

NA WAI EHA SURFACE WATER MANAGEMENT AREA DESIGNATION

FREQUENTLY ASKED QUESTIONS

- 1) **What does designation of a surface water management area mean?**
The designation of a surface water management area means that the Commission on Water Resource Management (Commission) will regulate the use of surface water in the management area by means of water use permits.
- 2) **What is meant by “Na Wai Eha?”**
Na Wai Eha refers to the four streams in the Wailuku District of Maui: Waihee, Waiehu, Iao, and Waikapu.
- 3) **Why did the Commission designate Na Wai Eha for surface water management?**
The State Water Code, Chapter 174C, Hawaii Revised Statutes, authorizes the Commission to designate water management areas for surface water use regulation where the Commission, after research and investigations, and consultation with the appropriate county mayor, county council, and county water agency, and after public hearing and published notice, finds that serious disputes respecting the use of surface water resources are occurring. The Commission designated Na Wai Eha for surface water management on March 13, 2008.
- 4) **Who must apply for a water use permit (WUP) to use surface water?**
Any person who is making, or who proposes to make a withdrawal, diversion, impoundment, or consumptive use of surface water in the designated area must apply for a WUP from the Commission. However, no WUP shall be required for domestic consumption (use of water for personal needs and for household purposes) of surface water by individual users, for users on any Maui Department of Water Supply water system, and for the use of rain catchment systems to gather water.
- 5) **How do I know if I am using surface water in the surface water management area?**
The land areas affected by the designation are located in the Wailuku District of Maui and include Tax Map Keys from: (2) 3-1-006:001 to (2) 3-8-087:093 and from (2) 4-1-001:017 to (2) 4-8-001:002. See attached map.
- 6) **Will existing water users be notified that they need to apply?**
Yes, if they registered their uses with the Commission. The Commission is required to send notices to existing users who have registered their uses with the Commission, to file for applications for WUPs to continue their existing uses. The Commission will also send notices to persons who have obtained stream diversion works permits from the Commission.
- 7) **What is an existing use?**
An existing use is a **reasonable and beneficial use** of surface water being made on or before the effective date of designation, that is, on or before April 30, 2008.

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Existing uses will be considered before new uses are considered, but must still meet the test of being **reasonable-beneficial**.

- 8) **What is meant by a reasonable and beneficial use?**
The State Water Code defines reasonable-beneficial use as “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 state and county land use plans and the public interest.”
- 9) **Is there a deadline to apply for a WUP application to continue an existing use of surface water?**
Yes. An application for a permit to continue an existing use of surface water must be made within a period of one year from the effective date of designation, that is, between April 30, 2008 (the date the Public Notice was published) and no later than April 30, 2009. Except for **appurtenant rights**, failure to apply within this period creates a presumption of abandonment of the use, and the user, if the user desires to revive the use, must apply for a permit as a proposed new use (see #11). An existing user of surface water with a verified appurtenant right will not lose the appurtenant right if the user does not file for a WUP before the April 30, 2009 deadline.
- 10) **What is an appurtenant right?**
An appurtenant water right is a legally recognized right to a specific amount of surface freshwater – usually from a stream – on the specific property that has that right. (“Appurtenant” means “something that belongs or goes with another thing.”) This right traces back to the first time the land was converted to fee simple title; i.e., the Great Mahele and the issuance of either a Land Commission Award or Royal Patent. The quantity of water under the appurtenant right is the amount that was being used on the land shortly before or at the time of the Mahele.
- 11) **I would like to use surface water from Na Wai Eha in the future. Do I need to apply for a surface WUP?**
Yes. A proposed new user of surface water must apply for a WUP and will be subject to the availability of surface water as determined by existing surface WUPs and the interim instream flow standards for Na Wai Eha. A proposed new user with a verified appurtenant right may apply for a WUP at any time.
- 12) **How do the conditions for issuing an existing WUP differ from those of a proposed new WUP?**
For an existing use, the Commission must determine whether the use is a reasonable-beneficial use as defined by the State Water Code. For a proposed new use, the applicant must establish that the proposed use of water:

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- (1) Can be accommodated with the available water source;
 - (2) Is a reasonable-beneficial use;
 - (3) Will not interfere with any existing legal use of water;
 - (4) Is consistent with the public interest;
 - (5) Is consistent with state and county general plans and land use designations;
 - (6) Is consistent with county land use plans and policies; and
 - (7) Will not interfere with the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act.
- 13) What will happen with the WUP applications?**
- (1) Applications will be reviewed for completeness.
 - (2) Notice of the applications will be published at least once a week for two consecutive weeks in a newspaper having general circulation in the affected county.
 - (3) Objections to the proposed permits may be filed with the Commission by a specified date.
 - (4) The applicants will be notified by the Commission if there are objections
 - (5) The Commission may hold a hearing if there are any objections.
 - (6) The Commission will act on the applications, subject to the interim instream flow standards for Na Wai Eha.
- 14) What is an instream flow standard?**
- According to the State Water Code, "Instream flow standard" means a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. "Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:
- (1) Maintenance of fish and wildlife habitats;
 - (2) Outdoor recreational activities;
 - (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
 - (4) Aesthetic values such as waterfalls and scenic waterways;
 - (5) Navigation;
 - (6) Instream hydropower generation;
 - (7) Maintenance of water quality;
 - (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
 - (9) The protection of traditional and customary Hawaiian rights.

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- 15) What is an interim instream flow standard?**
"Interim instream flow standard" means a temporary instream flow standard of immediate applicability, adopted by the commission without the necessity of a public hearing, and terminating upon the establishment of an instream flow standard.
- 16) How do the interim instream flow standards for Na Wai Eha affect the issuing of surface WUPs?**
In considering a petition to adopt an interim instream flow standard, the Commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for non-instream purposes, including the economic impact of restricting such uses.
- 17) How much will it cost to apply for a WUP application?**
The application fee for a WUP is \$25. Also, the Commission has approved billing the applicants for public notices relating to WUP applications. Payments for public notices average about \$300 per application.
- 18) How can I get a WUP application form?**
Application forms for surface WUPs are available at the Department of Land and Natural Resources, Commission on Water Resource Management, Kalanimoku Building, Room 227, 1151 Punchbowl Street, Honolulu, HI 96813, or may be downloaded from the Commission's web site at:
http://www.hawaii.gov/dlnr/cwrn/info_permits.htm.
- 19) Who can I contact if I have any questions?**
You can email the Commission at: dlnr.cwrn@hawaii.gov or call the Stream Protection and Management Branch at 587-0234, or toll-free from Maui at 984-2400, extension 70234.