

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 15, 2021
TIME: 11:00 am
PLACE: DLNR-Board Room
1151 Punchbowl Street, 1st Floor
& online via Zoom
Meeting ID: 923 5371 4460

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 11:05 a.m. and stated it is also being held remotely and live streamed via YouTube for public viewing due to the ongoing Covid-19 pandemic; 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, Dr. Kamana Beamer, Mr. Michael Buck, Mr. Neil Hannahs, Mr. Wayne Katayama, Ms. Joanna Seto, Mr. Paul Meyer

COUNSEL: Ms. Linda Chow

STAFF: Deputy M. Kaleo Manuel, Mr. Dean Uyeno, Mr. Neal Fujii, Dr. Ayron Strauch, Mr. Ryan Imata, Ms. Rae Ann Hyatt

OTHERS: Ms. Kapua Sproat (Ka Huli Ao); Mr. Ernest Lau (Honolulu BWS); Mr. Barry Usagawa (HBWS); Ms. Janice Marsters (Hart Crowser); Ms. Heather Tonneson (U.S. Fish & Wildlife); Mr. Keith Hammond (Palm Valley Farm)

All copies of written testimonies submitted will be included at the end of the minutes and is filed in the Commission office and are available for review by interested parties.

061521 00:02:43

A. APPROVAL OF MINUTES

May 18, 2021

PUBLIC TESTIMONY – None

**MOTION: (KATAYAM/BEAMER)
To approve the minutes as submitted.
UNANIMOUSLY APPROVED**

061521 00:04:00

B. ACTION ITEMS

1. **Delegation of Authority to the Deputy Director to Enter into Memoranda of Agreement and Contracts With the University of Hawai'i for the Services of Post-Juris Doctor Fellows**

PRESENTATION GIVEN BY: Mr. Neal Fujii, CWRM Planning Branch

Mr. Fujii stated the summary of request and provided a brief background on the need for this service to protect the public trust and to generally provide better water resource management in all water aspects within the Commission on Water Resource Management jurisdiction. In doing so, sometimes legal expertise and assistance is needed by staff .

This MOA will help to streamline processes and gives the CWRM staff and Deputy Director discretion with related services; an example is assisting with amending the administrative rules of the Water Code.

Commissioner Beamer recused self from B-1 with reason being a faculty member of the University of Hawai'i at Mānoa.

COMMENTS

Commissioner Hannahs – commended the staff as this promotes a next level of engagement and leadership talent while reducing the cost of retaining outside counsel.

PUBLIC TESTIMONY

Ms. Kapua Sproat, Director, UH Law School – Ka Huli Ao – As Commissioner Hannahs mentioned, this is a fabulous partnership between the law school and DLNR; and also mentioned, that many of the other divisions have post-JD fellows as it's also a phenomenal training opportunity for our recent graduates, and a way to increase capacity for the Commission. I also wanted to say Mahalo for this opportunity and happy to answer any questions.

QUESTIONS

Chair Case – appreciated Ka Huli Ao contribution to DLNR.

Commissioner Buck – in support of this submittal and requested the Deputy Director consult the Commission once the fellow is onboard.

Commissioner Katayama – (to Neal) what happens at the end of the 18-month process I think it will identify what the staff views as priorities in addressing how we move forward?

Mr. Fujii – specifically in this case, it would be a set of draft administrative rules, rule-making process, and along the way consult with staff and Deputy on how the direction is going. It will be a collaborative process ensuring the Commission's interests and values are involved.

Commissioner Katayama – what needs to be applied as you go through the admin rules?

Deputy Manuel – we had prior legal fellows before and the majority of the MOA is focused on their service, research and helping us primarily with rules. They're also able to help with legal review and research. As brought up as Commission priorities, is making clear our penalty policy and rules. Other rules needed to be updated based on current practice. If there are other priorities, we welcome that input.

Commissioner Katayama – referenced to item #3.3 in the MOA

Commissioner Meyer – has concerns of MOA and referenced that the staff knows best on the need for administrative rules, procedures and changes to them; and wondered if a legal fellow from UH is in fact necessary to the cause, as there are viable staff already onboard. There is also dealing with client confidentiality and the area of responsibility and practice that will be given to an outsider.

Chairperson Case asked for Dr. Sproat's response and noted that DLNR has hired legal fellows to perform work/duties which spanned over a decade working with various divisions, with great success.

Dr. Sproat – noted Commissioner Meyer's concern and noted confidentiality is of high priority and that the person hired would have taken or about to take the Bar Exam; also expanded on the success of past legal fellows hired and that they would also consult with (DLNR) Deputy AG's. The point of the fellows is to provide capacity and specific legal expertise in areas where staff needs support. I will work very closely with staff and post-JD fellow to ensure your concerns are addressed.

Deputy Manuel – added that all draft rules will have to come to Commission for review and approval which are also vetted by the AG's office.

Commissioner Meyer – thanked Deputy and noted it's important for the Commission not to delegate that to an outsider who is not governed by the same principles and rules and reiterated his concerns and stance.

Chair Case – ensured that it can be built into the contract itself and reiterated these are post-docs that will be taking the bar timely and are also subject to upkeep with professional standards.

Deputy AG Ms. Linda Chow – pointed out that they are not hired as your attorney but as legal fellows or law clerks as your only attorneys are the Deputy AG's; they will perform as that function and assist staff and the Deputy AG's to accomplish what the Commission wants.

Chair Case – noted that important point and reiterated they'll be in close contact with our AG's.

Commissioner Hannahs – commented in the submittal language that the legal fellow is there to assist the Commission and will not do something independently and will support on governing issues. Also noted with regards to confidentiality that they're not dealing with individual cases but dealing with administrative rules.

Commissioner Katayama – referenced the termination clause and asked on its understanding of it.

Mr. Fujii – read the termination clause and noted its standard language and if terminated, any funding would be returned to DLNR.

Dr. Sproat – clarified that payment to the legal fellow is on a monthly basis and for any reason if the contract is terminated, the monthly fee would be paid and any remaining monies would be returned to DLNR.

Ms. Joanna Seto, ex-officio Commissioner – commented that the post-doc working on the administrative rules would also need to go through the notice and public hearing process and these concerns would be public knowledge at the point where Governor has approved it to go to public hearing so it should alleviate your concern (Commissioner Meyer). The MOA in front of us is a contract so if we want, we could add any conditions discussed with UH’s approval on the conditions set forth.

Commissioner Meyer – appreciated Ms. Seto’s comment and reiterated stance on noted concerns.

Chair Case – commented that law firms have law clerks, and the JD fellows are more advanced and are at the oversight of our AG’s.

Commissioner Meyer – noted that law firms have assurance policies for protection.

MOTION: (HANNAHS/KATAYAMA)

To approve B-1 as submitted

APPROVED: CHAIR/BUCK/HANNAHS/KATAYAMA/SETO

RECUSED: BEAMER

ABSTAIN: MEYER

061521 00:33:31

B. ACTION ITEMS (CONT’D)

- 2. Approve Order to Honolulu Board of Water Supply to Bulkhead Ha‘ikū Tunnel (well 2450-001) at the 10-foot Thick Dike 1,200 feet From the Portal Entrance and Reduce Their Withdrawal to 0.3 million gallons per day He‘eia Hydrologic Unit, Ko‘olaupoko, O‘ahu**

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

Dr. Strauch presented a PowerPoint presentation and read the summary of request. Showed a map of the area and explained the natural flow of the stream from mauka to makai and noted the well and tunnels in the surrounding. There are lots of interests in the restoration of biocultural landscape and educational opportunities. Construction of the tunnel reduced baseflow from 2.0

to 1.0 mgd. It also affected groundwater conditions in nearby streams and as far as Kahalu‘u Stream. That is why the recommendation to bulkhead stands in order to restore the high-elevation aquifer function and potentially see streamflow benefits in Ha‘ikū and surrounding valleys. Dr. Strauch explained the diagram of the existing BWS Ha‘ikū Tunnel at 600 feet which was completed approximately 50-years ago to help restore storage capacity of the aquifer.

The USGS conclusions were stated and explained along with the diagram of the 500-foot operation system that includes sources in Ha‘ikū and Luluku and drops water down to the 272-foot system, which is integrated with additional sources along the windward coast. The largest end users are for non-potable needs which includes Kāne‘ohe Marine Corps Base (KMCB), Mid-Pacific Country Club, Wastewater Treatment Facility, and Olomana Golf Course, i.e., noting that R2 water is available for use by the KMCB, however is not currently being utilized because of operational system issues; and noting they are the largest end use consumer within the Ko‘olaupoko district.

Dr. Strauch read and explained the staff’s recommendations.

QUESTIONS

Commissioner Beamer – Mahalo Ayron on the presentation and noted the integration of ground and surface water and asked how is everyone feeling on the ground conversations as it feels like a good interim solution to do.

Dr. Strauch – based on ground communications, everyone is in support of the bulkheading process and hoped the timeline were shortened and is standing on the two-year deadline answer. If it’s a “no”, we need to take appropriate actions to protect instream values, which the community understands. We’re hoping BWS keeps CWRM informed of the progress and timeframe.

Commissioner Beamer – commented with the withdraw amounts decreased there are other methods to meet their needs.

Dr. Strauch – BWS can attest to the impacts of their operations and systems and have spent the last five (5) months on the ground trying to make adjustments in limiting system losses and other issues. This is a wrench but from a practical standpoint, I think it’s doable.

Commissioner Buck – noted there’s no changes to the IIFS and noted in the recommendation if bulkheading is not successful, we will deal with that issue if it arises and asked if there’s possibility the streamflow in He‘eia will not be the same amount?

Dr. Strauch – if/when bulkheading is completed, we will not only have the results of implementation of bulkheading but also have two (2) USGS studies that will help shape the development of the IIFS for this and neighboring streams which are also affected by the original Ha‘ikū tunnel construction.

Commissioner Buck – asked if in the next two (2) years there will be an increased flow in He‘eia Stream?

Dr. Strauch – yes it's the interim solution.

Commissioner Meyer – thanked Ayron in the useful information and showing the hydrogeology part of it as well. Agreed that building a bulkhead is a great idea moving forward and asked (Barry or Ernie of BWS) on the potential impact to the high-elevation customers and asked on an in-depth analysis of what this reduction in withdrawal cause over time?

Chairperson Case noted HBWS can answer that within their public testimony.

PUBLIC TESTIMONY

Mr. Ernie Lau, Honolulu Board of Water Supply (HBWS) – Aloha mai kākou and mahalo everybody for allowing us the time and opportunity to testify and a big mahalo to Kaleo and Ayron, also Chair Case for taking the time to meet with us over the last five (5) months. *(read a portion of the HBWS written testimony)* and thanked Ayron for pointing out the USGS study conducted in 1971 and understand in restoring the dam that was the dike system to restore water especially during wet winter periods and be used during dry periods. We'll find out if its feasible and are committed to that potential and working collaboratively with CWRM and USGS. We may have different perspective on the scale of the restoration but are working toward achieving the same objective and appreciate the opportunity.

We agree to fund the preliminary hydrogeology and engineering evaluation of the bulkhead in Ha'ikū tunnel and looking for additional funding from our FY21-22 budget. We agree that increasing the dike storage will have a mutual benefit on the watershed and increases streamflow and produce a sustainable withdrawal of domestic use for Hawaiian Home Lands in the mauka Ha'ikū Valley area.

(read the HBWS progress from its' written testimony) We expect the Ha'ikū Well to come online in July (2021). At BWS, we only use what we need to supply the needs of our community. We'll work hard to do that and it will be challenging. Already, our operation staff shown concern when we start to throttle back on sources in the system if it will create situations where we may suffer more main breaks especially in the lower Maunawili system. And operational issues where we may utilize water of the Ha'ikū Tunnel for emergencies but will do our best to keep the tunnel production down within the 0.3 mgd range.

(continued to read and explain the HBWS progress #5 from its' written testimony) We also noted the unknowns at the makai area as between mauka and makai there's a lot happening like channelization, stream diversions, and losing/gaining sections of stream. We're committed as Barry and I talked about a re-envisioned watershed partnership agreement with all the stakeholders including the major landowners in the Ahupua'a if they're open to that to seal our commitment to work together for the good of the community.

(continued to read and explain the HBWS progress #6 from its' written testimony) We'll continue to push water conservation and efficiency and glad that Ayron mentioned the KMCB potential opportunity to use recycled wastewater for their irrigation demand for their housing areas and golf course. I'd like to request from the Commission your support through our congressional delegation if you know them to help support a project to have the Base divert their wastewater and have it reused on the base as like we do in 'Ewa. *(reiterated that KMCB is the largest user on the Windward system and explained how it's getting drier)*. The

KMCB honored our request and dropped their usage to about 2.0 mgd. We pitched a project to U.S. Senator Brian Schatz and don't know if it will get funded but encourage our federal partners on this watershed to take responsible actions to reduce demand on our potable drinking water sources.

We also look forward to the IIFS discussion and noted the timeframe and feasibility of a bulkhead into this tunnel that was dug about 80-years ago so there is a need to exercise care and caution with a longer timeframe.

(referred to Barry Usagawa for further comments)

Mr. Barry Usagawa, HBWS – to elaborate on the system impacts as demands increase, when demands approach a fixed supply, our reservoirs levels drop. Last summer our reservoirs in East Honolulu were at 5-feet. *(explained the pressures at the high elevation level with respect to increase demands and low-water levels)*. The main breaks at Maunawili are due to the pressure being high at 200psi and there's concern of that.

I'd like to point out that the largest water user in the 500-system is the State Hospital. In a newspaper article they plan to open in August (2021) with double the capacity and the water use according to the FEIS of 2017 suggests an increase of 100,000 from currently 23,000 and at full build out will be 201,600 and they use Ha'ikū Tunnel water directly as they're directly on the transmission main. We're being asked to decrease from 0.5 to 0.3 mgd which is a drop of 200,000 and in two months the Department of Health (DOH) will start to use 100,000 more. There's three (3) big expansion projects but we're concerned of the State Hospital one. We'll try but, I think it would be difficult to meet those requirements once the hospital goes into full operation and increase their water use to 100,000.

We're cut back at 75% off of our permitted use and to cut back more we're questioning how fair or balanced it is and workable? As a suggestion, I'd like to recommend that the Commission consider requiring DLNR and DOH to install a pump on the existing exploratory well above the hospital and stop using Ha'ikū Tunnel water. It would be similar as Queen's on-site well and our meters would remain as emergency backups in case the pump goes out. It's State Well #2449-02 constructed by DLNR in 2000 with a 12-inch casing and 800-feet deep and test pumped to 500 gpm which equates to 720,000 gallons of water which is in the Keahala Stream system and wouldn't affect He'eia. The well is located 300-feet from the hospital water tank at the very top of the hospital; which is more than enough to serve both the hospital demands at full build and also Windward Community College *(reiterated stance of installing a pump to use less of the Ha'ikū Tunnel water)*.

Want to point out that this was not included in the State Water Projects Plan but adopted by the Commission in January (2021). The plan was to continue to take it from Ha'ikū Tunnel and noted the conversion of the well was not included but feels the community would support it. If the hospital can convert over in 2-3 years, it would help us use less water in the 500-system.

Mr. Lau – added that DOH operates its own water system at Waimano Home which has a well-based system with tank storage; and commented if another State agency can step-up in creating its own source of supply *(noted Joanna's agreement)*.

Also added that he, Barry and Kathleen Pahinui visited the various He'eia areas and working groups and was pleased and want to continue to collaboratively work together with a revised Ko'olaupoko Watershed Management Plan (through Barry).

QUESTIONS/DISCUSSION

Commissioner Beamer – it's great meeting with the community as it's such an important area for agricultural and cultural restoration and to me as one of the emerging highlights of Hawai'i; so it's important to make this as successful as possible. I've visited the Waihe'e Tunnel and Bulkhead on a tour and in that instance its achievable to build a bulkhead and with the hydrology may solve some issues with storage with periods of drought and high-water needs. What's the difference between Waihe'e and this bulkhead?

Mr. Lau – the Waihe'e is like H-1 freeway wide in size whereas the Ha'ikū Tunnel is a much smaller size. We've already started research with reports dating back to 1940s-60s. That tunnel is much tighter (*explained the history of the process of the tunnel and bulkhead*). Noted within that period, the water quality compromised and with this recent research, the tunnel will have to be closed but will be a benefit to He'eia Stream and during that period of the investigation through construction, may lose the use from that source until we can clear it from DOH to put it back in place.

Commissioner Beamer – referenced KMCB as the largest user on Windward side and the possibility to use R-1 for non-potable needs and are happy to support that.

Mr. Lau – appreciated that.

Commissioner Hannahs – appreciated Barry and Ernie's comments and Ernie's holistic view approach and supports all efforts. With respect to the urgency and timeframe and context of this decision making today will support it. We are aligned right now and need to get as much done now as other things as climate change impels us. We can't overlook or overstate we need to make good progress. I'm glad you toured the ahupua'a and saw the amazing work there of those that best represent the community and our values. I can't help to notice (Zoom) the young people there that Ms. Rocky Kaluhiwa helped shape and she was there from the beginning before any of these organizations existed as she's kupa 'āina. What we see is the vested legacy of outstanding community advocacy; Mahalo.

Commissioner Katayama – asked on the ability of the KMCB using recycled water.

Mr. Usagawa – they use 2.0 mgd on average and don't know much on their wastewater system as its on their base. About 1/3 of that is wastewater and they have a lot of irrigation with a lot of green space so a little more than 500,000 gpd (wastewater). (*explained the wastewater pipeline area of the base*) which transports it and there's a lot of housing within the area. Converting the R2 to R1 and the reasons it's taking so long is because its R2 water, they've tried to irrigate it and DOH reuse guidelines are very strict and more stringent are R2 and rightly so. There's a 500-foot buffer between irrigation and nearest homes. There's more dense trees along the perimeter to actually use more R2 water.

Commissioner Katayama – we really need to get to a R1 to better utilize and substitute out potable water to reduce the demand. With the State Hospital, does it make sense for the State

health system to manage a water supply that has a 700-gpd capacity and they're only using 200 – would it make more sense for the board to manage that supply?

Mr. Usagawa – we don't own the infrastructure and we have our hands full operating our own system. They can size the pump to their needs but it's feasible. The DLNR-Engineering staff offered to give us that well and we agreed to use it as a monitor well for now but didn't know the IFS would cut so deep in Ha'ikū and putting that as an alternative for the hospital is workable.

Commissioner Katayama – in terms of the ability for the interim flow standards that you have another source at the 500-foot level that can take the pressure off and eventually the bulkhead.

Mr. Lau – we haven't thought of looking at the condition and integrity of the State Hospital water system. We envisioned they could put a pump in that well and pump it into the tank and keep their meter as a backup should there be a failure in the pump. This is hot off the press and currently did not share this with anyone but throwing out ideas for solutions with a holistic approach that makes sense.

First hearing of this, my immediate reaction was not good, but overtime and visiting the stakeholders at He'eia, it really changed. The challenge is how do we find solutions of the needs of everyone? In this case with the bulkhead creating a potential for storage in the dike systems that were depleted, is a potential. Not knowing if its feasible but want to take a look at that. I'm with Barry, I'm not too keen in taking over the State Hospital water system and in not knowing what our BWS customers would have to pay.

Commissioner Katayama – the balance would be the cost of the dike system

Mr. Lau – sounds like the Commission is looking at the bulkhead should be done based on the 1971 USGS study recommendation. With climate change, we can anticipate that rainfall patterns are changing seeing shorter duration but more intensity – how do we capture that? One way is to use a dike system like a dam (underground) that can retain the recharge and allow to build-up storage behind the dike.

Commissioner Katayama – asked on the timing of the reduction to 300,00 gallons

Mr. Lau – the key is getting Ha'ikū well operational again and my staff informed it will be within the July timeframe and will need to re-certify the source with DOH Safe Drinking Branch. However, there were some construction issues that need resolving before completion.

Once it's in use and the pump turned on, and see if we can bring down the tunnel flow to 0.3 and make up the difference through the well but we're very nervous about this, but will test this concept this summer.

Commissioner Katayama – the way it stands now is if we approve the recommendation, it is effective immediately.

Mr. Lau – we can't do it immediately. Right now the portal is at 0.5 mgd but need to get Ha'ikū well operational.

Mr. Usagawa – Ha'ikū well also affects the stream and for the USGS study to determine how much? I don't know if we'll achieve the objective by running it. Maybe the tunnel affects the stream more than the well but they both affect it.

Mr. Ryan Imata, CWRM Ground Water Regulation Branch – regarding the State Hospital and of the Ha'ikū well affecting the stream which may be the same issue for the State Hospital well. From a note in the database, states there's a potential impact (the State Hospital is not running now) and that artesian flow is flowing into Keahala Stream; so there's a possibility of pumping that well may impact surface water and also affecting a lo'i that hospital residents tend to, so there's issues with pumping the State Hospital well.

Mr. Usagawa – clarified there are two (2) wells; the one Ryan is referring to is #01 which is by the lo'i; #02 is above the hospital by the tank and it's an exploratory well which I was referring to and whether there's impacts to streams, there's no flowing stream nearby. Keahala Stream is close – we can talk some more about it and try to figure that out; DLNR drilled it back in 2000.

Chair Case – we need more clarification of the timing of bringing it down to 300,000 and the potential impact by drilling more out of Ha'ikū well because if it's a direct impact, would defeat the purpose.

Deputy Manuel – these conversations highlight the need for an IIFS; there's a connection between groundwater resource and streamflow. This dialogue in looking at alternatives to meet overall demand is good. As Barry and Ernie mentioned, shifting to utilize the State Hospital well is an option and need to engage DOH and DLNR to transfer that well over. As highlighted in January, the need for an instream flow now is critical and what we're trying to do with this recommendation is balance out immediate stream restoration while looking at the long-term sustainable and comprehensive health of this aquifer.

Hearing the concerns of BWS, we can work with them on timeframe and if it delays the timeframe, we can amend the submittal to recommend that July it drops down 0.3 mgd but the goal is to see some stream restoration now and not wait for the bulkhead to happen. This is us trying to balance without setting an IIFS, this is a way to get streamflow in the interim of the bulkhead project.

Chairperson Case noted to place the timeline into the recommendation of the submittal so if pumping doesn't solve the streamflow issue, then we can come back to a solution.

Deputy Manuel – what we did here, is by requesting an increased daily reporting of pumpage, we'll be able to work with our data sets to understand how wells are affecting streamflow for streams that have gages and cross-reference with rainfall. Without getting that daily, it would be difficult to understand those impacts immediately. That condition in this item is what we're recommending. If we do see impact based on what we're recommending with the cut-back scenario, we can come back to the Commission to recommend an IIFS. We want to see if its feasible to move forward with this bulkhead but in the interim still need to protect streamflow and instream public trust uses.

Mr. Lau – we’re still engaging USGS on this approach to look at the watershed and the impact on connection between groundwater withdrawals and streamflow.

Commissioner Beamer – I’d like to hear more from the community; I’m in support of this as it gets us some return to the stream immediately and gives us time to understand the bulkhead and other issues. As for conservation, it seems like a cutback in use by the Military would solve this. What’s your level of control with users; could you ask for conservation by one (1) large user?

Mr. Usagawa – yes, we started our summer conservation messaging. The base doesn’t use Ha’ikū water, they could cutback. I’d prefer to focus in the 500-system, its users and see if we can reduce the drop down to the lower system. We can make that up with other sources; it’s a sensitive system and changes need to be made incrementally and that’s why we gradually stepped down over the past 6-months to monitor any impacts. (*spoke of El Nina pattern regarding a dry Summer*). We can make targeted conservation messages to specific users and see where that leads through the Summer.

Commissioner Hannahs commented if there’s amendments, to hear public testimony first to gather more information.

Ms. Seto – (to Ernie/Barry) what is the timeline for getting the hospital and Windward Community College on the DLNR well? Do we have approval for it? I know you’ll need to get the source approved for the He’eia well going back on. Did you get a timeline from the Drinking Water Branch knowing there’s staffing issues? I don’t know if you’re going to meet the 0.3 mgd limitation once it’s approved. Do you need additional time for that as well?

Mr. Lau – getting Ha’ikū well back in service and online-we appreciate the Safe Drinking Branch (SDB) assistance and my staff says July but if we could give us more room. (Commissioners) to bring a potable water source online, there’s a specific process with the SDB at DOH to test and clear for the well to be in service to ensure compliance with the Safe Drinking Water Act requirements; so more time would be helpful; maybe August or September but part of me doesn’t want to delay this any longer to be safe.

PUBLIC TESTIMONY (CONT’D)

Dr. Kawika Winter, He’eia National Estuarine Research Reserve (He’eia NERR) – Aloha mai kākou Chair Case and Commissioners. Thank you for the opportunity to submit testimony. I’ve testified previously on this issue and stand on that testimony and want to say a few things in relation to the recommendation on the table today. The concern of the fact is that this recommendation would have on spring water in order for the restoration activities to happen using traditional and customary practices in the ahupua’a; we need more water.

We have a great working relationship with Board of Water Supply - Barry and Ernie and CWRM staff - Ayron and Kaleo. It’s been a great opportunity working through this challenging situation together. There are traditional and customary practices that are not being exercised because there are uses of water that are not appurtenant rights namely the irrigation of golf courses. If this recommendation goes as follows, it would cut off the water taken from the tunnel but increase water taken from the wells. There’s nothing in the

recommendation about regulating the amount of water being taken from the wells and if the amount of water taken from the wells just makes up for what's not being taken from the tunnel and it affects the springs, then the traditional and customary practices that are occurring will be sacrificed for the irrigation of golf courses. From that perspective, I'm hoping there could be some regulation on the amount of well water that's taken and not a free for all when they report back.

One more area of the recommendation there was an area to monitor stream biota and I testified previously that the He'eia NERR is willing to collaborate on the monitoring. There was no language in the recommendation as to who was to do the monitoring. If its within our boundaries, we hope to be involved in that as we have a great working relationship with Division of Aquatic Resources and wanted to reiterate that. Thank you for the opportunity to testify, are there any questions?

PUBLIC TESTIMONY (CONT'D)

Ms. Rocky Kaluhiwa, Kāko'o 'Ōiwi - Aloha mai kākou Chair and members of the Commission. I'd like to thank Commissioner Hannahs for your humble words also for your service and also to Kamana Beamer as this is your last day today, Mahalo for your service to this Commission.

Aloha, my name is Leialoha "Rocky" Kaluhiwa. I'm speaking today on behalf of our Jones 'ohana. Our 'ohana is a registered organization of over 300 active members and represent one of the kupa 'āina of the He'eia Ahupua'a today. Our family has been in He'eia for over thirty (30) generations. My husband Freddy Kaluhiwa was appointed the Konohiki of He'eia by my generation by the He'eia Kūpuna Council. My grandfather Ulysses Jones, a descendant of Kana'ina who was the father King Lunalilo, was one of the few Native Hawaiian attorneys in Hawai'i at that time, and was made the overseer of the Territory in which is now known as the City and County of Honolulu. He was tasked to oversee the Ko'olaupoko Moku. During his tenure, he was commissioned to write a thesis on the waterways of He'eia. His position entitled him to help with the allocation of water to households and farms both mauka to makai, as everyone in those days was dependent on the flow of water in the 'auwai system.

Sharing of this precious resource through the canal and ditches created by our people long ago, one had to follow a strict timetable of the use of the water. Overdrawing of water upstream denied water to downstream users. Pollution of upstream created bad water for those downstream particularly for kalo farmers. Obstruction of water for drinking, irrigation and daily uses had to be carefully timed and managed so that all could use the water supply equally in a responsible and productive manner.

My grandfather Ulysses married Nāpo'e who was a direct descendant of Keko'aomokumoku o He'eia, the high Chiefess of He'eia. Her and her husband was the Konohiki of He'eia at that time. Together Ulysses and Nāpo'e raised twenty-one (21) children, sixteen (16) which was their own and five (5) in which they legally hānai. It was good for those days because it meant more workers for the lo'i. As Konohiki and following tradition, he and my grandmother designated Luna for the various mākāhā, small gates off the stream of He'eia which would open at specific times of the day or when needed to allow cool water to flow into the lo'i to provide a mix of the warm and cool water to keep the kalo healthy.

(Ms. Kaluhiwa – cont'd)

This resulted in a healthy production of kalo and other food products. When coupled with the healthy 'āina mauka and supported our lo'i i'a as well as our abundant off-shore marine resources of Kāne'ōhe Bay once known as Coral Gardens. This rich and thriving ahupua'a was the reason ancient Kings of O'ahu, kapu the 'āina for themselves. Although I was born thirteen (13) years after the death of my grandfather Ulysses, our 'ohana still practice these traditions till 1957. Our 'ohana and other kuleana landowners fought diligently against the destruction of the 'auwai system that was supported by the developers. During that time, the largest landowners surrounded the kuleana landowners and were the only ones who could afford to hire expensive attorneys to use scare tactics to have the kuleana landowners sign-off the closure of the traditional 'auwai system. I remember my uncles' loud resistance in these meetings when they signed off their water rights. My uncle Kapili McCabe owned the last two (2) poi mills which closed in the late 1940s, early 50s.

Today the Kāko'o 'Ōiwi organization comprised of some of the traditional He'eia 'ohana and governed on this board by some of the direct descendants of Keko'aomokumoku o He'eia shared their 'ike in the advisory capacity and are doing an immense job in restoring our lo'i lands. These lands are now under the jurisdiction of the Hawai'i Community Development Association (HCDA), a state agency. An IIFS ensures the water needed to keep the entire ahupua'a including the ocean, healthy and sustainable. This is the most important criteria to keep our water, lands and ocean healthy and ensures the health for generations of our people and the IIFS helps to solidify that. For that reason, our 'ohana, traditional practitioners and kūpuna stress the importance of kū lōkahi kākou, working together.

I humbly ask you to please support this. Mahalo pumehana.

PUBLIC TESTIMONY (CONT'D)

Mr. Kanekoa Schultz, Kāko'o 'Ōiwi – Aloha mai kākou. As part of Kāko'o 'Ōiwi that was awesome what Aunty said. We would really appreciate to see the instream flow standard because that mandates and solidifies the ability for us to move forward. Even during the pandemic, it shouldn't be a question of why that IIFS is maintained as obviously water is moving around. We appreciate and look forward to the partnership that we've already created; Mahalo for your time.

Ms. Leimana DaMate, 'Aha Moku – Aloha Chair and members of the Commission. Thank you for the opportunity on behalf of 'Aha Moku, I am the luna alaka'i. We've submitted written testimony, and after listening to Rocky's testimony, I only want to highlight a small portion of this. Kawaikapuokalani Hewett is not able to join us and asked me to read a part of the 'Aha Moku testimony and ties in with what Rocky has said.

(read from the written testimony)

“The people of He'eia Ahupua'a are an example of how communities, both native Hawaiian and others, have collaborated over the years to protect and preserve their culture, their practices and their specific 'ike, or knowledge of He'eia. They promote sharing of this knowledge and work continuously to do so. In sharing their 'ike, they have successfully partnered with others such as Papahana Kuaola who leases land from and is supported by

Kamehameha Schools. Many of the generational families are part of Kāko‘o ‘Ōiwi who are part of the He‘eia wetlands and cultivate kalo and other culturally important food crops. ‘Aha Moku participates with and supports Kāko‘o ‘Ōiwi and these families. We hold weekly kūkā sessions to share the ‘Aha Moku Foundation at Kāko‘o ‘Ōiwi with community leaders, families, organizations, legislators and government offices. All will benefit from the maintenance and restoration of stream and wetland habitat in He‘eia through increased streamflow because when the land is healthy, everyone benefits.

Also of great importance to the community is the strong participation of the Natural Estuary Resource Reserve (NERR) in He‘eia. The NERR consists of six strong Ko‘olaupoko Moku organizations – the Paepae O He‘eia, the Ko‘olaupoko Hawaiian Civic Club (the oldest Hawaiian Civic Club in Ko‘olaupoko organized in 1937), the Ko‘olau Foundation, Kāko‘o ‘Ōiwi, the University of Hawai‘i Institute of Marine Biology, and the Department of Land and Natural Resources (DLNR-He‘eia State Park)...”

With this, we strongly support this submittal and ask that the Commission approve it today. Thank you very much.

PUBLIC TESTIMONY (CONT'D) - *(video testimony)*

Mr. Keli‘i Kotubetey, Paepae o He‘eia – Aloha kakahiaka kākou. We manage and are kia‘i for He‘eia fishpond at the bottom of the stream and are connected to both the near shore reef ecosystem and He‘eia muliwai and all the way to the mountain tops that form our beautiful watershed here. I wanted to take a moment to provide testimony in support of the suggested recommended interim instream flow standard being offered by the Commission on Water Resource Management (CWRM).

Thank you so much for those recommendations. I think it’s the least we can do at this point in time and is wonderful that more water being returned to our watershed is absolutely critical. At this time, we are seeing that our loko i‘a is being hampered by the lack of freshwater and more freshwater means more nutrients and freshwater is the engine that drives our loko i‘a and the more productive our pond will be.

We’re the micro, small guys and we currently see our pond as too salty and not much phytoplankton or zooplankton production as we would expect of a pond of this size; so mahalo for offering an increase in or return of more water to our stream because we know it would have a positive impact at the fishpond. We are in the process of restoration and with it comes restoring our understanding and faith in the system that not only provides water to the communities around the island but also responsible for the upkeeping and maintaining the health of our natural ecosystems which includes us as kanaka.

I believe the Ha‘ikū tunnel was drilled, He‘eia Stream saw 10 mgd at the time my grandmother was a teenager and when the tunnel was put in, it dropped down to a fraction of what it is. My son, who will be a teenager in a few years, it saddens me that as a child who plays in He‘eia Stream, only sees a fraction of the water of what his great-grandmother saw. I’m confident and happy to know that I can tell my son that I did something to restore more water and it’s important to change things for the good-of our environment, flora and fauna, and the kanaka and move in the direction of having a more productive loko i‘a, reef

ecosystem and to our mountain tops. Mahalo nui for the opportunity and I'm in support of the recommendations.

(video testimony)

Ms. Hi'ilei Kawelo, Paepae o He'eia – Aloha Commissioners. We have the distinct honor, kuleana and privilege to care for the He'eia fishpond. I'm here today to testify in support of the return of water to He'eia. We're at the muliwai the end of the ahupua'a where the stream meets Kawahookamanō (Kāne'ōhe Bay) which is an important place for us. That mixing of salt and freshwater is where we see recruitment of juvenile fish. Without that mix in good quantity and quality, we don't have fish, phytoplankton and baby fish. For us, freshwater, wai is the limiting factor for restoration of this ahupua'a.

(showed the first water gate "Kāneloa" and explained that historically the stream was very wide and overtime the width became much smaller)

This amount of water is limiting a lot more than just the amount of kalo we can grow and amount of fish able to grow in the fishpond which also affects the fish at Kāne'ōhe Bay.

(showed the second water gate "Waitu" and explained that it's the only gate the functions to bring freshwater into the loko i'a; showed the two(2) pieces of 2"x12" boards the serve as a water barrier)

It's important for freshwater to stay in the stream and make its way out to the Bay and it would be irresponsible of us to pull both of these boards. *(explained and demonstrated by pulling up the board that over the last year how the water level is low and no longer freely flow over the boards)* We need to see more freshwater than that. We're looking forward to a future of growing fish and been at restoration for 20-years and its hard to do when your dependent on freshwater and this is all we've got here.

I really mahalo you guys in taking the time to think creatively about how to help solve a problem. We've got at least three (3) non-profit organizations that's been working in He'eia for 20-years which is a lot of time, energy and resources that have been put towards the restoration of an ahupua'a. What we want to see is 100% return and flow of water to He'eia.

(video testimony)

Mr. Keahi Pi'iohi'a, Paepae o He'eia – Aloha. I've been working here the last nine (9) years and in that time we took over you could not see the wai because there was not much of it, to a point where we know exactly where the wai is now and from doing the restoration, know where it's not anymore. The function of this fishpond is to create an ecosystem; not for the fish but the environment that we create and without that wai, the environment isn't created. We would never see or lived the way our kupuna did if the wai isn't returned.

It starts with good choices at the top, so we're asking you as the Water Commission, to look at this area. There was an 'auwai that fed freshwater to the other side of the fishpond and (now) there's no water that runs through the entire six (6) acres. Our mā kāhā is a trickle and see our i'a in that as it's their only source of freshwater they have. It's not about building huge aquaculture but using the footprints our kūpuna left for us; and fortunately, I get to

come here everyday and walk in those footprints. The work we do is not always day-to-day gratifying, it's hard at times; but we find the work we do is for the future. People will benefit from this loko i'a 20-100 years from now and will benefit even more if wai is added back into this loko i'a.

All of us today have the same passion and want to see a better Hawai'i. I can't see myself doing anything but huli ka lima i lalo, my hands need to be dirty and I've learned we can't make changes without doing it ourselves.

We know you understand and mahalo you guys for all the work you've done. We understand water is coming back and know it's just the start and hope one day when you do look at this, an 'auwai is running through this area and freshwater is coming to the other side of the pond and it starts with our wai. We ask you to help us restore this loko; it can be restored even from where you sit. We mahalo you and are grateful for the things you're pushing for and hope to see this place as how our kūpuna seen it; Mahalo.

(video testimony)

Mr. Willis Motooka, Ko'olaupoko Resident – I'm a retired science teacher from Castle High School in 2001. My experience with the fishpond was that of a volunteer and volunteered for the past fifteen (15) years. Salinity would go down with increased freshwater. It's important in two ways; it attracts fish and produces food for the types of fish the pond was popular for such as the 'ama'ama and 'awa. Those type of fish were herbivorous meaning they fed on algae and that freshwater would cultivate that type of algae they depend on.

(video testimony)

Mr. Fred Takebayashi, former He'eia Fishpond care taker 1945-50; Ko'olaupoko Resident – I lived here (at the fishpond) from 1945-50. While living here, in the beginning of the year was to catch as much baby mullet that were in the shoreline and bring it to the fishpond and raise it. That was a major work in the early part of the year. Then the rest of the year involved fixing the walls, making barracuda trap and other stuff.

I would like to see it revert back to at least having the freshwater come directly into the fishpond for the sake of the fishpond. Neighbors say it could be used better elsewhere, but I think it needs to revert back to what it was. There are people who didn't live the time I did, so it's hard to bridge the gap. Because I was born and raised on a fishpond and spent a good time at the fishpond, I look at it a certain way; more than a fact that it's just a place, it's a part of Hawai'i.

Mr. Iokepa Miner – Aloha mai kākou. I'm here on behalf of my 'ohana but also to bear helping hands with Kāko'o 'Ōiwi. I'd like to mahalo you folks for giving us the opportunity to show our support and speak of why we're here. I support the restoration of water to He'eia Stream and the perpetuation of traditional practices and support Hawai'i being Hawai'i and water is a piece of that and a key component of life. For what we do here in He'eia and across Hawai'i, and many of us heard talking today, water is a key aspect. You can grow kalo without water but will not be the same. You can't recruit fish, breed microorganisms, bring back native species found nowhere else without this water.

For us, putting more water back into the system allows us to effectively move forward and continue these practices so that our future generation can continue to enjoy these pieces of Hawai'i that each of us got the privilege to enjoy and be a part of. At a minimum, I also support the interim instream flow standard because the work we do in restoring a functional wetland muliwai estuary system, starts with knowing what our baseline flow is. We're already working off tides, moons, rainy and dry seasons; but not being able to work off a baseline flow is another wrench in our system. We can mediate but if we don't set these standards before the changes, we may not be able to do anymore.

We're taking progressive action to set the foundation so that the future we move forward on is solid. Again, mahalo to all of you folks.

PUBLIC TESTIMONY (CONT'D)

Aloha mai kākou. 'Oiai he mea waiwai ka wai, e 'Ōlelo Hawai'i ana wau ia 'oukou a inā 'a'ole 'oukou maopopo ka 'Ōlelo Hawai'i, na 'oukou ka hewa. He mea waiwai ka ho'ihoi 'ana i ka wai i kō mākou kahawai 'o He'eia. Mamake 'oukou e 'ike i nā mea ho'onaninani ma ka tv no nā malihini no nā mea e a'e a 'oukou e kāko'o ai, ho'ihoi i ka wai, no ka mea, na mākou na limahana o kēia 'āina nei. E hana i nā mea o kō mākou kupuna a inā mamake mākou nā keiki, nā hanauna e hiki mai ana e ho'omau i kēia 'ike o nā kupuna o ka wā ma mua, o ke koho ahuwale loa, o ke koho pololei a 'oukou, e ho'ihoi i ka wai. Kāko'o wau nā mea o kō mākou mau hoa ma ka loko i'a, ka NERR, 'Anakē Rocky, nā kupuna o kēia 'āina. Kāko'o wau i kēlā mau mana'o, no ka mea, o kēlā ka mea kūpono o kēia 'āina nei. No laila, me kēlā mana'o, 'o wau no 'o Kapalilaokalani Ehuwela, he mahi 'ai au no Kāko'o 'Ōiwi ma He'eia nei. Koho maika'i. Koho pololei 'oukou, no ka mea, no nā hanauna e hiki mai ana, 'o lākou ka hihia, 'a'ole na mākou. Mahalo.

Mr. Nicholas Reppun – I'm a farmer at Kāko'o 'Ōiwi for the last six (6) years. It has been a great honor and privilege to farm here and one of the most exciting things that has happened for us is restoration of a historical 'auwai. We're able to clear the hau bush, re-establish the channel, and get water back into the 'auwai. It was a huge moment as it allowed us to bring water into an area we've been trying to farm for several years. Also, incredibly heartbreaking as water did not reach the end of the 'auwai. This is one of the registered diversions within the wetland system that we know fed many acres. We've been able to establish new acreages but know it would not be sufficient to farm.

The restoration of water is essential for not only the development of our ecosystem but for the betterment of the kanaka and people that live by and on the land. I humbly ask you guys support the interim instream flow standard and restoration of water to He'eia Streams as well as all streams in Hawai'i. I would like to end my testimony with something that has stuck in my head a long time since my family was in the Waiāhole-Waikāne contested case; I believe it was Uncle Danny Bishop that said "no can eat golf balls" and I humbly ask you consider that in thinking about the allocation of water resources throughout Hawai'i; Mahalo.

Mr. Fred Reppun – He'eia National Estuarine Research Reserve – Mahalo for the opportunity to provide testimony and thank the Water Commission staff for their forward thinking in the recommendation to bulkhead Ha'ikū tunnel and reduce the permitted withdrawal from Ha'ikū

tunnel to 0.3 mgd while the feasibility study is conducted. In addition to these measures, I urge the Commission to amend the interim instream flow standard for He'eia Stream to 1.77 mgd and limit the amount of groundwater that can be pumped from the wells in Ha'ikū and 'Ioleka'a.

I have three concerns with the current recommendation: 1) bulkheading is an admirable idea that will likely restore high-elevation aquifers but whether it will increase streamflow in He'eia is for question. Greater aquifer storage across multiple wells and tunnels would benefit the BWS and may increase flow in neighboring ahupua'a in Ko'olaupoko; but can't guarantee that He'eia will benefit directly.

Will I support the effort to manage at the moku scale, I must advocate for He'eia which is unique among its neighbors in its current and future potential to increase food security, cause biodiversity, provide other ecosystem services, as well as educational values.

2) The regulation of He'eia Stream by water use permit alone doesn't adequately protect the stream during low-flow periods which are the most critical times. This summer, we saw waters in the wetlands drop lower than average diversions at the tunnel. Low water flow can rot a crop of kalo that's only weeks from harvest. Low stream flow can reduce oxygen and increase temperature. In the cooler ponds of the fishpond, we've seen schools die due to this stress which can be alleviated with greater freshwater flow. The current recommendation cause for setting an IIFS but a guarantee of greater streamflow is needed now.

3) Regulation of Ha'ikū tunnel does not protect the stream by pumping of Ha'ikū and 'Ioleka'a wells. In the absence of data, it's prudent to follow the precautionary principle and assume that both wells affect streamflow and both should be monitored and regulated accordingly. At the least, the community needs a stream gage on 'Ioleka'a Stream near its confluence with Ha'ikū; a specific mechanism convening with the Water Commission and BWS to address any issues that arise from the wells.

He'eia has so much more to give and water in the stream is a basic pre-requisite and is in short supply; so please take this opportunity to set an IIFS of 1.77 mgd and provide an assurance of accountability in regards to the wells; Mahalo nui.

PUBLIC TESTIMONY (CONT'D)

Ms. Elena Bryant, EarthJustice – Aloha Chair Case and Commissioners. We're not appearing on behalf of any clients today but on behalf of the public interest in He'eia Stream to offer our comments in support of the staff submittal and to urge the Commission to approve the recommendation with amendments. We submitted written comments and stand on our written testimony and wanted to highlight a few points.

I want to express our appreciation to Commission staff, the community and the Board of Water Supply to come up with an innovative and forward thinking approach to managing the limited water resources in the Ko'olaupoko aquifer system. Recognizing the severe impact that the Ha'ikū development tunnel had on the high-elevation aquifer storage and taking steps to restore the aquifer, is the type of generation spanning management of our island water resources that's essential for planning for our future and preparing for climate change.

While the bulkhead is a necessary and important step in the right direction, after speaking and hearing the community testimony today, we do have some concern. First, it's not clear whether the 0.7 reduction and withdrawal from the Ha'ikū tunnel would translate to increase base streamflow. As noted in the submittal, BWS reduced withdrawal by 0.5 mgd and noted there was some increase to streamflow but don't have the information as to how the total 0.7 reduction would impact streamflow, especially if there's increased pumping from Ha'ikū well.

We don't know how He'eia Stream would recover following the bulkheading project or how the bulkheading would impact the rest of the Ko'olaupoko aquifer. There's data suggesting the tunnel impacted He'eia Stream and also neighboring streams and hydrological units as well. As others have mentioned, we don't know how the pumping of Ha'ikū and 'Ioleka'a wells would affect streamflow.

(Ms. Bryant – cont'd)

All of these questions and uncertainty regarding the relationship between the tunnel, Ha'ikū and 'Ioleka'a wells and He'eia Stream flow highlight why it's imperative for the Commission to act now to set a numeric IIFS for He'eia Stream. Setting an IIFS is consistent with it's adaptive management approach that was exercised at Lāwa'i and Wai'oli on Kaua'i. In Wai'oli, the Commission adopted a numeric IIFS based on available information and understanding the Commission could always comeback to amend once more data is available.

The public trust and pre-cautionary principle support presumptions and protection for the benefit of He'eia Stream and because so little is known about the relationship between groundwater and stream water in He'eia, the only way to ensure an increase in baseflow is setting an IIFS. In January 2021, the Commission was briefed to amend the IIFS to 1.77 mgd so that it would provide a tangible increase in baseflow to support the stewardship activities in He'eia wetlands; and based on today's testimony, it seems the community is in strong support of that.

While we appreciate the BWS to engage in feasibility and design studies for the bulkhead, we recognize this could take up to two (2) years for the studies to complete and additional three (3) years for construction, but the community needs an increase in baseflow now in order to support ahupua'a restoration. We'd also like to note that the 0.7 mgd in reduction from the tunnel may not be sufficient to restore base streamflow if BWS will increase withdrawal from Ha'ikū and 'Ioleka'a wells. We would ask the Commission and BWS to ensure reduction in withdrawal from Ha'ikū tunnel is not met with an increased in withdrawal from Ha'ikū and 'Ioleka'a wells that's established by the groundwater pumpage reports.

Alternatively if the Commission is not inclined to adopt an IIFS today, we would ask the Commission to take swift action to modify the BWS water use permit if increased pumpage of Ha'ikū and 'Ioleka'a wells result in a negative impact to streamflow. Lastly, we encourage the Commission to incorporate milestones and quarterly reporting by the Board of Water Supply to the CWRM staff and community partners to ensure the target deadlines for the bulkheading recommendation are pursued and followed. We understand this will be a big undertaking of BWS and appreciate the efforts and firmly believe it's imperative to the health and recovery of the Ko'olaupoko aquifer, that the timetables in the submittal are met.

In sum, we strongly support and appreciate the innovative solution by Commission staff to bulkhead Hai'ku tunnel as a longer plan to restore the Ko'olaupoko aquifer and urge and encourage the Commission to strengthen the recommendations of the submittal by taking immediate action to amend the IIFS of He'eia Stream to provide interim protection now. Thank you for the opportunity to testify and I'll be happy to answer any questions; Mahalo.

PUBLIC TESTIMONY (CONT'D)

Mr. Dane Kanaloa Bishop – Aloha Water Commission and everyone. I've heard a lot of good things and see we're headed in the right direction. Thank you for the opportunity to testify. I'm from Ko'olau side of O'ahu. I want to talk about the muliwai of He'eia. I've worked there five (5) years intimately at that little space at the mouth of stream. During my time there, I've seen an increase in habitat. Ten years ago, the stream mouth was completely covered with mangrove trees which means there was almost zero (0) habitat of brackish water. That estuarine environment at the stream mouth was almost zero to a healthy habitat today.

The 'ama'ama, our native striped-mullet, inhabits that area as juveniles. They arrive in there in February when they're very small and live in there for about 2-3 years (and called Kahaha) and see this pattern in our estuaries on the Windward side of O'ahu. They inhabit that area (stream mouth) until they're bigger to travel out to the oceans.

If bulkheading can ensure more water for that ecosystem, then yes please; but it's not certain and we're not sure what the outcome of bulkheading the deep well in Ha'ikū will do; and we're going to consider there's some long-term improvement that will happen there. As said, the improvement in estuarine health has been gaining and improving, but if the water goes down in that area, that's a setback to the ecosystem. We need more security there where the wai meets the kai and to make sure the good work that's been happening there, continues and reach a higher potential; and the limiting factor is the amount of freshwater that comes down. If we have more freshwater mixing with the saltwater it will increase the habitat for these 'ama'ama and increase the overall health of that ecosystem.

I'm here to advocate for the muliwai, as its improving year-after-year and it's an opportunity for us to see that 'āina reach its full potential. I'm making that same recommendation all across Hawai'i everywhere there's a stream mouth I'll advocate for the same thing and appreciate all the work you guys do; BWS it sounds promising and I appreciate your work; and all the guys sitting behind the camera with Fred Reppun, shaka you guys. Aloha, thank you.

PUBLIC TESTIMONY (CONT'D)

Mr. Charlie Reppun – There's been really good testimony from everyone and I appreciate all of that. It makes me think of some of the things we've gone through many, many years ago in Waikāne, we fought to restore water to that stream. Back then, the BWS filed a negative declaration in the newspaper which we didn't see and so could not argue environmental issues at all. In Waiāhole we talked about the importance of freshwater near shore ecosystems, the response was that it was fine and it got used to less water in the stream. At

that point, no one in Hawai'i had studied nearshore waters. We had to contact a scientist in Florida to provide that information to the government and communities.

Back then when we lobbied to get things done, we went to communities all over the island and spoke of the freshwater going into the ocean, it was asked "why is this important?" and we said, "it's where you get fish"; and everyone knew where to fish and why the fishponds were where they were.

It's critical to recognize it's not only the water nearshore as all the water from the mountain ends up in the ocean some place; so conservation of water everywhere for everyone is really important because it's part of that ecosystem. All the work being done at He'eia is fantastic. A longtime ago I wrote a piece on minimum streamflow standards for Waihe'e. It was thought then is we need maintain a large margin of safety in setting minimum streamflows and sustainable yields for groundwater, in order not to be put in emergency situations where human lives, livelihoods and environmental integrity is threatened from these damaged streams. This decision that you're making here is an example that can be done in a lot of different places and climate change is what it is all about now and needs to be looked at everywhere. The education that's happened during this hearing is education that needs to go statewide.

I appreciate all the testimony and fully support increasing the minimum streamflow and thanks for all the work you do on the Commission; Mahalo.

Chairperson case acknowledged those that submitted written testimony. Mr. Fred Reppun asked if another oral testimony can be given. Chair Case granted the request.

PUBLIC TESTIMONY (CONT'D)

Mr. Ikaika Bishop – Aloha, good afternoon. Thanks for allowing me to present today to share my sentiments in support of returning wai back to He'eia. My family has been farming at Waiāhole Valley most of life and now I have the privilege and honor of doing so at one of the most beautiful places on earth. What makes it so beautiful is the life that feeds it by the water directly and without it, there's no life in the land. We can see it evident in our stream currently in comparison to the streams around us.

One of my kūpuna long ago, Aunty Margaret Parker, told us "if you learn this ocean and this land, you'll never starve. The land is your icebox and if you know it very well, it will take care of you. Unfortunately, I don't believe that statement is true anymore as the life that sustains this area is no longer flowing to feed it. The Reppun's have taught us how to grow taro most of our lives and the taro deserves water that's clean, fresh, flowing, cold, and oxygen rich, for us to grow one of our cultural foods and practice our profound culture of farming kalo, we need more water.

Please consider restoring the waters to the stream not just for the taro but the abundance of life that depends upon it. The native ecosystem is resilient; there are native species in the streams that are thriving and slowly returning. There are so many initiatives and community non-profits that are working diligently to restore native habitats and to make a conservative effort towards keeping this place sustainable. One of the food sources that no longer exists in this stream this āholehole, which is only found outside of our ahupua'a. My children who's

born and raised in He'eia may never eat this from He'eia Stream unless we have your support in returning the water to the stream. Mahalo for letting me share and please consider and make the right choice and listen to our kūpuna, the keiki and community; our voices are standing together; Mahalo, Aloha.

COMMENTS/DISCUSSION

Commissioner Hannahs – thanked the community for their time and voices and recognized that in each community they can speak from a public policy perspective with an active and engaged practice in serving us all. Appreciated the oral and video testimony.

Commissioner Beamer – echoed Commissioner Hannahs; mahaloia 'oukou pākahi a pau. Ua 'ike mka kākou i kēia lā ke alaka'i nani kamaha'o ma He'eia, no laila, mahalo pākahi a pau. Thanked everyone and asked (to Barry) of seeing the restoration efforts and (Ernie) also deeply respect your work as O'ahu has the most integrated system of water but wondered if there's a better way to accomplish this and to restore IIFSs? Whether its conservation for large users and golf courses, the stream in He'eia can't continue to suffer. There's deep urgency to have water returned to He'eia as soon as possible, and support the staffs' recommendation.

Commissioner Buck – also supports the staffs recommendations but concerned on the timeframe and staff is working to bridge the recommendation on reporting earlier the progress of the bulkheading, development of alternative water sources, BWS water reduction from Ha'ikū tunnel, and the impact of streamflow.

Commissioner Katayama – referred to Earth Justice's comments on the impacts of water withdrawals.

Dr. Strauch – in terms of monitoring the stream, it's part of the agreement between BWS and USGS that there will be a new gaging station at 'Ioleka'a, which should solve that question. Commented on the issues of withdrawals from Ha'ikū or 'Ioleka'a wells will impact streamflow is yet to be determined and that's part of why we're studying. I believe we should be cautious with withdrawals. The goal is to not take one source off to take advantage of another but to restore streamflow and functionality of the aquifer and to sustain the capacity of the entire mountain to also sustain streams and springs that would feed He'eia and neighboring ahupua'a.

I understand we want water in the stream as soon as possible and would evaluate the use of the water. A good portion of these sources would be dropped to the lower part of the system and a large demand is non-potable non-public trust use. So, trying to rectify how we manage sources with permitted end-uses that may not be consistent with protecting public trust needs is challenging and we don't have all the tools, but this is a really good first step.

Commissioner Katayama – it brings a sense of comfort and at least made aware in addressing some of these issues that's important and meaningful; thank you.

Commissioner Beamer – referred to reporting back to the Commission on a regular basis is important as we're learning more of the integration between the dike, groundwater withdrawal and streamflow is important.

Referenced the irony of Ko‘olaupoko being the breadbasket and wettest part of O‘ahu and yet we’re struggling with putting water back into the stream and for BWS to consider that.

Deputy Manuel – made amendments to the recommendations stating referenced the 2nd paragraph - 1) to *insert a date – recommending August 15, 2021* (giving two months to work with BWS to make that reduction doing it immediately upon approval); 2) under implementation bullet #2 at the end of the sentence to read – “...HBWS will communicate with Commission and continue to coordinate with Kamehameha Schools, DHHL, Papahana Kuaola, HCDA, and Kāko‘o ‘Ōiwi water users on a quarterly basis...” so that there’s continuous updates with all parties and there’s transparency; 3) on the monitoring under bullet #3 – adding at the end “...by all interested parties”; 4) lastly at the end to add a recommendation: “staff will report to the Commission at it’s September 2021 meeting on the progress of 1) HBWS reduction of 0.3 mgd from Ha’ikū tunnel; 2) it’s impact of flow in He’eia Stream; 3) progress of the bulkhead feasibility implementing engineering report; 4) potential development of other alternative water sources including the State Hospital well.

This gives us benchmarks of September to comeback with a more robust analysis.

Dr. Strauch – noted as BWS explained, they will need to enter the tunnel and therefore the tunnel will be taken offline indefinitely. (*explained that water from the tunnel will then flow into the stream and at some point all the water will go into the stream in the interim and not sure if should set a timeline to get to that stage*)

Commissioner Hannahs – would like the communications to be two-way with the gathering evidence of benefits of the return of water and gaging and any evidence to produce there’s impact.

Chair Case – asked for a motion

MOTION: (BEAMER/HANNAHS)

To approve B-2 with added amendments.

APPROVED: CASE/BEAMER/BUCK/HANNAHS/KATAYAMA/MEYER

W/RESERVATIONS: SETO

Chairperson Case thanked everyone for their participation, thoughts and engagement of the past, present and future on this important step forward.

RECESS: 2:02 PM

RECONVENE: 2:07 PM

061521 03:06:37

B. ACTION ITEMS (CONT'D)

3. Approve the Stream Channel Alteration Permit Application (SCAP.5593.2) by the U.S. Fish and Wildlife Service, for the Hanalei National Wildlife Refuge Intake Repair Project, Hanalei River, Hanalei, Kaua‘i, TMK: (4) 5-4-003:007

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

Mr. Uyeno stated the summary of request, provided a brief background information, noted the stream description and showed a map of the area, and provided a summary of the project description. DLNR-Aquatic Resources and DLNR-Engineering provided comments regarding the project; traditional and customary practices within the project area were noted with no comments received from DLNR-‘Aha Moku and noted there are no anticipated impacts to the traditional and customary practices; with no comments received from the general public as well.

The applicant has submitted the archaeological inventory survey to the State Historic Preservation Division (SHPD) and is awaiting their review. The project does not trigger an HRS Chapter 343 EA and is consistent with the Hawai‘i State Water Plan and noted the staff review and that there are five (5) registered diversions on Hanalei River. The project is an existing use and is not anticipated to impact the availability of water for registered diversions located upstream or downstream of the site. The staff’s recommendations were stated.

PUBLIC TESTIMONY

Ms. Heather Tonneson, U.S. Fish & Wildlife Service (USFWS) – I’m the Refuge Manager for the Kaua‘i Wildlife Refuge Complex. I’m going to turn it over Janice Marsters first, as she has clarifications she’d like to make and I’ll be available to answer and questions or provide additional background; Mahalo.

Ms. Janice Marsters, Hart Crowser – Aloha mai kākou. We’ve been helping the U.S. Fish & Wildlife Service with the geotechnical and environmental parts of this project. E kala mai as I did not get clarifications out to staff ahead of this as there’s a few updates that would be helpful. As noted by staff, the application for the SCAP was made several months before the completion of our Section 106 consultation activity fieldwork for the archaeological inventory survey and included test pits in the area where the excavation at the embankment where installed anchors would incur.

The May 25, 2021 date cited in the staff report is actually a finalization of our 106 letter to SHPD which consisted of the following: a) consultation with the public was initiated on 4/15/21 with a 30-day deadline; b) 4/30/21 the Archaeological Inventory Survey (AIS) and initiation letter was sent to SHPD regarding Section 106 consultation; which we have not heard from SHPD since. According to HRS 13284-3E which states if SHPD fails to submit comments during the set time, SHPD is presumed to concur with the agency submittal. We’ve also reached out to them last week with no response. Our request is that U.S. Fish & Wildlife met their Section 106 requirements and we’d be happy to provide any documentation regarding our public outreach and correspondence with SHPD and request that condition be removed from your decision.

We note the Army Corps has waived jurisdiction and saying a permit is not required for the repair of the existing levy and have a letter of concurrence from them with respect to that and the same for Section 401 and DOH. As noted, the project plans include best management practices to protect the water resources.

On the comment on 'o'opu, the project plan is to provide the construction contract with a species training ahead of the work and would include information on 'o'opu as noted.
(referred to Ms. Tonneson for further comments)

Ms. Tonneson – noted that the USFWS' Water Resources Branch received correspondence with CWRM's Mr. Douglas Kagawa in 2020 and note there are challenges with installing a device at the intake location and much of the system is underground so installing monitoring devices at certain points can be challenging but not impossible. We're coordinating in setting up a site visit. The registered diversion average has been consistent at 36 cfs and have partnered with NRCS and working with local farmers that farm on the refuge to update our water budget. We'll be doing periodic monitoring and providing an average based on this water budget based on historic and current information and hopeful in moving forward and happy to facilitate discussion to make that work.

QUESTIONS

Commissioner Beamer – referred to guidance by staff on the SHPD letter and how do we manage that.

Chairperson Case reiterated what the applicant mentioned on noting non-response from SHPD

Deputy AG, Ms. Linda Chow – clarified that the requirement is for the division or agency to allow SHPD to provide review and comment over the project, and the only way SHPD can enforce to protect historic properties are through conditions that's applied as part of the permit that's issued. I agree that SHPD has a backlog and the response days for SHPD can be followed strictly or the agency, or the agency may make instances on the County and State level to provide SHPD additional time for the necessary review and comment. It's up to the agency whether they want to proceed without SHPDs comments.

Commissioner Buck –referenced SHPD not meeting the 45-day extended timeframe on comments and agency in not waiting

Deputy AG Chow – there are no consequences to going forward after the 45-days has passed.

Chairperson clarified the agency referring to would be CWRM

Deputy Manuel – acknowledged that and clarified that Section 106 is separate from 6E compliance which we're looking at from the 6E compliance perspective versus the federal governments trigger of 106; we've being trying to coordinate with SHPD to get them to opine and this recommendation is based upon conversations with the applicant.

Ms. Marsters – appreciated the concerns as USFWS is trying to get this project constructed over the summer when it's less likely to flood and potential to takeout the intake itself. Asked on the expected timeline if the statutory deadlines aren't held?

Chair Case – answered-the short answer is “no”

Ms. Tonneson – we have a long history and good working relationship with SHPD; I know its not as black and white but note we have met our requirements and the ball is in their court. The regulated timeline has ended and certainly if SHPD comes back and if we get a hold of them and if they request additional days, we would work with them to honor that. The challenge for us is seasonal concerns because this is an emergency project; we were awarded these funds as part of the disaster relief as the result of the 2017 through 2020 major floods that included the emergency declarations of what we started this project under. We're under a time constraint and after the last major flood, the embankment is eroding behind the structure and need to get in and do work soon or risk losing the entire structure. 30-days won't throw that off if we need to wait a little bit longer and would work with SHPD to accommodate that as necessary but if we lose water, we would have no way to bring it in to farmers in an emergency situation once we lose that structure.

Commissioner Buck – commented on moving forward with this

Chair Case – asked if based on the 106 work done and the survey, is there indication of impact on historical or archaeological resources?

Ms. Marsters – replied we're replacing an existing embankment and near that area and the land area, did excavation and made sure there's no cultural deposits in that area in which none were found. The project road crosses an area that is assigned a State number as a historic agriculture complex that covers the entire field. There's nothing at the surface that represents that resource as the field has been flooded over decades of years (*explained what the project would entail and noted that the USFWS has been very strict in noting the areas only allowed to work in*). The hired archaeologist concluded there would be no adverse effect to historic resources.

Chairperson Case noted the emergency work to be done and the project area.

Mr. Uyeno – noted for the record when first conversations started just before the first emergency proclamation issued, now there's fifteen (15) emergency proclamations with the last one expiring on 9/19/20 and our discussions were just afterwards, and we asked the USFWS to come in for a SCAP.

Chairperson Case noted this would've been exempt under the emergency proclamation which since expired in which the Commission has authority to make the determination

Ms. Marsters – noted a question on the emergency proclamation head language if a project was initiated prior to the proclamation in pertaining to expiration, conditions and exemptions of the proclamation would remain in effect which was discussed with CWRM and so decided to proceed with the SCAP.

Deputy Manuel noted its agency risk and the Commission needs to make that determination to proceed with or without SHPD comments. Commissioner Beamer asked if its better to delegate authority to the Deputy or to set a timeline? Deputy AG Chow acknowledged that it could be delegated but there's no guarantee whether SHPD would be able to respond in any timeframe.

Deputy Manuel commented that right now it's low risk for the Commission to proceed based on today's conversation and in staff recommendation could withdraw that special condition in making it softer to coordinate and work with SHPD but not make the permit subject to this condition. Chairperson Case to make one (1) more attempt to get SHPD to reply by a certain date or review the archaeological survey and make the risk determination as it seems low risk and is an emergency repair.

Chair Case noted the delegated authority to Deputy Manuel to do the review, make the outreach and final determination by June 30, 2021.

Commissioner Hannahs commented if it's not fixed and storm season is quickly approaching, there would be further damage and potential loss of structure.

**MOTION: (BUCK/BEAMER)
To approve B-3 with amendments.
UNANIMOUSLY APPROVED**

061521 03:41:25

B. ACTION ITEMS (CONT'D)

- 4. Approve the After-the-Fact Stream Diversion Works Permit Application (SDWP.5510.8) for Up to 3.23 million gallons per day (mgd) for Hydropower to Palm Valley Farm LLC and Amend the Interim Instream Flow Standard for Ka'ie'ie Stream, Pāpa'ikou, Hawai'i, TMKs: (3) 2-7-006:017, 024, 028, and (3) 2-7-013:025**

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

Mr. Uyeno stated the summary of request, showed a map of the project location and read some background information. Noted that the project was undertaken prior to registration but had fallen through the cracks and resurfaced. Mr. Uyeno stated the stream and project description and shared screen and explained photos taken down and upstream showing the control board planks with the intake screens and box of the penstock. Relating to agency review and comments, comments were received only from DLNR-Engineering and no public comments were received.

No traditional and customary rights would be affected nor does this project trigger an EA. The structure has been in existence for (25) years and does not appear to be currently affecting water quality. Mr. Uyeno read part of the staff review and staff is recommending an IFS of 0.65 mgd to ensure connectivity for the stream and habitat for native species.

There are no diversions located above or below the applicant's diversion on Ka'ie'ie Stream. The staff's recommendation were stated and explained.

DISCUSSION/QUESTIONS

Chairperson Case asked if the applicant, Mr. Keith Hammond wants to add comments (before Commission heads into further discussions)

Mr. Keith Hammond, Palm Valley Farm – stated he's been manager of the hydro-electric facility and its properties for the last fifteen (15) years. We operate full-time and its been the same since I've been here. It's regulated by an automatic head-level controller that allows a set amount of water to flow over the intake grate and back into the dam. In the event of any failure, the machine and other areas shuts down which allows the full-stream to return back over the dam and that's how we release water into the stream right now.

I would need to get more information of what's required or what you (CWRM) would want as far as letting more over and am happy to work with everyone.

Commissioner Beamer – I'm in support but questioned around the location of the notch to maintain that wetted pathway and connectivity and thinking of the 'o'opu moving or getting stuck in the intake.

Dr. Strauch – the initial design of that steel box is to allow 'ōpae to cross so the puka (hole) is really small so 'o'opu would be able to traverse over it. For ease of control and keeping that path wetted, it should be okay for 'o'opu to cross.

Commissioner Hannahs – commented we're cleaning up something up that's 35-years old and asked if there's more like this and if we're treating this in a manner that's consistent?

Mr. Uyeno – typically if people come to us with a diversion constructed prior to registration in 1989, we do allow for back registration as long as it provides sufficient evidence that the location was in existence prior to 1989. (*explained on the history of early registered diversions in relation to BLNR and the start of CWRM*). In this case, it received proper approvals but didn't get built until after the registration period and wasn't followed up further by CWRM staff. I can't say this is the only one as we saw the case with Richard Ha and hope there's not a lot of these out there but certainly possible.

Deputy Manuel – noted that SPAM Branch has since been revamped with the addition of Doug Kagawa and his duties so maybe seeing some of these surface as there's 1,400 diversions and want to be sure files are up-to-date and is being consistent with current case law and policy.

Commissioner Hannahs – appreciated that and noted if this were to come before us today, I would look at food production, renewable energy, the ho'i, and minimal impact to resources and sounds like something we would approve.

Deputy Manuel – agreed and with what's before you, we've been able to collect what data we do have and as more is collected from the diverter and as staff continues to monitor and outreach, we would better understand what's happening on this stream. We haven't done a

full biological stream study; we have the HSA from the 1990s. Similar to Wai'a'ama Stream, there were downstream users that we didn't know about that were using the stream, that comes out after we make an action; so I ask the Commission to be flexible that if there are other instream uses that are known at later times, the Commission can revisit its decision making as an interim IFS for that purpose.

Commissioner Buck – asked how much energy is produced and if any is returned to the local utility?

Mr. Hammond – most power is consumed and during non-production times we consume about 7 kwh when the equipment is not actively running and last month the average export was 20 kwh.

Commissioner Katayama – (to Ayrn) what's the current flow if recommending 1 cfs?

Dr. Strauch – the original recommendation by USFWS was 0.78 cfs to provide for uses and noted the actual amount of water available at the intake fluctuates.

Commissioner Katayama – noted that the formula they've created is managing to what they need.

Dr. Strauch – the intake itself restricts the max flow they can take and there's a water level sensor that restricts the minimum, because they do need a minimum flow.

Commissioner Katayama – asked if changing the required flow standard how does it affect their ability to operate?

Dr. Strauch – replied it may be a better question for them but the original design was to provide for the 0.78 cfs and the plans we have is shown to provide for the continued wetted pathway.

Mr. Hammond – commented that inside the penstock box underneath the filter, there is a 2-1/2 inch pipe below the screen that allows continuous waterflow through the penstock box which has water coming out the top and the side of the intake.

Mr. Uyeno – proposed to add amendment to develop plans and cross-out the rest to state (in recommendation item #1a) "...develop plans to meet the interim instream flow standard of 1.0 cfs"; delete "construction" in the next sentence – "plans shall be submitted to the Commission staff for approval within 120-days."

Deputy Manuel – noted to delete the last sentence – reiterated amendment.

**MOTION: (BUCK/HANNAHS)
To approve B-4 with amendment.
UNANIMOUSLY APPROVED**

RECESS: 3:13 PM

RECONVENE: 3:18 PM

061521 04:15:17

B. ACTION ITEMS (CONT'D)

- 5. Approve Order to Moloka'i Properties Limited to Grant U.S. Geological Survey Access to Re-establish USGS Long-Term Monitoring Station 16415000 on East fork Kawela Stream to Address Top Priority Monitoring Needs for the State and Provide Current Hydrologic Data to Partially Address the Complaint (CDR.5310.4) Filed by Earthjustice on Behalf of Moloka'i Nō Ka Heke, Moloka'i**

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

Dr. Strauch gave a PowerPoint presentation and read the summary of request and showed and explained the maps highlighting the streams and the water diversions of the subject area of Moloka'i. A brief background was given of the stream diversion system and intake of the USGS monitoring station areas. Noting that a continuous real-time monitoring station that's monitoring perennial flow above the irrigation system is needed and the need to address the complaint dispute resolution (CDR.5310.4) filed by Earthjustice on behalf of Moloka'i Nō Ka Heke which is seeking to amend the IIFS for the streams diverted by the Moloka'i mountain system as well as an allegation of waste by Moloka'i Ranch. This station is needed to understand the water availability, use as an index station for IFS at nearby locations and streams currently being diverted, and monitoring the hydrologic system in the face of changing climate patterns; as there's no high-elevation stream gaging station on this island. The staff recommendations were stated.

QUESTIONS

Commissioner Buck – referencing the May 28th date, were Moloka'i Properties, Limited (MPL) denied access.

Dr. Strauch – working with USGS on the continuing monitoring stations across the state at high-priority locations, it was told to USGS and stated to CWRM that Moloka'i Properties refused access.

Commissioner Buck – asked if direct communication with Moloka'i Properties were established.

Dr. Strauch – no; only with their ownership which is not based in the United States; said they did not want to grant USGS access.

Commissioner Buck – noted to Chair if there's anyone with Moloka'i Properties on call today?

Noted no representatives with Moloka'i Properties were present

PUBLIC TESTIMONY

Mr. Walter Ritte, Ho‘olehua Homesteader – Aloha Commissioners. I’m here today as I thought it’s important for the Commission to understand how the community views these actions when it comes to our stream waters in our mountains. We’ve been dealing with Moloka‘i Ranch and they’re attitude towards you is the same they have towards our community, which is terrible. We’ve been fighting with Moloka‘i Ranch over water for the past thirty-five (35) years and been difficult because they’re in Singapore and have a totally different vision of what Moloka‘i is and is going.

Our community has been trying to work with Moloka‘i Ranch and as you can see by the maps, they’re taking water from the eastern side of the island all the way to the western side via pipes and reservoirs spanning 10-miles and been doing this for the past 100-years. Looking at it today of the 5 to 7 streams they’re diverting, Kawela is the main one. In the summer, the diversion at Kawela, there’s no water going over that wall; everything is diverted.

Kawela is important as the County has their well at the bottom of the Kawela River and there’s a big development that has (2) other wells at the bottom of the river. We have Moloka‘i Ranch that’s been taking water away from this ahupua‘a that’s left with very little water and has major problems with the County well in providing water for the people of Kawela to Kaunakakai.

We’re coming before this Commission trying to figure how we’re going to protect our river with instream flows and Kawela River is the most important that we’re targeting. (*reiterated the attitude of Moloka‘i Ranch*) We’re trying to figure out who’s going to use the water and for what purpose? Thank you.

PUBLIC TESTIMONY – CONT’D

Mr. Timmy Leong, member of Moloka‘i Nō Ka Heke – what Walter (Ritte) said is 100% true as I’ve been along for the ride with Walter all these years. I wanted to say Aloha to you, Commissioners. I reside in the ahupua‘a of Kawela and for those that don’t know, Kawela in Hawaiian means “the heat” and is a very hot dry area like Nānākuli or Mākaha (on O‘ahu). At the top of Kawela, you saw the water and lushness of the area but no one lives up there except for wildlife.

I first became acquainted with Kawela in 1985, pineapple was phasing out. (*spoke of his past-times going to Kawela with his ‘ohana and of the freshwater flowing from the mountain stream that they transported to take back home; and of the water quality from Kawela. Also spoke and quoted of the chronological history of the Kawela Stream water referencing George Cooke’s published book*)

We would never know how much water was transferred from Kawela to the west-end of Moloka‘i but do know that the water diverted from Kawela gulch did not have a chance to recharge Kawela’s aquifer. The present threat to its drinking water today are rising sodium levels. Department of Water Supply of Maui published a 2019 drinking water quality report which listed the sodium level of Kawela Well at a range of 28-40 ppm; the EPA recommends that sodium concentration in drinking water not exceed a range of 30-60 ppm.

The Kawela Wells is at a low-elevation near the coast and is prone to saltwater intrusion. The wells at Kawela plantation are at a higher elevation and not as vulnerable as the County well. The increased sodium levels seemed to be the product of well withdrawals exceeding the rate of recharge. There are two options to remedy that: 1) pump less; 2) divert less. It's crucial to know how much water Moloka'i Properties is diverting at the East Fork of Kawela Stream and without this data can't make informed decisions.

It's important that you, Commissioners, require MPL to allow USGS access to the East Fork of Kawela Stream to reestablish a long-term monitoring station. MPL's refusal to grant access for monitoring is not in the best interest of the people. I suggest to you, to let Kawela waters return to the stream because by water, all things find life; Mahalo.

Ms. Mahina Poepoe, Moloka'i Resident – I'm testifying on my own time and behalf. I want to commend the Commissioners, Chair Case, Deputy Manuel, and staff for taking action in an effort to address the petition. This is the tip of the iceberg when it comes to addressing the numerous water issues over the abuse and misuse of water resources by Moloka'i Ranch; and wanted to express my appreciation for that.

For today, I'm urging you to approve this item to grant the access to USGS to install and monitor the streamflow gaging station, at the high elevation of Kawela Stream. The results will improve the ability to inform decision making. To think there was a time when settlers saw a pristine river running to the ocean and considered it a waste! Thus, created a diversion to irrigate pineapple and sugar.

We came a long way and still have a long way to go. I have loko i'a kuleana at Kūpeke fishpond. I was inspired by the He'eia testifiers and wanted to echo some of their sentiments shared that the life or death of entire ecosystem in species, food sources, and cultural practices hangs in the balance of decisions made here which is a big responsibility of you all. That being said, I will always advocate for keeping as much water as possible in its natural state and to complete in a natural cycle. I support this item and urge you to require removing the inoperable diversions that aren't connected to anything.

I also want to thank you for making these meetings accessible through this technology and has been a silver lining for me during this time and as we start to transition back into in-person, hope that you continue allowing us to participate in this format. Thank you for your consideration on that as well; Mahalo.

PUBLIC TESTIMONY – CONT'D

Mr. Mahesh Cleveland, EarthJustice – Aloha everyone; Mahalo Chair Case and Commissioners and also to Uncle Timmy, Uncle Walter, and Mahina. I'm appearing today on behalf of Moloka'i Nō Ka Heke which is the group that in July 2019, bought the combined petition and complaint that's referenced in today's agenda item. You have our written testimony in support of staff's recommendation and will make a few additional comments.

There's no question this Commission has the legal authority to access private lands or to compel landowners to grant USGS access for purposes of inventory, monitoring and managing public water resources. As staff's discussed, the Water Code gives the

Commission authority to access private property that houses water resources with reasonable notice, even without landowner consent. Because USGS is acting in partnership with and on behalf of the Commission, there's no distinct difference; and there's no valid justification for any private landowner, using public resources to refuse to cooperate.

We appreciate the Commission taking this action to cut-through these unwarranted delays. While additional data is helpful, and we support the Commission's ongoing practice of partnering with USGS to install additional monitoring, these are best practices but are not part of the Code. The Commission is well within its authority to move forward with establishing a numerical interim instream flow standard for these Moloka'i streams based on the current available data grounded in the precautionary principle and certainly with private landowners to cooperate.

Based on what information provided to this Commission by the diverter, the CWRM has ample basis for decisive action on our waste complaint and petition for abandonment and would like to thank Mahina for mentioning those derelict diversions.

Moloka'i Nō Ka Heke supports this action today but also note to the Commission for more as it's been two (2) years since we filed formal action and given all the pending and unresolved water issues lingering on Moloka'i, we do hope today's action indicates the Commission intention to start working to legitimize Moloka'i major water supplies systematically and expeditiously. Reestablishing real-time stream monitoring above the diversion at Kawela Stream is an important step in gathering information especially for long-term management of this resource.

An uncooperative landowner doesn't have the power to hamstring the Commission in its duties nor does the lack of real-time monitoring preclude the Commission upon Moloka'i Nō Ka Heke's combined petition. We respectfully urge the Commission to approve staff's recommendation and follow-up promptly with action on the pending petition and complaint as detailed in our July 2019 submission and summarized in our written testimony today. Mahalo for the opportunity to speak.

QUESTIONS

Commissioner Buck – (to staff) asked if the Commission had a similar situation in which the Commission had to urge a private landowner for access?

Deputy Manuel – deferred to Dean and/or other staff that's been at CWRM for a long period.

DISCUSSION

Commissioner Buck, Deputy and Dr. Strauch discussed access ways and points. Deputy AG Linda Chow noted that the problem is if the diversion is on Moloka'i Ranch lands and this type of provision that allows an agency to make a decision like this-to order access and go on the land, has not been tested in the courts. Legally, the courts will not oppose such a decision because there's question of due process, property interests, i.e. The AGs general advice across the board and those that advise other agencies with similar provisions, is that they should first go to court to enforce - get an order from the court to allow for this type of access. Other agencies have statutes that specifically state that process as well.

Commissioner Buck commented during his tenure at Division of Forestry, and working along during the Invasive Species legislative session, there was a process in the law that allowed access on private land with due notification.

Ms. Chow noted that just because the legislature declared that it doesn't mean the courts are going to agree to it. Commissioner Buck asked what would happen if we did notify them and we move forward without the court? The landowner would have to go to court to stop us? Ms. Chow clarified that its untested (in court) and the AGs advice generally does need to go through the court process which is the safer route to do. However in this case, if the Commission decides to issue the order, it can be sent to Moloka'i Ranch and if they say that's fine, you have your access.

Deputy Manuel noted it's been talked about and is what we're recommending from staff for the Commission to act on as a first step to put across to Moloka'i Ranch the importance of this data; not only to the Commission and our communities on Moloka'i, but to them as diverters. They'll be better able to justify their use or lack there of. It's in everyone's best interest when we look at options to pursue and want to recommend this clearly to Moloka'i Ranch that this recommendation comes from the Commission and there are other options if this isn't fruitful that we can pursue. Right now, this is the first step to take and recommendation action for the Commission.

Commissioner Beamer stated his support. Commissioner Katayama asked if Moloka'i Ranch says "no" what would be our recourse to that? Deputy AG Ms. Chow suggested to file a special proceeding in court. Deputy Manuel stated the Commission has other authorities under the Water Code that it can pursue. For example, Moloka'i is a Groundwater Management Area but not a surface water area, so we can proceed surface water designation as a way to address limiting or returning allocations. The other option is the Commission can condemn property and hold it in its name; so if this site is that important to the Commission, that's another option; the Commission has discretion and authority that's not exercised.

Commissioner Hannahs asked if there's ability at Commission's disposal to set an instream flow standard based on current information? Dr. Strauch replied the station is bigger than just an IIFS as this has been a need for many decades and Moloka'i doesn't have much surface water monitoring. When the IIFS is set, we still going to want the station installed. Commissioner Hannahs reiterated we want the station and it's data and to strengthen our ability in attempt for the need for cooperation of the landowner so they can't block us, and if it takes going to court to get that tested, we should. Those can be longer term playouts and people who testified today; and the leverage created by an IIFS might be the fastest way to get the attention and cooperation from the landowner, while we try the other options as well.

Commissioner Buck asked Ms. Chow what is a reasonable amount of time to state to the landowner in the letter for their response – 1-month? Ms. Chow agreed and noted to leave it undefined. Commissioner Beamer noted that setting an IIFS is important. Deputy Manuel noted Dr. Strauch's time and workload and that he's been on numerous site visits and collecting data at Waikolu, in Kawela working with community to get as much data as possible. Highlighted also, is the low-flow study by USGS has been valuable in moving forward as similar with Lāwa'i/Wai'oli Streams on Kaua'i (*reiterated process that took place*

for *Lāwa‘i Stream*). Deputy Manuel noted also tied to this is the groundwater use permits of Moloka‘i Ranch that this system is a potential alternative to meet non-potable needs.

Commissioner Hannahs replied that we need to send a message to landowners as this as Moloka‘i Properties may not be the only ones out there that’s utilizing the public trust resources and our duty to steward that. It is also important to Moloka‘i and the communities and we’re obligated to represent them. Deputy Manuel noted it’s timely as the Commission just approved the scope of the Moloka‘i Water Use & Development Plan and so these hot topics can be resolved and folded into that comprehensive approach to water management.

**MOTION: (BEAMER/BUCK)
To approve B-5 with amendment.
UNANIMOUSLY APPROVED**

061521 04:58:41

C. INFORMATIONAL BRIEFINGS

1. Statewide Drought Committee Meetings Updates and Summer Outlook

PRESENTATION GIVEN BY: Mr. Neal Fujii, CWRM Planning Branch

Mr. Fujii gave a PowerPoint presentation on the Statewide Drought Committee Meetings Updates and Summer Outlook. There are (4) county drought committees that are made up of various stakeholders, government and private sectors that meet annually in June, discussing current drought impacts, preparation, mitigation, and responses.

Currently, most islands throughout Hawai‘i are abnormally dry. January 27, 2021, Governor Ige issues a drought emergency proclamation. Some Leeward areas in the state are currently under severe drought. Each of the main Hawaiian Islands was highlighted noting the areas of dry/drought conditions.

Other drought activities were noted such as the Wai‘anae Wildfire Meeting, Kaua‘i Brushfire Meeting, and Imagine a Day Without Water. The Wildfire & Drought Lookout Campaign was launched on June 9, 2021, which gives opportunities for organizations to outreach and partnership to bring more awareness throughout the communities.

DISCUSSION

Commissioner Hannahs noted it’s importance of “being at the table” and ultimately the decision and consequences to highlight to the Commission is the quantity of the resource. What can the Commission do to promote rain that’s long term? What can we do to capture it to deal with forest fires-then also conserve the resource while reducing withdrawal, without diminishing the sustainable yield? Part of your duty as you set the table and bring it back to the Commission, it needs to be contextualized in terms of the Commission.

Deputy Manuel highlighted this was brought to the Commission and community’s attention, as every August through October, there’re the issues of low flows. In anticipation of that and

going into summer months, wanted to highlight this subject as part of the Commission's mission is to protect instream and offstream uses.

D. ANNOUNCEMENTS

1. Application for a Well Construction Permit Ota Well (Well No. 8-3957-006) Next Steps

Deputy Manuel stated the symposium will be held prior to bringing back any application to the Commission. The symposium will consist of practitioners and lineal descendants along with NELHA, HHFDC, HDWS, DHHL, DLNR and is tentatively slated for the later part of fall. Mitigation measures that can be attached as special conditions to the permit and a long-term monitoring will be discussed so that impact can be prevented ahead of time.

Is in discussions with 'Aha Moku on planning and coordinating how best to facilitate the symposium.

2. Commissioner Beamer – Farewell Address

Chairperson Case noted today is Commissioner Beamer's last meeting and praised him on all his efforts, knowledge, compassion, and interests in water issues through all communities. Commented on his gentle style for setting the tone for this Commission in working together to work out water issues. Mahalo for his service and his results as it was a privilege in working alongside him during his (8) year tenure as a Water Commissioner and look forward to crossing paths in the future.

Commissioner Beamer – Mahalo nui Chair. The privilege and honor is truly mine. It's been incredible to serve with you and the other commissioners. I want to share some mana'o in the hopes of maybe one day my kids and grandkids will look at the notes and try to understand the reasons why I missed some things or sat in Zoom meetings while they're at pre-school.

I want to start by thanking my 'ohana, my dad; he came to the first opening at the legislature were I didn't know if I was going to be appointed. My kids Hali'aaloha, Kuloku, Ka'upulani for their support and patience; and my wahine Keli'i.

I'm moving away from this role but still be involved in water the rest of my life. Since the establishment of the Commission in roughly 30 years of work from the 1980s to 2012, the commission's set numeric instream flow standards sixteen (16) times in a total of ten (10) streams. Between 2013 and today's meeting in June 2021, our commission has set updated numeric flow standards 49 times as we did one today, for a total of 45 streams across the islands. These streams are: Waikapū, Wailuku, Waiakowali, Kauaikoi, Kauaikinana, Kōke'e, Waihulu, Koa'ie, Waimea, 'Ainakou, 'Ukumehame, Olowalu, Launui'poko, Kaua'ula, Honopou, Hanehoi, Waiakamoi, Wahinepeke, 'U'ahukomoa, Haipua'ena, Punalau, Honomanū, Nuailolo, Pi'ina'au, Palauhulu, Waiakamilo, Wailuanui, East Wailuaiki, West Wailuaiki, Kōpili'ula, Puaka'a, Wai'ohue, Wai'a'aka, Pa'akea, Kapāula, Hanawī, Makapipi, Kahoma, Kanahā, Wai'a'ama, Lāwa'i, Honokōhau, Kaluanui, Honolua, Wai'oli, and Ka'ie'ie.

This effort is something for us to celebrate and want to mahalo all the communities that in some instances petitioned the Commission; our staff especially Dr. Ayron Strauch, all the deputies I got a chance to work with and learn; Bill Tam, Jeff Pearson, and Kaleo; Chair Case, Chair Aila, and lastly our Commission Members; Mike, Wayne, Neil, Paul. Also want to mahalo Jonathan Starr and some of the Commissioners who aren't with us anymore; Milton Pavao, Bill Bafour.

It's a significant achievement to have achieved in eight years nearly quadruple the amount of all previous Commissions of the last 30-years in establishing the scientifically based IIFS. I do believe restoring these streams will balance reasonable and beneficial uses for agricultural and economics; however, there are significant matters that require our continued attention. We must continue to balance wai across our islands and enforce IIFS that we implemented and thoughtfully listened to the voices and concerns of our community. Our fiduciary duty as Kahuwai is to implement the public trust protect and manage waters of Hawai'i for present and future generations. We must also continue to earn the trust of our communities.

I know this work is hard and adverse; there's been times some of us gets challenged, held responsible for actions or inactions of previous commissions.

(Commissioner Beamer continues)

The needs of plantation companies whos' infrastructure has emptied community streams for generations. We've even faced paradox situations of the illegal overthrow, the Hawaiian Kingdom, the occupation and lingering issues of justice and sovereignty of the resources and water. This work comes with kuleana and we must shoulder these burdens. While these are significant, I think they pale in comparison to the intergenerational trauma carried by many indigenous communities who have witnessed their traditional and customary practices diminish because of the community lifeline, the stream, has been emptied for generations.

We must remember these communities responded by carrying that trauma and facing the injustice head on in the courts and processes mandated by this Commission; sometimes fighting over twenty (20) years. To me, that is a tremendous kuleana, it's a difficult and adverse work to continue. When we meet community, we can keep an open mind that perhaps we're one of the many faces encountered on their path to return water and life to their community. Whether we like it or not, we carry the burden of balancing reasonable and beneficial uses of wai and the legacy of historical injustice.

One of the most moving and inspiring development I witnessed has been resurgence of these communities of Aloha 'Āina across the islands as we have seen the next generation of leadership emerge across the pae'āina to better mālama our wai. In Wai'oli, West Maui, East Maui, Nā Wai 'Ehā, West Kaua'i, Wailua, Waimea, Keauhou, and He'eia.

Ma ka lohe 'ia ka leo makuahine mai na pua o Hawai'i, ma kēia 'aha 'ōlelo, 'o ka ha'aheo wale kēia. 'O ka ma'amau kēia no nā hana hou, puka ka 'ōlelo

What I've learned in these eight years is we have an incredible opportunity to play a role in restorative justice. I believe there are fewer greater callings than to have a chance to restore life to a community, the people, plants, 'o'opu, hihīwai, 'ōpae, and the aquifer itself were all

resurrected when we restore a stream. We did 45 in the last eight years and I hope this Commission can complete the roughly 400 streams over the next 15 years. We have the processes in place to restore streams in our islands.

We've also done significant work in the areas of groundwater and move the Commission towards an integrated one water approach over the last eight years and hope the Commission continues on this path to be actualized across the islands. It is a critical importance for mitigating climate crisis and a proactive management of aquifers and streams. In reality like the mele of kāne tells us, the engineered silos of ground, surface and stormwater, are just one-water. We don't actually manage the resource as much as we manage humans use, consumption and respect for this resource.

I hope the Commission continues to work towards understanding and protecting groundwater dependent ecosystems, to mitigate climate-crisis and the preservation of traditional and customary maoli practice as well as overall near shore marine health. The most difficult personal issue to leave unresolved is the Red Hill Tanks as this has been the most serious threat to our drinking water to one of the most important aquifers on O'ahu (*spoke of the threat to our drinking water that the Navy poses from their lack of action or inaction*)

(Commissioner Beamer continues with a story of his first day (meeting) as Commissioner with respect to Mr. Bill Bafour and the knowledge he learned from him and of Bill's open support of the public trust responsibilities and that Bill's metamorphosis were instrumental in decisions made.) I'm sharing this story today because I believe we have that chance in restorative justice while balancing reasonable and beneficial uses no matter what our previous professional backgrounds are, our political affiliations, race, or gender. We can learn new ways and from each other if we keep our Aloha and put our fiduciary duty to wai first, and that's our kuleana. I want to mahalo Bill and each of you.

E like me ka'u 'ōlelo o kō kākou wahi kupuna. He wai a ola, he wai a mana, e ola no ea a hiki i ke aloha 'āina hope loa.

Thank you for the opportunity and honor; Mahalo.

Chairperson Case asked if it was okay to enter what Commissioner Beamer has said into the minutes. Commissioner Beamer agreed.

Commissioner Hannahs stated his Aloha and sentiments towards Commissioner Beamer and noted he will miss his mana'o, leadership style, cultural values, and contributions that he has brought to the Commission over the past eight (8) years.

Commissioner Buck also echoed on Kamana's credibility and comfort he has brought to the Commission.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

July 20, 2021 (Tuesday)

August 17, 2021 (Tuesday)

This meeting was adjourned at 5:19 p.m.

Respectfully submitted,



RAE ANN HYATT
Secretary

OLA IKA WAI:



M. KALEO MANUEL
Deputy Director

Written Testimonies Received:

**Department of Land and Natural Resources Aha Moku Advisory Committee State of Hawaii
Post Office Box 621 Honolulu, Hawaii 96809**

Hawaii State Aha Moku Testimony
To the Commission on Water Resource Management
For the meeting of the
Commission on Water Resource Management

June 15, 2021

SUPPORT FOR AGENDA ITEM: B2

Approve Order to Honolulu Board of Water Supply to Bulkhead Ha'ikū Tunnel (well 2450-001) at the 10-foot Thick Dike 1,200 feet From the Portal Entrance and Reduce Their Withdrawal to 0.3 million gallons per day He'eia Hydrologic Unit, Ko'olaupoko, O'ahu Aloha Chairperson Case and Honorable Members of Commission for Water Resource Management (CWRM), on behalf of the Aha Moku participants and members of Native Hawaiian generational families connected to the Ahupua'a O He'eia, we offer you testimony in Support of Agenda Item B2.

In order to fully understand and appreciate the importance of this issue to the indigenous people of He'eia, it is important to recognize the protocols and symbiotic relationship between the people of He'eia, their customary practices, and the natural resources – in this case, water, which is life.

Hawaii State Aha Moku Foundation

The Hawaii State Aha Moku (Aha Moku), via Act 288, SLH 2012 brings the voices of the native Hawaiian generational and lineal descendants forward to the Hawaii State government in issues that impact their traditional and customary practices within natural and cultural resources. Working within a traditional resource sustainability process restored from the 9th century through translations of ancient chants and mo'olelo, the Aha Moku focuses on three main principles:

- • Malama Ke Akua (Honor God)
- • Malama I Ka'Aina (Honor the Land)
- • Malama Na Iwi Hanau O Ka 'Aina (Honor the people of the land)

These three principles are critical to the testimonies and generational knowledge of the native Hawaiians who continue to practice customary beliefs within their ahupua'a, and in this case, particularly in He'eia. The people are comprised of their beliefs and are themselves an integral part of the natural resources and cannot be separated from them because the Akua, the land and the people are one. They are the whole entity and not separate compartments. This belief system is often not comprehended within the western thought process, yet it is the core of Hawaii State constitutional protection of the traditional and customary practices (TCP) of Hawaii.

Community participation in He'eia

The people of He'eia Ahupua'a are an example of how communities, both native Hawaiian and others, have collaborated over the years to protect and preserve their culture, their practices and their specific 'ike, or knowledge of He'eia. They promote sharing of this knowledge and work continuously to do so. In sharing their 'ike, they have successfully partnered with others such as Papahana Kua'ola who leases land from and is supported by Kamehameha Schools. Many of the generational families are part of Kako'o 'Oiwī who are part of the He'eia wetlands and cultivate kalo and other culturally important food crops.

Aha Moku participates with and supports Kako'o 'Oiwī and these families. We hold weekly kuka sessions to share the Aha Moku Foundation at Kako'o 'Oiwī with community leaders, families, organizations, legislators and government offices. All will benefit from the maintenance and restoration of stream and wetland habitat in He'eia through increased streamflow because when the land is healthy, everyone benefits.

Also of great importance to the community is the strong participation of the Natural Estuary Resource Reserve (NERR)₁ in He'eia. The NERR consists of six strong Ko'olaupoko Moku organizations – the Pae 'Pai O He'eia, the Ko'olaupoko Hawaiian Civic Club (the oldest Hawaiian Civic Club in Ko'olaupoko organized in 1937), the Ko'olau Foundation, Kako'o 'Oiwī, the University of Hawaii Institute of Marine Biology, and the Department of Land and Natural Resources (DLNR-He'eia State Park).

Recommendation of Aha Moku:

Aha Moku supports the CWRM staff recommendations that this Commission consider the recommendations for improving high-elevation aquifer storage in the Ko'olaupoko Aquifer System for protecting instream uses in the He'eia Stream. The proposed system focuses on the protection of instream uses in He'eia Stream that are affected by groundwater withdrawal.

The people of He'eia are the living laboratories of their ahupua'a because their Kupuna are the center of knowledge and they share their 'ike for educational purposes as well as the practical usage and protection of the water, land and ocean.

DLNR and CWRM understand this foundation and their staff have worked hard to continuously integrate this into their daily operational work.

We deeply appreciate the opportunity to support the voices of the generational families of the Ahupua'a O He'eia who are in favor of this submittal.

Respectfully and humbly yours,

Kawaikapuokalani K. Hewett, Ka Mea Ho'okumu, Founder, Hawaii State Aha Moku

Rocky Leialoha Kaluhiwa, Kahu Nui, Aha Moku Advisory Committee, Hawaii State Aha Moku

Leimana DaMate, Luna Alaka'i, Hawaii State Aha Moku

June 15, 2021

State Department of Land and Natural Resources
Commission on Water Resource Management
1151 Punchbowl Street, Board Room 132
Honolulu, Hawaii 96813

Dear Chairperson Case and Members:

Subject: Action Item B2 - Approve Order to Honolulu Board of Water Supply to Bulkhead Ha'ikū Tunnel (well 2450- 001) at the 10-foot Thick Dike 1,200 feet From the Portal Entrance and Reduce Their Withdrawal to 0.3 million gallons per day He'eia Hydrologic Unit, Ko'olaupoko.

The Board of Water Supply (BWS) recognizes the importance of setting an Amended Interim Instream Flow Standard (IIFS) for He'eia Stream. We appreciate the Commission's willingness to embrace a holistic watershed perspective and seek innovative solutions toward setting a reasonable IIFS for He'eia Stream. We are committed to partnering with the Commission staff and the US Geological Survey (USGS) in elevating scientific understanding of the hydrogeologic resources in He'eia and adjacent watersheds, evaluating workable forms of watershed restoration balancing public trust instream and public trust noninstream uses of He'eia water and implementing innovative and tested solutions. Although there may be different perspectives on the scale of restoration, we are working toward the same objective and we appreciate this opportunity.

BWS agrees to fund the preliminary hydrogeology and engineering evaluation of an additional bulkhead in the BWS Haiku Tunnel in Fiscal Year 2021-2022, as a means to increase dike storage and water level elevation. We agree that increasing dike storage will have mutual watershed wide benefits to increasing stream and spring flow and provide a reduced but sustainable withdrawal for domestic use and water for Department of Hawaiian Homelands in mauka Ha'ikū Valley within the BWS municipal Ha'ikū-Lulukū 500' water system. As a follow-up to our testimony and discussion at the CWRM meeting of January 19, 2021, we are pleased to report the following progress:

1. BWS Board has approved funding in the BWS FY 2022 budget for the cooperative USGS study on the He'eia watershed and we are reviewing the agreement. The study scope was shared with CWRM staff and comments were incorporated. Execution of the cooperative agreement is anticipated in a month. USGS is conducting a site reconnaissance of the He'eia and Iolekaa Streams in the next week in preparation of their stream seepage runs later this summer. Stream seepage runs will determine which stream segments are gaining or losing. We note that the USGS study will take 3 years to complete and this ability to have

more scientific certainty of how water is stored and moves in the watershed, will be very important in it would be difficult in determining a reasonable IIFS.

2. BWS has throttled down production levels at Ha'ikū Tunnel from 1.0 mgd in January to 0.68 mgd on February 16 and to 0.5 mgd on April 7, 2021. BWS source production is now ¼ of our permitted use of Ha'ikū sources.

3. While the USGS study is being developed, BWS will keep withdrawals to a minimum, currently at 0.5 mgd. The Ha'ikū-Lulukū 500' system is sensitive to system adjustments when demand approaches gravity input. To continue to adequately serve our existing customers, we need to ensure reservoir levels do not drop drastically and that water pressures are maintained especially for highest elevation users like Kamakau School in mauka Ha'ikū Valley and the Hawaii State Hospital. Our operations staff has expressed caution about water hammer surges in water pressures that could cause water main breaks in lower Maunawili when source input is reduced down. High summer water demand and low rainfall could trigger these system impact indicators. It is for these reasons that throttling Ha'ikū Tunnel withdrawals even lower to 0.3 mgd will require methodical trial and testing and greater reliance on our Lulukū sources. It is a complex hydraulic challenge. When Ha'ikū Well is fully operational, we may have to pump well water into the water system to keep Ha'ikū Tunnel production at 0.3 mgd and still meet system demand.

4. As a result of the reduction in Ha'ikū Tunnel withdrawal, our hydrogeology staff has seen some increases in stream flow at the USGS He' eia Stream gage although they note that rainfall after March has been below normal. The national weather service is forecasting below normal rainfall through the summer.

5. BWS is evaluating alternatives to assist Kako'o 'Oiwī through a re-envisioned watershed partnership agreement to promote water conveyance efficiencies, diversion measuring gages and supplemental agricultural water meters to accommodate their irrigation demands especially during droughts.

6. We note that from early 1990's when the BWS water conservation program was initiated, BWS windward production has decreased approximately 37% which results in aquifer recovery and stream restoration. We note that chlorides are still at elevated levels in select Ko' olauloa basal wells and Ko'olaupoko dike sources are more sensitive to pumping. Water conservation, sustainable watersheds and limits on water transfer policies and stream restoration projects including He' eia as a catalyst project were included in the adopted 2012 Ko'olaupoko Watershed Management Plan.

Given the many competing needs for limited water resources in this watershed, BWS is appreciative of CWRM's holistic watershed approach in He'eia to ensure that the foregoing issues and alternative solutions are adequately considered and addressed before this Commission issues an IIFS decision. If you have any questions, please contact me.

ERNEST LAU, P.E. - Manager and Chief Engineer

June 12, 2021

Via Electronic Mail
dlnr.cwrn@hawaii.gov

Re: Agenda Item B.2

Approve Order to Honolulu Board of Water Supply to Bulkhead Ha'ikū Tunnel (Well No. 2450-001) at the 10-foot Thick Dike 1,200 feet From the Portal Entrance and Reduce Their Withdrawal to 0.3 million gallons per day; He'eia Hydrologic Unit, Ko'olaupoko, O'ahu

Dear Chair Case and Commissioners:

Mahalo for the opportunity to comment on the Staff Submittal recommending that the Commission order the Honolulu Board of Water Supply ("BWS") to Bulkhead Ha'ikū Tunnel (Well No. 2450-001) at the 10-foot-thick dike 1,200 feet from the portal entrance, and to reduce their withdrawal from Ha'ikū Tunnel from 1.0 million gallons per day ("mgd") to 0.3 mgd. Earthjustice appreciates the Commission taking the initiative to protect water resources in Ha'ikū and commends the Commission staff for putting forth an innovative and forward-thinking solution to restore and enhance the water resources in the Ko'olaupoko Aquifer System by remedying the significant damage the Ha'ikū Development Tunnel has caused to high-elevation aquifer storage capacities in the region. The bulkheading recommendation is an integral step forward to long-term restoration of the Ko'olaupoko Aquifer System and is the type of generational approach to water resource management that is essential in preparing for O'ahu's water future and combating the impacts of climate change.

Based on discussions with the He'eia community, Earthjustice fully supports the recommendation to bulkhead the Ha'ikū Tunnel, but *also* urges the Commission to establish an Interim Instream Flow Standard ("IIFS") for He'eia Stream as a critical safeguard and concrete step forward in the meantime. While the recommendation to bulkhead Ha'ikū Tunnel is a necessary and promising long-term solution to rehabilitating the Ko'olaupoko Aquifer System on a moku-wide basis, the community has legitimate concerns whether the proposed interim 0.7 mgd reduction in withdrawals from the Ha'ikū Tunnel will provide sufficient water in the interim to support continued ahupua'a restoration in the He'eia wetlands, including the ongoing and planned lo'i kalo cultivation and loko i'a production and management. Increased streamflow is crucial to realizing the collective visions of the numerous community groups leading the stewardship activities in the He'eia ahupua'a. Toward that end, we encourage the Commission to take further steps to immediately restore and increase base streamflow in He'eia Stream.

A. Immediate Action to Amend the IIFS for He'eia Stream is Necessary to Ensure Increased Stream Baseflow in He'eia Stream.

At a January 19, 2021 information briefing, Commission staff recommended setting an IIFS for He'eia Stream of 1.77 mgd. *See* Staff Submittal, Draft Amended Interim Instream Flow Standards For the Surface Water Hydrologic Unit of He'eia (3028): He'eia Stream, dated January 19, 2021, at 23. In response, numerous community members and groups testified in strong support of the restoration of streamflow to He'eia Stream to the greatest extent possible. The June 2021 Staff Submittal, however, recommends deferring amendment to the IIFS for He'eia Stream for a period of at least two years while BWS completes their feasibility study for the proposed bulkhead. As the June 2021 Staff Submittal recognizes, however, it is entirely possible that in two years BWS could conclude that bulkheading is not a feasible solution.¹ If the feasibility study determines that bulkheading is feasible, the Staff Submittal recommends revisiting the recommendation to amend the IIFS one to two years following construction completion, which even under the best-case scenario would add an additional four to five years before the IIFS for He'eia Stream is amended.

¹ Specifically, the Staff Submittal notes "[i]f HBWS determines that bulkheading is not a feasible solution upon completion of the feasibility study, staff will recommend an amendment to the interim IFS or amend the HBWS water use permit as needed." Staff Submittal at 21.

The Commission should amend the He'eia Stream IIFS now to provide *interim* protection, in line with the express purpose of the IIFS mechanism. Setting an IIFS would ensure a concrete and measurable

restoration of streamflow for the immediate benefit of the stream and wetland habitat in He‘eia, rather than deferring such protection for years pending the feasibility studies for longer-term actions. While the proposed 0.7 mgd reduction in withdrawals from Ha‘ikū Tunnel would also be helpful to specify controls on diversions, it is insufficient standing alone as an interim approach to support increased streamflow. At present, BWS frequently ceases withdrawals from Ha‘ikū Tunnel for extended periods of time. *See* Staff Submittal at 15, noting that from 2013 to 2019, BWS withdrew water from the Ha‘ikū Tunnel only 42 out of 84 months. The Staff Submittal further notes that in 2021, BWS experimented with reducing their water withdrawal from Ha‘ikū Tunnel to examine if stream baseflow responded. *See* Staff Submittal at 18. It was observed that a reduction in withdrawal from 1.0 mgd to approximately 0.5 mgd resulted in “some increase in stream baseflow,” but no concrete and measurable values are provided. *Id.* It is unclear to what extent stream baseflow will be further improved by an additional 0.2 mgd reduction in BWS’s Ha‘ikū Tunnel withdrawal.

In its recent action on Wai‘oli, Kaua‘i, the Commission embraced an adaptive management approach, moving forward to adopt a numeric IIFS based on the available information with the understanding that the Commission could always come back and further amend the IIFS once more data becomes available. Likewise, the public trust and precautionary principle support presumptions and protections for the benefit of the streams in this case.²

² *See In re Waiāhole Ditch Combined Contested Case Hr’g*, 94 Hawai‘i 97, 155, 9 P.3d 409, 467 (2000) (“*Waiāhole*”) (repeatedly emphasizing that under the public trust and precautionary principle, “the lack of full scientific certainty does not extinguish the presumption in favor of public trust purposes or vitiate the Commission’s duty to protect such purposes whenever feasible,” and “[u]ncertainty regarding the exact level of protection necessary justifies neither the least protection feasible nor the absence of protection”). We strongly urge the Commission to take immediate action to establish a numeric IIFS for He‘eia Stream. An IIFS of 1.77 mgd, as recommended in the January 2021 Staff Submittal, would provide the community with a tangible and measurable interim increase in baseflow necessary to immediately support continued ahupua‘a restoration in the He‘eia wetlands, pending longer-term investigations including the feasibility studies for the bulkheading proposal.

B. Limiting Groundwater Withdrawals via the Ha‘ikū and ‘Ioleka‘a Wells is Necessary to Ensure Health of the He‘eia Hydrologic Unit as a Whole.

Another immediate and pressing concern to the community is the lack of safeguards against increased groundwater withdrawals from other wells in the He‘eia Hydrologic Unit—namely, the Ha‘ikū and ‘Ioleka‘a Wells. The He‘eia Hydrologic Unit needs to be managed holistically, as one water system. If BWS is able to tap these wells to compensate for a reduction in withdrawals from Ha‘ikū Tunnel, this could result in nullifying any potential gains to baseflow in He‘eia Stream.

According to the Ko‘olau Poko Watershed Management Plan, BWS holds water use permits to withdraw 0.457 mgd from Ha‘ikū Well and 0.153 mgd from ‘Ioleka‘a Well. *See* Ko‘olau Poko Watershed Management Plan, Appendix C, O‘ahu Water Use Permit Index at C-2 (September 2012). The pump capacities for Ha‘ikū and ‘Ioleka‘a wells are 1.008 mgd and 0.302 mgd, respectively. Historically, BWS has not pumped at the full capacity of their permitted use for the Ha‘ikū and ‘Ioleka‘a Wells. In its written testimony on the Draft Interim Instream Flow Standard Assessment Report, dated November 23, 2020, BWS acknowledges that increased water efficiency in the windward water system “has resulted in a reduction in source production compared to State permitted use.” BWS Testimony on Draft Instream Flow Standard Assessment Report for the Hydrologic Unit of He‘eia (3028) at 10. The groundwater pumpage reports confirms this result, indicating that from 2013–2020 BWS pumped a monthly average of 0.163 and 0.057 mgd, respectively, from the Ha‘ikū and ‘Ioleka‘a Wells. *See* Staff Submittal, Table 6 at 17. Thus, the record indicates a potential of nearly 0.4 mgd of previously untapped but permitted water resources from the Ha‘ikū and ‘Ioleka‘a Wells, with a total well capacity upwards of an additional 1.0 mgd.

The community has legitimate concerns as to whether the reduction in withdrawal from the Ha'ikū Tunnel will be met with an increase in withdrawal from the Ha'ikū and 'Ioleka'a Wells. Since most of the largest metered water consumers in the BWS Ko'olaupoko District are for non-potable uses, and given the availability of non-potable water sources to meet such non-potable needs, BWS has alternatives to increasing its withdrawals from Ha'ikū and 'Ioleka'a Wells. *See* Staff Submittal, regarding Alternative Sources, at 16. As such, we encourage the Commission to also implement an enforceable cap on groundwater withdrawals from the Ha'ikū and 'Ioleka'a Wells comparable to BWS's monthly average groundwater withdrawals from 2013-2020. *See* Staff Submittal, Table 6 at 17. Alternatively, if the daily monitoring reports required under the monitoring provisions of the staff recommendation indicate that groundwater withdrawal from the Ha'ikū and 'Ioleka'a Wells exceed the established monthly average from 2013-2020, the Commission and He'eia community members should have specific recourse available to request an immediate modification or reduction of BWS's water use permits for the Ha'ikū and 'Ioleka'a Wells.

C. The Commission Should Set Clear Milestones and Reporting Requirements to Ensure the Target Deadlines for the Bulkheading Proposal are Being Actively Pursued and Timely Met.

We appreciate the clear timetables for implementation of the bulkheading recommendation contained in the Staff Submittal—i.e., two years for BWS to complete a feasibility study and preliminary engineering design for the proposed bulkhead, and three years to complete the final design and construction of the bulkhead. *See* Staff Submittal at 21. However, we urge the Commission to incorporate milestones, monitoring, and/or quarterly reporting by BWS to Commission Staff and community partners to ensure the target deadlines are being actively pursued and met on schedule.

D. Additional Stream Gauging in 'Ioleka'a Stream Would Provide Much Needed Data Towards Understanding the Relationship Between Groundwater and Surface Water in the He'eia Watershed.

As Commissioner Hannahs recognized during the January 19, 2021, information briefing on the Draft IIFS for He'eia Stream, investment in stream gauges in the He'eia watershed is necessary to plan for future data needs. Minutes For the Meeting of the Commission on Water Resource Management, dated January 19, 2021, at 11. Currently, there are no stream gauges measuring 'Ioleka'a Stream. Additional stream gauges would provide much needed and valuable data in understanding the impacts of groundwater withdrawals on stream baseflow, and also help ensure that pumping from the wells does not offset the discharge from the tunnel and negatively affect downstream uses. As such, we encourage the Commission to order the installation of a stream gauge on 'Ioleka'a Stream, near the confluence with Ha'ikū Stream. A stream gauge in this location would assist with understanding the groundwater-surface water relationship in the He'eia Watershed and is an ideal location for more permanent monitoring.

In conclusion, we appreciate the innovative solution by Commission staff to bulkhead Ha'ikū Tunnel (Well No. 2450-001) at the 10-foot-thick dike 1,200 feet from the portal entrance as a long-term plan to restore the Ko'olaupoko Aquifer System. This is exactly the type of forward-thinking and generation-spanning management of our island water resources that is essential to planning for our water future and preparing for the impacts of climate change. We encourage the Commission to strengthen the recommendations in the Staff Submittal by: (1) taking immediate action to amend the IIFS for He'eia Stream to ensure a tangible and measurable increase in stream baseflow that would support instream uses, traditional and customary practices, and continued ahupua'a restoration; (2) maintaining current groundwater withdrawals from Ha'ikū and 'Ioleka'a Wells to ensure the health and maintenance of the He'eia Hydrologic Unit as a whole; (3) setting clear benchmarks and reporting requirements to ensure target deadlines for the bulkheading proposal are being actively pursued and timely met; and (4) ordering additional stream gauging in 'Ioleka'a Stream to contribute towards understanding the relationship

between groundwater and surface water in the He'eia Watershed. In this way, the Commission may fully embrace its public trust obligations to protect and restore streamflow in He'eia Stream, while meeting the longer-term planning objectives for water resources in the He'eia Ahupua'a and the broader Ko'olaupoko Aquifer System.

Respectfully submitted,
/s/ Elena L. Bryant
Isaac Moriwake
Leinā'ala Ley
Mahesh Cleveland
Elena L. Bryant
EARTHJUSTICE

June 10, 2021

Hawaii State Commission on Water Resource Management
Kalanimoku Building 1151 Punchbowl Street, Room 227 Honolulu, Hawaii 96813

Aloha Commissioners:

The Ko'olaupoko Hawaiian Civic Club strongly urges you to approve the measure under consideration to restore water to He'eia stream. As the largest Native Hawaiian organization in Windward Oahu, we are deeply concerned about the water resources in He'eia and neighboring ahupa'a.

By reducing the BWS use of water from the Ha'ikū tunnel and allowing the aquifer to refill over time our community will be greatly enhanced. The stream quality will improve, the kalo and fish pond production will increase and the health of the entire estuary will benefit. Over time, the aquifer can again provide water to many more households.

This measure is a positive step in restoring the rich agricultural resources and preserving the unique and precious He'eia wetlands. Mahalo for your vote to approve the measure.

Respectfully,
Leialoha Kaluhiwa
Ko'olaupoko Hawaiian Civic Club

June 13, 2021

Via Electronic Mail
Commission on Water Resource Management
dlnr.cwrp@hawaii.gov

Re: Agenda Item B.5

Approve Order to Moloka'i Properties Limited to Grant U.S. Geological Survey Access to Reestablish USGS Long - Term Monitoring Station 16415000 on East Fork Kawela Stream to Address Top Priority Monitoring Needs for the State and Provide Current Hydrologic Data to Partially Address the Complaint (CDR.5310.4) Filed by Earthjustice on Behalf of Moloka'i Nō Ka Heke, Moloka'i.

Dear Chair Case and Commissioners:

For decades, Moloka'i Properties Limited ("MPL" or "the Ranch") has diverted, hoarded, and wasted the mountain waters of central Moloka'i without any restraint or accountability. Now, in addition to its long - running failures to comply with the Water Code's reporting and other requirements, the Ranch has now affirmatively blocked USGS access to reestablish real - time stream monitoring at Kawela, refusing to observe minimum obligations of transparency incumbent upon any private diverter of public trust water resources. Absent such basic cooperation, it is the Commission's kuleana as trustee to order compliance. Thus, on behalf of Moloka'i Nō Ka Heke, Earthjustice supports the Commission staff's recommendation and **strongly urge this Commission to issue an order compelling MPL to allow USGS access to reestablish the mauka real - time stream gauging station on Kawela Stream.**

Almost two years ago, on July 1, 2019, Moloka'i Nō Ka Heke filed their Combined (1) Petition to Amend the Interim Instream Flow Standards for Waikolu, Kawela, Manawainui, Kaunakakai Streams, and Their Tributaries, and (2) Complaint Against Waste, and (3) Petition for Declaratory Order (CDR.5310.4) ("Petition"). The Petition requests that this Commission:

- (1) establish numerical Interim Instream Flow Standards ("Interim IFSs") for the four streams the Ranch diverts, of which Kawela comprises the largest share of the diversions;
- (2) issue an order to show cause and compel any and all necessary action by the Ranch to cease and prevent waste of water resources; and
- (3) issue a declaratory order requiring the Ranch to formally abandon and remove its five inactive diversion works in the central Moloka'i mountains.

To date, the Commission has not acted on any of the requested relief, in part because of MPL's failure to timely respond to the allegations in the Petition or answer the Commission's requests for information, as discussed below.

In January 2020, staff began the process of investigating Moloka'i Nō Ka Heke's complaint against waste by sending MPL a letter instructing MPL to complete a Complaint/Dispute Resolution Response Form. On March 23, 2020, after obtaining two extensions of the deadline to respond, MPL provided a perfunctory response with minimal information. Nonetheless, as Moloka'i Nō Ka Heke discussed in their April 9, 2020 letter¹ to Commission staff, what little information MPL provided confirmed that most of the water currently diverted is being wasted or banked for speculative claims of future expansion and development. Meanwhile, MPL's parent company is seeking to sell the Ranch.² On January 5, 2021, nearly a year after Commission staff's initial inquiry to the Ranch, Moloka'i Nō Ka Heke sent Commission staff another letter,³ formally asking staff to follow up with MPL given the dearth of useful information or data in the Ranch's original response.

On February 5, Commission staff sent MPL an enumerated list of questions about water usage and requested additional data to demonstrate whether the Ranch has any reasonable - beneficial end use for the water it continues to divert from central Moloka'i streams. MPL's April 12 response to staff's letter, again, provided minimal data and further confirmed the Ranch's lack of viable water use plans for its stream water diversions or for the ranching operations it purports to be conducting.⁴

¹ Moloka'i Nō Ka Heke's April 9, 2020, letter is attached hereto as Appendix "A."

² In 2019, MPL's parent company, Singapore - based investment holding company GL, Ltd., had the Ranch listed on the international real estate market for over a quarter - billion dollars. To our knowledge, it is still available for sale, even without a legally recognized and permitted water supply.

³ Moloka'i Nō Ka Heke's January 5, 2021, letter is attached hereto as Appendix "B."

⁴ Moloka'i community members, for example, are highly skeptical of the Ranch's claimed "cow - calf operations," based on their direct observations of land uses in West Moloka'i and shipping activity (or lack thereof) in Kaunakakai.

After two years of the Ranch's delays and obfuscation, the Ranch now further obstructs this Commission by refusing its request to allow USGS access to reestablish stream monitoring above the Ranch's diversion at East Kawela. Such blatant stonewalling calls for direct Commission action.

As the staff submittal discusses, the Hawai'i State Water Code, Hawai'i Revised Statutes ("HRS") chapter 174C, as implemented by Hawai'i Administrative Rules ("HAR") chapter 13 - 167) mandates that this Commission research and investigate "all aspects of water use and water quality." HRS § 174C - 5(1); *see also* HAR § 13 - 167 - 3(1). The Commission's broadly established duty to "catalog and maintain an inventory of *all water uses and water resources*,"

HRS § 174C - 5(14) (emphasis added), necessitates Commission access to water resources to support its investigation, research, and data collection work and ensure transparency and accountability on the part of private and public water users. The Code thus expressly grants the Commission authority to access private property, upon "reasonable notice," for purposes of "conducting investigations and studies or enforcing any of the provisions of this code," even if a landowner does not give consent. HRS § 174C - 5(5). MPL's refusal to allow USGS access for streamflow monitoring in partnership with and on behalf of this Commission ultimately cannot block such access and merely amounts to another delay tactic.

The Commission's statutory mandates align with and support its duties under article XI, sections 1 and 7 of the Hawai'i Constitution. Our constitutional public trust doctrine embodies a dual mandate of (1) protection and (2) maximum reasonable and beneficial use—both of which directly apply to Moloka'i Nō Ka Heke's pending Petition and the Commission's staff proposed access for streamflow monitoring. *In re Waiāhole Ditch Combined Contested Case Hr'g*, 94 Hawai'i 97, 139 - 40 (2000) ("*Waiāhole*"). The public trust confers on the state "an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." *Id.* at 141. This constitutional public trust kuleana not only enables and supports, but *requires* the proposed action to compel compliance in the face of noncooperative diverters like the Ranch in this case.

Beyond the immediate action of requiring the Ranch to provide access for proper streamflow monitoring, however, the Commission should not allow the Ranch's noncooperation to prevent the Commission from moving forward and acting expeditiously on Moloka'i Nō Ka Heke's Petition based on the currently best available information. For example, in line with the precautionary principle,⁵ and given the lack of credible information

on reasonable - beneficial end uses in West Moloka'i after repeated requests to the Ranch since 2019,

⁵A lack of scientific certainty “should not be a basis for postponing effective measures to prevent environmental degradation,” but rather militates “in favor of choosing presumptions that also protect the resource.” *Waiāhole*, 94 Hawai'i at 154.

The Commission is well within its authority and discretion to set an Interim IFS for the Moloka'i Mountain Streams based on currently available data. Likewise, because the Ranch's diversions take anywhere from 400% (by MPL's estimation⁶) to over 1000% (according to the actual numbers MPL submitted⁷) of its surface water needs out of Kawela and Waikolu Streams, the Commission should take action on Moloka'i Nō Ka Heke's waste complaint and abandonment petition. In short, these two active diversions already take too much water, and the remaining five have not been used or needed for years. Considering the collapse of MPL's business models and development plans over the years, there is no plausible basis for retaining these defunct plantation - era structures, or continuing to allow the Ranch's excessive diversions and unlawful water banking.

The plantation days of large landowners operating as if they own our public waters are over. We urge this Commission to exercise its public trust management authority as staff recommends, followed up by additional expeditious steps forward on Moloka'i Nō Ka Heke's Petition. Mahalo nui for the opportunity to offer testimony on this important matter.

Respectfully submitted,

/s/ Mahesh Cleveland

Mahesh Cleveland

Leinā'ala L. Ley

Isaac Moriwake

EARTHJUSTICE,

Attorneys for

MOLOKA'I NŌ KA HEKE

Aloha Commissioners,

This testimony is submitted in support of the Commission's proposed Order to require Molokai Properties, Ltd. (MPL) to provide access to the USGS so that it can reestablish

long-term monitoring station 16415000 on the East Fork of the Kawela Stream. This data would be used to determine Interim Instream Flow Standards.

The USGS began monitoring Moloka'i water resources more than a century ago, prior to construction of the dams by MPL's predecessor the Molokai Ranch. In a report published in 1903, The Water Resources of Molokai (copy attached), the USGS described the Kawela stream as follows:

The main or east fork under average winter conditions flows as far down as an elevation of 1,500 or 2,000 feet. By far the greatest volume of its water is collected from the swamps near the head, and during rainy weather its volume reaches 5,000,000' to 7,000,000 gallons (7.74 to 10.83 cubic feet per second). On June 1, after three or four days of dry weather following showery weather, it was measured at an elevation of 3,160 feet, where its canyon has comparatively slight grade. The flow was 1,300,000 gallons in twenty-four hours (2.01 cubic feet per second). On June 19, after three weeks of hot and dry weather, it measured at the same place 350,000 gallons (0.54 cubic foot per second), at about which figure the flow, according to all accounts, remains constant during the summer, though in exceedingly dry weather it may dwindle as low as 50,000 gallons (0.08 cubic foot per second). (Page 37) The USGS report also provided a table estimating the daily flow of the East Fork stream at 1,200,000 gallons per 24 hours during the months of November - June, 1900. (Page 51) Archaeological studies of the Kawela area have revealed that it in pre-contact times the slopes were planted in 'uala (sweet potato) and these crops supported a thriving community with numerous house sites constructed throughout the ahupua'a. See the attached copy of The Archaeological Resources of Kawela, Moloka'i, Marshal Weisler and Patrick Kirch (1982). A consistent supply of water made all of this possible. Damming the stream destroyed what was once a thriving ecosystem.

As one of the members of Moloka'i No Ka Heke, the group that is asking this Commission to set flow standards for the Kawela Stream and four other ahupua'a, I urge you to require MPL to allow access to reestablish Long-Term Monitoring Station 16415000.

Thank you for considering my testimony.
Karen M. Holt, Esq.
Executive Director
Moloka'i Community Service Council
P.O. Box 2047
Kaunakakai, Hawai'i 96748

June 11, 2021

Aloha, Chair Case and Commissioners:

My name is Teave Heen and I am a lifelong resident of Kawela, Moloka'i. I am submitting this testimony in full support to approve the Order to Moloka'i Properties Limited to Grant U.S. Geological Survey Access to Reestablish USGS Long-Term Monitoring Station 16415000 on East fork Kawela Stream to Address Top Priority Monitoring Needs for the State and Provide Current Hydrologic Data to Partially Address the Complaint (CDR.5310.4) Filed by Earthjustice on Behalf of Moloka'i Nō Ka Heke, Moloka'i."

From 1985 to the present time I have personally witnessed the decline in stream flow, depletion of the down stream habitat, and a damned estuary contributing to flooding and adding to the sediment buildup on our south shore reefs. The well-being of our island and our community depend on proper resource management. This order is vital for updated and continuous data monitoring to accurately prove the devastating impact decades of water mismanagement has had on our rivers ecosystems and our south shores.

Mahalo for the opportunity to testify,
Teave H. Heen