

DHHL WATER POLICY PLAN STATEWIDE BENEFICIARY CONSULTATION
DHHL PAUKUKALO COMMUNITY CENTER, PAUKUKALO, MAUI
APRIL 7, 2014
6:30 P.M. – 8:30 P.M.

Attendance: 22 Total (13 beneficiaries, 6 other, 3 no response)

DHHL: Kaleo Manuel (PO), Julie-Ann Cachola (PO), Ulu Lota (PO), Mona Kapaku (MDO), Jane Gordon (MDO), Jonathan Scheuer (Consultant), Pua Gomes (HHC)

Handouts:

- Agenda
- Water Implementation Program Example
- DHHL Water Kuleana Handout
- DHHL Water Policy Plan Draft

Presentation:

Kaleo Manuel provided an overview of the Water Policy Plan process, its context and relationship to the DHHL planning system, and the work done to date in developing the plan. Jonathan Scheuer reviewed the DHHL Water Policy Plan draft that was developed using information and research from Department and external files, feedback from one-on-one interviews in the initial scoping of the project, and mana o shared during statewide beneficiary informational meetings. The DHHL Water Policy Plan is also consistent with DHHL's legal authorities, rights, and kuleana related to water.

Open Discussion:

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

- In Jonathan's presentation, he talked about a well that was on the Big Island. Can you elaborate on the well?
 - In the 1940's a homesteader constructed a well on the Big Island. We didn't know about it before. Recently, different homesteaders on the Big Island wanted to drill their own well, but they were getting responses from DHHL that indicated they could not. The proposed policy will explicitly say that where it's feasible, it would be OK.
- Part III, regarding being aggressive with our water rights, when will DHHL seek a seat on CWRM?
 - The DHHL has recommended people to serve on the CWRM, but OHA is generally the lead on pushing for representation on Boards and Commissions. This will possibly be in the top 3 recommendations of the policy plan—to get a seat on CWRM and BLNR.
- In the interest of consistency, will any part of this policy be translated into Administrative Rules so it will not change whenever the administration changes?
 - It probably will. It will be part of the implementation plan. We could highlight which parts should be included in Hawaii Administrative Rules. Kaleo noted that we are also working on Administrative Rules for the Planning System.

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- The Rulemaking process doesn't involve discussions like this, so we want to do this first then seek the rules that would be necessary.
- I like this policy, but I am also disappointed to hear that since 1920, the Act forgot about water. Land and water always goes together. It's a disgrace for DHHL to not have water together with land. Enough of telling us what is in the policy. Maui has our own water issues; don't confuse us with information about actions on other islands—just deal with the West Maui Mountains. We want to know: what is the Clean Water Act; what are the critical water issues on Maui; where are they located? You should find Hawaiian words to explain what you are talking about. Watershed, for example, is a German word. Talk Kanaka, not Haole. We have come to know about Paukukalo and Wai'ehu Kou. Now we have to go to Haleakala where water originates. Hawaiian Home Lands have to get its act together because the train is going really fast. We have to follow the moku system. We need to show the map—the number of wells, where they are. Why is DHHL not doing the research? Water meters are \$15,000—are beneficiaries going to pay \$15,000 for a meter? Or will you exempt yourself from that requirement?
 - When DHHL constructs a well, DHHL gets “water credits” which is then used to secure water meters. So for homestead lots, there is no charge to the lessee. But if a lessee wants to subdivide the property, sometimes DHHL pays and sometimes the beneficiary or lessee needs to pay for the added water meter.
- I think every beneficiary should have the right to drill a well on their lot without DHHL telling them they cannot--without the county or BLNR or legislature saying they cannot. You say that we need to dig a cesspool/septic tank, but I can't go look for water? Other people are drilling wells—why are DHHL lessees not allowed?
- Each island is different. You cannot have a one size fits all policy. “The HHC should look at each island differently.
- The demise of Na Wai Eha is the number of wells already drilled. I speak as a Kanaka from Na Wai Eha. I don't agree that we should drill any wells; the water needs to flow so we can go down to the muliwai; so the ocean can thrive. Others came here. They disregarded what we were doing; that we were sustainable. So we have to be mindful of the resources of our ancestors. Politics is the answer, unfortunately.
- It's been almost 6 years since we started the Na Wai Eha case. I claim kuleana in Waihee Valley. One of my pet peeves is when you say that “DHHL” has the right to water. The correct way to say it is that the beneficiaries have the right, but not DHHL. I have argued this before the CWRM. If you say you own the resource, prove it. It's like you're saying that you have “superior rights.” I fought the county on this and they finally admitted that water is a public trust resource. Just because the State/County is claiming “superior right” there's no proof. You cannot say the right belongs to DHHL. The right is with the beneficiary. People

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here have vested rights; DHHL is just a trustee that must protect the rights of the beneficiary.

- I agree with the wells, but I think it's more detrimental. You have to figure out how to get water to the people. Get the map. Identify the auwai, get the whole system.
- DHHL should not take the place of the person. The person is the one who has the right to provide for them.
- I heard Kalo mentioned earlier. I heard that kalo is a higher priority than the right of the state to control water.
 - We operate in a world where we recognize the illegal overthrow of the Kingdom but court rulings have acknowledged the successor sovereign.
- The public trust says they don't own the resource; they can only provide services. The public trust doctrine only refers to the citizens. Fiduciary duty is to protect the beneficiary. The State/County fiduciary duty is to protect native Hawaiians.
- Under the mission section, it identifies things you think are important for the HHC, however, this only pertains to the HHC. As seats become vacant, how will this education and knowledge be transferred? The issue is that somehow it has to filter down to the beneficiary. Tonight you are asking for input, but we're not educated on these things.
- How will the kanaka be successful? In this whole process, is the ultimate goal to expand the scope and expand the budget?
 - It's a sad history—I'm here to be a rational optimist—to say, OK let's go forward in spite of all these problems. Water is crucial to achieving the objectives of the Act. DHHL's actions have been ad hoc. The intent is to be more consistent and aligned—in line with what was envisioned versus an after thought.
- Will this policy plan cover our lands? Islands should speak for themselves. We don't want to go in now because we have to take the information into consideration. So don't divvy up the lands. We have Monsanto on land for non-Hawaiians business. On homestead lands, water will be drained. I don't hear about draining water as a means to irrigate agricultural lands versus draining streams. What do you do then because recently you raised the water rates? So if I have citrus plants I water the plants, but if it takes 5 years to grow and you have to water it for 5 years, I won't be able to afford the water, especially with the recent increase in water rates.
 - The county raised the rate, but not on Moloka'i.
- I live in Leiali'i. I can't water my grass. I'm concerned now with what are my rights? For some reason, I feel I like it will tie our hands. What if 2 years from now, we find that it's not what we want?
 - We didn't help with Na Wai Eha or Molokai.
 - This is a 3-6 year document. We want it to be useful. So what you're saying if its not connecting, then we are obviously missing the planning

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point. We have experience to produce a well. We spent \$1M-\$2M on the leaks and \$500000 on energy costs. We bring it in way below that. We understand struggles for farmers to water their crops. The trust pays \$1M each year.

- You're developing water policy for every island. What is the policy for Lana'i, where 95% of the land is owned by one private landowner? If you have county and HHLs, what are plans there?
 - This is a statewide policy. Every island has different issues. Regarding Lanai, we have 50 acres. Of that total, 15 acres is for commercial/industrial development and the other lots are vacant. The county has no water systems on Lanai.
- I'm very disappointed that DHHL has done nothing—thanks that they have you to help them. I agree that we are the beneficiaries and we have the rights. When you are talking about sharing, DHHL should cut the water diversions. You should sue them. You have to be proactive. We have the right to water so charge us for the pipes. We have the right to water. One time Paukukalo had its own water tank and our bills were low. They took the tank down (because it was dirty). At South Point, why not just let us dig a well. Anahola had a well. As families, we were all being proactive on our lands, but HHLs has not. So the question is, what does DHHL survive? How will you disseminate the water policy plan? Will you take it to the beneficiaries before the HHC?
- I want to aloha everyone for being here and taking on this great challenge. It's not just HHLs, it's the most vital part of life. When you talk about issues and policies, we want to be island-specific. I have to advise you that when you come to Maui, you need to be on Maui in your heart, head, and gut because we want to know if you know what you're talking about regarding Maui issues. I think as you get older you know how it has to happen. There are laws and rules regarding water tanks, etc. In this day and age, unfortunately, we have become so political—seeing the trusts become state entities. So we have made a shift in how we relates to taxes—now it's about what we need. In the old days, they had to think about what we all need. So unless you can think like that, it's the true 'i'o of our kupuna—7 generations from now. We've become so compliant. If you can share wisdom that we haven't heard before, that is pono. We aloha you because you understand the challenge.
- Thank you for being here. Part III exercises our water rights, but shouldn't it call for a policy to be in place? If there wasn't water rights, wouldn't that be the policy?
 - It's good to know our rights, but even knowing rights has not been enough to exercise our rights.
- In the HHCA and water code, references are made to the rights of native tenants. Water transcends HHLs. All of this about the public trust refers to "native tenants" which are the native Hawaiians. The "public" was never a part of it. Beneficiaries are those with 50% or more Hawaiian blood. He ali'i ka 'aina—he

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kawa ke kanaka. What goes with 'aina? Automatically, water. Kupuna know that water goes with land. Can I make a puka so I can collect water? In Makena, it's different because it has tubes that go down. Look at the kaona—it's not about chiefs and land. Don't make it hard for our next generation. Don't talk Honolulu over here. You have to talk Maui.

- Since you're talking about policy I suggest that you also talk about Administrative Rules. At the state level, it's like legislation. The problem at HHLs is no action. You have to explain how to advocate for our rights. The policy is the Water Code. The program is DHHL. We are at implementation. For the enforcement of the Water Code, everything happens at the subdivision level. The WAI inventory is great. Then you have to hire bodies to advocate on each island and attend meetings. That's how you partner. When looking at water use permits, they know they are supposed to re-engage Hawaiian rights but HHLs has no plans so they cannot predict or protect our water rights.
- Number #15 and #5 does not sit well. Every island is different. Where water is an asset, we should be licensing the water; and the revenue should go to NHRF, which goes directly to the beneficiaries.
- We have to develop a policy framework. It needs to be specific; it needs meat. How will you quantify water? How will you evaluate water quality? The plan is a good place to start.
- This is important kuleana because DHHL has to consent to all requests for water – and every County and the state knows that.
- I thought I knew our rights, but now I'm kind of mixed up. Whose water is it? Do I have a say?
- HHCA is your authority. Public Trust Doctrine – your position is already established.
 - The legal origin of some of the public trust doctrine is in the western states where they adopted English common law. We also have State Constitutional provisions. The public trust is established by codifying in the Constitution and other Acts where it was confirmed that water was for the people. The HHCA comes in at 1921. In court rulings, beneficiary uses of water are the for public trust uses of water. Precedent—county heard amendments to the County water use plan. The county said they would bring requests to the table, but CWRM took time to take the work as kuleana. HHLs should include in kuleana.
- What was the biggest delay in implementing the water code?
 - We had Alapaki as Chairman and he was very much in support of implementation. Then Jobie became the Chairman. Knowing how important this initiative is, Jobie wanted to take some time to see what was being proposed, etc. Then there was a lot of attention on immediate issues vs. long-term policy.
- I'm interested in mapping our water resources. For instance, as President of the Waiehu Kou 3 Hawaiian Homestead Association, we're trying to get water to the

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lands that surround us that we want to use for cultivation (Kope Gulch). I've been conducting research on different alternatives to get water to the lands we want to cultivate. Since we're so close to the ocean, I think that any underground water source (well) would contain brackish water, which could still be usable. We want to know if there are other alternatives, nearer to the highway. For instance, when the homes at Waiehu were being constructed, DHHL let the contractor use a parcel of land for a staging area. The contractor was also allowed to use a large water meter on the lot, which is close to the Highway. The construction is completed and the contractor vacated the parcel; only the water meter remains. I'm trying to get the homestead community to have access to water in order to support their agricultural Priority Project so the community can make money to support what it needs to do. Securing access to the water meter would be the easiest way to get water to the common area proposed for community gardens/agriculture.

- [POST MEETING NOTE: Per Mona, the water meter was meant to provide landscape irrigation for the large area by Waiehu Kou 4. This is the same area that Waiehu Kou 3 is proposing for their agricultural project. Waiehu Kou 4 is currently without a Board, in violation of their DCC&Rs and basically defunct. The water meter's intended use—to irrigate landscaping—is consistent with irrigating agricultural crops in the same area. An agreement with Waiehu Kou 3 would have to be reached on the terms for payment of water used.]
- The Maui Island Water Development Plan was completed and submitted to CWRM. CWRM rejected it.
- I would like to see implementation for Waiehu Kou. This could be used as a model project. The project would tap water from the Spreckles Ditch mauka that runs from Waihee to Wailuku and allow water to be accessed along the county highway.

Benefits:

- as a model, We could bring the water down parallel to the county road.
- Share access—Piilani trail to connect
- Heiau and families: bring pipe for water down.
- Information collection: start planting tomato, cabbage, dry land taro; use basin to plan

Green Comment Sheets:

- How does DHHL advocate for water use for beneficiary purposes relative to existing county planning processes, EA's, subdivisions, changes in land use at the LUC etc...?
- What policy statement will ensure proactive advocacy?
- Would an admin rule be more appropriate?
- How do we ensure consistency as administrations & goals change overtime?
- What information is required for DHHL to effectively advocate? Acreage? Use? Etc.?

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- What types of skills (manpower) are necessary to be successful advocates?
- Received rights of the state – aha moku resource management state
DLNR→DHHL have a relationship→site specific moku ahupuaꞤa

Broad Sheets:

During the course of the meeting, staff also tried to capture the open discussion and conversation on broad sheets, which are transcribed below.

- Well on HHL on Big Island?
 - Elaborate
- Part III
 - When will Department take a seat on CWRM? BLNR?
- Consistency – part / all [of the WPP should be] translated to Admin Rules.
 - Add that to the implementation plan
 - Part of larger planning system rule making
- Disappointed with presentation
 - Land and water always went together (Kūpuna knows this)
 - It's 2014 – disgrace to have gone so long without it
- Maui – handle our own kuleana
 - Don't confuse us with what's going on [other islands]
 - Focus on our mauna – our island
 - Water – Paukūkalo, Upcountry, etc.
 - Follow moku system
 - Show the map – where are the wells?
 - \$15K / meter
 - Every beneficiary should have right to drill – important to survival
 - Without the Department DLNR the County or the Legislature telling them no
 - All beneficiaries – no tax on dug wells
 - Each island is different – can't have a “one size fits all” policy
- Don't agree with digging any wells – as a kanaka that's my mana`o – let water flow in the stream to the ocean; our ocean is suffering
- Kuleana [land holders] – [their rights are] superior
 - “Implement” - have to consult with them
 - 4 areas
 - Pet peeves – DHHL's “title/right”
 - Beneficiaries have the right
 - Does state have written proof that they own the resource?
- Don't say right belongs to DHHL but beneficiary – they have the vested right
- DHHL is the trustee – the person not the entity
- Look at existing `auwai – how to get water to people / homesteads
- Grant 3343 – Spreckels?
- Public Trust Doctrine – not “own” water

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- Mission – items are necessary – only pertains to HHC; how will knowledge be transferred (filtered down) to beneficiary
- DHHL vs. Ahuna et al. – how to determine if beneficiary is successful? Return people to land
- Goal of WPP – for compliance? Expand authority / jurisdiction of DHHL related to water?
- Will WPP tie our hands? Islands should speak for themselves.
- MIS – Monsanto uses water from system and beneficiaries
- What if lessee can't afford water bill? What can you do for me now?
- What are you doing on Lāna`i? How are you dealing with lands there?
- Disappointed that DHHL hasn't done anything related to water since the HHCA.
- Gotta be proactive
- Make our own system, we'll manage.
 - In the past we did it on our own
 - DHHL can be "exempt"? from paying for water meter?
- Get Waiehu Kou III water to lands? Dig a well? Other alternatives?
 - Tap water from Spreckels ditch? Use collection basin – plant food there.
- Will final WPP be provided to beneficiaries before vote?
- "Consistent" – "same" – want to be island specific, sense of place; come to Maui prepped or Maui, in heart, mind, etc.
 - We are not the same, but we aloha you for this
 - We've become too political
- Akua ??? [gives? Creates?] water; we all need water; need to know how much we all need to drink; "Worry about 7 generations from now"
- Part III – shouldn't those rights already be policy? Why do you need the policy when you know your water rights?
- "native tenant" in HHCA vs. public trust / PT inserted in 1978
- HRS 7-1 > include language on gathering rights
- Talk with each community [not just each island]
- Policy is at state level
 - Translate goals into implementation statements – "how"
 - Too broad
- "Partner with beneficiaries" – what does that mean?
- DHHL can help to advocate for those rights
- Everything happens at county level – island specific
- Need person on each island
- No link between DHHL and CWRM
- Part IV #15 - NHRF fund – asset resources – NHRF fund
- Doesn't have meat – quantify
- Public Trust Doctrine and HHCA – weigh the two

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- Draft Water Use and Development Plan
 - Reservation for kuleana
 - DHHL should be included

Goal Prioritization:

Although the DHHL Water Policy Plan draft has twenty-two (22) goals, in order to focus our (HHC, DHHL, and Beneficiary) efforts related to water, attendees were asked to go through a goal prioritization activity. Each attendee was given three (3) dots and was directed to place those dots next to the three (3) goals they felt were the most important to work on implementing in the next three to six years. Below are the results from that activity.

| Goal | Description | Dots |
|------|-----------------------------|------|
| 1 | Water Asset Inventory (WAI) | 10 |
| 2 | Submittal Template | 0 |
| 3 | Budget | 1 |
| 4 | Communicate | 29 |
| 5 | Staff and Organize | 0 |
| 6 | Projections | 0 |
| 7 | Design | 0 |
| 8 | Watersheds | 1 |
| 9 | Advocacy | 0 |
| 10 | Partner | 0 |
| 11 | Water Plan | 0 |
| 12 | WUPA | 1 |
| 13 | DWSs | 0 |
| 14 | Licenses | 0 |
| 15 | Dedication of Systems | 0 |
| 16 | Water Credits | 0 |
| 17 | Wells | 0 |
| 18 | Break Even | 0 |
| 19 | Run Legal Systems | 0 |
| 20 | Security | 0 |
| 21 | Ag Water | 0 |
| 22 | MIS | 0 |

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