



WAILUKU WATER CO.

WAIKAPU IAO WAIEHU WAIHEE

Na Wai Eha

Agenda Item B.1
South Waikapu Auwai
Na Wai Eha Surface Water Management Area

Wailuku Water Company, LLC
February 11, 2022

Chairperson Case and Commissioners,

In the agenda published for its February 15, 2022 meeting, the Commission listed “Clarify the Distribution Points for South Waikapu Auwai as Part of the Implementation of the Final Decision and Order for CCH-MA15-01 and Order Wailuku Water Company and Waikapu Properties, Inc. [sic] to Implement Certain Actions to Initiate Delivery of Water to the South Waikapu Auwai, Na Wai Eha Surface Water Management Area, Waikapu, Maui.” CWRM February 15, 2022 Agenda, Item B.1, page 2. The staff report was not posted on this agenda item as of the time that this submittal was prepared. If a staff report is provided before the meeting, Company reserves the right to comment on the staff report.

First, Company wishes to thank staff for placing this item on the agenda for action. As understood by Company, the action proposed by staff will be to change the delivery point from the location that existed on the date of the Decision & Order to the sand filter station that exists just makai of Reservoir #1. The proposed delivery point is the point at which Company delivers water to Waikapu Properties, LLC. As Company is directed to deliver a set amount of water to the South Waikapu Auwai at the delivery point that existed on the date of the Commission’s Decision & Order, the Company believes an amendment of the Decision & Order is necessary to reflect the change in delivery point and should also reflect a change in the amount to be delivered at the new location to reflect the total deliveries for the South Waikapu Auwai and Waikapu Properties, LLC.

While Company will propose an amendment to the Decision and Order, Company initially raises the issue of whether the Commission can amend the Decision and Order. The Decision and Order was appealed. As such, it would be prudent for the Commission to confirm from its legal advisor that it retains the ability to amend the Decision and Order while the appeal is pending.

Assuming the Commission determines it has the ability to amend the Decision & Order, Company suggests that the Commission amend the Decision & Order as follows:

Decision & Order III.B.39.b.2.vi. is amended to read:

“South Waikapū `Auwai and Waikapu Properties existing use permit of 1,838 gpd shall be at the sand filter station makai of Reservoir #1”

Decision & Order III.B.39.c.6. is amended to read:

“South Waikapū `Auwai and Waikapu Properties – 0.267 mgd.”

Additionally, Company suggests that the Commission amend the Decision & Order to include a new paragraph in Decision & Order III.B.141 to the following:

“e. Waikapu Properties shall ensure that the following quantity of water is delivered to the South Waikapū `Auwai 0.265 mgd. The delivery point shall be just mauka of the delivery point for SWUPA 2155 – Clayton Suzuki. The amount shall be provided at all times unless identified in Tables 1-3, *supra*, or determined by the Commission to be an emergency. Waikapu Properties is required to gage and continuously monitor with a Commission staff approved water meter at the delivery point and report the amounts delivered monthly to the Commission.”

Should you have any questions please feel to contact me.


Avery B. Chumbley
President, Wailuku Water Company LLC



Cc: Paul R. Mancini & Jim W. Geiger

From: [Dawna](#)
To: [Hyatt, RaeAnn P](#)
Subject: [EXTERNAL] agenda item b1 testimony
Date: Monday, February 14, 2022 12:14:50 PM

February 14, 2022
State of Hawaii - Commission on Water Resource Management
P.O. Box 621 Honolulu Hawaii 96809
Via email: raeann.p.hyatt@hawaii.gov

Re: South Waikapu Kuleana 'Auwai WUPA Permittees

Dear Commission and Staff,


Further to our plea's of October 19, 2021, please be advised that as of this date, the kuleana appurtenant rights of kalo farmer's have not yet been enforced; nor restored; and we are still without water as of today.

We, as a collective ohana, continue to ask that this commission support our request to exercise our traditional and customary rights to access the original South Waikapu Kuleana 'Auwai for use on our kuleana lands as it once did before. We have made a formal request to the land steward, Mr. Avery Chumbley. Your support in our petitioning for kokua is appreciated.

Mahalo,

Crystal Smythe, Trustee
John Minamina Brown Trust

Dawnalyn Fujiwara R(B) - License #22820
Broker / Property Manager
Equity One Real Estate, Inc.
727 Wainee Street, Suite 104
Lahaina, HI 96761

Mobile: 808-
Office: 808-667-9584
Fax: 866-519-0840

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From: [Olivia Alves](#)
To: [Hyatt, RaeAnn P;](#) [DLNR.CW.DLNR.CWRM](#)
Subject: [EXTERNAL] Written Testimony toward 2/15/22 meeting item B1
Date: Monday, February 14, 2022 7:13:57 PM

Testimony regarding:

Item B1: Clarify the Distribution Points for South Waikapū ‘Auwai as Part of the Implementation of the Final Decision and Order for CCH-MA15-01 and Order Wailuku Water Company and Waikapu Properties, Inc. to Implement Certain Actions to Initiate Delivery of Water to the South Waikapū ‘Auwai, Nā Wai ‘Ehā Surface Water Management Area, Waikapū, Maui

Aloha e Commission on Water Resource Management

On behalf of Kuleana water users ‘Ohana Alves, we are appreciative of the recent efforts by Waikapū Properties- Mike Atherton and your commission to transfer allocated water through the newly designed piping system.

Unfortunately, these efforts have been disrupted by the recent actions of Avery Chumbley and we still have no water. After reading the recently forwarded emails between Mr. Chumbley and Mr. Atherton, it again appears that Mr. Chumbley is attempting to halt the decisions of the commission and the rights of kuleana water use. This is a chance for you as a commission to make it very clear what authority you have. We ask that you utilize this authority against unjust water ownership mindsets and make a clear message that when action is agreed upon it will actually happen. Our lack of hope that the water allocations will actually be withheld has gone on long enough. Just when we thought the lo’i would again feel river water and breathe back life, we encountered another roadblock. With urgency we ask that you make it clear to all parties that the release of water into the ready pipes will happen now and not later.

Also, in hopes of eliminating future challenges and moving forward with a long term plan we urge you to support our request to exercise our traditional and customary rights to access the original South Waikapū Kuleana ‘Auwai. We have made a formal request to landowners, Mr. & Mrs. Avery Chumbley, and are awaiting a response as to whether they will grant us access to restore

the traditional kuleana 'auwai so that we no longer need to rely on the former plantation system managed by Wailuku Water Co. We want to manage our own water course similar to that of the North Waikapū Kuleana 'Auwai Water Use Permittees and kalo farmers. Please do whatever is in your power to allow for the restoration of the water's path toward the health of Hawai'i and back to its original kuleana direction.

Mahalo nui

Ho'okahi Alves and 'Ohana



Hui o Nā Wai 'Ehā

Ola i ka wai WWW.HUIONAWAIEHA.ORG

**Hui o Nā Wai 'Ehā
Board of Directors**

February 15, 2022

Hōkūao Pellegrino
(President)

Re: B1

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(Treasurer)

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(Secretary)

Duke Sevila
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Mariana Lōwy-
Gerstmar
(Board Member)

Ka'apuni Aiwohi
(Board Member)

Kamalani Uehara
(Board Member)

Legal Counsel


Isaac Moriwake
(Earthjustice)

Aloha e Chair Case, Deputy Director Manuel and Commissioners and Staff,

It has now been 482 Days since the South Waikapū Kuleana Kalo Farmers and Water Use Applicants on the South Waikapū Kuleana 'Auwai, except for Mr. Suzuki, have had water flowing into their 'auwai. They have not been unable to cultivate kalo, lo'i have completely dried up, cracked and are full of weeds. The longevity of this resolve is of unreal proportions. How long more must these kuleana's suffer because of an individual and his corporation's unwillingness to help and vindictive nature towards Native Hawaiians and the lifeline they depend on to support their family and community. We beg you for once to see this issue from the standpoint of some of the last remaining kalo farmers in the Waikapū ahupua'a, who are literally are at their wits end and wondering if there is any hope out there on this matter.

While the Hui and kuleana(s) are truly grateful to Mr. Atherton and Mr. Ting for going above and beyond to build community relations by literally reconnecting the lifeline they depend upon, there is no doubt that WWC will continue to make every part of this resolve difficult if not impossible to work even in the short term and forcing us to right back to square one again returning to this Commission again and again.

Look at the hoops and bounds it took us to get here today. A pipeline built by with full disclosure and approval by all parties including the Commission and Wailuku Water Co. in October 2021, yet WWC refuses to allow the water to flow into the pipe via Reservoir 1 and into the 'auwai to kuleana users as stated on February 1,2, and 3 through multiple email exchanges between Mr. Atherton and CWRM. Even Chair Case and Deputy Director Case specified to him that this was approved and should be opened immediately following the completion of the 4" line. What happened next was even more degrading. Mr. Chumbely's response to Commission Chair and Deputy Director was for

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 for traditional and customary practices of Native Hawaiian kuleana kalo farmers, and to conduct water resource management education outreach programs for the Maui Community.

Aunty Crystal and the Alves ‘Ohana to literally write 2 sentences specifying that they were aware of the new system and that they approved it even though they had already advocated for this short term solution. With all due respect Commissioners and Chair, at what point are you all going to realize what we are dealing with here in Nā Wai ‘Ehā, really, when? Based on what we have been experiencing here, Mr. Chumbley seems to have full authority, even in systems he doesn’t own, manage or carry an easement while you have none.

As mentioned this issue is far from over, even when the pipeline is charged and flowing into the kuleana ‘auwai. Yesterday, 2/14/2022, a certified letter arrived to Mr. and Mrs. Chumbley on behalf of the Hui and South Kuleana Users, Alves and Smythe, formally requesting access through their property to exercise their appurtenant rights and traditional and customary rights as Native Hawaiians for use of Waikapū Stream water to cultivate kalo on their kuleana land via the historical ‘auwai that still remains today. We are waiting for an immediate response as to whether he will be agreeable to these traditional and customary rights being exercised or not. Maybe this is something he can clear up and share his stance in front of all of us today. That would be a great question for you to ask, following our testimony. We have also reached out the State Historic Preservation Division to make them aware that the pre-western contact ‘auwai system is predominantly in-tact and that they conduct a site visit to map, photograph and document its current state as to ensure that while we await Mr. Chumbley’s response, that absolutely no destruction or modification occurs on that parcel of land in that highly sensitive area. The Hui has also taken photographs of its current state, which include detailed remnants of a stone lined ‘auwai system through multiple LCA’s that tie into Waikapū Stream.

The quest to restore the traditional South Waikapū Kuleana ‘Auwai is not something new. In fact, written testimony by former Wailuku Sugar/Agribusiness employee and kalo farmer, Alfred Santiago stated in 2007 during the first Nā Wai ‘Ehā Contested Case the following;

D-1. WWC delivers water from Reservoir 1 to the “Reservoir 1” ‘auwai. Reservoir 1 receives water from the South Waikapū Ditch, which in turn comes from Waikapū Stream. The ‘auwai is an open ditch that services kuleana users on the south side of Waikapū Stream. (Jeremiah Dec. 1/28/08, ¶ 21; Tr. 12/7/07 (Santiago), p. 101, ll. 12-17; Exh. A-194D.)

D-2. **Historically, an ancient ‘auwai took water directly from Waikapū Stream to kuleana users on the south side of the stream. (Tr. 12/7/07 (Santiago), p. 103, ll. 3-6.)**

D-3. Alfred Santiago described two distinct portions of the “Reservoir 1” `auwai above the kuleana users, on land formerly owned by WWC. The upper portion of the `auwai is about a mile long. WWC’s predecessor constructed it to bring water from Reservoir 1 to the sugar cane fields and kuleana users when it abandoned the ancient intake. (Tr. 12/7/07 (Santiago), p. 101, l. 23 to p. 103, l. 10; p. 104, ll. 20-23; p. 120, ll. 13-20.) The ancient location of the upper portion of the `auwai was used as a pasture for years, but the contour and other features of the ancient `auwai are still visible. (Tr. 12/7/07 (Santiago), p. 103, l. 3 to p. 104, l. 5.)

D-4. WWC’s predecessor reconfigured and excavated the upper portion of “Reservoir 1” `auwai a second time in the late 1970s, when it changed from furrow to drip irrigation. Since then, roots and silt have accumulated in the `auwai. The upper portion of the `auwai is not regularly maintained and is in disrepair, although in extreme cases, such as when “branches totally block the ditch,” WWC employees have cleaned this section of the ditch. (Tr. 12/7/07 (Santiago), p. 101, l. 23 to p. 102, l. 12; p. 105, l. 19 to p. 106, l. 1; p. 110, ll. 17-24; p. 120, l. 13 to p. 122, l. 11.)

D-5. The lower portion of the `auwai, just above the kuleana users’ lands, is the ancient `auwai. Alfred Santiago and other kuleana users clean the lower portion of the `auwai. (Tr. 12/7/07 (Santiago), p. 104, l. 20 to p. 105, l. 18; p. 110, l. 25 to p. 111, l. 12; p. 119, l. 20 to p. 120, l. 9; Tr. 12/4/07 (Alboro), p. 235, ll. 17-19.)

In closing, Hui o Nā Wai ‘Ehā and South Waikapū Kuleana Users Alves and Smythe, formally and respectfully request support and approval by this Commission to allow access for the restoration of the historical and traditional South Waikapū Kuleana ‘Auwai not only as a means to be independent of Wailuku Water Co.’s system, but because it is their traditional and customary and appurtenant right that according to the Water Code 174C, shall be upheld and protected by this very Commission. The Hui humbly asks that these discussion take place beginning today, whether it is before all of us or in executive session with your attorneys general. We would like to know the stance of the Commission on this matter as well and put on the record. While the short term solution is being resolved today, the long term solution is an urgent need and something that cannot wait another 480 days to resolve. Mahalo nui.