

DEPARTMENT OF HAWAIIAN HOME LANDS WATER KULEANA

The Department of Hawaiian Home Lands (DHHL) has four primary water responsibilities: to develop water sources, manage water systems, to plan for water needs and advocate for water rights. To help fulfill these responsibilities, DHHL has distinct water rights based on the Hawaiian Homes Commission Act (HHCA), the Hawai’i State Constitution (HSC), Hawai’i Revised Statutes (HRS), Attorney General’s opinions and court cases. These water rights are tools that the Hawaiian Homes Commission (HHC) can deploy as needed. Which tool/right is best to use depends on the opportunities at hand and the costs (financial and otherwise) of asserting that tool/right.

Right/Tool	Description	Legal Reference	Has it been exercised? Where?
RESPONSIBILITY: DEVELOP WATER SOURCES			
Priority Use	In water management areas, water use permits are conditioned on non-interference with DHHL’s rights and reservations. Permitted amounts of others can be reduced if they interfere.	<ul style="list-style-type: none">• HRS § 174C-49(a)• Wai’ola O Moloka’i, 103 Haw. 401 (2004)	Partially; in the ground water management areas established on O’ahu, Moloka`i, and Maui, permits are issued conditioned on DHHL’s rights. On Moloka`i a permit was successfully challenged for its impact on DHHL rights.
Demand Water	To supply pastoral, aquaculture, agriculture, or domestic needs, DHHL can (1) demand water derived from government lands, without payment, (2) negotiate for the right to use water derived from government or private lands, or (3) bring eminent domain proceedings in its own name.	<ul style="list-style-type: none">• HHCA § 221• HRS § 171-58• Attorney General Opinion dated 8/22/1994	Partially; DHHL has negotiated for the use of water across the islands, and has used the related power to reserve water (see below) but has not “demanded” water from government lands nor brought eminent domain proceedings.
Issue Leases or Licenses	DHHL can lease or license trust land to third parties for the provision of water.	<ul style="list-style-type: none">• HHCA, especially §§ 204.5, 207	Yes; most new DHHL water systems are built to County standards then licensed to the respective County.
RESPONSIBILITY: MANAGE WATER SYSTEMS			
Own and Manage Water Systems	DHHL can develop, manage, and own water systems and deliver water to homesteaders and others. It is barred from selling any wholly-owned system.	<ul style="list-style-type: none">• HHCA §§ 220, 220.5, 221• HRS § 167	Yes; on Moloka`i, Kaua`i, and Hawai’i.
Derive Revenue	The HHC may derive revenue from the delivery of water to non-homesteaders.	<ul style="list-style-type: none">• HHCA § 220	Yes; on Moloka`i and Kaua`i.
Moloka`i Irrigation System	If an actual need is shown to the Department of Agriculture, the HHC and homesteaders have a preference right to 2/3 of the water developed by the system.	<ul style="list-style-type: none">• HRS § 168-4	No; however some homesteaders have individually sought water from the MIS and have been granted access.
RESPONSIBILITY: WATER PLANNING AND ADVOCACY			
Water Reservations	The Commission on Water Resource Management shall “reserve” water for future DHHL needs to the extent applicable, based on DHHL projections.	<ul style="list-style-type: none">• HHCA § 221• HRS §§ 174C-49(d), 101(a)	Yes; for groundwater in designated areas on O’ahu and Moloka`i; for some surface and ground water sources in non-designated areas on Kaua`i, Lāna`i, Maui, and Hawai`i.
Water License Revenue	DHHL is entitled to 30% of the receipts from state-issued water licenses.	<ul style="list-style-type: none">• HSC Art. XII, § 1• HHCA § 213(i)• HRS §§ 171-58(g), 174C-101	Yes; DHHL has received revenue and audited returns, and continues to advocate for broader application and fair pricing of lease requirements.
Public Trust Status	Public Trust purposes of water include domestic (individual household) water needs, traditional and customary Native Hawaiian practices, resource protection, and DHHL reservations. Public Trust purposes have priority over private commercial uses of water.	<ul style="list-style-type: none">• HSC Art XI, §§ 1, 7• HRS §§ 1-1, 174C• Waiāhole I, 94 Haw. 97 (2000)• Wai’ola• Kukui, 116 Haw. 481 (2007)	Yes; in legal actions on O`ahu (Waiāhole I) and Moloka`i (the Wai`ola and Kukui cases) and in numerous hearings and meetings before county and state authorities.

Ola i ka wai. E mālama i ka wai. He kuleana ko kākou.