

**STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
560 N. NIMITZ HIGHWAY, SUITE 200**

**COMMITTEE ON BENEFICIARY ADVOCACY AND EMPOWERMENT
MINUTES**

October 21, 2015 1:30 p.m.

ATTENDANCE:

Chairperson John Waihe'e, IV
Vice-Chairperson Peter Apo
Trustee Lei Ahu Isa
Trustee Dan Ahuna
Trustee Rowena Akana
Trustee Haunani Apoliona
Trustee Hulu Lindsey
Trustee Robert Lindsey
Trustee Colette Machado

BOT STAFF:

A. U'ilani Tanigawa
Claudine Calpito
Crayn Akina
Harold Nedd
Lady Elizabeth Garrett
Lehua Itokazu
Liana Pang
Melissa Wennihan

ADMINISTRATION STAFF:

Kamana'opono Crabbe, Ph.D., Pouhana / CEO
Lisa Victor, Pou Nui / COO
Anuheia Patoc, PUBL
Jim McMahon, ADV
Jocelyn Doane, PUBL
Kai Markell, COMP
Kamaile Maldonado, PUBL
Kawika Riley, ADV
Koalani Kaulukukui, CC
Momilani Lazo, CEO
Sterling Wong, PUBL
Wayne Tanaka, ADV

GUESTS:

Kapua Sproat
Pamela Bunn

I. CALL TO ORDER

Chair Waihe'e calls the Committee on Beneficiary Advocacy and Empowerment for Wednesday, October 21, 2015 to order at **1:30 p.m.**

Chair Waihe'e notes for the record that **PRESENT** are:

MEMBERS			AT CALL TO ORDER (1:30 p.m.)	TIME ARRIVED
CHAIR	JOHN	WAIHE'E, IV	PRESENT	
VICE-CHAIR	PETER	APO	PRESENT	
TRUSTEE	LEI	AHU ISA	PRESENT	
TRUSTEE	DAN	AHUNA	PRESENT	
TRUSTEE	HAUNANI	APOLIONA	PRESENT	
TRUSTEE	CARMEN "HULU"	LINDSEY	PRESENT	
TRUSTEE	ROBERT	LINDSEY	PRESENT	
TRUSTEE	COLETTE	MACHADO	PRESENT	
TRUSTEE	ROWENA	AKANA	PRESENT	Arrived at 1:34 p.m.

At the Call to Order, **EIGHT (8) Trustees are PRESENT**, thereby constituting a quorum.

II. APPROVAL OF MINUTES

A. October 7, 2015

Trustee Machado moves to approve the minutes of October 7, 2015.

Trustee Apoliona seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

Chair Waihe'e asks if anyone votes NO or ABSTAINS. There are no replies.

							1:31 p.m.
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA			X			
DAN	AHUNA			X			
ROWENA	AKANA						Arrived at 1:34 p.m.
VICE-CHAIR PETER	APO			X			
HAUNANI	APOLIONA		2	X			
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO	1		X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				8	0	0	1

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe'e notes for the record that all members present vote 'AE (YES) and the MOTION CARRIES.

III. COMMUNITY CONCERNS*

None

IV. NEW BUSINESS

- A. **BAE 15-05: Approval of OHA participation in the Appurtenant Rights and Water Use Permit Application portion of the contested case hearing regarding Nā Wai 'Ehā**

Trustee Machado moves to approve OHA's participation in the portion of the Nā Wai 'Ehā contested case hearing regarding the adjudication of surface water use permit applications, including the recognition and quantification of appurtenant rights claims, and to authorize the CEO to utilize OHA contract #2604, as amended, with Alston Hunt Floyd and Ing, Attorneys at Law, A Law Corporation, to cover legal services rendered to OHA for water use permit applications and appurtenant rights claims, contingent upon approval of sufficient funding, estimated at \$300,000, to reside in Program Code 2300 - Corporate Counsel, Object Code 57115 - Legal Services, to cover legal fees and costs incurred for participation in the foregoing.

Trustee Hulu Lindsey seconds the motion.

Chair Waihe'e turns it over to Ka Pouhana Kamana'opono Crabbe.

Pouhana Crabbe: Thank you Chair Waihe'e. OHA staff, Pamela Bunn, and Kapua Sproat have prepared a presentation, so we'll call them up to present just the highlights to you.

Senior Public Policy Advocate Doane: Thank you trustees. I know everyone is excited for us to move forward on Nā Wai 'Ehā, so we will be sure to keep this brief. Before Pam gets started, I just want to clarify that this action is not for funding because the contested case hearing is starting sooner rather than later. We want to get this committee then the full board's approval to start participating in this case. We have sufficient funds in our contract to last us, up until early next year. However, we are going to need funding in order to actually participate and this has been listed as a priority in the OHA Administration's recommendations for the realignment which will come in December.

Attorney Pamela Bunn: Aloha trustees. We will go through this PowerPoint presentation and I will skip over some of this since it's been shared before. You all know where Nā Wai 'Ehā is and what the problem is that we've been dealing with. OHA has been involved for over 10 years. The streams have seen a big improvement.

Trustee Hulu Lindsey: I wanted to point out that Maui has not seen the amount of rain that it has this year, in the last 10 years.

Attorney Pamela Bunn: Yes, that is very true, that is a big contributing factor to the stream flow.

Attorney Bunn continues to highlight information as provided in the PowerPoint presented below.



Nā Wai 'Ehā
Update on Status, Upcoming Proceedings
OHA Board of Trustees
Committee on Beneficiary Advocacy and Empowerment
October 21, 2015
Pamela Bunn
Alston Hunt Floyd & Ing

Nā Wai 'Ehā - The Four Waters



2

Kaulana Nā Wai 'Ehā

Once the largest contiguous area of kula (cultivated) lands of Hawaii
Largest concentration of haui (fish) in the state
Site of numerous legends, including the mythological account of Hanuwa planting the foundation of Hawaiian society



The Problem



4

In recent times, the waters of Nā Wai 'Ehā have been controlled by two companies: HC&S and Wailuku Water Company



5

Impacts of Diversions

- Traditional and customary Hawaiian rights are impaired
 - Some kuleana holders struggle to grow kula with insufficient water, as a kuleana cannot grow kula on their kuleana land at all
 - Lack of mauka to makai flow interrupts the life cycles of the native stream organisms, such as g. ppy, yooa, and kulaiva, making these organisms unavailable for gathering
 - Lack of stream flow has dried up coastal springs and wetlands
 - Lack of discharge at the mouths of the streams impairs the secondary marine environment, diminishing traditional resources such as limu
- Other public trust uses, such as recreation, are impaired
- Recharge to the 'Iap Aquifer, which provides the drinking water for Central Maui, is decreased

6

OHA's goals for Nā Wai 'Ehā

- Re-establish year round flows in the streams of Nā Wai 'Ehā, from the summit of Pū'u Kukui and Mauna Kahalawai till they reach the Pacific Ocean
- Return Public Trust resources to public control and management
- Securing permanent stewardship & funding for the watersheds so there will be streams for the future

7

Petition to amend the IIFS

- Interim Instream Flow Standards define the amount of water required to remain in a stream to support Public Trust uses
- In 1980s, State set them at status quo – amount flowing at time
- Petition to amend the IIFS was filed by Community Groups on June 26, 2004
- This petition resulted in contested case hearing, in which OHA intervened

8

	Proposed Decision (4/9/09)	Final Decision (6/10/10)
• Waiehe River	14 mgd	10 mgd
• Waiehu Stream	3.5 mgd	2.5 mgd
• 'Iao Stream	13 mgd	0
• Waikapū Stream	4 mgd	0
• TOTAL	34.5 mgd	12.5 mgd

(The IIFS for Waikapū Stream would be conditional upon flow reaching Kealia Pond within 120 days)

In Public Court of Honors & Intergovernmental Affairs (HONORS COURT) HEARING ON PETITION FOR PUBLIC TRUST INTERESTS IN THE NĀ WAI 'EHĀ WATERSHED AND NĀ WAI 'EHĀ AND PŪ'U KUKUI AND MAUNA KAHALAWAI STREAMS CONTROLLED CASE HEARING No. NC-CP-10041 Aug. 12, 2012

In reviewing the MTE's and OHA's points of view, the court concludes that the Commission on Water Resources Management acted in several respects:

First, in considering the effect of the IIFS on native Hawaiian practices in the Nā Wai 'Ehā, the Commission failed to assess findings of fact and conclusions of law regarding the effect of the amended IIFS on traditional and customary native Hawaiian practices in the Nā Wai 'Ehā, and regarding the feasibility of providing any affected practice.

Second, the Commission's analysis of stream flow was incomplete, as it focused on simple stream-gauges and did not fully consider other stream uses to which water is allocated during the hearings.

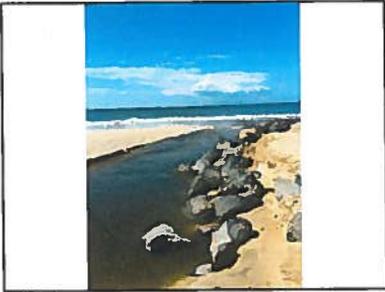
Third, the Commission acted in the consideration of alternative water sources and in its valuation of diverting portions' outcrop and reasonable system flows.

The court must review the Commission's June 16, 2010 Findings of Fact, Conclusions of Law, Decisions and Order, and remand the case for further proceedings.

120 Hawaii 1228-21-12, 2012 P. 3d 129, 132-133

	Proposed Decision (4/9/09)	Final Decision (6/10/10)	Mediated IIFS (4/17/14)
• Waiehe River	14 mgd	10 mgd	10 mgd
• Waiehu Stream	3.5 mgd	2.5 mgd	2.0 mgd*
• 'Iao Stream	13 mgd	0	10 mgd*
• Waikapū Stream	4 mgd	0	2.9 mgd
• TOTAL	34.5 mgd	12.5 mgd	24.9 mgd





OHA's goals for Nā Wai 'Ehā

1. Re-establish year round flows in the streams of Nā Wai 'Ehā, from the summit of Pu'u Kukui and Mauna Kahalawai till they reach the Pacific Ocean
2. Return Public Trust resources to Public Control and Management
3. Securing permanent stewardship & funding for the watersheds so there will be streams for the future

Petition to Designate Nā Wai 'Ehā as a Surface Water Management Area

- Designation effective April, 2008; first and only surface water designation in Hawai'i
- Required all users of Nā Wai 'Ehā water to apply for Water Use Permits by April, 2009
- Before permits can be issued for off-stream use, CWRM needs to know how much water is available

Water Unavailable for Offstream Use:

- Water that is required to remain in the stream to satisfy IIFS
- Water required to satisfy appurtenant rights

Appurtenant (or Kuleana) Rights:

- The "rights to the use of water utilized by parcels of land at the time of their original conversion into fee simple land." *Reppun v. Bd. of Water Supply*, 65 Haw. 531, 551, 656 P.2d 57, 71 (1982).
- Kuleana rights are "incidents of land ownership", and constitute "an easement in favor of the [property with an appurtenant right] as the dominant estate." *Id.* (quoting *Peck v. Bailey*, 8 Haw. 658 (1867) (brackets in original)).
- Kuleana rights are expressly protected and preserved by the Hawai'i Constitution (Art. XI, § 7) and the State Water Code (HRS § 174C-101(d)), and their exercise is a public trust purpose.

This is the First Time CWRM is Determining Appurtenant Rights

The Water Code expressly protects appurtenant rights, but almost thirty years after the Code was adopted, the Commission has never:

- promulgated rules to implement the mandated protection
- inventoried appurtenant rights; or
- actually made a determination of the existence or quantification of an appurtenant right

Status of Kuleana Rights Determinations:

- OHA assisted many kuleana users in Nā Wai 'Ehā to document their appurtenant rights
- Dr. Miike was appointed Hearings Officer for the appurtenant rights determinations
- Appurtenant rights are being determined in two phases -
 1. the existence of the right (recognition);
 2. the amount of water the kuleana is entitled to (quantification)

Phase 1 - CWRM's 12/31/14 Order:

Phase 2 - Contested Case Hearing

- Quantification of appurtenant rights will be by contested case hearing, which will include *all* Nā Wai 'Ehā water users
- Well over 100 parties, from individual kuleana users to corporate diverters and large landowners
- Each kuleana user is required to present written and oral testimony and exhibits regarding the amount of water used on the parcel at the time of the Māhele

Challenges for Nā Wai 'Ehā Kuleana Users

- Preparing testimony and exhibits
- Logistical issues
- Procedural fairness
- Communication
- Expert witnesses
- Water is a "zero sum" proposition
- Persuading the Hearings Officer and Creating a record

Water is a "Zero-Sum" Proposition

- Priorities mandated by law must be strictly enforced
 - Priority for kuleana use over commercial use
 - No priority for extinguished kuleana rights
 - Priority for T&C kalo cultivation
- Diverters must be held to their burdens of proof

JIC&S Diverts: 50 mgd
JIC&S Needs: 29.65 mgd

Persuading the Hearing Officer and Creating a Record

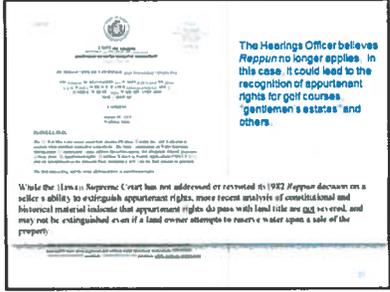
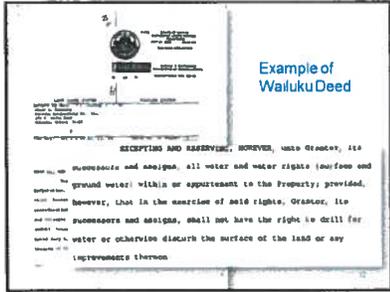
- Evidence and persuasive briefing on legal issues, such as presumptions, priorities, extinguished appurtenant rights
- Proposed Findings of Fact and Conclusions of Law

Importance for All Kuleana Users

- This proceeding will set precedent
- Procedurally, establishing an appurtenant right cannot be so burdensome that it impairs the ability to exercise the right
- Substantively, this proceeding will establish legal precedent regarding:
 - extinguishment of appurtenant rights
 - T&C right to cultivate kalo

Extinguishment of Kuleana Rights:

In *Reppun*, Chief Justice Richardson held that an attempt to sever appurtenant rights from a parcel by reserving the rights in a deed had the effect of extinguishing the rights:
 "We find, however, that while no appurtenant rights were effectively transferred in this case, *the deed that attempted to reserve such rights had the effect of extinguishing them.*
Reppun, 65 Haw. at 552, 656 P.2d at 71 (emphasis added).



T & C Right to Cultivate Kalo

The Water Code provides that "Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter" and defined T&C rights to include "the cultivation or propagation of taro on one's own kuleana." HRS 174C-10(c)

Separate sections address the protection of appurtenant rights, which are not limited to descendants of native Hawaiians, so clearly the legislature was talking about something other than an appurtenant right.



Trustee Machado: So if this motion passes, *Ms. Bunn you will be representing OHA and not any other plaintiff groups or other traditional and customary rights practitioners, is that correct?*

Attorney Pamela Bunn: Yes, that is correct – I would not be representing any individuals just the Office of Hawaiian Affairs.

Chair Waihe'e asks if there is any further discussion. There is none.

Chair Waihe'e calls for a **ROLL CALL VOTE.**

						Motion: 1:32 p.m.
						Vote: 1:54 p.m.
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA			X			
DAN AHUNA			X			
ROWENA AKANA			X			
VICE-CHAIR PETER APO			X			
HAUNANI APOLIONA			X			
CARMEN HULU LINDSEY		2	X			
ROBERT LINDSEY			X			
COLETTE MACHADO	1		X			
CHAIR JOHN WAIHE'E			X			
TOTAL VOTE COUNT			9	0	0	0

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe'e notes for the record that the **MOTION PASSES.**

IV. NEW BUSINESS

B. BAE 15-06: Adoption of an OHA Water Policy and a Water Backgrounder Appendix to be included in the Executive Board Policy Manual

Trustee Ahuna moves to approve the adoption of an OHA Water Policy along with Attachment A: Water Backgrounder Appendix, where upon approval, both will be included in the Executive Board Policy Manual of the Board of Trustees, as fully stated in Action Item BAE 15-06.

Trustee Hulu Lindsey seconds the motion.

Chair Waihe'e asks if there is any discussion.

Trustee Robert Lindsey: Again, this action item is very well done.

Trustee Machado: I don't want OHA to be responsible for any fiscal funding to accommodate the implementation of this particular policy. So I asked Jocelyn to give me an overview of what other kinds of executive policies that OHA has in place. *Could she share that with the trustees?*

Senior Public Policy Advocate Doane: Yes, so this is really the vision of Pouhana. However, we do have numerous policies in the Executive Board Policy Manual. We are working on reorganizing the manual and the policies, so that it will flow better. Currently we have: *Preservation and Protection of Legal Entitlements Policy, Native Hawaiian Rights and Entitlements Policy, and a Hawaiian Culture Policy.* So with this action item we would be adding a *Water Policy*, and then the *Iwi Policy* which we will discuss next.

We do have another presentation, but before we move into it, I do want to acknowledge Wayne Tanaka who is part of the *Water Working Group*. Wayne did a lot of the legwork on this action item. Of course, we have our contractors; in which Kapua Sproat is here with us today.

Moving into the presentation - OHA has invested substantially in ensuring that the public trust in water is upheld. OHA also invests to ensure that the rights and interests of its beneficiaries in the restoration and protection of our water resources for domestic uses, traditional and customary Native Hawaiian practices, ecological services, and other public trust purposes are vindicated. Given the ongoing diversion of substantial amounts of our water resources by private interests; the continuous demand for public trust water as a necessary resource for a number of profit-seeking endeavors; the growing need for water by an increasing island population in the face of reduced rainfall and other impacts of climate change; and the growing public awareness with regard to the public trust in water - upholding the public trust in water and ensuring appropriate water use and management should be a clear priority for all relevant agencies and stakeholders invested in Hawai'i's water future and indeed in the future of our islands period.

Combined, the proposed *Wai Policy and Water Backgrounder*, grounded in a cultural understanding of *wai*; the legal authorities and rights concerning its management and use; and OHA's historic advocacy around *wai* issues, would all institutionalize such consistency and coordination on a going-forward basis. Given this context, the proposed policy aims to: institutionalize OHA's commitment to promoting responsible and sustainable *maoli*-based water management and establish how OHA's roles as advocate, community engager, researcher, and asset manager, can most effectively lead to improved conditions for Native Hawaiians and improve intra-agency coordination and consistency on *wai*-related issues and actions. In working to craft these goals and the overall policy, we formed a *Water Working Group* and consulted other staff with experience in this area.

The proposed documents were initially developed by OHA contractors and recognized Hawai'i water law experts D. Kapua'ala Sproat and Isaac Moriwake, in coordination with OHA Public Policy staff. Drafts of the documents were also reviewed by the *Water Working Group*, consisting of representatives from the executive offices, various *paia*, as well as by other relevant staff. Kapua will share a little about how we developed the framework.

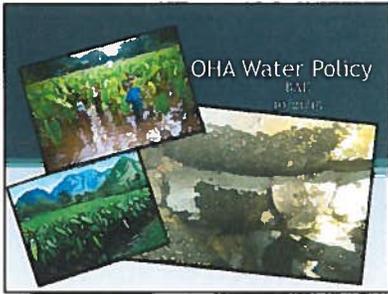
Kapua Sproat: Aloha mai kakou and mahalo for the privilege of being here with all of you today.

There are two basic parts; the first component is a Water Backgrounder that provides the cultural, legal, and historical framework for water resource management in Hawai'i today. It's mostly common sense, but ensures that everyone within OHA and working on these important issues has the same basic understanding across all individuals. The second part is the Water Policy itself, which is comprised of a vision and mission statement, basic principles, and then policies for each of the *paia*. As I mentioned, with respect to the backgrounder, it's basically cultural context for water use and management. It focuses mostly on the legal regime for water resource management with an emphasis on the Public Trust, especially the *kuleana* that that places on fiduciaries like the Office of Hawaiian Affairs.

The vision and mission is quite simple, what would become what is listed under section 2.7.a., if the Board approves this. Hawai'i will be a 21st - century model for protection and stewardship of *wai*, based on Native Hawaiian culture, best practices, and the public trust; and that OHA will continue to maintain and improve upon its *kuleana* as a leader and partner in four major areas: in protecting Hawai'i's *wai* resources, redressing ongoing injustices, promoting a living and thriving Native Hawaiian culture and nation, and setting an example in *pono* management practices.

The basic principles are outlined in section 2.7b and include establishing a cultural understanding of *wai* and its importance to the islands, Native Hawaiians and the *lāhui*; to uphold the public trust laws and protecting *wai* and Native Hawaiian interest in *wai*, and embracing OHA's *kuleana* as a landowner to properly manage *wai* on OHA's lands and model *pono* practices.

Senior Public Policy Advocate Doane reviews the policies that each *paia* will be responsible for. She also discusses the plans to implement the *wai* policy as outlined in the last five slides.



Landscape

- Declining Resources
- Increasing Demand
- Resurgence of Kuaʻāina
- OHA = Historic Advocate & Leader
- Evolving Asset Manager Role

Wai Policy Goals

- Institutionalize OHA's commitment
- Define OHA's advocate, community engager, and researcher roles
- Improve intra-agency coordination and consistency
- Model pono water management

Water Working Group & Consulted Staff

- Executive Offices
- Kawika Riley, Chief Advocate
- Jocelyn Doane
- Wayne Tanaka
- Everett Ohta
- Ikaika Nakahashi/Jonathan Ching
- Kamoa Quitevis/Wahine Tong
- Other Paia Directors Consulted

Contractors

- Proposed scope
- Contracted with foremost Hawaii water law experts
- Developed framework

Water Policy Content

- I. Backgrounder
- II. Policy
 - A. Vision & Mission Statement
 - B. Basic Principles
 - C. Policies

Water Policy Backgrounder

- Cultural Context for Water Use & Management
- Hawaii's Legal Regime for Water Resource Management
- Public Trust Duties

Water Policy: Vision & Mission

- Hawaii will be 21st-century model for the protection and stewardship of wai
- OHA will continue to maintain and improve on its kuleana as a leader and partner in
 - protecting Hawaii's wai resources,
 - redressing ongoing injustices,
 - promoting a living Native Hawaiian culture, and
 - setting an example in pono management practices

Water Policy - Basic Principles

- Establish a cultural understanding of wai and its importance to the islands, Native Hawaiians, and the lāhui
- Uphold the public trust and laws protecting wai and Native Hawaiian interests in wai
- Embrace OHA's kuleana as a landowner to properly manage wai on OHA lands and model pono practices

Role Specific Policies

Research Policies

- Strategically enhance available information
- Build strategic alliances and partnerships
- Gather, develop, and deploy the best info to inform advocacy and land management

Advocacy Policies

- Lead protection & restoration efforts
- Uphold & defend the constitution, water code, & public trust doctrine
- Build & maintain strategic alliances & relationships
- Align work of other OHA divisions

Community Engagement Policies

- Provide strategic support and resources to beneficiaries
- Cultivate and invest in communities
- Work with advocacy to ensure its policies and positions reflect community based 'ike

Resource Management Policies

- Lead in technologies and best practices
- Ensure water use respects T & C practices, instream uses, & ecological needs
- Disseminate and establish best practices for wai among other landowners and policymakers

Water Policy Next Steps

- Implementation Plan
 - Long Term Priorities
 - Short Term Priorities
- Paia Implementation Action items

Chair Waihe'e asks if there is any further discussion. There is none.

Chair Waihe'e calls for a **ROLL CALL VOTE**.

TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	Motion: 1:55 p.m. Vote: 2:15 p.m. EXCUSED
LEI	AHU ISA			X			
DAN	AHUNA	1		X			
ROWENA	AKANA			X			
VICE-CHAIR PETER	APO			X			
HAUNANI	APOLIONA			X			
CARMEN HULU	LINDSEY		2	X			
ROBERT	LINDSEY			X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				9	0	0	0

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe'e notes for the record that the **MOTION PASSES**.

IV. NEW BUSINESS

- C. **BAE 15-07: Adoption of an OHA Protecting Iwi Kūpuna Policy to be included in the Executive Board Policy Manual**

Chair Waihe'e turns it over to
Ka Pouhana Kamana'opono Crabbe.

Trustee Ahuna moves to adopt a Board of Trustee (BOT) policy to be included in the OHA Board of Trustees Executive Policy Manual as a new section numbered 2080 entitled "Iwi Kupuna" within the 2000 Series on Beneficiary Support and Services:

2080 Iwi Kupuna

Care, Management, and Protection of Iwi Kupuna

- 2.8.a. Consistent with its advocacy regarding the Hawaiian culture, OHA shall protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains or iwi kupuna. Recognizing that iwi is culturally "considered the most cherished possession" as defined by Mary Kawena Pukui as well as oral and written historical accounts, OHA shall ensure that in all OHA efforts and initiatives, the proper care, management, and protection of iwi kupuna is of paramount consideration. OHA also recognizes that the care and disposition of iwi kupuna is primarily an 'ohana kuleana and shall promote the active involvement of descendants and 'ohana in matters regarding the treatment and disposition of iwi kupuna. In furtherance of this policy objective, OHA shall:
1. Formulate consistent responses in the planning, consultation, and decision making regarding the care, management, and protection of iwi kupuna; and
 2. Ensure that all relevant OHA land management and planning documents, contractual agreements and grant agreements include an acknowledgment of a higher cultural standard of care regarding the care, management, and protection of iwi kupuna, which may exceed minimal requirements set forth in law and rule; and
 3. Consult with the Native Hawaiian Historic Preservation Council for guidance on iwi issues when deemed necessary by the Chief Executive Officer.

Trustee Apoliona seconds the motion.

Public Policy Manager Wong: Aloha mai kākou. We're going to have Compliance Enforcement Manager Kai Markell give a background regarding this policy.

Compliance Enforcement Manager Markell: Aloha Chair, Vice Chair, and Trustees. I'm going to give an overview absent of policy of our current responsibilities under the law that deals with iwi kupuna. We're mentioned in Chapter 6e, Historic Preservation Statute - we are supposed to get notified for every burial that is inadvertently found in the state; which is pretty much every day. The notifications aren't consistent, but we're working with the State Historic Preservation Division (SHPD) to rectify that. We're also responsible for giving to the Governor, names of persons to be appointed to the various burial councils. He receives names from SHPD and is required to take names from OHA's list as well. That's something that hasn't been consistent, but with Kamaile's help we're actually helping the councils fill vacancies so they can routinely meet and they're appreciative of that.

We're also consulted when they promulgate rules. The current rules are from 1996, but they will be amending them soon and we will have a say in it. At the federal level we are named in the Native American Graves Protection Repatriation Act of 1990 (NAGPRA). With the dissolution of Hui Malama I Na Kupuna o Hawai'i Nei in January of this year, it leaves OHA as the only named Native Hawaiian Organization in the regulation. Our role has increased and we still have people contacting us to return remains. We work with the burial councils to repatriate or reburial them.

Public Policy Manager Wong: This policy has been a long time in the making. Part of the impetus of it was what happened with Kawaiaha'o Church and the grant we gave to them.

The first paragraph of the policy lays out OHA's commitment to the protection of Iwi Kupuna because of the cultural and historical significance to our people.

The three bullets (•) listed are key and layout exactly how OHA will fill that commitment:

- Formulate consistent responses in the planning, consultation, and decision making regarding the care, management, and protection of iwi kupuna;
 - *This would be what Kai, as Manager, along with the Compliance Enforcement staff does, in responding to iwi kupuna discoveries.*
- Ensure that all relevant OHA land management and planning documents, contractual agreements and grant agreements include an acknowledgment of a higher cultural standard of care regarding the care, management, and protection of iwi kupuna, which may exceed minimal requirements set forth in law and rule;
 - If you remember, what happened at Kawaiaha'o was unclear and we had beneficiaries asking OHA to pull the grant money; there were no conditions in the grant for us to do that. So this will ensure that when the agency does engage in to contracts, the agreements will have now have language that will address a situation like that.
- Consult with the Native Hawaiian Historic Preservation Council for guidance on iwi issues when deemed necessary by the Chief Executive Officer.

So it's really simple, it just lays out what we're already doing and what we will do moving forward. Once it's approved by the full OHA Board, we will start drafting template language for OHA as an agency to start including into its contracts for grants and other agreements.

**IWI POLICY
ACTION ITEM #15-07**

OHA BAE Committee October 21, 2015

Iwi Policy

2000 Iwi Kupuua
Care, Management, and Protection of Iwi Kupuua

2.6.e. Consistent with its advocacy regarding the Hawaiian culture, OHA shall protect and promote the reverence and cultural importance of proper care, management, and protection of ancestral Native Hawaiian remains or Iwi Kupuua.

Recognizing that Iwi is culturally "considered the most cherished possession" as defined by Mary Kawena Pukui as well as oral and written historical accounts, OHA shall ensure that in all OHA efforts and initiatives, the proper care, management, and protection of Iwi Kupuua is of paramount consideration.

OHA also recognizes that the care and disposition of Iwi Kupuua is primarily an Ikaika obligation and shall promote the active involvement of descendants and Ikaika in matters regarding the treatment and disposition of Iwi Kupuua.

In furtherance of this policy objective, OHA shall:

- Formulate consistent responses in the planning, consultation, and decision making regarding the care, management, and protection of Iwi Kupuua; and

In furtherance of this policy objective, OHA shall:

- Ensure that all relevant OHA land management and planning documents, contractual agreements and grant agreements include an acknowledgment of a higher cultural standard of care regarding the care, management, and protection of Iwi Kupuua, which may exceed minimal requirements set forth in law and rule; and

In furtherance of this policy objective, OHA shall:

- Consult with the Native Hawaiian Historic Preservation Council for guidance on Iwi issues when deemed necessary by the Chief Executive Officer.

Pau

Chair Waihe'e asks if there is any further discussion. There is none.

Chair Waihe'e calls for a ROLL CALL VOTE.

						Motion: 2:15 p.m. Vote: 2:39 p.m.
TRUSTEE	1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI AHU ISA			X			
DAN AHUNA	1		X			
ROWENA AKANA			X			
VICE-CHAIR PETER APO			X			
HAUNANI APOLIONA		2	X			
CARMEN HULU LINDSEY			X			
ROBERT LINDSEY			X			
COLETTE MACHADO			X			
CHAIR JOHN WAIHE'E			X			
TOTAL VOTE COUNT			9	0	0	0

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

Chair Waihe'e notes for the record that the MOTION PASSES.

V. UNFINISHED BUSINESS

None

VI. BENEFICIARY COMMENTS*

None

VII. ANNOUNCEMENTS

None

VIII. ADJOURNMENT

Trustee Akana moves to adjourn the BAE meeting.

Trustee Robert Lindsey seconds the motion.

Chair Waihe'e asks if there is any discussion. There is none.

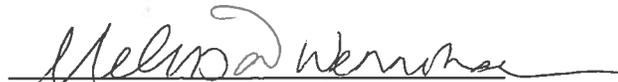
Chair Waihe'e asks if any members vote NO or ABSTAIN. There are no dissenting votes.

						2:40 p.m.	
TRUSTEE		1	2	'AE (YES)	A'OLE (NO)	KANALUA (ABSTAIN)	EXCUSED
LEI	AHU ISA			X			
DAN	AHUNA			X			
ROWENA	AKANA	1		X			
VICE- CHAIR PETER	APO			X			
HAUNANI	APOLIONA			X			
CARMEN HULU	LINDSEY			X			
ROBERT	LINDSEY		2	X			
COLETTE	MACHADO			X			
CHAIR JOHN	WAIHE'E			X			
TOTAL VOTE COUNT				9	0	0	0

MOTION: [X] UNANIMOUS [] PASSED [] DEFERRED [] FAILED

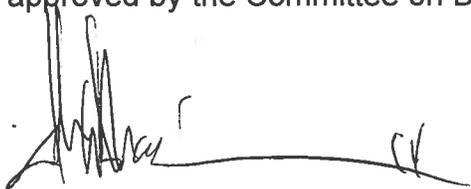
Chair Waihe'e adjourns the BAE meeting at 2:40 p.m.

Respectfully submitted,



Melissa Wennihan
Trustee Aide
Committee on Beneficiary Advocacy and Empowerment

As approved by the Committee on Beneficiary Advocacy and Empowerment on November 18, 2015.



Trustee John Waihe'e, IV
Chair
Committee on Beneficiary Advocacy and Empowerment

ATTACHMENT(s):

- NONE