



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

January 18, 2022
Honolulu, Hawai'i

Wailuku Kuleana Town 'Auwai
Nā Wai 'Ehā Surface Water Management Area, Maui

SUMMARY OF REQUEST

No action. The purpose of this submittal is to present information on the implementation of the Commission on Water Resource Management's (Commission) Decision and Order in contested case hearing CCH-MA15-01, as it relates to issues experienced with users on the Wailuku Town Kuleana 'Auwai (also referred to as Wailuku Town Kuleana Ditch).

LEGAL AUTHORITY

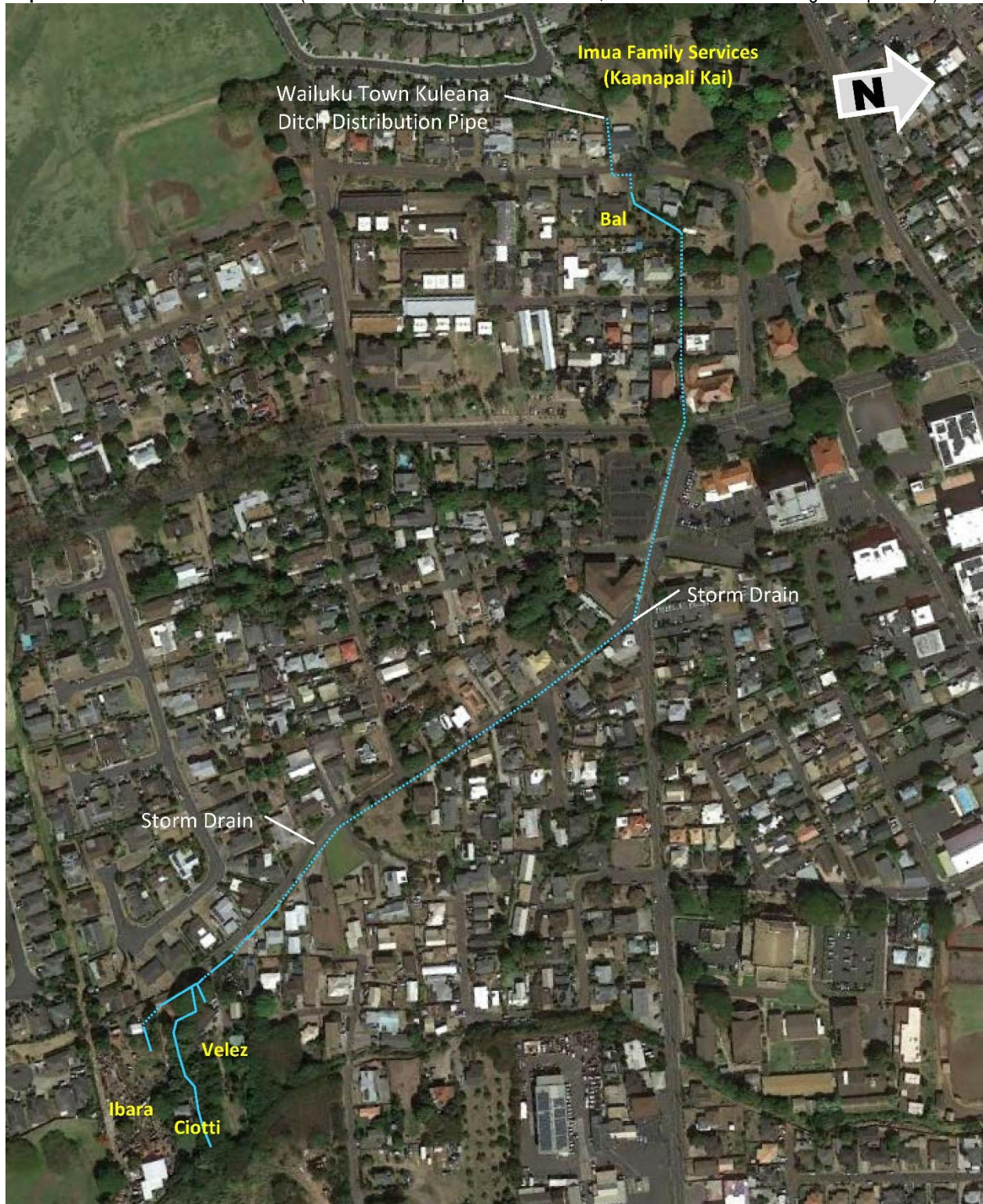
Under the State Water Code (Code), the Commission shall have jurisdiction statewide to hear any dispute regarding water resource protection, water permits, or constitutionally protected water interests, or where there is insufficient water to meet competing needs for water, whether or not the area involved has been designated as a water management area under this chapter. The final decision on any matter shall be made by the Commission. HRS § 174C-10.

BACKGROUND

The Wailuku Town Kuleana 'Auwai receives water from a distribution pipe and control valve that is located on TMK (2) 3-4-014:006. The property was formerly owned by Kaanapali Kai Inc. and is now owned by Imua Family Services. The distribution pipe conveys water from an intake located on Waihee Ditch approximately 1,800-feet mauka. Wailuku Water Company controls the distribution of water both from Waihe'e Ditch using a valve located at the intake, and a control valve located at the boundary on Imua Family Services property. From the distribution point, the water flows underground in a concrete lined channel for about 200 feet, then drops into an open channel where it flows for another 200 feet through two properties. The water goes back into a concrete-lined channel and continues on to the end, where it flows into an unlined channel for the last 250 feet. The total length of the Wailuku Town Kuleana 'Auwai is approximately 0.54 miles. An access point is located behind the Wailuku Public Library, and a

storm drain grate which captures runoff into the ditch is located at the corner of Kaohu Street and Kalua Road, and a second storm drain grate approximately 1,000 feet further down Kalua Road.

Map: Wailuku Town Kuleana 'Auwai. (Solid line indicates open-ditch sections; dotted line indicates underground portions.)



On April 17, 2014, under contested case hearing CCH-MA06-01, the Commission issued an Order adopting the; 1) Hearings Officer's Recommendation on the Mediated Agreement Between the Parties; and 2) Stipulation re Mediator's Report of Joint Proposed Findings of Fact, Conclusion of Law, Decision and Order.

On June 28, 2021, the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order (D&O) in contested case hearing CCH-MA15-01 regarding the Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Na Wai Eha Surface Water Management Areas of Waihee, Waiehu, Iao and Waikapu Streams, Maui. In its D&O, regarding the management of the WWC delivery system and the Wailuku Town Kuleana 'Auwai, the Commission set forth the following provisions:

D&O, pp. 305-307, Line 39:

- B. Appurtenant Rights and Surface Water Use Permits (SWUPs)
 - 39. SWUPA 2157 – Wailuku Water Company
 - b. As a condition of this permit, WWC is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:
 - 2. Distribution Points:
 - v. Wailuku Town Kuleana Pipeline
 - c. WWC shall ensure that the following quantity of water is delivered to the following distribution points in the indicated amounts based on SWUPs that will be issued as a result of this decision. The amounts to be delivered shall be provided at all times unless identified in Tables 1-3, supra, or determined by the Commission to be an emergency:
 - 5. Wailuku Town Kuleana Pipeline – 0.088 mgd

D&O, p. 360, Lines 207-208:

- F. Management of Kuleana Systems, Lines 207 thru 208:
 - 207. WWC and Mahi Pono are responsible to maintain their ditches to the point of delivery of water into the kuleana ditch or pipe system, with maintenance of the kuleana ditches and pipes the responsibility of the users.
 - 208. Monitoring of the amount of water diverted into kuleana systems shall be done by WWC and Mahi Pono, as set forth herein, except where the water is diverted directly from the stream. Where the kuleana system diverts directly from a stream, it shall be the collective responsibility of the kuleana system users to monitor and report the amount of water diverted from the stream. The quantity of water that may be collectively diverted is based on the SWUPs issued pursuant to this decision. The amounts to be delivered shall be provided at all times unless determined by the Commission to be an emergency.

D&O, pp. 305, Lines 35-36:

- B. Appurtenant Rights and Surface Water Use Permits (SWUPs)
 - 35. In awarding water for traditional and customary practices, and especially providing water for lo'i kalo, the users of traditional 'auwai will be responsible to

ensure that the ‘auwai are sufficient to handle the flow for the initial users and all down ‘auwai users as well.

36. The Commission also encourages the ‘auwai users to engage in collective stewardship of the ‘auwai systems to use the allocated water responsibly, both in times of abundance and more importantly during times of scarcity.

D&O, p. 361, Lines 209-213:

F. Management of Kuleana Systems

209. The Commission advises kuleana users on unlined ‘auwai systems to consider improving system efficiencies and reducing loss by lining or piping, including but not limited to South Waikapū ‘Auwai, South Waihe‘e ‘Auwai, and ‘Īao-Maniania Ditch.
210. In the pre-Māhele period, kuleana lands frequently contained pō‘alima which the occupants worked for the konohiki, chief, or king, and maintenance of the ditches was a collective responsibility. Present-day kuleana owners/users retain mutual responsibility for the maintenance of the kuleana ditches and pipes and to share the waters that flow in mutually used kuleana ditches and pipes.
211. The resuscitation of kuleana lands for lo‘i kalo is not only to allow individual kuleana to grow kalo through traditional practices but to do so in mutual cooperation and labor with neighboring kuleana, and a regulatory approach only solidifies the present focus on one’s own kuleana irrigation needs.
212. The modern-day “konohiki” must have the skills to shepherd kuleana occupants toward agreed mutual sharing of both water and the improvement and maintenance of the kuleana ditches and pipes. Such an endeavor is a long-term activity, entailing “konohiki” that are both knowledgeable of lo‘i kalo irrigation practices and efficient sharing of water. The Commission acknowledges the work kuleana permittees have put in to develop the social bonds that in pre-Māhele days resulted in extensive lo‘i kalo that these occupants are attempting to revive.
213. The Commission encourages the kuleana permittees, community groups, and agencies to assist in the development of a community or hui style of management for these kuleana ‘auwai to develop the community-sharing system that is needed to revive Nā Wai ‘Ehā as the premier wetland kalo producer not only on Maui, but throughout the State (See FOF 264, 269, 271-272, 275, 285-286).

The following users were awarded water use permits under the D&O:

ii. Wailuku Town Kuleana Ditch

181. The Wailuku Town Kuleana Ditch is next on the Waihe‘e Ditch
182. **SWUPA 2181—Kaanapali Kai (FOF 469)**
Kaanapali Kai is granted an existing use permit for 4,595 gpd based on her metered use.
183. **SWUPAs 2209/2210N—Vernon Bal (FOF 470)**
Because Bal did not submit testimony or participate in the contested case hearing, his request for recognition of appurtenant rights is denied without prejudice.

Similarly, his request for an existing use permit is denied and his request for a new use permit is denied without prejudice.

184. **SWUPAs 2241/2242N—Mary Ann Velez (Higa) (FOF 471)**
- a. Parcels 16 and 17 are recognized as having appurtenant rights of 136,950 gpd (0.913 acre x 150,000 gad).
 - b. Velez’s request for an existing use permit is denied.
 - c. Velez is granted a new use permit of 69,000 gpd (0.46 acre x 150,000 gad) for new lo‘i kalo. The 69,000 gpd is granted based on the recognition of appurtenant rights to Parcels 16 and 17.
 - d. Velez is also recognized as having a domestic use of 975 gpd (0.39 acre x 2,500 gad) a home garden, for which a permit will be issued.
185. **SWUPA 2247 &2248N—Jordanella Ciotti (FOF 472)**
- a. Parcel 19 is recognized as having appurtenant rights of 34,500 gpd (0.23 acres x 150,000 gad).
 - b. Ciotti is granted a permit for 8,265 gpd consisting of the following:
 - i. An existing use permit of 375 gpd (.0025 acre x 150,000 gad) for lo‘I kalo; and
 - ii. A new use permit of 7,890 gpd (.0526 acre x 150,000 gad) for lo‘i kalo. 8,265 gpd is granted based on the recognized appurtenant rights for Parcel 19.
 - c. Ciotti is recognized as having a domestic use of 989 gpd (0.3957 acre x 2,500 gad) for a garden, for which a permit will be issued.
186. **SWUPAs 2245/2246N—Greg Ibara (FOF 473)**
- a. Parcel 20 is recognized as having appurtenant rights of 175,650 gpd (1.171 acres x 150,000 gad).
 - b. Ibara is granted a permit of 4,050 gpd consisting of the following:
 - i. An existing use permit of 1,050 gpd (0.007 acre x 150,000 gad) for existing lo‘i kalo; and
 - ii. A new use permit of 3,000 gpd (0.02 acre x 150,000 gad) for new lo‘i kalo.

The 4,050 gpd is granted based on the appurtenant rights recognized for Parcel 20.

On September 29, 2021, the Commission received an email from Mr. Robert Street who indicated that he was angry about not receiving surface water. The following day, Commission staffer Dean Uyeno contacted Mr. Street to explain the implementation of the Commission’s D&O.

On October 7, 2021, Deputy Secretary Rae Ann Hyatt received a phone call from Mr. Street stating that only a “trickle” of water was in the ‘auwai and requested enforcement of the D&O. Commission staffer Rebecca Alakai followed up with Mr. Street on Monday, October 11. Mr. Street stated that he wanted to open a criminal complaint against Wailuku Water Company and wanted compensation for his crop losses.

On October 11, 2021, the Commission staff received an email from Avery Chumbley, of Wailuku Water Company (WWC), stating that “sometime after 2PM on Thursday 7th, the Wailuku Town Kuleana line valve was vandalized, we had the valve set to approx. 150 GPM flow which is approx. 6,500 GPM (sic) almost double the required D&O distribution point drop of 88,000 GPD / 3,700 GPM, (sic) this morning we discovered the valve was opened all the way. That means the flow exceeded 140,000 GPD, I sent the crew up to remove the meter and flush the line with full flow, then in a few hours replace the meter and use a chain and lock to secure the valve at a metered flow of between 100 to 150 GPM which will provided (sic) the required drop at the distribution point of approx. 3,700 GPH.”

On October 12, 2021, Hawaii News Now published a story featuring Mr. Street and the issues related to the Wailuku Town Kuleana ‘Auwai (<https://www.hawaiinewsnow.com/2021/10/13/battle-over-water-mauis-traditional-farmers-flares-up/>).

On October 13, 2021, Mr. Chumbley provided photos showing the type of propeller flow meter that was installed in the distribution pipe for the Wailuku Kuleana Town Ditch (Photos 1 and 2), citing allegations from Mr. Street that the meter was observed to not have been running and that water was not being delivered by WWC. Mr. Chumbley stated that if larger debris entered the pipeline, it could prevent the flow meter from working properly, but that water would continue to flow around the propellers. In response to this issue, WWC installed a screen around the intake pipe, located in Waihe‘e Ditch, on October 7, 2021 (Photo 3).

Photos 1, 2 and 3.



1) Front-view of the propeller flow meter used by WWC.



2) Top-view of the propeller flow meter used by WWC.



3) Perforated screen installed on intake pipe at Waihe'e Ditch.

On October 14, 2021, Mr. Chumbley emailed Commission stating that, "For the second time in less than 6 days the Wailuku Town Kuleana system was vandalized, some time after 2:30 PM on Wednesday 13th. there was a self-help effort which resulted in the WWC lock being cut off of the control valve and the valve opened in excess of half-way with a flow exceeding 300 GPM. At that flow level it would be over 18,000 GPH or 432,000 GPD. As you are aware the D&O requires WWC to drop 88,000 GPD / 3,666 GPH. In addition to damage and loss of personal property of WWC, this is clearly a act of waste which needs to stop." Following an earlier installation of a meter on the distribution pipe to the Wailuku Town Kuleana 'Auwai, WWC was in the process of trying to calibrate the valve setting based on the meter readings. Staff responded asking for Mr. Chumbley assistance in conducting a site visit to walk the system and better understand the complexities in management and maintenance of the Ditch. Mr. Chumbley responded the same day stating that he was "not sure a collective site visit between the staff, users and WWC would accomplish all that much," but that "WWC is happy and prepared to assist the staff in its site visit to view the site and the walk the system."

On October 15, 2021, Mr. Chumbley notified Commission staff that based on "tracking of the Wailuku Town Kuleana pipe distribution over a 4 hour period from 8:50 am to 12:50 pm, the volume dropped during that period was 19,400 gallons or 4,850 GPH exceeding the required D&O volume of 3,700 GPH." The lock and chain were replaced and there were "no new signs of vandalism."

Mr. Street also emailed the Commission staff, addressing Chair Suzanne Case, on October 15, stating the following:

"As you can see there is NO WATER flowing through the auwai. According to Case Number CCH-MA 15-01 FINDING OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER those end users of Wailuku Town Kuleana system are entitled to 88,000 gallons per day, seven days a week, 365 days a year, with an hourly delivery of 3,667 gallons. These figures are derived from the "REPPUN FORMULA" of 300,000 gals/ acres. As you can see we are not getting the water we are entitled to. I implore that this DECISION & ORDER be adhered to. If Wailuku Water Company LLC (Kugle, J. Alan, Lucien, Kent T. , Chumbley, Avery B.) refuses to abided by this order and decision, that this order and decision be sent to the Attorney General, State of Hawaii and a criminal investigation be initiated against the officers of Wailuku Water company LLC.

"Also take notice that the end users on this system are tasked with the responsibility of solely maintaining the auwai system.

"Implied Contract: "a legally-binding obligation that derives from actions, conduct or circumstances of one or more parties in an agreement. It has the same legal force as an express contract that is voluntarily entered into and agreed on verbally or in writing by two or more parties."

"Wailuku Sugar Company has always assisted in the maintenance of all the auwai in the Na Wai Eha. I question the legality of this decision. I personally have taken care of the auwai on this system. What I need is a legal instrument that will hold up in the court of

law of this decision that was made by the commission. Just saying so is not enough. Having been born and raised in C. Brewer and Company, I know Wailuku Sugar maintained all of the surface water distribution systems.

“Since Waikapū is part of the Na Wai Eha this is my "kōkua ōleo o Waikapū". The lack of URGENCY shown by The State of Hawai'i Department of Land and Natural Resources, Commission of Water Resources is disgustingly shameful and going into a gray area of legality.

“Those kuleana landowners who are entitled to an allocation of water should have it immediately. Those kuleana landowners who are entitled to an allocation of water that was illegally denied be compensated. Those kuleana landowners who are entitled to an allocation of water that was illegally denied with no compensation, understand this, it's called CULTURAL GENOCIDE.”

Commission staff contacted Mr. Street to follow-up and discuss WWC's lack of easements to maintain the Wailuku Town Kuleana 'Auwai once it leaves the Imua Family Services Property (formerly Kaanapali Kai, Inc., which was issued water use permit No. 2181). Mr. Street argued that Wailuku Agribusiness always maintained the Ditch when the area was in sugarcane and that the only problem was that the valve was closed.

On October 18, 2021, Mr. Chumbley emailed Commission staff stating that “there were two incidents of self-help vandalism over the weekend, one at the Wailuku Town (WTK) pipe and a second at the South Waikapu Kuleana auwai parshall flume.” In his email, Mr. Chumbley stated the following:

“On Sunday the WTK was again vandalized by Bob Street, we know it was him because Dean Wong the ED at Imua Family Services confronted him for trespassing on their property, see email he sent me below. “Enough is enough, I will call MPD to file a police report and press charges, this is theft from a public utility, criminal trespass, damage of personal property. Here is the email from Dean Wong and a picture of the cut chain.

“On Friday 15th we read the meter at 6:45 AM, it was 1,852,600, at 6:30 AM this morning is when we discovered the vandalism, the meter read 2,238,500 (see attached picture) that would be a delivery of 385,900 gallons over the 72 hour period or 5,359 GPH / 128,633 GPD. “We can assume the majority of this high flow came after the lock was cut and valve opened further which was on Sunday, Imua Family Services has video which we have asked for.”

Photos 4 and 5.



4) Cut chain on distribution pipe valve to the Wailuku Town Kuleana 'Auwai.



5) Flow meter on the distribution pipe to the Wailuku Town Kuleana 'Auwai. Reading indicates slightly more than 100 gpm, and a total of 2,238,500 gallons.

On October 19, 2021, Mr. Street attended the virtual Commission meeting and testified on Item B-2, which was related to the South Waikapū 'Auwai. Mr. Street stated the following:

Aloha mai and thank you. Aloha Pō'alu. I am off of the Wailuku Town 'auwai system. I can identify with Waikapū with what they're going through because we had our water cut-off here and are very upset about that after the Decision and Order. At this point, no morals, values, ethics, and spiritual void – I am done with Chumbley. 1) I'm asking that Jay Allen Cogle and Kent Lucien come to the table, they're part of Wailuku Water Company, we haven't heard a peep out of them. My feeling is hele mai, noho i lalo, pakaukau, kuka kuka - come to the table and let's have a discussion of what's going on. 2) the State Commission on Water Resource Management, tasked us with maintaining the 'auwai system; we have problems with the system. Not only is it an old system, but the road wash from the County goes into our drainage in at least two spots and this goes back to the plantation days and needs to be dealt with. The County is aware of this and has a drainage system on Kalua Road but also has ours that's never been corrected. They have been put on notice that we need to tackle this incident as I don't want road wash into my 'auwai.

“Lastly, if Avery Chumbley wants to have me arrested, do it himself; I am tired of it. We are entitled to the water; I want the water and want to expand to put in another lo'i and don't have time for this nonsense. I can't understand how a private entity can make money off a mineral resource that is under the preview of the State Commission on Water Resource Management, and nobody explained that to us; we need an explanation.

“I stand by my written testimony, and we will not be conquered through division. Mahalo for your time.”

On October 22, 2021, Mr. Chumbley emailed Commission staff stating, “I sent the crew out this morning to inspect the system and found in fact that the chain had been cut and valve was opened beyond its control setting. This is now the third incident of criminal property damage. I

filed another police report (21-037035) and will be following up with the Maui Prosecutors office to press charges. This needs to stop and unfortunately this appears the only way that will happen. Below are the 3 dates on which Robert Street has vandalized the system, for self-help purposes. 1) Oct 14, 2021 Lock cut and stolen, valve opened; 2) Oct 18, 2021 Chain cut, valve opened; and 3) Oct 21, 2021 Chain cut, valve opened.”

Commission staff also received an email from Mr. Street indicating that he contacted the Department of Land and Natural Resources’ Maui offices for the Land Division and Division of Conservation and Resources Enforcement (DOCARE) citing “water theft.”

Commission staff began coordinating with various parties including Wailuku Water Company, Imua Family Services, DOCARE, and water use permittees, to schedule a site visit for Friday, October 29, 2021.

On October 25, 2021, Commission staff received an email from Mr. Chumbley indicating that Dean Wong, of Imua Family Services, confronted Mr. Street on their property on Saturday, October 23. It was reported that Mr. Street cut the chain on the distribution pipe valve for a fourth time. Mr. Chumbley stated that he would contact the Maui Police Department to file a third police report. Mr. Chumbley reported the following meter readings: “The meter read 2,994,800 GAL @ 6:53 AM Oct 25, we read the meter on Friday Oct 22 @ 2:08 PM, at that time it read 2,592,100. That’s a flow of 402,700 gallons over 64.75 hours (6,219 GPH), the D&O allows for 3,666 GPH X 64.75 hours or 237,735 total gallons. This would be a self help theft of 164,965 gallons.”

Photos 6 and 7.



6) Cut chain on distribution pipe valve to the Wailuku Town Kuleana ‘Auwai on October 25, 2021.



7) Flow meter on the distribution pipe to the Wailuku Town Kuleana ‘Auwai. Reading indicates approx. 200 gpm, and a total reading of 2,994,800 gallons.

On October 29, 2021, Commission staff conducted a site visit at 9:00 a.m. with a representative from Senator Lorraine Inouye’s office and the assistance of a Maui DOCARE officer. Staff met with Avery Chumbley and Dean Wong to inspect the valve on the distribution pipe located at the boundary of the Imua Family Services property (Photo 8) as well as to understand the use of water on-site. Most of the group then crossed the street to the property formerly owned by Mr. Vernon Bal. The property, TMK (2) 3-4-007:042, is currently owned by Koeli LLC. At this

property, the water flows out of a concrete-lined channel and flows for approximately 20 feet (Photo 9), where it continues under a fence and flows through the adjacent property (TMK (2) 3-4-007:010; Photo 10) in a northerly direction. At some point after flowing the width of adjacent parcel, the water goes back underground flowing in an easterly direction. The group walked to Wailuku Public Library and observed the ditch through a concrete lined access point located behind the library (Photos 11 to 13). In 2015, complaints on the Wailuku Town Ditch found that tree roots in the vicinity of the library were clogging the underground channel and impeding flow.

Photos 8 to 11.



8) Distribution pipe with valve chained and flow meter at center, located on the boundary of Imua Family Services property.



9) Water flows underground from Imua Family Services and drops into an open ditch on the Koeli LLC property.



10) Water continues in an unlined ditch from the Koeli LLC property through the adjacent property before entering an underground channel at the northern end of the property.



11) The access gate behind the Wailuku Public Library to observe the access point on the underground concrete-lined channel.

Photos 12 and 13.



12) Uncovered access point of underground concrete-lined channel behind Wailuku Public Library.



13) Water flow in underground concrete-lined channel behind Wailuku Public Library.

The underground channel continues east under Kaohu Street, then makes a right turn southerly under Kalua Road (Photos 14 and 15). At the corner of this intersection, the ditch can be observed through a steel grate, where it receives storm water runoff from the road. The Commission staff is attempting to work with the Maui County, Department of Environmental Management, to determine if anything can be done to prevent storm water runoff entering the Wailuku Kuleana Town Ditch.

Photos 14 and 15.



14) Storm drain grate at the corner of Kaohu Street and Kalua Road, where channel continues underground towards the left of the photo along Kalua Road.



15) Close-up of water flowing in concrete-lined channel approximately six (6) feet underground.

The group continued walking in a southerly direction down Kalua Road. A second storm drain to the Wailuku Town Kuleana ‘Auwai was observed, located at the edge of the driveway of 436 Kalua Road (Photos 16 and 17).

Photos 16 and 17.



16) Storm drain at 436 Kalua Road.



17) Close-up of water flowing ditch at 436 Kalua Road.

While the Wailuku Town Kuleana ‘Auwai is underground for much of the way along Kalua Road, approximately 1,100 feet, it eventually drops into an unlined channel that flows on the western (mauka) edge of several properties (Photo 18). It flows through culverts under several driveways, before reaching the edge of the Velez (Higa) property (TMK (2) 3-4-004:017) near the end of Kalua Road. At that point, the ditch is concrete-lined and splits in three directions towards the Velez, Ciotti (TMK (2) 3-4-004:019), and Ibara (TMK (2) 3-4-004:020) properties (Photo 19).

Photos 18 and 19.



18) Water exits underground pipe and flows into an unlined channel and enters a culvert under a driveway.



19) Water flows from a driveway culvert at the Velez (Higa) property and splits. The right channel goes towards Velez and Ciotti (Velez pulls water from the channel via a pipe). The left channel continues towards the Ibara property.

The group then met with Jordanella Ciotti and Robert Street. Mr. Street explained the receipt and distribution of water from the Wailuku Town Kuleana ‘Auwai, the various plants grown on his property, and his plans to expand his plantings in the future (Photos 20 to 23). Mr. Street was informed to clearly define his future plans, including crop types and water demands, and to complete a Surface Water Use Permit application for New Use. Once water is used and flows through the Ciotti property, any excess water is piped and drops into the Spreckels Ditch adjacent to the back (east) of the property. The site visit was completed around 1:30 p.m.

Photos 20 to 23.



20) Water flows from the Velez property in an unlined ditch towards the Ciotti property.



21) The water continues in an unlined ditch onto the Ciotti property where it is piped and distributed to various points on the property



22) Kalo and other fruit trees and plants being cultivated on the Ciotti property.



23) Excess water flows through a pipe at the edge of the Ciotti property into Spreckels Ditch.

On November 1, 2021, Mr. Chumbley emailed Commission staff to follow up on the October 29 site visit. Deputy Kaleo Manuel responded and requested a copy of the 50-year water agreement WWC has with Imua Services as mentioned at site visit.

Commission staff received a phone call from Mr. Street at 10:24 a.m. stating that there was “no water” in the ‘auwai.

On November 2, 2021, Commission received a phone call from Mr. Street at 9:21 a.m. that there was no water in the ‘auwai.

On November 4, 2021, Commission staff spoke with Tyson Miyake, Mayor Victorino’s office, regarding the issue of storm water flowing into the Wailuku Town Kuleana ‘Auwai at the corner of Kaohu Street and Kalua Road. The Mayor’s Office and County Council are working with Department of Environmental Management to look into and address the issue.

On November 5, 2021, the Commission received a call from Mr. Street at 8:46 a.m. that there was no water flowing in the ‘auwai. Deputy Manuel returned Mr. Street’s call and left a message.

Deputy Manuel also contacted Mr. Chumbley to confirm the status of the Wailuku Town Kuleana ‘Auwai. Mr. Chumbley stated that on November 4, WWC installed an air relief valve on the distribution line to address accuracy issues of the totalizing flow meter. The current meter was reading 3,500 gallons per hour. There was also a corrugated metal sheet blocking the Waihe‘e Stream intake, blocking flows into Waihe‘e Ditch. The metal sheet was removed and Waihe‘e Ditch flows had increased from the prior day and the Wailuku Town Kuleana ‘Auwai distribution pipe should have increased head pressure.

On November 8, 2021, Commission staff received an email from Mr. Chumbley regarding the chain on the distribution pipe being cut over the prior weekend. In his email, Mr. Chumbley stated, “Kaleo as you are aware, on Friday Nov 5th you and I spoke by phone and you advised us that Mr. Street had called stating there was NO water, as I shared with you, On Thursday Nov 4th at 2 PM WWC crew checked the meter which was running at 150 GPM with a reading of 3,509,100, which I informed you of the details of such. Well, Monday Nov 8th at 6:45 the WWC crew went to get a meter reading to confirm calibration over the weekend and found the chain had once again been cut, which I now believe is at least the SIXTH time the chain has been cut and the valve was turned all the way open, with a meter reading of 4,293,500. That would be a drop of over $\frac{3}{4}$ of a million gallons over the 88 hour period.”

A follow-up email was sent to Mr. Street and Ms. Ciotti, stating the following:

“As discussed at our site visit on October 29, 2021, the Commission on Water Resource Management’s (Commission) Decision and Order issued on June 28, 2021, granted Jordanela Ciotti a permit for 8,265 gallons per day (gpd), consisting of an existing use permit of 375 gpd (0.0025 acre x 150,000 gallons per acre per day (gad)) for lo‘i kalo and a new use permit of 7,890 gpd (0.0526 acre x 150,000 gad) for lo‘i kalo. The 8,265 gpd is granted based on the recognized appurtenant rights of 34,500 gpd (0.23 acres x

150,000 gad). Ms. Ciotti is also recognized as having a domestic use of 989 gpd (0.3957 acre x 2,500 gad) for a garden. This total amount equals 9,254 gpd.

“Should you and Ms. Ciotti feel that this amount of water is not adequate, you must file a complete Application for Surface Water Use Permit for Proposed New Use with the Commission (attached in both PDF and Word DOC formats). Also attached is the original Application for Surface Water Use Permit for Existing Use filed by the previous landowners, Vanessa Ince and William Scott Kinzer, for your reference.

“The Commission is continuing to work with Wailuku Water Company to ensure consistent delivery of water to the Wailuku Town Kuleana ‘Auwai, in compliance with the Commission’s Decision and Order.

“This email also includes digital copies of Chapter 174C, Hawaii Revised Statutes and Chapter 13-167, Hawaii Administrative Rules, which provides reference to penalties of up to \$5,000 for violations of the State Water Code and supporting Rules.”

On November 15, 2021, Commission staff received an email from Mr. Chumbley stating the following:

“For the SEVENTH (7TH.) time Mr. Street, who is NOT a permit holder or the landowner of record, vandalized the WWC control valve by cutting the chain and opening the valve to a flow level in excess of 340 GPM or 489,600 GPD. This morning (11-15-21) at 6:46 Am when the crew went to check the totalizer on the meter we found the damage.

“On Friday Nov 12th. you left a voice message for me indicating that Mr. Street had called the CWRM complaining there was no water at the Ciotti property, around 4:30 PM I responded to you with a text and a picture of the meter which was indicating a flow of approx. 200 GPM from Friday morning at 6:43 am and a meter reading of 4,469,600

“Based on the calculations on the first photo in the attached PDF, that was a theft / self-help of in excess of 213,763 gallons over the 72 hour period.

“I am puzzled by the inaction of the CWRM to revoke the SWUP # 2247 for 9,254 to Ciotti, does it take me to file a formal complaint for these actions of waste and continuous self-help, if that is the desire of staff to enable this matter to be brought before the Commission tell me so I can submit the Complaint / Resolution Filing Form today.

“Additionally, WWC will call MPD this morning and file the sixth police report and will pursue criminal trespass and property damages charges with the Prosecutor’s office.”

On November 15, Commission staff also conducted a second visit, similar to the one conducted on October 29, with Senator Inouye and staff, Hui o Na Wai Eha President Hokuao Pellegrino and their Counsel Isaac Moriwake from Earth Justice. Meetings occurred with Imua Family Services, Mary Ann Velez, and Mr. Street to again share information and to identify solutions.

On November 16, 2021, Commission staff received an email from Mr. Street stating the following:

“I would like to start out by stating that the only obligation that Wailuku Water Co. has to the Wailuku Town Auwai is a constant flow/continuous flow. This can easily be accomplished by keeping the valve that begins the Wailuku Town Auwai in the open position at all times. (see photos).

“Second, it is not the responsibility of Wailuku Water Co. to control the flow and deny the end user of any water which we are legally entitled to. I am referring to the valve that is at the convergence of 231 Koeli St./225 Koeli St./2471 Main St. All the chains and locks need to be removed. THIS IS NOT WAILUKU WATER CO. KULEANA!

“Third, when the chains and locks are removed, for six weeks, I will control the valve at the above-mentioned address to achieve the flow rate to which we have been accustomed to.

“Fourth, after six weeks, at a time of convenience we can agree upon, send someone from CWRM who is capable of measuring the flow rate at the end of the Wailuku Town Auwai, not at the midpoint.

“Fifth, during this six week period we would like to work with someone from CWRM (Alexa Deike) and redo the Application to Modify SWUPA. Once this application is done and we can measure the flow rate to which we were accustomed to, we will submit the form.”

Mr. Street included the following photos (Photos 24 and 25) with his email.

Photos 24 and 25.



24) Measured depth (approx. 6'6") from ground surface to the bottom of Waihe'e Ditch where the control valve is located.



25) Control valve for the intake pipe located on Waihe'e Ditch which feeds the distribution pipe to the Wailuku Town Kuleana 'Auwai.

On November 16, 2021, Deputy Kaleo Manuel responded to Mr. Street's November 15 email, stating the following:

"I tried to return your phone call just now and left a message. I wanted to follow up on the email from you below and let you know that we have received it and will review your recommendations. In my initial review, most of these recommendations would require the Commission's approval and I cannot in my capacity make these decisions alone. Therefore, we'll take this and the information we've been gathering over the past couple of weeks and present a recommendation to the Commission at its December 21, 2021 meeting.

"As discussed previously, if you are acting on behalf of Ms. Ciotti who is the permittee on file, I am requesting a formal letter from Ms. Ciotti allowing you to do so. This will ensure that we are engaging with the proper parties on these issues."

On November 19, 2021, Mr. Chumbley sent an email addressing Chair Case, stating the following:

"Chair Case.... Good morning, I decided to address this issue directly to you as I feel the CWRM is not taking sufficient action to put a stop to this continuing situation.

"Now for the 8th time Mr. Street has once again cut the chain on the Wailuku Town Kuleana distribution pipe in a self-help and theft action resulting in a wasting of water under the conditions of State Water code and the recent D&O. For every incident but for the very first time that Mr. Street cut the chain (October 7th, 21), WWC has filed a police report, this will be the 7th MPD Police report that I will be fining over this matter. You may recall from discussions with staff the SWUP # 2247 for 9,254 GPD was issued to Ms. Ciotti, Mr. Street is not the property owner nor the permit holder of record under the D&O.

"On Thursday 18th at 6:45 AM, WWC staff check on the flow setting and read the meter which was 5,181,800, this morning (11-19-21) at 6:45 when the staff went back to the distribution point to take another meter reading in our efforts to calibrate the volume drop to the auwai, we found the chain cut and valve opened to about 300 GPM with as meter reading of 5,366,700.

"That results in a delivered flow by WWC of 184,900 gallons over the noted 24 hours, 7,736 GPH / 129 GPM, the June 28th, 2021 D&O awarded the lower three permit applicants a daily total of 83,279 GPD, this single above noted self-help / theft resulted in a loss/ waste of 101,621 gallons.

"As I have stated in the past to the staff and now directly to you Chair Case, I am requesting that the CWRM take a formal action to revoke Permit # 2247 to Ciotti based on these blatant and continued actions of self-help / theft and waste of water, which is clearly allowed and stated as a consequence under the D&O. WWC will continue to pursue with the MPD and Maui Prosecutors office criminal property damage and criminal trespass charges against Mr. Street."

Mr. Chumbley later notified staff that a new Kryptonite lock and chain (Photo 26) was installed on the distribution pipe and valve to prevent further efforts to cut the chain.

Photo 26.



26) Kryptonite lock installed on the Wailuku Town Kuleana 'Auwai distribution pipe.

On November 23, 2021, Deputy Manuel emailed Mr. Chumbley stating that a voicemail was received from Mr. Street on November 22 that “his kalo patch is drying up and there’s little to no water in his ‘auwai which is now affecting his bananas.” Deputy Manuel request an updated photo of the meter reading at the distribution pipe to confirm his delivery of water per the Commission’s D&O.

Mr. Chumbley responded, stating the following:

“WWC is providing the delivery drop at the WTK distribution point , Mr. Street MAY have little to no water due to the condition of the auwai NOT that WWC is withholding the deliveries.

“On Friday Nov 19th attached to the email I sent to all of you reporting the 7th time Mr. Street cut the chain and opened the valves in an effort of self-help resulting in the wasting of water, there was a PDF attached with various photos. The meter reading photo in that PDF showed a reading of 5,336,700 at 6:45 Am on 11/19. I then sent a follow up photo of Kryptonite chain that was added as a second chain on the valve, as of Monday at 6:40 am the chains had NOT been cut and remained intact.

“On Monday the meter read 5,608,200, over that 72 hour period that documents 241,500 gallons were delivered to the distribution point, (56 GPM - 3,354 GPH – 80,496 GPD) the D&O requires 83,279 GPD, over the 72 hour period (3 full days) the drop was short

2,783 gallons. Once Mr. Street stops the self-help efforts of continuously cutting the chains we will get the valve setting calibrated.

“The problem is NOT that WWC is not delivering the water, the problem is the auwai disfunction (sic).”

Deputy Manuel also emailed Mr. Street, stating that he had left voicemails with Mr. Street on November 22 and 23. He also forward the prior email sent on November 26.

On November 24, 2021, Mr. Chumbley sent an email stating the following:

“Aloha All... sometime from Monday 22nd at 6:40 Am (last date and time the chai (sic) was discovered cut) until 7:30 Am this morning (Wed Nov 24th) Mr. Street cut the chain once again for now the 9th time. However, he was only able to cut the regular chain, the new KRYPTONITE chain was NOT cut, I suspect his bolt cutters were unable to cut that chain.

“The below email was my response to Kaleo from Tuesday morning, I suspect Mr. Street cut the chain sometime after that maybe based on a reply to him by Kaleo that WWC had told him the details provided in the below email.

“However, we did identify a new issue with the meter totalizer this morning when the cut chain was discovered, the GPM flow are was reading very low, just somewhat registering a small flow, staff shut down the line and took out the meter, it was partially clogged with algae, which was cleaned and reinstalled and reset to 200 GPM flow. Keep in mind that even with the totalizer not registering, water is still flowing past the meter fan blades, we just cannot confirm how much.”

On November 28, 2021, Commission staff received an email from Jordanella Ciotti stating the following:

“Greeting Chair Suzanne Case,

“Please take notice and be advised that I, Jordanella Ciotti designate Robert Street as my legal representative on Case Number CCH-MA 15-01, FINDING OF FACT, CONCLUSION OF LAW AND DECISION & ORDER; SWUPA 2247 & 2248N (FOF 472) located at 484 Kalua Road, Wailuku, Maui, Hawaii.”

Commission staff also received an email from Mr. Street stating the following:

“Chair Case, be advised and take notice that no water was delivered through the Wailuku Town Auwai on 11/27 & 28/21. We are legally entitled to a sufficient amount of water that we were previously accustomed to. Since we have not received any water for over a week we are asking for and seeking compensation for the loss of our agricultural products and the restoration of OUR WATER RIGHTS.”

On November 29, 2021, Deputy Manuel sent an email to Mr. Chumbley stating the following:

“We received an email on Sunday at 10:27am from Mr. Street stating that there was no water in the ‘auwai on 11/27 and 11/28. Can you please provide us with a picture of the meter to ensure that the quantity per the D&O is being provided to the Wailuku Kuleana Town ‘Auwai?

“As a follow up to your email below, if the meter totalizer is not working properly, how do you plan to show that you are indeed meeting the quantity required per the D&O if that cannot be measured accurately? Is there an alternative, both short and/or long term that you could recommend for us to consider? I would be open to your suggestions. Mahalo.”

Mr. Chumbley responded as follows:

“While we do not read the meter daily, we are checking the meter several times a week at this time to make adjustments to the valve to deliver the amount of water stated in the D&O. When we read the meter last Wednesday after the algae was removed, the meter showed that about 240 gallons per minute were being delivered through the meter. We didn’t check the meter for vandalism and read it again until this morning because of the Thanksgiving holiday (WWC Thur & Fri) and the weekend (Sat & Sun).

“When we read the meter this morning, we noticed that while the titanium chain was not cut (the other chain had been cut on Wednesday 24th.) however, the valve setting had been changed from where we put it last Wednesday. The valve had been closed so that less water was flowing through the meter. We opened the valve to set deliveries through the meter at about 220+ gallons per minute and read the meter again later this morning. From 6:47 am until 10:47 am, we delivered about 16,200 gallons which would be about 68 gallons per minute or 4,050 GPH.

“While we believe that flows were reduced because someone partially closed the meter, we know that water was delivered to the auwai at the delivery point at all times between last Wednesday and today.

“If people would stop trying to adjust flow by changing valve settings, we could be certain in our delivery amounts. Until then, we will continue to adjust the valves to do our best to deliver the amounts stated in the D&O. We do not believe that there is a problem with the meter or the valve; the problem arises from people exercising self-help.

“Per your request, I’m attaching photographs of the meter readings as of 6:47 am and 10:47 am today. [Photos indicated a meter reading of 5,764,100 gallons at 6:47 a.m. and 5,780,300 gallons at 10:58 a.m. on November 29, 2021]

“On your request for short and long term solutions, the solutions seem to be either for CWRM to take action against permit holders who use self-help to adjust deliveries or for CWRM to amend the D&O to change the delivery from a daily requirement to the delivery system used for decades without problems. The previous delivery system was to

open the valve for a period of 7 hours three times each week. As this would result in a greater amount of water being delivered than authorized by the permits, it would require CWRM to approve some wasting of water.

Commission staff received an email from Mr. Street stating the following:

“We had the opportunity this Thanksgiving weekend to thoroughly go through our files dealing with the Wailuku Town Auwai system. If your team had done its homework, they would have found that Wailuku Water Company had abandoned the maintenance of the Wailuku Town Auwai system. This can be documented. You would have also found out that we enjoy and have an Implied Contract to access the Wailuku Town Auwai system (1848 Mahele to Uwe). Yet it was you and your team that got into bed with Wailuku Water Company, and allowed them to modify (several times without the knowledge or consent of the end users) to control the regulation of water flow. WE ALL DESERVE AN EXPLANATION ON THIS. The only business WWC has in the Wailuku Town Auwai system, is that the valve that comes directly off of Waihe'e ditch remains in the open position. This valve is the start of the Wailuku Town Auwai system. Our files also indicate that the minimum flow before we were cut off was 160,000 gallons per day. We are legally entitled to water that we were accustomed to, to satisfy our needs to grow kalo and other agricultural products we grow.

“It is not our responsibility to do your job by continuously sending photos to verify what is 'oiā'i'o. This has become an overused copout by the CWRM. The situation has become so untenable, that what little trust we had in you and your team is gone. Also take notice that on page 307 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER.

“WWC shall ensure that the following quantity of water is delivered to the following distribution points in the indicated amounts based on SWUPs that will be issued as a result of this decision. The amounts to be delivered shall be provided at all times unless identified in Tables 1-3, supra, or determined by the COMMISSION TO BE AN EMERGENCY.’ THIS IS AN EMERGENCY!”

On November 30, 2021 the Commission received an email from Mr. Street stating the following:

“There is NO water reaching the end users on 11/29-30/21. When is the Department of Land and Natural Resources Commission on Water Resource Management going to ADMIT that they are WRONG as far as the FINDING OF FACT, CONCLUSION OF LAW, AND DECISION & ORDER dated 06/28/21, pertaining to the Wailuku Town Auwai system. At this point the conduct of the Deputy Director is so egregious, on so many levels, that we are asking for his resignation. We are also asking that the water that we were accustomed to be restored immediately and compensation be considered for not only the loss of our water rights (which we are legally entitled to) but also for crop loss.”

On December 1, 2021, the Commission received an email from Mr. Street, addressed to Chair Case, stating the following:

“Please be advised that the Wailuku Town Auwai has NO water 12/01/21. We have been totally cut off for well over two weeks. We are demanding the removal of the Deputy Director of CWRM for openly practicing cultural genocide, along with Wailuku Water Company, against the kupa'aina, kama'aina and kanaka maoli. Since we have an absolute right to surface water the Deputy Director is now openly breaking the law of the land. His deceitful, dishonest, ulterior motives and hidden agenda will NEVER resonate let alone be accepted within the Na Wai Eha. Whatever credibility your Deputy Director had in the Na Wai Eha has totally evaporated. He has become ineffective in protecting our water rights. There also needs to be a discussion on compensation for the loss of our Water Rights which your Deputy Director is directly responsible for. Because of the devious approach which your Deputy Director has taken we demand his immediate removal and the restoration of OUR WATER RIGHTS. The question must be ask: If you have knowledge of the law, which your Deputy Director has, and in your capacity as Deputy Director, you fail to stop and protect, in this case OUR WATER RIGHTS, can your Deputy Director be enjoined in any future legal action in his professional as well as his personal capacity?”

On December 2, 2021, the Commission received an email from Mr. Street stating the following:

“Chair Suzanne Case, once again the Wailuku Town Auwai has no water flow at all. And once again your Deputy Director of CWRM refuses to recognize that we have an absolute right to surface water off the Waihe'e ditch. Your Deputy Director has failed once again and he continuously has failed, and he is failing on a daily basis. That makes your Deputy Director of CWRM a total and complete FAILURE! If your Deputy Director worked in the private sector he would have been terminated a long time ago for gross negligence as well as gross incompetence causing harm.

“Attached are two photos that were taken today, at the same spot that your Deputy Director and his team took there measurements (10/19/211), and determined that our "flow rate was 44,000 gals." This is a prime example of someone with ulterior motives and a hidden agenda and it's just one of several examples we can reference.

“Furthermore, it is NOT the responsibility of the end users to go back into the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER and correct YOUR errors. That is the responsibility of CWRM.”

Photos 27 and 28.



27) Photo provided by Mr. Street on December 2, 2021/



28) Photo provided by Mr. Street on December 2, 2021/

On December 3, 2021, the Commission received an email from Mr. Street stating the following:

“Chair Suzanne Case, once again the Wailuku Town Auwai has NO water, and we are still demanding the removal of your Deputy Director of CWRM, and the return of our water rights. Could we please be directed on where we can file a claim for damages that have been inflicted as a result of the negligence of CWRM. A timely response would be appreciated. BE AWARE that in August of 2015 WWR abandoned the complete maintenance of the Wailuku Town Auwai system. Why are they involved at all in the Wailuku Town Auwai system at all?”

On December 6, 2021, in an effort to schedule a site visit with WWC, the Commission received an email from Mr. Chumbley regarding the condition of the Waihe‘e Ditch Siphon that crosses Wailuku River, stating as follows:

“The WWC system sustained substantial damage last night during the storm, I went out with Noel at about 8 pm to shut down the Iao-Waikapu diversions as the reservoir was nearing capacity, there was a lot of mountain sheeting of flow into the ditches carrying debris, grates and overflows are plugged up. Around 8:30 pm the USGS gage in Wailuku river was reading 1,620 CFS, it may have blown out around then, Waikapu gage was reading 225 CFS. The Iao syphon under Wailuku river ruptured from boulder damage, we will be dropping as much of the Waihee diversion as possible in South Waiehu stream until it is safe to get into the diversion control gates in Waihee. Also flow in Waihee

ditch south will be dropped back into Waikapu Stream at Okie control gate. There is no deliveries to Mahi Pono at Hopoi chute. This may result in NO Waihee water for an extended time, we will need to access the damage and situation to have a better understanding.”

On December 7, 2021, Commission staff received an email from Mr. Chumbley stating the following:

“Below is a picture of the Wailuku Town Kuleana intake as it is positioned in Waihee ditch, as you will see in the picture there is a lot of rock, rubble and debris from the storm, additionally there is no flow in the ditch nor will there be on Wednesday during your scheduled site visit. As soon as it is safe to get into Waihee valley it is our intention to shut down the diversion of the Waihee ditch system and do an inspection of the rupture on the Waihee syphon under Wailuku River. This shut down is necessary to determine the extent of damage and prevent further complete catastrophic failure of the syphon. Depending on the level of damage it may be some time until the Waihee diversion flows can be brought back on line.

“Given this current situation, it doesn't make much sense to attempt WTK flow measurements as there will be no water in the system.”

Photo 29.



29) Photo provided by Mr. Chumbley on December 2, 2021.

Commission staff also sent an email to users on the Wailuku Town Kuleana ‘Auwai, informing them of the status of the Waihe‘e Ditch.

“The Commission on Water Resource Management (Commission) was notified yesterday, December 6, by Wailuku Water Company (WWC) that the Waihe‘e Ditch siphon at Wailuku River (formerly ‘Īao Stream) was damaged during the severe rainfall event experienced on Maui. The siphon was likely damaged by a large boulder that was carried downstream by the high flows.

“As a result, we understand that WWC will be shutting down its intake of water to the Waihe‘e Ditch from Waihe‘e River in order to assess the damage as streamflows subside. Following that assessment, WWC will need to determine what repairs will be necessary to temporarily repair the siphon to resume water service. The Commission staff are working with WWC on obtaining an emergency authorization once WWC’s assessment is complete. An estimated time for restoration of service is unavailable at this time.

“Please plan and prepare accordingly for this interruption in water service. We will do our best to communicate any updates as we receive them. If you do not wish to receive further updates, please let us know and we will remove you from this mailing list. Mahalo and stay safe.”

On December 13, 2021, Commission staff received an email from Mr. Chumbley detailing his plans to repair the Waihe‘e Ditch siphon (Siphon) where it crosses at Wailuku River, and requesting “immediate emergency approval to proceed with phase 1 repairs.” Mr. Chumbley provided a photo of the ruptured siphon (Photo 30), while the event also made the Hawaii News Now newscast on December 10, 2021 (Photo 31)

Photos 30 and 31.



30) Ruptured siphon at Wailuku River.



31) Screenshot of damaged siphon from Hawaii News Now newscast on December 10, 2021. Recording was provided courtesy of Hui o Nā Wai ‘Ehā.

On December 15, 2021, Chair Case issued an Emergency Authorization to WWC to conduct Steps 1 and 2 of WWC’s proposed plan (See Exhibit 1), pursuant to Hawaii Administrative Rules (HAR), Section 13-169-55.

Commission staff sent an email to water use permittees on the Wailuku Town Kuleana ‘Auwai and others, regarding the December 21, 2021 virtual Commission meeting

“You are receiving this email because you are a water use permittee under the Hawai‘i Commission on Water Resource Management’s designated surface water management area of Waihe‘e, Waiehu, ‘Āao, and Waikapū (collectively referred to as “Nā Wai ‘Ehā”) and may be impacted by recent events affecting the Wailuku Town Kuleana ‘Auwai.

“The staff of the Commission on Water Resource Management (Commission) originally intended on briefing the Commission on the water situation related to the Wailuku Town Kuleana ‘Auwai at its December Commission meeting. However, in consultation with Chair Suzanne Case and Deputy Director Kaleo Manuel, the matter will be postponed and will not be addressed at the December Commission meeting to be held on December 21, 2021. The Commission meeting will instead focus on a Red Hill Briefing by the Department of Health and Naval Facilities Engineering Systems Command Hawai‘I (NAVFAC).

“The Commission staff intends to address the Wailuku Town Kuleana ‘Auwai at the January Commission meeting currently scheduled for January 18, 2022.”

However, the December 21, 2021 Commission meeting was postponed to January 7, 2022.

On December 21, 2021, Commission staff sent a second email updating water use permittees on the status of the Waihe‘e Ditch. The email was expanded to include additional water use permittees located further north along the Waihe‘e Ditch system.

“The Commission on Water Resource Management (Commission) has received additional updates from Wailuku Water Company (WWC) regarding Waihe‘e Ditch flows. WWC has requested and received an Emergency Authorization for the Waihe‘e Ditch Siphon Repair.

“WWC plans to fabricate a metal plate to secure to the siphon as a temporary fix. During sufficiently low-flows, WWC intends to secure an additional steel plate over the exposed pipe to provide further protection. WWC may use a mini-excavator from the bank to temporarily move any boulders and rocks from the stream channel and place them around the work site at the Siphon. All boulders/rocks moved, must be returned to or near their original location in the stream channel. Any sandbags used must also be removed from the stream channel. WWC is required to provide notice via email to the Commission staff within 24 hours once the repair work is scheduled to proceed, and within 24 hours of completion of the work. All work must be completed within 30 days of the issuance of the Emergency Authorization, dated December 15, 2021. Following completion of the work, WWC shall submit a Stream Channel Alteration Permit (SCAP) application providing final details of the work performed.

“WWC has informed us that, while they were hoping to complete repairs this week, the weather forecast and continued high flows in Wailuku River has prevented them from doing so.

“Please plan and prepare accordingly for this interruption in water service. The Commission staff will continue to send updates regarding repairs to the Waihe‘e Ditch Siphon as we receive them. If you do not wish to receive further updates, please let us know and we will remove you from this mailing list. Mahalo.”

Following several communications that WWC was staging to complete the Siphon repairs, high streamflows in Wailuku River prevented repair efforts. On December 28, 2021, Mr. Chumbley sent notice the required 24-hour notice that WWC intended to complete the Siphon repairs on December 29 and also requested an extension of the Emergency Authorization. However, rainfall in ‘Iao Valley overnight required cancellation of the repairs.

On January 4, 2022, Mr. Chumbley notified Commission staff that WWC would attempt to repair the Siphon on Wednesday, January 5.

On January 5, 2022, Mr. Chumbley notified Commission staff the WWC was able to successfully complete Phase 1 of the Siphon repairs. The repair consisted of the welding of a steel plate over the ruptured section of the Siphon. Mr. Chumbley indicated that on Wednesday, January 6, WWC would “start walking the water back down the Waihee ditch and should have normal diversions restored by the end of the day.”

Photos 32 and 33.



32) Repaired siphon at Wailuku River.



33) Wailuku River following repair of the Siphon, at center.

On January 6, 2022, Chair Case issued an Extension of the Emergency Authorization to WWC (See Exhibit 2).

On January 11, 2022, WWC filed a Stream Channel Alteration Permit application for the emergency repair of the Waihe'e Ditch Siphon.

ANALYSIS

There are a few core policy issues and decisions of the Commission that need to be reviewed or revisited in light of this situation and they will be analyzed here.

With whom lays the responsibility to manage and maintain the Wailuku Kuleana Town 'Auwai and where should WWC provide the 88,000 gpd required water to the Wailuku Kuleana Town 'Auwai per the D&O of the Commission?

While the D&O of the Commission makes it clear that traditional 'auwai should be managed by the kuleana tenants, this specific 'auwai located in urban Wailuku town may require multiple parties to manage various parts of this system. A majority of the 'auwai runs under County roadways and are not easily accessible. There is storm drain runoff that should not be entering an 'auwai. Not all portions of this 'auwai have formal easements on private properties or are even identified on County of Maui Tax Map Keys. There is also disagreement among users on what segments should be managed and maintained by the purveyor, the County, the State, and the appurtenant right and permit holders.

Per WWC, the 88,000 gpd amount should be provided at the distribution point on Imua Family Services property at the pipe location that is sited above and where the chain and meter is located. Based on staff's inspection, there is likely considerable system loss from that location to the three end users along Kalua Road. Either the 'auwai's efficiency needs to be improved to reduce system loss or more water needs to be provided at that point to account for system losses and ensure that the permitted amounts are actually provided to the three end users.

Per Mr. Street, WWC should provide water to the Wailuku Kuleana Town 'Auwai at the location where the puka pipe is located in the Waihe'e Ditch and WWC does not need to be involved in any other management of the 'auwai. Even if that is the case, there would need to be an increase in quantity provided at that location in order to address the system losses identified in the prior paragraph.

Potential Staff Recommendation: Order WWC, County, State, Private Landowners, and Permit Holders to negotiate and formalize 'auwai easements and identify responsible parties to pay for and manage and maintain the 'auwai. Once that is formalized, the Commission can clearly articulate and ensure that the quantities issued in the D&O are being provided to the three end users.

Should the Commission consider increasing water use permit allocations to account for system loss?

The final permitted amounts issued in the D&O that must be provided to Wailuku Kuleana Town 'Auwai is 88,000 gpd or 616,000 gallons per week. This amount does not account for system losses and was estimated in the applications of the three end users. While the Commission

issued a water use permit to WWC for system losses for its entire system, it is unclear that any of that was attributed to this Wailuku Kuleana Town 'Auwai.

As mentioned earlier, prior to the D&O, water was provided three times a week from 7:00 a.m. to 3:00 p.m. Based on staff's site visit, when the valve at the pipe on Imua Family Services is opened all the way, the flow meter read 500 gpm. Per WWC, that flow can vary depending on the height of flow in Waihe'e Ditch. If we assume that on average 500 gpm flows with a completely open valve for 8 hours (240,000 gpd), three times a week it would total 720,000 gallons/week and increase the current gpd to 102,857 gpd. That is about 100,000 gallons/week more than what the Commission ordered in its D&O.

The water source for this auwai comes from Waihe'e Ditch, which is fed by a combination of Waihe'e River, Waiehu Stream, and Wailuku River sources.

While the D&O issued water use permits for the three end users totaling 88,000 gpd, the Commission also recognized appurtenant rights for these three end users totaling 347,100 gpd.

If the Commission does increase water use permit allocations, any water not used by the three end users flows into Spreckels Ditch that will then flow to Mahi Pono.

Other Ideas?

Staff initiated a conversation with Maui DWS Director to see if it would be possible to get additional meters for the three end users to provide the water the Commission issued to them in the D&O. This would provide them with their permitted amounts, with little to no system loss, and no need for formal management or maintenance of the Wailuku Town Kuleana 'Auwai. The Commission could shift the permitted amounts to Maui BWS's water use permit. Per that discussion, DWS said they would have to investigate the current pipe capacity and system design that may need to be upgraded to accommodate the added meters and that the three end users would now have meters from the DWS that they would probably need to pay for as customers of their system, so they would no longer be receiving "free water".

RECOMMENDATIONS

No actions are recommended at this time.

Ola i ka wai,

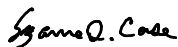


M. KALEO MANUEL
Deputy Director

Exhibits:

1. Emergency Authorization issued to Wailuku Water Company, dated December 15, 2021
2. Extension of the Emergency Authorization issued to Wailuku Water Company, dated January 6, 2022

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
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DEPUTY DIRECTOR

December 15, 2021

Ref: EA.5849.6

Avery Chumbley, President
Wailuku Water Company, LLC
P.O. Box 2790
Wailuku, HI 96793
Via email: abc@aloha.net

Aloha Mr. Chumbley:

Emergency Authorization
Waihe'e Ditch Siphon Repair
Wailuku River, Wailuku, Maui, Tax Map Key: (2) 3-3-018:002

The Commission on Water Resource Management (Commission) is responding to your December 13, 2021 email regarding your request for an emergency authorization for repair of the Waihe'e Ditch Siphon as it crosses Wailuku River to prevent further damage to the siphon and restore water service to your customers. We understand that this damage occurred as a result of heavy rains and high streamflows on December 5 and 6, 2021.

In your December 13, 2021 email at 8:28 a.m., you provided the following work plan:

Step 1: I have a metal fabricator from Maui coming this morning (Dec 13th) to do a site inspection, he will inspect the pipe based on the K2N engineers proposed repair drawings (see attached PDF), take final measurements and then fabricate a 3/8 inch A-36 metal plate to weld or use Lindapter bolts, depending on the type of metal of the pipe (steel vs- cast iron) over the rupture hole. He will also take a sample of the existing metal pipe which will be sent to the mainland for a metallurgy analysis to ensure the type of welding rods (if welding is to be done) are used to adhere the larger metal bumper plate in the phase 2 steps explained below, are compatible to the old pipe. His certified welder will use a rod that they feel best for the short-term immediate repair if it is to be welded vs- Lindapter bolts. I am calling this Phase 1 Temp repair, this will get the diversion flows back on line quickly.

Step 2: Once we have the results of the metallurgy analysis, we will go back into the site during a low flow time and weld or bolt, a second layer of a 3/8 or 1/2 inch steel plate over the existing exposed pipe (approx. 20+ feet long), this will act as a bumper protection layer for future boulders coming down stream during high flow events and push the water out into the basin

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to prevent any furthering curling and undermining of the earthen under area, and will buy us some time to get to the phase 3 or permanent replacement project.

Step 3: This would be known as the long-term replacement and refortification for future operations of the Waihee ditch flows in the pipe thru Wailuku River, this would be phase 3 which will be a huge project requiring many Government agency permits, community input involvement and a big investment. It may be 1 to 2 years until this would be a finished project, thus the need for the phase 2 project described above.

There will be NO excavation and/or fill of channel alterations to complete phase 1 & 2 of the project, WWC MAY utilize a mini-excavator located on the north side of the edge of the river to temporarily place some larger boulders in the area up-stream (mauka) of the rupture (which would be removed upon completion of the step 1 repair) and utilize sand bags to divert flows for personal safety allowing access directly over the break area during the phase 1 immediate repair.

By this communication I am requesting immediate emergency approval to proceed with phase 1 repairs described above, and consideration for phase 2 approvals to proceed when the metal results from the mainland have been received and fabrication of the bumper plate is completed, the timing would be at WWC discretion based on river flows for personal safety.

In response to subsequent questions from Commission staff, you provided the following responses in an email at 12:07 p.m. on December 13, 2021.

Commission: Once you are able to take measurements and complete fabrication, how much lead time will you need in order to be ready for on-the-ground work to occur for Step 1?

WWC: *Fabrication of the repair plate will be fast, it's only a matter of bending the plate to match the curvature of the siphon pipe the steel material should be available on Island, once we are able to do the closer inspection of the damaged area during low flows, the certified welder MAY be able to make a determination if we will need to weld or use bolts to attach the repair plate based on his professional judgement. Work can then be done right away provided flows for safety reasons are acceptable.*

Commission: Assuming working conditions are favorable (low streamflows), how long is the instream work on Step 1 expected to take?

WWC: *Step 1 repair plate attachment can be done in a single day.*

Commission: Can you provide more details about work in or adjacent to the stream channel, related to the use of the mini-excavator? Will boulders located in the stream channel be used? Will sandbags be placed temporarily in the stream channel?

WWC: *I don't believe it is realistic to expect that sand bags alone will be able to provide a temporary water flow blockage in order to be in the stream and or on top of the siphon pipe to make the repair safely, we do not know the depth of the channel in front of the damage area. The concept would be to have the mini-excavator on site and at the edge of*

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the channel to grab large boulders from around or above the high water mark to temporarily place them in front of the damaged area to assist in moving the flow around which would then be supplemented with sand bags. Any boulders placed would then be removed back above the high water mark and sand bags also removed after the step 1 repair plate is installed.

Commission: Are you able to provide notice within 24 hours prior to implementing the work on Phase 1?

WWC: *That should not be a problem.*

Pursuant to Hawaii Administrative Rules (HAR), Section 13-169-55, provides for emergency work and states:

§13-169-55 Emergency work. (a) When emergency channel alteration is necessary to prevent or minimize loss of life or damage to property, including the repair or restoration of structures damaged by a sudden and unforeseen event, a person may proceed to effect the channel alteration without a permit.

(b) In general, protective, health, and sanitation measures shall be limited to the minimum amount necessary to remove immediate threats to health and safety or to prevent immediate or further damage to property, and emergency repairs or restoration of structures shall be based on their replacement by a minimum facility of the same general type.

(c) No later than the first working day after initiation of any emergency work, the person effecting the work shall notify the department and describe the nature and circumstances of the remedial work so that the department may issue an emergency authorization.

(d) Within thirty days of his notification to the department, the person effecting the emergency work shall submit to the commission a report describing the nature and extent of the emergency work performed, including relevant maps and diagrams showing the location and details of the channel alteration completed.

(e) No fee will be required for the filing of a report for emergency channel alteration work. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-71)

In accordance with §13-169-55, HAR, the Commission approves your request for an Emergency Authorization per your provided work plan for Steps 1 and 2 only. Repairs to the siphon will be limited to your proposed “short-term immediate repair” (Step 1) and installation of a second layer steel plate to provide a “bumper protection layer” (Step 2). Work in the stream channel may require use of a mini-excavator located on the north bank of the river to temporarily place larger boulders, in addition to sand bags, to provide some protection of the work site from streamflows during repairs. This work is subject to the following conditions:

1. The mini-excavator must be kept on the streambank and out of the water to minimize any fuel spills or other water quality issues.

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December 15, 2021
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2. Only boulders and rocks currently located in the stream channel may be used or temporarily placed around the work site at the Siphon. No outside boulders or rocks from off-site may be used or placed in the stream channel.
3. All boulders temporarily replaced must be moved back to or near to their original locations in the stream channel. All sandbags must be removed from the stream channel. The stream channel should be restored to as close to a natural condition as possible.
4. WWC must provide notice via email to the Commission staff within 24 hours once the repair work on the Siphon is scheduled to proceed, and within 24 hours of completion of the work.

We understand that streamflows on Wailuku River continue to remain high and assessment of the damaged Siphon may be delayed. However, all work must be completed within 30 days of issuance of this Emergency Authorization. Following completion of the work, WWC shall submit a Stream Channel Alteration Permit (SCAP) application providing final details of the work performed. No application fee is required. The SCAP application, upon acceptance, shall be forwarded for agency review, then taken to the Commission for action to ensure that the work completed is consistent with the Emergency Authorization issued.

Please be advised that should the project extend beyond the minimum amount necessary to remove immediate threats to health and safety or prevent immediate or further damage to property, you may be required to apply for a stream channel alteration permit. Also, the project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, and floodways. This emergency authorization should not be used for other regulatory jurisdictions or used to imply compliance with other federal, state, or county rules. Work performed without appropriate permits or authorizations may be subject to fines and/or remedial actions.

If you have any questions, contact Rebecca Alakai at (808) 587-0266, or via email at rebecca.r.alakai@hawaii.gov.

Sincerely,



SUZANNE D. CASE
Chairperson

c.: U.S. Army Corps of Engineers
Department of Health, Clean Water Branch
Hui o Nā Wai 'Ehā

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

January 6, 2022

SUZANNE D. CASE
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Ref: EA.5849.6

Avery Chumbley, President
Wailuku Water Company, LLC
P.O. Box 2790
Wailuku, HI 96793
Via email: abc@aloha.net

Aloha Mr. Chumbley:

Extension of the Emergency Authorization
Waihe'e Ditch Siphon Repair
Wailuku River, Wailuku, Maui, Tax Map Key: (2) 3-3-018:002

The Commission on Water Resource Management (Commission) is responding to your December 28, 2021 email regarding your request for an extension of the emergency authorization issued on December 15, 2021 for repair of the Waihe'e Ditch Siphon as it crosses Wailuku River to prevent further damage to the siphon and restore water service to your customers. These actions are being taken to repair the damage to the Waihe'e Ditch Siphon as a result of heavy rains and high streamflows on December 5 and 6, 2021.

In your initial December 13, 2021 email, at 8:28 a.m., you requested an Emergency Authorization to conduct repairs, summarized as follows:

Phase 1: A metal fabricator will conduct a site inspection based on the K2N engineers proposed repair drawings and then fabricate a 3/8-inch A-36 metal plate to weld or use Lindapter bolts over the rupture hole. Once flows are sufficiently low, a certified welder will use a welding rod that they feel is best for the short-term immediate repair of the siphon and install the metal plate. This will be a temporary repair, while a metallurgy analysis is conducted.

Phase 2: Upon results of the metallurgy analysis, Wailuku Water Company (WWC) will return to the site at a low-flow period to weld or bolt a second layer of a 3/8- or 1/2-inch steel plate over the existing exposed pipe (approx. 20+ feet long), to act as a bumper protection layer for future boulders coming down stream during high flow events.

Phase 3: This is the long-term replacement and refortification of the Waihee Ditch Siphon requiring permitting, input from the community, and substantial investment. Estimated time for project completion is 1 to 2 years.

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You further stated:

“There will be NO excavation and/or fill of channel alterations to complete phase 1 & 2 of the project, WWC MAY utilize a mini-excavator located on the north side of the edge of the river to temporarily place some larger boulders in the area up-stream (mauka) of the rupture (which would be removed upon completion of the step 1 repair) and utilize sand bags to divert flows for personal safety allowing access directly over the break area during the phase 1 immediate repair.

“By this communication I am requesting immediate emergency approval to proceed with phase 1 repairs described above, and consideration for phase 2 approvals to proceed when the metal results from the mainland have been received and fabrication of the bumper plate is completed, the timing would be at WWC discretion based on river flows for personal safety.”

On January 5, 2022, the Commission received an email from you regarding the completion of WWC’s phase 1 repairs consisting of a welded patch over the rupture in the siphon. You indicated that all the sandbags were removed from the project site in Wailuku River and that WWC “will start walking the water back down the Waihee ditch and should have normal diversions restored by the end of the day.”

Hawaii Administrative Rules (HAR), Chapter §13-169-55, provides for emergency work and states:

- §13-169-55 Emergency work. (a) *When emergency channel alteration is necessary to prevent or minimize loss of life or damage to property, including the repair or restoration of structures damaged by a sudden and unforeseen event, a person may proceed to effect the channel alteration without a permit.*
- (b) *In general, protective, health, and sanitation measures shall be limited to the minimum amount necessary to remove immediate threats to health and safety or to prevent immediate or further damage to property, and emergency repairs or restoration of structures shall be based on their replacement by a minimum facility of the same general type.*
- (c) *No later than the first working day after initiation of any emergency work, the person effecting the work shall notify the department and describe the nature and circumstances of the remedial work so that the department may issue an emergency authorization.*
- (d) *Within thirty days of his notification to the department, the person effecting the emergency work shall submit to the commission a report describing the nature and extent of the emergency work performed, including relevant maps and diagrams showing the location and details of the channel alteration completed.*
- (e) *No fee will be required for the filing of a report for emergency channel alteration work. [Eff. MAY 27 1988] (Auth: HRS §174C-8) (Imp: HRS §§174C-5, 174C-71)*

In accordance with Chapter §13-169-55, HAR, the Commission approves your request for an extension of 30 days of the Emergency Authorization originally issued on December 15, 2021, per your provided work plan for implementation of phase 2 only. Repairs to the siphon will be

Avery Chumbley, President
January 6, 2022
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limited to your proposed installation of a second layer steel plate to provide a “bumper protection layer” (Step 2). Should work in the stream channel require use of a mini-excavator located on the north bank of the river to temporarily place larger boulders, in addition to sand bags, to provide some protection of the work site from streamflows during repairs, the work shall be subject to the following conditions:

1. The mini-excavator must be kept on the streambank and out of the water to minimize any fuel spills or other water quality issues.
2. Only boulders and rocks currently located in the stream channel may be used or temporarily placed around the work site at the Siphon. No outside boulders or rocks from off-site may be used or placed in the stream channel.
3. All boulders temporarily replaced must be moved back to or near to their original locations in the stream channel. All sandbags must be removed from the stream channel. The stream channel should be restored to as close to a natural condition as possible.
4. WWC must provide notice via email to the Commission staff within 24 hours once the repair work on the Siphon is scheduled to proceed, and within 24 hours of completion of the work.

All work must be completed within 60 days of issuance of the Emergency Authorization issued on December 15, 2021. Following completion of the work, WWC shall submit a Stream Channel Alteration Permit (SCAP) application providing final details of the work performed. No application fee is required. The SCAP application, upon acceptance, shall be forwarded for agency review, then taken to the Commission for action to ensure that the work completed is consistent with the Emergency Authorization issued.

Please be advised that should the project extend beyond the minimum amount necessary to remove immediate threats to health and safety or prevent immediate or further damage to property, you may be required to apply for a stream channel alteration permit. Also, the project may require other agency approvals regarding wetlands, water quality, grading, stockpiling, and floodways. This emergency authorization should not be used for other regulatory jurisdictions or used to imply compliance with other federal, state, or county rules. Work performed without appropriate permits or authorizations may be subject to fines and/or remedial actions.

If you have any questions, contact Rebecca Alakai at (808) 587-0266, or via email at rebecca.r.alakai@hawaii.gov.

Sincerely,



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c.: U.S. Army Corps of Engineers
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