

GREG IBARA
227 Kawaipuna St.
Wailuku, Hawai'i 96793
(808) 870-0950

2016 FEB -5 AM 9:57

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 GREG IBARA;
Standards, Nā Wai 'Ehā Surface Water) EXHIBITS "2245-IBARA-1" - "2245-
Management Areas of Waihe'e, Waiehu,) IBARA-3"
'Āao, & Waikapū Streams, Maui)
)
)
)

TESTIMONY OF GREG IBARA

1. This testimony is provided in support of Surface Water Use Permit Applications ("SWUPAs") No. 2245 and No. 2246N, filed with this Commission on Water Resource Management on April 23, 2009, for a parcel in Wailuku, Tax Map Key ("TMK") No. (2) 3-4-004:020. I have owned this land since I purchased it in 1998.

2. My domestic water use is a protected public trust purpose.

3. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-4-004:020 in the amount of 351,300 gallons per day ("gpd"). I request a permit under SWUPA No. 2245 for my current reasonable-beneficial use for TMK No. (2) 3-4-004:020 of 2,100 gpd, which was the existing use as of April 30, 2008. I also request an allocation under SWUPA No. 2246N for my future reasonable-beneficial use for TMK No. (2) 3-4-004:020 of 6,000 gpd, to restore a small fraction of the land to lo'i kalo.

QUANTIFICATION OF APPURTENANT RIGHTS

4. Attached as “2245-IBARA-1” is a true and correct copy of the County tax map for TMK No. (2) 3-4-004:020, showing that the total area of the parcel is 1.171 acres (“ac”). As shown in the TMK Map, my property is comprised of portions of two Land Commission Awards (“LCAs”): LCA No. 2621 to Palaoanui, confirmed by Royal Patent (“RP”) No. 3214; and LCA No. 3233:2 to Hoaai, confirmed by RP No. 7559. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-4-004:020 at the time of its conversion to fee simple title.

5. Attached as “2245-IBARA-2” are true and correct copies of various Māhele documents, including LCA No. 2621 to Palaoanui and the foreign testimony supporting the award. The foreign testimony indicates that both of the ‘āpana for this parcel were “moo of kalo land” at the time of the Māhele. The historical features of the land, including the slope of the property and the proximity of my parcel to the ‘auwai intake, further support the foreign testimony and establish that the portion of my TMK that overlaps with this LCA was in lo‘i kalo at the time of the Māhele.

6. Attached as “2245-IBARA-3” are true and correct copies of various Māhele documents, including LCA No. 3233:2 to Hoaai, the foreign testimony supporting the award, and a transcription of that foreign testimony. That testimony confirms that the land (‘āpana 2) contained a “mo‘o[] of kalo land,” and was “bounded . . . by . . . poalima lois” at the time of the Māhele. No land use other than kalo is documented for this ‘āpana.

7. 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, such as my property and the general vicinity, which the available Māhele

documentation indicates was extensively used for kalo cultivation, will require an amount closer to the upper end of this range.

8. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-4-004:020 is:

$$(1.171 \text{ ac}) \times (300,000 \text{ gad}) = 351,300 \text{ gpd}$$

AMOUNT REQUESTED UNDER SWUPA NO. 2245

9. As documented in my SWUPAs, we use water from the kuleana 'auwai that runs through Wailuku town. It is our understanding that this 'auwai receives water from Waihe'e Ditch, south of 'Īao Stream. The Wailuku town 'auwai receives water via a pipe in the Waihe'e Ditch and the water travels in pipes and ditches through Wailuku town and eventually passes our land on Kalua Road. Although the flow is inconsistent, when the water flows, we access some of it via a pipe in the 'auwai as it runs along the top of our property. The water we use seeps into the soil because there is not enough water for it return to the 'auwai. Thus, my existing use has been limited by the availability of water.

10. My existing use consists of approximately 0.007 ac of lo'i kalo.

11. Therefore, under SWUPA No. 2245, I request a permit for the following amount:

$$(0.007 \text{ ac}) \times (300,000 \text{ gad}) = 2,100 \text{ gpd}$$

This amount is less than 2% of my appurtenant right.

AMOUNT REQUESTED UNDER SWUPA NO. 2246N

12. As described in SWUPA No. 2246N, in addition to my existing use, I would like to resume cultivation of lo'i kalo on an additional 0.02 ac of my property, restoring the land to its Māhele-era use.

13. Therefore, under SWUPA No. 2246N, I request an allocation for the following additional amount:

$$(0.02 \text{ ac}) \times (300,000 \text{ gad}) = 6,000 \text{ gpd}$$

This modest amount is also less than 2% of my appurtenant right.

Reasonable-Beneficial Analysis

14. My existing and proposed uses are “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.

15. The quantity I am requesting is necessary for the economic and efficient irrigation required to restore traditional lo‘i kalo cultivation to a small portion of my property.

16. My use of stream water to irrigate my lo‘i is also consistent with 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 residential. My water use on my land for non-commercial cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

17. Because my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, 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.

18. As detailed in my SWUPAs, I have and will continue to use a reasonable amount of 'auwai water to maintain my modest crops. Other alternatives, such as municipal water, reclaimed wastewater, water from other ditch systems, desalinized water, and groundwater, are not practicable alternatives to the available 'auwai water. Requiring me to pay for these alternatives instead of diverting the small amount of water via the 'auwai that runs alongside my land would impose an unfair and impracticable cost on me and my family, given that we are a small, non-commercial, domestic water user who has always used the 'auwai that runs alongside our land to water our home garden.

SUMMARY

19. In sum: (1) the exercise of my appurtenant right is a protected public trust purpose; (2) my existing domestic water use is also a protected public trust purpose; (3) because I have appurtenant rights for TMK No. (2) 3-4-004:020, I am entitled to 351,300 gpd; (4) at this time, I request a permit under SWUPA Nos. 2245 and 2246N for 8,100 gad, of which 2,100 gad is for my existing use. This amount is less than 3% of my appurtenant right; and (5) I further request that the permitted water be allowed flow on a consistent, daily basis, as required to support lo'i kalo cultivation. These modest amounts will be used to irrigate non-commercial lo'i kalo, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

/

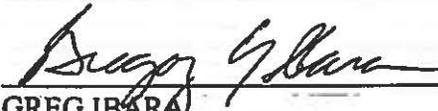
/

/

/

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

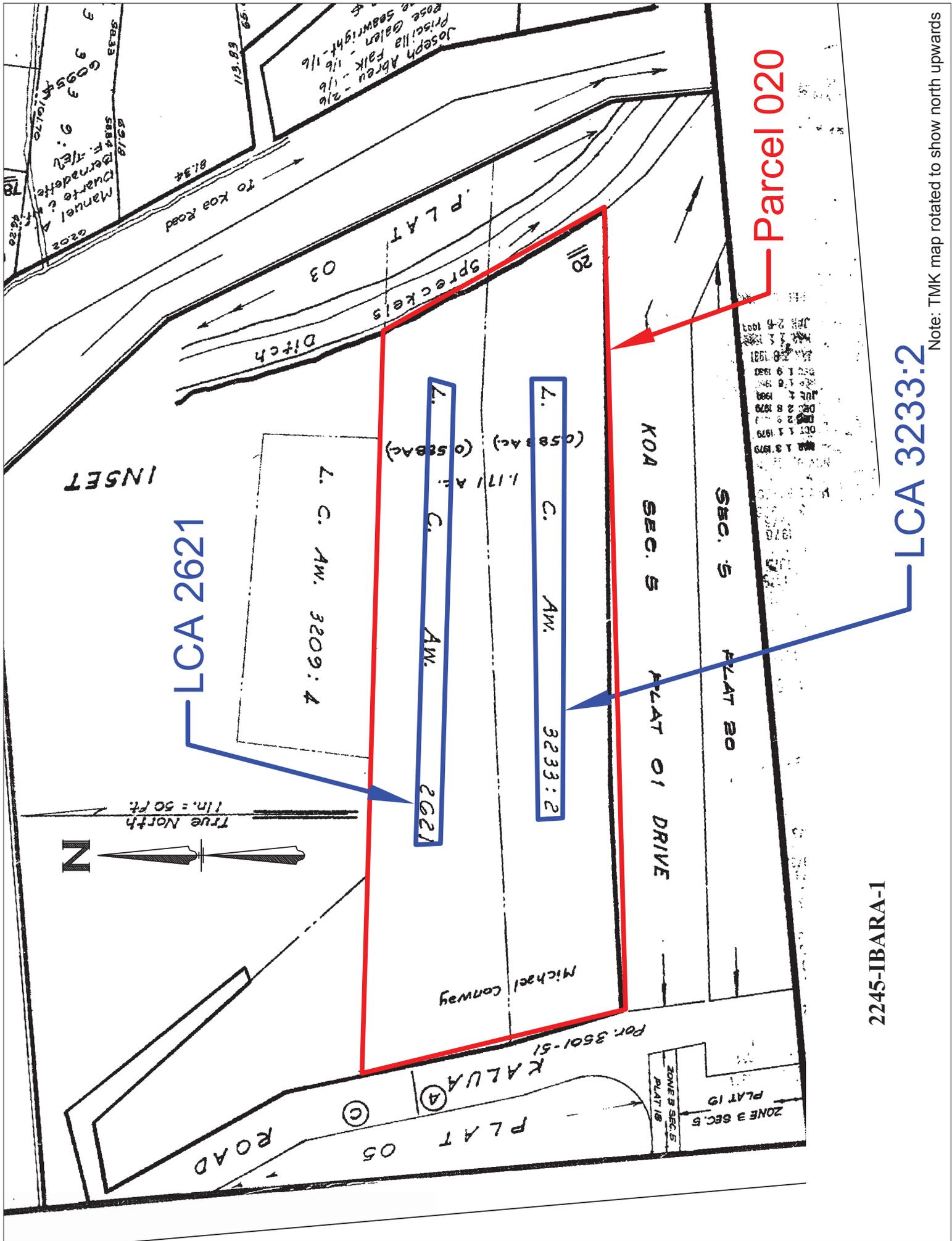
Dated: Wailuku, Hawai'i, 12/9/15.



GREG IBARA
WATER USE PERMIT APPLICANT PRO SE

Exhibits:

- 2245-IBARA-1: TMK Map
- 2245-IBARA-2: Māhele documents for LCA No. 2621
- 2245-IBARA-3: Māhele documents LCA No. 3233



2245-IBARA-1

LCA 3233:2

Parcel 020

LCA 2621

INSET

Note: TMK map rotated to show north upwards

by the Pale of Wailuku.

N^o 2, is bounded Maunaloa, by the Simohani's waste land. Waikae, by T. Kawanawai's land. Makai, by the same, Maalaea, by the Govt. lot.

N^o 3, is bounded Maunaloa, by the ili of Waianu. Waikae, by the Pale of Wailuku. Makai, by Kawanawai's land. Maalaea, by Pahu-pai's land.

C. 263. Palaramui. W.

Heaai see. Show the lands of the Ct. They consist of 2 pieces, in the ili of Maunaloa, Wailuku.

N^o 1 is a Piece of kula land.

" 2 " " " "

The Ct. rec^d them from me in the year 1838, and her title has never been disputed.

N^o 1 is bounded Maunaloa, by Heaai's land. Waikae, by Kama-hana's land. Makai, by the Govt. lot. Maalaea, by Heaai's land.

N^o 2 is bounded Maunaloa, by George Lawrence's land. Waikae, by Heaai's land. Makai, by Hill's land. Maalaea, by Heaai's land.

C. 2620. Kihuaui

Ohule see. Show the lands of the Ct. They consist of 2 pieces of land, in the ili of Maunaloa, Wailuku.

N^o 1 is a House lot

" 2 " " Piece of kula & kula land.

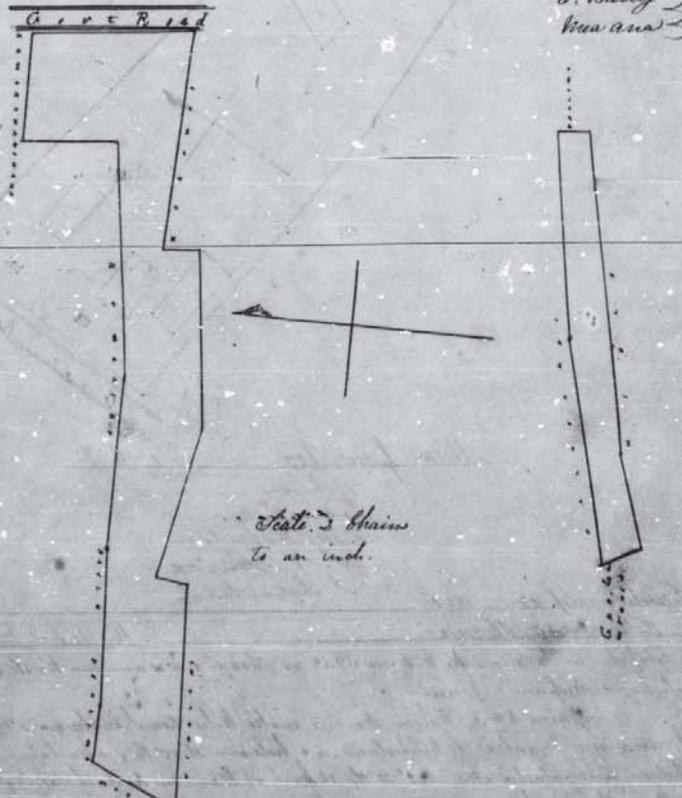
The Ct. rec^d these lands from his ancestors, in the days of Mamahamaha, and his title was never been disputed up to his death this year. His heirs are his Widow Heaai and their four Children.

N^o 1 is bounded Maunaloa, by the Creek of Maunaloa. Waikae, by Hill's land. Makai, by Kamakahanohano's land. Maalaea, by the Govt. land.

N^o 2 is bounded Maunaloa, by Kamakahanohano's land.

alaila aku sika 14° 38 N. 241 kaul. ipili'ana mo Karole, alaila'aku komohana.
 3. 92 kaul. ipili'ana mo Karole, alaila'aku He. 57° N. 3. 49 kaul. ipili'ana
 i ke Karle, alaila'aku 4. 65° N. 25 kaul. ipili'ana i ke Palaniwa alaila'aku He. 27°
 N. 2. 15 kaul. ipili'ana mo Karale, alaila'aku i ke Palaniwa alaila'aku 3 He. mo kua
 apama.

Apama 2. E komoka ana ke kua Komohana ^{Palaniwa} i kaiwafama.
 ipili'ana mo ke Hele o kolo ana 4. 27° N. 75 kaulaas mo ke Hele. 7 He.
 ana alaila'aku 4. 17° 15 He. 5. 13 kaul. ipili'ana i ke Palaniwa alaila'aku
 4. 01° 58 He. 4. 75 kaul. ipili'ana mo Palaniwa, alaila'aku, He. 5° He. 75 kaul. o
 ipili'ana mo Palaniwa alaila'aku He. 77° 50 N. 7. 51 kaul. ipili'ana mo ke Hele,
 alaila'aku He. 72° 45 N. 2. 20 kaul. ipili'ana mo Hele alaila'aku i ke komo-
 ka i He. Eka, mo kua Apama.



G. Bailey
 mea ana

Whe. pau loa B. 6
 ipili
 L. omi
 J. M. Robinson
 J. S. Conitt
 J. Kaulaha

Honolulu Sep 4. 1857

by Naea's land. Makai, by Kalawaiakoni's land. Maalaea,
by the Pali.

C. 7907. Kuka.

Kahili Sw. I know the lands of the Ct. It is one piece in the ili
of Okeea, Wailuku, Maui.

The Ct. rec'd it from Auwae before 1830, and his title
is without dispute. There are 2 pualima lots in it.

It is bounded. Mauka, by Kalawaiakoni's land. Waihee &
Makai sides, by Naea's land. Maalaea, by the land of Kaliai-
waiakoni.

C. 3535. Keala & Kapawunuu.

Kuadisee Sw. I know the land of the Ct. It is one piece of Keala land
in the ili of Maniawaa, Wailuku, Maui.

The Ct. rec'd this land from Auwae before 1830, and their
title has never been disputed. There are 3 pualima lots in it.

It is bounded. Mauka, by the Pali; Waihee, by the same. Ma-
kai, by the ili of Halekone. Maalaea, by the Crake of Wailuku.

C. 3233. Hooai.

Makahaunani Sw. I know the lands of the Ct. They consist of 3
pieces in the ili of Makua, Wailuku, Maui.

- N^o 1 is 2 Mows of Keala land
- " 2. " 1 " " "
- " 3. " a House lot.

The Ct. rec'd these lands from me in 1835, and his title
has never been disputed.

N^o 1. is bounded. Mauka, by Maaha's land. Waihee, by Hoo-
ai's land. Makai, by the Gov't Lot. Maalaea, by S. Kaunani's lot.

N^o 2. is bounded. Mauka, by George Lawrence's land. Waihee,
by Hekeua's land. Makai, by the pualima lots. Maalaea, by Hekeua's

land.

N^o 3. is bounded Maaka, by Hamohui's land. Waikae, by my land. Makai, by the Govt. Lt. Maalaea, by the Paliina loi.

C. 3534. Hauakiivai.

Lulileia I know the land of the Ct. It is one piece of kaula land in the ili of Keopuho, Wailuku, Maui.

The Ct. rec^d it from Kaimoepo before 1829, and his title has never been disputed. There are 2 pualima loi in it.

It is bounded Maaka, by Kalauna's land. Waikae, by the Creek of Wailuku, Makai, by the ili of Kapuakua, Maalaea, by the Pali of Wailuku.

C. 2414. Kailikune.

Kalauna I know the land of the Ct. It is one piece of kaula land in the ili of Kumu-kei-kei, Wailuku, Maui.

The Ct. rec^d it from Kalauna in the year 1823, and his title has never been disputed. There is no pualima loi in it. The Kalauna is the Hono-hiki of the ili.

It is bounded Maaka, by Kalauna's land. Waikae, by the Creek of Wailuku. Makai, by my land. Maalaea, by the Pali of Wailuku.

C. 313. Kama.

L. Kaunani I know the lands of the Ct. They consist of 6 pieces, in Wailuku, Maui.

N^o 1 is a House lot in the town of Wailuku.

" 2. " " kaula land in the ili of Owa.

" 3. " " " " " " Waikani.

" 4. " " one loi " " " " Kapuhakoo.

" 5. " " kaula land. " " " " Puako.

" 6. " " one loi " " " " Umia.

Foreign Testimony

Claim 3233 Hoai

Makahano Sw. I know the lands of the claimant. They consist of 3 pieces in the ili of Kalua, Wailuku, Maui.

No. 1 is 2 mo'os of kalo land

No. 2 is 1 mo'os of kalo land

No. 3 is a house lot

The claimant received these lands from me in 1835, and his title has never been disputed.

No. 1 is bounded. Mauka, by Maaka's land. Waihee by Haole's land. Makai by the gov't lot. Maalaea by T. Kaawai's lot.

No. 2 is bounded. Mauka by George Lawrence's land. Waihee by Kikia's land. Makai by the poalima lois. Maalaea by Heola's land.

No. 3 is bounded. Mauka by Kamoku's land. Waihee by my land. Makai by the gov't lot. Maalaea by the Poalima lo'i.

GREG IBARA

227 Kawaipuna St.

Wailuku, Hawai'i 96793

(808) 870-0950

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

WITNESS LIST

PARTY: GREG IBARA

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Greg Ibara	Need for and use of Nā Wai 'Ehā water	2245-IBARA-1 to -3

GREG IBARA
227 Kawaipuna St.
Wailuku, Hawai'i 96793
(808) 870-0950

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: GREG IBARA

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2245-IBARA-1	County Tax Map Showing Location of LCA Nos. 2621 and 3233:2	Testimony of Greg Ibara	
2245-IBARA-2	LCA No. 2621 and Foreign Testimony	Testimony of Greg Ibara	
2245-IBARA-3	LCA No. 3233:2, Foreign Testimony and Transcription	Testimony of Greg Ibara	