

**DHHL WATER POLICY PLAN SPECIAL BRIEFING
QLCC KEPO'OKALANI INTERPRETIVE CENTER, KONA, HAWAI'I
NOVEMBER 12, 2013
1:30 P.M. – 3:30 P.M.**

Attendance: 13 people signed in; about 20 people present.

DHHL: PLO – Darrell Yagodich, Kaleo Manuel (Project Manager), Ulu Lota, Bob Freitas, LMD – Kaipo Duncan, KDO – Erna Kamibayashi MDO – Halealoha Ayau
CONSULTANT: Jonathan Scheuer

Handouts:

- Agenda
- DHHL Water Kuleana Handout

Presentation:

Kaleo Manuel provided an overview of the Water Policy Plan process, its context and relationship to the planning system, and the work done to date in developing the plan. Jonathan Scheuer synopsised the history of water law in Hawai'i and also presented the specific rights and kuleana DHHL and the trust have related to water.

Open Discussion:

Below are the questions, comments, or testimony provided either verbally, on green comment sheets, or by letter, by those present at the meeting:

- Why has DHHL issued a RFP for legal counsel related to water? If DHHL is still doing outreach for this Water Policy Plan, how does it know its position will be contrary to other land owners? How does DHHL know it will need counsel?

DHHL: The DHHL RFP for legal counsel is to address separate matters not related to West Hawaii in which there may be legal conflicts among DHHL and other state agencies. Outside counsel is needed to address situations in Waimea Kauai and Pulehunui, Maui. That is why DHHL sought to use outside counsel rather than the state Attorney General.

- Is there conflict of interest because Jonathan is contracted with the NPS?
DHHL: When DHHL hired Jonathan, he did disclose that he works with NPS. No conflict of interest, but to avoid any perception of conflict, he does not do work for the Department specifically related to Keauhou aquifer and the related regional issues.

- DHHL: We are going to give the same presentation to this group as we do to every other community we have visited.

- What is DHHL projected water demand for the Keauhou ASYA and how will that effect DHHL water reservations in this area?

DHHL: Water demand is based on full build out of what is outlined in the DHHL Hawaii Island Plan. There was a West Hawaii Update of the plan in 2008. All of DHHL's water demand projections are also articulated in the State Water Projects Plan. DHHL is also a perpetual trust. The trust is forever. When we plan, we take that into account. DHHL water demands are lower than we expected in this region because our primary water demand is for domestic water use. Domestic water demands are lower than demand for agricultural and pastoral water uses.

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- Why did DHHL take the position to support designation of a GWMA for the Keauhou ASYA?
DHHL: With regards to DHHL's CWRM testimony related to the GWMA designation of the Keauhou ASYA, DHHL's position was not to support the designation of GWMA at this time, but rather DHHL is advocating CWRM to allow for more time to collect more information and data in order for CWRM make a more informed decision regarding this position.
- The county went through its process to update its Water Use and Development Plan. Did DHHL insert its water demand numbers into the County Plan?
DHHL: DHHL's water demands were accounted for in the SWPP. County WUDPs are supposed to account for water demands in the SWPP. Also County WUDPs are more specific. Usually, WUDP is handled by LDD not PO. Not sure what level of conversation LDD has had with the County. There has been a lack of communication between County and DHHL in the past. In the future, DHHL should be active participants in the County planning process.
- Has DHHL ever asked for GWMA designation?
DHHL: Yes, in Molokai. There were five users in this aquifer area. It was affecting DHHL use.
- Related to DHHL CWRM's testimony. I see DHHL's position as more than asking for more time to collect data. DHHL is also asking CWRM not to approve permits until more data is collected.
DHHL: From our point of view, if you are going to ask for more time to do more research, it seems reasonable to ask CWRM to not approve new permits until further research has been conducted so that more information will be available to CWRM to make better decisions.
- DHHL's statement at CWRM seemed strong.
- Is there another entity that can assert inherent rights to water?
DHHL: DHHL is unusual, perhaps unique. DHHL is named by name in the Water Code. There is no equivalent entity.
- Has anyone come forward to sue DHHL for not asserting its constitutional rights?
DHHL: No. But DHHL does get sued quite often for not providing water to homesteaders. There was a law article that DHHL is in breach of trust for not asserting its water rights.
- Only half of the permitted wells in this area report their water use. Did that factor into the DHHL CWRM testimony?
DHHL: Yes, that was part of it. Counties are great. They regularly report their water use. It is mostly the private developers that do not regularly report. In this region, DHHL does not have reservations for its future residential and commercial uses. So it seemed prudent to advocate CWRM to wait until more information is provided.
- What are the data sources that are used by NPS and DHHL?
DHHL: DHHL is working directly with County DWS in this area. We have also been looking at the USGS data and data provided at the Kona Water Table meetings. This

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policy will look at being more proactive than reactive to water issues. Having more data will help with that. We are waiting for the CWRM water studies in this area as well.

- As far as the DWS, we've treated every developer equally. No favoritism.
DHHL: That is consistent with what other counties are saying too. Our beneficiaries do not share that view. They feel that DHHL is different because of the statutes in the Water Code and HHCA. They feel that DHHL should be treated as a public trust purpose rather than like another developer.
- DHHL has been developing water systems and licensing it to the county. County has worked closely with DHHL to make sure it meets County standards.
DHHL: Beneficiaries have also voiced the "self-determination" argument. DHHL should own and operate its own systems. The policy discussion should highlight and be transparent about why it decides to turn-over systems to county or manage its own systems.
- This area is particularly interesting for OHA. DHHL has big plans. QLT has development plans in this region. DWS comments are interesting, because based on the presentation we just saw, how do we get to the place where DHHL is not treated like everyone else? Would GWMA designation actually help DHHL? Would it help DHHL since the County is not treating DHHL differently?
DHHL: These laws are more about the resource rather than the development side. The real big thing is the right to get state water before other entities. Part of the policy statements could be to work with other users in aquifer areas. What has happened in the past is that DHHL is the last one at the table and only has had the "scraps" that are left.
DHHL: DHHL has been looking at developing an exploratory well. But it is hard to justify an exploratory well if we cannot guarantee absorption of the homes the future well will service.
DHHL: The policy will also look at where DHHL will sink its resources.
- DHHL has the ability to have first choice of water. First in line to get the permit at CWRM. However, DHHL has no priority at the county level, and no priority to get a water meter from the county.
DHHL: CWRM only has the mechanism to enforce DHHL rights in GWMA or SWMA. On Oahu, DHHL has a good relationship with BWS. DHHL's rights have helped BWS get permits from CWRM because BWS systems also provide water service to DHHL communities.
- Are there any DHHL ag designated areas in the Kealakehe area?
DHHL: There is a general agriculture designation in this area. That would be the only place to develop agriculture in this aquifer. However, DHHL's general agriculture designation is mostly used to "land bank" and hold land, not to develop land for agriculture. Most of DHHL's agriculture developments are in the Puukapu area.

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- When DHHL demands water, are you demanding water from the resource? Or do you expect others to pay for the resource? Is DHHL taking from other people's systems?
DHHL: That language about “demanding water” in the presentation is referring to state systems and state lands. DHHL can demand from those systems. That has not been done. But DHHL may do that for the Kokee Ditch System on Kauai.
- That is the big tension here. If DHHL is developing its own source that's ok. But if DHHL is taking water from other systems that others have built, that does not seem fair.
DHHL: It is not legally clear whether DHHL can do that. That particular language in the HHCA refers to state owned lands and state systems. It does not pertain to ground water.
- When we talk about existing infrastructure, there's existing use and available capacity. When we look at opportunities now, there is an opening to invest in the system now. When DHHL goes to the Legislature, will it ask the Legislature to invest in its water hotspots?
DHHL: Based on the conversations we've had so far for this Water Policy Plan, there seems to be focus areas or issues on each island. The Water Policy Plan can address these areas of focus through CIP projects or through could be advocacy type actions.
DHHL: DHHL has been working with the Legislature for water projects. DHHL doesn't always get money for its projects. We do not know when we can develop because of lack of funds. So when DHHL can develop, the question becomes whether or not there will be water available in the aquifer at that point in the future. Exercising DHHL's right to reserve water will help to ensure that there will be available water in the aquifer.
- Maybe we lower SY projections to reflect DHHL future water needs and demands.
- Please clarify DHHL's rights to state resources and surface water resources.
DHHL: The language in the handout refers to surface water emanating from state lands. DHHL's water rights vary depending upon the source of water.
- If this aquifer gets designated, how does DHHL benefit?
DHHL: GWMA require applicants to get a WUP. Part of the review for the WUP is to ensure that the proposed use of water does not infringe upon DHHL use of water. It ensures that DHHL's water reservation is held.
- Part of the frustration in the community is from the previous administration. The previous administration conducted a study to identify infrastructure systems that would benefit the larger community. It makes the community nervous that DHHL is now taking a different tack that DHHL is threatening to take something from us.
- In other GWMA, has DHHL gotten reservations of water in those GWMA?
DHHL: Yes on Oahu and Molokai. But not on Maui.
- If this ASYA becomes a GWMA, will DHHL get a reservation?
DHHL: We are working now with CWRM through the SWPP. We are projecting our future uses through that process.

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- We are concerned that the DHHL testimony to CWRM tells the CWRM to freeze current uses. That impacts us.

All handouts and notes can be found on the DHHL website at:
dhl.hawaii.gov