



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: 51
 Event ID: 2721

SWUP NO. 2

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-61(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 CORDELL CHANG		Applicant's Contact SAME	2. SOURCE LANDOWNER'S NAME WAILUKU WATER COMPANY, LLC		Source Landowner's Contact AVERY CHUMBLEY
Applicant's Mailing Address, or Principal Place of Business 2315 KAHEKILI HWY. WAILUKU, HI 96793			Source Landowner's Mailing Address, or Principal Place of Business 225 EAST WAIKO ROAD WAILUKU, HI 96793		
Applicant's Phone [REDACTED]	Applicant's Fax N/A	Applicant's E-mail [REDACTED]	Source Landowner's Phone [REDACTED]	Source Landowner's Fax [REDACTED]	Source Landowner's E-mail [REDACTED]

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/8022 Waiehu/8023 Iao/8024 Waikapu/8001

4a. TMK OF STREAM DIVERSION LOCATION:

3	-	2	-	14	:	001
Zone		Sector		Plot		Parcel

4b. TMK OF DITCH DIVERSION LOCATION:

3	-	2	-	006	:	004
Zone		Sector		Plot		Parcel

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

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 Attachment A

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): CHANG C.
 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 <i>Cordell Chang</i> Signature <u>Cordell Chang</u> Print 4/19/09 Date	12. SOURCE LANDOWNER Signature Print Date
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**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	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	1,125	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	13,500	GPD				
AVERAGE DAILY USE (Average of the above)	1,125	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 TIME 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						0		GPD	
Uses that do not require potable water									
AGRCP	3 - 2 - 006 : 004 Zone Sector Plat Parcel	Ag	No	Ag	No	1,125	No	0.45	See Attachment A
	Zone Sector Plat Parcel								
	Zone Sector Plat Parcel								
	Zone Sector Plat Parcel								
TOTAL NON-POTABLE USE						1,125		GPD	
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						1,125		GPD	
If total use requested is not equal to the total monthly average in Table 1, please explain. Not applicable.									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. Not applicable.									

**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 - 2 - 006 : 004 <small>Zone Sector Plat Parcel</small>	Diversified Agriculture	1.29 acres	0.45 acres	Year Round	Year Round	Drip irrigation & hand water	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	Not applicable	See Attachment A
Wastewater reuse	Not applicable	See Attachment A
Ditch system	Not applicable	See Attachment A
Desalinization	Not applicable	See Attachment A
Ground water	Not applicable	See Attachment A
Other (specify)	Not applicable	Not applicable

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 A.

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(c) of the State Water Code which states that: *(i)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.*

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 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

- I. **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	
IRRGC	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRSC	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.*

ATTACHMENTS

This Water Use Permit Application incorporates the following attachments:

Attachment A – Supplemental Responses

Attachment B – TMK Map

Attachment C – Photographs

Attachment D – Documentation Establishing Appurtenant Rights

Attachment E – 7.5-minute series (1:24,000) USGS Topographic Map showing Waihe`e Stream, with the Waihe`e Ditch Diversion and Spreckels Ditch Diversion labeled.

NOTE: Because my existing use of water as of April 30, 2008 was limited by the lack of availability of sufficient water, my use on that date was less than used previously on this land, and less than I plan to use in the future if water is restored. Accordingly, I am submitting, together with this Application, a Surface Water Use Permit Application for a New Use, so that I can resume active kalo cultivation in the lo`i that were used for kalo until the 1980s, when the availability of water was reduced.

ATTACHMENT A

SUPPLEMENTAL RESPONSES

Box 2: Source Landowner

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

Box 5: Stream Diversion

We are a kuleana user along the kuleana 'auwai that runs to the South of Waihe'e River. Water is diverted from Waihe'e River at the Waihe'e and Spreckels diversions (see USGS Topographical Map, Attachment E). All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe'e diversion. The South Waihe'e kuleana 'auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open 'auwai on the south side of Waihe'e River. The water continues makai in the 'auwai, and a 3" pipe brings water from the 'auwai to our land, where we use it for diversified agriculture, as detailed in the attached photo exhibits. Our intake is shared with our neighbors, Charlene and Jacob Kana. Any unused water flows into a kuleana 'auwai makai of our property and continues on to other kuleana users.

Box 6: Flow Measurement Information

Our existing water use is not gauged. I estimated our existing water use at 1,125 gallons per day by multiplying the amount of land we used for diversified agriculture as of April 30, 2008 (0.45 acres) by 2,500 gallons per acre per day, which is the amount of water I understand the Commission allocated for diversified agriculture in the Waiāhole case.

Box 7: Appurtenant Right

This property has an appurtenant right to water because it was in kalo cultivation at the time of the Māhele of 1848. Appended to this application as ATTACHMENT D are true and correct copies of Land Commission Award 3805 and Royal Patent No. 5352, along with the testimony indicating that the land was in kalo at the time of the Māhele. We have no evidence, indication, or other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 1: 12-Month Average Daily Use

See supplemental response for Box 6.

Table 2: Land Use Consistency/Efficiency

Boxes 3 & 5 – Our application is for an existing use of water on land zoned for agriculture. The cultivation of diverse crops such as bananas, kale, chard, Chinese parsley, sweet potato, cucumbers, beets, carrots, dryland kalo, avocado, and starfruit and 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.

Box 10 – See supplemental response for Box 6.

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 water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law.

Moreover, even if we did not have protected rights to water from Waihe`e River, there is no potentially available alternative source that is economically practicable. We grow crops for our home use and to provide educational and other experiences through our non-profit Lokelani `Ohana, an organic farming program for people with disabilities. An alternative water source would require us to pay for water used to grow our crops. We would effectively be denied our appurtenant right to use Waihe`e River water to make our land productive. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

Municipal Sources – As long as I can remember, we have always used water from Waihe`e River on this kuleana parcel. Requiring me to pay for municipal water instead would impose an unfair and impracticable cost on my use.

Wastewater reuse – Reusing wastewater is impracticable because I would still be required to pay for water. Moreover, as a small user, 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 Spreckels Ditch via an existing kuleana `auwai that passes mauka of our land (and had to stop kalo cultivation when Wailuku Agribusiness limited the amount of water delivered to this kuleana and my neighbor's kuleana by installing a 3" pipe to deliver water from the auwai). Getting water from other ditch systems is not practicable, because there is no other ditch that passes near our kuleana land and we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. In any event, another ditch diverting water from Waihe`e River would not be an alternate water source. Constructing a ditch system to deliver water from another stream does not appear technically feasible given the topography and distance and would be cost prohibitive.

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 was 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 extremely burdensome. As a small user, I do not have the means to install and maintain such infrastructure.

Table 4: Public Interest

Our Existing Use is Consistent with the Public Interest

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.” As such, my existing use of stream water for diversified agriculture is consistent with the public interest.

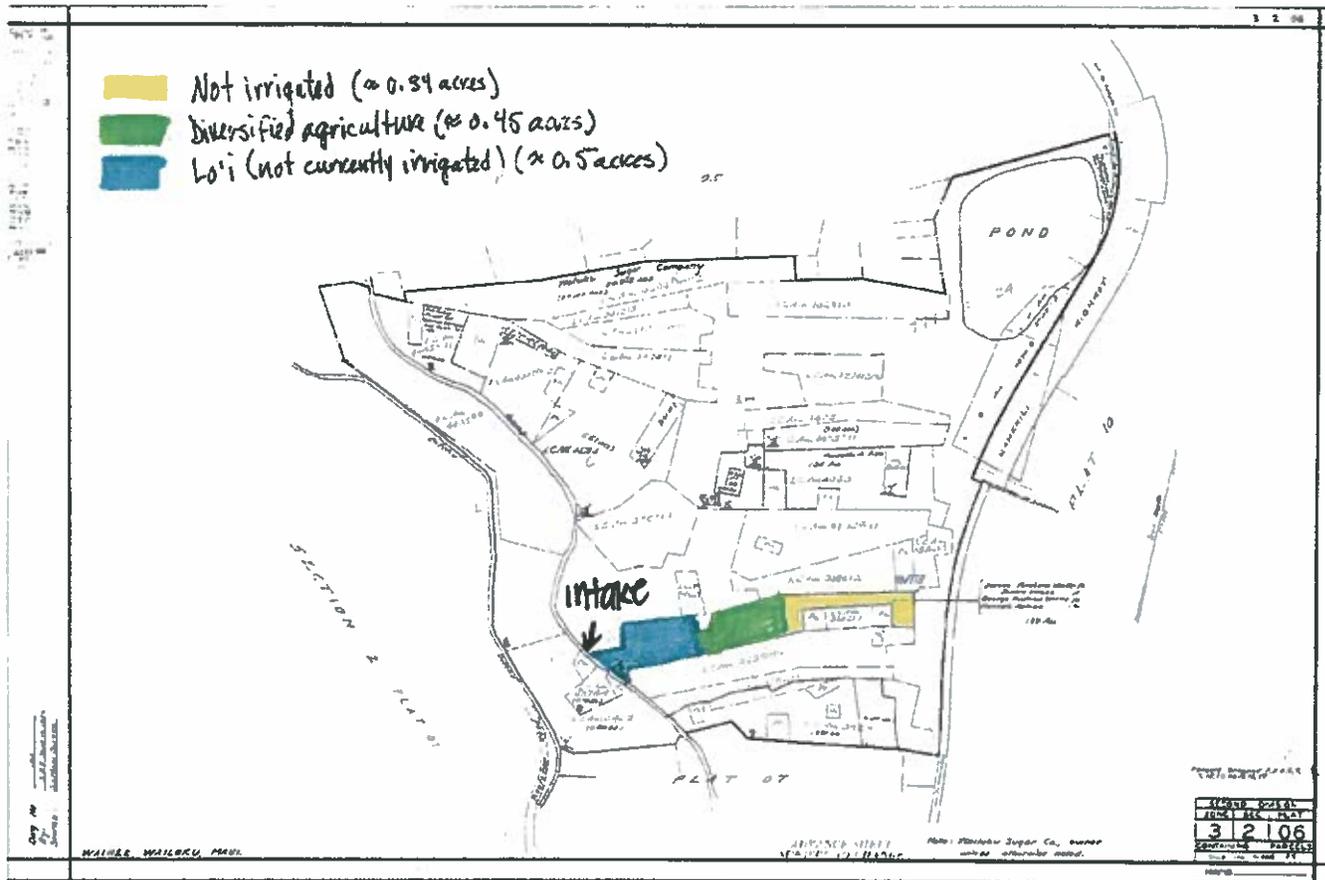
Our Existing Use is a Protected Public Trust Purpose

Because my existing water use is based on an appurtenant right, it is a protected public trust purpose. Waiāhole I, 94 Hawai‘i at 137 n. 34, 9 P.3d at 449, n. 34.

Our Existing Use is 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, my 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 I only use the amount I need.

ATTACHMENT B: TMK MAP



This is a true and correct copy of TMK No. 3-2-006: 004 highlighted to show the location of our uses.

ATTACHMENT C: PHOTOGRAPHS



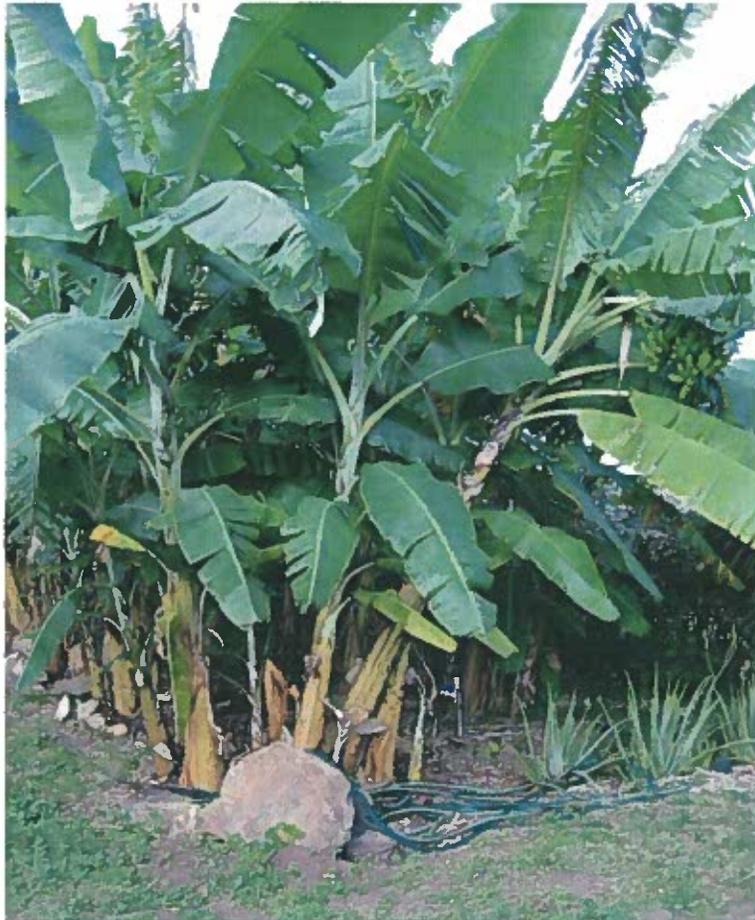
Above are true and correct copies of photographs that accurately depict the condition of the 'auwai (top photo) that feeds our kuleana intake, as well as the actual intake (bottom photo) that provides water to our kuleana and our neighbors.



Above is a true and correct copy of an April 18, 2009 photograph that accurately depicts the pipe that divides water between our kuleana and the Kana's kuleana, our neighbors.



Above is a true and correct copy of an April 15, 2009 photograph that accurately depicts our pipe's reduction in size to supply the drip irrigation system for our diversified agriculture.



Above is a true and correct copy of a photograph taken on January 31, 2009 accurately depicting our existing use of water for our diversified agriculture (bananas).



This is a true and correct copy of a photograph taken on January 31, 2009 accurately depicting our existing use of water for our vegetable garden.



Above is a photo accurately depicting the ditch that is available to return any excess water to our lower `auwai. This `auwai (pictured below) runs makai of our property and provides water to other kuleana users. These are true and correct copies of photos taken on April 15, 2009.



ATTACHMENT D: DOCUMENTATION ESTABLISHING APPURTENANT RIGHTS

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W. P. Lee
 W. P. Lee
 G. M. Robinson
 R. M. Smith
 S. M. Smith

Heardulu Sulai 12, 1852
 Heardulu Sulai 12, 1852

W. P. Lee
 W. P. Lee

92 Ak. a hiki 290 du hiki Hanga, hiki. Man 623 Komoheua 53 Ak. Palau. Man 418
 Hiki 105 Ak. Palau. Man 55 Ak. Hiki. 533 Ak. Palau. Man 29 Ak. Hanga 15 Ak.
 Palau. Man 67 Ak. Hiki. 523 Ak. Palau. Man 21 Ak. Hiki. 7 Ak. Palau.
 Man 2 Ak. Hiki. 15 Ak. Palau. Man 21 Ak. Hiki. 15 Ak. Palau. Man 66 Ak. Hiki.
 95 Ak. Hiki. 15 Ak. Palau. Man 21 Ak. Hiki. 15 Ak. Palau. Man 66 Ak. Hiki.
 Palau. Man 63 Komoheua 15 Ak. Palau. Man 54 Ak. Hiki. 15 Ak. Palau.
 Man 63 Komoheua 15 Ak. Palau. Man 54 Ak. Hiki. 15 Ak. Palau.
 105 Ak. Palau. Man 7 Ak. Hiki. 17 Ak. Hiki. 17 Ak. Hiki. 17 Ak. Hiki. 17 Ak. Hiki.
 via anghani 14 Ak. Hiki.

John T. Lowry
 Man iina iina

EXHIBIT C-30

Maloko o *Chang* ^{spana} *1.29* ^{Elia}
e oi iki aku, e emi iki mai paha. *Chang* Ua hoo, nui i ka aupuni, ua hoo maopala a me ka matala o paa.
No
ua nina la i haawia mai ko *King* *Alaka'i* a no hoo maopala, a me hoo waipuna, ua pili mai
ka euhou a ka Poe Alaka'i o ka lani i ka maopala a me ka matala o paa.
A I MEA E IKA AI, ua hoo waipuna i ka maopala, a me ka lani o ka Hawaii, Paa
Alaka'i o Honolulu i ka maopala.
June *18 63*
Kamohamohala
P. Kamohamohala

22

The Claimant received this from his parents in the days
 of Pihachamahe the title was not disputed.
 It is bounded to the north by Pihachamahe's land, to the south
 by Pihachamahe's land, to the east by the Pihachamahe's land, by the
 title of Pihachamahe.
 It is bounded to the north by the land of Pihachamahe, by
 the title of Pihachamahe, to the south by the Pihachamahe's land, by
 Pihachamahe's land.

C. 38th Hinaiaia

This is a piece of land which consists of two pieces in Pihachamahe's
 title.

It is a portion of Pihachamahe's land in Hinaiaia.
 It is bounded to the north by Pihachamahe's land, to the south
 by Pihachamahe's land, to the east by Pihachamahe's land, to the west
 by Pihachamahe's land.

The Claimant is a very old man, a son of the land
 and has possessed the land ever since in peace and quiet about
 a week since when he was taken away by his son by
 the right of force. There is a provision in the title.
 It is bounded to the north by Pihachamahe's land, to the south
 by the land of Pihachamahe, to the east by Pihachamahe's land, to the west
 by Pihachamahe's land.

It is bounded to the north by Pihachamahe's land, to the south
 by the land of Pihachamahe, to the east by Pihachamahe's land, to the west
 by Pihachamahe's land.

C. 39th Pihachamahe

This is a piece of land which is a piece of Pihachamahe's land
 in the title of Pihachamahe, Hinaiaia.

The Claimant received it from Pihachamahe in 1824. There
 are 5 families in it. His title is not disputed.

It is bounded to the north by Pihachamahe's land, to the south
 by Pihachamahe's land, to the east by Pihachamahe's land, to the west
 by Pihachamahe's land.

No. 1010 Hinaiiale July 25, 1849 Page 270

I.S. Keawa sworn He has seen 2 sections in the ilio of Waihee. This has been their lands since the time of Z. Kanwai in 1829, no objection. 1 Poalima in the first section.

Section 1 - Taro penku and pasture at Hailile

Mauka	Kamaika
Kahakuloa	Large ditch
Makai	Hoanaepum
Wailuku	Kamiheana

Section 2 - Taro penku and house lot at Pahukauiia

Mauka	Kamaika
Kahakuloa and makai	Poalima
Wailuku	Kaulahiwa

No. 3805 Leuhue July 25, 1849

Keawa sworn He has seen 1 section in Puhanolu ili in Waihee. Land from Nailima in 1829, no objection. 5 Poalimas there.

Mauka	Keale
Kahakuloa	Pila
Makai	Land fence
Wailuku	Palau

No. 4434 Alauka July 25, 1849
 3770 A

Keawa sworn He has seen 2 sections in the ili of Koiahi of Waihee. Land from her (Alauka) husband in 1829, no objection. 2 Poalimas in first section.

Section 1 - Taro penku

Mauka	Kuheleamoku
Kahakuloa	Anadarea
Makai	Kapihe
Wailuku	Kaasmakua

Section 2 - Taro Pauka

Mauka	Poalima
Kahakuloa	Stream
Makai	Kanaikroho
Wailuku	Poalima

No. 4431 Kamaika July 25, 1849 Page 271

Kahimu sworn He has seen 2 sections in the ilio of Waihee. Section 1 from Kahimu in 1829, section 2 from Kaholoaulani in 1829, no objection. 2 Poalimas in the first section.

Section 1 - Taro penku at Halapaha

Mauka	Poalima
Kahakuloa	Kahimu's land
Makai	Poalima
Wailuku	Stream

Section 2 - 3 Taro patches at Kahilinaia

Mauka	Leuhue ili
Kahakuloa and makai	Kaholoaulani's land
Wailuku	Kanalua

COPIED AT THE HAWAII STATE ARCHIVES

ATTACHMENT E

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

