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Clayton Suzuki
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June 5, 2009

Laura H. Thielen, Chairperson
Ken C. Kawahara, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809 US Mail First Class

Re: Clayton Suzuki, Linda Kadosaki Reed Suzuki and Scott Suzuki's response to objections of Hui o Na Wai Eha, Maui Tomorrow Foundation, Inc., and Office of Hawaiian Affairs to SWUPA-E no. 2155

Dear Chairperson Thielen and Deputy Director Kawahara;

On May 22, 2009 the Office of Hawaiian Affairs filed objections to the Surface Water Use Permit Application of Clayton Suzuki, Linda Kadosaki, Reed Suzuki and Scott Suzuki which was given file number SWUPA-E no. 2155 ("SWUPA 2155"). On May 26, 2009, Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. filed similar objections to SWUPA 2155. On behalf of the applicants, please file this letter in response to the objections under Hawaii Administrative Rule § 13-171-18(c). By copy of this letter, I am serving this response to the objections on the representatives of the objecting parties as shown below.

Each of the objecting parties' claims that no appurtenant rights to water exist for the lands that were included in SWUPA 2155 based on testimony that I gave in another proceeding that is pending before the Water Resource Commission. For some reason, the Office of Hawaiian Affairs saw fit to make a personal attack on me and my integrity. While such personal attacks are neither called for nor suggested under the Commission's rules of practice, I welcome the opportunity to tell the Commission why I now believe that appurtenant rights may exist.

The applicants bought the 3 parcels for which SWUPA 2155 was filed in 2003. I am not an attorney and at the time of the purchase of the property, I was told that no water rights were being transferred to the buyers. In 2007 and 2008, I testified before the Commission in the proceeding that was to determine if and how instream flow standards for the Na Wai Eha streams should be amended. Although the Hearings Officer who presided over that hearing made clear to me and all parties who participate that he would not be making any determinations about appurtenant rights, I was asked questions about whether the parcels in which I had an ownership interest had appurtenant water rights. I answered based upon the knowledge that I had at that time.

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In January, 2009, I received a copy of the form that the Commission prepared that was to be used to apply for a surface water use permit. The instructions on the form told me that an appurtenant water right would trace back to the first time the land was converted to fee simple title and referenced the Great Mahele and the issuance of either a Land Commission Award or a Royal Patent. Since the deed by which I obtained title to the properties referenced Land Commission Awards, I decided to do further investigation to determine if the parcels might have appurtenant water rights.

I hired a person to search the land and historical records to get copies of the documents that created title to the parcels. In March and April of 2009, I received copies of 17 separate land commission awards and 5 separate royal grants, each of which covered portions of the 3 parcels for which SWUPA 2155 was filed. The land commission awards described the existence of loi on the parcels. Based on a review of those documents, I came to believe that appurtenant rights may exist for the 3 parcels.

With that information, I contacted the Commission staff to find out if the Commission wanted the documents that supported the existence of appurtenant rights to be submitted with the SWUPA. I was told by Commission staff that this process would not be used to determine appurtenant rights. The staff also told me that if I believed appurtenant rights may exist, I should check the "yes" box on the application. I followed the advice of the staff.

In essence, the permit application caused me to investigate whether appurtenant rights might exist. The investigation revealed that loi existed on the property at the time that Land Commission Awards were granted. Accordingly, I now believe that appurtenant rights may exist.

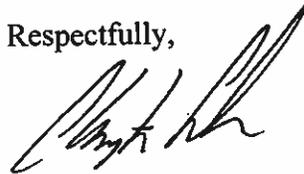
With that said, I still object to the assertion that the SWUPA process is the proper place in which appurtenant rights are to be determined. The Hearings Officer told those participating in the instream flow standard proceeding that it was not the proper place to determine appurtenant rights. The Commission Staff told me that the SWUPA process is not the place where appurtenant rights are to be determined. The permit application indicates to me that the existence of those rights must be determined by a court or by the Commission in another proceeding. I looked at the Hawaii Administrative Rules dealing with water use permits applications in water management areas and could not find any provision that said the Commission can or should determine whether appurtenant rights exist when reviewing or issuing a water use permit. In fact, H. Admin. R. § 13-171-1 says that the purpose of the regulations is to establish administrative control over the withdrawal and diversion of surface water in threatened areas to ensure the most beneficial use, development and management of the water resources. The same rules tell me that "Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time." H. Admin. R. § 13-171-27. While I am not a lawyer, I understand these provisions to mean that the Commission did not intend to address, determine or affect any claim of appurtenant rights under the Water Use Permit application process.

The objecting parties assertions about appurtenant rights appears to me to be an attempt to expand the scope of these proceedings, just like they attempted to expand the scope of the other proceeding in which I testified, invites the Commission to exceed its powers under the SWUPA process, and invites the Commission to commit error. As such, this objection should be rejected.

There also were objections that SWUPA should be rejected because water is delivered to the parcels before other parcels for which appurtenant rights have been established. As of the time of this application and response, no such rights have been established. For the objecting parties to argue that our SWUPA should be denied would mean that each of the SWUPAs on the same stream/auwai should be denied because none of those applicants have established appurtenant rights. Obviously, the objection is premature until such time as appurtenant rights have or have not been established.

Thank you for this opportunity to provide a response, should you need additional information please feel free to contact me.

Respectfully,



Clayton Suzuki

For himself and Linda Kadosaki,
Reed Suzuki and Scott Suzuki

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