

MIKI'ALA PUA'A-FREITAS
2644 Kahekili Highway
Wailuku, Hawai'i 96793
(808) 283-8784

2009 APR 23 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 MIKI'ALA PUA'A-
Standards, Nā Wai 'Ehā Surface Water) FREITAS; EXHIBITS "2364-FREITAS-1" -
Management Areas of Waihe'e, Waichu,) "2364-FREITAS-5"
'Īao, & Waikapū Streams, Maui)
)
)
)

TESTIMONY OF MIKI'ALA PUA'A-FREITAS

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2364N, filed with the Commission on Water Resource Management on April 23, 2009, by my father William Freitas, for our land in Waihe'e, Tax Map Key ("TMK") No. (2) 3-2-002:037 ("Parcel 37"), and SWUPA No. 2269, filed with the Commission on Water Resource Management on April 23, 2009, by my father William Freitas and Michael Rodrigues for TMK No. (2) 3-2-004:016 ("Parcel 16").

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, my 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 TMK No. (2) 3-2-002:037 in the amount of 232,500 gallons per day. I request a Surface Water Use Permit for my current and future reasonable-beneficial use for TMK No. (2) 3-2-002:037 of 150,825 gallons per day.

4. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-2-004:016 in the amount of 99,000 gallons per day. I request a Surface Water Use Permit for my current and future reasonable-beneficial use for TMK No. (2) 3-2-004:016 of 177,300 gallons per day.

QUANTIFICATION OF APPURTENANT RIGHTS

5. Parcel 37 has been in my 'ohana since time immemorial, and I currently live on this land. Our 'ohana land historically included all of Land Commission Award ("LCA") No. 4405EE:1 to Kaokaa, confirmed by Royal Patent No. 6207, although Parcel 37 currently includes just a portion of LCA No. 4405EE:1. I am attaching various Māhele documents that confirm water use on Parcel 37 at the time of the Māhele.

6. Parcel 16 is all of a pō'alima of LCA No. 7713:24 to Victoria Kamamalu. I am attaching various Māhele documents that confirm water use on Parcel 16 at the time of the Māhele.

7. Attached as "2364-FREITAS-1" is a true and correct copy of LCA No. 4405EE:1 to Kaokaa, as well as the foreign testimony supporting the award (the original and a transcription of the relevant portion).

8. Attached as "2364-FREITAS-2" is a true and correct copy of the County tax map for TMK No. (2) 3-2-002:037 with our 'auwai marked.

9. Attached as "2364-FREITAS-3" is a true and correct copy of LCA No. 4405-R to Mioi.

10. Attached as "2364-FREITAS-4" is a true and correct copy of LCA No. 4405-S to Puhi.

11. Attached as "2364-FREITAS-5" is a true and correct copy of the County tax map for Parcel 16, with arrows showing the diversion locations from the 'auwai to my land, and the areas of water uses marked (horizontal lines for the areas of domestic uses and shading for the lo'i kalo areas).

12. The documents in 2364-FREITAS-1, referring to LCA No. 4405EE:1, confirm that Parcel 37 was cultivated in wetland kalo at the time of the Māhele. The foreign testimony states 'āpana 1 was a "section of kalo and kula land at Kapahukauila." Based on the terracing and slope of our land and the existence of ancient lo'i kalo walls throughout our land, I believe that Parcel 37 was the kalo portion of LCA No. 4405EE:1.

13. The documents in 2364-FREITAS-3 through 2364-FREITAS-5 confirm that Parcel 16 is a pō'alima. 2364-FREITAS-5 shows Parcel 16 is situated between Parcels 15 and 17. The maps depicting LCA No. 4405-R 'āpana 2 and LCA No. 4405-S in 2364-FREITAS-3 and 2364-FREITAS-4 show that each LCA borders a pō'alima, which, as you can see from the shapes of the parcels, is Parcel 16. As a pō'alima, 100% of Parcel 16 was cultivated in wetland kalo at the time of the Māhele.

14. Parcel 37 is 0.775 acres. As shown in 2364-FREITAS-1, and based on the topography of my land covered by LCA No. 4405EE:1, Parcel 37 was cultivated in wetland kalo during the time of the Māhele.

15. Parcel 16 is 0.33 acres. As shown in 2364-FREITAS-3 through 2364-FREITAS-5, Parcel 37 was cultivated in wetland kalo during the time of the Māhele.

16. 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.

17. Thus, in my best estimation, the water right appurtenant to Parcel 37 is 232,500 gallons per day ("gpd") (0.775 acres x 300,000 gad), and the water right appurtenant to Parcel 16 is 99,000 gallons per day ("gpd") (0.33 acres x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

18. Both Parcel 37 and Parcel 16 receive kuleana water from the North Waihe'e Valley kuleana 'auwai, which receives water from a pipe in the Spreckels Ditch and also directly from Waihe'e River.

19. Our land at Parcel 16 receives water from the kuleana 'auwai near the top of the 'auwai. We use some water for our lo'i kalo, and the rest of the water continues makai in the 'auwai.

20. Our land at Parcel 37 is the last kuleana user along this 'auwai. The map in 2364-FREITAS-2 shows the 'auwai across the highway from our property, and I have marked the map to show the location of the pipe that brings kuleana water to our land.

21. Because my 'ohana's use of water on Parcel 37 on April 30, 2008 was prevented by the lack of availability of sufficient water, we did not use kuleana water on that date on Parcel 37. Accordingly, my father submitted an application for a new water use permit for Parcel 37, even though my 'ohana had used kuleana water from the 'auwai for generations.

22. In 2012, we restored kuleana water to our land at Parcel 37 and have been using some water to grow wetland kalo in the ancient lo'i kalo we have restored there and to water our yard, garden, and animals.

23. We are currently restoring and replanting 0.5 acres of wetland taro on our land at Parcel 37. We have already restored six of the ancient lo'i kalo on the makai side of the property, and we are currently working on restoring more patches in this area. We intend to restore all 0.5 acres of the ancient lo'i kalo on Parcel 37 within the year, and need enough water for 0.5 acres of healthy wetland kalo.

24. I believe that I need at least 300,000 gad for healthy wetland kalo, thus, I need 150,000 gpd to restore the full 0.5 acres of lo'i kalo on Parcel 37 (0.5 acres x 300,000 gad).

25. On Parcel 37, we also use kuleana water to grow fruits and vegetables throughout our yard, such as watercress, ulu, and sugar cane, and various fruit trees like star fruit, mango, papaya, and coconut. We also use some kuleana water for other domestic plants like ti leaves and ginger. Our animals, such as ducks, chickens, and geese, also drink the kuleana water that flows in our lo'i kalo.

26. I estimate about 0.275 acres of our land at Parcel 37 is used for our fruits and vegetables and our animals. Most of the fruits and vegetables are consumed by my 'ohana and shared with friends and neighbors. We also sell some of our fruits and vegetables at our roadside fruit stand to offset the costs associated with growing these fruits and vegetables.

27. Using the State of Hawai'i Water System Standard for Maui County of 3,000 gad, I estimate we use about 825 gpd for our fruits and vegetables and other domestic plants and our animals on Parcel 37 (0.275 acres x 3,000 gad).

28. We have also established Kapuna Farms on Parcel 37, which produces honey for both our family's consumption and for sale. We have beehives lined up along the banks of our lo'i, and our bees use some of the water from our lo'i kalo. We rescue bees in the area, and produce honey. We sell this honey to the public to cover the operating expenses of Kapuna Farms. Water is essential for the survival of honeybees and for the production of honey, which is another important use of our kuleana water.

29. We cultivate wetland kalo on all of Parcel 17, or 0.33 acres. We estimated the amount of water in use on Parcel 16 on April 30, 2008 by measuring how long it took to fill a five-gallon bucket at each of three diversions for Parcel 16 and TMK Nos. (2) 3-2-004:015 ("Parcel 15") and (2) 3-2-004:017 ("Parcel 17"). The total was 474,000 gpd, and we estimated that 1,200 gpd of that total was used for domestic plants on Parcels 15 and 17, and the remaining water, or 472,800 gpd was used for 0.88 acres of kalo on Parcels 15, 16, and 17. I estimate we were using 177,300 gpd of this by calculating the pro rata amount of water for 0.33 acres of lo'i kalo on Parcel 16 ($(472,800 \text{ gpd} / 0.88 \text{ acres}) \times 0.33 \text{ acres} = 177,300 \text{ gpd}$), I estimate I use 177,300 gpd on my 0.33 acres of lo'i kalo as of April 30, 2008.

30. Thus, for Parcel 37, we request a Surface Water Use Permit for our reasonable-beneficial use of 150,825 gpd for the purpose of cultivating wetland kalo in the ancient lo'i on our land and for our fruits and vegetables and other plants and animals (150,000 gpd + 825 gpd), and for Parcel 16, we request a Surface Water Use Permit for our reasonable-beneficial use of 177,300 gpd for the purpose of cultivating wetland kalo in the ancient lo'i on our land.

Reasonable-Beneficial Analysis

31. 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.

32. The quantity that I am requesting is necessary for the economic and efficient irrigation of my lo‘i kalo, fruits, and vegetables. Additionally, the animals we keep on our land, including bees, ducks, chickens, and geese depend on the use of water from the stream.

33. My use of the stream water is economic and efficient. We only use the amount of water we need for our fruits, vegetables, animals, and lo‘i kalo, and we implement measures to minimize water loss.

34. My use of the stream water is consistent with the state and county land use plans because we are growing crops and raising animals on land that is classified by the State as agriculture (Parcel 37) and rural (Parcel 16) and zoned by the County as agricultural.

35. My water use on my land for cultivation and to grow wetland kalo in the traditional manner is in the public interest and fulfills a public trust purpose. We are Native Hawaiians engaged in traditional agricultural practices, and our crops help to maintain Native Hawaiian culture, traditional agricultural practices, ecological balance, and scenic beauty.

Alternatives Analysis

36. 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 we have traditional and customary rights as Native Hawaiians, 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, other alternatives, such as municipal water, reclaimed wastewater, water from other ditch systems, desalinized water, and groundwater, are not

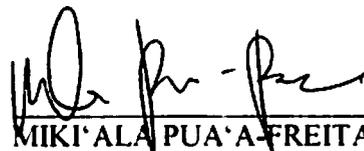
practicable alternatives to the 'auwai water from the Waihe'e River. Requiring us to pay for these alternatives instead of diverting a modest amount of stream water via the 'auwai that runs to our land would impose an unfair and impracticable cost on me and my family, given that we are a small water user that has used the kuleana water to grow our lo'i kalo, fruits, and vegetables for generations.

SUMMARY

37. In sum, (1) my 'ohana's traditional and customary right to grow kalo is a protected public trust purpose; (2) the exercise of our appurtenant right is a protected public trust purpose; (3) because I have appurtenant rights for TMK No. (2) 3-2-002:037, I am entitled to 232,500 gallons per day; (4) at this time, I request a permit for my reasonable-beneficial use of 150,825 gallons per day, which will be used for growing lo'i kalo, fruits, vegetables, and raising animals on our land, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative; (5) because I have appurtenant rights for TMK No. (2) 3-2-004:016, I am entitled to 99,000 gallons per day; (5) at this time, I request a permit for my reasonable-beneficial use of 177,300 gallons per day, which is used for growing lo'i kalo, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

I, Miki'ala Pua'a-Freitas, do declare under penalty of law that the foregoing is true and correct.

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



MIKI'ALA PUA'A-FREITAS
WATER USE PERMIT APPLICANT PRO SE

N^o 1 is bounded Mauka, by the Pealima lei. Lakaakula, by the Pealima lei; by the Pealima lei, Waiakua, by the Creek.

N^o 2 is bounded Mauka, by Kordi's land. Lakaakula, by the Pealima lei; by the Pealima lei, Waiakua, by the Creek.

N^o 3 is bounded Mauka, by the Pealima lei. Lakaakula, by the Pealima lei; by the Pealima lei, Waiakua, by the Creek.

^{cc}
C.L.L.O.S. Papakahu.

Kahina Sw. The Old land consists of two pieces in the di of Waikawana, Waiakua, Maui.

N^o 1 is 36 lots, one kula, and a House lot

N^o 2 is 12 lots, and one kula.

The Claimant received them from Paauw in 1835 and his title was never disputed. There are 4 pealima lei in it.

N^o 1 is bounded Mauka, by Maheke's land. Lakaakula, by Kanchahiti's land. Pealima, by the same. Waiakua, by Pealima's land.

N^o 2 is bounded Mauka, by the Pealima lei. Pealima, by the same's land. Pealima, by the Pealima lei. Waiakua, by the Creek.

^{dd}
C.L.L.O.S. Upani.

Upani, husband of C.L. made the necessary oath as to entering this claim.

Kahina Sw. The Old land consists of a kula and kula land, with a house lot all in one piece in the di of Waikawana, Waiakua, Maui.

The Claimant is an old resident and received the land from her father before 1829. Her title was never disputed. There are 3 pealima lei in it.

N^o 1 is bounded Mauka, by the di of Paalani. Lakaakula, by the Creek. Pealima, by the Pealima lei. Waiakua, by the Creek.

^{ee}
C.L.L.O.S. Kakaia.

The Claimant made the necessary oath.
Kakaia Sw. The Old land consists of 3 pieces in Waiakua, Maui.

Waikae

N^o 1 is a section of kula and kula land in Kapahukauila.

N^o 2 is a section of kula land in Kapahukauila.

The Claimant received N^o 1 from Saruwai in 1829, and N^o 2 from A. Pahi in 1830, and N^o 3 from Makamaona in 1829. His title was never disputed. N^o 1 included 1st portion land N^o 2 has 5th portion land N^o 3 none.

N^o 1 is bounded Waika, by the Gov^t lot. Kahakuloa, by the ili of Kapuna. Makai, by the ili of Kihiki. Kaula, by the Palama and Pahaas lii.

N^o 2 is bounded Waika, by the ili of Kihiki. Kahakuloa, by the same. Makai, by the ili of Kihiki. Kaula, by Makamaona's land.

N^o 3 is bounded Waika, by Saruwai's land. Kahakuloa, by Makamaona's land. Makai, by Ahi's land. Kaula, by Ahi's land.

C. 1,105 Wa.

Heaps li: The 1st land consist of one piece of 9 li in the ili of Ahi, Waika, Maui.

The Claimant received it from Kihikihani in 1827, and he from Hekeanawa Gov^r of Oahu. His title is not disputed.

It is bounded Waika, by Hekeanawa's land. Kahakuloa, by Hekeanawa's land. Makai, by Kihikihani's land. Kaula, by the ili of Kihikihani.

C. 1,106 Waipauiki

Heaps li: The 1st land consist of two pieces in Waika, Maui.

N^o 1 is a piece of kula land, it is the ili of Waipauiki.

N^o 2 is a piece of kula land, it is the ili of Ohi.

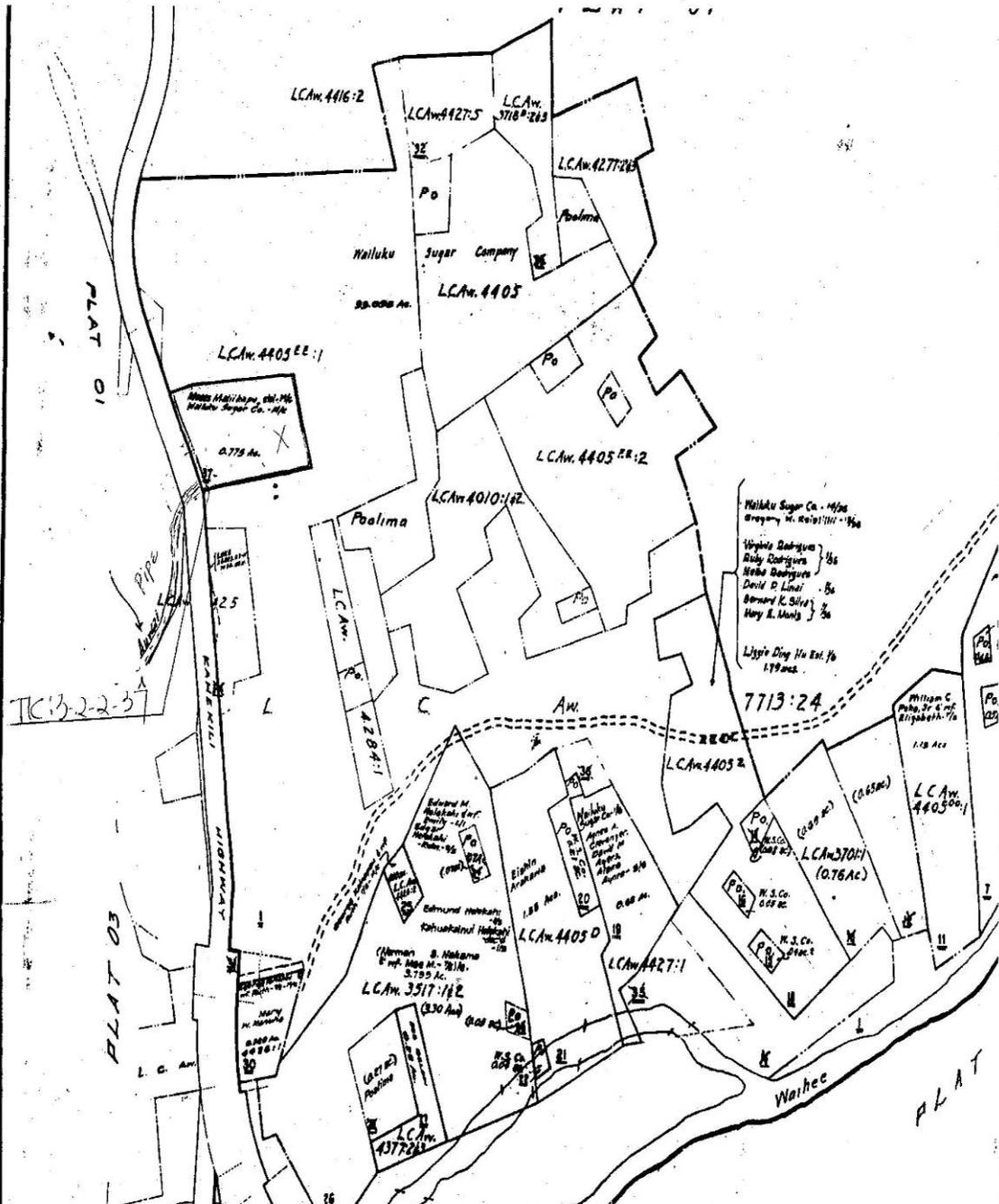
The Claimant received N^o 1 from Kihikihani in 1828, and he from Gov^r Hekeanawa through Kihikihani, and N^o 2 he received from Kama in 1826, and he from me, and he from Kihikihani, and he from Gov^r Hekeanawa. His title is not disputed. There are 2 li portions in N^o 1.

N^o 1 is bounded Waika, by Hekeanawa's land. Kahakuloa, by

Partial Transcription of Foreign Testimony for LCA No. 4405

EE “No. 1 is a section of kalo and kula land at Kapahukauila.”

2364-FREITAS-1-P.4



2364-FREITAS-2-P.1

MARCEL
WILLIAMS
ARCHT

Uluu Pau Lau p 6.
W. H. Allen
G. W. Robertson
S. H. Smith
J. M. Kaulahau

Honolulu Jan 4 1853.

Uluu 4 405 R. Mici

Waikoa, Maui

Uluu I. Ili Waipae. E hoomaka ke ana ma ke kahi Akau o Waia, ke kahi Kamehameha
& Kaalepo II

Uluu	36 1/2	Sika	132	Kh.	Kaalepo
Uluu	56	Kom.	45	"	Kealima
Uluu	30	Sika	40	"	"
Uluu	56	Sika	45	"	"
Uluu	36	Sika	3,36	"	Kaalepo
Uluu	9	Kom.	51	"	"
Uluu	66	Kom.	3,03	"	Kealima
Uluu	24 1/4	Kom.	535	"	Kaalepo
Uluu	66 3/4	Sika	216	"	Pufohaku

a hiti ma kahi i hoomaka'i, a maloko ia ana puu 1.46/100 Eka.

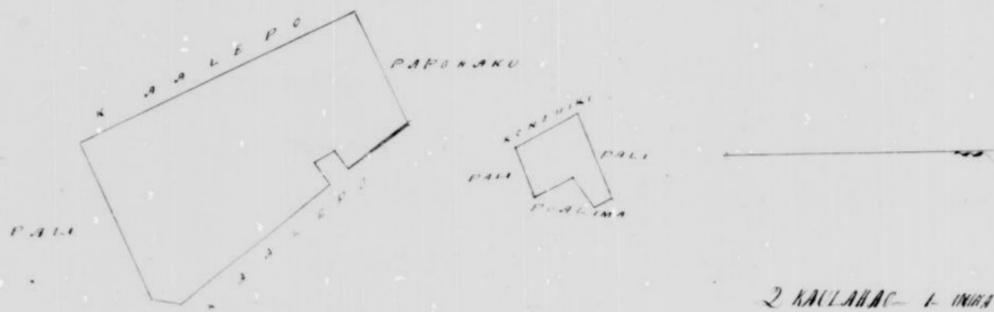
Uluu I. Ili Waikalulu. E hoomaka ke ana ma ke kahi Akau o Waia e fili ana me
kaalepo

Uluu	70 1/2	Sika	92	Kh.	Pali
Uluu	20 1/2	Kom.	79	"	Kealima
Uluu	56 1/2	Sika	66	"	"
Uluu	21 1/2	Kom.	33	"	Kealima
Uluu	7	Kom.	466	"	Pali
Uluu	24 1/2	Sika	127	"	Kamehameha

a hiti ma kahi i hoomaka'i, a maloko ia ana puu 15/100 Eka.

Waikoa, July 10, 1852

John S. Guier,
Ma ana ana.



Uluu Pau Lau p 6.
W. H. Allen
G. W. Robertson
S. H. Smith
J. M. Kaulahau

Honolulu, Jan 4, 1853.

Hele 4405 *37* Lou

Haihu Maui

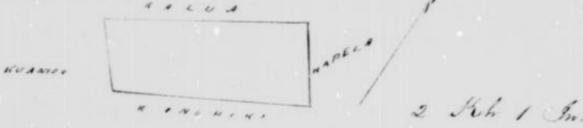
Apana 1 Ili Nelu. E hoomaka ke ana ma ke hiki Nema o Kua. Epili ana me Luamoo.

Akau	4 1/2	Komohana	128	Kaulahao	Luamoo
Akau	5 1/2	Hikina	354	"	Kalua
Hema	3 1/2	Hikina	148	"	Kapela
Hema	60	Komohana	342	"	Konohiki

a hiki ma kahi i hoomaka i, a maloko oia anapuni 4 25/100 Eka

Hailuku, July 7, 1852

John S. Cowie
Mea ana sina



Ulu Pau Lea / 4.
W. H. Lee
G. M. Robertson
I. Kaulahao
J. H. Smith

Honolulu, 25 Dec. 1852

Hele 4405 S. Puki

Haihu Maui

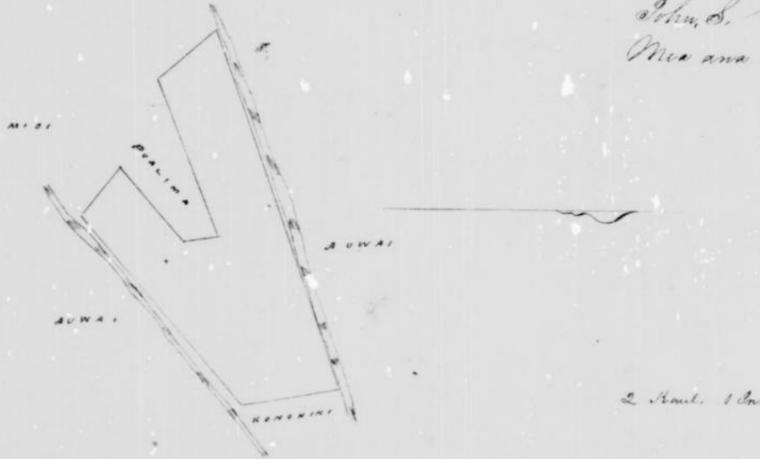
Ili Hailuku, E hoomaka ke ana ma ke hiki Akau. Ma hiki 2, ma ke hiki Nema o Kua.

Akau	5 1/2	Komohana	107	Kaulahao	Konohiki
Akau	48	Hikina	170	"	Keatima
Akau	9	Komohana	63	"	"
Hema	6 1/2	Komohana	299	"	"
Akau	40	Komohana	137	"	Miri
Akau	70 1/4	Hikina	667	"	Kuwa
Hema	8 1/2	Hikina	179	"	Konohiki
Hema	49	Komohana	132	"	Kuwa

a hiki ma kahi i hoomaka i, a maloko oia anapuni 1 25/100 Eka

Hailuku, July 10, 1852

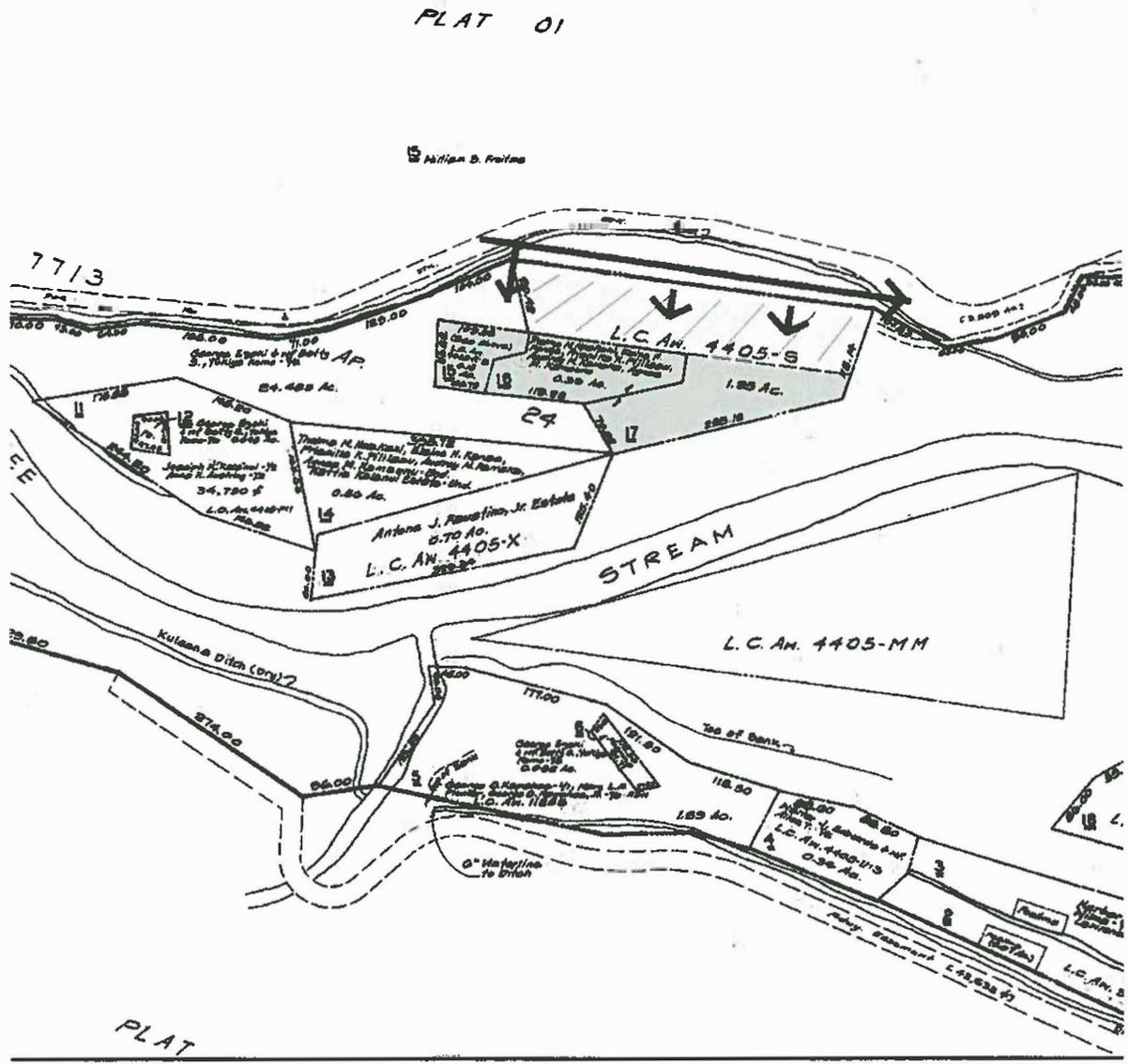
John S. Cowie
Mea ana sina



Ulu Pau Lea / 5.
W. H. Lee
G. M. Robertson
I. Kaulahao
J. H. Smith

Honolulu, 25 Dec. 1852

TMK maps showing diversion locations from 'auwai with arrows, and area of water uses referenced, domestic uses are marked with horizontal lines, lo'i kalo are shaded



MIKI'ALA PUA'A-FREITAS

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

WITNESS LIST

PARTY: MIKI'ALA PUA'A-FREITAS

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Miki'ala Pua'a-Freitas	Need for and use of Nā Wai 'Ehā water	2364-FREITAS-1 to -5

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

EXHIBIT LIST

PARTY: MIKI'ALA PUA'A-FREITAS

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2364-FREITAS-1	LCA No. 4405EE, Foreign Testimony and a Transcription	Testimony of Miki'ala Pua'a-Freitas	
2364-FREITAS-2	County Tax Map for TMK No. (2) 3-2-002:037	Testimony of Miki'ala Pua'a-Freitas	
2364-FREITAS-3	LCA No. 4405-R	Testimony of Miki'ala Pua'a-Freitas	
2364-FREITAS-4	LCA No. 4405-S	Testimony of Miki'ala Pua'a-Freitas	
2364-FREITAS-5	County Tax Map for TMK No. (2) 3-2-004:016	Testimony of Miki'ala Pua'a-Freitas	