

CHAPTER 182
RESERVATION AND DISPOSITION OF
GOVERNMENT MINERAL RIGHTS

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Note

Consultation and public input from Native Hawaiian community and general public when developing geothermal energy resources with public land trust lands. L 2012, c 193, §2.

Cross References

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Attorney General Opinions

Section 206 of the Hawaiian Homes Commission Act controls over the provisions of this chapter as applied to Hawaiian home lands, and the department of Hawaiian home lands has the authority to manage and dispose of geothermal resources on its lands. Att. Gen. Op. 14-1.

Law Journals and Reviews

Comment, Ownership of Geothermal Resources in Hawaii. 1 UH L. Rev. 69.

" **§182-1 Definitions.** In this chapter, if not inconsistent with the context:

"Board" means the board of land and natural resources.

"Department" means the department of land and natural resources.

"Force majeure" means any fire, explosion, flood, volcanic activity, seismic or tidal wave, mobilization, war (whether declared or undeclared), act of any belligerent [of] any such war, riot, rebellion, the elements, power shortages, strike, lock-out, difference of workers, any cause which prevents the economic mining of the lease, or any other cause beyond the reasonable control of the party affected, whether or not of the nature or character hereinabove specifically enumerated.

"Geothermal resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas, other hydrocarbon substances, and any water, mineral in solution, or other product obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the

surface of the earth, and not used for electrical power generation.

"Geothermal resources development" means the development or production of electrical energy from geothermal resources and direct use application of geothermal resources. The term does not include "geothermal resources exploration".

"Geothermal resources exploration" means either of the following:

- (1) Conducting non-invasive geophysical operations, including geochemical operations, remote sensing, and other similar techniques; or
- (2) Drilling exploration wells for purposes including but not limited to the extraction and removal of minerals of types and quantities;

that are reasonably required for testing and analysis to provide ground truth or determine the economic viability of geothermal resources. The term does not include "geothermal resources development".

"Minerals" means any or all of the oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits whether solid, gaseous, or liquid, including all geothermal resources, in, on, or under any land, fast or submerged; but does not include sand, rock, gravel, and other materials suitable for use and used in general construction.

"Mining lease" means a lease of the right to conduct mining operations, including geothermal resource exploration or development, on state lands and reserved lands.

"Mining operations" means the process of excavation, extraction, and removal of minerals, and the exploration or development of any and all geothermal resources, from the ground, design engineering, other engineering, erection of transportation facilities and port facilities, erection of necessary plants, other necessary operations or development approved by the board preceding or connected with the actual extraction of minerals and the exploration or development of geothermal resources.

"Occupier" means any person who owns in fee the surface of the land or any person entitled to the possession of land under a certificate of occupation, a nine hundred and ninety-nine year homestead lease, a right of purchase lease, a cash freehold agreement, and any person entitled to possession under a general lease from the State, and also means and includes the assignee of any one of the above.

"Reserved lands" means those lands owned or leased by any person in which the State or its predecessors in interest has reserved to itself expressly or by implication the minerals or right to mine minerals, or both.

"State lands" includes all public and other lands owned or in possession, use and control of the then Territory of Hawaii or the State of Hawaii, or any of its agencies and this chapter shall apply thereto. [L 1963, c 11, pt of §1; Supp, §99A-1; HRS §182-1; am L 1974, c 241, §2; am L 1978, c 135, §1; am L 1990, c 207, §1; gen ch 1993; am L 2012, c 97, §2; am L 2016, c 220, §2]

Case Notes

Reservation of mineral rights in royal patent issued on land commission award, validity of. 49 H. 429, 421 P.2d 570.

" **§182-2 Mineral rights reserved to the State.** (a) All minerals in, on, or under state lands or reserved lands are reserved to the State; provided that the board may release, cancel, or waive the reservation whenever it deems the land use, other than mining, is of greater benefit to the State as provided for in section 182-4. The minerals are reserved from sale or lease except as provided in this chapter. A purchaser or lessee of the lands shall acquire no right, title, or interest in or to the minerals. The right of the purchaser or lessee shall be subject to the reservation of all the minerals and to the conditions and limitations prescribed by law providing for the State and persons authorized by it to prospect for, mine, and remove the minerals, and to occupy and use so much of the surface of the land as may be required for all purposes reasonably extending to the mining and removal of the minerals therefrom by any means whatsoever.

(b) Subject to subsection (a), all land patents, leases, grants, or other conveyance of state lands shall be subject to and contain a reservation to the State of all the minerals, and shall also contain a reservation to the State, and persons authorized by it, of the right to prospect for, mine, and remove the minerals by deep mining, strip mining, drilling, and any other means whatsoever, and to occupy and use so much of the surface as may be required therefor. [L 1963, c 11, pt of §1; Supp, §99A-2; HRS §182-2; am L 2016, c 220, §3]

Cross References

General authority, see §26-15.

Other general provisions, see §171-58.

Law Journals and Reviews

Demolition of Native Rights and Self Determination: Act 55's Devastating Impact through the Development of Hawaii's Public Lands. 35 UH L. Rev. 297 (2013).

Case Notes

Reservation as self-effectuating. 49 H. 429, 440, 421 P.2d 570.

" **§182-3 Bond; compensation to occupiers.** (a) Every lessee of a mining lease granted under this chapter and every assignee thereof shall file with the board a bond, in a form and in an amount approved by the board, made payable to the State and which shall be conditioned upon the faithful performance by the lessee of all the requirements of this chapter and of the mining lease, and also conditioned upon the full payment by the lessee of all damages suffered by the occupiers hereinunder mentioned. If the State sells or leases its mineral rights on land which it or its predecessors in interest have granted or leased, or which it may hereafter sell or lease, and the land thereof including any crops or improvements is damaged by any mining or other incidental operations, including exploratory work, or by the failure of the lessee of the mining lease to properly restore the land after termination of the operations, the occupier shall be reimbursed the full extent of the damages caused by the mining operations of the lessee to be allocated between the lessee and the fee owner in accordance with the lease terms, if any.

(b) Nothing herein shall be construed to prevent the occupier from demanding and receiving rentals from the lessee of the mining lease or to forbid and prevent the occupier and the lessee from agreeing upon the amount of damages to be paid and the terms and conditions of payment. The occupier may in writing before or within thirty days after the public auction notify the board that the occupier elects to have the amount of damages and the amount of rentals to be paid as a result of the mining lease determined by arbitration with the successful bidder. In such event, the occupier shall notify the successful bidder of the occupier's election to arbitrate, and the arbitration shall proceed in accordance with chapter 658A. The arbitrators in fixing the amount of damages to be paid to the occupier shall award the occupier the amount which in their judgment shall fairly compensate the occupier for the damages the occupier may suffer to the occupier's crops or improvements or to the surface or condition of the occupier's land caused by

the mining or other incidental operations, including exploratory work, and a reasonable rental for the use of the surface. [L 1963, c 11, pt of §1; Supp, §99A-3; HRS §182-3; am L 1978, c 135, §2; gen ch 1985; am L 2001, c 265, §4; am L 2016, c 220, §10]

" **§182-4 Mining leases on state lands.** (a) If any mineral is discovered or known to exist on state lands, any interested person may notify the board of the person's desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased, the minerals involved, and any information and maps that the board by rule may prescribe. As soon as practicable thereafter, the board shall cause a public notice to be given in the county where the lands are located, at least once in each of three successive weeks, setting forth the description of the land, and the minerals desired to be leased. The board may hold the public auction of the mining lease within six months from the date of the first notice or any further time that may be reasonably necessary. Whether or not the state land sought to be auctioned is then being utilized or put to some productive use, the board, after due notice of public hearing to all parties in interest, within six weeks from the date of the first notice or any further time that may be reasonably necessary, shall determine whether the proposed mining operation or the existing or reasonably foreseeable future use of the land would be of greater benefit to the State. If the board determines that the existing or reasonably foreseeable future use would be of greater benefit to the State than the proposed mining use of the land, it shall disapprove the application for a mining lease of the land without putting the land to auction. The board shall determine the area to be offered for lease and, after due notice of public hearing to all parties in interest, may modify the boundaries of the land areas. At least thirty days prior to the holding of any public auction, the board shall cause a public notice to be given in the State at least once in each of three successive weeks, setting forth the description of the land, the minerals to be leased, and the time and place of the auction. Bidders at the public auction may be required to bid on the amount of annual rental to be paid for the term of the mining lease based on an upset price fixed by the board, a royalty based on the gross proceeds or net profits, cash bonus, or any combination or other basis and under any terms and conditions that may be set by the board.

(b) Any provisions to the contrary notwithstanding, if the person who discovers the mineral discovers it as a result of exploration permitted under section 182-6, and if that person

bids at the public auction on the mining lease for the right to mine the discovered mineral and is unsuccessful in obtaining such lease, that person shall be reimbursed by the person submitting the highest successful bid at public auction for the direct or indirect costs incurred in the exploration of the land, excluding salaries, attorney's fees, and legal expenses. The department may review and approve all expenses and costs that may be reimbursed.

(c) Notwithstanding any other law to the contrary, an application for a mining lease submitted pursuant to this section may be granted by the board in accordance with the procedures set forth in section 171-95.3. [L 1963, c 11, pt of §1; Supp, §99A-4; HRS §182-4; am L 1978, c 135, §3; am L 1983, c 296, §2; gen ch 1985; am L 1998, c 2, §45; am L 2016, c 220, §4]

Revision Note

In subsection (b), "attorneys fees" substituted for "attorney fee's".

Cross References

Strip mining, see chapter 181.

" **§182-5 Mining leases on reserved lands.** If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of the person's desire to apply for a mining lease. The notice shall be accompanied by a fee of \$100 together with a description of the land desired to be leased and the minerals involved and information and maps as the board may by rule prescribe. The board may grant a mining lease on reserved lands in accordance with section 182-4, or the board by the vote of two-thirds of the members to which the board is entitled, without public auction, may grant a mining lease on reserved lands to the occupier thereof. A mining lease may be granted to a person other than the occupier if the occupier has assigned the occupier's rights to apply for a mining lease to another person, in which case only an assignee may be granted a mining lease. Any provisions to the contrary notwithstanding, if the board decides that it is appropriate to grant a geothermal mining lease on the reserved lands, the surface owner or the owner's assignee shall have the first right of refusal for a mining lease. If the occupier or the occupier's assignee of the right to obtain a mining lease should fail to apply for a mining lease within six months from the date of notice from the board of a finding by the board that it is in the public interest that the minerals on the reserved lands be mined, a

mining lease shall be granted under section 182-4; provided that bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to exploit minerals reserved to the State. [L 1963, c 11, pt of §1; Supp, §99A-5; HRS §182-5; am L 1978, c 135, §4; gen ch 1985; am L 1988, c 378, §2; am L 2012, c 97, §3; am L 2016, c 220, §5]

" **§182-6 Exploration.** Any person wishing to conduct geothermal or mineral exploration on state lands or reserved lands shall apply to the board, which shall issue exploration permits upon terms and conditions as it shall by rule prescribe. During and as a result of the exploration, no minerals of types and quantity beyond that reasonably required for testing and analysis shall be extracted and removed from the state lands or reserved lands. Upon termination of the exploration permit, all exploration data, including but not limited to the drill logs and the results of the assays resulting from the exploration, shall be turned over to the board and kept confidential by the board. If the person does not make application for a mining lease of the lands within a period of six months from the date the information is turned over to the board, the board in its discretion need not keep the information confidential.

This section shall be construed as authorizing the board to issue an exploration permit for geothermal resources as well as minerals. [L 1963, c 11, pt of §1; Supp, §99A-6; HRS §182-6; am L 2012, c 97, §4; am L 2016, c 220, §6]

" **§182-7 Lease.** (a) Prior to the public auction contemplated in section 182-4 or 182-5, or the granting of mining lease without public auction contemplated in section 182-4 or 182-5, the board shall cause a mining lease for the land in question to be drawn. The lease shall describe the land and shall contain, in addition to such other provisions which the board may deem appropriate, specific provisions as provided in this section.

(b) The term of the lease shall be sixty-five years or for a lesser period at the discretion of the board.

(c) The payments to the State as fixed by the board shall be specified; provided that:

- (1) In the case of bauxite, bauxitic clay, gibbsite, diaspore, boehmite, and all ores of aluminum, the amount of royalties for each long dry ton of ore as beneficiated shall not be less than twenty-five cents or the equivalent of the price of one pound of virgin pig aluminum, whichever is higher, nor shall it exceed the equivalent of the price of three pounds of virgin pig aluminum;

- (2) The rate of royalty for ore processed into aluminous oxide in the State shall be set at eighty per cent of the rate of royalty for ore not processed to aluminous oxide in the State; and
- (3) The royalty shall be fixed at a rate that will tend to encourage the establishment and continuation of the mining industry in the State.

The prices of virgin pig aluminum for the purpose of determining the royalties under this section shall be the basic price on the mainland United States market for virgin pig, not refined, f.o.b. factory. The royalties shall be in lieu of any severance or other similar tax on the extracting, producing, winning, beneficiating, handling, storing, treating, or transporting of the mineral or any product into which it may be processed in the State, and shall not be subject to reopening or renegotiating for and during the first twenty years of the lease term.

If the lessee desires to mine other minerals, the lessee, before mining the minerals, shall notify the board in writing, and the board and the lessee shall negotiate and fix the royalties for the minerals.

Any other law to the contrary notwithstanding, thirty per cent of all royalties received by the State from geothermal resources shall be paid to the county in which mining operations covered under a state geothermal resource mining lease are situated; provided that if the geothermal resources are located on lands under the jurisdiction of the department of Hawaiian home lands, one hundred per cent of royalties received by the State shall be paid to the department of Hawaiian home lands.

(d) The lessee shall covenant and agree that the lessee shall commence mining operations upon the leased lands within three years from the date of execution of the lease; provided that so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one such lease on the same minerals, the covenant shall be suspended as to all other leases held by the lessee.

Any interested party may request that a mining lease contain a research period under which the lessees shall be required to expend money in research and development to establish a method to make economical the mining and processing of the minerals identified in the lease. If the board determines that the research period would be beneficial, it shall fix the period of research and shall also fix a minimum expenditure for labor performed or money spent by the lessee on research and development and the method by which the lessee shall establish that such expenditure in fact be made. In these leases, the obligation to commence mining operations within

three years shall not commence until the expiration of the research period.

(e) For the period of the lease the lessee shall have the exclusive right of possession of the minerals leased and the exclusive rights to mine and remove the minerals by means that shall be reasonable and satisfactory to the board and to occupy and use so much of the surface of the land as may reasonably be required, subject to the provisions of section 182-3. The right to use the surface shall include the right to erect transportation facilities thereon, construct plants for beneficiating, drying, and processing the minerals for electric power generation and transmission and other uses as may be approved by the board. The other uses may include but need not be limited to uses necessary or convenient to the processing of the minerals; provided that the lessee shall comply with all water and air pollution control laws, and rules of the State or its political subdivisions.

(f) The lessee may retain all minerals separated from the land as a part of the process of mining the minerals specified in the mining lease; provided that the lease may prescribe the accounting and testing procedures by which the amount and quality of the additional materials shall be determined for the purpose of computing the excise tax thereon and the applicable royalty that may be set by the board for the use of the minerals. [L 1963, c 11, pt of §1; Supp, §99A-7; HRS §182-7; am L 1978, c 135, §5; am L 1991, c 315, §1; am L 2014, c 170, §1; am L 2016, c 220, §7]

Attorney General Opinions

Allocating royalties from geothermal developments on department of Hawaiian home lands (DHHL) lands to the board of land and natural resources or the counties violated §4 of the Admission Act and article XII, §§1 and 3 of the Hawaii constitution. It is clear from the Admission Act and the Hawaii constitution that the State has an obligation to manage such resources on Hawaiian home lands for the benefit of native Hawaiians pursuant to the Hawaiian Homes Commission Act (HHCA). Allocation of royalties from geothermal developments on DHHL lands to entities other than DHHL would be violations of both the Admission Act and the Hawaii constitution because those proceeds would not be available to DHHL to carry out the terms and conditions of the HHCA. Att. Gen. Op. 14-1.

Section 206 of the Hawaiian Homes Commission Act controls over the provisions of this chapter as applied to Hawaiian home lands, and the department of Hawaiian home lands has the

authority to manage and dispose of geothermal resources on its lands. Att. Gen. Op. 14-1.

" **§182-8 Number of leases; acreage limitations; area covered by lease.** The board is authorized to impose a limitation on the number of leases or acres which a mining lessee or the mining lessee's transferee may hold under such terms and conditions as the board determines to be in the best interest of the State. No lease shall grant and include an area of land exceeding four square miles of contiguous land, in which the longest dimension of the area demised shall exceed its narrowest dimension by more than six times unless otherwise approved by the board. [L 1963, c 11, pt of §1; Supp, §99A-8; HRS §182-8; am L 1978, c 135, §6; gen ch 1985]

" **§182-9 Deposit; first year's rental.** All bidders shall prior to the date of public auction post with the board of land and natural resources a deposit of \$500. The board shall refund to unsuccessful bidders such amount within two days after the auction. All bidders, prior to the auction, shall satisfy the board of their financial ability to conduct mining operations and of their capability to develop a mine. The successful bidder shall pay to the board the amount of the first year's rental within two days after the acceptance of the bid by the board and the \$500 deposit shall be credited against such sum. If the deposit exceeds the first year's rental, the excess shall be refunded. All rentals thereafter are payable in advance once a year. [L 1963, c 11, pt of §1; Supp, §99A-9; HRS §182-9]

" **[§182-9.5] Unitization.** Upon motion by the board or petition filed by any mining lessee, the board, in its discretion, may order such lessees or owners of mineral rights on adjoining properties to collectively adopt, and operate under, a cooperative or unit plan of development, if the board finds that such a plan will prevent the waste of any mineral, increase the ultimate recovery, avoid the drilling, digging, or excavating of any unnecessary well, or for such other reason that would encourage and promote the development of any mineral resource. [L 1978, c 135, §8]

" **§182-10 Revocation of mining leases.** A mining lease may be revoked if the lessee fails to pay rentals when due or if any of the terms of the lease or of law are not complied with, or if the lessee wholly ceases all mining operations for other than reasons of force majeure or the uneconomic operation of the mining lease for a period of one year without the written consent of the board; provided that the board shall give the

lessee notice of any default and the lessee shall have six months or such other time limit as provided by the rules from the date of the notice to remedy the default. [L 1963, c 11, pt of §1; Supp, §99A-10; HRS §182-10; am L 1978, c 135, §7; am L 2016, c 220, §8]

" **§182-11 Assignment.** Any mining lease may be assigned in whole or in part, subject to the approval of the board, to an assignee who shall have the same qualifications as any bidder for a mining lease. The assignee shall be bound by the terms of the lease to the extent as if the assignee were the original lessee. The approval of the assignment by the board shall release the assignor from any liabilities or duties under the mining lease as to the portion thereof assigned except for any liability or duty which arose prior to the approval of the assignment by the board and which remains unsatisfied or unperformed. [L 1963, c 11, pt of §1; Supp, §99A-11; HRS §182-11; am L 2016, c 220, §10]

" **§182-12 Acquisition of rights-of-way.** The State may, at its discretion, acquire by eminent domain, by negotiation or otherwise, such real property, rights-of-way, and interest in, over, across, under, and through any real property which may be necessary for the transportation or communication facilities in connection with any mining operations and may assign, lease, or otherwise transfer such property or rights to persons or corporations engaged in mining operations. [L 1963, c 11, pt of §1; Supp, §99A-12; HRS §182-12]

" **§182-13 Surrender of mining leases.** Any lessee of a mining lease, who has complied fully with all the terms, covenants, and conditions of the existing lease, may, with the consent of the board, surrender at any time and from time to time all or any part of a mining lease or the land contained therein upon payments as consideration therefor two years' rent prorated upon the portion of the lease or land surrendered. The lessee shall thereupon be relieved of any further liability or duty with respect to the land or lease so surrendered; provided that nothing herein contained shall constitute a waiver of any liability or duty the lessee may have with respect to the land or lease surrendered as a result of any previous activities conducted on the land or under the lease. Upon the termination, cancellation, or surrender of any mining lease or any portion thereof, the lessee shall have the right to remove any and all equipment, buildings, and plants placed on the land surrendered by the holder of the mining lease. A mining lease may also be surrendered if as a result of a final determination by a court

of competent jurisdiction, the lessee is found to have acquired no rights in or to the minerals on reserved lands, nor the right to exploit the same, pursuant to the lease, and, in such event, the lessee shall be reimbursed for rentals paid to the State pursuant to the lease. [L 1963, c 11, pt of §1; Supp, §99A-13; HRS §182-13; am L 2016, c 220, §10]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **§182-14 Rules.** Subject to chapter 91, the board may adopt and amend rules as it deems necessary to carry out this chapter and to perform its duties thereunder, all commensurate with and for the purpose of protecting the public interest. All rules shall have the force and effect of law. [L 1963, c 11, pt of §1; Supp, §99A-14; HRS §182-14; am L 2016, c 220, §9]

" **§182-15 Other use of surface of state lands.** Where mining leases are granted on state lands, the board may reserve to the State the right to lease, sell, or otherwise dispose of the surface of the lands embraced within the lease. The lease, sale, or other disposal of the surface, if made, shall be subject to the rights of the holder of the mining lease. [L 1963, c 11, pt of §1; Supp, §99A-15; HRS §182-15; am L 2016, c 220, §10]

" **[§182-16] Levy and assessment of general excise tax.** Notwithstanding any provision to the contrary, the levy and assessment of the general excise tax on the gross proceeds from any manner of sale of (1) geothermal resources or (2) electrical energy produced by the geothermal resources producer from such geothermal resources, shall be made only as a tax on the business of a producer, at the rate assessed producers, under section 237-13(2)(A). [L 1978, c 135, §10]

" **[§182-17] Penalty for violation.** Any person who violates any provision of this chapter, or any regulation adopted pursuant hereto, shall be fined not more than \$500 for each offense. If any person after receiving written notice for a violation fails to cure such violation within such time and under such conditions as determined by the rules and regulations, such person shall be subject to a citation for a new and separate violation. There shall be a fine not more than \$500 for each additional violation. [L 1978, c 135, §9]

" **[\$182-18] Geothermal royalties.** (a) The board shall fix the payment of royalties to the State for the utilization of geothermal resources at a rate which will encourage the initial and continued production of such resources. With respect to all geothermal mining leases previously issued or to be issued, where the board determines that it is necessary to encourage the initial or continued production of geothermal resources, the board shall have the authority to waive royalty payments to the State for any fixed period of time up to but not exceeding eight years.

(b) The board shall adopt, amend, or repeal rules pursuant to chapter 91 to establish the basis upon which the amount and duration of royalty payments to the State will be fixed or waived. The board's assessment of each application shall include, but not be limited to, the examination of such factors as the progress of geothermal development taking place in the State at the time of the application, the technical and financial capabilities of the applicant to undertake the project, and the need for providing a financial incentive in order for the applicant to proceed. The granting of any favorable terms to an applicant for the payment of royalties under this section may be revoked by the board if the applicant fails to satisfy any of the terms and conditions established by the board, or if the applicant wholly ceases operations and for reasons other than events which are outside the control of the parties and which could not be avoided by the exercise of due care by the parties.

(c) The board shall submit a written report of all geothermal royalty dispositions to the legislature in accordance with section 171-29. [L 1985, c 138, §1]

Cross References

Royalty to counties, see §182-7(c).

Attorney General Opinions

Allocating royalties from geothermal developments on department of Hawaiian home lands (DHHL) lands to the board of land and natural resources or the counties violated §4 of the Admission Act and article XII, §§1 and 3 of the Hawaii constitution. It is clear from the Admission Act and the Hawaii constitution that the State has an obligation to manage such resources on Hawaiian home lands for the benefit of native Hawaiians pursuant to the Hawaiian Homes Commission Act (HHCA). Allocation of royalties from geothermal developments on DHHL lands to entities other than DHHL would be violations of both

the Admission Act and the Hawaii constitution because those proceeds would not be available to DHHL to carry out the terms and conditions of the HHCA. Att. Gen. Op. 14-1.