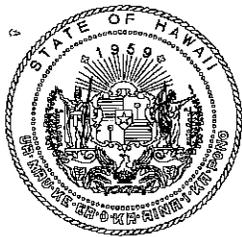


ORIGINAL



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

For Official Use Only:
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 29 AM 10:47

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

FORM SWUPA-N

- Application for New use
Application to Modify SWUP No.

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

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

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

1. APPLICANT'S NAME: John Varel
Applicant's Contact: John Varel
2. SOURCE LANDOWNER'S NAME: John Varel
Source Landowner's Contact: John Varel
Applicant's Mailing Address, or Principal Place of Business: PO 1468, Wailuku, HI, 96793
Source Landowner's Mailing Address, or Principal Place of Business: PO 1468, Wailuku, HI, 96793
Applicant's Phone: 357-0702, Applicant's Fax: 242-9009, Applicant's E-mail: jvarel@fusionstorm.com
Source Landowner's Phone: 357-0702, Source Landowner's Fax: 242-9009, Source Landowner's E-mail: jvarel@fusionstorm.com

SOURCE INFORMATION

3. SURFACE WATER HYDROLOGIC UNIT: Island: Maui; Hydrologic Unit: Waialeale; Hydrologic Unit Code: 6022

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

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

6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: Zone - Sec - Plat : Parcel

6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: Zone - Sec - Plat : Parcel

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

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

8. PROPOSED FLOW MEASUREMENT INFORMATION:
Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts?
Yes. List the manufacturer and describe the device. Depend on location of draw
No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below.

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

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

10. PROPOSED USE: Check all that apply. Agriculture Domestic Industrial Irrigation Military Municipal

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

PROPOSED USER INFORMATION

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

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

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

15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from 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, additional information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited to, any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

16. APPLICANT: Signature: John Varel, Date: 4/28/09
17. SOURCE LANDOWNER: Signature: John Varel, Date: 4/28/09

FILE ID: SWUP. 2299.6
DOC ID: 3240

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY

(Attach additional copies of Table 1 if necessary.)

LAND USE CONSISTENCY					EFFICIENCY OF USE								
1	2				3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.				STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 2.
Uses that require potable (drinking) water													
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
TOTAL POTABLE USE											¹²	GPD	
Uses that do not require potable water													
	Zone	Sec	Plat	Parcel	AG	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	AG	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No	340 ac	4400	1,474,500	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	see attached addendum
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
TOTAL NON POTABLE USE											¹³	GPD	
TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =											¹⁴	GPD	
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS													

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS

	A. Analysis of Potable Alternatives (Attach additional sheets if necessary.)	B. Analysis of Non-Potable Alternatives (Attach additional sheets if necessary.)
Municipal sources	N/A	see attached addendum
Wastewater reuse	N/A	see attached addendum
Ditch system	N/A	see attached addendum
Desalinization	N/A	see attached addendum
Ground water	N/A	see attached addendum
Other (specify)	N/A	see attached addendum

C. ADDITIONAL REQUIREMENTS:

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

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

John Varel

TMK # 3-2-001:001

SWUPA-N Addendum

Exhibits

Table 1; other

For the last 5 years I have been getting the vast majority of my irrigation water from 2 major leaks in the Waihee ditch system. Each leak is at minimum a million gallons a day and more consistently 2 million gallons a day, the flow fluctuates with the adjustment of the amount of water flowing through the Waihee ditch. There are no meters on these leaks and up until I acquired the property, the waters were running freely on my property. I have redirected much of the water to my fields and allowed excess water that I did not use in my fields, nursery, and diversified ag crops to flow back to the lower ditch, (Spreckles.)

The water diversions have supplied all of the water for 550 acres of ag land for the past 5 years. My existing needs for crops currently in production are: 1,474,500 gallons for 340 tree acres currently in macadamia nuts. (4,400 gallons per acre per day) per the Water Commission's 1992 Hawaii Water Plan, Oahu Water Management Plan. This acreage is currently not being irrigated from the leaks, for could not make a financial commitment to restore irrigation until I knew where my consistent supply of water would come from.

Table 3 Column B; Non- Potable Alternatives

Municipal sources: The county is not providing any new water meters for agricultural use in Waihee. I have two domestic water meters: one is a mile and a half from our homes, and the second does not have adequate pressure to make it up to our homes. The cost of tying into the county lines and installation of lengthy laterals to our homes is cost-prohibitive.

Wastewater reuse; Wastewater is also impractical, while I intend to recycle domestic effluent for use in our personal gardens, we will not generate enough water from our domestic uses to irrigate 2 acres of trees much less 550 acres of ag.

Waihee does not have a wastewater treatment plant. Effluent is simply not available.

Ditch system: Although Spreckles and Waihee ditches both run through my property, deed restrictions prohibit me from directly accessing any of the water flowing in the ditches. In addition Wailuku Agribusiness reserved appurtenant water rights when it sold the property to me in 2003. As a result, my rights may have been extinguished, although I reserve the right to claim appurtenant rights in the future based on new information.

The most cost effective solution to all parties is to take the water directly from the ditch and or ditch transmission and then into my irrigation system.

Desalinization: Desalinization of brackish water is also not practical.

Ground Water; Ground water is my most viable alternative to water from the ditch system. In fact, I have requested this Commission's permission to use groundwater (see GWUPA-N 825, filed August 28, 2008). Upon advice of Commission staff, however I intend to file an amended GWUPA-N. My initial GWUPA-N was contested, and I have been granted a temporary ground water permit for only 3000 gallons per day pending resolution of the in stream flow proceedings.

This is not sufficient nor cost effective. Power and infrastructure cost are prohibitive if only for domestic use. I am submitting this SWUPA-E as an alternative to my ground water application.

Other; I currently use exclusively the aforementioned leaks, storing in 4000 gallon water tanks and transmitting via pipes laid in the line of the flow of the leaks from Waihee Ditch.

C Public Interest

1. Use will maximize beneficial use and is in the public interest

Generally, "water use for the diversified agriculture on land zoned for agriculture is consistent with the public interest." As stated in the Wailahole Ditch Combined Contested Case. My water use is consistent with the public interest because the majority of the water I need is to sustain and continue the ag use designated for this land for hundreds of years. I have a base of crop of macadamia nut trees, but also a very diversified crop of Native Hawaiian reforestation, landscape, hundreds of fruit trees, dryland taro, as well as sustainable vegetable crops. Haw. Rev. Stat. 174C-2(c) declares that the protection of agriculture and the maintenance of proper ecological balance and scenic beauty is in the public interest. Thus current use is in the public interest. My use of the water also keeps water in the watershed of origin and will help maintain recharge of the watershed.

My use is also reasonable-beneficial. "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 consistent with the state and county land use plans and public interest. " HRS 174C-3. My current use fulfills state policies in favor of reasonable- beneficial uses of water, diversified and local agriculture, and the use of agricultural lands for bona fide agricultural purposes. Moreover, I take steps to make my water use more efficient. I am using micro-drip irrigation, and use mulch and green manure to protect the soil from erosion and minimize the use of water.

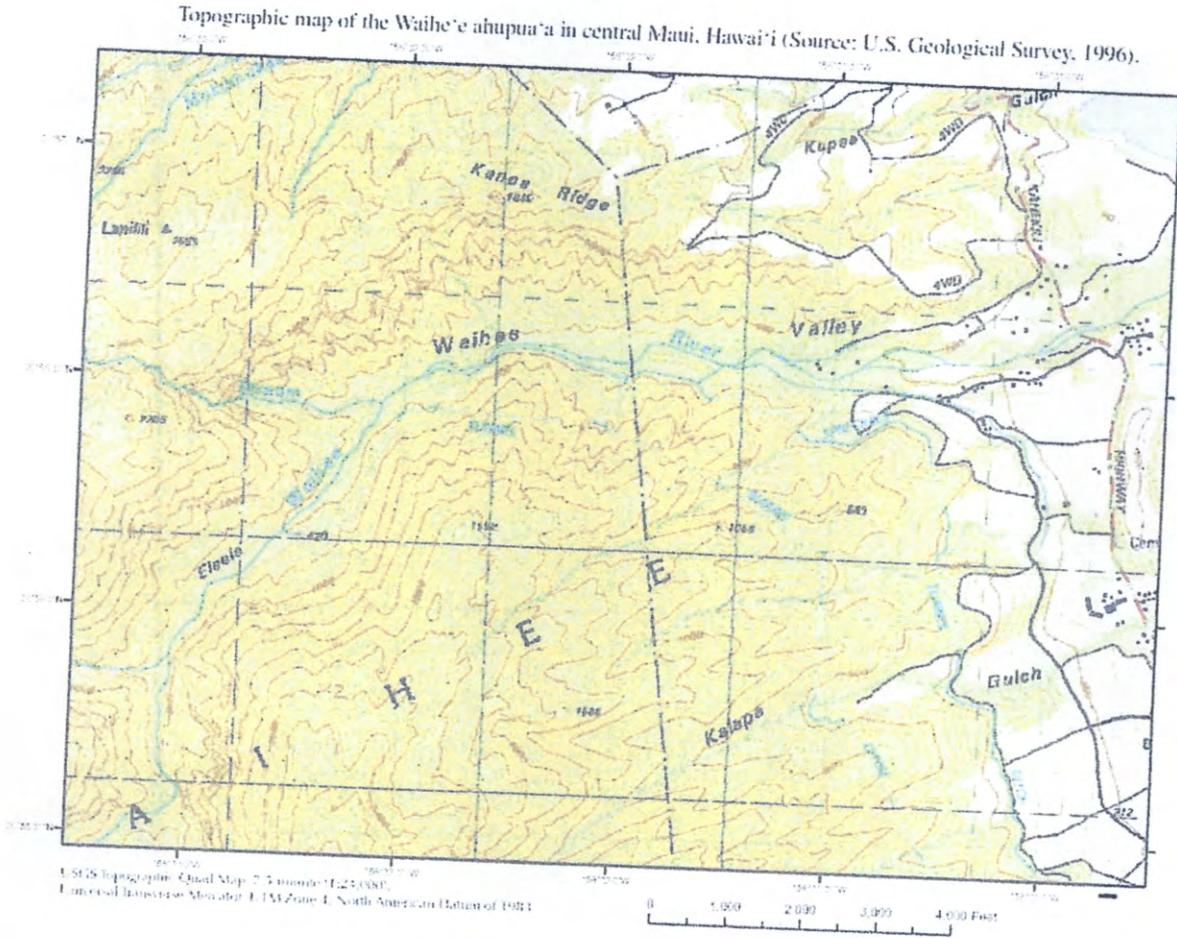
2. My use will not interfere with any existing legal uses

I do not believe that my use will interfere with existing legal uses as stated above.

3. My use will not interfere with the rights of DHHL

I am not aware of any DHHL lands using water from Waihee Stream or the ditch system that currently diverts most of the water. To the best of my knowledge, DHHL has not filed an application to use water from this source. While I am aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not and do not interfere with those reservations, which are largely served by ground water sources.

Exhibit A:



NORTH
WAIHU DITCH

T.M.K.: 3-2-13 : 18
553.62 Acs.

TRUE NORTH
SCALE: 1 IN. = 1000 FT.

#8
T.M.K.: 3-2-01 : 01
973,715 Acs.

T.M.K.: 3-2-01 : 03
368.9 Acs.

#13 WAIHEE DITCH
SPRECKELS DITCH

#14

ACCESS
BASEMENT

KAHEKILI
HIGHWAY

T.M.K.: 3-3-02 : POR. OF 01

#25
MALAINI
ROAD

T.M.K.: 3-2-09 : 01
113.00 Acs.

T.M.K.: 3-3-02 : POR. OF 01

LEGEND:

-  WAIHEE DITCH / SPRECKELS DITCH / NORTH WAIHU DITCH
-  IRRIGATION DITCH
-  IRRIGATION SYSTEM PIPELINE



Exhibit C: Photographs of End Uses: Nursery

These are true and correct copies of photographs accurately depicting portions of my nursery.



John Varel

TMK No. 3-2-001:001

Addendum and Exhibits

Exhibit D: Photographs of End Uses: Diversified Agriculture and Macadamia Nuts

These are true and correct copies of photographs accurately depicting portions of my diversified agriculture, including dryland kalo (top), bananas, and other fruits trees.



Exhibit D continued:

These are true and correct copies of photographs accurately depicting portions of my macadamia nut orchard, the top photo includes some of my bananas in the foreground.



John Varell
TMK No. 3-2-001:001
Addendum and Exhibits

Exhibit E: Photographs of End Uses: Domestic Uses

These are true and correct copies of photographs accurately depicting portions of our domestic uses, including our yard, bananas, and flowers.

