

ALFRED KAILIEHU, JR. & INA KAILIEHU
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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 ALFRED KAILIEHU
Standards, Nā Wai 'Ehā Surface Water) AND INA KAILIEHU; EXHIBITS "2250-
Management Areas of Waihe'e, Waiehu,) KAILIEHU-1" - "2250-KAILIEHU-2"
'Āao, & Waikapū Streams, Maui)
)
)
)

TESTIMONY OF ALFRED KAILIEHU, JR. AND INA KAILIEHU

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2250 and SWUPA No. 2251N, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-007:017. I, Alfred Kailiehu Jr., have lived on this land since I was born. I, Ina Kailiehu, have lived on this land since Alfred and I were married in 1969. This land has been in the Kailiehu family for over one-hundred years.

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 uses of stream water are traditional and customary cultural practices that are protected public trust purposes.

3. Our domestic water use is a protected public trust purpose.

4. Based on the information set forth below, we request recognition of appurtenant rights for TMK No. (2) 3-2-007:017 in the amount of 153,000 gallons per day. We request a Surface Water Use Permit for our current and future reasonable-beneficial use for TMK No. (2) 3-2-007:017 of 76,425 gallons per day, of which 1,425 gallons per day was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

5. TMK No. (2) 3-2-007:017 is comprised of a portion of Land Commission Award (“LCA”) No. 3299B to Nahalau, confirmed by Royal Patent No. 6206. We are attaching various Māhele documents that confirm water use on TMK No. (2) 3-2-007:017 at the time of the Māhele.

6. Attached as “2250-KAILIEHU-1” is a true and correct copy of LCA No. 3299B to Nahalau, as well as the native testimony supporting the award (the original, a transcription, and an English translation).

7. A true and correct copy of the County tax map for TMK No. 3-2-007:017 is attached as “2250-KAILIEHU-2.” This map shows the location of our property with the locations of our ‘auwai diversion and area of existing and future use labeled.

8. The documents in 2250-KAILIEHU-1, referring to LCA No. 3299B, establish that it was “kalo and kula land, and 3 poalima loi within” at the time of the Māhele. The gentle slope of my land, as well as ancient rock walls, suggests that this parcel is within the lo‘i portion of the LCA, as opposed to the kula portion. This is also supported by the fact that there were three pō‘alima within the LCA.

9. Our land, TMK No. (2) 3-2-007:017, is 0.51 acres. As explained above, we believe all of our parcel covered by LCA No. 3299B was cultivated in wetland kalo at the time of the Māhele.

10. Based on the Māhele documents in 2250-KAILIEHU-1, the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 0.51 acres using traditional methods.

11. 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.

12. Thus, in my best estimation, the water right appurtenant to TMK No. (2) 3-2-007:017 is 153,000 gallons per day ("gpd") (0.51 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

13. We are kuleana users that access water from a kuleana 'auwai. It is my understanding that the water in the 'auwai currently comes from the Spreckels Ditch and that the Wailuku Water Company calls the 'auwai the "Field Four" 'auwai. The water in Spreckels Ditch comes from Waihe'e River through the Waihe'e and Spreckels diversions. All the water from the Spreckels diversion enters the Spreckels Ditch, as does some water from the Waihe'e diversion. It is my understanding that the "Field Four" 'auwai receives water via a pipe in the Spreckels Ditch. We use a 1 1/2" pipe to feed our lo'i kalo, and a 3/4" pipe attached to a water hose to water the various plants on our land, and to fill a fifty-five-gallon tank for use in the home for non-potable purposes such as showering. We use garden hoses for irrigating our non-

commercial garden with things like bananas, mangoes, ulu, 'ilima, green onion, rare ginger, cucumber, chili peppers, pumpkin, corn, and string beans, and for watering our lawn.

14. We believe that the 2002 State of Hawai'i Water System Standard for Maui County of 600 gallons per day per single family home is sufficient for our existing domestic water uses, including use of water within our home and outside our home for watering our home garden and yard.

15. We currently have about 0.00275 acres of lo'i kalo, for which we estimate we use 825 gpd to irrigate (0.00275 acres x 300,000 gad).

16. If we had enough water, we would cultivate the amount of wetland kalo our family historically cultivated on a 0.25 acre portion of the property.

17. Using the standard amount of water necessary to maintain healthy lo'i kalo, or 300,000 gpd, we are asking for an additional 75,000 gpd (0.25 acres x 300,000 gad).

18. Thus, we request a water use permit in the amount of 76,425 gpd for our current and future uses (600 gpd + 825 gpd + 75,000 gpd).

Reasonable-Beneficial Analysis

19. Our family retains our appurtenant rights on our land, and our 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 which is both reasonable and consistent with the state and county land use plans and public interest." Hawai'i Revised Statutes § 174C-3.

20. The quantity we are requesting is necessary for the economic and efficient irrigation of our lo'i; our home garden, which includes bananas, mangoes, ulu, 'ilima, green onion, rare ginger, cucumber, chili peppers, pumpkin, corn and string beans for consumption by

ourselves, 'ohana, and neighbors; and ti leaves and tropical flowers, which provide our neighbors and us with aesthetic enjoyment. Our use of the stream water is economic and efficient, as we use only the amount needed to irrigate my garden and lawn, and we implement measures to minimize water loss, including using garden hoses, which reduce evaporation and leakage. Most of the water from our lo'i kalo does and will continue to return to the 'auwai.

21. Our use of stream water to irrigate our garden is also consistent with the state and county land use plans and the public interest. Our land is classified by the State as urban, and zoned by the County as urban. Our water use on our land for domestic cultivation is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

22. We have always used a reasonable amount of 'auwai water to maintain our 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 Waihe'e River. Requiring our family to pay for these alternatives instead of diverting the small amount of stream water via the 'auwai that runs alongside our land would impose an unfair and impracticable cost on us and our family, given that we are small, non-commercial, domestic water users who have always used the 'auwai that runs alongside our land for domestic purposes and to water our home garden and lo'i kalo.

23. Because our 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, 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 our SWUPA remains applicable, true, and correct.

SUMMARY

24. In sum: (1) our domestic water use is a protected public trust purpose; (2) our 'ohana's traditional and customary right to grow kalo is a protected public trust purpose; (3) the exercise of our appurtenant rights is a protected public trust purpose; (4) because we have appurtenant rights for TMK No. (2) 3-2-007:017, we are entitled to 153,000 gallons per day; (5) at this time, we request a permit for my current and future reasonable-beneficial uses on the property of 76,425 gallons per day, of which 1,425 gallons per day was the existing use on April 30, 2008, and which is or will be used to water our non-commercial garden, lo'i, and lawn, and to provide domestic water to our single family home, and to irrigate our future expanded lo'i kalo, all of which are reasonable-beneficial uses of stream water, for which there is no practicable alternative.

We, Alfred Kailiehu Jr. and Ina Kailiehu, do declare under penalty of law that the foregoing is true and correct.

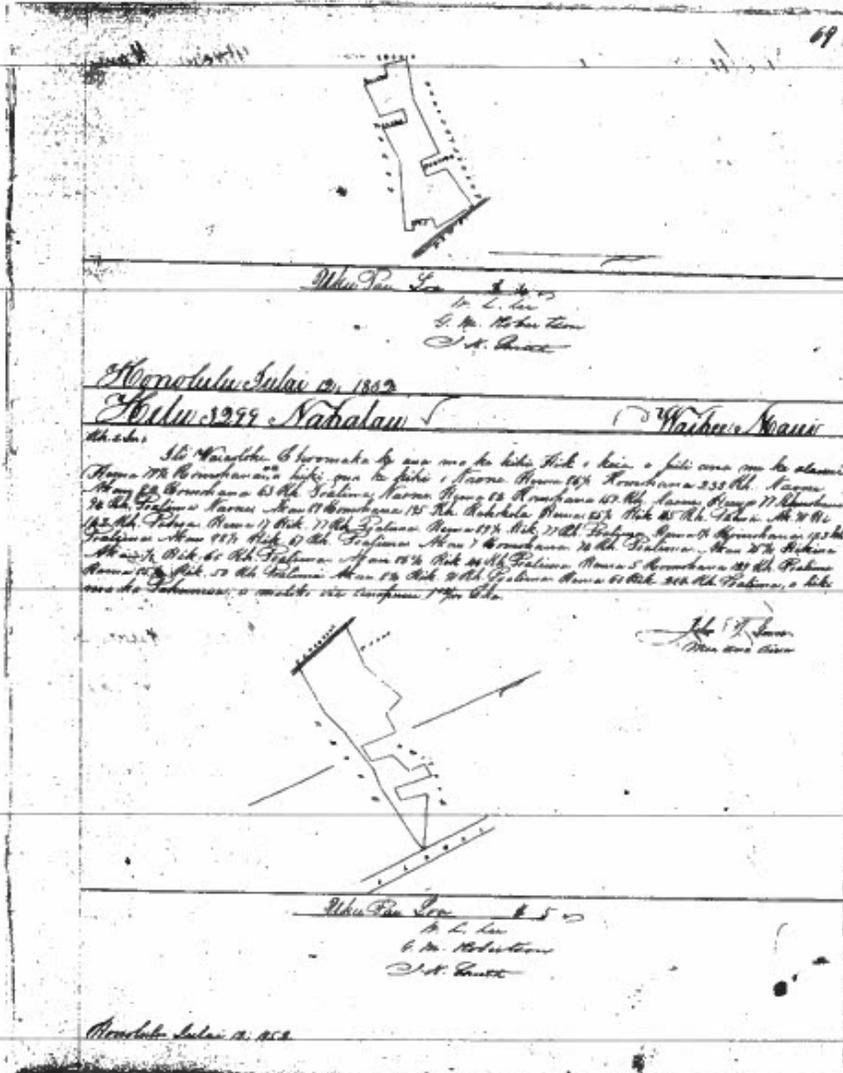
Dated: Waihe'e, Hawai'i, 12/23/2015.



ALFRED KAILIEHU, JR.
WATER USE PERMIT APPLICANT PRO SE



INA KAILIEHU
WATER USE PERMIT APPLICANT PRO SE



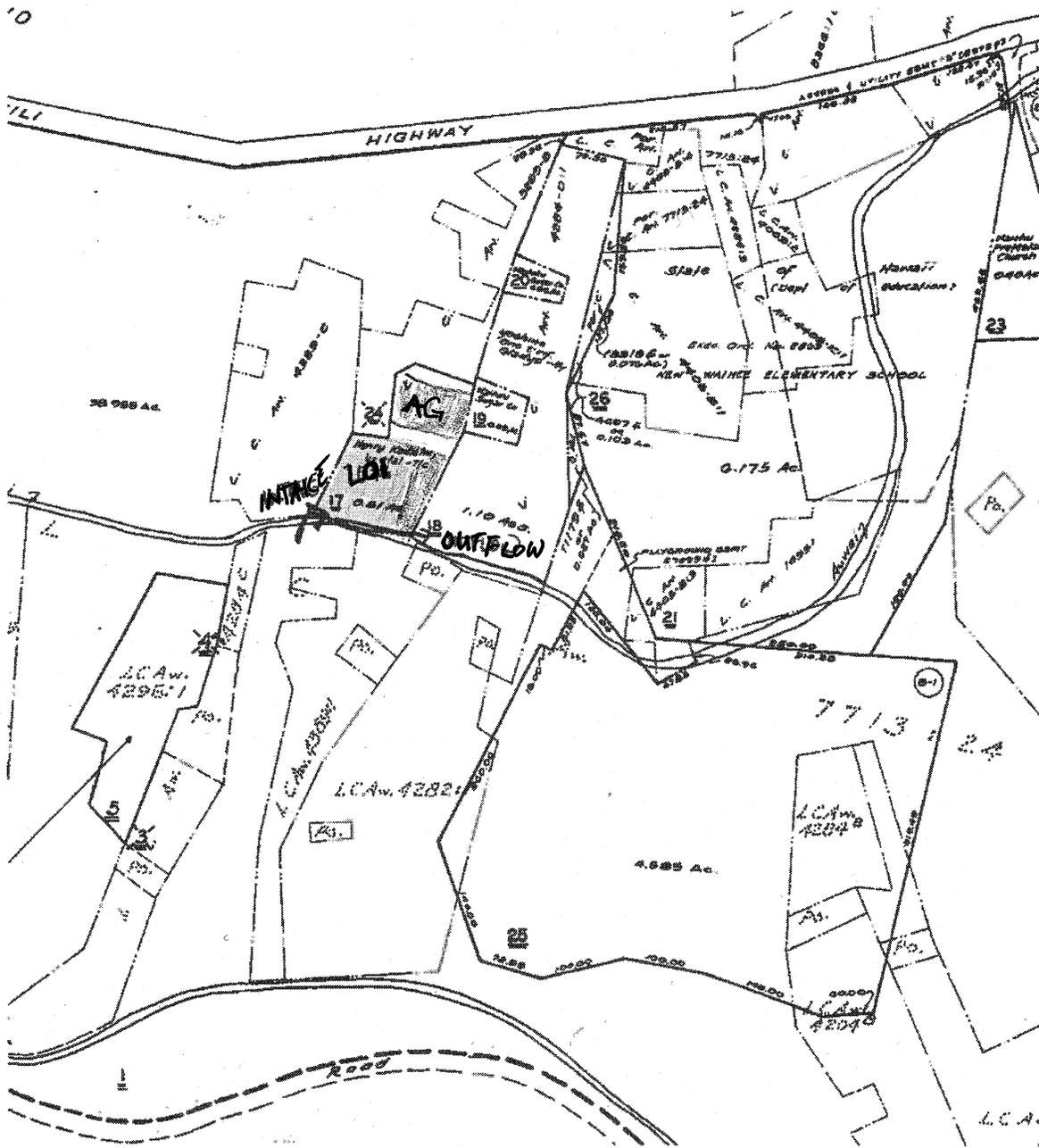
Native Testimony Transcription and Translation LCA 3299B

Nahalau Iulai 25, 1849 Ua komo keia ma ko Nahalau Helu 3299

L. Kaauwai. Hoohikiia Ua ike au 1 apana kalo me kula ma ka ili o Waiaolohe ma Waihee. He aina kahiko no kona. Aole mea keakea. 3 poalima maloko. Ua puni keia apana ia Y. Kaauwai ma ia aina a puni.

Nahalau July 25, 1849 This has been entered into for Nahalau. Number 3299

L. Kaauwai. Sworn in. Nothing is disputed. There is one parcel of kalo and kula land, and 3 poalima loi within. This parcel is surrounded by Y. Kaauwai's parcel.



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

WITNESS LIST

PARTY: ALFRED KAILIEHU, JR. & INA KAILIEHU

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Alfred Kailiehu, Jr. & Ina Kailiehu	Need for and use of Nā Wai 'Ehā water	2250-KAILIEHU-1 to -2

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EXHIBIT LIST

PARTY: ALFRED KAILIEHU, JR. & INA KAILIEHU

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2250-KAILIEHU-1	LCA No. 3299B, Native Testimony, Native Testimony Transcription and Native Testimony Translation	Testimony of Alfred Kailiehu and Ina Kailiehu	
2250-KAILIEHU-2	County Tax Map	Testimony of Alfred Kailiehu and Ina Kailiehu	