

CORDELL CHANG
2315 Kahekili Highway
Wailuku, Hawai'i 96793
(808) 244-8230

2016 FEB -8 AM 9: 50

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 CORDELL CHANG;
Standards, Nā Wai 'Ehā Surface Water) EXHIBIT "2221-CHANG-1"
Management Areas of Waihe'e, Waiehu,)
'Iao, & Waikapū Streams, Maui)
)
)
)
)

TESTIMONY OF CORDELL CHANG

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") Nos. 2221 and 2222N, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-006:004. I have lived on this land since about 1984. My family held this land since the time of the Māhele.

2. 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 intended use of stream water is a traditional and customary cultural practice that is a protected public trust purpose.

3. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-2-006:004 in the amount of 375,000 gallons per day. I request a

Surface Water Use Permit for my current and future reasonable-beneficial use for TMK Nos. (2) 3-2-006:004 of 151,125 gallons per day, of which 1,125 gallons per day was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

4. TMK No. (2) 3-2-006:004 includes all of one Land Commission Award (“LCA”), LCA No. 3805, confirmed by Royal Patent No. 5352. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-2-006:004 at the time of the Māhele.

5. Attached as “2221-CHANG-1” are true and correct copies of LCA No. 3805 to Lauhoe and the Native Register supporting the award (both the original document and a partial transcription and translation).

6. The documents in 2221-CHANG-1, referring to LCA No. 3805, confirm that my land was cultivated in wetland kalo during the time of the Māhele. The Native Register for LCA No. 3805 states the land included “forty two wetland taro patches, and a patch of pandanus (lauhala)....”

7. Based on the existence of ancient lo’i kalo walls on my land, I believe that the majority of my land was in wetland kalo cultivation at the time of the Māhele, and just a small portion was pandanus.

8. My land, TMK No. (2) 3-2-006:004, is approximately 1.29 acres. Based on the documents in 2221-CHANG-1, I estimate approximately 1.25 acres of my land was cultivated in wetland kalo during the time of the Māhele.

9. It is my understanding that, on average, taking into account fallow lo’i and uncultivated areas such as the 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 cultivation will require an amount closer to the upper end of this range.

10. Thus, in my estimation, the water right appurtenant to TMK (2) 3-2-006:004 is 375,000 gallons per day ("gpd") (1.25 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

11. Currently, I receive water from the kuleana 'auwai on the south side of Waihe'e River, which receives water from Waihe'e River at the Waihe'e and Spreckels diversions. I use a modest amount of water from the 'auwai that runs along the northwest section of my land by using a three-inch pipe.

12. This water irrigates our farm, which includes such things as bananas, tī leaf, ulu, coconut, papaya, and other fruits and vegetables. We feed ourselves, family, and people who work on our farm, and we donate some of our fruits and vegetables to churches and non-profit organizations to feed the homeless. We also sell some of our fruits and vegetables to offset the costs associated with our farm and to provide fresh, local food to the community. On April 30, 2008, we were farming only 0.45-acres of our 1.29 acres, and to estimate my existing water use on April 30, 2008, I used a water duty of 2,500 gallons per acre per day, which is the amount of water I understand the Water Commission allocated for diversified agriculture in the Waiāhole case, or 1,125 gpd (0.45 acres x 2,500 gad).

13. Because my existing use of water as of April 30, 2008 was limited by the lack of availability of sufficient water, I have been unable to grow kalo in the ancient lo'i on my land, as my 'ohana historically did. Accordingly, I request an additional amount of water to grow 0.5

acres of wetland kalo. Based on the water duty for kalo, I estimate I will need 150,000 gpd in order to cultivate 0.5 acres of healthy wetland kalo (0.5 acres x 300,000 gad).

14. Therefore, I request a total of 151,125 gpd for the purpose of irrigating my garden and restoring ancient lo'i kalo on my land (1,125 gpd + 150,000 gpd).

Reasonable-Beneficial Analysis

15. My existing use is "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 in which is both reasonable and consistent with the state and county land use plans and public interest." Hawai'i Revised Statutes § 174C-3.

16. The quantity that I am requesting is necessary for the economic and efficient irrigation of my farm. My use of the stream water is economic and efficient, as I use only the amount required to irrigate my farm, and I implement measures to minimize water loss, including using garden hoses, a water tank, and drip irrigation, which reduce evaporation and leakage.

17. My use of the 'auwai stream water to irrigate my farm is also consistent with the state and county land use plans and the public interest. My land is classified by the State as agriculture, and zoned by the County as agricultural. My water use on my land for our farm cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

18. Because my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, and we have a traditional and customary right to grow kalo as a native Hawaiian 'ohana, 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, 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 the Waihe'e River. Requiring me to pay for these alternatives instead of diverting a modest amount of stream water via the 'auwai that runs alongside my land would impose an unfair and impracticable cost on me, given that I am a small water user who has always used the 'auwai that runs alongside my land to water my plants and grow my fruits and vegetables.

SUMMARY

19. In sum: (1) my 'ohana's traditional and customary right to grow kalo is a protected public trust purpose; (2) my domestic water use is a protected public trust purpose; (3) the exercise of my appurtenant right is a protected public trust purpose; (4) because I have appurtenant rights for TMK No. (2) 3-2-006:004, I am entitled to 375,000 gallons per day; (5) at this time, I request a permit for my use of 151,125 gallons per day, of which 1,125 gpd was the existing use as of April 30, 2008, for my farm and lo'i kalo, which is a reasonable-beneficial use of stream water for which there is no practicable alternative.

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

Dated: Waihe'e, Hawai'i, 1/30, 2016.

Cordell Chang
CORDELL CHANG
WATER USE PERMIT APPLICANT PRO SE

Uku Pau Loa \$ 3.00

W. L. Lee
G. M. Robertson
J. H. Smith
J. Kekaulaoo

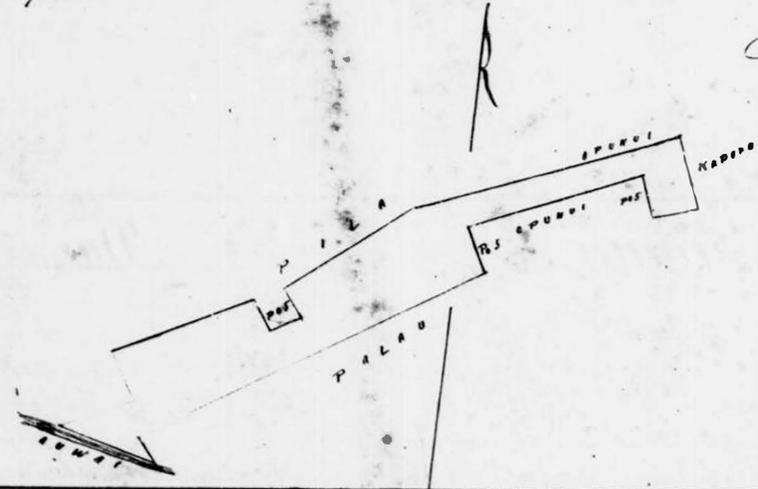
Honolulu Julai 12, 1852.

Helu 3805 Lautoo

Waikae Kani

Kh 2 In. Ili Puhouolu. Choomaka ke ana ma ke kiki Akau & Kaale Akau 1 Komohana
47 Rh. a hiki ma ke kiki Nema o Kila. Akau 43 1/4 Komohana 53 Rh. Palau. Akau 61 1/2
Hik. 145 Rh. Palau. Akau 55 1/4 Hik. 535 Rh. Palau. Akau 21 1/4 Komohana 85 Rh.
Palima. Akau 65 1/2 Hik. 325 Rh. Palima & Opunui. Nema 21 1/4 Hik. 79 Rh. Palima
Akau 7 1/4 Hikina 75 Rh. Palau. Akau 21 1/4 Komohana 138 Rh. Ili Kapiko. Nema 66 1/2 Komoh.
485 Rh. Opunui & Pila. Nema 51 Komohana 267 Rh. Pila. Nema 37 Hikina 62 Rh.
Palima Nema 62 Komohana 61 Rh. Palima Akau 34 1/2 Komohana 66 Rh. Palima
Nema 63 Komohana 263 Rh. Pila. Nema 33 Hik. 93 Rh. Palima. Nema 62 Komohana
145 Rh. Palima. Nema 77 1/4 Hikina 174 Rh. Auwai a hiki ma ke Pahu mua, a maloko
ia anafuni 1 29/100 Eka.

John T. Gover
Ma ana aino



Uku Pau Loa \$ 5.00

W. L. Lee
G. M. Robertson
J. H. Smith
J. Kekaulaoo

Honolulu Julai 12, 1852.

Helu 3962 Napukeha

Waikae Kani

Kh 2 In. Apana 1 Ili Kalofoe. Choomaka ke ana ma ke kiki Hikina Akau o Mahoe Akau 17 1/4
Komohana 421 Rh. Kula Konoehiki. Nema 54 Komohana 657 Rh. Kalia. Nema 47 Komohana
268 Rh. Kalia. Akau 64 1/2 Hikina 216 Rh. Mahoe & Palima Akau 59 Hik. 372 Rh. Mahoe & Palima
Nema 33 1/2 Hik. 88 Rh. Palima. Nema 46 1/2 Komohana 89 Rh. Mahoe Nema 26 1/2 Hik. 64 Rh.
Mahoe. Akau 73 1/4 Hik. 113 Rh. Mahoe Akau 13 1/4 Komohana 47 Rh. Mahoe. Akau 76 1/4 Hik.
159 Rh. Mahoe. Nema 13 Hik. 58 Rh. Mahoe Akau 79 1/4 Hik. 172 Rh. Mahoe a hiki ma
ke kiki mua, a maloko ia anafuni 1 53/100 Eka.

Apana 2 Ili Kalofoe. Choomaka ke ana ma ke kiki Nema o Mahoe. Nema 35
Hik. 170 Rh. Palima. Akau 79 Hik. 390 Rh. Palima Akau 53 Hik. 69 Rh. Palima Nema
47 1/2 Hik. 123 Rh. Palima Akau 62 3/4 Hik. 514 Rh. Kula Konoehiki Akau 14 1/4 Hik. 509 Rh.
Nema 73 1/4 Komohana 132 Rh. Kula Konoehiki & Mahoe. Nema 84 1/4 Komohana 133 Rh. Kula
& Mahoe. Nema 60 1/2 Komohana 457 Rh. Mahoe, a hiki ma ke Pahu mua, a maloko
ia anafuni 2 44/100 Eka.

John T. Gover
Ma ana aino

3801 Lupua *Konapala Jan 18 1861*
 Aloha nuku e na lina
 .14 hōma aina. Ke hoopiū aku nei au
 ia nuku au hōi Kuleana aina
 aia iloko o Hāglia ke ahupuaa
 he iti aina o ka inoa o Kalachote
 he pahale kikahi in. 2 mau uala
 aia iloko o Honohōma
 Na Lupua

3802 Loholohē *Kaa Jan. 18 1861*
 Aloha nuku e na lina
 .14 hōma aina. Ke hoopiū aku nei
 au ia nuku au hōi mau lei
 he kula uala kikahi aia ma
 lalo o Kākula, aia ma Kikiāpū
 Na Loholohē

3803 Lalahua *Honohōma Jan 18 1861*
 Aloha nuku e na lina
 .14 hōma aina. Ke hoopiū aku nei au
 ia nuku au hōi Kuleana aina. he
 kula uala he pia aina
 Na Lalahua

3805 Lauhāe *Guahuahe 1861*
 He palapala Kuleana
 .14 He Kikāpū māi hōi mau lei
 kato. he Kamaāna Kūmānāka
 lei. he pia lauhāe Kuleana
 hale Pau
 Na na Lauhāe
 Kāihē
 Māni

Partial Translation and Transcription of Native Register for LCA No. 3805

"... kou mau loi kalo

he kanaha kumalua

loi, he pae lauhala..."

"...I have forty two wetland taro patches,

and a patch of pandanus (lauhala)...."

CORDELL CHANG
2315 Kahekili Highway
Wailuku, Hawai'i 96793
(808) 244-8230

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) EXHIBIT LIST
Standards, Nā Wai 'Ehā Surface Water)
Management Areas of Waihe'e, Waiehu, 'Īao)
and Waikapū Streams, Maui)
)
)
)

EXHIBIT LIST

PARTY: CORDELL CHANG

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2221-CHANG-1	LCA No. 3805 and Native Register, Native Register Transcription and Translation	Testimony of Cordell Chang	