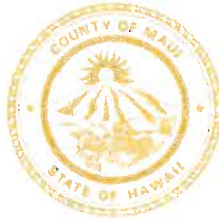


**MICHAEL P. VICTORINO**  
Mayor

**JEFFREY T. PEARSON, P.E.**  
Director

**HELENE KAU**  
Deputy Director



**DEPARTMENT OF WATER SUPPLY**  
**COUNTY OF MAUI**  
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WAILUKU, MAUI, HAWAII 96793  
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OFFICE OF THE MAYOR

February 11, 2020

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

**APPROVED FOR TRANSMITTAL**

Michael P. Victorino 2-13-20  
Mayor Date

For Transmittal to:

Honorable Yuki Lei K. Sugimura, Chair  
Water, Infrastructure, and Transportation Committee  
Maui County Council  
200 S. High Street  
Wailuku, Hawaii, 96793

Dear Chair Sugimura,

**SUBJECT:** Presentation on the Maui Island Water Use and Development Plan (Department of Water Supply) (WIT-22(1))

Thank you for your January 23, 2020 inquiry regarding "appurtenant water rights" as applied to proposed updates to the Maui Island Water Use and Development Plan (WUDP). We provide the following information:

**1. How does the Department accommodate native Hawaiian water rights on kuleana lands and taro lands in the Water Use and Development Plan?**

Answer: Appurtenant rights may be adversely affected by stream diversions. Consideration of kuleana and appurtenant rights are therefore specifically addressed in the WUDP for diverted streams in the following ways:

- a. Water requirements for kalo lo'i (taro) are assessed as representing appurtenant rights, in comparison to other agriculture and riparian rights for individual streams (Chapter 9.3)

*"By Water All Things Find Life"*

- b. There is no one data source to identify and inventory kuleana lands, appurtenant rights and associated water needs. Several methods are used to characterize the potential for lo'i kalo cultivation as well as for other plants for subsistence and cultural purposes in Chapter 9.3. The primary data consulted are kuleana parcels (Office of Hawaiian Affairs), representations of historical agriculture, Instream Flow Standard Assessments and contested case documents (Commission on Water Resource Management), the 1989 Declarations of Water Use, consultation with the Aha Moku Council, and the 2015 Agricultural Baseline (Hawaii Department of Agriculture).
  - c. In Na Wai Eha, an ongoing contested case addresses Interim Instream Flow Standards (IIFS), appurtenant rights and water use permits. The State Commission on Water Resource Management (CWRM) issued a provisional order on claims that particular parcels have appurtenant rights. The proposed Findings of Fact (FOF), Conclusions of Law (COL), and Decision and Order (D&O) issued by the Hearings Officer in November 2017 are incorporated into the WUDP to provide for water needs associated with appurtenant rights in Chapter 14.2, 14.5 and 14.6. Such water needs that were determined to be reasonable and beneficial would generally be satisfied under normal, or median stream flow conditions. CWRM has yet to adopt the proposed FOF, COL and D&O.
  - a. Water needs associated with appurtenant rights in West Maui were assessed based on the methods and sources stated in "b" above in Chapter 19.3, 19.5 and 19.6. Key strategies to accommodate appurtenant rights in the Lahaina Aquifer Sector Area in Chapter 19.8 include:
    - 1. Support for local initiatives that seek mauka to makai land management guided by traditional ahupua'a management techniques.
    - 2. Prioritize establishing IIFS for diverted streams.
    - 3. Installation of stream gages to support IIFS assessments.
    - 4. Implement seasonal use of surface water to take advantage of affordable supply in wet season and shift non-instream needs to groundwater and alternative supply when available in dry season to promote stream restoration.
  - d. Appurtenant rights for streams in East Maui are addressed in Chapter 16.3. Water needs were assessed based on the methods and sources stated in "b" above. An analysis of kuleana parcels in the Ko'olau Aquifer Sector Area projects water use and needed stream flow for kalo lo'i. The selected demand and supply scenario includes potential water use on identified kuleana lands. However, stream flow is not gaged or known for a large number of diverted and undiverted streams in East Maui. Establishing IIFS to meet instream needs, including appurtenant rights, is the responsibility of CWRM. The IIFS established in June 2018 for certain East Maui streams are incorporated into the WUDP.
2. **Explain how the Department considers the issue of appurtenant water rights as it develops updates to the Water Use and Development Plan.**

Answer: The determination of appurtenant water rights, including quantification of the amount of water entitled to by that right, lies with CWRM (HRS §174C-5). However, the WUDP recognizes and addresses appurtenant rights in multiple ways as illustrated above. The plan attempts to explain the legal framework and Supreme Court interpretations of appurtenant rights in Chapter 1.1. The distinction between appurtenant rights and Traditional and Customary Hawaiian rights is explained in Chapter 6.1.

In the WUDP public process, we identified issues and concerns that relates to adequate recognition and protection of appurtenant water rights in the context of diverted streams. Community input was gathered on options and policies that address stream flow and kuleana needs to support water use planning and for consideration during CWRM's IIFS process.

We hope you find this information useful. Should further clarification be necessary, please contact me at Ext. 7816.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey T. Pearson", with a stylized flourish at the end.

Jeffrey T. Pearson, P.E.  
Director

