

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES | KA 'OIHANA KUMUWAIWAI 'ĀINA  
**COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO**  
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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

March 24, 2026  
Honolulu, Hawai'i

Request for Delegation of Authority to the Chairperson to Appoint a Hearing Officer for CCH-MA 15-01, Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Nā Wai 'Ehā Surface Water Management Areas of Waihe'e River, Waiehu Stream, Wailuku River (previously known as 'Īao Stream) and Waikapū Stream, Maui

I. SUMMARY OF REQUEST

Staff requests that the Commission delegate authority to the Chairperson to appoint a qualified hearing officer to proceed with the contested case remanded from the Hawai'i Supreme Court to the Commission.

II. BACKGROUND

On March 13, 2008, the Commission designated the four streams of Nā Wai 'Ehā as a surface water management area, effective April 30, 2008. More than 140 applicants filed surface water use permit applications. Proceedings on the water use permit applications were combined with ongoing proceedings on the interim instream flow standards for the Nā Wai 'Ehā streams in Case No. CCH-MA 15-01, *Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Nā Wai 'Ehā Surface Water Management Areas of Waihe'e River, Waiehu Stream, Wailuku River (previously known as 'Īao Stream) and Waikapū Stream, Maui* ("Nā Wai 'Ehā").<sup>1</sup>

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<sup>1</sup> The Hawai'i Supreme Court's opinion, the Commission's Decision and Order, and filings from the contested case can be found on the Commission's website at <https://dlnr.hawaii.gov/cwrn/newsevents/cch/cch-ma15-01/>.

On June 28, 2021, the Commission issued its D&O II, amending the IIFS for Nā Wai 'Ehā and granting various applicants' surface water use permits. Two days later, the Commission issued errata to the D&O.

On June 20, 2024, the Supreme Court of the State of Hawai'i issued its opinion in Case No. SCOT-21-0000581, vacating portions of the Commission's Findings of Fact, Conclusions of Law, and Decision and Order issued June 28, 2021 (as amended by Errata issued June 30, 2021) and remanding the case for further proceedings. The Court identified deficiencies in the Commission's analysis and findings relating to instream flow restoration, incorporation of downstream uses into the interim instream flow standard, consideration of traditional and customary Native Hawaiian rights, balancing between users during water shortages, and the methodology underlying the water allocation received by permittee Mahi Pono.

### III. LOCATION

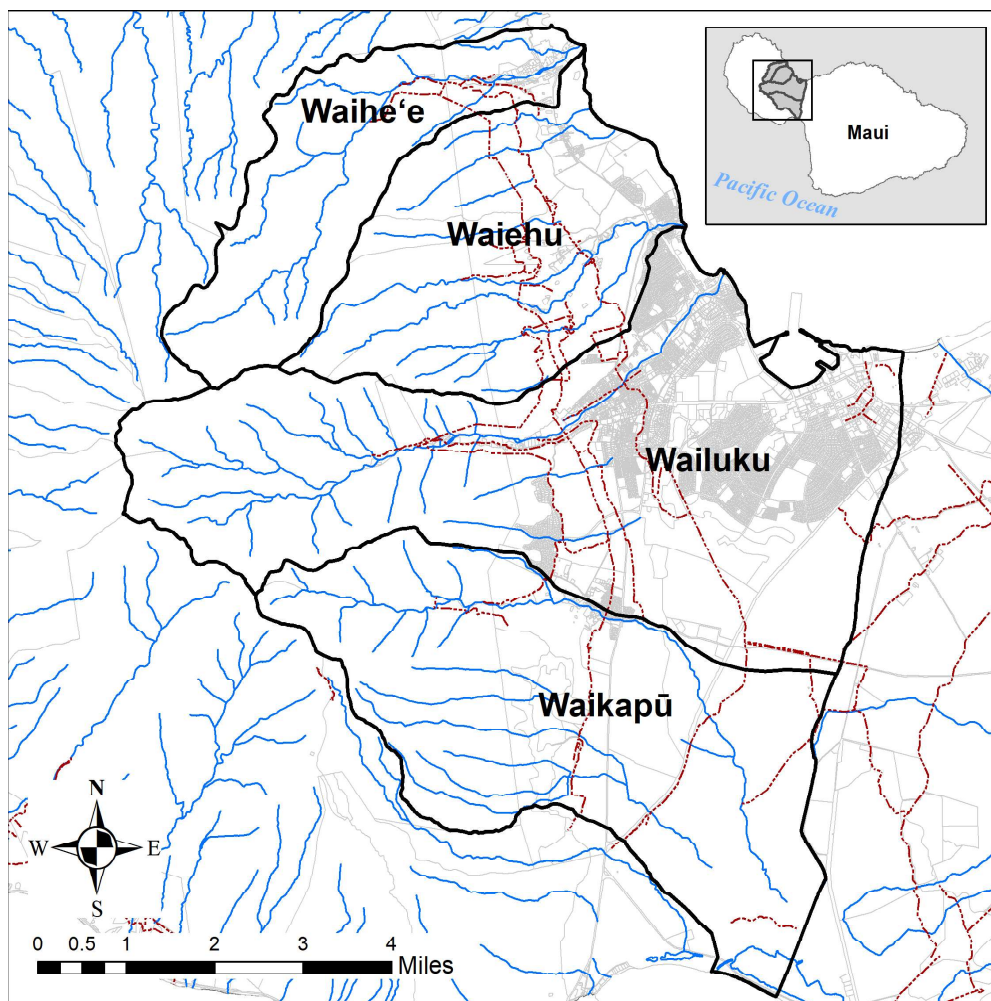


Figure 1. Map of designated hydrologic units: Waihe'e, Waiehu, Wailuku (also known as 'Īao), and Waikapū, Island of Maui.

#### IV. ANALYSIS

Contested case hearings are quasi-judicial proceedings that can be long and complex. In prior proceedings relating to Nā Wai 'Ehā, the Commission delegated authority to the Chairperson to appoint a hearings officer to allow for more efficient and expeditious proceedings.

The Commission may conduct the hearing itself or appoint a hearing officer or master to conduct contested case hearings. Hawai'i Revised Statutes §§ 92-16(3), 174C-11; Hawai'i Administrative Rules § 13-167-56(d).

In this matter, an appointed hearing officer would be able to (1) meet with counsel for the parties to organize the proceedings; (2) rule on preliminary motions, prepare for, and conduct the hearing on Maui; (3) receive, review, and rule on all the relevant and material evidence; (4) hear all legal arguments on the issues remanded by the Hawai'i Supreme Court; (5) prepare proposed findings of fact, conclusions of law, and a proposed decision and order; and (6) submit a proposed decision to the Commission for its consideration.

After the hearing officer's proposed findings of fact, conclusions of law and a proposed decision and order is submitted to the Commission, the parties will have an opportunity to file written exceptions and present oral argument to the Commission as a whole. The Commission will then make the final decision.

As a practical matter, the contested case hearing on Maui may take a number of weeks, depending on the complexity of scheduling.

#### V. RECOMMENDATION

Staff recommends that the Commission delegate authority to the Chairperson to appoint a qualified hearing officer to proceed with the contested case remanded from the Hawai'i Supreme Court to the Commission in CCH MA15-01, Nā Wai 'Ehā.

Ola i ka wai,



CIARA W.K. KAHAHANE  
Deputy Director

APPROVED FOR SUBMITTAL:



RYAN K.P. KANAKA'OLE  
Acting Chairperson