



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

FORM SWUPA-E (NA WAI EHA, MAUI)

For Official Use Only
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2009 APR 23 PM 4:02

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

Event ID: 2212

SWUP No. 21

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 DOUGLAS BELL		Applicant's Contact		2. SOURCE LANDOWNER'S NAME Avery Chumbly		Source Landowner's Contact	
Applicant's Mailing Address, or Principal Place of Business 1420 HONUA PLACE WAIKAPU, HI 96793				Source Landowner's Mailing Address, or Principal Place of Business 363 W. 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: Wahee/6022 Waiehu/6023 Iao/6024 Waikapu/6001

4a. TMK OF STREAM DIVERSION LOCATION: 3 - 5 - 004 : 018
Zone Sector Plat Parcel

4b. TMK OF DITCH DIVERSION LOCATION: 3 - 5 - 012 : 010
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: Two 5/8" hoses run from the auwai to my property, SEE ATTACHMENT.
 Is the diverted water returned to the stream or ditch? Yes. No. If yes, how much water is returned?

6. FLOW MEASUREMENT INFORMATION:
 Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?
 Yes. Enter the installation data:
 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 ATTACHMENT

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? N/A; no official "operator"

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): ROGERS W; ROGERS EH; ROGERS FARM
 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 Signature Douglas Bell Print Date <u>4/4/09</u>		12. SOURCE LANDOWNER Signature Print Date	
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 DOC ID: 3214v

**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	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	2,160	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	25,920	GPD				
AVERAGE DAILY USE (Average of the above)	2,160	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 TRM 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. CDUP 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									
							GPD		
Uses that do not require potable water									
DOM	3 - 5 - 12 : 8 Zone Sector Plat Parcel	URBAN	NO	AG	NO	2,160	NO	.25	SEE ATTACHMENT
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
TOTAL NON-POTABLE USE						2,160		GPD	
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						2,160		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 - 5 - 12 : 8 <small>Zone Sector Plat Parcel</small>	DIVERSIFIED AGR	.34	.25	YEAR ROUND	YEAR ROUND	OTHER - HOSE/SPRINKLER	FIELD CAPACITY
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <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 ATTACHMENT.
Wastewater reuse	N/A	SEE ATTACHMENT.
Ditch system	N/A	SEE ATTACHMENT.
Desalinization	N/A	SEE ATTACHMENT.
Ground water	N/A	SEE ATTACHMENT.
Other (specify)	N/A	SEE ATTACHMENT.

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 ATTACHMENT

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/cwrm/>; by contacting the Stream Protection and Management Branch at 587-0234; or sending an email to: dlnr.cwrm@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(c) 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/cwrm/>, 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 1

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
DOMNOH	Domestic Non-Residential – Other
DOMNSC	Schools
INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRGC	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRSCL	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.*

Douglas Bell, SWUPA-E

Exhibits

Appended hereto as Exhibit 1 are copies of the Māhele documents establishing that my property was in kalo in 1848 and had appurtenant rights at one time. Exhibit 2 is a copy of the 7.5 minute-series USGS topographic map with the Waikapū Stream and Waikō Road `auwai diversion labeled. Exhibit 3(a) is a TMK map showing the location of our property, Exhibit 3(b) is a close-up of the property showing the locations of our `auwai diversion and cultivated area. Exhibit 4 contains copies of true and correct photographs of our `auwai diversion and some of our end uses.

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, Avery Chumbley claims to be the source landowner.

5. Stream Diversion

I use water from the `auwai that runs along Waikō Road. Water is diverted into the `auwai from Waikapū stream through a traditional po'owai (intake made with stones) near Ione Shimizu's house (see attached USGS topo map). The water continues makai in pipes and ditches until it passes my neighbor Alan Birnie's property where I divert some water via two 5/8" garden hoses on a daily basis to irrigate my non-commercial garden, including dryland kalo, papaya, bananas, and tropical flowers; I also use some water to irrigate my yard. See Exhibit 4. My diverted water is absorbed by the ground and does not return to the ditch or stream.

Alan Birnie has allowed me to access the `auwai from his property for years and he supports my application for a water use permit. If you have any questions, you can contact him at: 174 West Waikō Road, Wailuku HI 96793 or (808) 269-8373.

6. Flow Measurement Information

Our existing water use is not gauged. Over the last few years there have been significant fluctuations in the water available in the `auwai because of the plantation diversions further upstream; sometimes there is more water, sometimes less. Although I did not document our existing water use between May 2007 and April 2008, I used the "bucket method" to estimate our use. For each hose, we measured the amount of time

it took to fill a three-gallon bucket in multiple trials. We then averaged the trials. The combined average flow rate for both hoses is 3 gallons per minute. Multiplying 3 gallons per minute x 60 (the number of minutes in an hour) = 180 gallons per hour. Since we irrigate for an average of 12 hours per day, our best estimate of our existing water use is 2,160 gallons per day (180 gallons x 12 hours).

7. Appurtenant Rights

My property had appurtenant rights, as documented in Land Commission Award Apana 3108:1 and the supporting documents such as foreign and/or native testimony. I included copies of the relevant documents as Exhibit 1. However, Edmund Rogers assigned the “water rights” to Wailuku Sugar in 1967. As a result, it appears my property’s appurtenant rights may be extinguished, although I reserve the right to claim appurtenant rights in the future based on further information.

Table 1: 12-Month Average Daily Use

As explained above in number 6, our existing water use is not gauged. As detailed above, our best estimate of average daily use is 2,160 GPD.

Table 2, Boxes 3 through 5

Our application seeks to use water on land zoned for agriculture in an urban state land use district. The cultivation of crops for our personal consumption is consistent with state and county general plans and land use designations. Additionally, this use is consistent with county land use plans and general policies.

Table 2: Land Use Consistency Efficiency, Box 10 Applicant’s Justification

We utilized the Bucket Method. As detailed above, our best estimate of average daily use is 2,160 GPD.

Table 4: Alternative Use Analysis

Our exercise of our traditional and customary right as Native Hawaiians to cultivate dryland kalo and other crops on our land is constitutionally protected, and by definition should not be required to use alternative, non-traditional sources. Even if such a requirement applied, there is no potentially available alternative source that is economically practicable. We cultivate dryland kalo on our land for cultural and subsistence purposes; the kalo, bananas, papayas, and other food that we grow feeds our ‘ohana and is shared with neighbors and the larger community. An alternative

water source that would require us to pay for water would effectively deny our traditional and customary right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

Municipal Sources. As long as I can remember, I have always used `auwai water for my non-commercial gardening. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on my existing domestic use for traditional and customary purposes.

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

Ditch system. I am currently using water from an existing `auwai. 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, I lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user engaged in traditional uses and non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable and would effectively deny my traditional and customary right.

Desalinization. Desalinization of brackish water is not a practicable alternative because I am 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 I were able to secure the permits necessary to drill a well and pump ground water for my uses, installing and operating such a well would be unprecedented and extremely burdensome. As a small user engaged in traditional uses and non-commercial gardening, I do not have the means to install and maintain such infrastructure.

Table 4, Public interest section:

Generally, "water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d 409, 474 (2000) ("Waiāhole I"). Further, HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our existing water use is predominantly for dryland kalo and other crop

cultivation. We grow kalo in a traditional manner and use it for home, ceremonial, and educational purposes. We also grow several varieties of fruits. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help to maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest.

Additionally, our existing use is a public trust purpose, and is reasonable and beneficial.

Our Existing Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians is a protected public trust purpose. Waiāhole I, 94 Haw. at 137, 9 P.3d at 449. Moreover, article XII Section 7 of Hawai'i's Constitution specifically recognizes the rights of Native Hawaiians to exercise traditional and customary practices for subsistence, cultural, and religious purposes. We are Native Hawaiian and currently use water for traditional, subsistence and cultural purposes. In a time when our global communities are facing food, energy, and economic crises, subsistence has the potential to provide immediate economic and health advantages.

Our Existing Use is Reasonable and Beneficial

"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 hoses 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."

EXHIBIT 1 (a)

Copy of Original Māhele Documents (LCA 3108) - Foreign Testimony

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Ch. 11. 1st. George Wilson

I know the land for which I am the Plaintiff in the Māhele of Kūhūhūhū in Kīpukūhū. It is the land of the 10th wife of the late King Kamehameha II. It was the King's land and should be his given it to the late Kaunakāhele, the 10th wife is some-thing of it under the Court and when they left it her title will be gone. She has no real title in the land or any other one piece of land.

Ch. 11. 108. Kūhūhū

I know the lands of the 10th wife consist of 6 pieces as follows: 1. 1st. 2. 3. 4. 5. 6.

1. 1st. 1000 sq. ft.
2. 2nd. House lot in Kīpukūhū.
3. 3rd. 1000 sq. ft. house lot in Kīpukūhū.
4. 4th. 1000 sq. ft. house lot in Kīpukūhū.
5. 5th. 1000 sq. ft. house lot in Kīpukūhū.
6. 6th. 1000 sq. ft. house lot in Kīpukūhū.

The lands are situated in the 10th wife's land in Kīpukūhū. The 1st. is a house lot in Kīpukūhū. The 2nd. is a house lot in Kīpukūhū. The 3rd. is a house lot in Kīpukūhū. The 4th. is a house lot in Kīpukūhū. The 5th. is a house lot in Kīpukūhū. The 6th. is a house lot in Kīpukūhū.

The 1st. is bounded: North, by the land of the late King Kamehameha II. South, by the land of the late King Kamehameha II. East, by the land of the late King Kamehameha II. West, by the land of the late King Kamehameha II.

The 2nd. is bounded: North, by the land of the late King Kamehameha II. South, by the land of the late King Kamehameha II. East, by the land of the late King Kamehameha II. West, by the land of the late King Kamehameha II.

The 3rd. is bounded: North, by the land of the late King Kamehameha II. South, by the land of the late King Kamehameha II. East, by the land of the late King Kamehameha II. West, by the land of the late King Kamehameha II.

The 4th. is bounded: North, by the land of the late King Kamehameha II. South, by the land of the late King Kamehameha II. East, by the land of the late King Kamehameha II. West, by the land of the late King Kamehameha II.

The 5th. is bounded: North, by the land of the late King Kamehameha II. South, by the land of the late King Kamehameha II. East, by the land of the late King Kamehameha II. West, by the land of the late King Kamehameha II.

The 6th. is bounded: North, by the land of the late King Kamehameha II. South, by the land of the late King Kamehameha II. East, by the land of the late King Kamehameha II. West, by the land of the late King Kamehameha II.

EXHIBIT 1 (b)

Copy of Original Māhele Documents (LCA 3108) - Māhele Award

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Māhele pūnaha
 H.L.L. Co.
 G. M. Robinson
 J. H. Smith
 J. Robinson

1853

Kōwhiri, Apresila 19, 1853

Māhele 3108 Kōwhiri

Apresila 1. Tahi me Kōwhiri Kōwhiri Kōwhiri
 (Kōwhiri me te kōwhiri kōwhiri kōwhiri kōwhiri kōwhiri)

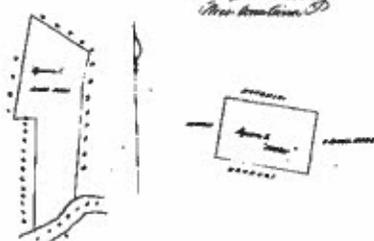
Māhe 10	Kōwhiri	60	āhe āhe me āhe kōwhiri
Māhe 11	Kōwhiri	50	
Māhe 12	Kōwhiri	250	Kōwhiri kōwhiri
Māhe 13	Kōwhiri	100	
Māhe 14	Kōwhiri	250	
Māhe 15	Kōwhiri	250	
Māhe 16	Kōwhiri	250	
Māhe 17	Kōwhiri	250	
Māhe 18	Kōwhiri	250	
Māhe 19	Kōwhiri	250	
Māhe 20	Kōwhiri	250	

Apresila 2. Tahi me Kōwhiri Kōwhiri Kōwhiri
 (Kōwhiri me te kōwhiri kōwhiri kōwhiri kōwhiri kōwhiri)

Māhe 21	Kōwhiri	250	āhe āhe me āhe kōwhiri
Māhe 22	Kōwhiri	50	
Māhe 23	Kōwhiri	250	Kōwhiri kōwhiri
Māhe 24	Kōwhiri	250	
Māhe 25	Kōwhiri	250	

E. R. P. Co.
 New American Co.

Māhele, Māhele 1, 1853



Māhele pūnaha
 H.L.L. Co.
 G. M. Robinson
 J. H. Smith
 J. Robinson

1853

Kōwhiri, Apresila 19, 1853

EXHIBIT 1 (d)
 Royal Patent Grant (LCA 3108)

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No. 7178

Palapala Sila Nui

A KE ALII, MAMULI O KA OLELO A KA POE HOONA KULEANA.

No ka Mana. Ua hoooholo na Laha Hoona i na komu kuleana aina i ka oieho, ho kuleana uiaio ko

Moorea Kuleana Holu 3108

ma ke **Ano Alodie** iloko o kahi i oiehoia malalo.

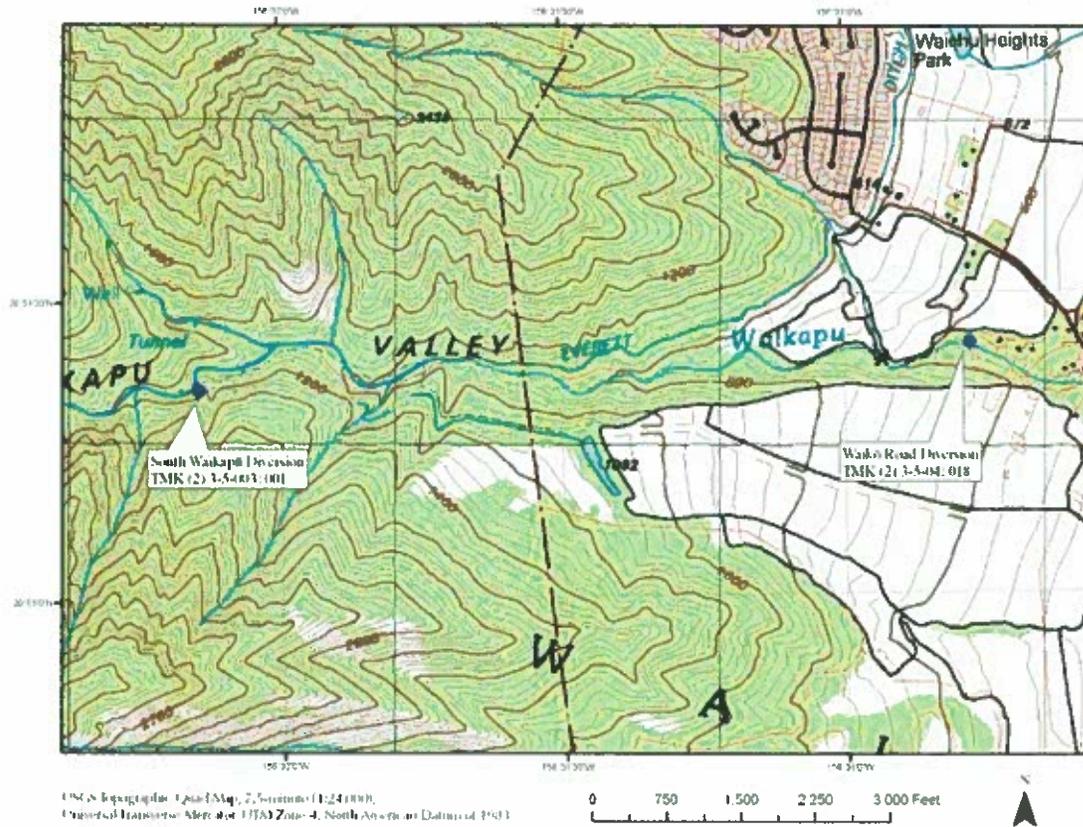
NOAIIA, me keia Palapala Sila Nui, ke hoike aku nei o KALAKAUA, ke Alii Nui a ko Akua i kona lokomaikai i hoooholo ai maluna o ko Hawaii Pae Aina, i na kanaka a pau, i keia la nona iho, a ua kona mau hope Alii, a ua haawi aku oia, ma ke **Ano Alodie** ia *Moorea* i keia wahi a pau loa ma *Maunakuli Nui* ma ka Mokuapuni o *Waiau* penei na mokuna:

Apana 1. Nui ma Pua
 I hoo maha ana ma ke kahi oia *Ukawa a i nui ana*
 Ke 7^o Ke 146 pauku a fite ana i ko ke *Maunakuli*
 Ke 29 . 826 *Pala*
 Ke 85 Ke 950 *Ulamoo*
 Ke 12 . 180 *Pala*
 Ke 78 Ke 870 *Maunakuli*
 i ke kahi mua *2710 Eka*

Apana 2. Nui ma Maiali
 I hoo maha ana ma ke kahi oia *Ukawa a i nui ana*
 Ke 78 Ke 655 pauku a fite ana i ko ke *Maunakuli*
 Ke 3 Ke 508 *Eka*
 Ke 79 . 578 *Oaa*
 Ke 86 . 520
 Ke 10 Ke 540 *Papa*
 i ke kahi mua *2710 Eka*

EXHIBIT 2
USGS map with Waikapū Stream and the Waikō Road diversion

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



BELL, DOUGLAS
TMK #: 3-5-012-008
WATER USE PERMIT APPLICATION - EXISTING USE

EXHIBIT 3 (a)
TMK map of relevant parcel highlighted (zoomed out)

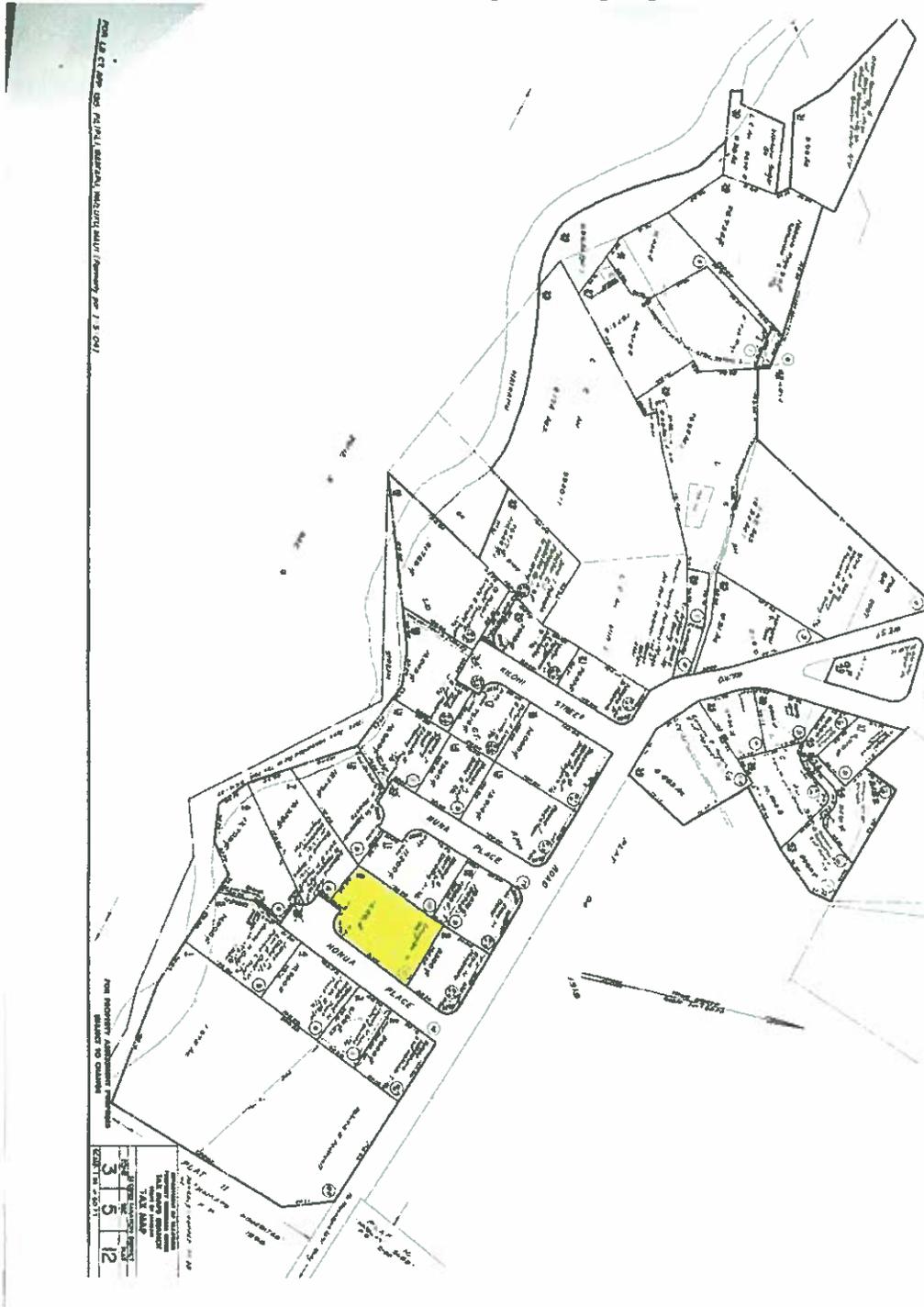


EXHIBIT 4: Pictures of surface water diversion and end uses

These are true and correct copies of photos taken on March 25, 2009 and March 29, 2009. They accurately depict conditions at the time the photos were taken.

Exhibit 4(a) depicts my diversion of water from the North Waikapū Kuleana `Auwai, which runs along Waikō Road. The photo below specifically shows the point of intake for my two hoses.



BELL, DOUGLAS
TMK #: 3-5-012-008
WATER USE PERMIT APPLICATION - EXISTING USE

Exhibit 4(b) is a photo of some of my dryland kalo and tropical flowers.



BELL, DOUGLAS
TMK #: 3-5-012-008
WATER USE PERMIT APPLICATION – EXISTING USE

Exhibit 4(c) is a photo of some of my papayas and the edge of my yard.



BELL, DOUGLAS
TMK #: 3-5-012-008
WATER USE PERMIT APPLICATION – EXISTING USE

Exhibit 4(d) is a photo of some of my banana trees.

