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MAUI TOMORROW FOUNDATION, INC.

2014 FEB 18 PM 3:07

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Īao Ground Water Management Area	)	Case No. CCH-MA06-01
High Level Source Water Use	)	
Permit Applications and	)	REPLY BRIEF
Petition to Amend Interim Instream	)	
Flow Standards of Waihe'e, Waiehu,	)	
Īao, & Waikapū Streams	)	
Contested Case Hearing	)	
	)	
	)	

REPLY BRIEF

In their responsive briefs, none of the parties dispute the range of instream uses and values and Native Hawaiian rights that the Community Groups<sup>1</sup> outlined in their opening brief. Nor could anyone dispute these public trust purposes in the face of the record and facts in this case, which were uncontested in the previous contested case hearing and on appeal and even acknowledged by the Hawai'i Supreme Court as

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<sup>1</sup> The Community Groups follow the short-form terms and citation formats that they established in their previous briefs.

“substantial.” Instead, the parties cursorily address various tangents, to which the Community Groups reply as follows:

As always, HC&S criticizes the Community Groups for citing figures such as the long-term ditch flow of 67 mgd, FOF 209, and instead argues for using low streamflow figures to dictate the total amount that can be restored. The Commission has already gone down this road, which led to the Hawai‘i Supreme Court vacating and remanding for these further proceedings, and it must not take this same wrong turn again.

The Companies have continually argued their backwards or minimalist approach relegating IIFSs to the less-than-minimum “leftovers” after offstream diversions are protected, and abandoning the vast bulk of streamflows for diverters to use as a “reservoir” for offstream uses. The Commission’s final decision followed this tack in its purported “balancing” of instream and offstream uses to set the IIFSs, which: (1) maximized HC&S’s offstream uses to Dr. Fares’s 90-100 percent figures while adding an extra five percent;<sup>2</sup> (2) minimized the amount available from Well No. 7 by an arbitrary cap and “subtracted” even that amount from its “analysis” except during times of minimum instream flows; and (3) picked the IIFSs based on whether they would always satisfy HC&S’s maximum-plus figures. COLs 247-54, 230. In sum, the final decision reversed the public trust’s protections, maximized offstream diversions and minimized instream flows, and forced public trust instream uses to bear the burden of low-flow

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<sup>2</sup> See FOF 457 n.5 (noting that “at the 100% rate, even though all acres would receive sufficient water all the time, more water than needed would be applied nearly all the time”).

conditions at all times for HC&S's benefit.<sup>3</sup> See Dissent at 2 (the final decision "turn[ed] all of these responsibilities on their heads" and "g[a]ve absolute priority to one of the private commercial users in this contested case"). As the Hearings Officer explained, "[t]he amended IIFS were the amounts of water remaining after all offstream requirements were met; i.e., a residual – not a balanced – approach. Such an approach does not rise even to the level of the 'least protection feasible.'" Id. at 4.

The Hawai'i Supreme Court, indeed, addressed issues of "averages" in the Waiāhole case. See In re Waiāhole Ditch Combined Contested Case Hr'g, 94 Hawai'i 97, 171-72, 9 P.3d 403, 483-84 (2000) Contrary to the Companies' mindset that the IIFS must protect offstream diversions, the Court's focus under the public trust emphasized the impact of offstream demands on the IIFS and "the practicability of adopting specific measures to mitigate this impact." Id. The Court vacated the Commission's decision for failing to protect instream uses and ruled:

In order to mitigate the impact of variable offstream demand on instream base flows, the Commission shall consider measures such as coordination of the times and rates of offstream uses, construction and use of reservoirs, and use of a shorter time period over which to measure average usage. If necessary, the Commission may designate the [ ]IIFS so as to accommodate higher offstream demand at certain times of the year.

Id. at 172, 9 P.3d at 484. Here, exactly opposite from mitigating the impact on instream flows, the final decision maximized that impact by maximizing HC&S's offstream demands and minimizing its Well No. 7 supply.

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<sup>3</sup> HC&S takes issue with the Community Groups pointing out the excess or "gap" between the Companies' diversions and their actual needs, but following their argued simple math, if this gap overstates what the Companies' take during low-flow times, then it correspondingly understates what the Companies take during all other times.

As the Court emphasized, streamflows are “the only source to supplement base stream flow and to satisfy [instream uses].” Id. at 165, 9 P.3d at 477. “Unlike [HC&S’s] offstream uses, [Nā Wai ‘Ehā] instream uses have no alternatives at any cost” to streamflows. Id. HC&S complains about averages and variability of streamflows, but the Companies have always had to deal with this “inherent variability,” COL 239, and HC&S has at its disposal various measures such as conservation, reservoirs, and Well No. 7 (also termed “conjunctive groundwater use”) precisely for this purpose.<sup>4</sup> Such measures are thus not only available and familiar to HC&S, they are legally required to fulfill the public trust mandate to protect and promote instream uses to the extent practicable.

In the Waiāhole case, the Commission resolved the issue of protecting instream uses from variability by “designat[ing] the IIFS to allow for variability on a limited, [intra-]monthly basis,” or for “short duration, spread throughout the year.” See In re Waiāhole Combined Contested Case Hr’g, Case No. CCH-OA95-01, Final Legal Framework, Findings of Fact, and Decision and Order, filed on December 28, 2001, at 116. Specifically, the Commission allowed the IIFS of two of the four streams to decrease “for five (5) non-consecutive days of each month” from 12.2 mgd to 9.6 mgd.

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<sup>4</sup> See, e.g., Exh. C-89 at 0004 (A&B’s consultant explaining that HC&S would compensate for a reduction of 10 mgd for the proposed water treatment plant by “employ[ing] farming methodologies” to “maintain the level of existing agricultural cultivation” and “supplement[ing] a portion of the agricultural water with brackish water from an existing well”). See also Waiāhole, 94 Hawai’i at 171 n. 78, 9 P.3d at 483 n. 78 (recognizing the “storage characteristics” of groundwater aquifers).

Id. at 117.<sup>5</sup> It recognized that “combined with coordination of water uses and use of reserve water in reservoirs, such an approach should mitigate, if not alleviate, the effects of a water shortage.” Id. at 116. While the Companies have not justified such provisions in this case, Waiāhole provides a precedent that only further highlights how the Commission previously failed in its public trust duties, and how the Companies continue to look through the wrong end of the legal telescope in their diverters’ approach to stream restoration.

HC&S also persists in arguing about the South Waiehu kuleanas, apparently hoping this may somehow help to maximize HC&S’s private commercial diversions. It does not, and HC&S should stop trying to conflate its use with kuleana and Native Hawaiian rights, which are undisputed in this case and legally recognized as public trust purposes and superior to HC&S’s claims.<sup>6</sup> As the record establishes, because of the Companies’ unilateral manipulation of Nā Wai ‘Ehā flows over the years, many kuleana rightholders today have no choice but to rely on the Companies’ ditch system to access their entitled water. The Companies, nonetheless, have uniformly acknowledged and documented ever since their initial 1924 agreement that kuleana

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<sup>5</sup> The Commission declined to adopt reduced IIFSs on a seasonal basis because it recognized that the time of higher offstream demand “would also be the time when stream flows would usually be the lowest.” Id. at 116.

<sup>6</sup> As the Hearings Officer may recall, HC&S does not gauge its South Waiehu diversions and instead estimated diverting “2-3 mgd during dry periods to a maximum of 10-15 mgd during wet periods.” FOF 187; COL 164. USGS preliminarily estimated South Waiehu Q<sub>50</sub>, Q<sub>70</sub>, and Q<sub>90</sub> streamflows, at 870 feet altitude, of 2.4 to 4.2 mgd, 1.9 to 2.8 mgd, and 1.3 to 2.0 mgd, respectively. FOFs 119-21. In its 2010 Report on Nā Wai ‘Ehā, USGS indicated Q<sub>50</sub>, Q<sub>70</sub>, and Q<sub>90</sub> streamflows of 3.2 mgd, 2.3 mgd, and 1.4 mgd, respectively, as well as seepage of around 1 mgd between 870 feet altitude and 280 feet altitude, near HC&S’s diversion. See Exh. A-R1 at 51, 70.

rightholders have “priority over any other uses,” and that the Companies’ diversions are “subject to” their “obligations” to satisfy these rights first.<sup>7</sup>

Since such undisputed rights are co-equal with other public trust uses that the IIFSs are intended to protect and similarly “have no alternatives” to stream water, it is reasonable to designate an automatically adjustable IIFS, so that in the event that streamflows drop below the amount necessary to satisfy both the IIFS (which should include an allocation for rightholders downstream of the Companies’ diversions) and rightholders on the ditch system, the IIFS will temporarily decrease by a certain (potentially prorated) amount to ensure that rightholders on the ditch system continue to receive water. This would not, however, apply to private commercial diverters like the Companies, who would still receive water only after the IIFS and priority rightholders are satisfied.

Moreover, as the Community Groups discussed in their Opening Brief, some kuleana rightholders currently receiving water through the plantation ditch system may have the capability of partially or fully reestablishing a direct connection of their ‘auwai to the streams. See id. at 27. These include the rightholders on the North Waihe’e ‘auwai and potentially the South Waihe’e ‘auwai. See Ellis WT 2/18/14; Chavez WT 2/18/14 (both attached hereto). Thus, the IIFS should also include an automatic adjustment provision so that in the event that kuleana rightholders can feasibly reconnect to the stream, then the amount calculated to satisfy those rights via the

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<sup>7</sup> See, e.g., Exh. D-52 at 33, 38-39; Exh. C-64 at 2-3; Exh. C-24 at 3; Exh. C-71 at 4. The Community Groups have fully detailed the Companies’ acknowledgement of priority kuleana rights in previous filings. See, e.g., Community Groups’ Exceptions, filed on May 11, 2009, at 21-25.

Companies' ditch system will be automatically added to the IIFS to flow downstream to those rightholders' reconnected 'auwai.

Such provisions are analogous to what the parties unanimously stipulated to for the South Waiehu kuleanas, ensuring that the IIFS is implemented to its fullest extent while also satisfying co-equal kuleana rights. They conform with modern-day "konohiki" responsibilities to kuleana rights, which now reside in this Commission. See Reppun v. Board of Water Supply, 65 Haw. 531, 546, 656 P.2d 57, 68 (1982) (recounting the konohiki's traditional role to manage "equality of division and avoid troublesome quarrels between the tenants," including during times of drought). As with South Waiehu, the parties should have no objections providing similar protections to other kuleana rightholders on the Companies' ditch system. The exercise of legally protected kuleana and Native Hawaiian rights can then continue as an integrated part of the public trust in Nā Wai 'Ehā waters, and HC&S can stop trying to exploit these rightholders as leverage to minimize stream restoration and maximize the Companies' diversions.

Finally, HC&S takes issue with a particular instream use of Waikapū Stream, the Keālia Pond wetlands. HC&S does not dispute that the stream is the "principal influent" and "major contributor" to the wetlands. Exh. A-165 at 6; Exh. C-R12 at 3-12. Rather, HC&S criticizes the Community Groups for raising the U.S. Fish and Wildlife Service's ("USFWS's") existing water use permit application ("WUPA"), which states the position that the wetlands refuge has generally received "sufficient" water from various sources including groundwater pumping -- although not during the benchmark

period specified in the WUPA form of May 2007 to April 2008, which was “an exceptionally dry winter and does not represent the levels required to sustain habitat for endangered waterbirds.” Exh. C-R13, Attach. 1. USFWS makes clear that as “less stream water flows into the Pond, the water levels recede,” “resulting in very low water or even dry conditions in the Pond by late summer or early fall.” Exh. C-R12 at 3-23. This requires USFWS to operate pumps, at the public’s expense, to slow the rate of decline. Id. at 3-14 to 3-17. A legally protected instream use and public trust purpose such as wetlands restoration is not obligated and should not be compelled to bear the burden of such an artificial remedy so that the Companies can maximize their profits. Nothing in its WUPA or any other document indicates that USFWS would not welcome additional flows from its primary source, Waikapū Stream, were the Commission to fulfill its duty to provide such restoration. See id. at 3-13 (recognizing that “Waikapū Stream was believed to be perennial through its entire reach but the stream was fully diverted of all but peak flows,” and that recently “water rights issues have come to the forefront”; “[h]owever, to date, the State’s decision to return water to some of the West Maui streams has not included the Waikapū Stream”).

WWC’s retort that has not “profited” off of Nā Wai ‘Ehā stream flows because it has supposedly lost money during this case displays its same unique brand of obliviousness that led it to pursue its post-plantation “water company” business to begin with, premised on its supposed “excess” share of Nā Wai ‘Ehā stream flows. WWC, again, has no right to make any money off of Nā Wai ‘Ehā public trust resources. See Community Groups’ Responsive Br. at 19-20. After it and HC&S stonewalled this



proceeding for years, WWC is now in a rush to finish -- but only because the PUC (at the Community Groups' and OHA's recommendation as intervenors), exercised its authority to limit WWC's ability to pursue its business plans. Now, this Commission must exercise its authority and duty to protect the public trust.

The Community Groups agree with WWC on the need for expeditious relief as Community Groups requested almost 10 years ago, albeit not for the sake of WWC's ability to make money. The Community Groups also agree that the question whether WWC is a viable business "is not for this Commission to decide," WWC's Responsive Br. at 2-3; rather, once this Commission duly protects the public trust and Native Hawaiian rights, then the PUC will decide whether WWC is fit to serve as a public utility. See Community Groups' Responsive Br. at 20.

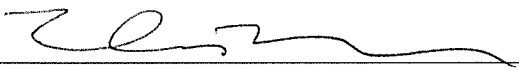
No one disputes the groundwater recharge benefits from stream flow restoration as USGS has documented, see Community Groups' Opening Br. at 28-31, yet DWS protests that because USGS has not specified exactly how much the sustainable yields will increase,<sup>8</sup> and because DWS does not yet have a permit for the additional groundwater, it "cannot voluntarily give up" the water it receives from WWC. Again, DWS attacks a strawman that no one is advocating. And again, DWS's tunnel vision during this remand proceeding prevents it from acknowledging and supporting the undeniable benefits to DWS's existing (and potential future) wells that USGS has actually quantified, just not in the specific terms DWS would prefer. See Community

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<sup>8</sup> As DWS is no doubt aware, this question of sustainable yield is partly controlled by DWS, depending on how optimally it locates and operates its wells.

Groups Opening Br. at 29-30. It remains to be seen on remand whether DWS will acknowledge these and other benefits of stream restoration to the County's interests and the public interest. DWS has still made no mention of any public trust responsibilities, which extend far beyond its current contract with WWC. See Kelly v. 1250 Oceanside Partners, 111 Hawai'i 205, 224, 140 P.3d 985, 1004 (2005) (making clear that the public trust doctrine governs county agencies).<sup>9</sup>

DATED: Honolulu, Hawai'i, February 18, 2014.

  
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<sup>9</sup> In light of DWS's objections to Duke Sevilla's testimony filed on January 7, 2014, the Community Groups have worked together with DWS to provide amended testimony making clear that: (1) Mr. Sevilla is not testifying on behalf of the County; and (2) the community is pursuing plans to use streamflows from 'Īao Stream for kalo cultivation only to the extent that it would coexist and not interfere with DWS's ability to access the 3.2 mgd under its WWC contract. See Sevilla Amended WT 2/18/14 (attached hereto).

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Case No. CCH-MA06-01


AMENDED WITNESS LIST

PARTY: HUI O NĀ WAI 'EHĀ and MAUI TOMORROW FOUNDATION, INC.

NO.	NAME/ORGANIZATION/ POSITION	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS	REQUESTED LENGTH OF DIRECT
1	Duke Sevilla (Amended Testimony filed 2/18/14 supersedes Testimony filed 1/7/14)		Need and use of Nā Wai 'Ehā water	No Exhibits	Half-hour
2	Piko A'o		Need and use of Nā Wai 'Ehā water	Exh. 1 to Piko A'o Testimony: Piko A'o property map	Half-hour
				Exh. 2 to Piko A'o Testimony: Photographs of Paeloko	
3	Kimberly Pauahi Lozano		Need and use of Nā Wai 'Ehā water	No Exhibits	Half-hour
4	Roy Ellis		Need and use of Nā Wai 'Ehā water	Exh. A-R10 to Ellis Testimony: Land Commission Awards, Royal Patents, and	Half-hour

NO.	NAME/ORGANIZATION/ POSITION	TO BE QUALIFIED AS AN EXPERT IN	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS	REQUESTED LENGTH OF DIRECT
				accompanying testimonies for Koki property	
				Exh. A-R11 to Ellis Testimony: Land Commission Award and accompanying testimonies for Morris property	
				Exh. A-R12 to Ellis Testimony: Land Commission Award and accompanying testimonies for E. Rodrigues property	
				Exh. A-R13 to Ellis Testimony: Photographs of kalo cultivation off of Waihe'e Valley North 'auwai	
5	Joshua Chavez		Need and use of Nā Wai 'Ehā water	Exh. A-R14 to Chavez Testimony: Highlighted tax map of Chavez property	Half-hour
				Exh. A-R15 to Chavez Testimony: Photograph of the South Waihe'e 'auwai	

DATED: Honolulu, Hawai'i, February 18, 2014.



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AMENDED EXHIBIT LIST

PARTY: HUI O NĀ WAI ʻEHĀ and MAUI TOMORROW FOUNDATION, INC.

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	ADM
A-R1	Delwyn Oki, Reuben Wolff, and Jeff Perreault, Effects of Surface-Water Diversion on Streamflow, Recharge, Physical Habitat, and Temperature, Nā Wai ʻEhā, Maui, Hawaiʻi (U.S. Geological Survey ("USGS") Scientific Investigations Report ("SIR") 2010-5011) (2010)	Opening Brief and Opening Statement	
A-R2	Stephen Gingerich, Ground-Water Availability in the Wailuku Area, Maui, Hawaiʻi (USGS SIR 2008-5236) (2008)	Opening Brief and Opening Statement	
A-R3	Piko Aʻo property map	Exh. 1 to Piko Aʻo Testimony: Piko Aʻo	

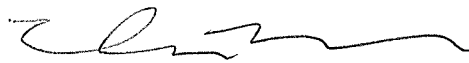
		property map	
A-R4	Photographs of Paeloko	Exh. 2 to Piko A'o Testimony: Photographs of Paeloko	
A-R5	Excerpts from Hawaiian Electric Companies, 2013 Integrated Resource Planning Report, filed in <u>In re Public Utils. Comm'n</u> , Docket No. 2012-0036, before the Public Utilities Commission ("PUC")	Responsive Brief, Moriwake Declaration	
A-R6	Maui Electric Co., Ltd.'s ("MECO's") Petition for Declaratory Order or Application for Waiver, filed on January 15, 2014, PUC Docket No. 2014-0011	Responsive Brief, Moriwake Declaration	
A-R7	MECO's Purchase Power Price Calculations submitted in <u>In re Maui Elec. Co.</u> , PUC Docket No. 2011-0092	Responsive Brief, Moriwake Declaration	
A-R8	Complaint in <u>Hui o Nā Wai 'Ehā v. Department of Water Supply</u> , Civ. No. 10-1-0388(3)	Responsive Brief, Moriwake Declaration	
A-R9	Stipulated Judgment in <u>Hui o Nā Wai 'Ehā v. Department of Water Supply</u> , Civ. No. 10-1-0388(3)	Responsive Brief, Moriwake Declaration	
A-R10	Land Commission Awards, Royal Patents, and	Exhibit to Ellis Testimony	

	accompanying testimonies for Koki property		
A-R11	Land Commission Award and accompanying testimonies for Morris property	Exhibit to Ellis Testimony	
A-R12	Land Commission Award and accompanying testimonies for E. Rodrigues property	Exhibit to Ellis Testimony	
A-R13	Photographs of kalo cultivation off of Waihe'e Valley North 'auwai	Exhibit to Ellis Testimony	
A-R14	Highlighted tax map of Chavez property	Exhibit to Chavez Testimony	
A-R15	Photograph of South Waihe'e 'auwai	Exhibit to Chavez Testimony	

Hui o Nā Wai 'Ehā and Maui Tomorrow Foundation, Inc. reserve the right to introduce additional exhibits at the remand hearing for purposes of impeachment or rebuttal, and to cite to and/or rely on all exhibits admitted in the original contested case proceeding, and all documents in the Commission on Water Resource Management's files relative or relevant to this matter, including all Water Use Permit Applications and Surface Water Use Permit Applications, all correspondence, and all other filings in CCH-MA-06-01.



DATED: Honolulu, Hawai'i, February 18, 2014.



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TESTIMONY OF ROYS ELLIS

1. This updates my written testimony filed with this Commission on Water Resource Management on October 26, 2007 and the oral testimony that I provided on December 7, 2007.

2. I am a member of Hui o Nā Wai ‘Ehā and co-own and live on land on River Road in Waihe‘e Valley, on the north side of Waihe‘e River, TMK Nos. 3-2-004:011 (0.8 acres) and 3-2-004:012 (0.045 acres).

3. As I have lived on and cared for this land for over 22 years, I am familiar with the surrounding lands along River Road and frequently talk to my neighbors on the north side of the River.

4. For over a year, a Native Hawaiian kalo farmer, Leroy Koyanagi, has been assisting me and several of my neighbors with restoring lo‘i kalo on our lands. These neighbors include Michael Rodrigues (TMK Nos. 3-2-004:015, :016, :017), Stanley Faustino (TMK No. 3-2-004:13), Clifford and Cristal Koki (TMK Nos. 3-2-003:004, :032), the Morris ‘ohana (TMK No. 3-2-003:28) , and Emmet Rodrigues (TMK No. 3-2-003:2).

5. At the time of the Māhele, all of our lands were in kalo cultivation, as documented by the native and foreign testimonies of the time:

a. As to my lands, true and correct copies of Land Commission Award (“LCA”) No. 4405-P:1 to Moo, RP Nos. 4120 and 6149, and the native and foreign testimonies in support of Moo’s claim were previously submitted as Exhibit A-97;

b. As to the Michael Rodrigues lands, true and correct copies of LCA Nos. 4405-R to Mioi and 4405-S to Puhi, RP Nos. 6459 and 2345, and the native and foreign testimonies in support of Mioi’s and Puhi’s claims were previously submitted as Exhibit A-121;

c. As to the Stanley Faustino lands, true and correct copies of LCA No. 4405-X to Mahoe II, RP No. 5319 to Mahoe 2, and the native testimony in support of Mahoe II’s claim were previously submitted as Exhibit A-33;

d. As to the lands owned by Clifford and Cristal Koki, true and correct copies of LCA Nos. 4377 and 4105 and RP Nos. 4105 and 5274, and accompanying testimonies are attached hereto as Exhibit A-R10;

e. As to the lands owned by the Morris ‘ohana, true and correct copies of LCA No. 4405P and accompanying testimonies are attached hereto as Exhibit A-R11; and

f. As to the lands owned by Emmet Rodrigues, true and correct copies of LCA No. 4426:1 and accompanying testimonies are attached hereto as Exhibit A-R12.

6. These and other kuleana lands on the north side of Waihe‘e River are supplied by an ‘auwai Wailuku Water Company (“WWC”) refers to as “Waihe‘e Valley North.” This main ‘auwai branches off into smaller ‘auwai that bring the water to our lands before returning to Waihe‘e River. For as long as I have lived here, WWC has provided water to this ‘auwai via a pipe from Spreckels Ditch.

7. Based on my personal observations and discussions with my neighbors and Leroy Koyanagi, I estimate current kalo cultivation to be around six and a half acres:

- a. My lands: 0.25 acres in kalo;
- b. Mike Rodrigues lands: 1.13 acres in kalo;
- c. Stanley Faustino lands: 0.25 acres in kalo;
- d. Clifford and Cristal Koki lands: 0.83 acres in kalo;
- e. Morris 'ohana lands: 2.0 acres in kalo; and
- f. Emmet Rodrigues lands: 2.0 acres in kalo.

8. Attached as Exhibit A-R13 are photographs accurately depicting several areas of current kalo cultivation off of the Waihe'e Valley North 'auwai.

9. Before the restoration of streamflows to Waihe'e River in August 2010, I estimate the amount of kalo cultivation was around two acres. We have been able to increase this amount by supplementing the flows from the pipe with additional streamflows we were able to channel into the Waihe'e Valley North 'auwai through its existing intake structure on the river. We are currently still dependent on the supply from the pipe, however, because there is a limit to how much streamflow we can draw directly from the river through the current intake structure. It would take some planning and work to reconfigure the intake to allow us to obtain sufficient streamflows directly from the river so that we would no longer need the flows from the pipe.

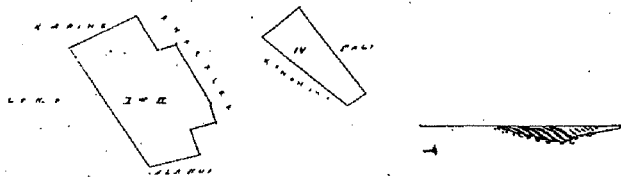
10. Leroy Koyanagi has informed me that if more water was flowing, he would be able to help open up seven additional acres of lo'i kalo, for a total of 13.5 acres. This would again require some work on the existing intake, as well as adequate streamflows flowing downstream.

11. The estimates of kalo cultivation above do not account for other landowners who are growing modest amounts of kalo, including Faye Haake, who tends to about 0.10 acres of kalo on TMK No. 3-2-003:022. Thus, the figures provided above are conservative estimates.

Num. 35 1/2. Hiki 56 Kk. ma ke Laupohala, Ak. 51 1/4. Hiki 297 Kk. ma ke Kamahele. Ak. 39.  
 Num. 35. Kk. ma Tahale Kula, Num. 38. Num. 294 Kk. ma ke Tahale a hiki ma hiki i ke  
 mahaia; a maaloa via Anapuni, 25/100 Eka.  
 Apana III Aole ma keia I laka. ke kai

Wailuku, July, 7, 1852.

John S. Lewis,  
 Ma a ana aia.



Wailuku, July, 7, 1852.  
 John S. Lewis,  
 Ma a ana aia.

Honolulu, 16, Oct. 1852.

Wailuku, July, 7, 1852.

John S. Lewis,

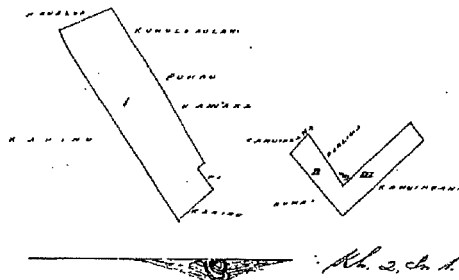
Apana I. Kk. Kaulapahu. E hoomaka ke ana ma ke Kiki Kamahele, a hiki ana  
 ma ke Kamahele, Ak. 57. Hiki 277 Kk. ma ke Kamahele; Ak. 59. Hiki 281 Kk.  
 ma ke Kamahele. Num. 39 1/2. Hiki 24 Kk. ma ke Kamahele. Ak. 54 1/4. Hiki 71 Kk.  
 ma ke Kamahele. Num. 39 1/2. Hiki 24 Kk. ma ke Kamahele. Num. 55 1/4. Num. 538 Kk.  
 ma ke Kamahele. Num. 67 1/4. Num. 70 Kk. ma ke Kamahele. Ak. 24 1/2. Num.  
 154 Kk. ma ke Kamahele. a hiki ma hiki i hoomaka; a maaloa via Anapuni 25/100  
 Eka.

Apana II. Kk. Kamahele. E hoomaka ke ana ma ke Kiki Kamahele, a hiki ana  
 ma ke Kamahele, Ak. 57. Hiki 277 Kk. ma ke Kamahele; Ak. 59. Hiki 281 Kk.  
 ma ke Kamahele. Num. 39 1/2. Hiki 24 Kk. ma ke Kamahele. Ak. 54 1/4. Hiki 71 Kk.  
 ma ke Kamahele. Num. 39 1/2. Hiki 24 Kk. ma ke Kamahele. Num. 55 1/4. Num. 538 Kk.  
 ma ke Kamahele. Num. 67 1/4. Num. 70 Kk. ma ke Kamahele. Ak. 24 1/2. Num.  
 154 Kk. ma ke Kamahele. a hiki ma hiki i hoomaka; a maaloa via Anapuni 25/100  
 Eka.

Apana III. Kk. Kamahele. E hoomaka ke ana ma ke Kiki Kamahele, a hiki ana  
 ma ke Kamahele, Ak. 57. Hiki 277 Kk. ma ke Kamahele; Ak. 59. Hiki 281 Kk.  
 ma ke Kamahele. Num. 39 1/2. Hiki 24 Kk. ma ke Kamahele. Ak. 54 1/4. Hiki 71 Kk.  
 ma ke Kamahele. Num. 39 1/2. Hiki 24 Kk. ma ke Kamahele. Num. 55 1/4. Num. 538 Kk.  
 ma ke Kamahele. Num. 67 1/4. Num. 70 Kk. ma ke Kamahele. Ak. 24 1/2. Num.  
 154 Kk. ma ke Kamahele. a hiki ma hiki i hoomaka; a maaloa via Anapuni 25/100  
 Eka.

Wailuku, July, 7, 1852.

John S. Lewis,  
 Ma a ana aia.





alo ma nana i Kealia mai a huli o Hea  
 ion, a me na Kihapai wauke Hea, aia ma  
 Pualoa Kihahi Kihapai wauke, a Kihapai  
 mahaia, a Kihapai Kala Mahe, aia ike i  
 Kihahi Kihahi ma Kihapai.  
 Olouala 19 Jan. 1888. Na Kealia

4374

Kealia

Hawaii Dec. 29, 1888

M

Hea ma Kihapai wauke Hea, aia ma  
 Pualoa Kihahi Kihapai wauke, a Kihapai  
 mahaia, a Kihapai Kala Mahe, aia ike i  
 Kihahi Kihahi ma Kihapai.  
 Olouala 19 Jan. 1888. Na Kealia

4375

Kealia

Hawaii Dec. 29, 1888

M

Hea ma Kihapai wauke Hea, aia ma  
 Pualoa Kihahi Kihapai wauke, a Kihapai  
 mahaia, a Kihapai Kala Mahe, aia ike i  
 Kihahi Kihahi ma Kihapai.  
 Olouala 19 Jan. 1888. Na Kealia

4385

Kealia

Hawaii Dec. 29, 1888

M

Hea ma Kihapai wauke Hea, aia ma  
 Pualoa Kihahi Kihapai wauke, a Kihapai  
 mahaia, a Kihapai Kala Mahe, aia ike i  
 Kihahi Kihahi ma Kihapai.  
 Olouala 19 Jan. 1888. Na Kealia



[illegible]

HELU *Mist.*

207

# **PALATALA SILA NUI.**

A KE ALII, MANULI O KA OLELO A KA POE HOONA KULEANA.

NO KA HEI, Ua hoohua na Luna Hoona i na kumu kuleana i ka olelo, he kuleana oia ho  
*Maui* *Maui*  
 ma ke **Ans Aludis** i ka o kahi i oleloa malika.

Nolala, ma kela Palatala Sila Nui, ke hoika oia nei o Kamehameha IV, ke Alii nui a ke Alua  
 i koe i komaikai i hoona ai malani o ka Hawaii Pae Aiea, i na kumaka a pau, i kela i naa lio,  
 a no kua mau hope ahi, ua hanaia ahi oia ma ke **Alua Aludis** i *Maui*  
 i kela wahi a pau ka ma *Maui*

ma ka mekupuni o *Maui* paei na mekupuni,  
 Ua i. *Charmadrasma* ka kahi *Charmadrasma*, a kahi oia nei *Charmadrasma*  
*Maui* 57° *Maui* 57° *Maui* 57° *Maui* 57°  
*Maui* 59° *Maui* 59° *Maui* 59° *Maui* 59°  
*Maui* 59° *Maui* 59° *Maui* 59° *Maui* 59°  
*Maui* 59° *Maui* 59° *Maui* 59° *Maui* 59°  
*Maui* 59° *Maui* 59° *Maui* 59° *Maui* 59°  
*Maui* 59° *Maui* 59° *Maui* 59° *Maui* 59°  
*Maui* 59° *Maui* 59° *Maui* 59° *Maui* 59°

*Charmadrasma* ka kahi *Charmadrasma* *Charmadrasma* *Charmadrasma*

Ua i. *Charmadrasma* ka kahi *Charmadrasma* *Charmadrasma*  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°  
*Maui* 43° *Maui* 43° *Maui* 43° *Maui* 43°

*Charmadrasma* ka kahi *Charmadrasma* *Charmadrasma* *Charmadrasma*

Mafofo o *Kia'i mauwapa* 172 Eke  
 a oi iki aha, a emi iki mui paha. Un koe nae i ke aupuni na mae ekekele a me na utule a pau.  
 No *Kia'i*.  
 ua aia i i hawaina me ke ANO ALODIO a no koe uia hoolina, a me koe waihana; ua pii nae  
 ka uia a ka Poe Abacelo a hoo like ai na na aia alolo i koe hana i koe hana.  
 A i mae i koe oi, ua hoo uia i koe hana, a me ke Sika Nui o ke Hawaii Pae  
 Aia na Hoolaha i koe la  
 o *Sulai* 1839

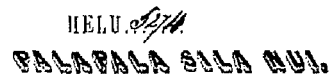
*Wahurouma.*

*Wahurouma.*







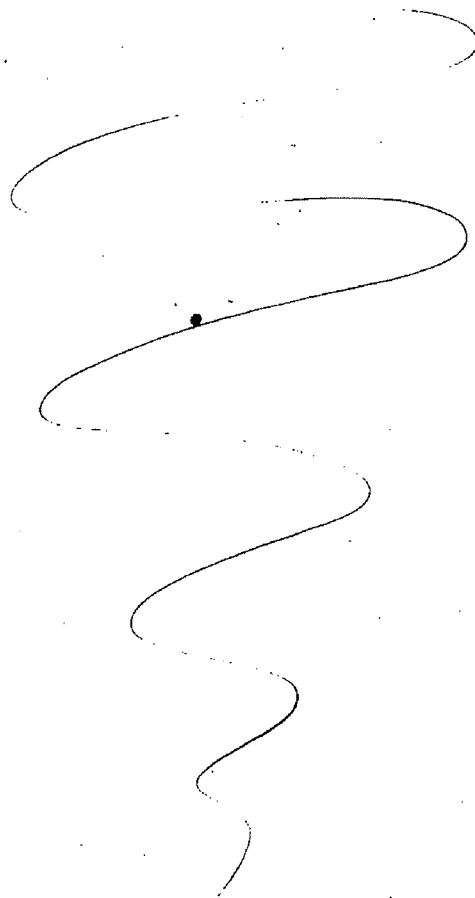


NO KA MEA. Ua ihoakalo na Iuna Ihoona i te kumu kuleana aia i ka olelo, he kuleana oiaia ko  
 iua ke Ano Aloha iho i ka hiki i olelo maia. Kuleana Hoku. *[Signature]*

Nelalie, ma keia Papapale Sila Nui, ke hooke aku nei o Kamahemaha IV, ke Alii nui a ke Aka  
i kono lokoakamai i honohele ai malena o ke Haauni Paa Aia, i ka hooke a pau, i keia la moe lio,  
a no kana mau hope ali, ua haavai aku oie ma ke **Ama Alohe** la **Pihau**  
i keia wahi a pau loa ma **Onile**  
ma ka moikupuni o **Mauui** penei na moone,

[illegible]

Alfama 2. Ba de su o Putane e ana iloko o Ma  
Kilana o Pi.



Makalo o *Hea* opana *Hea* Eke  
a ni iki aku, a eui iki mai paha. Ua koe nae i ke aupuni na toina niacelo a nae na metela o pau.

No *Puhau*  
ua aua ia i linauina na ke **Aue Alodie** a no kua mau linauina, a mo kua waihoia; na pili nae  
ke auaia a ke Pae Ahualo e kau Eke ai na os aua alodie i kela manawa i kela manawa.

A I MEA E INEA AI, ua kua wai i kela mau, a toe ke Sila Nui o ke Hawaii Pae

Aua nia Honolulu i kela la

• *Samueli* 7 1863

*(Hea) Kamehameha*

*(Hea) Kamehameha*

*He He Hei a na He Kamehameha Hei*

*(Hea) E. Kamehameha*



David

Natalie Frohman

12/22/2012, 10:00 AM, 10:00 AM, 10:00 AM

Maaka Amosi vini; Ma Kahahaka-a; Kahume  
Maaka Pa Uira, Ma Waituku Pua 14

2. Maunua Koroiki, Ma Kahihihiwa a Maheo o  
Kekunanihi, Ma Waihihihi, Ma Maheo o Maheo o Maheo.

*Miri. Hootica*

"2, 20 Los Rios y Maripaló"

... 8. Livi. Kalo, i. Shukoko.

1876. April 4. Loc. 8. Oak & Walnuts

Mo Hale mai ka Apana 2 i ka 1839. Mo Halepuna  
mai ka Apana 1 i ka 1846. Mo Halepuna mai ka Apana 1,  
i ka 1848. mo Halepuna mai ka Halepuna, Mo Halepuna  
mai ka Apana 1 i ka 1839. ake ma Halepuna, i Halepuna  
ma Halepuna, i Halepuna ma Halepuna 2.

Maaka Mahawai, Ma Kahahuli, Pahi, Ma Kai  
Pahi, Ma Walehu, Mahawai, ...

24 Martha Kinnabala Mo. Katabakina Pa

hibit A-R11 *M. atrox*, *M. watsoni*, *M. wailukii*, *Kahawai*  
3 | *M. ...* or *M. ...* *M. ...* or *M. ...* R-1.

Maui Wailuku o Kama

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala  
Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

4405

Kamaeala

July 26

Parvati Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

R

4405

Maui

July 26

Parvati Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

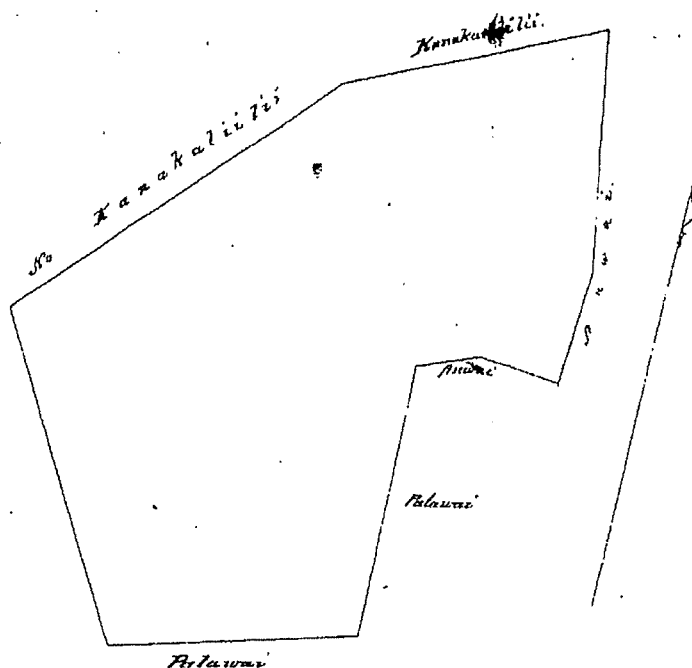
Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Maui Kamaeala, Maui Kamaeala, Maui Kamaeala

Napalai



Ukupauala

16.

W. L. Lee  
S. M. Robertson  
J. H. Smith  
J. Sekaula

Consolidated August 5, 1854.

Belu 4405 P Moo

Kaiher, Maui.

Aprina aua Kale moa ka ili o Kaiher, Maui.

O Kormuaka moa ka kiki Hikiwa a v. holo

Akau 37 1/2 Kormuaka 2.58 Kk marks Korkiki

Kama 80 1/2 Kormuaka 3.20 " Kaihawai

Kama 53 1/2 Kormuaka 2.68 " "

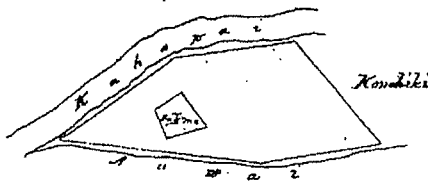
Kama 82 Hikiwa 3.70 " aua

Akau 80 1/2 Hikiwa 2.22 " " aikihi moa kikihi moa. 3/10 Eka

Palmas. Moa ka kiki Akau aua kau Akau 74 Kk. 1.76 Kk. ike kiki moa. Akau ka holo Ak. 73 1/2 Kk. 74 Kk. - Ak. 31 Kk. 77 Kk. - Kk. 56 Kk. 59 Kk. - Kk. 19 1/2 Kk. 57 Kk. a fuma - to Eka.

Kaiher, Maui 13, 1854.

E. Bailey  
Mearns aua



2 Chains = Iuka

Ukupauala

13.

W. L. Lee  
S. M. Robertson  
J. H. Smith

Consolidated August 7, 1854.

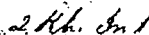
46, Kua'ata eua imona e. eua, eua  
 1, mana Kahuani, eua ia e hua eua  
 eua eua, hi hua eua eua  
 Oa Kahu

4426 Kahim Waikoo D.M. 29, 1848  
 . Up. Ihi aima o Halepahu 16 hi, Mo  
 Hanaunai mai Kio, Kula 4 fua hahala  
 Pahu Kaniola 3 hi, Mo Kula mai Kio,  
 1 Miana Hahana, Mo Kupauniki mai Kio  
 Halepahu 16 hi Halepahu Mo Halepahu  
 mai Kio, Kiohi 1 Kula Mo Kupauniki  
 mai Kio. Nani ma Kahim

4427 Kamakaiki . . . Waikiki Dec. 29, 1848  
 My mai Kōi, a no Kapaewa mai Hekeke, 3 Kula  
 ma Kula aua a ma Kūia aua o ma Kōi,  
 Kanaale 2, 1 Kōi, Mo Pūmaka mai Kōi, Kōlea  
 1 Kōi, Mo Kānawācaina mai Kōi, Pūmaka  
 1 Kōi, Mo Kānawācaina mai Kōi, i  
 Lāhine 7 Kōi Mo Kapaewa mai Kōi, Kapa-  
 wa 7 Kōi, Mo Pūmaka mai Kōi, 1 Kula.  
 Nō ma Kamakaiki

4429. Kauna White Det. 29 1848  
 16. Ihi Aina o Waihihira 49 hoi ai  
 Mo Kuakamauna mai Koi, i Waihihira  
 mo 3 hoi, Mo Kaawa mai Koi, i Waihihira  
 mo 1 hoi, aia iika na waihihira e hoapu-  
 mohono loa, tumakema au.  
 ibit A-R12 Nau na Kauna





A. L. Lee

W. A. Smith

C. Sekanaka.

Hebel 4426 Kaohiriu

Wanderleben

Apresento a Positiva e copia. Chama-se de uma rua para padm hup, o Reia Kuluana, Alt. 11 Mts 111  
Nha e hiki uma de hiki. Reia, Alt. 38 1/2 Mts, 82 Kts, 53 1/2 Mts, 132 Kts, 38 1/2 Mts  
82 Kts, Alt. 53 1/2 Mts 132 Kts. a hiki uma de padm mura, a malake via Positiva 1/2 Cka.

Aparua II Ili Kapahukawila E hōma ka ana ma ke Pihī. Hema o keia,  
 Al. 57<sup>1</sup>/<sub>2</sub> H. 57 Hh. ma Hanuichana, Kom. 51<sup>1</sup>/<sub>2</sub> Hh. 124 Hh. ma Hanuichana, Kom. 51<sup>1</sup>/<sub>2</sub>  
 Kom. 84 Hh. ma Hanuichana, Al. 56 Kom. 132 Hh. ma Hanuichana, a hiki ma ka paku  
 ma ana ma loko oia aia pūni, 12<sup>1</sup>/<sub>2</sub> Hh.

Mailuku July. 9. 1852

John. S. Fowler.

Тра ама ама

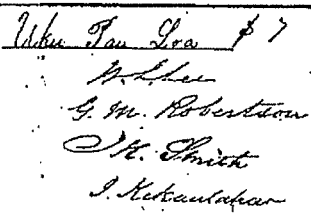


Honolulu 16 Oct 1852

Walter Mearns

Poalima i Hormatika he aua ma he Pitui Akau. Kua Kuleava, Hem. 22<sup>2</sup>, Hik. 21<sup>3</sup>  
 Kh. a hiki ma he Pitui Akau. Kua Hem. 50 Hik. 129 Kh. Hem. 52; Hem. 57 Kh. 44. 54 Hem.  
 129 Kh. Ak. 52 Hik. 57 Kh. a hiki ma kahi i Hormatika i a mualoto via Poalima 7/10. Eka.  
 Aua III Ili. Nale, Oa hualoto via.

John. S. Lowry.  
Mca ana ana



London, 16. Oct. 1852



**PHOTOGRAPHS OF KALO CULTIVATION  
OFF OF WAIHE'E VALLEY NORTH 'AUWAI**



**Exhibit A-R13**





COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

‘Īao Ground Water Management Area	)	Case No. CCH-MA06-01
High Level Source Water Use	)	
Permit Applications and	)	
Petition to Amend Interim Instream	)	
Flow Standards of Waihe‘e, Waiehu,	)	
‘Īao, & Waikapū Streams	)	
Contested Case Hearing	)	
	)	
	)	

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TESTIMONY OF JOSHUA CHAVEZ

1. I am the owner of a 25-acre parcel in the mauka area of Waihe‘e Valley, which includes TMK Nos. 3-2-4-1 and -21 (the “land”). The land follows along a length of the Waihe‘e River of around 3,000 feet and spans across the river to the north and south. The land is located downstream of the Waihe‘e and Spreckels Ditches. Attached hereto as Exhibit A-R14 is a true and correct copy of the tax map with the land highlighted in yellow.

2. This land includes the intake points and initial mauka sections of two major traditional ‘auwai for the Waihe‘e ahupua‘a, which have been called “Waihe‘e Valley North” and “Waihe‘e Valley South” in this case. These ‘auwai are highlighted in blue on Exhibit A-R14.

3. The North Waihe‘e ‘auwai is currently operational and flowing. A pipe from the Spreckels Ditch runs across my land, where it feeds a kuleana belonging to the Goo ‘ohana; the pipe then runs across the river from the south to the north through a concrete dam structure and discharges into the North Waihe‘e ‘auwai.

4. The section of the South Waihe'e 'auwai on my land is currently dormant. The 'auwai instead begins a short distance makai on the neighboring parcel, where a pipe from Spreckels Ditch discharges water into a small pool.

5. I have been working on my land to replace invasive vegetation like java plum trees with Native trees and plants. In this process, I uncovered the section of the South Waihe'e 'auwai on the land, which includes a visible, defined channel and stone walls in many places. Attached hereto as Exhibit A-R15 is a true and correct copy of a photograph of the 'auwai on my land.

6. I would like to reopen the portion of the South Waihe'e 'auwai on my land and its direct connection to Waihe'e River to enable cultivation on the land including lo'i kalo. I would also be very open to working with the larger community of kuleana landowners on the South Waihe'e 'auwai to reestablish this portion of the 'auwai as the link that would allow them to receive water directly from Waihe'e River, instead of Spreckels Ditch. This would take some planning, time and work, as well as community discussion and support. It appears this could be operationally feasible, however, if enough water is allowed to flow down the river.

## (TOP OF WAIHEE VALLEY ROAD)





PHOTOGRAPH OF THE SOUTH WAIHE'E 'AUWAI



Exhibit A-R15

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

‘Īao Ground Water Management Area	)	Case No. CCH-MA06-01
High Level Source Water Use	)	
Permit Applications and	)	
Petition to Amend Interim Instream	)	
Flow Standards of Waihe‘e, Waiehu,	)	
‘Īao, & Waikapū Streams	)	
Contested Case Hearing	)	
	)	

---

AMENDED TESTIMONY OF DUKE SEVILLA

1. This updates my written testimony filed with this Commission on Water Resource Management on September 14, 2007 and the oral testimony that I provided on December 3, 2007.

2. In addition to being a member of Hui o Nā Wai ‘Ehā and serving on its Board of Directors, I am also the President of Ke Ao I Ka Makani Ho‘eha Ili. I submit this testimony as a member of the community and public and Board Member of these organizations, and not on behalf of the County of Maui.

3. Ke Ao I Ka Makani Ho‘eha Ili is a state non-profit that is in the process of securing its federal non-profit status. Our mission is to preserve and restore the natural and cultural resources of the Paukūkalo Coastal Wetlands, and the area fronting Ka‘ehu Bay in particular, for ecological sustainability, traditional and customary Native Hawaiian practices, and overall community use. Members of our organization have helped to care for approximately 64 acres on the shores of Ka‘ehu Bay, which is bordered by ‘Īao Stream on one side and Waiehu Stream on the other (TMK No. 3-3-001:001), for almost ten years, and we are in the process of arranging a lease or other formal

arrangement with the current landowner, the County of Maui. Ke Ao I Ka Makani Ho‘eha Ili means “the light in the Ho‘eha Ili wind of Waiehu.” The name was given to our organization by a descendant of Paukūkalo and was meant to help us overcome any barriers we may face in realizing our mission. We are centrally a Native Hawaiian organization focused on perpetuating the traditional Native Hawaiian character and values of this area, and our board members include Kānaka Maoli who trace their lineage to Paukūkalo. We are working with many Native Hawaiian residents of this area and various community groups, including churches and schools, and organizations like Hawai‘i Wildlife Fund, who aid us in cleaning up the wetlands. We envision these lands will one day serve as an outdoor classroom for the community as a whole to come and experience traditional ways of life.

4. In late 2007/early 2008, a coalition of community members, including me, approached the Trust for Public Land (“TPL”) and requested assistance in securing the property for conservation and other cultural purposes for future generations. This process took many years, and the community, especially members of Ke Ao I Ka Makani Ho‘eha Ili’s Board, was instrumental in helping to protect this property.

5. TPL purchased TMK No. 3-3-001:001 (the “property”) at a foreclosure auction in December 2011 and paid significantly less than market value, in part, because of the role of community members like Walter Kanamu and me. In May 2012, the County of Maui purchased the property from TPL, again at a small fraction of market value. It is my personal belief that the County would not now have title to this property without the hard work of members of Ke Ao I Ka Makani Ho‘eha Ili’s Board.

6. Based on my work with TPL, Ke Ao I Ka Makani Ho‘eha Ili, and other organizations over the course of several years, I understand the importance of preserving and restoring this property. First, it is one of the last undeveloped shoreline parcels of a once-famous network of wetlands and fishponds that stretched from ‘Īao to Waihe‘e. It includes approximately 4,500 feet of shoreline along Ka‘ehu Bay, which is one of the few shorelines in Nā Wai ‘Ehā that remains available to the larger community for recreational, educational, and traditional and customary Native Hawaiian practices. Second, the property provides wetland, stream, estuarine, and marine habitat and is a critical link between ‘Īao and Waiehu Streams and Ka‘ehu Bay for freshwater and marine plants and animals, and the practices that depend on them (such as subsistence gathering and fishing). Third, this property is a cultural kīpuka: forty-one archaeological sites have already been identified, including lo‘i terraces, ‘auwai (irrigation canals), habitation sites, walls and enclosures, fishpond structures, and iwi kūpuna (burials). The property and the area fronting it continue to be actively used for traditional and customary Native Hawaiian purposes, including fishing, limu gathering, lo‘i kalo and other religious, cultural, and subsistence practices.

7. On March 2, 2008, David Ivy submitted written testimony on behalf of North Shore at Waiehu (the former property owner), regarding plans for the property’s physical and cultural restoration. Both Mr. Ivy’s testimony and the attached exhibits overviewed the cultural, environmental, archeological, historic, and other significance of the Paukūkalo Coastal Wetlands in general and this property in particular. In 2008, the Neighborhood Place of Wailuku was utilizing eight acres for cultural programming and lo‘i kalo, and another tenant (Wes Wong) was leasing two acres for spring-fed lo‘i kalo.



North Shore at Waiehu was working to restore up to 18 acres of lo'i kalo on the property, of which six would be spring-fed and 12 would have involved a request of water from 'Īao and Waiehu Streams. In addition, North Shore at Waiehu expected to restore the palustrine emergent wetlands on the property (the U.S. Army Corps of Engineers verified that about one-third of the 64-acre parcel are wetlands). While Ke Ao I Ka Makani Ho'eha Ili maintains this commitment to protecting and rehabilitating this property, and continuing the educational and cultural work of Neighborhood Place, our restoration plans are more extensive than North Shore at Waiehu's.

8. Although we are still in the process of arranging a lease or other formal agreement with the County, in the meantime we have been working directly with representatives from the Mayor's office on some funding, planning, and cleanup and maintenance for the property. In addition to the two acres of spring-fed lo'i that are being cultivated on the property, we already restored five lo'i on approximately one-quarter of an acre on the 'Īao side of the property. Those five lo'i are currently in dryland cultivation and irrigated by a sprinkler system that utilizes county water. We hope to convert these to wetland lo'i with water from 'Īao Stream, but are also sensitive to the County's need for water from 'Īao and would request additional water for our lo'i only to the degree that it would coexist and not interfere with the County's allocation of 3.2 million gallons per day. In all, we plan to restore a total of about 15 acres of lo'i kalo with water from 'Īao and Waiehu Streams; about 75% of that would be irrigated with water from 'Īao and 25% with water from Waiehu. In addition, we would like to restore at least an acre of loko i'a (traditional fishpond) with water from 'Īao and Waiehu

Streams as well. Because both streams border the property, direct access to the streams is not an issue. The main issue is ensuring sufficient flow.

9. We also believe that if mauka to makai stream flow is restored to 'Īao and Waiehu Streams, it will help to recharge the more than twenty acres of wetlands on the property, which we would also like to rehabilitate. I was raised and continue to live in Paukūkalo and know that when we have mauka to makai flow for more than a couple of days, the springs both on this property and on my 'ohana's 'āina (which is directly adjacent to the property) begin to flow again. Although this restoration will benefit the property and Ke Ao I Ka Makani Ho'eha Ili's work, it will also benefit the area's natural and cultural resources and the human communities that depend on them.

10. By reestablishing these resources on the property, we hope to increase the amount of fresh water being discharged into Ka'ehu Bay, which we expect will positively impact the nearshore marine ecosystem, including the 'anae, moi, kala, manini, pāpi'o, manaua, and wāwae'iole that I and other community members utilize to feed our families. Although these resources are no longer as abundant as they were during our kūpuna's time, they are still an important food source, and gathering them is a vital cultural practice.

11. Having worked on and around the property for several years now, I know that our restoration plans cannot be realized without the return of water to 'Īao and Waiehu Streams in particular. On behalf of Ke Ao I Ka Makani Ho'eha Ili and the extended community, including my 'ohana and me, I urge this Commission to restore the streams of Nā Wai 'Ehā so that the entire community can share in these public natural and cultural resources to sustain our cultural identity and way of life.

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

IN RE ʻĪAO GROUND WATER ) Case No. CCH-MA06-01  
MANAGEMENT AREA HIGH-LEVEL )  
SOURCE WATER USE PERMIT ) CERTIFICATE OF SERVICE  
APPLICATIONS AND PETITION TO )  
AMEND INTERIM INSTREAM FLOW )  
STANDARDS OF WAIHEʻE RIVER AND )  
WAIIEHU, ʻĪAO, AND WAIKAPŪ )  
STREAMS CONTESTED CASE HEARING )

CERTIFICATE OF SERVICE

I hereby certify that, on February 18, 2014, a true and correct copy of the foregoing document was duly served by first-class postage prepaid mail to the following parties addressed as follows:

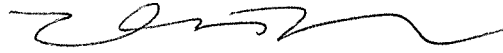
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