

MINUTES
FOR THE LIMITED MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

Approved by Commission on
Water Resource Management
at the meeting held on
5/20/15

DATE: April 28, 2015
TIME: 9:30 am
PLACE: Waimea Neighborhood Center
4556 Makeke Road
Waimea, Hawaii 96796

Chairperson Suzanne Case called the meeting of the Commission on Water Resource Management to order at 9:32 am.

The following were in attendance:

MEMBERS: Ms. Suzanne Case, Mr. Jonathan Starr, Mr. Michael Buck, Mr. Kamana Beamer, PhD, Ms. Denise Antolini

ABSENT: Mr. Milton Pavao , Ms. Virginia Pressler, M.D.

STAFF: Roy Hardy, Rebecca Alakai, Malie Beach-Smith, Lenore Ohye, Jeremy Kimura, Neal Fujii, Katie Ersbak

COUNSEL: Colin Lau, Esq.

OTHERS: Steve Spengler (Element Environmental), Kaleo Manuel (DHHL), William J. Aila, Jr. (DHHL), Myra Kaichi (AG), Isaac Moriwake (Earthjustice), John K. Aana (Po'ai Wai Ola), Doug Codiga (Schlack Ito for KAA), Landis Ignacio (KAA), Kaleo Hookano, Odetta Borja, Pauline Kupo, Big Kupo, Ted K. Blake, Felicia Cowden, Juan Wilson, Tek Nickerson, Yolanda Leone, Ned Leone, Jose Borja Jr., Don Heacock (DLNR/DAR), Linda Rosehill, Julie Kajiwara, Jimmy Nakatani (ADC), Myra Kaichi (AG), Basil Gomez (KAA), Jason Hines (KIUC), Dawn Huff (KIUC), Kawekiu Apalani, Val Turalde, Richard Kanahale, Wyatt Taniguchi, Cody Taniguchi, Dominic Acaín, Lorna L. Poe, Marilyn Yamaguchi, Gilroy Yorkman, Kalani Kapuniaí Jr., Andy Hood (SRGII/Earthjustice), Juan Wilson, Hena Caberto-Raco, Eben Manini, Mark Brimes, Kaina Makua, Kaelee Turalde, Pualilia Kahale, Perry Kilauano, Cody Licayan, Wyatt Aquino, Arlene Kuapahi, Wai Mata, Randy Lee, M. Kahale, Patrick Pereira, Aletha G. Kaohi, Liberta Albao, Alan Murakami, Klayton Kubo, Sherri Cummings

The Commission on Water Resource Management (Commission) will conduct a site visit to the Kōke'e and Kekaha Ditch Irrigation Systems in connection with the complaint against waste in the Waimea River and its tributaries filed by Earthjustice on Behalf of Po'ai Wai Ola and the West Kauai Watershed Alliance.

Chair Case welcomed the public and explained the purpose of the limited meeting.

A. Authorize the Commission on Water Resource Management to Conduct a Limited Meeting to View Portions of the Kōke'e and Kekaha Ditch Irrigation Systems in Waimea, Kaua'i, Hawai'i

Roy Hardy (Acting Deputy Director) explained the purpose of the limited meeting. The various sites are open to the public. However, due to logistics and issues with inadequate parking, the staff is recommending that the site visits be conducted as a limited meeting. There will be an opportunity for testimony at the end of the day. All sites will be video-taped and made available at the next regular meeting. The Office of Information Practices (OIP) concurs with the concerns raised by staff and agrees that the site visits should be limited.

Don Heacock (Kauai District Fisheries Biologist, Division of Aquatic Resources) said the issue is extremely important to the people of Kauai. He said the Commission must consider all public trust uses, including the protection of aquatic life.

Commissioner Starr asked Mr. Heacock if he could come back at a later date to explain the impacts on the aquatic ecosystem.

Mr. Heacock said he would be happy to.

William J. Aila, Jr. (Deputy Director, Department of Hawaiian Home Lands) reminded the Commission of their duty to provide water to Hawaiian Home Lands.

Commissioner Starr requested Deputy Aila to provide information on DHHL's plans for West Kauai and future land use.

Commissioner Beamer asked if DHHL has made a specific request for water.

Deputy Aila said DHHL has not made a specific request at this time, but is in the process of finalizing numbers.

Commissioner Buck asked when DHHL would have those numbers for West Kauai.

Deputy Aila said within the next 3-6 months.

Commissioner Antolini asked if the commissioners could direct questions to the public during the site visits.

Deputy Attorney General (AG), Colin Lau said "correct" as long as no decisions are made. The limited meeting is warranted due to safety concerns.

Chair Case said conversations could be recorded as part of the video tape. Questions can also be asked at the end of the day.

Commissioner Antolini asked if private conversations would be video-taped.

Deputy AG Lau clarified that the video is intended to record conversations with the commissioners as a whole.

Aletha G. Kaohi testified on the health of the Waimea River. She asked everyone to join hands for a pule.

Commissioner Beamer thanked the public for letting the Commission come to Kauai. It is good to be out in the community.

Commissioner Starr apologized for not visiting sooner to address the West Kauai petition.

Commissioner Antolini also thanked the public for attending. She said a meeting on Kauai is long overdue. Meeting the community is very important to the Commission.

Chair Case echoed the previous comments. She said she looks forward to the testimony in the afternoon.

**MOTION: (Starr / Antolini)
To conduct a limited site visit.
UNANIMOUSLY APPROVED.**

The video for the limited meeting is online. Please refer to the website link:

<http://dlnr.hawaii.gov/cwrm/surfacewater/ifs/westkauai/>

<http://dlnr.hawaii.gov/cwrm/newsevents/meetings/>

B. SITE VISITS (LIMITED)

SITE # 1

9:45 a.m. – Waimea Neighborhood Center

Doug Codiga (representing Kekaha Agriculture Association) and Landis Ignacio (Land Manager for Kekaha Agriculture Association) gave a short briefing on the Kōke'e and Kekaha Ditch Systems. Mr. Ignacio said KAA was formed in 2003 after the closure of Kekaha Sugar Company to address concerns regarding the infrastructure and impacts of the diversions on the community. A proposal was submitted to the State to allow KAA to manage the ditch infrastructure. The KAA manages and maintains the Kōke'e and Kekaha Ditch, 40 miles of drainage canals, two major pumping stations, several smaller community pumping stations, 27 miles of electric distribution lines, two hydroelectric plants, 40 miles of roads, and numerous bridges. Before the plantation went out of business, no money was spent on infrastructure maintenance or repair. When KAA inherited the infrastructure, many repairs were needed. KAA continues to improve the property and has identified issues that need attention. Maintaining and replacing infrastructure is very expensive. KAA is made up of five members – Pioneer, Wines of Kauai, BASF, Sunrise Capital, and Syngenta. Other non-members farm sweet potato, ginger, and other crops. Mr. Ignacio said KAA supports the process and is available to answer any questions.

Chair Case asked members of the community to save their testimony until the end of the day so the site visits can stay on schedule.

The Commission recessed while it traveled from the Waimea Neighborhood Center to the various locations of the site visit.

SITE #2

10:30 a.m. – Waimea Canyon Lookout

Steve Spengler (Element Environmental) explained his role as the consultant for the Water Commission, hired to collect data to evaluate the current status of the ditch systems in West Kauai. He gave a brief overview of the geology of Kauai and the formation of the Alaka'i Swamp. Streams from the Alaka'i Swamp feed into the Kōke'e and Kekaha Ditch Systems. Mr. Spengler described the ditch systems. The Kōke'e Ditch was built in 1923 and is 19 miles long. It was designed to take up to 55 million gallons of water per day (mgd). Historically it took ~13-14 mgd. Currently it takes 2-3 mgd so the water level in the Pu'u Lua Reservoir does not exceed 60 feet. Under natural conditions, Waipo'o Falls (Kōke'e Stream) would not flow. Flow in Kōke'e Stream is augmented by water returned from Kōke'e Ditch downstream of Kawaikoi, Waiakoali, and Kauaikinanā Stream Diversions. Mr. Spengler pointed out how the water gets re-routed once it enters Waimea Canyon. Historically, Kekaha Ditch averaged 34 mgd. Currently it takes about 30 mgd, which is largely used to power the hydropower plants. He noted that certain streams and the ditches could be dry at certain times of the year when there is less rainfall.

SITE #3

11:00 a.m. – Pu'u Lua Reservoir

Mr. Spengler said Pu'u Lua Reservoir is a popular trout fishing area. The waterfall entering the reservoir is water from the Kōke'e Ditch. The concrete gate valve is used to control the amount of water that discharges from the reservoir and enters the lower part of the Kōke'e Ditch system. Prior to dam safety regulations, the water in the reservoir used to be much higher. A sluice gate on Kōke'e Stream controls the amount of water that enters the Kōke'e Ditch and flows into the Pu'u Lua Reservoir. The water that does not go into the Kōke'e Ditch, gets put back into Kōke'e Stream and creates Waipo'o Falls. On December 2, 2014 Element Environmental took flow measurements at various points along the streams and diversions in both the Kōke'e Ditch and the Kekaha Ditch. Pressure transducers were also installed on the Waimea River. It takes approximately 12-13 hours for the water to flow from the Alaka'i Swamp to the end of the Waimea River. The Kōke'e Ditch was built in 1923 and is 19 miles long. It was designed to take up to 55 million gallons of water per day (mgd). Historically it took ~13-14 mgd. Currently it takes 2-3 mgd so the water level in the Pu'u Lua Reservoir does not exceed 60 feet. On December 2, 2014, 10 mgd was measured at Kawaikoi Stream, 12 mgd was flowing in the ditch, 1 mgd was dumped back into the stream at Kauaikinanā, and 3.5 mgd was recorded at the second diversion. 9 mgd was returned to Kōke'e Stream. Once in Waimea Canyon, approximately 90% of the Koaie Stream flow is diverted into a tunnel that gets discharged near a concrete dam. Nearly all of that flow gets diverted into the Kekaha Ditch. On December 2, 2014 the Kekaha Ditch was capturing approximately 32 mgd and 0.6 mgd was flowing below the diversion into the Waimea River. Below the Mauka Hydropower Plant, a fair bit of water is returned to the Waimea River. Near the end of the Waimea River, the flow was approximately 19 mgd. The flow in the Kekaha Ditch was approximately 19 mgd. Arguably, without the ditch the amount of water in the Waimea River would be double. Mr. Spengler commented that this is a snapshot of time. Every day is different and stream flows will vary. Under natural conditions, everything from the Alaka'i Swamp would flow into the Waimea River. He acknowledged that the

final report and analysis is not complete. Stream heights will fluctuate. Changes in climate may also contribute to changes in stream flows.

[Lunch]

SITE #4

12:30 p.m. - Pu'u Moe Ditch Divide

Pu'u Moe Ditch Divide is the point at which water flowing through the Kōke'e Ditch splits. Water flowing to the right of the Pu'u Moe Ditch Divide goes to DHHL and water flowing to the left travels downhill toward Kitano Reservoir. Landis Ignacio explained that the flow at the Ditch Divide may appear lower because the Pu'u Lua Reservoir gate valve is loose and may not let enough water flow through. Fixes like these are made on a daily basis. The height of the gate at the Ditch Divide is fixed. Historically more water flowed toward DHHL and the Kitano Reservoir. Water flowing to DHHL is important for current and future users. During July, August and September, there is very little water. Water from the Kōke'e Ditch also provides flushing capabilities for the restrooms at the Waimea Canyon Lookout. Don Heacock noted that the trout in Kauaikinānā Stream naturally spawn and are a different species from what is stocked at Pu'u Lua Reservoir.

SITE #5

1:15 p.m. – Black Pipe Siphon Viewpoint

Mr. Spengler pointed out the Kekaha Ditch and the Black Pipe Siphon. The Kekaha Ditch runs along the east side of Waimea Canyon before entering the pipe. Landis Ignacio said the ditch was built in 1907 with a maximum capacity of 55 mgd. The Black Pipe Siphon is a steel riveted pipe. In the 1960s it started to leak and had to be lined with cement. In August and September 2015 the ditch will be shut down and the pipe will be replaced. The replacement pipe will reduce the flow to 23 mgd and guarantee water delivery to farmers downstream. Currently the Kekaha Ditch averages 22.7 mgd, 20 mgd of which is used to feed the hydropower plant and 2 mgd for kuleana users. Mr. Ignacio noted that he is one of the taro farmers in Waimea that uses water from the Kekaha Ditch.

SITE #6

1:45 p.m. – End of Kōke'e Ditch

The Kitano Reservoir was closed as a result of vandalism. Water that had previously flowed into Kitano Reservoir now flows beyond the terminus of the Kōke'e Ditch. Mr. Ignacio said the water used to flow into a culvert and off the side of the cliff into the Kekaha Ditch. However, the Department of Transportation (DOT) said they own the culvert so the water is no longer flowing over the pali. Water in the settling basin was instrumental in putting out recent fires. The water exiting the Kōke'e Ditch will also be used as a back-up source for kuleana users when the replacement of the Black Pipe Siphon temporarily shuts down the Kekaha Ditch. KAA would like to minimize the impact to farmers as much as possible.

SITE #7

2:15 p.m. – Kekaha Ditch Crossing at Hwy 550

If the Kekaha Ditch did not exist, the water you see today would be in the Waimea River. From here, a small diversion runs water into two ponds in Waimea behind the hospital as part of the waste water treatment plant. The water diverted from the ditch is used to convert the reservoir water into R1 water, which is then used to irrigate the fields. Historically, part of the function of the second hydropower plant was to pump water from the reservoirs to irrigate the fields. Many people have commented on the sedimentation of the Waimea River. Mr. Ignacio noted that the Mānā Plain is a formerly drained swamp. The pumps are used to maintain the water level at minus two. Approximately 17 mgd of sea water enters the Mānā Plain, which must then be pumped back out into the ocean to prevent the Mānā Plain from flooding.

SITE #8

2:45 p.m. – Public testimony on West Kauai Site Visit

Chair Case opened up the limited meeting to public testimony. She read off the names of those who signed up to testify.

Jose Borja said he would like to see more water in the streams that feed the Waimea River.

Ned Leone said the water should be used for public trust purposes.

John Aana thanked the Commission for taking the time to gather the facts. A healthy river results in a healthy community. He said he has witnessed the condition of the Waimea River deteriorate over time.

Commissioner Beamer asked if Mr. Aana would like water restored to the Waimea River.

Mr. Aana replied “yes.”

Commissioner Buck asked about the stream flow over time.

Mr. Aana replied the levels are not the same. The weather throughout the island is drying up.

Commissioner Antolini asked about Mr. Aana’s knowledge of o’opu.

Mr. Aana said there used to be more o’opu in the river.

Sherri Cummings (beneficiary of Hawaiian Home Lands) commented on the lack of water flowing to DHHL. Without water, DHHL is reluctant to give people access to the land. She noted the time it takes to be awarded land and the length of the waitlist.

Commissioner Starr asked what land beneficiaries are interested in.

Ms. Cummings said there is plenty land near Pu’u Opae.

Commissioner Beamer said the Commission has no control over DHHL settlements. He noted that DHHL can request specific allocations for water and has a priority usage under the Water Code.

Ms. Cummings expressed her frustration with the DHHL process to award land, particularly agriculture lots.

Commissioner Starr talked about the constitutional mandate regarding DHHL water reservations. For years the Commission has asked DHHL for their proposed water reservations. Two years ago, DHHL started a process for developing a Water Plan. He urged the beneficiaries to help move the planning process forward.

Commissioner Antolini asked Deputy Aila and Kaleo Manuel from DHHL to provide more specifics on water reservation requests.

Deputy Aila noted that requests for a water license go to the Board of Land and Natural Resources (BLNR). Depending on the type of reservation, it may not come before the Water Commission. Listening to the points raised by the beneficiaries, it is important to note that DHHL must justify their land awards based on agriculture numbers that have been scientifically vetted.

Ms. Cummings responded that water use cannot be quantified if no one is on the land.

Deputy Aila said DHHL needs to find additional revenue to pay for the infrastructure needed to build roads, etc. Partnerships are needed.

Chair Case asked if water quantities could be determined by DHHL.

Deputy Aila commented that Kauai is not a water management area. Therefore, the Water Commission may not be able to address water allocation.

Commissioner Starr asked if Pu'u Opae would be opened in the future.

Deputy Aila replied that Pu'u Opae reservoir was not on the most recent list of DHHL capital improvement projects (CIP). Unless DHHL can partner with someone, Pu'u Opae is not a priority for DHHL.

Gilroy Yorkman said the water is in all the wrong places.

Patrick Pereira asked the Commission "who owns the water in Hawaii?"

Commissioner Beamer replied "no one owns the water."

Mr. Pereira questioned why one entity controls all the water on the west side of Kauai. He said water should be given to DHHL beneficiaries for farming.

Commissioner Beamer explained that the Commission is the trustee of Hawaii's ground and surface water resources. The Commission is still in the process of investigating the Earthjustice petition regarding West Kauai. Hopefully some water can be returned.

Commissioner Antolini asked Mr. Pereira about his connection to water and what potential uses he would recommend.

Mr. Pereira lamented the number of beneficiaries who have died waiting for pastoral parcels of land. He said he does not have many personal experiences with water, but understands

the plight of others who need water and are forced to divert small amounts of water to feed their grass and cows. He said it is unfair. A farmer should get as much water as he needs. There is enough agriculture land on Kauai to grow enough food for the entire state.

Aletha Kaohi explained her family history and connection to the land. She thanked the Commission for allowing her to offer a pule. The purpose of the pule is to connect all before a journey, that we are one, together to accomplish what is pono. The buzz word today is "sustainability." A community can be sustainable when crops are grown. Water is needed for the land to be productive. In ancient Hawaii every ahupua'a had fresh water freely flowing for drinking and recreation. She shared her concerns about the health of the Waimea River and questioned why it is dying. At one time, the river provided food year round and recreation. The Menehune Ditch intake was directly from the Waimea River. Pe'e Kaua'i was built before 1778. A konohiki oversaw the ditch as it provided drinking water and water for the taro fields. Times have changed as we now enjoy water from the county water system. Taro farmers have given up cultivating taro because there is not enough water. If there is a steady flow of water in Pe'e Kaua'i, land once planted in taro will be replanted. Taro is the healthiest food. Raw land can be planted with other types of food, but only if there is sufficient water.

Commissioner Beamer asked if Pe'e Kaua'i receives water from the Waimea River.

Ms. Kaohi said "it used to." The intake was from the Waimea River. Now they trap the water from the Kekaha Ditch. There is not much water in the ditch. She questioned who owns and maintains the ditch.

Commissioner Beamer asked if she has witnessed the decline in o'opu.

Ms Kaohi said when she was growing up there was plenty o'opu in the river. O'opu nakea can climb steep waterfalls. The female will lay eggs in the river. During floods the eggs are washed out to the ocean. Post-larval o'opu are called hinana. When she was young her mother would send her to the river to see if the hinana was running. Half the river would look red. The o'opu nakea is transparent with a red spot. Her father used to fill two 10 gallon buckets with o'opu nakea. There was plenty of o'opu for everyone. The river today is narrow and full of silt. It used to be navigable. The children can no longer swim. Water makes the river healthy. There is more water flowing out of the springs than flowing in the river. We talk about sustainability, but if we do not have water we do not have sustainability. The community dies when there is no water.

Alan Murakami said there is concern about native Hawaiian water rights. These rights need to be respected. There may be a lack of understanding about these provisions and what they mean. The water reservation issue is important, irrespective of designation as a water management area. Recognition of water reservation rights is superior to others. It is admirable that people want to share the water, but beneficiaries have a right to the water and the highest priority. He urged the Commission and DHHL to respect and uphold those rights. Currently, a lot of land is unoccupied. Water should be returned to these lands first so pastoral land leases can be awarded to beneficiaries. 95 years is a long time to wait for land. The Supreme Court agrees that the State has been in breach of its duty to award farm lands to native Hawaiians. The constitutional mandate and right to water has been overlooked. The Commission's duty to provide and reserve water is extremely important to ensure that people get the land that they need.

Commissioner Starr agreed with the points raised by Mr. Murakami. He asked what mechanism the Commission could utilize to fulfill those mandates, while DHHL works on its water reservations.

Mr. Murakami acknowledged that the issue cannot be solved by the Commission alone. He said he is happy to cooperate with the Commission.

Klayton Kubo testified that not enough water is flowing in the Waimea River. Less water should be in the ditch for hydro. He said he has gone down to the mouth of the river many times to open up the flow of water. It seems like everything is about money. Water is going to the Mānā Plain for seed companies to spray massive amounts of poison. He noted the decline in o'opu.

A member of the public commented on the continuity of the streams and the break in flow caused by the various ditches. The ditch systems impact the biological systems. In the past, Hawaiians lived on the land and established productive land uses without diverting the water out of the watershed. The plantations changed this system to maximize profit. This is not the way to treat the land. He noted the effects of different land practices on the Mānā Plain. Water is the key to sustainability and the people should not be held back from living on the land and growing food. If we can get the water to flow, people can start to live on the land.

Mr. Hena Caberto-Raco, a 25-year old taro farmer, said farmers need the water returned to the Waimea River. O'opu go through the hydro plants and cannot migrate upstream. All of us live together on this island. If we lose this resource, the people will die. The fluctuations of water from the ditch impact the taro farmers. We have the land and the people, but not the water resources to farm the land. The life of the land depends on the resource. He reflected on the mo'olelo and how people used to sustain themselves. Today, locals must work for the seed companies and construction. The main issue is the water. We need proper balance and to consider what is pono.

Commissioner Beamer asked what would help the taro farmers.

Mr. Caberto-Raco said he currently gets water from the Kekaha Ditch. As a taro farmer and kanaka maoli he wants water returned to the Waimea River.

Commissioner Buck asked about the springs on the Mānā Plain.

He said he used to swim in the springs as a kid before they were capped.

Commissioner Beamer asked if there is a diversion on Waiawa.

He said there is water in Waiawa but it is being supplied by the Kekaha Ditch. There used to be water flowing through it naturally.

Isaac Moriwake (Earthjustice) testified in support of DHHL's water claims and returning water to the Waimea River. Historically DHHL reservations have come last. This is not what the law intended. There are many stakeholders involved including future generations. He highlighted the actions that could be addressed in the short term. The headwaters of the streams in Kōke'e are being drained. Most of this water is being dumped into Kōke'e Stream, which is normally dry, to create Waipo'o Falls – a fake waterfall that only started to flow after the petition was submitted. Water from these

streams should not be diverted even if it has uses downstream. The Waimea River is being drained to power the Mauka Hydropower Plant. Some water is dumped back into the river, but there is a 2.5 mile stretch of the Waimea River that is completely dry. He questioned why 20 mgd is needed to power the Waiawa Hydropower Plant and why water is dumped onto the Mānā Plain, which is then pumped out to prevent saltwater intrusion. There used to be more water coming out of the pipe at the end of the Kōke'e Ditch. He questioned if the dumping of water from the pipe is necessary. Water is also dumped at Kauhao Gulch along the Kōke'e Ditch to prevent the build-up of sediment. Mr. Moriwake suggested that it be shut and opened every so often to flush out the debris. The commissioners have not had a chance to see the leakage along the Mānā Plain. It is unclear how much water is used by agriculture, the acreage and type of crops. Perhaps less water is needed. This issue is generational, but there are some quick fixes that can be addressed right now.

Commissioner Starr thanked everyone for their testimony and said the Commission would return again.

A member of the public testified that the diverted water flows into reservoirs. He said it was ironic to use the term sustainability when water is diverted to sustain large-scale agriculture that does not provide food for the people of Hawaii.

Chair Case adjourned the meeting at 4:15 pm.

Respectfully submitted,



KATIE ERSSBAK
Private Secretary to the Deputy

APPROVED AS SUBMITTED:



W. ROY HARDY
Acting Deputy Director