Water, Culture, and the Public Trust

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Conclusions

The Public Trust Doctrine, as institutionalized in Hawai`i makes our situation very different from the continental U.S.

Privatizing the regulation of our water resources is a bad idea.

Privatizing our water utilities may have some merit
Water and Culture
Hawaii is the most isolated population center on the face of the earth.
The first Polynesians settled in the Hawaiian islands about A.D. 600 from the Marquesas.
Ahupua’a: A way of life

Ahupua’a represents a unique relationship that the Hawaiians had with their environment.
Elements of the Ahupua’a

• Konohiki - A resource manager who ideally acted as a facilitator to resolve issues

• Kapu - “Laws” which prohibited certain resources and/or their use

• Pono - Concept that each person only takes what is appropriate for their needs
Ahupua’a: A way of life

Ahupua’a Values

- Respect and care for the land and sea (Malama)
- Considering the needs of the many (‘Ohana)
- Respect for your ancestors & elders (Kupuna)
- To be united (Lokahi) & work together (Laulima)
The ahupua’a and watershed concepts are similar in that they rely on a systems management approach and the involvement of communities.
“In Hawai`i the most valuable product of the forest is water, rather than wood. It follows that conservation of its watersheds by keeping them permanently clothed in protecting forests, is the chief duty of the forester.”

Ralph S. Hosmer
First Territorial Forester

“People like to say here in Hawai`i that land is power - but really water is power.”

William Paty
former Chairman
Dept. of Land and Natural Resources
What is the Public Trust Doctrine???

Simply put: The State has an obligation to protect, control, and conserve water resources for the benefit of its people.

Origin: Long history in Hawaii dating back to the Mahele and Principles of the Land Commission (1847)

- The right to water was specifically reserved for the people of Hawaii for their common good in all of the land grants
Recent: In 1978, the State added two critical provisions to the State Constitution:

1. Article 11, Section 1 states...

   For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals, energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

   All public natural resources are held in trust by the State for the benefit of the people.
2. Article 11, Section 7 states...

The State has an obligation to protect, control and regulate the use of Hawaii’s water resources for the benefit of its people.

The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define beneficial and reasonable uses; protect ground and surface water resources, watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii’s water resources.
McBryde v. Robinson, Kaua`i
The Waiahole Ditch Case, O`ahu
Integrated Resource Planning for Water
**Integrated Resource Planning (IRP)**

- A process that emphasizes the integration of various planning scenarios incorporating uncertainties, environmental externalities, and public needs to help determine the **appropriate mix** of resources for meeting future needs.

- A balanced approach to water resources decision-making that attempts to consider all direct and indirect costs of **demand-side** and supply-side management and **supply augmentation**.

- A comprehensive form of planning that encompasses **least-cost analyses** of resource management options and participatory decision-making.
Why do we need Integrated Resource Planning?

- Growing competition for available (and affordable) potable water resources;
- Major changes within the agricultural industry;
- Availability of alternative resources to meet non-potable demands;
- Greater public awareness of water resource development issues/concerns; and
- The need for appropriate recognition of legally protected water rights.
Conclusions Redux and Recommendations

1) Public Trust in Hawai`i makes us different than U.S.
   • Be very careful about depending on “outside” experts to guide us
   • No one owns water in Hawai`i so there is no true market value for it
   • Beneficial uses are not solely based on utilitarian values
   • Hawaiian cultural values and practice play major role
2) Privatizing regulation of water is a bad idea
   • Inherent conflicts of interest
   • No true market therefore no necessary or accurate price signals to base decisions on
   • Private for-profit enterprises are unable to carry out public trust responsibilities

3) Privatizing water utilities may have merit if:
   • Done under IRP framework
   • Cost-of service includes purchase and/or management of watershed lands (“the sponge”)
   • Evolve from the duty to serve to the duty to plan
   • Technologies for water conservation and reuse are going to be big business