

Written Testimony for CWRM Agenda Tuesday 9/21/2021
Waikapu Valley Stream: Kuleana Law Violations (Recurring)

Please be reformed that HRS 7-1 reads in part, as follows:

§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

The water being cut off by the corporate rancher upstream of Royal Patent 4948 is a clear violation of water rights afforded to kanaka maoli by virtue of CC 1859, § 1477 affirmed by HRS 7-1.

Over the past 11 months, no water has flowed in the natural auwai system; afforded to us for over 200 years. Our family has been entrusted to the ancestral kuleana of this place; and served as the original conservation stewards till now.

This act of intentionally depriving water is an encroachment upon aboriginal rights of kanaka maoli, affirmed and guaranteed protection by the laws of Hawaii.

In this matter, the Attorney General and Department of Land and Natural Resources (formerly known as the Ministry of Interior); is egregiously lawless.

Therefore, at this juncture, I implore you to not be complicit; and humbly ask that you have consideration and concern for Rights Established and Declared by Mo'i Kamehameha III; and affirmed as evidenced in HRS 7-1. Please allow me the courtesy of your intentions.

For the sake of posterity, our cultural roots must be preserved and perpetuated. I want to be a part of a society in which my footprint mattered.

Respectfully Submitted I Am,

Dawnalyn Poliala Tomoe Smythe Fujiwara
Great Granddaughter of Elaine Pahialii Mullaney

1839 KUMUKĀNĀWAI NO KO HAWAI'I NEI PAE 'ĀINA.

Ua hana mai ke Akua i nā lāhui kānaka a pau i ke koko ho'okahi, e noho like lākou ma ka honua nei me ke ku'ikahi, a me ka pōmaika'i.¹ Ua hā'awi mai nō ke Akua i kekahi mau waiwai like, no nā kānaka a pau, me nā ali'i a pau o nā 'āina a pau loa.

2. Eia kekahi mau waiwai āna i hā'awi like mai ai i kēlā kanaka kēia kanaka, i kēlā ali'i kēia ali'i. 'O ke ola, 'o nā lālā o ke kino, 'o ka noho ho'opa'a 'ole 'ia, a me ke ke'ake'a 'ole 'ia, 'o nā mea a kona lima i hana ai, a me nā mea a kona mana'o i ho'oponopono ai.

3. Na ke Akua mai nō ho'i ka 'oihana ali'i, a me ka noho ali'i 'ana i mea e malu ai; akā, i ka hana 'ana i nā kānāwai o ka 'āina, 'a'ole pono e hana 'ia kekahi kānāwai ho'omalū ali'i wale nō, a

ho'omalū 'ole i nā maka'āinana. 'A'ole ho'i pono ke kau i ke kānāwai ho'owaiwai i nā ali'i wale nō, a waiwai 'ole nā maka'āinana; a ma hope aku nei, 'a'ole loa e kau 'ia kekahi kānāwai kū'ē i kēia mau 'ōlelo i 'ōlelo 'ia ma luna, 'a'ole ho'i e 'auhau wale 'ia, 'a'ole e ho'okauā 'ia, 'a'ole e ho'ohana wale 'ia kekahi kanaka ma ke 'ano kū'ē i ua mau 'ōlelo lā.

4. No laila e ho'olaha 'ia aku ai kēia 'ōlelo, i mea ho'omalū like i nā kānaka a pau a me nā ali'i a pau o kēia pae 'āina; i ke'ake'a 'ole ai kekahi ali'i i kekahi o nā maka'āinana, i like ho'i ka malu o nā ali'i, a me nā kānaka ma lalo o ke kānāwai ho'okahi.

5. Ua ho'omalū 'ia ke kino o nā kānaka a pau, a me ko lākou 'āina, a me ko lākou mau pā hale, a me ko lākou waiwai a pau; 'a'ole ho'i e lawe 'ia kekahi mea, ke 'ōlelo 'ole 'ia kēlā mea ma ke kānāwai. 'O ke ali'i e hana i kekahi mea kū'ē i kēia Kumukānāwai, e pau kona noho ali'i 'ana ma kēia pae 'āina 'o Hawai'i nei, ke ho'omau 'ia ma laila, pēlā nā kia'āina, a me nā luna a me nā konohiki a pau.

1839. <Translation of the Constitution of Our Hawaiian Islands.>

God hath made of one blood all nations of men, to dwell on the face of the earth in unity and blessedness. God has also bestowed certain rights alike on all men, and all chiefs and all people of all lands.

2. These are some of the rights which he has given alike to every man and every chief, life, limb, liberty, the labor of his hands and productions of his mind.

3. God has also established governments and rule for the purposes of peace, but in making laws for a nation it is by no means proper to enact laws for the protection of rulers only, without also providing protection for their subjects; neither is it proper to enact laws to enrich the chiefs only, without regard to the enriching of their subjects also; and hereafter, there shall by no means be any law enacted which is inconsistent with what is above expressed, neither shall any tax be assessed, nor any service or labor required of any man in a manner at variance with the above sentiments.

4. These sentiments are hereby proclaimed for the purpose of protecting alike, both the people and the chiefs of all these islands, that no chief may be able to oppress any subject, but that chiefs and people may enjoy the same² protection under one and the same law.

5. Protection is hereby secured to the persons of all the people, together with their lands, their building lots and all their property and nothing whatever shall be taken from any individual, except by express provision of the laws. Whatever chief shall perseveringly act in violation of this Constitution, shall no longer remain a chief of the Hawaii Islands, and the same shall be true of the governors, officers and all land agents.

Verbal and Written Testimony for CWRM Agenda Tuesday
9/21/2021
Waikapu Valley Stream: Kuleana Law Violations (Recurring)

This verbal testimony is requested to lift up the names of water warriors now in the heavenly realm, Aunty Bernice Kekahuna of Honopou, East Maui and Aunty Diannah La'i Goo of Waihe'e, as I carry on the kuleana.

Please be reformed that HRS 7-1 reads **in part**, as follows:

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The water being cut off by the corporate rancher up stream of Royal Patent 4948 is a clear violation of water rights afforded to kanaka maoli by virtue of CC 1859, § 1477 affirmed by HRS 7-1.

Over the past 11 months, no water has flowed in the natural auwai system; afforded to us for over 200 years. Our family has been entrusted to the ancestral kuleana of this place; and served as the original conservation stewards till now.

This act of intentionally depriving water is an encroachment upon aboriginal rights of kanaka maoli, affirmed and guaranteed protection by the laws of Hawaii.

Since October 23, 2020, with no water in the auwai, I have continually asked how this continues to be allowed to happen, specifically addressing Dean Uyeno. To this date, no answer, verbal or written has been provided referencing any rules and/or laws to the contrary.

In this matter, the Attorney General and Department of Land and Natural Resources (formerly known as the Ministry of Interior); is egregiously lawless.

Therefore, at this juncture, I implore you to not be complicit; and humbly ask that you have consideration and concern for Rights Established and Declared by Mo'i Kamehameha III; and affirmed as evidenced in HRS 7-1. Please allow me the courtesy of your intentions.

For the sake of posterity, our cultural roots must be preserved and perpetuated. I want to be a part of a society in which my footprint mattered.

Respectfully Submitted I Remain,

Crystal Mae Nalani Smythe
Daughter of Edwina Smythe

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Testimony for the Meeting of the Commission on Water Resource Management

In re: the Issue of the Status of Waikapū Interim Instream Flow Standard Compliance and Water Availability Issues on the South Waikapū Kuleana ‘Auwai, Waikapū Surface Water Hydrologic Unit, Nā Wai ‘Ehā, Maui

This testimony is made on behalf of ‘Ohana Alves, the farmers of Alakani Farms, who have been implementing traditional kalo farming practices that are protected under Native Hawaiian water rights pursuant to Haw. Const. Art. XI sec. 7; HRS §7-1. We have been farming in the area of Waikapū with the use of the south Waikapū kuleana ‘auwai from the years 2014 until present. Our farm represents significant ecological, cultural, and community value to the island of Maui.

For the past 2020-2021 year, the water supply through the south Waikapū kuleana ‘auwai has been extremely insufficient and detrimental to our farm. For at least the past six months, our farm has received zero water flow from the ‘auwai into our lo‘i kalo. Our farm has diminished in size and production from about half an acre of lo‘i kalo to zero. Our production yield has decreased to nearly nothing.

During this time of no water flow, we have cared for the ‘auwai system and have witnessed many instances of intermittent flow and non-compliance use, which directly affects the water reaching us. We have also witnessed users who have less water flow allocations receive water before our water allocation begins. For example, the gate before the reservoir is cemented shut and does not allow any flow into the ‘auwai before the reservoir intake. Due to the physical location of the landowners’ property above the area of our farm, these landowners have the ability to take first and leave us with what's left over. We are clearly not getting our fair and legally-mandated allocation of water to our farm.

TO BE CLEAR, THERE IS NO KULEANA WATER REACHING OUR FARM. WHY SHOULD ENTITIES WITH LESSER ALLOCATION AMOUNTS HAVE WATER WHILE WE DO NOT? THIS IS AN ISSUE THAT REQUIRES IMMEDIATE CHANGE.

There needs to be an immediate change in this system by ensuring the appropriate management of the flow to allocated farms in the correct order. This is a mandate provided by law which CWRM is entrusted to carry out. Given our consistent monitoring of recent allocations, and the protection of our water allocation as part of our Native Hawaiian water rights, we find the current distribution system insufficient to fulfill the needs of our lo‘i kalo farm. We ask that an equitable system be created in which we, an ‘ohana with kuleana water rights, have the same authority as above landowners to monitor and care for the south Waikapū po‘owai where our stream begins (before the reservoir intake). We also request that the flow system be modified to

supply water towards the 'auwai (before the reservoir intake) before allowing less allocated water users their distribution of water.

We respectfully submit this testimony and mahalo you for your future diligence with this issue.

'Ohana Alves

Dated 9/18/2021



Hui o Nā Wai 'Ehā

Ola i k̄a wai [www.HUIONAWAIEHA.ORG](http://www.huionawaieha.org)

Hui o Nā Wai 'Ehā Board of Directors

September 18, 2021

Hōkūāo Pellegrino
(President)

Re: South Waikapū Kuleana 'Auwai Complaint

Koa Hewahewa
(Vice President)

Aloha e Chair Case and Commissioners,

Lani Eckart-Dodd
(Treasurer)

On behalf of the Board of Hui o Nā Wai 'Ehā and South Waikapū Kuleana 'Auwai Users and Permit Holders: Alves 2260E/2261N, Smyth/Minamina Brown 2217E/2218N, Higa 2366N, and Kamasaki 2368N and Harger 2156E, we would like to provide written testimony to supplement the formal Complaint Filed by Hui o Nā Wai 'Ehā on August 11, 2021 regarding the injustices occurring on the South Waikapū Kuleana 'Auwai between October 2020 and the present. We have broken our testimony down in the format of Timeline & Facts, Problems and Solutions. While we feel it is imperative that you review in detail the complaint that we filed, this written testimony provides a much more comprehensive and up-to-date review of the situation on hand. The Final D&O that all of you signed on June 28, 2021, makes it very clear that as the trustees of our streams, rivers and other fresh water resources, that you have the responsibility as well as obligation to enforce the rulings on hand. What we have is a very unfortunate situation that has literally dragged on for almost 1 year and without any resolve whatsoever by the State Commission on Water Resource Management. This problem demands your immediate attention and resolution to ensure that not only the rights of Native Hawaiian kuleana kalo farmers are being met but also that the processes, decisions and orders and laws set forth by you as commissioners are being adhered to and followed through on.

Lucienne de Naie
(Secretary)

Duke Sevila
(Founding Board
Member)

Miki'ala Pua'a-Freitas
(Board Member)

Ikaika Nakahashi
(Board Member)

Kōnane Awo DelaNux
(Board Member)

Mariana Löwy-
Gerstmar
(Board Member)

Ka'apuni Aiwahi
(Board Member)

Kamalani Uehara
(Board Member)

Maui Tomorrow (Collaborator)

Albert Perez
(Executive Director)

Legal Counsel

Isaac Moriwake
(Earthjustice)

Pamela W. Bunn
(Dentons)

Timeline & Facts:

Fact #1: 121+ documented acres of lo'i kalo cultivation on kuleana lands south of Waikapū Stream during the time of the Māhele (1848). Over 45 Land Commission Awards and Government Grants were awarded to Native Hawaiian kalo farmers. Lo'i kalo for were originally irrigated from a well-documented traditional 'auwai which derived from the Waikapū Stream roughly 500 feet above the present North Waikapū Kuleana 'Auwai.

Fact #2: Following the construction of the Emmesly Reservoir (a.k.a. Reservoir 1) in 1904 and South Waikapū Plantation Ditch by Wailuku Sugar Co., South Waikapū

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The Mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources pertaining to traditional and customary practices of Native Hawaiian kuleana kalo farmers and to engage the Maui community in water resource management education outreach programs.

Kuleana Kalo Farmers were cut off from their original water source which was the Waikapū Stream and forced to utilize water from the plantation era system.

Fact #3: From 1904 to October 2020, South Waikapū Kuleana Kalo Farmers received their water from the Wailuku Sugar Co./Wailuku Agribusiness/Wailuku Water Co. South Waikapū Diversion/Ditch (1.75 miles into the Waikapū Valley) via Waikapū Reservoir (0.9 miles from first active Kuleana User).

Fact #4: In 2007, Wailuku Water Co. provided documentation specifying that they were delivering 840,000 mgd to 13 South Waikapū Kuleana Users (See Wailuku Water Co. Data Provided in Nā Wai ‘Ehā Contested Case and Hui Complaint 8-11-2021)

Fact #5: In 2007, Wailuku Water Co. cut off the kuleana waterline and water to kuleana users; Higa – 2366N and Kamasaki – 2368N.

Fact #6: Actively cultivated South Waikapū kuleana kalo farming on kuleana lands drastically decreased from 121 acres (circa 1850) to 8 acres (2021).

Fact #7: Between 2000-2004, Clayton Suzuki, former Vice President of Wailuku Water Co. and during his tenure with WWC, installed a private water line and other irrigation infrastructure into the South Waikapū Kuleana ‘Auwai and diverted water away from the ‘auwai through Waikapū Properties LLC Land and onto his property.

Fact #8: Between Nā Wai ‘Ehā Contested Case #1 (2008-2014) and Contested Case #2 (2016-2021), the number of active South Waikapū Kuleana Kalo Farmers/Users went from 13 in 2008 to 6 in 2021.

Fact #9: 2021 Final Contested Case D&O recognized 6 South Waikapū Kuleana ‘Auwai/Kalo Farmers/Users which irrigates lo‘i kalo, diversified agriculture and domestic uses). Priority uses differed from user to user as well (See Final D&O and Hui Complaint 8-11-2021 for detailed information).

Fact #10: 2021 Final D&O permitted a total amount of water via the South Waikapū Ditch as 267,026 mgd and 265,188 mgd for kuleana users (-1838 gpd for Off-Stream User – Waikapū Properties LLC). This is a 572,974 mgd or 68% reduction of water use and delivery from 2008 to 2021.

Fact #11: South Waikapū Plantation Diversion/Ditch, Reservoir 1 and South Waikapū Kuleana ‘Auwai are owned by Waikapū Properties LLC and Hana‘ula Ranch LLC with Wailuku Water Co. holding an easement over the aforementioned irrigation infrastructure presently.

Fact #12: South Waikapū Kuleana Kalo Farmers/Users have rarely ever been cut off from water until October 2020, at which time Wailuku Water Co. installed a butterfly valve and lock on the 6” Pipe that comes out of Reservoir 1 and drops water down into the South Waikapū Kuleana ‘Auwai. This is when South Waikapū Kuleana Kalo farmers noticed their water being cut off due to newly installed valve limiting and/or shut off.

Fact #13: Hui o Nā Wai ‘Ehā and South Waikapū Kuleana ‘Auwai Kalo Farmers immediately contacted CWRM Deputy Director Kaleo Manuel about the lack of water from the kuleana ‘auwai on numerous occasions between October 2020 and July 2021 (see Complaint 8-11-2021). The Alves and Smyth/Minamina Brown family who are the largest users and kalo farming permittees were without water and continue to be without water except for Clayton Suzuki who has been able to capture whatever amount of water is flowing into the kuleana ‘auwai. Clayton Suzuki who is a permittee does not have appurtenant rights that are recognized in the 2021 Final D&O and does not have Native Hawaiian lineal/cultural T&C rights recognized for his use unlike that of Native Hawaiian families and kalo farmers; Alves and Smyth/Minamina Brown. Hui o Nā Wai ‘Ehā was initially told by Deputy Director Kaleo Manuel that he would assist and reach out to the Attorney Generals involved to assist with a minute order but said it was not needed because he would try resolve this at the Commission level, but nothing came about. After his acknowledging his inability to get any traction on this issue, he explained that the Final D&O would resolve this long-standing issue, yet after 2 months since the Final D&O has been out, nothing has happened. Therefore, we filled a formal complaint on August 11, 2021 in order to bring more attention to this issue.

Fact #14: Since the 2021 Final D&O has been published, all South Waikapū Kuleana Users are without their permitted amount of water except for Clayton Suzuki and off-stream user Waikapū Properties LLC and the possibility of an unpermitted user.

Fact #15: Wailuku Water Co. is supplying water to a non-permitted user of the South Waikapū Ditch/Reservoir 1 to Kumu Farms. Kumu Farms no longer farms on any lands associated with Waikapū Stream/Ditch/Reservoir 1. Hui o Nā Wai ‘Ehā worked closely with Waikapū Properties during the recent contested case to move all of the Kumu Farms and Hoaloha Farms operations “below” the Waihe‘e Ditch and to transition to that water source. Kumu Farms transitioned from Waikapū Field 735 which was irrigated from Waikapū Stream/Ditch/Reservoir 1 to now farming Field 737, 761 and possibly some of 763 which is currently irrigated from the Waihe‘e Ditch. There is absolutely no evidence of any farming on the Waikapū Fields. In fact, farming stopped on those fields more than 2 years ago. Hui o Nā Wai ‘Ehā, however has learned that there is a pipeline that goes from Reservoir 1 beyond the permitted use by Waikapū Properties LLC for their cattle by allowing water to enter into other reservoirs and the Waihe‘e Ditch below the Waikapū Fields.

Fact #16: Wailuku Water Co. has been diverting between 300,000 and 700,000 mgd between October 2020 and September 2021 based on data recovery at Reservoir 1, yet little to no kuleana water is reaching South Waikapū Kuleana Users. Hui o Nā Wai 'Ehā believes this is because other unpermitted users off-stream from Reservoir 1 is occurring. These are customers who are paying for water from Wailuku Water Co.

Fact #17: South Waikapū Kuleana 'Auwai (0.9 miles of open ditch from Reservoir 1 to Alves Family Kuleana) is completely overgrown due to the lack of water flowing in the ditch and even if the appropriate flow was to be released, it would be almost impossible in the current state for water to reach the kuleana users beyond Clayton Suzuki's private water line located in the 'auwai.

Fact #18: Between October 2020 and July 2021, when South Waikapū Permitted Kuleana Users walked up the ditch multiple times to understand the problems from lack of water, to witness Clayton Suzuki receiving water but nothing flowing beyond, to the newly installed 6" valve and lock limiting or cutting off water from flowing into kuleana ditch. They would consistently be told that they were not allowed to be up there, that they had no access to water, never allowed to adjust any part of the ditch system or to even be allowed to clean the 0.9 mile kuleana 'auwai.

Fact #19: There is an existing sluice gate that would allow water to easily enter the South Waikapū Kuleana 'Auwai prior to Reservoir 1 and could be managed and gauged to allow the permitted amount of water into the kuleana 'auwai. In August of 2021, Wailuku Water Co. removed the existing locked wooden sluice gate and then cemented the entire gate shut cutting off any other opportunity for water to flow into the kuleana 'auwai, forcing kuleana users to rely on a 8 millions gallon reservoir to fill up in order to get any bit of water.

Fact #20: As we write this, South Waikapū Kuleana Kalo Farmers continue to have no water, no access to ditch or reservoir and no allowable access to clean, maintain and manage their kuleana 'auwai from land owner Waikapū Properties LLC and easement owner Wailuku Water Co.

Problems:

#1: South Waikapū Kuleana Kalo Farmers and Permittees have little to no kuleana water. Specifically Native Hawaiian Families and wetland kalo farmers - Alves and Smyth/Minamina Brown have been unable to cultivate their lo'i kalo. Higa and Kamasaki have had their kuleana pipe cut off and no access to kuleana water since 2007.

#2: Reservoir #1 needs to be filled at a substantial amount in order to build capacity and pressure for water to reach the 6” kuleana pipe.

#3: 6” kuleana pipe now has a valve and lock on it to limit kuleana ‘auwai water.

#4: Clayton Suzuki’s has a private kuleana water line and irrigation system that derives 0.4 miles above all other South Waikapū Kuleana Kalo Farmers and Users.

#5: Unpermitted amount of water being delivered to off-stream users; Kumu Farms from the Waikapū Properties LLC water line via Reservoir 1.

#6: Inability for South Waikapū Kuleana Users to control their water source, clean and manage the 0.9 miles of the South Waikapū Kuleana ‘Auwai due to Waikapū Properties LLC private land and Wailuku Water Co.’s Easement over the irrigation system. Native Hawaiian Traditional & Customary Rights are being denied and not protected.

#7: Access to restore and use the ancient south Waikapū kuleana ‘auwai and po‘owai (intake) from Waikapū Stream is being denied by Wailuku Water Co.’s President and Makani ‘Olu Ranch land owner - Avery Chumbley.

Solutions:

#1: Limit flow of water into Reservoir 1 for Waikapū Properties LLC who is permitted only 1,838 gpd. Water for South Waikapū Kuleana Kalo Farmers & Users should come directly from South Waikapū Ditch **PRIOR** to entering Reservoir 1 via an existing sluice gate (see 8-11-2021 Hui Complaint for diagram, photographs and plans). Discontinue filling up Reservoir 1 which is unlined and requires a lot of water just to enter the 6” pipe with a valve and lock. CWRM should enforce the Final D&O by requiring Wailuku Water Co. to remove the cement they recently installed where the existing sluice gate was and to modify the sluice gate to be open and gauged to provide the permitted amount of water to flow directly into South Waikapū Kuleana ‘Auwai for kalo farmers below.

#2: CWRM should require Clayton Suzuki who is a permittee but with no appurtenant rights or Native Hawaiian T&C rights to receive his permitted amount of water either after or to adjust his access point of kuleana water along the South Waikapū Kuleana ‘Auwai. This is to ensure that Native Hawaiian South Waikapū Kuleana Kalo Farmers Alves & Smyth/Minamina Brown have priority use of water as outlined in the Final D&O.

#3: CWRM to ensure no other off-stream use of the South Waikapū Ditch & Reservoir 1 is occurring other than for permittee Waikapū Properties LLC which has an allocation for 1,838 GPD for cattle troughs.

#4. CWRM to either require Wailuku Water Co. and Waikapū Properties LLC to provide access for South Waikapū Kuleana Kalo Farmers/Users to maintain and manage kuleana ‘auwai (0.9 miles of open ditch) AND/OR to allow access to restore the traditional ‘auwai system from the Waikapū Stream (0.25 miles).

We humbly ask that you work diligently on resolving this issue in a very timely manner as a means to reduce any further pain and damage to these kuleana kalo farmers and other permittees who have been deprived of their rights and access to kuleana water by an evil entity who has made it their business model and mission to restrict and cut-off the lifeline and way of life of Native Hawaiians and others throughout the Nā Wai ‘Ehā community.

Me ka ha‘aha‘a,

Hōkūao Pellegrino

Hōkūao Pellegrino
(President)

Hui o Nā Wai ‘Ehā (501c3) · 213 West Waikō Road, Wailuku, Maui, Hawaii 96793
(808) 430-4534 · Huionawai4@gmail.com · www.huionawaieha.org ·  

The Mission of Hui o Nā Wai ‘Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe‘e Streams (Nā Wai ‘Ehā), to protect cultural and natural resources pertaining to traditional and customary practices of Native Hawaiian kuleana kalo farmers and to engage the Maui community in water resource management education outreach programs.



State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

COMPLAINT / DISPUTE RESOLUTION
FILING FORM

For Official Use Only:

Complaint File No: **C**

Instructions: Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit <http://dlnr.hawaii.gov/cwrm/>.

1. Name: Hui o Nā Wai ‘Ehā Date: July 30, 2021

Address: 213 West Waikō Road
Wailuku, Hawai‘i 96793

Daytime Phone No.: (808) 430-4534 Fax No. N/A

2. Location of the violation or water problem: Waikapū Stream

Tax Map Key: Waikapū (3-6-004-003 & 3-6-003-001)

Landowner’s Name: Waikapū Properties LLC & Hana‘ula Ranch LLC

Landowner’s Address: P.O. Box 1870 Manteca, CA 95336 & 1962 Wells St. Wailuku, HI 96793

Landowner’s Phone No.: (209) 601-4187

3. The party I have a complaint about or dispute with is: (if more than one party, please attach additional sheets)

Name: Wailuku Water Co.

Address: P.O. Box 2790
Wailuku, Hawai‘i 96793

Phone No.: (808) 244-7079, (808) 276-3595

If the party is not the landowner listed in Section 2 above, please describe the party’s relationship to the TMK parcel described in Section 2.

Regarding this issue, Wailuku Water Co. is not the land owner for which the violations are occurring on, however WWC has an easement with the current landowner; Hana‘ula Ranch LLC and Waikapū Properties over the S. Waikapū Intake, Ditch System and Reservoir #1. Furthermore, WWC manages and maintains the aforementioned system and infrastructure that delivers water to both on-stream and kuleana users.

4. Describe the complaint or reason for the dispute:

(Attach a sketch or photograph if that will help explain the problem.)

In October 2020, Hui o Nā Wai ‘Ehā received multiple calls from Native Hawaiian South Waikapū Kuleana Kalo Farmers (Crystal Smyth and Ho‘okahi Alves) regarding a lack of water or no water at all flowing in the South Waikapū Kuleana ‘Auwai which receives water from the South Waikapū Diversion Intake, Ditch and Reservoir #1 and ultimately feeds more than 3 active areas/properties being farmed in lo‘i kalo. South Waikapū Kuleana Users conducted a site visit to Reservoir #1 where a 6” pipe that feeds the kuleana ditch resides and observed a newly installed valve, lock and chain by WWC. Very little water was flowing out of the pipe in 2020-2021 compared to that in previous years and yet in-flows into reservoir were averaging 0.4 to 1 mgd.



12-9-2019 (No WWC Valve and lock)



10-23-2020 (WWC Installed Valve & Lock)



7-28-2021 (WWC Installed Valve & Lock)

According to South Waikapū Kuleana Users, many who have lived on their ‘āina from birth and are genealogically connected to their kuleana lands have never experienced their water literally being “cut off and locked out” of water flowing into South Waikapū Kuleana ‘Auwai, even in past droughts which have occurred pre and post CWRM 2014 IIFS Ruling on Waikapū Stream. Data provided by Wailuku Water Co. in 2007 which was during one of Maui’s severe droughts along with active cultivation of sugarcane by HC&S on Waikapū Field #735 off of S. Waikapū Ditch, shows that South Waikapū Kuleana Users were being provided with 840,000 mgd. See WWC from September 12, 2007 figures below.

12-Sep-2007		Wailuku Water Company		
		"Kuleana" Users		
Kuleana	Gauged:	Flows: MGD	TMK:	Owners
Reservoir 1	No Gauge	840,000	3-6-05: 19	David Kaliponi
			3-6-06: 01	Barbara Pawn
			3-6-06: 09	Clayton Suzuki Trust
			3-6-06: 13	Clayton Suzuki Trust
			3-6-06: 17	Barbara Pawn
			3-6-06: 21	Mae Balmores/Nadao Makimoto
			3-6-06: 22	Sakae & Bernadette Inouye
			3-6-06: 24	David Kaliponi
			3-6-06: 25	Elaine Mullaney
			3-6-06: 27	Jinsei & Patrica Miyashiro
			3-6-06: 29	Elaine Mullaney
			3-6-06: 33	Barbara Pawn
			3-6-06: 42	Sharlee Diequez

Hui o Nā Wai ‘Ehā notified CWRM Deputy Director Kaleo Manuel and Hydrologist Ayron Strauch by phone as well as email on this particular issue on October 24 and October 30, 2020. The response that we received was that Kaleo was going to discuss this issue with Chair Case and Attorney General. Photographs as well as flow data was also shared in regards to how much water was entering Reservoir #1 and photographs of kuleana ditch valve from Reservoir #1. CWRM Staff, Hui o Nā Wai ‘Ehā and S. Waikapū kalo farmers conducted site visits through October 2020 to June 2021 and observed different conditions such as 1) normal stream flow, normal ditch flow and low to no flow in S. Kuleana ‘Auwai 2) low stream flow, ditch flow and low to no flow in S. Kuleana ‘Auwai 3) low stream flow, no flow in ditch-reservoir and no flow in S. Waikapū Kuleana ‘Auwai. Deputy Director Kaleo Manuel mentioned in March 2021 that there may be a possibility to address this issue at a Water Commission Meeting and the possibility of doing a Minute Order, however that did not happen. It was later stated that State Attorney General advised CWRM that the Water Commission could only address IIFS issues and not water deliver agreements, but made it clear that the Contested Case D&O would “sort this out”. See Exhibit A.

As of today, July 30, 2021, 32 days after the Contested Case D&O Decision was announced, South Waikapū Kuleana kalo farmers still have no water reaching their lo‘i kalo. While the Final D&O did grant water permits for South Waikapū Kuleana kalo farmers and other users as well as a priority use system, Wailuku Water Company has failed to provide any water to these kuleana users even under the new variable IIFS set by the D&O to address drought conditions. Hui o Nā Wai ‘Ehā is extremely disappointed in the Commission’s Final D&O which provides no such detailed implementation plan which would “sort out” this issue that has now been dragging on 9 months without any relief or enforcement. Hui o Nā Wai ‘Ehā and Community members not just in Waikapū but throughout Nā Wai ‘Ehā were under the impression that the D&O would address these issues around water allocation, access and enforcement.

There are multiple factors that are causing no amount of water reaching the South Kuleana Kalo Farmers. Hui o Nā Wai ‘Ehā has explained to CWRM countless times that there is a ditch system problem, prioritization use problem and water restriction issue due to WWC installing a valve and lock on the kuleana intake pipe which has never existed there until 2020. The way to fix this issue is outlined in the proposed resolution section of our complaint. We cannot reiterate enough that in order to ensure this system is resolved, a site visit by all parties must be completed to understand the problem as a whole. While we are trying our best to explain via data collected for 7+ months, photo documentation and diagrams, it suite everyone if CWRM can schedule a site visit to understand the problem in real-time to understand where the Hui is coming from in terms of resolving this issue once and for all.



Average Reservoir 1 Flow Measurements in July 2021 (post-CWRM Final D&O = 250,000-350,000 GPD)

5. Describe how your water usage or water rights are specifically affected by the other party, if at all:

There are now a total of 7 South Waikapū Ditch Users that were granted water under the CWRM Final D&O that in total are allocated 267,026 GPD. That is 6 users less and 572,974 GPD less than what was documented by WWC and used in 2007. 2 of the 7 (Smyth & Alves) have received the highest priority designation under the CWRM Final D&O, meaning that they have New Uses, Existing Uses, Domestic Uses, Appurtenant Rights and Traditional and Customary Native Hawaiian Rights. Yet, these 2 users (Smyth & Alves) have not seen a drop of water in their lo‘i since May 2021 and very little to no water between October 2020 and now.

CWRM June 28, 2021 D&O Table (Not in User Order):

#	User	WUPA	Appurtenant	Domestic	T&C	Priority	Amount (GPD)
1	Waikapū Properties LLC	2356E/2297N	No	No	No	3	1,838
2	Colin Ka‘iliponi	2336E/2337N	Denied	Denied	Denied	N/A	0
3	Alves (Miyashiro)	2260E/2261N	Yes	Yes	Yes	1	75,600
4	J. Minamina Brown (Smythe)	2217E/2218N	Yes	Yes	Yes	1	173,100
5	George & Yoneko Higa	2366N	Yes	Yes	No	1	2,500
6	Robyn Garner (Kamasaki)	2368N	Yes	Yes	No	1	1,675
7	Clayton Suzuki	2155E	Extinguished	Yes	No	1 or 2	10,850
8	Brad Harger (Makimoto)	2156E	Yes	Yes	No	1	1,463
TOTAL							267,026 GPD

SEE EXHIBIT A for Schematic Map of Users

It is important to note that the South Waikapū Ditch / Kuleana System is very complicated to understand if CWRM Staff have not conducted site visits. For example, Clayton Suzuki, during his tenure as Vice President of Wailuku Water Co., installed his own private system within the South Waikapū Ditch/‘Auwai above all other kuleana users and kalo farmers which includes a filtration system, 0.45 miles of 2” pipe and sand filters. This was a major point of contention during the first and second Contested Case that never received any attention by Commissioners and/or staff. This system still exists today and the minimal water that being released by Wailuku Water Co. goes directly into his private system and a trickle of nothing going beyond. See Exhibit C for Suzuki Private System. We bring this issue up regarding Suzuki because he has constantly received water while no matter how little or large the flow is in the ditch because he has placed his system substantially higher up from all of the users, yet the location of his TMK is in the same vicinity as the other users on the system. Furthermore, Waikapū Properties LLC which has the lowest priority is also receiving water before any of the other kuleana users/kalo farmers receive water through the ‘auwai, specifically for cattle water troughs.



Clayton Suzuki private intake, water filtration system and pipeline within S. Waikapū Kuleana ‘Auwai 0.45 miles above downstream kuleana users and Native Hawaiian Kalo Farmers

6. Date the problem was first noticed: October 5, 2020

7. If this complaint or dispute is related to a water source, was the water source previously declared with the Commission on Water Resource Management?

Yes No Don't Know

If yes, what was the name and tax map key of the source?

3-6-003-001 (Waikapū)

8. Have you had any communication with the party/parties described in Section 3 above?

Yes No

If yes, list the communications and dates: (Attach copies if written communications were made)

Hui communication on behalf of the South Waikapū Kuleana Users as well as Kuleana Users Communication has been directly with CWRM, specifically with Deputy Director Kaleo Manuel and staff members Dean Uyeno and Ayron Strauch between October 2020 and May 2021 via emails.

9. Have you sought resolution of this matter with any other entity?

(e.g., government agency, judicial body, or private entity)

Yes, Hui o Nā Wai 'Ehā has asked CWRM Deputy Director on countless occasions to look into this matter and help the Native Hawaiian Kuleana Kalo farmers in addressing the issues around the recently installed valve and locks by WWC on their kuleana water and the lack of water. Ayron Strauch, CWRM Staff made 1 site visit on March 1, 2021 to measure ditch flows.

If so, with whom and what was the outcome?

(Please provide copies of any documentation of this process)

Hui o Nā Wai 'Ehā and South Waikapū Kuleana 'Auwai Users were always told that the D&O would address these issues. However, the D&O did not address this issue whatsoever and now 32 days after the D&O was rendered, there is no relief in sight for the Kuleana Users, except for Clayton Suzuki and Waikapū Properties.

10. Describe what you believe a successful and fair remedy might be:
Now that the CWRM Final D&O is in place and addresses the amount of water allocated per Water User Permittee, an implementation plan needs to be set forth, something we were hoping the D&O would have addressed but didn't whatsoever. Hui o Nā Wai 'Ehā has a solution that can be immediately implemented with minor modifications to the current plantation system and a long term solution that would take the South Waikapū Kuleana Users off the plantation system and be independent and connected directly to the Waikapū Stream as they were prior to 1905.

1) South Waikapū Ditch Intake according to the Final D&O under normal flow conditions and/or during variable IIFS conditions, should not be diverting more than 267,026 GPD. The Hui has observed 500,000 down to 200,000 GPD flowing into Reservoir 1 between June 1 and July 30 2021. Being that Reservoir 1 is unlined and large in size, it takes a certain amount of water to fill up in order to pressurize and or flow in the Kuleana 'Auwai Pipe (which now has a valve and lock) before entering the ditch. This is the first problem that needs to be resolved if this plantation system is to remain in place for the time being. There is a sluice gate prior to Reservoir 1 that can allow water to flow into the kuleana 'auwai. That gate should be modified to allow for 265,188 GPD (1,838 GPD subtracted for Waikapū Properties LLC) to flow into kuleana ditch directly. Waikapū Properties was only granted 1,838 GPD which we strongly feel no longer justifies filling up an entire reservoir for that use let alone, allowing thousands of gallons to evaporate/percolate into the ground due to it not being lined. Droughts have demonstrated the need for more efficient systems and the Hui believes that this is a worthy solution implement. This would allow cleaner and colder water to reach the kuleana users along with a more efficient way of delivering water instead of waiting and wasting water in Reservoir 1 to fill up. Even if 267,026 GPD is flowing into Reservoir #1, by no means is that amount flowing out via the 6" locked valve pipe entering the kuleana 'auwai below. Please refer to Exhibit A for area circled before Reservoir #1 as well as photo below. Part of this solution would also need to address the priority uses on the users on the kuleana 'auwai ditch. Clayton Suzuki's private intake is very large and has the capacity to take more water than is allowed in his permit which ultimately limits the water for traditional and customary Native Hawaiian uses and kalo farming below. Furthermore, his sand filters when cleaned out, dumps massive amounts of residue and sediment into the 'auwai causing blockages and debris into lo'i kalo systems. CWRM staff should require WWC to implement this solution immediately and to provide relief for kuleana users especially of those with highest priority use such as the Alves and Smyths.



Sluice Gate immediately before Reservoir #1 that can flow directly into S. Waikapū kuleana ditch. Refer to Exhibit A for explicit location on schematic map.

2) Long term solution for South Waikapū Kuleana Users and Kalo Farmers. Allow for kuleana users to restore the original ancient kuleana ‘auwai that connects directly to the Waikapū Stream and allow for them to manage the system directly, similar to that of the North Waikapū Kuleana Users. The traditional ‘auwai still remains but is partially overgrown, however the traditional po‘owai / intake is situated on Avery Chumbley’s property and he has made it clear to adjacent large land owner and owner of a portion of the ancient kuleana ‘auwai, Mike Atherton of Waikapū Properties LLC, that he would never allow this to happen, holding the South Waikapū Kuleana farmers hostage and in his control only. The Waikapū Community and Hui o Nā Wai ‘Ehā have been wanting to make this happen for over 3 years however, according to Mike Atherton, Mr. Chumbley has refused to allow this to happen. This would be the best solution because the ‘auwai and po‘owai are 0.85 miles below/downstream of Reservoir #1 and the system would be much more efficient and would allow Waikapū kuleana farmers (both north and south) to be completely independent of the Wailuku Water Co. old plantation system. We brought this up throughout the Contested Case and yet it never was it addressed. We urge CWRM investigate this solution and help the Hui, Kuleana Users and WWC make this happen. This would put the responsibility on the kuleana users to ensure they get water without having to deal with WWC’s inability to manage their system properly and efficiently. Below is a diagram showing current and proposed restoration areas.



Figure 32: Waikapū Map Key • Wailuku Sugar Co. Map (1899)

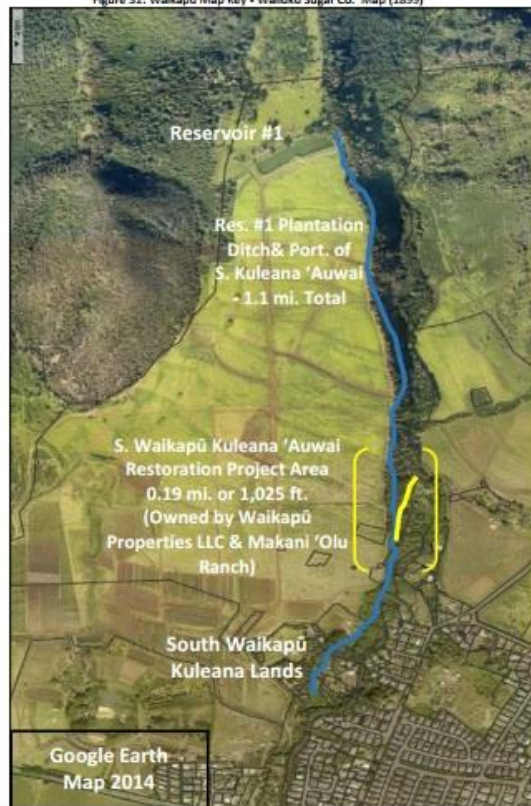


Figure 33: 'Auwai Restoration Project Map • Hōkūāo Pellegrino (2019)

I request that the Commission on Water Resource Management assist in resolving the matter described herein.

Teōkūāo Pellegrino (On behalf of Hui o Nā Wai 'Ehā & South Waikapū Kuleana Kalo Farmers) July 30, 2021
Signature Date



South Waikapū Intake System & Users Diagram

(Created by Hui o Nā Wai 'Ehā – 7/30/2021)

South Waikapū Ditch Total Permitted Amount Granted (6-28-2021 D&O): **267,026 GPD**

