

KATHLEEN DEHART

P.O. Box 1574

Wailuku, Hawai'i 96793

(808) 283-2180

2016 FEB -5 AM 9:59

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 KATHLEEN DEHART;
Standards, Nā Wai 'Ehā Surface Water	)	EXHIBITS "2361-DEHART-1" - "2361-
Management Areas of Waihe'e, Waiehu,	)	DEHART-2"
'Āao, & Waikapū Streams, Maui	)	
	)	
	)	

---

TESTIMONY OF KATHLEEN DEHART

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2361N, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-011:004. I have lived on this land since 1984. My family has owned this land since the time of the Māhele.

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 intended use of stream water is a traditional and customary cultural practice that is a protected public trust purpose.

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

4. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-2-011:004 in the amount of 150,000 gallons per day. I request a Surface Water Use Permit for my reasonable-beneficial use for TMK No. (2) 3-2-011:004 of 7,350 gallons per day.

**QUANTIFICATION OF APPURTENANT RIGHTS**

5. TMK No. (2) 3-2-011:004 is comprised of a portion of Land Commission Award (“LCA”) No. 3887B to Mahoe, confirmed by Royal Patent No. 6150. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-2-011:004 at the time of the Māhele.

6. Attached as “2361-DEHART-1” is a true and correct copy of LCA No. 3887B to Mahoe, as well the native register supporting the award (both the original and a transcription and English translation).

7. Attached as “2361-DEHART-2” is a true and correct copy of TMK map (2) 3-2-011:004, which I have marked to show the location of our property, our ‘auwai diversion, and area of proposed use.

8. The documents in 2361-DEHART-1, referring to LCA No. 3887B, confirm that our property was in kalo cultivation at the time of the Māhele of 1848. The native register confirms that there were 33 lo‘i, a pond, and a hala tree on the land.

9. My land, TMK No. (2) 3-2-011:004, is 0.5 acres. As shown in the documents in 2361-DEHART-1, my parcel covered by LCA No. 3887B was cultivated primarily in wetland kalo at the time of the Māhele.

10. Based on the Māhele documents in 2361-DEHART-1, the quantification of the appurtenant rights is the amount of water sufficient to grow kalo on 0.5 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) 3-2-011:004 is 150,000 gallons per day ("gpd") (0.5 acres x 300,000 gad).

**AMOUNT REQUESTED UNDER PERMIT**

13. We have not had access to kuleana water since 1984, however, my 'ohana historically accessed water from the kuleana 'auwai that runs to the south of Waihe'e River, and we seek access to that water once again. I plan to install a pipe in the South Waihe'e kuleana 'auwai before it crosses Kahekihi Highway at the Waihe'e School, TMK No. (2) 3-2-007:021, which will bring water to my land.

14. Once our kuleana water is restored, I intend to maintain approximately 30' x 30' of lo'i kalo. I estimate my proposed water use for wetland kalo cultivation of 6,000 gpd by multiplying the amount of land on which I intend to grow wetland kalo (0.02 acres) by 300,000 gallons, the average amount of water I understand is required to grow healthy wetland kalo.

15. I also plan to use water within my home for washing and other purposes and outside my home for watering my yard and non-commercial garden, where we will grow foods for us to eat like star fruit, mangoes, bananas, tomatoes, lettuce, eggplant, papaya, avocado, grapefruit, lemon, lime, squash, beets, string bean, bitter melon, and brussel sprouts.

16. I estimate my proposed domestic water use of 1,350 gpd by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gallons per acre by 0.45 acres, or the total acreage of my property (0.5 acres) minus the approximate square footage of my house and the amount of land on which I intend to grow wetland kalo (0.05 acres).

17. Thus, I request a permit in the amount of 7,350 gpd, for the amount of stream water necessary for my intended lo'i kalo, home garden, and domestic uses.

### **Reasonable-Beneficial Analysis**

18. My proposed 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.

19. Our proposed use of stream water will be "economic and efficient" because we will only use the amount we need. We will take steps to make our water use efficient. For instance, we will use pipes where appropriate to minimize water loss, and our farming practices will include the use of mulch to protect the soil from erosion and minimize the use of water. Therefore, the water we have requested is for a "reasonable-beneficial" use.

### **Alternatives Analysis**

20. Because our land has an appurtenant right to stream water, which is in the nature of an easement that was conveyed with the land at the time of the Māhele, we do not need to demonstrate that we have no practicable alternative water source. 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 this traditional and

customary right is constitutionally protected. Nonetheless, the Alternatives Analysis set forth in my SWUPA remains applicable, true, and correct.

21. Even if we did not have protected rights to stream water, there is no potentially available alternative source that is feasible or economically practicable. Our domestic water service is chlorinated, which is detrimental and unsuitable for wetland kalo. Similarly, wastewater reuse is not appropriate for wetland kalo. Alternate ditch systems do not consistently have enough water to support additional users. Installing and operating a well and pump for ground water use would be unprecedented and extremely burdensome.

22. Requiring me to pay for these alternatives instead of using a small amount of stream water would impose an unfair and impracticable cost on me and my family, given that I am a small, non-commercial, domestic water user.

**SUMMARY**

23. 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 TMK No. (2) 3-2-011:004, I am entitled to 150,000 gallons per day; (5) at this time, I request a permit for my future reasonable-beneficial uses on the property of 7,350 gallons per day, and this modest amount will be used for cultivation of wetland kalo, domestic uses, and irrigation of my non-commercial garden, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

/

/

/

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

Dated: Waihe'e, Hawai'i, 1/20/16.

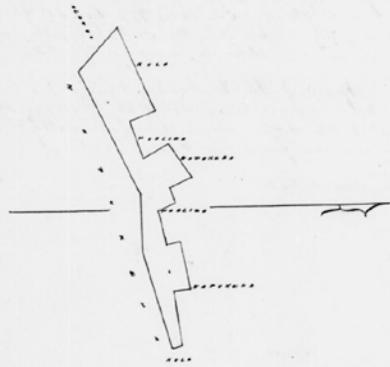
Kathleen DeHart  
KATHLEEN DEHART  
WATER USE PERMIT APPLICANT PRO SE

Heleia 3887 Maaboo Waikua Maui

Ah. 2. Lu. 8  
 He Kahi. Chormaka ke ana ma ka hiki Komoana o Kapukaha o Hana - 2.  
 Ah. 5 1/2 Km. 112 Ah. Palina. Ah. 6 1/2 Bih. 135 Ah. Kalia. Ah. 6 1/2 Bih. 135 Ah. Kapukaha  
 He. 2 1/2 Bih. 53 Ah. Palina. Ah. 6 1/2 Bih. 121 Ah. Palina. Ah. 51 Km. 92 Ah. Palina  
 Ah. 5 1/2 Bih. 134 Ah. Kapukaha. He. 8 Bih. 82 Ah. Palina. Ah. 6 1/2 Bih. 135 Ah. Palina  
 He. 2 1/2 Bih. 53 Ah. Kapukaha. Ah. 7 1/2 Bih. 115 Ah. Kapukaha. Ah. 1 1/2 Km. 67 Ah.  
 Kapukaha. Ah. 7 1/2 Bih. 135 Ah. Kapukaha. He. 5 1/2 Bih. 115 Ah. Kapukaha. Ah. 7 1/2 Km.  
 122 Ah. Kapukaha. He. 2 1/2 Bih. 53 Ah. Komoana. He. 7 1/2 Km. 532 Ah. Kapukaha  
 He. 5 1/2 Km. 112 Ah. Kapukaha. He. 6 1/2 Km. 112 Ah. Kapukaha. a hiki ma Kahi i  
 hoomaka. i. a malaka via auapuni o Heleia.

Maaluku Juno 1, 1852.

John S. Lowen  
Pau ana i lalo



Ulu Pai Sea to Sea

P. S. Lowen  
 G. M. Robertson  
 J. H. Smith  
 J. H. Kaula

Honolulu Augt 26: 1852.

Heleia 5965 Kikahuna Papaia Maui

3 ch. to inch.  
 Hana 1 & S. He Auapuni, a ma Papaia. Chormaka ke ana ma ka  
 hiki Kikahuna, a hiki ma Kahaala. He. 10 Km. 650 Ah. Komoana. He. 5 1/2 Km. 112 Ah.  
 Komoana. He. 2 1/2 Km. 112 Ah. Komoana. He. 11 1/2 Km. 511 Ah. Komoana. He. 2 1/2 Km.  
 He. 32 1/2 Km. 333 Ah. Komoana. He. 36 Km. 5. 93 Ah. Komoana. He. 25 1/2 Km. 112 Ah.  
 Komoana. He. 7 1/2 Km. 112 Ah. Komoana. He. 31 1/2 Km. 333 Ah. Komoana. He. 2 1/2 Km.  
 He. 67 1/2 Km. 112 Ah. Komoana. He. 65 Km. 112 Ah. Komoana. He. 5 1/2 Km. 112 Ah.  
 Komoana. He. 12 Km. 112 Ah. Komoana. He. 5 1/2 Km. 112 Ah. Komoana. He. 12 1/2 Km.  
 333 Ah. Komoana. He. 11 Km. 112 Ah. Kahaala. He. 1 1/2 Km. 333 Ah. Kahaala. a hiki i ka  
 hiki i hoomaka. i. a malaka via auapuni o Heleia.

132  
 maena, poli maia nana i keahea  
 mai a hiki i kea la  
 (Lima 17 Jan 1887) Na Kaka

---

3886 B Kapela Nāhoku  
 Ili aia i Kapela 14 lei  
 14 No Kuanu mai kōi. Puhauhi 1 lei  
 No Pila mai kōi. Kapohu 1 pūhau-  
 hala, ua pa. Na na Kapela

---

3887 C Cila Nāhoku  
 Puhauhi aia 11 lei No  
 Keorahine mai kōi. Cila maia  
 Na Pila

---

3888 Kawaiahi Nāhoku (Feb. 21. 87)  
 Ili aia i Kawaiahi 33 lei  
 16 No Kawaiahi mai kōi. Kapohu  
 1 lei. Ahahi maia ahakahi 2 hala  
 No Kapahua mai kōi  
 Na Kawaiahi

---

3889 C Mahoe Nāhoku  
 Puhauhi aia 33 lei  
 No Kakanai mai kōi. Kapohu 1  
 pūhala, 1 lei No Kapahua mai  
 kōi, ua hūhūa  
 Na Mahoe

---

3890 P Palau Nāhoku  
 Puhauhi aia 31 lei No  
 14 Keorahine. Puhauhi 5 lei No  
 Palau mai kōi.  
 Kapahua Ili aia i ma-  
 ma kahawai. No Mahoe mai kōi.  
 Na Palau

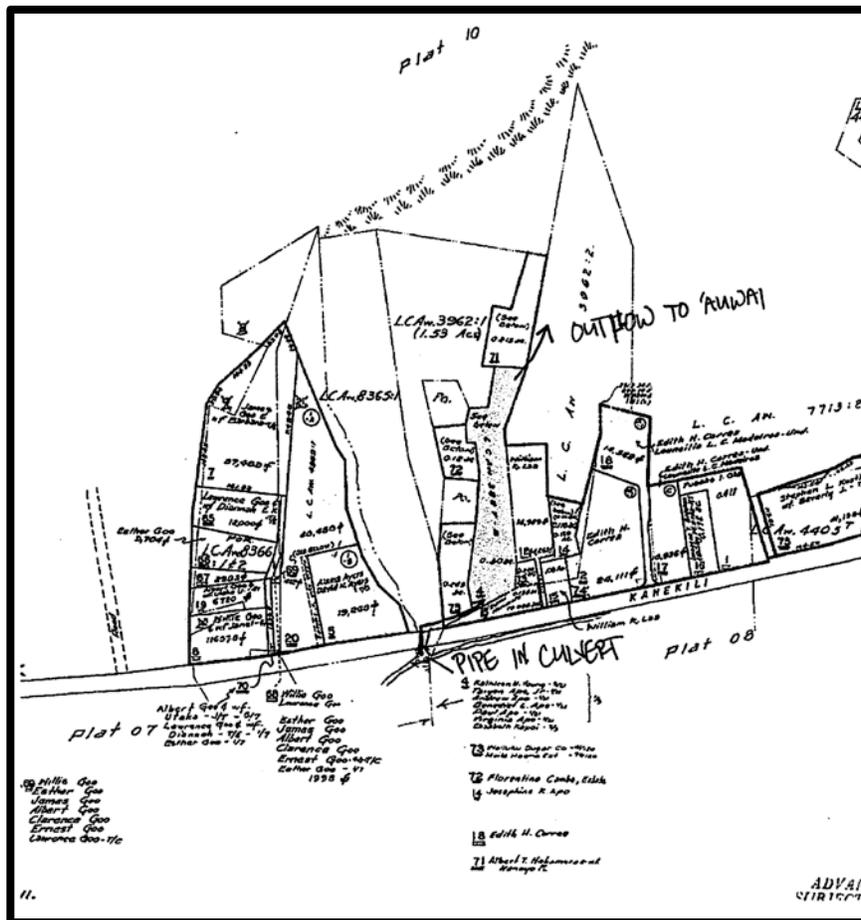
**Transcription and Translation of Native Register for Land Commission Award No.  
3887C**

Puhauolu elua 33 loi. No Kekauai mai ko'u Kapoho. 1 puhala, 1 loko no Kapahuai mai ko'u o ia kuleana.

Na Mahoe

Puhauolu two, 33 lo'i. My land, Kapoho, is from Kekauai. There is 1 Hala tree, one pond (loko) from Kapahuai in this kuleana land.

Sincerely, Mahoe



KATHLEEN DEHART

P.O. Box 1574

Wailuku, Hawai'i 96793

(808) 283-2180

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: KATHLEEN DEHART**

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Kathleen Dehart	Need for and use of Nā Wai 'Ehā water	2361-DEHART-1 to -2

KATHLEEN DEHART  
 P.O. Box 1574  
 Wailuku, Hawai'i 96793  
 (808) 283-2180

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: KATHLEEN DEHART**

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>	<b>REFERENCES</b>	<b>REC'D INTO EVIDENCE</b>
2361-DEHART-1	Copy of LCA No. 3887, Native Register, Native Register Translation	Testimony of Kathleen Dehart	
2361-DEHART-2	Copy of TMK map (2) 3-2-011:004	Testimony of Kathleen Dehart	