



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 Office of Hawaiian Affairs, Hui O Na Wai Eha and Maui Tomorrow		Contact Person Pamela W. Bunn, Alston Hunt Floyd & Ing, for OHA; Isaac Moriwake, Earthjustice, for Hui O Na Wai Eha and Maui Tomorrow
Mailing Address 1001 Bishop Street, Ste. 1800, Honolulu, HI 96813 (Bunn); 223 S. King Street, 4th Floor, Honolulu, HI 96813 (Moriwake)		
Phone 599-2436 (Moriwake) 524-1800 (Bunn)	Fax 524-4591 (Bunn); 521-6841 (Moriwake)	E-mail Address pbunn@ahfi.com; imoriwake@earthjustice.org
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 Hawaiian Commercial & Sugar Co.		Surface Water Use Permit Application No. 2205
Mailing Address P.O. Box 266 Puunene, HI 96784		
Identify all Tax Map Keys (TMK) related to this objection: (2) 3-6-02:001		
C. REASON(S) FOR OBJECTION		
<i>Select all that apply below. The objector has the burden of proof on all objections.</i>		
<input checked="" type="checkbox"/> The parcel was not used as a residence or for cultivation at the time of the Mahele.		
<input type="checkbox"/> The Appurtenant right to water has been reserved or extinguished.		
<input type="checkbox"/> 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		
<input checked="" type="checkbox"/> 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: Pamela W. Bunn Isaac Moriwake	Signature: 	Date: 19 September 2012

FILE ID:	5WUP.2205.6
DOC ID:	9987

ATTACHMENT TO OFFICE OF HAWAIIAN AFFAIRS' AND HUI O NĀ WAI 'EHĀ'S AND MAUI TOMORROW FOUNDATION, INC.'S OBJECTIONS TO APPURTENANT RIGHTS CLAIMS OF HAWAIIAN COMMERCIAL AND SUGAR COMPANY (SWUPA NO. 2205) RE TMK NO. (2) 3-6-002:001

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

Office of Hawaiian Affairs (“OHA”), Hui o Nā Wai ‘Ehā (“Hui”) and Maui Tomorrow Foundation, Inc. (“Maui Tomorrow,” and together with Hui, the “Community Groups”) 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. 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 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 beneficiaries, and the Community Groups’ members and supporters, 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. OHA beneficiaries and the Community Groups’ members and supporters own and reside on land along 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, OHA and its beneficiaries and the Community Groups and their members and supporters 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, OHA and the Community Groups 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.

Hawaiian Commercial and Sugar Company (SWUPA No. 2205) has claimed appurtenant rights on TMK parcel (2) 3-6-02:001, a 284.826-acre parcel (the “Property”), part of which it leases and cultivates. While the landowner and HC&S have submitted parallel appurtenant rights claims for other HC&S-leased fields, the owner of this Property apparently has not claimed appurtenant rights.

The application’s supporting documentation fails to establish any cultivation or water use on the Property at the time of the Māhele. *See Peck v. Bailey*, 8 Haw. 658, 661 (1867) (maintaining that absent “immemorial usage” of water, land grants “certainly could take nothing by having been a portion of the Ahupuaa”). The Property consists entirely of land that is part of Grant 3152 to Henry Cornwell. The grant and other submitted documentation contain no evidence of any cultivation and water use at the time of the Māhele, nor are the Community Groups and OHA aware of any such evidence.

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 OHA and its beneficiaries and the Community Groups and their members and supporters 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 OHA and its beneficiaries and the Community Groups and their members and supporters.

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:

Hawaiian Commercial & Sugar Co.
P.O. Box 266
Puunene, HI 96784

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.