



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

APPLICATION FOR SURFACE WATER USE PERMIT
 FOR EXISTING USE IN THE NA WAI EHA, MAUI, SURFACE
 WATER MANAGEMENT AREAS

For Official Use Only:
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 23 PM 3: 57
 Event ID: **SWUP.2209.6**

(No. 19)

FORM SWUPA-E (NA WAI EHA, MAUI)

For detailed instructions on filling out this application, refer to the attached instructions.

APPLICANT INFORMATION: Note: In accordance with §174C-51(1)(B), HRS, in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.

1. APPLICANT'S NAME VERNON BAL		Applicant's Contact Vernon Bal	2. SOURCE LANDOWNER'S NAME Wailuku Water Company LLC		Source Landowner's Contact Avery Chumbley
Applicant's Mailing Address, or Principal Place of Business 230 Koeli Street Wailuku, HI 96793			Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793		
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail

EXISTING SOURCE INFORMATION

The following must be attached before this application is accepted as complete:
 • Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion locations and quad map name.
 • Property Tax Map Key (TMK), showing stream or diversion location, and location of water use referenced to established property boundaries.
 • Photograph(s) of the surface water diversion works and end use.

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Waihee/6022 Waiehu/6023 Iao/6024 Waikapu/6001

4a. TMK OF STREAM DIVERSION LOCATION:

3	-	2	-	014	:	001
Zone		Sector		Plat		Parcel

4b. TMK OF DITCH DIVERSION LOCATION:

3	-	4	-	007	:	042
Zone		Sector		Plat		Parcel

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.
 Pipe Pump Ditch/auwai Other Describe: see attached addendum
 Is the diverted water returned to the stream or ditch? Yes. No. If yes, how much water is returned? see attached addendum

6. FLOW MEASUREMENT INFORMATION:
 Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?
 Yes. Enter the installation date:
 Describe the device and enter measured amounts in Table 1.
 No. Explain how you are measuring flow to justify amounts shown in Table 1 in the space below
 see attached addendum

EXISTING USER INFORMATION

7. APPURTENANT RIGHT: Do you claim an appurtenant right for your water use? Yes No
 If yes, has the appurtenant right been established by the courts or the Commission? Yes No

8. END USER INFORMATION: Are you an end user on an existing water system? Yes No
 If yes, who is the operator of the water system? Wailuku Water Company

9. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use with the Commission?
 Yes. List the file reference name(s):
 No

10. STREAM DIVERSION WORKS PERMIT (SDWP):
 Have you ever been issued a SDWP by the Commission?
 Yes. List the permit number(s):
 No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, further information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited, to any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

11. APPLICANT		12. SOURCE LANDOWNER	
 Signature VERNON J. BAL Print		Signature Print Date	
Date 4-4-09		Date	

FILE ID: SWUP.2209.6
 DOC ID: 3211V

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

**TABLE 1: 12-MONTH AVERAGE DAILY USE
Measured or Calculated Use of Water at the Source or End Use
As of the Effective Date of Designation, April 30, 2008**

MONTH / YEAR	AVERAGE DAILY USE FOR THE MONTH IN GALLONS PER DAY (GPD)	Check one item per box				OTHER Please describe
		METERED	ESTIMATED	ACTIVE BUT UNKNOWN	INACTIVE	
May 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	600	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	7,200	GPD				
AVERAGE DAILY USE (Average of the above)	600	GPD				

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY
(Attach additional copies of Table 2 if necessary)

LAND USE CONSISTENCY					EFFICIENCY OF USE				
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. COUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.
Uses that require potable (drinking) water									
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
TOTAL POTABLE USE						0		GPD	
Uses that do not require potable water									
DOM	3 - 4 - 007 - 042 Zone - Sector - Plat - Parcel	urban	no	r-3	no	600	no	0.28	see attached addendum
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
TOTAL NON-POTABLE USE						600		GPD	
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						600		GPD	
If total use requested is not equal to the total monthly average in Table 1, please explain. n/a									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. n/a									

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 3: IRRIGATION INFORMATION

List all crops as separate line items and include landscape and golf course irrigation, grown in the 12 months prior to April 30, 2008. Attach additional copies of Table 3 if necessary.

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to instructions.)	8. IRRIGATION PRACTICE (Refer to instructions.)
3 - 4 - 007 : 042 <small>Zone Sector Plat Parcel</small>	diversified ag	0.33	0.28	year round	year round	trickle, drip; crown flood	field capacity
- - - - : - <small>Zone Sector Plat Parcel</small>							
- - - - : - <small>Zone Sector Plat Parcel</small>							
- - - - : - <small>Zone Sector Plat Parcel</small>							
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- - - - : - <small>Zone Sector Plat Parcel</small>							

**SURFACE WATER USE PERMIT APPLICATION
EXISTING USE (NA WAI EHA, MAUI)**

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	Non-Potable Alternatives Attach additional sheets if necessary.
Municipal sources	n/a	see attached addendum
Wastewater reuse	n/a	see attached addendum
Ditch system	n/a	see attached addendum
Desalinization	n/a	see attached addendum
Ground water	n/a	see attached addendum
Other (specify)	n/a	see attached addendum

PUBLIC INTEREST

§174C-2(c) states that: The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such 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 of traditional and customary Hawaiian rights, 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.

Explain below how the uses in your application are consistent with the public interest as described above. Attach additional sheets if necessary.

see attached addendum

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

INSTRUCTIONS FOR FILLING OUT *FORM SWUPA-E*

This application form is to be used for actual existing uses as of the effective date of designation, April 30, 2008, for the Na Wai Eha Surface Water Management Areas. Based on the State Water Code, Section 174C, Part IV Regulation of Water Use, a completed application must be filed with the Commission on Water Resource Management (CWRM) no later than April 30, 2009, to qualify as an existing use. Failure to meet the filing deadline may cause your application to be considered a new use and require you to file an Application for Surface Water Use Permit for New Use.

If you are applying for a new surface water use, which are proposed uses after the date of designation, please use the Application for Surface Water Use Permit for New Use, Form SWUPA-N.

Information about surface water management areas and the current application forms are available at our website: <http://www.hawaii.gov/dlnr/cwrml/>; by contacting the Stream Protection and Management Branch at 587-0234; or sending an email to: dlnr.cwrml@hawaii.gov.

REQUIREMENTS FOR A COMPLETE APPLICATION Information must be legible. Therefore, please type or clearly print all information in ink.

- a. Fill in the most recent application form.
- b. Fill in every line on the application.
- c. Enclose a check for the non-refundable filing fee of \$25 payable to: Department of Land and Natural Resources.
- d. Pay for the cost of publishing any required public notices related to your application.
- e. Mark the source and end use locations on the appropriate USGS quad map and TMK map and attach to your application.
- f. Attach photos showing your existing diversion, measuring device (if applicable) and end use areas.
- g. Sign the application form. Both the applicant and the landowner of the source must sign the application form.
- h. Submit one original and 15 copies of the application form; one original and 15 copies of the attachments (instructions, maps, photos and any additional attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

The applicant must establish that the existing use of water is a reasonable and beneficial use. According to §174C-3 of the State Water Code: *"Reasonable-beneficial use" means 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.*

Furthermore, public interest is described in §174C-2(e) of the State Water Code which states that: *(t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such 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 of traditional and customary Hawaiian rights, 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.*

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

1. **APPLICANT'S NAME:** Fill in the information for the applicant. This should be the entity that will be responsible for all conditions of the water use permit.
2. **SOURCE LANDOWNER'S NAME:** Fill in the information for the landowner of the property where the existing surface water diversion works is located. *Note:* in accordance with §174C-51(1)(B), *in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.*

EXISTING SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface-Water Hydrologic Unit. A Management Tool for Instream Flow Standards* report available on the CWRM website at: <http://www.hawaii.gov/dlnr/cwrml/>, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.
- 4a. **TMK OF STREAM DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at (808) 270-7297, or check online at: www.mauipropertytax.com/
- 4b. **TMK OF DITCH DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.
5. **STREAM DIVERSION:** How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. **FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table I

EXISTING USER INFORMATION

7. **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. 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.
Do you claim an appurtenant right for your water use? Check "Yes" or "No."
If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
8. **END USER INFORMATION:** Are you an end user on an existing water system? Check "Yes" or "No". If yes, please list the name of the water system operator.
9. **REGISTRATION AND DECLARATION OF WATER USE:** Do you have a Registration and Declaration of Water Use from the Commission? Check "Yes" or "No". If yes, please list the name of the registrant(s).
10. **STREAM DIVERSION WORKS PERMIT (SDWP):** Have you ever been issued a SDWP by the Commission? If yes, please list the permit number(s). Otherwise, check "No."
11. **APPLICANT:** Please sign and print your name, and date your application.
12. **LANDOWNER:** Please sign and print your name, and date your application. The landowner shall be the joint applicant in the event the applicant is a lessee, licensee, developer, or any other person with a terminable interest or estate in the land which is the water source of the permitted water. §174C-51(1)(B)

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

TABLE 1: 12-MONTH AVERAGE DAILY USE - Measured or calculated use of water at the source or end use as of the effective date of designation, April 30, 2008.

Please fill out Table 1 to calculate your existing use as of the effective date of the designation, April 30, 2008, of the Na Wai Eha Surface Water Management Areas. The effective date of designation is the date of the publication of the public notice of the Commission designation action. The qualifying dates have been filled in for this application. Fill in as completely as possible.

The 12-month average is the average daily use^a of 12 months of consecutive use^b from the last month^c of the period.

- a. Average daily use. This is the average daily use for one month in gallons per day (GPD). To calculate this average, take the total use (in gallons) for the month, and divide this amount by the number of days in the month.
- b. 12 months of consecutive use. To calculate the average monthly withdrawal for 12 consecutive months of use, add the average daily use for all 12 months and divide that amount by 12.
- c. Last month. The last month of the period is the effective date of designation, April 30, 2008.

Check only one of the following boxes per row in Table 1:

- Metered – data is based on an operational meter with a totalizer.
- Estimated – data is based on some indirect measurement technique (e.g. measured flow rate multiplied by time of operation).
- Active but unknown – source is active, but there is no means to measure or estimate flow coming from source.
- Inactive – source was not pumped or diverted for the month.
- Other - describe how water use was measured or calculated in this box.

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

1. **PURPOSE / WATER USE CATEGORY:** Choose one of the following purpose or category codes listed below for each row in Table 2. There may be several purpose/categories on a single TMK, and each purpose or category must be listed in a separate row. Attach additional copies if necessary.

AGRICULTURE	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
DOMESTIC	
DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
DOMNOTH	Domestic Non-Residential – Other
DOMNSC	Schools
INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRG	Golf Course
IRRH	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRS	Schools
MILITARY	
MIL	Military
MUNICIPAL	
MUNCO	County
MUNPR	Privately owned and operated but defined as a public system by the Department of Health
MUNST	State

2. **USE TMK:** The Tax Map Key number of the parcel over which the water is applied. There should only be one parcel for each line. Also, attach a TMK map(s) for the lots showing the boundaries of irrigated acreage, etc., as well as a photograph of the area of use.
3. **STATE LAND USE DISTRICT:** To find out the current Land Use District, contact the Land Use Commission at 587-3822.
4. **CDUP REQUIRED:** If a Conservation District Use Permit (CDUP) is required, enter either: "Yes" and the date the CDUP was approved if you have a CDUP applicable to this project, or "Yes" and "not acquired" in this box. If a CDUP is not required, enter "N" for no in this box. To check if your parcel is in the Conservation District, contact the Land Use Commission at 587-3822. If your parcel is in a Conservation District, contact the Department of Land and Natural Resources Office of Conservation and Coastal Lands at 587-0328 to find out if a CDUP is required.
5. **COUNTY ZONING CODE:** To find out the Zoning Code for your property, call Maui County Planning Department at 270-6279, or 270-7253.
6. **SMAP REQUIRED:** If a Special Management Area Permit (SMAP) is required for this project, enter either: "Y" and the date SMAP was approved; or "Y" and "not acquired" in this box. If a SMAP is not required, enter "N" for no in this box. To find out if your property is in a Special Management Area and requires an SMAP, call Maui County Planning Department at 270-8205.
7. **QUANTITY OF USE:** Enter the quantity of use in gallons per day (GPD). Justification for the quantities requested may depend on your answers to items 8 and 9, and you should describe the justification in item 10.
8. **SUBMETERED? (Y/N):** If the specific use is submetered, enter "Y" for yes here. If it is not submetered, enter "N" for no. Submetering is specific to each line item.
9. **UNITS OR ACREAGE:** This is the value and category as the basis for calculating the duty. "Duty" is the amount of water used or requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling units, or number of people, or animals. Examples to fill in for this category are: 400 dwelling units, 500 people, 3.74 acres.
10. **APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7:** Explain how you are justifying the amount you are requesting. Attach additional sheets if necessary.

SURFACE WATER USE PERMIT APPLICATION EXISTING USE (NA WAI EHA, MAUI)

TABLE 3: IRRIGATION INFORMATION

If you have grown crops in the year prior to the date of designation, please list all the crops (including landscape and golf course irrigation) that you have grown. Enter a single crop and single TMK per line. If you have multiple crops, list them all as separate line items. Attach additional copies of Table 3 if necessary.

1. **USE TAX MAP KEY (TMK):** Enter the parcel number where the crop is being grown. Attach a map outlining irrigated area(s) and photos.
2. **CROP:** Enter the crop type.
3. **TOTAL ACREAGE:** Enter the total acreage of the parcel listed.
4. **NET IRRIGATED ACREAGE:** Enter the acreage for the specific crop grown.
5. **BEGIN GROWTH PERIOD (MONTH):** This is the month of the start of the growth cycle. For perennial crops, list the 12th month prior to the date of designation.
6. **END GROWTH PERIOD (MONTH):** This is the month of the end of the growth cycle. For perennial crops, list the month of the date of designation.
7. **IRRIGATION SYSTEM:** Enter one of the following:
 - TRICKLE, DRIP
 - TRICKLE, SPRAY
 - MULTIPLE SPRINKLERS
 - SPRINKLER, CONTAINER NURSERY
 - SPRINKLER, LARGE GUNS
 - SEEPAGE, SUBIRRIGATION
 - CROWN FLOOD
 - FLOOD (TARO)
 - OTHER – Please describe.
8. **IRRIGATION PRACTICE:** Enter one of the following:
 - IRRIGATE TO FIELD CAPACITY
 - APPLY A FIXED DEPTH PER IRRIGATION
 - DEFICIT IRRIGATION
 - OTHER – Please describe.

TABLE 4: ALTERNATIVES ANALYSIS

Please address every alternative listed in Table 4 and whether or not they are available, for both potable and non-potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc.

Surface water is defined in §174C-3 as *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 is surface water when it exits from the spring onto the earth's surface.*

PUBLIC INTEREST

Explain how the uses in your application are consistent with the public interest as described in §174C-2(c): *(t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such 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 of traditional and customary Hawaiian rights, 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.*

Addendum

Attachments

Appended hereto as Exhibit A is a copy of the 7.5 minute-series USGS topographic maps indicating the diversion points for Waihe`e River, North Waiehu Stream, and `Īao Stream. Exhibit B is a TMK map showing where the `auwai enters our land and the area of end use. Exhibit C contains copies of photographs of our `auwai diversion and area of proposed use. Exhibit D is described below.

Box 2: Source Landowner

Not applicable pursuant to HRS § 174C-51(1)(B), because applicant does not have a terminable interest in the land which is the source of the permitted water. According to the Water Commission's records, which have not been verified, Wailuku Water Company claims to be the source landowner.

Box 5: Stream Diversion

We are kuleana users along the **kuleana `auwai that runs through Wailuku town**. It is our understanding that this `auwai receives water from Waihe`e Ditch, to the south of `Īao Stream. The water in Waihe`e Ditch at that point is a mixture of water from Waihe`e River, North Waiehu Stream, and `Īao Stream. Water is diverted from Waihe`e River by Waihe`e Ditch at the Waihe`e diversion (see attached USGS topo map). Water diverted from North Waiehu stream enters the Waihe`e Ditch through the North Waiehu Ditch (see attached USGS topo map). Water is diverted from `Īao Stream (see attached USGS topo map) and enters the Waihe`e Ditch via the `Īao-Maniania Ditch to the north of `Īao Stream.

The Wailuku town `auwai **receives water via a pipe in the Waihe`e Ditch**. A concrete pipe empties into an open ditch on our land, although water flows only a few days each week for a couple of hours at a time. When the water flows, we use some of it via pipes and furrows to water our yard and garden. The water remaining in the `auwai continues past our land in an open ditch.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. At the time of the Mahele, our land was granted to Kaauiwai by Land Commission Award ("LCA") No. 1742, Royal Patent No. 5531. Attached as Exhibit D are true and correct copies of LCA No. 1742 and RP No. 5531 and the testimony in support of his claims, indicating the land was in kalo. We have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 2, Box 10: Justification for Requested Quantity

We estimated our existing domestic water use, including our use of water for our yard, ti leaf, banana, flowers, fruit trees, and non-commercial garden, including green onion, chili pepper, squash, rosemary, basil, and other herbs and vegetables for home consumption, by applying the 2002 State of Hawai'i Water System Standard for Maui County of 600 gallons per single family home.

Table 4: Alternatives Analysis

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law. In addition, the vegetables and flowers we grow feed our `ohana and are shared with neighbors and community members. Even if we did not have protected rights to stream water, there is no potentially available alternative source that is economically practicable for a small user like us.

Municipal Sources. Our domestic water service is a typical residential service and does not have the capacity to deliver the volumes of water we require. As long as I can remember, we have always used the `auwai water for our non-commercial gardening. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on this use.

Wastewater reuse. Reusing wastewater is impracticable because as a small user engaged in non-commercial gardening, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

Ditch system. We are currently using water from an existing `auwai, although water is not available consistently and in sufficient amounts to support the existing uses on our system, including our own uses (see concurrently filed SWUPA-N, requesting additional water for kalo cultivation). Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai `Ehā do not consistently have enough water to support additional users. Second, we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user engaged in non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable.

Desalinization. Desalinization of brackish water is not a practicable alternative because we are not aware of any such plant having been built on Maui. According to the County's estimates, a plant is expected to be built in 2013 at the earliest.

Ground Water. Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well for non-commercial gardening would be unprecedented and extremely burdensome. As a small user engaged in non-commercial gardening, we do not have the means to install and maintain such infrastructure.

Table 4: Public Interest

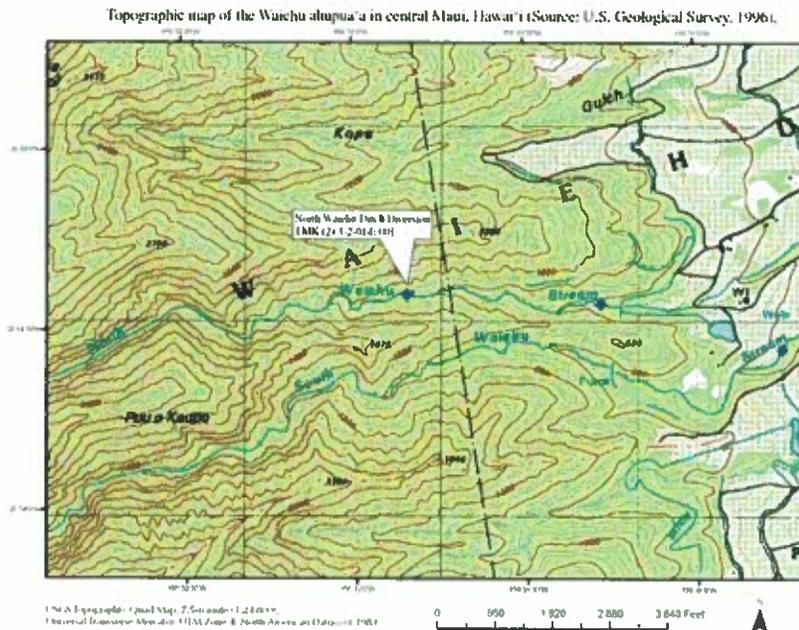
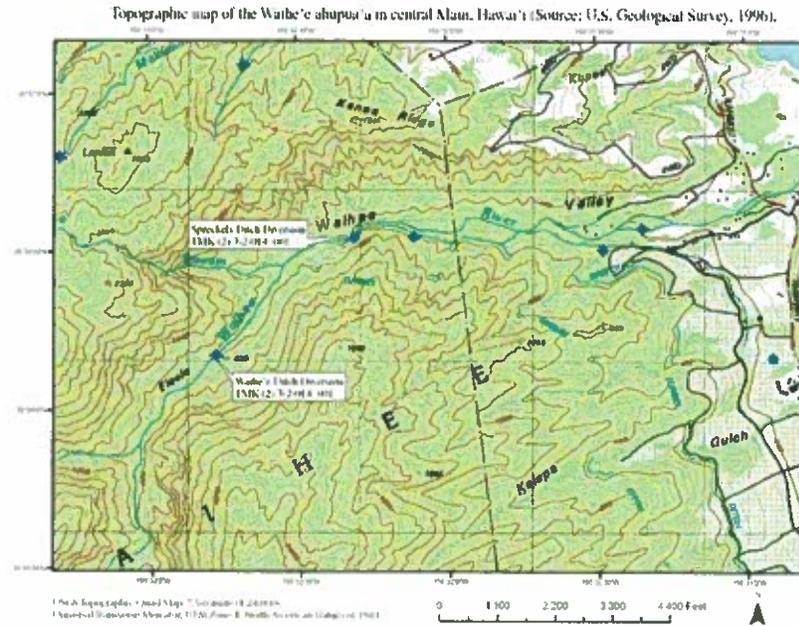
Our Existing Use is Consistent with the Public Interest

HRS § 174C-2(c) provides that domestic uses, agriculture, and the maintenance of proper ecological balance and scenic beauty are “in the public interest.” Our existing water use is to grow crops for our subsistence and the plants we grow help maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest. Additionally, the exercise of appurtenant rights is a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Hawai‘i 97, 137 n.34, 9 P.3d 409, 449 n.34 (2000) (“Waiāhole I”).

Our existing use is also a “reasonable-beneficial use.” “Reasonable-beneficial use” is defined 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 public interest.” HRS § 174C-3. As indicated, our existing use of stream water is consistent with state and county land use plans and the public interest. It is also “economic and efficient” because we only use the amount we need. We take steps to make our water use efficient. For instance, we use pipes where appropriate to minimize water loss, and our farming practices include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, our use is “reasonable-beneficial.”

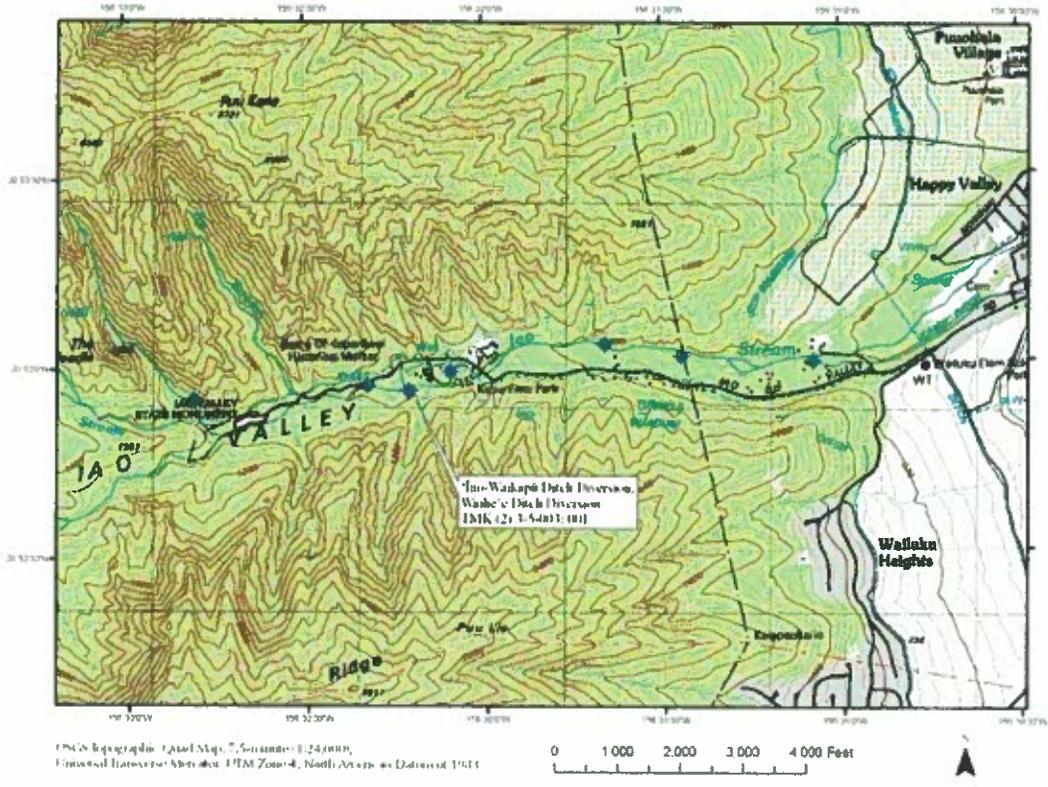
Vernon Bal
Existing Water Use Permit Application
TMK No. 3-4-007:042

Exhibit A: USGS Maps depicting diversions from Waihe'e River, North Waiehu Stream, and 'Īao Stream, respectively



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Topographic map of the 'Iao ahupua'a in central Maui, Hawaii' (Source: U.S. Geological Survey, 1996).



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Existing Water Use Permit Application
TMK No. 3-4-007:042

Exhibit B: TMK Map outlining area of use and direction of 'auwai flowing onto our land



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TMK No. 3-4-007:042

Exhibit C: Photographs of `auwai and end uses



Photograph depicting the pipe that brings kuleana water to our land a few days a week for a couple of hours at a time.



Photograph of the `auwai as it runs through our land during a period when there is water in the `auwai

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TMK No. 3-4-007:042

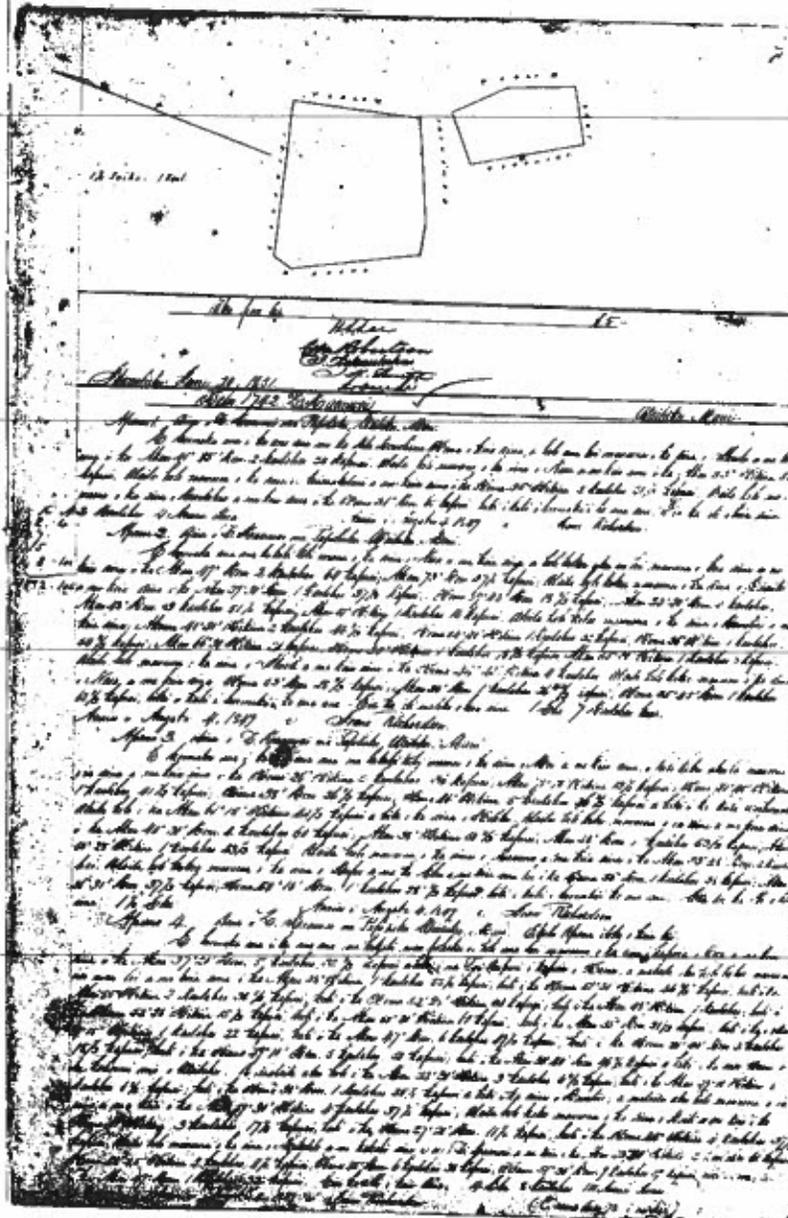


Photograph of end use, yard, banana, ti-leaf

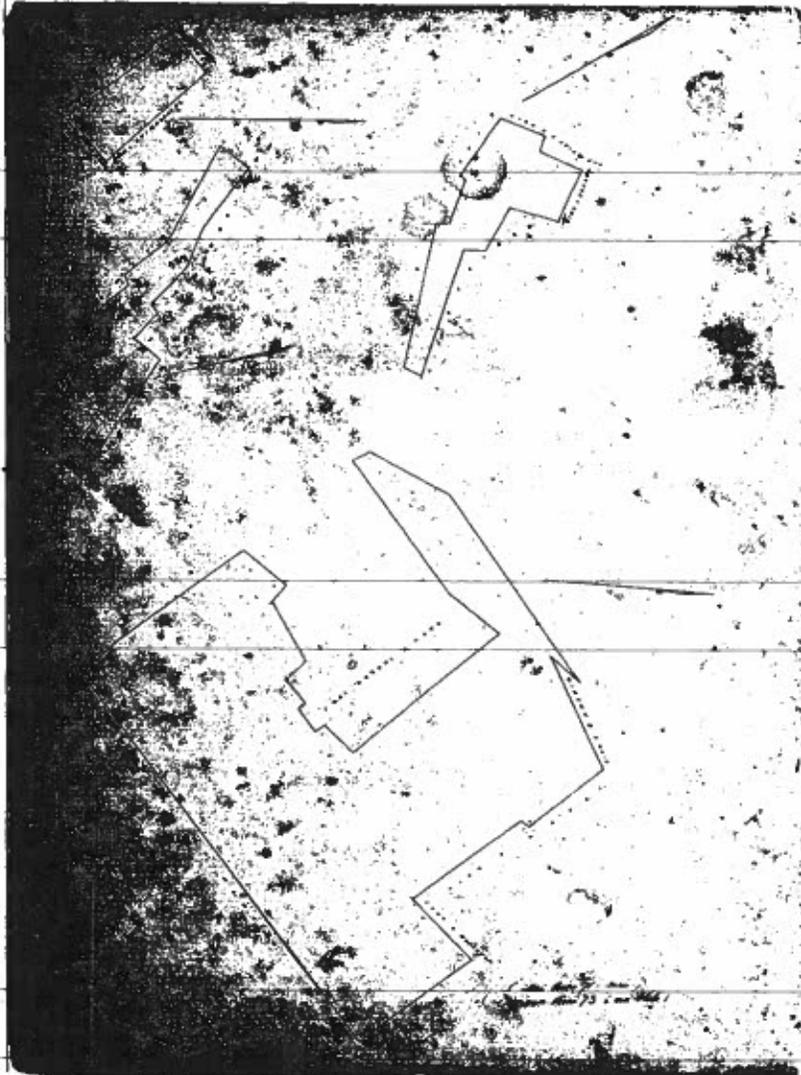


Photograph of end use, ti-leaf, heliconia, citrus

Exhibit D: Māhele Documents establishing our appurtenant rights



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Hekeahi ka. A ua lilihi no hoi hoi
noho ana ma na lai a me na hulu
Aole mea i hekeahi mai
Owari no me ka Mahalo

Wailuku } Napela
Jan. 13. 1847

Wale 107 Kaunani 13 Januani 1847

Pa a ka Oa hoiia au i ka ha o ka
makaun pa, no Hahaiolopua, a ke ho-
olua hoi au nona o hoi hoiho hoi-
ha no hoi ia au i makai o ke alani
aupuni, i hulu ai i ka hulu wili-
ho. Owa ka moa o ka aiwa.

Eia ka hoi e aiwa ia hoi hoi wa-
hi i makai ai, oia kala wahi, hoi wa-
hi, a no ke aupuni ia wahi o kama
e pili ana me hoi wahi i manao ai
e noho loa, o hoi ia ka ae ia noai
mae.

Owari no me ka mahalo

Na To. Haunani

Wailuku }
Mokuapuia }
Maui }

1760	<u>Kapuniwani</u>	He hōme kula ana. Hala aha kula kula mahu
O.	<p> Owan o ka mea oona ka mea malalo ihi nei, ke hāi ahi nei au i kōi kula ana aha, aia ma ka hāi waawa mā ka ili aia o ke kōmāhāi, Maatia i pūhi ana ma ka kōmāhāi o Kāhānāpāhāna ma mea ma aha aha oona a pau, ma ka A ka aia o Kūka- wā, ma ka hāi ke kōhāwāi, waikaha, ma ka hāi ka aia o Pa, ma ke hāi ka aia o Kāhānāpāhāna aia kēka hāi kula ana ma malalo o ka pa o Kāhānāpāhāna, he mea hāi hāi aha i hāi, he kula ana hāi, kēka hāi nei, aia ma ka Aha o ka hāi o Kāhānāpāhāna </p>	
	Na Kapuniwani	960 paun Det. 10 1877 Kāhānāpāhāna
	Oha loa kula kula ana aha	
	Ka Maat. 1877	
1761	<u>Koawe</u>	He mea kula ana. Det. 10 1877
	<p> He mea kula ana. Aha i i Maatili a ma ma kula kula ana. Owan o Koawe. He hāi ahi nei au i kōi kula ana aha, aia ma ka ma ma kula ana a ma kula kula ana ma kula ana, a ma kula kula ana </p>	
	Na Koawe	Kāhānāpāhāna
1762	<u>Keaunui</u>	He mea kula ana i kōi
	<p> oia kula i hāi kōi nei i oia, ka aha a ka hāi hāi hāi na kula kula ana. Aha i i Maatili ke hāi ahi nei au i kōi ma kula ana i kōi, aia ma ma Maatili kula ana ma ka Maatili kula ana Maatili, kōi kōi, ka ili aia o Kāhānāpāhāna i K.M. 1843 ka loa ma ma oia aia aia, i Oia kōi he ma ihi aia aia ma kula ana, ma ma o ka ma kula ana o Kāhānāpāhāna i ka loa ma ma </p>	

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Hoohikua o Tuijauka.

Kia mauka ho Heata pa e pili ana me ho
Keoni pa a ma ka akua ho Tahi wahi, ma
Hakula no i huani ia Heata kela wahi.
O olalo aku au ia ia nei, e hoome hou aku hou
wahi pa, ma ka mea, ke hoome hou mai mai
hi wa pa, o ka pau no ia o hau ike

Hele 35 Lani

Hoohikua o Hano Wahi.

Iha wa i hoohi ai ka Ohaolelo i hoo wa
ki maloko ho Lani maan ma o laila, a hoi mai
ua wahi ka ua helohi ka pa. O olalo aku
au ia Huikelani o pa paha hana i kaia
wahi, hoo mai i Huikelani ole, ua hoo
ho Lani iloko nei, nolaila, e hoohi aku ho
Lani wahi. *Continued Page 10 V. 10*

Waikuku, Feb 19, 1897

Hele 34 Kaaunwai From 95 Page
Pa o Hoohikua o Kauhapa

Mo Kaaunwai keia pa a kakou
e wahi nei ma Koloa nei I ka
M.H. 1886 paha ka loaa ana,
keia wahi ia ia. Mo Mika Lina
mai hooa, mo Kopili mai a
ia huua a. no Auwa mai

a ia ~~Cultura~~ Cina, he konohiki,
huwai no Wailuku nei ia wa, he
Auwai ka mokuna ma ka Akau
he Alanui Aupuni ma ka Hihina,
o ka pa aina, he Kulanui ma ka
Houa a me he konohana, Aole mea
huhuna e ai maloko, heia pa
ma Koloa nei.

Pa 2.

I ka make ana o huwai M. 7, 1894
Lilo o Kawaiholohe i konohiki no
Wailuku nei, a nana no i haawi
heia pa ia Kaauwai; na kono
na palena iloko, heia mau palena
na i oleia maluna

Pa 3.

He wahi e ai no kahi o To Kaauwai
aia ma Kapaaiki, wa paas no i
ka paia e Kaauwai, Ma ka Akau
he pa kahapaahaa, he wahi waike
wale ma ka Hihina, ma ka Houa
ko Pakanui pa ma he konohana
he Eoi paakas a me ko Kuitelanui
pa, I ka make ana o Kawaiholohe
lilo o Wailuku nei ia Kailihiwa, a
nana no i haawi mai heia wa-
hi ia Kaauwai, Aole mea kulu-
ana e ai ma heia, a malalo nae
o Kailihiwa

He ole na Kaauwai
Aole o Kauhapa i ike kekahi
mea e ai o Kauhahoua ka
ike paas;

HK

Hōhokūia, Kāhānāhāna ma ka
olelo Kēmolele

No To Kāuawai no kēia
pa ma Kōka nui, mai ka wa ia hūwai
ka lilo ana ia Kāuawai, no Mīka
Lina mai kōka, no Kōpili mai ko
Mīka Lina, Aole māhoko loa iāu ka
mea nōna mai kōka, no ka mea ma
Oloale au, Aole mea hūlana e ae
To Kāuawai wale no māhoko o kēia
pa, He kōka eae nō ka pa ma
Kāuawāi hōhokūia mai, Aole mea nōna
i kēia ia Kāuawai a hiki loa mai
i kēia mānawa

Pa 3.

He pa eae no kēia
To Kāuawai, aia ma Kāhānāhāna
he wahi wahi wale no ia mānawa
na Kāhānāhāna no i Kāuawai mai
ia Kāuawai ia wahi, ma pa
no kēia wahi i ka pa mānawa
Aole mea kēia ia ia no kēia mānawa
mea, Aole mea hūlana e ae i
lōka o kēia mānawa pa, he kōka no
māhoko, a he kōka no i lōka
Aole nōna ma hūlana i lōka, no ka
mea māhoko no ia o Kāuawai

See Page 203

Kawailalele, a one Kuuwa was Kawai waka, a ¹⁰¹
ua noko auaolu ana ma Kua waki a haki i Kua
mauawa, a ua hana i ua hale ma ka mahe,
sola ma Kua.

Ma Kooki Kua oke ana i Kua Kahala ma ka
Kooki Kua ma i ka M. H. 1856, a ua pa a ka pa
nana ma a hana, a ka noko ana ma ma ma Kua
waki sola ma Kua.

12,8387 Kihauolopua. ^{See page 6.}
Disputed by the King.

Henry S. Brooks sworn, knows the land in dis-
pute. Kuuwa the former possessor of this land
died on the 16th day of November 1854. After the
death of Kuuwa the land was given by the King
to Kaa. There was nothing planted on the land
on the land till the year 1856, when Mr. Richards
divided it out to the people to plant sugar cane
for the King on shares. Witness and some other
Samoans were employed to grind the cane.
After the cane was ground off, the land has
never been cultivated up to this time. Claim-
ant has no house on this land.

(Claimant being present gave his
consent to have the award for this land carried
out on the books of the Land Comm^{rs}. He says
the award is now lying in the Home Office.)

(cont. page 104)

