

From: [Glenn Teves](#)
To: [DLNR.CW.DLNR.CWRM](#)
Subject: [EXTERNAL] Testimony in support of Molokai submittals
Date: Monday, March 14, 2022 10:31:05 AM

Aloha Commissioners,

My name is Glenn Ioane Teves and I am a Ho'olehua Hawaiian homesteader. I'm in support of staff submittals B3 and B5 related to Molokai Water for Hawaiian Home Lands and B4 related to Interim instream Flow Standards for the Molokai Mountain river systems. I hope Molokai Properties will support the Interim instream Flow Standards.

On a related issue, I also realize that water from Well 17 has not undergone environmental review and needs to be addressed at a later date. In light of a court decision in the mid 1970's related to the transmission of water from Well 17 to Kaluakoi, it was stated that if this request for water was conducted today, the parties would need to complete an Environmental Impact Statement. Furthermore, Molokai Properties has never received a permit to withdraw water from Well 17 and this has gone on for 25 years. This is a slap in the face of CWRM and sets a dangerous precedent for others. DHHL has waited 27 years to get their withdrawal permit approved and it would have been better to just take the water and allow homesteaders to occupy their lands instead of denying homesteaders a request for a meter. By their inaction, CWRM is telling water users that it's better to ask for forgiveness than to ask for permission.

Thank you for the opportunity to testify,

Glenn Ioane Teves

Ahonui Homestead Association
PO Box 417
Hoolehua, HI 96729
Ualapue808@gmail.com

VIA EMAIL TRANSMITTAL

March 14, 2022

Commission on Water Resource Management
State of Hawai'i Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu, HI 96813
Email: Raeann.p.hyatt@hawaii.gov

Re: **Action Items:**

B3. Reservation of Ground Water for the Department of Hawaiian Home Lands from the Aquifer System Areas: **Kamiloloa (1.000 mgd), Kawela (0.244 mgd), Pālā'au (0.530 mgd), and 'Ualapu'e (0.855 mgd)**, on the Island of Moloka'i, a **Ground Water Management Area**, for use on Hawaiian Home Lands in **'Ualapu'e, Kapa'akea, Makakupa'ia, Kamiloloa, and Kalama'ula, Moloka'i**

B4. Address Portions of CDR.5310.4 by Amending Interim Instream Flow Standards for the Surface Water Hydrologic Units of Kawela (4037), Kaunakakai (4039), and Manawainui (4041), Moloka'i

B5. Approval of Surface Water Reservation of 6.0914 Million Gallons per Day for the Department of Hawaiian Home Lands and **Amend the Interim Instream Flow Standards for Waikolu Stream for the Surface Water Hydrologic Unit of Waikolu (4003), Moloka'i**

Aloha! Chair Case and Members of the Commission on Water Resource Management:

My name is Cora Schnackenberg, President representing the Ahonui Homestead Association (AHA). Our members are (DHHL) waitlisted beneficiaries are members and champion on the **project named Ualapue Kuleana Homestead (Subsistence) Project**, approved by Hawaiian Homelands Commissioners on February 19, 2020. **Reflection on 2021:** Maui County, DWS requested an Increase Water Use Permit and revoked prior to a scheduled contested hearing by your office (CWRM).

I strongly support the Department of Hawaiian Home Lands' ("DHHL's") Water Reservation as stated as ACTION ITEMS as referenced above. These requests are driven by the homesteaders and waitlisted beneficiaries, need of water. These request are well supported and cited in HRS174C-49, Waiola O Molokai 103, HAW 401 (2004), HHCA 221, HRS 171-58, HHCA 224.5 207, HHCA220, HRS 167, HRS 168-4, HHCA 213, Haw 97 (2000), and Haw Constit. Act XI and XII. And, by the Rehabilitation Act by Prince Jonah Kuhio, Hawaiian Homes Commission Act 1920.

With strong consideration, please approve ACTION ITEMS B3, B4, and B5.

Mahalo.

Cora Schnackenberg, Director
Association of Hawaiian Homestead Lands (AHHL)
PO Box 417
Hoolehua, HI 96729
cora.schnackenberg@yahoo.com

VIA EMAIL TRANSMITTAL

March 14, 2022

Commission on Water Resource Management
State of Hawai'i Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu, HI 96813
Email: Raeann.p.hyatt@hawaii.gov

Re: **Action Items:**

B3. Reservation of Ground Water for the Department of Hawaiian Home Lands from the Aquifer System Areas: **Kamiloloa (1.000 mgd), Kawela (0.244 mgd), Pālā'au (0.530 mgd), and 'Ualapu'e (0.855 mgd)**, on the Island of Moloka'i, a **Ground Water Management Area**, for use on Hawaiian Home Lands in **'Ualapu'e, Kapa'akea, Makakupa'ia, Kamiloloa, and Kalama'ula, Moloka'i**

B4. Address Portions of CDR.5310.4 by Amending Interim Instream Flow Standards for the Surface Water Hydrologic Units of Kawela (4037), Kaunakakai (4039), and Manawainui (4041), Moloka'i

B5. Approval of Surface Water Reservation of 6.0914 Million Gallons per Day for the Department of Hawaiian Home Lands and **Amend the Interim Instream Flow Standards for Waikolu Stream for the Surface Water Hydrologic Unit of Waikolu (4003), Moloka'i**

Aloha! Chair Case and Members of the Commission on Water Resource Management:

My name is Cora Schnackenberg, a Director of Association of Hawaiian Homestead Land (AHHL) for the island of Molokai. Our members are (DHHL) waitlisted beneficiaries statewide.

SUPPORT: I strongly support the Department of Hawaiian Home Lands' ("DHHL's") Water Reservation as stated as ACTION ITEMS as referenced above. These requests are driven by the homesteaders and waitlisted beneficiaries, need of water. These requests are well supported and cited in HRS174C-49, Waiola O Molokai 103, HAW 401 (2004), HHCA 221, HRS 171-58, HHCA 224.5 207, HHCA220, HRS 167, HRS 168-4, HHCA 213, Haw 97 (2000), and Haw Constit. Act XI and XII. And, by the Rehabilitation Act by Prince Jonah Kuhio, Hawaiian Homes Commission Act 1920.

With strong consideration, please approve ACTION ITEMS B3, B4, and B5.

Mahalo.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P O BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE COMMISSION ON WATER RESOURCES MANAGEMENT (CWRM)
MARCH 15, 2022 AT 9:00 AM

**ITEM B.3. Reservations of Ground Water for Department of Hawaiian Home Lands
From the Aquifer System Areas: Kamiloloa (40301), Kawela (40302), Pālā'au (40202), and
'Ualapu'e (40303), Island of Moloka'i, for use on Hawaiian Home Lands in 'Ualapu'e,
Kapa'akea, Makakupa'ia, Kamiloloa, and Kalama'ula, Moloka'i**

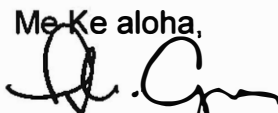
Aloha Chair Case and Members:

The Department of Hawaiian Home Lands (DHHL) submits testimony in strong support of the above referenced item. DHHL appreciates your consideration of this item and the submittal's detailed accounting of the long path to bring this to your consideration.

The availability of water is one of the key barriers DHHL faces in the development and delivery of homesteads across Hawai'i. Reservations of water in designated and non-designated areas were incorporated into the code in 1990 as an acknowledgment that funding and other delays hampered DHHL's ability to secure water when needed for its developments. In addition, it is critical to note that the setting and maintaining of reservations for DHHL's future needs assists the Commission greatly. Because CWRM needs to determine public trust water needs continually, reservations provide to CWRM critical information when non-public trust water requests are made.

As the submittal notes, DHHL held a beneficiary consultation process on this request in 2021 and there was significant support for this request as well as continuing strong concerns with the future management of water on Molokai. The final amounts requested were based on current plans and in furtherance of the [DHHL Water Policy Plan's](#) directive to "Develop, manage, and steward water in a manner that balances cost, efficiency measures, and Public Trust uses in the short and long term." DHHL will have a representative at your meeting to present oral testimony and answer questions.

Me Ke aloha,


for William J. Aila, Jr., Chairman
Hawaiian Homes Commission



March 14, 2022

Via Electronic Mail

Commission on Water Resource Management
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813
dlr.cwrwm@hawaii.gov

Re: Agenda Item B.3 Reservation of Ground Water for the Department of Hawaiian Home Lands from the Aquifer System Areas: Kamiloloa (1.000 mgd), Kawela (0.244 mgd), Pālā'au (0.530 mgd), and 'Ualapu'e (0.855 mgd), on the Island of Moloka'i, a Ground Water Management Area, for use on Hawaiian Home Lands in 'Ualapu'e, Kapa'akea, Makakupa'ia, Kamiloloa, and Kalama'ula, Moloka'i;

Agenda Item B.5 Approval of Surface Water Reservation of 6.0914 Million Gallons per Day for the Department of Hawaiian Home Lands and Amend Interim Instream Flow Standards for Waikolu Stream for the Surface Water Hydrologic Unit of Waikolu (4003), Moloka'i

Dear Chair Case and Commissioners:

Moloka'i Nō Ka Heke, through its counsel Earthjustice, offers the following comments on Commission Staff's recommendations to reserve ground and surface water for use by the Department of Hawaiian Home Lands ("DHHL"), establish Interim Instream Flow Standards ("IIFs") for Waikolu Stream, and otherwise adaptively manage the State of Hawai'i Department of Agriculture's Waikolu wells, development tunnels, and stream diversions, which supply water to the Moloka'i Irrigation System ("MIS") via a 5-mile tunnel through Moloka'i's eastern mountain and the 1.4 billion gallon Kualapu'u Reservoir.

Moloka'i Nō Ka Heke supports staff's proposal to reserve water for use by DHHL as a public trust purpose entitled to protection. Further, while Staff's proposal to set IIFs for Waikolu Stream is not responsive to Moloka'i Nō Ka Heke's formal Petition and Complaint addressing the Moloka'i Mountain Water System (CDR.5310.4) ("Petition"), Moloka'i Nō Ka Heke nonetheless supports the setting of downstream IIFs without waiving its request that the Commission set an IIFs to assure consistent stream flow directly below the Hanalilolilo diversion.

A. Reservations of Water for DHHL (Agenda Items B-3 and B-5)

MID-PACIFIC 850 RICHARDS STREET, SUITE 400 HONOLULU, HI 96813

T: 808.599.2436 F: 808.521.6841 MPOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

Moloka‘i Nō Ka Heke supports the Staff’s proposed actions to reserve ground and surface water to DHHL. Reservation of water for current and foreseeable future use on DHHL lands “constitutes a public trust purpose,”¹ *In re Waiola O Moloka‘i*, 103 Hawai‘i 401, 431 (2004) (“*Waiola*”), and “is an essential mechanism by which to effectuate the State’s public trust duty” to protect water sources for present and future generations. *Id.* Thus, DHHL reservations of water are entitled to the “full panoply of constitutional protections” afforded public trust purposes and take precedence over non-public trust uses, *id.*, and are among the “enduring public rights” in public trust waters that are “separate from, and superior to, the prevailing private interests in the resources at any given time.” *In re Waiāhole Ditch Combined Contested Case Hr’g*, 94 Hawai‘i 97, 138 (2000) (“*Waiāhole*”). Non-public trust uses, conversely, do not enjoy these constitutional protections. *Waiola*, 103 Hawai‘i at 429 (citing *Waiāhole*, 94 Hawai‘i at 138 (“private commercial use,” for example, “is not a public trust purpose”) (emphasis in original)). Thus, DHHL’s needs should be prioritized in allocating both ground and surface waters.

B. Waikolu Stream and the MIS (Agenda Item B-5)

Moloka‘i Nō Ka Heke further supports Staff’s recommendations to establish numerical IIFSs for Waikolu Stream, require modifications to Waikolu Dam #4, and modify the Department of Agriculture’s water use permit. Staff’s recommendations regarding Waikolu Stream and the MIS, like the DHHL reservations discussed above, are not responsive to Moloka‘i Nō Ka Heke’s Petition, and do not address Moloka‘i Nō Ka Heke’s request to establish an IIFS for Waikolu Stream at the Hanalilolilo intake high up in the Waikolu watershed. Moloka‘i Nō Ka Heke recognizes, however, that Staff’s recommended actions could provide benefits to Waikolu Stream’s ecosystem and watershed at lower elevations, and protect other public trust purposes, including surface waters reserved to DHHL from Waikolu. Thus, in the interest of seeing all of Moloka‘i’s waters “protect[ed], enhance[d], and reestablish[ed]” to the maximum extent practicable, *see Waiāhole*, 94 Hawai‘i at 149, Moloka‘i Nō Ka Heke supports establishment of IIFSs for Waikolu Stream and adaptive management of the Waikolu hydrologic unit and the MIS.

Moloka‘i Nō Ka Heke does not, however, waive its request that the Commission establish an IIFS for Waikolu at the Hanalilolilo intake that supplies Waikolu water to the Mountain Water System (“MWS”), joining waters taken from Kawela, Kaunakakai, and Manawainui Streams. Moloka‘i Nō Ka Heke notes that staff recommends 150,000 gallons of Waikolu water be reserved out of the MWS to supply a portion of non-potable water needs on DHHL lands in Kalama‘ula. Submittal B-5 at 37. 150,000 gallons per day is also the maximum

¹ Not to be confused with a public trust “use,” which does not receive the same level of protection under the Hawai‘i Constitution as public trust “purposes” such as reservations of water for DHHL. *Waiola*, 103 Hawai‘i at 431, 83 P.3d at 694.

amount of water that can be diverted from Hanalilolilo. *Id.* at 14, Table 4. A Hanalilolilo IIFS will ensure that instream values are protected in the event that DHHL utilizes its full reservation from the MWS. Thus, as discussed in our February 15 written testimony, Moloka‘i Nō Ka Heke requests this Commission amend staff’s recommendations to include language expressly committing to set an IIFS for Hanalilolilo before DHHL’s use of reserved MWS water is implemented.

He ali‘i ka ‘Āina,

/s/ Mahesh Cleveland

Mahesh Cleveland

Leinā‘ala L. Ley

Isaac Moriwake

EARTHJUSTICE,

Attorneys for

MOLOKA‘I NŌ KA HEKE