

JAMES PHILLIP DODD
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2016 FEB -5 AM 9:42

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 JAMES PHILLIP DODD;
Standards, Nā Wai 'Ehā Surface Water)	EXHIBITS "2224-DODD-1" - "2224-DODD-
Management Areas of Waihe'e, Waiehu,)	4"
'Īao, & Waikapū Streams, Maui)	
)	
)	

TESTIMONY OF JAMES PHILLIP DODD

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2224, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waikapū, Tax Map Key ("TMK") No. (2) 3-5-012:005. I have lived on this land since I purchased it around 1977.

2. The deed to this land contains an assignment of "water rights" to Wailuku Sugar in 1967. 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. My domestic water use is a protected public trust purpose.

4. Because my land is adjacent to Waikapū Stream and I had an existing use of stream water on April 30, 2008, I am an existing riparian user under Hawai‘i law, which is protected under Article XI, Section 7 of the Hawai‘i Constitution.

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) 3-5-012:005 in the amount of 96,000 gallons per day. I request a Surface Water Use Permit for my current reasonable-beneficial use for TMK No. (2) 3-5-012:005 of 4,113 gallons per day, which was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

6. TMK No. (2) 3-5-012:005 is comprised of a portion of Land Commission Award (“LCA”) No. 460 to Puupahoehoe, confirmed by Royal Patent No. 2165. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-5-012:005 at the time of the Māhele.

7. Attached as “2224-DODD-1” is a true and correct copy of LCA No. 460 to Puupahoehoe, as well as the native testimony supporting the award (both the original and the English translation).

8. Attached as “2224-DODD-2” is a true and correct copy of the map from the Office of Hawaiian Affairs’ Kīpuka Database, showing the boundaries for LCA No. 460 (in blue), and which has been marked to show the boundaries for TMK No. (2) 3-5-012:005 (in red).

9. Attached as “2224-DODD-3” is page 15 from my SWUPA, which includes a true and correct copy of the County tax map for TMK No. 3-5-012:005, as well as a diagram showing my existing water use on the parcel.

10. Attached as “2224-DODD-4” are pages 6 through 8 from my SWUPA, which include photographs depicting my surface water diversions and end uses. My use of stream water has not changed since the filing of the SWUPA.

11. The documents in 2224-DODD-1, referring to LCA No. 460, confirm that ‘āpana 1, in the ‘ili of Pilipili, was cultivated in wetland taro: the native testimony states there were numerous taro patches in ‘āpana 1, and also refers to “a kula.” The fact that TMK 3-5-012:005 is adjacent to the land of Pat Federcell (TMK 3-5-012:001), which shows extensive lo‘i kalo terracing, indicates my parcel was kalo land as well, as opposed to kula land.

12. My land, TMK No. (2) 3-5-012:005, is 0.32 acre.

13. Based on the Māhele documents in 2224-DODD-1 and the adjacency of my land to Mrs. Federcell’s kalo land, 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 0.32 acres using traditional methods.

14. 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.

15. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-5-012:005 is 96,000 gallons per day (“gpd”) (0.32 acre x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

16. Currently, I divert a modest amount of water from the ‘auwai that runs along Waikō Road, by placing a five-gallon bucket in the ‘auwai, along with several water hoses. Water flowing through the hoses is used to irrigate fruit trees, ti leaves, dryland kalo, herbs,

vegetables, and my lawn. The crops that I grow are used for subsistence purposes. I am requesting a permit for the amount of water necessary for these domestic uses.

17. I believe that 4,113 gpd is sufficient for my existing domestic water uses. I arrived at this number by using a modified "bucket method" to measure the flow rate from my two hoses. On October 11, 2008, each of my two hoses filled a 1-quart jar in 7 seconds. Based on those figures, I calculated the amount of water flowing over a 24-hour period as 4,113 gallons per day.

Reasonable-Beneficial Analysis

18. 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.

19. The quantity I am requesting is necessary for the economic and efficient irrigation of my home garden, which includes vegetables, herbs, and dryland kalo for consumption by myself, 'ohana, and neighbors. I also grow ti leaves. 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.

20. 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.

Alternatives Analysis

21. 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 that runs alongside my land 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 that runs alongside my land to water my home garden.

SUMMARY

22. In sum: (1) my domestic water use is a protected public trust purpose; (2) if appurtenant rights survived the deed's reservation for TMK No. (2) 3-5-012:005, my exercise of this right is a protected public trust purpose, and I am entitled to 96,000 gallons per day; (3) at this time, I request a permit for my current and existing reasonable-beneficial uses on the property of 4,113 gallons per day, and this 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, JAMES PHILLIP DODD, do declare under penalty of law that the foregoing is true and correct.

Dated: Waikapū, Hawai'i, 2/3/16.



JAMES PHILLIP DODD
WATER USE PERMIT APPLICANT PRO SE

Keolu 3301 Mahoe & Hamakua Waikapu Maui

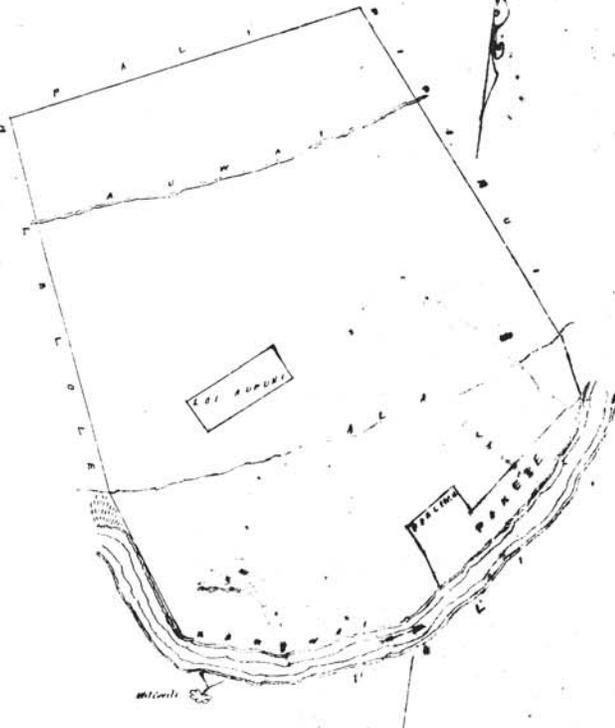
Keoluang 3301 mo Mahoe & Hamakua ili o Olohe Waikapu Maui
 Apana i Chomata ke ana ma ke kuaa Wiliwili kahi ana ma ka pali a e hiki AH 72° N
 400 Kk e pili ana i ke kahawai AH 45° N 100 Kk e pili ana i ke kahawai AH 25° N 76 Kk
 e pili ana me ka pali AH 34° N 55 Kk e pili ana me ka pali AH 42° N 120 Kk e
 pili ana me ka pali AH 37° N 53 Kk e pili ana me ka pali AH 45° N 313 Kk
 e pili ana me ka pali AH 19 1/2° N 123 Kk e pili ana me ka pali AH 37 1/2° N 756 Kk
 e pili ana me ka pali AH 73° N 718 Kk e pili ana me ka pali AH 15 1/2° N 758 Kk e pili
 ana me ka pali AH 28° N 427 Kk e pili ana me ka pali AH 19 1/2° N 756 Kk
 Ua haalele laka i ka Apana 2

Loi Aupuni maui ke kahi ma ke ala ma ka aia Komohana e ana ma
 AH 59° N 226 Kk i ke kahi ma alaila hiki AH 57 1/2° N 201 Kk AH 32 1/2° N 70 Kk
 ke 51 1/2° N 200 Kk AH 32 1/2° N 10 Kk i kahi komata i 1 1/2 Naulahae

April 27 1852

J. Bailey
 Keo ana aia

9.07
 1852



Uku Pau Loa 1/10

W. M. Robertson
 J. K. Kaulahoe
 J. H. Smith

Honolulu June 25 1852

Keolu 460 Pūpūhōhōe

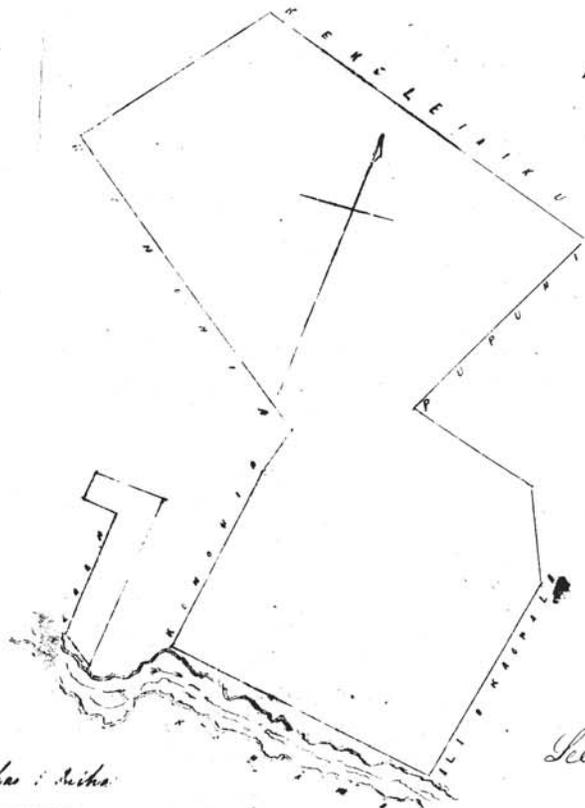
Waikapu Maui

Pūpūhōhōe ma ke ana ana i ke kuaa 460 mo Pūpūhōhōe ma ka ili o Pūpūhōhōe
 Maupuni o Maui
 Apana i Chomata i ke ana ma ke kahi AH 45° N 755 Kk e pili ana me ka pali AH 32 1/2° N 47
 Kk ma ke pali AH 32 1/2° N 200 Kk e pili ana me ka pali AH 32 1/2° N 200 Kk ma
 ke pali AH 32 1/2° N 200 Kk ma ke pali AH 32 1/2° N 200 Kk ma ke pali AH 32 1/2° N 200 Kk
 ma ke pali AH 32 1/2° N 200 Kk ma ke pali AH 32 1/2° N 200 Kk ma ke pali AH 32 1/2° N 200 Kk

ma te Kōwhiri Ake 15 $\frac{1}{2}$ Ki 100 Ah ma te Kōwhiri Ake 57 No 673 Ah ma te Kōwhiri Ake
 Ki 447 Ah ma te Kōwhiri a hiki ma Kahi i homaka i a ona loto via anapuni e hiki
 Ka $\frac{41}{100}$ o Ka Eka

Apana 2 E homaka i te ana ma te Kōwhiri e pili ana me te Kōwhiri a e hiki
 Ake 4 Ake 363 Ah ma te Kōwhiri Ake 89 No 141 Ah ma te Kōwhiri Ake 4 Ake 100
 Ah ma te Kōwhiri Ake 89 No 141 Ah ma te Kōwhiri Ake 4 Ake 100 Ah ma te Kōwhiri
 Ake 58 $\frac{1}{4}$ Ki 78 Ah ma te Kōwhiri a hiki ma Kahi i homaka i a onatiki via anapuni

C. Bailey
 Mea ana aima



2 Kōwhiri i Kahi

See Page 184, 13. Awaia

Uka Pau Loa Ake
 W. M. Robertson
 J. Turnbull
 C. L. Smith

Honolulu June 25 1852

Uka 3539 Kapulu

Kaikapu Maui

Kulana 3539 Kapulu Kaikapu Maui
 Apana 1 ili o Palama E homaka ma te Kōwhiri Ake via te Kōwhiri Ake Pūpū a e hiki Ake 7 $\frac{1}{2}$
 Ake 164 Ah e pili ana me Keakea Ake 18 $\frac{1}{2}$ No 34 Ah e pili ana me te Keakea Ake 35 $\frac{1}{2}$ Ake 157 Ah
 ma te Keakea Ake 50 $\frac{1}{2}$ Ake 38 Ah ma te Keakea Ake 51 $\frac{1}{2}$ Ake 178 Ah ma te Keakea Ake 51 $\frac{1}{2}$
 Ake 584 Ah ma te Pūpū Ake 65 No 112 Ah ma te Kōwhiri Ake 50 $\frac{1}{2}$ No 1127 Ah ma te
 ili o Ohia Ake 22 $\frac{1}{2}$ Ki 97 Ah ma te ili o Ohia Ake 71 $\frac{1}{2}$ Ki 517 Ah ma te Pūpū a hiki ma
 te Kōwhiri Ake $\frac{27}{100}$ Eka
 Apana 2 ili o Haani E homaka ma te Kōwhiri Ake via te Kōwhiri Ake Kōwhiri a e hiki
 e hiki Ake 81 $\frac{1}{2}$ Ake 555 Ah e pili ana me J Richardson Ake 5 $\frac{1}{2}$ No 555 Ah e pili ana me
 te J Richardson Ake 145 $\frac{1}{2}$ Ake 9 $\frac{1}{2}$ Ah e pili ana me J Richardson Ake 55 $\frac{1}{2}$ No 129 Ah e pili
 ana me J Richardson Ake 145 $\frac{1}{2}$ No 250 Ah e pili ana me J Richardson Ake 37 $\frac{1}{2}$ No
 Ah e pili ana me J Richardson Ake 145 $\frac{1}{2}$ No 250 Ah e pili ana me te Kōwhiri Ake
 ma te Kōwhiri Ake $\frac{17}{100}$ Eka

May 1, 1852

C. Bailey
 Mea ana aima

2224-DODD-1-P.2

Helu 429 Kavelohea

From Page 172

Hoohikiia o Puupahoe hoi
 Ua ike no au i kahi o Kavelohea e hoopii
 mai nei, he malawauke, aia ma Kahiki
 ma. Ioo, nona ma ia wahi mai a Auwai
 mai ka noho ana, a ia Kalawaraihou
 i kua wa i paia ka mea ililo ai ia ia
 aole au lohe ka mea i hemo ai, Ua
 ike au ka nui o ka loa malaila ia wa
 he mau no ka loa malaila

Wailuku Feb. 12 1847

Helu 462 Puupahoe hoi

Hoohikiia o Eka ma ka olelo a ke
 Akua. Ua ike no au ia mau aina o pau
 a Pe he opii aku nei ia oukou, o Ohia,
 o Pilipili, o ~~Kakelakela~~, o Kaamui, o Olohe,
 o kona mau palena, o ke ala a o
 Kaumukee ma ka Hik. ma ka Hema
 o ke Ala a me ke kai, ma ke Komohana
~~ma~~ ke huahine mauka pono o Waikapu
 he mau kula no iloko o ka pa aina
 He aina o Pilipili, he mau loi a he
 kula kona, o Kaamui he aina no ia,
 nona ke huahine mauka o Waikapu
 he mau loi no malaila a me ke kula
 maloko o ka pa aina o Olohe, he
 Loi no malaila a he kula no, wa
 kapu ia e Kimo i ke Ko manua
 o kela mau Loi i hoolimalimaila he
 rama ka waiwai i lilo malaila,
 a he Honu kahi a me na Kao he
 karaha, oia ka lilo no kela mau
 Loi

Mai kahiko loa mai no ka loaa ana o
 keia mau aina ia Puupahoehoe, Aole
 ona mea nana i keakea mai.

Hooihikiiia. Keili ma ka olelo a ke
 Akua, Wa ike no au i kahi o Puupahoehoe
 e hoopii mai nei, aia ma Waikapu
 o Ohia, o Pilipili, o Makahelakela
 o Haanui, o Olohe, no kona kaihua-
 ana mai kona. Kalainohoini ka
 inoa, no Keumoku mai ke Kalai-
 nohoino. Wa ike au i ka noho ana
 malaila, ma kahi avar no au o
 Waikapu, a hala kahi mau makahiki
 alaila hoi mai au a noho pu ma kou
 malaila, a ia wa lohe au he mau
 aina punoi kela no lakou, he
 kaai paakai o Ohia a me ke kula
 a he kai no hoi, mai ke aba ae
 mai a Kaumukee a me na kula
 eae e puli ana ma Wailuku, a he
 kula eae no iloko o ka pa aina o
 Waikapu, no Ohia, a he mau loi
 kahi he mau loi no ke Pilipili
 a he kula no hoi maloko o ka pa
 aina, O Haanui he mau loi no
 kona a me ke kula no, a no
 Haanui no hoi ke huakiwi o Waika-
 pu, o Makahelakela, he kula kona,
 o Olohe mau loi no kona a me
 ke kula, aia ma ka Akau o ka
 hale pule, He mau loi no
 kahi o Puupahoehoe i hoo lima lima

ia, he rama ke kumu, a he honu
kahi a me na kaas he kanaka, a he
Mama ke kahi i lilo no ka hana ana
a he ia maoli no kahi i lilo aku
A o ka mea nana i keakea o Haanui
Ua ae mai no oia no Haanui io no ia
aina.

Helu 418 Kalualani

Hooikiia o Kalehua ma ka olelo a ke Akua
Ua ike no au i kahi o Kalualani, aia ma
Kapaakukui ma Iao, noiu aku kona noho
ana malaila, no Mahune mai kou, a
no ka moi mai ko Mahune, he kanakolu-
kumanalima aie Ioi i haawi ai, a cha
ma kahi eae, a huiia he kanakolukuma-
maiva a pau, ole ona mea nana i kea-
keakea mai.

Hooikiia o Huhu ma ka olelo a ke Akua
Ua ike no au i kahi o Kalualani i hoopii mai
nei ia oukou, noiu aku kahi mau Ioi ona
no Mahune mai kou, a no Kamehameha III
mai ko Mahune, aia ma Kapaakukui
kauwahi ona he aina ohoa no ia, aia
ma Kaluauhi kahi ona, ole nae au ike
pono i ka mui o na Ioi malaila, ole
no hoi he mea ona nana i keakea

Relevant portions of the Native Testimony for LCA 460 to Puupahoehoe translated to English:

Eeka on February 12, 1847 testified that there were numerous taro patches and a kula in Pilipili. No one disputed his claim. Kaili testified that he knew of the lands in Pilipili and that there were numerous taro patches and a kula situated there.



Blue= LCA 460

Red=TMK 3-5-012:005

2224-DODD-2-P.1

EXHIBIT 3

Photographs of surface water diversion and end uses

These are true and correct copies of photos taken on October 11, 2008. They accurately depict conditions at the time the photos were taken.

This is where my neighbor Pat Federcell and I divert water from the North Waikapū Kuleana `Auwai, which runs along Waikō Road. Two of the hoses are hers; two are mine.



End Uses:



2224-DODD-4-P.2



2224-DODD-4-P.3

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 Amendments to the Interim Instream Flow) WITNESS LIST
 Standards, Nā Wai 'Ehā Surface Water)
 Management Areas of Waihe'e, Waiehu, 'Īao)
 and Waikapū Streams, Maui)
)
)
)

WITNESS LIST

PARTY: JAMES PHILLIP DODD

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
James Phillip Dodd	Need for and use of Nā Wai 'Ehā water	2224-DODD-1 to -4

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and Waikapū Streams, Maui)
))
))

EXHIBIT LIST

PARTY: JAMES PHILLIP DODD

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2224-DODD-1	LCA No. 460, Native Testimony, Native Testimony Translation	Testimony of James Phillip Dodd	
2224-DODD-2	Map from the Office of Hawaiian Affairs Kīpuka Database showing the boundaries for TMK No. (2) 3-5-012:005 and LCA No. 460	Testimony of James Phillip Dodd	
2224-DODD-3	County tax map for TMK No. (2) 3-5-012:005 and diagram of water use	Testimony of James Phillip Dodd	
2224-DODD-4	Photographs of my surface water diversions and end uses	Testimony of James Phillip Dodd	