Compilation of Public Review Comments

Hydrologic Unit:
Honolua (6013)
Honokōhau (6014)

Island of Maui

November 2019
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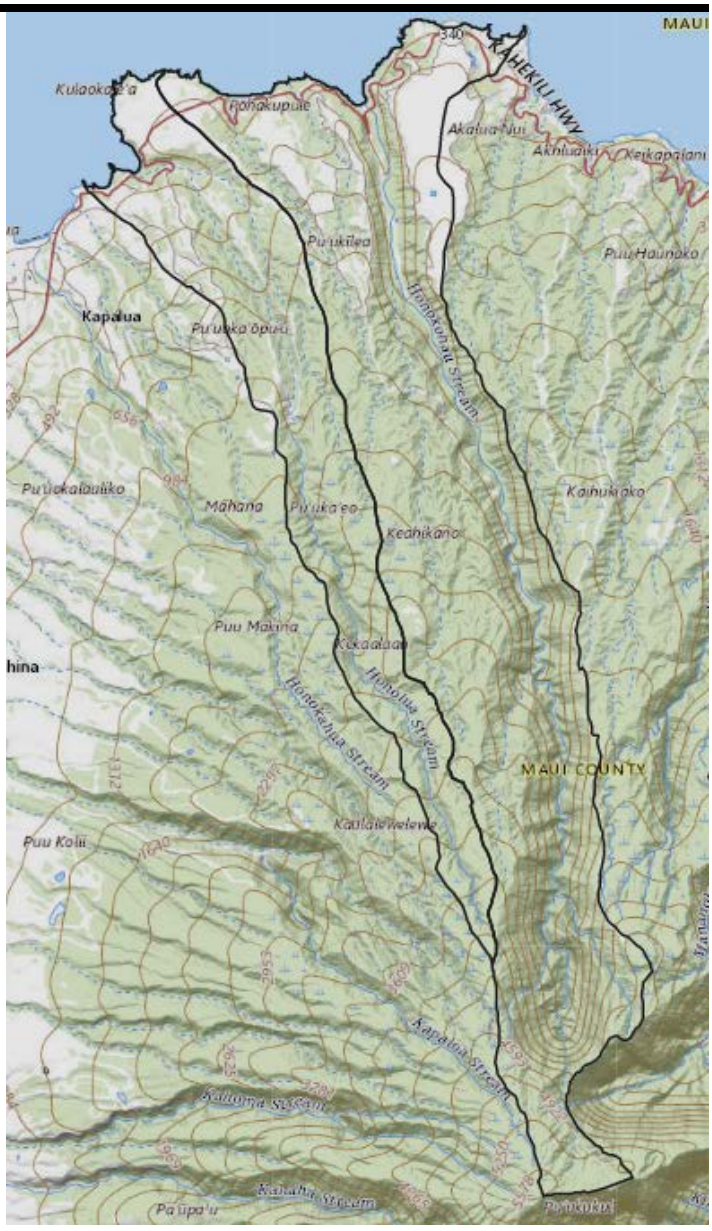

State of Hawai‘i
Department of Land and Natural Resources
Commission on Water Resource Management

Public Review Comments – Table of Contents

This document is a compilation of all public testimony and review comments submitted to the Commission on Water Resource Management (Commission) on the Instream Flow Standard Assessment Report for the Surface Water Hydrologic Units of Honolua (6013) and Honokōhau (6014).

Testimony and/or comments contained herein were received at the September 9, 2019 Public Fact Gathering Meeting held at Lahaina Civic Center Main Hall, Lahaina, Maui, or were submitted to the Commission up until 4:30 p.m. on October 9, 2019.

Testimony from September 9, 2019 Public Fact Gathering Meeting

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1) Darryl Aiwohi

My only is being a Honokōhau landowner and I raise taro down there. Our stream, because of that last storm, I know it affected a lot of things. It really screwed up our stream. One of the questions is, what are you guys going to do to help me get rid of. I mean we've got, really I bring this here, but his taro patches are completely wiped out. The water came down and took all his soil, all his taro, he can't grow taro any more. He put the oʻo down, it's hard rock already. It's all nice dirt. I know this storm was a one-in-100-year storm, but the river itself is trashed. When are you guys to, who is going to come and clean it? That's one of my questions. And hopefully, we always will have enough water for the farmers. And I tell you now, there's not many farmers, but when I was growing up, the whole valley was taro. Will we have enough water when more of these younger generation go back to their land and raise taro, or do we have to go and beg for water? That's my question. Clean up and guarantee a steady water supply.

2) Jon Kindred

Thank you. I'm providing this testimony in my capacity as president of the Plantation Estates Lot Owners Association. Earlier today I submitted testimony in writing and I'd simply like to summarize that at this point now. Our community, Plantation Estates, was formed in 1990 and the landscape irrigation needs for our homes and our common areas had been provided by the Kapalua Water Company through the Honokōhau Ditch. We're aware that water in the ditch comes from diversions on the Honokōhau Stream as well as other sources. We are part of this community and we depend on these water systems and we are deeply interested in these proceedings. We've been aware of the efforts of the Commission on Water Resource Management for the past few years in West Maui. We sincerely appreciate the work of Kaleo Manuelm Ayron Strauch, and other staff, as they prepare to recommend the new interim instream flow standards for the Honokōhau and Honolua Streams. As an interested community member, we've been very engaged with learning more about our relationship to these important streams. There have been three perspectives that really guide our approach here. First, we recognize that in Hawaiʻi water is held as a public trust. That there are four protected public trust uses of water and also that our community's irrigation uses are not one of these protected uses. Second, as we live below one of the wettest places on earth, with abundant ground and surface water sources, we believe there is more than enough water to fully provide for public trust uses, existing uses, and future uses as anticipated in state and county plans. This should be possible if the Commission and all stakeholders move forward in a thoughtful, respectful, and practical way. This approach should be incremental, beginning with immediate return of some waters to the Honokōhau Stream, while providing some level of assurance to existing, legal offstream users as reliable data is monitored regularly and necessary infrastructure improvements are made. Third, while our community's irrigation use is not a public trust use of water, we believe that under the law, our use is an existing user of water and our uses meet the legal standards of both being reasonable and beneficial. I'd like to emphasize, again, we sincerely appreciate the work of the Commission staff in this complex endeavor. Thank you for providing us with this opportunity to work together, to collaborate in finding solutions which can work for all stakeholders engaged in the Honokōhau Stream. Thank you.

3) David Schulmeister

I'm here, I'm representing Ka'anapali Land. Just a few comments. I'll try to fit it within three minutes and then we'll see how it goes later. I'd like to begin by also expressing an appreciation for the Water Commission staff. I know you guys worked really hard and you don't get paid the extra hours for climbing the mountains to look at the intakes and getting back late at night, and I really appreciate it. I think you guys do a great service. But as far as the situation with the instream flow standards, as Ayron mentioned, Ka'anapali Land depends on the Honokōwai source for the farm operation, coffee farm, and other activities. I think the concern with the IFSAR that I'd like to express, and we'll follow this up in writing, is there's a description of Honokōwai Stream as being a perennial stream. I think it's described as being perennial in the upper reaches and then dry in the lower reaches. Having been up there recently with Ayron, I think it's important to keep in mind that when you go above the Amalu diversion on the Amalu Branch, that actually during low-flow conditions, like we've been having recently, it's actually pretty much dry up there. The Amalu diversion is described, and you had a photo of it. You show the photo of the tunnel entrance there which goes across to Kapaloa, but you didn't really comment on the fact that the diversion structure itself is essentially gone. So, the Amalu diversion dam has been washed away and it is actually not operable. So you have a situation on Amalu where the current condition is that, during dry weather, there's no water coming above the diversion to divert and even when there is, when there's freshets, it just comes across the bedrock where the dam used to be. So there really isn't any water, any rainwater, being diverted at Amalu anymore. On the Kapaloa side, if you hike up… you show the pictures of the dam, but if you go up to the development Tunnel 20A intake, above there, the stream is also dry. And I think that that's very important, because when you talk about it being a gaining stream in the upper reach, not sure where the upper reach is there's a gaining stream, because when you get to the Tunnel A, you've got two, two-and-a-half million gallons that's coming into the stream there, but there's nothing coming above. So if it's gaining above that, it's also losing before you get to Tunnel A. So in effect, you have a situation where from Tunnel A down to the Kapaloa diversion, that's really tunnel water that's coming down, and that tunnel is a registered well. So from Ka'anapali Land's standpoint, that's groundwater no surface water. And there's a comment in one of the slides you showed previously where you cite Stearns and McDonald as having said that the development tunnels are tapping dike compartment groundwater that would've otherwise, probably, made its way into the stream via a spring or something. One thing I'd like to point out is, in your IFSAR, one of the things you point out… and this is…you had a slide that, I don't know if you could put up, but anyway, it looks like this, background hydrology, rainfall, and recharge, and you talk about the dike-impounded groundwater. You say that the dike compartments are hydraulically connected and excess inflow either recharges other aquifers or seeps into streams where erosion has cut deep enough to intersect the dike. So there's two possibilities, either the dike water will recharge an aquifer, or it may enter into the stream. Now Stearns and McDonald speculated in 1942 that it might enter the stream, such as they commented on Honokōhau, but Stearns and McDonald in 1942 did not have the USGS low-flow study that was done in 2014. And that study has seepage runs that were done, which pretty much show that any water coming in below the convergence is going to seep back into the ground extremely rapidly. Probably the most telling seepage run, I forget the year that it was done, but there was five million gallons per day of flow that was coming past the convergence of Amalu and Kapaloa, so that meant it was raining hard to have five million gallons per day coming there. And within just over a mile, it went to zero flow in the stream. So it shows that's an exteremly

leaky section of the stream. There's another piece of data that Stearns and McDonald did not have, and it's not mentioned in the IFSAR, and this is something we're going to supplement in writing with some data, but in the 1960s there's a number of wells that were attempted to be drilled in the Honokōwai Gulch below the convergence of the two tributaries. And basically what they were looking for was high-level groundwater and they didn't find any. So the only well in that area that hits high-level groundwater is the one that you mention as being a former Pioneer Mill well, and that's actually above the confluence. It's like 1,400-feet or whatever, so you have a situation where at that elevation… So basically if you have the seepage runs that show that the water is going to disappear at a very rapid rate and you don't have evidence that there's high-level groundwater that's going to intersect the stream, then you don't have the situation, on Honokōwai anyway, where the stream channel is incising, as you say, the groundwater. So Kaʻanapali Land is very concerned that if there's any thought of saying…Well there's two concerns here. One is, the well water that's coming from Tunnel A, it's not really surface water, it's not stream water, so that really isn't what should be put back in the stream because it never would've been in the stream in the first place. And if you did put it in, then it would just drop down and it would effectively have to be pumped again. And I think you mentioned in your presentation that the R3 well, which is what I think you're referring to, at one time had a maximum capacity of 1.7. So if you were to put it back in, then you'd just have to incur the cost to pump it back out again, which makes no sense. I'm done with my three minutes, do I have anymore time here? I have a few more comments I'd like to make later if there's time.

4) Sy Feliciano

Aloha, thanks for giving me good three minutes. My name is Sy Feliciano. I live in Honokōhau Valley, and I also got to work for Hoaʻāina Farm Services for over a year and I got to work on the ditch. I got to take Ayron and Malie up on their first visit to the intake. I remember that day where Ayron said he's writing this report and he's studying the law on what the stream use is. And I remember him saying that the first right to the water is the taro farmer and the stream fauna and flora. So, I think that comment that he gave me really said, wow, if he's going to work his report around what the law says, which makes sense to our community, I really want to help him and give him all the information I have from working the ditch for a little over a year to see the report come out, to actually help our community. So while working the ditch, I noticed that there were community concerns, so I reached out to the taro farmers, mostly Wili Wood, to Keith, to other farmers, Kimo Lindsey, and asked them how the river is fluctuating during the big water and what's happening. So a lot of the concern was there was a dry area from Aotaki dam down to Taro gate. So the dry area was because the high water would clog up the Aotaki gate and then no water would flow for two miles until Taro gate was dumping water back in. And I watched the ʻoʻopu stress out and I asked Ayron a question, "how many days does it take for the fish to start dying." And he said, "maybe like four days maximum." So I came up with this term called a response time. So Hoaʻāina, Maui Land & Pine, they needed to be more responsible and get there within… Within 24 hours I could see the stream… the fish stressing, because there was no water coming through the dam. So what I'm hoping is with this stream report, we get more regulation on the diversions. So just because it's way up in the mountain and there's nobody really monitoring it and taking care of it, we need to have some kind of way of policing it and monitoring it and the response time needs to be, not four days, but 24 hours. Because I lived in the valley and talking to Wili, you could see, OK, there's a big water coming,

so Hoa‘āina is responsible to get up there and flush the gate. But now, no one’s doing that. Has it been a year yet, where no one is actually monitoring the diversions? So I’m hoping that this report can be a little more strict on those big diversions, not just Honokōhau, but Honokōwai, all these diversions. Nobody’s taken care of the ditch for how many years, like when was the last time a big maintenance got done to this system. So that’s one of my concerns is just… whoever is running this ditch needs to be on it. When Maui Pine used to run the ditch, you heard of ditch clean-ups happening a few times a year. When I worked for Hoa‘āina, only a short period of time, but they said that they did it once in like five years. And I don’t know if… now, they’re saying the ditch is in very disrepair and so I’m hoping that this report will just tighten up that ditch, because the taro farmers are suffering in the valley. A lot of the water is being diverted for no reason, like Ayron said that when the high water happens, a lot of water is pushed into the intake, into the ditch, and it’s not even being used. All these systems need to be repaired, need to be monitored, so the community who has a hard enough time to grow taro, doesn’t have to be worried about when is the workers going to go up there and protect their right, their law. You know, so… It’s kind of hard for me to explain everything that I want to explain, but if anybody wants to contact to talk to me about what I’ve learned on the ditch, my name is syfeliciano@ gmail.com. I’d be happy to sit down with anybody and share like I did with Ayron and Malie and the community, to just improve the system, because the system is in place… was built for agriculture. That was one of the reasons why I wanted to get back and to work the ditch, because to see more farms going in the place, not gated community, landscapes, or golf courses. I don’t’ believe that the right use of the water. So once again, anybody wants to contact me to talk more about water, because I’ll be around in the community trying to help everybody, so thank you.

5) Kaʻapuni Aiwohi

My name is Ka‘apuni Aiwohi. My family comes from Honokōhau Valley. My daughter’s name is Pi‘imauna, her grandmother’s name is Pi‘imauna, and my grandfather’s grandmother’s name is Pi‘imauna, who is buried in that valley. That was my grandfather who spoke earlier. This is the valley that my family come from. I’m also involved in Hui o Nā Wai ‘Ehā. I’m a board member, so I also represent that group too. I feel like I need to say that too, because we’re going through the same issues over there, and right now, we don’t have enough to even farm in Honokōhau Valley. That’s kind of just about myself. And what I would like to tell the Commission that I feel the right thing to do is to restore 100-percent of the water in Honokōhau Valley. There is no plan that DHHL has, that the County has, to efficiently manage the water that they take out of the valley. And until those issues are solved, then they can come to the residents, the people who live in that valley, and see how much they can take. But they’re not going to take water if they can’t even efficiently manage those things. So, I think the concerns earlier is everybody want to open their hand to get water from the valley, but we don’t have people that are willing to get in there and work and do it. With the gate, with the dam still broken, you know, we have people, we have the County, we have all these people wanting to take water, but where are they when it’s time to take care of it. Where are they where we have these streams that the State manages, but who is the ones that are left to clean it. It’s the people in the valley. It’s not everybody else that lives outside the valley. So I think that we need to respect the natural geography of the area and give that power to the people who live there and not give it to an entity outside. So couple things that I also want to say. I also believe that we need 100-percent, because I don’t know how I could tell my kids how to divide which of my kids are allowed to eat poi. How do I tell them that in Waikapū, there’s only 72-percent restoration,

so 72-percent of my children… How can I say that in Wailuku, 62-percent of the water is there. How can I… I'm going to have to divide. Right now, the State has to come up where they're going to draw the line at how much stays in the stream and how much doesn't. And that percentage is going to affect my family, that percentage is going to affect how much of my family can actually grow taro there. That percentage is going to affect how much poi Maui is going to import from Hanalei. I love Kaua'i, but Kaua'i does not belong on Maui when we have the resources to grow that poi on Maui. So I'm really asking for the empowerment. Give that empowerment back to those in that valley that takes care, right, that takes care of that valley every day. I'm asking for you guys to make me stay up late at night to finish lesson plans for students who are coming to visit our valley. I'm asking to let my kids fight over which variety of taro is the best, the same way they fight over which chocolate is best in the candy aisle. I'm asking you to let my kids nag me about always wanting to pound poi for their classroom to take back to their teacher. I'm asking you to let my wife beg me for hand-pounded poi because the machine just doesn't do it for her. The question is how much poi is my family allowed to eat and what percentage of children can eat poi. And the answer is 100-percent. Mahalo.

6) Tamara Paltin

Hi, thanks for my three minutes. I think the last two guys pretty much said it all, but right now we're in the CPAC, the Community Plan Advisory Committee, and they're talking about a framework for growth. And I think that if you look at the current situations going on across the State, we need to have a big framework for growth for more lo'i in Honokōhau. I think it was last month, we opened up one more lo'i within three hours and it was a big group effort. So I think that it would be a mistake to look at three acres or whatever is currently there, because it's based on current circumstances based on what's been going on up to this point. But I think that you may need to plan for exponential growth of more lo'i, because, to me, the way that I see things going, that's the trend of things. And also, with the recent vote to settle, I think that instead of fighting over stream water, we do need to use as much R1 water as possible. If that means mixing, OK, but I would prefer that folks plant crops that don't… that are chloride-tolerant or what you were saying before. For Honolua, when we were talking about the diversion there, they're saying that all this water goes into a diversion and it comes out a small little pipe and they're claiming that the entire amount of the water gets back into the stream and so I would say just remove the diversions. Remove the diversions that are broken, remove the diversions that are just taking the water and supposedly putting 100-percent back, because what's really the point of that if we're talking about a framework of growth and groundwater aquifer recharge is really important. I'm not sure the specifics of what the other gentleman said about the water going back down, but it sounded like aquifer recharge which I think is a good thing, because with the development that is being planned for Lahaina, they're pumping out a lot of water, so we need to think about recharging the aquifers if we want to continue to pump out water. If we're going to pump out more and more water, we need to recharge the aquifers and sounds like that's a good way to do it. I'm for more restoration of all the streams and more reuse of the R1 water. And if folks are going to be major diverters of water, then like the previous guy said, they need to also put back in. They cannot just take, take, take. They gotta maintain the systems, you know, not just leave it, oh, this is broken, oh, this is not working. If you want to take it, you gotta take care of it. So, that's about it.

7) Jonathan Scheuer, Department of Hawaiian Home Lands

Aloha mai kākou. My name is Jonathan Likeke Scheuer. I wear a lot of hats. I'm here tonight on behalf of the Department of Hawaiian Home Lands, and Ayron talked a little bit about the ʻāina that the Department has at Honokōwai. I just want to describe for the Commissioners and those present, and the Commission staff, how DHHL is approaching this opportunity to use R1 water on its lands at Honokōwai. For many years, DHHL did not have a set policy on how it made water decisions. Each water decision was sort of made on case-by-case basis, but in 2014, after two years of beneficiary consultation around Hawaiʻi, the Hawaiian Homes Commission adopted a water policy plan to guide future water decisions. And there's four main policies in that plan. The first one, this actually expressly determine and plan for future water needs and participate in broader water management issues. The second is to aggressively exercise, reclaim, and protect Hawaiian Home Land water kuleana. And it was really explicit among beneficiary communities around Hawaiʻi. We didn't want to just talk about water rights, right, we want to talk about water kuleanas, responsibility and rights together. Third, to develop, manage, and steward water in a manner that balances cost, efficiency measures, and public trust uses in the short- and long-term. And fourth, to aggressively and affirmatively communicate decisions, reasoning, and performance in managing, stewarding, and using water before and after making water decisions. So how does that apply to this area? When the third point, the third policy talks about DHHL as a public trust use of water, we recognize that we have a priority of water than standard private commercial uses. But we also realize, in this area, we're not going to take so much water that the public trust uses in Honokōhau Stream are going to suffer unbearably, so we want to seek uses like R1 water, but we're also committed, as it says in the other parts of the policies, to communicate with our beneficiaries. So before, as in the process of DHHL's going through right now for planning subsistence homesteading uses on the lands at Honokōwai, it will involve conversations about the kind of water available and the implications of the water choices that are available to make farming on that and how that fits into the larger landscape. So that's how the Department's approaching it. It's very supportive of the process of… you know, for so many years in Nā Wai ʻEhā and elsewhere, was the community having to lead the effort to get streams restored. It's very gratifying that the Water Commission is stepping forward and driving that process rather than communities having to. And we're supportive of that and we want to be part of that, recognizing both our role as a public trust user, but also a public trust offstream user and that the onstream public trust uses need to be protected. Mahalo.

8) Frank Caprioni

Aloha mai kākou. Thank you guys for coming here. I guess I just got one big question, because I'm sure you guys are kind of familiar, I've dealt with you guys before. And one of my biggest questions to you guys is who's going to enforce all this stuff that you guys are talking about, because it sounds good and it sounds great and we definitely do need regulation and stuff, but who's going to enforce it. Because, to be honest with you, we dealt with you in Olowalu. I've called you guys multiple times and got no call back. What I got actually was lawyers coming to my house from the private entities and stuff, so I was more attacked on the other side for something that I didn't do wrong at all. So again, my biggest question to you guys is, who at that end of the day is going to enforce this. CWRM sounds great and all, but I think what we really gotta create is KWRM, the Kanaka Water Resource Management. You need the people of that place, in the area there, taking care of the stuff. You know what I mean. And I think, like, we have the… I think it's the, don't quote me on this, but the CMMA, the Community Management

Makai Area that I think Ekolu Lindsey guys created down in Lahaina with using community members who are there every day, who know what's going on. They're taking water samples. I think we need to do the same thing up in the mountains too. And as we know now, I know it's kind of cliché sometimes to say, but mauka to makai. What happens up top effects down below, you know what I mean. So I think, everything that going on the reefs has to do with up in the mountains. Marine biologists, people, will all… they'll tell you this stuff too, you know. So I think it is so… what you guys have in your hands right now is so important for everybody, because again, this is a public utilities thing too. So, again, I think that's my biggest question to you guys, is how are we going to enforce this. Because at the end of the day, we can create all the laws that we want, but if there's no enforcing to it, it doesn't matter. You know what I mean. And that's what's really going on with a lot of these private corporations. They know it. There's nobody there to enforce it, so to them they look at it as a joke. I'm sorry, I gotta make a comment on something that I heard earlier on the homeowner's association up on the plantation. And this is something that goes the same up in Launiupoko, on Olowalu, and probably the same all across the State, but there's all these big houses that are on agricultural land that are supposed to be doing agricultural stuff, and all the while, all they're doing is wasting the agricultural water. Me, myself, I'm a landscaper. I go to these properties. All these properties that I go to, there's nobody even there. I'll be there working through from 7 til 3, maybe even 4, 5 o'clock in the afternoon, the water gets turned on at 12 o'clock in the afternoon. I mean it doesn't take a brilliant farmer to know that you don't water in the day, especially in Lahaina. The thing's going to evaporate out, you know what I mean, so I think we need to create guidelines on these things too, you know, and so again, I just want to really stress that to you guys. How are we going to enforce these laws, because at the end of the day, I hope that these would become laws. Not only how are we going to enforce them, but there needs to be stricter fines so to speak. So again, for example on Olowalu, at the end of the day after these illegal diversions were taken out, at the end of the day, don't quote me on this, I could be wrong, but it was a thousand or so dollars. And the damage that happens inside of these streams, the life inside of the stream, at times, it's irreparable. So to even put a dollar amount to that is just… you cannot. So I think that the fines need to be stiffer, and again, we need to have enforcement… strict, strong enforcement. And I know nowadays too, there's plenty Hawaiians, and plenty just people without jobs too. I know there's plenty of people that know these mountains so well, they would love to be up there. But then it comes like what we dealt with in Olowalu, is with land issues. Oh no, they don't want you up there, you know what I mean, allowing you up there. And then another thing to that was kind of interesting to me when I talk with you guys before, was that, some of the comments that I got from you guys, and not specifically from you, but CWRM as a whole, was that, oh, the streams are Army Corps of Engineers. That's their, you know, kuleanas. And so, we can't really say you have to go through them, and so sometimes I feel like you guys kind of bounce back and forth. And again, I'm not trying to point fingers at any individual, just as a whole and stuff. And so again, I really appreciate you guys coming here and taking the time out, but again, I would really like to know… I don't know if you can answer that question now, but I would really appreciate if you guys could really think about that and how we're going to enforce these things. Again, we can create all the laws, but there's no enforcement. So thank you guys very much for your time.

9) Wili Wood

Aloha everybody. My name's Wili Wood. My family and I live in Honokōhau Valley. We've been restoring and planting loʻi since 2005, with the help of volunteer groups, schools such as Pūnana Leo, Ke Kula Kaiapuni, and Kahana Canoe Club, for example. We have donated hundreds and hundreds of pounds of kalo to these schools and clubs for their fundraisers, and there's been many occasions where we've lost entire patches, entire loʻis, due to insufficient and inconsistent water flow. And you know, it's really heartbreaking to see all the community get together to do all this work and to see the patch spoiled right before harvest. And you know, we still have to get in there and harvest that. We still have to get the community together and everybody comes and puts in that work. And as we're pulling out these big kalo, you can stick your finger right through it. And that's the stuff we've been dealing with for years. After Tropical Storm Olivia, there was no one running the ditch system. Email, upon email, upon email, to the person who's supposed to be running the ditch system. No response. And the responses we got were not good. So, today, we're asking for you guys, please make the right decision. Please do not rule for the water to go to these large corporation-type people, just to make more money off of it. In the valley today, there's roughly about three acres of kalo being grown, but that's due to insufficient water flow. There's plenty families up there. There's a lot of people that would love get back on their land, but the water is just not there. And when it is there, sometimes it's too high. And then it's too low the next day. So, we really need you guys to get together and help us, especially with the irrigator. The irrigator is a big concern of the taro farmers in the valley. And so, please, that's what we're asking you guys to decide on, the most water possible to the stream. Hundred percent if can. We know there are some outside uses that you guys really have to consider. But just keep in mind that, traditionally, the end users of Honokōhau water have been negligent. They have wasted and not really cared. Never seen any one of them up into the valley to do anything. So, that's what I have to say. Thank you very much. Aloha.

10) Keʻeaumoku Kapu

Aloha. Keʻeaumoku Kapu from Kauaʻula. I highly support the intent pertaining to what's coming about. Maybe just gotta figure out what would be the reasonable management of what type of surface water going come for the benefit of these rivers that are on the agenda. My only concern is, like a few of the testifiers before us, is the enforcement part. Our valley was estimated 3.4 million, right now we drawing 1.8. And the reason why I bring this up, I know it's not part of the agenda, but actually the content of what's happening in our valley is most definitely going to be similar to what's going to happen, it depends on what the instream flow standard going to be set for. Kauaʻula Valley is dry. And I know that the Commission on Water Resource Management only addresses the surface water. So I think everybody got to get a grasp on the surface water versus the water in the ditch. And that's another animal, that. That's a valid argument pertaining to how you going get the water and how many of the valley users are dependent on the ditch versus dependent on the surface water. And I know that your kuleana is only to address the necessary needs for taro cultivation, recreational purposes, the purpose for making sure that the replenishment of the river, also addresses the fauna and species, and those kinds of things, yeah. So I think what needs to be really look at, from everybody here, is to understand your kuleana pertaining to what's coming from the natural flow in the river from the surface water versus the ditch. And the ditch is going to be most definitely contentious on your part. I don't know whether or not that's your jurisdiction to adjudicate or even determine the

ditch. Because I going through that same problem right now. That I so far up on the river, I'm dependent on what the water is diverted from the river that comes to my house, so I can cultivate my traditional rights to grow taro versus my family that lives alongside the bottom of the river, which they can be dependent on the natural flow of the river. So, I think to make sure that everybody's not confused with the situation of what's happening that it's the ditch that going create the animosity amongst everybody's common use of the water when you start talking about public trust doctrines. I think we stay in the… in front of the wrong people. I don't know, but if we going to address the percentage of water that's going to be set for the instream flow standard, we gotta make sure that, how is it going to affect us. Because it's affecting me, right now. And all I want to add in the end is to make sure that once something is implemented and it's written into law, that enforcement needs to play a very important part. Because that didn't stop anything in our valley. I mean, we get guys already going for different animals, known as a 201H project trying to see if they can get water. The bad part for me is the State is allowing them and saying that, oh, you guys can do whatever you want to, but main thing you don't stop the natural flow of the river. That whatever was set in the instream flow standard and that's not finished yet. 1.8. We still get another 2 million gallons of water that we're looking to put back in the river, which was set by the Commission. I don't see that. I don't even see… now if you go down to the mouth of Kaua'ula River, where Puamana is, that buggah been dry for months. And it wasn't like that before the instream flow standard was set, so what's happening. So I can only say, whatever you guys asking for, to really, really look at the situation here, because what their mandated to do versus the public trust doctrine and the water coming from the ditch versus the water coming from the surface, that's a different animal. Get more clarity before we start looking at what type of determination of the instream flow standard once its set. So enforcement if the key. I really hope that there is one way we can kind of get some kind of agreement from the public utility company that the State maybe can set one standard to say that we need more people at the table, not just for this public utility company to make the final determination on what's going to happen on their side, which may infringe upon our rights as kuleanas in that valley. So enforcement is the key. Get all the players together, the ones that have an interest. We have an interest. We have a ultimate interest to that water and it supersedes the public trust doctrine. Everybody use that as an excuse. So mahalo, thank you.

11) Kaipo Kekona

Aloha mai kākou. Kaipo Kekona. Ka'anapali moku representative. Everybody kind of touched on most of the subjects that I think is important to get covered and address who… the chain of where the rights to water is set and precedent in legal standings. Of course, we know how true experience at what's been taken place prior with the CWRM IFIS, whatever abbreviation is. One thing that I haven't heard mentioned today is more of the, you know, we identifying the sources today and how they've been managed and how they've been diverted. What we never touched on is the original existence of the resource before… I no like even using the word resource because that's something we taking and resourcing. It's just a source itself, it's the source. We not looking at the source. The source was there before we all decided to resource it. And that source itself was identified through its natural contours and geographical landscape, if you will. You know, we talk about these lateral wells and wells was established here. Whether it's a lateral or vertical, whatever well was established, all of those wells was established upon resources or sources that were there before they put in their new management or their new infrastructure. Those things… I mean Honokōhau was almost 5,000 lo'is. And that was just,

yeah, we went divert the divert the water out of the stream and back into the stream. We went resource ‘em first and then we went reestablish that system where the thing would go back into that source. Today, when the thing is resourced today, it’s taking it far away and it’s not returning in any manner other than going through this table with a bunch of different applications upon that original source. So, if you want to… I think an important perspective that we missing, as one whole community, I mean not all of us, but a majority of our community is not understanding the original source. And when you can look at that source and understand how it existed prior to all of our interruption, that’s really how we can begin to move and look at how we should be co-existing with this source. So for me, that’s where I don’t hear anything being subject or touched on in everybody’s discussion tonight. So, just kind of wanted to put that out there and have people consider before you even think about the infrastructure and how this thing went operate and what it provided and how it’s been providing for a hundred years or whatever, just think about before you open your mouth about those things, think about what how went operate on its own before that happened. These well systems were established on top of what was natural springs. Maybe the spring might have been further up the hill, but in order to get to that source quicker, they went tap in from the side with one lateral well on top of this spring that was pouring into our stream before that. So, that’s just kind of where I think we should be considering, understanding our source better before we try to take it and divert it. When we can understand that from the beginning, we can more forward then. That’s all I get other than the understanding of the taro, and the fauna, and the flora, and the establishment of the diversions, and whose rights is what, and what is the right use of water. That’s all very important, but if we don’t understand where it came from to begin with, we cannot move forward in that mindset ‘cause we just going keep downgrading that source and that’s what I think is important for us to keep in mind as a community. Not so much you guys. I know you guys already get your set criteria and formulas and how you going determine what going be done in order to accomplish what you need to do by law, so I not going bother with trying to push on any of those subjects. That’s it. Mahalo.

12) Kaniloa Kamaunu

Aloha. My name is Kaniloa Kamaunu. Waihe‘e Valley. I know this is not my town, but the issues are the same. You know, I was there when they did the Nā Wai ‘Ehā case. And I learned a lot from that case. You still here, so you know basically what my thoughts are. And my thoughts is, and you know, it’s not to be insulting to anyone, but there are rights that belong to us. People seem to overlook that. You know, the kānāwai. I always live by the kānāwai. That’s what I fight with, because that’s real. You know, we talk about the public trust doctrine. And again, kala mai, but that doesn’t pertain to us. Public trust doctrine dictates that the source is managed by the governance of that country. You guys have set yourself to be that governance and the decision-makers of these resources. What you fail to forget is that we as kanaka already have that right. It’s our birthright. It was given to us. It’s for every kanaka. When I see the kanakas come up here and beg for use for taro... taro was the law. People forget and that’s the thing… gotta know our culture. You know, your Article 12, Section 7, talks about traditional customary practice. The aha moku that was established, 212 talks about customary generational, customary practices, traditional. Traditional is kalo is law. You no get land without kalo. You were rich if you had kalo. The more kalo you had, that means you were prosperous, so they give you more land, more kuleana. You get more water. Because that was the law. Kalo is relatives. It’s not a thing where you just eat. It’s not your food, but it is our relative. ‘Āina, same thing.

It's in our creation chant. We related to ʻāina. It's not a thing, it is a relative. And people forget that these things are relatives to us. They are living, breathing people. Our people have taught that. And that's in our tradition. When the laws of kānāwai was made, it was made in accordance to those thoughts of the kanaka and how we believe. It wasn't made to have control, to have power, to have money. ʻĀina was never to be used like that. It was never to be used. It was mālama ʻāina. Not take from ʻāina. Mālama ʻāina means you responsible now to take care, and it's sad to say that this governance has failed drastically. If we look around, I mean you just look around. Look at the waste of water. We giving ʻem to people who come here with money. All these foreigners, they actually have no rights, and that's the truth. Your guys rights don't count. We have a right. You guys supposed to protect our… your fiduciary duties… protect our rights, because we are not Americans. We are not just citizens. So all those laws of the kānāwai still come with us. We is the kingdom of Hawaiʻi. The people want to look away from that. Oh no, you guys part of this. No we not. And I've proven that. When I came here before, I said kuleana. That's me, my right as kuleana supersedes everybody else. You got any other claims, that no mean nothing. State no mean nothing. County no mean nothing. Because if you get the paperwork for show that you own ʻem, you got an interest, I like see. I was already told State never going do that. And I told ʻem, why. Because you guys no more nothing. So why we playing this games of who get rights? You guys know, your guys articles, the federal laws state that we get rights, but we are the ones that are pushed to the side and we gotta come beg. Kalo is law. It's not something just we like go plant so we can eat and feed our kids, it's how we are. That's our culture. We supposed to mālama ʻāina, we supposed to mālama kalo, we supposed to mālama all these things, and that's why our system works. Because mālama is the thought, not economics. Economics dictates that you use and abuse until there is none, or somebody holds everything and you then you gotta pay for ʻem That's why the system is broken. We have the answers. We always had the answers. We are the answers. You like kill this, you like fix this, everybody like water, you come back to the kanaka. We are keiki o ka ʻāina This is ours, and we getting dictated by laws that no pertain to us. But it's our fault also, because we fail to find out who we are. Mahalo.

13) Kanoelani Steward

Aloha nui kākou. [Opening statement spoken in Hawaiian.] Just wanted to mahalo you guys for all of your hana nui. Definitely commend you guys for all of the data that you guys compiled for all of the assessment reports. Definitely doesn't look easy. Definitely also wanted to mahalo everybody for being here. First of all, I definitely kākoʻo the use of the R1 water. You guys are probably well aware of it, you guys talked about it inside of the assessment reports. It's creating a huge issue down in Hāʻena Nui, which is also known as Kahekili Beach Park, Airport Beach. And so I definitely urge large landowners to collaborate, whoever is in charge with the State and the County to invest in the infrastructure that's needed to utilize the wastewater for all of those agricultural needs that are listed within the assessment report, since there is about 65-percent of the water that's being diverted from the stream. And so, to utilize wastewater, recycled water, instead of stream water, that'll be definitely a lanakila for our ʻāina. I totally kākoʻo about enforcement. I work a lot with the uncles in Hāʻena on Kauaʻi, with the community-based subsistence fishing area, and that's one thing that they've noticed when they created their rules for the area is enforcement. You know, they go through this whole process by the State in creating these rules that need to be followed by everybody, but then there's nobody to come in and help them enforce the laws. And, you know, the same thing is for everywhere across, you

know, anybody utilizing any of these sources, and so, definitely trying to find ways to collaborate. Coming up with something to help enforce the laws and whatever is put in place. Also, I feel like there should also be funding allocated to fund a position, or someone from the community, to maintain these diversions. In your presentation, you mention that the diversions are always usually clogged, and all these kinds of things, and that totally has an affect on everybody downstream. And so by recommending somebody from the community who, you know, these people are accountable. These people, they realize the importance of malama'ing something like that. And so they're also familiar to the landscape, and so it kind of touches upon what Sy guys were saying and the Kanaka CWRM, that was awesome. But definitely something else to think about as well. I also have a few edits for you guys. So I'm a super strong advocate of stream restoration, especially for freshwater fish and I mahalo all of that to Uncle Skippy, sitting right over here. I had the honor and privilege of working with him, starting when I was working for The Nature Conservancy and still here and there, getting to do surveys with him, but so everything I'm about to say pertains to the sections of maintenance and fish and wildlife habitat within the reports. So for the Honokōhau report, under the point-quadrat survey area, you guys indicate nākea, ʻalamoʻo, and nōpili, but you guys fail to mention that ʻōpae kuahiwi was also sighted, but ʻōpae kuahiwi was however noted in the table down below that you guys put in the Table 4-2. But in the table, you guys left out ʻoʻopu nōpili, so just like double-checking what you guys wrote down and confirming, everything, all the hard work and all the money and all the time and energy that was invested in all of these surveys, they're being presented to the public. And then for the Honolua report, there's absolutely no recent data from surveys done from the past year, or even mention that anything was done. You guys only talk about the surveys that were done in 1961, which definitely doesn't reflect the fish population today. And the same goes for Honokōwai, granted, because there's not enough water in the stream system, but just something to put up there. Also for Honolua… I guess I should just talk to you guys more often, but we partnered with Puʻu Kukui Watershed. I like this kumu kākoʻo for this papa hoʻokele waʻa. So we go up into Honolua Stream to incorporate that in our program, and so if training the community and other people, and giving them… empowering them to be able to collect this data, and to hand it over to you guys, because you guys definitely don't have the capacity to monitor all year round. And so, definitely finding not just people from the community, but even the educational programs helps get the teachers involved to teach it to the kids, 'cause we do go up there to Honolua to do surveys and everything, and so we also have knowledge of what types of fish are in the stream. But definitely to try to be more creative in accounting for all of our native stream organisms, because it is definitely protect as one of the instream uses. That's all. Definitely want to mahalo you guys for your time. Mahalo.

14) Karyn Kanekoa

Aloha mai kākou. [Introduction spoken in Hawaiian.] I currently live in Honokōhau with my ʻohana. There's six children in my house, two adults, one elderly woman, actually three adults, four adults and one elderly woman… there's a lot of us. But anyway, I've only in Honokōhau for five years. My husband and his ʻohana have been there for generations. His great-grandfather was a kalo farmer in Honokōhau. I wanted to point out that there's roughly around 23 keiki in Honokōhau and 18 of keiki are Kula Kaiapuni keiki. They're keiki ʻōlelo Hawaiʻi. they're keiki aloha ʻāina, they're keiki who are learning their culture, their history, their heritage, and the water is very important to them. They understand a lot of these issues that are going on and we often forget about our keiki and how much they know and how much worth they have.

But anyway, I feel like this sad, the theft of taking the water is an ongoing sick disease that we don't keep going, we don't want to keep passing on to our children. Their kūpuna we forced out back in 1914 because of this diversion. Their loʻi went warm, their kalo rotted, eventually they moved out because they couldn't farm kalo anymore due to greed, unfortunately. Many of these kuleana families never got to experience that way of life and they desperately want it back, but unfortunately I feel like people's lawns and coffee farms and palm trees are more important. And I understand that water is a public trust and it belongs to the people, but I feel like our keiki in these kuleana families should have priority over anyone else. Especially when most of these are only hear part-time. Our keiki deserve better. The kahawai, the river, deserves a hell of a lot better. It's been suffering for hundreds of years, and I feel like it's time to do the right thing. Put as much water as you can back. Put it all. I'm down for a hundred percent restoration, stream restoration. And also, on another note, there are currently 13 county water meters throughout Honokōhau and we got rumor that the County possibly might no longer service us anymore. We currently don't have water. We haven't had County water since Labor Day. And that's clean water in our homes. So, I think that you should take into consideration all the families that live there and put that much more water back into the stream. I don't know what that would be, a thousand gallons per day per family, there's probably around 30 families living in there. But I think that you definitely need to consider that we're forced to use more water from the stream being that we don't have any other water to use. That's all I have tonight. Thank you. Mahalo and mahalo for your hard work. Thank you.

15) Kekai Keahi

I guess I no need tale too much about actual returning of water, but I think more so, again the enforcement and who went enforce that these laws as being put back going remain in the stream. I know person that works for West Maui Land Company. He's been telling me that Dave Minami, and Peter, and all of them, been telling them to put water back in the stream at night and in early morning reopen the water. Charlie caught the guy at the siphon, where supposed to have 700,000 at the siphon, he caught the guy turning the water back on at the siphon, saw the meter, and it was at 300,000 gallons. They've been taking this water, so no more enforcement. In my opinion, I don't think a private company should be in charge of our assets. I get one problem with Maui Land & Pine, even Kaʻanapali Land, handling our assets. Already, Aqua Engineers, they supposed to be managing, but they saying, oh no, Maui Land & Pine never pay us, so until we get the money we ain't going manage the system. That is screwed up, 'cause get people in the valley that stay hurtin'. Talking about hurt also, we heard the guy from Plantation Estates saying that, you know, they need this water for their lawns and the greenways, and everybody was giggling in the back as if that's something that's important. These guys no understand. They thinking, even with Kaʻanapali Land, when the guy came up here, they looking at all this water going be taken away, and then they starting to feel the pressure. They starting to feel maybe what we've been feeling forever. Yeah? It happened when we testified with Kauaʻula, where I got one letter from one of the persons at Launiupoko saying that Peter Martin telling everybody that, of, the Hawaiians going take all your water, you not going get nothing, turning us into the bad guy. And so we went to the meeting, there's people from Launiupoko, saying eh, you guys gotta able for share, 'cause we worked so hard, we've been doing this, been doing that. And then my question to them was, OK, so when we ask you for share with us, where was you? You never did share with us. One hundred years that water been gone. We was lucky, from our family, we grew up inside Kahoma and Kanahā, we got to raise taro when we was small kids.

And so we got to see what was like and how it was before. And what was good was when we stopped doing that, the yearning for go back neve did go away. Was painful that we couldn't go back and farm our lands again. And so, we started going in different places. We go help Wili out, we go Charlie's place. Everywhere we can go, we went try open up taro again, like we did when we was young, but then we run into these companies, who really no give a shit about us, basically. And so I no really give a shit about what they think if they going lose water too. I think maybe good that they start to feel what we feel. But then their sense, their feeling is something that is monetary. They one business, they there for make money. Us guys just trying for live. That's one big difference. By the way, when I was looking at the Hawaiian Homes map, Ka'anapali Land, their coffee, part of 'em stay on top Hawaiian Homes, yeah? What the hell they doing? You gotta get the thing off. Charge 'em or something. I no believe in putting back the water if we no more enforcement. We gotta have enforcement also. Like I said, West Maui Land been doing some underhanded stuff. Charlie caught the guy. I wish he had a picture of the guy. He caught the guy right there turning on the valve with the meter open and saw how much gallons was coming out of the siphon. Maybe when he come up he can talk about that. Also, I think we should condemn all the intakes. Remove 'em away from, out of the private sector. Put 'em into, maybe, although, I don't necessarily agree with government, but probably little bit better than letting these guys grab hold of 'em. Also, that R1 water that Hawaiian Homes was talking about, as far as Lahaina goes and the use of that R1 water, I think that's one win-win situation as far as using that water for farm on Hawaiian Homes ag lands. That's a win-win situation 'cause that's water that we no don't gotta take out of any stream or any well. Maybe we can some water for dilute that water, but it's almost four million gallons a day that we could use for farming, which is awesome. I don't think Ka'anapali Land and Maui Land & Pine are really looking at R1 'cause they may be ag companies now, so-called, but I pretty sure they like change the zoning and turn 'em rural so they can make the big money. And they just holding on until then. I think they started squirming when we started talking about R1 water usage, because the State no allow R1 as potable water for drinking. That's just me talking a whole lot of nonsense, but enforcement is super important and I think if it comes down to it, we should enforce ourselves. We should be able for go up there and if Taro gate is plugged or closed, we should be opening 'em up. If these guys up at Kaua'ula taking this water, we should open 'em up, without any implications as being arrested or whatever. But, that's all.

16) Archie Kalepa

Aloha everyone. CWRM, you know, I want to thank you guys. And a lot of you guys may not be aware, but we've been very fortunate. When I hear Wili talk about the taro going rotten, we just started growing taro for about two years now and I've learned a lot and I know how hard that is to do. And when you're faced with those kinds of challenges, that can be very discouraging and it's not right. I think one of the things, it's super important, is the data that you guys are providing. But what are we going to do with that data, number one. And number two is what can we do to improve on what's currently there. A hundred percent agree that in order for us, for long-term management, for the island of Maui, it's really important for the water to go back into the stream first. We've been taking, taking, taking. When Pioneer Mill, Maui Land & Pine was here, a lot of the resources were diverted. Then came big subdivisions. We all need a place to live, but what has happened is we've taken so much from the main resource that that main resource is damaged. And it is not until you work every day and watch a river… and we've fortunate enough to watch Kahoma River, Kahoma Stream, be dry for a hundred years, and

watch the transformation firsthand, every single day. And just the other day when I went up there, I said, eh, you know what, the stream is really healthy. I think it's the widest I've ever seen the stream. You know, the water level, how wide the stream is. And just watching every day, you learn. And I really feel for the people in Honokōwai, because you guys have been holding, holding up the flag for a long, long time, and I really admire the fact that you guys continue through all the challenges. But it's so important. That's an important resource that we need to maintain and manage to make sure, because long-term by taking care of Honokōhau, it's going to be able to take care of the community. Not only the community in Honokōhau, but the communities that exist today. But if we don't continue to take care of that, everybody else, Ka'anapali, everybody else, there's going to come a day that you're not going to have the resources. So you gotta take care of that first. And I think, you know everybody's trying to figure out how to eat the pie. Everybody wants a slice of the pie. How we goin' eat the pie. But where the pie coming from. You gotta take care those people first. And you guys gotta figure out what that is and how to do that. You know, I don't have all the answers, and maybe some people are more one-sided than others, but from what I saw from what you guys showed on the intakes and the dikes and how damaged they are, that's part of the problem. That's part of a big problem that needs to be fixed and everybody that's big stakeholders here, you guys need to get involved. Because, before Pioneer Mill and Maui Land & Pine was doing it, but you need to do it with one thing in mind. Who comes first? You gotta take care of those people first, which is the kuleanas, the taro growers because they've been… that's why they're off their land. Because they got all pushed out, because they didn't have water. They cannot farm anymore. We have to take care of them first. We're seeing change. Change is happening in front of our eyes, whether it be environmental change, global warming, it's truly happening. But, you know what, a lot of us don't want to admit it, because life is too easy for us. The ones that watch it every singly day, they see it happening firsthand. Those are the guys that are going to have the answers. And you know what, we need to learn from them, we need to tap into them, and we need to protect them, and support them, so that everyone else in here can live a good life in your home, wherever that is. Hawaiian Homes, Ka'anapali Estates, Launiupoko, whatever it is, but if you guys don't take care of the resource, that resource is not going to be able to take care of you. And that's important and I seen it firsthand. Thank you.

17) Kanani Puou

I've been sitting over there, thinking I don't know if I should do this. We had a meeting Wednesday with Lanakila, and what he had and what I wanted to throw this at you guys is that, like he said, I not going quote him directly but, can we promise our kids clean air within 20 years? Can we promise our kids clean water in 20 years? Can we promise any of these things to our kids? You know, our generation as of right now, we kind of… we in limbo. Look at what we fighting for right now. I mean as of right now. But, our kids is our future and if we cannot promise them these kind things, without fixing what we need to do now, then what is the purpose is basically my question. And why are we letting foreign entities pretty much tell us what we should do. Shouldn't we be the people to manage and take care of what we need to do with our sources? That's what I really wanted to share, was that can we promise that to our kids in 20 years? Can we promise that clean water, fresh air? No? I going tell you 'no' right now, we cannot. But if we can do something about this right now and make sure that our water is here and for them, until past 20 years, then I think we had done our purpose and our job. That's all I really wanted for throw it there. That's been sticking on my mind sitting behind there. Mahalo.

Testimony submitted directly to the Commission

18) Jonathan Kindred (received September 8, 2019)

Plantation Estates Lot Owners Association
10 Hoohui Road, Suite 302
Lahaina, Hawaii 96761
(808) 669-9030

September 9, 2019

Ms. Suzanne Case, Chairperson
Mr. M. Kaleo Manuel, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

Dear Ms. Case and Mr. Manuel,

My name is Jonathan Kindred, and this testimony is offered as President of the Plantation Estates Lot Owners Association (PELOA). The landscape irrigation needs for our homes and common areas have been provided by the Maui Land and Pineapple Company, via the Kapalua Water Company through the Honokohau Ditch, since our community was developed in 1990. The water in the Honokohau Ditch used in our area comes from diversions on Honokohau Stream and other sources. We are part of this community and depend on these water systems, and we are deeply interested in these proceedings.

We have been aware of the efforts of the Commission on Water Resource Management (CWRM) to set Interim Instream Flow Standards (IIFSs) for the past few years in West Maui. In that regard we have appreciated the work of and communications by Kaleo Manuel, Ayron Strauch and other staff as they have prepared to recommend new IIFS for Honokohau and Honolua Streams. Indeed, as interested community members we have been very engaged with learning more about our relationship to these important streams, and have been able to learn things in this process that we were unable to discover from our water purveyor. We have reviewed the Draft Instream Flow Standard Assessment Reports (IFSAR's) prepared, and have some specific comments to offer.

Our guiding perspectives

Before we offer these comments, however we want to share three perspectives that guide our remarks:

- First, we recognize that water in Hawai`i is held as a Public Trust, there are four protected "Public Trust" uses of water that courts have recognized, and our community's irrigation uses are not one of those protected uses. Protecting these Public Trust uses is a Hawai`i Constitutional obligation.

- Second, as we live below one of the wettest areas on earth, with abundant ground and surface water sources, in an era after expansive plantation agriculture has ended, we believe there is enough water to fully provide for Public Trust uses, existing uses, and future uses anticipated in state and county plans. This will be possible if the CWRM and other stakeholders move forward together in a thoughtful, respectful, and practical way.
- Third, while our community's irrigation use is not a Public Trust use of water, we believe that under the law our use is an "existing user of water", and our uses meet the legal standard of being both reasonable and beneficial.

Comments on the Draft IFSAR for Honokohau Stream

We have three primary comments on the draft Honokohau IFSAR at this time:

1. We would like the IFSAR to note that we are in the process as an association of both identifying additional efficiencies available to us, and as well as understanding alternative sources of water, should that be necessary. We hope to, working with the Commission, identify future water management schemes that places necessary water in streams, manages costs in a reasonable way, and also achieves CWRM policy objectives to match quality of water uses with their intended uses. In our specific case, we recognize that ground water is available to us, but also that it has been CWRMs goal to have groundwater uses for potable purposes where possible, rather than irrigation uses such as we have.
2. We observe that some of the language in the Draft IFSAR characterizes water demand by the economic status of current or future residents (e.g. p. 103 describes demands from "affordable" and "luxury" uses). We are unaware of any state or county policies that suggest water allocation is or should be based on income levels, and we believe that this detracts from the overall value of report.
3. We believe that the IFSAR and any related policy recommendations must recognize the significant uncertainties in data on future flows and future water demands. We believe the most thoughtful, respectful, and practical approach is one that is incremental, beginning with an immediate return of some waters to Honokohau stream while providing some levels of assurance to existing legal off-stream users, as reliable data is monitored regularly and necessary infrastructure improvements are made.

Again we appreciate the work of the CWRM staff in this endeavor and we are appreciative of the State taking these important steps to fulfill its duty. A continued collaborative sprit and engagement with stakeholders will allow these critical actions to be taken while still providing water for existing users, such as our users, who have relied on this water for decades.

Sincerely,

Jonathan Kindred

19) Ekolu Lindsey (received September 8, 2019)

Edwin Lindsey
[redacted]
Lahaina, HI 96761
October 7, 2019

Commission on Water Resource Management
State Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

Dear Commission on Water Resource Management
State Department of Land and Natural Resources:

I am writing to you regarding establishing IFS in Honokowai Valley. I write to you as an individual, as I wear many hats. I strongly support returning water to Honokowai Valley so we can practice our traditional and customary rights, and revitalize native flora and fauna. I also understand that in times of drought, water allocation becomes very challenging. Kaanapali Coffee Farms is the last large farming operations on West Maui. It is imperative, that we support their operations by allowing enough water to operate efficiently. Our Kanaka Maoli fight for water is important, but so is maintaining the largest farming operation on West Maui.

I would advocate for a balance of both. However, during times of drought, let the scales tip slightly to Kaanapali Coffee Farm.

Respectfully,

Edwin Lindsey

20) Jonathan Kindred (received September 9, 2019)

TY MANAGEMENT CORPORATION

October 9, 2019

Ms. Suzanne Case, Chairperson
Mr. M. Kaleo Manuel, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809
VIA EMAIL to: dlnr.cwrm@hawaii.gov

RE: Written testimony on the "Instream Flow Standard Assessment Report; Island of Maui Hydrologic Unit 6013; Honokohau June 2019; DRAFT PR-2019-03"

Dear Ms. Case and Mr. Manuel,

This is written testimony submitted on the above referenced matter. TY Management Corporation is the owner of the Bay and Plantation Golf Courses at the Kapalua Resort, as well as associated assets. TY acquired the Plantation Course in 2009 and the Bay Course in 2010. We retained Troon Golf, the world's largest professional golf course management company, in 2011 to manage these courses. These two courses are simultaneously essential landscape features and economic drivers for the Kapalua Resort, which itself is the employment center for this part of Maui.

The Maui Land and Pineapple Company (MLP), via the Kapalua Water Company (KWC), provide the irrigation needs for these properties. The water is delivered to us through systems supplied by the Honokohau Ditch, which utilizes water from diversions on Honokohau Stream and other sources. While the amendment to Interim Instream Flow Standards (IIFSs) for Honokohau and other West Maui streams will immediately and directly affect the major diverter on the stream (MLP / KWC), as major water users and customers we have a significant and immediate interest in these proceedings.

We have been aware of the efforts of the Commission on Water Resource Management (CWRM) to set Interim Instream Flow Standards (IIFSs) for the past few years in West Maui. In that regard we have appreciated the work of and communications by Kaleo Manuel, Ayron Strauch and other staff as they have prepared to recommend a new IIFS for Honokohau Stream. We have reviewed the Instream Flow Standard Assessment Report (IFSAR) referenced above, and have some specific comments to offer.

Our guiding perspectives

Before we offer these comments, however we want to share three perspectives that guide our remarks:

- First, we recognize that water in Hawai`i is held as a Public Trust, there are four protected "Public Trust" uses of water that courts have recognized, and our golf course irrigation is a non-Public Trust use. Protecting Public Trust uses is a Hawai`i Constitutional obligation.
- Second, as we live below one of the wettest areas on earth, with abundant ground and surface water sources, in an era after expansive plantation agriculture has ended, we believe there is enough water to fully provide for Public Trust uses, existing uses, and future uses anticipated in state and county plans. This will be possible if the CWRM and other stakeholders move forward together in a thoughtful, respectful, and practical way.
- Third, we believe that while our irrigation use is not a Public Trust use of water, we believe that under the law our use is an "existing use of water", and our uses meet the legal standard of being both reasonable and beneficial. Indeed, as at least some of our uses predate the closure of plantation operations, we may be one of the oldest still-extant existing offstream water uses.

Comments on the Draft IFSAR for Honokohau Stream

We have four major comments on the draft Honokohau IFSAR at this time, focused on the section on off stream uses beginning on page 90. We agree that an examination of non-instream uses is a critical component of the IFSAR and the IIFS amendment process. However, it is critical that the information therein be factually based and legally accurate. In that regard:

1. The introduction of the section (p. 90) implies that offstream use of water for agriculture is a use of water under the Code that is a higher priority than other offstream uses. It so implies by discussing agricultural lands, related water demands, and assertions of agricultural advocates. Other than taro cultivation and the public trust uses of the Department of Hawaiian Homelands, generalized agricultural uses of water are not Public Trust uses of water. They may be existing, reasonable, and beneficial, depending on the facts at hand. However under the Code and case law, they are not Public Trust uses, nor do they have a prioritization among non-Public Trust uses of water.
2. We believe there are significant problems with the data regarding offstream uses by the golf courses and others in Table 14-1 (page 92). For instance, it lists uses attributed to a "Troon Golf" water gauge beginning in 2009, even though their management began in April 2011. We have endeavored to work with staff to provide information to correct these matters to the best of our knowledge. However, it is no substitute for receiving transparent, accurate information from MLP / KWC. We believe the IFSAR should not be finalized

before that information is provided and we and others have a chance to review the data.

3. We believe the discussion of Important Agricultural Lands (IAL) (page 99) is both distracting and confusing. IAL are lands that have been legally designated as such by the LUC under HRS Chapter 205 Part III; we believe there are no lands in this area with that designation.
4. We believe that the report generally understates the poor quality of the ditch system and its appurtenances. We believe it is critical for CWRM and other stakeolders to be able to differentiate between diversion levels and use levels.

Again, we appreciate the work of the CWRM staff in this endeavor and we are appreciative of the State taking these important steps to fulfill its duty. However, without better data available on other offstream uses, the condition of the ditch, and a clearer legal grounding on the relationship among offstream uses, drawing conclusions on this draft of the IFSAR will be hampered. We would ask that after better data are provided by MLP / KWC and others, additional review and comment periods be allowed prior to report finalization.

Sincerely,

Tadashi Yanai
President

21) James 'Kimo' Falconer (received September 9, 2019)

Testimony of James Kimo Falconer

DATE: October 9, 2019

TO: VIA EMAIL: (dlnr.cwrm@hawaii.gov)
Commission on Water Resource Management

FROM: James Kimo Falconer

RE: CRWM draft Instream Flow Standard Assessment Report for Honokowai, Honolua and Honokohau streams.

Dear Commissioners and Staff for the Commission on Water Resource Management:

I write as the President of MauiGrown Coffee, Inc., a Hawai'i company that I own and that has been in the coffee business since May 1, 2003.

This submission is informed by, first, my roles as an employee of Pioneer Mill Co., Ltd. from 1983 and then as President of MauiGrown Coffee, Inc. since 2003. During this time, I have been intimately and consistently involved in the planning, operation, farming, distribution, and marketing of coffee which presently has resulted in more than 400 acres of coffee trees located at the Kaanapali Coffee Farms. At present, my coffee operations are not limited by the availability of land, but the assurance of adequate, available, priced-right, and un-contaminated irrigation water.

Second, I am very familiar with the conditions in the 1980s and the 1990s of the areas commonly referred to as the Honokowai Stream, the Honokowai Gulch, the Amalu Stream, the Kapaloa Stream, the Honokowai Transmission Tunnel and related reservoirs and irrigation systems, and with the area that Kaanapali Land Management Corp. permitted to be used by the Maui Cultural Lands (MCL) group in the early 2000s.

After pointing out a few additional background matters and considering that there are so many relevant and important points to submit for your consideration, I find it easier to bullet them out rather than comment more fully in text. Therefore, I wish to present the following for your study:

BACKGROUND

I have been an active farmer on land irrigated by waters from the Honokowai Transmission Tunnel and the Honokohau Tunnel and Ditch system for 36 years and counting.

I was the Agricultural Research Director for Pioneer Mill Co. Ltd. (PMCo) from 1983 to 1999, the Vice President of Kaanapali Estate Coffee from 1992 to 2001, and from 2003 as the President of MauiGrown Coffee, Inc. I am one of the more knowledgeable persons on all facets of coffee on Maui and on the sources of water available to irrigate the coffee plants grown on Kaanapali Coffee Farms.

Today, at approximately 400 acres, Kaanapali Coffee Farms is one of the largest coffee farms in the United States and certainly on Maui. There is more demand for the coffee from Kaanapali Coffee Farms than there is supply. There is more available land for coffee than is

presently in coffee. But the limiting factor is a reliable supply of suitable irrigation water at a cost similar to that of mountain water.

Our coffee is sold as specialty coffee, meaning that it obtains premium prices from the marketplace. There are more than twenty employees working the coffee farm on a regular basis with additional seasonal workers hired during the harvesting season, which has just started.

While working for PMCo, my department oversaw all of the measuring and monitoring of every water source on the plantation. This department had been keeping these records for at least 80 years prior to my arrival. The data we kept track of included mountain water ditch flows (hourly), pumping of ground water wells, and related information such as salinity (daily), nutrient content of effluent water that the County proposed to dilute and distribute to Maui Land & Pine and PMCo for irrigation of pineapple and sugar cane, etc.

During the time of PMCo's sugar operation, it was not uncommon for PMCo to receive 35 MGD from Maui Land & Pineapple through the Honokohau Tunnel and Ditch System. For many years, Kaanapali Land Management Corp. (KLC) has received zero or close to zero water from the Honokohau Tunnel and Ditch System. The sole source of surface water for KLC's operation, including the coffee farm, has been the Honokowai Transmission Tunnel.

This testimony will therefore focus on our only water source for irrigation, the Honokowai Transmission Tunnel running from the Kapaloa Stream branch below Development Tunnel 20 A to the Horner and Hanakaʻoʻo Reservoirs.

In this context of the following points, there are further two background matters to submit in this testimony.

First, from 1983, I never observed kalo being farmed in any area adjacent to the Honokowai Stream. In fact, cane trucks used a road through the lower part of the stream, about half way between the current MCL project area and the sediment basin. The road was called "mango gulch" and was used regularly as the stream bed was without water in all normal times in those days.

Second, and relatedly, I do not remember continuous flow in the Honokowai Stream at any time below the convergence of Kapaloa Stream and Amalu Stream. I am sure that those two streams flowed more frequently than now because of the constant attention to upkeep and daily management by the plantation and because rainfall was more abundant than at present. Even then, the stream never flowed in normal times to the area where the MCL project site is located.

Furthermore, in talking with old-timers familiar with the Honokowai Stream, they never heard of anyone taking boats into the stream as asserted by one testifier at your 8/29/2019 meeting. Likewise, none of those old-timers (nor even my mom or grandparents) told me that they heard of anyone paddling around in that stream. People would swim at the mouth of the Honokowai Stream where brackish water accumulated and it was safer for babies and children to swim in those spots.

Relating to the Honolua/Honokohau ditch/intake

- In 2016 the Wahikuli/Crater reservoir complex was decommissioned by the DLNR resulting in no storage for freshet water when high flows occur. Because of these closures and other restrictions on storage reservoirs, water from the Honokohau Ditch may enter Honokowai Gulch via the overflow spillway during storm flows or when the County water treatment plant takes less water than usual. No coffee or other agricultural crops can be prudently grown on the basis that water that may or may not come your way. This should be taken into account in your IFS ruling for Honokowai Stream if the ruling changes the amount of water that continues to be diverted at the Honokohau transmission tunnel intake.

- There is no system in place to deliver water to DHHL lands from Honokowai Stream or the Honokowai Transmission Tunnel currently. The designated system to irrigate this DHHL land comes from the Honokohau system. This needs to be taken into account in your ruling on the IFS for Honokohau and Honokowai.

Relating to the Honokowai development tunnel 20A (aka: Well 20A)

- The diversion and intake from Amalu stream is physically plugged and unable to divert water into the tunnel although the tunnel and dam diversion structure as the dam diversion structure and tunnel are covered by rocks and the dam is no longer able to divert streamflow which goes over or around the structure when the stream is flowing.

- The Kapaloa Stream is flowing only from water entering the stream bed via development tunnel well 20A at approximately 1.5 MGD. There is zero natural surface flow in the stream above well 20A during normal dry periods.

- Below the Honokowai Stream diversion, there is a losing reach where no natural aquifer water re-enters the stream and water in the stream disappears into the ground and is lost to the dry stream bed. Putting water into that losing reach means that no one gets the beneficial use of that water, including those who may wish to take water from the stream below the losing reach. The water is gone at that losing reach well before the MCL project and does not reappear in the stream bed.

Relating to the Sediment Basin near the mouth of Honokowai Stream

- The sediment basin was built in the early nineties with federal funds in a project known as the Honolua Watershed Project. Multiple streams north of Kaanapali had sediment basins built to reduce runoff into the ocean to protect shoreline areas and off-shore reefs. Anyone who knows this area from before 1980 knows how muddy the whole shoreline was year-round. The project has been hugely successful and this shoreline is now mostly pristine with sound reef recovery in process.

- The Honokowai Stream sediment basin does not allow permanent flow to the ocean. The basin must fill to a minimum level for water to reach weep holes after passing through the basin designed to prevent the sediment from passing through to the concrete channel that runs to the mouth of the stream bed. In the cover page of the IFS report, there is a Google Earth image that asserts that it shows the Honokowai Stream "flowing into the Pacific Ocean." It is difficult to confirm that description from the actual image, but assuming

that the depiction matches the description, it is likely that (i) the flow consisted of drainage that entered the concrete channel after the sediment basin or (ii) was the product of storms in the mountains. To the extent that the IFS changes the status quo, there will be a need to report to the NRCS and local Soil and Water Conservation Districts the impacts the CWRM action will have on the sediment basin as it plays an important role in protecting the near shore and coral reefs. In my view, any change from the status quo will and should trigger environmental assessment studies.

Relating to the use of R-1 effluent water

- From circa 1980 to circa 1988, PMCo leased land north of Honokowai stream from Maui Land & Pine Co., at the request of County and working with Maui Land & Pine Co., PMCo regularly used effluent from the Lahaina Wastewater Treatment Plant in a diluted form to irrigate sugar cane. It was this testifier's duty to monitor the nutrient and salinity values of the effluent used to irrigate certain sugar fields. Dilution factors were set at 5:1 or 5 MGD ditch water to 1 MGD effluent. The Chloride levels even with this dilution were highly elevated; the nutrient levels could not be turned off, therefore there was a significant problem in managing the growing of a crop with such effluent from an agronomic perspective. Moreover, there apparently has not been an assessment of consumer acceptance to crops such as coffee when grown with such effluent under the critical circumstance of full and complete disclosure of such use to the market. Furthermore, the absence of testing for contaminants such as drugs, pharmaceuticals, heavy metals, and other potentially health-affecting chemicals in the effluent and their potential percolation into ground water makes any substantial use of R-1 effluent problematic for the coffee that I market. Even more problematic, is the use of R-1 effluent to irrigate coffee with dwelling units in close proximity to the use of R-1 effluent.

- Dilution is a critical aspect of any R-1 usage, and the Honokowai system cannot meet this dilution requirement because there is simply inadequate water in the system to achieve proper and necessary dilution rates before further factors on the appropriateness of its use are reached. To get the required dilution, water will have to come from the Honokohau system.

- However, there is no reservoir south of Honokowai Stream to hold the diluted effluent (see the first bullet point regarding the Honokohau ditch). Once the capacity of the Honokohau Ditch is exceeded in a heavy rainfall event, basically the R-1 sewage effluent will end up in the ocean. If that is the case, a NPDES permit will likely be needed and the environmental harm is likely to be great.

- An environmental assessment or environmental impact statement may be required; however, it should be conducted even if the law does not require it. The degree of potential contamination to the aquifer and prime agricultural lands should demand that an EIS be prepared given the scope and permanency of any distribution of R-1 effluent to agricultural lands and to lands in close proximity to residences and downslope beach and ocean resources.

- Use of any R-1 sewage effluent regardless of treatment method will erase the opportunity for any "organically certified" farming and presents large challenges to the marketability of crops, including coffee, that aspire to premium positions in the marketplace.

Relating to PMCo pump use and current and future farming

- There is a 'Maui' type well in the Honokowai aquifer formerly used by PMCo that I have not discussed in the preceding parts of this submission and which the CWRM staff seems to imply is an alternative source of water for the coffee farm. It is, coincidentally, named the 'R' well. It was designed to be used when ditch flows were down. It was designed and built to pump up to 5 MGD of ground water. As the lift is 800 feet to the Honokohau ditch, the cost of power to pump water from this well is prohibitive without co-generative power formerly created by the sugar mill. Furthermore, this well is very close to the zone of mixing at the basal lens. Of the two tunnels created to find the impermeable dikes, the first skimming tunnel developed low saline water and a second one generated ground water with significantly higher salinity. The close proximity of these tunnels to each other and to the well means that the aquifer is near sea level, and that there is little agriculturally usable water of a consistent and continued use without the threat of increased salinity from these sources even if cost was not a prohibitive factor, which, of course, it is.

- Regarding farming, I read a reference that, at the 8/29/2019 public hearing, an apparent intended description of the coffee farm as being a "Gentleman's Farm" with the further implication that the coffee farm was a fake and a sham. This is incorrect. MauiGrown Coffee and Kaanapali Coffee Farms are commercial farming businesses, and to call them out as gentlemen farms or a sham for expensive housing is insulting. The Maui origin coffee produced here is known worldwide and very unique in the coffee industry. Having homes on the property is a business model that provides for a viable agricultural operation. Where else on the West Maui agricultural lands is there 400 acres in a commercial crop today? This demonstrates that the model pioneered defrays the costs of creating and furthering a coffee operation. It is a model that, with variants, is commonly used, especially in places like Napa Valley, to balance farming with market housing.

- This farm of 400 acres in coffee trees is the last operating farm of decent size on West Maui. If this closes because of the lack of stream water, it is my opinion based on almost forty years of close personal involvement in farming lands located in West Maui that no one will drill wells in this aquifer to water agriculture or invest large sums to retrofit wells that at the very most will develop or pump water too expensive to use to farm. This is a fact. The wells that exist would have to be retrofitted at a cost that can never be recovered by an agricultural business. That is why nobody is drilling new wells or retrofitting old wells for use on any of the other fallow lands on West Maui.

- A word on coffee farming. Take water away from the Honokowai Transmission Tunnel and growing coffee in the future will wither and ultimately die. Moreover, it will be the end of the coffee farming at Kaanapali that I and others have worked so hard to turn into the success that we enjoy today. In fact, land is not the limitation to the expansion of the coffee farm at Kaanapali. It is water. There is much more demand for MauiGrown coffee than there is supply. Yet, some people apparently want to reduce the amount of water available for coffee and other agricultural crops that are grown with water from Honokowai.

- A word on future farming efforts. Food security is being demanded by Maui's citizens. There is land for farming diversified crops and thereby increasing local, fresh food with gains in food security. It is a complex process to attain this desirable goal. Taking water

to restore flow to the Honokowai Stream - only to see it disappear and not re-emerge ever - does not advance future farming efforts or food security.

- A word on brush fires. These result largely from the passing of agriculture and the demise of the irrigation systems and related reservoirs that provided water to these areas and re-charged the aquifers underlying the fallow lands. Dry lands become tinder boxes. An unintended consequence of taking stream water and drying out the reservoirs is that brush on the former sugar lands have no feasible access that firefighting equipment can use. Therefore, helicopters are used to make water drops on the wildfires. But no reservoirs mean the helicopters have to fly to the ocean to get water. Many times, this is a futile effort and, even worse, the sea water has a high salt content that inhibits or prevents plant growth recovery and causes long-term damages to the soil. This is happening now in areas that have had water taken away south of Lahaina. In pristine watershed areas, this has damaged native forests.

Conclusion

- In conclusion, please maintain the status quo for the Honokowai Stream. We need the water that we are getting from the transmission tunnel that is taking water at the Kapaloa Stream Diversion.

Thank you for your attention to this matter.

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22) Bianca Isaki (received September 9, 2019)

October 9, 2019

Subject: Written testimony on the Instream Flow Standard Assessment Reports for the Hydrologic Units of Honokōwai (6010), Honolua (6013), and Honokōhau (6014), West Maui, dated June 2019.

Aloha e Commissioners,

We are attorneys working with several West Maui groups, the West Maui Preservation Association, a nonprofit organization, Ka Malu o Kahālāwai, an unincorporated association, and several Honokōhau valley community residents. Our comments focus on the Instream Flow Standard Assessment Reports (IFSARs) for Honokōhau and Honokōwai streams.

We applaud the Commission and its staff on the extensive work committed to West Maui's streams. Our comments are submitted to assist in determinations of interim instream flow standards (IIFSs) for the Commission's November 2019 meeting.

I. Background and approach

The Commission's protection of instream uses of water includes a mandate to "reestablish, where practical, beneficial instream uses of water[.]" HRS §174C-5; HAR §13-169-1; *also* HAR §13-169-22 (requiring establishment of a program to "to protect, enhance, and reestablish, where practical, beneficial instream uses of water"). To this end, the Commission establishes interim instream flow standards (IIFSs) as a temporary instream flow standard of immediate applicability. HAR §13-169-2. The Water Code expects the Commission's acts of "preserving, enhancing, or restoring instream values" to impact existing uses, but those impacts may be "avoid[ed] or minimize[d]" through a range of water management tools including "uses of water from alternative sources[.]" HRS § 174C-71(1)(E). "The clear implication of these provisions is that the Commission may reclaim instream values to the inevitable displacement of existing offstream uses." *In re Water Use Permit Applications,* 94 Hawai'i 97, 149-50, 9 P.3d 409, 461-62 (2000) (*Waiāhole)* citing Comm. Whole Rep. No. 18, in 1 Proceedings, at 1026 ("[T]he agency should have the flexibility to regulate existing as well as future water usage of Hawaii's water resources . . . .").

The "reestablish[ment]" of beneficial instream water uses include Native Hawaiian traditional and customary practices of growing kalo, ecosystem uses necessary to the thriving of 'o'opu, limu, and 'ōpae, and domestic uses associated with Hawaiian communities who are returning on live on kuleana parcels. The Water Code prohibits abridging or denying Native Hawaiian traditional and customary rights through the operation of this chapter. HRS §174C-101(c). Taken together, the mandate to reestablish beneficial instream uses and the prohibition against abridging or denying Native Hawaiian rights demonstrates an intent to establish IIFSs that provide for historical and future water uses that support these rights and practices.

The diminution of industrial agriculture in West Maui provides a "unique and valuable opportunity" akin to that identified by the *Waiāhole* court upon the close of sugar operations in Central O'ahu. *Id.,* 94 Hawai'i at 149, 9 P.3d at 461. The court admonished the Commission to take the opportunity and "restore previously diverted streams while rethinking the future of O`ahu's water uses." *Id.* By initiating water use planning through the implementation of IIFSs, the Commission prevents a situation in which "demand for new uses heightens the temptation simply to accept renewed diversions as a foregone conclusion." *Id.*

The constitution and Code, therefore, do not differentiate among "protecting," "enhancing," and "restoring" public instream values, or between preventing and undoing "harm" thereto. *In re Water Use Permit Applications*, 94 Hawai'i 97, 150, 9 P.3d 409, 462 (2000). The IIFSs should provide for historical appurtenant and traditional and customary instream uses of surface water and also future instream uses that protect traditional and customary practices. The comments provided below are premised on the foregoing approach to the purpose of IIFSs.

On the other hand, those seeking to sustain offstream uses of water have the burden of establishing that their water uses are actual, cannot be met through alternative sources, and will not affect public trust uses of water, now or in the foreseeable future.

II. Comments

A. Honokōwai stream

1. Honokōwai stream supported mauka to makai lo'i kalo historically.

As noted in the Honokōwai IFSAR, the oral testimony, terracing, and Land Commission Awards for parcels alongside the stream indicate a history of kalo growing that lasted well into the 1980s. Maui Cultural Lands and others are seeking to restore ecosystem and traditional and customary uses of Honokōwai surface waters. Offstream uses, diversions, drought, and development of groundwater resources may contribute to challenges facing restoration of mauka to makai flow.

The adopted IIFSs should restore Honokōwai as a perennial stream. Registered map no. 1196, dated 1883, shows Honokōwai stream flowing from mauka to makai. Map no. 2534, dated 1912, also shows Honokōwai flowing from mauka to makai. Map no. 2758, dated January 1925, shows Honokōwai stream exiting to the sea. In 1917-1918, a deteriorating iron flume built to divert Honokōwai stream was replaced with a tunnel that developed up to 50 mgd. At the time, the average use of Honokōwai waters was approximately 6.15 mgd. Later from 1950 and onwards, Pioneer Mill built a second tunnel mouth and the Amalu and Kapaloa diversions. By the 1990s, the mean daily flow in the Honokōwai ditch was 9 mgd. Today, the average production of the tunnels is 2.5 mgd, yet Honokōwai only flows mauka to makai 50 percent of the time.

2. Commercial gentlemen's estate farms are not protected uses of surface water.

On April 23, 2019, Ka Malu o Kahālāwai and the West Maui Preservation Association filed a water wasting complaint concerning surface waters that were collected at Honokōhau stream and dumped into fields near Wahikuli and Hahakea gulch. Since that time, we learned that a significant part of the wasted water came from Honokōwai stream.

The complaint alleged wasting practices by Kā'anapali Land Management Corporation (KLMC). KLMC operates a "private agricultural community" in which local farmers work the land of estates owned by private buyers.[1] These lands are used to grow coffee. The Honokōwai IFSAR notes KLMC expects to use 4.04 mgd of Honokōwai surface water for its coffee operations. *Id.* at 90. Coffee requires more water than other crops, including the notoriously thirsty avocado. *Id.* at 107. While the Commission does not typically pass on land uses, the Commission is required to consider solutions that may avoid or minimize impacts on existing uses, which solutions include

[1] *See* Kaanapali Land Mgmt. Co., "Kaanapali Coffee Farms" *available at:* http://www.kaanapalicoffeefarms.com/ (accessed Oct. 2, 2019).

"modifications of project operations" and other solutions. HRS §171-71(1)(E). To this end, the Commission may consider recommending substitution of other crops for coffee. Such solutions would be consistent with this Commission's mandate to prioritize public trust and instream uses. As noted by the report "[c]offee is now grown by KLM using surface water for irrigation, and the lack of streamflow continues to impede cultural uses of the valley." Honokōwai IFSAR at 1. The IIFSs should aim to remedy this situation.

3. *Recycled water is an option for offstream public trust uses of water.*

We note DHHL's nonpotable water demand for Honokōwai will be 2.081 mgd by 2031. Honokōwai IFSAR at 85. But the report also noted DHHL's estimate underestimates agricultural irrigation demand by 1,500 gallons per acre per day. This could mean 2.6 mgd is needed for the 777 acre Honokōwai tract, although we note some of the acreage is being used for coffee by KLMC and may offset the 4.04 mgd figure cited for KLMC coffee irrigation use. DHHL water needs may be met through R-1 recycled water available from the Lahaina Wastewater Treatment Facility (WWTF) or water from Honokohau ditch. *Id.* at 86. The Lahaina WWTF is already connected by a 20-inch line to the Maui Land & Pineapple reservoir at the 300 ft elevation and the Lower Field 14 Reservoir at the 750 ft elevation. *Id.* Also, as noted in the report, the Lahaina WWTF has a capacity of 9 mgd with average production of 4.2 mgd but not all of that volume is being treated to R1 standards because demand is only 40% of production. That demand is currently about 1.5 mgd used to water Kā'anapali resort golf course. Investigating the county's capacity to ramp up R-1 production and use would allow the Commission to avoid and minimize impacts to offstream existing and public trust uses of water while also restoring Honokōwai stream.

4. *Planned, non-DHHL developments should not be considered existing uses for which the Commission should avoid or minimize impacts*

The Honokōwai IFSAR presciently presents information about planned developments that could draw on water reserves. However, those non-DHHL planned developments should not be accommodated as existing uses for which the Commission should explore methods of avoiding or minimizing impacts. Specifically, Table 14-8 lists the Pulelehua development, which has not received Land Use Commission (LUC) approval for their request to amend their DBA. The County Council rejected the Peter Martin project, "Polanui Gardens," and it did not receive a DBA. Makila Rural-East, Makila Farms, and Polanui Gardens are all inconsistent with the West Maui Community Plan as urban sprawl and their predicted water needs should not be accommodated through IIFS at this time. Honokōwai IFSAR at 108.

5. *Water wasting complaint against MLP and Kaanapali Land Management Co.*

Honokōhau residents, Ka Malu o Kahālāwai, and the West Maui Preservation Association filed a water wasting complaint with the Commission against MLP and the Kaanapali Land Management Co. (KLMC) for wasting water that comes from the Honokōhau ditch in April 2019. Since the filing of the complaint, Commission staff indicated that the source of at least some of the wasted water is Honokōwai stream.

The Honokōwai IFSAR does not indicate that KLMC and/ or MLP have been discharging diverted water into fallow fields and allowing it to carry sediment into the ocean. The Commission is aware of this practice, having documented water wasting on at least dates in March 2017,

December 2018, and July 2019. This practice should weigh heavily against any provision for these entities' offstream uses of water from both Honokōwai and Honokōhau streams, discussed below.

B. Honokōhau stream

The IIFS will be key to restoring the Honokōhau community. Around the turn of the 20th century, Honokōhau sustained a schoolhouse, a store, and a post office, and a thriving community. Today, highly motivated, principled residents are successfully repopulating the valley with Hawaiian traditional and customary practitioners and others who are cultivating kalo from water appurtenant to their parcels. Honokōhau residents are working with West Maui communities to restore streams and traditional and customary practices that rely on streams through work exchanges, community organizing, and the water wasting complaint filed by residents of Honokōhau along with other West Maui residents. *See supra* Part II.A.5.

We took several approaches to instream values reported for Honokōhau stream: (1) approximating water resource needs to fulfill the historical promise of thousands of thriving loʻi along Honokōhau; and, (2) collating information from Honokōhau residents and farmers about existing and planned loʻi and other instream uses.

1. Kuleana identified in Honokōhau IFSAR

The Honokōhau IFSAR appropriately recognizes kuleana parcels associated with Honokōhau stream and the great likelihood of appurtenant rights claims therein. *Id.* (Fig. 12-3 and Table 12-1). The IFSAR's integration of Land Commission Award information is consistent with this Commission's approach to appurtenant rights.

In 1993, an appurtenant rights advisory group assembled by the Commission published a "manual" for appurtenant rights researchers.[2] Preparers specifically examined Honokōhau appurtenant rights as a case study, which included estimating the historical acreage of loʻi in the valley. Based on their analysis of maps dated circa 1900, prepared from surveys performed by Duncan and Shishido, show approximately 51.75 acres of loʻi. *See* Appurtenant Rights Manual at 6-11. The estimate did not include all historic loʻi and did not document changes in ownership up to 1993. Researchers noted approximately 21.67 acres of the kuleanas were claimed by MLP and its predecessors (MLP was formerly part of Alexander & Baldwin, Co.).[3] Although the 1993 study did not find active loʻi cultivation of the upper reaches of Honokōhau valley, it noted extensive archaeological evidence of loʻi terraces and "confirm[ed] that the morphology of the existing structures as well as their distribution had not been altered or modified, at the least, since the pre-

[2] *See* Draft Appurtenant Water Rights Survey Phase 1, prepared by Eugene P. Dashiell Planning Srvcs., George Cooper, Lehman Henry, Royce Jones, Malia Kaʻai, Marion Kelly, Jon Olsen, Barry Nakamura, Doris Rowland, and Aki Sinoto (Feb. 14, 1993) (Appurtenant Rights Manual).

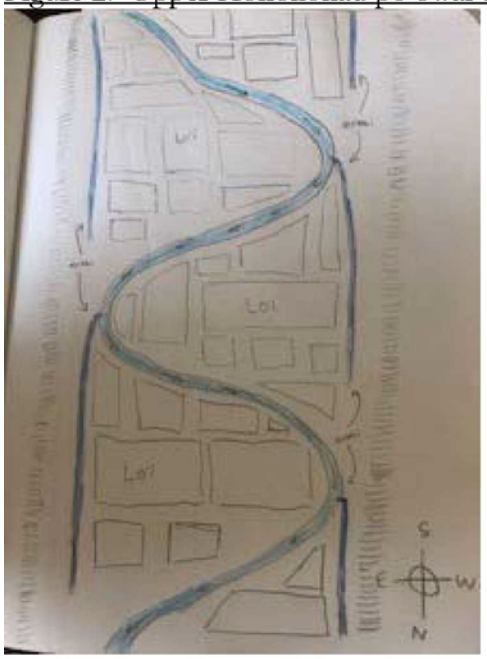
[3] Most, if not all, of the MLP-claimed kuleana have been largely abandoned and many Honokōhau community members have been using those lands to cultivate crops and loʻi. It was not until the *Mcbryde Sugar Co. v. Robinson,* 54 Haw. 174, 504 P.2d 1330 (1973) decision that the Hawaiʻi supreme court interrupted plantations' practice of diverting water based on appurtenant rights under a theory that waters appurtenant to one parcel could be transported to another watershed. This may offer some explanation as to why MLP/ A&B historically sought Honokōhau kuleana land during the Territorial period.

māhele period, and most likely since the prehistoric construction of many of these features." Appurtenant Rights Manual at 6-3.

Longtime Honokōhau residents Wili Wood, Pōmaikaʻi Wilson, and Kapule Eubank, amongst others have also observed extensive evidence of kalo cultivation in the upper portion of Honokōhau valley. Since about the year 2005, they have gone on hunting excursions into the upper reaches of Honokōhau stream. They have seen many poʻowai intakes on these trips. Specifically, Wood noted, "every time the stream turned from one valley wall to the other (in an S-turn manner) there would be a new intake at the upstream portion of the land." *See Fig. 2.* Some, but not all of these poʻowai were accounted for by field survey maps prepared by Commission staff.

Wood and others sought to raise this to the Commission's attention because increasing flows through the IIFS process "would open up possibilities for families that would like to return to the place where their ancestors grew their food."

Figure 2. Upper Honokōhau poʻowai diagram from Wili Wood.



We note that some of the kuleana listed in the IFSAR are identified by TMKs that now reference large areas of Maui Land and Pineapple, Co. (MLP) lands, such as Land Commission Award (LCAw) No. 7385, ʻāpana 2, LCAw No. 7389, ʻāpana 2, and LCAw No. 75B. Also, several parcels adjacent to the stream were omitted, including TMK No. (2) 4-1-002:003 (LCAw 7714:03), parcel 2004 (LCAw 7714-b, RP8130), parcel 2073 (LCAw 5776, RP 4592), parcel 2035, parcel 2065 (LCAw 5827B, RP 4615), parcel 2068, parcel 2069, parcel 2070, parcel 2042, parcel 2046, parcel 2049, parcel 2015 (LCAw 5610:03), parcel 2053, parcel 3001, parcel 3006 (LCAw75B, por RP416), parcel 3021, parcel 3026, parcel 3027, parcel 4006, parcel 4010, parcel 4014, parcel 4016 (LCAw 6145-N, RP 4619), parcels 4017 and 4018. If LCAw No. 7385, ʻāpana 2, LCAw No. 7389, ʻāpana 2, and LCAw No. 75B are omitted and the others included, approximately 128 acres of kuleana lands line Honokōhau stream. The Land Commission Award for the ahupuaʻa of Honokōhau, LCAw. No. 7714B to Kekuaiwa, conveyed an area of 6680 acres, more or less. The Duncan and Shishido maps from the 1900s, depicting Honokōhau kuleana parcels, indicate that each parcel was fairly filled with loʻi. These maps are appended to this letter for reference.

2. Reported water uses by a portion of Honokōhau residents

The following is based on a partial survey of Honokōhau residents and farmers who were asked what their current and planned water uses are and the approximate location of those uses. Planned or restored uses of surface water on kuleana lands are particularly appropriate information in light of the 2018 destruction caused by Hurricane Olivia, which rendered certain uses impracticable currently.

The TMKs are listed to approximate the location of the use reported. As abovenoted, some Honokōhau residents have been farming adjacent MLP parcel and therefore the acreage associated with the uses are also approximated.

Fig. 2. Additional information on existing/ planned instream uses.

TMK	**Use/ Planned**	**Acres**	**Use (mgd)**	**# hx loʻi**
41004008	43 loʻi and house	2	.5	24
41002039	multiple loʻi, house	.5	.125	9
41003027	multiple loʻi kalo	8	0.4	126
41002074 41002060 41002072	hale, loʻi, burials	4.22	1.05	55
41002068	loʻi, crops, livestock, house	1.17	0.3	4
41002033 41002064 41002066 41002035	hale, loʻi, orchards	3.84	0.9	48
--	loʻi, house	4.5	.9	--
41002013	loʻi, house	1.261	.25	--
41002069	house	.81	0.0006	18
Total		26.3	4.426	284

These figures do not fully account for the uses that are made of the many parcels in the valley as we were not able to contact many of the Honokōhau residents and farmers.

The uses described include planned uses, including rebuilding loʻi and homes on lands that were destroyed by Hurricane Olivia in 2018. For instance, Wili Wood's parcel does not currently host the dozens of loʻi that existed prior to Hurricane Olivia. *See infra* Fig. 2.

Fig. 3. Pre-Olivia loʻi

Screenshot of TMK (2) 4-1-002:039 and adjacent parcels prior to Hurricane Olivia provided by Wili Wood.

3. Domestic water needs are instream uses

Domestic water needs should not be a bar to the expansion of the Honokōhau community. The IIFS should reserve water in the stream to accommodate domestic needs for a restored valley population. In 2014, the Honokōhau system had 13 connections providing an average daily flow of 2,378 gallons (0.002 mgd) as a consecutive system to the Kapalua Water Company system. However, longtime Honokōhau families are seeking to return to the valley and renew loʻi kalo cultivation and other traditional and customary practices. Many thousands used to live in the valley. In the late 1980s and 1990s, many left consequent to increasingly restricted employment opportunities with the closing of the plantation and also due to the methamphetamine epidemic.

In the past year, the County of Maui Department of Water Supply was unable to continue to supply Honokōhau residents with potable water for domestic uses. Regular water service to Honokōhau customers was shut down and the community was required to truck potable water from a water tanker parked at the entrance to the valley. The community has met with county officials and are advocating for an independent potable water system utilizing treated Honokōhau surface water. The balance of domestic water uses and, additionally, water sufficient to support an average historical population in the valley should be included in IIFS calculations.

4. Infrastructural improvements and SDWP application may be impracticable at this time.

Honokōhau communities and Commission staff both recognize that infrastructure needed to cultivate crops and for domestic use along Honokōhau stream, including dams, poʻowai, and ʻauwai, are in need of maintenance and repair in order to make them fully operational. This practical difficulty faced the Commission in preparing its 1993 survey and continues today, particularly after Hurricane Olivia damaged these structures in 2018.

Conducting many of the infrastructural improvements, particularly on ʻauwai, would require resources and administrative permitting actions that are not within reach of many individual residents. In 1993, CWRM's Appurtenant Rights Task Force recognized "[r]estoration of *ʻauwai* can require major efforts and may be beyond the resources of an owner of a small parcel. Usually *ʻauwai*

served many parcels and were maintained by many people." Appurtenant Rights Manual, at 7-1. Prior to western systems of ownership, "work crews were organized and the water transmission systems were maintained. Today, different methods may be called for." *Id.* at 7-3. Pre-*McBryde* cases recognize that water management principles apply to ʻauwai used to distribute water to kuleana parcels. *Id.* at 7-3, 7-4 citing *Davis v. Afong*, 5 Haw. 216, 223-24 (1884); *Carter v. Territory of Hawai'i*, 24 Haw. 47 (1917) (ʻauwai may be considered natural streams). Based on this legal equation between streams and ʻauwai, the Task Force recommended State regulation and management of ʻauwai; "[t]his would provide the opportunity to manage the maintenance of these systems through government regulatory processes." Appurtenant Rights Manual, at 7-4.

> Because the State has functionally replaced the konohiki as water manager via codification of land and water law, and in the Water Code, the State may have a responsibility to include *ʻauwai* in stream management policies. In this way, the State could aid water users to manage their water and related land resources (*ʻauwai* maintenance and rights of way for example).

Id. at 7-8. These recommendations remain applicable to the situation of most Honokōhau residents today. Additionally, and not discussed extensively by the 1993 Task Force, repair of dams and ʻauwai may require stream diversion works permits from the Commission, U.S. Army Corps 404 permits, conservation district use permits, and the associated time and financial cost of procuring necessary information and submitting them.

C. Honolua stream

Restoring the entirety of Honolua stream to an unmodified, undiverted state would help protect important cultural resources, marine waters, and prevent further degradation of water quality.

Archaeological evidence indicates Honolua stream supported over 140 loʻi at one time. As recognized by the IFSAR, terracing, oral testimony about loʻi kalo cultivated above and below the current stream, and the series of kuleana parcels along the stream demonstrates the rich Hawaiian history of Honolua stream. Honolua IFSAR at 69.

The Honolua IFSAR notes MLP's diversion works have been inoperative since 2003. The diversion consists in a large concrete and steel grate over which the stream flows and gets deposited into a concrete retaining pool. A four inch PVC pipe brings the water over the ditch and into the streambed a few hundred feet below the diversion. This interruption in flow compromises the availability of habitat for native species, including ʻoʻopu. Restoring flow to the stream should mean restoring it at all points and MLP's pointless diversion structure should be removed at MLP's cost.

Restoring flow to Honolua stream may also ameliorate the enterococci pollution that recurs in nearshore waters. Freshwater flows flush the stream and provide important resources for limu and other marine life. Līpoa Point, which encompasses cliffs that stretch into Honolua Bay, is named for the brown seaweed that once infiltrated the shoreline. Marine waters in Honolua Bay and to the west of Līpoa Point are within the Honolua-Mokulēʻia Bay Marine Life Conservation District (MLCD) established by the DLNR in 1978.

As recently as July 2017, Honolua Bay was found to be extremely polluted with enterococci bacteria and the state warned members of the public to stay out of the water. The IFSAR notes no agriculture in the area and that surface water is being used for landscape irrigation, including for luxury homes in Kapalua. Honolua IFSAR at 83. Landscaping in the area may be degrading instream values and marine water quality. A Department of Land and Natural Resources scoping report on the Honolua Bay area identified Kapalua Plantation Estates, an upscale gentlemen's estate development surrounding the private Kapalua Golf course, as a source of discharges of fertilizer,

pesticides, and other chemical treatments associated with landscaping, grounds-keeping and fairway maintenance that may be adversely impacting water quality and coral reef vitality within Honolua Bay.[4]

The Commission should consider restricting use of Honolua stream for landscape irrigation that may be harming stream ecosystems. In determining IIFSs, the Commission is required to "weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses[.]" HRS §174C-71(2)(D). The economic impact of changing landscaping methods, such as planting xeriscapes or plants that require less water does not outweigh the value of improving the health of Honolua's stream ecosystems.

III. Conclusion

We mahalo the Commission and its staff for the excellent work that it has put into the IFSARs for Honokōwai, Honolua, and Honokōhau. However, we also respectfully submit the foregoing additional information and argument to assist in determinations of the IIFSs for each of these streams. Please feel free to contact us with any questions about this comment letter at bianca.isaki@gmail.com or (808) 927-5606.

Yours truly,

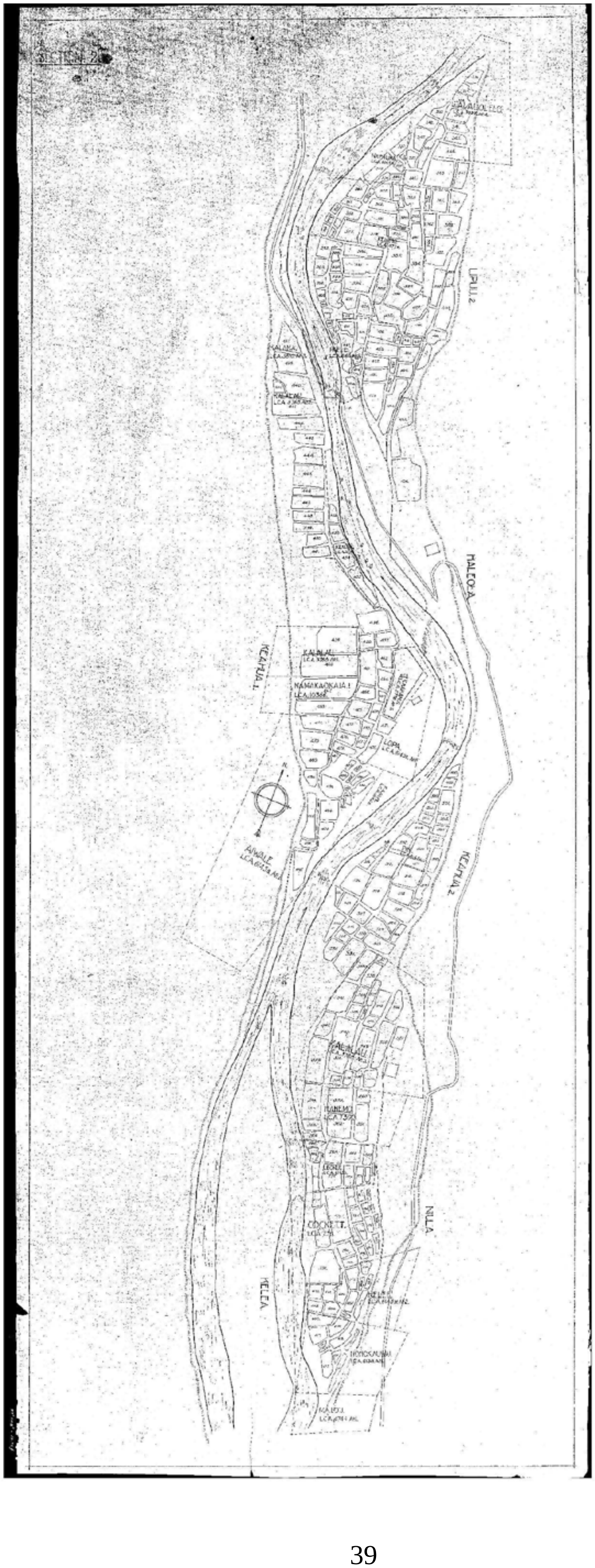
Bianca Isaki

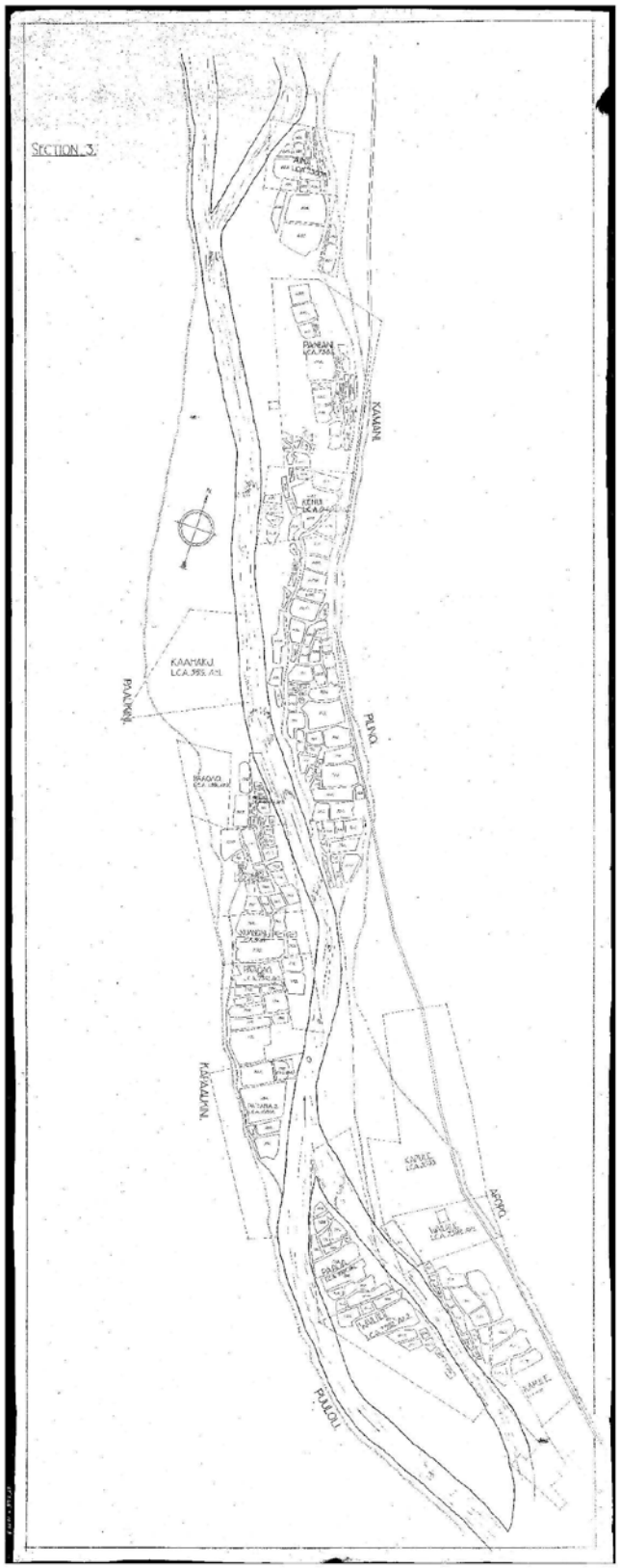
BIANCA ISAKI, ESQ.
LINDA NYE, ESQ.
LANCE D. COLLINS, ESQ.

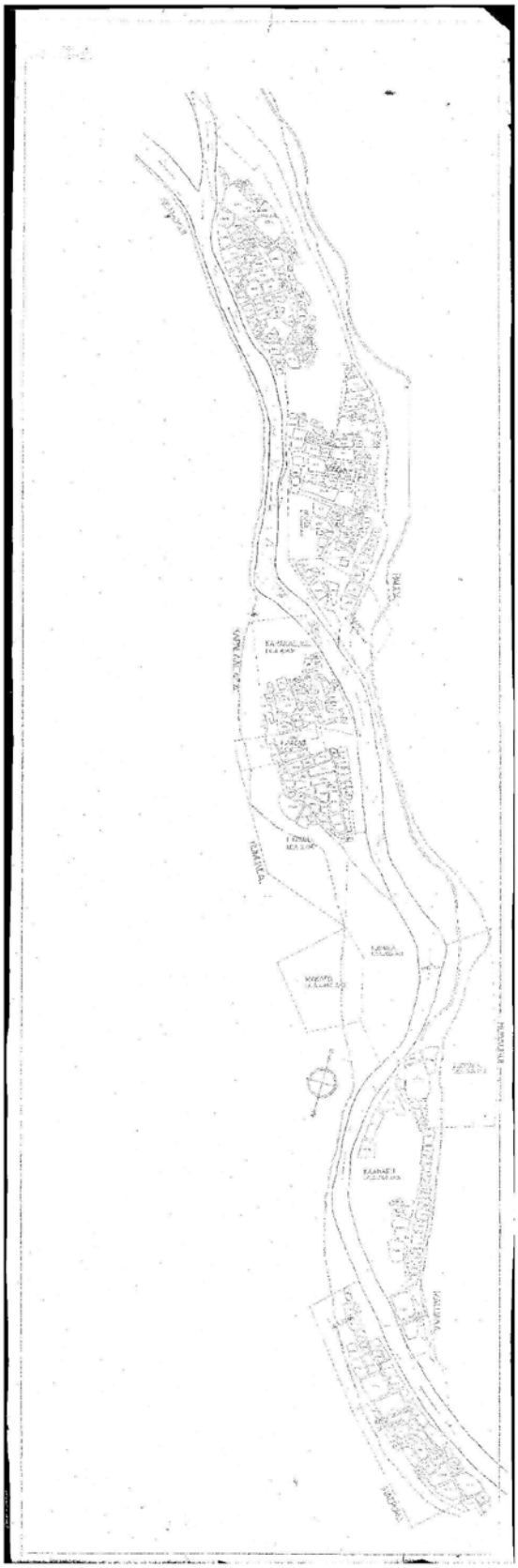
c: Wili Wood
Tamara Paltin, County Councilmember
Kai Nishiki, Community Plan Advisory Committee
Kanoe Steward
Kekai Keahi
Karyn Kanekoa
Tiare Lawrence
Archie Kalepa
Sy Feliciano
Kainoa Wilson
Jen Mather

[4] Dep't of Land and Natural Resources, State of Hawai'i, Honolua Bay and Līpoa Point Scoping Report, Honoapi'ilani Highway West Maui, Hawai'i TMK (2) 4-1-001:010, prepared by Planning Consultants Hawai'i, LLC, at 11-12 (Apr. 2018) *available at*: https://dlnr.hawaii.gov/wp-content/uploads/2019/01/121718Final-Scoping-Report.pdf.


HONOKOHAU VALLEY.
DETAIL SURVEY.
FIELD WORK BY. F. SHISHIDO.
DRAFTING BY C. DUNCAN.
LEGEND.
STREAM.
ROAD.
DITCH.
TARO LAND.
PALI.
SECTION. I.
SCALE. INCH = 50 FEET.
KEAIAU
KAHALOA
KEALOPOU
KAPALELELE
IPUU
PELEKANE
MOOILI
MAIA
PANO
KAPAIKIA
WALI
MAKAA




SECTION 3



23) Naomi Guth (received September 9, 2019)

From: Naomi Guth
To: DLNR.CW.DLNRCWRM
Subject: Honokohau Valley
Date: Wednesday, October 09, 2019 2:49:34 PM

On Wed, Oct 9, 2019 at 2:30 PM Naomi Guth [redacted] > wrote:

> To the DLNR, CWRM
>
> We are Patrick and Naomi Guth of Lahaina, but have family land in Honokohau valley.
> Parcel #410030050000
> We draw water from Honokohau stream with our water pump twice a week each time for 60 minutes, 30 gallons per minute equaling 1500 gallons, for a total of 3000 gallons a week for 2 of our largest lo'i
> kalo.
>
> The Kauhane Ohana are our caretakers and live there.
>
> We filed a water declaration back in 1989, we have both appurtenant and riparian rights for our property.
>
> Mahalo,
> Patrick and Naomi Guth
>
> Sent from my iPhone