

EMMETT RODRIGUES

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2015 FEB 10 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 EMMETT RODRIGUES;
Standards, Nā Wai 'Ehā Surface Water	)	EXHIBITS "2324-LAA-1" - "2324-LAA-3"
Management Areas of Waihe'e, Waiehu,	)	
'Īao, & Waikapū Streams, Maui	)	
	)	
	)	

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**TESTIMONY OF EMMETT RODRIGUES**

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") Nos. 2324 and 2325N, filed with the Commission on Water Resource Management on April 30, 2009 for a parcel in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-003:002. For almost seventy years, our 'ohana leased this land to Aloha Poi to grow wetland kalo in the traditional manner in the ancient lo'i on our property. Over time, our access to sufficient amounts of water for kalo has diminished, making kalo cultivation difficult. Our 'ohana is now cultivating this parcel on our own. In addition, we maintain lo'i kalo on TMK No. (2) 3-2-003:003.

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 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 TMK Nos. 3-2-003:002 and 3-2-003:003 in the amount of 524,100 gallons per day. I request a Surface Water Use Permit for my current and future reasonable-beneficial use for TMK Nos. 3-2-003:002 and :003 of 492,000 gallons per day, of which 54,000 gallons per day was the existing use as of April 30, 2008.

### **QUANTIFICATION OF APPURTENANT RIGHTS**

4. TMK No. 3-2-003:002 is a portion of Land Commission Award ("LCA") No. 4426:1, confirmed by Royal Patent ("RP") No. 4937. I am attaching various Māhele documents that confirm water use on TMK No. 3-2-003:002 at the time of the Māhele.

5. Attached as "2324-LAA-1" is a true and correct copy of LCA No. 4426:1 to Kahinu, as well as a transcription of the foreign testimony supporting the award.

6. Attached as "2324-LAA-2" is a true and correct copy of a screen shot of TMK No. 3-2-003:002 from the Office of Hawaiian Affairs' Kipuka Database. I have labeled this screenshot to illustrate the approximate location of TMK No. 3-2-003:002 on LCA No. 4426:1. The pō'alima in the center of TMK No. 3-2-003:002 is TMK No. 3-2-003:003. The George Ezaki Trust owns TMK No. 3-2-003:003.

7. Attached as "2324-LAA-3" is a true and correct copy of the County tax map for TMK Nos. 3-2-003:002 and :003 depicting the 'auwai intake locations and outflow to Waihe'e River, with the areas we cultivate in lo'i kalo shaded in grey.

8. The documents in "2324-LAA-1," referring to LCA No. 4426:1, confirm that TMK No. 3-2-003:002 has appurtenant rights to water because the majority of the parcel was in

kalo cultivation. The foreign testimony describes that this parcel contained sixteen lo'i and pasture at the time of the Māhele.

9. Although the George Ezaki Trust owns the pō'alima in the center of my property (TMK No. (2) 3-2-003:003), we have always cultivated this pō'alima along with the other lo'i on our land, accordingly, we claim appurtenant rights for this parcel along with our own. TMK No. (2) 3-2-003:003 is a pō'alima of LCA No. 7713:24 to Victoria Kamāmalu.

10. The map depicting LCA No. 4426:1 in "2324-LAA-1," shows the pō'alima within LCA No. 4426:1, and the TMK map attached as "2324-LAA-3" shows TMK No. 3-2-003:003 is a pō'alima within TMK No. 3-2-003:002.

11. TMK No. 3-2-003:002 is 2.053 acres in size.

12. Based on the Māhele documents in "2324-LAA-1," the existence of ancient lo'i kalo walls, and the fact almost all of the stream water we currently use is for ancient lo'i that we have restored, we estimate at least 1.64 acres of this property was in kalo at the time of the Māhele. Thus, the quantification of the appurtenant rights for TMK No. 3-2-003:002 is the amount of water sufficient to grow kalo on 1.64 acres using traditional methods.

13. TMK No. 3-2-003:003 is 0.107 acres in size.

14. Because this parcel was a pō'alima at the time of the Māhele, 100% of the parcel was cultivated in kalo. Thus, the quantification of the appurtenant rights for TMK No. 3-2-003:003 is the amount of water sufficient to grow kalo on 0.107 acres using traditional methods.

15. 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.

16. Thus, in my best estimation, the water right appurtenant to TMK Nos. 3-2-003:002 and :003 is 524,100 gallons per day (“gpd”) (1.747 acres x 300,000 gad).

**AMOUNT REQUESTED UNDER PERMIT**

17. Currently, I use an estimated 54,000 gpd from the kuleana ‘auwai on the north side of Waihe‘e River. I use this water to irrigate 1.64 acres of lo‘i kalo.

18. The existing use amount, 54,000 gpd, is not enough water to produce a healthy crop of wetland kalo. Although I try to make due with what I have, the lack of water causes problems like small corms, taro rot, and uncontrollable weeds.

19. I request at least 300,000 gallons per acre per day for my wetland kalo, which would be a sufficient amount of water to keep temperatures cool and minimize crop diseases.

20. Accordingly, I request enough water to irrigate 1.64 acres of healthy lo‘i kalo on TMK No. 3-2-003:002, which requires a total of 492,000 gpd (1.64 acres x 300,000 gad).

21. I request a Surface Water Use Permit for my current and future reasonable-beneficial use for TMK No. 3-2-003:002 of 492,000 gallons per day, of which 54,000 gallons per day was the existing use as of April 30, 2008.

**Reasonable-Beneficial Analysis**

22. My existing water 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.

23. The quantity I am requesting is necessary for the economic and efficient irrigation of these lo‘i. Water from Waihe‘e River flows through neighboring properties in open ditches down to our lo‘i kalo, and any water that does not evaporate or seep into the soil returns to the

Waihe'e River. I use only the amount needed to irrigate these lo'i, and I implement measures to minimize water loss.

24. My use of stream water to irrigate these lo'i 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 RU 0.5.

### **Alternatives Analysis**

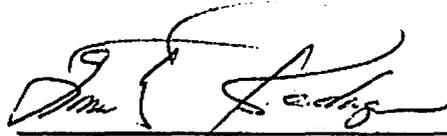
25. Because my land has appurtenant rights to stream water in the nature of an easement that was conveyed at the time of the Māhele, I am not required to provide an alternatives analysis to show that I have no practicable alternative source of water. My appurtenant right is for stream water, not for water from any other source, and my exercise of this right enjoys maximum protection and first priority under the law. Nonetheless, 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. The Alternatives Analysis set forth in SWUPA No. 2324 remains applicable, true, and correct.

### **SUMMARY**

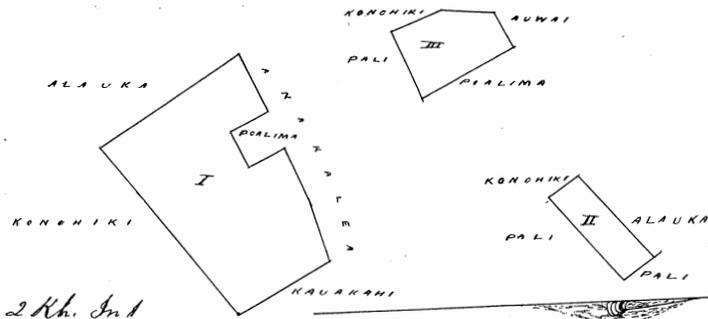
26. In sum: (1) my 'ohana's traditional and customary right to grow kalo is a protected public trust purpose; (2) the exercise of my appurtenant right is a protected public trust purpose; (3) because I have appurtenant rights for TMK No. (2) 3-2-003:002 and :003, I am entitled to at least 524,100 gallons per day; (4) at this time, I request a permit for the current and future reasonable-beneficial uses on the property of 492,000 gallons per day, of which 54,000 gpd was the existing use as of April 30, 2008, to irrigate lo'i kalo, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

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

Dated: Waihe'e, Hawai'i, November 17, 2015

A handwritten signature in black ink, appearing to read 'Emmett Rodrigues', written over a horizontal line.

EMMETT RODRIGUES  
WATER USE PERMIT APPLICANT PRO SE



Uku Pau Lou 5.  
 W. L. Lee  
 F. M. Robertson  
 W. Smith  
 J. Kekaulaha.

Honolulu, 16. Oct. 1852

Keleu 4426 Kakinu I

Waihee Hawaii

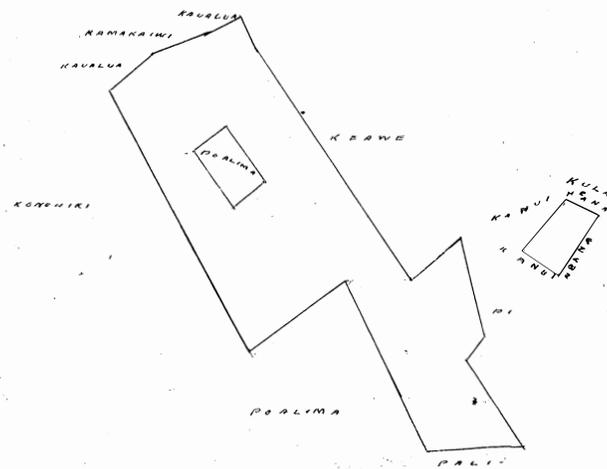
Apana I Ili Kapahu. E hoomaka ke uua ma ke Pihiki Nihina Kona o Kawahu.  
 Ak. 2 1/4 Kom. 115 Kk. ma Kawahu, Ak. 20 Kom. 105 Kk. ma Hamakua, Ak. 2 1/4 Kom. 79  
 Kk. ma Kawahu, Ak. 6 1/4. Hiki 70 Kk. ma Keawe, Ak. 5 1/4 Hiki 538 Kk. ma Keawe, Ak. 3 1/2  
 Kom. 125 Kk. ma Keawe, Ak. 7 1/2 Hiki 200 Kk. ma P. Kom. 52 Hiki 57 Kk. ma Paalima,  
 Ak. 56. Hiki 202 Kk. ma Paalima, Kom. 2; Hiki 194 Kk. ma Pali; Kom. 64 Kom. 363 Kk.  
 ma Paalima, Kom. 3 1/2, Hiki 262 Kk. ma Paalima Kom. 60; Kom. 295 Kk. ma Auwai; Kom. 62;  
 Kom. 281 Kk. ma KONGHIKI, a hiki ma hiki hoomaka i a maloko via anapuni 2 2/3 Eka,

Apana I Paalima i loko. E hoomaka ke ana ma ka pahu hipe, o Keia Keleuana, Ak. 11 Kom. 111  
 Kk. a hiki ma ke Pihiki o Keia, Ak. 38 1/2 Kom. 82 Kk. Kom. 53 1/2 Kom. 132 Kk. Kom. 38 1/2 Hiki  
 82 Kk. Ak. 53 1/2 Hiki 132 Kk. a hiki ma ka pahu uua, a maloko via Paalima 1/10 Eka,

Apana II Ili Kapahukawala E hoomaka ke ana ma ke Pihiki Kona o Keia  
 Ak. 57; Hiki 57 Kk. ma Hanuichana, Kom. 57 1/4 Hiki 120 Kk. ma Hanuichana, Kom. 31 1/2  
 Kom. 84 Kk. ma Hanuichana, Ak. 56 Kom. 132 Kk. ma Hanuichana, a hiki ma ka pahu  
 uua a maloko via anapuni, 1/10 Eka,

Mailulu July. 9. 1852

John S. Tower.  
 Mea ana aina



Kk. 3 In 1

This claimant received 200 from ... before in 1720 ...  
the year ... and ... from ... in 1729  
... in 1729. His title is not disputed. There are  
no persons in either piece.

It is bounded ... by ... land ... by the  
... land ... by the ... land ... by the ...  
... is bounded ... and all sides, by ...

It is bounded ... by ... land ... by the  
... land ... by the ... land ... of the ...

A. 44-6. ...

This claimant has three pieces of land but claims only  
one of them with ... is a piece of the ... and one hole in the ... of  
... land ...

He received it from ... in 1729. His title is not  
disputed.

It is bounded ... by the ... land ... in the  
... land ... by the ... land ... by the ...  
... land ...

It is bounded ... by the land of ...  
... by the ... land ... by ... land ...  
by the ...

The ... is bounded in with ... which it joins

A. 64-20.

This claimant has a claim ... which was heard  
by ... and the court.

... land is one piece of ... in the ... of ...  
... land ...

The claimant ... from ... his wife in 1729, and she  
from her parents in ... His title is not disputed. There are ...

No. 3718 B Kawakanalii (cont.)

Section 1 from Kaikitohopono in 1843  
Section 2 from Hoanasapu in 1829  
Section 3 from Nui in 1829, no objection.

No. 4426 Kahinu

Pi sworn He has seen 1 section (16 patches and a pasture) in Halepahu ili in Waihee. Land from E. Kaaui in 1829, no objection.

Mauka	Lauhoe ili
Kahakuloa	Lono Pashao
Makai	Poalima
Wailuku	Stream

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No. 3297 B

Kanakaui sworn He has seen 2 sections of Kahinu in Pahukaula ili having 3 patches. House site is in Kalamuninahehe ili of Waihee. Both sections from Kanuibeana in 1829, no objection.

Section 2	Mauka	Kanuibeana
	Kahakuloa	Prison patch
	Makai	Milima
	Wailuku	Poalima
Section 3	House site is in section 1, (on sheet 3)	

No. 6594 Pi

July 24, 1849

Kahinu sworn He has seen 1 section in Kaopiloilo ili in Kahakuloa - 12 patches. Land from Pi's wife, and old land, no objection.

Mauka	Hale
Kaanapali and makai	M. Kenai
Waihee	Kahinu

No. 2413 Kuaiki

July 24, 1849

Kapu sworn He has seen 1 section in Paanea ili in Waihee consisting of taro, a pasture and a house. Land from E. Kaaui in 1829, no objection. 4 Poalimas there.

Mauka	Mountain
Kahakuloa	William Kokani
Makai	Prisoners' patch
Wailuku	Pohakuaaka ili

No. 4274 Kaanaa

July 24, 1849

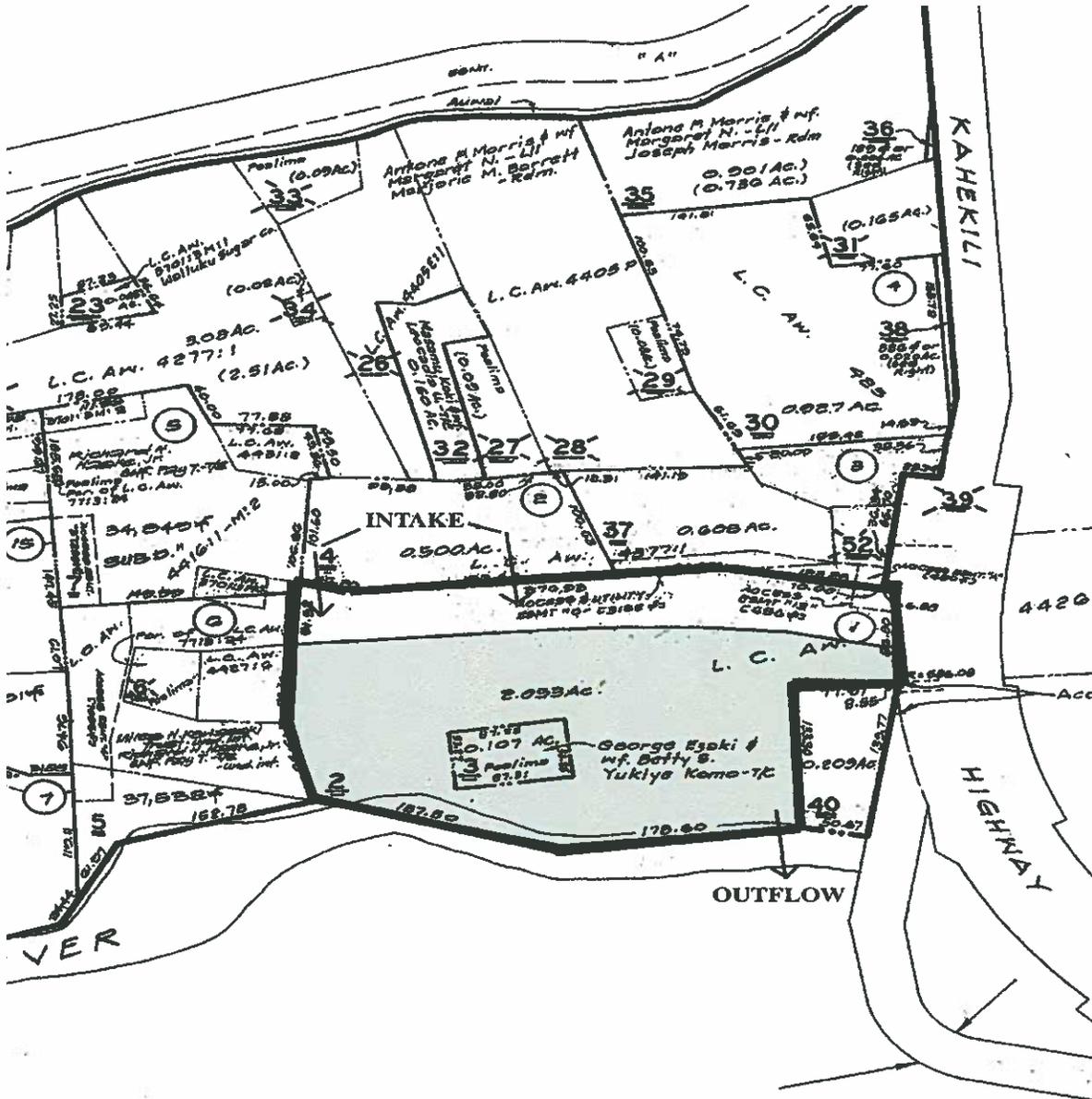
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E. Kaaui sworn He has seen 2 sections in the ilis at Waihee. Land from E. Kaaui in 1832, no objection. 3 Poalimas at sections 1 and 2.

Section 1 - Taro section at Paulelo	Prisoners' patch
Mauka	Kahanamui
Kahakuloa	Poalima
Makai	Waikeanaana ili/Kaanaa
Wailuku	
Section 2 - Taro land (section) and a house lot at Paulelo and Kapoho	
Mauka and Kahakuloa	Poalima
Makai	Puone
Wailuku	Kaana/Kapahuwai



The area of existing lo'i kalo is shaded in grey. We seek more water to grow healthy kalo in this area.



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 and Waikapū Streams, Maui )  
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WITNESS LIST

**PARTY: EMMETT RODRIGUES**

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Emmett Rodrigues	Need for and use of Nā Wai 'Ehā water	2324-LAA-1 to -3

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\_\_\_\_\_)  
)

EXHIBIT LIST

**PARTY: EMMETT RODRIGUES**

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>REFERENCES</b>	<b>REC'D INTO EVIDENCE</b>
2324-LAA-1	LCA No. 4426:1, Foreign Testimony, Foreign Testimony Transcription	Testimony of Emmett Rodrigues	
2324-LAA-2	Illustration of TMK No. 3-2-003:002 and TMK No. 3-2-003:003	Testimony of Emmett Rodrigues	
2324-LAA-3	County Tax Map	Testimony of Emmett Rodrigues	