

Waiahole Irrigation Ditch Dispute

20-30 million gallons of water per day--transferred from the Windward side to the central valley and leeward area. Water is no longer needed for sugar.

Continue present transfers:

State of Hawaii--Dept. of Land and Natural Resources
--Dept. of Agriculture

Campbell Estate

Castle & Cook (Dole)

Del Monte

Hawaii Farm Bureau

Kamehameha Schools/Bishop Estate

Robinson Estate

U.S. Navy

Waiahole Irrigation Company (Amfac)

Return waters to the Windward valleys

Hakipuu Ohana

Kahaluu Neighborhood Board

Ka Lahui

Office of Hawaiian Affairs

Waiahole-Waikane Community Association

OHA's Recommendation to the Water Code Review Commission:

1. The Water Commission should be expanded to eight members and the Chairs of OHA's Board of Trustees and of the Hawaiian Homes Commission should sit as ex officio voting members on this body.

2. The Water Commission should develop a comprehensive program to manage and protect Hawaii's fresh water resources.

The Commission should designate the entire state as a water management area and should take a more active role in ensuring that Hawaii's waters are allocated in a fair and equitable manner that recognizes the preferential rights of Hawaiians.

3. The Commission should abandon its present first-come, first-serve approach and should be empowered (1) to make reservations for Hawaiian priority uses based on estimated uses, (2) to allow uses that are temporary and subject to reduction if Hawaiian priority uses increase, and (3) to deny uses where it is obvious that the requested use will infringe on Native Hawaiian uses.

OHA's Recommendation to the Water Code Review Commission:

4. It should be acknowledged that the rights of Native Hawaiians to water exist as rights without regard to whether they can be quantified.

5. The rights of Native Hawaiians under Section 221 of the Hawaiian Homes Commission Act and under H.R.S. Section 174C-101 should be clarified. More specifically, Hawaiian water rights should be modernized so that the symbolically-important traditional rights can be translated into rights that will be meaningful for today's Hawaiians as they become more autonomous and enter into new economic endeavors.

6. Mechanisms should be identified in the Water Code to ensure that funds can be found to enable DHHIL to construct the infrastructure needed to deliver water to the Hawaiian homesteaders. One obvious approach would be to ensure that DHHIL receive a share of the revenues from all water leases to non-Hawaiians.

Protection of Minimum Stream Flows in Order to Guarantee Gathering Rights. H.R.S. Section 174C-101(c) reaffirms the rights of native Hawaiians to gather 'opae, hihiwai, and 'o'opu, and an adequate in-stream flow is essential for them to thrive. **The Water Commission has not yet provided the strong leadership required to protect the flow of Hawaii's streams,** and has been unwilling to acknowledge these rights explicitly and to protect them. Although Sections 13-169-20(1) and 13-169-33(d) refer in general terms to ensuring adequate stream flow to protect fish and wildlife, no explicit reference is made to the 'opae, hihiwai, and 'o'opu, which are the resources that have traditionally come out of Hawaii's streams. One crucial step that needs to be taken is that **adequate data** need to be collected so that the streams can be monitored over time.

The Water Code does not go far enough, however, in spelling out the nature of the rights of Hawaiians to water, and how these rights are to be implemented and protected.

The Water Commission has not fulfilled its constitutional mandate under Article XII, Section 7, of Hawaii's Constitution which anticipates the establishment of a comprehensive program to manage and protect Hawaii's fresh water resources. The Water Commission's actions can best be characterized as crisis management, and it has tended to allocate water on a first-come, first-served basis. Instead, the Commission should step back from the day-to-day issues and take a broad holistic view of the situation. Part of that broad view should involve reaffirming and implementing the preferential rights to water that Native Hawaiians are entitled to.

The Water Code is a useful document which brings some order to the regulation of water in Hawai'i. It is based on the traditional Hawai'i and Kingdom law which viewed water as a resource held in trust to be managed for the benefit of all the people. The Code also explicitly recognizes in H.R.S. Section 174C-101 that persons of Hawaiian ancestry have preferential rights to water pursuant to the Hawaiian Homes Commission Act, 1920, as amended, and pursuant to traditional and customary rights. The traditional rights include gathering rights to 'opae, hihiwai, and 'o'opu, which require streams with sufficient water to allow them to thrive, and the appurtenant water rights guarantee water sufficient to produce taro and provide for other traditional kuleana uses.

OHA's Recommendation to the Water Code Review Commission:

7. The Water Commission should address the loss of kuleana lands that resulted from the building of the Kohala Ditch on the Big Island, the Spreckels Ditch at Waihe'e, Maui, and other irrigation efforts, and should propose an appropriate solution to this problem.

8. Permits to use water should be limited in duration, and fees should be paid for these permits. OHA recommends that water permits should be issued for no more than 30 years. After that period, the water users can reapply for additional permits. If water supplies are adequate, they would be granted the renewal. If not, their requests would be evaluated along with the other demands for water.

9. Entities receiving permits for water should contribute financially for access to this common-property resource into a fund that would be used to build the infrastructure needed to deliver water to Hawaiians and others.

10. Special attention should be given to the water needs of Kaho'olawe, and that a plan should be developed immediately that would address how that water needs of that island are to be met.

COMMISSION ON WATER RESOURCE MANAGEMENT

WAIAHOLE DITCH WATER
Non- Sugar Uses

<u>USER</u>	<u>OSCO's</u> <u>ESTIMATES</u> <u>(in GPD)</u>	<u>STAFF's</u> <u>ESTIMATES</u> <u>(In GPD)</u>
HSPA	1,000,000	500,000
HSPA	12,000	15,000
ICI	500,000	191,000
Mililani Memorial Park	140,000	142,373
Royal Oahu Resort	0	700,000
Mililani Golf Course	178,000	178,000
Teen Challenge	not listed	2,000
Waiawa Nursery	not listed	100,000
Hawaii Food Products	not listed	19,000
Thinh Kuang	50,000	171,000
Pacific Landscape	70,000	70,000
Hawaiian Agriculture	90,000	343,000
Hawaiian Foliage	122,000	670,000
Waiahole Irrigation Co.	1,000	1,000
Dole Irrigation	20,000	774,000
Waiawa Correctional Facility	150,000	7,000
Del Monte	not listed	198,000
Waiahole Farm Lots	500,000	500,000
Circle 6 Ranch	5,000	5,000
U.S. Air Force	600	600
Terry Cozzen's Ranch	35,000	50,000
Hymie Gaoing	5,000	5,000
David Kahuku	7,500	7,500
Louis Santiago	7,500	7,500
Operating Engineers #3	7,500	7,500
Makakilo Golf Course	0	120,000
TOTAL	2,901,100	4,784,473

Handwritten notes:
 On 10/1/73
 in 10/1/73

The Claims of the Hawaiian
People to land and other resources
are well founded in law.

These Claims are supported by
international law and by the laws
and decisions of other countries.

Hawaiians are entitled to own
and control their own land and
resources

AND
are entitled to be at the
table when decisions regarding
other public resources are made.

Second Native Hawaiian has water service ended

By BRIAN PERRY
Staff Writer

PAUKUKALO — Another Native Hawaiian has joined the protest over water rights in this homestead community.

On Monday, Department of Water Supply officials cut off water to John Mahi's Kuhio Street home after he refused to pay six months' worth of water bills.

Mahi, 49, maintains, along with neighbor Oliver Dukelow, that the Hawaiian Homes Act provides free water to the Department of Hawaiian Home Lands for agricultural or domestic purposes. Mahi and Dukelow argue that, as beneficiaries of the department, they should get water free of charge.

"I feel I'm doing what is right for us as a Hawaiian people," Mahi said.

On Aug. 10, Dukelow had his water meter disconnected for refusing to pay his county water bills. He has gone without a direct connection to the water system ever since.

Wednesday morning, Water Supply Department Director David Craddick said Dukelow later took a county water meter, and that the alleged theft has been referred to the Department of the Prosecuting Attorney.

Dukelow said he's heard nothing from county prosecutors. County Prosecutor Larry Butrick could not be reached for comment.

"I paid for that water meter," Dukelow said. "What are they going to do? Throw me in jail?"

Dukelow said that since the water was cut off in August, he has received water in his Kuhio Street residence from a neighbor who ran a hose over to his home.

Hawaiian Homes Commission Chairwoman Hoaliku Drake said the water going to homesteaders is free but the homesteaders must pay for the cost of the transmission system.

Mahi said he explained his posi-



The Maui News / EUGENE TANNER/photo

John Mahi of Paukukalo loads up his steamer with kulolo that he is making for some friends on Oahu. Mahi had his water turned off by the county this week because he has refused to pay his water bills. This photo was taken Wednesday.

tion to the Maui County Board of Water Supply and the Hawaiian Homes Commission in a letter.

"I explained that they (the water board) don't have jurisdiction over me because this is Hawaiian Homes land. All the bills shouldn't be sent to me; they should be sent to the Hawaiian Homes Commission," he said.

Craddick said water bills for a property are sent to the party that applies for the water connection, which was Mahi in this case.

"If he believes it is the responsibility of the Department of Hawaiian Home Lands, he should have had the department apply for the meter," Craddick said.

Dukelow predicted that Mahi is the first of others on Maui who will follow his lead in refusing to pay for county water service. "There are a lot of people who feel the way I feel," he said.

About a dozen Big Island residents with similar claims to water rights have also had their water turned off.

Rights to Water Resources

- 1. Claims based on traditional and historical practices**
- 2. The Winters doctrine**
- 3. The Water Code--positive and negative features--based on the traditional Hawai'i and Kingdom law which viewed water as a resource held in trust to be managed for the benefit of all the people. The Code explicitly recognizes in H.R.S. Section 174C-101 that persons of Hawaiian ancestry have preferential rights to water pursuant to the Hawaiian Homes Commission Act, 1920, as amended, and pursuant to traditional and customary**

rights. The traditional rights include gathering rights to 'opae, hihiwai, and 'o'opu, which require streams with sufficient water to allow them to thrive, and the appurtenant water rights guarantee water sufficient to produce taro and provide for other traditional kuleana uses.

I. Impact of KMI's Request on the Rights of the Native Hawaiian People

A. The Winters Doctrine – land set aside by the federal government for natives is entitled to the water the natives need for agricultural and domestic uses.

B. Relevant Hawai`i Statutes

- * Haw. Const. Art. XII, Sec. 7
- * Haw. Homes Comm. Act, sec. 221(c)
- * Water Code – HRS 174C-101(a)&(c)
- * Water Code – HRS 174C-49(e)

C. The DHHL Reservation (2.905 mgd) – designed to protect the rights of Native Hawaiians under *Winters* and the relevant Hawai`i statutes – constitutes an important right that must be protected.

D. Traditional and Customary Rights – strong Native Hawaiian culture on Moloka`i requires protection of subsistence living – Native Hawaiian families obtain 38% of their food through traditional gathering activities.

IV. How Should the Claims of Terrestrial Water Users Be Balanced Against the Value of Having Fresh Water in the Coastal Areas and Nearshore Waters?

A. The value of natural ecosystems

1. To support native life forms – and support traditional subsistence gathering rights.
 2. Erosion control
 3. Reduce fires
 4. Promote health of coastal area
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B. Ecosystems around the world are being restored:

1. Everglades, Florida
2. Owens Valley, California
3. Waiahole Valley, O`ahu

C. Transfers of water should be limited -- ***Precautionary Principle*** – always err on the side of caution when scientific information is inadequate.

I. Impact of KMI's Request on the Rights of the Native Hawaiian People

- A. The Winters Doctrine**
- B. Relevant Hawai'i Statutes**
- C. The DHHL Reservation (2.905 mgd)**
- D. Traditional and Customary Rights**

II. How Much Water Is Available from the Kualapuu Aquifer?

- A. 5 mgd total?**
- B. Where is the "transition zone"?**
- C. Evidence of rising chloride levels.**
- D. Need for a new monitoring well.**

III. What Is the Extent of KMI's "Existing Use"?

IV. How Should the Claims of Terrestrial Water Users Be Balanced Against the Value of Having Fresh Water in the Coastal Areas and Nearshore Waters?

II. How Much Water Is Available from the Kualapuu Aquifer?

A. 5 mgd total? – Tom Nance testified that DHHL could not obtain its reservation from its existing wells; Bill Meyer testified that DHHL might not be able to obtain the reservation at all from the Kualapuu area.

B. Where is the top of the “transition zone”? – it appears to be *above* the bottom of the DHHL well.

C. Evidence of rising chloride levels. – provides strong evidence that the bottom of the DHHL well is already in the transition zone.

D. Need for a new monitoring well. – an essential step, pursuant to *the precautionary principle*.