The Water Policy Plan Implementation Program FY 2019 and 2020

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May 20 – 21, 2019 Waimea, Hawai`i

Wai`ale`ale “Blue Hole”, Kaua`i
I. Water Policy Plan Development
II. WPP Content
III. WPP IP Report FY 2019
IV. WPP IP FY 2020

East Maui Irrigation System
II. Development of the WPP

- Research beginning in 2012
- 1\textsuperscript{st} round of meetings
- Identified themes, drafted policy
- Unanimous approval as DRAFT by the HHC on February 19, 2014
- 2\textsuperscript{nd} round Beneficiary Consultation Meetings
- Unanimous approval by HHC on July 22, 2014
II. WPP Content: Sections

- Vision
- Mission
- Values
- Policies
- Goals
- Implementation Program
II. WPP Content: Four Priority Goals

1. Affirmatively communicate
2. Aggressively advocate
3. Water Assets Inventory
4. Watershed Protection
### III. WPP IP FY 2019

**PROPOSED WPP IMPLEMENTATION PROGRAM AND BUDGET FOR FY 2019**

**Goal 1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.**

<table>
<thead>
<tr>
<th>#</th>
<th>Implementation Action(s)</th>
<th>Cost / resource estimate</th>
<th>Estimated expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Annually and regionally present on DHHL water projects and issues in conjunction with HHC meetings.</td>
<td>Staff time: 80 hr. Consultant time: 80 hr.</td>
<td>Within PO budget and consultant contracts</td>
</tr>
<tr>
<td>1. a.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. b.</td>
<td>Develop and execute ten targeted trainings on water rights for beneficiaries over two years in collaboration with the William S. Richardson School of Law’s Ka Huli Ao program and others as available and appropriate.</td>
<td>Staff time: 200 hr. Consultant time: 200 hr.</td>
<td>Covered under contract issued in FY 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Subtotal</td>
<td>Staff: 280</td>
<td>Obligated funds</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Consultant: 280</td>
<td></td>
</tr>
</tbody>
</table>
Table I. Summary of FY 2019 WPP IP Performance

Red shading and plain text indicates implementation action goal was not met; yellow shading and italicized text indicates some progress was made; green shading and bold-faced text indicates the action goal was met.

Goal 1. Affirmatively communicate with beneficiaries regarding water decisions, performance, and water rights on a regional and annual basis.

<table>
<thead>
<tr>
<th>#</th>
<th>Implementation Action(s)</th>
<th>Performance</th>
<th>Next Steps</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Annually and regionally present on DHHL water projects and issues in conjunction with HHC meetings.</td>
<td>Objective met</td>
<td>Proposed to be continued</td>
</tr>
<tr>
<td>1. b.</td>
<td>Continued implementation of ten targeted trainings on water rights for beneficiaries over two years in collaboration with the William S. Richardson School of Law’s Ka Huli Ao program and others as available and appropriate.¹</td>
<td>Objective met</td>
<td>Proposed to be continued</td>
</tr>
</tbody>
</table>
III. WPP IP FY 2019 – Accomplishments

• September 2019 – groundwater reservations across Hawai`i
• April 2018 – July 2019 – Training
• December 2018 – Kukui dismissal
• June 2019 USGS Molokai Study
IV. WPP IP FY 2020 – Major Goals

1.b. Continued Training

2.a. NHRF Advocacy (171-58(g))
2.b. Seek reservations and water
2.c. Monitoring other agencies
2.f. Water rights experts / studies

3.a. WAI development

4.a. Watershed protection

5.c. MIS Cost of Service Study
<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.b. Training</td>
<td>100,000</td>
</tr>
<tr>
<td>2.a. NHRF Advocacy</td>
<td>100,000</td>
</tr>
<tr>
<td>2.b. WPP IP</td>
<td>200,000</td>
</tr>
<tr>
<td>2.f. Legal experts</td>
<td>150,000</td>
</tr>
<tr>
<td>5.c. MIS COSS</td>
<td>150,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$700,000</strong></td>
</tr>
</tbody>
</table>
Nīnau?
Honokāia, Hawai`i
Testimony of Mr. AGM Robertson, attorney of Honolulu, Representing Parker Ranch, at a December 14, 1920 hearing on HR 13500

“The bill also provides that this Hawaiian homes commission may also acquire water rights, either by purchase or condemnation, for the purpose of bringing water upon such of these lands as are now unwatered. For that purpose the local legislature is authorized to make appropriations of money out of the revenues of the government....

Senator Nugent (of Idaho): Do you object to these things?

Mr. Robertson: We certainly do, Senator: absolutely. These moneys, mind you, come out of the pockets of the white taxpayers of the Territory and are handed over to or are used for the benefit of the Hawaiian population—as we find it stated in the bill here - of one thirty-second Polynesian blood.
Mr. Kalanianaole. Mr. Chairman, may I say just a few words right there?

The Chairman. Yes.

Mr. Kalanianaole. Mr. Robertson says that these moneys are to come out of the white taxpayers’ pockets of the Territory. That is not correct. They are to come out of leases of the cane lands – that is, if the land board sees fit to lease them...

Mr. Robertson. I was coming to that point further in my argument. It does not make any difference where this $1,000,000 …comes from….it is money that comes out of the pockets of the white taxpayers of the Territory.
I. DHHL Planning System

1st Tier

General Plan
Statewide, 20 year timeframe

2nd Tier

Water Policy Plan

Island Plans
Regional, 20 year timeframe

3rd Tier

Regional Plans
Developed Areas, 2-4 year timeframe

Development Plans
Undeveloped Areas, 10-year timeframe

Implementation Tools

Funding
- CIP, Operating Budget
- (2 & 5 years)

Legislation
Administrative Rules

Land Use
- Designations, Amendment
- Processes

Evaluation Program

DHHL Planning System
Research

- Department and Water Commission files
- Review of DHHL legal rights and roles
- Specific Projects (e.g. Pulehunui, Maui)
- State Water Projects Plan Update
- Scoping Interviews
- Statewide beneficiary meetings
  - Notes, conversation maps, letters
II. Development of the WPP
<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Venue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oct. 23</td>
<td>O‘ahu</td>
<td>Stevenson Middle School Cafeteria</td>
</tr>
<tr>
<td>Oct. 30</td>
<td>Kauaʻi</td>
<td>Chiefess Kamakaheleli Middle School</td>
</tr>
<tr>
<td>Nov. 4</td>
<td>Molokai</td>
<td>Lanikeha Community Center</td>
</tr>
<tr>
<td>Nov. 5</td>
<td>O‘ahu</td>
<td>Kapolei Middle School Cafeteria</td>
</tr>
<tr>
<td>Nov. 6</td>
<td>O‘ahu</td>
<td>Blanche Pope Elementary Cafeteria</td>
</tr>
<tr>
<td>Nov. 7</td>
<td>Lānaʻi</td>
<td>Lānaʻi Elementary &amp; High Cafeteria</td>
</tr>
<tr>
<td>Nov. 12</td>
<td>Hawaiʻi</td>
<td>DHHL Kūhiō Hale, Waimea</td>
</tr>
<tr>
<td>Nov. 13</td>
<td>Hawaiʻi</td>
<td>Hilo High School Cafeteria</td>
</tr>
<tr>
<td>Nov. 14</td>
<td>Maui</td>
<td>DHHL Paukūkalo Community Center</td>
</tr>
</tbody>
</table>
Conversation maps

Ola i ka wai
What are the key water issues in your community?

- Water Supply - amount, capacity to transmit (system)
- Ecosystem restoration for watershed recharge
- Water for stadium Bowl-o-Drome
- Is there infrastructure?
- Is there enough source?
- Neptune receivers - can DHHL investigate in Waianae
- Meter misreading
- Where?
- Kupuna water bill usage
- DPP - in code says 3 toilets, but there are 8 generations in some households (owner builders)

- Insufficient $$ to deliver, build, etc new homesteads for the wait list
  Add to the “Nelson decision
- Insufficient $$ to deliver, build, etc new homesteads for the wait list
  Add to the “Nelson decision
- Not all can afford to pay
- Conservation - wise use
- Wailist Leialii Maui: Cost for system for the mauka development
- DHHL not advocating for homesteaders on water & sewer issues Ordinance 14

- Social justice
- Decreasing stream flows
- Access to my lot
- Sufficiency of clean water
- Rainfall is decreasing

- For homesteaders - if they fall into low-income bracket is this subsidized?
- Use renewable energy to pump

- Clean water
- Houseless hidden #s under Federal

- Who pays? Cost shares

- Age & Capacity of infrastructure - need to repair and maintain

- Who pays? Cost shares

- Age & Capacity of infrastructure - need to repair and maintain
**Meeting Notes**

**Historical Relationship Between DHHL and MIS**

The Beginning

The HHC Act of 1920, Section 221(d) read in its original form, any tract, to use, free of all charge, Government-owned surplus water/tributary to the Waimea River upon the island of Molokai, and any surplus water tributary to the Waimea River which is covered by a water license and which the commission deems necessary for the additional purpose of adequately irrigating any such Government-owned tract, excluding water already under a license prior to the passage of this Act and covering any water license issued after the passage of this Act and covering any water license issued after the passage of this Act

The commission is authorized, for the additional purpose of adequately irrigating any such Government-owned tract, excluding water already under a license prior to the passage of this Act and covering any water license issued after the passage of this Act and covering any water license issued after the passage of this Act, to use, free of all charge, any water upon the island of Molokai, and any of the surplus water tributary to the Waimea River upon the island of Kauai, which is covered by the license and which the commission deems necessary for the additional purpose of adequately irrigating any such Government-owned tract, excluding water already under a license prior to the passage of this Act and covering any water license issued after the passage of this Act and covering any water license issued after the passage of this Act.

As indicated by this Section 221(d), the commission was given the authority to use any Government-owned surplus water upon the island of Molokai, and any of the surplus water tributary to the Waimea River upon the island of Kauai, not covered by a water license or covered by a water license issued after the passage of this Act. Any water license issued after the passage of this Act, whether or not stipulated therein, that the license shall, upon the demand of the commission, grant to it the right to use, , free of all charge, any of the water upon the island of Molokai, and any of the surplus water tributary to the Waimea River upon the island of Kauai, which is covered by the license and which the commission deems necessary for the additional purpose of adequately irrigating any such Government-owned tract, excluding water already under a license prior to the passage of this Act and covering any water license issued after the passage of this Act and covering any water license issued after the passage of this Act.

Creation and Subsequent Changes to a Molokai Water Authority

In May 1943, the territorial legislature passed Act 227 to establish a Molokai Water Authority as a way of addressing the domestic and agricultural water needs of Molokai. This Act specifically gave homestead lessees preference to have their water needs met first before any other person or persons.

In June 1953, the territorial legislature passed Act 245 which established the Hawaii Irrigation Authority (HIA). The HIA substituted for the HHC in its role as the Molokai Water Board, e.g., the HIA had the same powers, duties, and functions as MWB were transferred to HIA.

Significance of Proposed Amendments to HHC Act of 1920 and Passage of Territorial Legislative Measures

In May 1955, three (3) significant pieces of legislation was enacted, two proposed congressional measures amending the HHC Act, Section 220 and 221 and one territorial measure, giving two thirds preference for water from a constructed irrigation system to the homestead lessees. These amendments were to be considered for passage.

1. Joint Resolution 10 was introduced by Senator Kawehiokalaninui-I-iamamao Kanui and introduced to Congress during the 88th Congress, giving two thirds preference for water from a constructed irrigation system to the Homestead lessees. It was passed by the House of Representatives on February 15, 1963, and by the Senate on February 27, 1963, and was signed into law by President Kennedy on March 5, 1963.

2. Joint Resolution 11 was introduced by Senator Kawehiokalaninui-I-iamamao Kanui and introduced to Congress during the 89th Congress, giving two thirds preference for water from a constructed irrigation system to the Homestead lessees. It was passed by the House of Representatives on June 13, 1965, and by the Senate on July 14, 1965, and was signed into law by President Johnson on July 28, 1965.

3. Joint Resolution 10 was introduced by Senator Kawehiokalaninui-I-iamamao Kanui and introduced to Congress during the 90th Congress, giving two thirds preference for water from a constructed irrigation system to the Homestead lessees. It was passed by the House of Representatives on March 14, 1967, and by the Senate on March 23, 1967, and was signed into law by President Johnson on April 27, 1967.

The other observation, there were 15 people from our community who were community people and not just people who do not have the capability or knowledge to understand the water issues and problems that we have.

We want you to take a look at the proposed congressional measures on water and the proposed congressional measures on water.

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Different meetings had different concerns

<table>
<thead>
<tr>
<th>Location</th>
<th>Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oʻahu (Honolulu)</td>
<td>Education, outreach, advocacy</td>
</tr>
<tr>
<td>Kauaʻi</td>
<td>Stream restoration, ag water, CWRM</td>
</tr>
<tr>
<td>Molokai</td>
<td>Take back the MIS, self-sufficiency</td>
</tr>
<tr>
<td>Oʻahu (Kapolei)</td>
<td>Water rates / high cost of water</td>
</tr>
<tr>
<td>Oʻahu (Waimānalo)</td>
<td>State v Maoli rights, homestead design</td>
</tr>
<tr>
<td>Lānaʻi</td>
<td>Desalinization &amp; development impact</td>
</tr>
<tr>
<td>Hawaiʻi (Waimea)</td>
<td>Ag water, water system management</td>
</tr>
<tr>
<td>Hawaiʻi (Kona)</td>
<td>Oppose Keauhou designation</td>
</tr>
<tr>
<td>Hawaiʻi (Hilo)</td>
<td>Fairness of the County BWS</td>
</tr>
<tr>
<td>Maui</td>
<td>DHHL vs. kuleana water rights; kalo</td>
</tr>
</tbody>
</table>
Key themes

- Water is a critical trust asset
- We need sufficient water now & in the future
- DHHL’s knowledge of water is limited
- Water management should be balanced
- Beneficiary partnership is essential
- Continuous, aggressive advocacy is critical
- Water connects DHHL to other trusts, and to all other people
Final Drafting and Approval

- Statements further grouped as they relate to values, policies, and goals
- Draft cross checked with beneficiary input
- Review by DHHL staff
- Unanimous approval as DRAFT by the HHC on February 19, 2014
- Statewide Beneficiary Consultation Meetings
- Unanimous approval by HHC on July 22, 2014
Vision and Mission

- **Vision**
- Directly from §101 of the HHCA

- **Mission**
- Driven by DHHL water kuleana

### 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 Hawaii State Constitution (HSC) and Hawaii 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.

<table>
<thead>
<tr>
<th>Right/Tool</th>
<th>Description</th>
<th>Legal Reference</th>
<th>Has it been exercised?</th>
<th>Where?</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Right to Develop Water Sources</strong></td>
<td>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.</td>
<td>- HRS 168-15(1)</td>
<td>Yes; most DHHL water systems are built to County standards then licensed to the County Board of Water Supply.</td>
<td>- HHC 220.5-10(1)</td>
</tr>
<tr>
<td><strong>Demand Water</strong></td>
<td>To supply personal, agricultural, or domestic needs, DHHL can (a) Demand water derived from government lands, without paying the government (b) negotiate for the right to use water deriving from government or private lands, or (b) bring eminent domain proceedings. In its own name, the right to use “kupuna water” from private lands.</td>
<td>- HHCA 322(1)(B)</td>
<td>DHHL has negotiated for the use of water across the islands. The HHC has authorized the demand of a right for water in Kauai.</td>
<td>- HCC 221(10)</td>
</tr>
<tr>
<td><strong>Uses/Licenses for Transmission</strong></td>
<td>DHHL can lease or license trust land to third parties for the provision of water.</td>
<td>- DHCC 49(d)</td>
<td>Yes; on Molokai, Kauai, and Hawaii.</td>
<td>- HRS 401-10(2)</td>
</tr>
<tr>
<td><strong>Responsibility: Manage Water Systems</strong></td>
<td>DHHL is responsible for managing, operating, maintaining, and delivering water to homeowners and others. It is banned from selling any wholly owned system.</td>
<td>- HHC 401-10(2)</td>
<td>Yes; on Molokai, Kauai, and Hawaii.</td>
<td>- HRS 401-10(2)</td>
</tr>
<tr>
<td><strong>Demand Revenue</strong></td>
<td>The HHC may derive revenue from the delivery of water to non-homeowners.</td>
<td>- HRS 401-10(3)</td>
<td>Yes; on Molokai, Kauai, and Hawaii.</td>
<td>- HRS 401-10(3)</td>
</tr>
<tr>
<td><strong>Moloka’i: Irrigation System</strong></td>
<td>If an actual need is shown to the Department of Agriculture, HHCA and homeowners have a preference right to use all the water developed by the system.</td>
<td>- HRS 168-4</td>
<td>Homeowners have individually sought access to the NWS for water which has been provided.</td>
<td>- HRS 168-4</td>
</tr>
<tr>
<td><strong>Responsibility: Water Planning and Advocacy</strong></td>
<td>The DHHL manages state and federal water planning and management, which shall “reserve” water for future DHHL needs to the extent applicable, based on DHHL projections.</td>
<td>- HHCA 401-10(4)</td>
<td>Yes; on Oahu and Molokai, but never in an “undesignated” area.</td>
<td>- HRS 168-5(1)</td>
</tr>
<tr>
<td><strong>Water License Revenue</strong></td>
<td>DHHL is entitled to 30% of the receipts from water licenses issued by the State.</td>
<td>- HHCA 401-10(5)</td>
<td>Yes; it has received revenue and pursued returns.</td>
<td>- HRS 168-5(1)</td>
</tr>
<tr>
<td><strong>Public Trust Status</strong></td>
<td>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.</td>
<td>- HHCA 401-10(6)</td>
<td>Yes, to legal actions on Oahu (the Waiholo case) and Molokai (the Waialua case).</td>
<td>- HRS 168-5(1)</td>
</tr>
</tbody>
</table>

*Prepared by Jonathan Likeke Scheuer Ph.D. for dhhl 10-18-13*
Values: Waiwai, Waihona, Mālama, Laulima