



**East Kauai
Water Users' Cooperative**

Post Office Box 800
Kapaa, Hawaii, 96746
Phone:
Fax:

Membership And Water Use Agreement

I. Member

Name: _____
Address: _____
Home Phone: _____ Business Phone _____
Fax: _____ E-mail: _____ Cell Phone _____

II. Irrigated Property

Address of Irrigated Lands: _____
Kauai Tax Map Key Number: _____ Total number of acres _____

III. Water Commitment

I agree to accept delivery of _____ million-gallon allocation units of water annually at the rate established yearly by the East Kauai Water Users' Cooperative ("Cooperative") at its annual general meeting.

IV. Agreement with Cooperative

1. I hereby agree to become a Member of the Cooperative.
2. As a Member, I hereby agree to comply with, abide by, and be bound by the Cooperative's Articles of Association, the Bylaws, this Agreement, the Cooperative Rules and any and all other action taken by the Board of Directors having general application to all the members, and as to any and all amendments duly adopted as to the Articles, Bylaws, and Rules.
3. I affirm that I am an agricultural producer as defined in the Agricultural Cooperative Associations Act of the State of Hawaii (Hawaii Revised Statutes Chapter 421).
4. I understand that the Cooperative offers no guarantee of quality of water or of delivery and that this Agreement may be terminated upon sixty days' notice by either party.
5. I further agree to comply with, abide by, and be bound by the terms and conditions contained in the General Provisions of the East Kauai Water Users' Cooperative attached to this Agreement.

Member:

(signed)
Date: _____

Accepted by the East Kauai Water Users' Cooperative:

By: _____ Date: _____
Its President

By: _____ Date: _____
Its Secretary

General Provisions Of The East Kauai Water Users' Cooperative or, "The Fine Print"

1. The execution of this Agreement by the parties herein shall effectively terminate any existing or prior agreements relating to water usage and allocation between the parties.
2. A Member may be an individual or individuals, a partnership, a corporation or a cooperative. If this Agreement is signed by an individual on behalf of a Member, the individual so signing warrants that he is authorized to sign on behalf of the Member and agrees that this Agreement is binding upon the Member.
3. The parties hereto fully understand and admit it would be impractical or extremely difficult to fix the actual damages to the Cooperative which would result from a breach of this Agreement by the Member, and therefore they expressly agree that in the event of the Member's neglect, failure or refusal to purchase delivery of water as promised herein, the Member will pay to the Cooperative as liquidated damages, a sum equal to the unpaid annual assessment. The Member further understands and agrees that upon determination by the Cooperative of a breach of this Agreement by Member, the Cooperative may exercise its right to suspend, or terminate the Member's benefits of cooperative membership and that such suspension, or termination of Member's benefits does not waive, or nullify Member's obligations to purchase water obligated under this Agreement.
4. This Agreement shall be binding upon and inure to the benefit of both parties, their respective administrators, executors, heirs, successors, devisees, legatees and assigns. If a Member transfers any portion of the land described herein during the term of this Agreement (by sale, lease, or other means), the amount of the Member's water commitment shall be delivered for the remainder of the calendar year in which such transfer is made, but not thereafter. The Member agrees to notify the Cooperative in the event of such a transfer and to provide the transferee with a copy of this Agreement prior to the transfer. If the transferee fails to purchase the amount of water in accordance with this Agreement, the Member shall remain obligated to the Cooperative for liquidated damages as provided herein, and the Cooperative shall have such additional remedies as are provided by law. The transferee may apply to the Cooperative for membership as specified in the Articles of Incorporation and Bylaws of the Cooperative.
5. No Member shall be privileged to take any water from any part of the Cooperative's system, or to receive any water from the system, except as and when permitted by the Board of Directors.
6. Each Member shall take his water at such point or points on the conduits of the Cooperative as the Board of Directors may designate and delivery so made shall be in full performance of the duty of the Cooperative to its Members.
7. The Cooperative offers no guarantee of quality of water or of delivery.
8. All measuring boxes, gates and locks with keys thereto, shall be and always remain the property of and in the custody and sole charge of the Cooperative.
9. The maximum quantity of water which the Cooperative shall be called upon to furnish in any one year is that quantity which, if reasonably and properly handled by the Member, will properly irrigate the lands described in this Agreement upon account of which said water is furnished.
10. In the event of any litigation arising out of this Agreement, or of any other disputes between the Cooperative and its member, the prevailing party in such litigation shall be entitled to all court costs, including reasonable attorney's fees. However, in accordance with the Cooperative's Bylaws (Article 17), any dispute shall first be submitted to mediation.
11. Assessments for services provided by the Cooperative are billed by, paid to, and collected by the Cooperative.
12. Execution of this Agreement by the parties herein makes all provisions of this Agreement operative and binding on all the parties herein.
13. The Member hereby acknowledges receipt of a true and correct copy of the Articles of Incorporation, the Bylaws, and the Cooperative Rules, and hereby gives his full assent to and approval thereof, with like force and effect as if the Member's signature has been affixed to the original Bylaws and Rules.
14. There are no oral or other conditions, promises, covenants, representations or inducements in addition to, or at variance with any of the terms of this Agreement. This Agreement represents the voluntary and clear understanding of both parties fully and completely. This Agreement may not be modified except in writing and is signed by both parties or their duly authorized representatives.
15. This Agreement shall be governed by and interpreted under the laws of the State of Hawaii. If any term of this Agreement conflicts with the law, all other terms of this Agreement will still remain in effect if they can be given effect without the conflicting term. This means that any terms of this Agreement which conflict with the law can be severed from the remaining terms, and the remaining terms will still be enforced.
16. This Agreement may be terminated by the Member by giving written notice thereof to the Cooperative. The Cooperative may terminate this Agreement by giving written notice thereof to the Member at any time throughout the year during which the Agreement is in effect. Any notice of termination by either the Member or the Cooperative given in accordance with this section shall become effective upon the close of the Agreement in the following calendar year in which such notice is given.