducting the hearing of any matter referred by the Board pursuant to this section, the hearings officer shall solicit and consider the views of the appropriate county officials responsible for planning, economic development and resource management and such other county officials and others as the Board shall direct.

(4) Each of the hearings officers authorized herein shall be deemed to be an "agent" of the Board and shall have all powers associated with said designation.

1.13 JUDICIAL REVIEW OF REGULATIONS AND ORDERS OF THE BOARD CONCERNING THE WATER CODE

The judicial review of regulations and orders of the Board with respect to this code shall be governed by the Hawaii Administrative Procedure Act. Trial de novo is not provided by this code and shall not be allowed upon review of Board actions concerning this code.

1.14 CITIZEN COMPLAINTS

The Department shall promulgate procedural rules for the processing of citizen complaints including the right of appeal to the Board. In the event that any person shall file a complaint with the Department that any other person is wasting or polluting water or is making a diversion, withdrawal, impoundment, or consumptive use of

waters not expressly exempted under the provisions of this code and without a permit to do so, the Department shall cause an investigation to be made, take appropriate action, and notify the complainant thereof.

1.15 ACQUISITION OF REAL PROPERTY

(1) The legislature declares it to be necessary for the public health and welfare that water and water related resources be conserved and protected; the acquisition of real property for this objective shall constitute a public purpose for which public funds may be expended.

(2) The Board is empowered and authorized to acquire real property and easements therein by purchase, gift, devise, lease, eminent domain or otherwise for flood control, water management, or water and water-related resource conservation.

(3) Land, water areas, and related resources which may be acquired for this purpose shall include, but not be limited to, streams and watercourses, parks and recreation areas, beaches, submerged lands, and other open areas, beaches, submerged lands, and other open areas, as well as necessary access sites and rights-of-way.

(4) This section shall not limit the exercise of similar power delegated by statute to any state or local government agency. This section is not intended to limit, in any way, the powers of the Department in regards to the acquisition of real property under any other statute.

1.16 PENALTIES AND COMMON LAW REMEDIES

(1) The Board may enforce its regulations and orders adopted pursuant to this code by suit for injunction or for damages or both.

(2) Any person who violates any provision of this code shall be guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment not to exceed six (6) months, or a fine not to exceed \$1,000, or both. For a continuing offense, each day during which the offense is committed shall be considered a separate violation.

(3) Any person who violates any provision of this code may be subject to a fine imposed by the Board, such fine not to exceed \$1,000. For a continuing offense, each day during which the offense is committed shall be considered a separate violation.

(4) No provision of this code shall bar the right of any injured person to seek other legal or equitable relief against a water user for actions in violation of this code.

1.17 REPORT ON DIVESTITURE OF CERTAIN DEPARTMENT FUNCTIONS

(1) By no later than twenty (20) days prior to the convening of the first regular session of the legislature following the effective date of the State Water Code, the Department shall submit to the legislature a report the purpose of which shall be to identify all existing situations in which the Department would be required, pursuant to the State Water Code, to obtain a permit as permittee for the withdrawal, diversion, impoundment or consumptive use of water. The report shall identify each such situation, the statutory or regulatory authority therefor, and the Department's recommendations to the legislature on how the Department may divest itself of such authority so that it will not be required to be a permittee under any permit issued pursuant to the State Water Code.

(2) In preparing its report, the Department shall consult with other departments, boards or other governmental entities concerning to which such department, board or other governmental entity should be transferred any particular authority the retention of which by the Department would require the Department to be a permittee under any permit issued pursuant to the State Water Code.

1.18 SEVERABILITY

If any section, subsection, sentence, clause, phrase or words of this code are for any reason held to be unconstitutional or invalid, such action shall not affect the validity of any remaining portion of this code.

CHAPTER 2 CONSUMPTIVE USES

2.01 PERMITS REQUIRED

(1) No person shall make any withdrawal, diversion, impoundment, or consumptive use of water without obtaining a permit from the Department. However, no permit shall be required for domestic consumption of water by individual users.

(2) No provision of this chapter shall apply to coastal waters as defined in section 1.03 (2) of this code.

2.02 CONDITIONS FOR A PERMIT

(1) To obtain a permit pursuant to the provisions of this chapter, the applicant must establish that the proposed use of water (a)

is a reasonable-beneficial use as defined in section 1.03 (10) of this code, (b) will not interfere with any existing legal use of water, and (c) is consistent with the public interest and the provisions of the State Water Plan.

(2) The common law of the state to the contrary notwithstanding, the Department may allow the holder of a use permit to transport and use surface or groundwater beyond overlying land or outside of the watershed from which it is taken if the Department determines that such transport and use are consistent with the public interest. The Department shall only permit such transportation of water in accordance with the relevant provisions of the state water plan which shall carefully consider the impact of the transportation of water on all affected areas.

(3) The Department by regulation may reserve from use by permit applicants water in such locations and quantities and for such seasons of the year as in its judgment may be required to implement a provision of the State Water Plan. Such reservations shall be subject to periodic review and revision in the light of changed conditions; provided, however, that all presently existing legal uses of water shall be protected.

2.03 EXISTING USES

(1) All existing uses of water, unless otherwise exempted from regulation by the provisions of this code, may be continued after the effective date of this code only with a permit issued in accordance with the provisions of section 2.04, section 2.05 and section 2.06 of this code.

(2) After publication as provided in section 2.05, the Department shall issue a permit for the continuation of a use in existence before the effective date of this code if the existing use is 1) a reasonable-beneficial use as defined in section 1.03 (10) of this code; 2) allowable under the common law of this state; and 3) in conformity with the state water plan. Whether the existing use is a reasonable-beneficial use, is allowable under the common law of the State, and is in conformity with the State Water Plan shall be determined by the Board after a hearing; provided, that the Board may make such a determination without a hearing, if the quantity of water applied for does not exceed 150,000 gallons a month or if the quantity of water applied for exceeds 150,000 gallons a month, but no objection to the application is filed by any person having standing to file an objection. In determining whether an application does not exceed 150,000 gallons per month, the Department shall consider an average of water use over the three (3) month period immediately preceding the filing of the application.

(3) Applications for permit under the provisions of subsection (2) above must be made within a period of one (1) year from the effective date of this code. Failure to apply within this period shall create a conclusive presumption of abandonment of the use and the user, if he desires to revive the use, must apply for a permit under the provisions of section 2.04 of this code. If the Department determines that there is just cause for the failure to file, it may allow late filing. However, the Department may not allow a late filing more than five (5) years after the effective date of this code.

(4) In the event that the Department refuses to issue an interim permit upon timely application under subsection (2) above, the user shall be allowed reasonable compensation amounting to reimbursement for any damages attributable to the lessening of his water supply and any expenses related thereto. Applications which have not been granted or denied by the Department, in its administrative capacity, within 180 calendar days of filing shall be deemed granted. The 180 day time period described in this section shall not be deemed to run for any period in which an application is not complete, in all material respects in the judgment of the Department. In applying the criteria of subsection (2) above to interim permit, the Department need not apply the criteria regarding conformance with the State Water Plan if such plan has not been adopted.

(5) In determining the amount of water that shall be granted to an existing user, the Department shall initially grant an amount which shall be deemed to be an interim allocation. Thereafter, the Department shall, within three to five years after the application, fix a more accurate amount to be granted in the permit. The manner for determining this amount shall utilize the best available means, as determined by the Department. However, the manner for determining such an amount shall not be unduly burdensome on the permittee. In making such a final determination, the Department may reduce the amount originally granted to the permittee. The Department is obligated to make such a reduction if such reduction results in the conservation of water.

(6) The Board shall promulgate rules as to what constitutes appropriate metering and gauging devices. If such metering is needed such metering devices must be in place and operational for at least one (1) year prior to the issuance of a final permit.

(7) In the event that two or more existing users of water are deemed to be competing for water as defined by this section, the Board must hold a hearing on the competing existing uses. In the case of such competing existing uses, regardless of the amount of water applied for, the Board, and not the Department, shall decide on the issuance of permits. For the purposes of this section, competing existing uses shall include any existing uses for a hydrologically controllable area which exceed the appropriate sustainable yield or minimum streamflow for such area, as determined by the Department.

2.04 APPLICATION FOR A PERMIT

(1) All permit applications filed with the Department under this chapter shall contain the name and address of the applicant (in the case of a corporation, the address of its principal business office), the date of application, the source of the water supply, the quantity of water applied for, the use to be made of the water and any limitations thereon, the place of the use, the location of the well or point of diversion, and such other information as the Department may deem necessary.

2.05 NOTICE

(1) Upon receipt of the application, the Department shall cause a notice thereof to be published in a newspaper having general circulation within the affected area. The notice shall be published at least once a week for two (2) consecutive weeks. In addition, the Department shall send a copy of such notice to any person who has filed a written request for notification of any pending applications affecting a particular designated area. This notification shall be sent by regular mail prior to the date of last publication.

(2) The notice shall contain the name and address of the applicant, the date of filing, the date set for hearing, if any, the source of the water supply, the quantity of water applied for, the use to be made of the water and any limitations thereon, the place of the use and the location of the well point or diversion.

(3) The notice shall state that written objections to the proposed permit may be filed with the Department by a specified date. The Board shall establish by rules the time limits within which objections must be filed. The Department, at its discretion, may request further information from either applicant or objectors, and a reasonable time shall be allowed for such responses. Each applicant shall be notified by the Department of the objections filed as to his or her application.

(4) The Department shall make available to the public, upon request, a monthly bulletin of all pending applications. Such bulletin shall briefly state the relevant facts of each application. In addition, the Department shall send a copy of the notice of application to any person who has filed a written request for notification of any pending applications affecting a particular designated area.

2.06 PERMIT ISSUANCE

(1) The Board shall determine, after a hearing, whether the conditions set forth in section 2.02 (1) have been established; provided, that the Board may make such determination without a hearing if the quantity of water applied for does not exceed an average of 150,000 gallons per month or if the quantity of water applied for exceeds an average of 150,000 gallons a month, but no objection to the application is filed by any person having standing to file an objection.

(2) In acting upon any application, the Department need consider only those objections filed by a person who has some property interest in any land within the watershed from which the water sought by the applicant is to be drawn or who will be directly and immediately affected by the water use proposed in the application. The Department shall adopt rules in conformance with this subsection governing the filing of objections and the persons having standing to file objections.

(3) Applications which have not been granted or denied by the Department, in its administrative capacity, within 90 calendar days of an application not requiring a hearing, or within 180 calendar days of an application requiring a hearing, shall be deemed granted. The time periods in this section shall not be deemed to run for any period in which an application is determined to be incomplete, in a material respect, in the judgment of the Department. The time periods in this subsection should not be deemed to run for any period in which the State Water Plan has not been adopted.

(4) As a condition for the issuance of a permit the Department or Board may require the permittee to install meters, gauges, or other appropriate measuring devices.

2.07 COMPETING APPLICATIONS

(1) If two or more applications which otherwise comply with the provisions of section 2.02 of this code are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the Department shall have the right to approve that application which best serves the public interest as set forth in the state water plan.

(2) In the event that two or more competing applications qualify equally under the provisions of subsection (1) above, the Department shall give preference to a renewal application over an initial application.

(3) An application for modification of a permit which involves a change of use as defined in section 2.09 (1) shall be deemed an initial application for the purposes of this section.

2.08 DURATION OF PERMITS

(1) Permits may be granted for a maximum period of thirty (30) years. The Department may base duration of permits on a reasonable system of classification according to source of supply, type of use, or both. In the case of applications of existing users, there shall be no presumption that such applicants shall be granted thirty (30) year permits. As to existing users, the Department shall grant permits, the duration of which is appropriate in light of all material circumstances, including the terms of existing land leases. Permits are subject to renewal as set forth in section 2.10.

2.09 MODIFICATION OF PERMIT TERMS

(1) A permittee may seek modification of any terms of an unexpired permit. A permittee who seeks to change the use of water subject to his permit, whether or not such change in use is of a material nature, or make any change in respect to the water which shall have a material effect upon any person or upon the water resource, must make

application pursuant to section 2.04 in respect to such a change. Modification of one aspect or condition of a permit may be conditioned on the permittee's acceptance of changes in other aspects of a permit as proposed by the Department.

As used in this section the term "change in use" includes the following: (1) any increase or decrease in the area of land which is irrigated or affected; (2) any increase or decrease in the amount of water that is applied to the land; (3) any change in the type of irrigation system being used; and (4) any change in the point of withdrawal or diversion, whether or not the amount withdrawn or diverted remains the same. Nothing in this section shall be construed as limiting the power of the Department to impose other conditions on the issuance of permits which relate to use or change of use.

(2) If the proposed modification involves an increase in water of 150,000 gallons per month or more, the application shall be treated under the provisions of section 2.04 in the same manner as the initial permit application. Otherwise, the Department may, at its discretion, approve the proposed modification without a hearing provided that the permittee establishes that (a) a change in conditions has resulted in the water allowed under the permit becoming inadequate for the permittee's needs, or (b) the proposed modification would result in a more efficient utilization of water than is possible under the existing permit.

(3) All permit modification applications shall be treated in the same manner as the initial permit application under section 2.04 of this code. Moreover, section 2.06 (3) regarding the time limit for departmental action shall apply to modification applications.

2.10 RENEWAL OF PERMITS

(1) No later than two years nor sooner than six years prior to the termination according to its term of any permit granted pursuant to the State Water Code other than a permit granted pursuant to section 2.03 above, the permittee shall, if it desires the renewal of said permit, file an application for renewal of said permit in the same manner as provided in Section 2.04. The processing and consideration of a renewal application by the Department and/or Board and the issuance and administration of a renewal permit shall proceed in accordance with the requirements of the State Water Code regarding initial permits except as otherwise set forth herein. The Department shall notify the permittee of the date of termination three (3) years prior to the date of termination. However, failure to do so shall not result in any legal consequences to the Department.

(2) With regard to renewal applications, it is declared to be legislative policy that water uses existing under a permit validly issued pursuant to the State Water Code be continued upon expiration of said permit by renewal for an appropriate period unless it is clearly demonstrated that materially changed conditions, substantially competing uses or other compelling factors have arisen subsequent to issuance of the initial permit which counsel against permit renewal. Accordingly, the affirmative burden with regard to an application for a permit renewal shall rest upon those opposed to such a permit renewal to demonstrate that the permit renewal should not be granted. The Department and/or Board, in considering whether a sufficient demonstration has been made, shall take into account the following factors: (1) whether the use sought to be renewed remains consistent with the public interest and the provisions of the State Water Plan; (2) whether the pattern of land and water use in the area in which the water use sought to be renewed is located has materially changed over the permit term; (3) whether the permittee's water use requirements have materially changed over the permit term; (4) whether renewal is required to allow the permittee sufficiently to amortize the cost of any improvements constructed in reliance upon a validly-issued permit; and (5) whether the permittee has conducted itself in accordance with the permit conditions and the State Water Code and other applicable statutes, ordinances, rules and regulations throughout the permit term.

(3) Nothing herein shall be construed to require the Department and/or Board to renew a permit for a term identical to that of the initial permit if renewal for such a term would be inconsistent with the public interest and the State Water Plan.

2.11 REVOCATION OF PERMITS

After a hearing the Board may revoke permits as follows:

(1) For any material false statement in an application to continue, to initiate, or to modify a use, or for any material false statement in any report or statement of fact required of the user pursuant to the provisions of this code, the Board may revoke the user's permit, in whole or in part, permanently.

(2) For willful violation of the conditions of the permit, the Board may permanently or temporarily revoke the permit, in whole or in part.

(3) For violation of any provision of this code, the Board may revoke the permit, in whole or in part, until the permittee complies with all provisions of the code.

(4) For nonuse of the water supply allowed by the permit for a period of two (2) years or more, the Board may revoke the permit permanently and in whole unless the user can prove that his nonuse was due to extreme hardship caused by factors beyond his control. The Department and the permittee may enter into a written agreement that, for reasons satisfactory to the Department, any period of non-use may not apply towards the two-year revocation period. Moreover, any period of non-use which is caused by a declaration of water shortage pursuant to Section 2.10 shall not apply towards the two-year period of forfeiture.

(5) The Board may cancel a permit, permanently and in whole, with the written consent of the permittee.

2.12 PERIODIC REPORTING

The Department shall promulgate regulations which require annual reporting of water usage.

2.13 TRANSFER OF PERMIT

A permit may be transferred, in whole or in part, from the permittee to others or another if (1) the conditions of use of the permit including, but not limited to, place, quantity and purpose of the use remain the same and, if (2) the Department is informed within sixty (60) days. Failure to so inform the Department shall mean that the transfer is invalid and such transfer shall constitute a ground for revocation of the permit. A transfer which involves a change in the conditions of the permit shall also be invalid and constitute grounds for revocation. A transfer which also involves a change in use as that term is defined in section 2.09 (1) shall also be invalid and constitute grounds for revocation.

2.14 CONTESTED CASES

Applications, modifications or renewals pursuant to this code shall be considered "contested cases" within the meaning of the Hawaii Administrative Procedure Act. The provisions of that Act shall apply to applications under this code except where the rules under this code conflict with that Act. In such a case, the provisions of this code shall apply.

2.15 FEES

The Department shall have the power to, and shall promulgate a schedule of application and permit fees. The funds from such fees shall be used to defray the administrative costs of the permit system. Such fees, however, shall not apply in the case of public agencies.

2.16 DECLARATION OF WATER SHORTAGE

(1) The Board by regulation shall formulate a plan for implementation during periods of water shortage. As a part of this plan, the Board shall adopt a reasonable system of permit classification according to source of water supply, method of extraction or diversion, use of water or a combination thereof.

(2) The Board, by regulation, may declare that a water shortage exists within all or part of the district when insufficient water is available to meet the requirements of the permit system or the State Water Plan or when conditions are such as to require temporary reduction in total water use within the area to protect water resources from serious harm. The Board shall publish a set of criteria for determining when a water shortage exists. Such criteria, however, shall not be considered binding upon the Board.

(3) In accordance with the plan adopted under subsection (1) above, the Department may impose such restrictions on one or more classes of permits as may be necessary to protect the water resources of the area from serious harm and to restore them to their previous condition.

(4) A declaration of water shortage and any measures adopted pursuant thereto may be rescinded by regulation by the Board.

(5) When a water shortage is declared, the Department shall cause notice thereof to be published in a prominent place within a newspaper of general circulation throughout the area. Such notice shall be published each day for the first week of the shortage and once a week thereafter until the declaration is rescinded. Publication of such notice shall serve as notice to all water users in the area of the condition of water shortage.

(6) The Department shall notify each permittee in the county by regular mail of any change in the condition of his permit, any suspension of his permit, or of any other restriction on his use of water for the duration of the water shortage.

(7) If an emergency condition exists due to a water shortage within any area of the district, and if the Department, with the concurrence of the Board, finds that the exercise of the powers under section 2.16 (3) 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, commercial, industrial, agricultural or other reasonable uses, the Department may issue orders reciting the existence of such an emergency and requiring that such action, including but not limited to apportioning, rotating, limiting or prohibiting the use of the water resources of the county, be taken as the Department deems necessary to meet the emergency.

(8) An affected party to whom an emergency order is directed under section 2.16 (7) shall comply immediately but may challenge such an order. The Board shall give such proceedings precedence over all other pending cases.

CHAPTER 3

WATER QUALITY

3.01 DEFINITIONS

When appearing in this chapter or in any regulation adopted pursuant thereto, the following words shall mean:

(1) Disposal system -- any system for disposing of wastes, either by surface or underground methods, including sewage systems, treatment works, disposal wells, and other systems.

(2) Impairment of water quality -- any act or condition, including, but not limited to, pollution, which temporarily or permanently reduces, or threatens to reduce, water quality below the level established by the Department of Health pursuant to this code.

(3) Industrial waste -- any and all solid, liquid, or gaseous waste substances, excluding sewage, resulting from any producing, manufacturing, or processing operations of whatever nature or from the development of any natural resource.

(4) Other waste -- garbage, municipal refuse, chemicals, and all other waste substances, which are not sewage or industrial waste, which may pollute the waters of the state.

(5) Outlet -- the terminus of a sewer system, or the point of discharge of any sewage, industrial waste, or other wastes or the effluent therefrom, into the waters of the state.

(6) Pollution -- any alteration of water quality, including change of temperature, taste, color, turbidity, or odor of the waters, or the addition of liquid, solid, radioactive, gaseous, or other substances to the waters, or the removal of such substances from the waters, which will render or is likely to render the waters harmful to the public health, safety, or welfare; industrial, agricultural, recreational, or other lawful uses; or to animals, birds or aquatic life.

(7) Sewage -- any and all waste substances, liquid or solid, associated with human habitation, which contain or may be contaminated with human or animal excreta, offal, or any feculent matter.

(8) Sewage system -- pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for conducting wastes to an ultimate point of treatment and/or disposal.

(9) State waters -- all waters, fresh, brackish, or salt around and within the State of Hawaii, which includes all the islands of the Hawaiian Archipelago, together with their appurtenant reefs and waters, except Midway Island.

(10) Treatment works -- any plant or other works used for the purpose of treating, stabilizing or holding wastes.

(11) Wastes -- sewage, industrial wastes, and all other wastes, liquid, gaseous, solid, or radioactive, which may affect water quality.

(12) Water quality -- chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

3.02 EXCLUSION OF ATMOSPHERIC MOISTURE

No provision of this chapter shall apply to moisture contained in the atmosphere.

3.03 ADDITIONAL POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH

As delegated to it by the United States Environmental Protection Agency for the primary enforcement of the Federal Safe Drinking Water Act, Federal Clean Water Act and the Federal Resource Conservation and Recovery Act, the Department of Health shall continue to, or will, when delegated:

(1) exercise general supervision over the administration and enforcement of the Federal Safe Drinking Water Act within the state and all regulations promulgated thereunder and adopt, modify, repeal, promulgate, and enforce such regulations implementing or effectuating the power and duties under this code as it may be deemed necessary;

(2) administer any program of research in water pollution or water quality control, accept funds from the United States or any person to that end, and support programs of research by other governmental agencies, universities, industries, and private persons;

(3) collect and disseminate information relating to water pollution and the prevention, control and abatement thereof;

(4) administer any program of financial assistance for water pollution or water quality control and accept funds from the United States or any person to that end.

3.04 SAFE DRINKING WATER PLAN

(1) The state Safe Drinking Water Plan shall consist of the following:

(a) program management and administration to provide for proper program supervision, staffing and budgetary needs, preparation of an emergency plan, development and review and appropriate amendments

to changes in state statutes and regulations, review and comment on federal regulations, and liaison to county health departments for the provision of interagency interprogram coordination;

(b) potable water supply surveillance and technical assistance to include, but not be limited to, the performance of sanitary surveys and site investigations, review of water quality data and monitoring information, assistance and technical advice to water suppliers as appropriate, investigate water quality complaints and to assist appropriate agencies in emergencies;

(c) plan review for new or modified public water supply systems in order to insure that construction of potable water facilities are in compliance with applicable codes, ordinances, and regulations;

(d) laboratory certification program to insure that laboratories performing analyses for contaminants as prescribed in the Safe Drinking Water Act, are in compliance with appropriate quality assurance procedures and approved methodology;

(e) laboratory capability requirements in order to perform the necessary analyses for contaminants that may be of concern to public health;

(f) training and certification activities to insure that the public water supply personnel, owners, and state officials are adequately trained in order to perform the duties as required;

(g) enforcement activities to insure compliance with applicable federal and state statutes which may include, but not be limited to, notices of violations, enforcement orders, variances and exemptions as appropriate, civil litigation, and the development of an enforcement strategy;

(h) the maintenance of data to include, but not be limited to, an inventory of public water suppliers and the maintenance of records of water quality information;

(i) the investigation of water borne diseases as a result of water contamination and public health exposure;

(j) public participation activities which are to include a program that will involve the public in the planning and the conduct of the state Public Water Supply Supervision Program;

(2) The state Safe Drinking Water Plan shall be periodically reviewed and may be revised.

(3) During the process of modifying or revising the state Safe Drinking Water Plan, the Department of Health shall consult and carefully evaluate the recommendations of concerned federal, state and local agencies, county water suppliers, and private water system suppliers.

(4) The Department of Health shall review all new sources of potable water prior to their use. The review of any new or modified water source shall be based upon an engineering report to address existing and potential concerns affecting the water quality including, but not limited to, the long term integrity of the source in supplying water which will comply with both the federal and state statutes. No person shall use a source to serve a public water system unless said source is approved by the Director of Health.

(5) The Department of Health shall have the power to promulgate and amend rules and regulations to comply with federal statutes. Maximum contaminant levels established by the federal government shall be applicable to state rules and regulations.

3.05 WATER QUALITY PLAN

(1) The state Water Quality Plan shall consist of the following:

(a) water quality standards for all waters of the state, such standards to consist of receiving water standards and, where applicable, effluent standards;

(b) water quality objectives for planning and operation of water resource development projects, for water quality control activities, and for the improvement of existing water quality;

(c) other principles and guidelines deemed essential by the Department of Health for water quality control; and

(d) a program of implementation for those waters which do not presently meet established water quality standards.

(2) The state Water Quality Plan shall be periodically reviewed and may be revised.

(3) During the process of formulating or revising the state Water Quality Plan, the Department of Health shall consult with and carefully evaluate the recommendations of concerned federal, state and local agencies, particularly county water supply agencies.

(4) The Department of Health shall not adopt or modify the state Water Quality Plan or any portion thereof until a public hearing is held. At least thirty (30) days in advance of such a hearing the Department of Health shall notify any affected counties, and shall give notice of such hearing by publication within the affected region.

(5) The Department of Health shall have the power to ban the importation into this state of any substance which the department reasonably believes may present a danger to the water quality of this state.

3.06 WATER QUALITY STANDARDS

(1) It is recognized that, due to variable factors, no single standard of quality and purity of the waters is applicable to all waters of the state or to different segments of the same waters.

(2) The Department of Health shall group all waters of the state into classes and adopt water quality standards for each class. Such classification shall be made in accordance with considerations of best usage in the interests of the public.

(3) In preparing the classification of waters and the standards of purity and quality above mentioned, the Department of Health shall give consideration to:

(a) the size, depth, surface area covered, volume direction and rate of flow, stream or hydraulic gradient, and temperature of the water;

(b) the character of the land bordering, overlying or underlying the waters of the state and its peculiar suitability for particular uses, and with a view to conserving the value of said land, encouraging the most appropriate use of the same for economic, residential, agricultural, industrial, or recreational purposes;

(c) the past, present and potential uses of the waters for transportation, domestic and industrial consumption, bathing, fishing and fish culture, fire prevention, sewage disposal, industrial and other wastes and other possible uses; and

(d) the extent of present defilement or fouling of the waters which has already occurred or resulted from past discharge therein.

(4) The Water Quality Plan adopted by the Department of Health shall contain standards of quality and purity for each of the various classes in accordance with the best interests of the public.

(5) In preparing such standards, the Department of Health shall give consideration to:

(a) the extent, if any, to which floating solids may be permitted in the waters;

(b) the extent, if any, to which suspended solids, settleable solids, colloids, or a combination of solids with other substances suspended in water may be permitted;

(c) the extent, if any, to which organisms or virus may be permitted in the waters;

(d) the extent of the oxygen demand which may be permitted in the receiving waters;

(e) the extent, if any, to which the temperature of the waters may be altered;

(f) the minimum dissolved oxygen content of the waters that shall be maintained;

(g) the limits of other physical, chemical, biological, or radiological properties that may be necessary for preserving the quality and purity of the waters of the state;

(h) the extent to which any substance, including pesticides or any hazardous or toxic substance (not to be construed solely in its waste form), must be excluded from the water for the protection and preservation of public health; and

(i) the value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries, and others to plan, schedule, finance and operate improvements in an orderly and practical manner.

(6) The Department of Health may impose such effluent standards as it deems necessary to maintain or improve water quality.

(7) The Department of Health may, by rule, modify classifications and upgrade the standards of quality.

3.07 ADDITIONAL POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH

In addition to other powers and duties under this code, the Department of Health shall:

(1) issue, revoke, modify, or deny, in accordance with its requirements, permits for the discharge of any substance into the waters of the state and for the installation, modification, or operation of treatment or disposal systems or any part thereof;

(2) require the prior submission of plans, specifications, and other data relative to the construction of treatment or disposal systems, or any part thereof, in connection with the issuance of such permits or approvals as are required by this code;

(3) in accordance with the state Water Quality Plan, issue, modify, or revoke orders: (a) prohibiting or abating discharges of various substances into the waters of the state; or (b) requiring the construction of new treatment or disposal systems, or any parts thereof, or the modification, extension, or alteration of existing disposal systems, or any parts thereof, or the adoption of other remedial measures to maintain or upgrade water quality;

(4) require proper operation and maintenance of all treatment works or disposal systems; and

(5) exercise all incidental powers necessary to carry out the objectives of this chapter.

3.08-PERMITS FOR NEW OUTLETS

(1) No person shall without having obtained a written authorization from the Department of Health:

(a) begin construction of any new outlet for the discharge of sewage, industrial wastes, or other wastes, or the effluent therefrom, into the waters of the state, or make any change in, addition to, or extension of any existing disposal system or part thereof which would materially alter the method, the volume, or the effect of treating or disposing of the sewage, industrial wastes or other wastes; or

(b) begin construction of any new treatment works for the treatment of sewage, industrial waste, or other wastes, or the effluent therefrom, into the waters of the state, or make any change in, addition to, or extension of any existing treatment plant or part thereof which would materially alter the method, volume, or effect of treating said wastes.

(2) No authorization for any new outlet or the construction of a new disposal system or the modification or extension of any existing disposal system shall be issued until the plans have first been submitted to and approved by the Department of Health.

3.09 DISCHARGE PERMITS

(1) (a) No person shall discharge any substance into the waters of the state which may affect the quality of waters of the state without first obtaining a permit from the Department of Health.

(b) The Department of Health may exempt certain types of discharges from the requirements of this subsection if it is clearly established that there will be no significant impairment of water quality from such discharges.

(2) The permit may be granted only if the Department of Health determines that such discharge will not lower water quality, in the affected water, below the standards set for that class of water, pursuant to the state Water Quality Plan. Permits may also be denied if the Department of Health determines that such discharge would not be consistent with water quality improvement objectives established for the affected water, pursuant to the state Water Quality Plan.

(3) The procedure for permit applications shall be governed by the provisions of appropriate Department of Health rules. All information required by such form must be furnished and, when information filed by any person pursuant to this section is not adequate in the judgment of the Department of Health, the department may require such person to supply such additional information as it deems necessary.

(4) No discharge into the waters of the state, pursuant to the terms of a permit issued under this section, shall create a vested right to continue such discharge. All discharges into waters of the state are privileges, not rights.

(5) Permits may be modified, suspended, or revoked by the Department of Health after a hearing pursuant to section 3.13 (Administrative Enforcement) of this code:

(a) for any materially false statement in the permit application;

(b) for willful or negligent violation of the conditions of the permit;

(c) for refusal to allow inspection of facilities as provided under section 3.11 (Inspections) of this code;

(d) after a determination by the Department of Health that the water quality of the affected water has fallen below the water quality standards established by the Department pursuant to the Water Quality Plan or any subsequent modification thereof;

(e) in order to protect the public health, safety, or welfare; or

(f) to protect any domestic consumptive uses or water uses exercised pursuant to the provisions of chapter 2 of this code.

(6) Discharge permits shall be issued for a term of five (5) years. Renewals shall be treated in the same manner as initial applications.

3.10 POLLUTION OF UNDERGROUND WATERS; PERMITS

No person shall construct, modify, use or abandon any injection well for the purpose of draining any surface water, discharging or injecting any sewage, industrial, or other wastes into the ground waters of the state without first obtaining a permit from the Department of Health.

3.11 DEVELOPMENT AND IMPLEMENTATION OF A HAZARDOUS MATERIALS AND WASTES MANAGEMENT SYSTEM

The Department of Health shall develop and implement a Hazardous Materials and Wastes Management Program which may include delegation of the Section 3011 of the Federal Resource Conservation and Recovery Act's (RCRA) Hazardous Waste Management Program by the United States Environmental Protection Agency. The Department of Health shall continue to participate in the Federal Comprehensive Environmental Response, Compensation, and Liability Act's (CERCLA) Superfund Program for cleanup of hazardous waste contaminated sites.

One of the goals of the Department of Health's Hazardous Materials and Waste Management Program will be to prevent contamination of existing and potential Underground Sources of Drinking Water (USDW) as defined by Title 11, Administrative Rules, Chapter 23, Underground Injection Control.

3.12 INSPECTIONS

(1) The Department of Health shall have the power to enter at reasonable times upon any private or public property other than dwelling places for the purpose of inspecting and investigating conditions relating to water quality.

(2) Such investigations shall include such engineering studies, bacteriological, biological, and chemical analyses of the water, and location and character of the source or sources of contamination as may be necessary.

(3) The Department of Health may require the maintenance of records relating to the operation of disposal systems, and any authorized representative of the Department of Health may examine and copy any such records or memoranda pertaining to the operation of disposal systems.

3.13 FEES

The Department of Health may establish fees for the issuance and renewal of any permits established under this chapter.

3.14 ADMINISTRATIVE ENFORCEMENT

(1) If the Department of Health has reason to believe that a violation of any provision of this chapter has occurred, it shall serve written notice upon the violator. The notice shall specify the provision of the code or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that corrective action be taken within a reasonable time.

(2) If, after a hearing, the Department of Health finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the condition involved or for the taking of such other corrective action as may be appropriate.

(3) If the Department of Health issues an order under subsection (1) above, the order shall become effective after ten (10) days unless a hearing is requested. However, any order issued after a hearing may prescribe the date by which the violation shall cease by fixing reasonable timetables for necessary action.

(4) If, after a hearing, the Department of Health finds that no violation is occurring, it shall rescind the order issued under subsection (1) above.

(5) The Department of Health may enforce its orders by injunction pursuant to the provisions of section 3.16 (Injunctions) of this code.

3.15 SUMMARY ABATEMENT

(1) The Department of Health may order any person to abate, terminate, modify, or decrease pollution which constitutes or threatens to become, an immediate and serious hazard to public health, safety, and welfare, or a serious and immediate hazard to fish or wildlife.

(2) Orders issued under this section shall be final and conclusive unless the affected person requests a hearing within ten (10) days after receipt of a copy of the order.

(3) If a hearing is requested, the orders of the Department of Health shall not be stayed during the pendency of the hearing or any review thereof.

3.16 INJUNCTIONS

(1) Whenever it shall appear that any person, as defined in section 1.03(4) (Definition of "Person") of the code, is causing or threatens to cause an impairment of water quality in violation of any order of the Department of Health, the Department of Health may institute proceedings for injunctive relief from the appropriate circuit court of the state to prevent the continuance of such action.

(2) In a petition for injunctive relief, any previous findings of the Department of Health after due notice and hearing shall be prima facie evidence of the fact or facts found therein. The court shall grant the injunction without the necessity of showing a lack of adequate remedy at law upon a showing by the Department of Health that such person is violating or about to violate the provisions of this code or is violating or about to violate any order or determination of the Department of Health with respect to this code.

(3) In such suit, the Department of Health may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions as the facts may warrant.

3.17 CIVIL PENALTIES

(1) Whoever causes pollution of the waters of the state which results in damage, is liable to the state for such damages and the reasonable costs and expenses of the state incurred in tracing the source of the discharge and in restoring the waters to their former condition.

(2) Upon the request of any state agency or the alleged violator, the Department of Health may consider and assess these damages. If the amount so assessed is not paid within ninety (90) days, the Department of Health may institute civil action in the appropriate court for a judicial determination of liability and damages.

(3) Nothing herein shall give the Department of Health the right to bring an action on behalf of a private person.

3.18 LOCAL JURISDICTION: CONFLICTS

No provision of this chapter or any ruling of the Department of Health is a limitation:

(1) on the power of any local governmental agency to adopt and enforce additional regulations, not in conflict therewith, imposing further conditions, restrictions, or limitations with respect to the disposal of waste or any other activity, including the use of chemicals and pesticides which might impair water quality;

(2) on the power of any state or local governmental agency to declare, prohibit, and abate nuisances;

(3) on the power of a state agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer; or

(4) on the right of any person to maintain at any time any appropriate action for relief against pollution under the common law.

CHAPTER 4

WELLS

4.01 DEFINITIONS

When appearing in this chapter or in any rule, order, or regulation adopted pursuant thereto, the following words shall mean:

(1) Well -- Any artificial excavation constructed by any method which is capable of extracting water from, or injecting water into, the ground. It shall include, but not be limited to, water-table wells, artesian wells, core-boring holes, recharge wells, drainage wells, and waste disposal wells.

(2) Well driller -- Any person, firm, or corporation which constructs, alters, or repairs wells.

(3) Well construction -- The producing of any well, including the construction, alteration, or repair thereof, but excluding the installation of pumps and pumping equipment.

(4) Pumps and pumping equipment -- Any equipment or materials utilized or intended for use in withdrawing or obtaining ground water, including, without limitation, seals, tanks, fittings, and controls.

(5) Pump installation contractor -- Any person, firm, or corporation which is in the business of installing or repairing pumps and pumping equipment.

(6) Installation of pumps and pumping equipment -- The procedure employed in the placement and preparation for operation of pumps and pumping equipment, including all construction involved in making entrance to the well, and establishing seals and repairs, as defined in section 4.01(7), to existing installations.

(7) Repairs -- Any change, replacement, or other alteration of any well, pump, or pumping equipment, which requires a breaking or opening of the well seal.

(8) Well seal -- An approved arrangement or device used to cap a well or to establish and maintain a junction between the casing or curbing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the other terminal.

(9) Abandoned well -- Any well whose use has been permanently discontinued. Any well shall be deemed abandoned which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical.

(10) Artificial recharge -- The intentional introduction of water into any underground formation.

4.02 POWERS AND DUTIES OF THE DEPARTMENT

In addition to other powers and duties delegated to it by this code, and other acts authorized by law, the Department shall:

(1) require registration of all existing wells, as provided in section 4.04;

(2) require registration of all well drillers and pump installation contractors, as provided in section 4.04;

(3) require permits for well construction, as provided in section 4.10;

(4) require permits for installation of pumps and pumping equipment as provided in section 4.11;

(5) require well completion reports, as provided in section 4.13;

(6) develop well construction standards, as provided in section 4.14;

(7) develop pump and pumping equipment installation standards, as provided in section 4.14; and

(8) adopt, modify, promulgate, and enforce all rules, regulations, and orders necessary to carry out the provisions of this code.

4.03 REGISTRATION OF ALL EXISTING WELLS

(1) Any person owning or operating any well shall register said well with the Department. Registration shall be on the forms provided by the Department.

(2) The registration report shall include:

(a) the water use permit number,

(b) the legal description of the land upon which the well is located,

(c) the location of the well,

(d) the purpose of the well,

(e) the diameter of the well,

(f) the name of the well driller who constructed the well,

(g) the maximum capacity of the well,

(h) the name of the pump installation contractor who installed the pump and pumping equipment, and

(i) such other data as the Department may require.

(3) The Department shall maintain a permanent record in which shall be entered the information gathered from the persons owning or operating all wells reported.

(4) In addition to the penalties prescribed in Chapter 1, the Department may deny the issuance of a water use permit, as provided for in Chapter 2, until such time as the applicant registers all wells which he owns or operates.

4.04 REGISTRATION OF WELL DRILLERS AND PUMP INSTALLATION CONTRACTORS

(1) Any person who wishes to engage in business as a well driller or a pump installation contractor shall be registered with the Department and shall be the holder of a valid, current registration certificate.

(2) Qualifications for Well Driller's Certificate and Pump Installation Contractor's Certificate:

(a) To be qualified to receive a registration certificate the applicant must:

(i) be at least 21 years of age;

(ii) be of good moral character;

(iii) have not less than two (2) years' experience in the work for which he is applying for registration;

(iv) have knowledge of the rules, regulations, and orders adopted under this code; and

(v) have passed a satisfactory examination conducted by the Department.

(3) Certificates of Registration:

(a) shall not be transferable or assignable;

(b) shall be assigned an identification number.

4.05 ISSUANCE OF CERTIFICATES AND BONDS

When an application for a certificate of registration has been approved by the Department, the applicant shall be notified in writing, after which he shall have thirty (30) days in which to file with the Department a performance and compliance bond in the amount of \$5,000.00 per certificate with a corporate surety authorized to do business in the state, conditioned that such applicant will comply with the laws of the state and the rules, orders, and regulations of the Department while engaging in the business for which he is registered.

4.06 SUPERVISION OF WELL CONSTRUCTION AND THE INSTALLATION OF PUMPS AND PUMPING EQUIPMENT

(1) All well construction operations shall be performed under the direct and personal supervision of the registered well driller who received the permit for well construction, as provided in section 4.10.

(2) All operations connected with the installation of pumps and pumping equipment shall be performed under the direct and personal supervision of the registered pump installation contractor who received the permit for installation of pump and pumping equipment, as provided in section 4.11.

4.07 MARKING OF VEHICLES AND EQUIPMENT

It is the duty of all registered well drillers and registered pump installation contractors to see that all vehicles, trailers, and rigs used by them or their employees in their business are marked with legible identification numbers at all times. The identification number to be used shall be the registration number which appears on the registration certificate. The Department shall set out in detail in its rules, regulations, and orders the specific method and manner for marking vehicles and equipment.

4.08 GROUNDS FOR REFUSAL, SUSPENSION, OR REVOCATION OF CERTIFICATES

The Department may refuse to issue or renew, or may suspend or revoke, a certificate of registration on one or more of the following grounds:

- (1) material misstatement in the application for certificate of registration;
- (2) failure to have or retain the qualifications required herein;
- (3) intentional misrepresentation of a material fact by an applicant in connection with any information or evidence furnished the Department;
- (4) willfully aiding or abetting another in violation of any provision of this code or any regulation or order issued pursuant thereto;
- (5) gross incompetency in the performance of his work;
- (6) failure to apply for registration prior to beginning well drilling operations or pump installation operations within the water management district; or
- (7) willful disregard or violation of any provision of this code, or rule, order, or regulation issued pursuant thereto.

4.09 PROCEEDINGS TO REFUSE, SUSPEND, OR REVOKE CERTIFICATES

(1) Proceedings to refuse, suspend, or revoke a certificate of registration may be instituted by the Department or by any other party by filing a written complaint on forms provided by the Department.

(2) The Department, upon investigation and after a hearing, as provided in Chapter 1 of this code, may refuse, suspend, or revoke the certificate of registration.

4.10 PERMIT FOR WELL CONSTRUCTION

(1) Prior to the beginning of construction of any well, permission must be obtained from the Department by making written application for the construction on forms to be provided by the Department. The application shall be made by the well driller who will perform the work and shall contain the following:

- (a) the name and registration number of the applicant,
- (b) the name and address of the person who will control and operate the well,
- (c) the number of the water use permit,
- (d) the location of the well,
- (e) the proposed depth and method of construction,
- (f) the size and expected capacity of the well,
- (g) the name and registration number of the pump installation contractor, and
- (h) such other information as the Department may require.

(2) The Department shall issue a permit whenever it finds that an application is in proper form and contains the required information, provided that, on the basis of the information therein contained, the proposed construction will not be contrary to applicable law, rules, orders, or regulations. Before acting on any application, the Department shall cause the application to be simultaneously reviewed by the Department of Health and the Department of Agriculture for compliance with their rules and standards concerning, among other things, the appropriateness of the well location. Receipt of the permit by the well driller will constitute permission to begin well construction. The permit will also direct the well driller to file a well completion report, as provided in section 4.13.

(3) The Department shall issue a Notice of Rejection, as provided in section 4.12, whenever it finds that an application fails to meet the requirements of this code or any applicable law, rule, order, or regulation.

(4) The permit shall be prominently displayed at the site of the well prior to beginning any work thereon and shall remain so displayed until construction is completed.

(5) The holder of a permit under this section who desires to change the location of his well before construction is completed shall apply to the Department for an amendment of his permit. The application shall contain the same information as required for an original application, plus information as to the manner of sealing or plugging the incomplete and abandoned well. The Department shall cause the application to be simultaneously reviewed by the Department of Health and the Department of Agriculture for compliance with their rules and standards concerning, among other things, the appropriateness of the location of the well. If the Department determines that the proposed well at the proposed new location will both serve the same use as the original well and draw upon the same supply of water and will not be contrary to applicable law, rules, orders or regulations, and that the incomplete and abandoned well will be sealed or plugged so as to prevent waste of water and damage to the water supply so as not to be dangerous to public safety, it shall approve the application and issue an amended permit therefor.

4.11 PERMIT FOR INSTALLATION OF PUMPS AND PUMPING EQUIPMENT

(1) Prior to the beginning of the installation of pumps and pumping equipment, permission must be obtained from the Department by making written application for the construction on forms to be provided by the Department. The application shall be made by the pump installation contractor who will perform the work and shall contain the following:

- (a) the name and registration number of the applicant,
- (b) the number of the water use permit,
- (c) the number of the well construction permit,
- (d) description of the pumps and pumping equipment to be installed, and
- (e) such other information as the Department may require.

(2) The Department shall issue a permit whenever it finds that an application is in proper form and contains required information, provided that on the basis of the information therein contained, the proposed installation will not be contrary to applicable law, rules, orders, or regulations. Receipt of the permit by the pump installation contractor will constitute permission to install pumps and pumping equipment. The permit will also direct the pump installation contractor to file a well completion report, as provided in section 4.13.

(3) The Department shall issue a Notice of Rejection, as provided in section 4.12, whenever it finds that an application fails to meet the requirements of this code or any applicable rule, order, or regulation.

(4) The permit shall be prominently displayed at the site of the well prior to beginning any work thereon and shall remain so displayed until the installation is completed.

4.12 NOTICE OF REJECTION, SUSPENSION, OR REVOCATION OF PERMIT

(1) The Department shall issue a Notice of Rejection whenever it determines that an application for a permit under sections 4.10 or 4.11 fails to meet the requirements of this code or any rule, order, or regulation adopted pursuant hereto.

(2) The Notice of Rejection shall:

- (a) state the ground for rejection, and may state any remedial action which may be taken to make such application acceptable for approval; and
- (b) be served in writing upon the persons signing the application by registered or certified mail.

(3) Any applicant receiving a Notice of Rejection may obtain a hearing before the Department by filing within thirty (30) days of the mailing of such Notice of Rejection a written petition requesting such hearing. The hearing before the Department shall be conducted pursuant to Chapter 1 of this code.

(4) The Department may, upon investigation, suspend a permit and, after notice and hearing, may extend such suspension or may revoke the permit. Such suspension or revocation may be made on any one or more of the following grounds:

- (a) material misstatement or misrepresentation in the application for a permit;
- (b) failure to comply with the provisions set forth in the permit;
- (c) willful disregard or violation of any provision of this code, or any rule, order, or regulation promulgated pursuant hereto; or
- (d) material change of circumstances or conditions existing at the time such permit was issued.

4.13 WELL COMPLETION REPORT

Within thirty (30) days after the completion of the well, the well driller and pump installation contractor shall file, upon forms provided by the Department, a written report with the Department. The report shall contain the following information:

- (1) a log containing the depth, thickness, and character of the different strata penetrated and the location of water-bearing strata;
- (2) an accurate record of the work, including:
 - (a) statement of the date of beginning of work,
 - (b) the date of completion,
 - (c) length, size, and weight of the casing and how the same is placed,
 - (d) the size of the drilled hole,
 - (e) where the well is sealed off and the type of seal,
 - (f) number of cubic feet per second (cfs) or gallons per minute (gpm) of flow from the well when completed,
 - (g) pressure in pounds per square inch (psi) if it is a flowing well, and if nonflowing, the static water level and the water temperature, and
 - (h) a chemical analysis of a water sample drawn from the well; and
- (3) such additional information as may be required by the Department to establish compliance with the terms of the permit, the provisions of this code, and all rules, regulations, and orders promulgated pursuant to this code.

4.14 WELL CONSTRUCTION STANDARDS AND PUMP INSTALLATION STANDARDS

- (1) The Department shall adopt minimum standards for the construction of wells and the installation of pumps and pumping equipment.
- (2) The minimum standards for the construction of wells shall include, but not be limited to, the following provisions:
 - (a) all wells shall be equipped with a device for measuring the amount of ground water being withdrawn from the well, such device to be approved by the Department and installed within the time period set in section 4.20;
 - (b) all wells shall be capped or equipped with a control valve, such cap and control valve to be approved by the Department;
 - (c) approved procedures for the plugging of wells;
 - (d) approved procedures for the grouting and sealing of wells; and
 - (e) criteria for the location of wells:
 - (i) with respect to possible pollution sources, and
 - (ii) with respect to maintaining the well in a sanitary condition.
- (3) Should any well not be equipped with a cap or valve as required in subsection (2) above, or should any well be allowed to flow so as to waste ground water in violation of this section, or should any well be contaminated because of deficiencies as set forth in subsection (2) above, in violation of this section, then:
 - (a) The Department shall, upon being informed of this fact, give notice to the owner of the land upon which the well is situated to correct the defect or waste as the case may be. If the defect or waste is not corrected within ten (10) days after notice is given, the Department shall have the necessary valve, cap, plug, or other device installed upon the well.
 - (b) The cost of installation of the valve, cap, plug, or other device and the control of the flow from the well shall, if made or done by the Department be at the expense of the owner and shall be a lien against the tract of land upon which the well is situated until the expense is paid. Said lien may be foreclosed in a civil action in any court of competent jurisdiction, and the court shall allow the plaintiff a reasonable attorney's fee to be set as a part of the cost.

- (4) The minimum standards for the installation of pumps and pumping equipment shall include, but not be limited to, the following provisions:
 - (a) The pumps and pumping equipment shall be installed so that the pumps and their surroundings can be kept in a sanitary condition.
 - (b) The pumps and pumping equipment shall be of a capacity consistent with the water need and the drawdown characteristics of the well.
 - (c) The pumps and pumping equipment shall be durable and reliable in character.
 - (d) The pumps and pumping equipment shall be constructed of material which will not create a toxic condition in the water.
 - (e) The pumps and pumping equipment shall provide reasonable protection against entrance of pollutants.

4.15 ARTIFICIAL RECHARGE

(1) No construction may be begun on a project involving artificial recharge as defined in section 4.01 (10) of this code without written permission of the Department. Such application shall contain the detailed plans and specifications for the construction of the project. Should the application be rejected, the applicant may obtain a hearing before the Department by filing a written petition requesting such hearing.

(2) The Department may do any act necessary to replenish ground water. For the purposes of replenishing the ground water supplies, the Department may, among other things:

- (a) exchange water;
- (b) distribute water to persons in exchange for ceasing or reducing ground water extractions;
- (c) spread, sink, and inject water underground;
- (d) store, transport, recapture, reclaim, purify, treat, or otherwise manage and control water for the beneficial use of persons or property within the district; and
- (e) build the necessary works to achieve ground water replenishment.

4.16 ABANDONMENT OF WELLS

When a well is abandoned, the owner thereof shall fill and seal the well in a manner approved by the Department. Prior to abandonment the owner shall file with the Department a report showing the following:

- (1) the name and address of the owner;
- (2) the water use permit number;
- (3) the name and address of the registered well driller who will be employed to perform the work required for abandonment;
- (4) the reason for abandonment; and
- (5) a description of the work to be performed to effect the abandonment consistent with the standards adopted pursuant to section 4.14 (2) (c) and (d).

4.17 DRAINAGE WELLS

All drainage wells shall conform to the provisions of this chapter.

4.18 EXEMPTIONS AND LIMITATIONS

No provisions of this chapter shall apply to:

- (1) any distribution of water beyond the point of discharge from the storage or pressure tank, or beyond the point of discharge from the pump if no tank is employed; or
- (2) any well, pump, or other equipment used temporarily for dewatering purposes.

4.19 METERING; GENERALLY

Within three (3) years of the effective date of this code all ground water and surface water diversions shall be metered in a manner which satisfactorily indicates the volume of withdrawal. The Department shall promulgate guidelines as to acceptable metering and gauging devices. The Department shall also have the power to require periodic reporting on forms provided by the Department.

What is the Advisory Study Commission on Water Resources State of Hawaii?

Act 170, Session Laws of Hawaii 1982 established the Advisory Study Commission on Water Resources to conduct a comprehensive review of the various issues relating to Hawaii's water resources, including existing state and county laws and rules relating to water resources, and to submit a report which includes a proposed water code for the State of Hawaii for consideration and possible adoption by the Hawaii Legislature during the 1985 Regular Session. The Legislature has determined that the formulation and enactment of a State water code is necessary to implement the provisions of Article XI, section 7 of the Constitution of the State of Hawaii.

Who are the Members of the Commission?

The Commission is composed of 13 members. Four members are heads of departments of the State of Hawaii government and four are the chief executives of the four county boards of water supply. The remaining five members are appointed by the President of the Hawaii State Senate and the Speaker of the Hawaii State House of Representatives. The current make-up and organization of the Commission is as follows:

Mr. Gregory Gomes, President of WEBCO Hawaii, Inc.
(Chairman of the Advisory Study Commission on Water Resources)

Mr. Reuben S. F. Wong, Attorney at Law
(Vice-chairman of the Advisory Study Commission on Water Resources)

Mr. Kazu Hayashida, Manager and Chief Engineer, Board of Water Supply, City and County of Honolulu
(Secretary of the Advisory Study Commission on Water Resources)

***Mr. Kent Keith**, Director, Department of Planning and Economic Development, State of Hawaii

****Mr. Leslie Matsubara**, Director, Department of Health, State of Hawaii

*****Mr. James Nakatani**, Watercress Farmer and Member, Hawaii Farm Bureau Federation

Mr. William S. Haines, Director, Department of Water Supply, County of Maui

Mr. Susumu Ono, Chairman, Board of Land and Natural Resources, State of Hawaii

Ms. Georgiana Padeken, Chairperson, Hawaiian Homes Commission, State of Hawaii

Mr. Charles Reppun, Taro Farmer

Mr. Raymond H. Sato, Manager and Chief Engineer, Department of Water, County of Kauai

Mr. William Sewake, Managing Engineer, Department of Water Supply, County of Hawaii

Mr. Fred Trotter, Trustee, Campbell Estate

*Replaced Mr. Hideto Kono

**Replaced Mr. Charles G. Clark

***Replaced Mr. Dickey Nitta, former President, Hawaii Farm Bureau Federation

The Commission is attached to the Legislative Reference Bureau for administrative purposes. Mr. Yukio Naito of the law firm, Shim, Sigal, Tam & Naito serves as the Project Coordinator for the Commission.

What are the Major Tasks of the Commission?

The major tasks of the Commission consist of seven study areas:

- (1) The gathering of data on existing statutes, case law, water uses and users, etc.;
- (2) Research, study and formulation of recommendations on the rights of the State and of private individuals to and in water;
- (3) Research, study and formulation of recommendations on water use policy, including prioritization of uses of water;
- (4) Research, study and formulation of recommendations on water policies, such as water resource protection, water development and water conservation;
- (5) Research, study and formulation of recommendations in the rights of the State and of private individuals in land for water use, development, protection, etc.;
- (6) The determination of regulatory measures and the formulation of licensing procedures for water development, water use, construction of water facilities, etc.; and
- (7) The definitions in general terms of the role of the State, counties, federal government and the private sector in the administration of the code, including water development regulation of the use of water, water protection and operation and maintenance of water systems.

What Reports will the Commission Submit to the Legislature?

In compliance with Act 170, the Commission submitted a progress report to the Hawaii State Legislature in December 1983. Prior to the convening of the 1985 Regular Session of the Hawaii State Legislature, the Commission is required to submit a report of findings and recommendations which will include a proposed water code for consideration and possible adoption by the Legislature.

How is the Public Informed about the Commission's Efforts?

In addition to the public hearings required by the statute, a reading file containing the major research findings, minutes of Commission meetings, a periodic newsletter and other pertinent material of the Commission has been set up at various locations in each county as follows:

County of Kauai Department of Water Supply Lihue, Kauai	Molokai Library Kaunakakai, Molokai
Maui Regional Library Wailuku, Maui	Lanai Community/School Library Lanai City, Lanai
Hawaii Regional Library Hilo, Hawaii	Legislative Reference Bureau Library Hawaii State Capitol Honolulu, Hawaii
Kealakekua Library Kealakekua, Hawaii	

The meetings of the Commission generally held at the Board of Water Supply Building, City and County of Honolulu, Board Room, 630 S. Beretania Street, Honolulu, Hawaii 96813, are open to the public.

Should you have any concerns, comments, suggestions or questions, you are invited to contact any Commissioner at your convenience. If you prefer, you may write to Mr. Gregory Gomes, Chairman, Advisory Study Commission on Water Resources State of Hawaii, c/o Legislative Reference Bureau, Hawaii State Capitol, Room 004, Honolulu, Hawaii 96814.