



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

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COMMISSION ON WATER RESOURCE MANAGEMENT
 2009 APR 23 PM 4:16
 Event ID: SWUP.2235.6

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

SWUP 35

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 Russel Gushi		Applicant's Contact		2. SOURCE LANDOWNER'S NAME Avery Chumbley		Source Landowner's Contact	
Applicant's Mailing Address, or Principal Place of Business 185 West Waiko Road Wailuku, HI				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: Waialae/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 : 015
 Zone Sector Plat Parcel

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply
 Pipe Pump Ditch/vauwal Other Describe: see attachment 1
 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 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 1

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 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):
 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 Russel Gushi Print		 Signature Print	
Date: 4/4/09		Date:	

FILE ID: SWUP.2235.6
 DOC ID: 3239 ✓

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

**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 (TRM) 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.)
Zone 3 Sector 5 PMA Parcel 012 : 015	diversified ag	0.32	0.18	Year round	Year round	Other-flood and hand water	Irrigate to field capacity
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
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Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							
Zone Sector PMA Parcel							

**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		see attachment 1
Wastewater reuse		see attachment 1
Ditch system		see attachment 1
Desalinization		see attachment 1
Ground water		see attachment 1
Other (specify)		N/A

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 1

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 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	
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.*

ATTACHMENT 1

EXHIBITS: Appended hereto as **EXHIBIT 1** is a copy of the 7.5 minute-series USGS topographic map with the Waikapū Stream and Waikō Road `auwai diversion labeled. **EXHIBIT 2** is a TMK map showing the location of our property and the locations of the `auwai diversion and area of our existing domestic use. **EXHIBIT 3** is a TMK map showing the `auwai diversion from the stream and the route of the `auwai to the diversion at our property. **EXHIBIT 4A** contains true and correct copy of a photograph taken on or about October 12, 2008 depicting the stream diversion; **EXHIBITS 4B-D** contains true and correct copies of photographs taken on or about January 19, 2009, depicting our ditch diversion and areas of use. **EXHIBIT 5** is described below.

2. Source Landowner:

Not applicable per HRS § 174C-51(1), which requires the name and address of the landowner, not a signature. According to the Water Commission's records, which have not been verified, Avery Chumbley claims to be the source landowner.

5. Stream Diversion:

We currently use water from the kuleana `auwai that runs along Waikō Road. Water is diverted into the `auwai from the 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 our property where we divert some water via several 5/8 inch garden hoses and one 2" PVC pipe to irrigate our bananas, dryland taro, landscaping, vegetable garden, and fruit trees. The water is consumed and does not return to the stream. Our diversion can be shut off when not in use. See **EXHIBIT 4B**.

6: See explanation for Table 2, below.

7. Appurtenant rights:

My property had appurtenant rights, as documented in Land Commission Award 8808 to Kekeleiaiku and other supporting documents. Attached as **EXHIBIT 5** are true and correct copies of Land Commission Award No. 8808, Royal Patent No. 2164, and accompanying testimony showing our land was in kalo at the time of the Mahele of 1848. However, Edmund Rogers reserved appurtenant water rights when he sold the property to me. 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: See explanation for Table 2, below.

Table 2, Justification for Requested Quantity:

I estimated my existing domestic water use, e.g., my use of water outside my home for watering my non-commercial garden, lawn, and fruit trees, by applying the 2002 State of

Hawai'i Water System Standard for Maui County of 600 gallons per single family home. Even though my domestic water use is relatively small, I am still applying for and would like a Water Use Permit for my existing use.

Table 4. Alternatives Analysis

We have a small non-commercial garden including dryland taro, bananas, vegetables, citrus trees, and ornamental landscaping plants. The crops we grow feed our `ohana and are shared with neighbors and community members. As shown below, each potentially available alternative water source is impracticable for a small, non-commercial user like us.

Municipal Sources. As long as we 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 our existing 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. 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 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 section:

Our Existing Use is Consistent with the Public Interest: The county zoning of our property is Ag. 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). Further, HRS § 174C-2(c) provides that the protection of agriculture and the maintenance of proper ecological balance and scenic beauty are "in the public interest." As such, our existing use of stream water is consistent with the public interest.

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,

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 we are able to turn off our diversion when we have adequate water. Therefore, the water we use is a “reasonable-beneficial use.”

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

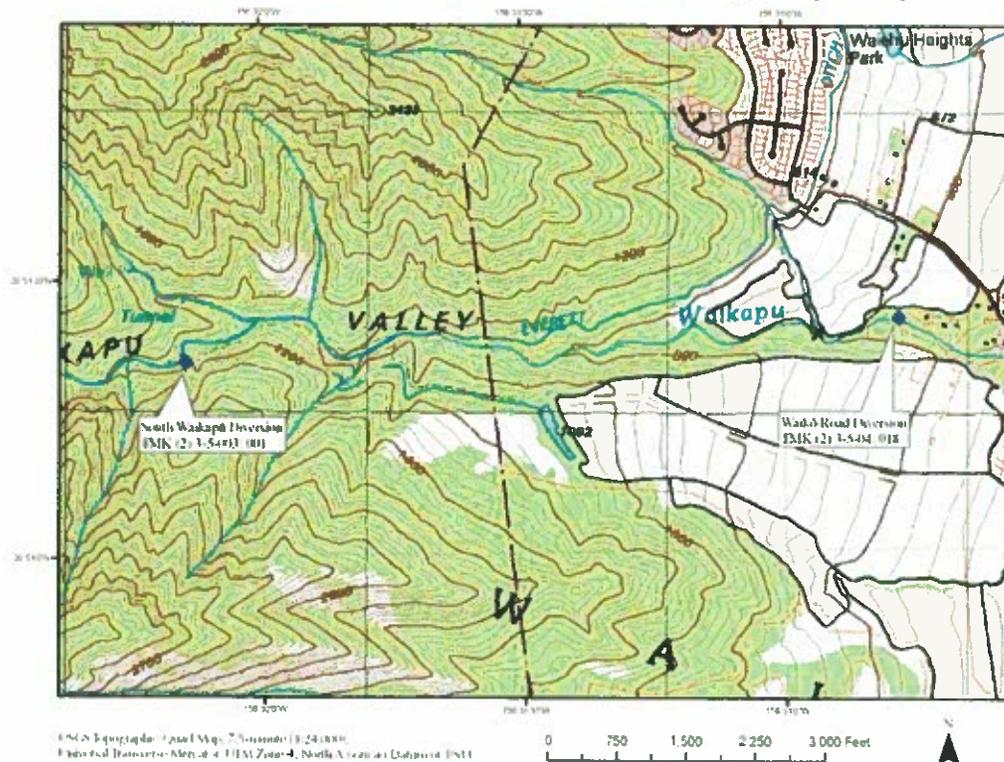


EXHIBIT 1

USGS Map showing the location of the Waikō Road `auwai diversion



EXHIBIT 2

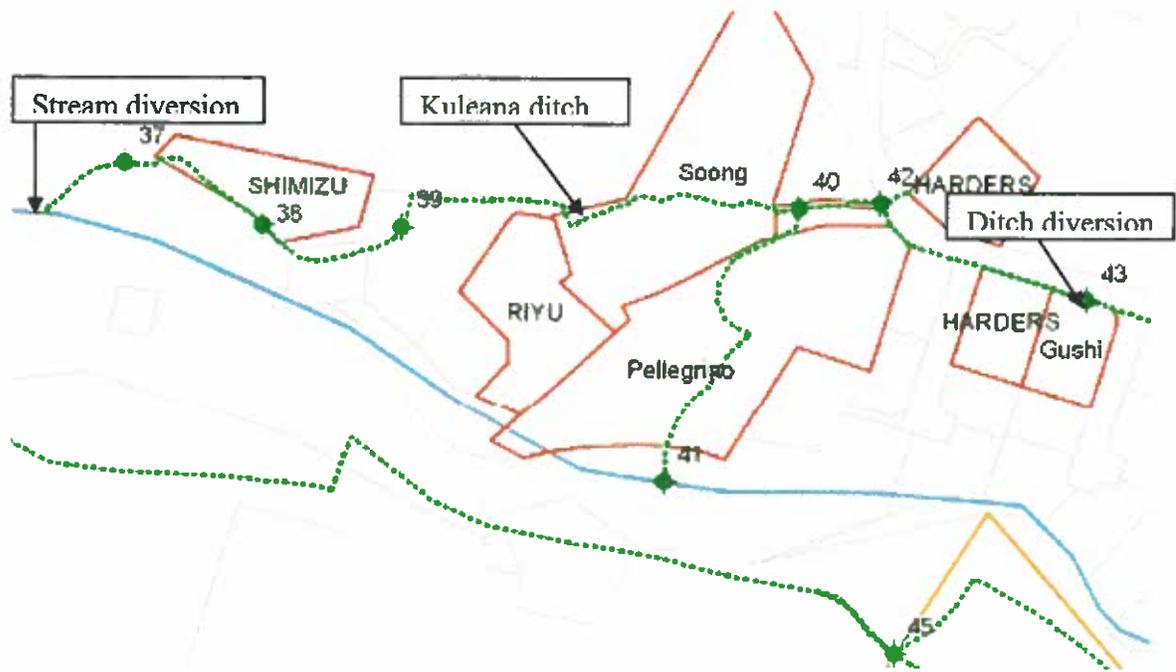


EXHIBIT 3



EXHIBIT 4A

Stream diversion and intake pipe that feeds `auwai



EXHIBIT 4B

Kuleana ditch diversion. Depicted are the three 5/8" hoses and 2" PVC pipe that divert water from the kuleana ditch to our property. In this photo, the PCV pipe is positioned up to prevent the flow of water.



EXHIBIT 4C

Portion of our garden cultivated in dryland taro. Ti plants for landscaping are visible in the background.



EXHIBIT 4D
Landscaping on the perimeter of our property

- Parcel 3. Taro mo'o at Palana, Waikapu
4. " " " " " "
5. 11 lo'i " " " "
6. 5 lo'i & kula " " " "
7. 3 lo'i at Kamaohali " " " "
8. House lot " Kaalaea " " " "
9. Potato mala at Waiohuli, Kula " " " "
10. " " " Kamaole " " " "

Parcels 1 to 6 were from Nakaikuaana in 1835. Parcels 7 and 8 were from Keaho in the days of Kamehameha I. Parcel 9 was from Kole in 1844; Kole had it from Pupuhi. Parcel 10 was from Folea in 1847; Folea received it from C. Kanaina. There is no opposition.

1. is bounded mauka by Kaina, Waihee by Antonio Catalina, Kula and Maalaea by stream.
2. is bounded mauka by Haole, Waihee by Kaina, Kula by Kaina, Maalaea by stream.

3. is bounded mauka by Keaweamahi, Waihee by myself, Kula and Maalaea by stream.
4. is bounded mauka by Kamai, Waihee by Manu, Kula and Maalaea by stream.
5. is bounded mauka by Niheu, Waihee by Pepelaopili, Kula by myself, Maalaea by stream.
6. is bounded mauka by Pepelaopili, Waihee by Napuupahoehoe, Kula by Kaina, Maalaea by Pepelaopili.
7. is bounded mauka by Kahakumakaai, Waihee by Ehunui, Kula by Kaai, Maalaea by Kaai.
8. is bounded mauka by Napaeloi, the other three sides by land.
9. is bounded mauka by Kole, Honuaula by Paele, makai by Kole, Makawao by Eas.
10. is bounded mauka by Folea, Honuaula by Folea, makai by Kino Humphreys, Makawao, Government.

No. 2607 - Piipii July 16, 1849

Kahuihoupe sworn: I know his two parcels in Waikapu.

- Parcel 1. Taro pauku in Kapalaalaea
2. 5 taro lo'i in Pikoooku

Parcel 1 was from Napuupahoehoe in 1836. Parcel 2 was from Omno in 1836. No opposition. No po'alima in it. Piipii died in 1848 and his heir is his brother, Nu.

1. is bounded mauka by Government lot, Waihee by land of Haanui, Kula by the 'Ili of Kukuialainaka, Maalaea by the 'Ili of Kapehana.
2. is bounded mauka by Napaeloi, Honuaula by stream, Kula and Makawao by Kaai.

No. 8808 - Kekeleiaiku

Eka sworn: I know of four parcels in Waikapu and three potato parcels in Kula.

EXHIBIT 5

Parcel 1.	Taro pauku at Mokahelahela	'Ili in Waikapu
" 2.	" " "	" " "
" 3.	6 lo'i	" " "
" 4.	Kula	" " "
" 5.	Potato mala Waiohuli	" " Kula
" 6.	" " Kamaole	" " "
" 7.	" " "	" " "

Parcels 1, 2, 3 and 4 were from Napuupahoehoe in 1842; it was an ancient land from his wahine. Parcel 5 was from Pupuhi,

in 1844. Parcels 6 and 7 were from Kalauao. There is no po'alima in the parcels in Waikapu. No opposition.

1. is bounded mauka by the 'Ili of Kuaia, Waihee 'Ili of Auwaic-limuiki, Kula, Lot of Pupuhi, Maalaea, Napuupahoehoe.
2. is bounded mauka by 'Ili of Kuaia, Waihee by Mumuku, Kula by Pupuhi, Maalaea by Puupahoehoe.
3. is bounded mauka by 'Ili of Nohoana, Waihee, Kula, 'Ili of Pili-pili 1, Maalaea, stream.
4. is bounded mauka by Mumuku, Waihee by Kaai, Kula by Government lot, Maalaea by Puupahoehoe.
5. is bounded mauka by Puupahoehoe, Honuaula by Mumuku, makai by Kapuaa, Makawao by Luukia.
6. is bounded mauka by Kalaikapu, Honuaula by Kalauao, makai by Mahoe, Makawao by Weloaka.
7. is bounded mauka by Pipio, Honuaula by Wiwi (son of/ Keahi, makai by Kamukoli, Makawao by Kalauao.

No. 8464 - Keaweehu July 16, 1849

Naanaa sworn: I know of two parcels in the 'Ili of Punia in the Ahupua'a of Waikapu. Parcel 1 has two lo'i, parcel 2 has four lo'i. They were from Hanunu in 1842. Keaweehu died in this year, 1849, and his heir is Kaai. No opposition.

1. is bounded mauka by Kaai, Waihee by my land, Kula, 'Ili of Kaopala, Maalaea by Keawe.
2. is bounded mauka by Keawe, Waihee by Keawe, Kula by myself, Maalaea by Kawana.

No. 5742 - Kaluahinui

Kamai sworn: I know of his two parcels in these 'Iilis of Waikapu as follows:

- Parcel 1. Taro pauku at Ohia
- " 2. House lot and 1 lo'i at Palama

Parcel 1 was from Napuupahoehoe in the time of Kamehameha I.

Parcel 2 was from his makua, at the same time. In the first parcel is one po'alima. No opposition.

1. is bounded mauka by Manu and Kuheleleca, Waihee by pali of Waikapu, Kula by Kakau and Kuahui, Maalaea by Waikapu stream.
2. is bounded mauka by Kapule, Waihee by Kekua, Kula by Napuupahoehoe, Maalaea by Poupou and Pepetaopili.

EXHIBIT 5

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years from living, and has possessed it ever since up to his death in 1880
 This was his last will & his heir.

Plot 1 is bounded Maunaloa, by the Great Mt. Tolu, by the side of Maunaloa, by the side of Maunaloa. Maunaloa, by the side of Maunaloa.

Plot 2 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

C. 5503 Kakaiaho.

Like the other Old lands consist of seven pieces in Kakaiaho & Maunaloa.

Plot 1 is a section of land in Maunaloa.

Plot 2

Plot 3

Plot 4

Plot 5

Plot 6

Plot 7

The Old lands in Kakaiaho were first purchased in 1822, or rather from the side, who is the daughter of the first purchaser. Her father was born in Kakaiaho, the land in Kakaiaho, the one from Puapua, and then in Kakaiaho from Maunaloa in 1822. This title has never been disputed.

Plot 1 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

Plot 2 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

Plot 3 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

Plot 4 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

Plot 5 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

Plot 6 is bounded Maunaloa, by the side of Maunaloa, by the side of Maunaloa, by the side of Maunaloa.

EXHIBIT 5

Filed at Hawaii State Archives

2. Kakuwa's land, 2'ohai, by Kakuwa's land. Makawao, by Mary Con-
 ough's land.
 3. 7. is bounded. Kakuwa, by Kakuwa's land. Makawao, by Mary
 land. Kakuwa, by Kakuwa's land. Makawao, by Mary's land.

C. 266. Makawao.

This was bought by Mr. Richards in 1846.

The title consists of 2 pieces in the title of Hawaii.
 Kakuwa, Hawaii.
 1st is 2 lots
 2nd is 2 lots
 The title was bought from Kakuwa in 1842, and has
 been held in the same name. His title was not disputed up to his
 death this year. Kakuwa is his heir.
 1st is bounded. Kakuwa, by Kakuwa's land. Makawao, by Mary
 land. Kakuwa, by the title of Kakuwa. Makawao, by Kakuwa's land.
 2nd is bounded. Kakuwa, by Kakuwa's land. Makawao, by
 the same. Kakuwa, by Mary's land. Makawao, by Kakuwa's land.

C. 576. Makawao.

This was bought by Mr. Richards in 1846.

The title consists of two pieces in the title of Hawaii.
 1st is a section of lots in Hawaii.
 2nd is a section of lots in Hawaii.
 The title was bought from Kakuwa in the name of Kakuwa
 and Kakuwa. From his parents he possessed it from the day
 of Kakuwa's death. His title was never disputed.
 1st is bounded. Kakuwa, by Kakuwa's & Kakuwa's land.
 Makawao, by the title of Kakuwa. Kakuwa, by Kakuwa's & Kakuwa's land.
 Makawao, by the title of Kakuwa.
 2nd is bounded. Kakuwa, by Kakuwa's land. Makawao, by
 Kakuwa's land. Kakuwa, by the title of Kakuwa. Makawao, by Kakuwa's
 & Kakuwa's land.

C. 666. Makawao.

This was bought by Mr. Richards in 1846.

EXHIBIT 5

Russel Gushi
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SWUPA- Existing Use
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