



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

February 15, 2022
Honolulu, Hawai‘i

Approve Interim Water Use Permits to Mary Ann Velez (Higa) (SWUPAs 2241/2242N), Jordanella Ciotti (SWUPAs 2247/2248N), and Greg Ibara (SWUPAs 2245/2246N) on the Wailuku Town Kuleana ‘Auwai and Order Wailuku Water Company and Mahi Pono, LLC to Implement Certain Actions for Commission Staff to Assess Water Loss, Nā Wai ‘Ehā Surface Water Management Area; Wailuku, Maui

SUMMARY OF REQUEST

Staff is requesting that the Commission on Water Resource Management (Commission) approve interim water use permits to Mary Ann Velez (Higa) (SWUPAs 2241/2242N), Jordanella Ciotti (SWUPAs 2247/2248N), and Greg Ibara (SWUPAs 2245/2246N) on the Wailuku Town Kuleana ‘Auwai, to provide immediate relief in accordance with recognized appurtenant and domestic use rights and provide for the assessment of system losses by Commission staff; Order Wailuku Water Company to provide for a full release of water from the Wailuku Town Kuleana Pipeline distribution point, estimated at 500 gallons per minute (gpm) or 720,000 gallons per day (gpd); and Order Mahi Pono, LLC to install a berm in the Spreckels Ditch to prevent stagnant conditions in the Sprekels Ditch resulting from the backflow of water from the Hopoi Chute and the additional flow through from the Wailuku Town Kuleana ‘Auwai.

LEGAL AUTHORITY

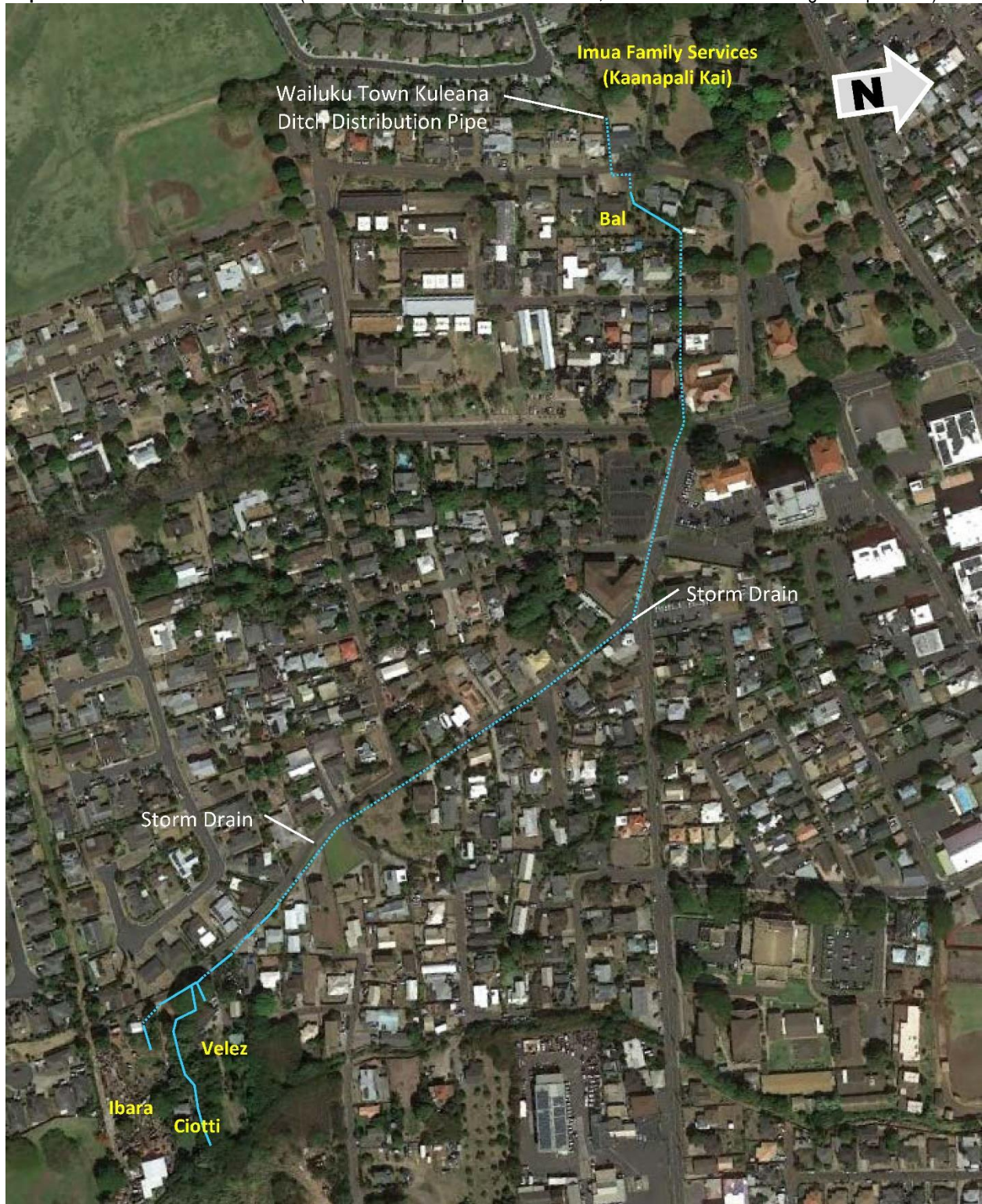
Under the State Water Code (Code), the Commission shall have jurisdiction statewide to hear any dispute regarding water resource protection, water permits, or constitutionally protected water interests, or where there is insufficient water to meet competing needs for water, whether or not the area involved has been designated as a water management area under this chapter. The final decision on any matter shall be made by the Commission. HRS § 174C-10.

BACKGROUND

Note: Please see Exhibits 1 and 2 (Briefing A3 and Testimony, respectively, from January 18, 2022 Commission meeting) for a more complete background of events related to this submittal.

Wailuku Town Kuleana 'Auwai, Nā Wai 'Ehā Surface Water Management Area

Map: Wailuku Town Kuleana 'Auwai. (Solid line indicates open-ditch sections; dotted line indicates underground portions.)



Wailuku Town Kuleana ‘Auwai, Nā Wai ‘Ehā Surface Water Management Area

The Wailuku Town Kuleana ‘Auwai (‘Auwai) receives water from a distribution pipe and control valve that is located on TMK (2) 3-4-014:006. The property was formerly owned by Kaanapali Kai Inc. and is now owned by Imua Family Services. The distribution pipe conveys water from an intake located on Waihe‘e Ditch approximately 1,800-feet mauka. Wailuku Water Company currently manages the distribution of water both from Waihe‘e Ditch using a valve located at the intake, and a control valve located at the boundary on Imua Family Services property. From the distribution point, the water flows underground in a concrete lined channel for about 200 feet, then drops into an open channel where it flows for another 200 feet through two properties. The water goes back into a concrete-lined channel and continues on to the end, where it flows into an unlined channel for the last 250 feet. The total length of the ‘Auwai is approximately 0.54 miles. An access point is located behind the Wailuku Public Library, and a storm drain grate which captures runoff into the ditch is located at the corner of Kaohu Street and Kalua Road, and a second storm drain grate approximately 1,000 feet further down Kalua Road.

On April 17, 2014, under contested case hearing CCH-MA06-01, the Commission issued an Order adopting the; 1) Hearings Officer’s Recommendation on the Mediated Agreement Between the Parties; and 2) Stipulation re Mediator’s Report of Joint Proposed Findings of Fact, Conclusion of Law, Decision and Order.

On June 28, 2021, the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order (D&O) in contested case hearing CCH-MA15-01 regarding the Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Na Wai Eha Surface Water Management Areas of Waihee, Waiehu, Iao and Waikapu Streams, Maui. In its D&O, regarding the management of the WWC delivery system and the ‘Auwai, the Commission set forth the following provisions:

D&O, pp. 305-307, Line 39:

- B. Appurtenant Rights and Surface Water Use Permits (SWUPs)
 - 39. SWUPA 2157 – Wailuku Water Company
 - b. As a condition of this permit, WWC is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:
 - 2. Distribution Points:
 - v. Wailuku Town Kuleana Pipeline
 - c. WWC shall ensure that the following quantity of water is delivered to the following distribution points in the indicated amounts based on SWUPs that will be issued as a result of this decision. The amounts to be delivered shall be provided at all times unless identified in Tables 1-3, supra, or determined by the Commission to be an emergency:
 - 5. Wailuku Town Kuleana Pipeline – 0.088 mgd

The following users were awarded water use permits under the D&O:

- ii. **Wailuku Town Kuleana Ditch**
 - 181. The Wailuku Town Kuleana Ditch is next on the Waihe‘e Ditch

182. **SWUPA 2181—Kaanapali Kai (FOF 469)**
Kaanapali Kai is granted an existing use permit for 4,595 gpd based on her metered use.
183. **SWUPAs 2209/2210N—Vernon Bal (FOF 470)**
Because Bal did not submit testimony or participate in the contested case hearing, his request for recognition of appurtenant rights is denied without prejudice. Similarly, his request for an existing use permit is denied and his request for a new use permit is denied without prejudice.
184. **SWUPAs 2241/2242N—Mary Ann Velez (Higa) (FOF 471)**
- a. Parcels 16 and 17 are recognized as having appurtenant rights of 136,950 gpd (0.913 acre x 150,000 gad).
 - b. Velez’s request for an existing use permit is denied.
 - c. Velez is granted a new use permit of 69,000 gpd (0.46 acre x 150,000 gad) for new lo‘i kalo. The 69,000 gpd is granted based on the recognition of appurtenant rights to Parcels 16 and 17.
 - d. Velez is also recognized as having a domestic use of 975 gpd (0.39 acre x 2,500 gad) a home garden, for which a permit will be issued.
185. **SWUPA 2247 & 2248N—Jordanella Ciotti (FOF 472)**
- a. Parcel 19 is recognized as having appurtenant rights of 34,500 gpd (0.23 acres x 150,000 gad).
 - b. Ciotti is granted a permit for 8,265 gpd consisting of the following:
 - i. An existing use permit of 375 gpd (.0025 acre x 150,000 gad) for lo‘I kalo; and
 - ii. A new use permit of 7,890 gpd (.0526 acre x 150,000 gad) for lo‘i kalo. 8,265 gpd is granted based on the recognized appurtenant rights for Parcel 19.
 - c. Ciotti is recognized as having a domestic use of 989 gpd (0.3957 acre x 2,500 gad) for a garden, for which a permit will be issued.
186. **SWUPAs 2245/2246N—Greg Ibara (FOF 473)**
- a. Parcel 20 is recognized as having appurtenant rights of 175,650 gpd (1.171 acres x 150,000 gad).
 - b. Ibara is granted a permit of 4,050 gpd consisting of the following:
 - i. An existing use permit of 1,050 gpd (0.007 acre x 150,000 gad) for existing lo‘i kalo; and
 - ii. A new use permit of 3,000 gpd (0.02 acre x 150,000 gad) for new lo‘i kalo.

The 4,050 gpd is granted based on the appurtenant rights recognized for Parcel 20.

Beginning on September 29, 2021, the Commission staff began receiving communications from Mr. Robert Street, who indicated that he was angry about not receiving surface water via the ‘Auwai. During the same period, the Commission staff also began receiving communications from Mr. Avery Chumbley, of Wailuku Water Company (WWC), that they were attempting to

Wailuku Town Kuleana ‘Auwai, Nā Wai ‘Ehā Surface Water Management Area

implement the Commission’s D&O to deliver the total permitted amount of water at the specified distribution point for the ‘Auwai; however, somebody was also vandalizing the control valve in an attempt to increase the release of water. Mr. Chumbley would later implicate Mr. Street.

On October 29, 2021, Commission staff conducted a site visit at 9:00 a.m. with a representative from Senator Lorraine Inouye’s office and the assistance of a Maui Division of Conservation and Resources Enforcement (DOCARE) officer. Staff met with Mr. Chumbley and Mr. Dean Wong, of Imua Family Services, to inspect the valve on the Wailuku Town Kuleana Pipeline distribution pipe located at the boundary of the Imua Family Services property as well as to understand the use of water on-site. WWC was asked to fully open the valve on the 3-inch line to observe the maximum flow (in gallons per minute, gpm) in the pipeline (Photo 1)

Photo 1. Wailuku Town Kuleana Pipeline distribution point meter showing approximately 500-gallon per minute flow with a fully-opened valve.



On November 28, 2021, Commission staff received an email from Jordanella Ciotti stating, “Please take notice and be advised that I, Jordanella Ciotti designate Robert Street as my legal representative on Case Number CCH-MA 15-01, FINDING OF FACT, CONCLUSION OF LAW AND DECISION & ORDER; SWUPA 2247 & 2248N (FOF 472) located at 484 Kalua Road, Wailuku, Maui, Hawaii.”

Following the January 18, 2022 Commission meeting, the Commission staff received additional emails from Mr. Street stating that “There is NO water in the Wailuku Town Auwai.” Similar emails from Mr. Street regarding no water in the ‘auwai were received on January 20, 21, and 22, and February 3. The Commission staff also received an email from Mr. Chumbley on January 21 that the distribution valve, located on the Imua Family Services property, had also been tampered with and the main valve was found to be “closed nearly all the way.” On January 24, Mr. Chumbley forwarded an email from Mr. Dean Wong, of Imua Family Services, implying that Mr. Street “has been making his way up our property and turning the valves on the water pumps on the property – because he does not know what they are for or connected to, he’s been causing problems to our irrigation system.”

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On January 26, 2022, Mr. Street sent the following email to Mr. Hokuao Pelegrino, of Hui o Nā Wai 'Ehā, copying Mayor Michael Victorino, Maui County Council members, and Commission staff.

“Aloha mai Hokuao for your thoughts and recommendations regarding the Wailuku Town Auwai system. Below are my thoughts and plan of action.

“Within Wailuku Valley there are two Wahi Pana, one is called Ke Pani Wai, the other I'ao. The Friday after Thanksgiving from twelve a.m to twelve a.m. Saturday I'ao will be closed. This can be accomplished administratively. This is the starter.

“1. That you, or some other Hawaiian scholar, educate the occupants of 2471 Main Street, and Wailuku Water Company and the Commission on Water Resource Management on what the word "KULEANA" means. Including what kuleana lands mean, what kuleana water rights mean and what kuleana ala hele e hike aku ai means.

“2. I have requested the contract that exists between Wailuku Water Company and the property owners of 2471 Main Street, Wailuku. To date I have not received it.

“3. That Wailuku Water Company remove the chains and locks at the midpoint of the Wailuku Town Auwai system and our lawful, legal rights to surface water be restored.

“4. That the end users of the Wailuku Town Auwai system control the management flow of water at the midpoint in conjunction with the State Commission on Water Resource Management to be monitored at any time by the Department of Conservation and Resource Management and used as baseline data.

“5. That the end users of the Wailuku Town Auwai system as well as Hui o Na Wai Eha, get an explanation on the Hopoi Chute distribution system of Wailuku Water Company that has been leaking "forever". Because of this "puka in the pipe" is Mahi Pono receiving their proper allocation of water which they are entitled to?

“6. At no time have the end users of the Wailuku Town Auwai given up their legal right to access the Kama auwai system. The end users of the Wailuku Town Auwai also have a legal right to access the new transport system that begins off of the Waihe'e ditch system. We are requesting the route (map) of the transport system that starts off of the Waihe'e ditch and goes through the subdivision to the midpoint of the Wailuku Town Auwai system.

“I have contacted Maui County Public Works and have asked them to identify the steel plate that is mauka of 456 Kalua Road. They had no maps that showed this steel plate and its function, or what is below it. I requested that it be put on the "to do" list, and if I am unavailable to physically be there, that they take photos.

“What the Wailuku Town Auwai system needs is an instrument that can go into the auwai and photograph/video the integrity of the auwai system. I contacted Environmental Management, County of Maui and they were unable to accommodate this request. The

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next step would be to contact either the Public Works Department and/or Department of Water Supply to see if they had an instrument like this. You would think they would.

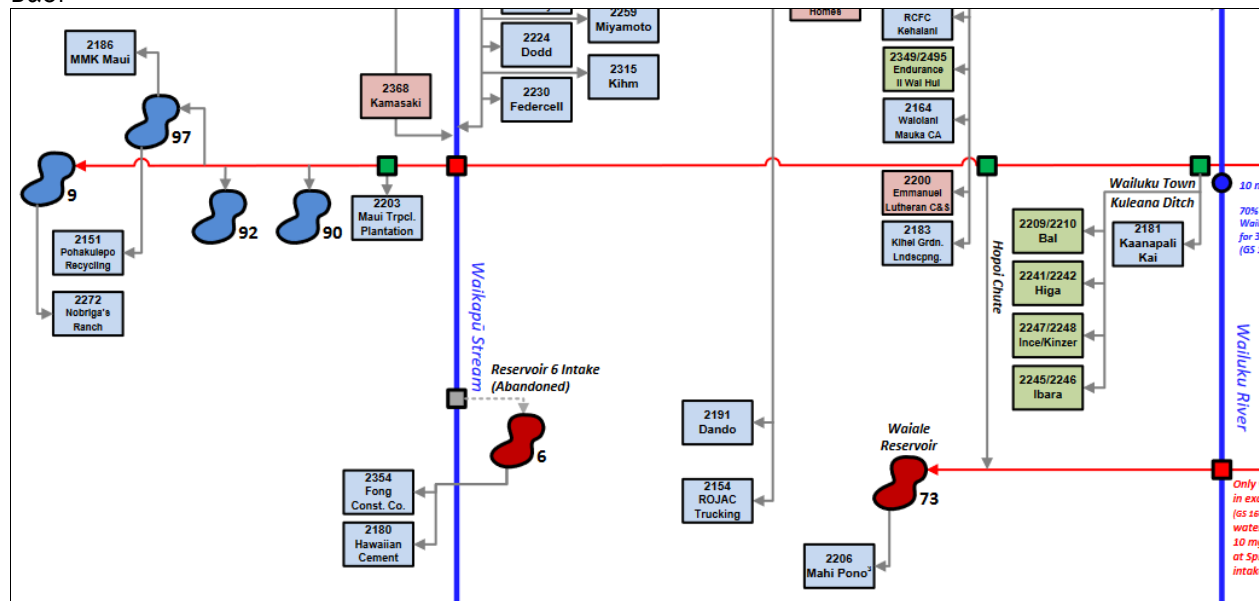
“Within Wailuku Valley there are two Wahe Pana, one is called Ke Pani Wai, the other I’ao. The Friday after Thanksgiving from twelve a.m. to twelve a.m. Saturday I’ao will be closed. This can be accomplished administratively. This is the finisher.”

ANALYSIS

In its D&O, the Commission did not consider the system losses that occur from the delivery point, located at the Imua Family Services property, to the end users on the ‘Auwai (i.e., Velez (Higa), Ciotti, and Ibara), because no evidence was presented or data available for the system. The Commission staff believes that there is likely considerable loss occurring from the ‘Auwai as it traverses approximately 0.54 miles underground in a concrete lined channel for most of its course and in unlined channels in certain sections.

The Commission staff believes that it is in the best interest of the three water use permittees (Velez, Ciotti, and Ibara), who were recognized as having appurtenant rights totaling 347,100 gpd and domestic use rights (Velez and Ciotti) totaling 1,964 gpd, that the system losses occurring in the ‘Auwai be assessed by Commission staff. In the interim, while the Commission staff prepares to conduct a seepage run, the Commission may approve interim water use permits for a period of 60 days to provide for immediate relief to these kuleana users, while the Commission staff prepares to assess system losses. In addition, the Commission should recognize that additional water use permittees receiving water from Waihe‘e Ditch, with distribution points located downstream of the Wailuku Town Kuleana Pipeline, are all commercial uses including Mahi Pono, LLC (4,981,250 gpd), Maui Tropical Plantation (124,532 gpd), MMK Maui (762,500 gpd), and Pohakulepo Recycling (8,555 gpd), totaling 5,876,837 gpd.

Figure 1. Excerpt of Figure 1, WWC Irrigation System and Location of SWUPAs, included in the Commission’s June 28, 2021 D&O.



Commission staff is proposing to conduct at least one seepage run, consisting of flow measurements collected at multiple points of the 'Auwai over the course of a single day during stable flow conditions. This will require working with multiple landowners along the course of the 'Auwai to obtain permission to enter property and conduct the seepage run.

During the course of investigations at Ms. Ciotti's property, the Commission staff also found that water from the 'Auwai that may flow-through the Velez, Ciotti, and Ibara properties is returned to the Spreckels Ditch. However, in part, due to the high volume of water delivered to Mahi Pono, LLC, via the Hopoi Chute, may be causing the water to backup into the Spreckels Ditch resulting in stagnant conditions makai of the Velez, Ciotti, and Ibara properties.

RECOMMENDATIONS

Staff recommends that the Commission:

- 1) Approve an interim water use permit for the following users from the Wailuku Town Kuleana Pipeline distribution points currently managed by Wailuku Water Company.
 - a. Mary Ann Velez (Higa) equivalent to 40-percent of water released from the Wailuku Town Kuleana Pipeline.
 - b. Jordanella Ciotti equivalent to 10-percent of water released from the Wailuku Town Kuleana Pipeline.
 - c. Greg Ibara equivalent to 50-percent of water released from the Wailuku Town Kuleana Pipeline.
- 2) Order the three interim water use permittees to modify the distribution in the Wailuku Town Kuleana 'Auwai along Kalua Road to ensure the appropriate percent of water is delivered as approved in action 1 above.
- 3) Order Wailuku Water Company to immediately fully open both control valves at the intake on Waihe'e Ditch and at the boundary on Imua Family Services property to release water to the Wailuku Town Kuleana Pipeline, for a period of 60 days to provide for immediate relief to the water use permittees located on the Wailuku Town Kuleana 'Auwai and allow for Commission staff to assess system losses in the Wailuku Town Kuleana 'Auwai.
 - a. Wailuku Water Company shall provide photographic evidence of the McCrometer flow meter located at the distribution point for the Wailuku Town Kuleana Pipeline, showing a fully opened valve, estimated at not less than 500 gpm.
 - b. Wailuku Water Company shall secure the main 4-inch valve at the Wailuku Town Kuleana Pipeline with a strong, anti-theft lock to prevent tampering while the Commission investigates system losses.

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- 4) Order Mahi Pono, LLC, to install a berm in the Spreckels Ditch, upstream of the Velez (Higa) property to prevent stagnant conditions in the Sprekels Ditch resulting from the backflow of water from the Hopoi Chute and the additional flow through from the Wailuku Town Kuleana 'Auwai.

Ola i ka wai,

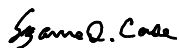


M. KALEO MANUEL
Deputy Director

Exhibit:

1. January 18, 2022, Briefing A3: Wailuku Kuleana Town 'Auwai, Nā Wai 'Ehā Surface Water Management Area, Maui
(Exhibit 1 available online at:
<https://files.hawaii.gov/dlnr/cwrp/submittal/2021/sb20210921B1.pdf>)
2. January 18, 2022, Testimony related to Briefing A3
(Exhibit 2 available online at:
<https://files.hawaii.gov/dlnr/cwrp/submittal/2022/sb20220118A3T.pdf>)

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson