

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

For Official Use Only RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT
2009 APR 30 AM 8:48
Event ID:

FORM SWUPA-E (NA WAI EHA, MAUI)

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

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

1. APPLICANT'S NAME: James Kahalekai, Kauli Kahalekai, Millilani Sheaffer
2. SOURCE LANDOWNER'S NAME: WAILUKU WATER COMPANY LLC
Source Landowner's Contact: Avery Chumbley
Applicant's Mailing Address: 202 Waie'e Valley Rd. Wailuku, HI 96793
Source Landowner's Mailing Address: 255 East Waiko Road Wailuku, HI 96793

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: [X] Waie'e/6022 [ ] Waiehu/6023 [ ] Iao/6024 [ ] Waikapu/6001
4a. TMK OF STREAM DIVERSION LOCATION: 3 - 2 - 014 : 001
4b. TMK OF DITCH DIVERSION LOCATION: 3 - 2 - 005 : 023
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: See Attached
Is the diverted water returned to the stream or ditch? [X] Yes. [ ] No. If yes, how much water is returned? See Attached
6. FLOW MEASUREMENT INFORMATION:
Does the stream diversion have a flowmeter with totalizer or other device to measure diverted amounts?
[ ] Yes. Enter the installation date:
Describe the device and enter measured amounts in Table 1.
[X] No. Explain how you are measuring flow to justify amounts shown in Table 1 in the space below
See Attached section "Table 2, Box 10"

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? [X] Yes [ ] No
If yes, who is the operator of the water system? Wailuku Water Company
9. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use with the Commission?
[X] Yes. List the file reference name(s): Kahuu H; Kahalekai JM
[ ] 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: Kauli Kahalekai, Date: 4/22/2009
12. SOURCE LANDOWNER: Signature: \_\_\_\_\_, Date: \_\_\_\_\_

SWUP NO. 81

FILE ID: SWUP.2312.6
DOC ID: 3444
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**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	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	253,800	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>SUM OF AVERAGE DAILY USE FOR THE MONTH</b>	3,045,600					<b>GPD</b>
<b>AVERAGE DAILY USE (Average of the above)</b>	253,800					<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>						N/A	GPD		
<b>Uses that do not require potable water</b>									
AGRCP	3 - 2 - 005 : 023 Zone Sector Plat Parcel	Ag	No	Ag	No	231,000	No	0.77	See Attached
AGRCP	3 - 2 - 005 : 022 Zone Sector Plat Parcel	Ag	No	Ag	No	22,800	No	0.076	See Attached
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
	____ - ____ - ____ : ____ Zone Sector Plat Parcel								
<b>TOTAL NON-POTABLE USE</b>						253,800	GPD		
<b>TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>						253,800	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 - 2 - 005 : 023 <small>Zone Sector Plat Parcel</small>	Wetland Kalo	1.1	0.77	Annual	Annual	Flood (taro)	Field capacity
3 - 2 - 005 : 022 <small>Zone Sector Plat Parcel</small>	Wetland Kalo	0.12	0.076	Annual	Annual	Flood (taro)	Field capacity
- - - - : <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**

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

**PUBLIC INTEREST**

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

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

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

## INSTRUCTIONS FOR FILLING OUT FORM SWUPA-E

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

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

Information about surface water management areas and the current application forms are available at our website: <http://www.hawaii.gov/dlnr/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.
- 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: *(i) 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.*

## **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 "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<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.*

## ATTACHMENTS

### EXHIBITS:

Appended hereto as Exhibit (1) is a copy of the 7.5 minute-series USGS topographic map with the Waihe`e Ditch Diversion and Spreckels Ditch Diversion labeled. Exhibit (2) is a TMK map showing the location of our property, `auwai diversions, and area of existing use. Exhibits (3(a)) to (3(c)) contain true and correct copies of photographs accurately depicting the South Waihe`e kuleana `auwai as it brings water to our land and our end uses for lo`i kalo. Exhibit (4) provides documentation establishing our appurtenant rights.

### Supplementary Information

#### **Supplemental Information, Box 2: Source Landowner**

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

#### **Supplemental Information, Box 5: Stream Diversion**

We are kuleana users along the kuleana `auwai that runs to the south of Waihe`e River. Water is diverted from Waihe`e River at the Waihe`e and Spreckels diversions (see attached USGS topo map). All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe`e diversions. The South Waihe`e Valley kuleana `auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open `auwai on the south side of Waihe`e River. We receive the outflow from Kenneth Kahalekai's land at TMK No. 3-2-004:003 via pipes and open ditch at TMK No. 3-2-004:023 (see Exhibit (3(a))). The water continues to our lo`i kalo at TMK No. 3-2-004:022 in an underground pipe. After the water flows through our lo`i kalo, some of our outflow returns to Waihe`e River via an open ditch and some flows down to the Anakalea's property at TMK No. 3-2-005:020.

#### **Supplemental Information, Box 7: Appurtenant Rights**

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. In fact, almost all of the stream water we currently use is for ancient lo`i kalo that we have restored. Attached hereto as Exhibit (4) are true and correct copies of Māhele records for Land Commission Award No. 4405-HH, Royal Patent No. 4119. This land has been in our family for several generations, and based on our knowledge of the history of this kuleana and our family's use of the kuleana water on the land to grow kalo, 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.

**Addendum, Table 2, Boxes 3 through 5: State Land Use District and County Zoning**

Our application seeks to use water on land zoned agricultural. The cultivation of wetland kalo in the traditional manner is consistent with state and county general plans and land use designations. Additionally, this use is consistent with county land use plans and general policies.

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

We estimated our existing water use for wetland kalo cultivation on TMK No. 3-2-005:023 of 231,000 gallons per day by multiplying the amount of land we had in wetland kalo cultivation on April 30, 2008 (about 0.77 acres) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo.

We estimated our existing water use for wetland kalo cultivation of 22,800 gallons per day on TMK No. 3-2-005:022 by multiplying the amount of land we had in wetland kalo cultivation on April 30, 2008 (about 0.076 acres) by 300,000 gallons, the average amount of water we understand is required to grow healthy wetland kalo.

**Addendum, 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. Similarly, our traditional and customary right as Native Hawaiians is to cultivate kalo on our land in the traditional manner, not in some other manner using alternative, non-traditional sources, and this traditional and customary right is constitutionally protected.

Moreover, even if we did not have protected rights to stream water, there is no potentially available alternative source that is economically practicable. We cultivate kalo on our land for cultural and subsistence purposes. An alternative water source that would require us to pay for the volumes of constantly flowing water in our lo`i necessary to keep temperatures cool and support healthy kalo would make our practice and use economically impossible. We would effectively be denied our appurtenant right and traditional and customary right to grow kalo on our land. As shown below, each potentially available alternative water source imposes a cost on exercising our protected rights and we do not have any practicable alternative for our use of water from the South Waihe`e kuleana `auwai.

**Municipal Sources.** Our domestic water services are typical residential services and do not have the capacity to deliver the volumes of water we require for wetland kalo cultivation. Even if the Maui County Department of Water Supply were willing to provide municipal water for kalo cultivation by installing a larger water meter, the cost of using municipal water for such purposes would be prohibitive. Additionally, water from the Maui County Department of Water Supply is chlorinated, which is detrimental and unsuitable for kalo cultivation.

**Wastewater reuse.** Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. As a small user engaged in traditional and

domestic uses, 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 that has historically provided water for the ancient lo`i kalo on these lands. 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. 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 to provide flowing water for kalo cultivation would be unprecedented and extremely burdensome. As a small user engaged in traditional and domestic uses, we do not have the means to install and maintain such infrastructure.

#### **Supplemental Information, Table 4, Public Interest:**

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

Generally, "water use for diversified agriculture on land zoned for agriculture is consistent with the public interest." In re Waiāhole Ditch Combined Contested Case, 94 Hawai'i 97, 162, 9 P.3d 409, 474 (2000) ("Waiāhole I"). Further, HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are "in the public interest." Our existing water use is predominantly for wetland kalo cultivation. We grow kalo in traditional ways and use it for our subsistence. We are Native Hawaiians engaged in traditional agricultural practices, and our 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**

Kalo cultivation by Native Hawaiians and the exercise of appurtenant rights are also protected public trust purposes. Waiāhole I, 94 Haw. at 137 & n.34, 9 P.3d at 449 & n.34; see also Haw. Const. art XII, § 7 (protecting traditional and customary Native Hawaiian rights); HRS § 174C-101(c) (specifically protecting the right to cultivate kalo on one's own kuleana). Additionally, because much of the water we use is returned directly to Waihe`e River, our use supports other 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 directly to Waihe`e River, 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 use pipes where appropriate to minimize water loss, and our farming practices have been handed down for decades to maximize efficiency and effectiveness. Therefore, our use is “reasonable-beneficial.”

**EXHIBIT (1): USGS Topo Map**

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

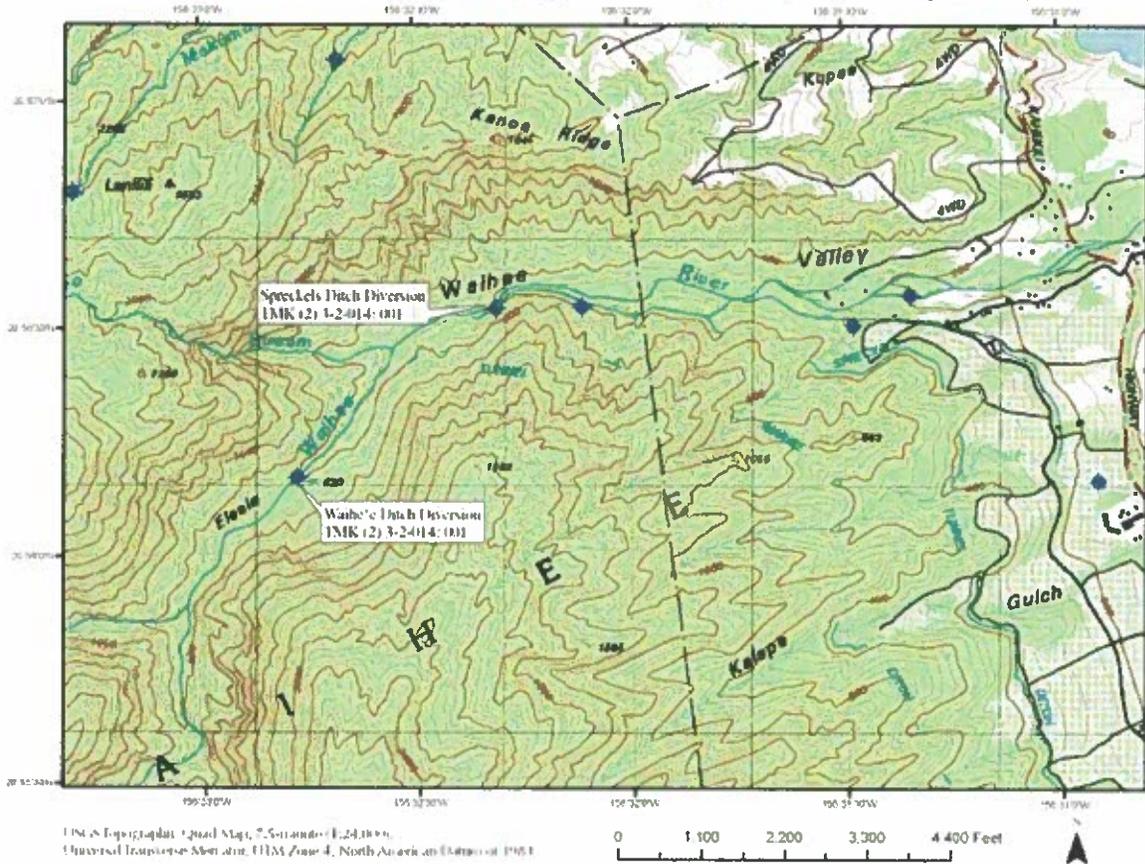
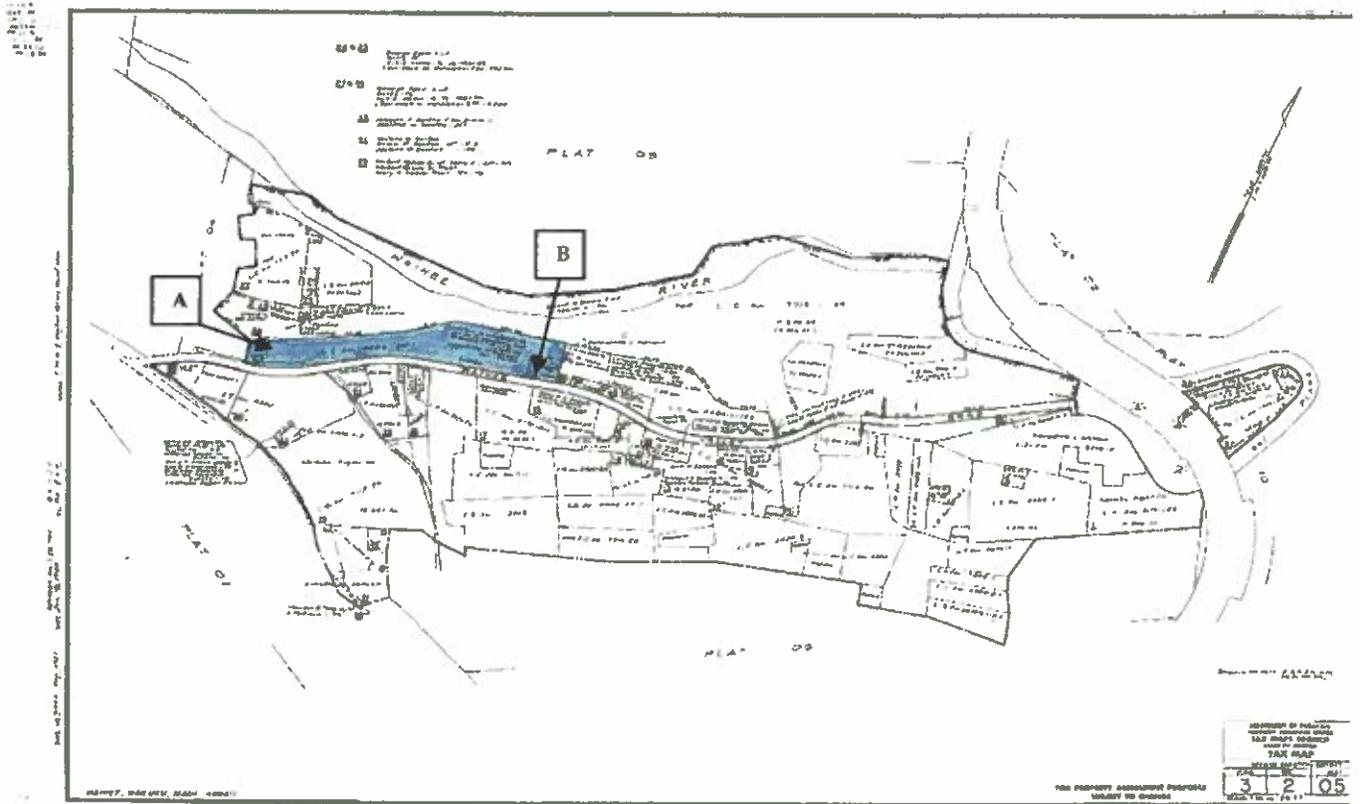


EXHIBIT (2): TMK Map



- A. TMK No. 3-2-05-23: 1.11 total acres (0.77 acres lo'i kalo) and Kauai Kahalekai's house
- B. TMK No. 3-2-05-22: 0.44 total acres (0.076 acres lo'i kalo) and James Kahalekai's house

EXHIBIT (3a): Photographs



**The photograph above depicts the `auwai as it flows from Kenneth Kahalekai's land at TMK No. 3-2-004:002 to our land at TMK No. 3-2-005:023.**

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**EXHIBIT (3b): Photographs**

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EXHIBIT (3c): Photographs







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HELU 1119  
**PALAPALA SILA NUI.**

A KE ALII, MAMULI O KA OLELO A KA POE HOONA KULEANA.

NO KA HEA, Ua hoooho na Luua Hoona i na kumu kuleana aina i ka olelo, he kuleana riazio ko  
*Abekawa* *Milliana Kuuwaaos L. 26.*  
 ma ko Amo Alodio iiko o kahi i olelois maalo.

Notiaia, ma keia Palapala Sila Nui, ke hoika aku nei o Kamehameha IV. ke Alii nui a ke Atua  
 i kono lokomakai i hoonoho ai maluna o ko Hawaii Pea Aioa, i na kanaka a pau, i keia la eona iho,  
 a no kona mau hope sili, ua hawii aku oia ma ko Amo Alodio i *Abekawa*

i keia wahi a pau loa ma *Mahele Sila o Papaia*  
 ma ka mokupuni o *Mauui* pesee na mokuna,

*Mahele 1. 752. E hoomaka ma ke kahi Hika, i keia a pili ana*  
*me Wahaiaua, a me Mahele ma Palama, a hiki ana.*

Hona	70°	Kom	1.20	Kaul ma ka Palama
Hona	22°	Hik	1.00	
Hona	67 1/2°	Kom	1.89	Aurwai
Hona	66 1/2°	Kom	2.55	
Hona	60°	Kom	.64	
Hona	36°	Kom	.65	
Hona	54 1/2°	Kom	4.60	
Akai	22 1/2°	Kom	.81	Mahele Sila
Akai	55 1/2°	Hik	4.22	
Akai	56 1/2°	Hik	1.50	
Akai	35 1/2°	Hik	1.86	
Akai	76 1/2°	Hik	4.00	
Hona	25 1/2°	Hik	.65	Kaukai

*Mahele i kahi i hoomaka. Ke Anapuni 1 1/2 Eka.*

*Mahele 3. Mahele 1. E hoomaka ma ke kahi Hona i*  
*pili ana me ka Palama, alaila akue hiki ana.*

Akai	75°	Hik	1.75	Kaul pili me ka Palama
Hona	27°	Hik	.50	
Hona	79°	Hik	1.82	Pali
Akai	16°	Hik	.60	Kala

*Mahele i kahi i hoomaka. Ke Anapuni*

*Mahele 2. E hoomaka ma ke kahi Kom i pili ana me Palama*

Hona	27 1/2°	Hik	.50	Kaul pili me ka Palama
Akai	47 1/2°	Hik	1.75	Pali
Akai	39 1/2°	Kom	.81	Kala
Hona	50°	Kom	1.65	Kaukai

*a pili i kahi ma ka Anapuni 2 1/2 Eka*



Maloko o *Kuia maw* spans *175* *175* *175*  
a oi iki aku, a emi iki mai paha. Un koe nei i ke aupuni na aina unanewa a me na metela a pau.

No *Abraham*  
ua aina ia i haawia ma ke ANO ALODIO a so koma ma hooiina, a me koe waipona; ua pili nei  
ke aubau a ke Poe Ahaolelo a kau like me emi na aina a lohia i kea manawa i kea manawa.

A i mea e iken ai, ua kau wai i kea moa, a me ka Sila Nui o ke Hawaii Pae  
Aina ma Hooiloia i kea la

*Julia* 1957

*Maahumanu*

*Hamakua*

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The Pali Makai by the Cook Makai, by the same.  
 It is bounded Makai by the Pali's i.e. Kahakaha, by  
 the Pali Makai by the same's land. Makai, by my land.

1616  
 C. 4405 Kiana.

The Claimant's title consists of 3 pieces in Kiana, Hawaii.  
 No. 1 is a lot in the same  
 No. 2 is a lot in the same  
 No. 3 is a lot in the same  
 The Claimant received title from Kaunani in 1827, or rather  
 long before her death. I had the land. His title was never disputed.  
 There are 3 pieces of land in it.  
 No. 1 is bounded Makai, by the Pali's land. Kahakaha, by  
 the Pali Makai, by the same's land. Makai, by the same's land.  
 No. 2 is bounded Makai, by the Cook Kahakaha, by Kahakaha's  
 land. Makai, by Kaunani's land. Makai, by the same's land.  
 No. 3 is bounded Makai, by the Pali's land. Kahakaha, by the  
 same's land. Makai, by the same's land. Makai, by the Pali's

1617  
 C. 4405 Kiana.

The Claimant made out that he owned his claim, but forgot  
 to send it in (not heard).

1618  
 C. 4405 Kiana.

The Claimant made the necessary title.  
 The title land consists of 3 lots and half land in one  
 piece in the name of Kaunani's Makai, Hawaii.  
 He received it from Kaunani in 1826, and he from Geo.  
 Robinson. His title was never disputed. There are 3 pieces of land  
 in it.  
 It is bounded Makai, by the Cook's lot and former lot. Kahakaha,  
 by the Cook Makai, by the name of Paulson's Makai, by the Pali's

Copied at Hawaii State Archives

No. 4405 FF Ku (oont.)

Mauka	Kuamoo
Kahakuloa	Kawaa's land
Makai	Napela's land
Wailuku	Maikaaloa

No. 4405 GG Kupanihl July 27, 1849

Hale sworn Kekahio wrote (the claim) before 1848. Hale has seen 2 sections in the ilis of Waihee. First section from Anadarea in 1843, he received lands from Kuihelani at the same time. Section 2 from Kana in 1846. Kana's land from Hale in 1846, Hale's land from Kuihelani. Kuihelani's land from M. Kekua-naoa, no objection. @ 2 Poalima's in first section.

Section 1 - Whole ili of Waiakuu

Mauka	Kuahine
Kahakuloa	Pali
Makai and Wailuku	Stream

Section 2 - 4 Patches at Ohia

Mauka	Poalima
Kahakuloa	Pali
Makai	Hiaaina
Wailuku	Hale's land

No. 4405 HH Akihewa July 22, 1849 Page 293

Kuamoo sworn Kekahio wrote wahahea's (claim) before 1848 and he has seen 3 sections in the ilis of Waihee. This is an old land before 1829 at the time of Kam I, Land from Z. Kaauwai before 1829, no objection. 3 Poalima's in the first section

Section 1 - Taro moo at Papaina 2

Mauka	Kahikiula
Kahakuloa	Pali
Makai	Wahalua
Wailuku	Kawaa

Section 2 - Pasture at Papaina 1

Mauka	Big ditch
Kahakuloa	Wahalua
Makai	Kawaa
Wailuku	Keino

Section 3 - 5 patches in Kalepelepe 2

Mauka	Paahao
Kahakuloa	Kaanua
Makai	Nelu ili
Wailuku	Pali

No. 4405 II Kahananui July 27, 1849

Anakalea had given Kahananui 2 sections in 1843 m but it has not been filed on Oahu.

No. 4405 KK Uhu July 27, 1849

Claimant sworn Kekahio wrote this claim before 1848, but documents have not been returned as yet. Kahananui sworn He has seen 1 taro section at Kamahoe ili of Waihee.

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