

Kani Kulea Keana`aina

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Jobie M. K Masagatani, Chairman, Hawaiian Homes Commission  
Department of Hawaiian Home Lands (DHHL)  
P.O. Box 1879 Honolulu, Hawai'i 96805

Re: *Community meeting for mana`o for development of DHHL Water Policy Plan – Kaua`i*

Dear Chairman Masagatani and Members of the Hawaiian Homes Commission,

Aloha! As a beneficiary, that DHHL is in the process of developing a Water Policy Plan – specific to the Department of Hawaiian Home Lands – is critical. Water is essential to life – Traditional Native Hawaiian water rights are not clearly defined. The perpetuation of harm done to the Native Hawaiian beginning with the alienation of land from the Hawaiian and continues with the lack of water allocated to the Native Hawaiian.

Being an applicant on the 'Waiting List' – a Beneficiary of Department of Hawaiian Home Lands (DHHL) Trust – I request that the Members of the Hawaiian Homes Commission refer to the Hawaiian Homes Commission Act, 1920 (HHCA) *before* it became a muddled mass of amendments without regard to the rights of beneficiaries; or consultation with them to make said amendments.

The solution for a DHHL Water Policy: Return to the original HHCA pertaining to water rights of the Native Hawaiian. It is explicitly '*spelled out*'. The HHCA intent was to address & reverse the decline of the Native Hawaiian population / disenfranchisement from their homeland. This includes Water Rights. **Commissioners' need to simply consult '*the source*' as Prince Kuhio designed in the HHCA for a Water Policy Plan.**

In February 1987, the University of Hawaii at Manoa, published: "Water Code Development in Hawaii: Water Code Development in Hawai'i: History and Analysis, 1978 – 1987" by Williamson B.C. Chang

"The Hawaiian Homes Commission has a clear right to water derived from government owned lands if such water-is subject to a water license. A fair and conservative interpretation of section 221 leads one to conclude that water from government lands (under a konohiki, riparian or appurtenant water right) which was granted to a private party, pursuant to a permit, would be subject to the priorities created under section 221. Such priorities would exist in favor of the Hawaiian Home lands for domestic, livestock and aquaculture uses. The rights under section 221 can only be diminished by Congress. The rights granted in section 221 would extend beyond the lands adjacent to Hawaiian Home lands. ... A more expansive interpretation of section 221 would grant such priorities as to all surface waters subject to state permits, whether or not such waters originate from government owned lands. ... Similar to state government lands, the lands of the DHHL have common law water rights. It is probable that such rights will be considered to have vested at the time of they are not subject to being repealed or overruled by judicial decision. The State does not have the power to subject such common law water rights to regulation under a water code. Hence, the rights of DHHL in this context are similar to those of the United States military. Regulation by consent is possible. Furthermore, it is believed that the DHHL could contractually agree to refuse to assert common law property rights in return for compensation. There is a possibility that the DHHL could assert federally reserved water rights."

Past & currently 'Western Concepts' have dictated Native Hawaiian Water Rights; DHHL Water Policy Development must ensure subsistence, traditional, customary, cultural & spiritual practices & enforcement. Please protect, preserve Native Hawaiian Water Rights; thus perpetuate Native Hawaiian population – rather than add to the genocide of the Native Hawaiian.

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