

KENNETH KAHALEKAI

2019 FEB 10 AM 9:50

240 Waihe'e Valley Road

Wailuku, Hawai'i 96793

(808) 244-5248

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 KENNETH KAHALEKAI;
Standards, Nā Wai 'Ehā Surface Water)	EXHIBITS "2249-KAHALEKAI-1" &
Management Areas of Waihe'e, Waichu,)	"2249-KAHALEKAI-3"
'Īao, & Waikapū Streams, Maui)	
)	

TESTIMONY OF KENNETH KAHALEKAI

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2249, filed with the Commission on Water Resource Management on April 23, 2009, which originally covered five parcels in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-004:002 ("Parcel 2"), TMK No. (2) 3-2-004:003 ("Parcel 3"), TMK No. (2) 3-2-004:019 ("Parcel 19"), TMK No. (2) 3-2-005:027 ("Parcel 27") and TMK No. (2) 3-2-005:029 ("Parcel 29"). I no longer oversee Parcels 19 and 27; therefore, they should be considered part of SWUPA No. 2312, submitted by Kau'i Kahalekai.

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 current and intended use of stream water to grow kalo 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 Nos. (2) 3-2-004:002 and :003, and (2) 3-2-005:029 in the amount of 785,100 gallons per day. I request a Surface Water Use Permit for my current reasonable-beneficial use for TMK Nos. (2) 3-2-004:002 and :003, and TMK No. (2) 3-2-005:029 of 578,100 gallons per day, which was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

4. Parcel 2 is 0.957 acres and is comprised of the majority of Land Commission Award ("LCA") No. 3718, confirmed by Royal Patent ("R.P.") No. 5452, and two pō'alima of LCA No. 7713:24 to Kamamalu. Parcel 3 is 1.44 acres and is comprised of all of LCA No. 4432, 'āpana 1, confirmed by R.P. No. 5361, and three pō'alima of LCA No. 7713:24 to Kamamalu. Parcel 29 is 0.44 acres and is comprised of a portion of LCA No. 3718, confirmed by R.P. No. 5452, and a portion of LCA No. 7713:24 to Kamamalu. Parcels 2 and 29 together comprise the entirety of LCA No. 3718. I am attaching various Māhele documents that confirm water use on Parcels 2, 3, and 29 at the time of the Māhele.

5. Attached as "2249-KAHALEKAI-1" are true and correct copies of LCA No. 3718 to Maikaaloa and the original, transcribed, and translated native register supporting LCA No. 3718.

6. Attached as "2249-KAHALEKAI-2" are true and correct copies of LCA No. 4432:1 to Kahikiula and the original and translated native testimony supporting LCA No. 4432.

7. Attached as “2249-KAHALEKAI-3” are true and correct copies of the County tax maps for TMK Nos. (2) 3-2- 004:002, (2) 3-2-004:003, and (2) 3-2-005:029.

8. The documents in 2249-KAHALEKAI-1 referring to LCA No. 3718 confirm that this land, in the ‘ili of Mookahi, was cultivated in wetland kalo. The native register states there were 61 lo‘i. The LCA map also clearly marks the two pō‘alima adjacent to the ‘auwai on Parcel 2. As pō‘alima, these areas were fully cultivated in wetland kalo at the time of the Māhele. Thus, Parcel 2 and the portion of Parcel 29 within LCA No. 3718 were fully cultivated in wetland kalo at the time of the Māhele.

9. About one-half of Parcel 29, or 0.22 acres, is comprised of a portion of LCA No. 7713:24 to Kamamalu, and one-half of Parcel 29 was within LCA No. 3718, thus, as established in 2249-KAHALEKAI-1, about 0.22 acres of Parcel 29 was cultivated in wetland kalo at the time of the Māhele.

10. The documents in 2249-KAHALEKAI-2 referring to LCA No. 4432 state that ‘āpana 1 was “a whole ili of Paulani”. The native testimony indicates there were eight lo‘i, one of which was deemed a pō‘alima. The LCA also clearly marks the 3 pō‘alima within Parcel 3. Thus, Parcel 3 was fully cultivated in wetland kalo at the time of the Māhele.

11. Based on the Māhele documents in 2249-KAHALEKAI-1 and 2249-KAHALEKAI-2, my land has appurtenant rights, and the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 2.617 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 rights appurtenant to TMK Nos. (2) 3-2-004:002 and :003 and (2) 3-2-005:029 is 785,100 gallons per day (“gpd”) (2.617 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

14. Currently, my family and I use water from the kuleana ‘auwai that runs south of of Waihe‘e River. This ‘auwai is known as the South Waihe‘e Valley kuleana ‘auwai, which receives water from a pipe in the Spreckels Ditch. The pipe empties into an open ‘auwai. The water flows makai in the ditch and passes adjacent to my property at Parcel 2. We divert some of the water from the ‘auwai at three locations. The rest of the water continues to flow in the ‘auwai and crosses Waihe‘e Valley Road.

15. The water from each of our three diversions feeds portions of our lo‘i in Parcel 2 and then flows to portions of our lo‘i in Parcel 3. The water is then returned to the ‘auwai, where some flows to our neighbors and/or our family downstream and some returns to Waihe‘e River.

16. We also use some of the water for domestic purposes, including watering domestic plants, such as fruits, vegetables, and herbs, as well as watering our pigs and chickens.

17. On April 30, 2008, we were cultivating 1.92 acres in lo‘i kalo on Parcels 2 and 3. Based on the water duty for kalo of 300,000 gad, we estimated the amount of water in use at that time was about 576,000 gpd. We also used water for domestic purposes on 0.7 acres. Using the 2002 State of Hawai‘i Water System Standard for Maui County for domestic cultivation of 3,000 gallons per acre, we estimated our domestic use was about 2,100 gpd.

18. I am requesting a permit for my existing uses, or the amount of water necessary to irrigate kalo on 1.92 acres and for our domestic uses on 0.7 acres, which, based on the water duty for kalo and the Maui County standard, is 578,100 gpd (576,000 gpd + 2,100 gpd).

REASONABLE-BENEFICIAL ANALYSIS

19. “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.

20. My use of water is “economic and efficient” because I only use the amount I need to irrigate my lo‘i and non-commercial garden, and for domestic purposes. I work to minimize water loss through evaporation and seepage by using pipes where feasible. The remaining water flows to my neighbors and family and back to the ‘auwai.

21. The quantity I am requesting is necessary for the irrigation of healthy lo‘i kalo and our domestic usage, including irrigation of our fruits, vegetables, and herbs, as well as watering our pigs and chickens.

22. The use of stream water to irrigate the lo‘i kalo and for our domestic purposes is also consistent with the state and county land use plans and the public interest. My land is classified by the State as rural, and zoned by the County as agricultural. The water use on my land for domestic cultivation is in the public interest and fulfills a public trust purpose.

ALTERNATIVES ANALYSIS

23. 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. Similarly, our traditional and customary right as Native Hawaiians is to cultivate kalo on our land in the traditional manner, not in some other manner using alternative, non-traditional sources, and

traditional and customary right is constitutionally protected. Nonetheless, the Alternatives Analysis set forth in SWUPA No. 2249 remains applicable, true, and correct.

SUMMARY

24. 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 Nos. (2) 3-2-004:002 and :003, and (2) 3-2-005:029, I am entitled to at least 785,100 gpd; (5) at this time, I request a permit for the existing reasonable-beneficial uses on my land of 578,100 gallons per day, which was the existing use on April 30, 2008, and which is used to irrigate lo'i kalo and for domestic purposes, which are alone and cumulatively a reasonable-beneficial use of stream water. There is no practicable alternative for this use.

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

Dated: Waihe'e, Hawai'i, 12-14-17



KENNETH KAHALEKAI
WATER USE PERMIT APPLICANT PRO SE

Uku Pau Leaf 6

353

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

Honolulu 27 Oct 1852

Hele 5490 to 3970 Haac

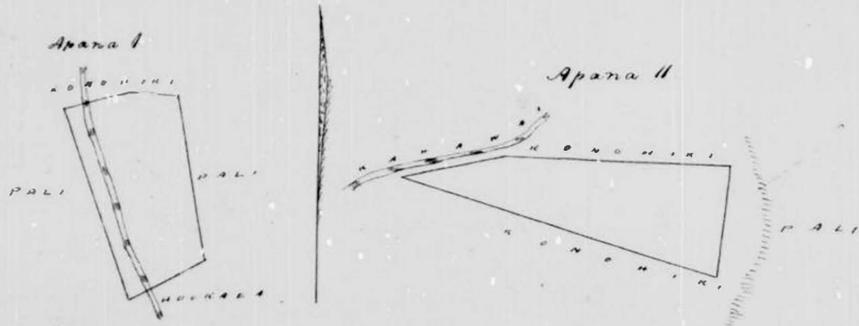
Hanalei, Maui

Apana I. Kaula Kaholua - Kala Kuuaha, Komohana, Ehuomaka ke ana ma ke kahi Akau o keia, e pili ana me ka Poalima Nema 75 1/2, Komohana 119 Kaulahao ma Komohiki Nema 19 1/2, Hikiina 356 Kaulahao ma ka Pali, Akau 57 3/4, Hikiina 149 Kaulahao ma ke Auakaa, Akau 7 1/2, Kom. 270 Kaulahao ma ka Pali, Akau 8 1/2, Komohana 82 Kaulahao ma ka Poalima, a hiki ma kahi i huumaka'i, a malake via anapuni, 57/100 Eka.

Apana II Ili Kaula Kaholua, Kula, Ehuomaka ke ana ma ke kahi Hikiina Akau o keia, Akau 89 Komohana 400 Kaulahao, a hiki malake, Nema 77 1/2, Komohana 180 Kaul. mo. Kahawai, Nema 73 Hikiina 579 Kaulahao a hiki malake, Akau 6, Hikiina 200 Kk. a hiki ma kahi i huumaka'i a malake via anapuni 67/100 Eka

Maui Apana Koe na haa ole,
Wailuku, Sept. 6, 1852

John S. Lowers
Maui ana aina



Uku Pau Leaf 5

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

Honolulu 27 Oct 1852

Hele 3718 Iona Maitinatala

Waihee, Maui

Ili Paulani E huumaka ke ana ma ke kahi Hikiina. Kahiina Apana III
Nema 87 1/2, Hikiina 180 Kaulahao ma ka Auwai nui, Akau 11, Komohana 16 Kaulahao ma Poalima
Akau 88, Hikiina 146 Kaulahao ma Poalima, Nema 6 1/2, Hikiina 2 Kaulahao ma ka Poalima
Akau 88 1/2, Hikiina 280 Kaulahao ma ka Auwai nui, Akau 4 1/2, Komohana 55 Kaulahao ma ka
Poalima, Nema 8 1/2, Hikiina 152 Kaulahao ma ka Poalima, Nema 11 1/2, Hikiina 54 Kaula
ma ka Poalima, Nema 84 1/2, Hikiina 160 Kaulahao, ma ka Auwai nui, Akau 10 3/4, Komoha-
195, Kaulahao, ma ke Keino, Nema 77 Kom. 64 Kk ma ke Kahikiula, Kom. 53 1/2 Kom. 4 1/2
Kk, ma ke Kahikiula, Kom. 57 Kom. 80 Kk ma ka Poalima, Nema 51 Kom. 2,000 Kk
ma ka Hikiula Nema 87 Kom. 293 Kk, ma Kahikiula Nema 24 Komohana
79 Kk, ma ke Kahiina, a hiki ma kahi moa, a malake via anapuni (1.13 Eka
original)

Wailuku July 7, 1852 2249-KAHALEKAI-1-P.1 John S. Lowers
Maui ana aina

5711B

Kamakahānui

14 Ihi aīna, Waipae 6 lo'i
no Kauhūnūhōpoua ouai kōu. Hōdili
2 lo'i, ai Hōanāapuu ouai kōu. Kāpūna
3 lo'i no Kūki māi kōu, oia kula
Waihu. Dek. 29, 1827. Na Kamakahānui

5711C

Māikāala

14 Ihi aīna, Mōkōkahi 27 lo'i
no Kōani māi kōu. Kālofōlofō 17 lo'i
no Kūhelani māi kōu
Waihu. Dek. 29, 1827. Na Māikāala

5721

Makāale

Dek. 26, 1827

14 Ihi palāpala Kūlana
no Kōa māi kōu māu lo'i he 12
kōkahi kula. Oia pūhala Kūlana
hele, kōkahi Mōi. Waihu māi
Na Makāale

5722

Mōanālua

14 Ihi palāpala hoi aku
i he kumoi Kūlana kula, a oia
ke Kūlana lo'i māi. Waihu māi
Oia o Mōanālua ke hoi
aku māi māi ia māi, a kōu māi
lo'i he 23 lo'i, aia māi Mōanālua
māi māi māi. Oia ke Kūlana
māi māi māi māi. Hele ke
Kūhūhū māi o Kūwa, māi māi
māi o Kūhūhū māi i ka aīna,
oia ke Kūlana māi māi māi
aīna māi. Oia māi māi māi
māi māi māi, māi māi māi māi
Kāhāwai, māi māi māi māi

3718 Maikaaloa

Ili aina o Mookahi 47 loi no Kaauī mai ko‘u. Kalepelepe 14 loi no Kuihelani mai ko‘u.

(Land section named Mookahi with 47 lo‘i I got from Kaauī. 14 lo‘i at Kalepelepe I got from Kuihelani.)

Waihee Dek 29, 1847

(Waihe‘e, December 29, 1847)

Na Maikaaloa

(By Maikaaloa)

2249-KAHALEKAI-1-P.4

Ulu Pau Lea 55
W. L. Lee
G. M. Robertson
J. Kekaulaha
J. H. Smith

Honolulu 27 Oct 1852

Ulu 4432 Kahikiula Waiau Maui

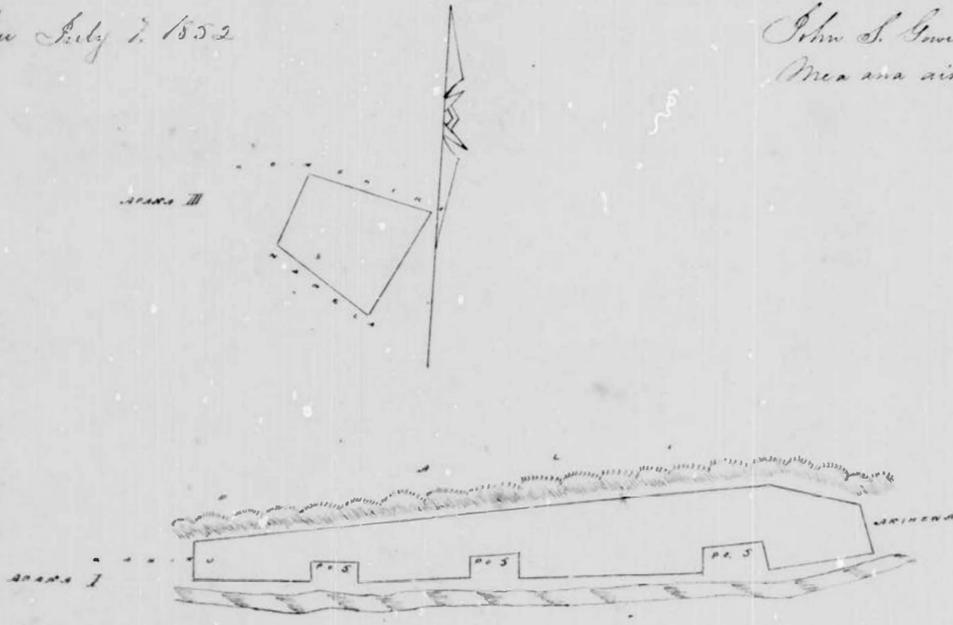
Apana I Ili Paulani. E hoomaka ke ana ma ke kahi hema i Ahikiwa, hema 11 1/2
Komohana 191 Kaulahao ma ka auwai, Akau 12 1/2, Komohana 49 Kaulahao ma ka Pealima,
Hema 8 1/2, Komohana 104 Kaulahao ma ka Pealima, Hema 6 1/2, Hikiina 46 Kaulahao ma ka Pealima,
Hema 8 3/2, Komohana 327 Kaulahao ma ka Auwai, Akau 2 1/2, Komoh. 155 Kaulahao ma ka Pealima,
Hema 8 2 1/2, Komohana 85 Kaulahao ma ka Pealima, Hema 10 1/2, Hikiina 37 Kaulahao ma ka Pealima,
Hema 8 0 1/2, Komohana 488 Kaulahao ma ka auwai, Akau 1 Komohana 40 Kaulahao ma ka Pealima,
Hema 8 6 1/2, Komohana 86 Kaulahao ma ka Pealima, Hema 6 Hikiina 37 Kaulahao ma ka Pealima,
Hema 8 6 1/2, Komohana 265 Kaulahao ma ka Auwai, Akau 6 1/2, Komohana 68 Kaulahao ma ka Kahimu,
Akau 7 1/2, Hikiina 10.12 Kaulahao ma ka Pali, Hema 81, Hikiina 165 Kaulahao ma ka Pali,
Hema 22 1/2, Hikiina 91 Kaulahao ma ke Ahikiwa, a hiki ma kahi i hoomaka i a malohe ia
anapuni 15 1/2 per Eka.

Apana II Aole noma.

Apana III Ili Kapeho. E hoomaka ke ana ma ke kahi Komohana, Napela.
Hema 56 Hikiina 204 Kaulahao ma ke Napela, Hema 36 Akau 28 Hikiina 218 Kaulahao ma
Komohiti, Akau 77, Komohana 226 Kaulahao ma Kula, Hema 22 Komohana 140 Kaulahao
ma ke Paapohaku, a hiki ma kahi i hoomaka i a malohe ia anapuni, 33 per Eka.

Wailuku July 7, 1852

John S. Gove
Ma ana aia



Ulu Pau Lea 55
W. L. Lee
G. M. Robertson
J. Kekaulaha

Honolulu 27 Oct 1852

No. 4440 C Kekaula (cont.)

Section 1 - Taro pauku at Mookahi

Mauka and Kahakuloa	Maikaaloa
Makai	Poalima
Wailuku	Kahanu

Section 2 - Fish pond at Kapoho

Mauka and Kahakuloa, makai	Kapaole
Wailuku	Kapahuwai

No. 4440 Keino

July 26

This interest is in that claim no. 4440. Keawe sworn He has seen 1 taro section in the ili of Paulani in Waihee which has been joined with the pasture section and was from Anadarea in 1844. Anadarea's land fro, Kuihelani in 1843. Kuihelani's land from M. Kekuanaoa, no objection. 8 Poalima's in this taro section.

Mauka	Waiakaonaona ili
Kahakuloa	Papaia ili
Makai	Maila
Wailuku	Waiakaonaona ili

No. 4294 Keoii this is the same as No. 4417 25 July 1849.

No. 4432 Kahikiula

July 26

Z. Kaawai sworn He has seen 3 sections in the ilis of Waihee. Kahikiula has one other section which Kaauwai has not seen.

Land from Kahikiula's parents at the time of Kam I. * Kawahinekuapuu had Page 275 opposed to 1 patch in the first section. That one patch has become a poalima. 7 patches of this land have been given to this claimant. There is no konohiki.

Section 1 - a whole ili of Paulani

Mauka	Kamahoe
Kahakuloa	Papaohia ili
Makai	Paulani ili
Wailuku	Kamahoe/Waiakaonaona ili

Section 2 - Pond and house site in Kapoho

Mauka	Land fence
Kahakuloa	Anadarea Pea's land
Makai	Prisoners' pond
Wailuku	Anadarea's land

Section 3 - House lot at Koiahi

Mauka	Prisoners' pond
Kahakuloa	Anadarea Pea's land
Makai	Sea
Wailuku	Napela

No. 4296 B Mahoe

July 26

Keawe sworn He has seen 3 sections in these ilis of Waihee as listed below.

First section from Kiekie in 1845. Kiekie's land from Keahi in 1844. Second section from Kekumoku in 1835. Kekumoku had owned the land in 1832. No objection, 2 Poalima's there.

Section 1 - Taro moo and 6 patches at Pahauolu

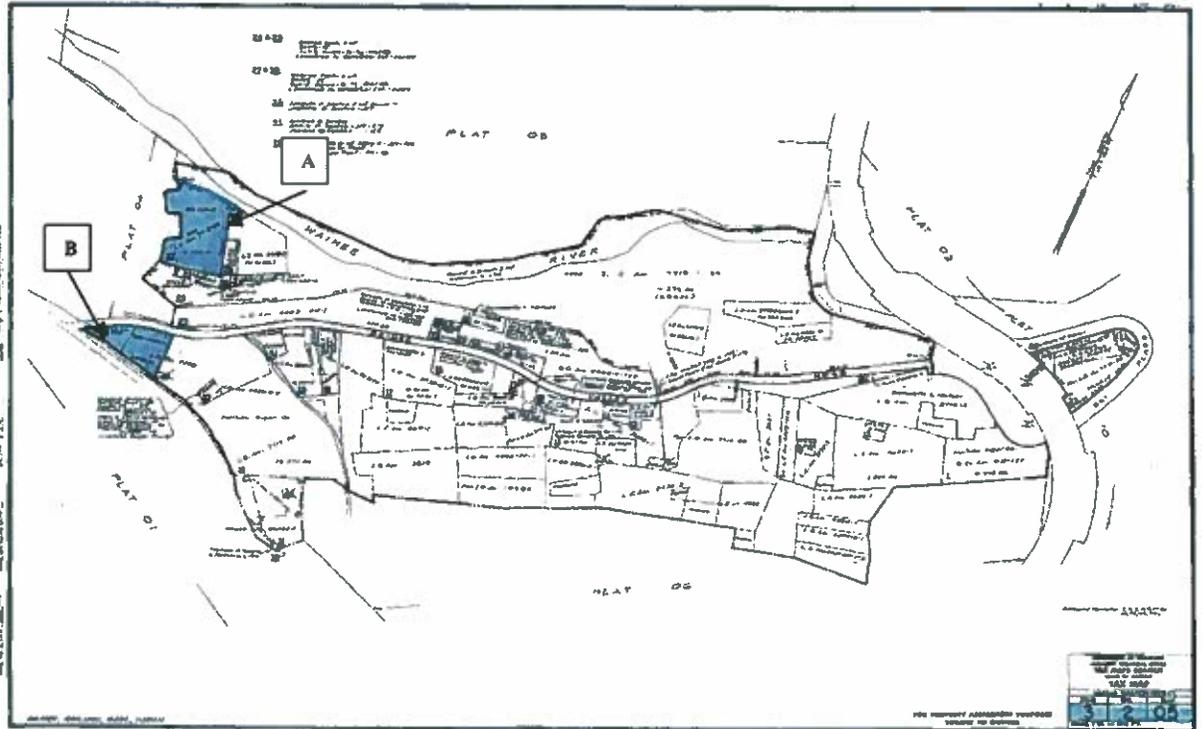
Mauka	Kaale
Kahakuloa	Kapahuwai
Makai	Kiekie's land
Wailuku	Opunui's land

Section 2 - Pond at Kapoho

Mauka	Land fence
Kahakuloa and makai	Kapaole
Wailuku	Kapahuwai

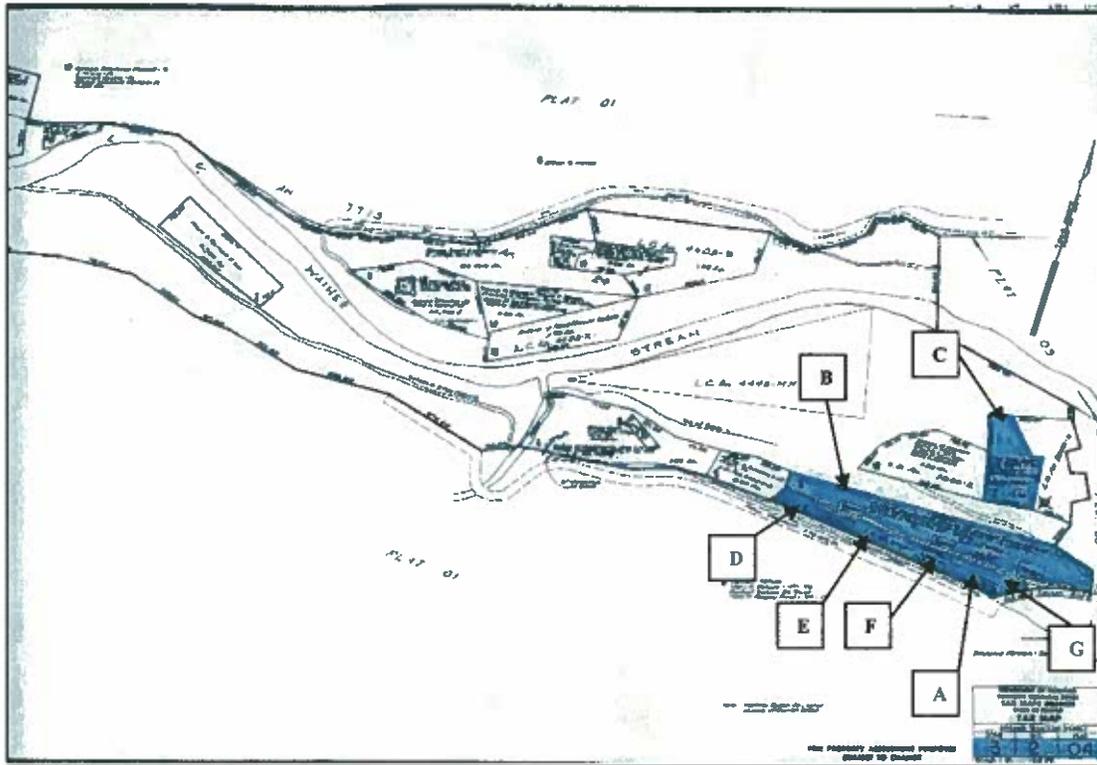
Section 3 - House lot at Kapoho

2249-KAHALEKAI-2-P.4



- A. TMK No. 3-2-05-27: 0.766 total acres (0.76 acres of lo'i cultivation)
- B. TMK No. 3-2-05-29: 0.44 total acres (0.41 acres diversified agriculture) and Herbert and Mary Kaluau's house

2249-KAHALEKAI-3-P.1



- A. TMK No. 3-2-04-02: 0.957 total acres (0.77 acres lo'i kalo)
- B. TMK No. 3-2-04-03: 1.44 total acres (0.15 acres lo'i kalo, 0.29 diversified agriculture)
- C. TMK No. 3-2-04-019: 1.17 total acres (1.17 acres lo'i kalo)
- D. `Auwai diversion # 1 (located on TMK No. 3-2-04-02)
- E. `Auwai diversion # 2 (located on TMK No. 3-2-04-02)
- F. `Auwai diversion # 3 (located on TMK No. 3-2-04-02)
- G. Kenneth and Wizzie Kahalekai's house

2249-KAHALEKAI-3-P.2

KENNETH KAHALEKAI

240 Waihe'e Valley Road

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STATE OF HAWAI'I

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

WITNESS LIST

PARTY: KENNETH KAHALEKAI

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Kenneth Kahalekai	Need for and use of Nā Wai 'Ehā water	2249-KAHALEKAI-1 to -3

KENNETH KAHALEKAI

240 Waihe'e Valley Road

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STATE OF HAWAII

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

EXHIBIT LIST

PARTY: KENNETH KAHALEKAI

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2249-KAHALEKAI-1	LCA 3718, Native Register, Native Register Translation	Testimony of Kenneth Kahalekai	
2249-KAHALEKAI-2	LCA 4432, Native Testimony, Native Testimony Translation	Testimony of Kenneth Kahalekai	
2249-KAHALEKAI-3	County Tax Map for TMK Nos. (2) 3-2-004:002, :003 and (2) 3-2-005:029	Testimony of Kenneth Kahalekai	