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WATER USE PERMIT APPLICANT PRO SE

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Na Wai Eha Surface Water Management Areas of Waihee, Waiehu, Iao & Waikapu Streams, Maui

Case No. CCH-MA15-01

TESTIMONY OF FRANCISCO CERIZO,

EXHIBITS "2307-CERIZO-1 (12/28/17) TO 2307-CERIZO-21 (12/28/17); EXCEPTIONS TO THE HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION AND ORDER; CERTIFICATE OF SERVICE

TESTIMONY OF FRANCISCO CERIZO

1. This testimony is provided in support of the Surface Water Use Permit Application Nos. 2307 and 2308N. The hearing officer's November 1, 2017 proposed findings of fact, conclusions of law and decision and order states "the commission was unable to make a determination in the provisional recognition process, even after supplemental information was provided. (Provisional Order, Attachment C, Revised Exh. 7, p. 17.)" in regards to my requests for recognition of appurtenant rights. The above Provisional Order was dated December 31, 2014. [Prop HO FOF 387, November 1, 2017, p 130, lines 15-17]

2. The Commission On Water Resources (Commission) had meetings on October 14, 2014 and November 21, 2014 to allow Appurtenant rights applicants to provide information and evidence on their respective claims. The October 14, 2014 hearing officer's findings and recommendations for the Provisional Recognition of Appurtenant Rights was presented. It stated in part relative to my application in Exhibit 7, page 70 "No appurtenant right documentation provided. Deny without prejudice."

3. At the second Appurtenant Rights information and documentation meeting held by Commission on November 21, 2014, I submitted documentation in support of my claim for appurtenant rights. There was another Appurtenant right applicant that requested
additional time and was granted to file additional material no later than January 31, 2015. I left the meeting with an understanding that I would be able to submit additional material in support of my claim if needed, up to January 31, 2015.

4. The Commission adopted the "Na Wai Eha Provisional Order on Claims That Particular Parcels Have Appurtenant Rights" on December 31, 2014. Page 3 of the Provisional Order states in part, "Therefore, provisionally, and subject to further amendments as necessary, the Commission hereby: 1. Adopts the Hearings Officer's October 14, 2014 Findings and Recommendations (Attachment "A") as modified by the Hearing Officer's December 31, 2014 Amended and Revised Findings and Recommendations (Attachment "B"); 2. Adopts the Revised December 31, 2014 Exhibit 7 (Attachment "C"), subject to a) the rights of those Applicants who requested more time to file additional material January 31, 2015; b) the need of the Commission staff to update information that was or may be received in the future; and c) later determination by the Commission. Any such further revisions to the Revised December 31, 2014 Exhibit 7 may only be done with the written approval of the Commission. 3. Reserves the right to issue further orders addressing both procedural and substantive matters as needed. 4. Confirms that this Provisional Order is not a final order."

5. The revised December 31, 2014 Exhibit 7, p. 17 states in part relative to my claim, "Supplemental documentation provided, but cannot accurately determine boundary of LCA 8859-B Apana 20. No historic documentation to support water use on LCA. No appurtenant right documentation provided."

6. On or about January 16, 2015 I met with with the Commission staff on any deficiencies on my November 21, 2014 documentation. The staff indicated that additional information was needed on the Land Commission Award affecting our property, dwelling usage and cultivation at the time of the Mahele. On January 30, 2015, I submitted to the Commission staff an 18 paged addendum to my documentation to further support my appurtenant rights claim.

7. The January 30, 2015 addendum included 21 Figures or exhibits. All of the Figures may be viewed online for the Contested Case Hearing for CCH-MA15-01, Hearing information dated January 24, 2017 “Summary Table of Filings, include links to Surface Water Use Permit Applications and Appurtenant Rights Documentation”, SWUPA No. 2307/2308N, 5th document listed on the Commission on Water Resources Management website. A table of the 21 Figures is below:
<table>
<thead>
<tr>
<th>FIGURE NO.</th>
<th>DESCRIPTION</th>
<th>REFERENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>True and correct copy of p. 1 of LCA 8559B:20 to WmC Lunalilo</td>
<td>Mahele Awards Volume 10 p. 481</td>
</tr>
<tr>
<td>2</td>
<td>True and correct copy of p. 2 of LCA 8559B:20 to WmC Lunalilo</td>
<td>Mahele Awards Volume 10 p. 482</td>
</tr>
<tr>
<td>3</td>
<td>True and correct copy of Plan Map of Waiehu, Maui in its entirety in 1875. The area of the Ahupuā of Waiehu is 2,909 acres which excludes the Ili of Hananui’s 467 acres</td>
<td>State of Hawaii “Registered Map no.” 772 (downloaded from the ags.hawaii.gov)</td>
</tr>
<tr>
<td>4</td>
<td>True and correct copy of Map of Waiehu 1887 Government Survey - colored map of the Konohiki awards to Lunalilo along with crown, government and kuleana lands.</td>
<td>Registered Map no. 1435</td>
</tr>
<tr>
<td>FIGURE NO.</td>
<td>DESCRIPTION</td>
<td>REFERENCES</td>
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<td>5</td>
<td>True and correct copy of Map of Portion of Waiehu 1887 Government Survey - more detailed colored map of the Konohiki awards to Lunalilo (LCA 8559B:20 &amp; 8559B:21), along with crown, government and kuleana lands along with streams, ditches, roads, stone walls, fences and dwellings. (A dwelling on the future tmk parcel 3-3-002:12 (parcel 12) is shown within the Lunalilo Estate.)</td>
<td>Registered Map no. 1436</td>
</tr>
<tr>
<td>6</td>
<td>True and correct color copy of portions of Registered Map no. 1436 showing a dwelling on our future parcel 12 site within the Konohiki lands owned by the Lunalilo Estate.</td>
<td>Registered Map no. 1436</td>
</tr>
<tr>
<td>7</td>
<td>True and correct copy of tax map plat 2-3-013 showing LCAs 8559B:20 &amp; 8559B:21</td>
<td>State of Hawaii Tax Map Plat 3-2-013</td>
</tr>
<tr>
<td>FIGURE NO.</td>
<td>DESCRIPTION</td>
<td>REFERENCES</td>
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<tr>
<td>8</td>
<td>True and correct copy of tax map plat 3-3-002 showing parcel 12.</td>
<td>State of Hawaii Tax Map Plat 3-3-002</td>
</tr>
<tr>
<td>9 - 11</td>
<td>Registered Map no. 1436 by Monsarrat (1887) and the current tax map plat 3-3-002 were copied with an engineer's scale shown on the respective maps to verify that the dwelling shown on 1887 Monsarrat's map would be located on parcel 12.</td>
<td>Registered Map no. 1436 and tax map plat 3-3-002</td>
</tr>
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<td>FIGURE NO.</td>
<td>DESCRIPTION</td>
<td>REFERENCES</td>
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<td>12</td>
<td>True and correct copy of Portion of the Wailuku Sugar Co (WSCo) Title Map (1937) by RM Towill showing the boundary of Exchange Deed 78 between WSCo and Kapohuli that will be the future parcel 12. Also shown is Kapohuli's family owned LCAs directly across and one abutting Waiehu Stream across from future parcel 12.</td>
<td>WSCo Title Map (1937). Notes on the map indicate maps compiled from maps made by E.D. Baldwin, A.C. Alexander and the engineering department of Wailuku Sugar Co. Alexander (1871-1901) and Baldwin (1882-1908?) both worked with the Hawaiian Government Survey Office. (Susan Shaner, Hawaiian Government Survey 1870-1915, p. 3)</td>
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<p>| 13-15     | True and correct copy of the Exchange Deed No. 78 between WSCo. and Kapohuli (s) executed on April 8, 1897. The Kapolahulis conveyed their one third interest in LCA 2489 and RP no 5287 for a one acre parcel | Deed was recorded with the Bureau of Conveyances, Book 168, pp 292-294 |</p>
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<thead>
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<th>FIGURE NO.</th>
<th>DESCRIPTION</th>
<th>REFERENCES</th>
<th>RECD INTO EVIDENCE</th>
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</thead>
<tbody>
<tr>
<td>16</td>
<td>The WSCo title map was copied with a engineers scale shown. Conclusion: Dwelling shown on the Monsarrat (1887) is located on parcel 12 of the current tax map plat 3-3-002.</td>
<td>WSCo title map (1937)</td>
<td>Google map</td>
</tr>
<tr>
<td>17</td>
<td>True and correct copy of a satellite view showing the approximate locations of the current dwelling, taro patches and auwai system.</td>
<td></td>
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</tr>
<tr>
<td>18-19</td>
<td>True and correct copy of portion of tax map plat 3-3-002 showing eight LCA properties with a total of 36 taro patches documented by native and foreign testimony. Most if not all would use the same auwai system as parcel 12. The auwai system ends at the S. Waiehu Stream after flowing through parcel 12.</td>
<td>Tax map plat 3-3-002 showing affected LCAs on the same (south) side that our parcel is located.</td>
<td>Documentation from SWUPA #2351N for Wahi Ho’omalu Ltd Partnership</td>
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<td>FIGURE NO.</td>
<td>DESCRIPTION</td>
<td>REFERENCES</td>
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<td>20</td>
<td>True and correct copy of the approximate location of the auwai system is shown on portion of the WSCo title map starting approximately at LCA 3275E:6 to Kaleo at the South Waiehu stream intake and flowing through or above seven other LCA properties including LCA 3275E:3 to Kaleo which the native and foreign testimony stated 22 taro patches were located on Apana 3 then onto and ending after flowing through parcel 12.</td>
<td>WSCo title map (1937)</td>
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<td>21</td>
<td>Picture of the auwai along a steep sloped terrain adjacent to LCA 3259.</td>
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<tr>
<td>Unnumbered Figures</td>
<td>Two pictures showing family members working on our taro patches on parcel 12.</td>
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The office of Hawaiian Government Survey was established in 1870. “It’s organization was prompted by the increased public demand for additional grants of government land in the late 1860’s and the government ignorance of the amount or location of government land still available for lease or sale. It was also surmised that a survey and its resultant maps, besides determining the extent of remnant government lands, would provide useful to private individuals and other government agencies, especially tax assessors, boundary commissioners and the courts, since no district maps existed....” “Previous surveys in the Kingdom were predominately those initiated by the Land Commission (kuleanas) and the Interior Department (government grants)......” “These surveys were ....often inaccurate and subsequently added greatly to the burden of the new Government Survey”. ...“They would establish primary triangulation station and base lines....While setting up stations, they would sketch a map of the area putting in prominent topographical features (to facilitate relocating the stations) and record all of the surveyed kuleanas and Grants on a map of the district.”...” During the 1870s and 1880s work concentrated on establishing triangulation stations, delineating government lands, drawing maps and resurveying kuleanas on Maui, Hawaii, and Oahu.” (Susan Shaner, Hawaiian Government Survey 1870-1915, pp. 1,2)

8. Attached are additional documentation and Mahele documents for SWUPA Nos. 2307 and 2308N to further support that LCA no. 8559B:20.1 was cultivated in wetland kalo. Approximately 320 feet mauka of LCA no. 8559B:20.1 or parcel 12 is a neighboring LCA no. 3275E:3 To Kaleo.

9. Attached as “2307-CERIZO-1” is a true and correct copy of LCA No. 3275E: 3 to Kaleo. Apana 3 of the LCA No. 3275E shows “3 Apana V. Ill Ohianui,” (the 3 was a hand written revision of the Apana no. which was documented in royal patents 5154 and 6072) indicates that this Apana is for a chief. And the following testimonies indentifies the largest number of lo‘i on one Apana on this auwai on the south side South Waiehu stream. Also included are supporting foreign testimony, native testimony, and lot area confirmed by Royal Patent 5154 and 6072.

10. Attached as “2307-CERIZO-2 and 2307-CERIZO-3 to 4 ” are true and correct respective copies of native testimony which says “Ap 3. 22 lo‘i kalo ma Lualailua i Waiehu”. And the foreign testimony which says “No.3 is 22 lo‘i in Lualailua, Waiehu”
11. Attached as "2307-CERIZO-5 thru 8 are true and correct copies of Royal Patents 5154 and 6072 stating that LCA No. 3275E:3 to Kaleo has an area of 6.62 acres. Based on Commission’s conclusion that 150,000 gallons of water per acre per day for taro lo’i is a reasonable use. With 6.62 acres of lo’i in cultivation, 993,000 or nearly a million gallons of water per day could have been used in the time of the Mahele. Typically, used water is returned to the auwai or original source stream or South Waiehu Stream.

12. Attached as "2307-CERIZO-9 is a true and correct copy of map showing the topography and approximate boundary for LCA 3275E:3 to Kaleo (LCA). The approximate location of the existing auwai that would have provided water for the LCA is shown. The topography of the LCA shows that there is sufficient grade to allow water used on the LCA to return to the existing auwai. The above is confirmed by the same topographic map which shows a diversion channel collecting runoff from the upper slopes including the LCA to a channel adjacent to parcel 12 that leads to South Waiehu Stream. The diversion channels were installed when the cane fields were converted to macadamia nuts. In the process of the conversion, portion of the existing auwai was modified and piped under the diversion channel.

13. LCA 3275E:3 could have used nearly one million gallons of water a day in the cultivation of 22 lo’i. It is therefore likely that 320 feet makai to LCA 8559B:20.1 there would also be kalo cultivated in the 8 lo’i on LCA 8559B:20.1 before the water is finally returned to South Waiehu Stream.

14. The State’s Registered Map No. 1436 is dated December 1887 and made by M.D. Monsarrat who worked for the Hawaiian Government Survey office from 1877-1911. (Susan Shaner, Hawaiian Government Survey 1870-1915, p. 4.) Dwellings are shown adjacent to the LCAs 3275E:3 to Kaleo and within portion of 8559B:20 to WmC. Lunalilo (noted on the colored map legend as Konohiki, Lunalilo Estate) on the Registered Map No. 1436. Attached as “2307-CERIZO-10 “is a true and correct copy of the map as noted above and as shown as Figure 6 of my addendum submitted to the Commission staff on January 30, 2015.

15. Attached as “2307-CERIZO-11 to 15” are true and correct copies of the deed as recorded in the State Bureau of Conveyance, from the estate of the then deceased WC Lunalilo to Waihee Sugar Company recorded on February 4, 1890, Book 67, pp. 107-111, conveying three parcels of land. First was a 14.16 acre tract that was partially described as “That parcel of taro and cane land....”. The Second was a shoreline tract of 207.86 acres that was partially described as “that parcel or tract of cane and pasture land”. And lastly, the Third tract was partially described as “That parcel or tract of taro, cane, pasture and mountain land containing 879.66 acres.....”. Since dwellings were shown on the Hawaiian Government Survey 1887 map when the Lunalilo estate still owned the property before the sale to Waihee Sugar Co. (1890), and subsequent re-sales to Wailuku Sugar Co. (WSCo) (1895) and Kapohuli (1897 Exchange deed for one acre with WSCo), and that “taro” is prominently listed on the third tract (LCA 3559B:20), it is therefore likely that kalo existed
on that portion of LCA 3559B:20 along with a dwelling for WmC Lunalilo or his estate or tenant at the time of the Mahele. The recorded Lunalilo to Waihee Sugar Co deed describes the boundary line shared between the Ahupuaas of Wailuku and Waiehu 2 (LCA 3559B:20 to WmC Lunalilo) on page 110, starting on course no. 30. LCA 3275:E-3 is located along course no. 38. LCA 3559B:20.1 is adjacent to but does not coincide with course no. 39, i.e., LCA 8559B:20.1 in totally within the LCA 8559B:20 to WmC Lunalilo. The courses can be viewed on State's Registered Registered Map No. 772. Most of the course lengths were revised and are lightly penciled on the same map. A true and correct copy of Map No. 772 is shown in Figure 3 of my January 30, 2015 submittal to the Commission.

16. At least a dozen lo‘i exist in good condition along the auwai above LCA 8559B:20.1 or parcel 12. Because of the high tree canopy, many of the lo‘i are grassed or lightly wooded which may make them easy to restore. The 8 lo‘i on LCA 8559B:20.1 were in all kalo when it was purchased by our family in 1951. The 8 lo‘i is of traditional construction whereby cold water incoming from the auwai enters individually into each lo‘i and then into an outgoing auwai that collects waters from the other lo‘i’s and return all the waters to the South Waiehu Stream. The incoming waters could also bypass all the 8 lo‘i when maintenance is required. LCA 8559B:20.1 should have been good candidate for a kuleana or native tenant award at the time of the Mahele. The award would have made it the second highest lo‘i count against the 22 lo‘i identified on LCA 3275E:3 to Kaleo located on the same auwai.

17. In Moore and Fitzpatrick’s book on surveying the Mahele, “According to its final report, the Land Commission heard 13,514 claims for land yet made only 9,337 awards. Many of the unawarded claims were duplicates, some were not granted, and about 1,500 were not acted upon, probably because the claimants had died or failed to appear.” They also said, “Several scholars have pointed out that kuleana lands tended to be the richest farm land in Hawai‘i, whereas the huge acreages given to the ali‘i and konohiki included vast stretches of desert, mountain lands, and forests. Recent attention, however, has focused on the fact that only a small percentage of maka ‘ainana benefitted from the mahele. Based upon her extensive research into the mahele records, Lilikala Kame‘elehiwa argues that there were actually 14,195 claims for kuleana lands and only 8,421 actual grants. Some were multiple claims by a single person and some were additional claims by ali‘i and konohiki.” (“Surveying the Mahale: mapping the Hawaiian land revolution” (1995) by Moore and Fitzpatrick p. 50)

18. LCA 3559B:20.1 or Parcel 12 was the result of an exchange deed between Kapohuli, wife Kini and WSCo recorded on April 8, 1897, Book 168, pp. 292-294. A true and correct copy of Book 168, pp.292-294 on file with the Bureau of Conveyances is attached as Exhibit “2307-CERIZO-16 to 18”. The deed conveys Kapohuli’s wife Kini’s one third interest of 3.14 acres in Royal Patent 5287, LCA 2487 to Kahue to WSCo in exchange for a one acre portion of LCA 3559B:20. Attached as Exhibit “2307-CERIZO-19” is a true and correct copy of a portion of the WSCo 1937 title map showing LCA 2487 to Kahue and
the one acre parcel being directly across Kapohuli's other LCA 4149:1. Attached as Exhibit "2307-CERIZO-20 to 21" are true and correct copies of the native and foreign testimonies for LCA 2487 both of which indicate that 70 lo'i were located on LCA 2487. It is therefore likely that the land exchanges were for similar lo'i lands and that the 8 lo'i on LCA 3559B: 20.1 did exist in wetland kalo at the time of the Mahele.
<table>
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<tr>
<th>EXHIBIT NO</th>
<th>DESCRIPTION</th>
<th>REFERENCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>2307-CERIZO-1 (12/28/17)</td>
<td>True and Correct Copy LCA No 3275E:3 to Kaleo</td>
<td>Papakilo Database</td>
</tr>
<tr>
<td>2307-CERIZO-2 (12/28/17)</td>
<td>True and Correct Copy Native Testimony LCA 3275E:3 to Kaleo</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-3 to 4 (12/28/17)</td>
<td>True and Correct Copy Foreign Testimony LCA 3275E:3 to Kaleo</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-5 (12/28/17)</td>
<td>True and Correct Copy Royal Patent 5154 p1</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-6 (12/28/17)</td>
<td>True and Correct Copy Royal Patent 5154 p2</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-7 (12/28/17)</td>
<td>True and Correct Copy Royal Patent 6072 p1</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-8 (12/28/17)</td>
<td>True and Correct Copy Royal Patent 6072 p2</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-9 (12/28/17)</td>
<td>True and Correct Copy topographic map LCA 3275E:3 &amp; por LCA 3559B:20.1</td>
<td>Maui County Land Use and Code Admin-Prelim Subd Map No 3.1723</td>
</tr>
<tr>
<td>2307-CERIZO-10 (12/28/17)</td>
<td>True and Correct Copy Registered Map 1436 (1887)</td>
<td>State of Hawaii online dags.hawaii.gov</td>
</tr>
<tr>
<td>2307-CERIZO-11 (12/28/17)</td>
<td>True and Correct Copy Deed Lunalilo Estate to Waihee Sugar Co p107</td>
<td>State Bureau of Conveyances Book 67</td>
</tr>
<tr>
<td>2307-CERIZO-12 (12/28/17)</td>
<td>True and Correct Copy Deed Lunalilo Estate to Waihee Sugar Co p108</td>
<td>State Bureau of Conveyances Book 67</td>
</tr>
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<td>EXHIBIT NO</td>
<td>DESCRIPTION</td>
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<tr>
<td>2307-CERIZO-14 (12/28/17)</td>
<td>True and Correct Copy Deed Lunalilo Estate to Waihee Sugar Co p110</td>
<td>State Bureau of Conveyances Book 67</td>
</tr>
<tr>
<td>2307-CERIZO-16 to 18 (12/28/17)</td>
<td>True and Correct Copy of an Exchange Deed Kapohuli, wife Kini and Wailuku Sugar Co</td>
<td>State Bureau of Conveyances Book 168, pp. 292 to 294</td>
</tr>
<tr>
<td>2307-CERIZO-19 (12/28/17)</td>
<td>Portion of Wailuku Sugar Co title map showing LCAs 2487, 4149:1 and one acre exchange deed parcel</td>
<td>Wailuku Sugar Co title map (1937)</td>
</tr>
<tr>
<td>2307-CERIZO-20 (12/28/17)</td>
<td>True and Correct copy of native testimony for LCA 2487 to Kahue</td>
<td>OHA KIPUKA Database</td>
</tr>
<tr>
<td>2307-CERIZO-21 (12/28/17)</td>
<td>True and Correct copy of the Foreign Testimony for LCA 2487 to Kahue</td>
<td>OHA KIPUKA Database</td>
</tr>
</tbody>
</table>
EXCEPTIONS TO HEARINGS OFFICER’S PROPOSED

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION AND ORDER

I am submitting the following written exceptions to the Hearings Officer’s proposed Finding of Fact, Conclusion of Law, Decision and Order as it relates to the Surface Water Permit Applications 2307 and 2308N, and the recognition and quantification of our appurtenant water rights. Written exceptions to sections d, and the additions of sections g, h, and i to the Findings of Fact (FOF) 387 and sections c, d, e, h and addition of i, of the Conclusions of Law (COL) 266. Text to be deleted has been struck through, and text to be added is underlined. The notes in bold italic are for reference only and not needed to be included.

FINDINGS OF FACT:

d. The Commission was unable to make a determination in the provisional recognition process, ever after supplemental information dated November 21, 2014 was provided. (Provisional Order, Attachment C, Revised Exh. 7, p.17.)

g. Cerizo submitted an “Addendum to November 21, 2014 SWUPA” dated January 28, 2015 to the Commission staff on January 30, 2015. The “Na Wai Eha Provisional Order on Claims That Particular Parcels Have Appurtenant Rights” dated December 31, 2014 was not updated to reflect Cerizo’s submittal. The January 15, 2015 submittal included the following:

a. Several historical maps for which the konohiki award ‘s acreage and other contents was provided. A copy of the state registered map no. 1435 identified the Lunalilo (WmC Lunalilo) Estate as Konohiki lands. The map titled “Map of Waiehu” situated Ahupua’a of Waiehu between the Ahupua’aas of Wailuku and Waihee. Registered map no. 772 provides the total area of Waiehu as 3,376 acres. The area of Hanahui was given as 467 acres. Upon the visual review of map 1435, the area colored as the Lunalilo Estate in Waiehu Valley is approximately 1100 acres. In the LCA 3559B:20 to WmC Lunalilo, the Lunalilo Estate was described as the Ahupua’a of Waiehu 2. (WT, June 30, 2015 Figure nos. 1,2,3&4)

b. A copy of the state registered map no 1436 shows upon visual review, all of the LCA awarded kuleana lands within the Waiehu Valley, Lunalilo Estate. When compared with map no. 1435, the Land Commission Awards is less one third of Lunalilo’s award or approximately 350 acres. Therefore, the net land area of LCA 3559B:20 is approximately 750 acres most of which is in the mountain valley or the coastal sand dune. (WT, January 30, 2015 Figures 4 & 5)
c. Cerizo identified an existing dwelling on the copy of the 1887 government survey registered map no. 1436 in the vicinity of parcel 12. The current tax map plat 3-3-002 shows parcel 12 and its location to be completely within LCA 3559B:20. Portion of the Wailuku Sugar Co. (WSCo) Title Map dated 1937 shows how parcel 12 was created by an exchange deed no 78 and that the parcel is totally within LCA 3559B:20. Based on photographed measurements of a engineering scale on the respective maps, Cerizo concluded that the existing dwelling shown on registered map no 1436 is on parcel 12. (WT, January 30, 2015, Figures 6-16)

d. A copy of the exchange deed between Kapohuli, wife Kini and Wailuku Sugar Company which conveys Kapohuli''s, wife Kini's one third interest of 3.14 acres in Royal Patent 5287, LCA 2487 to Kahue to WSCo in exchange for a one acre portion of LCA 3559B:20. This would be the future parcel 12. (WT, January 30, 2015, Figures 13-16)

e. A copy of the WSCo title map showing the location of LCA 2487 relative to exchange lot to Kapohuli. The exchange lot is directly across two LCAs, awarded to Kapohuli, LCAs 4149:1 & 4149:3. (WT, January 30, 2015 Figure 12)

f. A copy of a tax map plat 3-3-002 showing parcel 12 along with eight LCAs that have a total of 36 taro patches documented with native and foreign testimony submitted within the SWUPA no. 2351N. (WT, January 30, 2015, Figures 18-19)

g. A copy of the WSCo title map, showing the approximate location of the auwai starting on the south side of S. Waiehu Stream, in the vicinity of LCA 3275E:6 to Kaleo and passing through or adjacent to the other LCAs including LCA 3275E:3 to Kaleo which contained 22 lo'i, the most on the auwai system before the auwai enters in parcel 12. The auwai is described as needing constant maintenance. Portions of the auwai is six feet deep as it cuts into the steep S. Waiehu Stream slopes. (WT, January 30, 2015, Figure 20, p. 17)

h. A copy of the state registered map no. 1436 shows the eight LCAs identified in the above paragraph “f”. The map shows the pali or steep slopes along the common boundary between the Ahupua'a of Wailuku and Waiehu, and along the LCAs. All of the LCAs are on the bottom of the pali except for LCA 3275E:3 to Kaleo making vehicular access from the south side of S. Waiehu Stream not possible except the LCA to Kaleo. This is the reason why most of the LCAs are mostly well preserved. (WT, January 30, 2015, Figure 6)

i. A photograph showing the steep slopes along the auwai adjacent to LCA 3259. LCA 3259 obtained its water directly from the stream due to the elevation difference. (WT, January 30, 2015, Figure 21.)

j. Cerizo stated that he sees many existing lo'i laying at rest when maintenance work on the near mile long auwai is done. He further stated that due to light
vegetation, many of the lo‘i may be easily restored. The existing auwai system and
eight lo‘i on parcel 12 provides evidence or cultural land features consistent with
lo‘i kalo usage established for the LCA’s above Parcel 12. Photographs were
provided of the existing auwai and lo‘i on parcel 12 (WT January 30, 1015, p1,
15,18).

h. Cerizo provided additional documentation and Mahele documents to support that
LCA 8559B:20.1 was in wetland kalo. The additional sub-paragraph nos. continues from
the above FOF paragraph “g” above:

k. Copies of the neighboring LCA 3275E:3 to Kaleo (LCA) along with the
Royal Patents 5154 and 6072, native and foreign testimonies documenting that
22 lo‘i were located on the LCA. Cerizo noted that the neighboring LCA is
approximately 320 feet from parcel 12 or LCA 8559B:20.1. (WT December 28,
2017, pp. 9-10, paragraphs (para.) 8-11)

l. Copy of a topographic map showing that waters from the auwai could
enter the LCA to Kaleo and outlet into the existing auwai before flowing through

m. With nearly one million gallons a day flowing through the LCA to Kaleo
back to the auwai, it was likely that the same water would be used for the
cultivation of lo‘i kalo as it flows into the existing auwai, onto and through LCA
10, para. 13)

n. Copy of a 1890 deed from the WC Lunalio Estate to Waihee Sugar
Company conveyed three parcels totaling to 1101.68 acres. The third parcel of
the deed by its description describes the LCA 8559B:20 to Lunalilo that is located
above the government road to Waihee. The description states “Third. That parcel
or tract of taro, cane pasture and mountain lands....” Cerizo noted that course no.
39 is adjacent to LCA 8559B:20.1. Cerizo also noted that government survey of
1887 identified a dwelling on LCA 8559B:20.1 and with the identifying the
contents of taro, cane, pasture and mountains in the sale of the Lunalilo Estate
lands, that it would be likely that taro was being grown on the property for Lunalilo,
his estate or by his tenant. (WT December 28, 2017, p. 10-11, para. 15)

o. Cerizo state that the site of LCA 8559B:20, was a likely site for a kuleana
award however cited Moore and Fitzpatrick’s book on surveying the Mahele
whereby in the final report of the Land Commission cited of the 13,514 claims for
land, only 9, 337 were awarded. The authors said “many of the unawarded claims
were duplicates, some were not granted, and about 1,500 were not acted upon,
probably because the claimants had died or failed to appear.” The authors also
said “Based upon her extensive research into the mahele record, Lilikala
Kam’eleihiwa argues that there were actually 14,915 claims for kuleana lands and only 8,421 were actual grants.” (WT December 28, 2017, p. 11, para. 17)

n. Copies of the LCA 2487 to Kahue, Royal Patent 5287, native and foreign testimony, and 1897 exchange deed between Kapohuli, wife Kini and Wailuku Sugar Company (WSCO), transferring Kapohulis’ one third interest in LCA 2487 to Kahue & Royal Patent 5287 to WSCO. This new parcel would become parcel 12 or LCA 8559B:20.1. Native and foreign testimony indicate that LCA 2487 included 70 lo‘i. The land exchange likely involved lands of similar uses and area therefore supports that the eight lo‘i kalo existed at the time of the exchange and likely further existed at the time of the mahele. (WT December 28, 2017, p. 11-12, para. 18)

i. The Commission should review Cerizo’s supplement information provided on January 30, 2015 and with additional supplemental information provided in his written testimony dated December 28, 2017. And that a favorable revision of the December 31, 2014 “Provisional Order “be granted in accordance to the conditions nos. 2-4 of the same order.

CONCLUSION OF LAW

Note: All of the following revisions applies if the there is a favorable review and approval by the Commission on our claim for appurtenant rights

c. The Commission was unable to make a determination in the provisional recognition process, even after supplemental information was provided.

c. The Commission had granted provisional approval of appurtenant rights based on the updated information received on January 30, 2014 and additional documentation dated December 28,2017. The Provisional Order was updated. (Provisional Order, Attachment “”, Revised Exh. 7, p. 17).

d. Cerizo nevertheless submitted documents and testimony for the CCH:

i. Parcel 12 is portion of the konohiki award to Lunailo, LCA 8559B: 20.1.

ii. Parcel 12 abuts South Waiehu stream, has eight terraced lo‘i fed by the ‘auwai, and was likely cultivated in lo‘i kalo from records supporting two four neighboring LCAs. Note: The other two LCAs were added with the new documentation: LCA’s 2487 and 3275E:3

e. Cerizo appurtenant rights request is denied, and he may reapply approved. Parcel 12 is a portion of the konohiki award, for which the acreages and other contents were determined. are not known.
h. He is issued a permit for 69,000 gpd (.46 acres x 150,000 gad), of which 12,400 gpd (his existing use) is in Category 2, and the remainder, or 56,600, is in Category 3.

i. Parcel 12 was identified to have kalo and a dwelling. Appurtenant rights would be equivalent to 95,000 gpd (.95 acre [1/4 acre removed for dwelling] x 100,000 gad). All of the permitted 69,000 gpd are in Category 2, because they are less than the Cerizo’s appurtenant rights.

Dated: Wailuku, Maui, Hawaii, December 28, 2017

FRANCISCO CERIZO, TRUSTEE

THE MODESTA F. CERIZO TRUST

WATER USE PERMIT APPLICANT PRO SE
Th. 35 4178. It is noted that he wrote out and sent in his claim on

Febr. 25, 35 4178. It is noted that he wrote out and sent in his claim on
35. 1827.

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3. To the south it is bounded by a line running带上

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<th>Name</th>
<th>Address</th>
<th>Post Office</th>
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<tbody>
<tr>
<td>1</td>
<td>John Doe</td>
<td>123 Main St</td>
<td>New York</td>
<td>30</td>
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<tr>
<td>2</td>
<td>Jane Smith</td>
<td>456 Oak Rd</td>
<td>Chicago</td>
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<td>3</td>
<td>Michael Brown</td>
<td>789 Maple Ln</td>
<td>Los Angeles</td>
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<td>Emily Johnson</td>
<td>101 Pine St</td>
<td>San Diego</td>
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<td>5</td>
<td>William Sims</td>
<td>202 Cedar Rd</td>
<td>San Francisco</td>
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<td>7</td>
<td>David Wilson</td>
<td>404 Pine Rd</td>
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Note: This is a sample table and does not represent the content of the document.
This base map is the prelim subdivision plat for the Puuohala Mauka Subdivision aka Wailuku Country Estates, Maui County LUCA No. 3.1723 dated 7/10/96. (The boundary of LCA 3275E:3 is approximately shown)
PORTION OF STATE OF HAWAII REGISTER MAP NO. 143

Figure 6 Government Survey Registered Map no. 1436 (1887)

NOTE
- Kanoaiki, Lualalie Estate
- Sales by
- Government Land
- Crown Land
- Kaluunas
- Streams and Ditches
- Roads
- State Walls
- Fences

MAP OF A PORTION OF WAIEHU, MAUI.
Survey and Map by M.D. Monserrat.
Scale: 300 feet = 1 inch.
Dec. 1867.
RECORDED DEED: ESTATE OF WC LUNALILO TO WAIHEE SUGAR
COMPANY P. 107

EXHIBITS 12/28/17 2307-CERIZO-11
RECORDED DEED: ESTATE OF WC LUNALILO TO WAIHEE SUGAR
COMPANY P. 108

to us paid by the Waihee Sugar Company in consideration of
the same, hereby acknowledged, do hereby grant, bargain and
sell to the said Waihee Sugar Company, there and in the
above parcel of land situated at Waiakea Island, Kauai,
being portions of the Heupua'a of Waiakea, and
hereinafter described as follows, namely,

First. That parcel of two and one-half acres containing
an area of fourteen (14) acres, belonging to the
said H. Lunalilo deceased and included within its
works and bounds, and all right titles and interest in
the same, as more particularly described as follows,
among others,

Commencing at a large rock marked with a
mark and on the north edge of road, said rock being called Okuhali,
adjointing the Iki of Makalena and Kapekaua and


Second. That parcel of one and one-fourth acres, being
one hundred seventy (170) acres included within the following
works and bounds,

Commencing at the sea beach at a place called
Waikeki, adjoining the H. H. Brown's and running
1. E. 115. 19 N. to true 183.8 feet along road along the Iki of Kapekaua
on top of sand hills

2. S. 109. 46 W. to true 226.4 feet along Kapekaua co-ruing towards

3. E. 33. 38 N. to true 344.5 feet along same road and co-ruing
to point on north edge of road.

4. W. 41. 25 N. to true 122.5 feet along the Iki of Kapekaua to boundary
5. E. 79. 34 N. to true 273.5 feet along same


7. E. 64. 28 W. to 229.7
RECORDED DEED: ESTATE OF WC LUNALILO TO WAIHEE SUGAR
COMPANY P. 109

EXHIBITS 12/28/17 2307-CERIZO-13 Page 13 of 21
RECORDED DEED: ESTATE OF WC LUNALILO TO WAIHEE SUGAR COMPANY P. 110

EXHIBITS 12/28/17 2307-CERIZO-14
RECORDED DEED: ESTATE OF WC LUNALILO TO WAIHEE SUGAR COMPANY P. 111

[Image of old document]

[Handwritten text]

EXHIBITS 12/28/17 2307-CERIZO-15
EXCHANGE DEED BETWEEN KAPOHULI, WIFE KINI AND WAILUKU SUGAR COMPANY (1897) p. 1

Kapohuli, Wife Kini & Wailuku Sugar

This Indenture made this 10th day of April, 1897 by and between Kapohuli, husband, and Kini, his wife, of Wailuku, District of Maui, and The Wailuku Sugar Company, a corporation duly created and existing under and by virtue of the laws of the Republic of Hawaii, of Wailuku, county of Maui, as Grantor and Grantee, the parties hereto, witnesses that the grantee, the first party, has given and granted, and by these presents do give and grant unto the said party of the second part, and to the successors and assigns forever, the one mentioned, the third interest in 3.13 acres more or less in Royal Patent No. 8284, Land Commission Award No. 54-7, to Kahana, situated in the District of Wailuku, in Maui, and described as follows, together with all the interest, hereditaments and appurtenances thereto belonging or in any wise appertaining or in exchange of said for the lands hereinbefore mentioned by virtue of the second part, to have and to hold the said premises with the appurtenances and every part thereto and the said party of the second part, and to the successors and assigns forever, in exchange of said lands hereinbefore mentioned, and the party of the second part has likewise given and granted unto the said party of the first part, their heirs and assigns, all that certain piece or parcel of land hereinbefore described as follows, begin on the best surf of the

EXHIBITS 12/28/17  2307-CERIZO-16
at Mannaue Point which bears \( 3^\circ 49^\prime 06^\prime \), and \( 2^\circ 50^\prime 12^\prime \) west of the North gate point, of gate situated on the east boundary of Waikahua road and running,

1. \( 3^\circ 49^\prime 10^\prime \) to \( 2^\circ 38^\prime \), down to cake at 6 a.m.
2. \( 6^\circ 27^\prime \) to \( 2^\circ 48^\prime \), above stream to point.
3. \( 6^\circ 50^\prime \) to \( 2^\circ 31^\prime \), up the road to road.
4. \( 3^\circ 39^\prime \) to \( 2^\circ 30^\prime \), along road to the initial point, containing an area of one acre, together with the improvements, buildings, and appurtenances thereon belonging to the described land in and for the lands and interest in land herein before mentioned, of the said party of the first part.

To have and to hold the said premises with the appurtenances and any part thereof to the said party of the first part, their heirs and assigns forever, in exchange of and for the lands and interest in land herein before mentioned.

Provided always, nevertheless, and these premises are upon the condition, and it is the true intent and meaning of the parties hereto that if it shall happen that either of the said parties to these presents, their executors, administrators, successors or assigns, shall at any time hereafter, during the said respective terms above granted by or for or on account of any former or other conveyances, or otherwise however, be sold or sold off and from the possession of either of said premises or improvements, and other premises, as respectively granted in exchange as aforesaid, or any part thereof, item and in any such case the grant and conveyance made by these presents shall be utterly void and of no effect; and therefore it shall and may be lawful to and for the party to parties, as sold or sold into their or its said former messuage or tenement and premises, with all and singular the appurtenances, to resell and the same to have again, to possess and enjoy, as of their and its former estates or entails, anything herein continued to the contrary notwithstanding.

In witness whereof the parties to these presents have hereunto set their hands and sealed the day and year first above written.

S. H. Kapohuli

Kini

M. D. Faimai

President Sugar Co.

by its President S. W. Allen

by the President Geo. W. Robertson

Island of Maui, Hawaiian Islands 74°

On this 25th day of April, 1897, personally appeared before me, Kapohuli W., and Kini, his wife, to me known to be the persons described in, and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein set forth. And Kini, wife of the said Kapohuli, upon examination by me separate and apart from her husband acknowledged that she executed the same freely and voluntarily and without compulsion, fear or restraint from her said husband.

A. H. Kapohuli Notary Public
Hawaiian Islands, Island of Oahu, 2/5. On this 14th day of April A.D. 1897, personally appeared before me, E. H. Atlantic, Esq., 2/5, Recorder of the District of Honolulu, the person described as the husband who executed the foregoing instrument, who personally acknowledged to me that he executed the same freely and voluntarily, and for the use and purpose therein set forth, as such President and Treasurer of the Paliulani Sugar Co.

Arthur B. Wood 2/5

Recorder of the District of Honolulu, 2/5

Kaliko, S. K. Nakapaehu & J. D. Dowsett 2/5

Said Kalka, S. K. Nakapaehu, my husband, for me, Kekai, my husband, made, by these presents, the above-mentioned acts of transfer, and executed the foregoing instrument, who personally acknowledged to me that he executed the same freely and voluntarily, and for the use and purpose therein set forth, as such President and Treasurer of the Paliulani Sugar Co.

Joseph M. Cooper 2/5

Recorder of the District of Honolulu, 2/5

Recorded and filed in the Hawaii Court of Appeals, 2/5, Wilkes M. Shelton, M. A. M.

EXHIBITS 12/28/17 2307-CERIZO-18 Page 18 of 21
A 3662 tract.

Title date. Title based on a piece of land and lands laid in the 60s of Pueblo, Trencher, and Acechante.

The defendant is a title from the maker's known to possess it in the days of Acechante. The title has never been disputed. There is no question to it.

It is bounded by the Pueblo and the ranch land.

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It is bounded by the Pueblo and the ranch land.
FRANCISCO CERIZO TRUSTEE OF MODESTA F. CERIZO TRUST
P.O. Box 492
Wailuku, Hawaii 96793

WATER USE PERMIT APPLICANT PRO SE

COMMISSION ON WATER RESOURCE MANAGEMENT
STATE OF HAWAII

Surface Water Use Permit Applications
Integration of Appurtenant Rights and
Amendments to the Interim instream Flow
Standards, Na Wai Eha Surface Water
Management Areas of Waihee, Waiehu, Iao
& Waikapu Streams, Maui

Case No. CCH-MA15-01

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2018, TESTIMONY OF FRANCISCO CERIZO, EXHIBITS 2307-CERIZO-1 (12/28/17) TO 2307-CERIZO-21 (12/28/17), EXCEPTIONS TO HEARINGS OFFICER'S PROPOSED FINDING OF FACT, CONCLUSIONS OF LAW, & DECISION AND ORDER; CERTIFICATE OF SERVICE was served on the Commission on Water Resource Management, by US mail and electronic service, and on the parties listed below, by electronic service.

SERVICE BY MAIL

Commission on Water Resource Management
1151 Punchbowl Street, room 227
Honolulu, Hi 96813

(By email: kathyyoda@hawaii.gov)
ELECTRONIC SERVICE

Douglas Bell  
1420 Honua Place  
Waikapu, HI 96793  
sandi.doug@hawaiiantel.net

Doyle Betsill  
c/o Betsill Brothers  
P.O. Box 1451  
Wailuku, HI 96793  
teresa@bbcmui.com

Francisco Cerizo  
PO Box 492  
Wailuku, HI 96793  
cerizof@gmail.com

Heinz Jung and Cecilia Chang  
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