



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HWY., SUITE 200
HONOLULU, HAWAII 96817

Ryan Kanaka'ole, Acting Chairperson
Ciara W.K. Kahahane, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Lahaina Surface Water Use Permit Applications – Appurtenant and Traditional and Customary Rights Claims (posted for public notice April 16, 2026)

Aloha e Chair Kanaka'ole and Deputy Director Kahahane,

The Office of Hawaiian Affairs (“OHA”) writes with respect to the Surface Water Use Applications (“SWUPAs”) posted for public notice by the Commission on Water Resource Management (“Commission”) on April 16, 2026, for applicants claiming appurtenant or traditional and customary rights within the Honokōhau, Honolua, Kahoma, Kaua'ula, Olowalu, and Ukumehame streams. OHA provides the following comments and objections.

The Hawai'i State Constitution charges OHA with protecting Native Hawaiian rights and ensuring the responsible stewardship of the public land trust lands on behalf of its Native Hawaiian beneficiaries. Haw. Const. Art. XII, §§ 4-6; *see also* Hawai'i Revised Statutes (“HRS”) chapter 10. The above-mentioned streams are part of the public lands trust and are of critical importance to OHA's beneficiaries, including those claiming traditional and customary or appurtenant water rights in the instant permitting process, and Hawaiian Home Lands beneficiaries with rights to existing water reservations. OHA thus has a vested, due process interest in ensuring the instant permitting process upholds governing constitutional mandates and statutory principles to ensure protection of Native Hawaiian beneficiary rights in the State's water resources.

To that end, OHA appreciates the Commission's decision to first review and post the SWUPAs associated with appurtenant rights and traditional and customary Native Hawaiian practices in the Lahaina region. “The purpose of the state water resource public trust is to protect certain uses.”¹ The legally protected trust uses are: (1) the maintenance of waters in their natural state; (2) individual domestic household use; (3) the exercise of Native Hawaiian traditional and customary rights; and (4) the Department of Hawaiian Home Lands' constitutionally protected reservations of water.² The approach adopted by the Commission thus reflects a mindful and appropriate adherence to the constitutional public trust framework, ensuring that the Commission evaluates and protects higher-priority trust uses before considering lower-priority off stream demands. This structure is an important step toward fulfilling the State's affirmative duty to protect

¹ *Kauai Springs, Inc. v. Planning Comm'n of County of Kauai*, 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014).

² *Id.* (citations omitted).

public trust resources and—particularly traditional and customary uses—at the outset of the allocation process, rather than after competing demands have been aggregated.

Thus, as a general matter of legal right and principle, OHA supports the permit applications submitted for appurtenant and traditional and customary uses, as these uses represent core public trust purposes that are entitled to the highest level of protection.

When considering the hierarchy of public trust purposes and interests, OHA notes that, in Honokōhau Stream, the State has previously recognized a reservation of approximately 2.0 million gallons per day (mgd) for the Department of Hawaiian Home Lands, which constitutes a protected public trust purpose. There are also several users requesting water for traditional lo‘i kalo cultivation, who cannot engage in this practice using alternative water sources. Therefore, we respectfully emphasize that when later evaluating SWUPAs from the Maui Department of Water Supply and Kapalua Water Co. for diversion of water from Honokōhau Stream, the Commission must consider alternative sources (such as groundwater and recycled wastewater) or practices (such as demand side management and conservation measures) to fulfill non-public trust, off-stream water uses.

The prioritization of public trust purposes also underscores the importance of ensuring that the quantities of water requested and ultimately allocated for public trust purposes are accurately defined, independently evaluated, and not subsumed within broader requests for non-public trust uses. As the Commission proceeds to evaluate applications, it remains critical that water identified for appurtenant, traditional and customary, and other protected trust uses are not enveloped within municipal or broad-system requests to inappropriately disguise municipal water requests as public trust purposes. This principle is particularly relevant to the following applications, to which OHA objects, as detailed below.

OHA objects to the SWUPAs filed by Launiupoko Irrigation Co. (6065) and Olowalu Water Co. (6063).

As the Commission is well aware, when allocating water via water use permit applications, it is bound by the constitutional public trust doctrine which imposes a dual mandate to affirmatively protect water resources and public trust uses while regulating the reasonable and beneficial use of water.³ This duty requires the Commission to uphold the presumption in favor of public trust purposes such as resource protection and to ensure that water is allocated in a manner consistent with trust purposes when weighing competing water uses.⁴ In operationalizing this duty, the Commission must ensure that all uses satisfy the “reasonable-beneficial use” standard, meaning a use that is reasonable, not wasteful, and consistent with the public interest and trust purposes.⁵

³ Haw. Const. Art. XI, §§ 1, 7; HRS §§ 174C-3, 174C-2; *In re Water Use Permit Applications (Waiāhole I)*, 94 Hawai‘i 97, 138–39 (2000).

⁴ *Waiāhole I*, 94 Hawai‘i at 142.

⁵ HRS §§ 174C-3, 174C-2; *Waiāhole I*, 94 Hawai‘i at 139–40.

“[A] lack of information from the applicant is exactly the reason an agency is empowered to deny a proposed use of a public trust resource.”⁶

Within this regime, the Commission must evaluate uses according to a hierarchy of protected interests, giving the highest priority to constitutionally and statutorily protected trust uses, including appurtenant rights, traditional and customary Native Hawaiian practices, water reservations for Hawaiian Home Lands, and individual domestic household needs.⁷ In doing so, it is critical to distinguish between individual domestic basic household needs for water, such as drinking and sanitation, which constitute a public trust purpose, and municipal uses, which are more properly characterized as general public use that must demonstrate efficiency and consistency with public interest and public trust obligations.⁸

Launiupoko Irrigation Co. (6065)

OHA objects to the SWUPA-E submitted by Launiupoko Irrigation Co. (LIC) requesting an existing amount of 1,647,318 gallons per day (gpd) from Kaua'ula Stream, because it fails to establish that its use is reasonable-beneficial by properly distinguishing and prioritizing water uses consistent with the public trust and does not provide a clear accounting of diversion and return flow.

While the application claims traditional and customary uses of water, and identifies water used for Kuleana parcels and traditional agricultural practices such as kalo cultivation, these uses are aggregated into a broader municipal and non-potable system demand, rather than being independently quantified and prioritized. The application indicates that approximately 145,929 gpd is attributed to Kuleana traditional and customary uses, but this amount is masked within a much larger municipal system-wide request. If the uses identified are accurate, then traditional and customary uses amount to only 8.8% of LIC's total water allocation request. The remaining 91.2%, totaling 1,311,581 gpd, serves municipal uses and should not be considered alongside appurtenant and traditional and customary public trust use applications.

Under *Waiāhole I*, the Commission must ensure that traditional and customary practices and appurtenant rights receive a presumption in favor of their protection and are not made contingent upon or subordinate to municipal system operations. Incorporating these uses into a general system request obscures the actual volume necessary to sustain constitutionally protected practices and fails to demonstrate that these uses will be reliably met under all conditions, particularly during times of scarcity.

⁶ *Kauai Springs*, 133 Hawai'i at, 174, 324 P.3d at 984.

⁷ Haw. Const. Art. XII § 7; Haw. Const. Art. XI §§ 1, 7; HRS § 174C-101; *Waiāhole I*, 94 Hawai'i at 137 n.34.

⁸ See *Waiāhole I*, 94 Hawai'i at 168-71. Moreover, while traditional and customary practices must be prioritized as a public trust purpose under Article XI, section 1, they are independently protected pursuant to Article XII, section 7 of the Hawai'i State Constitution.

This deficiency is further compounded by the fact that the Kuleana users identified in the application have submitted their own SWUPAs and are parties to a 2003 settlement agreement wherein LIC is legally obligated to ensure water to their 'āina is uninterrupted. Despite the agreement, LIC has intermittently cut off water supply to their 'āina. Notably, on March 31, 2022, the Commission sent a Notice of Alleged Violation to LIC informing them that a \$5,000 per-day fine would be imposed if it failed to maintain compliance with the interim instream flow standards (“IIFS”).⁹ This prompted LIC to cut off water to the Kuleana users who promptly filed a lawsuit to ensure their water needs were restored and LIC meet the conditions of their 2003 settlement agreement.¹⁰ The Commission then granted immediate temporary relief by ordering LIC to meet the public trust water needs of the Kuleana users and Kamehameha Schools' tenants at all times, ensuring continued access to water.¹¹

This adversarial history and the existence of independent applications reflect that these Kuleana users are asserting their own water rights, many of which qualify as both appurtenant and traditional and customary rights. Those water uses must be evaluated independently and with priority, not subsumed within a municipal system allocation. Allowing a municipal applicant to incorporate these quantities into its own request improperly recharacterizes constitutionally protected uses as discretionary system demand, thereby undermining the priority structure mandated by the public trust doctrine. It also risks misallocation or double-counting of water in a manner that diminishes the Commission's ability to ensure that these rights are fully protected.

Moreover, by subsuming traditional and customary uses, the application improperly elevates municipal uses to a level of priority that is inconsistent with established law. While individual domestic uses are considered a public trust purpose, municipal distribution may include non-potable uses such as landscaping and private pools that are not themselves public trust uses.¹² Notably, it is known that LIC largely serves gentlemen estates, and photographs in LIC's application depict several properties with extensive landscaping and private pools which are not public trust water uses.

Lastly, OHA notes that the application presents potentially misleading water accounting by identifying approximately 1.65 mgd of diversion from Kaua'ula Stream while referencing 3.0 mgd as being returned to the stream. Mathematically this assertion is unclear, and the application does not include any further analysis or explanation of the quantified return, obscuring the net impact of the proposed diversion.

In sum, the application fails to 1) clearly prioritize appurtenant and traditional and customary uses as independent, first-priority allocations; 2) properly account for the existence of separate SWUPAs submitted by the Kuleana users; 3) provide a clear accounting of diverted water returned into Kaua'ula Stream; and 4) justify the evaluation of requested quantities for municipal and non-potable uses alongside public trust protected uses.

⁹ CWRM, Notice of Alleged Violation (Ref. No. CWRM.5783.6) (Mar. 31, 2022).

¹⁰ *Kapu v. Launiupoko Irrigation Co.*, No. 2CCV-22-0000104 (Haw. Cir. Apr. 14, 2022).

¹¹ CWRM, Commission Meeting, Agenda Item C-4 (Apr. 19, 2022)

¹² *See Waiāhole I*, 94 Hawai'i at 168-71.

Olowalu Water Co. (6063)

OHA objects to the SWUPA-E submitted by Olowalu Water Co. (“OWC”) requesting an existing amount of 261,575¹³ gpd from Olowalu Stream, because the application improperly relies on the Olowalu Cultural Reserve to elevate a primarily municipal and non-potable system demand to the level of traditional and customary practices public trust evaluation, while failing to prioritize or ensure the actual water needs of the cultural reserve.

The Olowalu Cultural Reserve is the only water use identified in the application that constitutes a traditional and customary practice, including lo‘i kalo and traditional agriculture. The application assigns an estimated water need of 150,000 gpd to the cultural reserve and references it in support of their overall water request; however, it was not incorporated into the applicant’s total requested water use. The application also acknowledges that the actual water use for the reserve during the relevant period was approximately 27,752 gpd. This inconsistency creates uncertainty as to whether the cultural reserve’s water needs are being meaningfully represented or simply invoked as a traditional and customary water use to brown wash the application and enable evaluation of the broader municipal water request alongside genuine public trust purposes.

OWC claims to primarily serve non-potable irrigation and agricultural uses. The application depicts several resort estates with extensive landscaping and private pools. Including the cultural reserve in this manner, without ensuring its water needs are actually met, improperly elevates municipal uses into a public trust framework without demonstrating that the underlying traditional and customary water uses are adequately quantified and prioritized. The application’s structure allows OWC to rely on the existence of the cultural reserve to improperly support its diversion request, which would primarily serve non-public trust uses. Moreover, it disguises the municipal request, which is not a prioritized public trust purpose, and thus subject to a higher of level of scrutiny and proof to ensure the reasonable-beneficial standard is satisfied.¹⁴

Additionally, OHA notes that the applicant claims 60,000 gpd is returned to the Olowalu Stream at TMK 4-5-003:108, the same location as the stream diversion and the location of the cultural reserve. The application clearly depicts the stream diversion point, however, nowhere in any provided maps or descriptions, does it demonstrate the ho‘i (return) point. With no additional explanation or proof that water is returned to the stream, this assertion further obscures the net impact of the proposed diversion and hinders the Commission and the general public’s ability to evaluate potential impacts of the proposed diversion.¹⁵

¹³ OHA notes that the Commission’s table and summary of applications posted on April 16, 2026, shows the amount of water requested as 549,913 gpd, differing from the application.

¹⁴ See *Waiāhole I*, 94 Hawai‘i at 162 (holding the public trust places the burden on off stream uses to show their “actual needs and . . . the propriety of draining water from public streams to satisfy those needs.”).

¹⁵ “[A] lack of information from the applicant is exactly the reason an agency is empowered to deny a proposed use of a public trust resource.” *Kauai Springs*, 133 Hawai‘i at, 174, 324 P.3d at 984.

In sum, the application fails to: 1) justify its inclusion of the Olowalu Cultural Reserve without including its water demand in the total surface water requested; 2) demonstrate that any water attributed to the cultural reserve will be reliably delivered and protected as a priority; 3) provide a clear accounting of diverted water returned into Olowalu Stream; and 4) justify the evaluation of predominantly municipal and non-potable water uses alongside public trust protected uses.

Restoration of Moku'ula and Mokuhinia

Lastly, OHA emphasizes its support for the restoration of Moku'ula and Mokuhinia as the reawakening of a sacred landscape that once stood as the cultural and political heart of Maui and the Hawaiian Kingdom. Nā 'Aikāne o Maui's (6130) request for water is a call to restore the lush landscape and once thriving wetland that sustained lo'i kalo and the 17-acre Loko o Mokuhinia renowned as the home of Kihawahine, an akua mo'o ali'i wahine. This effort speaks to the restoration of Lele (Lahaina's original name), and a place remembered for its abundance of water.

This once verdant land of abundance fell victim to sugarcane plantation water diversions that continue to water gentleman estates, golf courses, and pools, leaving the 'āina barren of traditional cultivated landscapes and vulnerable to wildfires and other natural disasters. In contrast to the dryness that defines Lahaina today, Lele reflects a time when wai flowed freely. Approving the water restoration request affirms a commitment to that vision to return balance and restore the once "Venice of the Pacific." The Commission has a great opportunity to help restore Lahaina's beauty and abundance of wai for future generations. OHA urges the Commission to support this effort to restore flow to this system and allow the 'āina to breathe again and reconnect the lāhui to a place of profound ancestral significance.

Closing Remarks

Mahalo for the Commission's continued efforts to prioritize applications involving public trust uses, including appurtenant and traditional and customary practices. OHA respectfully urges the Commission to ensure that such uses are clearly prioritized in its decisions. We appreciate your careful consideration of these comments and look forward to continued engagement on this matter. Should you have any questions, please contact OHA Compliance Advocate, A. Leialoha Mākuanani at (808) 582-0494 or by email at andream@oha.org.

'O wau iho nō me ka 'oia 'i'o,



Summer Sylva
Interim Ka Pouhana, Chief Executive Officer

SS:lm

cc: Glenn Tremble (Launiupoko Irrigation Co.) (Olowalu Water Co.) (via U.S. Mail)