



**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 4:50

Event ID: SWUP.2277.6

SWUP NO. 62

**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.

<b>1. APPLICANT'S NAME</b> Warren K.H. Soong		Applicant's Contact		<b>2. SOURCE LANDOWNER'S NAME</b> Avery Chumbley		Source Landowner's Contact	
Applicant's Mailing Address, or Principal Place of Business 245A West Waiko Road, Waikapu, HI 96793				Source Landowner's Mailing Address, or Principal Place of Business 363 W. Waiko Road Wailuku, HI 96793			
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail		

**EXISTING SOURCE INFORMATION**

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

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

**4a. TMK OF STREAM DIVERSION LOCATION:** 3 - 5 - 004 : 018  
Zone Sector Plat Parcel

**4b. TMK OF DITCH DIVERSION LOCATION:** 3 - 5 - 012 : 026  
Zone Sector Plat Parcel

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

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

**EXISTING USER INFORMATION**

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

**8. END USER INFORMATION:** Are you an end user on an existing water system?  Yes  No  
 If yes, who is the operator of the water system? N/A, no "operator"

**9. REGISTRATION AND DECLARATION OF WATER USE:** Do you have a Registration and Declaration of Water Use with the Commission?  
 Yes. List the file reference name(s): Warren Soong  
 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.

<b>11. APPLICANT</b>		<b>12. SOURCE LANDOWNER</b>	
		Signature	
Warren K.H. Soong	4/April 09		
Print	Date	Print	Date

FILE ID: SWUP.2277.6  
 DOC ID: 3282V

**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	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	4,476	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SUM OF AVERAGE DAILY USE FOR THE MONTH</b>	53,712	<b>GPD</b>				
<b>AVERAGE DAILY USE (Average of the above)</b>	4,476	<b>GPD</b>				

**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.
<b>Uses that require potable (drinking) water</b>									
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
<b>TOTAL POTABLE USE</b>						<b>0</b>		<b>GPD</b>	
<b>Uses that do not require potable water</b>									
DOM	3 - 5 - 012 : 026 Zone Sector Plat Parcel	Urban	No	Ag	No	4,476	No	1,492	See attachment A
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
	Zone: _____ Sector: _____ Plat: _____ Parcel: _____								
<b>TOTAL NON-POTABLE USE</b>						<b>4,476</b>		<b>GPD</b>	
<b>TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>						<b>4,476</b>		<b>GPD</b>	
If total use requested is not equal to the total monthly average in Table 1, please explain.									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above.									

**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 - 5 - 012 : 026 <small>Zone Sector Plot Parcel</small>	diversified agriculture	1.52	1.492	Year Round	Year Round	Other: sprinkler and hand water with hose	Irrigate to Field Capacity
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							
- - - : <small>Zone Sector Plot Parcel</small>							

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

**TABLE 4: ALTERNATIVES ANALYSIS**

	<b>Potable Alternatives</b> Attach additional sheets if necessary.	<b>Non-Potable Alternatives</b> Attach additional sheets if necessary.
Municipal sources		See attachment A
Wastewater reuse		See attachment A
Ditch system		See attachment A
Desallnization		See attachment A
Ground water		See attachment A
Other (specify)		N/A

**PUBLIC INTEREST**

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

Explain below how the uses in your application are consistent with the public interest as described above. Attach additional sheets if necessary.

See attachment A

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

### INSTRUCTIONS FOR FILLING OUT FORM SWUPA-E

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

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

Information about surface water management areas and the current application forms are available at our website: <http://www.hawaii.gov/dlnr/cwrm/>; by contacting the Stream Protection and Management Branch at 587-0234; or sending an email to: [dlnr.cwrm@hawaii.gov](mailto: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.
- b. 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/](http://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 "Ycs" 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<sup>a</sup> of 12 months of consecutive use<sup>b</sup> from the last month<sup>c</sup> 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.

<b>AGRICULTURE</b>	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
<b>DOMESTIC</b>	
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
<b>INDUSTRIAL</b>	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
<b>IRRIGATION</b>	
IRRGC	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRSC	Schools
<b>MILITARY</b>	
MIL	Military
<b>MUNICIPAL</b>	
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 12<sup>th</sup> 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

**Exhibit 1A:**

A copy of the 7.5 minute-series USGS topographic map with the Waikapū Stream and Waikō Road 'auwai diversion labeled.

**Exhibits 2A and 2B:**

A TMK map showing the location of our property and area of existing use and a map showing the locations of our 'auwai diversion.

**Exhibits 3A and 3B:**

Photographs of the surface water diversion and end use. These are true and correct copies of photos taken on October 12, 2008.

**Exhibit 4A:**

A true and correct copy of Land Commission Award No. 2199 to Pahoa, Royal Patent No. 3129, and the native and foreign testimonies in support of Pahoa's claim. The native testimonies indicate that this was taro land at the time of the Māhele.

**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, Avery Chumbley claims to be the source landowner.

**Supplemental Information for Box 5: Stream Diversion**

We are kuleana users along the kuleana 'auwai that runs along Waikō Road. Water is diverted into the 'auwai from the stream through a traditional po'owai (intake made with stones) near Ione Shimizu's house (see attached USGS topo map). The water continues makai in pipes and ditches until the 'auwai cuts through our property where we divert some water by pipe and ditch for our crops. See Photo Exhibits 3A and 3B. We have a small non-commercial garden, including sweet potato, cassava, dry land taro, banana, and breadfruit. We also water our lawn. Any excess water that is not absorbed by our crops flows back into the kuleana 'auwai.

**Supplemental Information for Box 6:**

See explanation for Table 2, Box 10, below.

**Supplemental Information for 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 Exhibit 4 are true and correct copies of Māhele records for Land Commission Award No. 2199 to Pahoa, Royal Patent No. 3129, and the native and foreign testimonies in support of Pahoa's claim. The native testimonies indicate that this was taro land at the time of the Māhele.

This land has been in our family continuously since the Māhele, 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.

**Table 2, Box 10: Justification for Requested Quantity**

I estimated my existing domestic water use of 4,476 gallons per day, by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gallons per acre by the total acreage of my property minus the approximate square footage of my house (3,000 gallons per acre x 1.492 acres = 4,476 gallons per day).

**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 have a small non-commercial garden including sweet potato, cassava, dry land taro, banana, and breadfruit. The vegetables we grow feed our 'ohana and are shared with neighbors and community members. 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. An alternative water source that would require us to pay for the gallons of water necessary to sustain our garden crops 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 and is impracticable for a small, non-commercial user like me.

**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. 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 this use.

**Wastewater reuse**

Reusing wastewater is impracticable because we would still be required to pay for large volumes of water. 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 the existing 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 gardening, the cost of taking water from or constructing another ditch is not practicable.

#### **Desalinization**

Desalinization of brackish water is not a practicable alternative because we are not aware of any such plant having been built on Maui. According to the County's estimates, a plant is expected to be built in 2013 at the earliest.

#### **Ground Water**

Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well would be unprecedented and extremely burdensome. As a small user engaged in non-commercial gardening, we do not have the means to install and maintain such infrastructure.

#### **Table 4: Public Interest**

##### **Our Existing Use is Consistent with the Public Interest**

HRS § 174C-2(c) provides that agriculture and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our agricultural practices and crops help maintain ecological balance and scenic beauty. As such, our existing use of stream water is consistent with the public interest.

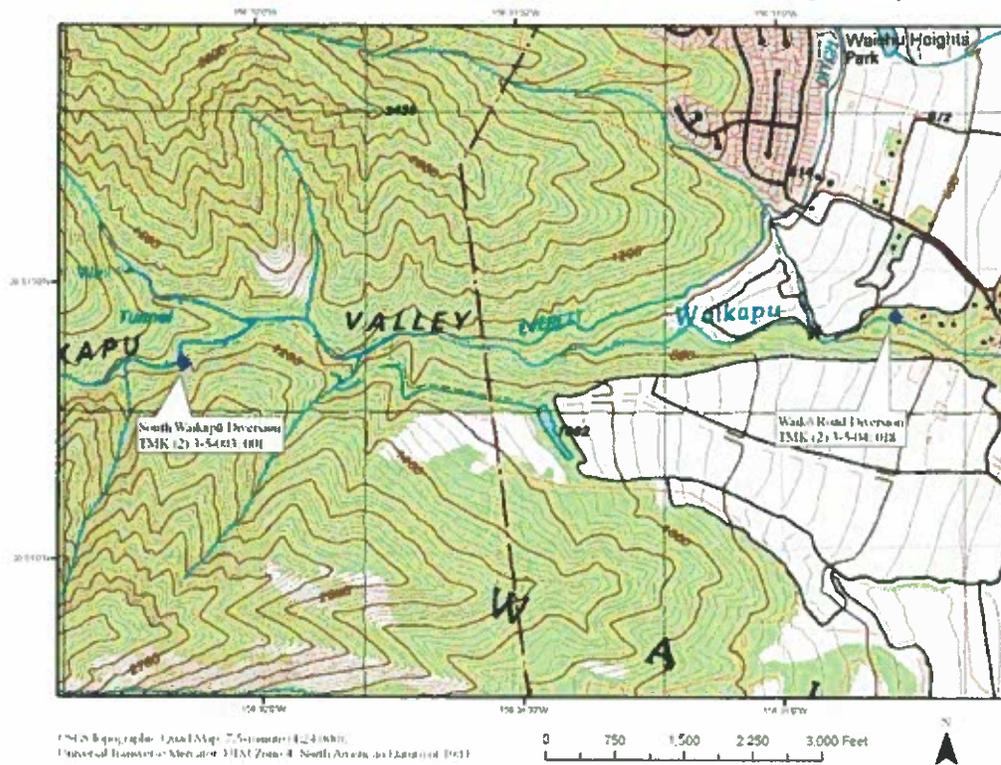
##### **Our Existing Use is a Protected Public Trust Purpose**

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.

##### **Our Existing Use is a "Reasonable-Beneficial Use"**

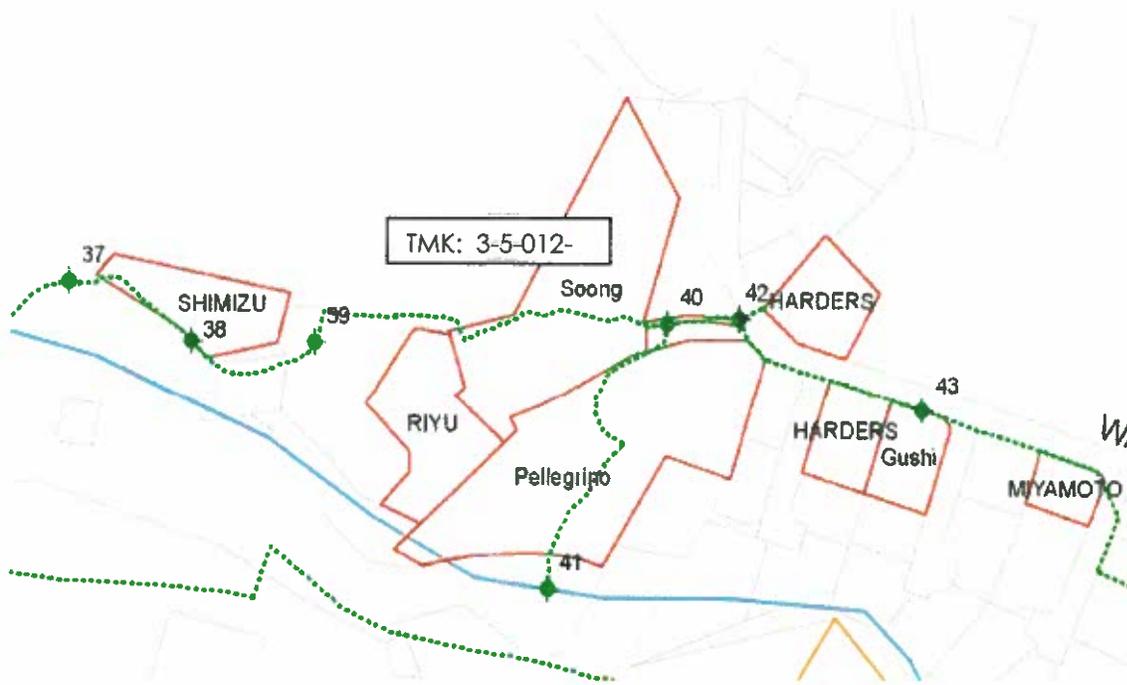
"Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest." HRS § 174C-3. As indicated, our 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 garden hoses to transfer water from the 'auwai to minimize water loss, and our farming practices include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, our use is "reasonable-beneficial."

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



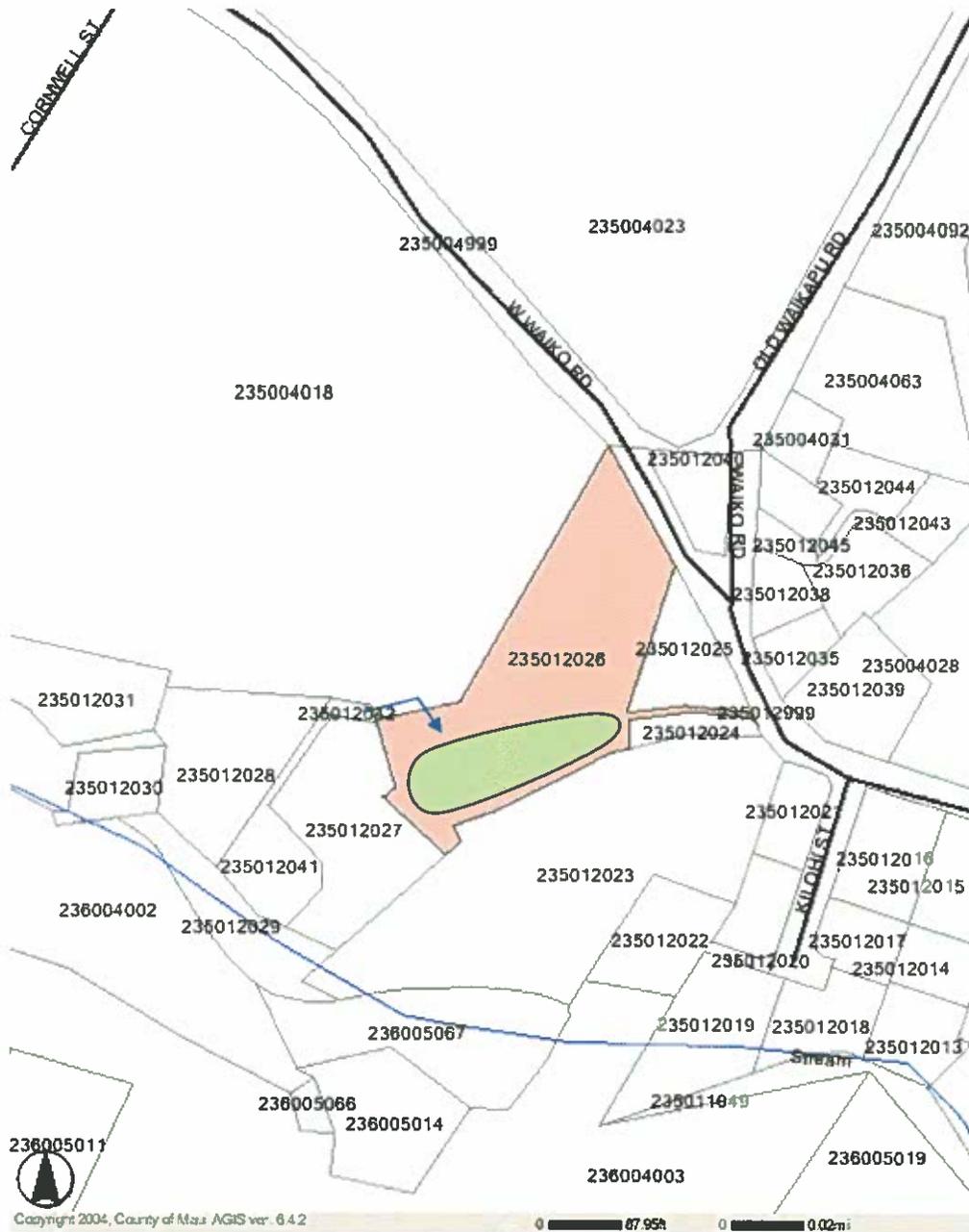
7.5 minute-series USGS topographic map with the Waikapū Stream and Waikō Road 'auwai diversion labeled.

**EXHIBIT 1A**



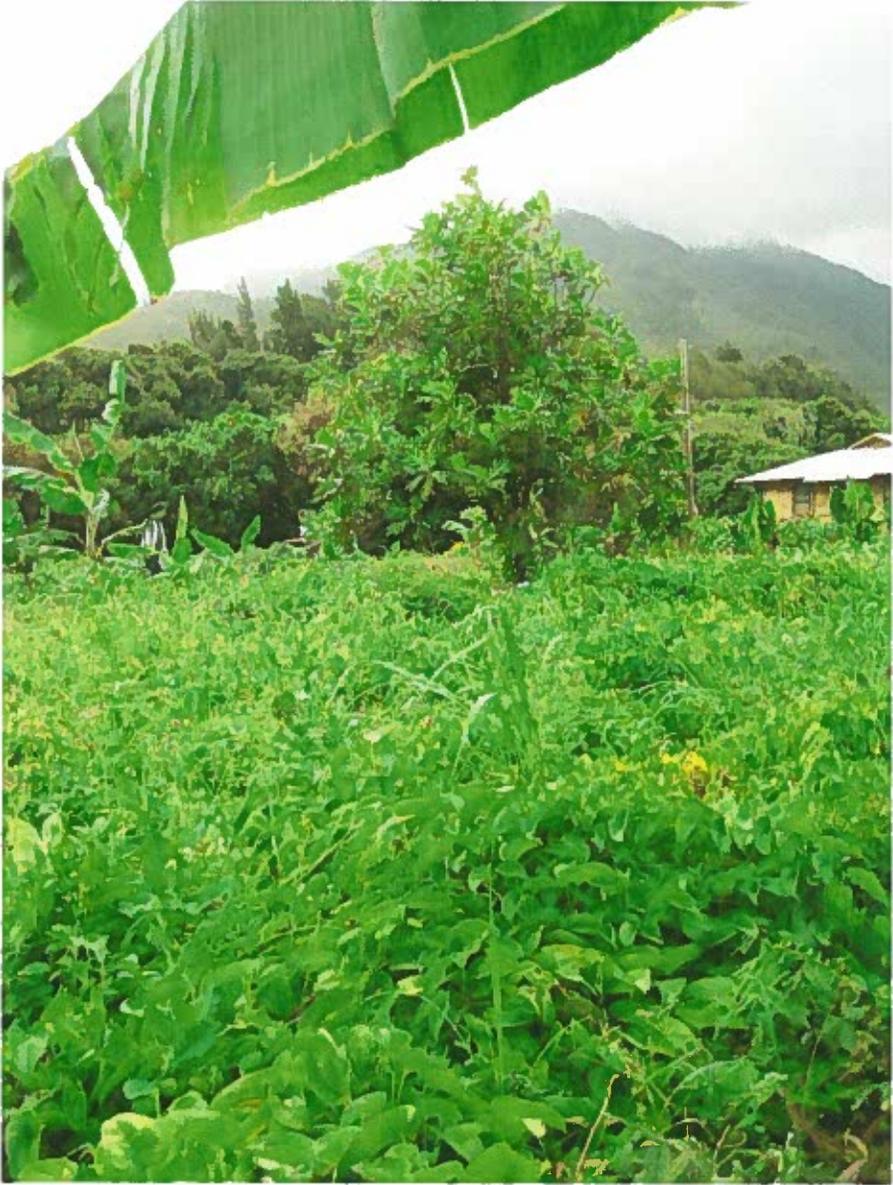
Map showing Waikapū Stream with ditch diversions and 'auwai crossing TMK: 3-5-012-026 (Soong)

**EXHIBIT 2A**



TMK: 3-5-012-026 showing water coming into property from the 'auwai (blue arrow), tapioca and sweet potato beds in green, and other diversified agriculture including my lawn in red. The end uses are not drawn to scale.

## EXHIBIT 2A



TMK: 3-5-012-026 Existing Use (tapioca)

**EXHIBIT 3A**



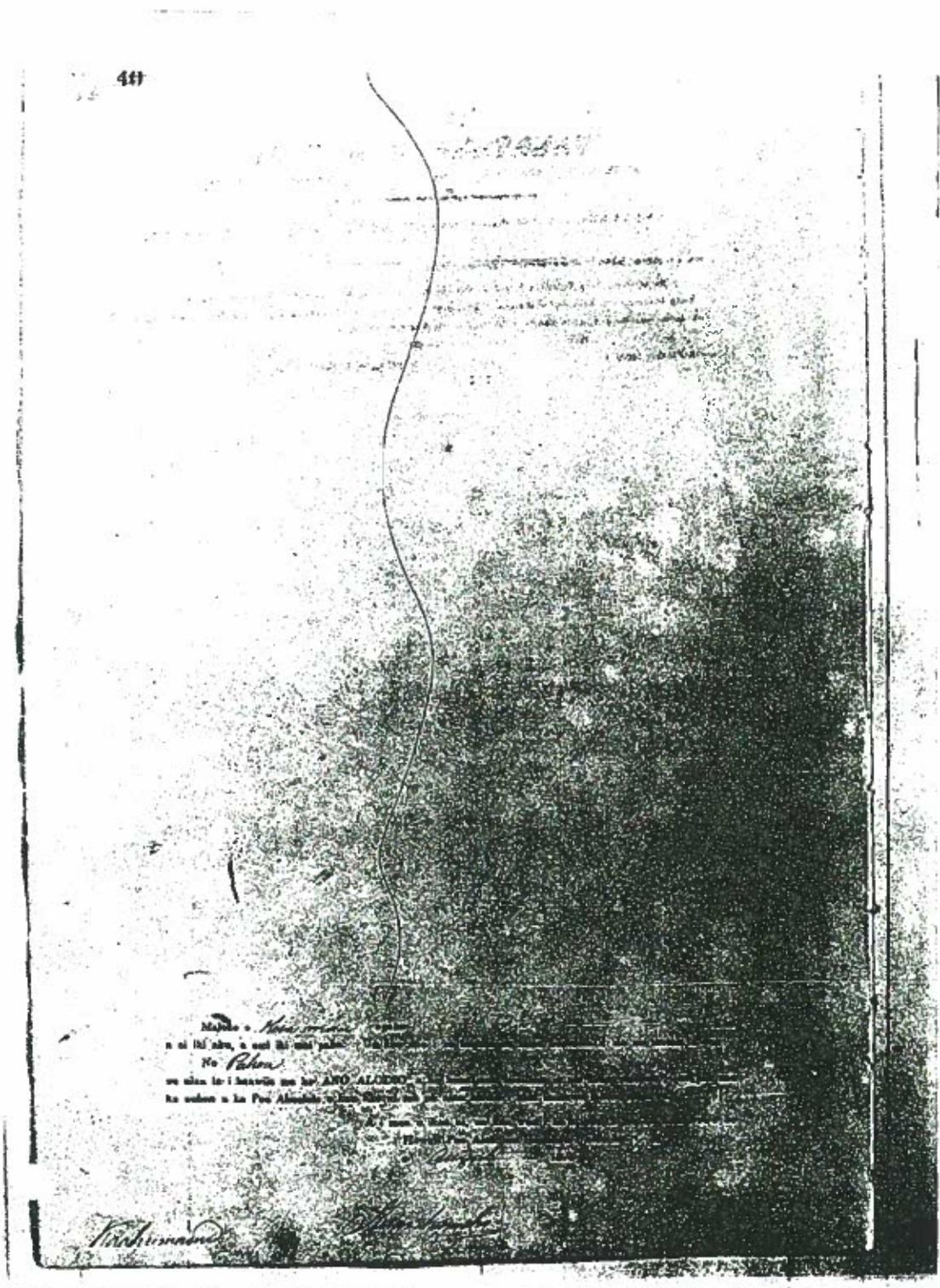
Photo above: Kuleana `auwai as it flows onto my property (parcel 26)  
Photo below: Landowner (Mr. Soong) with adjacent landowner next to `auwai crossing parcel 26

**EXHIBIT 3B**









Copied at Hawaii State Archives

mae i ho hua

174

A. 177. Pihou.

Uluouia The A. 177 land consists of one piece in the ili of Nihoa  
 Waikapu, and the other of hula lands in Waikolu, Ikae Nihoa.  
 The A. 177 is the first of these lands from Kapu in  
 1837 and the other from his wife in 1846 and the first of former  
 adjacent lands, his title is without dispute. There is one parcel  
 in the first piece.

A. 177 is bounded. Maunaka & Waikou sides, by Pihou's  
 land. Hula, by Kamaunui's land. Waikou, by Pihou's land.  
 A. 177 is bounded. Maunaka, by Pihou's land. Maunaka  
 & Waikou sides, by Kapu's land. Maunaka, by the coast-  
 lands of Eniwa.

A. 178. Eka.

Maunaka The A. 178 land consists of 3 pieces in Waikou, and  
 one in Waikou, Ikae.

- 1. 1. is 16 lots in the ili Maunaka.
- 2. 2. 2. of Nihoa.
- 3. 3. 2. House lot in Maunaka.
- 4. 4. 1. White ground in Maunaka.

The A. 178 & Waikou lands with the exception of 1 & 2  
 from Kapu's land in 1837, and 3 & 4 from Eniwa in 1846.  
 Kapu's land was the lands which he gave Eka from Maunaka,  
 in the days of Kamaunui's land. Eniwa in 1846 land  
 was given from Kapu in the days of Pihou. His title has never  
 been disputed. There are six parcels in 1 & 2.

A. 178 is bounded. Maunaka & Waikou sides, by the former  
 land. Hula, by the ili of Pihou. 2. Maunaka, by the coast of  
 Waikou.

A. 178 is bounded. Maunaka, by Kapu's land & coast.  
 Waikou, by Kapu's land, Hula, by the ili of Pihou. Maunaka,  
 by Kapu's land.

2195 Mouku

Page 396

To the Land Commissioners: I hereby state to you my claim for my ali in the Ahupua'a of Mapulehu, on the Island of Molokai, which is named Pa. That is my claim. Farewell to you all.  
Mapulehu, Molokai, December 21, 1847

MOUKU

2196 Piano

Page 397

Ali of Kawailele, Manoa. I have 28 lo'i, 1 kula. On the north is the kula of Kaluahinenui, on the east is the lo'i of Kaawahua, on the south is Kaulaa, on the west is the lo'i of Puipui. Finished.

PIANO

2197 Puna

Ali of Puali, Manoa, Island of Oahu. I have 2 lo'i, 1 kula, 1 houselot. On the north is the kula of Nalino, on the east is the ka of Holualoa, on the south is the stream, on the west is the kula of Kekua. Finished.

PUNA

2198 Poopoo

Ali of Kawailele, Manoa. I have 6 lo'i, 1 kula, 1 houselot. Five of my lo'i are on the south and one is on the north. Finished.

POOPOO

2199 Pahoa

Ahupua'a of Waikapu, 'Ili of Kuaiwa. To the Land Commissioners: I am writing you for my land claim at Waikapu. My claim is for a section of land in the 'Ili of Kuaiwa. My land was from Kapu in the year '34 and I have lived on this section of land since then. There are some lo'is and a kula. I have not been objected to by the hohiki. Here are the witnesses of my claim: Eeka, Kamai.  
Waikapu, Maui, Dec. 21, 1847

PAHOA

2200 Nahalauwila

Ali /in/ Manoa, Island of Oahu. I have 4 lo'i, 1 kula, 1 kuahiwi, forested mountain area, 1 houselot. On the north

Page 398

the kula /and/ the Government Road, on the east is the lo'i of Kalani, on the south is the lo'i of Kalali, on the west is the lo'i of Kaluahinenui ma. Finished.

NAHALAUWILA