



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 3:59
 Event ID: **SWUP.2260.6**

SWUP NO. 52

FORM SWUPA-E (NA WAI EHA, MAUI)

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

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

1. APPLICANT'S NAME Jinsei Miyashiro Trust		Applicant's Contact Lisa Battad		2. SOURCE LANDOWNER'S NAME Wailuku Water Company LLC		Source Landowner's Contact Avery Chumbley	
Applicant's Mailing Address, or Principal Place of Business P.O. Box 235 Wailuku, HI 96793				Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793			
Applicant's Phone		Applicant's Fax		Applicant's E-mail		Source Landowner's Phone	
						Source Landowner's Fax	
						Source Landowner's E-mail	

EXISTING SOURCE INFORMATION

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

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Waihee/6022 Walehu/6023 Ieo/6024 Walkapu/6001

4a. TMK OF STREAM DIVERSION LOCATION: 3 - 5 - 003 : 001
 Zone Sector Plat Parcel

4b. TMK OF DITCH DIVERSION LOCATION: 3 - 6 - 006 : 027
 Zone Sector Plat Parcel

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

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

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): Jinsei Miyashiro, my father
 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		Signature	
Lisa Battad			
Print		Print	
Date <u>4-4-09</u>		Date	

FILE ID: SWUP.2260.6
 DOC ID: 3265V

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

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

MONTH / YEAR	AVERAGE DAILY USE FOR THE MONTH IN GALLONS PER DAY (GPD)	Check one item per box				OTHER Please describe
		METERED	ESTIMATED	ACTIVE BUT UNKNOWN	INACTIVE	
May 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	2,857	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	34,284	GPD				
AVERAGE DAILY USE (Average of the above)	2,857	GPD				

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

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

LAND USE CONSISTENCY					EFFICIENCY OF USE				
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For Irrigation uses, fill in Table 3.
Uses that require potable (drinking) water									
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
TOTAL POTABLE USE									
								GPD	
Uses that do not require potable water									
DOM	3 - 6 - 006 - 027 Zone - Sector - Plat - Parcel	Urban	No	AG	No	2,857	No	0.1	SEE ATTACHED
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
	Zone - Sector - Plat - Parcel								
TOTAL NON-POTABLE USE						2,857		GPD	
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						2,857		GPD	
If total use requested is not equal to the total monthly average in Table 1, please explain. N/A									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. N/A									

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

TABLE 3: IRRIGATION INFORMATION

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

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to instructions.)	8. IRRIGATION PRACTICE (Refer to instructions.)
3 - 6 - 006 : 027 <small>Zone Sector Plat Parcel</small>	Diversified Agriculture	0.712	0.1	year round	year round	other: ditch	Irrigate to Field Capacity
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							
- - - : <small>Zone Sector Plat Parcel</small>							

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

TABLE 4: ALTERNATIVES ANALYSIS

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

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: *(t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

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

EXISTING SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface-Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: <http://www.hawaii.gov/dlnr/cwrml/>, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.
- 4a. **TMK OF STREAM DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/
- 4b. **TMK OF DITCH DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.
5. **STREAM DIVERSION:** How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. **FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table 1

EXISTING USER INFORMATION

7. **APPURTENANT RIGHT:** An appurtenant water right is a legally recognized right to a specific amount of surface freshwater – usually from a stream – on the specific property that has that right. This right traces back to the first time the land was converted to fee simple title, i.e., the Great Mahele and the issuance of either a Land Commission Award or Royal Patent. The quantity of water under the appurtenant right is the amount that was being used on the land shortly before or at the time of the Mahele. Do you claim an appurtenant right for your water use? Check "Yes" or "No." If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
8. **END USER INFORMATION:** Are you an end user on an existing water system? Check "Yes" or "No". If yes, please list the name of the water system operator.
9. **REGISTRATION AND DECLARATION OF WATER USE:** Do you have a Registration and Declaration of Water Use from the Commission? Check "Yes" or "No". If yes, please list the name of the registrant(s).
10. **STREAM DIVERSION WORKS PERMIT (SDWP):** Have you ever been issued a SDWP by the Commission? If yes, please list the permit number(s). Otherwise, check "No."
11. **APPLICANT:** Please sign and print your name, and date your application.
12. **LANDOWNER:** Please sign and print your name, and date your application. The landowner shall be the joint applicant in the event the applicant is a lessee, licensee, developer, or any other person with a terminable interest or estate in the land which is the water source of the permitted water. §174C-51(1)(B)

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

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

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

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

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

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

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

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

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

AGRICULTURE	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
DOMESTIC	
DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
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
IRRSCL	Schools
MILITARY	
MIL	Military
MUNICIPAL	
MUNCO	County
MUNPR	Privately owned and operated but defined as a public system by the Department of Health
MUNST	State

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

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

TABLE 3: IRRIGATION INFORMATION

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

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

TABLE 4: ALTERNATIVES ANALYSIS

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

Surface water is defined in §174C-3 as both contained surface water - that is, water upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes, reservoirs, and coastal waters subject to state jurisdiction - and diffused surface water - that is, water occurring upon the surface of the ground other than in contained waterbodies. Water from natural springs is surface water when it exits from the spring onto the earth's surface.

PUBLIC INTEREST

Explain how the uses in your application are consistent with the public interest as described in §174C-2(c): *(t)he state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.*

Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application -- Existing Use

Water Use Permit Application (Existing Use) Addendum

Existing Source Information

Appended hereto as Exhibit 1 is a copy of the 7.5 minute-series USGS topographic map with the Waikapū Stream and South Waikapū diversion labeled. Exhibit 2 is a TMK map showing the location of our property as well as a close-up of the property showing locations of our `auwai diversion and end uses. Exhibit 3 contains copies of photographs of our `auwai diversion and end uses. Exhibits 4 and 5 contain copies of documents establishing that our land was in kalo at the time of the Māhele.

Box 2: Source Landowner

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

Box 5: Stream Diversion

We are kuleana users along the kuleana `auwai to the South of Waikapū Stream. Water is diverted from Waikapū Stream by an intake (see attached USGS topo map), then continues to Reservoir #1 via pipes and ditches. The water continues makai in more pipes and ditches until it passes our kuleana where, at the mauka corner of our property, we divert some water for our crops. At the makai-Waiehu corner, our triangle-shaped property slopes down towards and touches Waikapū Stream. In years past, any unused water from the `auwai would return to the stream. Although we have noticed that the amount of water in our `auwai has declined over time, any unused water still returns to the stream at that point.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. In fact, almost all of the stream water we currently use (see our concurrently filed SWUPA-E) was used for lo`i kalo until the 1960s. Attached hereto as Exhibit 4 are true and correct copies of Māhele records for Land Commission Award No. 10481, Royal Patent No. 3131, including testimony indicating the land was in kalo. Attached hereto as Exhibit 5 are true and correct copies of Māhele records for Land Commission Award No. 5280 and Royal Patent No. 6699. This land has been in our family continuously since the early part of the 20th century, and based on our knowledge of the history of this kuleana and our family, 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-63.¹

Table 2, Box 10: Justification for Requested Quantity

I used a modified “bucket method” to measure the flow rate from the outflow of two ditches that water the crops on my property. Although I use only one ditch at a time, we checked each ditch to see if the flow varied between the two ditches. On October 23, 2008, we measured both ditches individually and each filled a 2 gallon bucket in 4.5 seconds. Given that the flow rate from each ditch is the same (and I use only one ditch at a time), I calculated the amount of water flowing over a 24-hour period as 40,000 gallons per day. Since I irrigate for half a day once a week, I estimated my use as 2,857 gallons per day. Because my water use doesn’t change, I believe that approximates the amount of water that I was using on April 30, 2008.

Table 4. Alternatives Analysis

Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative source of water. Our appurtenant right is for stream water, not to water from some other source, and our exercise of this appurtenant right enjoys maximum protection and first priority under the law. We are also an existing riparian use, which is constitutionally protected. See Haw. Const. art. XI, § 7 (preserving appurtenant rights and existing riparian uses). Moreover, even if we did not have protected rights to water from Waikapū Stream, there is no potentially available alternative source that is economically practicable.

We grow bananas, tangerines, and some ti leaf. The fruits and other items we grow feed our `ohana and are shared with neighbors and community members. As shown below, each potentially available alternative water source imposes a cost on continuing our existing riparian use and on exercising our protected rights.

Municipal Sources. As long as I can remember, we have always used the `auwai water for our non-commercial gardening. Requiring us to pay for municipal water instead would impose an unfair and impracticable cost on 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, although water is not available consistently and in sufficient amounts to support all of the existing

¹ HRS § 174C-63 provides: “Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder at any time. A permit for water use based on an existing appurtenant right shall be issued upon application.”

uses on our system. 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 subsistence agriculture, the cost of taking water from or constructing another ditch is not practicable, especially when we have appurtenant rights to water in the ‘auwai we are currently using.

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 subsistence agriculture, we do not have the means to install and maintain such infrastructure and should not have to do so given our appurtenant rights to Waikapū stream water.

Table 4, Public interest section:

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 agriculture and the maintenance of proper ecological balance and scenic beauty are “in the public interest.” Our existing water use is predominantly for subsistence agriculture, including bananas, tangerines, and ti leaf. As such, our existing use of stream water is consistent with the public interest.

Our Existing Use is a Protected Public Trust Purpose

Because our existing water use is based on appurtenant rights, it is a protected public trust purpose. Waiāhole I, 94 Haw. at 137 n.34, 9 P.3d at 449 n.34. Additionally, because any unused water from our kuleana is returned to Waikapū Stream, our use supports other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource protection; (3) water for domestic purposes; and (4) the protection of traditional and customary Native Hawaiian rights and appurtenant rights.

Our Existing Use Supports Beneficial Instream Uses

Because any of the unused water that we divert for agriculture is returned to Waikapū Stream, our existing use also supports beneficial instream uses such as: (1) the maintenance of fish and wildlife habitats; (2) outdoor recreational activities; (3)

Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use

maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; (4) aesthetic values such as waterfalls and scenic waterways; (5) maintenance of water quality; (6) the conveyance of irrigation and domestic water supplies to downstream points of diversion; and (7) the protection of traditional and customary Native Hawaiian rights. See HRS § 174C-3.

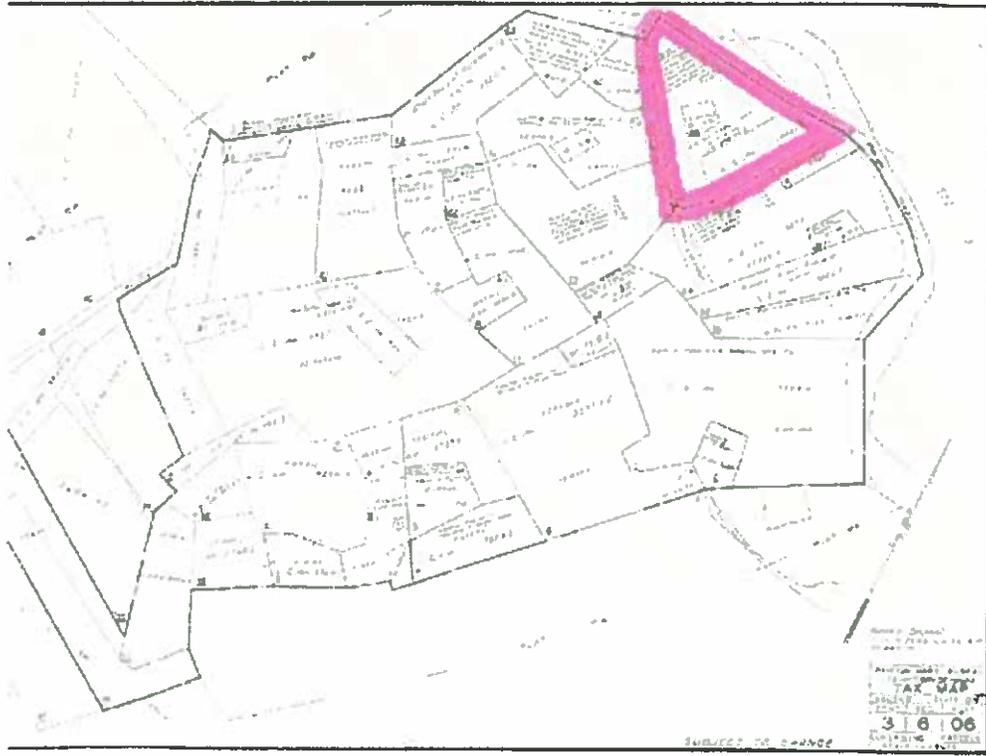
Our Existing Use is a “Reasonable-Beneficial Use”

“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 pipes and concrete-lined `auwai where appropriate to minimize water loss, and our farming practices include the use of mulch and green manure to protect the soil from erosion and minimize the use of water. Therefore, the water we have use is a “reasonable-beneficial use.”

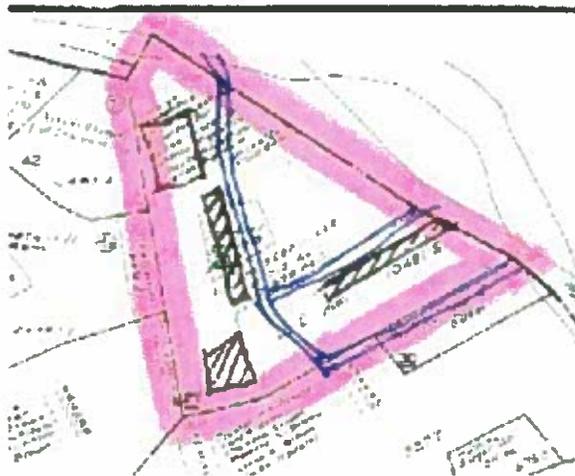
Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use

EXHIBIT 2

TMK maps showing diversion locations and water uses referenced



Area of Existing Use Indicated by Diagonal Lines
Flow of 'Auwai Indicated by Blue Lines
Waikapū Stream is in the Top Right Corner



Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use

EXHIBIT 3

Photographs of surface water diversion and end uses

These are true and correct copies of photos taken on October 25, 2008. They accurately depict conditions at the time the photos were taken.

This is the ditch I use to divert water onto my property from the South Waikapū Kuleana `Auwai.



Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use

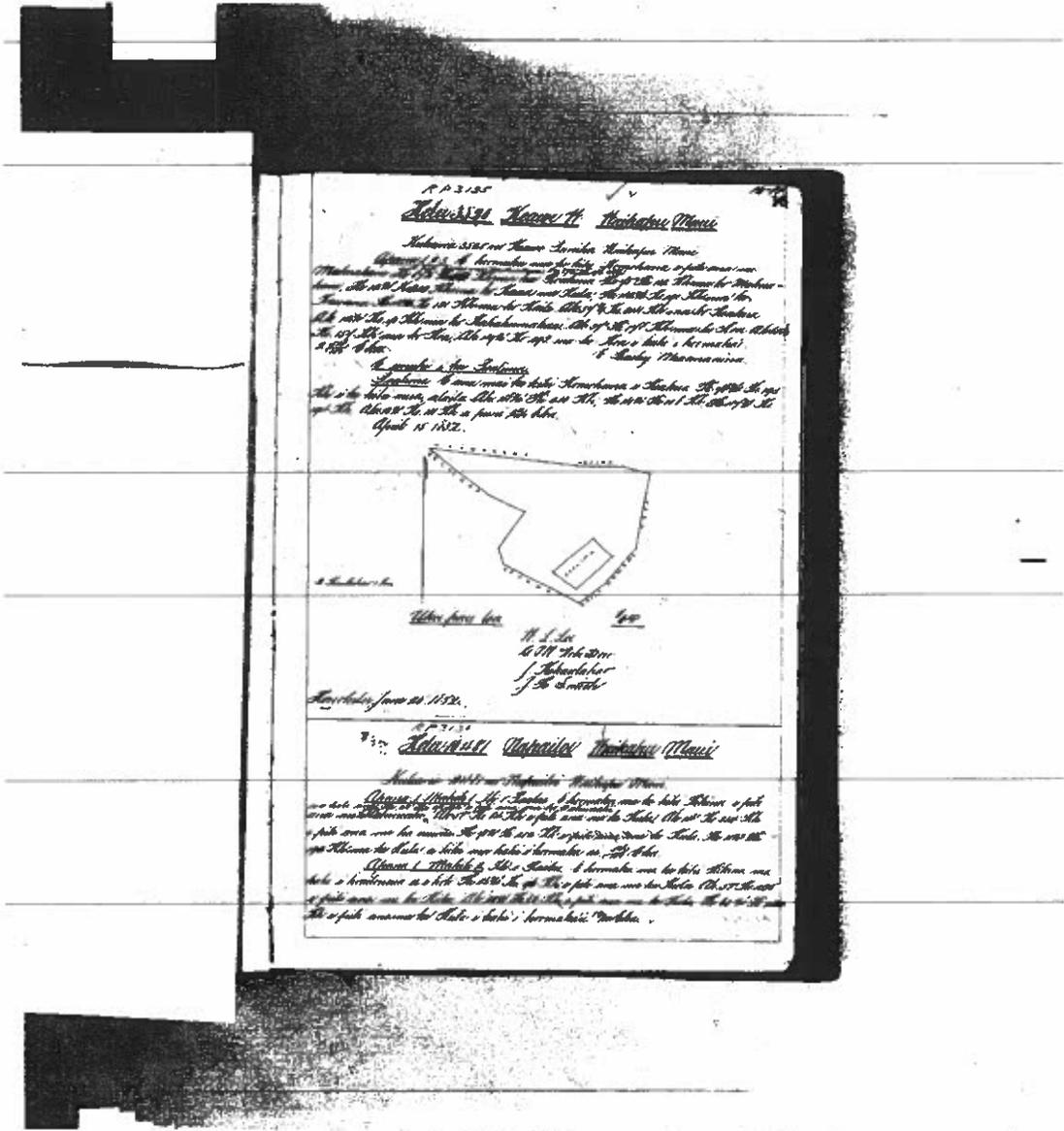
End Uses:



Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use



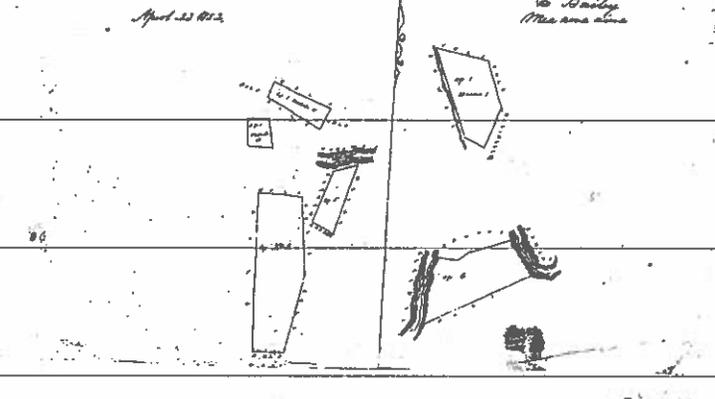
EXHIBIT 4
Copies of Original Māhele Documents for Land Commission Award
10481



Ulu Tani Loa 10.
 2. 10. 1981
 3. 1981
 4. 1981

Hondulua Kure 25 1981
Helelu 1981 Napairi (11) Haikapu Maui

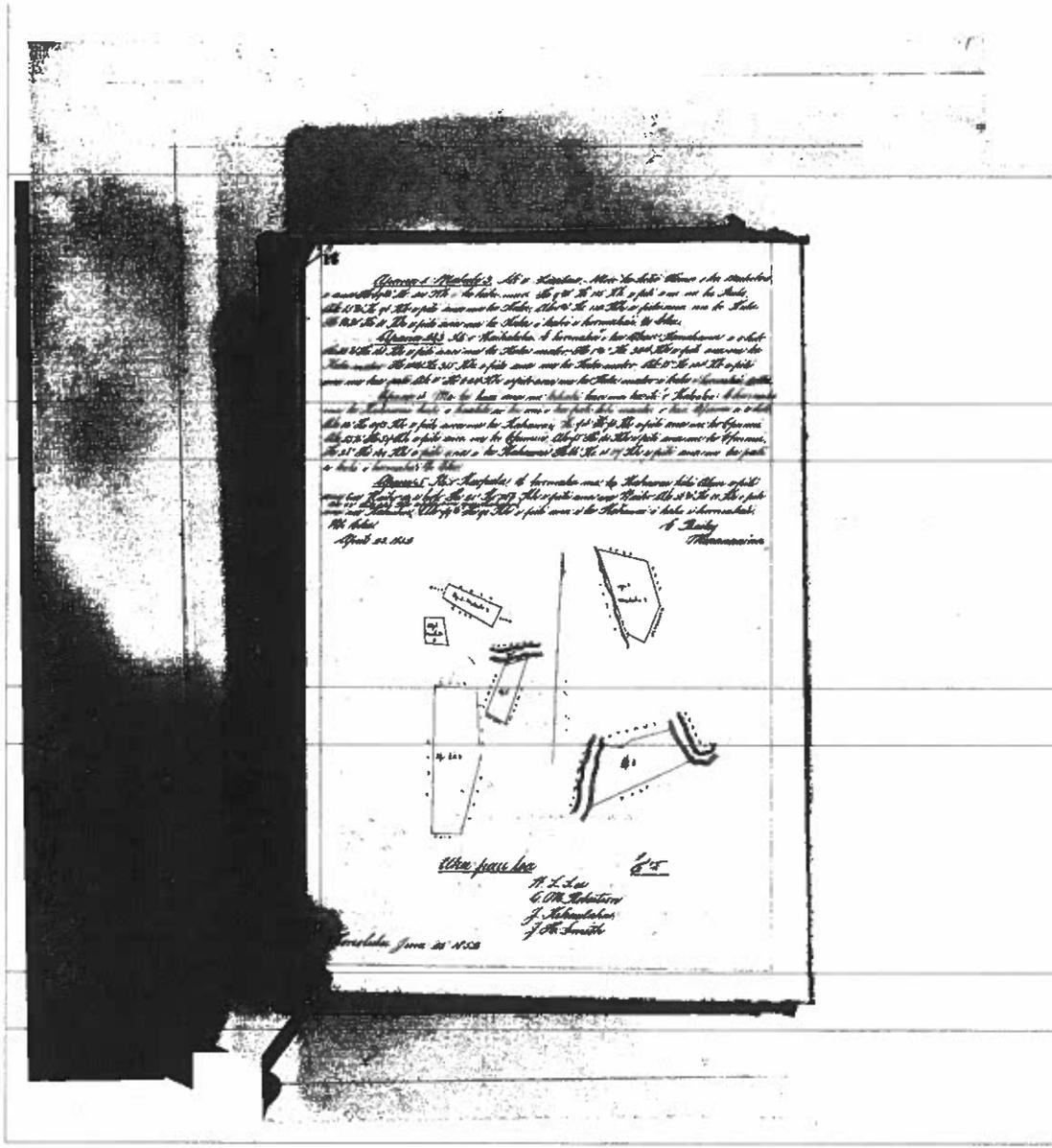
(Handwritten text in Hawaiian script follows, detailing land parcels and boundaries. The text is dense and difficult to transcribe fully but appears to list various parcels and their locations.)



Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use

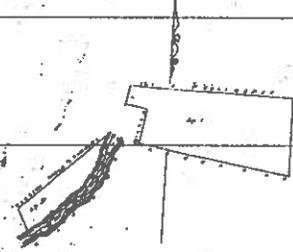


Handwritten text in Japanese, likely a permit or application form. The text is partially obscured by blacked-out areas.



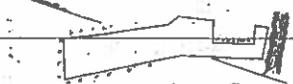
Jinsei Miyashiro Trust c/o Lisa Battad
 TMK No. 3-6-006-027
 Water Use Permit Application – Existing Use

Ulu Pua Laka #4
 Kulu
 9. 9m. 10m. 10m.
 I. 10m. 10m. 10m.
 J. 10m. 10m. 10m.
 K. 10m. 10m. 10m.
 L. 10m. 10m. 10m.
 M. 10m. 10m. 10m.
 N. 10m. 10m. 10m.
 O. 10m. 10m. 10m.
 P. 10m. 10m. 10m.
 Q. 10m. 10m. 10m.
 R. 10m. 10m. 10m.
 S. 10m. 10m. 10m.
 T. 10m. 10m. 10m.
 U. 10m. 10m. 10m.
 V. 10m. 10m. 10m.
 W. 10m. 10m. 10m.
 X. 10m. 10m. 10m.
 Y. 10m. 10m. 10m.
 Z. 10m. 10m. 10m.



Ulu Pua Laka #4
 Kulu
 9. 9m. 10m. 10m.
 I. 10m. 10m. 10m.
 J. 10m. 10m. 10m.
 K. 10m. 10m. 10m.
 L. 10m. 10m. 10m.
 M. 10m. 10m. 10m.
 N. 10m. 10m. 10m.
 O. 10m. 10m. 10m.
 P. 10m. 10m. 10m.
 Q. 10m. 10m. 10m.
 R. 10m. 10m. 10m.
 S. 10m. 10m. 10m.
 T. 10m. 10m. 10m.
 U. 10m. 10m. 10m.
 V. 10m. 10m. 10m.
 W. 10m. 10m. 10m.
 X. 10m. 10m. 10m.
 Y. 10m. 10m. 10m.
 Z. 10m. 10m. 10m.

Ulu Pua Laka #5
 Kulu
 9. 9m. 10m. 10m.
 I. 10m. 10m. 10m.
 J. 10m. 10m. 10m.
 K. 10m. 10m. 10m.
 L. 10m. 10m. 10m.
 M. 10m. 10m. 10m.
 N. 10m. 10m. 10m.
 O. 10m. 10m. 10m.
 P. 10m. 10m. 10m.
 Q. 10m. 10m. 10m.
 R. 10m. 10m. 10m.
 S. 10m. 10m. 10m.
 T. 10m. 10m. 10m.
 U. 10m. 10m. 10m.
 V. 10m. 10m. 10m.
 W. 10m. 10m. 10m.
 X. 10m. 10m. 10m.
 Y. 10m. 10m. 10m.
 Z. 10m. 10m. 10m.



Ulu Pua Laka #5
 Kulu
 9. 9m. 10m. 10m.
 I. 10m. 10m. 10m.
 J. 10m. 10m. 10m.
 K. 10m. 10m. 10m.
 L. 10m. 10m. 10m.
 M. 10m. 10m. 10m.
 N. 10m. 10m. 10m.
 O. 10m. 10m. 10m.
 P. 10m. 10m. 10m.
 Q. 10m. 10m. 10m.
 R. 10m. 10m. 10m.
 S. 10m. 10m. 10m.
 T. 10m. 10m. 10m.
 U. 10m. 10m. 10m.
 V. 10m. 10m. 10m.
 W. 10m. 10m. 10m.
 X. 10m. 10m. 10m.
 Y. 10m. 10m. 10m.
 Z. 10m. 10m. 10m.

Jinsei Miyashiro Trust c/o Lisa Battad
TMK No. 3-6-006-027
Water Use Permit Application – Existing Use

Mabala # *(Handwritten)* ngayon *(Handwritten)* 1.66 Eho
o sa hihiya, o ang di masipala. Unang masipala ng mga mababaw o masipala ng pag-
No *(Handwritten)*
unang hihiya ng mga *(Handwritten)* o unang masipala, o unang masipala; unang pag-
hihiya ng mga *(Handwritten)* o unang masipala ng mga *(Handwritten)* o unang masipala.
A I MATA E HINA NG, unang masipala ng mga *(Handwritten)* o unang masipala ng mga *(Handwritten)* o unang masipala.
Aino ang *(Handwritten)* ng mga *(Handwritten)*
" *(Handwritten)* 11.64 *(Handwritten)*
(Handwritten) *(Handwritten)*

26

Aina o Wailuku, Lisa Miki Mami, aia no
 ma kahi eae ho'opila'hi i'aku Mami. Oia keia
 oia mala mala ho'ike i'aku i'aku
 He wahi kahuahale o'aua'aua i'aua'aua
 Kalo'epolepo ho'ike kahuahale o'aua'aua Oia keia
 e ananay nei ke kula'ana ia moia i'aua'aua
 ia e'uhon a'pau e'ua Lisa Mami
 He Kapi'olani

5280 Wahi In e'uhon e'ua Lisa Mami i'aua'aua
 e'uhon e'ua'aua e'ua'aua he keia kula'ana he 13 he
 aia ma ka He i'aua'aua i'aua'aua i'aua'aua
 He na paha'ia, ma ka Akau ma he i'aua'aua
 ma, ma ka i'aua'aua he kahuahale, ma ka e'ua'aua
 he i'aua'aua, i'aua'aua, ma ka kahuahale he
 He i'aua'aua i'aua'aua ma ka kahuahale
 Wailuku 13, Ma 1118-5 He Kapi'olani

5281 Kahuahale Kahuahale 30 Jolt 1118
 Aia ma e'ua'aua Lisa Mami he kahi
 aia ma e'ua'aua e'ua'aua i'aua'aua he kahi
 kula'ana aia. He He, i'aua'aua i'aua'aua Akau
 e'ua'aua i'aua'aua o'aua'aua, i'aua'aua e'ua'aua
 kahuahale he aia, hele la He i'aua'aua i'aua'aua
 Oia ma kahi he ma'au ma'au ma'au ma'au, i'aua'aua
 Kahuahale He i'aua'aua i'aua'aua
 Oia ma kahi. He ma'au mala mala mala 5
 mala He i'aua'aua i'aua'aua
 Oia ma kahi. He wahi kahuahale ma'au o
 Akau ma'au. Ma He Akau, he kahuahale i'aua'aua he
 kahuahale, Ma He kahi he kahi, kahuahale he
 Kahi He i'aua'aua i'aua'aua Oia ma ma'au ma'au ma'au
 he kula'ana ma'au. He kahi he kahi aia ma'au ma'au
 ma'au e'ua'aua Lisa Mami
 Kahuahale