



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

September 20, 2022  
Honolulu, Hawai'i

Approval of Stream Diversion Works Permit Application (SDWP.5895.6)  
Hui o Nā Wai 'Ehā (Applicant) and Michael and Dana Pastula (Landowner)  
Reestablish the North Waihe'e 'Auwai by Reconstruction of a Rockwall  
To Divert 1,392,326 gpd for Previously Approved Surface Water Use Permits and  
Find that a Petition to Amend the Interim Instream Flow Standard is Not Required  
Waihe'e Stream, Waihe'e Surface Water Management Area, Maui, TMK: (2) 3-2-004:001

APPLICANT

Hui o Nā Wai 'Ehā  
213 West Waiko Road  
Wailuku, HI 96793

LANDOWNER

Michael and Dana Pastula  
1900 Baldwin Ave.  
Makawao, HI 96793

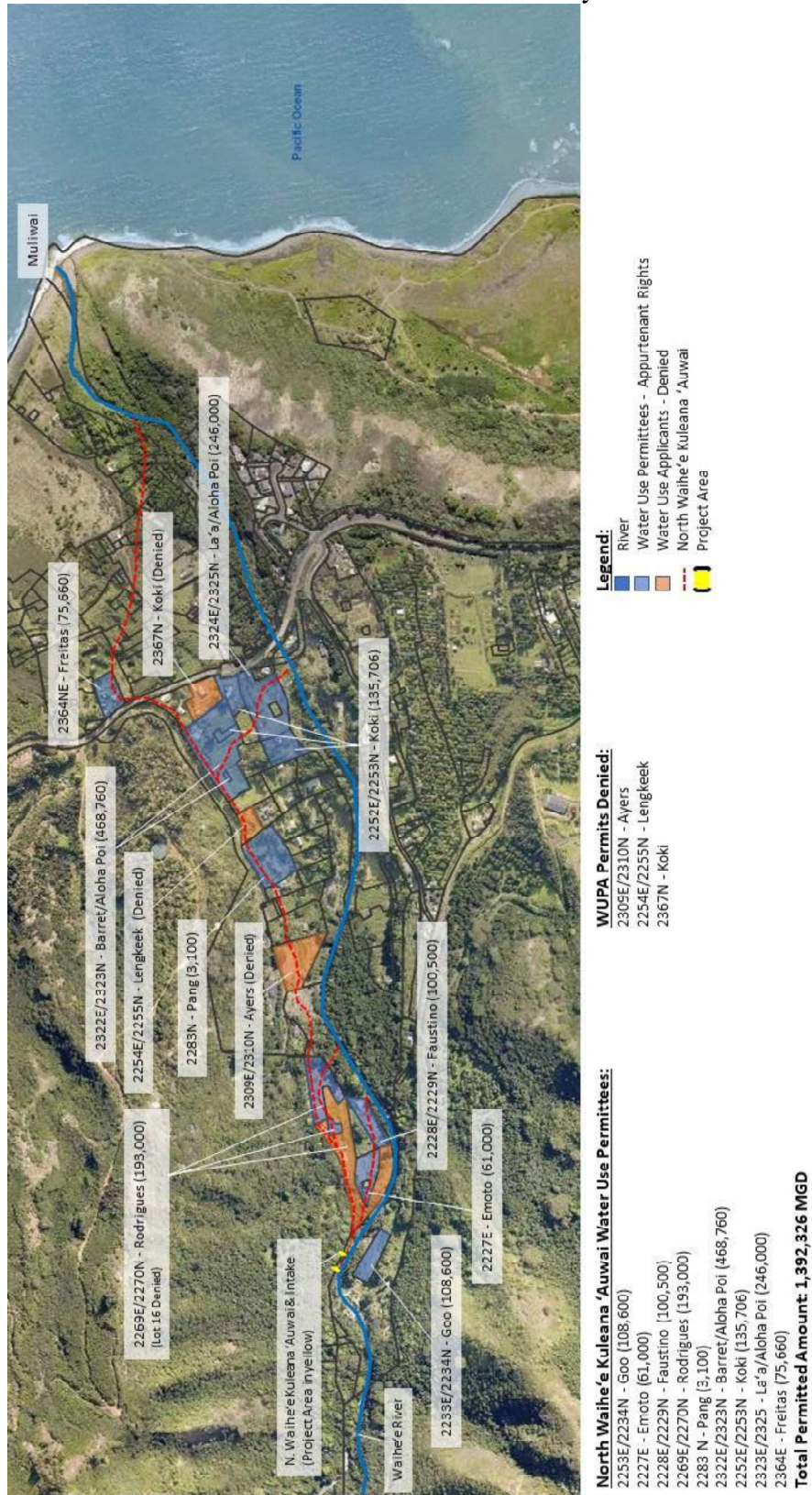
SUMMARY OF REQUEST

Approve Stream Diversion Works Permit (SDWP.5895.6) Application to reestablish the North Waihe'e 'Auwai ('Auwai). The applicant proposes to reconstruct a rock wall 128-feet long by up to 8-feet wide and up to 7.5-feet high at the original location of its source, or po'owai. An existing sluice gate will be used to control and divert water from the Waihe'e Stream into the 'Auwai for over nine (9) acres of taro lo'i, diversified agriculture, and domestic uses in the amount of 1,392,326 gallons per day (gpd) to nine (9) existing surface water use permittees.

Find that a petition to amend the Interim Instream Flow Standard (interim IFS) is not required under HRS 174C-71 and HAR 13-169-36 because the permitted flow amount was previously approved in the Nā Wai 'Ehā Contested Case Hearing, Case Number CCH-MA 15-01 (D&O).

The proposed action will also require amendments to the existing Surface Water Use Permit (SWUP) holders' source of water from the Wailuku Water Systems' (WWC) Spreckels Ditch to the Waihe'e River and 'Auwai. At a future date, proposed amendments will be brought to the Commission for action.

LOCATION: Waihe'e River. North Waihe'e Kuleana 'Auwai System and Water Use Permittes.



## BACKGROUND

The North Waihe'e 'Auwai constructed around 1500 AD. Length is about 1.2 miles long. 'Auwai begins at LCA 4405 to Mo'o in the 'ili of Waihalulu to LCA 4405:1 to Kaokaa in the 'ili of Kapahukauwila. According to the applicant, flow capacity was estimated to be 2-4 million gallons per day (based on historical acreage at some unknown rate per acre). See **Exhibit 1**.

On June 28, 2021, the water use permits were approved in the amount of 1,392,326 gpd in the D&O. Footnote number 56 (p. 313 D&O) states "The Commission takes judicial notice that the pipeline connecting the North Waihe'e 'Auwai to Spreckels Ditch was irreparably damaged in flooding in 2019. Work is being done to re-establish the original auwai from the Waihe'e Stream." Note: should read 2018 flood.

On July 18, 2022, the applicant filed a complete SDWP.5895.6 application that can be viewed on the Commissions website: [https://files.hawaii.gov/dlnr/cwrmswreview/SDWP\\_5895\\_6.pdf](https://files.hawaii.gov/dlnr/cwrmswreview/SDWP_5895_6.pdf).

## STREAM DESCRIPTION

The Waihe'e Stream is perennial and about 16 miles long. The median flow is about 34 mgd. The stream at the point of the diversion is approximately 42 feet wide and 1 to 2 feet deep. The subject action is located below the Spreckels Ditch. The interim IFS, located just below the Spreckels Ditch, is 11.44 mgd which represents the flow necessary to support the majority of instream habitat (10 mgd) and instream traditional and customary practices (1.44 mgd) associated with the downstream North Waihe'e 'Auwai. This amount represents the traditional and customary uses that are fed directly from the stream and not through WWC's system. At the mouth of the River, the flow will be at least an estimated 6.0 mgd when losses into the streambed, return flows from the hoi, and consumption are factored in (p. 294 D&O).

## PROJECT DESCRIPTION

The scope of work to reestablish the 'Auwai by reconstruction of a rock wall 128-feet long, up to 8-feet wide, and up to 7.5-feet high at the original location of its po'owai ('auwai intake) consists of the following:

1. Mahi Pono, LLC, will use an excavator to reconstruct the 128-feet long x up to 8-feet wide x up to 7.5-feet high stone wall section on the left bank of the stream and below the po'owai. The po'owai consists of an existing 18-inch x 18-inch sluice gate in a concrete wall. The excavator will only be used to re-tore the damaged section of the dry-stacked 'auwai wall on the subject TMK. No cement or PVC pipe will be used. See **Figure 1**.
2. Hui o Nā Wai 'Ehā Board and North Waihe'e 'auwai kuleana kalo farmers will also be present to assist. They will re-stack the section of stone wall using rocks that had fallen into the stream near the damaged section.
3. Once complete, the community will open the sluice gate to allow flow into the gravity fed system to the previously approved permit holders for agricultural and domestic uses.



**Figure 1:** Site photos.

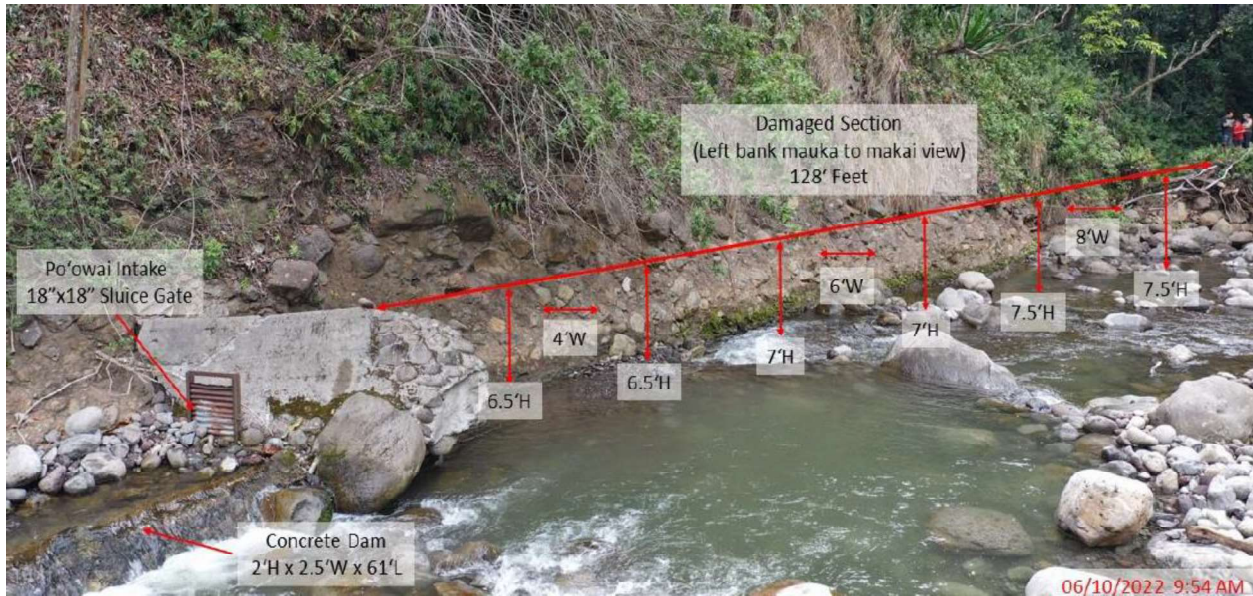


1A. Waihe'e River (left) and North Waihe'e 'Auwai (center), looking upstream in 2017. Community members are standing around the po'owai, an old sugar plantation concrete intake, to the 'Auwai.



1B. Waihe'e River, looking upstream, following a flood event and the loss of the 'Auwai intake in 2018. Note the concrete intake structure is visible in the center right, along the left bank of the river.





1C. The proposed repairs to the 128-foot damaged section of 'auwai, looking toward the left bank and downstream.



1D. Collage of damaged 'auwai section details. A) Image at upper left is looking towards the left bank with the intact concrete headwall or po'owai; B) Image at lower left is looking towards the left bank and downstream showing the damaged section of the 'auwai; C) Image at right is the damaged 'auwai section on the left bank, looking upstream.





1E. The six (6) inch pipe (blue) under the Kahekili Highway provides water to the makai side of the highway and the last permittee.

#### AGENCY REVIEW COMMENTS

Maui County, Planning Department: No objections.

Department of Hawaiian Home Land (DHHL): No comments received.

Department of Land and Natural Resources (DLNR), Aha Moku: No comments received.

DLNR, Aquatic Resources: No objections.

DLNR, Engineering: No comments received.

DLNR, Forestry and Wildlife (DOFAW): No comments received.

DLNR, State Historic Preservation Division (SHPD): Determined that no historic properties affected and requested the following as a condition of the permit, "In the unlikely event that



subsurface historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division at (808) 652-1510. SHPD also requests Hui o Nā Wai Ehā formally request a SIHP [State Inventory of Historic Places] site number for the North Waihe'e 'Auwai. Directions on how to complete the form and submit the SIHP request to HICRIS [Hawai'i Cultural Resource Information System] can be found on the SHPD website: <https://dlnr.hawaii.gov/shpd/files/2022/01/SIHP-Request-Procedure-for-Users.pdf>.

*Commission Staff Response: The above is an existing standard permit condition. The request for a SIHP site number will be added as a special condition.*

DLNR, Land Division: No comments received.

DLNR, State Parks: No comments received.

Dept. of Health (DOH), Clean Water Branch: The DOH standard comments can be reviewed at: <https://health.hawaii.gov/cwb/files/2018/05/Memo-CWB-Standard-Comments.pdf>.

*Commission Staff Response: The lead agency for the protection of water quality is the Department of Health, Clean Water Branch, which administers the Federal Clean Water Act (33 U.S.C. §1251 et seq.) and the State Water Pollution Act (HRS Ch. 342D; HAR Ch. 11-54 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control). HAR §11-54-1 through §11-54-8 defines Best Management Practices and water quality criteria applicable to inland and nearshore waters and are based on the Federal Clean Water Act. HAR Ch. 11-55 Appendix C defines discharges of storm water associated with construction activity. HRS 174C-66 states that the DOH oversees the State's water quality control program.*

Office of Hawaiian Affairs: No comments received.

US Army Corps of Engineers: No Department of the Army permit is required. See **Exhibit 2**.

US Fish and Wildlife Service (FWS): No objections.

Public Comments: See **Exhibit 3**.

TRADITIONAL AND CUSTOMARY PRACTICES (KA PA'AKAI ANALYSIS)

In its Findings of Fact, Conclusions of Law, and Decision and Order in contested case hearing CCH-MA15-01<sup>1</sup>, the Commission concluded that, “the required elements to qualify as a constitutionally protected traditional and customary practice have been established through testimony that kalo growing existed throughout all four watersheds prior to November 25, 1892, that the practice is related to family needs for subsistence, and that the manner in which the practice is conducted is consistent with tradition and custom. *Pratt I*, 124 Hawai'i at 352-54, 243 P.3d at 312-15. Therefore, existing and/or new water use permits for traditional and customary practices associated with growing kalo are issued in this case to any applicant who qualifies as a Native Hawaiian within the guidelines set forth in *PASH* and who do *not* intend to grow kalo for a *commercial purpose*” (COL 181).

- 1) The identity and scope of cultural, historical, or natural resources in which traditional and customary native Hawaiian rights are exercised in the area.

The Applicant stated, “Waihe'e is the fourth ahupua'a and river within the moku of Wailuku, poetically known as Nā Wai 'Ehā. Nā Wai 'Ehā was historically known as the largest contiguous kalo growing region in the all of Hawai'i. Over 130 Land Commission Awards (LCA) were granted to Native Hawaiians in the ahupua'a of Waihe'e following the Kuleana Act of 1850 and sustained an estimated 500 acres of lo'i kalo, both to the north and south side of Waihe'e River. During the 2007 and 2016 Nā Wai 'Ehā Contested Cases, evidence was provided that demonstrated extensive lo'i kalo systems continuing to be cultivated by Native Hawaiian families throughout Waihe'e. Water Use Permits were granted in 2021 to over 30 individuals and families in Waihe'e. There are two major 'auwai systems that historically irrigated lo'i kalo systems to the North and the South.

The subject of this permit pertains to the North Waihe'e Kuleana 'auwai. It historically irrigated over 200 acres of lo'i kalo on the north side of Waihe'e River. Hui o Nā Wai 'Ehā conducted a pedestrian survey in 2006 and notated that there were over 40 acres of active lo'i kalo cultivation on kuleana lands to the north, most of whom grow for home/community consumption and others who provide kalo to Aloha Poi Co. About 90% of the kuleana kalo farmers are Native Hawaiians with lineal ties to Waihe'e and who have maintained their cultural practices and traditions associated with the ahupua'a of Waihe'e for generations.

In February 18, 2018, Waihe'e Community experienced a 100 year flood that severely impacted homes, properties, farmland, lo'i kalo and traditional 'auwai systems, in particular, the North Waihe'e Kuleana 'auwai. About 128 feet of the 'auwai immediately below the po'owai was damaged and continues to be in disrepair. A 3-5-inch steep pipe

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<sup>1</sup> The Findings of Fact, Conclusions of Law, and Decision and Order in contested case hearing CCH-MA15-01, 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, was issued on June 28, 2021.



via the Spreckels Ditch that once provided water into the 'auwai in addition to stream water was damaged and severed on the south side of the river. It no longer provides any water into the 'auwai. For over 4 years, the North Waihe'e Kuleana 'auwai has not flowed and kuleana kalo farmers have suffered severely because of the lack of water and have been unable to cultivate lo'i kalo. This Stream Diversion Works Permit approval would allow the Hui in collaboration with the North Waihe'e kuleana kalo farmers and Mahi Pono to restore the damaged section of the North Waihe'e Kuleana 'auwai. It is an important lifeline and water source and falls in line with the Hui's mission to ensure that Nā Wai 'Ehā and respectfully Waihe'e, continues to be a major traditional kalo growing regions as it once was. See Exhibit A, that includes portions of historic maps that document the North Waihe'e Kuleana 'auwai as well as a TMK Map overlay in which the Hui created showing the course of the 'auwai and Water Use Permittees who rely on this traditional irrigation system."

*CWRM Staff Response: The proposed action will restore water to existing permittees identified in the D&O. In addition, the D&O stated, "The required elements to qualify as a constitutionally protected traditional and customary practice have been established through testimony that kalo growing existed throughout all four watersheds prior to November 25, 1892, that the practice is related to family needs for subsistence, and that the manner in which the practice is conducted is consistent with tradition and custom. (citing Pratt I). Therefore, existing and/or new water use permits for traditional and customary practices associated with growing kalo are issued in this case to any applicant who qualifies as a Native Hawaiian within the guidelines set forth in PASH and who do not intend to grow kalo for a commercial purpose." COL no. 181.*

- 2) The extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action.

The Applicant stated, "The approval of this permit to restore the North Waihe'e Kuleana 'auwai will have a beneficial impact to traditional and customary Native Hawaiian rights, allowing lo'i kalo to be cultivated once again by kuleana kalo farmers who have cultural and lineal ties to Waihe'e Valley and who want to grow food for their 'ohana and community. Hui o Nā Wai 'Ehā who is the applicant of this SDWP is a Native Hawaiian organization who works directly with kuleana kalo farmers throughout Nā Wai 'Ehā who actively cultivate kalo and who intend to restore lands to active cultivation for food production. Hui o Nā Wai 'Ehā in conjunction with the North Waihe'e kuleana kalo farmers/Water User Permittees and Mahi Pono, intends to restore the damaged portion of the North Waihe'e Kuleana 'auwai. Additional benefits to traditional and customary Native Hawaiian rights include the ability to manage the traditional 'auwai system as they once did prior to the 2018 flood damage. There will be no negative impacts to traditional and customary Native Hawaiian rights prior, throughout and following the restoration process."

*CWRM Staff Response: The 'Auwai flows through 30 properties that includes nine (9) permittees, four (4) applicants that were denied permits, and (17) landowners that were*

*not part of the D&O. Over time, the 'auwai may have filled in or changed its course or capacity to carry the proposed flow. The applicant stated that he consulted with all permittees regarding the application. However, there are 21 property owners that were not part of the D&O or were denied a permit that may not be aware of the subject action to restore flow. Their consultation is unknown. Further work may be needed to restore 'auwai capacity to protect all properties as a million gallons of water a day flows through them. The applicant provided a map showing the course of the 'auwai including its return to the stream. Staff reviewed deed language for each property on the Bureau of Conveyance's website and most, but not all, have language regarding the free flowage of the 'auwai.*

- 3) What feasible action, if any, could be taken by the Commission in regards to this application to reasonably protect native Hawaiian rights.

The Applicant stated, "The approval of this SDWP application would greatly help protect Native Hawaiian rights by allowing for the restoration of an active traditional 'auwai system that irrigates an extensive agricultural system of lo'i kalo. Hui o Nā Wai 'Ehā, as the Applicant, is a well-respected Native Hawaiian organization that has been in existence for over 15 years. The leadership of this organization is made up of individuals from all four ahupua'a in Nā Wai 'Ehā, all of whom are well versed and have extensive knowledge in lo'i kalo cultivation, 'auwai and water resource management, Hawaiian land tenure, traditions and customary practices and rights of Native Hawaiians and ability to effectively engage with their respective communities and partners."

*CWRM Staff Response: Recommend that the applicant consult with non-permit holders affected by the flow of water as it returns to the stream.*

#### HRS CHAPTER 343 – ENVIRONMENTAL ASSESSMENT (EA) COMPLIANCE

Under Hawaii Revised Statutes (HRS) §343-5(a), an EA shall be required for actions, as summarized in part below, that propose:

- (1) use of state land or county lands, or the use of state or county funds;
- (2) use within any land classified as a conservation district;
- (3) use within a shoreline area;
- (4) use within any historic site as designated in the National Register or Hawaii Register;
- (5) use within the Waikiki area of O'ahu;
- (6) any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation;
- (7) any reclassification of any land classified as a conservation district;
- (8) construction of new or the expansion or modification of existing helicopter facilities within the State, that may affect: (A) any land classified as a conservation district; (B) a shoreline area; or (C) any historic site as designated in the National Register or Hawaii Register;
- (9) any (A) wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the



equivalent; (B) Waste-to-energy facility; (C) Landfill; (D) Oil refinery; or (E) Power-generating facility.

*CWRM Staff Response: The proposed action does not trigger an EA.*

## STAFF REVIEW

Review of the permit application by Commission staff is subject to the consideration of the legal authorities cited in **Exhibit 5**.

HAR §13-168-32(d) sets out the general criteria for ruling on SDWP applications.

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.

*CWRM Staff Response: See the D&O for an extensive analysis of flow and user needs on this stream and 'auwai. The impact to water quality is anticipated to be negligible.*

- (2) Where instream flow standards or interim instream flow standards have been established pursuant to HAR Chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.

*CWRM Staff Response: HRS §174C-71, requires the Commission to protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses. The interim IFS located above the subject action is 11.44 mgd which represents "the flow necessary to support the majority of instream habitat (10 mgd) and instream traditional and customary practices (1.44 mgd) associated with the downstream North Waihe'e 'auwai." This amount represents the traditional and customary uses that are fed directly from the stream and not through WWC's system. At the mouth of the River, "the flow will be at least an estimated 6.0 mgd when losses into the streambed, return flows from the ho 'i, and consumption are factored in." (p. 294 D&O).*

*This diversion will return unused water to the stream at three (3) locations. It is not anticipated that the interim IFS at the mouth of the stream will be affected. The identified instream uses include fish habitat, lo 'i kalo, and streamflow contribution to the nearshore waters, among others. The water quantity and quality appear relatively unchanged.*

- (3) The proposed diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.

*CWRM Staff Response: The Waihe'e and Spreckels Ditch diversions are located above the proposed action. There are no known diversions located below the proposed action.*

*The reconstruction of the rock wall is not anticipated to impact diversions located upstream.*

#### ADDITIONAL STAFF ANALYSIS

The WWC has an existing Surface Water Use Permit (SWUP.2157.6) for system losses in the amount of 2.73 mgd. The requested amount of 1.4 mgd will be transferred from the WWC system to the stream. The amount is considered negligible compared to the total volume delivered to authorized users from the system and staff does not anticipate that WWC's permit would need to be amended.

The subject action will require amendments to the nine (9) SWUP permit holders allocation from WWC's Spreckels Ditch to the stream and 'auwai. Proposed amendments will be brought to the Commission for action at a future date.

The permit action is to reconstruct a 128-foot wall and divert approximately 1.4 mgd of water at the subject TMK. The size and capacity of the 'Auwai is unknown.

Approximately 1.4 mgd may flow through properties whose owners were not part of the D&O or were denied a permit. The main trunk of the 'auwai is shown on the TMK map but not the three ho'i returning water back to the stream. The applicant stated in a meeting that the two mauka ho'i may be overgrown. It is recommended that the applicant contact non-permit landowners regarding the subject action and the ability to convey water through their property. The property owner adjacent to the last permit holder and makai ho'i provided a comment letter stating their concern about water and ponding on their property. See **Exhibit 3**.

The six (6) inch pipe that goes under Kahekili Highway services one permit holder located on the makai side of the Highway. The pipe may become plugged and/or not have the capacity to convey 1.4 mgd, so management of water flow at this section of the 'auwai will be important. If there is limited flow through the pipe, then flow at the po'owai will need to be controlled in order to prevent flooding to downstream properties. While the purpose or owner of the smaller pipe next to the 6-inch pipe shown in **Figure 2** is unknown, it is believed to be inactive based on discussions with Hui o Nā Wai 'Ehā. Access to the pipe/'auwai on Government property shall not be unreasonably withheld with regards to appurtenant right holders. See Act 27 SLH 2022 HB1768 ([https://www.capitol.hawaii.gov/session2022/bills/HB1768\\_CD1\\_.pdf](https://www.capitol.hawaii.gov/session2022/bills/HB1768_CD1_.pdf)).

The D&O, p. 305, No. 35 states, "In awarding water for traditional and customary practices, and especially providing water for lo'i kalo, the users of traditional 'auwai will be responsible to ensure that the 'auwai are sufficient to handle the flow for the initial users and all down 'auwai users as well."

Commission staff contacted the landowner adjacent to the makai ho'i identified in the applicant's map and forwarded the link to the SDWP application. The landowner comment letter is found in **Exhibit 3**. Landowner concerns include who maintains the pipe under the highway and that it be kept clear of obstruction to prevent flooding on the highway and their property. Photos are



included showing ponding on the highway and water going down an access road to their property but it is unclear how that flooding is connected to the 'auwai pipe that is located south of the subject property. Per discussions with the applicant, Commission staff understands that flow will be controlled at the two mauka ho'i such that the last permit holder get enough water yet no excess water flow offsite.

The D&O, p. 305, No. 36 states, "The Commission also encourages the 'auwai users to engage in collective stewardship of the 'auwai systems to use the allocated water responsibly, both in times of abundance and more importantly during times of scarcity."

*CWRM staff response: Staff concur with the above and added as a special condition.*

## RECOMMENDATION

That the Commission:

1. Approve Stream Diversion Works Permit (SDWP.5895.6) to reestablish the North Waihe'e 'Auwai by reconstruction of a rock wall 128-feet long, up to 8-feet wide, and up to 7.5-feet high at the original location of its source, or po'owai. An existing sluice gate will be used to control and divert water from the Waihe'e River into the 'auwai for over nine (9) acres of taro lo'i, diversified agriculture, and domestic uses in the amount of 1,392,326 gallons per day (gpd) to nine (9) existing surface water use permittees subject to the standard conditions in **Exhibit 4** and the special conditions below:
  - a. Per D&O, p. 305, No. 35, "In awarding water for traditional and customary practices, and especially providing water for lo'i kalo, the users of traditional 'auwai will be responsible to ensure that the 'auwai are sufficient to handle the flow for the initial users and all down 'auwai users as well." Per D&O, p. 305, No. 36, "The Commission also encourages the 'auwai users to engage in collective stewardship of the 'auwai systems to use the allocated water responsibly, both in times of abundance and more importantly during times of scarcity."
  - b. Due to the impermanent nature of traditional hand-constructed rock walls, particularly during high-flows, reconstruction of the rock wall as designed is permitted. Please notify the Commission at least 48 hours prior to reconstruction. If the rock wall must be relocated or enlarged, a request for determination shall be submitted to the Commission to determine if the reconstruction shall require a Stream Diversion Works Permit.
2. Find that a petition to amend the instream flow standard is not required under HRS 174C-71 and HAR 13-169-36 because the permitted flow amount was previously approved in the D&O.
3. Within 120 days of the date of approval, Commission staff will amend the existing Surface Water Use Permit holders' source of water from the Wailuku Water Company's Spreckels

Ditch to the Waihe'e River and North Waihe'e 'Auwai and take to the Commission for approval.

4. SHPD requests Hui o Nā Wai Ehā formally request a SIHP site number for the North Waihe'e 'Auwai. Directions on how to complete the form and submit the SIHP request to HICRIS can be found on the SHPD website:  
<https://dlnr.hawaii.gov/shpd/files/2022/01/SIHP-Request-Procedure-for-Users.pdf>.

Ola i ka wai,

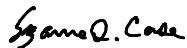


M. KALEO MANUEL  
Deputy Director

Exhibits:

1. Application
2. Department of the Army Determination Letter
3. Public comment
4. Standard Stream Diversion Works Permit Conditions
5. Legal Authorities

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE  
Chairperson



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
STREAM DIVERSION WORKS  
PERMIT APPLICATION**

For Official Use Only:

**Instructions:** Please print in ink or type and send one (1) completed hardcopy and one (1) digital copy of the application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Applications must be accompanied by a non-refundable filing fee of \$25.00 payable to the Department of Land and Natural Resources. The Commission may not accept incomplete applications without the required signatures. For assistance, call the Stream Protection and Management Branch at 587-0234. For further information and updates to this application form, visit <http://dlnr.hawaii.gov/cwrm>

Check here to allow Commission staff to communicate primarily via e-mail. Legally required and other key correspondence will still be transmitted via postal mail.

PERMIT TYPE		
1. Permit Status:	<input checked="" type="checkbox"/> New	<input type="checkbox"/> After-The-Fact
2. Type of Construction:	<input checked="" type="checkbox"/> Installation	<input type="checkbox"/> Modification <input type="checkbox"/> Removal / Abandonment
APPLICANT INFORMATION		
3. APPLICANT'S NAME / COMPANY	Applicant's Contact Person	Applicant's Phone
Hui o Na Wai 'Eha	Hokūao Pellegrino on behalf of HNWE	(808) 430-4534
Applicant's Mailing Address	Applicant's E-mail Address	
213 West Waikō Road Wailuku, Hawai'i 96793	Huionawai4@gmail.com	
<input type="checkbox"/> Check here if project will impact multiple landowners. If project impacts multiple landowners, skip Item 4 below, then complete and attach Form LND-APP to identify and verify landowner's approval of proposed stream diversion work.		
4. LANDOWNER'S NAME / COMPANY	Landowner's Contact Person	Landowner's Phone
Michael & Dana Pastula	Michael & Dana Pastula	(808) 280-5244
Landowner's Mailing Address	Landowner's E-mail Address	
1900 Baldwin Ave Makawao, Hawai'i 96768	danapastula@me.com	
5. CONSULTANT'S NAME / COMPANY	Consultant's Contact Person	Consultant's Phone
N/A		
Consultant's Mailing Address	Consultant's E-mail Address	
6. CONTRACTOR'S NAME / COMPANY	Contractor's Contact Person	Contractor's Phone
Mahi Pono, LLC	Mark Vaught	(808) 579-9516
Contractor's Mailing Address	Contractor's E-mail Address	
P.O. Box 1104 Pu'unēne, Hawai'i 96784	Mark.vaught@mahipono.com	
STREAM INFORMATION		
7. Island: (Check only one)	<input type="checkbox"/> Kauai	<input type="checkbox"/> Oahu <input type="checkbox"/> Molokai <input type="checkbox"/> Lanai <input checked="" type="checkbox"/> Maui <input type="checkbox"/> Hawaii
8. Tax Map Key(s) List all affected tax map key parcels.		
(2) 3-2-004-001 (portion of)		
9. Stream / Gulch Name(s) List all affected streams and/or gulches.		
Waihe'e River		
FOR OFFICIAL USE ONLY:		
LAT:	SWHU ID:	FILE ID:
LON:	GWHU ID:	DOC ID:
	REACH ID:	



GENERAL PROJECT INFORMATION				
10. Diversion No: (if already assigned)		11. Diversion Name: North Waihe'e Kuleana 'Auwai		
12. Project Site Location(s): Provide site coordinates of downstream-most point of project in degrees, minutes, seconds (NAD83).				
Latitude:	20 ° 56 ' 34.52 " N	Longitude:	156 ° 31 ' 37.59 " W	Elevation: 284 ft. above mean sea level
13. Diversion Structure Type: (Check all that apply)				
<input type="checkbox"/> Unlined channel	<input checked="" type="checkbox"/> Hand-built rock	<input type="checkbox"/> Concrete masonry	<input type="checkbox"/> Dam/weir	<input type="checkbox"/> Pipe
<input type="checkbox"/> Metal	<input type="checkbox"/> Plastic	<input type="checkbox"/> Wood	<input type="checkbox"/> Pump	<input type="checkbox"/> Direct use
<input type="checkbox"/> Other - Describe:				
STREAM DIVERSION WORKS SPECIFICATIONS (For Abandonments, skip to Legal Requirements section, Item #32.)				
14. Structure Dimensions: (feet)		Width:	4-8 feet	
Provide generalized dimensions for the entire project / structure area. If the project includes a pipe (e.g., culvert, drain, etc.), provide the pipe diameter.		Height:	6.5 - 7.5 feet	
		Length:	128 feet	
		Diameter:	N/A	
15. Diversion Location:		<input checked="" type="checkbox"/> Left bank (downstream view)		
Provide the general location of the diversion intake structure in relation to the streambank.		<input type="checkbox"/> Right bank (downstream view)		
		<input type="checkbox"/> Across entire stream channel		
16. Intake Dimensions: (feet)		Width: 18"	Height: 18"	Length: 12" Diameter: N/A
17. Average diversion amount: (cubic feet per second) 2.3 CFS of Approximately 1,500,000 gallons per day				
18. Diversion is part of a system of diversions: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
19. Diverted flow can be controlled: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
Control Dimensions: (feet)		Width: N/A	Height: N/A	Length: N/A Diameter: 18"x18" sluice gate
20. Water will be pumped from the stream: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, identify pump capacity: (gallons per minute) Daily average pumping time: (hours)		
21. Water will be impounded in the stream channel: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
22. Water diversion capacity will be measured daily: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
23. Water will be returned to the stream: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If yes, average amount of return flow: (cubic feet per second) Unspecified amount. Depends of active / fallow lo'i kalo cultivation		
24. Water will be stored off-stream: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Describe storage facility: Storage capacity: (gallons)		
25. State Land Use Classification: (Check all that apply) <input checked="" type="checkbox"/> Agriculture <input type="checkbox"/> Conservation <input type="checkbox"/> Rural <input type="checkbox"/> Urban				
WATER USE INFORMATION				
Check all water use categories below that are intended for the proposed diversion, then describe the proposed use in more detail.				
<input checked="" type="checkbox"/> 26. Agriculture Primarily for lo'i kalo cultivation and secondary diversified ag				
<input type="checkbox"/> 27. Domestic				
<input type="checkbox"/> 28. Industrial				
<input checked="" type="checkbox"/> 29. Irrigation Gravity-fed 'auwai system will return unused water to Waihe'e River				
<input type="checkbox"/> 30. Military				
<input type="checkbox"/> 31. Municipal				
LEGAL REQUIREMENTS				
If required, the permits or approvals below must be obtained before the Commission on Water Resource Management can legally issue a permit. Visit the Commission's Applications & Forms webpage ( <a href="http://dlnr.hawaii.gov/cwrm/info/forms/">http://dlnr.hawaii.gov/cwrm/info/forms/</a> ) for links to agency websites/contact information.				
32. Conservation District Use Permit (CDUP): To find out if your stream diversion works is located in a Conservation District (CD), you may visit to the Land Use Commission (LUC) website at <a href="http://luc.hawaii.gov/maps">http://luc.hawaii.gov/maps</a> to view Land Use District Boundary maps. If the stream diversion works will be located in a CD, contact the Department of Land and Natural Resources' Office of Conservation and Coastal Lands (OCCL) at (808) 587-0377 to determine is a CDUP is required.				
<input type="checkbox"/> Stream diversion works is in a Conservation District.				
<input type="checkbox"/> Required. CDUP #: _____ Date CDUP approved: _____				
<input type="checkbox"/> Not Required. Attach documentation from Office of Conservation and Coastal Lands (OCCL), Department of Land and Natural Resources.				
<input type="checkbox"/> I have not checked with the OCCL about whether or not a CDUP is required.				
<input checked="" type="checkbox"/> Stream diversion works is <u>not</u> in a Conservation District.				

**33. Special Management Area Permit (SMAP):** To determine if an SMAP is necessary, contact your County Planning Department.

Required. SMAP #: \_\_\_\_\_ Date SMAP approved: \_\_\_\_\_

Not Required. Attach documentation from applicable County agency.

I have not checked with the County about whether or not an SMA Permit is required.

**34. State Historic Preservation Division (SHPD), Department of Land and Natural Resources:** If the parcel(s) affected by the stream alteration has been reviewed by the State Department of Land and Natural Resources Historic Preservation Division (SHPD or through an OEQC Environmental Review, Special Management Area Permit, etc.), check "yes" and attach any relevant documentation from SHPD. If the affected parcel(s) has not undergone SHPD review, attach a photograph of the affected area, a schematic diagram (showing the location, access road and infrastructure for the alteration), and a short description of the prior use(s) of the land on which the alteration resides.

*\*Please note: You are **strongly advised** to contact the SHPD to obtain a pre-review of your project. In the event that you do not get an HP pre-review and if during the course of either review or the permit itself it is determined that you need SHPD's concurrence, your application or permit may be held in abeyance or denied until issues with HP are resolved. To contact SHPD, please call (808) 692-8015.*

I have consulted the SHPD regarding potential impacts of stream channel alteration activities on historic sites. I have attached applicable documentation from the SHPD.

I have not consulted with the SHPD regarding potential impacts of stream channel alteration activities on historic sites.

**35. Chapter 343, Hawaii Revised Statutes, Hawaii Environmental Policy Act:**

An Environmental Assessment was completed, and

An Environmental Impact Statement was required and has been accepted (attach letter of acceptance).  
Publication date in The Environmental Notice: \_\_\_\_\_

A Finding of No Significant Impact has been determined (attach letter).  
Publication date in The Environmental Notice: \_\_\_\_\_

This project proposes:

<input type="checkbox"/> Use of state or county lands, or use of state or county funds	<input type="checkbox"/> A wastewater treatment unit
<input type="checkbox"/> Use within a state conservation district	<input type="checkbox"/> Waste-to-energy facility
<input type="checkbox"/> Use within a shoreline setback area	<input type="checkbox"/> Landfill
<input type="checkbox"/> Use within a national or Hawaii registered historic site	<input type="checkbox"/> Oil refinery
<input type="checkbox"/> Use within the Waikiki Special District	<input type="checkbox"/> Power-generating facility
<input type="checkbox"/> The construction, expansion or modification of helicopter facility	<input checked="" type="checkbox"/> None of the above 11 items

**OTHER REGULATORY REQUIREMENTS**

If the proposed stream channel alteration is subject to the following permits or approvals, indicate by checking the appropriate box below and submit either the approval letter from the appropriate agency or attach a copy of the application form. If the proposed stream channel alteration is not subject to the following permits or approvals, indicate by checking the "N/A" (Not Applicable) field.

	Attached	N/A
36. U.S. Army Corps of Engineers (Harbors and Rivers Act, Section 404, Clean Water Act)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
37. State Department of Health, Clean Water Branch (Section 401, Clean Water Act, Water Quality Certification, Best Management Practices Plan)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
38. Right-of-Entry or Right-of-Way Permit if the proposed stream channel alteration includes State lands. (Chapter 171, Hawaii Revised Statutes)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
39. Hawaii Environmental Policy Act (Chapter 343, Hawaii Revised Statutes; Title 11, Chapter 200, Hawaii Administrative Rules)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
40. Soil and Water Conservation District	<input type="checkbox"/>	<input checked="" type="checkbox"/>
41. County Certification of "No-Rise"	<input type="checkbox"/>	<input checked="" type="checkbox"/>
42. County Grading Permit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
43. County Discretionary Permit(s)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**CULTURAL IMPACTS**

Articles IX and XII of the State Constitution, other state laws, and the courts of the State, require government agencies to promote and preserve cultural beliefs, practices, and resources of Native Hawaiians and other ethnic groups. If there is not enough space available, please make a note in the field (e.g., "See attached") and attach all information with this application as requested.

**44. Please provide the identity and scope of cultural, historical, and natural resources in which traditional and customary native Hawaiian rights are exercised in the area.**

Waihe'e is the fourth ahupua'a and river within the moku of Wailuku, poetically known as Na Wai 'Eha. Na Wai 'Eha was historically known as the largest contiguous kalo growing region in the all of Hawaii. Over 130 Land Commission Awards (LCA) were granted to Native Hawaiians in the ahupua'a of Waihe'e following the Kuleana Act of 1850 and sustained an estimated 500 acres of lo'i kalo, both to the north and south side of Waihe'e River. During the 2007 and 2016 Na Wai 'Eha Contested Cases, evidence was provided that demonstrated extensive lo'i kalo systems continuing to be cultivated by Native Hawaiian families throughout Waihe'e. Water Use Permits were granted in 2021 to over 30 individuals and families in Waihe'e. There are two major 'auwai systems that historically irrigated lo'i kalo systems to the North and the South.

The subject of this permit pertains to the North Waihe'e Kuleana 'Auwai. It historically irrigated over 200 acres of lo'i kalo on the north side of Waihe'e River. Hui o Na Wai 'Eha conducted a pedestrian survey in 2006 and noted that there were over 40 acres of active lo'i kalo cultivation on kuleana lands to the north, most of whom grow for home/community consumption and others who provide kalo to Aloha Poi Co. 90% of the kuleana kalo farmers are Native Hawaiians with lineal ties to Waihe'e and who have maintained their cultural practices and traditions associated with the ahupua'a of Waihe'e for generations.

In February 18, 2018, Waihe'e Community experienced a 100 year flood that severely impacted homes, properties, farmland, lo'i kalo and traditional 'auwai systems, in particular, the North Waihe'e Kuleana 'Auwai. 128 feet of the 'auwai immediately below the po'owai was damaged and continues to be in disrepair. A 3-5" steep pipe via Spreckels Ditch that once provided water into the 'auwai in addition to stream water was damaged and severed on the south side of the river. It no longer provides any water into the 'auwai. For over 4 years, the North Waihe'e Kuleana 'Auwai has not flowed and kuleana kalo farmers have suffered severely because of the lack of water and have been unable to cultivate lo'i kalo. This Stream Diversion Works Permit approval would allow the Hui in collaboration with the north Waihe'e kuleana kalo farmers and Mahi Pono to restore the damaged section of the North Waihe'e Kuleana 'Auwai. It is an important lifeline and water source and falls in line with the Hui's mission to ensure that Na Wai 'Eha and respectfully Waihe'e, continues to be a major traditional kalo growing regions as it once was. See Exhibit A, that includes portions of historic maps that document the North Waihe'e Kuleana 'Auwai as well as a TMK Map overlay in which the Hui created showing the course of the 'auwai and Water Use Permittees who rely on this traditional irrigation system.

**45. Identify the extent to which those resources, including traditional and customary Native Hawaiian rights, will be affected or impaired by the proposed action.**

The approval of this permit to restore the North Waihe'e Kuleana 'Auwai will have a beneficial impact to traditional and customary Native Hawaiian rights, allowing lo'i kalo to be cultivated once again by kuleana kalo farmers who have cultural and lineal ties to Waihe'e Valley and who want to grow food for their 'ohana and community. Hui o Na Wai 'Eha who is the applicant of this SDWP is a Native Hawaiian organization who works directly with kuleana kalo farmers throughout Na Wai 'Eha who actively cultivate kalo and who intend to restore lands to active cultivation for food production. Hui o Na Wai 'Eha in conjunction with the north Waihe'e kuleana kalo farmers/Water User Permittees and Mahi Pono, intends to restore the damaged portion of the North Waihe'e Kuleana 'Auwai. Additional benefits to traditional and customary Native Hawaiian rights include the ability to manage the traditional 'auwai system as they once did prior to the 2018 flood damage. There will be no negative impacts to traditional and customary Native Hawaiian rights prior, throughout and following the restoration process.

**46. What feasible action, if any, could be taken by the Commission on Water Resource Management in regards to your application to reasonably protect Native Hawaiian rights?**

The approval of this SDWP application would greatly help protect Native Hawaiian rights by allowing for the restoration of an active traditional 'auwai system that irrigates an extensive agricultural system of lo'i kalo. Hui o Na Wai 'Eha, as the Applicant, is a well respected Native Hawaiian organization that has been in existence for over 15 years. The leadership of this organization is made up of individuals from all four ahupua'a in Na Wai 'Eha, all of whom are well versed and have extensive knowledge in lo'i kalo cultivation, 'auwai and water resource management, Hawaiian land tenure, traditions and customary practices and rights of Native Hawaiians and ability to effectively engage with their respective communities and partners.

PROJECT DESCRIPTION
<p>Please complete the following sections by providing detailed information on the project components identified below. If there is not enough space available, please make a note in the field (e.g., "See attached") and attach all information with this application as requested.</p>
<p><b>47. Describe the overall project scope and objectives.</b></p> <p>The Applicant's overall objective is to restore the portion of the North Waihe'e Kuleana 'Auwai that was damaged due to the 2018 flood. This will in turn allow for Native Hawaiian and local Water Use Permittees who have appurtenant rights to once again cultivate lo'i kalo on their kuleana lands that have now been fallow for four years. The scope of work is as follows:</p> <p><b>Pre-Restoration:</b></p> <ul style="list-style-type: none"><li>- Hui o Na Wai 'Eha is in continuous communication with WUPA Permittees on the North Waihe'e Kuleana 'Auwai apprised of the CWRM permit request along with the work we hope to achieve once approved.</li><li>- Hui o Na Wai 'Eha board members and community members have helped to clean section of the 'auwai that has been overgrown due to lack of water for the last 4 years. The Hui will conduct a few more work days throughout the system in preparation for the returned flow into the 'auwai.</li><li>- Hui o Na Wai 'Eha will conduct a traditional ceremony within the 'auwai prior to the work being conducted in addition to a blessing immediately before restoration work.</li></ul> <p><b>Restoration:</b></p> <ul style="list-style-type: none"><li>- Mahi Pono will provide an excavator and operator to conduct the restoration work on the North Waihe'e Kuleana 'Auwai. Hui o Na Wai 'Eha Board and north Waihe'e 'auwai kuleana kalo farmers will also be on hand to assist.</li><li>- Mahi Pono will use an excavator to reconstruct the damaged 128 foot long stone walled section on the north side of Waihe'e River and below the intact po'owai. They will re-stack the section of stone wall using rocks that had fallen into the stream nearby the damaged section.</li><li>- Once complete, the community will open up the po'owai to allow for water to flow into the gravity fed system and to be used by Water User Permittees for lo'i kalo cultivation.</li></ul> <p><b>Post Restoration:</b></p> <ul style="list-style-type: none"><li>- North Waihe'e Kuleana 'Auwai Permittees and kalo farmers will continue to assist in maintaining and managing the 'auwai system to ensure water is flowing properly and efficiently.</li></ul> <p>NOTE: Excavator will only be used to restore the 128 foot damaged section of dry-stacked 'auwai wall. No cement, PVC pipe or any other foreign material will be used as part of this scope of work.</p>
<p><b>48. Describe existing stream channel dimensions and median streamflow conditions at the site of the proposed stream diversion works.</b></p> <p>The median flow for Waihe'e River is 34 million gallons per day or 52.63 cubic feet per second. The submerged portion of the Waihe'e River that pertains to this SDWP is roughly 50 feet wide and about 1-2 feet deep from bank to bank, during normal conditions. The river at the point of the diversion is approximately 42 feet wide and 1-2 feet deep. The IIFS for Waihe'e River just below the Spreckels Ditch is 10 million gallons per day. The permitted amount of flow in the North Waihe'e Kuleana 'Auwai is 1,392,326 million gallons per day.</p>



**49. Identify and describe the project components outlined below**

**A. Materials**  
Existing stones adjacent to damaged North Waihe'e Kuleana 'Auwai that have fallen into Waihe'e River.

**B. Quantities**  
Necessary amount of stones from Waihe'e River

**C. Excavation**  
None

**D. Fill**  
None

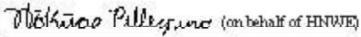
**E. Disposal**  
None

**F. Construction methods**  
Excavator & non-mechanized manual labor

**G. Temporary facilities**  
None

**H. Expected period of time required for construction**  
3-7 days, weather permitting

**I. Liability during construction**  
Mahi Pono LLC

<b>50. Describe the project's consistency with county zoning and development plans.</b>		
The Project is located on State and County zoned agricultural land and is falls in directly alignment with the Wai'ailuku Community Plan which strongly supports Hawaiian cultural practices, agriculture and water resource management. This Stream Diversion Works Permit will not only enable traditional Hawaiian agriculture and lo'i kalo cultivation in particular to occur but also re-establish Nā Wai 'Ehā as a major food hub for the island of Maui.		
<b>51. Identify potential alternatives (sources of water) to the project and describe the relative costs and benefits of each alternative.</b>		
Waihe'e River is the only source of water for the North Waihe'e Kuleana 'Auwai, other than rainfall. There are no other potential and feasible alternatives for this project.		
<b>SUBMITTALS</b>		
<i>Please submit the following plans, maps, or drawings in legible form, preferably on 8.5" by 11" sheets.</i>		
<b>52. Location Map:</b> Provide a location map of the proposed project relative to major roadways. Please see the attached documents titled Exhibit A		
<b>53. Plans / Elevations / Sections:</b> Provide a plan view of the proposed stream diversion works structure in relation to the stream channel and property boundaries. Elevation and section views of the diversion structure in relation to the stream channel should also be provided if available.		
<b>SIGNATURES</b>		
Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that if the permit requested is granted by the Commission on Water Resource Management (Commission), the permit shall be subject to the following conditions:		
<ol style="list-style-type: none"> <li>1) The proposed work is to be completed within two (2) years from the date of permit approval.</li> <li>2) The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion.</li> <li>3) The permittee shall submit a set of as-built plans and photographs to the Commission upon completion of the project.</li> <li>4) The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months.</li> <li>5) If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.</li> </ol>		
<b>54. APPLICANT</b>		
<b>Print Name:</b> Hui o Nā Wai 'Ehā	<b>Signature:</b>  (on behalf of HNWWE)	<b>Date:</b> 4-27-2022
<b>55. CONSULTANT</b>		
<b>Print Name:</b>	<b>Signature:</b>	<b>Date:</b>
<b>56. CONTRACTOR</b>		
<b>Print Name:</b> Ma'hi Pono LLC	<b>Signature:</b>	<b>Date:</b>
<b>57. LANDOWNER (If multiple landowners, skip Section 53, then complete and attach Form SCAP-LND with appropriate landowner signatures.)</b>		
<b>Print Name:</b> Michael & Dana Partik	<b>Signature:</b>	<b>Date:</b>

**CHECKLIST FOR A COMPLETE APPLICATION and ITEM DESCRIPTIONS (ITEMS 1 - 31)**

- Fill in the most recent application form (check <http://dlnr.hawaii.gov/cwrm> or call 587-0234 for updates).
- Fill in every line which includes Items 1-57, as indicated (total 7 pages).
- Enclose a check for \$25 payable to the Department of Land and Natural Resources.
- Mark the proposed diversion location on: the appropriate USGS quad map, TMK map, photo and schematic, and attach to the application.
- Attach Form LND-APP to identify and obtain authorizations for the project if multiple landowners will be impacted.
- Attach a grading plan and cross section profiles showing existing and finish grades, if available.
- Attach documentation from CDUP, SMAP, SHPD when applicable regarding Items 32-34.
- Attach letters from U.S. Army Corps of Engineers, Hawaii Department of Health, Office of Conservation and Coastal Lands, and appropriate county agencies regarding Items 35-43.
- Provide digital copies on CD-ROM or via e-mail, if available.
- Obtain the necessary signatures for the application form.

Send the application and maps, copies, and the filing fee to:

*Commission on Water Resource Management*

*P.O. Box 621*

*Honolulu, HI 96809*

**PERMIT TYPE**

1. **Permit Status:** Indicate whether this application is for a new stream diversion works project (including medication or abandonment) or if the project has already been completed and an after-the-fact permit is being applied for.
2. **Type of Construction:** Is the permit application for the installation of a new diversion works or modification / abandonment of an existing diversion works.

**APPLICANT INFORMATION**

3. **Applicant's Information:** Fill in the information for the applicant. This should be the entity that will be responsible for operation and maintenance of the stream diversion works and for reporting water use when the project is completed.
4. **Landowner's Information:** Fill in the information for the landowner of the property where the diversion intake will be located.
5. **Consultant's Information:** Fill in the information for the consultant who will assist with plan and design preparation for the subject project.
6. **Contractor's Information:** Fill in the information for the contractor who will perform the work on the subject stream diversion works.

**STREAM INFORMATION**

7. **Island:** The island name where the stream diversion will be located.
8. **TMK:** Tax Map Key number (generally there is no lot number, but where a parcel is divided into two lots, fill in the lot number)
9. **Stream / Gulch Name:** Name of the stream or gulch where the stream diversion will be located.

**GENERAL PROJECT INFORMATION**

10. **Diversion Number:** If you already have a state diversion number assigned, please fill it out here. Otherwise, leave it blank and a diversion number will be assigned by CWRM.
11. **Diversion Name:** Give the diversion a short concise name that will differentiate it from other diversions.
12. **Project Site Location(s):** Fill in diversion location coordinates taken from a GPS unit at the project site. Units are Degrees, Minutes and Seconds (seconds should be filled out to at least one decimal place; e.g. 19°59'32.8"N, 155°14'51.5"W). If more than one site, attach separate sheet. Elevations should be provided in feet above mean sea level.
13. **Diversion Structure Type:** What materials will the diversion works structure consist of and how will it divert water from the stream.

**DIVERSION SPECIFICATIONS** *(For Abandonment applications, skip this section and proceed to the Legal Requirements section, Item #32.)*

14. **Structure Dimensions:** What are the physical dimensions of the stream diversion works structure that will be located in the stream channel?
15. **Diversion Location:** Will the diversion intake be located on the right or left bank (facing downstream) or across the entire stream channel?
16. **Intake Dimensions:** What are the physical dimensions for the stream diversion intake (gate, pipe, etc.)?
17. **Average Diversion Amount:** The average amount of water that the diversion is calculated / estimated to divert from the stream.
18. **Diversion is part of a system of diversions:** Is the diversion part of a larger system including multiple stream diversions?
19. **Diverted flow can be controlled:** Will a control structure be located on the intake that can be used to regulate the diversion (gate, valve, etc.)?
20. **Water will be pumped from the stream:** Will a pump be used to remove water from the stream, and if so, what is the pumpage rate?
21. **Water diversion will be impounded in the stream channel:** Will the diversion structure on the stream channel require impoundment?
22. **Water diversion capacity will be measured daily:** Will a meter or other measurement device be installed and recorded on a daily basis?
23. **Water will be returned to the stream:** Will a portion of the diverted water be returned to the stream, and if so, how much?
24. **Water will be stored off-stream:** Will the diverted water be stored in an off-stream facility (reservoir, basin, tank, etc.)? Describe.
25. **State Land Use Classification:** Identify the current State Land Use Classification.

**WATER USE INFORMATION**

26. **Agriculture:** Water used for aquaculture, crop irrigation and processing, livestock, ornamental and nursery plants, and taro.
27. **Domestic:** Water used for single- and multi-family households, non-municipal commercial businesses, hospitals, churches, hotels, and schools.
28. **Industrial:** Water used for fire protection, mining, dust control, geothermal, power development, and hydroelectric power.
29. **Irrigation:** Water used for golf courses, hotels, landscape and water features, parks, schools, and habitat maintenance.
30. **Military:** Water is used by the military for military-operated water supply systems.
31. **Municipal:** Water is State, county, or private agency-operated to service multiple uses.

Please see header descriptions for remaining Sections in completing Items 32 to 57.

**NOTE:** Please be aware that some information on this form asks for information in cubic feet per second (CFS). Conversion factors for other commonly used water flow rates are as follows:

- 1.0 million gallons per day (MGD) equals 1.547 cubic feet per second (CFS)
- 1.0 gallon per minute (GPM) equals 0.002228 cubic feet per second (CFS)

<p><b>50. Describe the project's consistency with county zoning and development plans.</b></p> <p>The Project is located on State and County zoned agricultural land and is falls in directly alignment with the Wailuku Community Plan which strongly supports Hawaiian cultural practices, agriculture and water resource management. This Stream Diversion Works Permit will not only enable traditional Hawaiian agriculture and lo'i kalo cultivation in particular to occur but also re-establish Nā Wai 'Ehā as a major food hub for the island of Maui.</p>					
<p><b>51. Identify potential alternatives (sources of water) to the project and describe the relative costs and benefits of each alternative.</b></p> <p>Waihe'e River is the only source of water for the North Waihe'e Kuleana 'Auwai, other than rainfall. There are no other potential and feasible alternatives for this project.</p>					
<p><b>SUBMITTALS</b></p>					
<p>Please submit the following plans, maps, or drawings in legible form, preferably on 8.5" by 11" sheets.</p>					
<p><b>52. Location Map:</b> Provide a location map of the proposed project relative to major roadways. Please see the attached documents titled Exhibit A</p>					
<p><b>53. Plans / Elevations / Sections:</b> Provide a plan view of the proposed stream diversion works structure in relation to the stream channel and property boundaries. Elevation and section views of the diversion structure in relation to the stream channel should also be provided if available.</p>					
<p><b>SIGNATURES</b></p>					
<p>Signing below indicates that the signatories understand and swear that the information provided is accurate and true to the best of their knowledge. Further, the signatories understand that if the permit requested is granted by the Commission on Water Resource Management (Commission), the permit shall be subject to the following conditions:</p> <ol style="list-style-type: none"> <li>1) The proposed work is to be completed within two (2) years from the date of permit approval.</li> <li>2) The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion.</li> <li>3) The permittee shall submit a set of as-built plans and photographs to the Commission upon completion of the project.</li> <li>4) The permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months.</li> <li>5) If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.</li> </ol>					
<p><b>54. APPLICANT</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 35%; padding: 5px;"> <p><b>Print Name:</b> Hui o Nā Wai 'Ehā</p> </td> <td style="width: 45%; padding: 5px;"> <p><b>Signature:</b> <i>Roberto Pellegrino</i> (on behalf of HNWE)</p> </td> <td style="width: 20%; padding: 5px;"> <p><b>Date:</b> 4-27-2022</p> </td> </tr> </table>			<p><b>Print Name:</b> Hui o Nā Wai 'Ehā</p>	<p><b>Signature:</b> <i>Roberto Pellegrino</i> (on behalf of HNWE)</p>	<p><b>Date:</b> 4-27-2022</p>
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<p><b>55. CONSULTANT</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 35%; padding: 5px;"> <p><b>Print Name:</b></p> </td> <td style="width: 45%; padding: 5px;"> <p><b>Signature:</b></p> </td> <td style="width: 20%; padding: 5px;"> <p><b>Date:</b></p> </td> </tr> </table>			<p><b>Print Name:</b></p>	<p><b>Signature:</b></p>	<p><b>Date:</b></p>
<p><b>Print Name:</b></p>	<p><b>Signature:</b></p>	<p><b>Date:</b></p>			
<p><b>56. CONTRACTOR</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 35%; padding: 5px;"> <p><b>Print Name:</b> Mahi Pono LLC</p> </td> <td style="width: 45%; padding: 5px;"> <p><b>Signature:</b> <i>Maurice Kung'u</i></p> </td> <td style="width: 20%; padding: 5px;"> <p><b>Date:</b> 5/5/2022</p> </td> </tr> </table>			<p><b>Print Name:</b> Mahi Pono LLC</p>	<p><b>Signature:</b> <i>Maurice Kung'u</i></p>	<p><b>Date:</b> 5/5/2022</p>
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<p><b>57. LANDOWNER (If multiple landowners, skip Section 53, then complete and attach Form SCAP-LND with appropriate landowner signatures.)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 35%; padding: 5px;"> <p><b>Print Name:</b> Michael &amp; Dana Pastula</p> </td> <td style="width: 45%; padding: 5px;"> <p><b>Signature:</b> <i>[Signature]</i></p> </td> <td style="width: 20%; padding: 5px;"> <p><b>Date:</b> 5/11/2022</p> </td> </tr> </table>			<p><b>Print Name:</b> Michael &amp; Dana Pastula</p>	<p><b>Signature:</b> <i>[Signature]</i></p>	<p><b>Date:</b> 5/11/2022</p>
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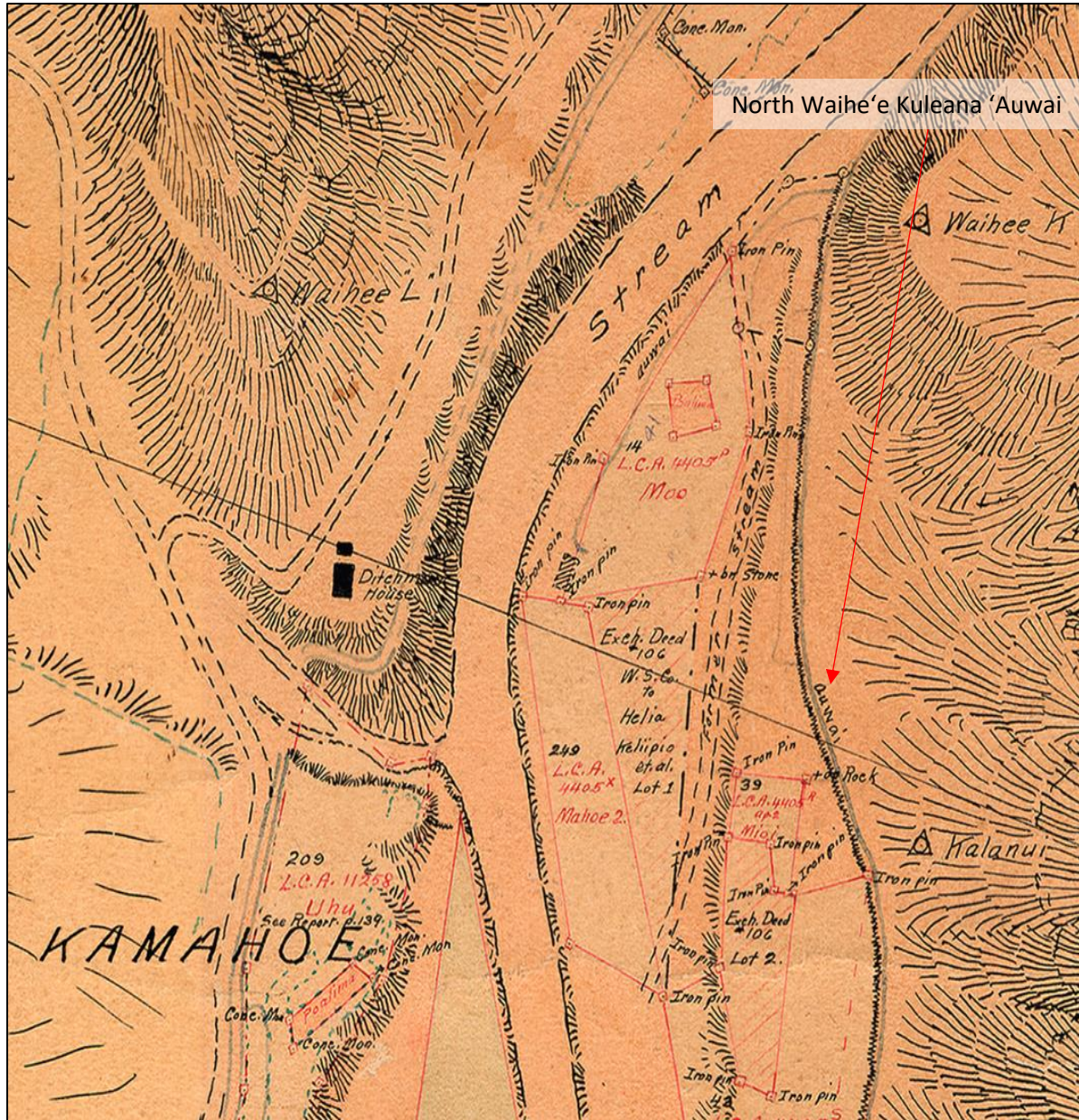
# Exhibit A

Map of Waihe'e 1896 (Includes North & South Waihe'e Kuleana 'Auwai)

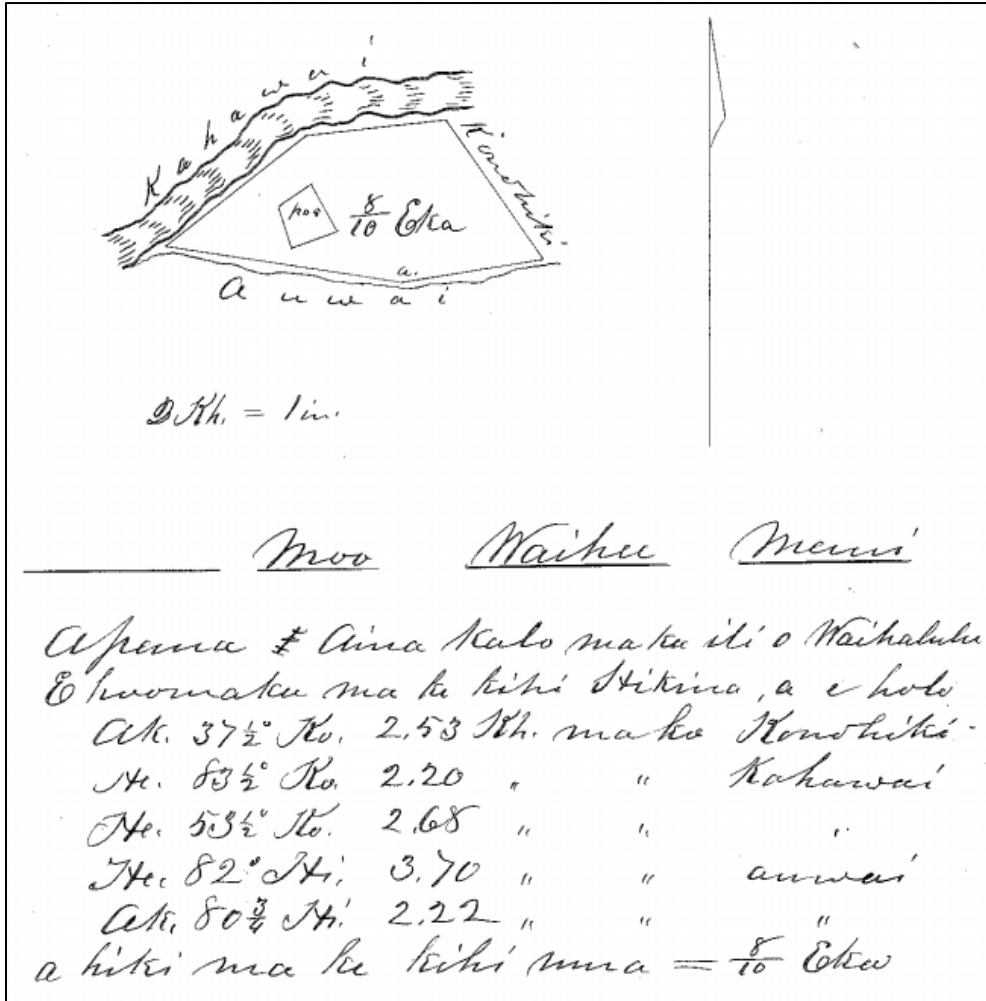




# Portion of Map of Waihe'e 1922 Showing North Waihe'e Kuleana 'Auwai



## Brief Historical Background of North Waihe'e Kuleana 'Auwai

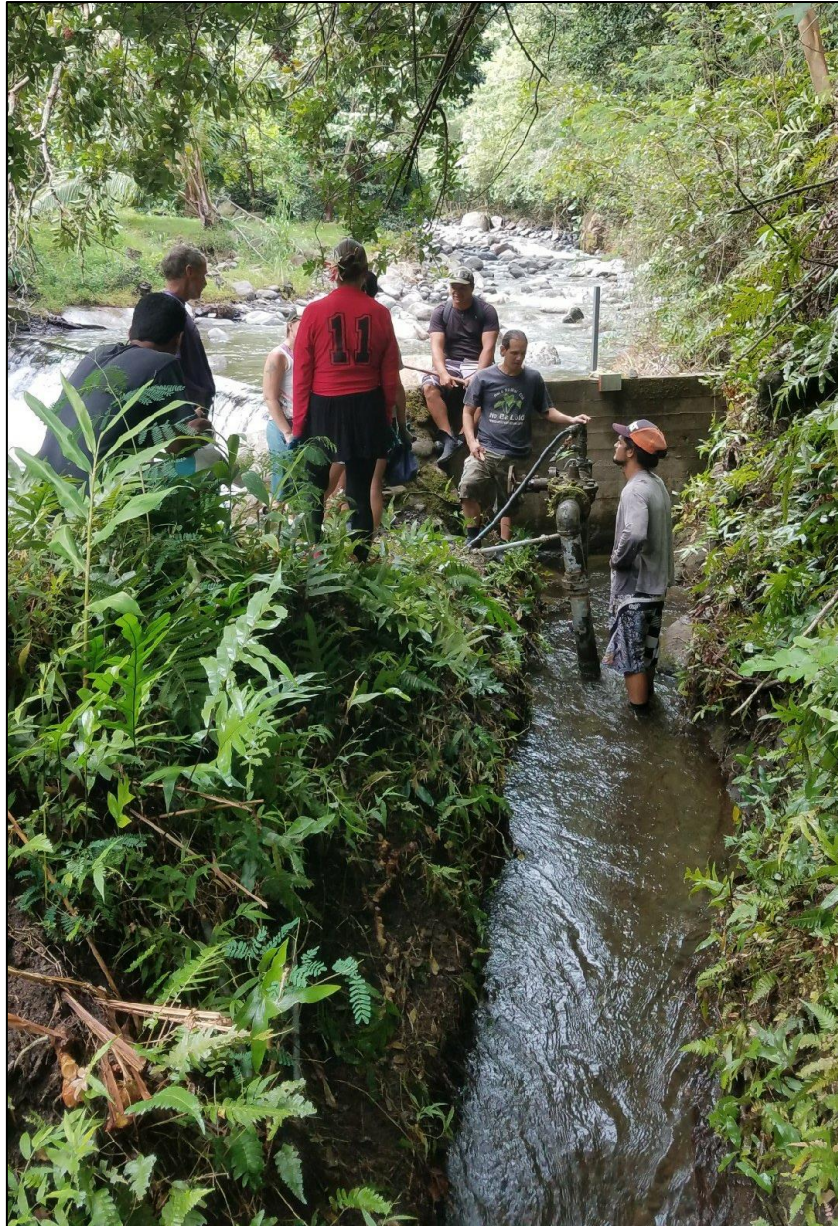


Boundary Description of LCA 4405 to Mo'o (N Waihe'e Kuleana 'Auwai Described)

- Constructed Circa 1500 a.d.
- 1.2 miles long / 6,336 ft.
- Historically irrigated over 30 LCA's / kuleana lands, Konohiki lands and Po'alima (est. 100+ acres) used for lo'i kalo cultivation.
- 'Auwai Commences at LCA 4405 to Mo'o in the 'ili of Waihalulu to LCA 4405:1 to Kaokaa in the 'ili of Kapahukauwila.
- Flow Capacity 2-4 million gallons per day (based on historical acreage use)
- 40 acres of active lo'i kalo cultivation documented utilizing the North Waihe'e Kuleana 'Auwai prior to the February 18, 2022 flood.



North Waihe'e Kuleana 'Auwai & Intake - November 9, 2017 (Pre-2018 Flood Damage)





Damaged North Waihe'e Kuleana 'Auwai – February 19, 2018 (Day after flood)





## 2017 to 2018 Comparison Photo





# Mother Nature leaves shocking damage to ancient Waihee 'auwai

More than 100 people came to help restore water to taro farmers

By COLLEEN UECHI  
Staff Writer

Maui kalo farmers are working to restore an ancient 'auwai in Waihee that was damaged during the recent storm and flood — cutting off farmers from the water that feeds their lo'i.

More than 100 people showed up Sunday to help the Waihee community remove debris and rebuild the ditch system, which supports at least 15 families cultivating about 15 to 20 acres of kalo, said Miki'ala Pua'a-Freitas, co-owner and founder of Kapuna Farms in Waihee.

"Every single family below depends on this one system," Pua'a-Freitas said Monday. "As of today, 100 percent of the lo'i are dry be-

cause we have no water due to the damage."

Fed by the Waihee River, the 'auwai is about a mile long, beginning in the valley and ending at Kapuna Farms along Kahekili Highway. During the storm on Feb. 18, the overflowing Waihee River not only broke the po'owai (the stone dam at the head of the 'auwai) but also destroyed about 125 feet of the 'auwai and washed away lo'i in its path.

"A lot of that is because of the invasive java plum trees," said Tiare Lawrence, one of the community members organizing the cleanup. "During heavy rains, they have shallow root systems, so they fall and they create these massive dams. And when they break, the water tends to flood over the stream banks. So that happened in Waihee last week."

See TARO on Page A4



Photo courtesy Tiare Lawrence

**Charlie Palakko** (from left), **Keith Keahi**, **Kapono Antunez** and **Curen Ohama** (foreground) work to clear debris and help restore the walls of the north Waihee kuleana 'auwai on Sunday. The traditional ditch system was heavily damaged during recent flooding and has cut off more than a dozen kalo-growing families from their water source.

# The Maui News

TUESDAY, February 27, 2018

## Taro

Continued from Page A1

On Sunday, community members — including kalo farmers from all over Maui — dislodged rocks from the river and began work on the walls. While the river has widened, Pua'a-Freitas said it's still flowing toward the head of the 'auwai and that workers were "not moving the river or changing the river, just repairing the walls that were damaged." The job was done by hand not only to follow tradition but to keep sediment from spilling into the ocean.

"For me, it's not just about the quick fix," Pua'a-Freitas said. "It's about doing it properly and really looking at the long term. . . . We all want water back in our lo'i kalo, but we just know it's going to be a long road."

Kapuna Farms is located at the foot of the valley and includes goats, hens, an apiary for rescued bee hives and some lo'i. However, the farm's kalo operations are mostly centered in the valley (about 2 to 3 acres) with many of the other farmers. Pua'a-Freitas said her active lo'i were spared, but the ones that she and co-owner Moana Wietecha have been restoring were "wiped out." Their neighbor lost about an acre "that's now just river."

Pua'a-Freitas grew up cleaning the 'auwai with her siblings and said while the damage was upsetting, she was trying to count the positives.

"You can't fight Mother Nature," she said. "You just pick up the pieces she's left and go from there."

Hokuao Pellegrino, president of the Hui o Na Wai 'Eha, said he's not aware of a historical Hawaiian name for the ditch system, but that it's commonly been referred to as the north Waihee



Photo courtesy Tiare Lawrence

**More than 100 people**, including kalo farmers from across the island, gathered to lend a hand Sunday. Workdays are scheduled from 9 a.m. to 2 p.m. Saturday as well as March 11, 17 and 25.

kuleana 'auwai. It's likely been around at least 400 years, though that's "a pretty conservative" estimate, Pellegrino said.

The traditional irrigation system fed all of the kuleana taro farmers on the north side of Waihee River. the largest

of "the four great waters" flowing from the West Maui Mountains. Kuleana farmers south of the river, meanwhile, get their water from two ditches maintained by Wailuku Water Co. and the former Hawaiian Commercial & Sugar Co.

On a normal day, the base flow for Waihee River can range from 24 million to 30 million gallons per day, compared to 12 to 16 mgd for the Wailuku River, 4 mgd for the Waikapu Stream and 3.5 mgd for the Waiehu Stream. While there are no real-time gauges on the Waihee River to measure the recent storm flow, Pellegrino said the damage was "comparable to Iao" in September 2016. When he saw the 'auwai, he was "just shocked." Both he and Pua'a-Freitas referred to it as a "100-year storm."

"I just didn't think that could've ever happened," Pellegrino said. "That 'auwai is so big. It had a huge bank that protected it. There was a big chunk of land that was gone."

Lawrence said the plan is to have the water back in the 'auwai by the end of March. A community workday will be held from 9 a.m. to 2 p.m. Saturday as well as on March 11, 17 and 25. Volunteers should bring gloves and work shoes and park at 2644 Kahekili Highway. Instructions will be given from there.

Volunteers are encouraged to bring potluck dishes. Anyone willing to donate food and drinks can email [tiare4maui@gmail.com](mailto:tiare4maui@gmail.com) or call 276-7685.

Donations also can be made at [paypal.me/kokuawaihee](https://paypal.me/kokuawaihee) or by visiting Hui o Na Wai 'Eha's Facebook page.

"We're so dependent on importing food from the continent, and maintaining these traditional 'auwai systems guarantees us that we'll have poi on our table," Lawrence said.

■ *Colleen Uechi* can be reached at [cuechi@maui.news.com](mailto:cuechi@maui.news.com)



# Maui Now Article (February 27, 2018)

## Waihe'e Flood "Obliterates" Structure That Feeds Water to Kalo Farms Wendy Osher · February 27, 2018 MAUINOW.COM

More than 100 volunteers participated in a restoration effort at Waihe'e River on Sunday after a storm on Feb. 18 wiped out a rock wall at the headwaters and cut off water flow to taro farmers downstream.

Project coordinator, Tiare Lawrence said the workday was an opportunity to bring the community out and engage volunteers in restoration and education efforts on the importance of maintaining the streams at Nā Wai 'Ehā.

"The invasive java plum trees are wreaking havoc in our streams and we're noticing that every time there is big rains that the falling trees are actually what's causing a majority of the damage to the banks," said Lawrence.

Organizers say volunteers did much of the work by hand to avoid sediment and runoff that could occur with the use of big machinery.

The north 'auwai ditch system feeds about 10 farmers including Kapuna Farms which cultivates kalo on 2-3 acres in the valley and some other farmers who supply kalo to Aloha Poi Company. Organizers say water has been cut off to about 20 or so acres of lo'i kalo cultivation on the North side of the 'auwai.

"They have no water in their lo'i right now," said Lawrence who anticipates water restoration to the 'auwai within the next couple of weeks. The restoration of walls that were wiped out in the flood is expected to take much longer, possibly six months to a year to complete.

In the meantime, the group will continue to conduct community work days and has set up a PayPal account to help with the purchase of 6-inch piping as a "temporary solution" to get water into the ditch until the 'auwai walls can be reconstructed.

The funds are being raised through Hui o Nā Wai 'Ehā, a 501c3 non-profit and all donations are tax deductible. 100% of the donations earmarked for the 'Auwai Restoration will be provided to the kuleana kalo farmers.

"In this particular case, in Waihe'e, the north Waihe'e kuleana 'auwai—at least the first 125-130 feet of the original 'auwai (ditch/canal) and po'owai/māno wai (the stone dam at the headwaters that bring a portion of the stream water into an 'auwai system) had pretty much been obliterated," said Hōkōau Pellegrino, president of Hui o Nā Wai 'Ehā.

According to Pellegrino, the po'owai served its purpose, which was to break away in a major flood event, and prevent more severe damage to the actual 'auwai downstream. The stone structures, Pellegrino said, are meant to be very strong and very functional, but they're also meant, during flash flood events to break away.

"This was not your typical one. This was definitely a massive flood event," he said. "In this case, unfortunately, because of the magnitude of water and flooding that occurred, you had a stream bed that was probably maybe 40-50 feet wide, now its upwards of 150 feet wide. And so, when that water came down, it not only blew out the stone dam po'owai, it also blew out a good portion of that beginning intake part of the 'auwai. And that's a historical 'auwai that's been there for generations," said Pellegrino.

According to Hui o Nā Wai 'Ehā, the ahupua'a of Waihe'e currently has the largest cultivation of lo'i kalo of the four ahupua'a in Nā Wai 'Ehā. "In Nā Wai 'Ehā, Waihe'e was probably equal to that of Wailuku in terms of the amount of lo'i kalo that were cultivated pre-western contact. These 'auwai systems are definitely no joke," said Pellegrino. "Today it feeds 20 acres, but historically we're talking upwards of 500 plus acres just on the north side of Waihe'e Stream alone that was fed from this 'auwai."

The flood is being compared to the 100 year event at 'Iao that caused millions of dollars in damage two years ago. "I would say this was basically almost identical to the type of storm and flood event that occurred in 'Iao and other places in 2016," said Pellegrino who has been researching old Hawaiian language newspapers for clues into the frequency

and destruction caused by past events.

He uncovered a Feb. 20, 1858 article reporting on a flood in Waihe'e saying, "pretty much 160 years to the date of a massive flood event in Waihe'e that not only destroyed lo'i kalo, but it also damaged house sites there, the stream moved in a different direction and flooded different kuleana lands."

"It's kind of interesting to see how often this type of flooding reoccurs, but at least the trend that we're seeing in places like 'Iao Valley and Wailuku River, it seems like anywhere between 50 to 100 years, these type of flood events occur, so this is not going to be the last for sure," he said.

More community work events are scheduled at Waihe'e from 9 a.m. to 2 p.m. on Saturday, March 3, as well as Sunday, March 11, Saturday, March 17 and Sunday, March 25, 2018 at 2644 Kahekili Highway which is just past the Waihe'e River Bridge. The purpose is to shore up some of the areas along the 'auwai that got undermined and restore the original 'auwai.

The work involves a coordinated effort between the north Waihe'e kuleana taro farmers, Hui o Nā Wai 'Ehā and farmers from all parts of Maui. Sunday's event drew farmers and volunteers from Hāna, Honokōhau, Kahakuloa and Kauaula Valley.





Community Restoration Work Days (March 2018)





# SDWP Restoration Project Area & Description







Po'owai 18"x18" (Intake)



Damaged Section  
(Left bank mauka to makai view)



Damaged Section  
128 Feet  
(Left bank makai to mauka view)





128' Damaged Section  
Mauka to makai view plain





1st makawai (intake) off 'Auwai that irrigates  
WUPA 2227E – Emoto and 2228E/2229N –  
Faustino and ho'i (return)





2nd makawai (intake) off  
'Auwai that irrigates WUPA  
2269E/2270N - Rodrigues





3rd makawai (intake) off  
'Auwai that irrigates WUPA  
2322E/2323N – Barret/Aloha  
Poi Co., 2252E/2253N – Koki  
and 2324E/2325N –  
La'a/Aloha Poi Co.





4th and last makawai (intake) off of 'auwai. 6"  
'Auwai pipe that goes under Kahekili Highway that  
irrigates and intake WUPA 2364NE – Freitas)





Old 3" Steel Water Pipe  
(Damaged, unused and returning water directly to River)

Concrete Dam 61'

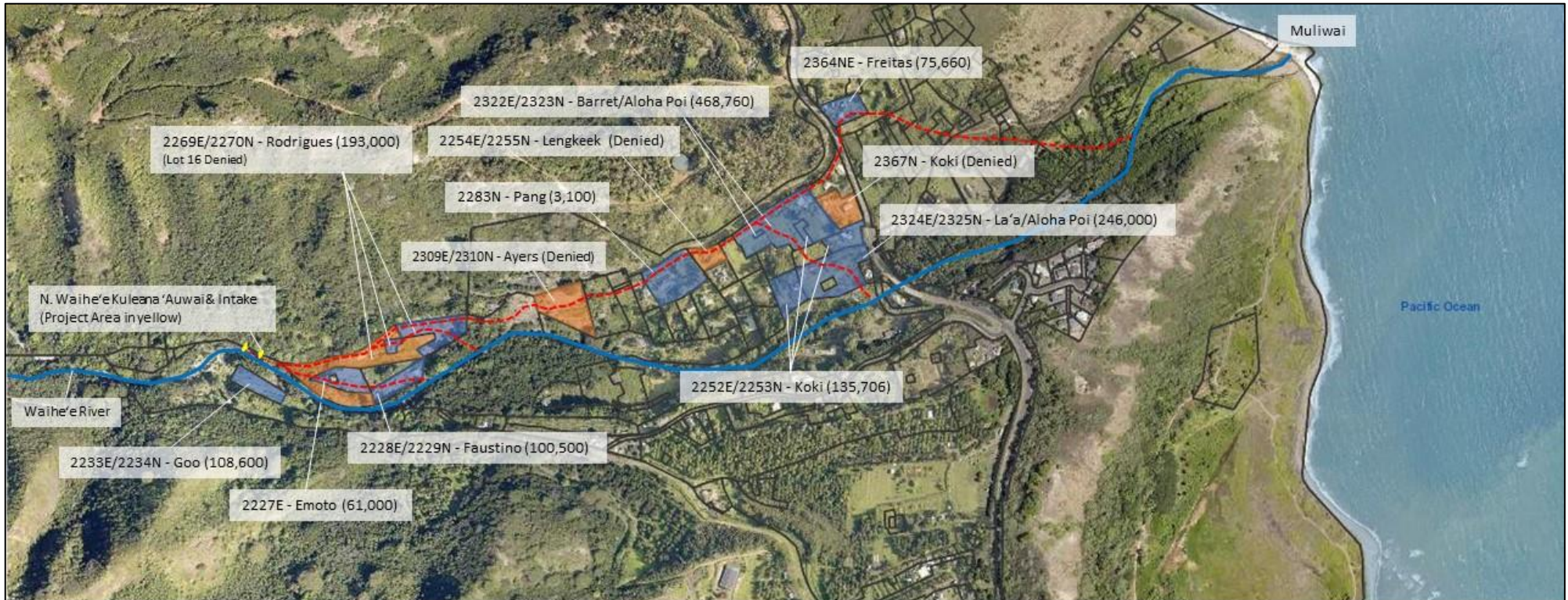
'Auwai Intake

Portion of 128'  
Damaged Section





# North Waihe'e Kuleana 'Auwai System & Water Use Permittees



## North Waihe'e Kuleana 'Auwai Water Use Permittees:

2253E/2234N - Goo (108,600)  
 2227E - Emoto (61,000)  
 2228E/2229N - Faustino (100,500)  
 2269E/2270N - Rodrigues (193,000)  
 2283 N - Pang (3,100)  
 2322E/2323N - Barret/Aloha Poi (468,760)  
 2252E/2253N - Koki (135,706)  
 2323E/2325 - La'a/Aloha Poi (246,000)  
 2364E - Freitas (75,660)

**Total Permitted Amount: 1,392,326 MGD**

## WUPA Permits Denied:

2309E/2310N - Ayers  
 2254E/2255N - Lengkeek  
 2367N - Koki

## Legend:

■ River  
■ Water Use Permittees - Appurtenant Rights  
■ Water Use Applicants - Denied  
--- North Waihe'e Kuleana 'Auwai  
■ Project Area





DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT  
FORT SHAFTER, HAWAII 96858-5440

September 24, 2021

SUBJECT: Determination of No Permit Required Mahi Pono, North Waihee Stream  
Ditch Repair, Wailuku, Island of Maui, Hawaii  
Department of the Army File No. POH-2021-00071

Mahi Pono, LLC  
Mark Vaught  
P.O. Box 1104  
Puunene, HI 96784

Dear Mr. Vaught:

The Honolulu District, U.S. Army Corps of Engineers (Corps), Regulatory Branch has received your request for a determination whether a Department of the Army (DA) permit is required for the North Waihee Stream irrigation ditch restoration within waters of the U.S. (WOUS) below the ordinary high water mark at 20.943005°, -156.527483°; in Wailuku, Island of Maui, Hawaii. Please reference Department of the Army (DA) file number POH-2021-00071 in any future correspondence related to this permit.

We have reviewed your submittal pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344; "Section 404") and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; "Section 10").

Based on the information you provided, we have determined that the proposed restoration to the irrigation ditch as a discharge that would not require a permit under Section 404(f)(1) exemptions for maintenance of irrigation ditches. The discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption and does not require a permit and would not have jurisdictional authority under Section 10 of the Rivers and Harbors Act. Based on the information provided for the proposed project activities, a DA permit is not required. This determination of no permit required addresses only the proposed work activities described in your submitted documentation.

While a DA permit is not required for your proposed project, you are responsible for obtaining all other applicable Federal, state, or local authorizations required by law. Be advised, a DA permit may be required if you alter the method, scope, or location of your proposed work. You should contact our office if you are considering modifying your project.

**EXHIBIT 2: Department of the Army Determination Letter**

- 2 -

Thank you for your cooperation with the Honolulu District Regulatory Program. If you have any questions related to this determination, please contact me at 808-835-4107 or via e-mail at [Frank.J.Winter@usace.army.mil](mailto:Frank.J.Winter@usace.army.mil). You are encouraged to provide comments on your experience with the Honolulu District Regulatory Branch by accessing our web-based customer survey form at <https://regulatory.ops.usace.army.mil/customer-service-survey/>.

For additional information about our Regulatory Program, please visit our web site at <http://www.poh.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

A handwritten signature in black ink that reads "Frank Winter". The signature is written in a cursive, slightly stylized font.

Frank Winter  
Regulatory Specialist

Enclosures  
cc:

**From:** [may sin](#)  
**To:** [Alakai, Rebecca R](#)  
**Subject:** [EXTERNAL] Fwd: Stream diversion works permit application North Waihe'e 'auwai  
**Date:** Wednesday, August 17, 2022 9:39:50 PM  
**Attachments:** [Screen Shot 2022-08-17 at 4.29.45 PM.png](#)  
[Screen Shot 2022-08-17 at 9.29.36 PM.png](#)

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Hi Rebecca,

As the primary land owner on the property on the makai side of Kahekili highway surrounding and beneath the Frietas property, we are concerned that the pipe that crosses under Kahekili Highway through which the auwai would flow is kept clear of obstruction to prevent the stream from gushing down the access road coming off Kahekili Hwy to our property which would impact many families in the future.

At this point it is unclear as to who has the right to maintain the pipe the water is intended to flow through since it goes under a State Highway. We would like to see legal documentation with enforceable language to ensure that the applicant will, and is capable of keeping the pipe under Kahekili Highway unobstructed before the application is approved.

I have included photos of water collecting on the highway and going down the access road into our property to show the water flow down the access road due to a blocked pipe under Kahekili Highway. We appreciate your efforts to coordinate this with all the proper authorities and land owners.

Kind regards  
May









STANDARD STREAM DIVERSION WORKS PERMIT CONDITIONS  
(Revised December 15, 2020)

1. The permit application and staff submittal approved by the Commission at its meeting on the above date shall be incorporated herein by reference.
2. The permittee, owner and/or operator of the stream diversion works shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis to the Commission per HAR §13-168-7 Report of Water Use.
3. The project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, endangered species, and floodways. The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and county governments, including, but not limited to, instream flow standards.
4. The permittee, his successors, assigns, officers, employees, contractors, agents, and representatives, shall indemnify, defend, and hold the State of Hawaii harmless from and against any claim or demand for loss, liability, or damage including claims for property damage, personal injury, or death arising out of any act or omission of the permittee or his successors, assigns, officers, employees, contractors, and agents under this permit or related to the granting of this permit.
5. The permittee shall notify the Commission, by letter, of the actual dates of project initiation and completion. The permittee shall submit a set of as-built plans and photos in pdf format of the completed work to the Commission upon completion of this project. This permit may be revoked if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The proposed work under this stream channel alteration permit shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Commission upon showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Commission no later than three (3) months prior to the date the permit expires. If the commencement or completion date is not met, the Commission may revoke the permit after giving the permittee notice of the proposed action and an opportunity to be heard.
6. Before proceeding with any work authorized by the Commission, the permittee shall submit one set of construction plans and specifications in PDF format to determine consistency with the conditions of the permit and the declarations set forth in the permit application.
7. The permittee shall implement site-specific, construction Best Management Practices in consultation with the DOH Clean Water Branch and other agencies as applicable, that are designed, implemented, operated, and maintained by the permittee and its contractor to properly isolate and confine activities and to contain and prevent any potential pollutant(s) discharges from adversely impacting State waters per HRS Ch. 342D Water Pollution; HAR §11-54-1 through §11-54-8 Water Quality Standards; and HAR Ch. 11-55 Water Pollution Control, Appendix C.
8. The permittee shall protect and preserve the natural character of the stream bank and stream bed to the greatest extent possible. The permittee shall plant or cover lands denuded of vegetation as quickly as possible to prevent erosion and use native plant species common to riparian environments to improve the habitat quality of the stream environment.
9. In the event that subsurface cultural remains such as artifacts, burials or deposits of shells or charcoal are encountered during excavation work, the permittee shall stop work in the area of the find and contact the Department's Historic Preservation Division immediately. Work may commence only after written concurrence by the State Historic Preservation Division.

## LEGAL AUTHORITIES

Water as a Public Trust. The four public trust purposes are:

1. Maintenance of waters in their natural state.
2. Domestic water use of the general public, particularly drinking water.
3. The exercise of Native Hawaiian and traditional and customary rights, including appurtenant rights. *Waiahole*, 94 Hawaii 97; 9 P.3d 409 (2000).
4. Reservations of water for use on Hawaiian home lands. *Waiola O Molokai, Inc.*, 103 Hawaii 401; 83 P.3d 664 (2004).

HRS §174C-71 Protection of instream uses. The commission shall establish and administer a statewide instream use protection program. In carrying out this part, the commission shall cooperate with the United States government or any of its agencies, other state agencies, and the county governments and any of their agencies. In the performance of its duties the commission shall:

- (2) Establish interim instream flow standards;
  - (D) In considering a petition to adopt an interim instream flow standard, the commission shall weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses;
- (3) Protect stream channels from alteration whenever practicable to provide for fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses;
  - (A) The commission shall require persons to obtain a permit from the commission prior to undertaking a stream channel alteration; provided that routine streambed and drainage way maintenance activities and maintenance of existing facilities are exempt from obtaining a permit;
  - (C) The commission shall establish guidelines for processing and considering applications for stream channel alterations consistent with section 174C-93;

HRS §174C-93 Permits for construction or alteration. No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a permit from the commission.

### HAR §13-168-2 Definitions.

“Interim instream flow standard” means a temporary instream flow standard of immediate applicability, adopted by the commission without the necessity of a public hearing, and terminating upon the establishment of an instream flow standard.

“Instream use” means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of aquatic life 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) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;



- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

“Stream diversion” means the act of diverting, pumping or otherwise removing water from a stream into a channel, ditch, pipeline, or other conduit.

“Stream diversion works” means any artificial structure, excavation, pipeline, or other conduit constructed singly or in combination, for the purpose of diverting or otherwise removing water from a stream into a channel, ditch, tunnel, pipeline, etc.

HAR §13-168-7 Report of water use. (a) The owner or operator of any well or stream diversion works from which water is being used shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage on a monthly (calendar or work schedule) basis.

HAR §13-168-32 Stream diversion permits. (a) No person shall construct or alter a stream diversion works, other than in the course of normal maintenance, without first obtaining a stream diversion permit from the commission...

(d) In reviewing an application for a permit, the commission shall cooperate with persons having direct interest in the stream diversion works and be guided by the following general considerations:

- (1) The quantity and quality of the stream water or the stream ecology shall not be adversely affected.
- (2) Where instream flow standards or interim instream flow standards have been established pursuant to chapter 13-169, no permit should be granted for any diversion works which diminishes the quantity or quality of stream water below the minimum established to support identified instream uses, as expressed in the standards.
- (3) The proposed diversion works shall not interfere substantially and materially with existing instream or non-instream uses or with diversion works previously permitted.