

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 §221HRS 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 in designated areas on O`ahu and Moloka`i, and in August 2015 for the first time in an undesignated area (Keauhou, Hawai`i Island).
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 §213(i) • 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, §1, 7HRS 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.