

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

JULY 21-22, 2014

To: Chairman and Members, Hawaiian Homes Commission

From: Kaleo Manuel, Acting Planning Program Manager

Subject: Adoption of Final Water Policy Plan

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission:

1. Adopt the Final Water Policy Plan (2014) (Exhibit A); and
2. Authorize dissemination of the Water Policy Plan (2014).

DISCUSSION

Background and Purpose

The necessity of water to the well-being of Hawaiians has been understood since ancient times. Pūku'i famously recorded the 'ōlelo no'eau:

Mōhala i ka wai ka maka o ka pua
Unfolded by the water are the faces of the flowers
Flowers thrive where there is water, as thriving people are found where living conditions are good.

The significance of water to the success of the Hawaiian Homes Commission Act (HHCA) has also been recognized since the passage of the Act. The Federal and State Governments have given and increased the rights to water for the Trust since its inception. The original Act contains a section on Water (§221)

that provides considerable rights to water to the Trust that exist, with amendments, till this day. Moreover, after many years of difficulty in accessing water, in 1991 the state Legislature passed what became Act 325. The Legislature then recognized that, "Since the passage of the Hawaiian Homes Commission Act in 1921, the shortage of available water has been one of the primary reasons for the failure of Administrators to settle native Hawaiians on Hawaiian homesteads.." As a result, Act 325 modified other state laws regarding water, further increasing the rights of water to the Trust.

However, as has been well documented elsewhere, and even the most significant critics of the Act relate, funding for implementation of all aspects of the Act has been a significant limiting factor in successfully helping beneficiaries. In a situation of constantly limited resources compared to its legal mandate, there has also been consistently multiple and complex competing water related issues facing the Trust. Some of these issues have been outstanding for years and decades, such as providing water to remote home lands ranging from West Kaua'i to South Hawai'i Island. Operations of different water systems have also consistently remained a challenge, and in recent years new water challenges have emerged, especially in areas where water is becoming scarce and other users are competing for water.

In part because of this context, management of investments, interests, and assertion of its rights in water appear to have been historically focused on immediate issues, and lacked consistency across time and geographic areas. Occasionally resolution of immediate concerns has created longer-term problems related to water. Certain critical actions have also not been consistently taken. Some of these omissions, such as the failure to secure reservations of water under the state Water Code have been characterized as a potential breach of fiduciary duty by the state towards native Hawaiian beneficiaries of the trust.

Absent a long-term strategy and clear organizational policies, case-by-case decision making is likely to continue. For this primary reason, the HHC through the DHHL have been working on the development of a Water Policy Plan (WPP) for the

past three years. The purpose of the WPP is to provide strategic, proactive, comprehensive and consistent guidance and direction to the Hawaiian Homes Commission, DHHL staff, and beneficiaries on water related issues, actions, and decisions so that water is treated as a key trust asset, rather than a problem to overcome.

Process

The WPP was developed over the course of three years and involved various tasks and activities identified in Table I below. The outcome of this work is the proposed Final Water Policy Plan.

TABLE I. COMPLETED ACTIVITIES IN DEVELOPING THE WPP

TASK	ACTIVITIES
Data Gathering & Analysis	Review of Department and Commission on Water Resource Management (CWRM) water records
	Synthesis of existing water rights in the Hawaiian Homes Commission Act (HHCA) and other sources, and presentation to HHC on the same
	Individual and small group interviews on Kaua'i, O'ahu, Moloka'i Maui, and Hawai'i Interviewees included diverse viewpoints Commissioners, DHHL Staff and consultants, Homestead leaders, County Water Purveyors, Farmers & Ranchers, trusts, CWRM staff, and water law experts & advocates
	Analyzing water issues and strategy development for priority areas and projects (e.g. Anahola and Waimea, Kaua'i; Pūlehunui, Maui)
	Participating in State Planning Processes - Estimating DHHL water needs and reservations for the State Water Projects Plan and Water Resources Protection Plan
	Assisting in Water Conservation interagency initiative
	Tracking actions potentially affecting DHHL water rights before the CWRM and state Legislature and drafting testimony on the same
Issue identification with beneficiaries	Developing educational materials for outreach including synthesis of DHHL water rights and educational presentation
	Held nine (9) beneficiary water outreach and education meetings on six islands, and one stakeholder meeting in Kona - approximately 250 participants
	Delivery of same presentation to HHC (January 2014)
	Compilation of meeting notes and conversation maps
Draft of WPP	Consolidation of data and comments into "Summary of Findings"
	Synthesis of "Summary of Findings" to draft vision, mission, values, policies, and goals of WPP
	Approval of Draft WPP for Beneficiary Consultation (February 2014)
Formal Beneficiary Consultation	Conducted a series of nine (9) statewide Beneficiary Consultation meetings on six (6) islands, and one stakeholder meeting in Kona - approximately 200 participants (March - April 2013)
	Compilation of meeting notes
	Edited Draft WPP to address comments and concerns from meetings, to extent applicable

Final Water Policy Plan

The Final Water Policy Plan contains the following components:

1. A statement of a Vision and Mission for water;
2. Values related to water;
3. Policies;
4. Goals;
5. Delegation of Authorities and Reporting; and
6. Identification of Legal Authorities, Related Plans and Policies, References, and Definitions.

The vision statement reiterates the original intent and vision of the HHCA as it relates to water, and is composed of direct quotes from the HHCA. The mission statement contains language directly from, and is consistent with, the Act and the General Plan goals and objectives related to water resources approved by the HHC in 2002.

Values support the vision and mission, in providing "contextual lenses" for application of and compliance with policy statements. The values of the WPP are also common themes of beneficiary, Department staff, and HHC input and discussions that arose in the development of the policy.

Consistent with and driven by the values mentioned above, the policy statements of the WPP seek to achieve the mission and the vision related to water. These policy statements also comprehensively reference the kuleana and authorities of the Department and HHC related to water.

In the WPP, goals identify particular objectives, which need to be completed and implemented in order to achieve the vision, execute the mission, and comply with the policies. These goals were developed by consolidating data and findings throughout the planning process and from across the islands.

Also included in the WPP is a specific section on delegated authority. The HHCA specifies that "The commission may delegate to the chairman such duties, powers, and authority or so much thereof, as may be lawful or proper for the performance of the functions vested in the commission" (HHCA §202(a)(part)). The WPP

specifies that the only duty delegated to the Chairman is to develop an Implementation Program to be reported annually to the HHC.

Finally, the WPP identifies the legal authorities, related plans and policies, references, and definitions that correlate to the vision, mission, values, policies, and goals related to water.

Next Steps

If adopted by the HHC, the DHHL will develop an implementation program geared towards implementing the four (4) priority goals that are to:

1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.
2. Aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL, and the HHC to water before all relevant agencies and entities.
3. Develop and manage a Water Assets Inventory (WAI).
4. Support watershed protection and restoration on DHHL lands and source areas for DHHL water.

RECOMMENDATION

Based on the forgoing, staff respectfully recommends that the HHC approve the action as recommended.

HAWAIIAN HOMES COMMISSION WATER POLICY PLAN

PROPOSED FINAL DRAFT BASED ON BENEFICIARY CONSULTATION

June 17, 2014

Vision

Our vision is that there will be adequate amounts of water and supporting infrastructure so that homestead lands will always be usable and accessible, to enable us to return to our lands to fully support our self-sufficiency and self-determination in the administration of the Hawaiian Homes Commission Act (HHCA), and the preservation of our values, traditions, and culture.

Mission

In a manner consistent with our values, the Hawaiian Homes Commission (HHC) and Department of Hawaiian Home Lands (DHHL) shall strive to ensure the availability of adequate, quality water by working cooperatively to:

- Understand our trust water assets;
- Plan for our water needs;
- Aggressively understand, exercise and assert our kuleana as stewards of water;
- Develop and protect water sources; and
- Manage water systems.

Values

1. **Waiwai:** Mōhala i ka wai ka maka o ka pua. *Unfolded by the water are the faces of the flowers.* The availability of water to our lands and people is integral to the trust and our mission.
2. **Waihona:** `Ua lehulehu a manomano ka `ikena a ka Hawai`i. *Great and numerous is the knowledge of the Hawaiians.* Honoring and documenting our knowledge about water is essential to managing it.
3. **Mālama:** He ali`i ka `āina; he kauwā ke kānaka. *The land is a chief; man is its servant.* We consider water to be part of our genealogy and so we manage it in a manner that cares for its long-term sustainability for all things, as we also use it productively for our mission.
4. **Laulima:** E lauhoe mai na wa'a; i ke kā, i ka hoe; i ka hoe, i ke kā; pae aku i ka 'āina. *Everybody paddle the canoes together; bail and paddle, paddle and bail, and the shore is reached.* We are one people who now share Hawai`i with others. DHHL is only one of many Hawaiian serving institutions. We will assert our rights while considering our larger lāhui `ōiwi and the larger world in which we live.

Policies

The water policies of the HHC and the DHHL are to:

1. Expressly determine and plan for future water needs and actively participate in broader water management, use and protection efforts in Hawai'i in order to secure water.
2. Educate beneficiaries, the DHHL, HHC, and other stakeholders continually on our water kuleana.
3. Aggressively, proactively, consistently and comprehensively exercise our water kuleana.
4. Foster self-sufficiency of beneficiaries by promoting the adequate supply of water for homesteading when developing or managing water.
5. Foster the self-determination of beneficiaries by seeking ways for beneficiaries to participate in the management of water by delegating authority related to water subject to the discretion of the HHC as described in the HHCA.
6. Develop, manage, and steward water in a manner that balances cost, efficiency measures, and Public Trust uses in the short and long term.
7. Make water decisions that incorporate traditional and place-based knowledge of our people and are clear and methodical in their reasoning.
8. Make efforts to understand, maintain, and improve the quality of water as it moves into and through our lands and is used by beneficiaries.
9. Affirmatively communicate our decisions, our reasoning, and our performance in managing, stewarding, and using water before and after making major water decisions.
10. Affirmatively consider the development and use of alternative sources of water and efficiency measures in water decision-making.
11. Ensure that water decisions are consistent with other Departmental policies, programs, and plans including but not limited to the Energy Policy and Agricultural Program.
12. Explicitly consider water availability and the costs to provide adequate water when developing new homestead areas, designating land uses, issuing land dispositions, or exchanging properties.

Goals

To make progress on achieving our Mission and complying with our Policies, the Priority Goals of the HHC and the DHHL are to:

1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.
2. Aggressively, proactively, consistently and comprehensively advocate for the kuleana of the beneficiaries, the DHHL, and the HHC to water before all relevant agencies and entities.
3. Develop and manage a Water Assets Inventory (WAI).
4. Support watershed protection and restoration on DHHL lands and source areas for DHHL water.

Additional goals that DHHL and the HHC shall seek to achieve, based on the availability of resources, organized by mission activities, are:

Part I. Understand our trust water assets

1. Revise the DHHL submittal template to the HHC for water related decisions.
2. Revise budgets to show the total costs of a) water system management b) all spending on water issues.
3. Staff and organize the DHHL consistent with importance of water to the trust.

Part II. Plan for our water needs

4. Determine current and foreseeable future needs based upon periodic reviews of water availability projections that incorporate climate change, projected beneficiary demand, alternative sources and efficiency measures.
5. Design homesteads and manage lands to create and enhance water availability, optimizing costs, use of alternative sources and efficiency measures.

Part III. Aggressively understand, exercise and assert our water rights

6. Secure adequate and enforceable reservations of water for current and foreseeable future needs for all of its lands across the islands.
7. Partner with trust beneficiaries in water advocacy efforts.
8. Engage in updates to all Hawai'i Water Plan elements to ensure DHHL water needs and rights are addressed.
9. Advocate that all Water Use Permit Applications properly address the water rights of DHHL and other Hawaiian water rights.
10. Advocate that County Boards of Water Supply and other County agencies that affect water have the spirit of the HHCA faithfully carried out to protect DHHL water uses as a Public Trust use of water and manage rates so they are affordable by beneficiaries.
11. Ensure that all legal provisions for the licensing of state water are followed.

Part IV. Develop and protect water sources

12. Carefully weigh alternatives regarding the dedication or DHHL management of new water systems.
13. Methodically and consistently manage and allocate water credits.
14. Support the drilling of wells by beneficiaries for their own use on lots where appropriate.
15. Partner with Department of Health and others on water quality education and outreach.
16. Continue to pursue development of agricultural water systems.

Part V. Manage water systems

17. Secure revenue and reduce operation costs so DHHL water systems break even financially over the long term.
18. Increase security and reliability for DHHL water users.
19. Pursue resolution by the Department of Agriculture of prior audit findings in the management of the Moloka'i Irrigation System and full repair of the System.

Delegation of Authorities and Reporting

1. Delegation
 - a. The Hawaiian Homes Commission delegates authority to the Chairperson to prepare an Implementation Program for this Water Policy Plan. The Program shall identify tasks to implement each goal, and shall specify tasks that apply statewide as well as tasks that apply to different islands or regions under each goal.
2. Reporting
 - a. The Chairperson shall submit the proposed Implementation Program to the Hawaiian Homes Commission annually in conjunction with the Department's budget request.
 - b. The Chairperson shall annually report on progress on execution of the approved Implementation Program and overall progress towards achieving the goals of and maintaining compliance with the Water Policy Plan.

Legal Authorities

1. Hawai'i State Constitution
2. Hawaiian Homes Commission Act of 1921, as amended
3. Hawai'i State Water Code, HRS 174C
4. In the Matter of Water Use Permit Applications (Waiāhole I case)
5. Wai'ola o Moloka'i
6. Kauai Springs, Inc. v. Planning Commission of the County of Kauai

Related Plans and Policies

1. DHHL General Plan
2. DHHL Energy Policy
3. Hawaiian Homes Commission Beneficiary Consultation Policy

References

1. 1983. Puku'i, Mary Kawena. 'Ōlelo No'eau: Hawaiian Proverbs & Poetical Sayings. Honolulu: Bernice Pauahi Bishop Museum.
2. Aia i hea ka wai a Kāne? (Traditional chant, "Where is the water of Kāne?")

Definitions

Alternative sources: Alternative sources include but are not limited to the water developed through reuse and recycling technologies and best practices, capture of flood waters, desalinated waters, and other sources as may be appropriate for proposed uses.

Hawai'i Water Plan: The Hawai'i Water Plan and its parts, as detailed in Part III of the Hawai'i State Water Code (HRS 174C), is the state's "program of comprehensive water resources planning to address the problems of supply and conservation of water" (HRS 174C-2(b)).

Efficiency Measures: Efficiency measures include optimal design and development, alternative energy utilization, changing in behavioral practices and technologies that support onsite distributed wastewater systems.

Kuleana: Kuleana encompasses both rights and responsibilities. DHHL's water kuleana includes its responsibilities under its mission and the legal rights to water enshrined in the HHCA and state Constitutional and statutory provisions. Kuleana exists within the genealogical and spiritual relationship between water and the lāhui `ōiwi.

Public Trust: As delineated in the Hawai'i Supreme Court Waiāhole I and Wai'ola O Moloka'i cases, public trust uses of water include domestic uses, traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and reservations of water for the DHHL.

Water: In this policy, water includes mists, fog, rain, and other precipitation; water as it flows above or below ground, and into the ocean; water used for homesteading; alternative sources including waste, brackish, and salt water; water used in the exercise of traditional and customary practices; infrastructure used to produce, store and transmit water; and water we use as well as water to which we have rights.

Water Assets Inventory (WAI): A comprehensive geographically referenced database of the water assets of the DHHL, including traditional knowledge related to water, DHHL owned water infrastructure, current and future water demand, water agreements, water credits, and potential water sources.

Approval Date

Policy approved by the Hawaiian Homes Commission on _____.