

The Water Policy Plan Implementation Program FY 2019 and 2020

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May 20 – 21, 2019 Waimea, Hawai`i

Wai`ale`ale “Blue Hole”, Kaua`i

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- I. Water Policy Plan Development**
 - II. WPP Content**
 - III. WPP IP Report FY 2019**
 - IV. WPP IP FY 2020**

East Maui Irrigation System

II. Development of the WPP

- **Research beginning in 2012**
- **1st round of meetings**
- **Identified themes, drafted policy**
- **Unanimous approval as DRAFT by the HHC on February 19, 2014**
- **2nd round Beneficiary Consultation Meetings**
- **Unanimous approval by HHC on July 22, 2014**

II. WPP Content: Sections

- **Vision**
- **Mission**
- **Values**
- **Policies**
- **Goals**
- **Implementation Program**

II. WPP Content: Four Priority Goals

- 1. Affirmatively communicate**
- 2. Aggressively advocate**
- 3. Water Assets Inventory**
- 4. Watershed Protection**

III. WPP IP FY 2019

PROPOSED WPP IMPLEMENTATION PROGRAM AND BUDGET FOR FY 2019

Goal 1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.

#	Implementation Action(s)	Cost / resource estimate	Estimated expenses
1. a.	Annually and regionally present on DHHL water projects and issues in conjunction with HHC meetings.	Staff time: 80 hr. Consultant time: 80 hr.	Within PO budget and consultant contracts
1. b.	Develop and execute ten targeted trainings on water rights for beneficiaries over two years in collaboration with the William S. Richardson School of Law's Ka Huli Ao program and others as available and appropriate.	Staff time: 200 hr. Consultant time: 200 hr.	Covered under contract issued in FY 2018
	Subtotal	Staff: 280 Consultant: 280	Obligated funds

III. WPP IP FY 2019 Annual Review

Table I. Summary of FY 2019 WPP IP Performance

Red shading and plain text indicates implementation action goal was not met; yellow shading and *italicized text* indicates some progress was made; green shading and bold-faced text indicates the action goal was met.

Goal 1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.



#	Implementation Action(s)	Performance	Next Steps
1. a.	Annually and regionally present on DHHL water projects and issues in conjunction with HHC meetings.	Objective met	Proposed to be continued
1. b.	Continued implementation of ten targeted trainings on water rights for beneficiaries over two years in collaboration with the William S. Richardson School of Law's Ka Huli Ao program and others as available and appropriate. ¹	Objective met	Proposed to be continued



III. WPP IP FY 2019 – Accomplishments

- **September 2019 – groundwater reservations across Hawai`i**
- **April 2018 – July 2019 – Training**
- **December 2018 – Kukui dismissal**
- **June 2019 USGS Molokai Study**

IV. WPP IP FY 2020 – Major Goals

1.b. Continued Training

2.a. NHRF Advocacy (171-58(g))

2.b. Seek reservations and water

2.c. Monitoring other agencies

2.f. Water rights experts / studies

3.a. WAI development

4.a. Watershed protection

5.c. MIS Cost of Service Study

IV. WPP IP FY 2020 – Budget

1.b. Training	100,000
2.a. NHRF Advocacy	100,000
2.b. WPP IP	200,000
2.f. Legal experts	150,000
5.c. MIS COSS	150,000
<u>TOTAL</u>	<u>\$700,000</u>

Nīnau?



Context



Honokāia, Hawai`i

Testimony of Mr. AGM Robertson, attorney of Honolulu, Representing Parker Ranch, at a December 14, 1920 hearing on HR 13500

“The bill also provides that this Hawaiian homes commission may also acquire water rights, either by purchase or condemnation, for the purpose of bringing water upon such of these lands as are now unwatered. For that purpose the local legislature is authorized to make appropriations of money out of the revenues of the government....

Senator Nugent (of Idaho): Do you object to these things?

Mr. Robertson: We certainly do, Senator: absolutely. These moneys, mind you, come out of the pockets of the white taxpayers of the Territory and are handed over to or are used for the benefit of the Hawaiian population—as we find it stated in the bill here - of one thirty-second Polynesian blood.

December 14, 1920 hearing on HR 13500

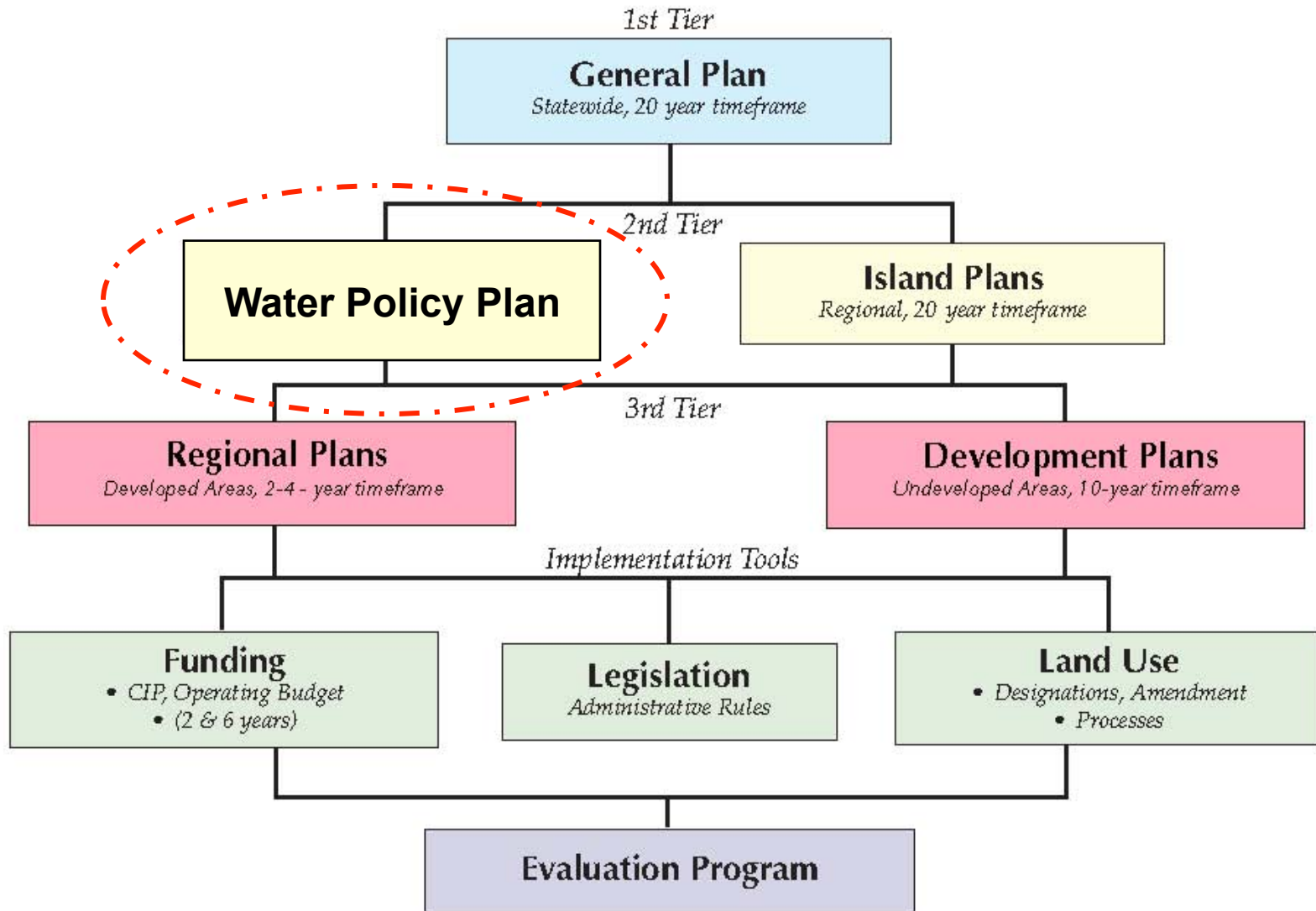
Mr. Kalanianaʻole. Mr. Chairman, may I say just a few words right there?

The Chairman. Yes.

Mr. Kalanianaʻole. Mr. Robertson says that these moneys are to come out of the white taxpayers' pockets of the Territory. That is not correct. They are to come out of leases of the cane lands – that is, if the land board sees fit to lease them...

Mr. Robertson. I was coming to that point further in my argument. It does not make any difference where this \$1,000,000 ...comes from....it is money that comes out of the pockets of the white taxpayers of the Territory.

I. DHHL Planning System



DHHL Planning System

Research

- **Department and Water Commission files**
- **Review of DHHL legal rights and roles**
- **Specific Projects (e.g. Pulehunui, Maui)**
- **State Water Projects Plan Update**
- **Scoping Interviews**
- **Statewide beneficiary meetings**
 - **Notes, conversation maps, letters**

II. Development of the WPP

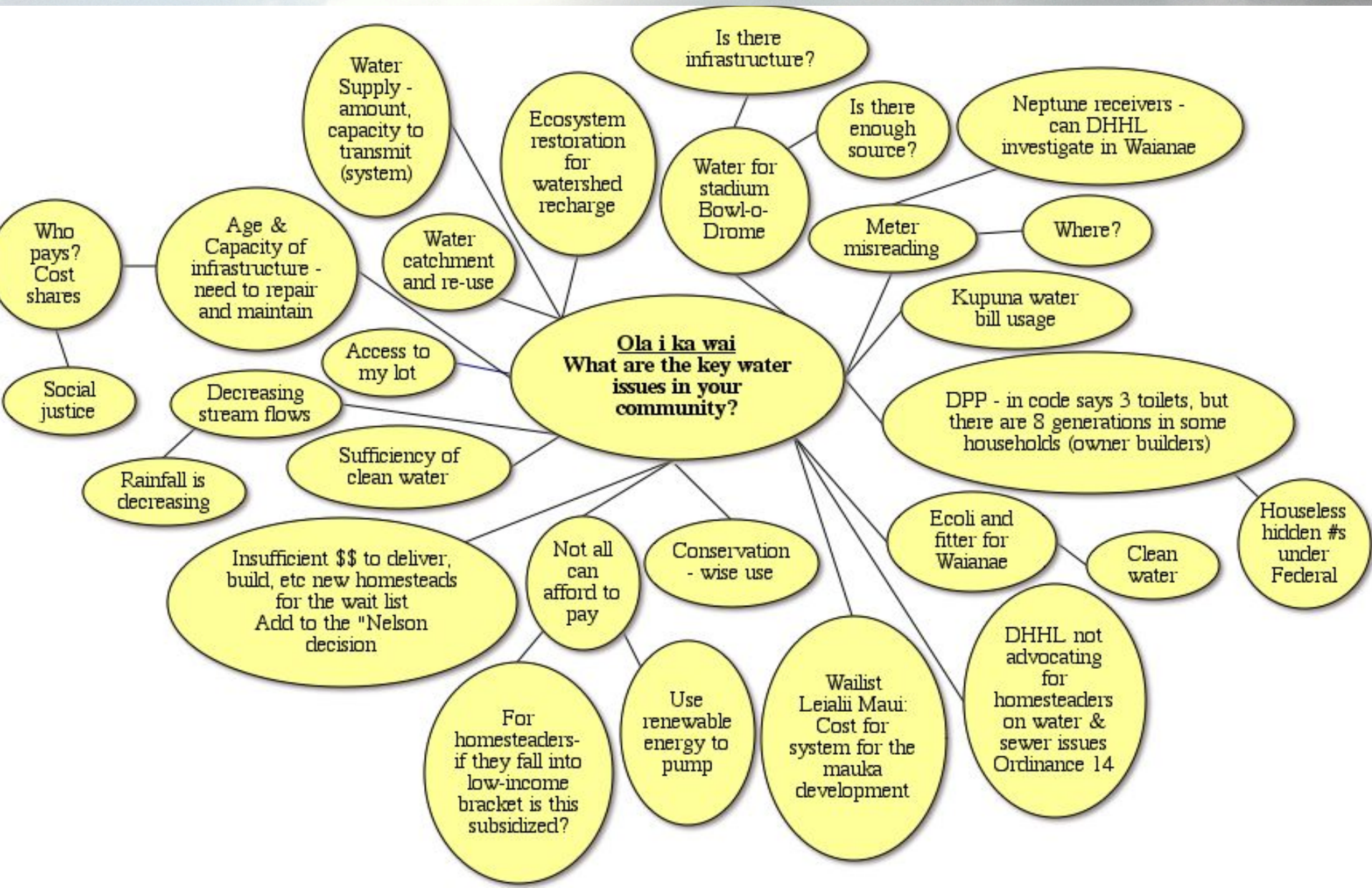


Honokāia, Hawai`i

Meetings - 2013

Oct. 23	O'ahu	Stevenson Middle School Cafeteria
Oct. 30	Kaua'i	Chiefess Kamakahelei Middle School
Nov. 4	Molokai	Lanikeha Community Center
Nov. 5	O'ahu	Kapolei Middle School Cafeteria
Nov. 6	O'ahu	Blanche Pope Elementary Cafeteria
Nov. 7	Lāna'i	Lāna'i Elementary & High Cafeteria
Nov. 12	Hawai'i	DHHL Kūhiō Hale, Waimea
Nov. 13	Hawai'i	Hilo High School Cafeteria
Nov. 14	Maui	DHHL Paukūkalo Community Center

Conversation maps



Meeting Notes

HISTORICAL RELATIONSHIP BETWEEN DHHL AND MIS

The Beginning

"The commission is authorized, for the additional purpose of adequately irrigating any tract, to use, free of all charge, Government-owned water upon the island of Molokai and Government-owned surplus water/ tributary to the Waimea River upon the island of Kauai, not covered by a water license or covered by a water license issued after the passage of this Act. Any water license issued after the passage of this Act and covering any such Government-owned surplus water shall be deemed subject to the condition, whether or not stipulated therein, that the license shall, upon the demand of the commission, grant to it the right to use, free of all charge, any of the water upon the island of Molokai, and any of the surplus water tributary to the Waimea River upon the island of Kauai, which is covered by the license and which the commission deems necessary for the additional purpose of adequately irrigating any tract."

As indicated by this Section 221(d), the commission was given the authority to use any Government-owned water on Molokai, free of charge, to adequately irrigate any HHL tract, excluding water already under a license prior to the Act. If a water license was issued subsequent to this Act, the commission retained its right to use water free of charge for irrigating purposes.

Creation and Subsequent Changes to a Molokai Water Authority

In May 1943, the territorial legislature passed Act 227 to establish a Molokai Water Board as a way of addressing the domestic and agricultural water needs of Molokai homeowners. The Hawaiian Homes Commission served as the Board. The Act specifically gave homestead lessees preference to have their water needs met first before any other person or persons.

In June 1953, the territorial legislature passed Act 245 which established the Hawaii Irrigation Authority (HIA). The HIA substituted for the HHC in its role as the Molokai Water Board, e.g., its powers, duties, and functions as MWB were transferred to HIA.

Significance of Proposed Amendments to HHC Act of 1920 and Passage of Territorial Legislation Act 164

In May 1955, three (3) significant pieces of legislation was enacted, two proposed Congressional measures amending the HHC Act, Section 220 and 221 and one territorial measure, giving two-thirds preference for water from a constructed irrigation system to DHHL.

Joint Resolution 10 would amend Sec. 220 of HHC Act by adding a new paragraph that would allow for the construction of irrigation projects on

1

From:
To:
Date:
Subject:

Kawehikalaninui-I-Iamamao Kanui <kawehi.kanui11@gmail.com>
andrew.h.choi@hawaii.gov
11/13/2013 02:15 PM
Water and Other Responses

Aloha Andrew,

Please forward this email to Nancy, Darrell, Jonathan, chair and commissioners on our feed back regarding water.

As the newly elected/appointed by na Kupuna, as the Executive/Project Director for the Waimanalo Ahupuaa Business and Community Association based in Waimanalo, we have concerns below...both myself and representing the fisher people, Mr. Sam Marquez attended the meeting to understand what the water issue was all about and what the DHHL is doing...we met and talked after the meeting and sending in to you our concerns, we want you to make copies and make sure each commissioner has our written input.

One observation, there were 15 people from our community who were community people and not staff that came to the meeting...that was a very low number to carry any kind of votes by the commissioners on water and we request that commissioners also attend these meetings...Uncle Joe Tassill did not attend due to being off island...talked with him at the Celebration For Life funeral for the late Kahu Ryan Kalama who passed.

The other observation and in our discussion prior to the meeting about the amendments to the HCCA 1920, since 1984...and still have not gotten it when we requested that information more than a year ago.

These amendments are important to your plans and our plans for Waimanalo and all homestead lands on all islands. We would like to request again a list of all amendments made during and after 1982...to the present.

We have a feeling that these amendments were never passed through the US congress and so it would not be taken over by third parties, protecting the rights of the people from the time of the kingdom to the present.

Objectively, the first main issue is Jurisdiction...and this is where we are stomped...and amazed at how is it that so called stakeholders have the main say in properties that came from the kingdom, to us, via Kahu and to us, na Kanaka Hawaii?

Secondly, with the lands came the water so there is no doubt in our minds that WATER must be free to Kanaka Hawaii...anyone who is not tied to third parties or stakeholders...including Hawaiians who work for any State of Hawaii agency, department or groups. Jurisdiction dictates that no third parties are allowed, yet they are all over your paper work and people working within this government...is a conflict of interest...we have to insist on doing things right to manage our lands...it is ass backwards, to put it bluntly as I am told by na Kupuna, that night.

Different meetings had different concerns

- O'ahu (Honolulu): Education, outreach, advocacy
- Kaua'i: Stream restoration, ag water, CWRM
- Molokai: Take back the MIS, self-sufficiency
- O'ahu (Kapolei): Water rates / high cost of water
- O'ahu (Waimānalo): State v Maoli rights, homestead design
- Lāna'i: Desalinization & development impact
- Hawai'i (Waimea): Ag water, water system management
- Hawai'i (Kona): Oppose Keauhou designation
- Hawai'i (Hilo): Fairness of the County BWS
- Maui: DHHL vs. kuleana water rights; kalo

Key themes

- Water is a critical trust asset
- We need sufficient water now & in the future
- DHHL's knowledge of water is limited
- Water management should be balanced
- Beneficiary partnership is essential
- Continuous, aggressive advocacy is critical
- Water connects DHHL to other trusts, and to all other people

Final Drafting and Approval

- **Statements further grouped as they relate to values, policies, and goals**
- **Draft cross checked with beneficiary input**
- **Review by DHHL staff**
- **Unanimous approval as DRAFT by the HHC on February 19, 2014**
- **Statewide Beneficiary Consultation Meetings**
- **Unanimous approval by HHC on July 22, 2014**

Vision and Mission

- Vision
- Directly from §101 of the HHCA
- Mission
- Driven by DHHL water kuleana

DEPARTMENT OF HAWAIIAN HOME LANDS (DHHL) WATER KULEANA

The DHHL's main water responsibilities are to develop sources, to manage systems, and to plan for needs and advocate for rights. To do this DHHL has distinct water rights based on the Hawaiian Homes Commission Act (HHCA), the Hawai'i State Constitution (HSC) and Hawai'i Revised Statutes (HRS), and court cases.

These water rights are tools that the Hawaiian Homes Commission (HHC) can use as needed. Which tool/right is best to use in a situation depends on the opportunities at hand and the costs (financial and other) to assert the tool/right.

Right/Tool	Description	Legal Reference	Has it been exercised? Where?
RESPONSIBILITY: DEVELOP WATER SOURCES			
Priority Use	In water management areas, water use permits are conditioned on permitted uses not interfering with the rights of DHHL. Permitted amounts can be reduced if they interfere with DHHL rights.	<ul style="list-style-type: none"> • HRS 174C-49(a) • Wai'ola O Moloka'i: 103 Haw. 401 	In the ground water management areas established on O'ahu, Moloka'i, and Maui, permits are issued conditioned on DHHL rights.
Demand Water	To supply pastoral, aquaculture, agriculture, or domestic needs, DHHL can (1) Demand water deriving from government lands, without paying the government (2) negotiate for the right to use water deriving from government or private lands, or (3) bring eminent domain proceedings, in its own name, the right to use "surplus water" from private lands.	<ul style="list-style-type: none"> • HHCA §221 HRS 171-58 • Attorney General Opinion dated 8/22/1994 by W. Tam 	DHHL has negotiated for the use of water across the islands. The HHC has authorized the assertion of a demand for water in Waimea, Kaua'i.
Issue Leases or Licenses for Transmission	The DHHL can lease or license trust land to third parties for the provision of water.	<ul style="list-style-type: none"> • HHCA especially §204.5, 207 	Yes. Most new DHHL water systems are built to County standards then licensed to the County Board of Water Supply.
RESPONSIBILITY: MANAGE WATER SYSTEMS			
Own and Manage Water Systems	The DHHL can develop, manage, and own water systems and deliver water to homesteaders and others. It is barred from selling any wholly owned system.	<ul style="list-style-type: none"> • HHCA §220, 220.5, 221 • HRS 167 	Yes; on Moloka'i, Kaua'i, and Hawai'i.
Derive Revenue	The HHC may derive revenue from the delivery of water to non-homesteaders.	<ul style="list-style-type: none"> • HHCA §220 	Yes; on Moloka'i and Kaua'i.
Moloka'i Irrigation System	If an actual need is shown to the Department of Agriculture, HHC and homesteaders have a preference right to 2/3 of the water developed by the system.	<ul style="list-style-type: none"> • HRS 168-4 	Homesteaders have individually sought access to the MIS for water and been provided it.
RESPONSIBILITY: WATER PLANNING AND ADVOCACY			
Water Reservations	The Commission on Water Resource Management shall "reserve" water for future DHHL needs to the extent applicable, based on DHHL projections.	<ul style="list-style-type: none"> • HHCA §221 • HRS 174C-49(d), 101(a) 	Yes; on O'ahu and Moloka'i, but never in an "undesigned" area.
Water License Revenue	DHHL is entitled to 30% of the receipts from water licenses issued by the State.	<ul style="list-style-type: none"> • HSC Art XII §1 • HHCA §2130 • HRS 171-58(g), 174C-101 	Yes; it has received revenue and audited returns.
Public Trust Status	Public Trust uses of water include the domestic needs of the general public, traditional and customary Hawaiian uses, maintaining wildlife and scenic beauty, and the rights of the DHHL. Public Trust uses are supposed to have priority over private commercial uses of water.	<ul style="list-style-type: none"> • HSC XI §31 • 2HRS 1-1, 174C • Waiāhole I, 94 Haw. • 97Wai'ola O Moloka'i: 103 Haw. 401 	Yes; in legal actions on O'ahu (the Waiāhole case) and Moloka'i (the Wai'ola case).

Ola i ka wai. E mālama i ka wai. He kuleana ko kākou.

Prepared by Jonathan Likeke Scheuer ph.d. for dhhl 10-18-13

Values: Waiwai, Waihona, Mālama, Laulima



AUWE ! PAU WAILUKU I KA N
hiki mai ma ko makou nei keena
palapala na S. D. Hakuole, o Ki
hai mai ana i ka pau loa o ka aina o Wai-
luku i ka mahina i ke ko. A ke hai hou
mai nei ng ke boomaloo ia nei na loi kanu
kalo e na Haele, i wahi e kanu ai i ke ko. A
ke makau nei ok, e pau ana ka ai ana o na
kanaka oia wahi i ka ai ana i ka poi, a e ai
wale aku ana no pana i ka balena oolea ho-
eha niho, a haka palaoa mama e maona ole
a pa kanaka Hawaii. Oia na mas na ka-
naka i ka ai i ka poi.

