

DOUGLAS BELL
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Waikapū, Hawai'i 96793
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WATER USE PERMIT APPLICANT PRO SE

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

Surface Water Use Permit Applications,) Case No. CCH-MA15-01
Integration of Appurtenant Rights and)
Amendments to the Interim Instream Flow) TESTIMONY OF DOUGLAS BELL;
Standards, Nā Wai 'Ehā Surface Water) EXHIBITS "2212-BELL-1" - "2212-BELL-
Management Areas of Waihe'e, Waiehu,) 2"
'Āao, & Waikapū Streams, Maui)
)
)
)

TESTIMONY OF DOUGLAS BELL

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2212, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waikapū, Tax Map Key ("TMK") No. (2) 3-5-012:008. I have lived on this land since I purchased it around 1970 from Edmund Rogers.

2. The deed to this land contains a reservation of appurtenant rights. I understand that because of this reservation, the appurtenant water rights may be extinguished. Nevertheless, as stated in my application, I reserve the right to claim appurtenant water rights. Therefore, in the event of a legal determination that these appurtenant rights were not extinguished, I am providing further information regarding water use at the time of the Māhele.

3. We are a Native Hawaiian 'ohana who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778. Pursuant to Article XII, Section 7 of the Hawai'i

Constitution and Hawai'i Revised Statutes ("HRS") section 174C-101, our use of stream water to grow dryland kalo is a traditional and customary cultural practice serving a protected public trust purpose.

4. My domestic water use is also a protected public trust purpose.

5. Based on the information set forth below, if appurtenant rights survived the deed's reservation, I request recognition of appurtenant rights for TMK No. (2) 3-5-012:008 in the amount of 102,000 gallons per day. I request a Surface Water Use Permit for my current reasonable-beneficial use for TMK No. (2) 3-5-012:008 of 2,160 gallons per day, which was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

6. TMK No. (2) 3-5-012:008 is comprised of a portion of 'āpana 1 of Land Commission Award ("LCA") No. 3108 to Konohia, confirmed by Royal Patent No. 2814. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-5-012:008 at the time of the Māhele.

7. Attached as "2212-BELL-1" is a true and correct copy of LCA No. 3108 to Konohia.

8. Attached as "2212-BELL-2" are true and correct copies of the native testimony supporting LCA No. 3108.

9. The documents in 2212-BELL-1 and 2212-BELL-2, referring to LCA No. 3108, confirm that 'āpana 1, in the 'ili of Pilipili, was cultivated in wetland taro: the LCA itself labels the 'āpana as "aina kalo," and the native testimony notes there were "2 mookalo" in 'āpana 1. I understand that the phrase "'āina kalo" refers to a tract of land cultivated in lo'i kalo, and that the term "mo'o," when used in conjunction with "kalo," describes larger tracts of lo'i.

10. My land, TMK No. (2) 3-5-012:008, is 0.34 acre. As explained above, the entire parcel, covered by LCA No. 3108, was cultivated in wetland kalo.

11. Based on the Māhele documents in 2212-BELL-1 and 2212-BELL-2, if appurtenant rights survive the deed's reservation of rights, the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 0.34 acres using traditional methods.

12. It is my understanding that, on average, taking into account fallow lo'i and uncultivated areas such as banks between lo'i, healthy wetland kalo requires between 100,000 and 300,000 gallons of water per acre per day ("gad"), and that areas with greater proportions of lo'i in cultivation will require an amount closer to the upper end of this range.

13. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-5-012:008 is 102,000 gallons per day ("gpd") (0.34 acre x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

14. Currently, I divert water from the 'auwai that runs along Waikō Road, by using two 5/8 inch garden hoses to irrigate approximately .25 acre of my land, including my non-commercial garden of dryland kalo, 65 papaya trees, bananas, and tropical flowers, and my lawn.

15. As explained in my SWUPA, by utilizing the "bucket method," I estimated my water use for the above-stated purposes to be 2,160 gallons per day (180 gallons x 12 hours). Therefore, I am requesting a permit for this amount.

Reasonable-Beneficial Analysis

16. In the event of a legal determination that my appurtenant rights were extinguished, my existing use is still "reasonable-beneficial," defined as: "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a

manner which is both reasonable and consistent with the state and county land use plans and public interest.” Hawai‘i Revised Statutes § 174C-3.

17. The quantity I am requesting is necessary for the economic and efficient irrigation of my home garden, which includes bananas and dryland kalo for consumption by myself, ‘ohana, and neighbors. My use of the stream water is economic and efficient, as I use only the amount needed to irrigate my garden and lawn, and I implement measures to minimize water loss, including using garden hoses, which reduce evaporation and leakage.

18. My use of stream water to irrigate my garden is also consistent with the state and county land use plans and the public interest. My land is classified by the State as urban, and zoned by the County as agricultural. My water use on my land for domestic cultivation is in the public interest and fulfills a public trust purpose. Additionally, my cultivation of kalo in the traditional manner is also consistent with the public interest and is a protected public trust purpose.

Alternatives Analysis

19. I have always used a reasonable amount of ‘auwai water to maintain my non-commercial garden of fruits and flowers, along with other community members along this traditional ‘auwai. Other alternatives, such as municipal water, reclaimed wastewater, water from other ditch systems, desalinized water, and groundwater, are not practicable alternatives to the ‘auwai water from Waikapū Stream. Requiring me to pay for these alternatives instead of diverting the small amount of stream water via the ‘auwai would impose an unfair and impracticable cost on me and my family, given that I am a small, non-commercial, domestic water user who has always used the ‘auwai to water my home garden.

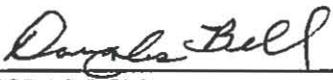
20. In the event my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, and because my 'ohana's exercise of our traditional and customary right to cultivate dryland kalo is constitutionally protected, I am not required to provide an alternatives analysis to show that I have no practicable alternative source of water. My appurtenant right is for stream water, not for water from any other source, and my exercise of this right enjoys maximum protection and first priority under the law. Nonetheless, the Alternatives Analysis set forth in my SWUPA remains applicable, true, and correct.

SUMMARY

21. In sum: (1) my domestic water use is a protected public trust purpose; (2) my 'ohana's traditional and customary right to grow kalo is a protected public trust purpose; (3) if appurtenant rights survived the deed's reservation for TMK No. (2) 3-5-012:008, the exercise of these appurtenant rights is a protected public trust purpose, and I am entitled to 102,000 gallons of water per day; (4) at this time, I request a permit for my current and reasonable-beneficial uses on the property of 2,160 gallons per day, and this modest amount will be used to irrigate my non-commercial garden and lawn, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

I, Douglas Bell, do declare under penalty of law that the foregoing is true and correct.

Dated: Waikapū, Hawai'i, 1/26/16.



DOUGLAS BELL
WATER USE PERMIT APPLICANT PRO SE



Uku fau tau \$5.00

W. L. Lee
 G. M. Robertson
 C. H. Smith
 S. Tekaulahar

Honolulu April 19, 1853

Lotu 3108 Honohia (Main)
 Kalepalepo, Pipili, Kaitapu, Eaha

Apana 1. Tahale ma Pipili Kaitapu, Maui. E ho omaka ma ke kaha wai kahi Kama o kua, a e holo

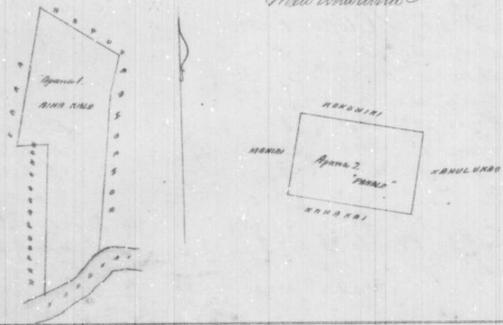
Mau	72'	Pikina	6'	Ala i feli ana i kaha wai	
Mau	42 1/2'	Pikina	8'	"	
Mau	6 1/2'	Pikina	3.90	"	Kapupakohoo
Mau	18 1/2'	Pikina	1.05	"	"
Mau	57'	Komohana	2.28	"	"
Kama	10'	Komohana	3.47	"	Kaa
Mau	89'	Pikina	73	"	Kapupakohoo
Kama	4'	Komohana	3.63	"	a hiki ma ke hiki ma 1 1/2 Eka

Apana 2. Tahale ma Kalepalepo, Maui. E ho omaka ma kaha wai kahi Komohana Kama, a e holo

Mau	10'	Pikina	53'	Ala i feli ana ma Kahi	
Kama	80'	Pikina	70	"	Komohiki
Kama	10'	Komohana	58	"	Kahulaha
Mau	80'	Komohana	70	"	Kahakai a hiki i ke hiki maui 1/10 Eka

E. Bailey
 Mea Anahana

Honolulu, Maraki 1, 1853



SCALE
 Apana 1 2 Kahulaha = 1/10 Eka
 2 1/2 =

Uku fau tau
 W. L. Lee
 G. M. Robertson
 C. H. Smith
 S. Tekaulahar

Honolulu April 19, 1853

Wai Pua Lea # 8
H. L. Lee

G. W. Robertson
J. Kaulahoa
J. H. Smith

Honolulu 1 Sep 1852

Hele 3108 Konoia

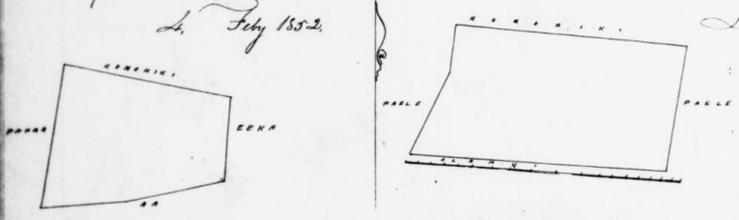
Waihuhi Kula Maui

Apawa 1 Kula ma Pua Ehoomaka ana ma te kiki i Akau, a e holo ana, Num. 7, No. 176 pauntia e pili ana i te Kono-hiki Num. 29, No. 276 pauntia e pili ana ma Pua Num. 83 No. 250 pauntia e pili ana i te Alanui, No. 125 No. 250 pauntia e pili ana ma Pua, No. 18 1/2 No. 270 pauntia e pili ana ma Kono-hiki i te kiki mua, 2 1/2 Eka.

Apawa 2, Kula ma Waihi. E hoomaka ana ma te kiki i Akau, a e holo ana, Num. 78 No. 632 pauntia e pili ana i te Kono-hiki Num. 5 No. 308 pauntia e pili ana i te Eka, Num. 79 No. 278 pauntia e pili ana i te Aaa, Num. 86 No. 222 pauntia e pili ana i te Aaa, No. 10 No. 280 pauntia e pili ana i te Papea, i te kiki mua, 2 1/2 Eka.

L. Feb 1852

A. F. Turner
Luna ana aina



Wai Pua Lea # 7
H. L. Lee

G. W. Robertson
J. Kaulahoa
J. H. Smith

Honolulu 1 Sep 1852

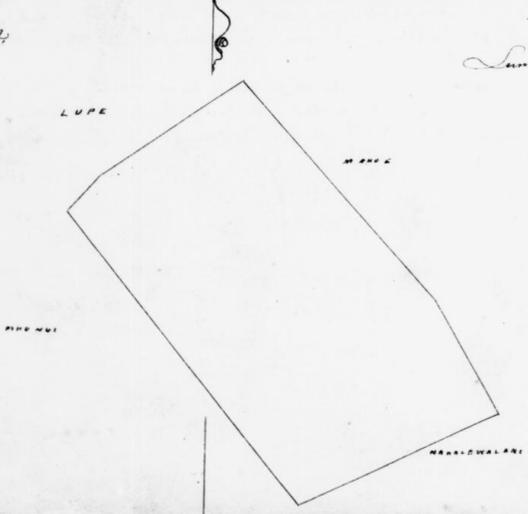
Hele 5037 Kepara

Wailama Kipahulu Maui

Hele o Anani Wailama Kipahulu Maui
E hoomaka ana ma te kiki i Kama a e holo ana, No. 11 1/2 No. 940 pauntia e pili ana i te Pihouie, No. 120 pauntia e pili ana i te Lupe, No. 55 No. 427 pauntia e pili ana i te Lupe, Num. 26 No. 730 pauntia e pili ana i te Napu, Num. 52 1/2 No. 250 pauntia e pili ana i te Kahi, Num. 62 No. 550 pauntia e pili ana i te i te Kahaloaalani i te kiki mua, 5 1/2 Eka.

20 April 1852

A. F. Turner
Luna ana aina



11034. George Shaw

July 13. 1849.

69.

To the Honorable H. C. Perkins. On the 13th of July 1849, he has received
from the Honorable H. C. Perkins, Maui, Hawaii

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3108. Hawaii

Letter to the Honorable H. C. Perkins. On the 13th of July 1849, he has received
from the Honorable H. C. Perkins, Maui, Hawaii

- 1. Maui
- 2. Hawaii
- 3. Kahoolawe
- 4. Molokai
- 5. Lanai
- 6. Oahu

Maui 1.2 on the 13th of July 1849, a letter in which he has received from the Honorable H. C. Perkins, Maui, Hawaii
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Molokai 1.2 on the 13th of July 1849, a letter in which he has received from the Honorable H. C. Perkins, Maui, Hawaii
Lanai 1.2 on the 13th of July 1849, a letter in which he has received from the Honorable H. C. Perkins, Maui, Hawaii
Oahu 1.2 on the 13th of July 1849, a letter in which he has received from the Honorable H. C. Perkins, Maui, Hawaii

- 1. Maui
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- 4. Molokai
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 and Waikapū Streams, Maui)
 _____)
)

WITNESS LIST

PARTY: DOUGLAS BELL

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Douglas Bell	Need for and use of Nā Wai 'Ehā water	2212-BELL-1 to - 2

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)
)

EXHIBIT LIST

PARTY: DOUGLAS BELL

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2212-BELL-1	LCA No. 3108:1	Testimony of Douglas Bell	
2212-BELL-2	Native Testimony, Native Testimony translation, Foreign Testimony supporting LCA No. 3108:1	Testimony of Douglas Bell	