

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

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BOATING AND OCEAN RECREATION  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

March 10, 2022

Ms. Suzanne D. Case, Chairperson and Members  
Department of Land and Natural Resources  
Commission on Water Resource Management  
1151 Punchbowl Street, Board Room 132  
Honolulu, Hawaii 96809

SUBJECT: Testimony on March 15, 2022 Agenda Item B.4: 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

Dear Ms. Case and Members:

The Division of Aquatic Resources (DAR), Hawaii Department of Land and Natural Resources is submitting written testimony in support of the recommendations to:

1. Approve the request for a surface water reservation of 6.0914 million gallons per day (mgd) for the Department of Hawaiian Home Lands (DHHL) to meet their foreseeable future non-potable water needs in the Ho'olehua and Kalama'ula tracts serviced by the Molokai Irrigation System and the Mountain Water System from Waikolu Stream; and
2. Amend the interim instream flow standards (interim IFS) for one stream in the Waikolu surface water hydrologic unit:

WAIKOLU HYDROLOGIC UNIT (4003): Waikolu Stream

The Commission on Water Resource Management (CWRM) weighs the importance of present or potential instream values with the present or potential uses for noninstream values, including the economic impact of restricting such uses through the State Water Code HRS174C.

The Division of Aquatic Resources is responsible for managing, conserving, and protecting Hawaii's aquatic resources statewide, which includes stream, estuary, and marine ecosystems. Surface stream flows are important to maintain and sustain the health of these ecosystems. The Interim Instream Flow Standard (IIFS) provides protection and balance for instream uses for biota and habitat versus noninstream uses such as agricultural, domestic/municipal, industrial purposes.

The Waikolu Stream has a high biological ranking for native species rating of 9 out of 10. (Hawaii Watershed Atlas 2008). DAR staff has conducted numerous stream surveys (over 150 surveys during years 1979-2002) from the estuary to the headwaters. All the native stream species were observed which included: hīhīwai (*Neritina granosa*); ‘ōpae ‘oeha‘a (*Macrobrachium grandimanus*), ‘ōpae kala‘ole (*Atyoida bisulcata*); ‘o‘opu ‘akupa (*Eleotris sandwicensis*), ‘o‘opu naniha (*Stenogobius hawaiiensis*), ‘o‘opu nākea (*Awaous hawaiiensis*), ‘o‘opu nōpili (*Sicyopterus stimpsoni*), ‘o‘opu ‘alamo‘o (*Lentipes concolor*), āholehole (*Kuhlia xernura*) along with the following threatened/endangered damselflies: *Megalagrion blackburni*, *Megalagrion calliphya*, *Megalagrion hawaiiense*, *Megalagrion nigrohamatum nigrohamatum*, *Megalagrion pacificum*, and *Megalagrion xanthomelas*. During the surveys it was also observed that the stream animals would accumulate just below the dry sections of the stream until connectivity was restored which was usually by a freshet or rainfall. This again highlights the importance of that a continuous wetted flow for the native biota to migrate to upstream habitats and to sustain the amphidromous phase of their life cycle.

DAR supports CWRM staff recommendations to:

1. Approve a reservation of surface water for the Department of Hawaiian Home Lands in the amount of 6.0914 mgd from the Waikolu surface water hydrologic unit, Moloka‘i; subject to two-thirds of the availability of water transported through the West Portal of the MIS and measured at USGS 16405300.
2. Interim IFS shall be established on Waikolu Stream at an elevation of 1,050 feet of 1.10 cfs (0.71 mgd) at CWRM station 4-125; i.e., above the Dam #1 intake. The interim IFS will support the outstanding ecological resources present in Waikolu Stream.
3. Interim IFS shall be established on Waikolu Stream at an elevation of 900 feet, at USGS 16405500 of 0.95 cfs (0.61 mgd); i.e., at the first crossing. The interim IFS will support the outstanding ecological resources present in Waikolu Stream.
4. Interim IFS shall be established on Waikolu Stream at an elevation of 250 ft, approximately 0.97 miles below Dam #4, of 5.3 cfs (3.5 mgd) and measured at USGS station 16408000. The interim IFS will support the outstanding ecological resources present in Waikolu Stream.
5. Staff recommends that there be a continuous wetted flow in Waikolu Stream at MIS Dam #4 to maintain habitat connectivity for native aquatic migratory species. Waikolu Stream has outstanding aquatic resources and was identified as a stream worthy of protection based on its diversity of aquatic and recreational resources and its blue-ribbon aquatic resources.  
Implementation would involve the installation of a steel plate 18 inches wide across the intake grate on Dam #4 that is similar to one already installed on Dam #1.
6. Modification of State DOA Water Use Permit (00220) of 3.360 mgd for the Waikolu aquifer system. The approved use of 0.853 mgd in this permit for Well 23 (well 4-0855-002) will be reduced to 0.145 mgd. The approved use of 0.853 mgd for Well 24 (well 4-0855-003) will be reduced to 0.360 mgd. The total WUP will not change.

Thank you for your consideration of our testimony.

Sincerely,



Brian J. Neilson, Administrator  
Division of Aquatic Resources

**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

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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](mailto: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](mailto: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](mailto: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



WILLIAM J. AILA, JR.  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

JOSH GREEN  
LT GOVERNOR  
STATE OF HAWAII

TYLER I. GOMES  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS

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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.5. 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 (IIFS) for Waikolu Stream For the Surface Water Hydrologic Unit of Waikolu (4003), Moloka'i**

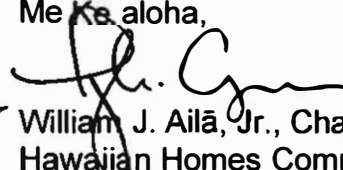
Aloha Chair Case and Members:

The Department of Hawaiian Home Lands (DHHL) submits testimony in strong support of the above referenced item and urges your adoption of the recommended actions. There are many ways in which this matter will be of critical support to DHHL, to Molokai, and to CWRM's efforts on this island. We will highlight three here.

First, for DHHL homesteaders over many years, access to Molokai Irrigation System (MIS) water has been denied, with references to a lack of supply made. This submittal makes it clear that different management of the system could provide needed water to DHHL homesteaders.

Second, for DHHL to efficiently use the water it manages in its own water system (under the permit granted by CWRM last year), it is preferable to DHHL to not deliver potable water for non-potable uses when alternatives area available. Improved management of the MIS for beneficiary interests via these proposed actions can lead to the provision of actual alternate sources of water for our beneficiaries currently using our potable system for agricultural irrigation.

Third, we appreciate that the CWRM is taking the affirmative step to reserve water for DHHL in conjunction with the setting of revised IIFS, as was previously committed to by the Commission. Setting DHHL reservations in conjunction with the setting of revised IIFS is in full accordance with the CWRM's duties to ensure public trust uses of water are protected.

Me Ke aloha,  
  
for William J. Ailā, Jr., Chairman  
Hawaiian Homes Commission



March 14, 2022

Via Electronic Mail

Commission on Water Resource Management  
Kalanimoku Building  
1151 Punchbowl Street, Room 227  
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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)

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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,”<sup>1</sup> *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

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<sup>1</sup> 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