

CYNTHIA ANN McCARTHY

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2016 FEB -5 AM 9:43

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 CYNTHIA ANN
Standards, Nā Wai 'Ehā Surface Water)	McCARTHY; EXHIBITS "2368-
Management Areas of Waihe'e, Waiehu,)	KAMASAKI-1" - "2368-KAMASAKI-2"
'Iao, & Waikapū Streams, Maui)	
)	
)	
)	

TESTIMONY OF CYNTHIA ANN McCARTHY

1. This testimony is provided in support of Surface Water Use Permit Application ("SWUPA") No. 2368, filed with the Commission on Water Resource Management on April 23, 2009, for a parcel in Waikapū, Tax Map Key ("TMK") No. (2) 3-6-007:010. I have lived on this land all my life: my grandfather purchased a portion of it in 1919 and my father Teruo Kamasaki, who passed away after filing this SWUPA, purchased the remaining portion from a neighbor in 1951.

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

3. Based on the information set forth below, I request recognition of appurtenant rights for TMK No. (2) 3-6-007:010 in the amount of 213,000 gallons per day. I request a Surface Water Use Permit for my future reasonable-beneficial use for TMK No. (2) 3-6-007:010 of 2,010 gallons per day. I would use the water to irrigate the non-commercial garden of fruits

and vegetables such as togan melon, daikon, and corn that my father used to grow until July 2004 when the pipe that used to bring the water from the 'auwai to our land was pulled out and destroyed.

QUANTIFICATION OF APPURTENANT RIGHTS

4. TMK No. (2) 3-6-007:010 is comprised of Land Commission Award ("LCA"), LCA No. 432 to Sylva, confirmed by Royal Patent No. 102. I am attaching various Māhele documents that confirm water use on TMK No. (2) 3-6-007:010 at the time of the Māhele.

5. Attached as "2368-Kamasaki-1" is a true and correct copy of LCA No. 432 to Sylva, as well the native register supporting the award (both the original and the English translation).

6. Attached as "2368-Kamasaki- 2" is a true and correct copy of a screen shot from the Office of Hawaiian Affairs' Kīpuka Database, showing the location of LCA No. 432 (in yellow). This map has been marked to show the location of TMK No. 3-6-007:010 (in blue)

7. As depicted in 2368-Kamasaki-2, our entire parcel falls under LCA No. 432.

8. The documents in 2368-Kamasaki-1, referring to LCA No. 432, confirm that the 'ili of Lehuapueo was cultivated in wetland taro: the LCA describes the existence of "numerous" "lo'i" at the time Sylva submitted his claim.

9. My land, TMK No. (2) 3-6-007:010, is 0.71 acre. As explained above, my parcel covered by LCA No. 432 was cultivated in wetland taro.

10. Based on the Māhele documents in 2368-Kamasaki-1 and 2368-Kamasaki-2, the quantification of the appurtenant rights is the amount of water sufficient to grow wetland taro on 0.71 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) 3-6-007:010 is 213,000 gallons per day ("gpd") (0.71 acre x 300,000 gad).

AMOUNT REQUESTED UNDER PERMIT

13. As my father explained in his testimonies in the contested case hearing regarding the interim instream flow standards for Nā Wai 'Ehā, CCH-MA06-01, our family's access to the 'auwai water we had used for decades was terminated when, in 2004, my father discovered the pipe he installed in the culvert that fed our 'auwai to bring water to our land was pulled out and destroyed. Although we have been cut off from the water, I would like to see that pipe reinstalled so that I can use the water to irrigate a non-commercial garden, like the one my father used to have, of togan melon, daikon and corn, and to water my lawn. I am requesting a permit for the amount of water necessary for these domestic uses.

14. I estimate my proposed domestic water use to be 2,010 gallons per day. I arrived at this amount by multiplying the 2002 State of Hawai'i Water System Standard for Maui County of 3,000 gallons per acre per day ("gad") by the acreage I anticipate irrigating, 0.67 acre (the total acreage of our land—30,922 square feet—minus the approximate square footage of our house—1,680 square feet).

Reasonable-Beneficial Analysis

15. This new use would be "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.

16. The quantity I am requesting is necessary for the economic and efficient irrigation of my home garden, which will include fruits and vegetables for consumption by myself, ‘ohana, and neighbors. My use of the stream water will be economic and efficient, as I will use only the amount needed to irrigate my garden and lawn, and I will implement measures to minimize water loss, including using pipes where appropriate, and use mulch and green manure to protect the soil from erosion and minimize the use of water.

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

Alternatives Analysis

18. As explained above, from 1919 up until 2004, when the pipe that brought water from the concrete ditch to our land was destroyed, my family had used a reasonable amount of ‘auwai water to maintain our non-commercial garden of fruits and flowers. 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 Waikapū Stream. Requiring me to pay for these alternatives instead of diverting the small amount of stream water via the ‘auwai that my family had previously used for decades would impose an unfair and impracticable cost on me and my family, given that we are a small, non-commercial, domestic water user who has always used the ‘auwai to water our home garden.

19. 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, the Alternatives Analysis set forth in my SWUPA remains applicable, true, and correct.

SUMMARY

20. In sum: (1) my domestic water use 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) 3-6-007:010, I am entitled to 213,000 gallons per day; (4) at this time, I request a permit for my future reasonable-beneficial uses on the property of 2,010 gallons per day, and this modest amount will be used to irrigate my non-commercial garden and lawn, which is a reasonable-beneficial use of stream water, for which there is no practicable alternative.

I, CYNTHIA ANN McCARTHY, do declare under penalty of law that the foregoing is true and correct.

Dated: Waikapū, Hawai'i, 2/1/16


CYNTHIA ANN McCARTHY
WATER USE PERMIT APPLICANT PRO SE

C. No. 132 Anthony Sylva

This is a claim for a certain piece of land in Waikapu, Island of Maui.

The Claimant obtained this land from Kaahi the Honohiki of the District, and he from his parents who received this with other lands from Kaahu-manu 1: his possession has always been peace-able.

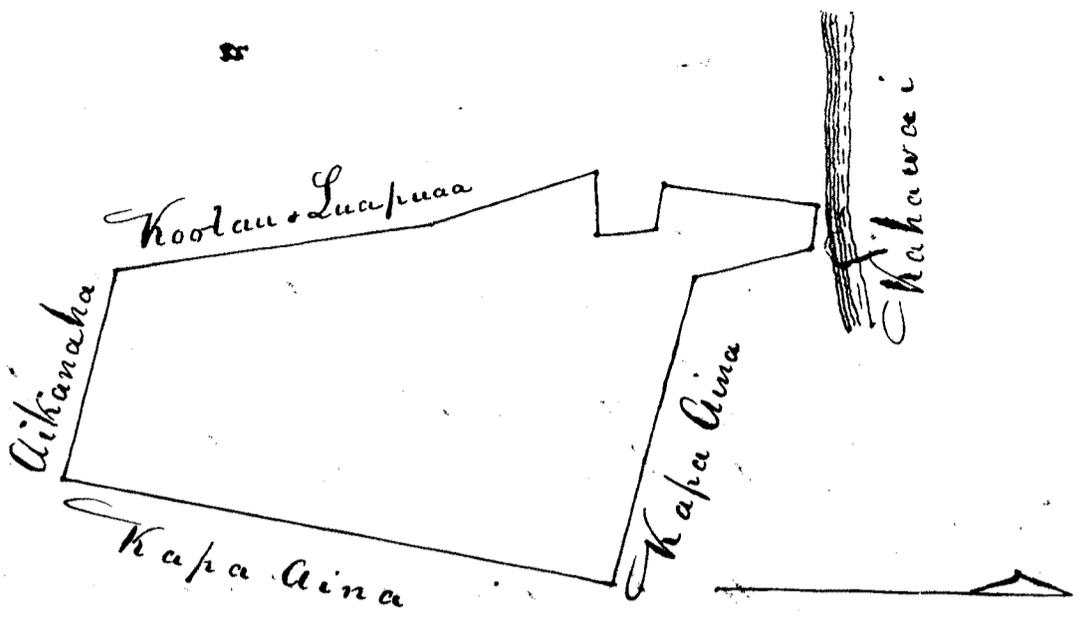
This title is clear; coming under the 1st Rule of the Board: and we do hereby award to Anthony Sylva a freehold Estate less than allodial; or in other words, a life Estate, in said lot, which he may commute for a fee-simple title as prescribed by law.

The correct metes and bounds of this lot are contained in the annexed survey made by John Richardson on 19th January 1857.

Ke hui o ka aina o Atani Sylva. Lohiapua ka inoa, aia ma Waikapu i Maui, aia hoi ma ka kapa ma ka aiao hema o ka kahawai nui, ma ke Honohana o ke Alamui Aupuni, ma ka Akau hoi o ka aina i kapaia o Aikanaha, ma ka Hikina hoi o na aina i kapaia o Koolau, a me Luapuaa.

Hoemaka ana ka arao mua, ma ka lili mauka o ke Alamui Aupuni, a mwe aku i ka H. 9°30' No. 11 Kaulahao, 64 1/2 kapuai, huli H. 78° No. 4 Kaulahao 33 1/2 kapuai, a hiki i ka aina i kapaia o Koolau, huli H. 10° No. 6 Kaulahao, 60 kapuai, huli H. 18° No. 3 Kaulahao, 36 1/2 kapuai, hiki i ka lili Aupuni i kapaia o Kaimuilii, huli H. 86° Hoi. 1 Kaulahao, 16 kapuai, huli H. 1°30' Hoi. 1 Kaulahao, 18 kapuai, huli H. 86° No. 58 kapuai, huli H. 8°30' Hoi. 3 Kaulahao, 16 1/2 kapuai, hiki i ka lili o ka kahawai nui, huli H. 83° Hoi. 58 kapuai, huli H. 10°30' Hoi. 2 Kaulahao, 46 1/2 kapuai, alaila huli i kahi i hoemaka i H. 73° Hoi. 7 Kaulahao, 6 1/2 kapuai. Cia hoi ka ili maloko o Eka, 32 Roda

6-16



Costs Application of C. N. 132 Anthony & Co. L.

Incidental expenses Sec. of Commis ^{rs} .	1
Action of Comm ^{rs} at Maui Dec. 1846	1
Citation, 50. Staff testimony reduced and Engrossed f2	1 50
Engrossing Survey made by John Richardson	1
Report of Commissioners this day rendered on the above claim	5
	<hr/> 9 50
Al. depos ^{ns} of Claim reduced f2	1
	<hr/> 10 50

Heale Koono
Aug 10, 1849.

W. L. Lee
J. H. Smith
Is. Kaunui
Loaweli

764
Helu ~~374~~ ⁴³² Antony Siboa

Hohikiia & Haai

Heu no ia aina a haawi ia ia nei no Haahu-
mann a i kou mau makua; he maalo kahi
mau loi a he wai no kahi a pela no i keia
wa a mamuli ou ka noho ana mai oia nei.
Aole oua mea mana i heakea mai; he ka-
naka no maua hookahi no nae, ua hile aku
kahi aole au ike i ka mea i hile ai.

Hohikiia & Mahuka.

Ua ike no au i kona aina ma Waikeapu
& Lahuapua ka inoa na Haai no i ha-
wi ia ia. Mo ko Haai mau makua mai no
ko Haai, he maikai no ka aina i ka wa i
loua ai ka aina ia ia. He kanaka no ma
ka aina, na Haai no i palapala mai iau
a nani no i haawi aku ia ia. Ua kuku-
lu no oia i hale malaia 2 halelepo 1 hale-
pili.

Helu 433. Wilama Crowningburgh from 185 P.
Hohikiia & Puupahoehoe

Ua ike no au no ka makuakane mai ko
na & Pilipili a make kona makuakane
waito mai i ka wahine a Wilama M.H. 1832.
Hiki ia mai o Pilipili a lilo aku o Toha
koi ia ia no Heaumoku mai kou; ua
pau no i ka pa i keia wa.

Helu 434 Palukiko

Hohikiia & Puupahoehoe.

Ua ike no au ia aina no Hoki mai ko
na. M.H. 1840. ka loua ana ia ia o kela
aina o Huaiwa ka inoa no Huhukilo
mai kona a make ia no Hauka mo.

aikane i haawi mai iau ke kamaheka e kua
 ke wahi kua ike. Ua ke kua ma lo'i Iloa ma
 ai iau. Pono ka noho aia, i noho nei Makou
 Aloha ma me Peikie

Na hoike

Maikihua

Kawaihiki

Feb 13 1847

Kaliapulu

Hehu 433 Antony Siboo

Ma

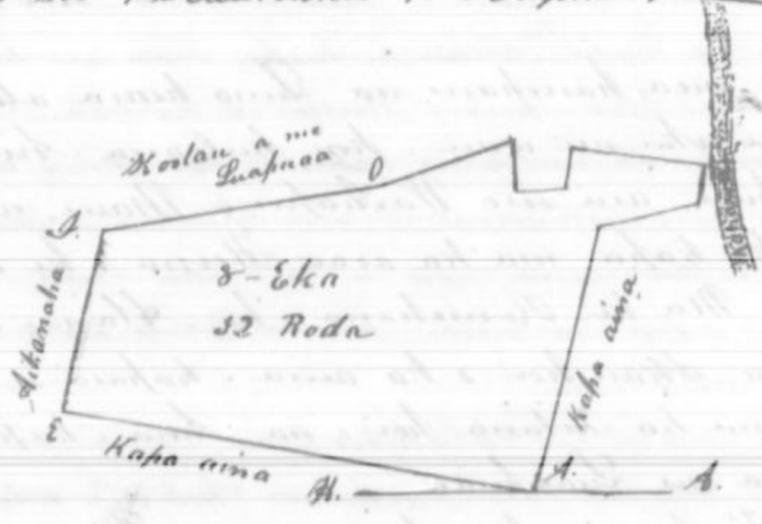
Waikahu Feb 10th 1847

Ina mea hana hana, na Luma hana, aloha oia,
 ke hui aku nei wau i kua kua ma Aia. Le
 huaipua, aia ma Waikahu, i Maui, aia kua
 ma ke kapa ma ka aao oia o ke kua ma
 nui. Ma ke kua hana o ke Aia ma kua
 Ma ka kua kua o ke kua ma kua ma kua
 ha, ma ka kua kua o ke kua ma kua ma
 oia a me kua ma

Ke kua ma kua aku nei wau i ke kua o kua
 aia. Na kua i haawi mai iau i kua ma
 5 mahatiki ma ma oia ma kua ma kua
 ma iau i kua ma. I kua wa i haawi mai
 ai iau i kua ma, ke kua ma ma lo'i ma
 paan i ke ma, a ma e hoolihua ma kua
 ma i na lo'i, a ma ke kua ma ma lo'i i kua
 wa. Ua noho mai wau me ke kua ma ma
 a kua i kua wa.

Na Antony Siboo

He kii o ka aia o Atou Siloa o Ihuapua
 ka iwa aia ma Waikapu i Maui, aia noi ma
 ke kapa ma ka aia o Kema o ke kahawai ma ma
 ke Kema o ke Alanui Aupuni, ma ka Aka
 noi o ka aia i kapaia o Aikama, ma ka Hiki
 ma noi o ka aia i kapaia o Koolau a me Iuapua
 a. E hoomaka ana ka aia ma ma ka lili
 ma ma, o ke Alanui Aupuni. A me aia, ka
 H. 9.30 H. 11 Kaulaao 16 1/2 Kapua, huli A. 78 H.
 H. 33 1/2 Kapua A hiki, ka aia i kapaia o
 Koolau huli A. 10 H. 6 Kaulaao 60 Kapua -
 huli A. 18 H. 3 Kaulaao 36 1/2 Kapua Hiki
 i ka loi Aupuni i kapaia o Kammili huli
 A. 86 H. 1 Kaulaao 16 Kapua.



Huli A. 1.30 H. 1 Kaulaao 18 Kapua huli
 A. 86 H. 38 Kapua huli A. 8.30 H. 3 Kaula
 hao 16 1/2 Kapua Hiki i ka lili o ke kahawai ma
 huli H. 8.3 H. 58 Kapua huli H. 10.30 H. 2 Kaula
 hao 16 1/2 Kapua, alaila huli i ka lili o hoomaka
 ai H. 7.3 H. 7 Kaulaao 6 1/2 Kapua

Eia noi ka ihi malo, 8 Eka 32 Roda

Na Keoni Richardson, ana
 Janari 19 H. 1867

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

WITNESS LIST

PARTY: CYNTHIA ANN McCARTHY

NAME/ ORGANIZATION/ POSITION	SUBJECT MATTER	EXHIBIT(S) TO BE INTRODUCED BY WITNESS
Cynthia Ann McCarthy	Need for and use of Nā Wai 'Ehā water	2368-KAMASAKI-1 to -2

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and Waikapū Streams, Maui)
)
)
)

EXHIBIT LIST

PARTY: CYNTHIA ANN McCARTHY

EXHIBIT NUMBER	DESCRIPTION	REFERENCES	REC'D INTO EVIDENCE
2368-KAMASAKI-1	LCA No. 432, Native Register, Native Testimony, Native Register Translation, Native Testimony Translation	Testimony of Cynthia Ann McCarthy	
2368-KAMASAKI-2	Screen shot from the Office of Hawaiian Affairs' Kīpuka Database, showing the location of LCA No. 432 and TMK No. 3-6-007:010	Testimony of Cynthia Ann McCarthy	

