



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

APPLICATION FOR SURFACE WATER USE PERMIT FOR
 PROPOSED NEW USE IN A DESIGNATED SURFACE WATER
 MANAGEMENT AREA

FORM SWUPA-N Application for New use
 Application to Modify SWUP No.

For Official Use Only:
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 23 PM 4:08
 SWUP. 2242.6

For detailed instructions on filling out this application form completely, refer to the attached instructions sheet.
 Incomplete applications will not be accepted for processing.

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 location and the quad map name.
- Property tax map showing the stream or diversion location and location of water use referenced to established property boundaries.
- Photograph(s) of the surface water source, diversion and use, if applicable.

APPLICANT INFORMATION: NOTE: In accordance with HRS §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 be stated as a joint applicant for the water permit.

1. APPLICANT'S NAME DARRELL HIGA		Applicant's Contact DARRELL HIGA		2. SOURCE LANDOWNER'S NAME WAILUKU WATER COMPANY LLC		Source Landowner's Contact Avery Chumbtey	
Applicant's Mailing Address, or Principal Place of Business 918 Kanakaea Loop Lahaina, HI 96761				Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Waiuku, HI 96793			
Applicant's Phone		Applicant's Fax		Applicant's E-mail		Source Landowner's Phone (808) 244-7079	
						Source Landowner's Fax (808) 242-7068	
						Source Landowner's E-mail abc@aloha.net	

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: MULTIPLE Hydrologic Unit Code: MULTIPLE

4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT IF APPLICABLE: N/A

5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: Yes No
 Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit:
 See attachment page 1.

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 5 - 0 0 3 : 0 0 1
Zone Sec Plat Parcel

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 4 - 0 0 4 : 0 1 6
Zone Sec Plat Parcel

7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply.
 Pipe Pump Ditch/auwai Other Describe: See attachment page 1.

7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?
 Yes. How much water will be returned? See attachment page 1.
 No

8. PROPOSED FLOW MEASUREMENT INFORMATION:
 Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?
 Yes. List the manufacturer and describe the device. N/A
 No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below.
 See attachment page 2.

PROPOSED USE INFORMATION HRS §174C-51(4), (5), (6)

9. TOTAL QUANTITY OF WATER REQUESTED: 138,000 gallons per day. See Table 1, Item 14.

10. PROPOSED USE: Check all that apply. Agriculture Domestic Industrial
 See Table 1, Item 1. Irrigation Military Municipal

11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps. See Table 1, Item 2.

PROPOSED USER INFORMATION

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

13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system?
 Yes. List the name of the system operator: Waiuku Water Company No

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

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission?
 Yes. List the permit number(s): N/A 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, additional 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.

16. APPLICANT Signature Print 4-4-09 Date		17. SOURCE LANDOWNER Signature Print Date	
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FILE ID: SWUP. 2242.6
 DOC ID: 3247

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY

(Attach additional copies of Table 1 if necessary.)

LAND USE CONSISTENCY			EFFICIENCY OF USE							
1	2	3	4	5	6	7	8	9	10	11
PURPOSE/ WATER USE CATEGORY	TRM FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property line map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.	STATE LAND USE DISTRICT	CRUP REQ'D Check the appropriate box, and indicate date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and indicate date approved, if applicable.	UNITS OR NET ACREAGE	GPD/ACRE or (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB- METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how the number was calculated. For irrigation uses, fill in Table 2.
Uses that require potable (drinking) water										
	Zone - - - - - Parcel		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone - - - - - Parcel		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone - - - - - Parcel		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone - - - - - Parcel		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
TOTAL POTABLE USE 0 GPD										
Uses that do not require potable water										
AGRCP	Zone 3 - 4 - 0 0 4 : 0 1 7 Parcel	URBAN	<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	URBAN	<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	0.225 acres	300,000	67,500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See attachment page 2.
AGRCP	Zone 3 - 4 - 0 0 4 : 0 1 6 Parcel	URBAN	<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	URBAN	<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No	0.235 acres	300,000	70,500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	See attachment page 2.
	Zone - - - - - Parcel		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone - - - - - Parcel		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / <input type="checkbox"/> Yes, not acquired / <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
TOTAL NON POTABLE USE 138,000 GPD										
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) = 138,000 GPD										
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS										
N/A										

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

	A. Analysis of Potable Alternatives (Attach additional sheets if necessary.)	B. Analysis of Non-Potable Alternatives (Attach additional sheets if necessary.)
Municipal sources	N/A	See attachment page 2-3.
Wastewater reuse	N/A	See attachment page 2-3.
Ditch system	N/A	See attachment page 2-3.
Desalination	N/A	See attachment page 2-3.
Ground water	N/A	See attachment page 2-3.
Other (specify)	N/A	See attachment page 2-3.

C. ADDITIONAL REQUIREMENTS:

PUBLIC INTEREST Hawaii Revised Statutes §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.*

1. Explain below how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code above.
See attachment page 3.
2. Explain below how your proposed new use(s) will not interfere with any existing legal use(s).
See attachment page 4.
3. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.
See attachment page 4.

APPLICATION FOR SURFACE WATER USE PERMIT PROPOSED NEW USE

INSTRUCTIONS

This application form is for **new surface water uses** or for a modification of a previously approved water use permit in designated surface water management areas. New surface water uses are proposed uses after the effective date of designation of the surface water management area. Please check the appropriate box.

Do not use this form for existing surface water use applications. Existing surface water uses are actual uses before the effective date of designation. Please use Form SWUPA-E for existing uses.

Most questions can be addressed by visiting our website at: www.hawaii.gov/dlnr/cwrm, or contacting us at 587-0234, or by email at: dlnr.cwrm@hawaii.gov. The current application forms are also available at: www.hawaii.gov/dlnr/cwrm/resources_permits.htm.

REQUIREMENTS FOR A COMPLETE APPLICATION

1. Fill in the most recent application form. A current form is available at our web site or by contacting us at 587-0234.
2. Print in ink or type in the information on the application.
3. Fill in every item in the application form (page 1) and Tables 1, 2, and 3 as it relates to your proposed new use or permit modification.
4. Enclose a check for the non-refundable filing fee of \$25 payable to: Department of Land and Natural Resources. Government agencies are not required to pay the filing fee.
5. Pay for the cost of publishing any required public notices related to your application. The current cost for publishing public notices is approximately \$400.00. Commission staff will provide instructions later in the permit process regarding payment of these costs.
6. Mark the source and end use locations on the appropriate USGS quad map (scale 1:24,000) and property tax (TMK) map and attach these maps to your application.
7. Attach photos showing your existing diversion, measuring device(s) (if applicable) and end use areas.
8. Sign the application form in ink. Both the applicant and the landowner where the source is located must sign the application form.
9. Submit the original application and 15 copies of the application form and all attachments (maps, photos and any other attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

ADDITIONAL REQUIREMENTS FOR A COMPLETED APPLICATION

Per Hawaii Revised Statutes §174C-49, the applicant must establish that the proposed new use of surface water:

1. Can be accommodated with the available water source.
2. Is a reasonable-beneficial use.*
3. Will not interfere with any existing legal use of water.
4. Is consistent with the public interest.**
5. Is consistent with state and county general plans and land use designations.
6. Is consistent with county land use plans and policies.
7. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.

*HRS §174C-3 of the State Water Code states: *"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.*

**HRS §174C-2(c) of the State Water Code 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.*

NOTE: Filling in the application form and Tables 1, 2, and 3 completely will address the requirements of HRS §174C-49.

LINE BY LINE INSTRUCTIONS ON APPLICATION

APPLICANT INFORMATION

In accordance with the Hawaii Water Code, both the applicant and the person who owns the property where the water source is located are required to apply for a water use permit. §174C-51(1)(B), HRS, states, *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:** Fill in the information for the applicant. This should be the person who 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.

SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Enter the appropriate island, hydrologic unit name, and hydrologic code where the proposed source is located. The "source" is the stream 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.

**APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE**

4. **INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT:** Provide Instream Flow Standard (IFS) for hydrologic unit if available.
5. **CAN YOUR PROPOSED USE BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS:** Check "Yes" or "No". Explain how your proposed use(s) can be accommodated within the Instream Flow Standard (IFS) for the above hydrologic unit.
- 6a. **TMK OF PROPOSED STREAM DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the tax parcel where the stream diversion will be located. Each tax parcel is issued a TMK number by the county property tax office and is defined as follows: 1st digit = (Island code), 2nd digit = Zone, 3rd digit = Section, Digits 4-6 = Plat, Digits 7-10 = Parcel, e.g. (1) 1-1-001:001. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/
- 6b. **TMK OF PROPOSED DITCH DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the parcel where the proposed ditch diversion will be located.
- 7a. **PROPOSED STREAM DIVERSION:** How will water be diverted from the stream to your property? Check all the appropriate box(es).
- 7b. **WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?** Check "Yes" or "No." If yes, enter the amount of water to be returned.
8. **PROPOSED FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If yes, please describe the measuring device. A flowmeter with a totalizer will directly measure the total use for the source (similar to a car's odometer). If no, explain how stream diversion will be measured or estimated to justify amounts requested.

PROPOSED USE INFORMATION (HRS §174C-51(4), (5), (6))

9. **TOTAL QUANTITY OF WATER REQUESTED:** Enter the amount of water requested as gallons per day (GPD). Fill out Table 1 and enter the amount in Box 14, "Total Use Requested."
10. **PROPOSED USE:** Check all the boxes that apply for the proposed use. Refer to the instructions for Table 1: Land Use Consistency/Efficiency of Use, Item 1: Purpose/Water Use Category below to determine which water use category to use.
11. **LOCATION OF PROPOSED WATER USE:** Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps and show the location of the proposed use.

PROPOSED USER INFORMATION

12. **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 proposed water use? Check "Yes" or "No."
If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
13. **PROPOSED END USER INFORMATION:** Will you be an end user on an existing water system? Check "Yes" or "No." If yes, please list the name of the water system operator.
14. **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, list the name of the registrant(s).
15. **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."
16. **APPLICANT:** Sign and print your name, and date your application.
17. **SOURCE LANDOWNER:** Sign and print your name, and date your application. The landowner of the source shall be a 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)

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY OF USE

Provide information on all of the proposed uses you are applying for or seeking to modify. In the space provided below the table or on a separate sheet, explain whether there are any limitations (e.g., a contract or other legal agreement(s)) on your proposed water use(s), as required by §174C-51(5), HRS.

1. **PURPOSE / WATER USE CATEGORY:** For each proposed use, choose one of the categories listed below and enter the appropriate code in the space provided (e.g. AGRAQ, IRRIG, etc.)

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

**APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE**

INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRG	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRS	Schools
MILITARY	
MIL	Military
MUNICIPAL	
MUNCO	County
MUNPR	Privately owned and operated but defined as a public system by the Department of Health
MUNST	State

2. USE TMK: The Tax Map Key number of the parcel over which the water will be 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, check "Yes" and enter the date CDUP was approved if you have a CDUP applicable to this project; or check "Yes, not acquired". If a CDUP is not required, check "No." To find out 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 Na Wai Eha, contact Maui County Department of Planning at 270-6279 or 270-7253.
6. SMAP REQUIRED: If a Special Management Area Permit (SMAP) is required, check "Yes" and enter the date SMAP was approved if you have a SMAP applicable to this project; or check "Yes, not acquired". If a SMAP is not required, check "No." To find out if your parcel is in a Special Management Area and requires an SMAP, contact Maui County at 270-8205.
7. UNITS OR NET ACREAGE: This is the value and category as the basis for calculating the duty. "Duty" means the amount of water requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling unit, or number of people, or animals. Some examples of this category include: 400 dwelling units, 500 people, and 3.74 acres.
8. GPD/UNIT or GPD/ACRE (GPD=gallons per day): Enter the gallons per day or gallons per acre for each water use category listed in Column #1.
9. REQUESTED QUANTITY OF USE (GPD): Enter the requested quantity of use in gallons per day (GPD) at build out after all phases of your project have been completed. The build out amount may differ from the four-year cumulative projected demand if your build out date extends beyond the cumulative projected four-year demand.
10. SUBMETERED? Is there a second measuring device or meter for another user? Check "Yes" or "No" if the specific use will be submetered or not. Submetering is specific to each line item.
11. APPLICANT'S JUSTIFICATION FOR QUANTITY OF REQUESTED USE FOR ITEM #9: Explain how you are justifying the amount(s) you are requesting for Item #9. Attach additional copies of Table 1 if necessary to show how this number was calculated. For irrigation uses, fill in Table 2.
12. TOTAL POTABLE USE: Add the quantities listed in the column above for potable water and enter the total potable use in gallons per day (GPD) here.
13. TOTAL NON-POTABLE USE: Add the quantities listed in the column above for uses that do not require potable water and enter the total non-potable use in gallons per day (GPD) here.
14. TOTAL QUANTITY OF WATER REQUESTED: Add the requested amounts listed on Box 13 and Box 14 and enter the total requested amount of both potable and non-potable uses here.
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. HRS §174C-51(5)

TABLE 2: IRRIGATION INFORMATION

On Table 2, provide the information requested for all the crops you are proposing to grow, including landscape and golf course turf and plants. Enter only one crop and one parcel number (TMK) per line. For multiple crops, list each one as a separate line item. All proposed or modified irrigation uses you are applying for must be listed. Attach additional copies of Table 2, if necessary.

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop will be grown. Also attach a property tax map with an outline around the area(s) of proposed use(s) and a photograph of each area of the proposed use.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage that the specific crop will be grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle.
7. IRRIGATION SYSTEM: Enter one of the following:

TRICKLE, DRIP
TRICKLE, SPRAY
MULTIPLE SPRINKLERS

**APPLICATION FOR SURFACE WATER USE PERMIT
PROPOSED NEW USE**

SPRINKLER, CONTAINER NURSERY
SPRINKLER, LARGE GUNS
SEEPAGE, SUBIRRIGATION
CROWN FLOOD
FLOOD (TARO)
OTHER – Please describe in the space provided for Comments.

8. IRRIGATION PRACTICE: Enter one of the following:

IRRIGATE TO FIELD CAPACITY
APPLY A FIXED DEPTH PER IRRIGATION
DEFICIT IRRIGATION
OTHER - Please describe in the space provided for COMMENTS below.

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

- A. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

- B. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for non-potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

Surface water is defined in §174C-3, HRS 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.*

C. **ADDITIONAL REQUIREMENTS**

1. Explain how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code below.

Hawaii Revised Statutes §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.*

2. Explain how your proposed new use(s) will not interfere with any existing legal use(s).

3. Explain how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act. See below. To inquire about potential interference, you may contact the Department of Hawaiian Home Lands Planning Office at 586-3836.

The State Water Code in §174C-101(a), HRS [Native Hawaiian water rights], states: *Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.*

Attachments

Appended hereto as Attachment B is a copy of the 7.5 minute-series USGS topographic map with the Waihe`e, `Īao, and North Waiehu `auwai diversions labeled. Attachment C is a TMK map showing the location of our property as well as a close-up of the property showing the locations of our `auwai diversion and area of proposed use. Attachment D contains copies of photographs of our `auwai diversion and area of proposed use. Attachment E is described below.

Supplemental Information for Box 2: Source Landowner

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

Supplemental Information for Box 3: Surface Water Hydrologic Unit

Hydrologic Unit & Codes: Waihee, 6022; Waiehu, 6023; Iao, 6024

Supplemental Information for Box 4 & 5: Instream Flow Standards

There currently are no Instream Flow Standards for Nā Wai `Ehā, and a petition to amend upwards the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions to accommodate my proposed use.

Supplemental Information for Box 7(a&b): Proposed Stream Diversion

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

The `auwai runs through Wailuku town and down Kalua Road, where we access water through a 1 ½" pipe. The amount of flow is inconsistent (and does not flow everyday); however, there is never enough water diverted from the ditch to return the water to Spreckels Ditch. The water flows from the `auwai into our 1 ½" pipe and fills our 2,000 gallon tank, which we use to store water to irrigate our plants every day. The water not caught in the 1 ½" pipe continues to flow south in the `auwai to our neighbors' properties. We seek to use additional water to cultivate wetland kalo in traditional lo`i kalo. If enough water is supplied, the water will be returned to the Spreckels Ditch, which abuts the property on its eastern edge.

Supplemental Information for Box 12: Do you claim an appurtenant right?

My property has appurtenant rights, because it was in kalo cultivation at the time of the Mahele of 1848. Royal Patent No. 6251 and Land Commission Award 3339, Royal Patent No. 4106 and Land Commission Award 3509, and the testimonies in support of these claims indicate this land was in kalo. True and correct copies of these documents are appended to this application as ATTACHMENT D. We have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

Table 1, Box 11: Justification for Requested Quantity

We estimated our proposed water use of 138,000 gallons per day for wetland kalo cultivation by multiplying the amount of land on which we intend to grow wetland kalo (0.46 acres of land, including 0.235 acres of new kalo cultivation on TMK No. 3-4-004: 016, and 0.225 acres of new kalo cultivation on TMK No. 3-4-004: 017) by 300,000 gallons, the average amount of water I understand is required to grow healthy wetland kalo.

Table 3, Box B: Alternatives Analysis

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law. Even if we did not have protected rights to stream water, there is no potentially available alternative source that is economically practicable. We intend to cultivate kalo on our land in a traditional manner for cultural and subsistence purposes; the kalo we will grow will feed our `ohana and will be shared with neighbors and community members. An alternative water source that would require us to pay for the volumes of constantly flowing water in our lo`i necessary to keep temperatures cool and support healthy kalo would make our use economically impossible. We would effectively be denied our appurtenant right. As shown below, each potentially available alternative water source imposes a cost on exercising our protected right.

Municipal Sources. Our domestic water service is a typical residential service and does not have the capacity to deliver the volumes of water we require. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation by installing a larger water meter, the cost of using municipal water for such purposes would be prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for wetland kalo.

Wastewater reuse. Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. As a small user engaged in traditional uses, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

Ditch system. We are currently using water from an existing `auwai, although water is not available consistently and in sufficient amounts to support the existing uses on our system, including our own uses. 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 traditional uses and 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 to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional uses, we do not have the means to install and maintain such infrastructure.

Table 3, Section C: Additional Requirements

1) My proposed new use(s) will maximize beneficial use(s) and are in the public interest

HRS § 174C-2(c) provides that the protection of domestic uses, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." The water we are requesting will be for kalo cultivation. We will grow kalo in traditional ways and use it for home purposes. We are engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty. As such, our proposed use of stream water is consistent with the public interest. Additionally, the exercise of appurtenant rights is also a protected public trust purpose. In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 137 n.34, 9 P.3d 409, 449 n.34 (2000) ("Waiāhole I").

Our proposed use is also a "reasonable-beneficial use." "Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest." HRS § 174C-3. As indicated, our proposed use of stream water is consistent with state and county land use plans and the public interest. It will also be "economic and efficient" because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we will use pipes to minimize water loss, and the surface of our kalo beds will be covered with azola to keep the kalo at a low temperature, which helps to increase efficiency. Therefore, the water we have requested is for a "reasonable-beneficial use."

HIGA, DARRELL
TMK: 3-4-004-017; 3-4-004-016
WATER USE PERMIT APPLICATION – NEW USE
PAGE 4 of 23

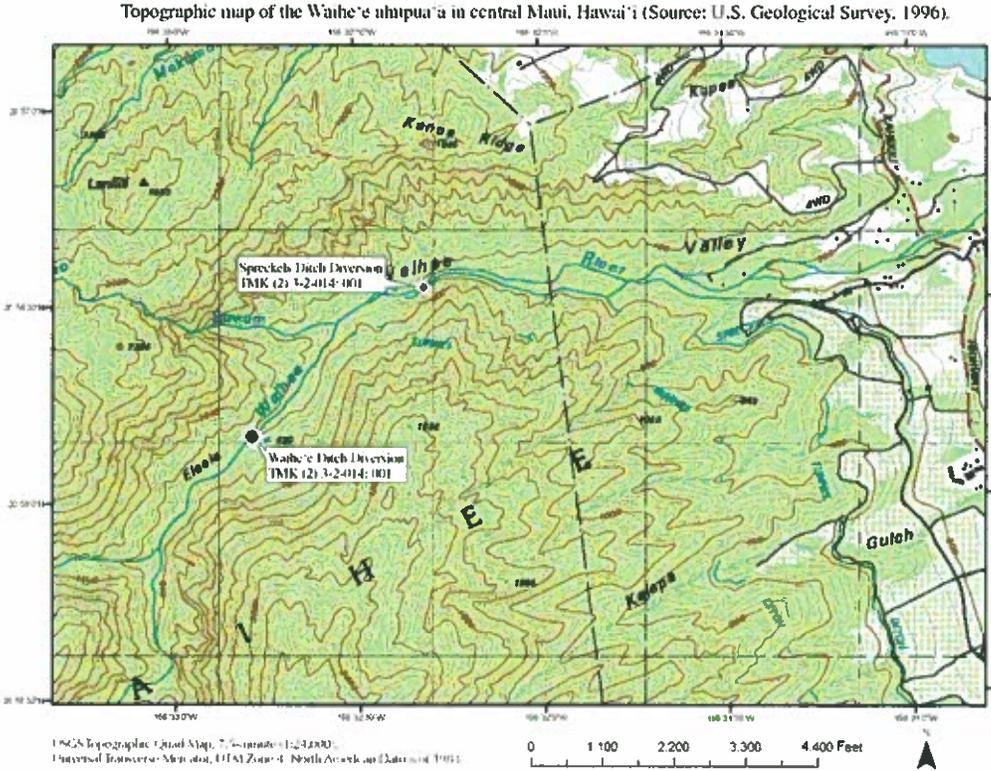
2) Our proposed use(s) will not interfere with any existing legal use

Our proposed use will not interfere with existing legal uses. As kuleana users, we have first priority by law. We believe the flows of Nā Wai `Ehā streams are able to accommodate our new use.

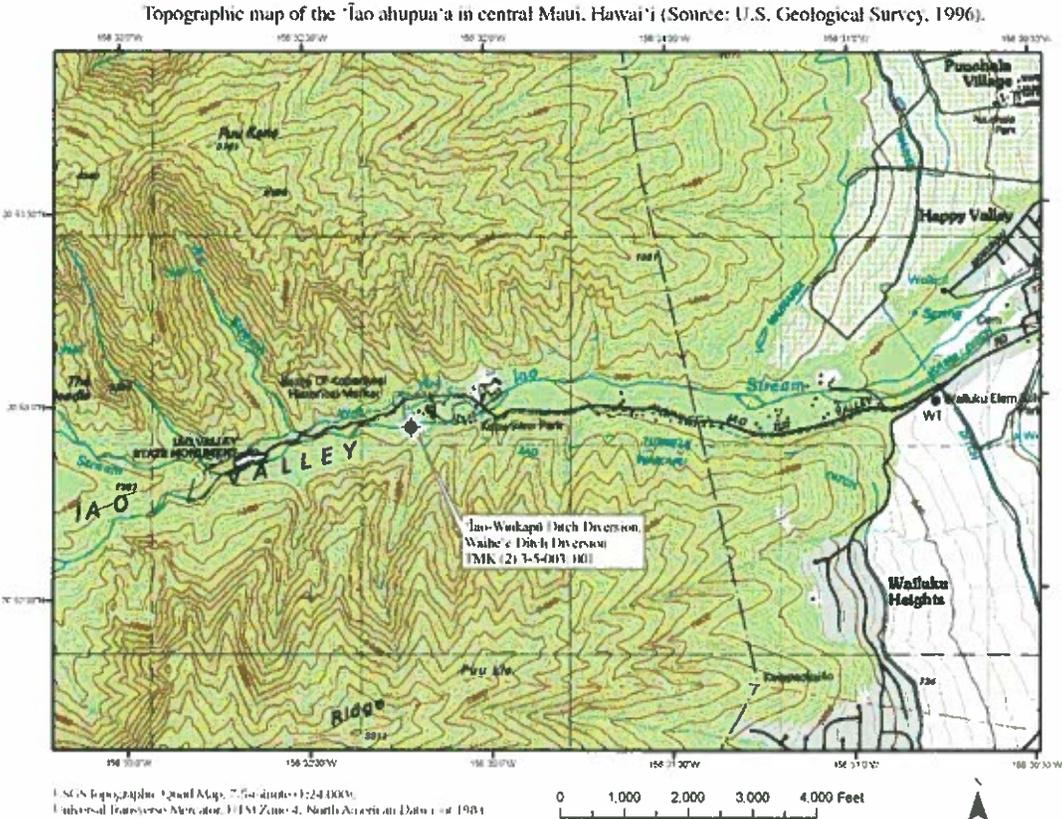
3) Our proposed use(s) will not interfere with the rights of the Department of Hawaiian Home Lands

We are not aware of any DHHL lands using water from Nā Wai `Ehā streams. To the best of our knowledge, DHHL has not filed an application to use water from this source. While we are aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources. Instead, our proposed use will actually help to protect DHHL's rights because the vast majority of the water that we have requested will be returned to the stream, and if it remains in the stream, it will recharge the aquifer, protecting the health of the aquifer system for DHHL's present and future ground water uses.

ATTACHMENT B: USGS MAPS

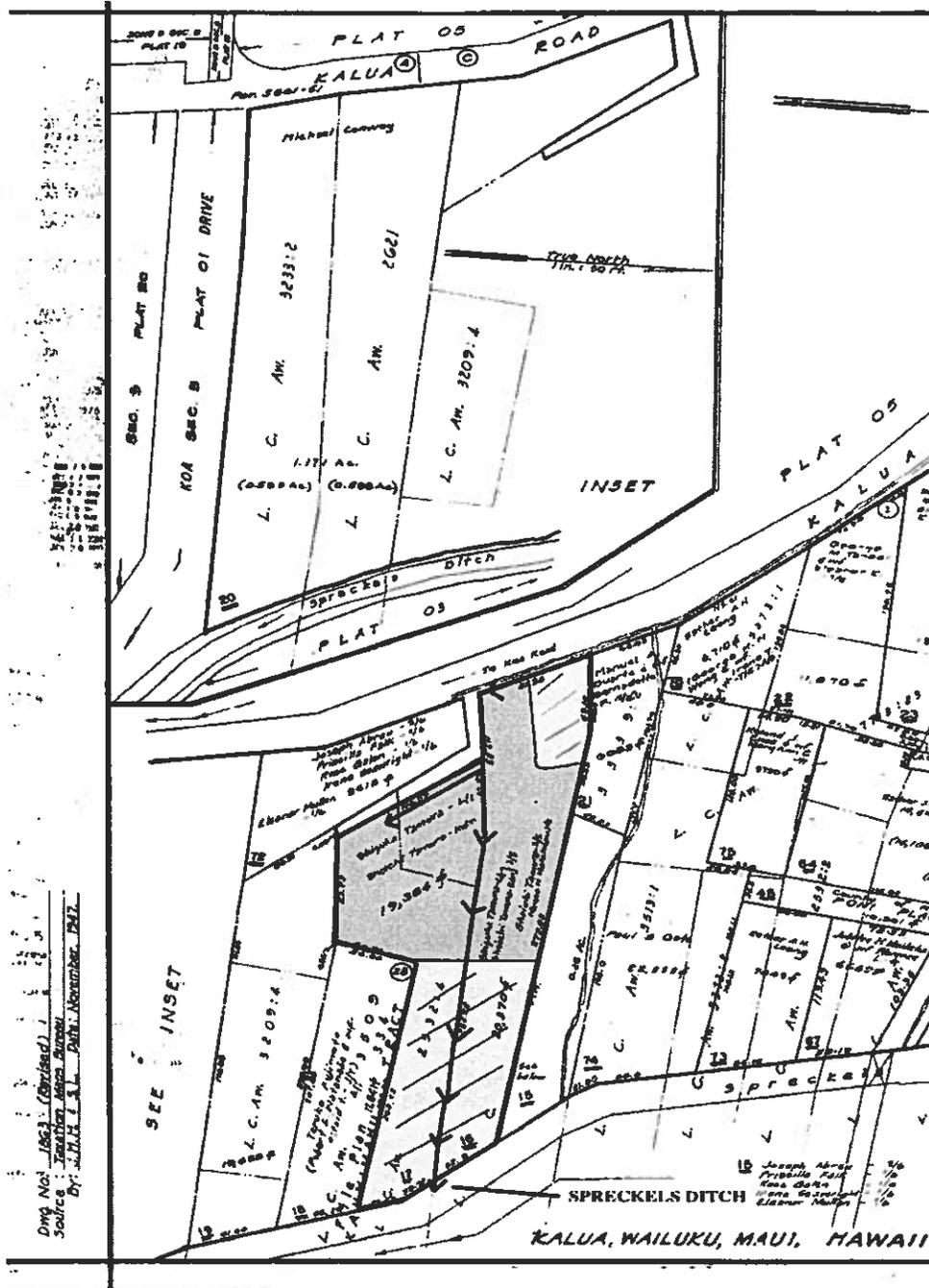


This is a true and correct copy of the USGS map for Waihe'e.



This is a true and correct copy of the USGS map for 'Iao.

ATTACHMENT C: TMK MAP



This is a true and correct copy of TMK No. 3-4-004: 016 and TMK No. 3-4-004: 017 depicting the area of domestic water use shaded in grey and the areas of proposed lo'i kalo indicated with hatch marks.

ATTACHMENT D: PICTURES



This is a true and correct photograph taken on October 24, 2008 that accurately depicts the conditions of the western portion of TMK No. 3-4-004: 016 where lo'i kalo will be cultivated.



This is a true and correct photograph taken on October 24, 2008 that accurately depicts the conditions of the middle portion of the property (both TMK Nos. 3-4-004: 016 and 3-4-004: 017), facing west, where lo'i kalo will be cultivated.

HIGA, DARRELL
TMK: 3-4-004-017; 3-4-004-016
WATER USE PERMIT APPLICATION – NEW USE
PAGE 10 of 23



This is a true and correct photograph taken on October 24, 2008 that accurately depicts the conditions of the eastern portion of the property where future lo'i will be cultivated, facing west.

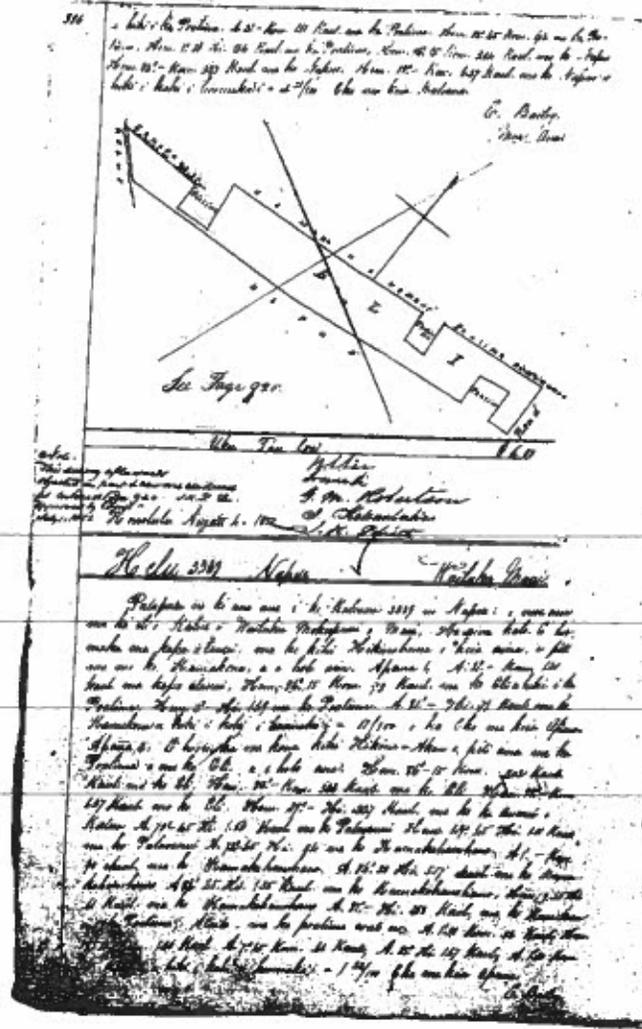


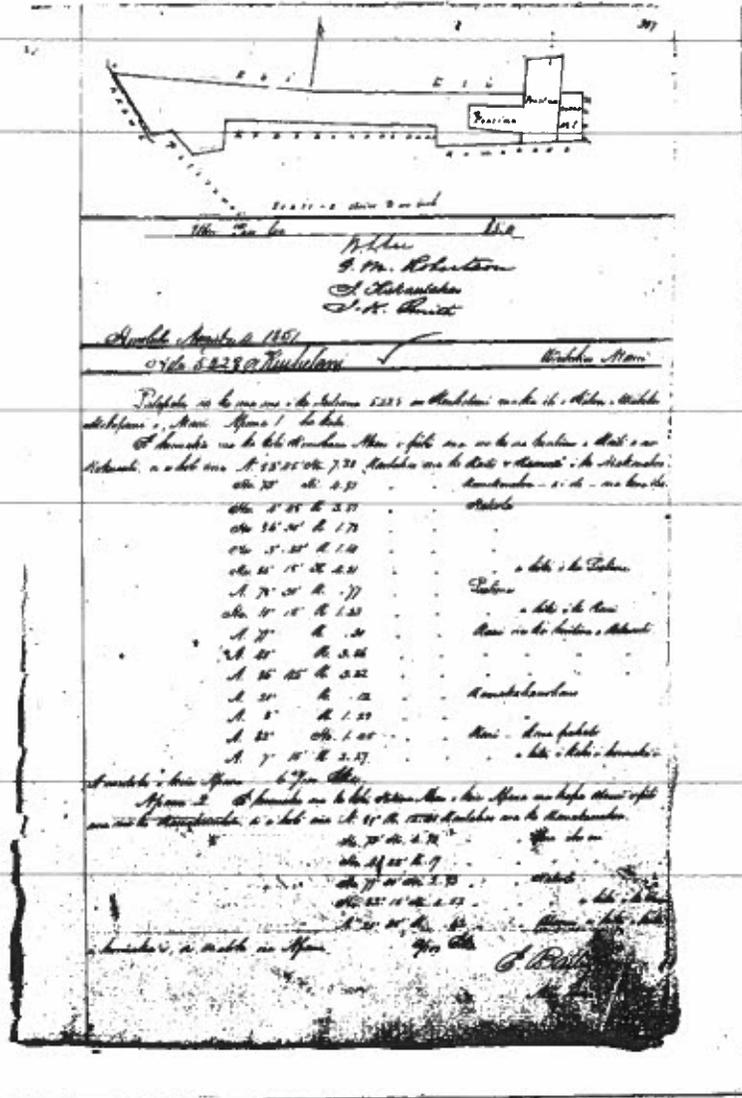
This is a true and correct photograph taken on October 24, 2008 that accurately depicts the conditions of Spreckels Ditch where water will leave our property after irrigating our kalo.

	<p style="text-align: right;">5140</p> <p>ka hula kōkahi hūlana iū aiā mō mā hūm ʻōmō aiā i pūli aiā mō. ʻē loī aiā ʻōi mōi. Wāka pūli mōi hānōke mō. ʻŌa pūli Na hūmōhānō. ʻŌa hāhā</p>
<p>2532</p> <p>ʻŌa</p>	<p>ʻŌa hūmōhānō Hūlana aiā i ka hūmōhānō. ʻŌa hūmōhānō hūmōhānō he hūmōhānō mōi aiā i hūmōhānō aiā, i ka aiā mōi. ʻŌa hūmōhānō, ʻŌa hūmōhānō, i ka wa aiā he la aiā, ʻŌa aiā hūmōhānō mōi aiā hūmōhānō ʻŌa hūmōhānō mōi aiā hūmōhānō hūmōhānō. ʻŌa hūmōhānō hūmōhānō i hūmōhānō mōi aiā, mōi aiā 13 la i waī 3 hūmōhānō mōi aiā, he wāhi hūmōhānō mōi aiā, he mōi aiā, mōi aiā ka pūli pūli. ʻŌa hūmōhānō ʻŌa hūmōhānō mōi aiā, he mōi aiā hūmōhānō ka hūmōhānō, mōi aiā hūmōhānō, ka pūli, mōi aiā, mōi aiā hūmōhānō he aiā hūmōhānō, pūli mōi aiā hūmōhānō mōi aiā, 13 la i waī hūmōhānō mōi aiā ka hūmōhānō, hūmōhānō, he hūmōhānō ka pūli mōi aiā hūmōhānō, he aiā hūmōhānō mōi aiā hūmōhānō. He hūmōhānō aiā hūmōhānō hūmōhānō mōi aiā hūmōhānō. Mōi 3, ʻē loī waī ʻē mōi aiā, ʻē hūmōhānō mōi aiā mōi aiā, ʻē hūmōhānō mōi aiā he wāhi mōi aiā hūmōhānō i ka pūli, ʻŌa hūmōhānō ka pūli mōi aiā ka hūmōhānō, he mōi aiā hūmōhānō ka hūmōhānō, he aiā hūmōhānō mōi aiā ka hūmōhānō, he aiā hūmōhānō ka pūli mōi aiā ka hūmōhānō, a mōi aiā hūmōhānō ʻŌa mōi aiā ka hūmōhānō pūli i hūmōhānō, mōi aiā hūmōhānō hūmōhānō i hūmōhānō mōi aiā, he aiā mōi aiā mōi aiā hūmōhānō, ʻŌa hūmōhānō mōi aiā hūmōhānō i hūmōhānō hūmōhānō. ʻŌa hūmōhānō he wāhi hūmōhānō hūmōhānō</p>

	<p style="text-align: right;">47</p> <p style="text-align: center;">C. 3513. Hanaulake.</p> <p><i>[Handwritten text describing land parcels and boundaries for C. 3513. Hanaulake, mentioning names like 'Hanaulake' and 'Hanaulake' and various land parcels.]</i></p> <p style="text-align: center;">C. 3512. Hanaulake.</p> <p><i>[Handwritten text describing land parcels and boundaries for C. 3512. Hanaulake, mentioning names like 'Hanaulake' and 'Hanaulake' and various land parcels.]</i></p>
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LCA 3339:





paalena. Ma ka Akau o Pohaku oiauhii, a nia
 ka hiki iia ku pa aiaa. He ma ili aiaa o
 Muihale, Komohana a pa aiaa
 Maikapaue o ka hiki iia aiaa
 17 Januani 1848.

3339 Kapue

Ukua ukua oia hana hana. He
 hiki ahu nui au i kua hulaana. He ma
 lo i kua hulaana he sh, aia oia ka ili aiaa
 i hiki oia i hulaana ma Maikaku i Maui, he
 so ma kahi i kua hulaana ma ma kahi aiaa. A
 paia oia paalena, Maui oia lo i Akale, hiki
 oia he pa aiaa. He ma oia lo i Mauihano-
 hana. Komohana he Auwai. He ka Mauihano-
 Maikaku (7 Dik. 1847). o ka Kapue

Maikapaue Maui Jan. 13, 1848

3340 Kahauana

Ukua ukua oia hana hana
 U. hulaana aiaa. He hiki ahu nui au ia ukua
 oia kua maui hulaana lo i oia ma kahi aiaa o
 Mauihano. Hiki a Mauihano, Komohana
 Mauihano. Hiki a Mauihano he Auwai. He ma
 Mauihano he oia maui hulaana oia lo i a oia
 oia Mauihano he oia maui hulaana lo i
 Paia i hulaana ai au ia maui lo i maui hulaana
 oia maui hulaana he maui hulaana, a maui
 ia, oia maui hulaana maui lo i maui hulaana
 oia Mauihano he hiki oia i hulaana mauihano
 oia hulaana. He maui hulaana maui, aia
 oia maui hulaana oia Mauihano. Hiki a
 Mauihano, Komohana o Mauihano he Mauihano
 Maikapaue, Mauihano Mauihano, maui hulaana

Maloko o Kingman spans 1.00 Kila

a of the state, a part of the same. To the use of the same for the purpose of the same.

He Water

na aia i ka wahi o ka Aie Alaloa a no ka mea i ka wahi, a no ka mea i ka wahi; na pili me ka aia a ka Pae Alaloa a
ka lilo a ka na aia aia i ka wahi i ka wahi.

A i ka wahi a, na ka wahi i ka wahi, a ka ka lilo a ka Hawaii Pae
Aia na Hawaii i ka wahi

Kingman
Kamehameha

Darrell Higa
D. H. Higa

