

May 22, 2002



Gil Coloma-Agaran
Chair
Department of Land and Natural Resources
Commission on Water Resource Management
Kalanimoku Building
Honolulu, Hawai'i 96813

Aloha Chair Coloma-Agaran and Members of the Commission,

KAHEA is an alliance of cultural practitioners and environmental activists. We believe that the proposal to divert water from the windward side violates the rights of Native Hawaiians and local farmers and undermines a thriving local economy. The proposed diversion would also undermine cultural values. Kalo is woven into the very fabric of Hawaiian culture. It is incorporated into the genealogy and is the embodiment of community health economic sustainability.

Please do not sacrifice cultural rights and a thriving local economy for the benefit of private profit. If the state were to allow this diversion, it would be authorizing privatization of a public trust. It is the mandate of the state is to protect the integrity of our watersheds, our public trust resources and to protect cultural rights.

Please grant the Windward Parties' amended petition for declaratory order and deny Kamehameha's request for 4.2 mgd from the Waiähole Ditch. Both the Hawai'i Supreme Court and this Commission have recognized that the higher the level of instream flow, the greater the support for our streams and their native ecosystems and estuaries. However, Kamehameha's application seeks to increase stream diversion; further degrading our streams, their ecosystems, and the instream uses, including traditional and customary Native Hawaiian practices, dependent upon them.

This Commission is the primary guardian of public rights under the Public Trust and the Hawai'i Supreme Court made clear that your role is more than one of an umpire. This Commission must "take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process." Establishing instream flow standards is only part of that process. This Commission should not allow stream water to be taken out of watersheds when alternatives exist. Please protect our public rights in Windward streams by issuing a declaratory order denying Kamehameha's application for the following reasons:

- The streams diverted by the Waiähole Ditch are the major source of fresh water for the Kāne`ohe Bay estuary and fishery, native stream life, Native Hawaiian traditional and customary practices, and Windward agriculture and aquaculture. Any additional allocations will decrease the availability of water for these purposes.

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tel/fax: (808) 661-4527
lmua.Hawaii@verizon.net

Kealoha Pisciotta
Biodiversity Coordinator
Island of Hawai'i
tel: (808) 934-7668
kealohap@aloha.ne

Protecting Native Hawaiian Traditional & Customary Rights & Our Fragile Environment

P.O. Box 27112 • Honolulu, Hawai'i 96827 • tel (808) 524-8220 • fax (808) 524-8221 • www.kahea.org • kahea-alliance@hawaii.rr.com

- Kamehameha failed to satisfy the requirements set forth in our State Water Code and clarified by the Hawai`i Supreme Court. The court strongly reaffirmed the Public Trust Doctrine, which provides that all of Hawai`i's waters are held in trust by the State for its people.
- The court confirmed that applicants like Kamehameha bear the burden of justifying their proposed uses in light of public rights in the resource. Moreover, non-agricultural and golf course uses, like those proposed by Kamehameha, bear an even heavier burden and must establish that no alternatives are available.
- Kamehameha's own report identifies several alternative sources. The Commission should order Kamehameha to use one of those alternatives, such as potable and non-potable ground water, or reclaimed water. In fact, potable wells are already in place at the Waiawa by Gentry development and could be used.
- In 1997, this Commission acknowledged that proposed uses like Kamehameha's are presumptively disfavored because "the transport of water affecting windward streams across the island to Ewa for new non-agricultural purposes, when other water sources are available, further reduces the protection afforded the stream ecosystem by keeping water in its area of origin."
- The public should not be forced to shoulder the burden in another contested case by proving that alternative sources of water exist. Instead, Kamehameha is required to prove that alternatives do not exist, and it has failed to do that.

Please grant the Windward Parties' petition and deny Kamehameha's application. Thank you for this opportunity to testify.

Sincerely,

Cha Smith
Executive Director