



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

ORIGINAL

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 9: (

SWUP NO. 88

Event ID: SWUP.2324.6

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 William La'a (Landowner) Lester Nakama (Lessee) Emmett & Renette Rodrigues (Owner)		Applicant's Contact Lester Nakama (Aloha Poi Factory, Inc.)	2. SOURCE LANDOWNER'S NAME Wailuku Water Company LLC		Source Landowner's Contact Avery Chumbley
Applicant's Mailing Address, or Principal Place of Business 800 Lower Main Street Wailuku, HI 96793			Source Landowner's Mailing Address, or Principal Place of Business 255 East Waiko Road Wailuku, HI 96793		
Applicant's Phone	Applicant's Fax	Applicant's E-mail	Source Landowner's Phone	Source Landowner's Fax	Source Landowner's E-mail

EXISTING SOURCE INFORMATION

The following must be attached before this application is accepted as complete:

- Portion of 7.5-Minute Series USGS topographic map (scale 1:24,000) labeled with stream and diversion locations and quad map name.
- Property Tax Map Key (TMK), showing stream or diversion location, and location of water use referenced to established property boundaries.
- Photograph(s) of the surface water diversion works and end use.

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

4a. TMK OF STREAM DIVERSION LOCATION: 3 - 2 - 014 : 001
 Zone Sector Plat Parcel

4b. TMK OF DITCH DIVERSION LOCATION: 3 - 2 - 003 : 024
 Zone Sector Plat Parcel

5. STREAM DIVERSION: How is water diverted from the stream to your property? Check all that apply.
 Pipe Pump Ditch/auwai Other Describe: See attachment 1
 Is the diverted water returned to the stream or ditch? Yes. No. If yes, how much water is returned? See attachment 1

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

EXISTING USER INFORMATION

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

8. END USER INFORMATION: Are you an end user on an existing water system? Yes No
 If yes, who is the operator of the water system? Wailuku Water Company

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

10. STREAM DIVERSION WORKS PERMIT (SDWP):
 Have you ever been issued a SDWP by the Commission?
 Yes. List the permit number(s):
 No

NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) If necessary, further information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited, to any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.

11. APPLICANT Signature Print <u>LESTER NAKAMA</u>	12. SOURCE LANDOWNER Signature Date <u>4/25/09</u>
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FILE ID: SWUP.2324.6
 DOC ID: 3456

**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	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
June 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
July 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
August 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
September 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
October 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
November 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
December 2007	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
January 2008	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
February 2008	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
March 2008	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
April 2008	54,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SUM OF AVERAGE DAILY USE FOR THE MONTH	648,000	GPD				
AVERAGE DAILY USE (Average of the above)	54,000	GPD				

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

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY
(Attach additional copies of Table 2 if necessary)

LAND USE CONSISTENCY						EFFICIENCY OF USE				
1. PURPOSE / WATER USE CATEGORY	2. USE TMK ATTACH THE FOLLOWING: • Property tax map, showing use location in reference to established property boundaries • Photograph of the area of use	3. STATE LAND USE DISTRICT	4. CDUP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	5. COUNTY ZONING CODE	6. SMAP REQ'D Enter either: Yes and Date approved, or Yes and not acquired, or No	7. REQUESTED QUANTITY OF USE Gallons per Day (GPD)	8. SUB-METERED? (Yes or No)	9. UNITS OR NET ACREAGE	10. APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 7. If applicable, attach sheets to show how this number was calculated. For irrigation uses, fill in Table 3.	
Uses that require potable (drinking) water										
	____ - ____ - ____ : ____ Zone 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 - 2 - 003 : 002 Zone Sector Plat Parcel	Rural	No	RU-0.5	No	54,000	No	1.64	See attachment 1	
	____ - ____ - ____ : ____ Zone Sector Plat Parcel									
	____ - ____ - ____ : ____ Zone Sector Plat Parcel									
	____ - ____ - ____ : ____ Zone Sector Plat Parcel									
TOTAL NON-POTABLE USE						54,000		GPD		
TOTAL USE REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =						54,000		GPD		
If total use requested is not equal to the total monthly average in Table 1, please explain.										
In accordance with §174C-51(5), please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. To the best of my knowledge, there are no limitations on the use of water described above.										

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

TABLE 3: IRRIGATION INFORMATION

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

1. USE TAX MAP KEY (TMK) Attach map outlining area and photo.	2. CROP	3. TOTAL ACREAGE	4. NET IRRIGATED ACREAGE	5. BEGIN ROWTH PERIOD (Month)	6. END GROWTH PERIOD (Month)	7. IRRIGATION SYSTEM (Refer to Instructions.)	8. IRRIGATION PRACTICE (Refer to Instructions.)
3 - 2 - 003 : 002 <small>Zone Sector Plat Parcel</small>	Wetland Taro	2.053	1.64	Annual	Annual	Flood (Taro)	Irrigate to Field Capacity
- - - : - <small>Zone Sector Plat Parcel</small>							
- - - : - <small>Zone Sector Plat Parcel</small>							
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**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 1
Wastewater reuse	N/A	See attachment 1
Ditch system	N/A	See attachment 1
Desalinization	N/A	See attachment 1
Ground water	N/A	See attachment 1
Other (specify)	N/A	See attachment 1

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 1

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

INSTRUCTIONS FOR FILLING OUT *FORM SWUPA-E*

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

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

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

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

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

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

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

LINE BY LINE INSTRUCTIONS FOR COMPLETING THE APPLICATION FORM

APPLICANT INFORMATION

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

EXISTING SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Check the appropriate box for the hydrologic unit name and hydrologic code where the source is located. The "source" is the stream, ditch, or conduit from which water is diverted to the user. For information on hydrologic unit names and unit codes please refer to the *Surface-Water Hydrologic Unit: A Management Tool for Instream Flow Standards* report available on the CWRM website at: <http://www.hawaii.gov/dlnr/cwrm/>, or contact CWRM staff at (808) 587-0234. You may also contact CWRM toll-free from Maui at: 984-2400, ext. 70234.
- 4a. **TMK OF STREAM DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the stream diversion is located if applicable. To find out your TMK number, call Maui County Real Property Tax Division at: (808) 270-7297, or check online at: www.mauipropertytax.com/
- 4b. **TMK OF DITCH DIVERSION LOCATION:** Fill in the current Tax Map Key (TMK) number of the parcel where the ditch diversion is located, if applicable.
5. **STREAM DIVERSION:** How is water diverted from the stream to your property? Check the appropriate box(es). Is the diverted water returned to the stream or ditch? Check "Yes" or "No." If yes, enter the amount of water returned.
6. **FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No." If you have a working flowmeter with a totalizer, answer "Yes" to this question, and fill in the date that the flowmeter was installed and any other information you may have (manufacturer, serial number, etc.). A totalizer directly measures the total use for the source (similar to a car's odometer). Otherwise, answer "No" and explain how stream diversion is measured or estimated to justify amounts requested in Table 1

EXISTING USER INFORMATION

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

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

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

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

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

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

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

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

TABLE 2: LAND USE CONSISTENCY/EFFICIENCY

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

AGRICULTURE	
AGRAQ	Aquatic Plants & Animals
AGRCP	Crops & Processing
AGRLI	Livestock & Processing, and Pasture
AGRON	Ornamental & Nursery Plants
AGROTH	Other
DOMESTIC	
DOM	Single & Multi Low-Rise & High-Rise Household
DOMN	Domestic (Non-residential)
DOMNCB	Commercial Businesses
DOMNRI	Religious Institutions
DOMNHOS	Hospitals
DOMNHOT	Hotels
DOMNOB	Office buildings
DOMNOTH	Domestic Non-Residential – Other
DOMNSC	Schools
INDUSTRIAL	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial – Other
IRRIGATION	
IRRGC	Golf Course
IRRHM	Habitat Maintenance
IRRHOT	Hotel
IRRILA	Landscape/Water Features
IRROTH	Other
IRRPCA	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 1

EXHIBITS: Attached as **EXHIBIT 1** is a true and correct copy of a USGS topographic map labeled with stream and diversion locations. Attached as **EXHIBIT 2** is a true and correct copy of a Property Tax Map Key showing diversion location and location of water use. Attached as **EXHIBIT 3A-B** are true and correct copies of photographs that accurately depict the ‘auwai and examples of our end uses. **EXHIBIT 3A** depicts the beginning of the ditch that diverts water from the North Waihe‘e Valley kuleana ‘auwai and brings the water to our property. **EXHIBIT 3B** depicts some of our lo‘i kalo. **EXHIBIT 4** is described below.

ADDITIONAL INFORMATION FOR SWUPA-E BOXES:

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.

4a. STREAM DIVERSION LOCATION:

Although our ‘auwai currently receives water diverted from TMK No. 3-2-014:001, we seek to resume diverting water to our ‘auwai directly from Waihe‘e River at TMK No. 3-2-004:001, as we historically did.

5. STREAM DIVERSION:

We are kuleana users along the North Waihe‘e Valley kuleana ‘auwai. 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 diversion. The North Waihe‘e Valley kuleana ‘auwai receives water via a pipe in the Spreckels Ditch. The pipe empties into an open ‘auwai on the north side of Waihe‘e River. The water continues makai in the ditch and pipes along River Road until we divert water via an open ditch from the ‘auwai at the Barrett’s property (TMK No. 3-2-003:024). The water flows through their lo‘i kalo in open ditches and pipes, then flows onto the neighboring Koki properties (TMK No. 3-2-003-004 and No. 3-2-003-037). Water flows from the Koki’s land onto our parcel in two places, one inflow is a pipe and the other is via open ditch. The water that enters our property is used in wetland kalo cultivation and the water that does not evaporate or seep into the soil is returned directly to Waihe‘e River, which is adjacent to our land (See **EXHIBIT 2**).

6. FLOW MEASUREMENT INFORMATION: Please see explanation for **TABLE 2** below.

7. APPURTENANT RIGHT:

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. 4426:1 and Royal Patent No. 4937, including testimony indicating the land was in kalo. This land has been in our family for several generations, and based on our knowledge of the history of this kuleana and our family, we have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

TABLE 2: JUSTIFICATION FOR REQUESTED QUANTITY:

We estimated our existing water use for wetland kalo cultivation by using the five gallon bucket method (‘Onipa‘a Nā Hui Kalo, *Guidelines for Grassroots Lo‘i Kalo Rehabilitation*). We measured at the intake from the North Waihe‘e Valley `auwai on the Barrett’s land (TMK No. 3-2-003:024). The amount of time it took to fill a five gallon bucket five times and the average time was 6 seconds. Using the table on page 70 of the *Guidelines for Grassroots Lo‘i Kalo Rehabilitation* we calculated that we access about 72,000 gallons of water per day at the intake. We estimate that after flowing through the Barrett’s lo‘i kalo, about 75% of the water flows to our land. Therefore, we estimate that we receive approximately 54,000 gallons per day. The amount of water currently available is not enough to produce a healthy crop of wetland kalo (see our concurrently filed SWUPA-N).

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. In addition, because the stream runs adjacent to our property and we were accessing stream water on April 30, 2008, we are existing riparian users under Hawai‘i law. Our existing riparian use of water from Waihe‘e River is protected under Article XI, Section 7 of the Hawai‘i Constitution.

Moreover, even if we did not have protected rights to stream water, there is no potentially available alternative source that is economically practicable. We have leased our land to Aloha Poi Company since the 1940s to grow kalo in the traditional manner in the ancient lo‘i on our land. Aloha Poi makes poi out of the kalo they grow to provide the local community with a nutritious and culturally significant food source. An alternative water source that would require us or Aloha Poi to pay for the volumes of constantly flowing water in our lo‘i necessary to keep temperatures cool and support healthy kalo would make Aloha Poi’s wetland kalo cultivation using traditional methods economically impossible. We would effectively be denied our appurtenant right and the opportunity to grow kalo on our land. As shown below, each potentially available alternative water source is impracticable and imposes a cost on exercising our protected right.

Municipal Sources. Our land does not have access to county water. Even if the Maui County Department of Water Supply were willing to provide municipal water for wetland kalo cultivation by installing a large 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 wetland kalo.

Wastewater reuse. Reusing wastewater is impracticable because we would still be required to pay for large volumes of flowing water. Additionally, the closest wastewater treatment plant is in Kahului. As a small user engaged in wetland kalo cultivation using traditional irrigation methods, we do not have the means to hookup to and use that water.

Ditch system. We are currently using water from an existing ‘auwai, although water is not available consistently and in sufficient amounts to support the existing uses on our system, including our own uses. Getting water from a different ditch system other than the existing system that already services our land is not practicable or efficient. 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 and irrigation system. As a small user engaged in wetland kalo cultivation, 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 wetland kalo cultivation using traditional methods, we do not have the means to install and maintain such infrastructure.

TABLE 4: PUBLIC INTEREST:

Our Existing Use is Consistent with the Public Interest

HRS § 174C-2(c) provides that the protection of traditional and customary Hawaiian rights, agriculture, and the maintenance of proper ecological balance and scenic beauty are “in the public interest.” The water we use is for kalo cultivation. We grow kalo in traditional ways and use it to make poi for sale in local stores. Our lo‘i kalo help maintain ecological balance and scenic beauty and allow the perpetuation of the Native Hawaiian culture. 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. In re Waiāhole Ditch Combined Contested Case, 94 Hawai‘i 97, 137 n.34, 9 P.3d 409, 449 n.34 (2000). Additionally, because much of the water we use is returned to Waihe‘e River, our use supports other existing public trust purposes such as: (1) the maintenance of waters in their natural state; (2) resource

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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 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. Therefore, the water we use is for a “reasonable-beneficial use.”

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

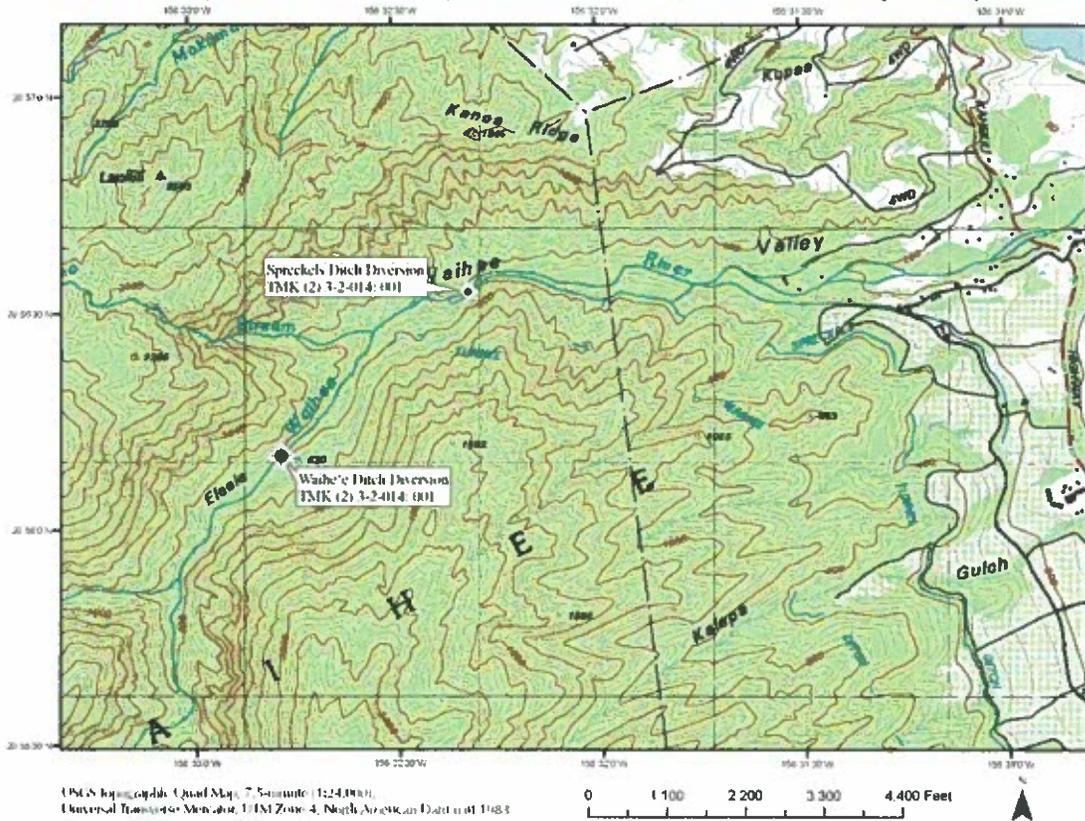


EXHIBIT 1: True and correct copy of a USGS topographic map labeled with stream and diversion locations.

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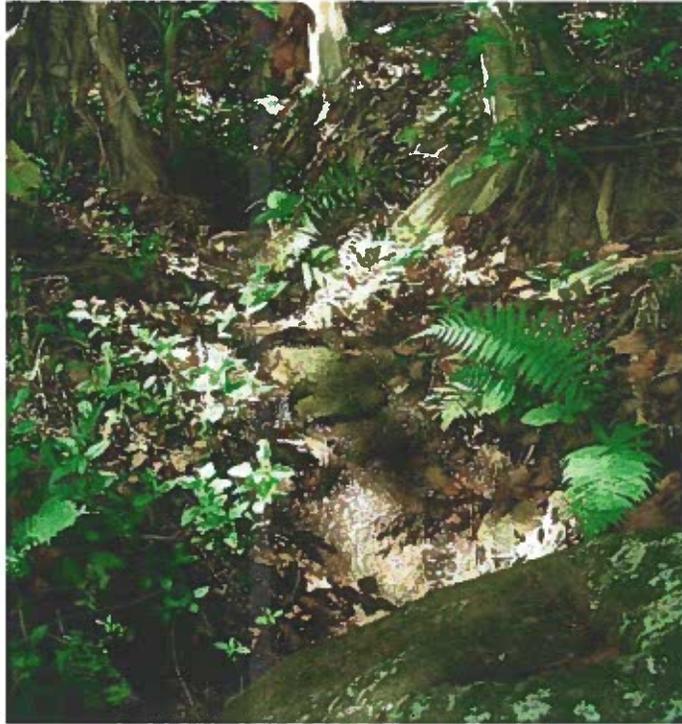
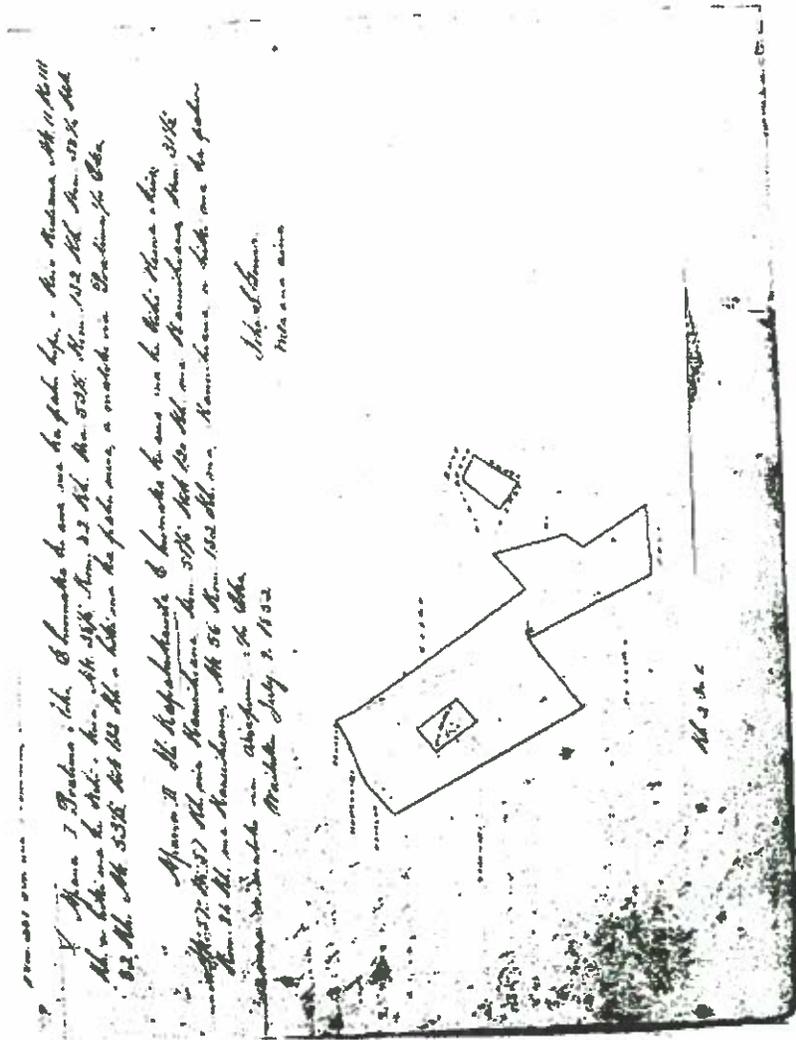


EXHIBIT 3A Ditch diversion. Beginning of ditch that brings water from the North Waihe'e Valley 'auwai to our land at TMK No. 3-2-003-002.

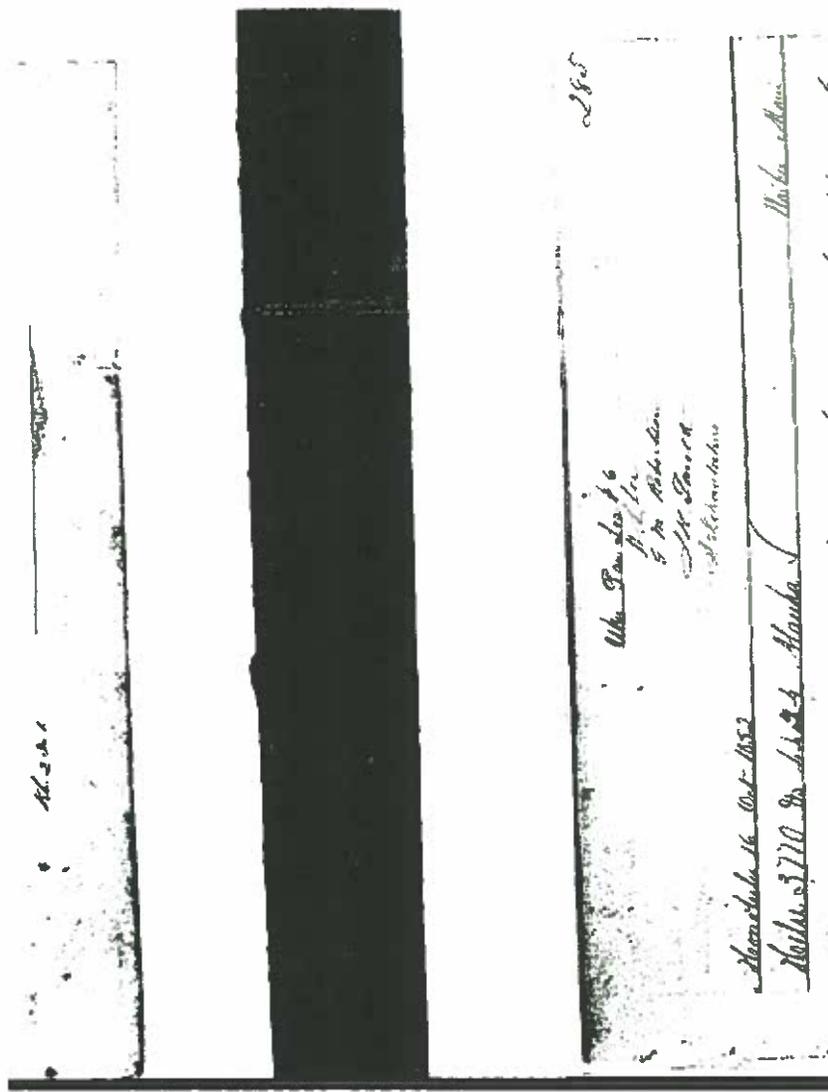
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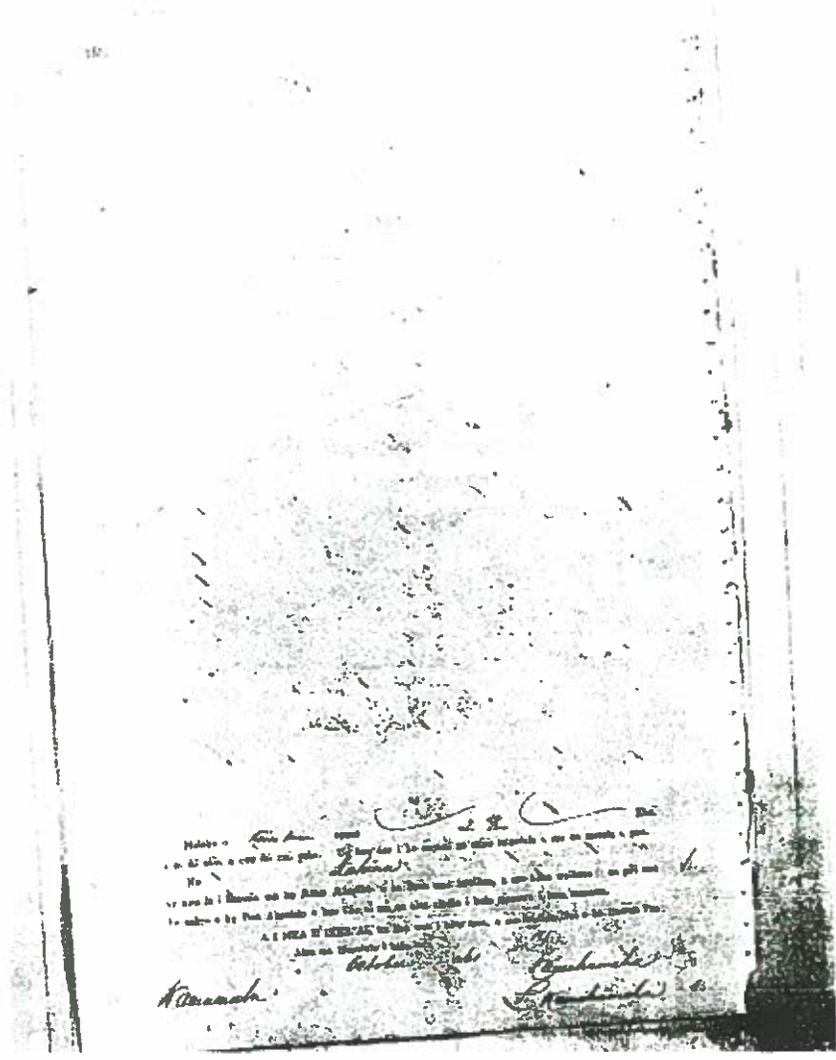
EXHIBIT 3B
End use: Lo'i kalo



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No. 4399E - Mahalea Page 167

Greetings to the Land Commissioners: I, Mahalea, have 12 lo'i in the land of Waipuka, which I received from Kapu, who received them from Kahuna. My lo'is are on the north.

MAHALEA

No. 4399F - Kuuuonua Page 168

Greetings to the Land Commissioners in the District of the Island of Oahu. I, Kuuuonua, hereby state my claim for land, in Waipuka. I have 25 lo'i and I received my name from Hualalo, and have held it until this time, for your information.

KUUUONUUA

No. 4405 - Kapahuwai Waihee

'Ili of Kapahu, 4 mo'c. There are 5 /lo'i/ in one, 5 in another, 3 ponds in one and 4 ponds in another. At Waipukua is 1 taro lo'i, which I received from Kapo. One clump of hau, /At/ Keenapali District, an 'ili with 1 lo'i, from Kaloeloa to Alaloa. I received it from Pak'il.

KAPAHUWAI

No. 4416 - Kaulua Waihee, Dec. 29, 1847

'Ili of Lauke, 39 lo'i, which I received from Kauni. At Halepaku is 1 lo'i which I received from Kahinu. At Kapuna is 1 kula and 1 house, which I received from Kaulu. At Ishukanila is 1 kula which I received from Kaula.

KAULUA

No. 4417 - Keolii Waihee, Dec. 28, 1848

'Ili of Papaina, 25 lo'i, which I received from Kawa. At Ohi are 12 lo'i, received from Pupuka. At At Honuakana is 1 lo'i, at Uai-pae is 1 lo'i, received from Noo. At Waipae are 4 lo'i received from Kaulapo. At Kalepelepe is 1 lo'i received from Kauhii. At Kulu is 1 lo'i received from Ku. At Papaina II, are 2 lo'i,

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received from Akiheem. Combined, a total of 45 lo'i. At Kaloeloa, two stream branches, at Keoelis is one stream branch. It is for you to attend to this. I am inert.

KEOLII

No. 4426 - Kanina Waihee, Dec. 29, 1848

'Ili of Kalepehu, 16 lo'i, received from Kawa. 2 kula 4 lauhalo clumps. At Puhuanila are 3 lo'i received from Kuka. 1 stream branch, received from Kupanahi. At Kalaimehehehe is a house site

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received from Halema. At Koihi is 1 kula received from Kanakahi.

EAEIU

No. 4427 - Kamakahi Waihee, Dec. 29, 1848

'Iii of Kanaele, 15 lo'i, received from Koko and also from Kapana, 2 kula, on either side of the lo'in. At Kanaele 2, 1 lo'i, received from Punuku. At Koihi is 1 lo'i, received from Kaunuaelina. At Hanukaila is 1 lo'i received from Kahunana. At Lauhee are 7 lo'i received from Kapana. At Kapana are 7 lo'i received from Fuuli, and 1 kula.

KAMAKAHI

No. 4429 - Kaula Waihee, Dec. 29, 1848

'Iii of Waipukas, 49 taro lo'i, which I received from Kukanuana. At Waipukas also are 3 lo'i which I received from Kaama. At Waipukas also is 1 kula. It is inland. It is for you to administer this claim -- I am Inept.

KAUA.

No. 4431 - Kaula Waihee, Dec. 29, 1848

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'Iii of Halepahu, 16 lo'i received from Kahinu. At Kahilinanais are 3 lo'i received from Kaholomani. At Kala'ininacheche is 1 lo'i, received from Halema. At Lalinui is 1 kula mauke received from Kahinu. At Upea is 1 kula received from Pupuka.

KAU KAUA

No. 4432 - Kahikiula Waihee, Dec. 28, 1848

'Iii of Paulani, 47 lo'i, received from kuhelani. There are 2 kula, above and below the lo'i. At Punaolu are 4 lo'i received from Fila. At Koihi are 2 lo'i received from Keulu. At Kapoho are 2 houses and 1 pond. At Kapooka are 3 taro lo'i received from Anakala. I, Kanikiula an tho nno who has all these lands.

KAHIKIULA

No. 4434 - Kaula Waihee, Dec. 29, 1848

At Kalopelepe, 23 lo'i, received from Keoha. At Kalopelepe 2, 17 lo'i, received from Kaual. At Koihi, 2 lo'i received from Alauka. At Papaina, 1 lo'i, received from Aki. At Papaina, 1 lo'i received from Paiki. 1 kula is inland at Kapanaa. At Koihi is 1 lo'i received from Hoo. At Kapooka 2 is 1 pond, received from Kina. At Kapoho is 1 kula, from Kapooka to Kapuaolu, from Puulolo to Kapoho. At Halelani is 1 Government kula land, from Kikeke (Black-ards). At Kahakuloo, in Melokila, is 1 stream branch, which I received from Kunaepoa.

KAAKAKUA

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No. 3718 B Kapaemahelani (cont.)
 Section 1 from Kaikiohohono in 1813
 Section 2 from Konaepuni in 1829
 Section 3 from Nuku in 1829, no objection.

No. 4125 Kahinu

He sworn He has seen 1 section (16 patches and a pasture) in Halepahu III in Waihee. Land from Z. Kaeawai in 1829, no objection.

Mauka	Lomoe III
Kahakuloa	Lono Pasha
Makai	Poalina
Wailuku	Stream

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No. 3297 B

Kanikani sworn He has seen 2 sections of Kahinu in Pamaunua III having 3 patches. House site is in Kapaemahelani III of Waihee. Both sections from Kamahele in 1829, no objection.

<u>Section 2</u>	Mauka	Kamahele
	Kahakuloa	Prison patch
	Makai	Maiina
	Wailuku	Poalina
<u>Section 3</u>	House site is in section 1, (on sheet 3)	

No. 5594 Pt

July 24, 1819

Kahinu sworn He has seen 1 section in Kapaemahelani III in Kahakuloa - 17 patches. Land from Pt's wife, and old land, no objection.

Mauka	Male
Konaepuni and Makai	M. Waihi
Waihee	Kahinu

No. 2413 Kakaiki

July 24, 1819

Kanu sworn He has seen 1 section in Puaena III in Waihee consisting of taro, a pasture and a house. Land from Z. Kaeawai in 1829, no objection. Poalina there.

Mauka	Mountain
Kahakuloa	William Kokuni
Makai	Prisoners' patch
Wailuku	Pohakuauka III

No. 4274 Konaepuni

July 24, 1819

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Z. Kapaemahelani sworn He has seen 3 sections in the III at Waihee. Land from Z. Kaeawai in 1832, no objection. 3 Poalinas of sections 1 and 2.

<u>Section 1</u> - Two section at Puaolo	Prisoners' patch
	Kahakuloa
	Makai
	Wailuku
<u>Section 2</u> - Two land (section) and a house lot at Puaolo and Kapoho	Mauka and Kahakuloa
	Makai
	Wailuku
	Konaepuni

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