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

APPLICATION FOR SURFACE WATER USE PERMIT FOR *EXISTING USE* IN THE NA WAI EHA, MAUI, SURFACE WATER MANAGEMENT AREAS

FORM SWUPA-E (NA WAI EHA, MAUI)

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

For Official Use Only:
RECEIVED
COMMISSION ON WATER RESOURCE MANAGEMENT
2009 APR 23 PM 4:43
Event ID: SWUP.2266.6

SWUP No. 5!

APPLICANT INFORMATION:
Note: In accordance with §174C-51(t)(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	Applicant's Contact	2. SOURCE LANDOWNER'S NAME	Source Landowner's Contact
ISABELLE RIVERA		LIVING WATERS LAND FOUNDATION, LLC	PATRICIA BRAGG

Applicant's Mailing Address, or Principal Place of Business	Source Landowner's Mailing Address, or Principal Place of Business
P.O. BOX 634, WAILUKU, MAUI 96793	1332 ANACAPA STREET, SUITE 200 SANTA BARBARA, CA 93101

Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail
[redacted]					

EXISTING SOURCE INFORMATION

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

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: ☐ Waihee/6022 ☒ Waiehu/6023 ☐ Iao/6024 ☐ Waikapu/6001

4a. TMK OF STREAM DIVERSION LOCATION: 3 (Zone) - 2 (Sector) - 013 (Plat) : 015 (Parcel)

4b. TMK OF DITCH DIVERSION LOCATION: 3 (Zone) - 2 (Sector) - 017 (Plat) : 012 (Parcel)

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.

☒ Pipe ☐ Pump ☒ Ditch/Auwai ☐ Other Describe: See attachment.

Is the diverted water returned to the stream or ditch? ☒ Yes. ☐ No. If yes, how much water is returned? See attachment page 1.

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 page 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? 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): Christabell C. Kanoa

☐ 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
Isabelle Rivera Signature	Signature
ISABELLE RIVERA 4-22-09 Print Date	Print Data

FILE ID: SWUP.2266.6
DOC ID: 3271

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	600	☐	☒	☐	☐	
June 2007	600	☐	☒	☐	☐	
July 2007	600	☐	☒	☐	☐	
August 2007	600	☐	☒	☐	☐	
September 2007	600	☐	☒	☐	☐	
October 2007	600	☐	☒	☐	☐	
November 2007	600	☐	☒	☐	☐	
December 2007	600	☐	☒	☐	☐	
January 2008	600	☐	☒	☐	☐	
February 2008	600	☐	☒	☐	☐	
March 2008	600	☐	☒	☐	☐	
April 2008	600	☐	☒	☐	☐	
SUM OF AVERAGE DAILY USE FOR THE MONTH	7,200	**GPD**				
AVERAGE DAILY USE (Average of the above)	600	**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 - Section - Plat : Parcel)								
	___ - ___ - ___ : ___ (Zone - Section - Plat : Parcel)								
	___ - ___ - ___ : ___ (Zone - Section - Plat : Parcel)								
	___ - ___ - ___ : ___ (Zone - Section - Plat : Parcel)								
					TOTAL POTABLE USE	0	GPD		
Uses that **do not** require potable water									
DOM	3 - 2 - 017 : 012 (Zone - Section - Plat : Parcel)	AG	No	AG	No	600	No	1 unit	See attachment page 2.
	___ - ___ - ___ : ___ (Zone - Section - Plat : Parcel)								
	___ - ___ - ___ : ___ (Zone - Section - Plat : Parcel)								
	___ - ___ - ___ : ___ (Zone - Section - Plat : Parcel)								
					TOTAL NON-POTABLE USE	600	GPD		
					TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =	600	GPD		

If total use requested is not equal to the total monthly average in Table 1, please explain.
See attachment page 2.

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 - 2 - 017 : 012 (Zone - Sector - Plat : Parcel)	Diversified Agriculture	2.55 acres	0.007 acres	Year round	Year round	Trickle irrigation	Field capacity
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							
- - :							

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

TABLE 4: ALTERNATIVES ANALYSIS

	Potable Alternatives Attach additional sheets if necessary.	**Non-Potable Alternatives** Attach additional sheets if necessary.
Municipal sources	N/A	See attachment page 2-3.
Wastewater reuse	N/A	See attachment page 2-3.
Ditch system	N/A	See attachment page 2-3.
Desalinization	N/A	See attachment page 2-3.
Ground water	N/A	See attachment page 2-3.
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 attachment page 3-4.

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

INSTRUCTIONS FOR FILLING OUT *FORM SWUPA-E*

This application form is to be used for actual **existing uses** as of the effective date of designation, April 30, 2008, for the Na Wai Eha Surface Water Management Areas. Based on the State Water Code, Section 174C, Part IV Regulation of Water Use, a completed application must be filed with the Commission on Water Resource Management (CWRM) no later than **April 30, 2009**, to qualify as an existing use. Failure to meet the filing deadline may cause your application to be considered a new use and require you to file an Application for Surface Water Use Permit for New Use.

If you are applying for a new surface water use, which are proposed uses after the date of designation, please use the Application for Surface Water Use Permit for New Use, **Form SWUPA-N**.

Information about surface water management areas and the current application forms are available at our website: http://www.hawaii.gov/dlnr/cwrm/; by contacting the Stream Protection and Management Branch at 587-0234; or sending an email to: dlnr.cwrm@hawaii.gov.

REQUIREMENTS FOR A COMPLETE APPLICATION Information must be legible. Therefore, please type or clearly print all information in ink.

a. Fill in the most recent application form.
b. Fill in every line on the application.
c. Enclose a check for the non-refundable filing fee of $25 payable to: Department of Land and Natural Resources.
d. Pay for the cost of publishing any required public notices related to your application.
e. Mark the source and end use locations on the appropriate USGS quad map and TMK map and attach to your application.
f. Attach photos showing your existing diversion, measuring device (if applicable) and end use areas.
g. Sign the application form. Both the applicant and the landowner of the source must sign the application form.
h. Submit one original and **15 copies** of the application form; one original and 15 copies of the attachments (instructions, maps, photos and any additional attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

The applicant **must** establish that the existing use of water is a reasonable and beneficial use. According to §174C-3 of the State Water Code: *"Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest.*

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

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

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

EXISTING SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT AND CODE: Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface-Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: http://www.hawaii.gov/dlnr/cwrm/, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.

4a. TMK OF STREAM DIVERSION LOCATION: Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/

4b. TMK OF DITCH DIVERSION LOCATION: Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. FLOW MEASUREMENT INFORMATION: Check "Yes" or "No". If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table 1

EXISTING USER INFORMATION

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

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

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

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

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

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

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

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

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

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

AGRICULTURE	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
DOMESTIC	
DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
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
IRRPA	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 A

Attachments

Appended hereto as Attachment B is a copy of the 7.5 minute-series USGS topographic map with the Kuleana 'Auwai Diversions, Left and Right Banks, labeled. Attachment C is a TMK map showing the location of our property, the inflow and outflow of water from our kuleana `auwai, and our existing end uses (banana patch and domestic use). Attachment D contains copies of photographs of our 'auwai diversion and area of existing use. Attachment E includes documentation establishing that our land was in kalo at the time of the Māhele of 1848 and is described in more detail below.

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, Living Waters Land Foundation, LLC claims to be the source landowner.

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Box 5: Stream Diversion

We currently use water from the South Waiehu kuleana 'auwai that runs along the Waihe`e side of South Waiehu Stream. Water is diverted into our 'auwai from the stream through a traditional po'owai (intake made with stones) on TMK: 3-3-013-015 (see attached USGS topo map, labeled "Kuleana `Auwai Diversion Left Bank" and attached photos). The water that is diverted from the stream continues makai in a traditional 'auwai for about 1 ½ miles until it reaches our property. Since Maui County does not provide municipal water service in this area, we use water from the `auwai for all of our water needs, including our domestic water uses and non-commercial banana patch. Any unused water is absorbed into the ground or flows back into the ditch, which eventually returns to the stream. The amount returned to the stream varies, depending on the weather, our domestic water needs, and other factors.

Box 6: See explanation for Table 2 Box 10, below.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. Attached hereto as Attachment E are true and correct copies of Māhele records for Land Commission Award No. 3443, Royal Patent No. 6283, including testimony indicating the land was in kalo. Based on our knowledge of the history of this kuleana and our family, this land has been has been passed down from generation to generation and has remained in our family continuously since the Māhele; 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 2, Box 10: Justification for Requested Quantity

I estimated my existing domestic water use, including my use of water within my home and outside my home for watering my yard and non-commercial garden and banana patch, by applying the 2002 State of Hawai`i Water System Standard for Maui County of 600 gallons per single family home.

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.

Moreover, even if we did not have protected rights to water from South Waiehu Stream, there is no potentially available alternative source that is economically practicable. The County does not provide municipal water service in our area, so we rely on the stream to support all of our domestic, agricultural, and other water needs. Requiring us to use an alternate water source would effectively deny our appurtenant right and traditional and customary right to live a subsistence lifestyle on our kuleana. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights.

Municipal Sources. As explained above, our property does not have any access to County water because we are too far mauka; there is no municipal water service in our area. So, our ʻauwai is the only source of water for our domestic, agricultural, and other needs.

Wastewater reuse. Reusing wastewater is impracticable because our kuleana ʻauwai is the only source of water for our domestic, agricultural, and other needs. Reclaimed water is not suitable for household uses such as brushing our teeth, bathing, washing dishes, etc.

Ditch system. I am currently using water from an existing ʻauwai. Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai ʻEhā do not consistently have enough water to support additional users. Second, I lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user who relies on kuleana water to support all of my uses, the cost of taking water from or constructing another ditch is not practicable, especially when I have appurtenant rights to the water in my existing ʻauwai.

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 domestic user also engaged in non-commercial

gardening, we should not have to do so given our appurtenant right to the water from South Waiehu Stream..

Table 4: Public Interest

Our Existing Use is Consistent with the Public Interest

Generally, "water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d 409, 474 (2000) ("Waiāhole I"). Further, HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our domestic water uses include watering our non-commercial garden and banana patch. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help maintain ecological balance and scenic beauty

Our Existing Use is a Protected Public Trust Purpose

Because our existing domestic 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; see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights). Additionally, because any unused water is returned to Waiehu 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

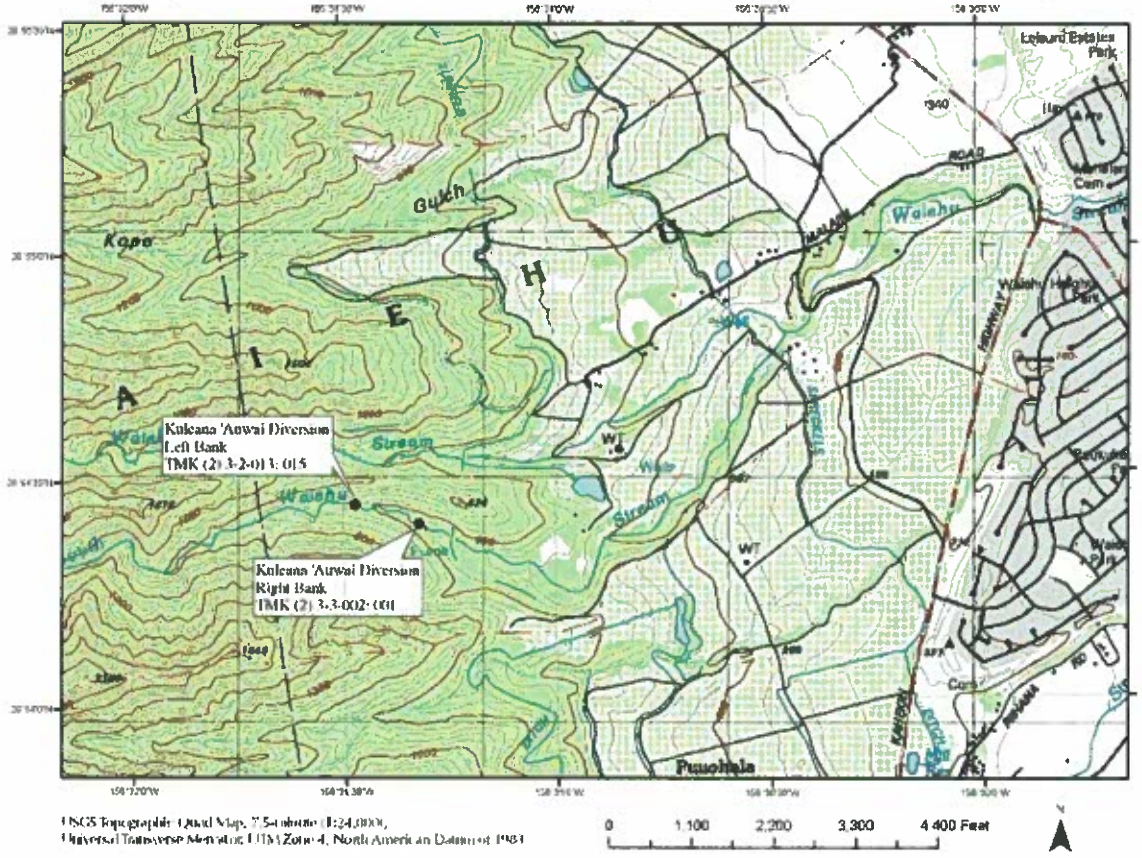
Because any unused water returns to Waiehu Stream, our existing domestic use also supports beneficial instream uses such as: (1) the maintenance of fish and wildlife habitats; (2) outdoor recreational activities; (3) maintenance of ecosystems such as estuaries, wetlands, and stream vegetation; (4) aesthetic 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 to transfer water from the intake and 'auwai to our property to maximize efficiency and minimize water loss. Therefore, our use is "reasonable-beneficial."

ATTACHMENT B: USGS MAP

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

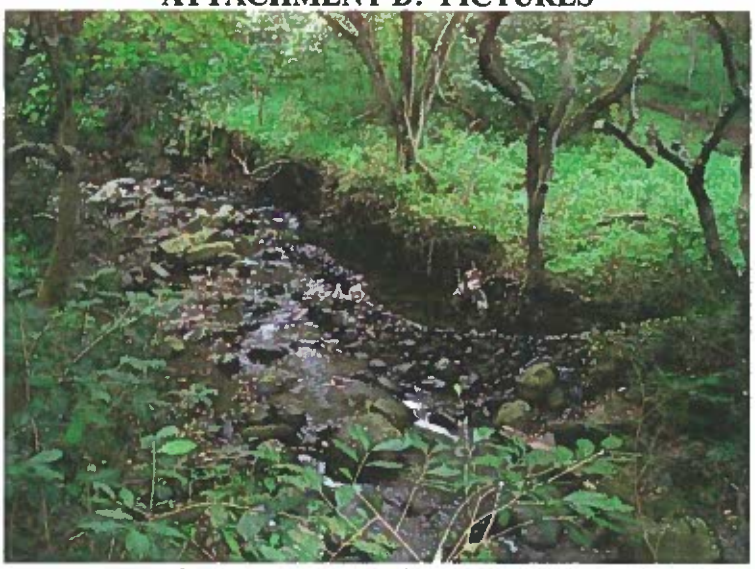


This is a true and correct copy of the USGS map for South Waiehu.

ATTACHMENT C: TMK MAP

This is a true and correct copy of TMK No. 3-2-017: 012, depicting our parcel, the inflow and outflow of water from our kuleana `auwai, and our existing end uses (banana patch and domestic use). The green section (future lo`i) is detailed in our new use application, which we filed concurrently. This map is approximate and not to scale.

ATTACHMENT D: PICTURES



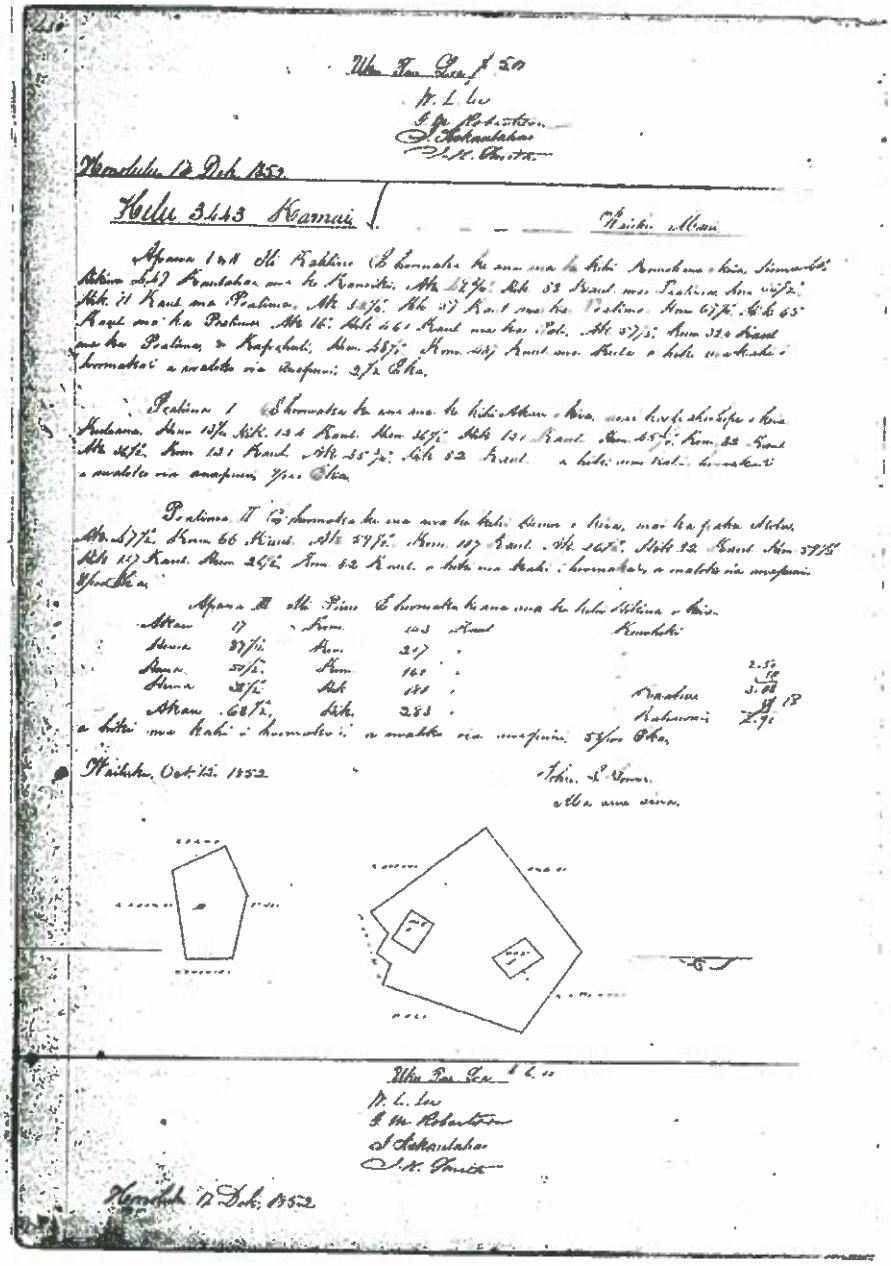
This is a true and correct copy of a July 17, 2006 photograph of the intake for our `auwai from South Waiehu Stream, which is called "Kuleana 'Auwai Left Bank" on the USGS Map.

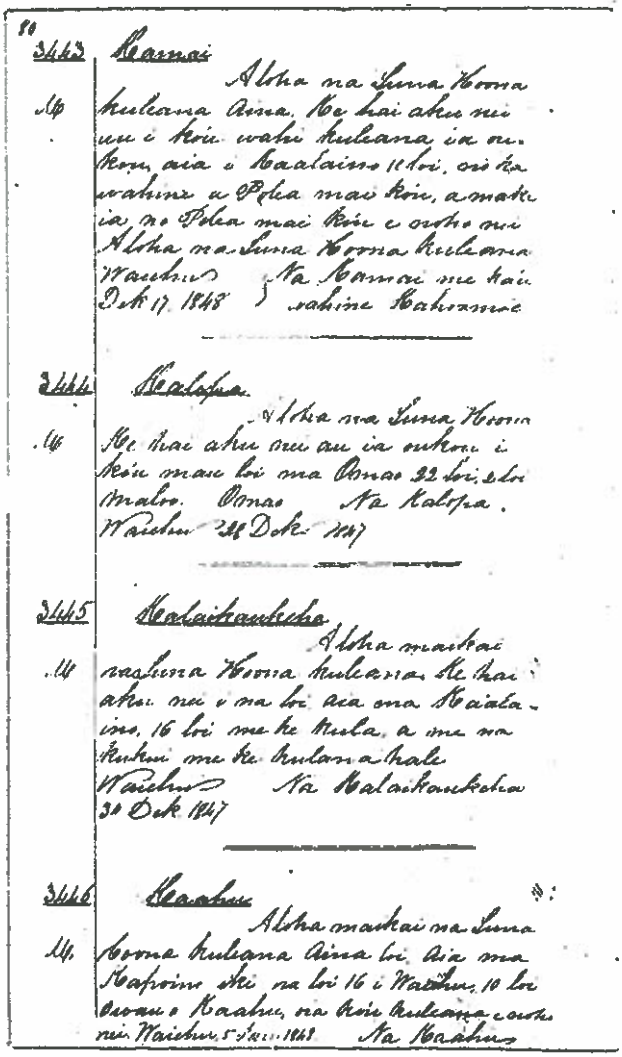
This is a true and correct photo taken on January 31, 2009 that accurately depicts the condition of the pipes that transport water onto my property from our 'auwai, to my banana trees, and to my home for domestic purposes. You can also see the `auwai from the Cabacungans flowing from right to left under our pipe.

This is a true and correct photograph taken on January 31, 2009 that accurately depicts the condition of the pipes that transport water on my property to my banana trees and to my home for domestic uses.

This is a true and correct photograph of my grandson and me taken on January 31, 2009 at our property.

ATTACHMENT E: DOCUMENTATION SUPPORTING APPURTENANT RIGHTS





80

3443 Kamai

M. Aloha na Luna Hoona kuleana Aina. He hai aku nei au i kou wahi kuleana ia oukou, aia i Kaalaino 10 loi, no ka wahine a Polea mai kou, a make ia no Polea mai kou e noho nei Aloha na Luna Hoona kuleana Waiehu Dek 17 1848 } Na Kamai me kau wahine Kahoomoe

3444 Kalopa

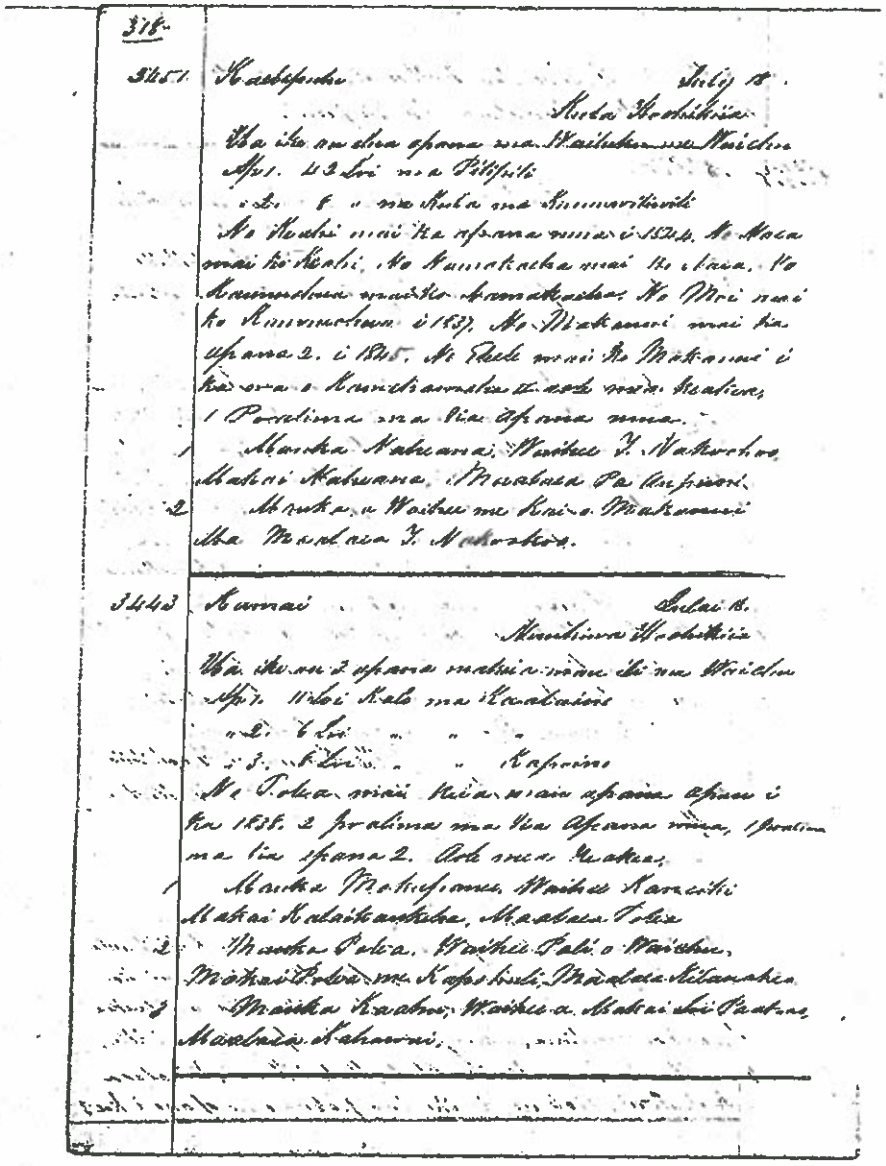
M. Aloha na Luna Hoona He hai aku nei au ia oukou i kou mau loi ma Omao 22 loi, 2 loi Maloo. Omao Na Kalopa. Waiehu 28 Dek 1847

3445 Kalaikaukeha

M. Aloha maikai na Luna Hoona kuleana. He hai aku nei i na loi aia ma Kaalaino, 16 loi me ke kula, a me na kukui me ke kulana hale Waiehu Na Kalaikaukeha 30 Dek 1847

3446 Kaahu

M. Aloha maikai na Luna Hoona kuleana Aina loi. Aia ma Kapoino iki na loi 16 i Waiehu, 10 loi Owau o Kaahu, na kou kuleana e noho nei Waiehu 5 Jan 1848 Na Kaahu



HELU

PALAPALA SILA NUI

A ke Alii, mamuli o ka olelo a ka Poe Hoona Kuleana,

NO KA MEA, ua hoolilo au Luna Hoona i na kuau kuleana aina i ka olelo, he kuleana olelo ko Kamai Kuleana Helu 7713

na ke Aupo Alodio koko o kahi olelo malalo.

Nolaila, na keia Palapala Sila Nui, ka hoike aku nei o Kauikeaouli IV, ke Alii ai a ke Akua i hoea lokomaikai i hoomoho ai malama o ko Hawaii Pae Aina i ka hauoli a pau, i hoiia ka oiaio ike, o na kuau oiaio kope alii no hoawi aku ola, ma ka Aupo Alodio la Kamai

i hoiia wahi a pau loa no Kamai

me ka makaainana o Kamai penei ma ka olelo:

(Kuau 1, no Ili o Kaalaina ka hoomaka ana ma ke Kihi Komohana
Akau 44° Hi 4.49 Kuai
Akau 402° " .88 "
Akau 46° " .71 "
Akau 32° " .57 "
Akau 49° " .65 "
Akau 16° " 4.61 "
Akau 37° K 3.26 "
Akau 45° " 4.87 "
Kihi i hoomaka ai a malaila i ka auwaiola. 2 Ekai

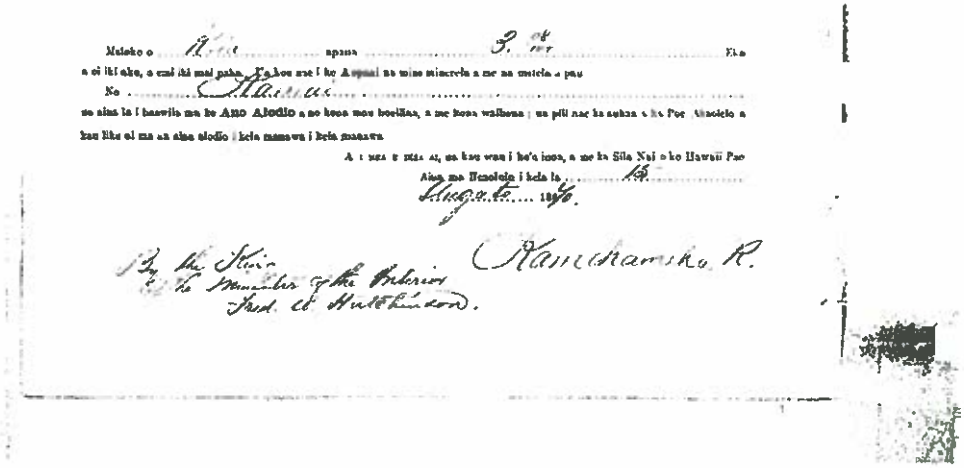
Kuauna 2. O ka hoomaka ana ma ke Kihi Akau ma ke kapa o Kuleana
Hema 132° Hik 1.30 Kuai O
Hema 45½° Kom 52 "
Akau 45½° Hik 52 "
a malaila i ka auwaiola.

Hema 365° Hik 1.21 Kuai O
Akau 365° Kom 1.21 "
a kihi ana Kihi i hoomaka ai a
17½ Ekai

Kuauna 3. O ka hoomaka ana ma ke Kihi Hema a ma Akau ke kapa o Kuleana
Akau 17° Hik 11 Kuai
Akau 36½° Hik 82 "
Akau 46½° Kom 52 "
a kihi ana Kihi i hoomaka ai a malaila
ka auwaiola.

Hema 89° Kom 1.07 Kuai
Hema 49° Hik 1.07 "
a kihi ana Kihi i hoomaka ai a malaila
17½ Ekai

(Kuauna 4. Ma Akau O ka hoomaka ana ma ke Kihi Hikina
Akau 17° Ko 1.43 Kuai
Hema 89½° " 2.07 "
Hema 36½° " 1.60 "
Hema 38° Hi 1.80 "
Akau 6.8° " 2.33 "
a kihi ana Kihi i hoomaka ai Auwaiola 17½ Ekai



Maloko o ..... apana ..... 3. 08 ..... Eka

a oi iki aku, a emi iki mai paha. Ka kou ane i ke Aupuni na mise mineola a me na mutela a pau

No ..... Hawaii .....

na aina la i hawaiia ma ke Ano Alodio a no kona mau hoeilina, a me kona waihona ; na pili nae ka auhau a ka Poe Ahaolelo a kau like ai ma na aina alodio i kela manawa i kela manawa

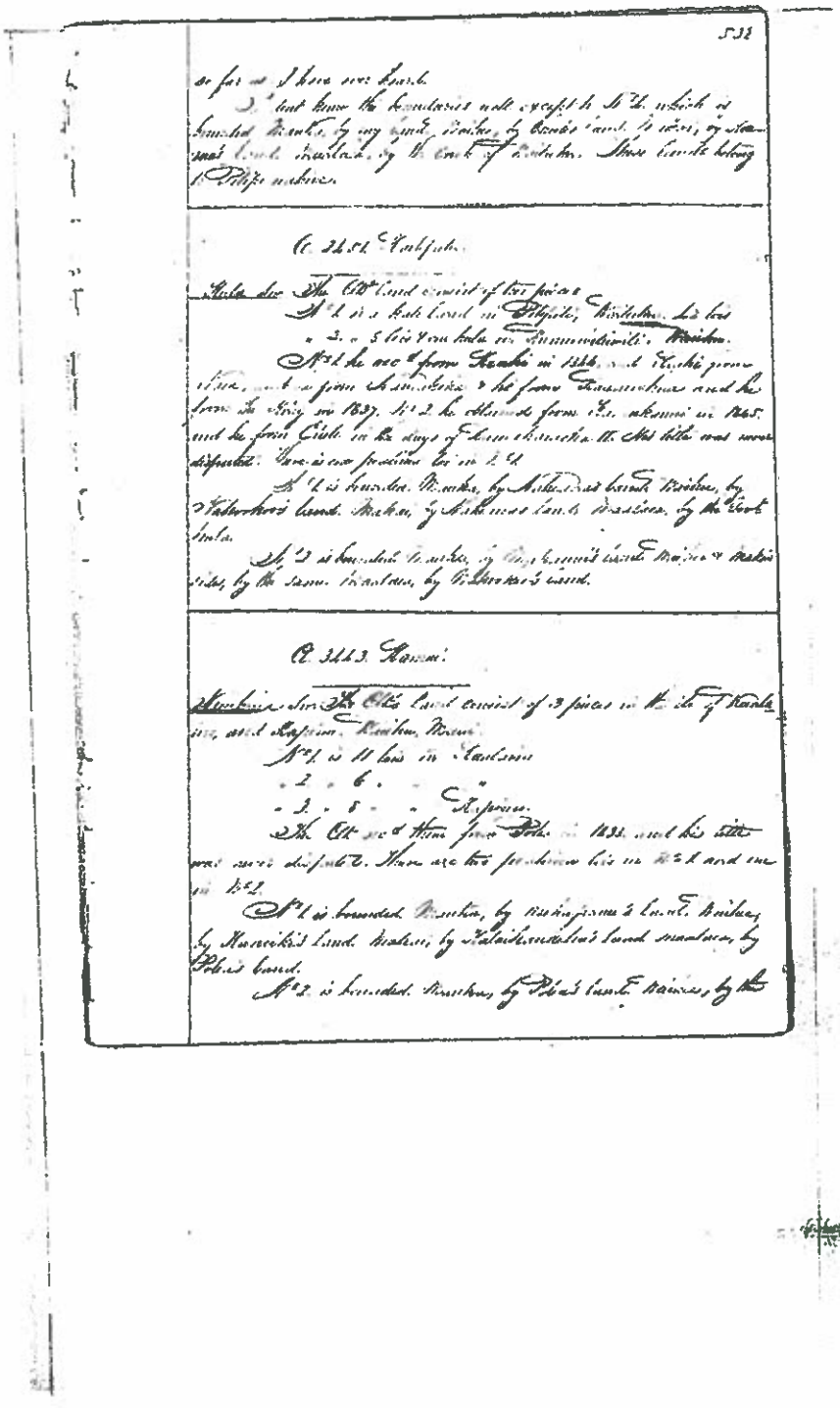
A i mea e mea ai, na kau wau i ke'a inoa, a me ka Sila Nui o ko Hawaii Pae

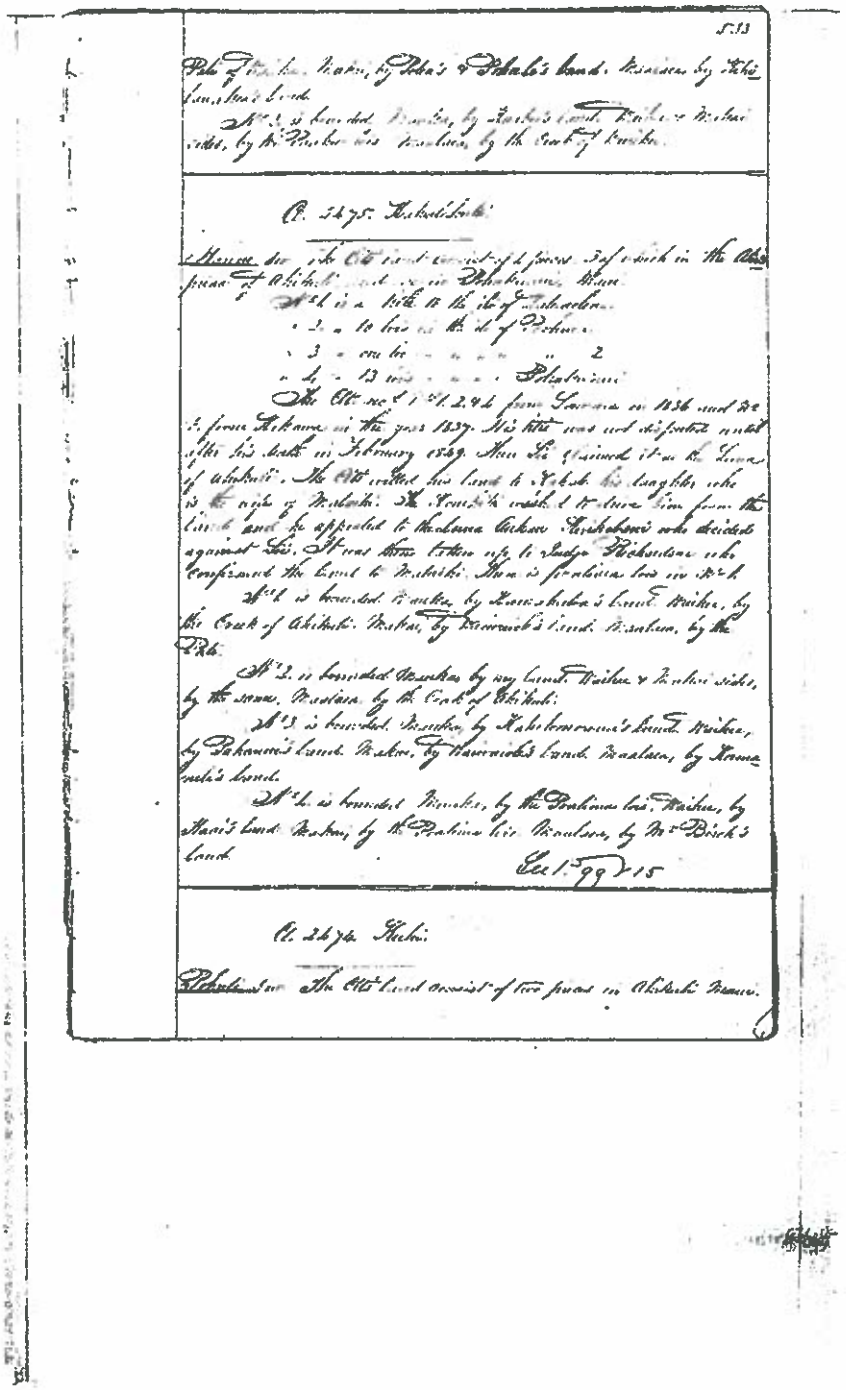
Aina ma Honolulu i kela la ..... 15 .....

Augusto ..... 1896.

By the Kiu
the Minister of the Interior
Fred. W. Hutchinson.

Kamehameha R.





Pale of Kuiku. Makai, by Poka's & Pokale's land. Maalaea by Kihi-lanakea's land.

No. 3 is bounded. Mauka, by Kaiku's land. Waihu & Makai sides, by the Pauka lois. Maalaea, by the Creek of Kuiku.

Cl. 2475. Hakuli Kuli.

Hanoa sur. The Cl. land consist of 4 pieces 3 of which in the Ahupuaa of Ahikuli and one in Pohakuaui, Maui.

No. 1 is a kiki to the ile of Kahaelua.
" 2 " 10 lois in the ile of Pohue.
" 3 " one lo " " " " 2
" 4 " 13 lois " " " " Pohakuaui.

The Cl. rec. 1st 1.2.4 from Lawaia in 1836 and No. 3 from Hekawa in the year 1837. His title was not disputed until after his death in February 1849. Then Lii claimed it as the Luna of Ahikuli. The Cl. willed his land to Kaksh his daughter who is the wife of Malaiki. The Kamaiki wished to drive him from the land and he appealed to the Luna Aukau Kuikebeni who decided against Lii. It was then taken up to Judge Richardson who confirmed the land to Malaiki. Then is Poaliua lois in No. 1.

No. 1 is bounded. Mauka, by Kamakaka's land. Waihu, by the Creek of Ahikuli. Makai, by Kaiwaiole's land. Maalaea, by the Pale.

No. 2 is bounded. Mauka by my land. Waihu & Makai sides, by the same. Maalaea by the Creek of Ahikuli.

No. 3 is bounded. Mauka, by Kahelomowaa's land. Waihu, by Pahaunui's land. Makai, by Kaiwaiole's land. Maalaea, by Kamanele's land.

No. 4 is bounded. Mauka, by the Poaliua lois. Waihu, by Haai's land. Makai, by the Poaliua lois. Maalaea, by Mr Birch's land.

Sec 1. 99 & 15

Cl. 2474. Kuhi.

Pohuli sur. The Cl. land consist of two pieces in Ahikuli Maui.