

ORIGINAL



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 Official Use Only:
RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 30 AM 8:43
SWUP NO. 78
Event ID: SWUP.2307.6

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

APPLICANT INFORMATION: Note: In accordance with §174C-51(1)(B), HRS, in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land, which is the water source of the permitted water, applies for a water permit, the landowner shall also be stated as a joint applicant for the water permit.
1. APPLICANT'S NAME: Francisco Cerizo
2. SOURCE LANDOWNER'S NAME: Wahi Ho'omalulu Limited Partnership
Source Landowner's Contact: John A. Russell
Applicant's Mailing Address: PO Box 492, Wailuku, HI 96793
Source Landowner's Mailing Address: c/o John A. Russell, PO Box 351, Kula, HI 96790

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 [X] Waiehu/6023 [] Iao/6024 [] Waikapu/6001
4a. TMK OF STREAM DIVERSION LOCATION: 3 - 3 - 002 : 001
4b. TMK OF DITCH DIVERSION LOCATION: 3 - 3 - 002 : 012
5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.
[X] Pipe [] Pump [X] Ditch/auwai [] Other Describe:
is the diverted water returned to the stream or ditch? [X] 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.
[X] 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? [X] Yes [] No
if yes, has the appurtenant right been established by the courts or the Commission? [] Yes [X] No
8. END USER INFORMATION: Are you an end user on an existing water system? [] Yes [X] No
if yes, who is the operator of the water system?
9. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use with the Commission?
[X] Yes. List the file reference name(s): Cerizo, M.
[] No
10. STREAM DIVERSION WORKS PERMIT (SDWP):
Have you ever been issued a SDWP by the Commission?
[] Yes. List the permit number(s):
[X] 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: Signature of Francisco Cerizo, Date 4/1/09
12. SOURCE LANDOWNER: Signature and Date

FILE ID: SWUP2307.6
DOC ID: 3439 ✓

**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	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	21,420	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	257,040	GPD				
AVERAGE DAILY USE (Average of the above)	21,420	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 TIMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.
Uses that require potable (drinking) water									
	Zone - Sector - Plat : Parcel								
	Zone - Sector - Plat : Parcel								
	Zone - Sector - Plat : Parcel								
	Zone - Sector - Plat : Parcel								
TOTAL POTABLE USE						0		GPD	
Uses that do not require potable water									
AGRCP	3 - 3 - 002 : 012 Zone Sector Plat Parcel	Ag	No	AG	No	18,000	No	0.06	See attachment A
IXOM	3 - 3 - 002 : 012 Zone Sector Plat Parcel	Ag	No	AG	No	3,420	No	1.14	See attachment A
	Zone - Sector - Plat : Parcel								
	Zone - Sector - Plat : Parcel								
TOTAL NON-POTABLE USE						21,420		GPD	
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						21,420		GPD	
If total use requested is not equal to the total monthly average in Table 1, please explain. N/A									
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. N/A									

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

TABLE 3: IRRIGATION INFORMATION

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

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to instructions.)	8. IRRIGATION PRACTICE (Refer to instructions.)
3 - 3 - 002 : 012 <small>Zone Sector Plat Parcel</small>	Taro	1.2	0.06	Year Round	Year Round	Flood (Taro)	Irrigate to Field Capacity
3 - 3 - 002 : 012 <small>Zone Sector Plat Parcel</small>	Diversified Ag./Domestic	1.2	1.14	Year Round	Year Round	Other—Hand water with hose	Irrigate to Field Capacity
 <small>Zone Sector Plat Parcel</small>							
 <small>Zone Sector Plat Parcel</small>							
 <small>Zone Sector Plat Parcel</small>							
 <small>Zone Sector Plat Parcel</small>							
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 <small>Zone Sector Plat Parcel</small>							
 <small>Zone Sector Plat Parcel</small>							

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

TABLE 4: ALTERNATIVES ANALYSIS

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

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 I:

- 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
AGPCP	Crops & Processing
AGRLI	Livestock & Processing, and Pastura
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	
IRAGC	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

Exhibit 1A:

A copy of the 7.5 minute-series USGS topographic map with South Waiehu Stream and our 'auwai diversion labeled. Our diversion is called "Kuleana `Auwai Diversion Right Bank," because it's on the right hand side of the stream as you are looking makai.

Exhibits 2A and 2B:

Map showing the location of our property, as well as a close-up of the property showing the locations of our 'auwai diversion and area of existing use.

Exhibits 3A and 3B:

True and correct copies of photographs of our stream diversion, 'auwai diversion, and area of existing use.

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, Wahi Ho'omalua Limited Partnership claims to be the source landowner.

Supplemental Information for Box 5: Stream Diversion

We are kuleana users on the South Waiehu kuleana 'auwai that runs along the 'Iao side of South Waiehu Stream. Water is diverted into the 'auwai from the stream through a traditional po'owai (intake made with stones) on TMK: 3-3-002-001 (see attached USGS topo map). The owner of TMK: 3-3-002-001 is Wahi Ho'omalua Limited Partnership, c/o John A. Russell, PO Box 351, Kula, HI 96790. That property was formerly owned by Wailuku Agribusiness. Water that is diverted from South Waiehu Stream continues makai in a traditional 'auwai until it reaches our property where we divert some water by pipe and ditch for all of our domestic water uses, as well as our lo'i kalo and other crops such as bananas, tangerines, avocado, and jabong. See Exhibits 3A and 3B. We are the only user on this kuleana 'auwai and we maintain the ditch and intake ourselves. After flowing through our lo'i, a flume returns water directly to South Waiehu Stream. The amount of water returned varies, depending on the season, weather, crop use, and other conditions.

Supplemental Information for Box 6:

Because our family lives in the upper reaches of South Waiehu and does not have access to the Maui County Municipal Water System, we rely on our kuleana 'auwai to supply all of our household and other needs, including diversified agriculture. Our existing water use is not gauged. So, we estimated our existing domestic water use 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 our property (1.2 acres) minus the 0.06 acres we have in wetland kalo (3,000 x 1.14) for a total of 3,420 gallons per day.

We estimated our existing water use for wetland kalo cultivation by multiplying the amount of land we had in wetland kalo cultivation on April 30, 2008 (0.06 acres) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo for a total of 18,000 gallons per day.

Based on this information, we believe that our existing water use for domestic needs and wetland kalo cultivation approximates 21,420 gallons per day.

Box 7: Appurtenant Rights

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. Our property was formerly owned by Kapahuli, a hoā'āina from Waiehu. We grew up on this property, tending our lo'i kalo, and we take pride in continuing to do so today. When we restored our land, including lo'i in traditional terraces that existed on our property, we unearthed at least five pōhaku ku'i'ai, traditional Hawaiian stone poi pounders. We still have one today that we use to make poi from the kalo we grow. Given the traditional terracing and the fact that we uncovered poi pounders on our property, we have direct evidence that our land was in kalo during ancient times. In fact, the majority of the stream water we currently use is for ancient lo'i kalo that our family has cultivated for generations. Based on our knowledge of the history of this land 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 1: 12-Month Average Daily Use

See explanation for Box 6, above.

Table 2, Box 10: Justification for Requested Quantity

See explanation for Box 6, above.

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.

In addition, we are an existing riparian use, which is constitutionally protected. See Haw. Const. art. XI, § 7 (preserving appurtenant rights and existing riparian uses). Even if we did not have protected rights to water from Waiehu Stream, there is no potentially available alternative source that is economically practicable. Because we do not have access to County water, we use the kuleana 'auwai to supply all of our water needs. We cultivate kalo on our land for subsistence purposes; the kalo we grow feeds our 'ohana and is shared with neighbors and other community members. We engage in non-commercial gardening and produce bananas, avocados, tangerines, jabong, and some tropical flowers. The fruits and vegetables we grow feed our 'ohana and are

shared with neighbors and community members. As shown below, each potentially available alternative water source imposes a cost on continuing our appurtenant right and existing riparian use.

Municipal Sources

As explained above, we have no access to County water; our kuleana 'auwai is the only source of water for our domestic, agricultural, and other needs.

Wastewater reuse

Reusing wastewater is impracticable because our kuleana 'auwai 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

We are currently using water from an existing 'auwai. 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 who relies on kuleana water to support all of our uses, the cost of taking water from or constructing another ditch is not practicable, especially when we have appurtenant rights to and am an existing riparian user of water from our current 'auwai.

Desalinization

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

Ground Water

Even if we were able to secure the permits necessary to drill a well and pump ground water for our uses, installing and operating such a well to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in non-commercial gardening, we should not have to do so given our appurtenant and riparian rights 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 domestic uses, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our existing water use is predominantly for home use and kalo cultivation. We grow kalo in a traditional manner and use it for home consumption. We also grow several varieties of fruits (banana, tangerine, avocado). We use traditional agricultural practices and our

crops help to 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

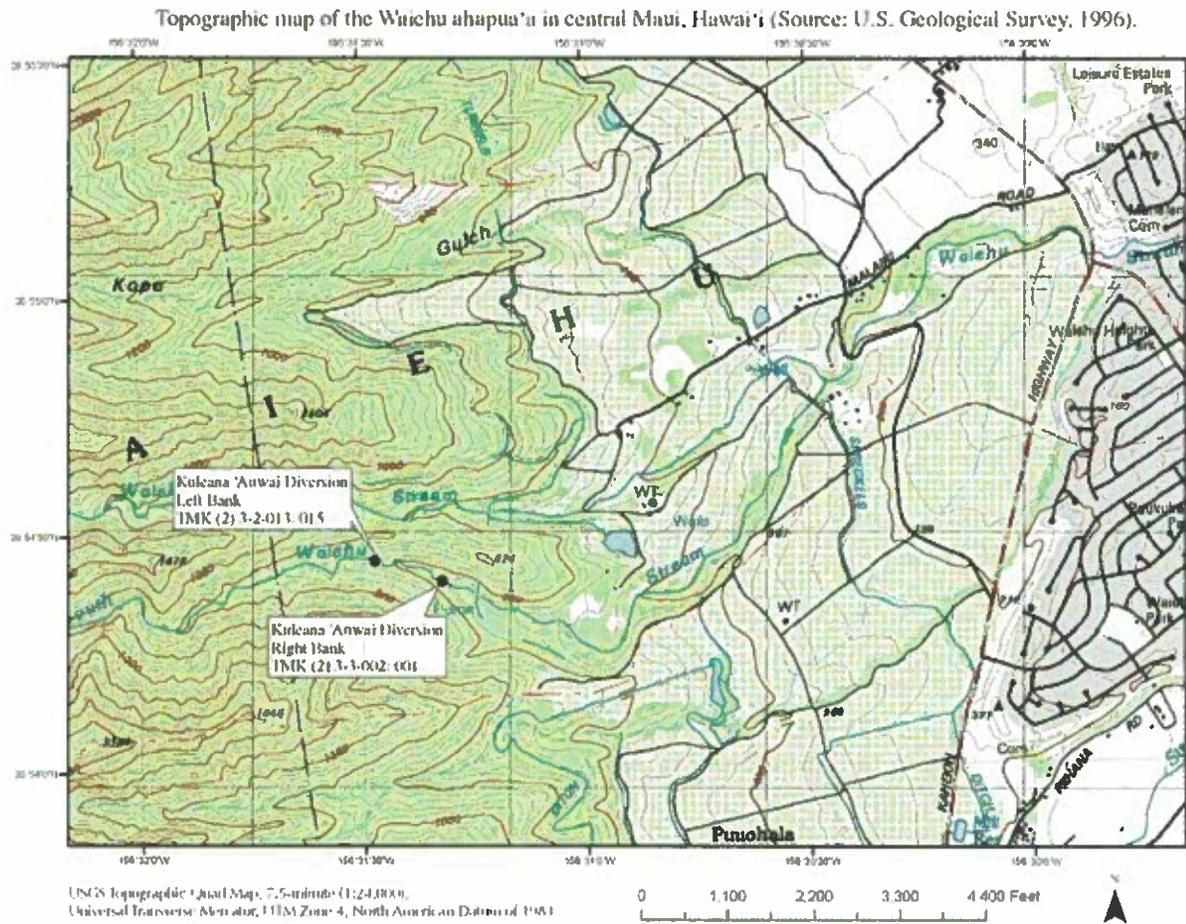
The exercise of appurtenant rights is a protected public trust purpose. Waiāhole I, 94 Haw. at 137 n.34, 9 P.3d at 449 n.34. Additionally, because any unused water from our ‘auwai is returned to South Waiehu Stream, our use supports existing public trust purposes such as: (1) the maintenance of waters 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

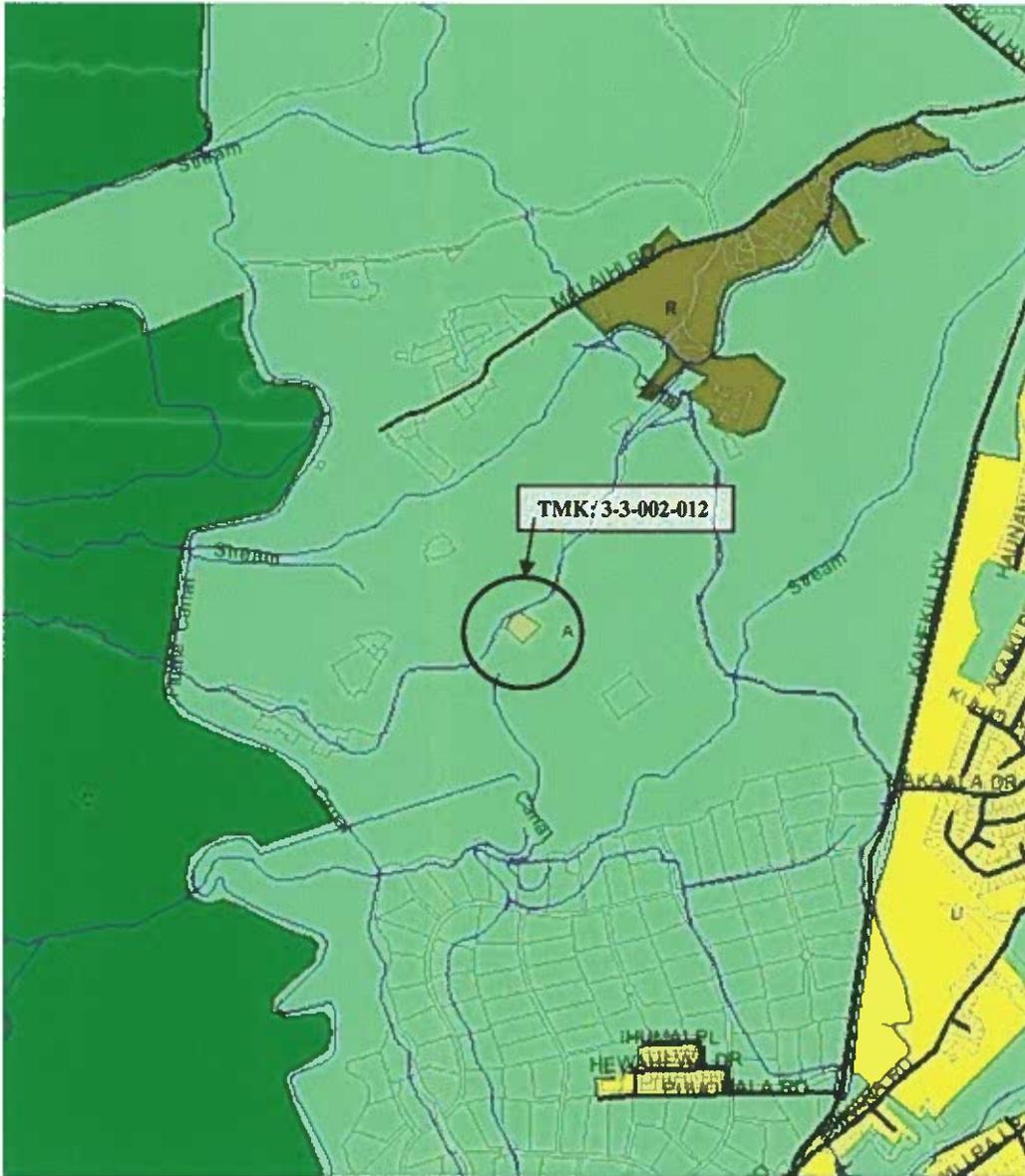
Because we return much of the water we divert for kalo cultivation to South Waiehu Stream, our existing use also supports beneficial instream uses such as: (1) the maintenance of fish and wildlife habitats; (2) outdoor recreational activities; (3) maintenance of ecosystems such as estuaries, wetlands, 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 regularly clean our kuleana ‘auwai all the way up to the intake to ensure that it is well maintained. We also use pipes and a concrete-lined ‘auwai where appropriate to minimize water loss. Our farming practices include the use of mulch, and green manure to protect the soil from erosion and minimize the use of water. Therefore, our use is “reasonable-beneficial.”

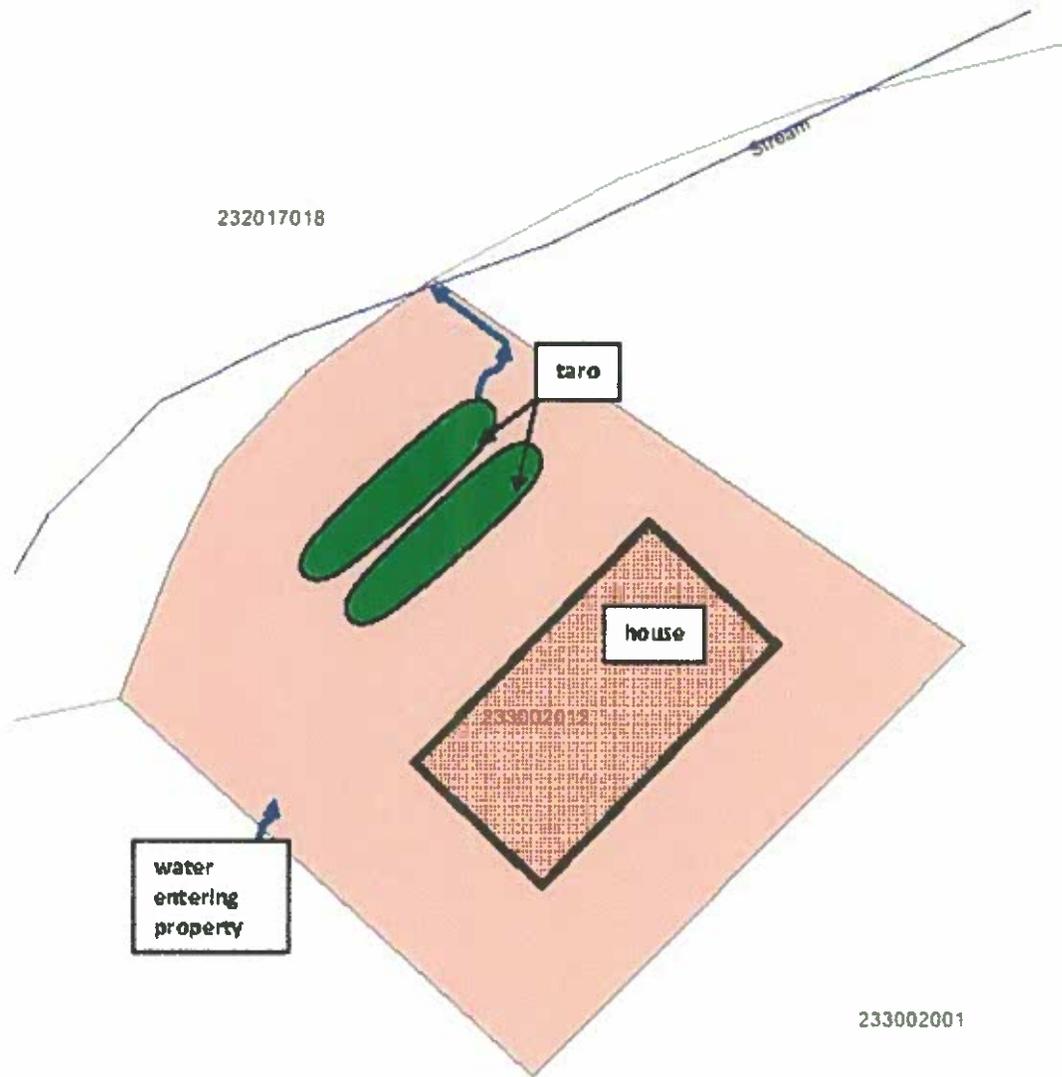


7.5 minute-series USGS topographic map with South Waiehu Stream and our 'auwai diversion labeled; our diversion is on the right bank.



Map showing location of TMK: 3-3-002-012, our property.

EXHIBIT 2A



TMK: 3-3-002-012 showing the area of existing use in lo`i kalo. The remainder of the light pink area is in diversified agriculture, including bananas, avocados, jabong, and tangerines, etc. The darker pink hatched area is our home. The end uses are approximate and are not drawn to scale.

EXHIBIT 2B



Two photos above: South Waiehu Stream Diversion (TMK: 3-3-002-001), which diverts a portion of the stream. The remainder flows around and through our traditional po`owai.

Photo below: South Waiehu Stream right bank kuleana 'auwai, which transports water to our property for our domestic, agricultural, and other uses.

EXHIBIT 3A



Photo above: Me, Francis Cerizo, with the intake onto our property from the `auwai
Photo below: Existing use area (lo'i kalo).

Other uses, including bananas and ti leaves are visible in the background

EXHIBIT 3B