



May 7, 2026

Via Hand Delivery and E-Mail

Ryan K.P. Kanaka'ole, Acting Chairperson
Ciara W.K. Kahahane, Deputy Director
Commission on Water Resource Management
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Honolulu, Hawai'i 96813
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Re: Comments and Objections on Applications for Surface Water Use Permits for the Lahaina Aquifer Sector Area Water Management Area, Kaua'ula and Olowalu Hydrologic Units.

Dear Chair Kanaka'ole, Deputy Director Kahahane, and Commissioners:

On behalf of Hui Mānowai (the "Hui"),¹ we respectfully submit the following comments and objections in response to the Commission's public notice dated April 9, 2026, regarding several Surface Water Use Permit Applications ("SWUPAs") for existing uses of water from the Kaua'ula and Olowalu hydrologic units:

A. Objections to Launiupoko Irrigation Company (SWUPA No. 6069) and Olowalu Water Company (SWUPA No. 6063)

The Hui objects to the SWUPAs filed by Launiupoko Irrigation Company ("LIC") and Olowalu Water Company ("OWC") and requests a hearing on these applications pursuant to Haw. Rev. Stat. § 174C-53(a). LIC and OWC do not claim any appurtenant rights, and their applications do not demonstrate actual water need for bona fide traditional and customary Native Hawaiian practices. The companies' applications thus do not belong among the public trust priority applications included in the Commission's April 9, 2026 public notice.

The applications also do not meet the companies' legally required burden of proof. The Commission has an "affirmative duty" under the constitutional public trust doctrine "to take

¹ Hui Mānowai is a community-based organization formed to promote the protection and stewardship of Maui Komohana's public trust water resources and uses, including traditional and customary Native Hawaiian practices. Hui members rely on, routinely use, or seek to use surface water from the Lahaina Aquifer Sector water management areas, including but not limited to Olowalu, Launiupoko, and Kaua'ula streams, for domestic use, agriculture, traditional and customary Native Hawaiian practices, and other recreational, scientific, cultural, educational, aesthetic, and religious activities.

the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." *In re Waiāhole Combined Contested Case Hearing*, 94 Hawai'i 97, 141, 9 P.3d 409, 453 (2000) ("*Waiāhole I*"). Offstream users bear the burden of "establishing that the proposed use will not interfere with any public trust purposes," including the exercise of traditional and customary rights and appurtenant rights, and the Commission is likewise "duty bound to hold an applicant to its burden." *In re Waiola o Moloka'i, Inc.*, 103 Hawai'i 401, 441-42, 83 P.3d 664, 704-05 (2004). The Commission should not approve any use, "existing" or otherwise, to the detriment of users with superior claims, such as appurtenant rights. *Waiāhole I*, 94 Hawai'i at 153, 9 P.3d at 465 ("The Code also obligates the Commission to ensure that it does not 'abridge or deny' traditional and customary rights of Native Hawaiians."); Haw. Const., art. XI, § 7; Haw. Const., art. XII, § 7; Haw. Rev. Stat. §§ 174C-2(c), -63, -101(c-d).

1. Launiupoko Irrigation Company

The Hui objects to LIC's existing use SWUPA, which fails to provide the Commission with the information it needs to analyze the asserted existing use and ultimately does not show that LIC's use is reasonable-beneficial. LIC is a private, regulated utility that supplies municipal water to residential developments on land zoned for agriculture in Launiupoko, Maui. LIC claims agricultural and irrigation uses for 403 units over a net irrigated area of 695 acres. Aerial photographs included in LIC's application show lots with large houses, lawns, landscaping and swimming pools, but minimal farming.

LIC requests 1,647,318 gpd from Kaua'ula Stream based on its average consumption in 2017, which was the highest in the seven years prior to designation. This high-end figure does not, by itself, establish reasonable-beneficial use. Indeed, LIC acknowledges in its application that the amount of Kaua'ula Stream water available to its customers has been on the decline since 2017 because of prolonged droughts, insufficient groundwater pumping ability, and inability to meet the interim instream flow standard ("IIFS"). The Commission has previously rejected an applicant's cherry-picking of highest usage as "not reasonable-beneficial" and "similar to requesting priority access to water during periods of water shortage over other permittees in advance." *Surface Water Use Permit Applications, Integration of Appurtenant Rts. & Amends. to Interim Instream Flow Standards* ("*Nā Wai 'Ehā II*"), 154 Hawai'i 309, 355, 550 P.3d 1167, 1213 (2024). Moreover, prior levels of consumption alone do not justify LIC's requested quantity of use. *Id.* at 354, 550 P.3d at 1212 ("*Waiāhole I*'s admonition that permits should reflect 'actual water needs' does *not* stand for the proposition that the Commission *must* grant all parties who demonstrate an existing use a permit in the full amount that they 'need' or have historically used.") (first emphasis added). LIC's "existing uses are not automatically 'grandfathered' under the constitution and the Code," *Waiāhole I*, 94 Hawai'i at 149, 9 P.3d at 461, and LIC must justify any offstream use "not only standing alone, but also in relation to other public and private uses and the particular water source in question," *id.* at 161, 9 P.3d at 473.

LIC's application includes an estimated 145,929 gpd distributed to several kuleana 'ohana within its service area. The kuleana users are not LIC customers, but rather parties to a 2003 Interim Settlement Agreement under which LIC is legally obligated to deliver water from Kauaʻula Stream to the kuleana properties at no cost to the recipients. The kuleana users rely on Kauaʻula Stream as the sole source of water for their domestic and agricultural uses and the exercise of their traditional and customary Native Hawaiian practices, including lo'i kalo cultivation. Although LIC attempts to claim the kuleana users' public trust uses as part of its application, the kuleana users have filed their own SWUPAs which the Commission should process and prioritize separately under the constitution and the Code. *See* SWUPA Nos. 6109, 6117, 6118, 6124, 6176, 6183. Indeed, the quantity of water requested in the kuleana users' public trust priority applications exceeds the amount LIC requested for the kuleana parcels in its SWUPA. *See, e.g.,* SWUPA No. 6124.

Moreover, LIC has repeatedly cut off or reduced the water supplied to kuleana parcels and failed to meet the Kauaʻula IIFS. After one such incident in April 2022, the Commission temporarily suspended the IIFS to provide for the continued diversion of water to meet the kuleana users' public trust needs.² The Commission extended the temporary suspension in July 2022, and the IIFS remains suspended today.³ LIC's existing offshore uses thus already drain the Kauaʻula Stream below IIFS levels and are not just "potentially," but actually, detrimental to public instream uses and values.

LIC alone bears the burden to provide basic information about its actual needs before the Commission can even begin to assess its SWUPA "with a level of openness, diligence, and foresight commensurate with the high priority [public] rights command under the laws of our state." *Waiāhole I*, 94 Hawai'i at 143, 9 P.3d at 455. But LIC provides only vague descriptions of its end uses and claims that it has no "data on specific customer uses after the meter and can only provide information on the metered amounts." The "lack of information" given by LIC regarding its actual needs "is exactly the reason an agency is empowered to deny a proposed use of a public trust resource." *Kauai Springs, Inc. v. Planning Comm'n*, 133 Hawai'i 141, 174, 324 P.3d 951, 984 (2014). LIC further fails to "demonstrate the absence of practicable mitigating measures," such as reduced or no irrigation. *Waiāhole I*, 94 Hawai'i at 161-62, 9 P.3d 473-74.

LIC's existing use is not reasonable-beneficial. The Commission "must take the initiative in considering, protecting, and advancing public rights" in Kauaʻula Stream water "at every stage of the planning and decision-making process" and is "duty-bound to place the burden on [LIC] to justify the proposed water use in light of the [public] trust purposes." *Kauai Springs*, 133

² Commission on Water Resource Management, Staff Submittal Item C-4 (Apr. 19, 2022), <https://files.hawaii.gov/dlnr/cwrm/submittal/2022/sb20220419C4.pdf> (last visited May 5, 2026).

³ IFS: 6007 – Kauaʻula Stream, Maui, <https://dlnr.hawaii.gov/cwrm/surfacewater/ifs/maui/6007-kauaula/> (last visited May 5, 2026).

Hawaiʻi at 173, 324 P.3d at 983. LIC bears the burden of proving actual need for any bona fide agriculture and, for its landscaping uses, it bears a “heavy burden” to show why stream water should be diverted out of public streams for such purposes. *Waiāhole I*, 94 Hawaiʻi at 168, 9 P.3d at 480. LIC fails to show how its use is “consistent with the public interest,” particularly “in relation to other public and private uses.” *Id.* at 161, 9 P.3d at 473. Accordingly, the Hui requests that LIC’s application be denied unless LIC can “demonstrate affirmatively that the proposed use will not affect a protected [public trust] use.” *Kauai Springs*, 133 Hawaiʻi at 173, 324 P.3d at 983 (cleaned up). In any event, it should not be considered with applications based on true public trust purposes.

2. Olowalu Water Company

The Hui objects to OWC’s existing use SWUPA, which fails to provide the Commission with the information it needs to analyze the asserted existing use and ultimately does not show reasonable-beneficial use. OWC is a private, regulated utility that supplies municipal water to residential developments on land zoned for agricultural purposes in Olowalu, Maui. OWC requests 261,575 gpd for agricultural and irrigation uses across a net irrigated area of 150 acres. OWC’s requested amount is based on a formula of “Total Billed Metered Usage + 12% for losses” over the twelve-month period prior to designation. Prior levels of consumption alone do not, however, justify LIC’s use, and the requested amounts lack substantiation. *Waiāhole I*, 94 Hawaiʻi at 149, 9 P.3d at 461 (“[E]xisting uses are not automatically ‘grandfathered’ under the constitution and the Code, especially in relation to public trust uses.”).

OWC also fails to satisfy its burden of proving actual need and reasonable-beneficial use for any bona fide agriculture. Beyond its metered totals, OWC neglects to include any information or means of calculating how much water is being applied to its agricultural, landscaping, and other irrigation claims, and instead provides only a vague description of its uses and several end use photographs depicting diversified agriculture and livestock on select parcels. Aerial photographs reveal, however, that the majority of parcels covered in OWC’s application contain large houses, lawns, landscaping, swimming pools, and minimal farming. For its landscaping, OWC bears a “heavy burden” to show why stream water should be diverted out of public streams for such purposes. *Waiāhole I*, 94 Haw. at 168, 9 P.3d at 480 (“[T]he Commission [has] repeatedly expressed its intention to hold nonagricultural uses such as . . . landscape irrigation to different standards and conditions than other uses.”) (internal quotation marks omitted).

OWC fails to establish that its use is reasonable-beneficial “in relation to other public and private uses.” See *Kauai Springs*, 133 Hawaiʻi at 174, 324 P.3d 984. OWC includes no discussion of how its non-potable use relates to the public interest.⁴ OWC also fails to meet any

⁴ In the Public Interest section of its application, OWC discusses only its potable water uses, which are not the subject of SWUPA No. 6063. See Item 20 at PDF 13.

burden, let alone a heavy burden, of demonstrating the absence of practicable mitigating measures and alternatives. See *Waiāhole I*, 94 Hawaiʻi at 161-62, 9 P.3d 473-74. Its alternatives analysis states that ground water from Olowalu Shaft N Pump is already used “for non-potable irrigation use to supplement surface water from Olowalu Stream,” but does not show why further use of this ground water would not be a feasible alternative to surface water. SWUPA No. 6063 at PDF 12. OWC’s alternatives analysis also fails to discuss at all mitigating measures such as reduced or no irrigation.

OWC also claims traditional and customary practices, the sole basis of which appears to be the inclusion of 150,000 gpd for the Olowalu Cultural Reserve (“OCR”) from a lower stream diversion outside of OWC’s system. OWC’s application notes that OCR’s uses include loʻi kalo, diversified agriculture, and native plant nurseries, but expressly *excludes* OCR’s use from the total quantity of water requested in its SWUPA⁵ and makes no other claim of appurtenant or traditional and customary rights. OWC further fails to affirmatively demonstrate that its use will not affect a protected public trust purpose. See *Kauai Springs*, 133 Hawaiʻi at 173, 324 P.3d at 983. OWC’s deficient *Ka Paʻakai* analysis cursorily concludes that the potential for OWC’s use to “affect or impair” traditional and customary practices or cultural resources is “negligible.” Conclusory statements, with no supporting data or analysis, are not sufficient to meet OWC’s legal burden of proof.

B. Comment on Kamehameha Schools’ Claim of Appurtenant Rights (SWUPA Nos. 6068, 6069)

Applicant Kamehameha Schools (KS) claims appurtenant rights for its Kuʻia lands within the Kauaʻula hydrologic unit, but fails to meet its prima facie burden, including establishing the existence and quantity related to those rights. The Hawaiʻi Constitution and Water Code expressly protect appurtenant rights. Haw Const., art. XI, § 7; Haw. Rev. Stat. § 174C-63, -101(d). Under the Code, a permit for water based on a true appurtenant right “shall be issued upon application.” Haw. Rev. Stat. § 174C-63. The exercise of appurtenant rights is also a public trust purpose, which the Commission has the affirmative duty to take “into account in the planning and allocation of water resources, and to protect . . . whenever feasible.” *Waiāhole I*, 94 Hawaiʻi at 141, 9 P.3d at 453.

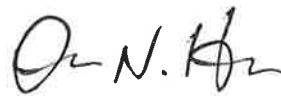
⁵ OWC states that OCR’s use is “excluded from OWC’s requested amount but included in the SWUPA for OCR’s benefit to preserve their water use and support their mission.” SWUPA No. 6063 at PDF 4. OCR has not submitted its own application, but should it choose to do so, its rights are preserved under the Code. Haw. Rev. Stat. § 174C-101(d) (“The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section . . . shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter.”).

The Commission is mandated to “determine appurtenant water rights,” including “the quantification of the amount of water . . . entitled to by that right, which determination shall be valid for purposes of [the Code].” Haw. Rev. Stat. § 174C-5(15). The Commission, however, cannot fulfill its duty to consider and protect appurtenant rights in balancing the various WUPAs, much less issue WUPAs to applicants with appurtenant rights, without prima facie evidence showing that the applicant’s land was entitled to water at the time of the Māhele. *See McBryde Sugar Co. v. Robinson*, 54 Haw. 174, 188, 504 P.2d 1330, 1339 (1973) (With respect to kuleana awards, “[i]t is the general law of this jurisdiction that when land allotted by the Māhele was confirmed to the awardee by the Land Commission and/or when Royal Patent was issued based on such award, such conveyance of the parcel of land carried with it the appurtenant right to water for taro growing.”).

In its applications for existing and new uses, KS includes the Land Commission Award, Royal Patent, Native Register, and foreign testimony establishing that the land at TMK No. 4-6-018:003 was awarded to Ruth Ke’elikōlani at the time of the Māhele as ‘āpana 11 of LCA 7716. KS also includes a citation to *Horner v. Kumuli’ili’i*, 10 Haw. 174 (1895), in which the Supreme Court of the Republic of Hawai’i opined on the allocation of water in Kaua’ula Valley. But KS fails to provide documentation establishing that its specific parcel was entitled to water, and in what amount, at the time of the Māhele.⁶ KS should therefore supplement its application with prima facie evidence of the existence of its appurtenant rights and the quantity related to those rights.

Mahalo for this opportunity to comment. We appreciate your consideration of these comments and objections and your efforts to protect Maui Komohana’s public trust resources for present and future generations.

Ola i ka wai,



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⁶ KS includes in its attached *Ka Pa’akai* analysis a description of the documented historical features of its Ku’ia lands, including portions of the Pi’ilani ‘Auwai and “other irrigation features,” but does not provide information regarding how much of the parcel was in cultivation at the time of the Māhele. *See, e.g.*, SWUPA No. 6068 at PDF 33;

Comments and Objections to SWUPAs, Kauaʻula and Olowalu Hydrologic Unit

May 7, 2026

Page 7 of 7

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