

THOMAS TEXEIRA
205 Waihe'e Valley Road
Wailuku, Hawai'i 96793
(808) 242-7797

2016 FEB 13 AM 10:00

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 THOMAS TEXEIRA;
Standards, Nā Wai 'Ehā Surface Water)	EXHIBITS "2280-TEXEIRA-1" - "2280-
Management Areas of Waihe'e, Waichu,)	TEXEIRA-2"
'Īao, & Waikapū Streams, Maui)	
)	
)	

TESTIMONY OF THOMAS TEXEIRA

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") Nos. 2280 and 2281N, filed with the Commission on Water Resource Management on April 23, 2009, for two land parcels in Waihe'e, Tax Map Key ("TMK") Nos. (2) 3-2-005:031 ("Parcel 31") and (2) 3-2-005:032 ("Parcel 32"). These two parcels have been in our 'ohana for generations, since before the time of the Māhele. My wife and I have lived on Parcel 31 since 1984. My daughter, Denise, currently lives on Parcel 032.

2. We 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 intended use of stream water 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 Parcels 31 and 32 in the amount of 98,100 gallons per day (“gpd”). I request a Surface Water Use Permit for my existing and future reasonable-beneficial use for Parcels 31 and 32 of 21,379 gpd, of which 4,845 gpd was the existing use as of April 30, 2008.

QUANTIFICATION OF APPURTENANT RIGHTS

4. Parcel 31 is all of Land Commission Award (“LCA”) No. 4405U:2 to Kahinu, confirmed by Royal Patent (“RP”) No. 5990, and a portion of LCA No. 7713:24 to Victoria Kamamalu, confirmed by RP No. 4475. Parcel 32 is all of LCA No. 3721:2 to Makaele, confirmed by RP No. 6439. I am attaching various Māhele documents that confirm water use on Parcels 31 and 32 at the time of the Māhele.

5. Attached as “2280-TEXEIRA-1” is a true and correct copy of LCA No. 4405U to Kahinu, as well as the native testimony supporting the award (both the original and a transcription and English translation of the relevant portion).

6. The documents in 2280-TEXEIRA-1 confirm that LCA No. 4405U was in kalo cultivation at the time of the Māhele. The native testimony in support of LCA No. 4405U states that ‘āpana 2 was “10 taro patches at Waiakamaona.” As shown in LCA No. 4405U, ‘āpana 2 is 0.27 acres.

7. Attached as “2280-TEXEIRA-2” is a true and correct copy of LCA No. 3721 to Makaele, as well as the native testimony supporting the award (both the original and a transcription and English translation of the relevant portion).

8. The documents in 2280-TEXEIRA-2 confirm that Parcel 32 was in kalo and dryland cultivation at the time of the Māhele. The native testimony for LCA No. 3721 states that ‘āpana 2 was “8 taro patches and dry cultivation.” As shown in LCA No. 3721, ‘āpana 2 is 0.06

acres. Based on the existence of ancient lo'i kalo rock walls on our land, I believe that LCA No. 3721:2 was primarily kalo at the time of the Māhele.

9. As established by 2280-TEXEIRA-1, LCA No. 4405U:2, which is 0.27 acres, was cultivated in wetland kalo at the time of the Māhele.

10. As established by 2280-TEXEIRA-2 and the topography of my land, I estimate that 95% of LCA No. 3721:2, or 0.057 acres, was cultivated in wetland kalo at the time of the Māhele.

11. It is my understanding that, on average, taking into account fallow lo'i and uncultivated areas such as the 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 cultivation will require an amount closer to the upper end of this range.

12. Thus, in my estimation, the water rights appurtenant to Parcels 31 and 32 totals 98,100 gallons per day ("gpd") (0.327 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

13. My 'ohana accesses kuleana water from the 'auwai that runs to the south of the Waihe'e River. The South Waihe'e kuleana 'auwai receives water via a pipe in the Spreckels Ditch, which then empties into an open 'auwai on the south side of Waihe'e River. The water continues makai in the ditch until it splits at the top of Waihe'e Valley Road, and one branch runs adjacent to our property in an open ditch, where we access some water via an open ditch at Parcel 32.

14. We use pipes to bring kuleana water to our garden where we grow vegetables for our subsistence, including string beans, squash, corn, pumpkin, and eggplant. We also water our lawn and other domestic plants such as ti leaf, banana, papaya, crown flowers, heliconia, and

plumeria, and maintain a greenhouse with orchids. We use kuleana water for our garden and other domestic purposes on about 0.535 acres of Parcels 31 and 32. I estimate our existing domestic water use as of April 30, 2008 was 1,605 gpd, using the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gad (0.535 acres x 3,000 gad).

15. We also use our kuleana water to maintain four koi ponds on about 0.09 acres. I estimate our existing water use for our koi ponds as of April 30, 2008 was 3,240 gallons per day, using the water duty for aquaculture used in the Water Commission's 1992 Oahu Water Management Plan (0.09 acres x 36,000 gad).

16. I intend to restore 0.06 acres of lo'i kalo on my land that my 'ohana historically maintained. I believe that I need at least 300,000 gad for healthy wetland kalo, thus, I would need 18,000 gpd for my lo'i kalo (0.06 acres x 300,000 gad). I am subtracting from this amount 1,466 gpd because I will be using some of the land on which I currently maintain my garden and koi ponds to restore my lo'i kalo. Therefore, I believe I will need a total of 16,534 gpd for my lo'i kalo.

17. Thus, I request a water permit in the amount of 21,379 gpd for my current and future uses (1,605 gpd + 3,240 gpd + 16,534 gpd).

Reasonable-Beneficial Analysis

18. My 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 in 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 that I am requesting is necessary for the efficient irrigation of my kalo, home garden, yard, and koi ponds. My use of the kuleana water to grow food and irrigate

my yard is consistent with the state and county land use plans and the public interest. My land is classified by the State as agriculture, and zoned by the County as agricultural. Additionally, my water use on my land for domestic cultivation and to grow kalo in the traditional manner is in the public interest and fulfills a public trust purpose.

Alternatives Analysis

20. Because my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, and because we are a Native Hawaiian ‘ohana with traditional and customary rights to grow kalo, I am not required to provide any 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, 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 the Waihe‘e River. Requiring me to pay for these alternatives instead of diverting a modest 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 plants and grow my fruits and vegetables.

SUMMARY

21. In sum: (1) my domestic water use is a protected public trust purpose; (2) my ‘ohana’s traditional and customary right to grow kalo 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 both TMK Nos. (2) 3-2-005:031 and 3-2-005:032, I am entitled to 98,100

gpd; (5) at this time, I request a permit for my existing and future reasonable-beneficial use of 21,379 gpd, of which 4,845 gpd was the existing use on April 30, 2008, and which will be used for the purpose of cultivating lo'i kalo, in addition to growing vegetables and fruits for my 'ohana's subsistence and maintaining my yard and koi ponds, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

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

Dated: Waihe'e, Hawai'i, 1/29/16 2016.


THOMAS TEXEIRA
WATER USE PERMIT APPLICANT PRO SE

From Page 419 Vol. 3. 600

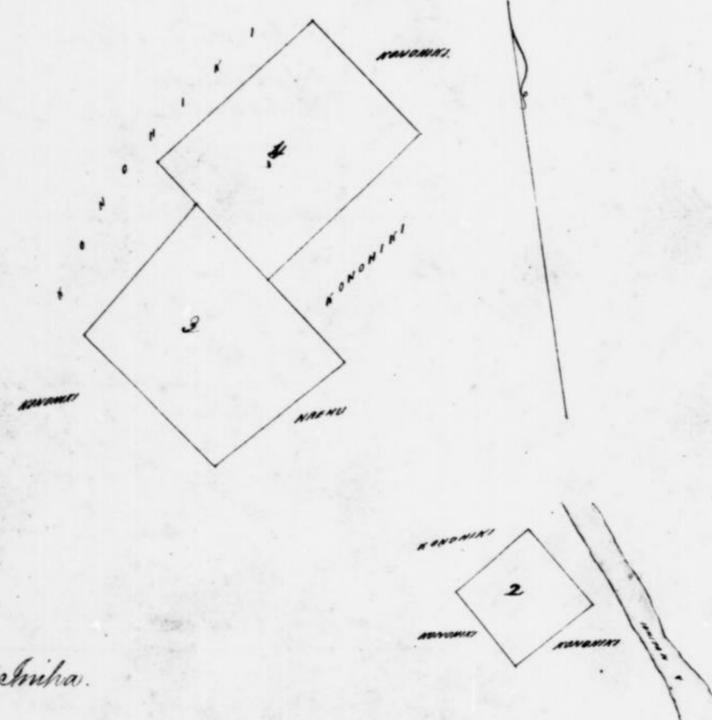
Ekele Apana aina ma na Aiaina, Kahoruraha ame Kupuulua ma Maui, Kona, Mokupuni Oahu.
 Apana 2 Kahuwahala. E hoemaka ma kuhiki Hikiina makai, keia ma ke ahupohaku ku pupau 46
 paku ma ke muliwai mai, Aholo Kona 60 Kom. 1.58 kaul. ika paku laau, Kuli He. 30 Kom. 1.58 kaul. ika
 ke Konehiki. He 60 Heik 1.58 kaul. ika ke Konehiki, Malaila aku Kom 30 Heik 1.58 kaul. ika ke hoemaka i.
 Malaila ke 2 1/2 Eka.

Apana 3. Mala Ho. E hoemaka ma kuhiki Hikiina Konehana ma ke akeia fili ika Alanui
 ame ke ke Konehiki ma ke paku laau hoailonaia x Aholo He. 46 Heik. 3 kaul. ika mala uala a Kalekii, Kuli
 Kom 38 Heik. 3 7/8 kaul. ika hoela a Konehiki ame ke haku, Ahole ahole ma ke haku, Kom 7 Kom. 2.83 kaul
 hiki ika Alanui ame ke ke Konehiki, a malaila aku He 40 Kom. 3.22 kaul. hiki ika ke hoemaka i.
 Malaila ke 1 Eka.

Apana 4. Mala Wala. E hoemaka ma kuhiki Hikiina makai o keia fili meke ke Konehiki
 ma ke paku laau hoailonaia x Aholo Kom 52 Kom. 3.60 kaul. hiki ika Mala Ho a Kalekii, Kuli He. 38 Kom. 2.80
 kaul. fili meke Mala Ho a i ike ke Konehiki, Alaila kuli He. 52 Heik. 3.60 kaul. ika ke Konehiki, Kom 38 Heik. 2.80
 kaul. alaila hiki ika ke hoemaka i.
 Malaila ke 1 Eka

Honolulu, November 11th 1853.

J. N. Matulis
Maui Oahu



2 Kaulahao = 1 Aiaina.

Mokupaula 73.
 W. L. Lee
 G. M. Robertson
 J. Kaulahao
 C. L. Smith

Honolulu November 10th 1853.

Apana 1. He Kaulahao ma ke akeia fili ika Alanui
 He 87 He 52 kaul. ika fili ana me Pealima
 He 58 He 154. " auwai
 He 65 He 177. " "
 He 87 1/2 He 200. " "
 A 2 1/2 He 68. " Papohaku
 A 87 1/2 He 116. " Pealima
 A 5 He 200. " "

Ke	77'	Ko.	1.66	Al.	e fili ana me	Maikaloa
Ke	77 1/2'	Ko.	1.64			Peolina
Ke	77'	Ko.	60			
A	24 1/2'	Ko.	1.64			
Ke	77'	Ko.	57			

Maikaloa a hiki ma kahi i hoomaka i.
Maloko oia Anapuni 5/100 Eka

Apana #1 Ni Maikaloa. E hoomaka ke ana ma ke kahi Maui o keia.

Ke	61 1/2'	Ko.	1.20	Al.	e fili me	Konohiki
Ke	116'	Hi	2.34			Kula
A	47'	Hi	91			Maikaloa
A	36 1/2'	Ko.	39			Peolina
A	52 1/2'	Hi	50			Konohiki
A	38'	Ko.	57			Upai
Ke	63 1/2'	Ko.	72			Peolina
A	31 1/2'	Ko.	66			

Maloko oia Anapuni a hiki ma kahi i hoomaka i.
5/100 Eka

Apana #2 Ni Paolani. E hoomaka ke ana ma ke kahi Maui o Kahikiula

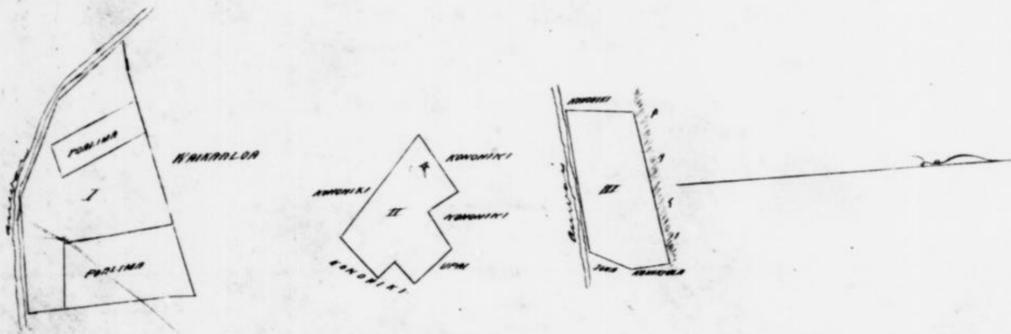
Ke	24'	Ko.	79	Al.	e fili me	Sona
Ke	85'	Ko.	2.54			Auwai
A	4'	Hi.	1.21			Konohiki
A	80'	Hi.	2.72			Pali
Ke	8 1/2'	Hi	65			Kahikiula a hiki ma kahi i hoomaka i.

Maloko oia Anapuni 5/100 Eka

John S. Gorzi
Mea anaama

Kalulu July 7, 1852.

1-15



Maikaloa

85

W. L. Lee

J. M. Robertson

J. M. Kaula

J. H. Smith

Kalulu November 17, 1853.

Hulu 9829 Kapulilau

Kaupuni Hawaii

(From page 175 & 6 cancelled)

Kulana ma Olowalu Kaupuni Hawaii.

Ap. 1. Pahala. E hoomaka ana ma ka pohaku hoailonaia x ma ke kahi Maui e fili ana me ka wai loko o Konohiki, a hiki ana Maui 60 1/2' Kei. 2.06 kaul. ma kuana ma ke kahi o ka hale a hiki i ke kumu kei. alaila Kom. 30' Kom. 98 pauku a ke kaula. alaila ma ke kaula Maui 57' Kom. 95 pauku, & Kom. 37' Kom. 120 pauku, alaila ma ke kaula Maui 63' Kom. 90 pauku, & Maui 15 1/2' Kei. 50 pauku a hiki i kahi i hoomaka i.
Maloko o keia 115/1000 Eka

Ap. 2. Olowalu. E hoomaka ana ma ke kahi Maui e fili ana me kuana o ka loko ame ke kaula Maui a hiki ana Kom. 55 1/2' Kei. 2.44 kaul. alaila Kom. 37' Kei. 2.12 kaul. alaila ma ke kaula Maui 57' Kom. 2.55 kaul. alaila ma ke Konohiki loko wai. Maui 43' Kei. 2.22 kaul. a hiki i kahi i hoomaka i.
Maloko o keia 5/100 Eka

J. C. Lyons
Surveyor

Ma kahuhia ma ka apana, i ka 1826. Ma
 lawe wale o Waiwale, kolu huna o hana
 lawe wale aia ma ka lona, i kela apana,
 i poalima ma ka apana ma,
 Ma ka huna ma, Ma kahuhia Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna

Ma ka huna Ma ka huna

Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna

Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna

Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna

Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna
 Ma ka huna Ma ka huna Ma ka huna

Partial Translation and Transcription of Native Testimony for LCA No. 4405U

Ap.2. 10 Loi ma Waiakamaona

Parcel 2. 10 taro patches at Waiakamaona

2280-TEXEIRA-1-P.5

Uku Pau Loa # 5.
 W. L. Lee
 G. M. Robertson
 J. H. Smith
 J. Mekaulehae

367

Honolulu 27 Oct 1852

Uku 3721 Makale

Kauihi Maui

Apawa I. Ii Waikamaona. E hoemaka ke ana ma ke kahi mua o Kuahuwa. Apawa I.
 Kaul. ma Kuahuwa. Hem. 52 1/2. Hiki 182 Kaul. ma Pealima. Ak. 80. Hiki 80 Kaul. ma Pealima. Ak. 60.
 Hiki 89 Kaul. ma ka Pealima. Ak. 74 1/2. Hiki 70 Kaul. ma ke Pila. Ak. 44 1/2. Kauhana 57 Kaul.
 ma ka Pealima. Ak. 80 1/2. Hiki 73. Kaul. ma Pealima. Ak. 10 1/2. Kauhana 172 Kaul. ma
 ma Papohaku. Ak. 74 1/2. Hem. 152. Kaul. ma Pealima, a hiki ma kahi i hoemaka i, a malake via
 anapuni 9600 Eka.

Apawa II. Ii Waikamaona. E hoemaka ke ana ma ke kahi mua o Kahu. Apawa II
 Hem. 11 1/2. Hiki 109 Kaul. ma Kula. Hem. 3 1/2. Hem. 19 Kaul. ma Kula. Ak. 82 1/2. Hem. 77 Kaul. ma ka
 Anuaimui. Ak. 56. Hem. 87 Kaul. ma ka Anuaimui. Ak. 43 1/2. Hiki 41 Kaul. ma Kauhana. Hem. 53.
 Hiki 55 Kaul. ma Kahu, a hiki ma kahi i hoemaka i, a malake via anapuni 9600 Eka.

Wailuku July 7 1852

John S. Lewis
 Mea ana aina



Kaul. 2 In 4

Uku Pau Loa # 5.
 W. L. Lee
 G. M. Robertson
 J. H. Smith
 J. Mekaulehae

Honolulu 27 October 1852

Uku 4303 & 4304 Kauhana

Kauihi Maui

Apawa I. Ii Kauhana. E hoemaka ke ana ma ke kahi mua o Kauhana & Pimauwa. Hem. 64 1/2. Hem. 103
 Kaul. ma Kauhana. Hem. 28 1/2. Hiki 153 Kaul. ma Kauhana. Hem. 2 1/2. Ak. 148 Ak. ma Pimauwa. Ak. 91 1/2.
 Hiki 189 Kaul. ma Pila. Ak. 10. Hem. 220. Ak. ma Pimauwa. Hem. 65. Hem. 60 Ak. ma Pimauwa.
 Ak. 50 1/2. Hem. 173 Kaul. ma Pimauwa, a hiki ma kahi i hoemaka i, a malake via anapuni 5300
 Eka.

Apawa II & III. Ii Kauhana. E hoemaka ke ana ma ke kahi mua o Kauhana & Makale. Hem. 66. Hem. 86
 Kaul. ma ke Makale. Ak. 20 1/2. Hem. 185 Kaul. Pealima & Kauhana. Ak. 52 1/2. Hiki 212
 Kaul. Pealima & Kauhana. Hem. 12 1/2. Hiki 241 Kaul. ma Pealima. Hem. 70 1/2. Hem. 83 Kaul. ma
 Kauhana, a hiki ma kahi i hoemaka i, a malake via anapuni 4900 Eka.

Wailuku. Aug. 20. 1852.

John S. Lewis
 Mea ana aina

260.

Ma na Mahinehu, ma i ka wa kahiko, i
ka wa o Kamohamoho II. 6 2 Poalima
ma ka Apua ma, 6 5 Poalima ma ka
Apua 2. Uole ma ka Keaha.

1 Maaka Pa lina, Ma Kahakuloa Kamahele
Mahele Pua, Ma Waiuku Paka

2 Maaka a Ma Kahakuloa, a Mahele Paka
Ma Waiuku Kaha.

9256 Kawaha Julai 25, 1829
Uole ka Pua ma a Kawaha mahele
ka Hele 9256

4063 Kawahukili Julai 25, 1829
Mahele Kookihia
Ua ike au i apua kaha ma ka ike aima
Waiakama ma Waiuku, No Aua mahele Kama
Pua 1832. Uole ma ka Keaha, 8 5 Poalima
mahele o kama ma.

Mahele a Poalima o Kaha, Ma Kahakuloa
Kamahele, Mahele Pa lina, Ma Waiuku
Kamahele

3721 Mahele Julai 25, 1829
Mahele Kookihia

Ua ike au i apua ma ka ike aima
Waiakama ma Waiuku

1. Mahele Kaha ma Kaha

" 2. 8 Poi " " "

Mahele Kaha ma i ka 1832, Uole ma ka Keaha
Mahele, 6 5 mahele Poalima, ma ka Apua.

1 Maaka Pahi, Ma Kahakuloa Kamahele, Mahele
Kamahele, Ma Waiuku Hele o Kamahele.

2 Maaka Hele o Pua ma, Ma Kahakuloa Mahele, Waiuku Pahi.

Partial Translation and Transcription of Native Testimony for LCA No. 3721

Ap2. 8 loi kalo me kula

Parcel 2. 8 taro patches and dry cultivation

2280-TEXEIRA-2-P.3

THOMAS TEXEIRA
205 Waihe'e Valley Road
Wailuku, Hawai'i 96793
(808) 244-7079

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: THOMAS TEXEIRA

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Thomas Texeira	Need for and use of Nā Wai 'Ehā water	2280-TEXEIRA-1 to -2

THOMAS TEXEIRA
 205 Waihe'e Valley Road
 Wailuku, Hawai'i 96793
 (808) 244-7079

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: THOMAS TEXEIRA

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2280-TEXEIRA-1	LCA No. 4405U, Native Testimony and Partial Native Testimony Translation	Testimony of Thomas Texeira	
2280-TEXEIRA-2	LCA No. 3721, Native Testimony and Partial Native Testimony Translation	Testimony of Thomas Texeira	