

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapter 13-169
Hawaii Administrative Rules
April 19, 1989

SUMMARY

A new §13-169-49.1 is added.

§13-169-49.1

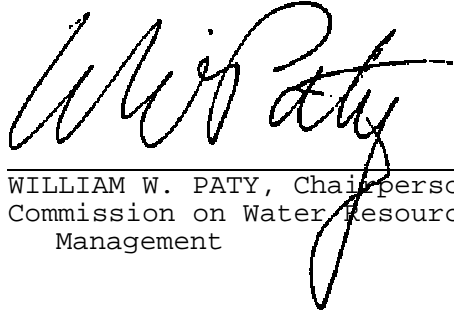
§13-169-49.1 Interim instream flow standard for Windward Oahu.
The Interim Instream Flow Standard for all streams on Windward Oahu, as adopted by the commission on water resource management on April 19, 1989, shall be that amount of water flowing in each stream on the effective date of this standard, and as that flow may naturally vary throughout the year and from year to year without further amounts of water being diverted offstream through new or expanded diversions, and under the stream conditions existing on the effective date of the standard, except as may be modified by the following conditions:

- (1) Based upon additional information or a compelling public need, a person may petition the commission on water resource management to amend the standard to allow future diversion, restoration, or other utilization of any streamflow.
- (2) The commission reserves its authority to modify the standard or establish new standards, including area-wide or stream-by-stream standards, based upon supplemental or additional information.
- (3) In any proceeding to enforce the instream flow standard, the commission, its delegated hearing officer, or a judicial officer may abate the enforcement proceeding if, under the circumstances and weighing the importance of the present or potential instream values with the importance of the present or potential uses of the stream's water for non-instream purposes (including the economic impact of restricting such uses), the enforcement of the instream flow standard would:
 - (A) Create a substantial hardship on a use existing on the effective date of this standard; or
 - (B) Impermissibly burden a right, title, or interest arising under law.
- (4) Projects under construction or projects that have secured all discretionary permits required by appropriate federal, state, or county agencies prior to July 1, 1987 shall not be affected by the standard. [Eff. May 04, 1992]
(Auth: HRS §174C-8) (Imp: HRS §174C-2, 174C-3, 174C-5, 174C-71)

DEPARTMENT OF LAND AND NATURAL RESOURCES

The amendment to chapter 13-169, Hawaii Administrative Rules, on the Summary Page dated April 19, 1989, was adopted on April 19, 1989, following a public hearing held on March 13 and 14, 1989, after public notice was given in the Sun Press (Windward) on March 2, 1989 and in the Honolulu Star Bulletin and the Honolulu Advertiser on February 27, 1989.

The amendment shall take effect ten days after filing with the Office of the Lieutenant Governor.



WILLIAM W. PATY, Chairperson
Commission on Water Resource
Management

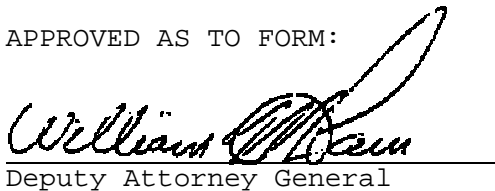
APPROVED:



JOHN WAIHEE
GOVERNOR
STATE OF HAWAII

Dated: APR 24 1992

APPROVED AS TO FORM:



Deputy Attorney General

APR 24 1992

Filed