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STATE OF HAWAII
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HRD09/4458

June 3, 2009

Ken C. Kawahara, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

RE: Request for comments on Leinaala Kihm's Surface Water Use Permit Application – Existing Use, Nā Wai 'Ehā Surface Water Management Areas, Maui; TMKs: 3-5-012:001, 3-5-004:018; SWIM ID: 2315.

Aloha e Ken C. Kawahara,

The Office of Hawaiian Affairs (OHA) is in receipt of the above-mentioned letter dated May 20, 2009. OHA has reviewed the project and offers the following comments.

OHA is the "principal public agency in this State responsible for the performance, development, and coordination of programs and activities relating to native Hawaiians and Hawaiians." Hawaii Revised Statutes (HRS) § 10-3(3). As such, we take an active interest in reviewing the seminal designation of this important area as a surface water management area by the Commission on Water Resource Management (CWRM).

It is our duty to "[a]ssess[] the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and conduct[] advocacy efforts for native Hawaiians and Hawaiians." HRS § 10-3(4). OHA points out that Nā Wai 'Ehā, the "Four Waters" of West Maui – Waikapū, 'Īao and Waiehu Streams and Waihe'e River – have a long history of Native Hawaiian use. These streams, which once supported extensive kalo cultivation, have been drained almost dry for more than a century by ditches that diverted the water to irrigate sugar plantations. OHA has committed significant resources over the last five years in working with the community on our shared goals to bring back native stream life and restore traditional and customary practices, such as kalo cultivation, that depend on flowing water.

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OHA points out that the State Water Code in HRS §174C-2(c) directs CWRM to ensure that adequate provision shall be made for the protection of traditional and customary Hawaiian rights. Further, the Constitution of Hawai'i, in Article XII, Section 7, affirms the support for Native Hawaiians' protected rights to traditional and customary practices. This principle is also embodied in the State Water Code (HRS §174C-3) by defining the protection of traditional and customary Hawaiian rights as a beneficial instream use. Therefore, OHA urges that CWRM consider this hierarchy of rights when considering these applications.

We note that this application was limited in information and so it was unclear how the water would be used or how OHA can offer the best comments for CWRM. Thank you for the opportunity to comment. If you have further questions, please contact Grant Arnold by phone at (808) 594-0263 or e-mail him at granta@oha.org.

'O wau iho nō me ka 'oia'i'o,



Clyde W. Nāmu'o
Administrator

C: OHA CRC Maui