



**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: ENTER DATE AND TIME
2012 SEP 21 PM 1:22

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 Wailuku Water Company, LLC		Contact Person Avery B. Chumbley
Mailing Address P. O. Box 2790, Wailuku, Hawaii 96793		
Phone 808/244-7079	Fax 808/242-7968	E-mail Address abc@aloha.net
Explain your legal or material interest in objecting to this Appurtenant rights claim. Wailuku Water Company, LLC is the owner and operator of the private distribution system through which the Applicant receives surface water. Determination of Applicant's claim of an appurtenant right to water that is distributed through Wailuku Water Company, LLC's distribution system may impact the operation of the distribution system and will affect the property rights of Wailuku Water Company, LLC.		
B. APPLICANT (As listed in the Public Notice)		
NAME/COMPANY	Waikapu Ranch Company LLC	Use Permit Application No.
Mailing Address	P.O. Box 889 Wailuku, HI 96793 SWUPA# 2282	
Identify all Tax Map Keys (TMK) r	TMK: (2)3-5-004-023	
C. REASON(S) FOR OBJECTION		
<i>Select <u>all</u> that apply below. The objector has the burden of proof on all objections.</i>		
<input type="checkbox"/> The parcel was not used as a residence or for cultivation at the time of the Mahele.		
<input checked="" type="checkbox"/> The Appurtenant right to water has been reserved or extinguished.		
<input checked="" 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): The claim must be reviewed in light of the following: 1-Whether the claim properly characterized the source of the water for which the claim is asserted; 2-Whether the rights claimed are subject to Public Utilities Commission Regulation; and 3-Whether the rights have been extinguished. See the attached sheets which expand on the objections and provide documentary support for the objection(s).		
Supporting documentation / evidence must be provided on separate sheets.		
D. OBJECTOR SIGNATURE		
<input 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: Avery B. Chumbley, Authorized Representative	Signature: 	Date: September 18, 2012

FILED: 15 WUP - 2282 b
DOCID: 60128

Whether the Claim Properly Characterized The Source of Water

The claim contains an ambiguity or possibly a mischaracterization on the water source for the appurtenant right.

A claimant to an appurtenant right must establish that the surface water was taken directly from the stream, or from an auwai that was connected to a stream, at the time of the original conversion of the property to fee simple title.

Claims based on surface water taken from a privately owned distribution system and not from a stream, especially a distribution system that did not exist at the time of the original fee simple conversion, does not establish an appurtenant right to surface water delivered through a privately owned distribution system.

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights derives from a diversion that existed at the time of the original fee simple conversion from a stream or an auwai that was then connected to a stream.

In addition, factual and legal questions exist as to whether applicant is required to hold a stream diversion works permit and/or a stream channel alteration permit and whether there is a right to use a privately owned distribution system if the surface water is being diverted through that privately owned distribution system.

Rights Claimed May be Subject to Public Utilities Commission Regulation

The claim asserts a right to use surface water that reaches the claimant's property through a distribution system owned by Wailuku Water Company, LLC

The ability of Wailuku Water Company, LLC to deliver water through that distribution system is the subject of a proceeding pending before the State of Hawaii Public Utilities Commission ("PUC").

Any determination by the Commission on Water Resource Management on claims in which the surface water is delivered through use of the distribution system owned by Wailuku Water Company, LLC must include a condition that the delivery of the surface water is subject to applicable terms, conditions, rules, regulations, decisions, orders, tariffs, and actions of the PUC (collectively "PUC Regulation")

Accordingly, factual and legal questions exist on whether the subject claim for appurtenant rights may be subject to PUC Regulation.

Were Appurtenant Water Rights Extinguished

Appurtenant rights to surface water are created at the time the original conversion to fee simple land. While an appurtenant right to surface water cannot be transferred separately and apart from land to which it attaches, the right can be extinguished.

The appurtenant right to surface water is extinguished if the Grantor of the property transfers the property and either reserves the right to the Grantor or transfers the property without transferring the appurtenant right.

The conveyance document in the chain of title to the subject property contain language to the following effect:

EXCEPTING, RESERVING AND GRANTING, however, unto Grantor, its successors and assigns, all water and water rights (surface and ground water) within or appurtenant to the Property, including the right to develop and utilize the same; 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.

Accordingly, factual and legal questions exist as to whether an appurtenant right has been extinguished.



R-292 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 MAY 27, 2004 08:01 AM
 Doc No(s) 2004-107165



20 1/3 23

/s/ CARL T. WATANABE
 REGISTRAR OF CONVEYANCES
 CONVEYANCE TAX: \$1900.00

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

Makana Real Estate Corporation
 70 Kanoa St #103
 Wailuku, HI 96793

TG: 2003 37093-5
 TGE: A47010531
 Doris Ann Schoepner

RS-1

Tax Key: (2) 3-5-004-023

Total No. of Pages: 14

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration to Grantor paid by MAKENA REAL ESTATE CORPORATION, a Hawaii corporation, whose address is 70 Kanoa St. #103 Wailuku, HI 96793, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby grant

and convey unto the Grantee as a tenant in severalty, 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 (the "Property"); subject, however, to all encumbrances noted on said Exhibit "A".

EXCEPTING, RESERVING AND GRANTING, 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.

EXCEPTING, RESERVING AND GRANTING, FURTHER, unto Grantor, its successors and assigns forever, as appurtenant to the lands which are located adjacent or in the vicinity of the Property and which are now owned or used or hereafter acquired and used by Grantor, its successors and assigns, in agricultural operation, the unrestricted right to engage in any type of farming operation, including, but not limited to, open burning, percolating, evaporating, fertilizing, milling, generating power, water diversion, plowing, grading, storing, hauling, spraying pesticides, irrigating, crop dusting, and all other activities incidental to the planting, farming, harvesting and processing of agricultural products and by-products, which

operations may from time to time cause noxious emissions such as noise, smoke, dust, light, heat, vapor, odor, chemicals, vibration, and other nuisances to be discharged or emitted over and upon the Property. Grantor, its successors and assigns, shall not be responsible or liable to Grantee, its successors and assigns, for the consequences from the creation and discharge of such noxious emissions within the Federal and State environmental and agricultural laws and regulations, and Grantee, its successors and assigns, shall indemnify and hold Grantor, its successors and assigns, harmless from any liability or expense resulting from such claims arising from such nuisance whether made by Grantee or guests or other persons using the Property.

EXCEPTING, RESERVING AND GRANTING, FURTHER, unto Grantor, its successors and assigns, watercourse easement(s) of such character and sufficient size as Grantor, its successors and assigns, may establish for the flowage and direction of water or water-suspended material or the flotation of other objects upon, through, along and over the Property in such location as shall be mutually agreed in writing from time to time, including the right to construct, maintain, operate, repair or remove improvements in connection with said easement(s) and together with such rights of way for ingress and egress as shall be reasonably necessary in connection herewith.

TO HAVE AND TO HOLD the same, together with any improvements thereon and the rights, easements, privileges, and appurtenances thereunto belonging or appertaining unto the Grantee, the heirs, representatives, administrators, successors and assigns of the Grantee, forever.

AND the Grantor covenants with the Grantee that the former is now seised in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all encumbrances made by persons claiming by, through or under the Grantor, except the liens and encumbrances hereinbefore mentioned, and except also the liens and encumbrances created or permitted by the Grantee after the date hereof; and that the Grantor will WARRANT and DEFEND the Grantee against the lawful claims and demands of all persons claiming by, through or under the Grantor, except as aforesaid.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, or neuter, the singular or plural number, individuals or corporations, and their and each of their respective successors, heirs, personal representatives, and permitted assigns, according to the context hereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

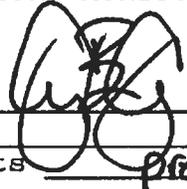
The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the Grantor and Grantee have executed these presents on this 21 day of May, 2004.

APPROVED AS TO FORM:
MANCINI, WELCH & GEIGER

By Peter A. Horovitz

WAILUKU AGRIBUSINESS CO., INC.

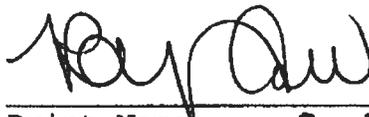
By 
Its Avey B. Chumley
president

By 
Its Kent T. Lucien
Vice President

Grantor

STATE OF HAWAII)
) SS.
City: COUNTY OF HONOLULU)

On this 24th day of MAY, 2004, before me personally appeared KENT T. LUCIEN to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Print Name: Roy J. Tatsuno
Notary Public, State of Hawaii.

My commission expires: NOV 2 2005

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 21st day of May, 2004, before me personally appeared Richard Takase to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



Print Name: Laura Gima
Notary Public, State of Hawaii.

My commission expires: February 29, 2008

EXHIBIT "A"

All of that certain parcel of land (being all of Royal Patent Number 6338, Land Commission Award Number 3702 to D. Malo and Royal Patent Number 3132, Land Commission Award Number 2203 to Nahema and portions of Royal Patent Number 1714, Apana 2 to Francis Silva, Royal Patent Number 6483, Land Commission Award Number 8672, apana 1 to Kalulau, Royal Patent Number 3116, Land Commission Award Number 2225 to Kuamu, Royal Patent Number 497, Land Commission Award Number 443 to John Richardson, Royal Patent Number 2004, Land Commission Award Number 920, Apana 2 to John Richardson & Co., Royal Patent Number 5926, Land Commission Award Number 8875 to Kanaina, and Royal Patent Grant Number 2007, Apana 3 to John Richardson, situate, lying and being on the northerly side of Waiko Road at Waikapu, Wailuku, Island and County of Maui, State of Hawaii, being LOT 2, and thus bounded and described:

Beginning at a point at the northwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 6,289.21 feet south and 5,444.67 feet west and running by azimuths measured clockwise from true South:

1. 281° 12' 97.40 feet along the remainder of R.P. 2004, L.C. Aw. 920:2 to John Richardson & Co. to a point;
2. 288° 03' 69.55 feet along same to a point;
3. 296° 14' 207.67 feet along same to a point;
4. 283° 02' 56.84 feet along same to a point;
5. 277° 13' 345.11 feet along the remainders of R.P. 2004, L.C. Aw. 920:2 to John Richardson & Co. and R.P. 5926, L.C. Aw. 8875 to Kanaina to a point;
6. 278° 42' 417.29 feet along the remainders of R.P. 5926, L.C. Aw. 8875 to Kanaina and Grant 2007:3 to John Richardson to a point;

7. 279° 56' 235.85 feet along the remainder of Grant 2007:3 to John Richardson to a point;
8. 280° 22' 256.51 feet along same to a point;
9. 29° 26' 885.26 feet along the westerly side of Old Waikapu Road to a point;
10. 28° 26' 48" 655.94 feet along same to a point;
11. 26° 27' 206.48 feet along same to a point;
12. 78° 55' 30" 75.08 feet along same to a point;
13. Thence along same on a curve to the right, having a radius of 40.00 feet, the chord azimuth and distance being: 108° 35' 45" 39.60 feet to a point;
14. 138° 16' 499.86 feet along the northerly side of Waiko Road to a point;
15. Thence along same on a curve to the left, having a radius of 1,020.00 feet, the chord azimuth and distance being: 129° 28' 312.09 feet to a point;
16. 120° 40' 39.86 feet along same to a point;
17. 210° 40' 222.00 feet along the remainder of R.P. 3116, L.C. Aw. 2225 to Kuamu to a point;
18. 120° 40' 219.53 feet along same to a point;
19. 32° 52' 222.16 feet along same to a point;
20. 120° 40' 56.98 feet along the northerly side of Waiko Road to a point;
21. Thence along same on a curve to the left, with the point of curvature azimuth from the radial point being: 210° 40'

and the point of tangency
azimuth from the radial point
being: 206° 05' 33", having
a radius of 2,020.00 feet,
the chord azimuth and
distance being: 118° 22'
46.5" 161.22 feet to a
point;

22. 195° 00' 443.36 feet along the remainder of
R.P. 497, L.C. Aw. 443 to
John Richardson, being also
along a portion of Lot 1-A of
Waiko Mauka Ag Subdivision to
a point;
23. Thence along the remainder of R.P. 497, L.C. Aw. 443 to
John Richardson, being also
along a portion of Lot 1-B of
Waiko Mauka Ag Subdivision on
a curve to the left with the
point of curvature azimuth
from the radial point being:
282° 17' 13" and the point
of tangency azimuth from the
radial point being: 272°
00', having a radius of
285.00 feet, the chord
azimuth and distance being:
187° 08' 36.5" 51.10 feet
to a point;
24. 179° 43' 11" 84.27 feet along the remainder of
R.P. 497, L.C. Aw. 443 to
John Richardson, being also
along Lot 1-B of Waiko Mauka
Ag Subdivision to a point;
25. Thence along same on a curve to the right, having a radius
of 125.00 feet, the chord
azimuth and distance being:
188° 36' 35.5" 38.64 feet
to a point;
26. 197° 30' 115.44 feet along the remainders of
R.P. 497, L.C. Aw. 443 to
John Richardson and R.P.

2004, L.C. Aw. 920:2 to John Richardson & Co., being also along Lot 1-B of Waiko Mauka Ag Subdivision to a point;

27. Thence along the remainder of R.P. 2004, L.C. Aw. 920:2 to John Richardson & Co., being also along Lot 1-B of Waiko Mauka Ag Subdivision on a curve to the right, having a radius of 300.00 feet, the chord azimuth and distance being: 199° 55' 25.30 feet to a point;

28. 202° 20' 350.00 feet along the remainder of R.P. 2004, L. C. Aw. 920:2 to John Richardson & Co., being also along Lots 1-A and 1-B of Waiko Mauka Ag Subdivision to the point of beginning and containing an area of 46.091 acres, more or less.

Said above described parcel of land having been acquired by WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, as follows:

1. By DEED of WILLIAM H. CORNWELL and F. W. MACFARLANE, dated November 20, 1894, recorded in the Bureau of Conveyances of the State of Hawaii in Liber 152 at Page 86;
2. By DEED of WAIKAPU AGRICULTURAL COMPANY, LIMITED, a Hawaii corporation, dated September 1, 1921, recorded in the said Bureau of Conveyances in Liber 605 at Page 418;
3. By DEED of MAUI REALTY COMPANY, LIMITED, a Hawaii corporation, dated August 31, 1939, recorded in the said Bureau of Conveyances in Liber 1519 at Page 452; and
4. By EXCHANGE DEED of MRS. LUUKIA PELEKAI, a widow, dated November 29, 1952, recorded in the said Bureau of Conveyances in Liber 2645 at Page 69.

Further confirmed by:

(A) FINAL JUDGMENT dated February 22, 2000, filed in Civil No. 99-0084(2), Circuit Court of the Second Circuit, State of Hawaii, on February 23, 2000, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2000-025030 on February 24, 2000;

(B) FINAL JUDGMENT dated October 18, 2001, filed in Civil No. 01-1-0453(3), Circuit Court of the Second Circuit, State of Hawaii, on October 19, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-166869 on October 23, 2001;

(C) FINAL JUDGMENT dated October 19, 2001, filed in Civil No. 01-1-438(1), Circuit Court of the Second Circuit, State of Hawaii, on October 22, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-168823 on October 25, 2001; and

(D) FINAL JUDGMENT dated November 13, 2001, filed in Civil No. 01-1-0333(3), Circuit Court of the Second Circuit, State of Hawaii, on November 14, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-180532 on November 16, 2001.

(E) FINAL JUDGMENT dated June 2, 2003, filed in Civil No. 02-1-0071(3), Circuit Court of the Second Circuit, State of Hawaii, on June 2, 2003, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2003-112509 on June 5, 2003.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Matters arising out of the failure of a patent to have issued on Land Commission Award 3702 to David Malo. The Company assumes no obligation to procure any patent or to pay commutation, if any, which may be owed thereon.
3. Rights of native tenants as reserved in Royal Patent Grant Number 2007 to John Richardson.
4. Roadway as indicated on tax map.

5. Cane flume as indicated on tax map.

6. GRANT to MAUI ELECTRIC COMPANY, LIMITED and HAWAIIAN TELEPHONE COMPANY, now known as VERIZON HAWAII INC., dated January 5, 1987, recorded in the said Bureau of Conveyances in Liber 20331 on Page 23, granting a perpetual right and easement for utility purposes and as shown on the map attached thereto.

7. GRANT to MAUI ELECTRIC COMPANY, LIMITED and VERIZON HAWAII INC, dated March 30, 2001, recorded in the said Bureau of Conveyances as Document No. 2001-064466, granting a perpetual right and easement for utility purposes as shown on map attached thereto.

8. GRANT to WAIKAPU 28 INVESTMENTS, LLC, a Hawaii limited liability company, dated January 30, 2003, recorded in the said Bureau of Conveyances as Document No. 2003-019115, granting a perpetual, nonexclusive easement for access and utility purposes over, across, under and through Grantor's Land on its makai east boundary of Grantor's Land between Grantor's Land on one side and Grantee's Land, real property designated as (2) 3-5-004-092, and other real properties, all as shown on the portion of map attached thereto as Exhibit "A".

9. EASEMENT A (25 feet wide) for access and utility purposes in favor of Lots 1-A and 1-B of Waiko Mauka Ag Subdivision, TMK: (2) 3-5-04:53, as shown on survey map prepared by Reed M. Ariyoshi, Land Surveyor, with Warren S. Unemori - Engineering, Inc., dated April 26, 2004, revised May 7, 2004.

10. EASEMENT B for utility purposes in favor of Wailuku Agribusiness Company, Inc., as shown on survey map prepared by Reed M. Ariyoshi, Land Surveyor, with Warren S. Unemori - Engineering, Inc., dated April 26, 2004, revised May 7, 2004.

11. EASEMENT C for water tank purposes in favor of the County of Maui, as shown on survey map prepared by Reed M. Ariyoshi, Land Surveyor, with Warren S. Unemori - Engineering, Inc., dated April 26, 2004, revised May 7, 2004.

12. EASEMENT D for access and utility purposes in favor of Wailuku Agribusiness Company, Inc., as shown on survey map prepared by Reed M. Ariyoshi, Land Surveyor, with Warren S.

Unemori - Engineering, Inc., dated April 26, 2004, revised May 7, 2004.

13. Encroachments or any other matters as shown on survey map prepared by Reed M. Ariyoshi, Land Surveyor, with Warren S. Unemori - Engineering, Inc., dated April 26, 2004, revised May 7, 2004.

NOTE: Such encroachments include, but are not limited to, the United States Department of the Interior Geological Survey Monitoring Well No. 6-5130-2 located on the property and which may exist on the property with the permission of Grantor.

14. Any claims or rights, including the inability to convey title to all or any portion of the property pursuant to any appeal filed in Civil No. 02-1-0071(3), Circuit Court of the Second Circuit, State of Hawaii.

END OF EXHIBIT "A"

Tax Key: (2) 3-5-004-023