

RICHARD EMOTO & ROYS ELLIS

2010 FEB -8 AM 9:59

415 River Rd.

Wailuku, Hawai'i 96793

(808) 242-8459

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 RICHARD EMOTO AND
Standards, Nā Wai 'Ehā Surface Water)	ROYS ELLIS; EXHIBITS "2227-EMOTO-1"
Management Areas of Waihe'e, Waiehu,)	- "2227-EMOTO-3"
'Īao, & Waikapū Streams, Maui)	
)	
)	

TESTIMONY OF RICHARD EMOTO AND ROYS ELLIS

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2227, filed with the Commission on Water Resource Management on April 23, 2009, for two parcels in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-004:011 ("Parcel 11") and TMK No. (2) 3-2-004:012 ("Parcel 12"). I, Richard Emoto, am Mr. Ellis' business partner and I currently own this land. I, Roys Ellis, have lived on this land for over 20 years.

2. The domestic water use on this property is a protected public trust purpose.

3. Based on the information set forth below, we request recognition of appurtenant rights for TMK Nos. (2) 3-2-004:011 and :012 in the amount of 253,500 gallons per day. We

request a Surface Water Use Permit for Mr. Ellis' current reasonable-beneficial use for TMK Nos. (2) 3-2-004:011 and 012 of 432,000 gallons per day, which was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

4. Parcel 11 is 0.8 acres and is wholly comprised of Land Commission Award ("LCA") No. 4405-P, 'āpana 1, confirmed by Royal Patents No. 4120 and 6149. Parcel 12, which is 0.045 acres situated within Parcel 11, is a pō'alima of LCA No. 7713:24 to Victoria Kamamalu. We are attaching various Māhele documents that confirm water use on Parcels 11 and 12 at the time of the Māhele.

5. Attached as "2227-EMOTO-1" is a true and correct copy of LCA No. 4405-P to Moo and the original and transcribed foreign testimony supporting LCA No. 4405-P.

6. Attached as "2227-EMOTO-2" is a true and correct copy of the translated survey boundaries for LCA No. 4405-P, which shows the pō'alima within LCA 4405-P.

7. True and correct copies of the County tax maps for Parcels 11 and 12 are also attached as "2227-EMOTO-3."

8. The documents in 2227-EMOTO-1, referring to LCA No. 4405-P:1, confirm that 'āpana 1, in the 'ili of Waihalulu, was cultivated in wetland kalo: the LCA itself labels the parcel as "aina kalo," which means "taro land;" the foreign testimony describes LCA No. 4405-P:1 as containing "20 patches." We understand the phrase "'āina kalo" refers to a tract of land cultivated in wetland kalo. The existence of ancient rock walls further indicates that Parcel 11 was cultivated 100% in wetland kalo at the time of the Māhele.

9. The document in 2227-EMOTO-2 confirms that Parcel 12 is a pō'alima. As a pō'alima, 100% of Parcel 12 was cultivated in wetland kalo at the time of the Māhele.

10. Based on the Māhele documents in 2227-EMOTO-1 through 2227-EMOTO-3, my land has appurtenant rights, and the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 0.845 acres using traditional methods.

11. It is our 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.

12. Thus, in my best estimation, the water rights appurtenant to TMK Nos. (2) 3-2-004:011 and :012 is 253,500 gallons per day ("gpd") (0.845 acre x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

13. Currently, Mr. Ellis uses water from the kuleana 'auwai on the north side of Waihe'e River, which receives water from a pipe in the Spreckels Ditch and also directly from Waihe'e River. The open 'auwai splits in two; one of the branches flows through my property. The water enters the land through a pipe that directs the flow through a water wheel that generates hydroelectricity. From there, some of the water is used for domestic purposes. The rest flows through the lo'i kalo via an open ditch. Some water is taken by pipe and sprinkler system to water the lawn and non-commercial garden, which includes foods like beans, broccoli, cherry tomatos, daikon, and eggplant. We are requesting a permit for the amount of water necessary to run the water wheel and irrigate the kalo and garden and for domestic uses.

14. The water wheel requires approximately 432,000 gpd to generate a sufficient amount of hydroelectricity (which is supplemented with photo-voltaic panels). This calculation is based on measuring how many gallons per minute the wheel requires in order to produce the necessary electricity. It uses 300 gallons per minute (300 gallons per minute x 1440 minutes per day = 432,000 gpd). This is the minimum amount of water needed to generate electricity for the home and this was the amount of water in use for these purposes on April 30, 2008.

15. Nearly all of the water that runs through the water wheel and the lo'i kalo is returned to the 'auwai, where it flows to the neighbor's property and then back to Waihe'e River. After domestic usage and a small amount of seepage, we estimate that approximately 430,800 gpd is returned to the 'auwai.

Reasonable-Beneficial Analysis

16. "Reasonable-beneficial use" is 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. Our use of water is "economic and efficient" because we only use the amount we need to operate the water wheel, irrigate the lo'i and non-commercial garden, and for domestic purposes. We continually work to make water use on the land more efficient by using pipes to minimize water loss through evaporation and seepage, and using green manure to protect the soil from erosion, and after minimal consumptive uses, the remaining water flows to the neighbor and back to Waihe'e River.

18. The quantity we are requesting is necessary for the (1) economic and efficient operation of the water wheel, which generates domestic electricity; and (2) irrigation of the lo'i

kalo and home garden, which includes beans, broccoli, daikon, eggplant, and cherry tomatoes for consumption by Mr. Ellis, our 'ohana, and neighbors; and (3) domestic uses.

19. The use of stream water to irrigate the lo'i kalo and home garden is also consistent with the state and county land use plans and the public interest. The land is classified by the State as agricultural, and zoned by the County as agricultural. The water use on the land for domestic cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

20. Because the land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, we are not required to provide an alternatives analysis to show that we have no practicable alternative source of water. Our appurtenant right is for stream water, not for water from any other source, and our exercise of this right enjoys maximum protection and first priority under the law. Nonetheless, the Alternatives Analysis set forth in SWUPA No. 2227 remains applicable, true, and correct.

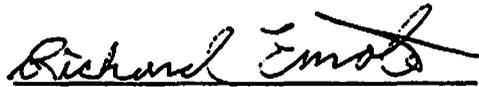
SUMMARY

21. In sum: (1) our domestic water use is a protected public trust purpose; (2) the exercise of my appurtenant right is a protected public trust purpose; (3) because we have appurtenant rights for TMK Nos. (2) 3-2-004:011 and 012, we are entitled to at least 253,500 gpd; (4) at this time, we request a permit for the current and existing reasonable-beneficial uses on the property of 432,000 gallons per day, which is used to operate a water wheel to produce electricity, irrigate lo'i kalo and a non-commercial garden and lawn, and for domestic purposes,

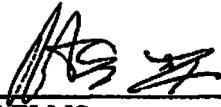
which are alone and cumulatively a reasonable-beneficial use of stream water, for which there is no practicable alternative.

We, RICHARD EMOTO and ROYS ELLIS, do declare under penalty of law that the foregoing is true and correct.

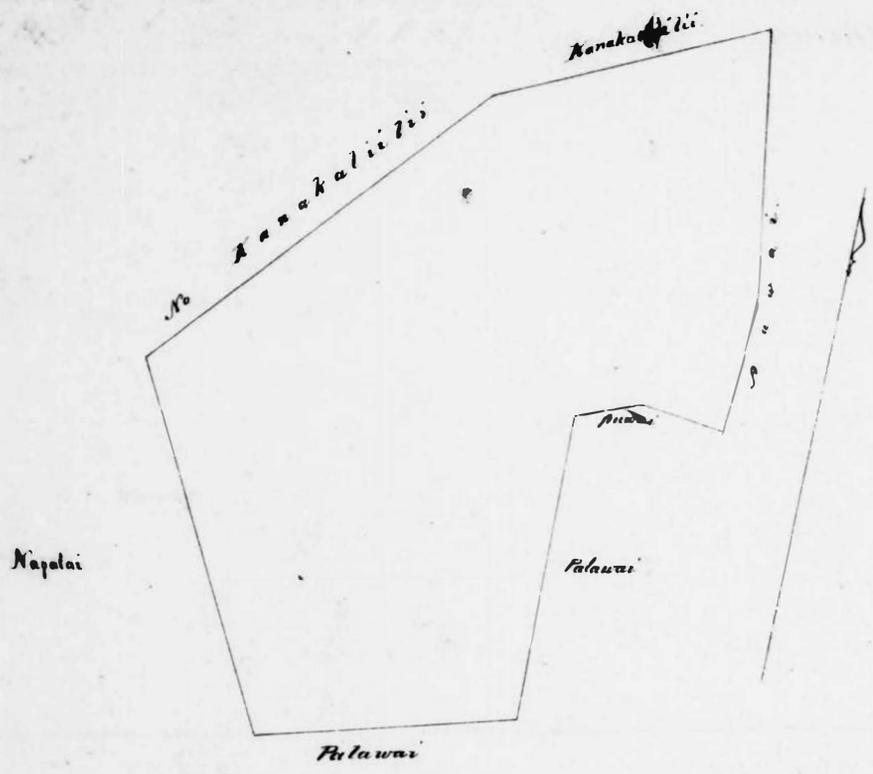
Dated: Waihe'e, Hawai'i, 25 NOV 2015.



RICHARD EMOTO
WATER USE PERMIT APPLICANT PRO SE



ROYS ELLIS
WATER USE PERMIT APPLICANT PRO SE



Ukupaoua

#6.

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

Honolulu Augate 5, 1854.

Helu 4405 P 1000

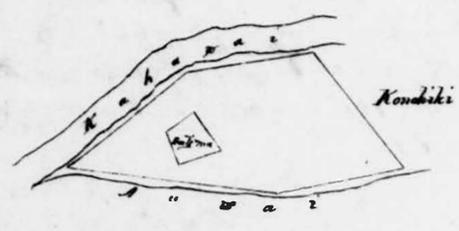
Waikaeo Maui.

Apana aina Kale ma ka ili o Waikaeo, Waikaeo, Maui.
 E hoomaha ma ka kahi Hihina a e holo
 Akau 57 1/2 Komohana 2.53 Kk. ma ka Komohiki
 Kama 83 1/2 Komohana 2.20 " " Kahawai
 Kama 53 1/2 Komohana 2.68 " " "
 Kama 82 Hihina 3.70 " " aubai
 Akau 80 1/2 Hihina 2.22 " " ahiki ma ka kahi mua. 3/10 Eka

Palama. Ma ka kahi Akau a ana i ka Akau 74 No. 176 Kk. i ka kahi mua. Alala holo Ah. 72 1/2 Kk. 74 Kk.,
 Ah. 20 Kk. 19 Kk., Kk. 56 Kk. 57 Kk., Kk. 19 1/2 Kk. 57 Kk. a pumi - 30 Eka

Hailuhw Sulai 13, 1854.

E. Bailey
 Maa ana aina



2 Chains = Iuka

Ukupaoua

#3.

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

Honolulu Augate 7, 1854.

N^o 2 is bounded. Mauka, by the Honohiki's land. Hakakuloo, by
Kehimooku's land. Makai, by Kekeramooku's lot. Waiuku, by the id of
Makaaha.

C.L. 405 Mos.

Mini's Suc. Kahu's duly sent Mos's Claim to Kahu. His lands consists
of 4 pieces in Waikae, Maui.

- N^o 1. is 20 lots and one kula in Waikaluku-
- " 2. " " " " " " " Waipae 3rd
- " 3. " 8 " in Ohuakolea.
- " 4. " 4. " " Waipae 1st

The Claimant rec^d N^o 2. from Nahu in 1829. N^o 1. from Ma-
kapuu in 1846, and he from Gov. Kihianawa, and N^o 3. from Kaahi
in 1850, and he from Amakala, and he from Gov. Kihianawa, and
N^o 4. from Kaalepo before 1839. His title is not disputed. There are
5 portions lots in N^o 1. and two in N^o 2.

N^o 1. is bounded. Mauka, by the Creek. Hakakuloo, by the
Pat. Makai, by Pulu's land. Waiuku, by the Creek.

N^o 2. is bounded. Mauka, by Kamakaala's land. Hakakuloo,
by the Govt lot. Makai, by Kaalepo's land. Waiuku, by the Creek.

N^o 3. is bounded. Mauka, by Kaahi's land. Hakakuloo, by
the same. Makai, by the same. Waiuku, by Kaanua's land.

N^o 4. is bounded. Mauka, by Kamakaala's land. On other
three sides, by Kaalepo's land.

C.L. 405 Kaalepo.

The Ott's wife, Kaahawai made oath that this Claim was
duly entered.

L. Kaawwai Sw. The Ott's land consists of 3 pieces in Waikae,
Maui.

- N^o 1. is an iti called Waipae 2.
- " 2. " 2 Mows of Kalo in Waipae 4th
- " 3. " 6 lots, Kula, and House lot in the id of Lono a -
kaulana.

No. 4405 M Palau

July 26, 1849

Kawelohelii sworn He has seen Kekahio had written in early Feb. 1848. He has seen 2 taro section in Puhanolu ili of Waihee. Land from Kekana in 1835. No objection. 3 Poalimas in there.

Mauka	Big ditch
Kahakuloa	Kawelohelii's land
Makai	Land fence
Wailuku	Mahoe

No. 4405 N Kaaukelehonua

July 26, 1849

Claimant sworn and stated that he had seen Kahookola write (the claim). Maluhia sworn He has seen 3 sections in the ilis of Waihee.

Section 1 - 30 patches at Waipukua

Mauka	Land fence
Kahakuloa	Kamakiaai
Makai	Edge ditch
Wailuku	Maiuielua

Section 2 - Pond at Makaaka

Mauka	Land fence
Kahakuloa	Wili
Makai	Poalima
Wailuku	Konohiki

Section 3 - House lot at Makaaka

Ecuse lot obtained in 1844, no objection. First section from Eleleioho during the time of Kaahumahu I. Two sections at Makaaka from Keahi. 3 Poalimas in first section.

No. 4405 O Keaka

July 26, 1849

Page 285

Keaka sworn "I have witnessed - Napela had written my deed before 1848. Nalau sworn He has seen two sections in these ilis of Waihee.

Section 1 - 42 patches at Waipukua

Mauka	Konohiki
Kahakuloa and makai	Kekunoku
Wailuku	Makaaka ili

First section from Keakai in 1843. Land and pond from Kaili at the time of Kam I no objection, 5 poalimas in there.

No. 4405 P Noc

July 26, 1849

Mioi sworn He has seen - Kekahio had written (claim) before 1848. He has seen also 4 sections in the ilis of Waihee.

Section 1 - 20 patches and pasture at Waihalulu

Mauka	Stream
Kahakuloa	Pali
Makai	Puhi
Wailuku	Stream

Section 2 - 20 taro patches at Waipae 3

Mauka	Kanealeala
Kahakuloa	Land fence
Makai	Kalepo
Wailuku	Stream

Section 3 - 8 Taro patches at Ahuakolea

Mauka, Kahakuloa, makai	Kauni
Wailuku	Kaanua

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MOO - WAIHEE - NAUI

L. C. A. 4405P
R. P. 6149
Blk. 7, Page 688

Apana aina Kalo ma ka Ili o Waihalulu. Beginning at the East corner and running:

N. $37\frac{1}{2}^{\circ}$ W.	2.53 chains along Konohiki
S. $83\frac{1}{2}^{\circ}$ W.	2.20 chains " Kahawai
S. $53\frac{1}{2}^{\circ}$ W.	2.68 chains " "
S. 82° E.	3.70 chains " Auwai
N. $80\frac{3}{4}^{\circ}$ E.	2.22 chains " "

to the beginning.

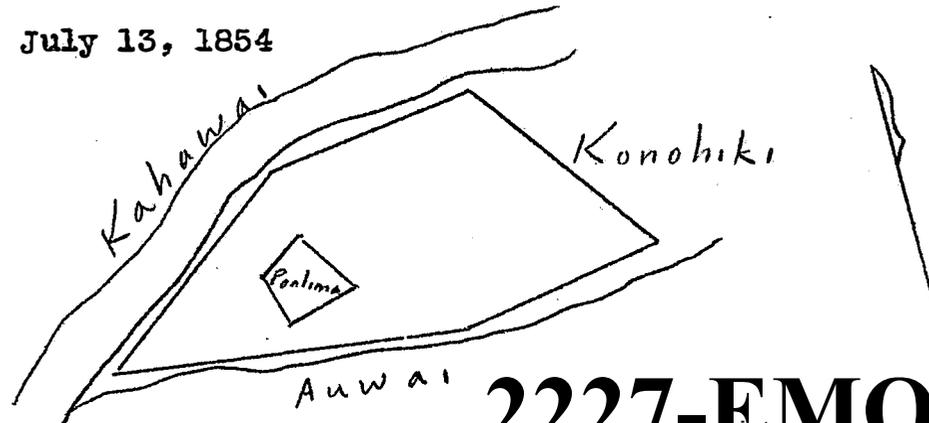
Area 8/10 Acre

Poalima. Mai ke North corner

N. 74° W.	1.76 chains i ke kihi mua, alaila holo
N. $72\frac{1}{2}^{\circ}$ E.	.74 chains
N. 31° W.	.79 chains
S. 56° W.	.59 chains
S. $19\frac{1}{2}^{\circ}$ E.	.57 chains a puni

Area 1/20 Acre

July 13, 1854



2227-EMOTO-2-P.1

MOO - WAIHEE - MAUI
APANA 2 & 4

L. C. A. 4405P
 R. P. 4120
 Bk. 8, Page 455

Ili Waepae 3 & 4 Beginning at the South corner, joining
 Kahawai

N. 73° E	22.11	3.35	chains	along	Kahawai
N. 38° W.	507.54	7.69	chains	"	Kalepo
S. 50 $\frac{1}{2}$ ° W.	87.78	1.33	chains	"	Paa pohaku
S. 46° E. —	55.44	.84	chains	"	Poalima
S. 46° W.	102.3	1.55	chains	"	"
S. 43 $\frac{1}{2}$ ° E. —	102.3	1.55	chains	"	Kanealaala
N. 29 $\frac{1}{4}$ ° E. —	91.08	1.38	chains	"	Kauhi
S. 45° E. —	66.03	1.06	chains	"	"
S. 24° W. —	90.46	1.37	chains	"	"
S. 26 $\frac{1}{2}$ ° E.	192.72	2.92	chains	"	Kanealaala

to the beginning.
 Area 1 73/100 Acres

APANA 3

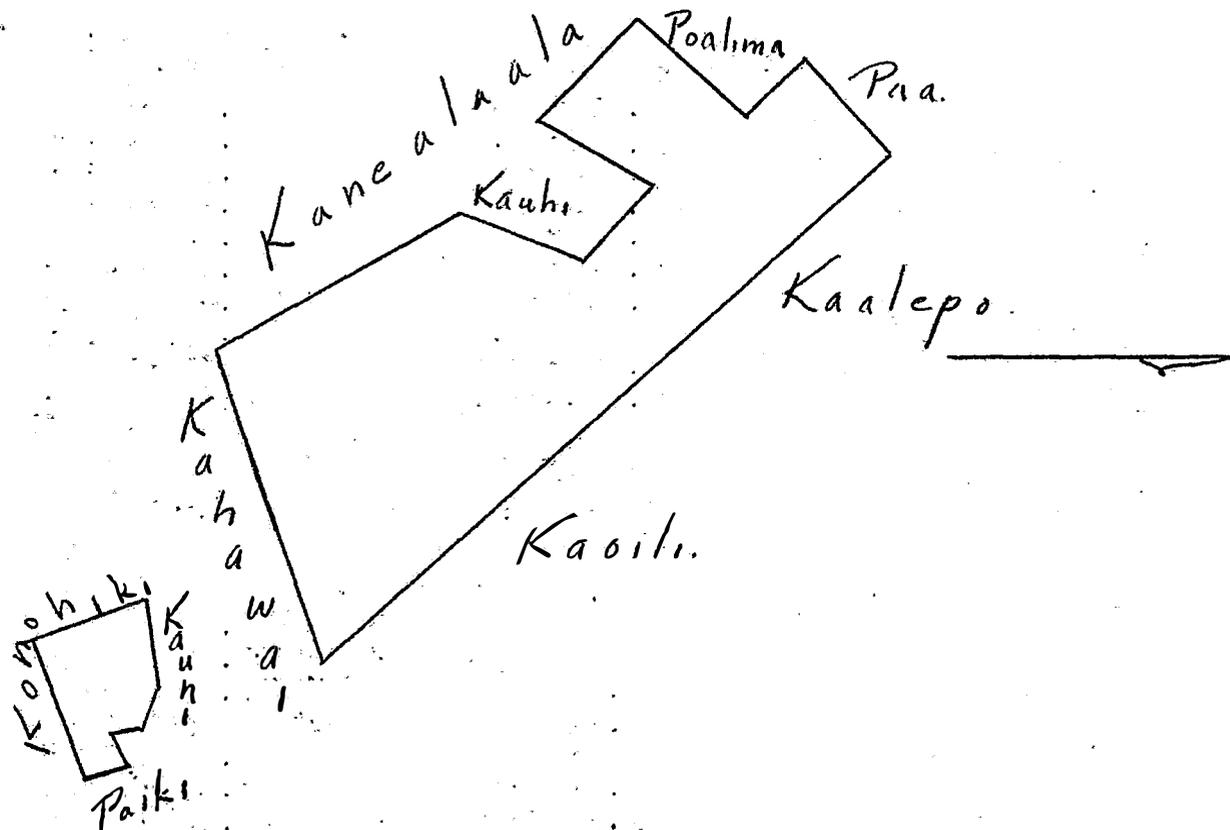
Ili Ahuakolea. Beginning at the North corner joining Kauhi

S. 83 $\frac{1}{8}$ ° W.	60.72	.92	chains	along	Kauhi
S. 17 $\frac{1}{2}$ ° E.	80.52	1.22	chains	"	Konohiki
N. 70° E.	102.96	1.56	chains	"	Kahawai
N. 13 $\frac{1}{4}$ ° W	29.04	.44	chains	"	Paiki
S. 69° W.	21.78	.33	chains	"	"
N. 14 $\frac{1}{2}$ ° W	15.18	.23	chains	"	"
N. 62 $\frac{1}{8}$ ° W	34.37	.52	chains	"	Konohiki

to the beginning.
 Area 14/100 Acre

July 1, 1852

2227-EMOTO-2-P.2



2227-EMOTO-2-P.3

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 Management Areas of Waihe'e, Waiehu, 'Īao)
 and Waikapū Streams, Maui)
)
)
)

WITNESS LIST

PARTY: RICHARD EMOTO & ROYS ELLIS

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Roys Ellis	Need for and use of Nā Wai 'Ehā water	2227-EMOTO-1 to -3

RICHARD EMOTO & ROYS ELLIS

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and Waikapū Streams, Maui)
)
)
)

EXHIBIT LIST

PARTY: RICHARD EMOTO & ROYS ELLIS

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2227-EMOTO-1	LCA 4405P, Foreign Testimony, Foreign Testimony Transcription	Testimony of Roys Ellis	
2227-EMOTO-2	Translated survey boundaries for LCA 4405P	Testimony of Roys Ellis	
2227-EMOTO-3	County Tax Map for Parcels 11 and 12	Testimony of Roys Ellis	