



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT**

**OBJECTION TO AN
APPURTENANT RIGHTS CLAIM**

Form APRT-OBJ
For Official Use Only:
 2012 SEP 19 PM 2:18

Instructions: Complete one (1) "Objection to an Appurtenant Rights Claim Form" (Form APRT-OBJ) for each Appurtenant rights claim to which you object.

- Any person or entity with a legal or material interest in the water may file written objections. Persons filing objections must serve copies of the written objection and all related documentation / evidence 1) on the applicant; and 2) on the Commission on Water Resource Management, P.O. Box 621, Honolulu, HI 96809.
- Appurtenant rights claimants will have an opportunity to submit a rebuttal to the written objections.
- For questions, contact the Commission's Stream Protection and Management Branch at (808) 587-0234.

A. OBJECTOR

NAME/COMPANY Hui O Na Wai `Eha and Maui Tomorrow; Office of Hawaiian Affairs		Contact Person Isaac Moriwake, Earthjustice, for Hui O Na Wai `Eha & Maui Tomorrow; Pamela Bunn, Alston Hunt Floyd & Ing for OHA
Mailing Address 223 S. King St. 4th Floor Honolulu, HI 96813 (Moriwake); 1001 Bishop St. Suite 1800 Honolulu HI 96813 (Bunn)		
Phone 599-2436 (Moriwake) 524-1800 (Bunn)	Fax 521-6841 (Moriwake); 524-4591 (Bunn)	E-mail Address imoriwake@earthjustice.org; pbunn@ahfi.com

Explain your legal or material interest in objecting to this Appurtenant rights claim.
See attached.

B. APPLICANT (As listed in the Public Notice)

NAME/COMPANY Clayton Suzuki	Surface Water Use Permit Application No. 2155
Mailing Address P.O. Box 2577 Wailuku, HI 96793	
Identify all Tax Map Keys (TMK) related to this objection: (2)3-6-006-009, -013, -022	

C. REASON(S) FOR OBJECTION

- Select all that apply below. The objector has the burden of proof on all objections.
- The parcel was not used as a residence or for cultivation at the time of the Mahele.
 - The Appurtenant right to water has been reserved or extinguished.
 - There are materially false statements or representations in the claimant's application for Appurtenant rights.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests (Use separate page if needed):
See attached.

Supporting documentation / evidence must be provided on separate sheets.

D. OBJECTOR SIGNATURE

By checking this box (for electronic submissions) or signing below (for hardcopy submissions) indicates that the signatory understands and swears that the information provided is accurate and true to the best of their knowledge.

Print Name: Isaac Moriwake Pamela Bunn	Signature: 	Date: 9/19/2012
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FILE ID: 5WUP.2155.6
OTHER: 3650.6
9988

ATTACHMENT TO HUI O NĀ WAI 'EHĀ'S AND MAUI TOMORROW
FOUNDATION, INC.'S AND THE OFFICE OF HAWAIIAN AFFAIRS'
OBJECTIONS TO APPURTENANT RIGHTS CLAIMS OF CLAYTON SUZUKI

Explain your legal or material interest in objecting to this appurtenant rights claim.

Hui o Nā Wai 'Ehā ("Hui") and Maui Tomorrow Foundation, Inc. (collectively, the "Community Groups") and the Office of Hawaiian Affairs ("OHA") are parties with legally established due process interests and standing in ongoing proceedings regarding the waters of Nā Wai 'Ehā, Waihe'e River and Waiehu, 'Īao, & Waikapū Streams. The Hui is a community-based organization that was formed to protect and restore Nā Wai 'Ehā's water resources and the practices that depend on them, including traditional and customary Native Hawaiian practices. Maui Tomorrow, a community-based organization with over 1,000 supporters, is dedicated to protecting Maui's natural and cultural resources, promoting principles of ecologically sound development, and preserving rural lifestyles on Maui. OHA is statutorily and constitutionally mandated to protect the cultural and natural resources of Hawai'i for its beneficiaries – native Hawaiians and Hawaiians. Haw. Rev. Stat. §§ 10-3(3), (5); Haw. Const. art. XI, § 1; Haw. Const. art. XII, § 2.

The Community Groups' members and supporters and OHA beneficiaries rely on, use, or seek to use surface water from the Nā Wai 'Ehā surface water management areas and their nearshore marine waters for purposes including but not limited to fishing and gathering, agriculture, aquaculture, research, education, recreation, artistic activities, aesthetic enjoyment, spiritual observance, and traditional and customary Native Hawaiian practices. The Community Groups' members and supporters and OHA beneficiaries own and reside on land along and around each of the streams within the Nā Wai 'Ehā surface water management areas and hold appurtenant, traditional and customary, and public trust rights to Nā Wai 'Ehā surface water. In sum, the Community Groups and their members and supporters and OHA and its beneficiaries have legally protected rights and interests in Nā Wai 'Ehā surface water, which are legally and materially affected by and adverse with the claims of appurtenant rights at issue. At the Commission's request, the Community Groups and OHA can provide further information regarding their rights and interests in this matter.

Summarize carefully your objection and how approval of this Application would adversely affect your legal interests.

It appears that the appurtenant rights, if any, in the land at issue, TMK No. (2) 3-6-06-09, -13, -22, have been reserved. See Reppun v. Board of Water Supply, 65 Haw. 531, 552, 656 P.2d 57, 71 (1982) (holding that a reservation of appurtenant water rights “had the effect of extinguishing them”). The claimant bought the land from Wailuku Agribusiness Co., Inc. via a deed “EXEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property.” (Emphasis in original.) The relevant excerpts of the deed are attached hereto.

The Community Groups and OHA reserve the right to raise further objections if the objections above are not sufficient to refute the application’s appurtenant rights claims.

Approval of this application would adversely affect the rights and interests of the Community Groups and their members and supporters and OHA and its beneficiaries in Nā Wai ‘Ehā surface water because it would erroneously recognize priority claims of appurtenant rights to such water without legal and factual basis and contrary to established law, to the prejudice of the opposing rights and interests of the Community Groups and their members and supporters and OHA and its beneficiaries.

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R-795 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
MAY 01, 2003 08:02 AM
Doc No(s) 2003-081213



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES
CONVEYANCE TAX: \$50.00

20 3/3 21

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LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:
Avery B. Chumbley
Wailuku Agribusiness Co., Inc.
255 E. Waiko Road
Wailuku, Hawaii 96793

Tax Key: (2) 3-6-06-09, 13, 22 Total No. of Pages: 9

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 E. Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by CLAYTON SHIGETO SUZUKI, Trustee of the Clayton Shigeto Suzuki Revocable Trust dated July 5, 1984, as amended, and LINDA MICHIE KADOSAKI, Trustee of the Linda Michie Kadosaki Revocable Trust dated July

5, 1984, as amended, both whose address is 1305 Kawika Place, Wailuku, Hawaii 96793, which Trustees are empowered under paragraph 8.03 of Article VIII of each trust to hold, develop, lease, assign, convey, sell, encumber and/or otherwise deal with and dispose of real property, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give, grant, convey, release and forever quitclaim unto the said Grantee, as Trustees aforesaid, their respective successors in trust and assigns, all of Grantor's right, title and interest in and to the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; subject, however, to all encumbrances noted on said Exhibit "A".

FURTHER, Grantor shall do nothing in derogation of Grantee's rights, if any, to cross Tax Key No. (2)3-6-07:02 for access and utility purposes PROVIDED FURTHER that Grantor makes no representation or warranty that any such right exists.

EXCEPTING AND RESERVING, HOWEVER, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property; provided, however, that in the exercise of said rights, Grantor, its successors and assigns, shall not have the right to drill for water or otherwise disturb the surface of the land or any improvements thereon.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this date, a true and correct copy of the foregoing document was duly served via first class U.S. mail, postage prepaid:

Clayton Suzuki
P.O. Box 2577
Wailuku, HI 96793

DATED: Honolulu, Hawai`i, September 19, 2012.

EARTHJUSTICE
223 South King Street, Suite 400
Honolulu, Hawai`i 96813

By:



ISAAC H. MORIWAKE

Attorneys for:

HUI O NÄ WAI 'EHÄ & MAUI
TOMORROW FOUNDATION, INC.