MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 15, 2020
TIME: 9:00 am
PLACE: Online via Zoom
Meeting ID: 978 9411 7380

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:25 a.m. (due to technical difficulties) and stated it is being live streamed via YouTube for public viewing due to the ongoing Covid-19 pandemic; and noted the meeting was set to take live oral testimony and any written testimony would be acknowledged when the submittal items come up. Chairperson Case also read the standard contested case statement.

MEMBERS: Chairperson Suzanne Case, Mr. Michael Buck, Mr. Neil Hannahs, Mr. Wayne Katayama, Mr. Keith Kawaoka, Mr. Paul Meyer

EXCUSED: Dr. Kamana Beamer

COUNSEL: Ms. Linda Chow

STAFF: Deputy M. Kaleo Manuel, Mr. Roy Hardy, Ms. Lenore Ohye, Mr. Dean Uyeno, Dr. Ayron Strauch, Ms. Rae Ann Hyatt

OTHERS: Mr. Paul Subrata (Maui Land & Pineapple Co., Inc. <MLP>), Senator Gil Keith-Agaran (Counsel for MLP), Ms. Dawn Huff (Joule Group, LLC, for Kaua‘i Utility Corp. <KIUC>), Ms. Kelsey Yamaguchi (Counsel for KIUC), Mr. Delwyn Oki (U.S. Geological Survey <USGS>), Ms. Dani Yoo (DLNR Engineering), Mr. Gayson Ching (DLNR Engineering), Mr. Lance Fukumoto (Fukunaga Engineers), Ms. Amanda Miyahara (Fukunaga Engineers), Mr. Ken Kawahara (Akinaka & Associates), Dr. Jonathan Scheuer (for Dept. of Hawaiian Home Lands <DHHL>), Dr. Kawika Winter (He‘eia National Estuarine Reserve)

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

091520 00:02:35

A. APPROVAL OF MINUTES

August 18, 2020

PUBLIC TESTIMONY – None

Commissioner Buck – noted and appreciated the detailed minutes

MOTION: (KATAYAMA/BUCK)
To approve minutes as submitted
APPROVED – Case/Katayama/Buck/Meyer/Kawaoka

091520 00:03:55
B. ACTION ITEMS

1. Approval of Stream Diversion Works Permit Application (SDWP.5358.6) to Abandon Diversion No. 768 on Kaluanui Stream by Maui Land & Pineapple Co., Inc., and Find that SDWP.5358.6 is Exempt from Hawaii Revised Statutes, Chapter 343, Kaluanui Stream, Lahaina, Maui TMK: (2) 4-1-001

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection & Management Branch

Mr. Uyeno presented the submittal item, summarized the request and provided some background information. No water is diverted from the site. The permit application was required by the letter dated December 4, 2019, Notice of Commission Action, sent by the Commission on Water Resource Management (Commission) to Maui Land & Pine (MLP). Find that SDWP.5358.6 is exempt from Hawaii Revised Statutes, Chapter 343. The subject project is exempt from the preparation of an environmental assessment in accordance with Hawaii Administrative Rule. Traditional and customary rights are not affected.

On April 23, 2019, Ka Malu o Kahalawai and West Maui Preservation Association filed a formal Complaint / Dispute Resolution form alleging waste against MLP, Kapalua Water Company, and Ka‘anapali Land Management Corporation. On November 20, 2019, the Commission was presented with a staff submittal to “Request to Address the Waste Complaint Filed by Ka Malu O Kahalawai and West Maui Preservation Association Against Maui Land and Pineapple Company Alleging Water Diverted from Honokōhau Stream Overflows the Honokōhau Ditch, Pursuant to Hawai‘i Revised Statutes §174C-13, and to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Honolua (6013) and Honokōhau (6014), West Maui.” The Commission amended staff’s recommendations and unanimously approved the submittal, including the implementation action that, “within 120 days of Commission action, MLP will submit a stream diversion works permit to formally abandon diversion 768 at Kaluanui Stream.”

There were no objections nor comments received by other agencies. Mr. Uyeno then summarized the staff’s recommendations.

091520 00:09:34

QUESTIONS

Commissioner Buck – asked for a brief walk through of the photos taken of the diversion

Mr. Uyeno – mentioned that Mr. Paul Subrata of Maui Land & Pineapple (MLP) and counsel for MLP, Senator Gil Keith-Agaran is present to assist with questions as well. Explained the photos pertaining to the diversion.

Commissioner Buck – asked what component of the diversion is silted over?

Mr. Uyeno – my understanding is the diversion intake itself; the pipe grate that you see.

Commissioner Buck – a comment for staff; I think in the future we're going to see a lot of these as we're dealing in East Maui. I know we still don't have a formal policy of how we want to deal with these abandonment of the diversion. I know the situation in East Maui we want to get the water flowing back as quick as we could. Sometimes it's hard to just take a look at these photographs and determine. I don't think on this we don't have any legal remedy to force the landowner to do anything, we may have to do a little more thinking as we deal with these in an more organized way rather than these one-off requests.

Chair Case – asked for clarification on the pipes that make up the grate, you're saying that underneath it is filled with dirt so if and when the stream runs higher; Ayron can you clarify?

Dr. Ayron Strauch, CWRM Stream Protection & Management – noted that the stream is not flowing (in the right-hand photo), it is a stagnant pool. When it does flow, it flows across the piping. The intake is between the pipes and clogged up with silt. No water has been diverted since 2001. The stream flow is very intermittent and only flows when there's a big rainstorm event upstream and therefore contributes little to the system. I understand there's a need to address the structure in the stream, but because it's an intermittent stream, geology and topography, it does not support any aquatic ecosystem.

Commissioner Meyer – noted it would be helpful to have a current picture of the siltation whether that fills the box or intake under the grating or whether it covers over the grating; to have a current representation of the condition of it would be helpful. It's what we're reacting to her is if the intake is silted over, it's non-functional for the foreseeable future.

Commissioner Hannahs – as Commissioner Buck inferred, we had a hiccup of what our standards are in the case of abandonments or removal of the improvements. It's relevant there's no impairment to stream-life; are there any other considerations we should be taking into account about what's left here in place? Does that impair the environment at all?

Dr. Strauch – in terms of other instream uses like recreational value, no as this is high up in the watershed on private property. There are no traditional and customary practices (T&C) in the immediate vicinity of this structure and no aesthetic value that can be attributed to this stream; so I don't think there's any instream uses affected by this structure as left in place.

Commissioner Hannahs – asked on the degrading of the structure overtime and or foresee a problem with debris going downstream

Dr. Strauch – MLP would have to keep an eye on it because the ditch structure is part of a larger system that they do access in their annual maintenance.

Commissioner Hannahs – if it's problematic, do we have a means of enforcing mitigation?

Dr. Strauch – it's an AG question

Commissioner Hannahs – this is post abandon; if we allow them to abandon and allow this to be left in place and as it degrades, do we have lever to make cure?

Ms. Linda Chow, Deputy Attorney General – it would depend on the condition of the permit we issue that allows for the abandonment of the structure. It's not clear in the law of what does the abandonment of a structure of a diversion mean? It could be interpreted to mean that it recognizes the structure is no longer diverting water and the Commission has noted and approved that. I don't think it relieves the owner of the structure from all responsibility for that structure, which would play into what Ayron was saying that they (MLP) should continue to check on it to be sure nothing is happening to the structure that would need to be addressed. One interpretation is yes, the diversion is no longer happening but yes you do have continuing responsibility for the structure itself. Abandoning the diversion does not mean you abandon all responsibility.

Commissioner Meyer – thank you Linda, that's helpful.

Chairperson Case asked the Commissioners for a motion for item B-1 as submitted

Commissioner Buck – requested to ask a question to a representative of Maui Land & Pineapple Co.

(Mr. Paul Subrata of Maui Land & Pineapple and counsel, Mr. Keith-Agaran joined in)

Commissioner Buck – asked if the Commission approve this abandonment, what might happen in the future? - if you have any comments and ideas of how we might put an amendment to this; annual photos to be assure this abandonment is not causing permanent damage to the stream; how may we amend this submittal?

Mr. Gil Keith-Agaran, Counsel for MLP – listening to what Commissioners is interested in, I think that Maui Land & Pineapple, could do what is suggested; as it does it's annual maintenance or more frequent, they could report back if they observe any problems and if there are additional big storm events which led to some of the problems MLP had with some diversions, you would get a report from MLP about that. If that happens, MLP could come back and if there's additional work the Commission would like to see done, I suppose that could be taken up in some agenda item at that time.

Commissioner Buck – I'm thinking of an amendment that says require annual inspection and reports to Commission staff on status of diversion abandonment, does that seem reasonable?

Mr. Keith-Agaran – to the extent it's accessible, yes. I think in the future there might be a way to use technology to do this kind of inspections, whether to use drones or another way to look at the system. I know Dean reported that both of these diversion systems are very difficult to get to and can be taken up in the future.

Chair Case – what exactly are we looking for in this sense? We're talking about abandoning the use of the structure as a diversion, the structure is in the stream which is on private property, the stream water flows-the water is a public resource; are we looking to make sure it doesn't rust away, fall apart and goes downstream?

Ms. Chow – it's a question more for Commissioner Buck who brought up the issue of what if the condition of the structure degrades and becomes a problem and as Ayron identified, does it affect instream value, does the change of the structure impact instream value like native stream-life, aesthetics or recreational, or T&C rights? It's what you're looking for, how it might affect other instream uses. At this point because the diversion is being abandoned, there will be no off-stream use made of the water; so you're looking at instream use.

Commissioner Buck – maybe a potential of a high storm flow it becomes an active diversion again; I just know once we vote to abandon, as far as the Commission is concerned, we lost all ability to deal with any potential ramifications of that. Personally, I think an annual reporting by staff on the status and as Senator Agaran has said, it could be via a helicopter or drone.

Chair Case – because it's a remote area and seems like what we're concerned about is after a big storm event which suppose could happen annually maybe more in the 2-5 year range. I don't know what the terrain is like here or how difficult it is to access.

Commissioner Hannahs – I wanted to clarify what Commissioner Buck stated the problem; I was comforted by Linda and Chair's comment because what we're abandoning is their right approving the abandonment right to divert, we're not necessarily abandoning any obligation they have to this private property. At some future point, if this damages public trust interest (as I interpreted Linda's comments) we will still have opportunity to address that issue if it arises. Is that correct Linda?

Ms. Chow – yes; that was basically what I was saying.

Chair Case – would it be helpful for us to put a condition to that effect noting what we're approving here is the abandonment of the use of the diversion? I think what we want to do is retain jurisdiction of the diversion itself to the extent in the long-term be sure there's no harm to instream values. Do we want to make that explicit in our approval condition so there's no question down the line about there's no further jurisdiction to deal with the diversion itself? If they were completely removing the diversion structure, there wouldn't be an issue, it would return to its natural condition, but that's not what they're doing in this. Seems like we can add that condition to retain jurisdiction.

Commissioner Hannahs – I would be supportive of that Chair; and also Mr. Subrata and Mr. Keith-Agaran, I don't think it's an extraordinary risk but we're dealing with abandonment across the State and it's a concern to us. We don't want to have landowners incur unnecessary expense just removing a bunch of stuff which is fine in place, but in some cases not fine in place now or over time, and as trustees' we're taking that into consideration.

Chair Case – I would suggest something like that, but in this case because it's so remote and the instream values are not directly affected, I would suggest the frequency of inspection and reporting be less frequent unless there's a big storm event.

Commissioner Buck – I don't need this amendment based on the approval that it's just based on abandonment of the diversion that's a better way to handle it, it's fine with me.

Chair Case – I think it would be useful to clarify and could add it in this language because we're approving an application to abandon the diversion. We can tweak it and say "we're

approving the application to abandon the use of the diversion to divert water" and specifically say "we're retaining jurisdiction over the diversion structure itself to the extent necessary to protect instream values in the future."

Commissioner Buck – I would second that amendment.

Commissioner Meyer – seems like a reasonable template for dealing with this kind of situation going forward.

Chair Case – Mr. Buck, do you want to add something about the inspections?

Commissioner Buck – nope, I don't think it's necessary at this point.

Chair Case – repeated the amendment

PUBLIC TESTIMONY – None

091520 00:32:26

MOTION: (BUCK/HANNAHS)
To approve B-1 as amended.
UNANMIOUSLY APPROVED

091520 00:32:45
B. ACTION ITEMS (CONT'D)

2. Approval of Stream Diversion Works Permit Application (SDWP.5359.6) to Abandon Diversion No. 769 on Honolua Stream by Maui Land & Pineapple Co., Inc., and Find that SDWP.5359.6 is Exempt from Hawaii Revised Statutes, Chapter 343, Honolua Stream, Lahaina, Maui TMK: (2) 4-2-001:001

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection & Management Branch

Mr. Uyeno gave the summary of request and provided a brief background information and summarized the timeline of events. The project scope is to formally abandon Diversion 769 which was deactivated in late 2004 and subsequently destroyed by high flows resulting from consecutive hurricanes in late 2018. No work is proposed on the diversion structure itself, but the Commission staff recommends that any remnant debris remaining in the stream (e.g., concrete, rebar, steel grating, corrugated metal, etc.) be removed by MLP and photographic evidence be submitted to the Commission.

Descriptions of the photos presented in the submittal were stated and there were no objections or comments received by other agencies. Also, traditional and customary rights are not adversely affected. The project is exempt from the preparation of an environmental assessment per HAR §11-200.1-15(c)(1), operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing. Because the diversion is no longer in place, no instream uses will be impacted. The staff recommendations were then stated.

QUESTIONS

Commissioner Buck – any timeframe for recommendation #2?

Mr. Uyeno – I would defer to Mr. Subrata and Senator Keith-Agaran but would recommend within the year; under the current conditions, hopefully we can get out there sooner than later. Typically, the permit is good for two years.

Commissioner Hannahs – in this case you asked them to remove making that a condition, in the prior case you did not; what is your thought process as to why you believe it's necessary in this case?

Mr. Uyeno – with this case, we know the diversion was basically destroyed and there's remnants as you can see in the photos and my understanding there is some exposed concrete and rebar further downstream as a result of the diversion itself; and its actively in place in the stream, so we're asking that to be removed.

Commissioner Hannahs – so concern of future risk and not present risk; thank you.

Chair Case – the use of the term debris I think gives rise to confusion because it's subjective, is the intention here for Maui Land & Pineapple to remove all of the remnant diversion structures? Is it loose diversion structures or no evidence there ever was a diversion there? We should clarify this, we don't want to run into disagreements down the line over anyone's interpretation of what constitutes debris.

Mr. Uyeno – referred to photos on page four; my understanding is some of that material and corrugated metal that was used to cover the intake, has washed downstream and the materials are still in the downstream of the prior location of the diversion.

Dr. Strauch – I wanted to add that the Summer of 2019 on a site visit with MLP staff, Commission noted that the remanent structures that are no longer affixed to anything built, as part of the irrigation system were transported downstream. A portion of the ditch traverses the stream channel in a concrete structure, below that, portions of the diversion materials that were part of the upstream diversion, were transported downstream. A thought was the stream diversion is no longer functional and MLP will be abandoning the right to divert water. Let's remove loose material that might affect habitat or might be transported downstream that may affect recreational uses or potentially transported to Honolua Bay.

Chair Case – instead of using the word "debris" we would say "loose or dislodged diversion material" in Honolua Stream, e.g. concrete rebars, corrugated metals, and railroad ties; and suggest adding the same language in the previous amendment (B-1) about retaining jurisdiction over the structure to protect instream values in the future; that we're approving abandonment of the use of the diversion.

Commissioner Buck – commented on adding the one-year timeframe for recommendation #2.

Mr. Keith-Agaran – the caution my client has is the access issue. Along with the damage to the diversion itself, there was also damage to the road (to the area) and obstructions on the road that need to be removed if the cleanup requires heavy equipment. That's the caution

MLP has in getting the work done. If its loose enough and vehicles can be taken down there, it could be done. To address what the staff is asking for is, MLP could assess the requirement to remove the debris and provide a proposal to the staff going forward if that's acceptable, and either come back to the Commission or do the work. Initially when I saw the proposed condition, it wasn't clear if the staff was talking about where in Honolua Stream the debris was and what kind; and I haven't been up there or seen what's in the stream or how large the material is or if it will require heavy equipment; that was caution from MLP's consultant.

Chair Case – do you know if there's loose material that could be removed that doesn't require heavy equipment? We're making sure that stuff doesn't wash downstream in a heavy storm; Mr. Subrata, do you have any suggestions?

Mr. Subrata – I believe there are some impediments, the metals; concrete would be too heavy but the metals would not. One concern too is the access issue as we go downstream it's currently being prevented by a boulder and to remove it, requires a significant method that might have potential environmental impact that we can't foresee at this time. To answer your question, yes there are certain loose impediments, remnant structures there from the diversion that we can remove by hand.

Chair Case – so if we say something like …the condition would be to remove all loose and dislodged remnant diversion structures that can be removed by hand and retain jurisdiction for review of the larger ones.

Mr. Subrata – I think that's reasonable request and of course we need to do a little more assessment to see what it looks like today but I believe it would not have that much of an impact; would require access certainly so we would need time as you know this diversion is rather remote. Aside from that, if heavy equipment is not needed, I believe it's a request we can assess and look at.

Commissioner Hannahs – the mere fact that something is hard to do, if there's a risk to the public trust asset, nonetheless we should make that demand of the parties such as Maui Land & Pine. I appreciate what Mr. Subrata said in the case of doing that, undertaking a mitigation we create an environmental risk is matters of concern that should be taken into consideration by the Commission. (reiterated the amendment points)

Chair Case – part of my distinction between hand-removal and using heavy equipment is an assumption that there's less chance of it being washed downstream if its heavier stuff.

Commissioner Buck – I would support Commissioner (Hannahs) with the distinction of the abandonment to divert, a plan and there might be easier ways without heavy equipment with low-tech and helicopter access just cause it's hard. After 100-years of diverting water from the stream, and as we know there's a lot of community interest of this issue at our last meeting, I think it's important we do all we can to leave the stream somewhat as how it was before. I would support Hannahs in having the applicant come back with a plan of options of how they would be removing the remnant articles and components of the diversion system.

091520 00:50:48
Chairperson Case asked for a motion on item B-2 and repeated the amendment to read – #1 - to Approve Stream Diversion Works Permit SDWP .5359.6, Application to Abandon use of

Diversion No. 769 on Honolua Stream subject to Standard Conditions in Exhibit-1 and the special conditions below; the Commission retains jurisdiction over the diversion to the extent necessary in the future, to protect instream values; #2 – Direct MLP to remove any loose or dislodged diversion material remaining in Honolua Stream such as concrete, rebar, steel grating, corrugated metals, railroad ties, etc., that can be removed by hand (or by light equipment that can access the stream as is), and submit photographic evidence to the Commission; and to report back within a year to Commission staff on a plan to remove further material that may require heavy equipment to remove. – and retain recommendation #3

PUBLIC TESTIMONY – None

MOTION: (HANNAHS/BUCK)
To approve B-2 as amended.
UNANMIOUSLY APPROVED

RECESS: 10:18 AM

RECONVENE: 10:28 AM

091520 01:04:02

B. ACTION ITEMS (CONT'D)

3. Approval of a Stream Diversion Works Permit Application (SDWP.5321.2) by Kaua'i Island Utility Cooperative for the Kōke'e Ditch Diversion Modifications at Waiakōali (Diversion 620), Kawaikōī (Diversion 616), and Kōke'e (Diversion 622) Streams, in Accordance with the Mediation Agreement for the Waimea Watershed Area dated April 18, 2017, and Find that SDWP.5321.2 is Exempt from Hawaii Revised Statutes, Chapter 343, Waiakōali, Kawaikōī, Kōke'e Streams, Waimea, Kaua'i, TMK: (4) 1-4-001:003 and 013

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection & Management Branch

Mr. Uyeno read the summary of request and provided a brief background information of the submittal and summarized its timelines and also summarized the project description for each stream and gave information on the photos submitted, also provided the project actions that will be done for each stream; and read the staff recommendations for the proposed submittal.

The proposed changes will result in less water diverted into the ditch and more water retained in the streams. It is intended to address the requirements for Phase One Interim Instream Flow Standards (IIFS) outlined in the Mediation Agreement for the Waimea Watershed Area approved on April 18, 2017 by the Commission.

The Waiakōali Stream diversion is the first supply point for the ditch and the current irrigation requirements are low, the modification for this structure only needs to provide enough ditch flow to hydrate the ditch and tunnels. The Phase One IIFS value is 1.4 mgd. After proposed work is completed, the estimated diversion flow capacity will range from 0 to 30 mgd.

The Kawaikōī Stream diversion is the second diversion structure and contributes the majority of the water present in the ditch system. The Phase One IIFS value is 4.8 mgd. After the proposed work is completed, the estimated diversion flow capacity will range from 0 to 32 mgd.

The Kōkeʻe Stream diversion is the fourth main diversion structure and captures streamflow plus recaptures ditch discharge and routes the combined flows into the main ditch tunnel adjacent to the west abutment. The Phase One IIFS value is the natural flow of the stream. After the proposed work is completed, the estimated diversion flow capacity will be a range of 0 to 10 mgd

Agency comments were received from DLNR Division of Aquatic Resources and Division of Forestry and Wildlife which is noted on page 14-15 of the submittal along with CWRM staff response/recommendations. Also noted that no traditional and customary practices would be adversely affected.

The proposed action triggers an EA because the diversions are located on State land and in the Conservation District. However, per Hawaii Administrative Rule (HAR) §11-200.1-15(a) some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

Chair Case – thanked Dean for a thorough presentation and opened up for questions from Commissioners.

091520 01:21:56

QUESTIONS

Commissioner Meyer – some of the system looks a bit like retrofitting, in your estimation, is the changes going to be robust enough to survive a longer period of time as some materials used seem notwithstanding?

Mr. Uyeno – in part, I would defer that to Dawn Huff, representative for KIUC, as well as Kelsey Anderson. It is a retrofit but as you know under the Waimea Watershed Agreement, KIUC is proposing to develop a hydroelectric project as part of the entire system. My understanding is that they (KIUC) are planning to maintain this diversion as long as the project continues. In addition this diversions is high-up in the watershed and the high-flows we see for some diversions aren't as extreme in this area because it's near the top or at a high elevation of the watershed.

Commissioner Meyer – thank you Dean; the implication that KIUC is following this project and maintaining it carefully satisfies my concern.

Commissioner Buck – any comments from any of the other participants in the mediated settlement?

Mr. Uyeno – we do have Dr. Jonathan L. Scheuer here, representative for Department of Hawaiian Homelands, he may have some comments but I'm not aware of any other comments received.

Commissioner Katayama – these diversions are a preamble to the phase 2 in the mediated agreement, and currently we have 3 parties with vested interest: ADC, KIUC & the restoration of streamflows; are these changes to the system sufficient to satisfy the needs and in terms of maintenance of the system, the applicant permit is KIUC but how are the interest of ADC be protected by this or what is the arrangement under the agreement as I couldn't quite understand that reading the agreement.

Mr. Uyeno – deferred to Dawn and Kelsey and replied; ADC is the landowner they own the land beneath the ditch system. They do manage water users on the receiving end on the Manā plain so that would be their interest as far as that goes. <*asked to repeat second question*>

Commissioner Katayama – *reiterated and rephrased his second question in terms of ADC's role and the responsibility of the IIFS as identified in the agreement*

Ms. Dawn Huff, Representative for Kaua'i Island Utility (KIUC) – currently ADC is the landowner and KAA is carrying the operational responsibility for the ditch system. One of our goals in the design of these modifications was to do something that would not increase their operational burden but would ensure both the IIFS would be met and the ditch users downstream would receive flows needed. Our responsibility if the energy project moves forward, would start once we receive all our permits for construction. We would step into a lease agreement with ADC to take over the full operational responsibility for the ditch system, the maintenance and upkeep. At that point, we would become the responsible party for the IIFS. Our interpretation of the mediation agreement prior to KIUC taking over the operational responsibility of the ditch system is, we would be the implementor of these modifications and responsible for making any repairs should there be damage, but the operator continues to be KAA; so we would need to work closely with ADC and KAA to make sure the IIFS at each stream point is met, after the modifications are completed; thank you.

Chairperson Case acknowledged written testimony for submittal item B-3, received from Agribusiness Development Corporation (ADC) and Department of Hawaiian Homelands (DHHL)

091520 01:30:12

PUBLIC TESTIMONY

Dr. Jonathan L. Scheuer, Representative for Dept. of Hawaiian Homelands – Aloha mai kakoū Commissioners, I'm here today on behalf of William Ailā, the Chairman of the Hawaiian Homes Commission. We submitted our written testimony, mostly I'm here to say that we're supportive of finally reaching phase 1. It's taking longer than any party anticipated when the settlement agreement was reached but we're happy to be here supportive of the permits being issued. As we've noted in our written plans, DHHL's Pu'u 'Opae Homestead Settlement Plan Final Environmental Assessment and FONSI was published on August 8, 2020, so we're doing our part to prepare for settlement of this area for water delivery per the agreement. Happy to answer any questions

091520 01:30:12
Chairperson Case asked for a motion to approve B-3 as submitted

MOTION: (KATAYAMA/MEYER)
To approve B-3 as submitted.
UNANMIOUSLY APPROVED

091520 01:31:56

B. ACTION ITEMS (CONT'D)

4. Approval of a Stream Channel Alteration Permit Application (SCAP.5150.2) by Kaua'i Island Utility Cooperative for the Kōke'e Ditch Diversion Modifications and Installation of Monitoring Stations at Waiakōali (Diversion 620), Kauaikinana (Diversion 607), and Kōke'e (Diversion 622) Streams, in Accordance with the Mediation Agreement for the Waimea Watershed Area dated April 18, 2017, and, Find that SCAP.5150.2 is Exempt from Hawaii Revised Statutes, Chapter 343, Waiakōali, Kauaikinana, Kōke'e Streams, Waimea, Kaua'i TMK: (4) 1-4-001:003 and 013

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection & Management Branch

Mr. Uyeno read the summary of request and summarized the project description for each stream and gave information on the photos submitted, also provided the project actions that will be done for each stream; and read the staff review and recommendations for the proposed submittal.

Agency comments were received from DLNR Division of Aquatic Resources and Division of Forestry and Wildlife which is noted in the submittal along with CWRM staff response/recommendations. Also noted that no traditional and customary practices would be adversely affected.

The proposed action triggers an EA because the diversions are located on State land and in the Conservation District. However, per Hawaii Administrative Rule (HAR) §11-200.1-15(a) some actions, because they will individually and cumulatively probably have minimal or no significant effects, can be declared exempt from the preparation of an EA.

091520 01:44:55

QUESTIONS

Chair Case – thanked Dean for a thorough presentation and opened up for questions from Commissioners.

Commissioner Katayama – with the current data and improvement gathering for flows, who will have access to that once the stream upgrades have been put in and installed – does the department have any desire to have access to that data and what about ADC?

Mr. Uyeno – we'll be working with KIUC and Dawn will have a further response to that; and I believe all the parties will have access to the data in the mediated agreement.

Ms. Huff – yes, Dean is correct; it'll be shared with all the parties and it is our understanding of part of the agreement.

Chairperson Case noted that the written testimony previously received from Agribusiness Development Corporation (ADC) and Department of Hawaiian Homelands (DHHL) covers submittal items B-3 and B-4.

091520 01:46:42
Chairperson Case asked for a motion to approve B-4 as submitted

MOTION: (KATAYAMA/BUCK)
To approve B-4 as submitted.
UNANMIOUSLY APPROVED

Chairperson Case thanked everyone for their hard-work on these items and noted that it's encouraging to see it move forward from the lawsuit that resulted in the mediation, the site visit that most was able to attend and understand the locations of it; and is very encouraged to see the progress.

RECESS: 11:12 PM

RECONVENE: 11:19 PM

091520 01:54:52

C. PRESENTATIONS

1. U.S. Geological Survey Presentation on Scientific Investigations Report 2019–5150 Numerical Simulation of Groundwater Availability in Central Molokaʻi, Hawaiʻi

Mr. Roy Hardy, CWRM Ground Water Branch, introduced the presentation item and noted that the focal point of the presentation is the Kualapuʻu Aquifer System Area and gave a brief background of the aquifer area along with the wells and permits; and introduced Mr. Delwyn Oki of the U.S. Geological Survey who along with DHHL and OHA, assisted with the study.

PRESENTATION GIVEN BY: Mr. Delwyn Oki, U.S. Geological Survey

The study was published earlier this year and is also available online at: https://doi.org/10.3133/sir20195150. There are many volcanic vents near the Kualapuʻu Aquifer area which is important in the study of the groundwater flow; and there are four active production wells in the area and are of concern for future development. A graph was shown representing the groundwater recharge from 1940's to recent years.

There are four Motivations for Understanding Groundwater Availability which are: 1. Groundwater is the main source of drinking water; 2. Demand for groundwater is expected to increase; 3. Groundwater resources are limited; 4. Effects of additional groundwater withdrawal are uncertain. The overall objective of the USGS study was to evaluate groundwater availability in central Molokaʻi. An animation of the freshwater zone model from 1940's to recent years was also shown.

There are a number of subsistence sites that were identified in 1994 by the Molokaʻi Subsistence Task Force that may be affected if fresh groundwater discharge is reduced in the aquifer area. The model also evaluated how coastal discharge would be impacted as well.

In summary, a) groundwater model developed to evaluate withdrawal scenarios; b) model results indicate additional groundwater in the Kualapuʻu area may be available; c) the distribution and rate of withdrawals are important factors controlling groundwater availability; d) additional withdrawals will have an impact—managers and stakeholders must evaluate whether the impacts are acceptable.

The study also has a number of limitations such as: 1) groundwater model is regional in scale and may not accurately represent local conditions; 2) groundwater model contains uncertainty, a) subsurface geology poorly known, b) additional data from wells would help to constrain model, c) water-budget components uncertain, and d) model can be updated as information becomes available; 3) no wells available in parts of the Kualapuʻu Aquifer System.

Chairperson Case – thanked Mr. Oki for the presentation and the efforts to conduct the study

QUESTIONS

Commissioner Hannahs – that watershed is heavily populated with ungulates, did you study the effects that they are having?

Mr. Oki – we did not study the effect of ungulates in the Kualapuʻu area. The groundwater recharge which would be impacted by landcover was based on information available to us at the time period. Any effects of ungulates if they're incorporated in the land cover maps available would be accounted for and if not, we would not have addressed that.

Commissioner Hannahs – referred to page 6 of presentation and noted a steady decline in recharge from 1980 and each decade; asked if it corresponded to the rise in ungulates or has it been dealt with by the East Molokaʻi Watershed Partnership?

Mr. Oki – yes, they are. The reduction in groundwater recharge overtime, reflects a reduction in rainfall over the decades. It also might reflect a little bit of the loss of pineapple cultivation prior to the 1980's. Typically, where there was pineapple cultivation, you'll have a slight enhancement of groundwater recharge so without it (pineapple), there was a steady decline.

Commissioner Buck – I will add, the majority of the unrestricted ungulate damage is more on East Molokaʻi that may not be connected and we had a lot of horrible fires in this watershed that reduced the forest cover over the last 20-30 years.

(to Roy) to remind us, where are we in the Molokaʻi case – which well is Molokaʻi Ranch using and which one is Hawaiian Home Lands?

Mr. Hardy – there is a lot of background since 1992, and Well-17 is what Molokaʻi Ranch uses and they still have not gotten a permit to pump; but they do because they had existing uses at that time; that well has been in place since 1950. The contested cases are basically done and we're waiting for was this tool to help assess the (3) pending applications for Molokaʻi Ranch, DHHL and Maui Department of Water Supply. This is what we have now and can move

forward addressing these collectively, which is what we were trying to do through the contested case.

Chair Case – I know you have measures on the salinity levels that are okay and not okay for drinking water, do we have any studies on the impact of freshwater on the coastal areas as I recall there were concerns on the impact of limu?

Mr. Oki – I'm not aware of any specific studies that have been published for Moloka'i. This is an emerging issue (groundwater dependent ecosystems) for the State for instance, on Kona near the national park – how reduction in groundwater discharge through the park might impact some ecosystems there. There has been some study of salinity effects on selected types of fauna in the Kona area, but am not aware on specific studies on Moloka'i.

Chair Case – are there anchialine ponds along the south shore there or mostly fishponds and reef systems?

Mr. Oki – yes, mostly fishponds in the coastal areas.

Commissioner Meyer – thanked Delwyn for the presentation and noted the color coding of the models carefully highlighted the situation and a cause of serious concern for the utilities involved and customers. Do you think there's adequate attention in addition to salinity and the near shore water potential deterioration and attention to the need for redundancy on these wells? I think the need for concern was highlighted recently when the DWS-Maui had (3) wells out (of service) in the Wailuku Aquifer was an extraordinary situation, and the one well out on Moloka'i would be a serious concern and would be a real community problem. Do you think they're paying attention to that right now?

Mr. Oki – the County (Maui) is considering drilling another production well as a replacement for the existing well so they are aware of that and are trying to address it.

Mr. Hardy – added to in addition to redundancy, the localized effect of spreading out the pumpages as you can see all the wells are near each other and you have a large aquifer but there pumping out of one spot and you don't want to do that as it over stresses that one (area). In some scenarios they were moving East to West with those additional wells. They don't necessarily have to pump more but it provides redundancy and spreads out the pumpage.

Commissioner Hannahs – I wanted to understand, increasing the withdrawal will have an impact on traditional and customary practice?

Mr. Oki – the increase in withdrawal if it's maintained for a long period, is going to cause a reduction in the groundwater discharge that would naturally occur otherwise. For instance, if you're pumping a well at a rate of 1-mgd forever, the discharge that would've occurred going to the streams and oceans, is going to be reduced by that same amount so yes, it's going to have an impact.

Chair Case – that was part of my first question, how much of an impact-we don't know, but it will reduce the amount of fresh-water flow. Are you also saying the streams will have less water in it at a certain elevation?

Mr. Oki – if pumping from Kualapu‘u, it will not likely affect streams in the North-East valleys like Palikunu or Wailau. As a general statement, groundwater typically will discharge to streams and in an island setting, discharge to the ocean; so depending on where you put your well, it will affect that groundwater discharge. If we drill a well near the coast it will affect discharge to the ocean.

Mr. Hardy – to add on what Delwyn said, in the Commission’s Water Protection Plan, when you drill in a dike area the assumption is you’re going to affect stream flow. When you’re in basal areas that’s not the case, usually it’s typically more at the coastline.

Chair Case – and the basal layer would be thinner near the coastline, is that right?

Mr. Hardy and Mr. Oki – yes

Chair Case – it might take less time to impact salinity levels?

Mr. Oki – depending on where you pump; it’s a function of how thick the lens is but also how close the well is to that area of natural discharge. (and stated an example)

Mr. Hardy – there’s no doubt that when you pump, you’re going to impact what leaks to the stream or the coast as what used to go there is going to come out of the well instead. What does that impact do to the fauna and natural environment, and can they tolerate the salinity changes? That’s what we’re trying to assess like in Keauhou, you have a symposium to try and get at that question and there’s still needs to be a lot more work done on that.

Mr. Oki – it’s an emerging issue nationwide on groundwater dependent ecosystems.

Commissioner Katayama – the difference between the water added in scenario 1 and 2 is based on permit applications that are pending, is that correct?

Mr. Hardy – yes; the information that Delwyn had is what we had at that time. Subsequent to these scenarios, in early 2019 we got an update from Moloka‘i Ranch and increased their request by 100,000/gpd so a slight difference there. What’s missing is the reservation for Hawaiian Homelands of almost 3million gpd, more than half of the sustainable yield estimate so that’s set aside.

Commissioner Katayama – is there a scenario that comprehends all the reservations?

Mr. Hardy – you would need to ask Department of Hawaiian Homelands; there could be many and hopefully the pumpage is spread-out and not increase from your existing wells and continue to increase the stress in that one spot on the island where there’s a lot of pumpage going on.

Commissioner Katayama – that’s helpful, thank you Roy.

Chairperson Case – great presentation and great study; thank you so much for that and appreciate your work on it. It’s very interesting and important for us all in moving forward.

PUBLIC TESTIMONY – None

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C. PRESENTATIONS (CONT'D)

2. Briefing by DLNR Engineering on the State Water Projects Plan Update

Ms. Lenore Ohye, CWRM Planning Branch, introduced the presentation item and DLNR Engineering Division staff, Mr. Gayson Ching and Ms. Dani Yoo in which the agency were responsible for updating this component of the Hawai'i Water Plan. Also attending in support are the DLNR Engineering consultants, Mr. Lance Fukumoto and Ms. Amanda Miyahara of Fukunaga & Associates, and Mr. Ken Kawahara of Akinaka & Associates. Ms. Ohye then stated the next steps of the process to move the plan forward.

PRESENTATION GIVEN BY: Mr. Lance Fukumoto, Fukunaga & Associates
Mr. Ken Kawahara, Akinaka & Associates

Objective of the State Water Projects Plan (SWPP) ". . . to provide a framework for planning and implementation of water development programs to meet projected water demands for State projects." Preparation responsibility included Department of Land and Natural Resources (DLNR) Engineering Division and Consultants Fukunaga & Associates, Inc. and Akinaka & Associates, Ltd. Akinaka & Associates role in the plan was to look at the water demands in the north Kona region and at that time, there were concerns of water availability. Their report is the appendix in the overall State Water Projects Plan.

The SWPP was last updated in 2003 for all State agencies. The State Water Projects Plan is a planning level guide that provides general estimates of State water needs and conceptual water development options that could potentially meet those water needs. Key tasks are: a) inventory of state sources: water systems, wells and stream diversions, b) identification of proposed State projects/developments, c) assessment of future water demand projections, d) water development strategies, e) consistency with other components of Hawai'i Water Plan

The technical approach of the data collection included data from: the Public Drinking Water System data from Department of Health, CWRM Well and Stream Diversion Database, available Project Master Plans, and survey of State agencies. Also provided maps (O'ahu) of existing hydrologic units, registered wells and locations, existing stream diversions, and existing State water systems for potable and non-potable. Stated the projected water demands and explained the table of domestic consumption guidelines.

Cumulative potable water demands for the year 2034, the final year of the SWDPP timeline, calculates 12mgd for Hawai'i Island and almost 70mgd for non-potable use. DHHL Ag lands on Hawai'i Island contribute to most of the non-potable usage. Also provided information of the water development strategies to identify projects to meet water demands statewide for both potable and non-potable water. Other considerations included: consistency with WRPP, WQP, AWUDP and County WUDP updates, promote use of non-potable resources, water conservation initiatives, and the Food Safety Modernization Act. Read through the conclusions and recommendations to be pursued by DLNR-Engineering to work in cooperation with other state agencies.

QUESTIONS

Commissioner Hannahs – referred to Table 3.1 on slide #17 and asked what would be the basis for having different average demands from county to county?

Mr. Fukumoto – I couldn't speak for the county water departments but would have to assume they have their own data that would bear this.

Commissioner Katayama – how is the federal governments water demands reflected in this analysis?

Mr. Fukumoto – this report only deals with State water projects so we don't look at anything else, nothing from county or the federal level.

Commissioner Katayama – do you have an sense of federal consumption of both potable and non-potable water, especially for the Oʻahu calculation? <Overall usage and future demand>

Mr. Fukumoto – sorry, I'm not sure but it might be something that is indicated in the Honolulu Board of Water Supply Watershed Management Plans. Details like that would typically be at the county level. Reiterated this plan is based on state water projects.

PUBLIC TESTIMONY – None

Chairperson Case – thanked and appreciated everyone work on this study/presentation

091520 03:01:08

C. PRESENTATIONS (CONT'D)

3. Developing an Amended Interim Instream Flow Standard for Heʻeia Stream, Koʻolaupoko, Oʻahu

Chairperson Case acknowledged late written testimony for submittal item C-3, received all in support from Mr. Anthony Olegario on behalf of DLNR-Division of Aquatic Resources; Mr. Frederick Reppun; and Mr. Kanekoa Kukea-Schultz on behalf of Kakoʻo ʻOiwi

PRESENTATION GIVEN BY: Dr. Ayron Strauch, CWRM Stream Protection and Management Branch

Dr. Strauch touched base on the State Water Code HRS-174(C) and noted the Interim IFS process and spoke briefly on the assessment of instream and non-instream uses. Also noted the statewide interim instream flow standard priorities of each of the main Hawaiian islands.

The Heʻeia Ahupuaʻa lies in the Koʻolaupoko district on Oʻahu and the landowners/stewardship consists of DLNR, DHHL, KSBE, HCDA, C&C Honolulu, and HBWS. A number of non-profit groups also participate in the management of the various land areas within Heʻeia. Heʻeia also became part of the National Estuarian Research Reserve System.

There is a stream gage installed by U.S. Geological Survey (USGS) that monitors streamflow in Heʻeia Stream for a number of decades. There are also three (3) Board of Water Supply development tunnels in the Heʻeia hydrologic unit. The Honolulu Board of Water Supply manages the Koʻolaupoko Aquifer system. A graph chart was provided to show the mean daily

flow averages from He‘eia Stream for 1982-2019 and the mean daily withdrawal from Ha‘iku Tunnel.

There are many on-going traditional and customary practices in the immediate areas in which the various non-profit organizations help to manage, provide restoration and educational efforts while protecting the natural habitat and surrounding ecosystems.

A brief summary and explanation of the instream uses of water in the immediate area and the next steps were also noted.

Commissioner Hannahs noted the tremendous educational and outreach efforts provided by the various non-profit groups. Dr. Strauch also noted that He‘eia has the most potential to be the most prominent biocultural landscape statewide which features a complete restoration from mauka to makai.

QUESTIONS

Chairperson Case – thanked Ayron and asked what percentage is withdrawn from the streams through the tunnels and wells?

Dr. Strauch – the pumpage varies (referred to the graph chart on slide #19) and noted around 1mgd is what we see as the baseflow affected by the tunnel development. Of the original 2.1mgd baseflow there is 1.1mgd less, roughly half. It affects the dry season conditions; during wet season conditions, flows go up and down regularly but at the dry season there’s less than 300,000 gpd which is a trickle of water that affects instream values and what we’re working on protecting.

Chairperson Case – is the pumping tend to be dry season pumping?

Dr. Strauch – I think they (HBWS) rely upon this gravity source of water more during the dry season and let the aquifer fill during the wet season; that’s how they manage the other development tunnels and tend to use the aquifer as a natural reservoir.

Chairperson Case – commented on the affect of groundwater ecosystems and salinity.

Commissioner Hannahs – noted Chair Case’s points and noted his past involvement working with the various groups on the educational efforts and asked in addition to BWS, he’d like to see in the next steps, keeping the decision makers of the landowner groups engaged and commented on the important research taking place in the He‘eia ahupua‘a.

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PUBLIC TESTIMONY

Dr. Kawika Winter, He‘eia National Estuarian Research Reserve – Aloha Chair Case and Commission members. Thank you for the opportunity to testify in support of the opportunity to restore instream flow standards to He‘eia Stream. I’m a faculty member at the Hawai‘i Institute of Marine Biology. I’m not however providing testimony on behalf of UH today, I’m testifying before you as Head of The He‘eia National Estuarian Research Reserve.

Our program is to support restoration of the He‘eia Ahupua‘a and one of the ways we do support is we conduct research to understand the ecological affects of restoration efforts. We look at everything from the mountains to the sea, waterbirds, the aquatic environment, wetlands, coral reefs and all the issues like sedimentation, etc. We believe based on the research we have that this would be a good thing in support of restoration efforts and work going on there.

Ecomanagement partners such as Kako‘o ‘Oiwi and Paepae O He‘eia would be easier for them to restore if they had the proper amounts of water that were flowing down to the Ahupua‘a. I should mention our co-management partners include Department of Land and Natural Resources, Hawai‘i Community Development Authority, Ko‘olaupoko Hawaiian Civic Club, The Ko‘olau Foundation, as well as HR&B?, Kako‘o ‘Oiwi, and Paepae O He‘eia, and everybody is united in support to restore the waters to He‘eia Stream.

I did have one question for Dr. Strauch, aside from the Board of Water Supply diversion, there’s also a channelization that shuts water out of He‘eia and into Kane‘ohe and our co-management partners were hoping the restoration efforts phase flow back into He‘eia; via that route is being explored as well. I’m not taking any questions but as Chair Case said, we are ready and prepared to conduct the research that can translate what’s happening ecologically and culturally when waters are returned; thank you for your time.

Dr. Strauch – I didn’t explain that situation because it’s a bit complicated. There’s a spring that pops up at Haleiwa Joe’s area of Ha‘iku development. The City and County of Honolulu at some point, channelized that spring flow into a different watershed/hydrologic unit. That spring flow would’ve contributed to He‘eia baseflow but no longer does. It’s a larger engineering challenge that’s not just a resource management challenge. I’m not giving up, this is step one.

Dr. Winter – thank you, I just want to make sure that remains a part of the conversation.

Chairperson Case – thanked Dr. Strauch on his efforts on this as well as CWRM staff and for everyone’s participation today and look forward to continued discussions in the future.

D. NEXT COMMISSION MEETINGS (TENTATIVE)

October 20, 2020 (Tuesday)

November 17, 2020 (Tuesday)

This meeting was adjourned at 12:58 pm.

Respectfully submitted,

Rae Ann Hyatt

RAE ANN HYATT
Secretary

OLA I KA WAI:

M. KALEO MANUEL
Deputy Director