



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

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

FORM SWUPA-N

- Application for New use  
 Application to Modify SWUP No. \_\_\_\_\_

For Official Use Only:

**RECEIVED**  
**COMMISSION ON WATER**  
**RESOURCE MANAGEMENT**

**2009 APR 23 PM 3:48**

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

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

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

<b>APPLICANT INFORMATION:</b> NOTE: In accordance with HRS §174C-51(1)(B), in the event a lessee, licensee, developer, or any other person with a terminable interest or estate in the land which is the water source of the permitted water, applies for a water permit, the landowner shall be stated as a joint applicant for the water permit.					
1. APPLICANT'S NAME KATHLEEN DE HART		Applicant's Contact		2. SOURCE LANDOWNER'S NAME WAILUKU WATER COMPANY LLC	
Applicant's Mailing Address, or Principal Place of Business PO Box 1574 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 (808) 244-7079	Source Landowner's Fax (808) 242-7068	Source Landowner's E-mail abc@aloaha.net
<b>SOURCE INFORMATION</b>					
3. SURFACE WATER HYDROLOGIC UNIT: Island: MAUI Hydrologic Unit: WAIHEE Hydrologic Unit Code: 6022					
4. INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT IF APPLICABLE: N/A					
5. CAN YOUR PROPOSED USE(S) BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS: <input type="checkbox"/> Yes <input type="checkbox"/> No Explain how your proposed use(s) can be accommodated within the existing IFS for the above hydrologic unit: see attached addendum					
6a. TMK OF PROPOSED STREAM DIVERSION LOCATION: 3 - 2 - 0 1 4 : 0 0 1					
6b. TMK OF PROPOSED DITCH DIVERSION LOCATION: 3 - 2 - 0 0 7 : 0 2 1					
7a. PROPOSED STREAM DIVERSION: How will water be diverted from the stream to your property? Check all that apply. <input checked="" type="checkbox"/> Pipe <input type="checkbox"/> Pump <input checked="" type="checkbox"/> Ditch/auwai <input type="checkbox"/> Other Describe: See attached addendum					
7b. WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH? <input checked="" type="checkbox"/> Yes. How much water will be returned? see attached addendum <input type="checkbox"/> No					
8. PROPOSED FLOW MEASUREMENT INFORMATION: Will the stream diversion have a flow meter with totalizer or other device to measure diverted amounts? <input type="checkbox"/> Yes. List the manufacturer and describe the device. <input checked="" type="checkbox"/> No. Explain how stream diversion will be measured or estimated to justify amounts requested in the space below. see attached addendum					
<b>PROPOSED USE INFORMATION</b> HRS §174C-51(4), (5), (8)					
9. TOTAL QUANTITY OF WATER REQUESTED: 7,350 gallons per day. See Table 1, Item 14.					
10. PROPOSED USE: Check all that apply. <input checked="" type="checkbox"/> Agriculture <input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Industrial See Table 1, Item 1. <input type="checkbox"/> Irrigation <input type="checkbox"/> Military <input type="checkbox"/> Municipal					
11. LOCATION OF PROPOSED WATER USE: Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps. See Table 1, Item 2.					
<b>PROPOSED USER INFORMATION</b>					
12. APPURTENANT RIGHT: Do you claim an appurtenant right for your proposed water use? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, has the appurtenant right been established by the courts or the Commission? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
13. PROPOSED END USER INFORMATION: Will you be an end user on an existing water system? <input checked="" type="checkbox"/> Yes. List the name of the system operator: Wailuku Water Company <input type="checkbox"/> No					
14. REGISTRATION AND DECLARATION OF WATER USE: Do you have a Registration and Declaration of Water Use from the Commission? <input checked="" type="checkbox"/> Yes. List the file reference name(s): Heinrich, BW <input type="checkbox"/> No					
15. STREAM DIVERSION WORKS PERMIT (SDWP): Do you have a SDWP from the Commission? <input type="checkbox"/> Yes. List the permit number(s): <input checked="" type="checkbox"/> No					
NOTE: Signing below indicates that the signatories understand and affirm that the information provided on this application is accurate and true to the best of their knowledge. Furthermore, the signatories understand that: 1) if necessary, additional information may be required before the application is considered complete; 2) if a water use permit is granted by the Commission, this permit will be subject, but not limited to, any existing legal uses, changes in sustainable yields and instream flow standards, Hawaiian Home Lands uses, and any other conditions imposed by the Commission; and 3) the applicant is responsible for paying the required public notice fees associated with this application.					
16. APPLICANT Kathy DeHart Signature Kathy DeHart Print Date 4/4/09			17. SOURCE LANDOWNER Signature Print Date		

FILE ID: SWUP-2381.6  
 DOC ID: 3473 ✓

APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE

TABLE 1: LAND USE CONSISTENCY / EFFICIENCY  
(Attach additional copies of Table1 if necessary.)

LAND USE CONSISTENCY					EFFICIENCY OF USE								
1	2				3	4	5	6	7	8	9	10	11
PURPOSE / WATER USE CATEGORY	TMK FOR PROPOSED LOCATION OF USE ATTACH THE FOLLOWING: • Property tax map, showing proposed location of use referenced to established property boundaries. • Photograph of the area of proposed use.				STATE LAND USE DISTRICT	CDUP REQ'D Check the appropriate box, and write in the date approved, if applicable.	COUNTY ZONING CODE	SMAP REQ'D Check the appropriate box, and write in the date approved, if applicable.	UNITS OR NET ACREAGE	GPD/UNIT or GPD/ACRE (Gallons per Day)	REQUESTED QUANTITY OF USE (GPD)	SUB-METERED? Check Yes or No	APPLICANT'S JUSTIFICATION FOR REQUESTED QUANTITY OF USE FOR ITEM 9. If applicable, attach sheets to show how this number was calculated. For Irrigation uses, fill in Table 2.
<b>Uses that require potable (drinking) water</b>													
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>TOTAL POTABLE USE</b>											0	<sup>12</sup>	GPD
<b>Uses that do not require potable water</b>													
agrcp	3	2	0 1 1	0 0 4	urban	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	Interim	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	0.02	300,000	6,000	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	see attached addendum
dom	3	2	0 1 1	0 0 4	urban	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	Interim	<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input checked="" type="checkbox"/> No	0.45	3,000	1,350	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	see attached addendum
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
	Zone	Sec	Plat	Parcel		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No		<input type="checkbox"/> Yes, date approved: / / <input type="checkbox"/> Yes, not acquired <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>TOTAL NON POTABLE USE</b>											7,350	<sup>13</sup>	GPD
<b>TOTAL QUANTITY OF WATER REQUESTED (Sum of Total Potable Use and Total Non-Potable Use above) =</b>											7,350	<sup>14</sup>	GPD
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. §174C-51(5) HRS N/A													

**APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE**

**TABLE 2: IRRIGATION INFORMATION**

List all crops that will be grown as separate line items and include landscape and golf course irrigation.  
Attach additional copies of Table 2 if necessary.

1	2	2	4	5	6	7	8
TMK OF PROPOSED LOCATION OF USE (Attach TMK map outlining area and photos for each proposed use.)	CROP	TOTAL ACREAGE	NET IRRIGATED ACREAGE	BEGIN GROWTH PERIOD (Month)	END GROWTH PERIOD (Month)	IRRIGATION SYSTEM (Refer to instructions.)	IRRIGATION PRACTICE (Refer to instructions.)
3 - 2 - 0 1 1 : 0 0 4 <small>Zone Sec Plat Parcel</small>	wetland taro	0.5	0.02	year round	year round	flood (taro)	field capacity
3 - 2 - 0 1 1 : 0 0 4 <small>Zone Sec Plat Parcel</small>	diversified agriculture	0.5	0.45	year round	year round	trickle, drip	field capacity
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							
<small>Zone Sec Plat Parcel</small>							

**9. COMMENTS:**

**APPLICATION FOR SURFACE WATER USE PERMIT - PROPOSED NEW USE**

**TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS**

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

**C. ADDITIONAL REQUIREMENTS:**

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

1. Explain below how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code above.  
see attached addendum

2. Explain below how your proposed new use(s) will not interfere with any existing legal use(s).  
see attached addendum

3. Explain below how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.  
see attached addendum

# APPLICATION FOR SURFACE WATER USE PERMIT PROPOSED NEW USE

## INSTRUCTIONS

This application form is for new surface water uses or for a modification of a previously approved water use permit in designated surface water management areas. New surface water uses are proposed uses after the effective date of designation of the surface water management area. Please check the appropriate box.

**Do not use this form for existing surface water use applications.** Existing surface water uses are actual uses before the effective date of designation. Please use Form SWUPA-E for existing uses.

Most questions can be addressed by visiting our website at: [www.hawaii.gov/dlnr/cwrm](http://www.hawaii.gov/dlnr/cwrm), or contacting us at 587-0234, or by email at: [dlnr.cwrm@hawaii.gov](mailto:dlnr.cwrm@hawaii.gov). The current application forms are also available at: [www.hawaii.gov/dlnr/cwrm/resources\\_permits.htm](http://www.hawaii.gov/dlnr/cwrm/resources_permits.htm).

### REQUIREMENTS FOR A COMPLETE APPLICATION

1. Fill in the most recent application form. A current form is available at our web site or by contacting us at 587-0234.
2. Print in ink or type in the information on the application.
3. Fill in every item in the application form (page 1) and Tables 1, 2, and 3 as it relates to your proposed new use or permit modification.
4. Enclose a check for the non-refundable filing fee of \$25 payable to: Department of Land and Natural Resources. Government agencies are not required to pay the filing fee.
5. Pay for the cost of publishing any required public notices related to your application. The current cost for publishing public notices is approximately \$400.00. Commission staff will provide instructions later in the permit process regarding payment of these costs.
6. Mark the source and end use locations on the appropriate USGS quad map (scale 1:24,000) and property tax (TMK) map and attach these maps to your application.
7. Attach photos showing your existing diversion, measuring device(s) (if applicable) and end use areas.
8. Sign the application form in ink. Both the applicant and the landowner where the source is located must sign the application form.
9. Submit the original application and 15 copies of the application form and all attachments (maps, photos and any other attachments) and filing fee to: Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.

### ADDITIONAL REQUIREMENTS FOR A COMPLETED APPLICATION

Per Hawaii Revised Statutes §174C-49, the applicant must establish that the proposed new use of surface water:

1. Can be accommodated with the available water source.
2. Is a reasonable-beneficial use.\*
3. Will not interfere with any existing legal use of water.
4. Is consistent with the public interest.\*\*
5. Is consistent with state and county general plans and land use designations.
6. Is consistent with county land use plans and policies.
7. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act.

\*HRS §174C-3 of the State Water Code states: "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.

\*\*HRS §174C-2(c) of the State Water Code 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.

NOTE: Filling in the application form and Tables 1, 2, and 3 completely will address the requirements of HRS §174C-49.

### LINE BY LINE INSTRUCTIONS ON APPLICATION

#### APPLICANT INFORMATION

In accordance with the Hawaii Water Code, both the applicant and the person who owns the property where the water source is located are required to apply for a water use permit. §174C-51(1)(B), HRS, states, *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:** Fill in the information for the applicant. This should be the person who 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.

#### SOURCE INFORMATION

3. **SURFACE WATER HYDROLOGIC UNIT AND CODE:** Enter the appropriate island, hydrologic unit name, and hydrologic code where the proposed source is located. The "source" is the stream 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.

**APPLICATION FOR SURFACE WATER USE PERMIT  
PROPOSED NEW USE**

4. **INSTREAM FLOW STANDARD (IFS) FOR HYDROLOGIC UNIT:** Provide Instream Flow Standard (IFS) for hydrologic unit if available.
5. **CAN YOUR PROPOSED USE BE ACCOMMODATED WITHIN THE ABOVE AMOUNTS:** Check "Yes" or "No". Explain how your proposed use(s) can be accommodated within the Instream Flow Standard (IFS) for the above hydrologic unit.
- 6a. **TMK OF PROPOSED STREAM DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the tax parcel where the stream diversion will be located. Each tax parcel is issued a TMK number by the county property tax office and is defined as follows: 1st digit = (Island code), 2nd digit = Zone, 3rd digit = Section, Digits 4-6 = Plat, Digits 7-10 = Parcel, e.g. (1) 1-1-001:001. 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/)
- 6b. **TMK OF PROPOSED DITCH DIVERSION LOCATION:** Fill in the Tax Map Key (TMK) number of the parcel where the proposed ditch diversion will be located.
- 7a. **PROPOSED STREAM DIVERSION:** How will water be diverted from the stream to your property? Check all the appropriate box(es).
- 7b. **WILL THE DIVERTED WATER BE RETURNED TO THE STREAM OR DITCH?** Check "Yes" or "No." If yes, enter the amount of water to be returned.
8. **PROPOSED FLOW MEASUREMENT INFORMATION:** Check "Yes" or "No". If yes, please describe the measuring device. A flowmeter with a totalizer will directly measure the total use for the source (similar to a car's odometer). If no, explain how stream diversion will be measured or estimated to justify amounts requested.

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

9. **TOTAL QUANTITY OF WATER REQUESTED:** Enter the amount of water requested as gallons per day (GPD). Fill out Table 1 and enter the amount in Box 14, "Total Use Requested."
10. **PROPOSED USE:** Check all the boxes that apply for the proposed use. Refer to the instructions for Table 1: Land Use Consistency/Efficiency of Use, Item 1: Purpose/Water Use Category below to determine which water use category to use.
11. **LOCATION OF PROPOSED WATER USE:** Show the location of the proposed use on the same USGS and TMK maps as the proposed source location. Otherwise, attach similar maps and show the location of the proposed use.

**PROPOSED USER INFORMATION**

12. **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 proposed water use? Check "Yes" or "No." If yes, has your appurtenant right been established by the courts or the Commission? Check "Yes" or "No."
13. **PROPOSED END USER INFORMATION:** Will you be an end user on an existing water system? Check "Yes" or "No." If yes, please list the name of the water system operator.
14. **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, list the name of the registrant(s).
15. **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."
16. **APPLICANT:** Sign and print your name, and date your application.
17. **SOURCE LANDOWNER:** Sign and print your name, and date your application. The landowner of the source shall be a 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)

**TABLE 1: LAND USE CONSISTENCY / EFFICIENCY OF USE**

Provide information on all of the proposed uses you are applying for or seeking to modify. In the space provided below the table or on a separate sheet, explain whether there are any limitations (e.g., a contract or other legal agreement(s)) on your proposed water use(s), as required by §174C-51(5), HRS.

1. **PURPOSE / WATER USE CATEGORY:** For each proposed use, choose one of the categories listed below and enter the appropriate code in the space provided (e.g. AGRAQ, IRRIG, etc.)

**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

**APPLICATION FOR SURFACE WATER USE PERMIT  
PROPOSED NEW USE**

<b>INDUSTRIAL</b>	
INDEL	Geothermal, Thermoelectric Cooling, Power Development
INDFP	Fire Protection
INDMI	Mining, Dust Control
INDOTH	Industrial - Other
<b>IRRIGATION</b>	
IRRG	Golf Course
IRRH	Habitat Maintenance
IRRHOT	Hotel
IRRLA	Landscape/Water Features
IRROTH	Other
IRRPCA	Parks
IRRS	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 will be 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, check "Yes" and enter the date CDUP was approved if you have a CDUP applicable to this project; or check "Yes, not acquired". If a CDUP is not required, check "No." To find out 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 Na Wai Eha, contact Maui County Department of Planning at 270-6279 or 270-7253.
6. SMAP REQUIRED: If a Special Management Area Permit (SMAP) is required, check "Yes" and enter the date SMAP was approved if you have a SMAP applicable to this project; or check "Yes, not acquired". If a SMAP is not required, check "No." To find out if your parcel is in a Special Management Area and requires an SMAP, contact Maui County at 270-8205.
7. UNITS OR NET ACREAGE: This is the value and category as the basis for calculating the duty. "Duty" means the amount of water requested for a "unit" over a specific time period, e.g. gallons per acre per day, or gallons/acre/day. "Unit" can mean dwelling unit, or number of people, or animals. Some examples of this category include: 400 dwelling units, 500 people, and 3.74 acres.
8. GPD/UNIT or GPD/ACRE (GPD=gallons per day): Enter the gallons per day or gallons per acre for each water use category listed in Column #1.
9. REQUESTED QUANTITY OF USE (GPD): Enter the requested quantity of use in gallons per day (GPD) at build out after all phases of your project have been completed. The build out amount may differ from the four-year cumulative projected demand if your build out date extends beyond the cumulative projected four-year demand.
10. SUBMETERED? Is there a second measuring device or meter for another user? Check "Yes" or "No" if the specific use will be submetered or not. Submetering is specific to each line item.
11. APPLICANT'S JUSTIFICATION FOR QUANTITY OF REQUESTED USE FOR ITEM #9: Explain how you are justifying the amount(s) you are requesting for Item #9. Attach additional copies of Table 1 if necessary to show how this number was calculated. For irrigation uses, fill in Table 2.
12. TOTAL POTABLE USE: Add the quantities listed in the column above for potable water and enter the total potable use in gallons per day (GPD) here.
13. TOTAL NON-POTABLE USE: Add the quantities listed in the column above for uses that do not require potable water and enter the total non-potable use in gallons per day (GPD) here.
14. TOTAL QUANTITY OF WATER REQUESTED: Add the requested amounts listed on Box 13 and Box 14 and enter the total requested amount of both potable and non-potable uses here.
15. Please explain if there are any limitations (legal, contractual, etc.) on the use(s) of water described above. HRS §174C-51(5)

**TABLE 2: IRRIGATION INFORMATION**

On Table 2, provide the information requested for all the crops you are proposing to grow, including landscape and golf course turf and plants. Enter only one crop and one parcel number (TMK) per line. For multiple crops, list each one as a separate line item. All proposed or modified irrigation uses you are applying for must be listed. Attach additional copies of Table 2, if necessary.

1. USE TAX MAP KEY (TMK): Enter the parcel number where the crop will be grown. Also attach a property tax map with an outline around the area(s) of proposed use(s) and a photograph of each area of the proposed use.
2. CROP: Enter the crop type.
3. TOTAL ACREAGE: Enter the total acreage of the parcel listed.
4. NET IRRIGATED ACREAGE: Enter the acreage that the specific crop will be grown.
5. BEGIN GROWTH PERIOD (MONTH): This is the month of the start of the growth cycle.
6. END GROWTH PERIOD (MONTH): This is the month of the end of the growth cycle.
7. IRRIGATION SYSTEM: Enter one of the following:

TRICKLE, DRIP  
TRICKLE, SPRAY  
MULTIPLE SPRINKLERS

**APPLICATION FOR SURFACE WATER USE PERMIT  
PROPOSED NEW USE**

SPRINKLER, CONTAINER NURSERY  
SPRINKLER, LARGE GUNS  
SEEPAGE, SUBIRRIGATION  
CROWN FLOOD  
FLOOD (TARO)  
OTHER – Please describe in the space provided for Comments.

8. IRRIGATION PRACTICE: Enter one of the following:

IRRIGATE TO FIELD CAPACITY  
APPLY A FIXED DEPTH PER IRRIGATION  
DEFICIT IRRIGATION  
OTHER - Please describe in the space provided for COMMENTS below.

**TABLE 3: ALTERNATIVES ANALYSIS AND ADDITIONAL REQUIREMENTS**

- A. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

- B. ALTERNATIVES ANALYSIS: Please address each alternative and explain why they are or are not available for non-potable needs. Other alternatives on the last line may include stormwater reclamation, rainwater catchment, etc. that are not already listed above.

Surface water is defined in §174C-3, HRS 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.*

C. ADDITIONAL REQUIREMENTS

1. Explain how your proposed new use(s) will maximize beneficial use(s) and how they will be deemed to be in the public interest as defined by the State Water Code below.

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

2. Explain how your proposed new use(s) will not interfere with any existing legal use(s).

3. Explain how your proposed new use(s) will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act. See below. To inquire about potential interference, you may contact the Department of Hawaiian Home Lands Planning Office at 586-3836.

The State Water Code in §174C-101(a), HRS [Native Hawaiian water rights], states: *Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.*

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## **Addendum**

### **Attachments**

Appended hereto as Exhibit A is a copy of the 7.5 minute-series USGS topographic map with the Waihe`e River and Waihe`e and Spreckels diversions diversion labeled. Exhibit B is a TMK map showing the location of our property, our `auwai diversion, and area of proposed use. Exhibit C contains copies of photographs of the area of proposed use. Exhibit D is described below.

### **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.

### **Box 4 & 5: Instream Flow Standards**

There currently are no Instream Flow Standards for Nā Wai `Ehā, and a petition to amend upwards the Interim Instream Flow Standards is pending. There is sufficient water upstream of all diversions to accommodate my proposed use.

### **Box 7(a&b): Proposed Stream Diversion**

My `ohana has historically accessed water from the kuleana `auwai that runs to the south of Waihe`e River. It is my understanding that 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 South Waihe`e kuleana `auwai receives water via a pipe in the Spreckels Ditch; and the pipe empties into an open `auwai on the south side of Waihe`e River. The water continues makai in the ditch and pipes through Waihe`e. Historically, the kuleana water continued toward Wailuku town on Kahekili Highway adjacent to my `ohana's land, where we accessed it via an open ditch, and later a pipe in a cement flume. In 1984, a storm broke the cement flume that brought water to our land. Later, the County completely destroyed the flume when it widened Kahekili Highway. We have not had access to our kuleana water since 1984, however, we seek to access this water once again. I will install a pipe in the South Waihe`e kuleana `auwai before it crosses Kahekili Highway at the Waihe`e School, TMK No. 3-2-007:021, which will bring water to my land. The outflow from our lo`i kalo will return to the South Waihe`e kuleana `auwai via a pipe.

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**Box 12: Do you claim an appurtenant right?**

Our property has appurtenant rights because it was in kalo cultivation at the time of the Māhele of 1848. Attached hereto as Exhibit D are true and correct copies of Māhele records for Land Commission Award No. 3887B, Royal Patent No. 6150, and testimony indicating the land was in kalo. This land has been in our family continuously since the Māhele, and based on our knowledge of the history of this kuleana and our family, we have no evidence, indication, or any other reason to believe that our appurtenant rights have been extinguished. This application should be granted pursuant to HRS § 174C-63.

**Table 1, Box 11: Justification for Requested Quantity:**

I intend to maintain an approximately 30' x 30' lo'i kalo. I estimated my proposed water use for wetland kalo cultivation of 6,000 gallons per day by multiplying the amount of land on which I intend to grow wetland kalo (0.02 acres) by 300,000 gallons, the average amount of water I understand is required to grow healthy wetland kalo.

I estimated my proposed domestic water use of 1,350 gallons per day, including my use of water within my home for washing and other purposes and outside my home for watering my yard and non-commercial garden, where we will grow foods for us to eat like star fruit, mangoes, bananas, tomatoes, lettuce, eggplant, papaya, avocado, grapefruit, lemon, lime, squash, beets, string bean, bitter melon, and brussel sprouts, by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gallons per acre by 0.45 acres, or the total acreage of my property (0.5 acres) minus the approximate square footage of my house and the amount of land on which I intend to grow wetland kalo (0.05 acres).

**Table 3, Box B: 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 and other crops on our land for cultural and subsistence purposes; the kalo we grow feeds our `ohana and is shared with neighbors and community members. 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 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

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potentially available alternative water source imposes a cost on exercising our protected rights.

**Municipal Sources.** Our domestic water service is a typical residential service and does not have the capacity to deliver the volumes of water we require to cultivate kalo. 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 wetland kalo.

**Wastewater reuse.** We currently reuse the greywater generated in our home by running pipes from the house into our banana patches. The amount of water generated in our home is not enough for our intended uses. Also, the greywater would not be appropriate for our wetland kalo. Reusing other types of wastewater is impracticable because as a small user engaged in traditional uses and non-commercial gardening, we do not have the means to hookup to and use that water. The closest wastewater treatment plant is in Kahului.

**Ditch system.** We seek to use water from the 'auwai from which we historically accessed water. Getting water from other ditch systems is not practicable. First, the other ditch systems in Nā Wai 'Ehā do not consistently have enough water to support additional users. Second, we lack the property, access, permissions and funding necessary to permit and construct an additional ditch diversion. As a small user engaged in traditional uses and non-commercial gardening, the cost of taking water from or constructing another ditch is not practicable.

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

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

**Table 3, Section C, Additional Requirements:**

**1) My proposed new use will maximize beneficial use and is in the public interest**

My water use is consistent with the public interest because the majority of the water that I have requested is for wetland kalo, which I will cultivate in a traditional manner, and other crops for my 'ohana's subsistence. Haw. Rev. Stat. § 174C-2(c) declares that the protection of traditional and customary Hawaiian rights, agriculture, and

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the maintenance of proper ecological balance and scenic beauty are “in the public interest.” Our requested use satisfies all three objectives: I am Native Hawaiian and will grow kalo in a traditional manner; my proposed use is for agriculture; and my kalo and subsistence crops help to maintain ecological balance and scenic beauty. Thus, my proposed use of stream water is in the public interest.

#### My Proposed Use is a Protected Public Trust Purpose

Kalo cultivation by Native Hawaiians, water for domestic purposes, and the exercise of appurtenant rights are also protected public trust purposes. In re Waiāhole Ditch Combined Contested Case, 94 Hawai‘i 97, 136-37 & n.34, 9 P.3d 409, 448-49 & n.24 (2000) (“Waiāhole I”); 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).

#### My Proposed Use is Reasonable and Beneficial

“Reasonable-beneficial use” is defined as “the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and public interest.” HRS § 174C-3. As indicated, our proposed use of stream water is consistent with state and county land use plans and the public interest. It will also be “economic and efficient” because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we will use pipes where appropriate to minimize water loss, and our farming practices will include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, the water we have requested is for a “reasonable-beneficial use.”

#### **2) My proposed use will not interfere with any existing legal use**

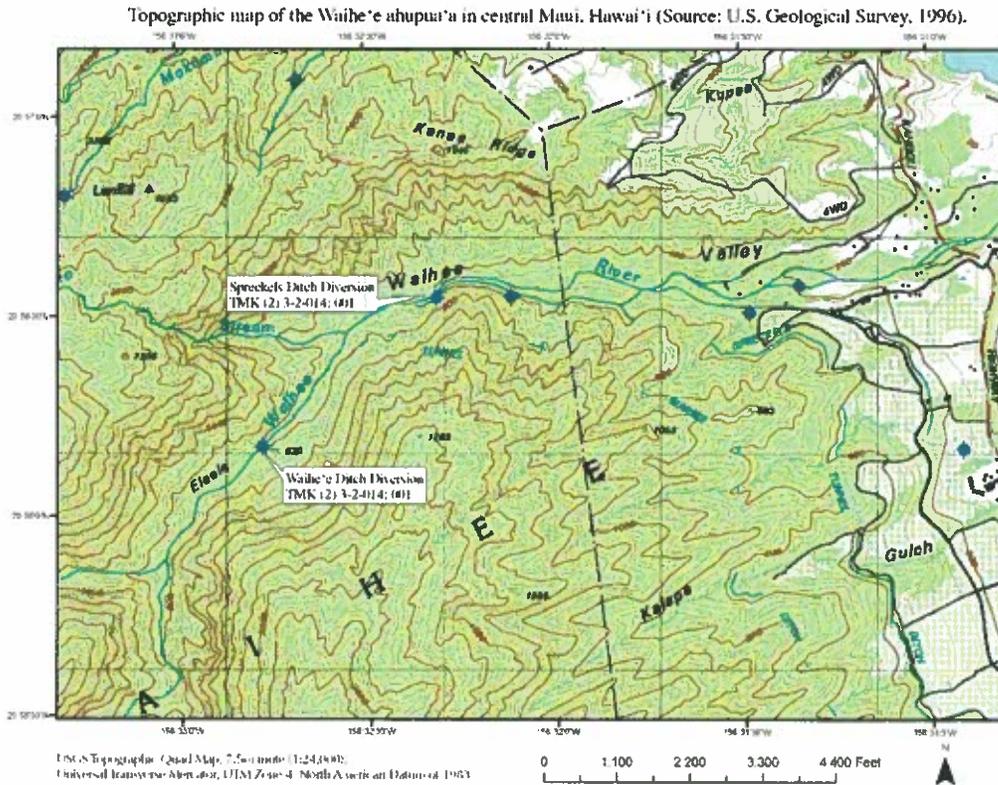
My proposed use will not interfere with existing legal uses. As kuleana users, my ‘ohana has first priority by law. The flow of Waihe`e River is able to accommodate our new use. Also, our use will not interfere with other existing legal uses because it will not result in a large net loss of water from the stream and larger ecosystem.

#### **3) My proposed use will not interfere with the rights of the Department of Hawaiian Home Lands**

We are not aware of any DHHL lands using water from Waihe`e River. To the best of my knowledge, DHHL has not filed an application to use water from this source. While I am aware that DHHL has outstanding reservations for municipal water meters in Central Maui, our use will not interfere with those reservations, which are largely served by ground water sources.

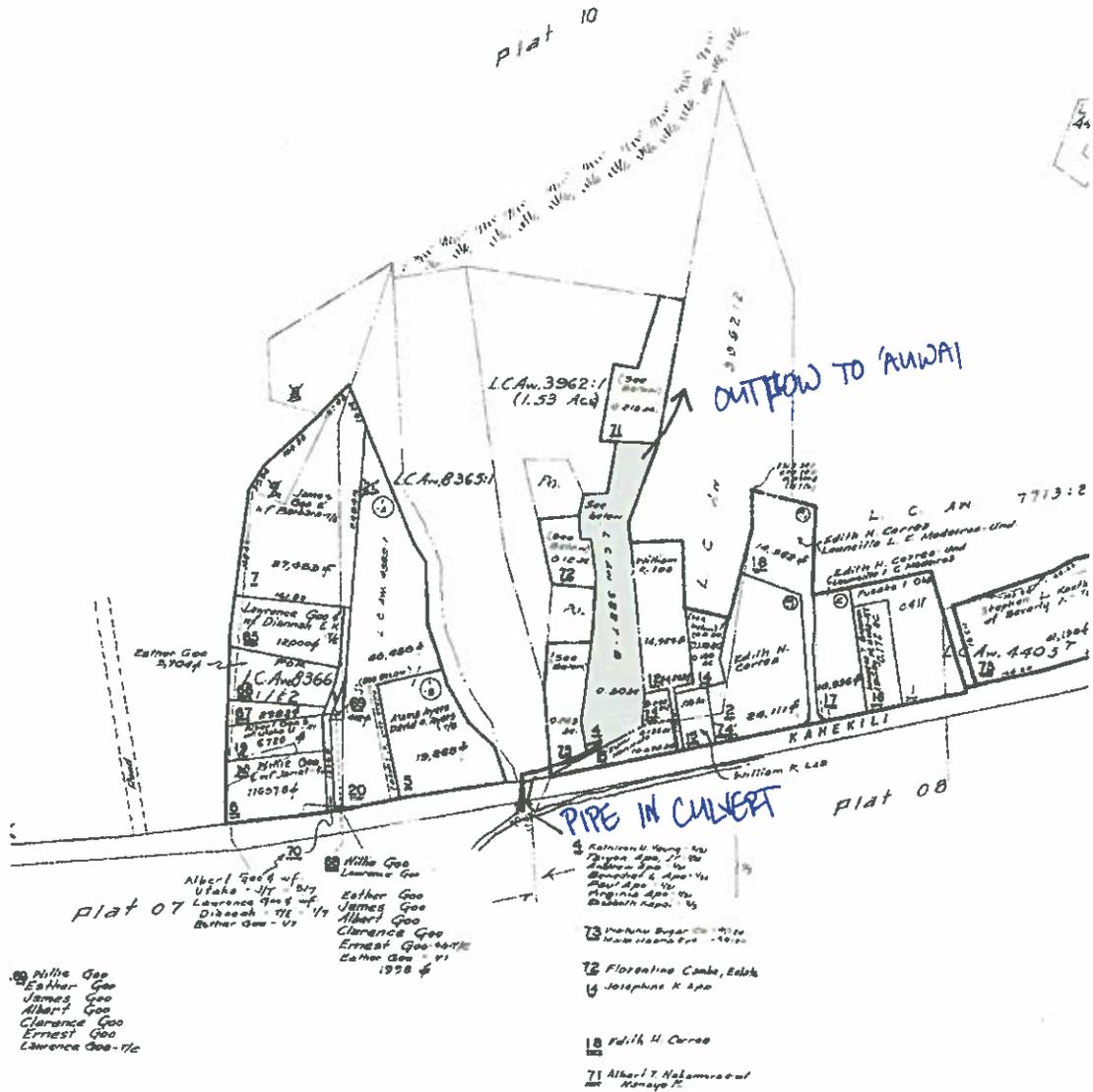
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**Exhibit A:**  
**USGS Map of Waihe'e River and Waihe'e and Spreckels Diversions**  
This is a true and correct copy.



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Exhibit B: TMK Map



11.

ADP/AS  
 2/18/2014

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**Exhibit C: Photographs of proposed end uses**



The photographs above and below were taken on October 25, 2008 and accurately depicts a portion of my non-commercial garden, including lettuce, eggplant, and star fruit



The photograph above was taken on October 25, 2008 and accurately depicts the area where I intend to grow wetland kalo





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Malolo Maui apana 0.91 Eka  
a oi ihi aka, a eui ihi mai paha. Ua hoo paha i ka Agama'i no nina aia'ole a ma ka pule a paa.  
No (Maui)  
no aia i ka hewaia ma ka AAO Aka'ole a no hoo ma hoo'ia, a ma hoo wai'ana; no pii ma ka aia a ka Pae Aka'ole a  
ka hoo a ma ka aia aia i hoo ma'awa i hoo ma'awa.  
A i hoo a ma'awa a ma hoo wai i hoo hoo, a ma ka Eka Wai a ka Hawaii Pae  
Aia no Hawaii (hoo i  
15 a (Maui) 100  
By the King  
W.M. Robinson  
Kaua'amahe B.

132	<p>moana, aole maia nana i ke akea          mai a hiki i kua la          Olowale 17 Jan. 1881. Na Pika</p>
3886	<p><u>A</u> <u>Kapela</u> <u>Waihu</u>          Ili aia, Kalapelohe 14 loi          Oo Kuama mai koi. Puhauhe 1 loi          Oo Pila mai koi. Kapohe 1 fuhala-          hala, ua pau. Na na Kapela</p>
3886	<p><u>Pika</u>          Puhauhe elua 35 loi. Oo          Kurohine mai koi. Elua mau          Na Pika</p>
3887	<p><u>Hawaimii</u> <u>Waihu (D.H. 24, 25)</u>          Ili aia, Waiakohu 33 loi          Oo Hawaimii mai koi, Kapohe          1 loko, akahi Oo akakai, 3 hale,          Oo Kapahuai mai koi          Na Hawaimii</p>
3887	<p><u>C</u> <u>Mahoe</u>          Puhauhe elua, 33 loi.          Oo Kekaui mai koi, Kapohe 1          fuhala, 1 loko Oo Kapahuai mai          koi, ia Kuleana          Na Mahoe</p>
3888	<p><u>B</u> <u>Palau</u>          Puhauhe elua, 37 loi Oo          Kurohine, Puhauhe 5 loi Oo          Palau mai koi.          Kakahele Ili aia, Oo          na Kakahele Oo Mokei mai koi.          Na Palau</p>



The Claimant received it from his father before 1829. His title was never disputed up to his death in 1824 after his claim was sent in and his wife, Kuanaka, had possessed the land since. He left 3 children. There are two portions left in it.

It is bounded on the north by the Brook, Kahakaha, by Kapehaha's land, on the south by the same hills of Kahakaha, on the west by Kapehaha's land.

Lot 1

The old land consists of 3 pieces on the side of Kapehaha.

- 1. A section of land on Kapehaha.
- 2. A section of land on Kapehaha.
- 3. A section of land on the side of Kapehaha.

The Claimant received them in older times before 1829, and has possessed them ever since. There are 3 portions left in 1829.

It is bounded on the north by Kahakaha's land, Kahakaha, by the side of Kahakaha, on the south by the same.

It is bounded by the first piece and is included in its boundaries.

It is bounded on the north by Kapehaha's land, Kahakaha, by the same, on the south by the same, on the west by the Brook.

Lot 2

The Claimant made it necessary only. The old land consist of one piece of land and water on the side of Kapehaha's land.

The Claimant received it from his father in 1824, and he from his father in 1829. His title is not disputed.

It is bounded on the north by the Brook, Kahakaha, by Kahakaha's land, on the two sides, by the Brook.

Lot 3

This claim was duly entered. The old land consist of 2