

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 21, 2021
TIME: 9:00 am
PLACE: Online via Zoom
Meeting ID: 816 6613 8439

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:02 a.m. and stated it is being held remotely and live streamed via YouTube for public viewing due to the ongoing Covid-19 pandemic. Chairperson Case read the standard contested case statement. It was noted the meeting was set to take live oral testimony and any written testimony would be acknowledged when the submittal items come up.

MEMBERS: Chairperson Suzanne Case, Mr. Michael Buck, Mr. Neil Hannahs, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Ms. Joanna Seto, Mr. Paul Meyer

COUNSEL: Mr. Colin Lau

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

OTHERS: Mr. Ernest Lau (Hon. Board of Water Supply), Mr. Barry Usagawa (Hon. Board of Water Supply), Ms. Joy Gannon (Lanai Water Company)

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.

092121 00:02:17

A. APPROVAL OF MINUTES

August 17, 2021

PUBLIC TESTIMONY – None

MOTION: (HANNAHS/MEYER)

**To approve the minutes as amended incorporating Ms. Seto's edits.
UNANIMOUSLY APPROVED**

092121 00:03:12

B. NON-ACTION ITEMS / INFORMATIONAL BRIEFINGS

1. Status of Waikapū Interim Instream Flow Standard Compliance and Water Availability Issues on the South Waikapū Kuleana ‘Auwai, Waikapū Surface Water Hydrologic Unit, Nā Wai ‘Ehā, Maui

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

Mr. Uyeno shared a PowerPoint presentation of the overview of the Interim Instream Flow Standard (interim IFS) compliance and water availability issues of the Waikapū Surface Water Hydrologic Unit of Maui. The chronology was explained.

Dr. Strauch focused on the interim IFS and briefed on the recent rainfall/drought conditions and measurements taken at Pu‘u Kukui; noted due to drought, it led to a long-term deficit in groundwater recharge and baseflow to streams. The station itself has been challenging to maintain. The real-time interim IFS monitoring data is available online and provides fairly accurate data. CWRM is proposing to add monitoring on South Waikapū ditch so that it can be monitored before any distribution points. Various photos of the monitoring sites were shared and explained.

Mr. Uyeno continued the presentation explaining the chronology of the South Waikapū ‘Auwai with reports of the kuleana users not receiving water, reports of vandalism, a formal complaint received by the Hui regarding the lack of water from Wailuku Water Company and its non-fulfillment of the Commission’s D&O.

Photos of the water levels at Reservoir 1 were shared and noted along with a diagram of the kuleana users of the South Waikapū ‘Auwai system. Some of the Commission’s D&O were highlighted which was noted in the letter to the Wailuku Water Company as well as highlighting the kuleana user rights and to also maintain the system collectively. The Hui’s letter of complaint and various photos were noted stating the fact that Waikapū Properties has the lowest priority yet receives water directly from Reservoir 1 before any kuleana users.

Proposed solutions for the South Waikapū ‘Auwai were highlighted.

QUESTIONS

Commissioner Kagawa-Viviani – asked on the data of the May 2020, if it was shown in the current presentation and asked for an explanation and asked where in the diagram does it show the proposed monitoring station.

Dr. Strauch – explained it was due to lack of rainfall and with enforcement in pre-decision and order, there were no drought scenario mechanisms to enforce whether there was sufficient water in the stream to meet the IFS or traditional and customary practices and other off-stream uses. We were in a bind because of the lack of water in total, there wasn’t sufficient water to meet the IFS on certain days, even if no water was diverted and all the water were put back into the stream, it still wouldn’t meet the IFS.

Commissioner Kagawa-Viviani – reiterated on the explanation as there was a major shift in May 2020.

Dr. Strauch – noted it's a regulated flow and is affected by how much water is being withdrawn. We do not manage the system.

Commissioner Kagawa-Viviani – ok, so we don't know; I just wanted to understand the data; asked where is the proposed monitoring going to be installed?

Dr. Strauch – showed the South Waikapū 'Auwai system diagram and pinpointed the area of the proposed monitoring station.

Mr. Uyeno – noted it would be right before the bypass from the emergency release gate from the ditch that goes into Reservoir 1.

Commissioner Kagawa-Viviani – where it was concreted?

Mr. Uyeno – yes

Dr. Strauch – shared photos of the ditch and reservoir and further explained the area of monitoring gage proposal.

Commissioner Hannahs – is Reservoir 1 unlined?

Mr. Uyeno – yes

Dr. Strauch – based on evidence of the contested case hearing, it leaks about 0.15 mgd when full and don't know how much when not full; but we don't have real time monitoring on the reservoir.

Commissioner Hannahs – currently, its only beneficiary is Waikapu Properties?

Dr. Strauch – the 'auwai gets water, at least 267,000/gpd from the reservoir through the pipe that's now valved.

Mr. Uyeno – at this point, I believe the water still goes to Kumu Farms and that's why the letter was sent to them asking for status of the organic crop certification which supposed to reduce the amount of water going to the cattle; and the relocation of their farming operations makai of Waihe'e ditch, at that point they would switch to using water from Waihe'e ditch.

Commissioner Hannahs – it's reasonable to expect the beneficiaries of that reservoir to make an investment to install lining to make the reservoir more efficient and create less loss.

Mr. Uyeno – other than the kulenana 'auwai users and once the farm operations is relocated, Waikapu Properties will be the sole recipient of the water and will only be used for cattle drinking water. The question is feasibility-to line the reservoir at that point or just feed the kuleana users as well as the cattle operations directly from the diversion?

Commissioner Buck – (to Dean) asked if the majority of the water going to the South Waikapū 'Auwai is diverted before it goes into the Reservoir 1? (referred to the map in the D&O vs. the map of the complainant)

Mr. Uyeno – no, it goes into Reservoir 1 first then is distributed out through that pipe.

Commissioner Buck – asked on the accuracy of the map

Mr. Uyeno – noted it's not inaccurate but shows it dropping into the 'auwai from one end of the reservoir and feeds the Waikapu Properties from the other end, but it all goes into the reservoir first. Noted also there was the emergency gate that was being used intermittently.

Commissioner Buck – based on our D&O of the 2.9 mgd, at what point where we expecting to be able to measure that?

Mr. Uyeno – it should have been out of that pipe.

Commissioner Buck – for Waikapu Properties, there is no return of water to the stream?

Mr. Uyeno – nope, all used for agriculture for the cattle.

Dr. Strauch – clarified the 2.9 mgd is the interim IFS.

Commissioner Buck – I was just making clear at which point we were going to measure it to ensure that there was enough water in the 'auwai as majority of that water is returned to the stream which is why we set the IFS at 2.9 mgd.

Dr. Strauch – we measured 2.9 mgd in the stream but pre-D&O there was no drought scenario and no mechanism to enforce how much water is being diverted.

Mr. Uyeno – the 2.9 mgd is below the South Waikapū ditch intake and after there is a release from the South Waikapū that returns water back if there's too much water diverted at the intake; the IFS point is below where the water is returned, and the IFS is to ensure water to the North Waikapū 'Auwai.

Commissioner Buck – I was not aware we were so dependent on Reservoir 1 and looking at this (map) it looks like there's opportunity to provide that amount of water before the water enters the reservoir; am I misreading the map?

Mr. Uyeno – that is one of the proposals suggested by the Hui in order to ensure there's more water going into the 'auwai.

Commissioner Buck – if that is the final outcome, the majority of the water is returned to the stream.

Mr. Uyeno – not sure how much water is actually returned (asked Ayron the distance between the reservoir and Clayton Suzuki's property)

Dr. Strauch noted the rough estimates of the distances

Mr. Uyeno – from the reservoir to Clayton's?

Dr. Strauch – roughly 1/2 a mile

Mr. Uyeno – noted there is some loss because the ‘auwai is unlined and there is a steep gradient and once it gets to Mr. Suzuki’s intake, he takes his first before the kuleana users, so not sure on exactly how much is returned to the stream.

PUBLIC TESTIMONY

Ms. Dawnalyn Fujiwara (Waikapū Kalo Farmer) – Aloha Commissioners. This verbal testimony is requested to lift up the names of the water warriors now and the heavenly realm, Aunty Bernice Kekahuna of Honopou East Maui and Aunty Deanna La‘iku of Waihe‘e, as I carry on the kuleana.

Please be reformed that HRS 7-1 reads in part:... The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple. The water being cut off by the corporate rancher upstream of Royal Patent 4948 is a clear violation of water rights afforded to kanaka maoli by virtue of CC 1859, § 1477 affirmed by HRS 7-1.

Over the past 11 months, no water has flowed in the natural ‘auwai system; afforded to us for over 200 years. Our family has been entrusted to the ancestral kuleana of this place; and served as the original conservation stewards till now. This act of intentionally depriving water is an encroachment upon aboriginal rights of kanaka maoli, affirmed and guaranteed protection by the laws of Hawaii.

Since October 23, 2020, with no water in the ‘auwai, I have continually asked how this continues to be allowed to happen? Specifically addressing Dean Uyeno to this date, with no answer verbal or written referencing any rule or laws to the contrary. In this matter, the Attorney General and Department of Land and Natural Resources (formerly known as the Ministry of Interior); is egregiously lawless.

Therefore, at this juncture, I implore you to not be complicit; and humbly ask that you have consideration and concern for Rights Established and Declared by Mō‘ī Kamehameha III; and affirmed as evidenced in HRS 7-1. Please allow me the courtesy of your intentions.

For the sake of posterity, our cultural roots must be preserved and perpetuated. I want to be a part of a society in which my footprint mattered. Respectfully Submitted I remain Crystal Mae Nalani Smythe, daughter of Edwina Smythe; Mahalo.

PUBLIC TESTIMONY – CONT’D

Ms. Emilou Alves (Waikapū Kalo Farmer) *[due to technical issues, Ms. Alves is utilizing Mr. Hokuao Pellegrino’s cell phone for audio purposes]*

Aloha Commissioners. This is the first time in 27 years that I’ve experienced a lack of water. We’ve always had water even in times of drought. Sometimes we had to go Monday, Wednesday or Tuesday, Thursday, 20 years ago when we had drought. For the last 20 years I have not experienced at any time when we had no water and I know we have a drought period, but the river has been low and high. I have a question, why are we being cut-off of water now and haven’t been cut-off the last 27 years? My other question is, the cement release gate, how would you release anything if it’s cemented with hollow tile?

To be clear, we haven't had any water since October of last year or very minimal water at times. We would like to have water so that we can continue to do our farming since we do provide a lot of kalo and fruits and vegetables for the community and right now, unable to do that.

PUBLIC TESTIMONY – CONT'D

Mr. Hōkūao Pellegrino (Hui o Nā Wai 'Ehā) – Aloha mai kākou Chair Case, Water Commissioners and Community. In 1850, there was 121+ documented acres of wetland lo'i kalo on the South side of Waikapū Stream, self-managed systems and sufficient water for kuleana lands. Fast forward to 2021, there is less than eight acres of kalo in active cultivation; actually, none at the present moment due to no water. For a corporation managing a derelict system dating 117 years old, and landowners restricting access to clean, manage or even look at what's happening to their water is occurring, where is the justice in this?

Kuleana farmers have been long abused by plantation interests and water companies for now over 150 years and continue to be held hostage and discriminated against by Wailuku Water Company who picks and chooses who they want to provide water to. For example, paid customers versus legally, protected rights of Native Hawaiian kuleana kalo farmers. A Decision and Order has been handed down to the community based on our contested case set forth on June 28, 2021, yet no one seems to be following it and definitely no one is enforcing it.

Please read our complaint and more so the written testimony that we recently provided; the facts, the problem and the solution are clearly spelled out for you. Our Hui and community are not complainers but rather solution-minded, driven kanaka that preserve a way of life, wanting to feed the community. Ho'i wale iho nō! – you've laid out with a fine tooth comb exactly what needs to be done here and how this issue can be resolved.

As stated on page #360 of the D&O, F. Management of Kuleana Systems: paragraph 207:
...Wailuku Water Company and others are responsible to maintain their ditches to the point of delivery of water into the kuleana ditch for pipe-system, with maintenance of the kuleana ditches and pipes are the responsibility of the users. We're asking you to please take this seriously and resolve this quickly given that it has now been 3-months since the final D&O and over 10-months since this problem has been ongoing.

Based on the presentation, I'd like to share two things: the photo of Reservoir 1 of June 1, 2020, is a perfect example of when the water enters Reservoir 1, it goes to the south which feeds Waikapu Properties. The kuleana pipe is on the north; whenever that water comes in, low or high, it always goes towards the south. That photo shows the injustice that's happening. Secondly, as Commissioners mentioned the cost of upgrading the kuleana ditch; back in 2016, I did a feasibility study for landowner Waikapu Properties, who at that time was interested in looking at piping in the kuleana system of 1.1 miles. At that time, it was roughly \$150,000. Last week I go quotes from the only two piping companies on Maui for a 12-inch pipe, couplings and clean-outs-and looking at \$865,000, which includes labor.

PUBLIC TESTIMONY – CONT'D*Mr. Pellegrino*

Whether this should happen or not, it should not fall on the kuleana because that kuleana ditch, while owned by Waikapu Properties, there's a perpetual easement that Wailuku Water Company has which they've restricted access for cleaning, management or just looking at the problem. The kuleana landowners have been threatened and asked not to go up to the reservoir to see what is occurring.

I just want you to remember and as you look at our complaint as well, and the testimony we've provided, to remember back in 2007, WWC provided data showing they were giving 10+ kuleana's 840,000 gallons of water. Here we are with less than 7, with a third or a fraction of that amount and yet these kuleana's are not receiving any water. There're big issues here and the fact that a non-permitted user is using that water. I can confirm (and can provide the evidence if need be) that Kumu Farms has not been farming on any of the Waikapū fields supplied by Reservoir 1 for over two years; with also confirmation from the landowner Waikapu Properties, that Kumu Farms has not been farming.

We've learned that the old plantation pipe that goes beyond the cattle troughs-this water from Reservoir 1 can drop into Waihe'e Ditch as well as other reservoirs below. Kumu Farms irrigated water comes from Waihe'e (ditch). Kumu Farms is being used as the "pawn" in this situation; not by the landowner but being held hostage by Wailuku Water Company- illegally putting Reservoir 1 water into other sources, which is not supposed to be happening. The only users of Reservoir 1 and the South Waikapū Ditch are off-stream users-should be Waikapu Properties for the cattle. Which is why we're making it very clear the best resolution is to allow the water for the kuleana to be dropped into the kuleana ditch before the reservoir. Why would you want to fill-up a 7-million-gallon reservoir for 1,800 gallons for off-stream use? It makes no sense at all. This solution is very clear, easy and spelled out in our testimony. Please look at that page with the solutions as I think this would work with the help of the Commission and Commission staff, Mahalo.

COMMENTS

Commissioner Hannahs – thanked and appreciated the Hui for presenting coherent testimony which lays out facts and identifies the issue and has a solution to it. We'll decide how the people feel about the recommended solutions and appreciate the clarity of the testimony.

PUBLIC TESTIMONY – CONT'D

Ms. Pam Bunn (Dentons LLC) – Good morning, Chair, Commissioners, Staff, and Community. I really have nothing to add to the testimony of the Hui. I think they've done a marvelously eloquent job in laying out the problem and the solutions and just urge you to take great care in implementing one of those solutions; thank you. If I have extra time and any of the Hui members need more time to testify, I would be happy to have them speak.

PUBLIC TESTIMONY – CONT'D

Mr. Isaac Moriwake (EarthJustice on behalf of Hui o Nā Wai 'Ehā) – Good Morning Chair Case and Commission members. I appreciate the commission staff for its presentation in bringing this matter to commission as it's long overdue and urgent, as it was urgent 10-months ago and more so now. I appreciate the Commission for its forward progress on these issues, for example it's final D&O's the recognition of kuleana, native Hawaiian rights as the top priority, and now we need to start acting on it like we mean it. Most of all, I appreciate Hui o Nā Wai 'Ehā and the kuleana right holders for their patience and grace under these unconscionable circumstances.

I agree, Mr. Pellegrino has really summed up the situation better than a lawyer could, and I told him I give him an honorary legal degree for his testimony submitted today in how he laid it out, solution-minded and forward looking.

I want to emphasize the fundamentals here and how unprecedented this is. Occasionally, over the 17 years I've been working on this case, we've got complaints from kuleana's about sudden shut-offs usually it's a maintenance issue; sometimes notice is given, other times not; unusually it'll last for days maybe a week or two; but never in my 17 years (working on this case) have I seen an outright, dictatorial cutoff of kuleana rights for almost a year. This is nothing short of a travesty of justice and a breakdown of the social order. We're talking going back 100-150 years at this point, this is established history. The very first water cases in this region, kuleanas take first before the plantation. The agreements between Wailuku Sugar an HC&S in which they acknowledge, we supply the kuleanas first before we take our water. Even in Wailuku Water Company's documents (before becoming WWC) in their agreements with their customers, recognizes the obligations to priority kuleana rights in times of drought.

Many of you may recall at the end of 2017, regarding the egregious violations of Waikapū IFS, former Commissioner Balfour stated...it seemed like WWC was getting away with murder...; so, what do we call this? Kuleana rights have been around for more than a century; longer than the instream flow standards. That's why we're emphasizing that the Commission needs to be the Konohiki ultimately in these types of situations. In the D&O we've gotten a lot of advice (I think that's what Mr. Uyeno called it) in how kuleana's are responsible for their own 'auwai. Now, WWC is prohibiting the kuleana users from maintaining or reopening their own 'auwai flow; it's a catch 22 and ridiculous. The question is not only how can this happen but how has it been allowed to go on for so long?

The Hui reached out to the Commission for months as well as the kuleana's and we were told this will be addressed in the D&O which came out in June, almost three months ago. I'll close with the legal mandate, in modern Hawaii Law Article-11, Section-7, establishes this Commission expressly includes in its constitutional kuleana assuring appurtenant rights, it's there in our State Constitution. This is why we have the Commission and exactly what the Commission needs to do here and is what the kuleana right holders are asking you Commissioners to do, to assure their appurtenant rights. I'm available for questions on the legalities of this and understand there's some doubt being kicked-up and some smoke screens on some of the legal issues; I'm happy to address those directly. As far as the factual details, I don't think anyone could've done a better job then Mr. Pellegrino on behalf of the Hui. Thank you very much for your attention on this very important matter and look forward for you taking action.

QUESTIONS / COMMENTS

Commissioner Buck – (to staff) what recommendations do you have so we could comply with our recent Decision & Order?

Mr. Uyeno – commented that one possibility (as Mr. Pellegrino noted) would be to directly feed the kuleana ‘auwai as well as the cattle operations directly from the intake and remove the reservoir from the operation. That would eliminate loss and address some of the loss issues.

Commissioner Buck – following up on what I heard from Mr. Pellegrino was only allow the amount for the cattle operations to go through the reservoir but make sure the ‘auwai gets a full distribution before water entering the reservoir; would that be hard to implement?

Mr. Uyeno – eliminating the use of the reservoir need to come from an order from the Commission, it’s private property but certainly an option. There are issues with storage - building up storage capacity-what are the options for that in times of drought? Is another consideration and the issue needs to be discussed in more detail. To note, Mr. Pellegrino did note and make clear they’re not asking for discontinued use of the reservoir but assuring that the kuleana gets water first. That may include instead of using the pipe from the reservoir – prioritizing the use through the control gate to the ‘auwai first.

Commissioner Buck – our D&O also said that staff or representatives of staff would have access to these diversion points – do you believe that is also not being followed?

Mr. Uyeno – asked the diversion points meaning the distribution?

Commissioner Buck – we want to make sure for transparency, that people (our staff), even if its on private lands, would have access to the diversion points.

Mr. Uyeno – as staff, we are able to get to the reservoir as we do need to access that area to get to our gauge upstream of the reservoir and down towards the river. The issue is the kuleana users aren’t able to access the reservoir where the water is released into the ‘auwai.

Commissioner Buck – noted the D&O stating “our staff or authorized representative” – is an option to consider.

Commissioner Hannahs – should we conclude by the fact that Wailuku Water is absent here that they’re in agreement or accepting of the solutions that are put forth by the Hui?

Deputy Manuel – I would not make that conclusion. We have reached out to Wailuku Water Company. I have been communicating with them and I’ve been personally trying to help facilitate the conversations between parties here at a staff level, informal process. Were at the point where any final decision or recommendations need to happen formally with this Commission; I would not assume anything about their presence. I would say that we shared the same information with all parties, Mr. Suzuki, Waikapu Properties, Wailuku Water Company, as well as the Hui and all kuleana tenants and farmers, have gotten the same emails from myself and staff and are aware of this conversation and may be watching on YouTube; but not present in the meeting now.

Commissioner Hannahs – did they supply any written testimony?

Deputy Manuel – we did not receive written testimony from Wailuku Water Company.

Commissioner Hannahs – (to Dean) would you agree with the characterization of Mr. Pellegrino as to how Reservoir 1 works in terms of water naturally moving south, towards the side of Mr. Suzuki and not the side of protected uses?

Mr. Uyeno – to clarify, it's Waikapū Properties and defer to Dr. Ayron Strauch as he's more familiar with the reservoir.

Dr. Strauch – you're correct in that there is flow to the south. The initial reservoir was expanded, and you'll see the difference in elevation (in Dean's photo provided). We don't know the loss whether one side loses more than the other. One proposed solution that was discussed is halving the reservoir, building a better compartment through the middle so that you fill-up one side, you'll get better head in the pipes at lower volumes both to the 'auwai and other users; might help the solution without losing the reservoirs functionality.

Commissioner Hannahs – is it reasonable to expect the users of that reservoir to invest in a pipe system so they'll get their water more efficiently? Right now, there's two problems created by the use of the reservoir. 1) it's unlined and there's loss of a valuable resource, 2) the design of it is such that it impairs our ability to meet the needs of the protected kuleana users. It's not a good solution for us.

Deputy Manuel – which is why the Hui's recommendation is made the way it's made based on the record and how the system operates and functions, that there is a more efficient way they're proposing to get water directly to the priority users you folks identified in your D&O before other users on that system. The other parts of the system could be inefficient or provided in other ways, but the solutions recommended by the Hui emphasize that priority.

Commissioner Hannahs – is there anything in the four solutions advanced by the Hui that is not in keeping with our D&O? Do the solutions of the Hui strengthen or align with our ability to enforce?

Deputy Manuel – I think it is in alignment with the Commission's Decision & Order with reducing waste, in system efficiencies, and sense of prioritization. Based on the recommendations they are consistent with the policies and decisions the Commission has made in the D&O.

Commissioner Katayama – as you've talked to the various parties in crafting a long-term solution, is there a way to capture high flows of water, holding it and distributing it during low-flow periods? What is the capacity of Reservoir 1? In agreeing with Ayron, if we can't replace the reservoir with original capacity, making it smaller is always better as you'll get a lot more efficient use of the water; and not sure on the pan (evaporation), but I'm sure reducing the size reduces loss as well.

In addressing the various parties, how much time do you need to get a solution on some obvious choices on how we can resolve these issues? (Appreciated the Hui's presentation of facts, problems and solutions)

Deputy Manuel – based on the complaints, situation, facts, and staff’s investigation into the matters, we plan to bring for formal action to the Commission next month to expedite movement in some decisions and get immediate reprieve and to ensure water is going to kuleana users. In addition, there are some longer-term strategies or implementation that as a Commission will need to continue to monitor and manage.

One of those is reservoir use, whether it continues to be a used or a useful water storage facility, that’s coordination and communication with the owner and manager of the system; that’s a longer conversation we need to have and can build in longer-term recommendations on feasibility. The capacity of the reservoir mentioned is about 7 mgd.

Dr. Strauch – in the Broadbent report, it’s 12 mgd.

Deputy Manuel – the current capacity might be 7 mgd because of siltation. That’s one of the issues, it’s still unknown when we had talked to Wailuku Water Company. Cleaning and dredging and rebuilding it back to that design capacity could be a solution in implementing the D&O. We plan to bring this back to Commission based on the conversations today and community input, and highlight the longer-term strategies for implementation to meet the intent of the Commission’s D&O. It’s very complex with who manages, who’s the landowner and somethings are not consistent with the D&O. For example, we said ‘auwai users should manage that ‘auwai - but if they’re not permitted access, it is problematic. Those are things we’re working through and hopefully come up with resolutions both immediately and long-term.

Commissioner Katayama – look forward to the October meeting and its progress.

Commissioner Buck – I’m glad we will have some opportunity to make a decision on this issue. My provisional recommendation is I also believe the Hui’s recommendations are consistent with our D&O and some communication with the affected parties provide them with the Hui’s recommendations and give them a short timeframe to provide us with written testimony before the next meeting, I think is the most expeditious way to move forward at this time.

Chairperson Case announced that the “chat” (in Zoom) needs to be in Sunshine (law) and requests if something needs be said, to offer it publicly. Referred to Mr. Pellegrino’s document entitled “The History of Reservoir-1” – request it be provided to staff and as appropriate, staff can include it in the upcoming agenda item.

Commissioner Buck stated the reservoirs are important to the long-term solution in how we convert those liabilities to assets and find a solution for long-term efficiencies for a water delivery system.

Commissioner Kagawa-Viviani – thanked the testifiers and staff for the information. Noted on the multiple convening issues that Ayron laid out in the context of drought. For me, looking at the data and the flow-time series, there’s imprints of a lot of human activity and diversion or steady groundwater flow that becomes more ephemeral post May 2020. How well do we understand this system? – not just the ‘auwai setting but the interconnectedness of the hydrology and water use because all that plays in, and the person at the end of line always gets shorted.

We’ve talked a lot about engineering solutions and a lot of what I’m hearing relates to power differentials that is inherit of who’s upstream and downstream and who gets access first. I’m wondering how we as a Commission can think more systematically and holistically as we think

about enforcement, what our goal is in mediating some of the power imbalances; especially someone like me as I've never walked that system. It's impossible, we can't have kuleana users maintain in the pō'alima system if we have different plants in the system, which we do. And we have access issues; it brings a hypercritical notion to give advice but not empower folks on these systems.

I'd like to hear from other Commissioners on what our role is in mediating some of these power issues. Maybe it's up to staff but feel we as Commissioners have a role because I think everybody does want the water to be stewarded and distributed well. Monitoring and transparency is part of that and hopefully in the future, deal with these conflicts promptly. 10-months...I wonder how people have made it through the summer; Mahalo everybody for presenting.

Chairperson Case – asked Mr. Pellegrino the next time this item comes on the agenda, if he could attach what he thinks is relevant information to his testimony or link it so that when it's posted (to the website) it has full availability for everyone.

(to Commissioner Kagawa-Viviani) that some of [Ms. Kagawa-Viviani's notations made] it has been wrestled with in the Decision (& Order). One complication is that we're not part of that agreement between the users and the Wailuku Water Company as distributors; but Wailuku Water Company is required to provide water to the diversion points (in the agreement), and if the system has a flaw that doesn't allow the provision of water to the 'auwai because it's going through the reservoir, that's a problem that's right for us to address.

We can easily be overwhelmed in policing this system, so we have to be careful in what is our role and what's the responsibility of all users and diverters; that's carefully thought through in the D&O. It's a complicated system and a lot of people and is more complicated by the drought situation and as the climate changes and the earth warms and the distribution of water gets more random through drought and flood cycles, this is just a microcosm of what's happening all over the planet in terms of the impact of relationships between users and distributors of water. We need to do our best to moderate as we are required and able to do.

I appreciate the staff bringing this as an information item and has been helpful in bringing the information item prior to an action item so we get the chance to fully vet it and think it through. The absence of Wailuku Water Company in these discussions is notable and problematic and will not speculate why they're not here and what their positions are and am sure they have some positions they'll have to express if they want it considered in a decision.

Commissioner Hannahs – (on Commissioner Kagawa-Viviani's request for other input) 1) we needed to set policy and the D&O did that; 2) we need to be serious about making sure that policy gets enforced and implemented; that's where staff and community comes in. Also, supporting staff in their efforts to make sure there's a naturalization of the D&O is important. 3) when you're playing cops against people who's trying to create problems or misaligns with our decisions, is not an efficient way of doing business. We need a better community and I really appreciate what Kaleo (Deputy Manuel) is doing in terms of meeting people offline, bringing the parties together to get through the historic polarities and issues that divided us to bring it them around to a new order we're trying to impose. We have to be consistent and relentless in our efforts to build that community and understand what we expect in how water is to be treated, make the investments, exercise the personal goodwill that's necessary to act like a responsible

community. That's why I'm so impressed by the Hui's testimony which did just that; state facts, identify the problem and bring a solution.

Dr. Strauch – we've been working with Wailuku Water to report both the amount of water diverted from the stream as required by the D&O and the amount distributed to the 'auwai. We don't have the capability of doing that ourselves and that's why I believe the Commission in the D&O stated that the users need to report this. We're trying to get that information to the public as soon as possible; Our responsibility is to maintain the infrastructure necessary to ensure that the IFS is maintained; we can't run around measuring everybody's use.

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B. NON-ACTION ITEMS / BRIEFINGS (CONT'D)

2. Status of the Order to the Honolulu Board of Water Supply to Bulkhead Ha'ikū Tunnel, He'eia Surface Water Hydrologic Unit, Ko'olaupoko, O'ahu

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

This decision to bulkhead was made at the May 2021 Commission meeting. As part of the implementation, the commission requested (CWRM) staff work with the community and Board of Water Supply by gathering together quarterly to talk about the status and the implementation of the USGS study. Part of that order was to reduce the groundwater withdrawal from approximately 1.0 mgd to 0.3 mgd. At the recent meeting, BWS shared that they ramped down their withdrawal to the 0.3 mgd back in August (2021) and are working on monitoring the daily flows both from the Ha'ikū Tunnel and Well in He'eia. Thus far, BWS have met its agreement with what has been established by the Commission.

PUBLIC TESTIMONY

Mr. Ernie Lau (Honolulu Board of Water Supply) – Good Morning Chair and members. Aloha everybody; it's a nice wet day on O'ahu in Mānoa. It's raining and a good recharge for our aquifers, so I'm very happy. I want to thank you for the opportunity to provide an update to the Commission. I will turn it over to Barry Usagawa, Head of our Water Resources Division to provide the update report and I'll be available for any questions from the Commissioners.

UPDATE GIVEN BY: Mr. Barry Usagawa, Hon. Board of Water Supply

Mr. Usagawa shared the BWS letter to DLNR dated 9/21/21 noting that BWS began reducing the Ha'ikū Tunnel production on August 7, 2021 to 0.3 mgd. BWS will be installing a new water meter by the end of the year, until then, there is no daily production data reporting, only physical spot shots. To install the new meter, both the Ha'ikū Tunnel and Well will need to be shut-down for 30 days.

Mr. Usagawa showed and explained the graph of the stream flow measure at He'eia Stream gauge and the Ha'ikū rain gauge noting the rain gauge has been below normal and will take time and rainfall to build-up water behind the bulkhead. A new pressure gauge will be installed at the Ha'ikū tunnel portal and once installed, it will confirm existing data and serve as a key indicator to dike water recovery. Higher head levels behind the bulkhead are expected to increase discharges to both Ha'ikū and 'Ioleka'a Streams. USGS has initiated their field reconnaissance including stream seepage runs.

BWS is in the process of procuring a consultant to conduct a preliminary engineering study; an executed contract is expected by the end of the year. The budget is \$500K for a 2-year study. The results from this study will provide BWS with guidance for responding to the state Commission on Water Resource Management order dated 6/18/21. There are four (4) scope items that are concurrent actions. 1) gathering historic information to be reviewed for the study; 2) field investigation – conduct a multi-season tunnel pressure, dike storage and stream gauge testing program; 3) evaluation: conduct hydro-geologic, civil, and geotechnical engineering to determine the maximum water level that can be sustainably maintained, assess cost-benefits, impacts and implications; 4) conduct agency and regional stakeholder meetings as necessary.

A big concern is microbiological contamination as this is a drinking water source. We need to understand what will affect it and what are the mitigation measures. Another concern is the recertification of the tunnel once the work is completed.

Letters were sent to the users on the Windward 500 system regarding CWRM order and notifying on necessary actions to limit increase of water use.

QUESTIONS/COMMENTS

Commissioner Katayama –regarding the State Hospital water system in which they have a well, does that play a part in looking at different alternatives in part of your study?

Mr. Usagawa – it should; but I thought that staff were going to update you on the well as I haven't included that in the letter. The well was drilled in early 2000s but haven't gotten an update on that possibility, but it would be key to helping us reduce tunnel production as the less we use from the tunnel, more is going to stay in the stream.

Deputy Manuel – deferred to Mr. Ryan Imata, Acting Chief of the Ground Water Branch.

Mr. Imata – I had a conversation with Ms. Joanna Seto (DOH) about the State Hospital system and did some research and think there's a component that will be difficult for the hospital to be certified as a public water system which also has a time constraint that will take a couple of years for them to get off the BWS system (*deferred to Ms. Seto*).

Commissioner Seto – in my job, I am the Safe-Drinking Water Branch Acting Chief. I've reached out to the staff there which they informed me there is a capacity process that new public water systems need to complete prior to becoming a regulated public water system. It involves production of construction plans, new source, engineering reports, capacity documents at the pre-construction and start-up capacity stages. The timeline is possibly 2022-2023 for the drinking water to come from that well; and don't know if DLNR will be providing property rights to that well. There's still a lot of unanswered questions and we encourage the Board of Water Supply to look at other reuse options for the other large water users.

Deputy Manuel – Mahalo for that; we wanted to bring this back to Commission and provide an update as this will be a continuous conversation and process to meet the intent of the Commission's order which is to help restore and/or protect instream values. We need to also look at how wells and pumpage can be distributed to meet that need.

Commissioner Buck – any update on conversations with Kāne'ōhe Marine Corps Base which I believe are the largest user?

Mr. Lau – we plan to send a letter to them (*referred to Barry for an answer*)

Mr. Usagawa – answered not yet; but we've been corresponding with them through email and the last update was unchanged. They're still working towards bringing their reuse system back online once they install the landscaping buffer in the golf course and expanded residential units (*explained on the recent main break at Hawai'i Kai which drastically reduced water levels for a little over 36-hours which also affected the Windward side of O'ahu*). Water is limited on the Windward side so with these types of emergencies and with reservoirs levels dropping because of it, there's hardly enough source to refill it which is an ongoing challenge but will get through it.

Mr. Lau – our intention is to send a letter to the marine corps to request them to pursue R-1 treatment and reuse on the base. We've corresponded formally with some of our congressional delegation allocating for funding to be made available to the military to convert to R-1 and reduce their freshwater potable water usage (*spoke of the recent water main break and the effects of it*). Our integrated system is both a blessing and a challenge and want to let you know that in emergency situations, we actively work 24-hours to do the repair. If necessary we may need to open up the valve of the Ha'ikū tunnel and allow more of that source to temporarily flow back into our system, when we're in a desperate situation.

Chair Case – asked that would be in communication with our Water Commission Deputy?

Mr. Lau – asked Deputy Manuel for his work cell phone.

Deputy Manuel – noted a follow-up email will be sent.

Mr. Lau – clarified it will be shared with BWS executives and appreciated cell number to contact him (in emergencies) as necessary.

Deputy Manuel – noted that as part of this process BWS identified drought scenarios in situations and to highlight and remind the Commission, one-day is great, but in the previous

submittal, it was months. We have challenges in implementation and am grateful to the Board in working with them to solve problems quickly as possible.

Per the Code, we need to start developing shortage plans throughout the state in our water management areas because all of O‘ahu except for Wai‘anae is one of those. As Ernie mentioned, in a time of shortage what is our communication and coordination that needs to happen? It highlights the need for more integration between us as a regulator and our distributors and water operators in water management areas.

PUBLIC TESTIMONY

Dr. Kawika Winter (Reserve Manager, He‘eia National Estuarine Research Reserve) – Aloha Chair Case and Commissioners. Thank you for the opportunity to provide testimony. We continue to be in close communication with our co-management partners who are doing the restoration management activities, particularly on the HCDA property managed by Kāko‘o ‘Ōiwi and our partners at Paepae o He‘eia. To report, there’s still no observed increases of water. Water is still very low; too low to effectively conduct the restoration activities as testified to previously.

I wanted to convey there has been two questions that has come up in the context of ideas of what might be going on and if staff could provide an answer either now or through subsequent correspondence through email would be appreciated. One idea that perhaps there are other wells that's not managed by BWS that are in the Ahupua‘a of He‘eia-is there a chance that one is pumping a lot more water than previously thought and is there a way we can know how much that is and factor that into the equation? Second, there has been a lot of construction work on Haiku Road corresponding to the times the water levels were dropped- perhaps the same thing happened on Kalaniana‘ole, where they broke into a spring and dumped spring water into the sewage system? How do we follow-up on that idea to see if that’s an issue we’re facing here?

If we can get the answer to those to questions, it would be much appreciated; thank you.

PUBLIC TESTIMONY – CONT'D

Mr. Frederick Reppun (He‘eia National Estuarine Research Reserve) – Hello everybody. Thank you, Barry, for your presentation both today and the other day when we met.

My main questions is given the switching between tunnel and wells, with the assumption that might have an impact on stream flow in areas we are not currently measuring, what is the feasibility of understanding the baseline flow for ‘Ioleka‘a Stream and the lower reaches of Hai‘kū and He‘eia Stream? I understand that USGS is conducting a study of the relationships among those different sources on the streams, but it seems like there might be a moving baseline – I’m not a hydrologist but want to make sure the timing of the USGS study and the switching between tunnels and wells is going to still allow us to properly manage the area.

We got to see a presentation from Scott Izuka of USGS which showed a preliminary model to look at the effect of reducing tunnel withdrawals on groundwater storage. I’m sure he has

refinements to make, but it's something that has not come up in our discussions before and wondered if we can get him to speak about that and talk about the details in front of the Commission? I wonder if the use of that kind of modeling could speed up our study and understanding of the system and get us to a point quickly where we can set an interim instream flow standard, rather than given the models, predictions of how storage will behave and what that will tell us of the relative cost and benefits of creating a new bulkhead. I just wanted to put that out there for the Commission to consider hearing from Scott Izuka; thank you.

QUESTIONS/COMMENTS

Dr. Strauch – going back to Kawika's question in the Hai'kū Ahupua'a, while there are seven wells drilled historically, only three, the Hai'kū Tunnel and well and 'Ioleka'a Well are active. The DOT has a small well which was built for the H-3 construction, but they don't generally use it and even when, not used much. The others (per our database) are all abandoned.

For Fred's question, BWS contracted with USGS to study well pumpage to model groundwater movement, recharge and the effects of the tunnel on baseflow of Hai'kū and 'Ioleka'a Streams. Their groundwater model was developed for the island and is a bit coarser than we would like, but they're going to apply it to this area and are still refining it. We will have USGS present after they're confident with their results (they don't like sharing "preliminary" studies); at that point, they will present to the Commission, possibly in January.

They're working on monitoring continuous low flow discharge in both 'Ioleka'a and Hai'kū Streams at the points in the streams closest to the wells; looking at whether pumpage (continuously monitored streamflow next to the pumps) are affected by the pumps being active or not. Also looking at points where groundwater is discharging to the stream via seepage runs and identifying reaches that groundwater is contributing substantially to streamflow. The intersection between the modeling and field work will allow USGS to conclude to what extent the streamflow is impacted by the tunnel. They're both inter-related and can't skip to a conclusion because they have a functioning model; we're still looking at the entirety of the system.

Mr. Usagawa – *(in response to Kawika's question in regard to the sewer line)* I did check the City and VA on the distribution of their sewer system in the area (*shared a map*) - Kahekili has a large sewer line and whether or not this could be intercepting some of the groundwater flow going into the wetland, it's not; because it's a forced-main which they replaced on Hai'kū Road. Because there's a dip in Kahekili Road, they pump the wastewater up to Hai'kū and from there down, it flows with gravity. If there's leaking, it will leak out because it's under pressure and not intercepting. I hope that answers your question, but I did look at that and it's not.

Chairperson Case appreciated the report and look forward to future updates.

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B. NON-ACTION ITEMS / BRIEFINGS (CONT'D)

3. Statewide Water Audit Program Updates

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

Mr. Fujii provided an update of the Statewide Water Audit Program. In 2016, Act 169 was passed requiring the Commission to begin the Water Audit Program and allows the Commission to provide training and technical assistance at no cost to the affected utilities. The program was done in two phases with Phase-1 of the County water audits completed on July 1, 2018, and Phase-2 large capacity and water management areas audits completed on July 1, 2020. Annual water audits are due each July 1st.

The Act 169 authorized federal and private funding which allowed CWRM to contract with other water and environmental partners to assist with the training and technical assistance. Outreach and follow-ups were implemented in the program.

In 2018 the County systems supplied a total of approximately 215 mgd. Common opportunities for water loss control include data management (meter testing, billing database), real loss recovery (managing water pressure, leak detection), and apparent loss recovery (meter testing program). The water audit program achieved its goals of providing training/technical assistance and validating audits.

In summary, the water audits are only a first step in the water loss control plan. It's too soon to see water savings and are seeing some utilities implementing recommendations. The next steps include identifying funding sources, expand partnerships, certification for staff, and address small PWS with insufficient end-use meters. The AWWA is not suited for non-utility PWS.

QUESTIONS

Commissioner Kagawa-Viviani – who would you say benefited most during these exercises and workshops as presumably?

Mr. Fujii – the utilities in the water system benefited; there are some were already using the AWWA. The utilities have gotten free training and we've (CWRM) also benefitted from the program.

Commissioner Kagawa-Viviani – in seeking additional funding and ways to support this, is it CWRM to maintain the training to continue this practice for the future.

Mr. Fujii – if we go with a different version of the software there are some changes and training would be required – who's responsible for that and how do we get that done-staff could do training. Other States rely on private sector water loss experts to assist them; in the future, there may be training required and Hawaii Rural Water Association may be able to assist as they have circuit riders. Similarly, RCAC (Rural Community Assistance Corporation also has circuit riders). One is funded by EPA the other funded by USDA-Rural Development and Department of Health who pays them to go out and assist the small systems-mainly to ensure safe-drinking water with a focus on efficiency. Going forward, we may be able to partner and look for funding.

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B. NON-ACTION ITEMS / BRIEFINGS (CONT'D)

4. Lāna‘i Water Company Presentation – Water Efficiency Measures

Mr. Neal Fujii introduced the presenter of B-4. Lāna‘i Water Company has improved water efficiencies and have been a doctor of the Water Audit Program

PRESENTATION GIVEN BY: Ms. Joy Gannon, Manager, Lāna‘i Water Company, Pūlama Lānai

Ms. Gannon thanked Chair and Commissioners for the invitation to present.

Ms. Gannon shared a PowerPoint presentation and highlighted information on two (2) of Lāna‘i’s drinking water systems – PWS 237 Lāna‘i City Water System which serves majority of Lāna‘i and PWS 238 Manele Water System that serves 135 customers. There is also a brackish/irrigation water system that serves 48 customers with their irrigation needs. On Lāna‘i, there are two (2) R-1 facilities with the capacity to recycle 100% of wastewater, the only one in the State of Hawaii, which was also featured in the documentary “Voices of the Sea”.

When Mr. Ellison purchased the island of Lāna‘i in 2012, he began making major investments that included water conservations and efficiencies bringing the pumping rates and sustainable yield at 6 mgd. Periodic water reports are reported every 28 days reporting on the pumping of the brackish and drinking water. Since change of ownership, pumping reduced by 0.5% with traditional waterline and irrigation improvements with a savings of 60 mg/year.

The water audit was completed in 2017 utilizing 2016 data. The primary focus in 2017-18 was to improve the validity of the audit data by focusing on water meters and utility billing. There are over 1,700 customers that have Smart Meters installed which DLNR provided a grant for partial funding of Phase II of the smart meters. Ms. Gannon shared an example of the smart meter reading of her residence. The smart reader also measures irrigation use which showed a water savings of 12 mg/year and drinking water savings of 10 mg/year with water audits conducted monthly.

The changes for 2020-21 include more tracking meters installed, changes to improve the GIS system, leak deselection via drone, redesigning the SCADA app program, and in the process of building the hydraulic water models. In 2019, Lāna‘i Water Company developed a Water Conservation Plan Update which will also be revisited.

QUESTIONS/COMMENTS

Commissioner Buck – thanked Joy for an impressive presentation and was inspired by the use of R-1 and referred to the presentation by Ms. Lynn McCury last year regarding conservation efforts and asked if there were any updates on that.

Ms. Gannon – In general, there are programs and about 1/3 of the island was put into conservation and are in a five (5) year partnership with U.S. Fish & Wildlife currently focusing on ungulates and fencing because of the impacts to the watershed over the years and are also assisting with reef management and will be happy to forward info to Deputy Manuel.

Commissioner Hannahs – also thanked Ms. Gannon for the presentation and impressive conservation measures and agree with Commissioner Buck as the recharge source is vitally important. This island and ownership of it deserves great credit as Lāna‘i was the first to plant the Cook Island Pines to optimize fog drip capture and encourage the ungulate control.

I appreciate your leadership in what you’ve done to the golf courses on island and asked if the program is up to speed so if other golf courses approach (us) for water, we can speak to them in terms of what we can allocate but what they can do to optimize conservation and reuse and asked if its common among golf course operators or are you in a league position and others are catching up as we have this problem state-wide.

Ms. Gannon – our golf course is entirely watered by brackish or R-1; the technology used at the golf course is cutting edge for irrigation management. In addition, it was the staff’s willingness to use that technology and the learning curve that comes with it and the ownership responsibility to replace leaky pipes which was a very expensive project but, it all had huge impacts for our water use. At some point in time if anyone would want to see the golf course, we could do tours as it’s really impressive.

Deputy Manuel – the Commission’s move to constantly evaluate highest and best use of quality water is very important and the reevaluation of alternatives like working with DOH on reuse, being more strategic and pushier to make sure it's considered as a practical alternative and penciling it out for costs. As Joy mentioned, putting in the lines and pipes are real costs so being proactive and start to plot it out and get the infrastructure in before the end uses is great. We are looking at that statewide with any way we can create efficiencies and where R-1 and reuse is possible. The Freshwater Council is an advocate for that which the Commission is a part of and Commissioner Buck is a member of as well.

Joy and I professionally go back quite some ways and she is the gold-star student or who we prefer to partner with throughout the State, and the goal as a participant in the Water Audit Program; the idea and intent as a Commission and staff we (I) constantly hear reasons why we can’t do things-and Joy is the reason why we can; so I wanted to give you an example of someone or an entity who has done it-with resources and leadership-and as she took on that role, you can see the data and results of that so kudos to Joy and her team and the work they’re doing.

I wanted to give the Commissioners an example of a Public Water System of both groundwater, brackish and reuse on what can be done on a system level if you take the time and have the right leadership.

Commissioner Hannahs – appreciated the response and hoped the golf course and resort ownership organizations get together and share this information as we’re often faced with the need to supply water for economic opportunity and often the financial investment required to upgrade the technology to create a new system that will spare our natural resources, is often the reason they can’t do it. There’s also a natural capital cost and we can’t have that keep

giving way just because people can't make the financial investment. There needs to be a balance and education as to what they can do.

Chair Case – appreciated the real-time immediate feedback through water metering in how you're doing and the ability to understand immediately when there's a leak so you can take immediate action.

Commissioner Kagawa-Viviani – was inspired and hopeful that their (Lāna'i Water Company) experience can be shared and asked for a comment on the early adopters – are there lessons that can be transferrable to others that reduce the initial investment because you've learned through this experience of what works or how to install more efficiently - specifically interested in the tracking meters on the distribution lines and how would that work for a bigger utility?

Ms. Gannon – with the GIS mapping technology there's capability to do district metering which has a supply meter and all your demand meters. It does work in larger communities but will need to design it (the program) appropriately (*Ms. Gannon shared screen and explained the use of the Beacon Advanced Metering program app showing water measurement data of (1) supply and (39) demand meters*). For lessons learned, it's not an automatic water savings as you need to work with, communicate and educate your customers which all goes hand-in-hand (*further explained the leak detection notice letters sent to customers and gave examples of leak-detection scenarios*).

Commissioner Kagawa-Viviani – given that Lāna'i Water Company is the only utility on island and DHHL has parcels looking to develop, is the current system able to accommodate delivery to future residential developments?

Ms. Gannon – DHHL has a water reservation here on island. We have a sustainable yield of 6.0 mgd and are currently pumping 1.57 mgd so we have the availability to provide water for their reservation. We develop well sites and water infrastructure as they are needed. We are a PUC regulated entity and there's a process we go through in bringing new customers on and making sure that doesn't impact our current customers rates.

Commissioner Buck – are you using any of your water stewardship activities in your promotion for the hotels and finding positive connections in trying to promote more visitors because of your stewardship?

Ms. Gannon – I don't think we've gone down that road yet and think there's an opportunity there particularly with our watershed. If you have the opportunity to visit our watershed, it's spectacular and relatively accessible. From the city when you look out, it's dry versus up in the watershed with the fog drip – you're in the rain forest and it's astounding with the native habitat; it's an opportunity we do need to explore.

Deputy Manuel – we were “pre-pandemic” when we tried to plan a Commission meeting on Lāna'i which was to include site visits (with Joy) to the wastewater treatment plant and well sites. It's something we can work towards as I'm sure the community on island would appreciate us hosting a Commission and community meeting on island.

As an update, we (Joy and CWRM) did a presentation to the Lāna‘i Planning Commission as part of our annual report back to the them and the community on new data and information found.

Chairperson Case thanked Joy and appreciated the work presented. Ms. Gannon notified she will be sending Deputy Manuel information for distribution regarding the watershed and thanked the Commission for the opportunity to present.

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B. NON-ACTION ITEMS / BRIEFINGS (CONT'D)

5. Hawai‘i Department of Health Update on the Red Hill Administrative Order on Consent

Deputy Manuel introduced item B-5 and the presenter Commissioner Joanna Seto and informed that staff will be available for questions after the presentation.

PRESENTATION GIVEN BY: Ms. Joanna Seto, Department of Health, Safe Drinking Water Branch

Ms. Seto gave an update on the Red Hill Administrative Order on Consent. The last update to the Commission was given on October 2018. The primary Statement of Work (SOW) highlights tank inspection, repair and maintenance, upgrade alternatives, corrosion and metal fatigue practices, investigation and remediation of releases, groundwater protection and evaluation, and risk vulnerability. Four tanks are currently undergoing clean, inspect and repair process. With the tank tightness tests, all tanks have passed. Regulators are currently reviewing the tank upgrade alternative supplement (TUA). *(Ms. Seto read excerpts from Section 5.2.1, page 34 and Section 5.3.1, page 36 of the TUA supplement; also showed and briefed on the diagram for alternative 1A – Environmental Risk Management, Section 4.2,5 of page 32)*

Ms. Seto briefed on each of the Statement of Work. There are a total of twenty-seven (27) monitoring wells with six (6) more to be drilled in the Red Hill or surrounding areas. The Fuel Tank Advisory Committee (FTAC) meetings increased from annual to semiannual. Pending Governor Approval in the first quarter of 2022, the Navy plans to host an in-person meeting/workshop.

Chairperson Case thanked Ms. Seto and appreciated the update/presentation.

QUESTIONS/COMMENTS

Commissioner Buck – thanked Ms. Seto and offered the Commission’s assistance if needed and asked on working with the EPA, if DOH respond to the Navy responses individually or is it consulted on?

Commissioner Seto – we consult together as it’s a joint effort-DOH and EPA.

Commissioner Buck – concerned if DOH has the capacity to represent all the State’s interests and reiterated the Commission’s willingness to assist.

Commissioner Kagawa-Viviani – referred and asked on the data of the monitoring wells – if the data goes straight to the Navy or if there’s an independent external oversight as there’s that distrust (between the public and the Navy regarding the Red Hill issue).

Commissioner Seto – stated the wells are monitored by the Navy with the data provided to the regulatory agencies. There has been opportunity for split samples which can be checked on.

Commissioner Kagawa-Viviani – how frequent are the wells monitored?

Commissioner Seto – the groundwater monitor program is quarterly and depends on the parameters their testing.

Deputy Manuel – our CWRM groundwater team participate actively in the groundwater monitoring as we’ve been permitting these groundwater wells (deferred to Mr. Ryan Imata, Acting Branch Chief of CWRM Groundwater Branch)

Mr. Imata – the groundwater team is heavily involved in the design phase of those wells, especially during construction but not too involved in the data collection.

Commissioner Hannahs – thanked Joanna and appreciated the information but can’t tell whether we’re winning or losing as the wheels of justice seemed to be turning slowly as years have been going by. Is there a way to lay out our strategy in dealing with this over a timeframe as we get updates, have a sense of variance that we’re on track and relative to the presence of risk?

Commissioner Seto – referred and shared the TUA Supplemental and briefed on page 84 of the document showing the graph of the proposed clean, inspect and repair schedule and mentioned there’s a delay in progress as they’re learning more about the process and ways to improve.

Commissioner Hannahs – referred to the graph and commented if this is the best case and found comfort of the graph showing that most of the tanks have been returned to service.

Commissioner Seto – we (DOH) are looking to ensure they maintain the safe drinking water of the systems.

Deputy Manuel – noted that Ms. Seto, himself, Chair, and some CWRM staff sit on the Fuel Tank Advisory Committee. A suggestion was made that for example as Commissioners of Water Resource Management have questions for the Navy, there is opportunity to do so; you can also be a part of that process and encourage it. As a regulator like DOH, the Commission

plays an active role in protecting our water resources and encourage the Commission to ask questions directly to the Navy (*notified to the Commissioners of the upcoming October 28th meeting and encouraged an active engagement process*).

Commissioner Hannahs – reiterated on the graph shared earlier by Ms. Seto and commented on the progress schedule of it being ahead or behind and noted there's no other status indication of the tanks tracking progress.

Commissioner Meyer – thanked Ms. Seto on the presentation and asked on the availability of this report and on additional details. This is vital to the Commission and our efforts at protecting the drinking water resource as the potential for lasting damage is extreme.

Commissioner Seto – the Supplement is 520 pages, and the link will be sent to the Deputy for distribution and to post upon (CWRM's) website. My efforts include the assistance of the Red Hill Team and appreciate all the work done and continue to do.

Commissioner Katayama – thanked Ms. Seto for the presentation and asked if the alternative R-1 is the consensus cost-benefit approach in fixing this problem.

Commissioner Seto – the Navy has proposed 1A as BAPT at this time and the regulating agencies are still reviewing that decision.

Commissioner Katayama – the timeline chart presented, what's driving that?

Commissioner Seto – the schedule referring to is their clean, inspect and repair schedule; it's not the schedule to bring the tanks into BAPT, whatever that's determined to be. They're ensuring the tanks are in good condition to continue until they can get into BAPT.

Commissioner Katayama – what's protecting the groundwater from contamination?

Commissioner Seto – in their processes, they have a system of systems to monitor the fuel going in and out of the tanks. The Navy says that is how they're protecting the groundwater at this time and are still evaluating on what we (the regulating agencies) believe that is.

Commissioner Katayama – is there a back-up solution in the event the Navy is not proficient in containing their fuel?

Commissioner Seto – a risk item is to have a water treatment facility for the Red Hill Shaft area but have not been given an update if their moving forward with that and with the funding requirements.

Commissioner Buck – commented it will be cheaper now to relocate those tanks rather than spending the monies and delaying the timeframe.

Commissioner Seto – it's still under consideration.

Commissioner Meyer – in the late 80's-90's when EPA shut down most underground storage tanks, large or small and forced reconstruction either a double-wall (inspected and alarmed) or above ground storage tank, I recollect there were not acceptable alternatives of a single-

wall underground – is that true? If so, why is the Navy not entertaining more conventional alternatives for reconstruction?

Commissioner Seto – apologize as I’m not too familiar with the upgrades back then; but for the upgrades at Red Hill, it was an option proposed in their original review for the facility and not sure why it’s not continued as an option. Everything is still possible until we figure out what we want them to do.

Commissioner Buck – clarified that the military are exempted from those regulations.

Commissioner Kagawa-Viviani - referred to the spills and containment – it doesn’t line up with the timeline. Who’s assessing what risk is and probabilities-is it DOH, EPA or BWS? Where is that information?

Commissioner Seto – the risk assessment evaluation is conducted by EPA and DOH and we are reviewing their submittal for Section 8 and that information is upon either of the three agencies webpage.

Chairperson Case thanked Ms. Seto for the hard work performed involving this matter.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

October 19, 2021 (Tuesday)

November 16, 2021 (Tuesday)

This meeting adjourned at 1:06 p.m.

Respectfully submitted,



RAE ANN HYATT
Secretary

OLA IKA WAI:



M. KALEO MANUEL
Deputy Director

Written Testimonies Received:

September 21, 2021

Suzanne D. Case, Chairperson and Members
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: Non-Action Item B2 - June 18, 2021 Order to Honolulu Board of Water Supply to Bulkhead Ha'ikū Tunnel (Well No. 2450-001) and Reduce Withdrawal to 0.3 million gallons per day: He'eia Hydrologic Unit, Ko'olaupoko, O'ahu

The Honolulu Board of Water Supply (BWS) provides the following update regarding our efforts to comply with the abovementioned Order by the Commission on Water Resource Management (CWRM). Specifics of this Order that were designated for progress reporting to CWRM in September 2021, and our related activities to date as follows:

BWS Reduction to 0.3 MGD from Ha'iku Tunnel

As shown in the graph below, BWS has reduced the flow from Ha'ikū Tunnel since January 2021, from approximately 1.0 MGD to 0.5 MGD and then to 0.3 MGD on August 7, 2021. The subject flow was adjusted in stages to allow for interconnected water system adjustments and minimize the possibility of low service pressures at high elevation properties and avoiding mainbreaks from hydraulic hammer within the Windward 500 water system.

Water Production Reporting

BWS expects a new water meter to be installed before the end of the year. Until then, we do not have daily production data, only physical spot reads. Our estimated monthly production report to the BWS Board is current to August 2021.

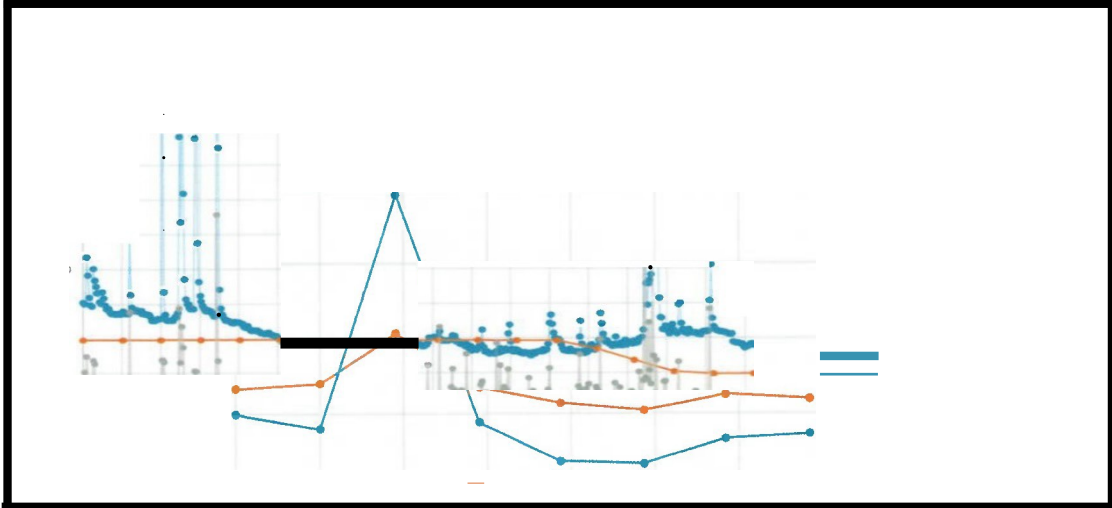
In order to install the new meter, we will have to shut down both Ha'iku Tunnel and Ha'iku Well for 30 days and cut into the 16-inch pipeline. However, we require Iolekaa Well back in service first. The shutdown will occur in the next several months when water demand is typically lower.

Ms. Suzanne D. Case, Chairperson and Members
September 21, 2021 Page 2

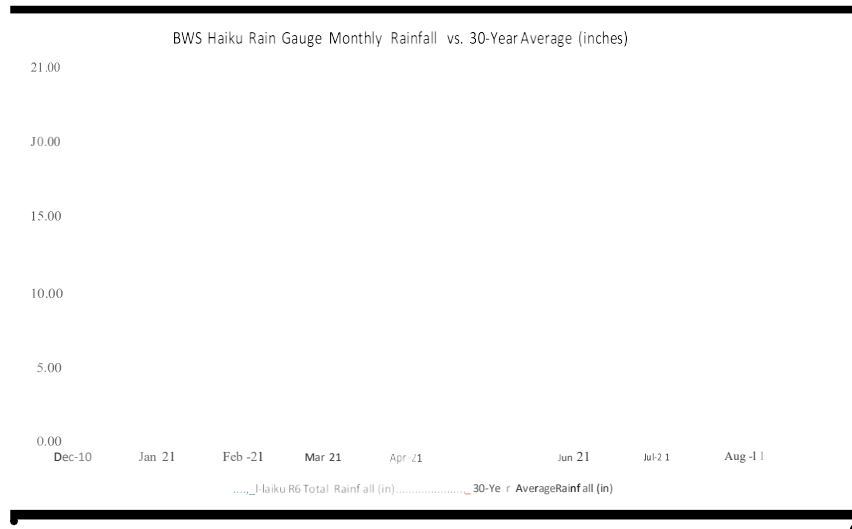
Monitoring Ha'iku Tunnel and He'eia Stream Flow

The graph below displays the streamflow as measured at the USGS He'eia Stream Gauge (16275000), rainfall from our Ha'iku rain gage and source production. Rainfall in Ha'iku valley,

as measured at the BWS Ha'iku Rain Gauge, has been below normal for all but one month in 2021. This likely contributes to the lack of streamflow increase in He'eia Stream even when Ha'iku Tunnel flow was reduced. It will take time and rainfall for water to build up behind the bulkhead.



The monthly total rainfall data since January 2021 from BWS Ha'iku Rain Gauge, compared to the average over the past 30-year base period, is displayed below.

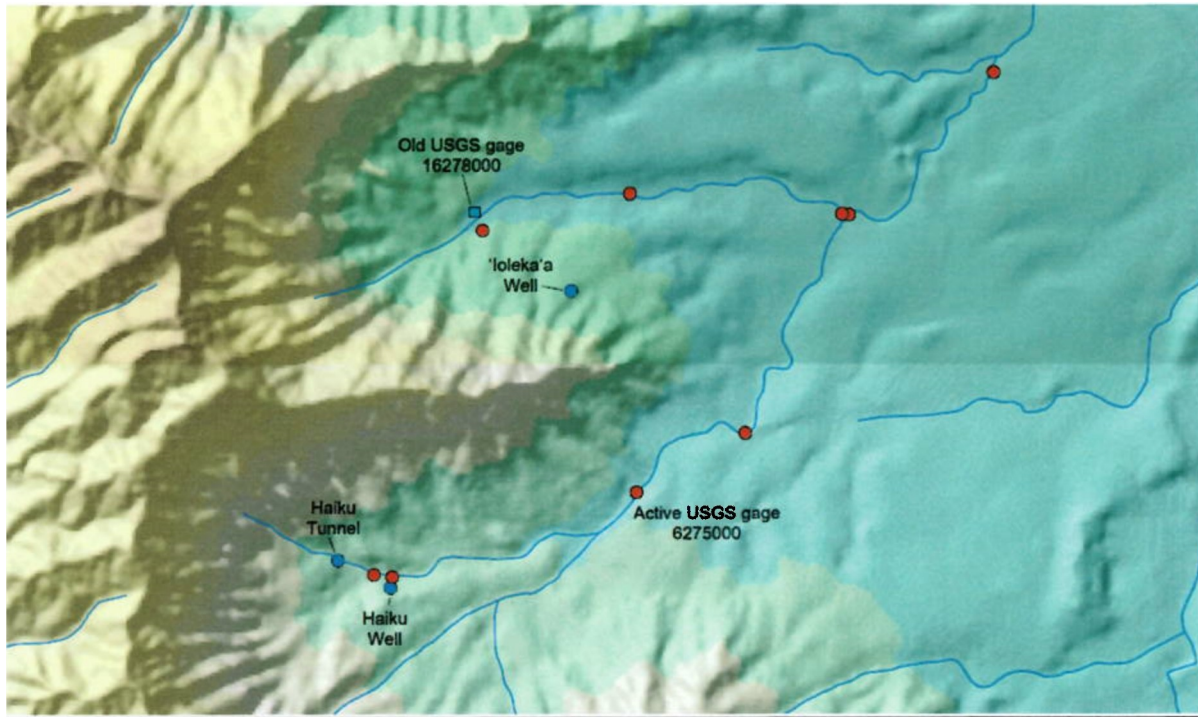


Installation of New Pressure Gage

BWS operations crews are scheduled to install a new pressure gage at the Ha'iku Tunnel portal in October. There are two pressure gages both reading different pressures. Based on a portal elevation of 550-feet, we believe there is approximately 87 feet of head behind the last bulkhead. The new pressure gage readings will confirm existing data and serve as a key indicator of dike water recovery. Higher head levels behind the bulkhead are expected to increase discharges into the gaining segments of both Ha'iku and 'Ioleka'a Streams.

Stream Surveys:

USGS has initiated their field reconnaissance including stream seepage runs.

**Assessment of Bulkhead Feasibility and Preliminary Engineering Report**

BWS is in the process of procuring a consultant to conduct a "Ha'ik0 Tunnel Bulkhead - Preliminary Engineering Study". An executed contract is expected by the end of the year. The draft scope of work is attached. The budget is \$500,000.00 for the 2-year study.

Limitation on Water Use for Large Users Expansion Plans

BWS letters were sent to large water users in the Windward 500 system that have expansion plans including the State Department of Health, Adventist Health Castle and Hawaii Memorial Park Cemetery notifying them of the June 18, 2021 CWRM Order. In light of the limitation on water supply, BWS is requiring necessary actions to limit increases in water use pursuant to

Section 1-101.1 Availability of Water, and Section 1-112 Use of Nonpotable Water required for Large Landscaped Areas, BWS Rules and Regulations.

If you have any questions, please contact me at 748-5061.

Very truly yours,
Ernest Y.W. Lau, P.E
Manager and Chief Engineer

Attachments

Testimony for the Meeting of the Commission on Water Resource Management

In re: the Issue of the Status of Waikapū Interim Instream Flow Standard Compliance and Water Availability Issues on the South Waikapū Kuleana ‘Auwai, Waikapū Surface Water Hydrologic Unit, Nā Wai ‘Ehā, Maui

This testimony is made on behalf of ‘Ohana Alves, the farmers of Alakani Farms, who have been implementing traditional kalo farming practices that are protected under Native Hawaiian water rights pursuant to Haw. Const. Art. XI sec. 7; HRS §7-1. We have been farming in the area of Waikapū with the use of the south Waikapū kuleana ‘auwai from the years 2014 until present. Our farm represents significant ecological, cultural, and community value to the island of Maui.

For the past 2020-2021 year, the water supply through the south Waikapū kuleana ‘auwai has been extremely insufficient and detrimental to our farm. For at least the past six months, our farm has received zero water flow from the ‘auwai into our lo‘i kalo. Our farm has diminished in size and production from about half an acre of lo‘i kalo to zero. Our production yield has decreased to nearly nothing.

During this time of no water flow, we have cared for the ‘auwai system and have witnessed many instances of intermittent flow and non-compliance use, which directly affects the water reaching us. We have also witnessed users who have less water flow allocations receive water before our water allocation begins. For example, the gate before the reservoir is cemented shut and does not allow any flow into the ‘auwai before the reservoir intake. Due to the physical location of the landowners’ property above the area of our farm, these landowners have the ability to take first and leave us with what's left over. We are clearly not getting our fair and legally-mandated allocation of water to our farm.

TO BE CLEAR, THERE IS NO KULEANA WATER REACHING OUR FARM. WHY SHOULD ENTITIES WITH LESSER ALLOCATION AMOUNTS HAVE WATER WHILE WE DO NOT? THIS IS AN ISSUE THAT REQUIRES IMMEDIATE CHANGE.

There needs to be an immediate change in this system by ensuring the appropriate management of the flow to allocated farms in the correct order. This is a mandate provided by law which CWRM is entrusted to carry out. Given our consistent monitoring of recent allocations, and the protection of our water allocation as part of our Native Hawaiian water rights, we find the current distribution system insufficient to fulfill the needs of our lo‘i kalo farm. We ask that an equitable system be created in which we, an ‘ohana with kuleana water rights, have the same authority as above landowners to monitor and care for the south Waikapū po‘owai where our stream begins (before the reservoir intake). We also request that the flow system be modified to supply water towards the ‘auwai (before the reservoir intake) before allowing less allocated water users their distribution of water. We respectfully submit this testimony and mahalo you for your future diligence with this issue.

‘Ohana Alves - Dated 9/18/2021



Hui o Nā Wai 'Ehā

Ola i ka wai WWW.HUIONAWAIEHA.ORG

Hui o Nā Wai 'Ehā Board of Directors

Hōkūāo Pellegrino
(President)

Koa Hewahewa
(Vice President)

Lani Eckart-Dodd
(Treasurer)

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(Board Member)

Kamalani Uehara
(Board Member)

Maui Tomorrow (Collaborator)

Albert Perez
(Executive Director)

Legal Counsel

Isaac Moriwake (Earthjustice)

Pamela W. Bunn (Dentons)

September 18, 2021

Re: South Waikapū Kuleana 'Auwai Complaint Aloha e Chair Case and Commissioners,

On behalf of the Board of Hui o Nā Wai 'Ehā and South Waikapū Kuleana 'Auwai Users and Permit Holders: Alves 2260E/2261N, Smyth/Minamina Brown 2217E/2218N, Higa 2366N, and Kamasaki 2368N and Harger 2156E, we would liketo provide written testimony to supplement the formal Complaint Filed by Hui o Nā Wai 'Ehā on August 11, 2021, regarding the injustices occurring on the South Waikapū Kuleana 'Auwai between October 2020 and the present. We have broken our testimony down in the format of Timeline & Facts, Problems and Solutions. While we feel it is imperative that you review in detail the complaint that we filed, this written testimony provides a much more comprehensive and up-to-date review of the situation on hand. The Final D&O that all of you signed on June 28, 2021, makes it very clear that as the trustees of our streams, rivers and other freshwater resources, that you have the responsibility as well as obligation to enforce the ruling on hand. What we have is a very unfortunate situation that has literally dragged on for almost 1 year and without any resolve whatsoever by the State Commission on Water Resource Management. This problem demands your immediate attention and resolution to ensure that not only the rights of Native Hawaiian kuleana kalo farmers are being met but also that the processes, decisions and orders and laws set forth by you as commissioners are being adhered to and followed through on.

Timeline & Facts:

Fact #1: 121+ documented acres of lo'i kalo cultivation on kuleana lands south of Waikapū Stream during the time of the Māhele (1848). Over 45 Land Commission Awards and Government Grants were awarded to Native Hawaiian kalo farmers. Lo'i kalo for were originally irrigated from a well-documented traditional 'auwai which derived from the Waikapū Stream roughly 500 feet above the present North Waikapū Kuleana 'Auwai.

Fact #2: Following the construction of the Emmesly Reservoir (a.k.a. Reservoir 1) in 1904 and South Waikapū Plantation Ditch by Wailuku Sugar Co., South Waikapū

Kuleana Kalo Farmers were cut off from their original water source which was the Waikapū Stream and forced to utilize water from the plantation era system.

Fact #3: From 1904 to October 2020, South Waikapū Kuleana Kalo Farmers received their water from the Wailuku Sugar Co./Wailuku Agribusiness/Wailuku Water Co. South Waikapū Diversion/Ditch (1.75 miles into the Waikapū Valley) via Waikapū Reservoir (0.9 miles from first active Kuleana User).

Fact #4: In 2007, Wailuku Water Co. provided documentation specifying that they were delivering 840,000 mgd to 13 South Waikapū Kuleana Users (See Wailuku Water Co. Data Provided in Nā Wai 'Ehā Contested Case and Hui Complaint 8-11-2021)

Fact #5: In 2007, Wailuku Water Co. cut off the kuleana waterline and water to kuleana users; Higa – 2366N and Kamasaki – 2368N.

Fact #6: Actively cultivated South Waikapū kuleana kalo farming on kuleana lands drastically decreased from 121 acres (circa 1850) to 8 acres (2021).

Fact #7: Between 2000-2004, Clayton Suzuki, former Vice President of Wailuku Water Co. and during his tenure with WWC, installed a private water line and other irrigation infrastructure into the South Waikapū Kuleana 'Auwai and diverted water away from the 'auwai through Waikapū Properties LLC Land and onto his property.

Fact #8: Between Nā Wai 'Ehā Contested Case #1 (2008-2014) and Contested Case #2 (2016-2021), the number of active South Waikapū Kuleana Kalo Farmers/Users went from 13 in 2008 to 6 in 2021.

Fact #9: 2021 Final Contested Case D&O recognized 6 South Waikapū Kuleana 'Auwai/Kalo Farmers/Users which irrigates lo'i kalo, diversified agriculture and domestic uses). Priority uses differed from user to user as well (See Final D&O and Hui Complaint 8-11-2021 for detailed information).

Fact #10: 2021 Final D&O permitted a total amount of water via the South Waikapū Ditch as 267,026 mgd and 265,188 mgd for kuleana users (-1838 gpd for Off-Stream User – Waikapū Properties LLC). This is a 572,974 mgd or 68% reduction of water use and delivery from 2008 to 2021.

Fact #11: South Waikapū Plantation Diversion/Ditch, Reservoir 1 and South Waikapū Kuleana 'Auwai are owned by Waikapū Properties LLC and Hana'ula Ranch LLC with Wailuku Water Co. holding an easement over the aforementioned irrigation infrastructure presently.

Fact #12: South Waikapū Kuleana Kalo Farmers/Users have rarely ever been cut off from water until October 2020, at which time Wailuku Water Co. installed a butterfly valve and lock on the 6" Pipe that comes out of Reservoir 1 and drops water down into the South Waikapū Kuleana 'Auwai. This is when South Waikapū Kuleana Kalo farmers noticed their water being cut off due to newly installed valve limiting and/or shut off.

Fact #13: Hui o Nā Wai 'Ehā and South Waikapū Kuleana 'Auwai Kalo Farmers immediately contacted CWRM Deputy Director Kaleo Manuel about the lack of water from the kuleana 'auwai on numerous occasions between October 2020 and July 2021 (see Complaint 8-11-2021). The Alves and Smyth/Minamina Brown family who are the largest users and kalo farming permittees were without water and continue to be without water except for Clayton

Suzuki who has been able to capture whatever amount of water is flowing into the kuleana 'auwai. Clayton Suzuki who is a permittee does not have appurtenant rights that are recognized in the 2021 Final D&O and does not have Native Hawaiian lineal/cultural T&C rights recognized for his use unlike that of Native Hawaiian families and kalo farmers; Alves and Smyth/Minamina Brown. Hui o Nā Wai 'Ehā was initially told by Deputy Director Kaleo Manuel that he would assist and reach out to the Attorney Generals involved to assist with a minute order but said it was not needed because he would try to resolve this at the Commission level, but nothing came about. After his acknowledging his inability to get any traction on this issue, he explained that the Final D&O would resolve this long-standing issue, yet after 2 months since the Final D&O has been out, nothing has happened. Therefore, we filed a formal complaint on August 11, 2021, in order to bring more attention to this issue.

Fact #14: Since the 2021 Final D&O has been published, all South Waikapū Kuleana Users are without their permitted amount of water except for Clayton Suzuki and off-stream user Waikapū Properties LLC and the possibility of an unpermitted user.

Fact #15: Wailuku Water Co. is supplying water to a non-permitted user of the South Waikapū Ditch/Reservoir 1 to Kumu Farms. Kumu Farms no longer farms on any lands associated with Waikapū Stream/Ditch/Reservoir 1. Hui o Nā Wai 'Ehā worked closely with Waikapū Properties during the recent contested case to move all of the Kumu Farms and Hoaaloha Farms operations "below" the Waihe'e Ditch and to transition to that water source. Kumu Farms transitioned from Waikapū Field 735 which was irrigated from Waikapū Stream/Ditch/Reservoir 1 to now farming Field 737, 761 and possibly some of 763 which is currently irrigated from the Waihe'e Ditch. There is absolutely no evidence of any farming on the Waikapū Fields. In fact, farming stopped on those fields more than 2 years ago. Hui o Nā Wai 'Ehā, however has learned that there is a pipeline that goes from Reservoir 1 beyond the permitted use by Waikapū Properties LLC for their cattle by allowing water to enter into other reservoirs and the Waihe'e Ditch below the Waikapū Fields.

Fact #16: Wailuku Water Co. has been diverting between 300,000 and 700,000 mgd between October 2020 and September 2021 based on data recovery at Reservoir 1, yet little to no kuleana water is reaching South Waikapū Kuleana Users. Hui o Nā Wai 'Ehā believes this is because other unpermitted users off-stream from Reservoir 1 is occurring. These are customers who are paying for water from Wailuku Water Co.

Fact #17: South Waikapū Kuleana 'Auwai (0.9 miles of open ditch from Reservoir 1 to Alves Family Kuleana) is completely overgrown due to the lack of water flowing in the ditch and even if the appropriate flow was to be released, it would be almost impossible in the current state for water to reach the kuleana users beyond Clayton Suzuki's private water line located in the 'auwai.

Fact #18: Between October 2020 and July 2021, when South Waikapū Permitted Kuleana Users walked up the ditch multiple times to understand the problems from lack of water, to witness Clayton Suzuki receiving water but nothing flowing beyond, to the newly installed 6" valve and lock limiting or cutting off water from flowing into kuleana ditch. They would consistently be told that they were not allowed to be up there, that they had no access to water, never allowed to adjust any part of the ditch system or to even be allowed to clean the 0.9 mile kuleana 'auwai.

Fact #19: There is an existing sluice gate that would allow water to easily enter the South Waikapū Kuleana 'Auwai prior to Reservoir 1 and could be managed and gauged to allow the permitted amount of water into the kuleana 'auwai. In August of 2021, Wailuku Water Co. removed the existing locked wooden sluice gate and then cemented the entire gate shut.

cutting off any other opportunity for water to flow into the kuleana 'auwai, forcing kuleana users to rely on a 8 million gallon reservoir to fill up in order to get any bit of water.

Fact #20: As we write this, South Waikapū Kuleana Kalo Farmers continue to have no water, no access to ditch or reservoir and no allowable access to clean, maintain and manage their kuleana 'auwai from landowner Waikapū Properties LLC and easement owner Wailuku Water Co.

Problems:

#1: South Waikapū Kuleana Kalo Farmers and Permittees have little to no kuleana water. Specifically Native Hawaiian Families and wetland kalo farmers - Alves and Smyth/Minamina Brown have been unable to cultivate their lo'i kalo. Higa and Kamasaki have had their kuleana pipe cut off and no access to kuleana water since 2007.

#2: Reservoir #1 needs to be filled at a substantial amount in order to build capacity and pressure for water to reach the 6" kuleana pipe.

#3: 6" kuleana pipe now has a valve and lock on it to limit kuleana 'auwai water.

#4: Clayton Suzuki's has a private kuleana water line and irrigation system that derives 0.4 miles above all other South Waikapū Kuleana Kalo Farmers and Users.

#5: Unpermitted amount of water being delivered to off-stream users; Kumu Farms from the Waikapū Properties LLC water line via Reservoir 1.

#6: Inability for South Waikapū Kuleana Users to control their water source, clean and manage the 0.9 miles of the South Waikapū Kuleana 'Auwai due to Waikapū Properties LLC private land and Wailuku Water Co.'s Easement over the irrigation system. Native Hawaiian Traditional & Customary Rights are being denied and not protected.

#7: Access to restore and use the ancient south Waikapū kuleana 'auwai and po'owai (intake) from Waikapū Stream is being denied by Wailuku Water Co.'s President and Makani 'Olu Ranch landowner - Avery Chumbley.

Solutions:

#1: Limit flow of water into Reservoir 1 for Waikapū Properties LLC who is permitted only 1,838 gpd. Water for South Waikapū Kuleana Kalo Farmers & Users should come directly from South Waikapū Ditch **PRIOR** to entering Reservoir 1 via an existing sluice gate (see 8-11-2021 Hui Complaint for diagram, photographs and plans). Discontinue filling up Reservoir 1 which is unlined and requires a lot of water just to enter the 6" pipe with a valve and lock. CWRM should enforce the Final D&O by requiring Wailuku Water Co. to remove the cement they recently installed where the existing sluice gate was and to modify the sluice gate to be open and gauged to provide the permitted amount of water to flow directly into South Waikapū Kuleana 'Auwai for kalo farmers below.

#2: CWRM should require Clayton Suzuki who is a permittee but with no appurtenant rights or Native Hawaiian T&C rights to receive his permitted amount of water either after or to adjust his access point of kuleana water along the South Waikapū Kuleana 'Auwai. This is to ensure that Native Hawaiian South Waikapū Kuleana Kalo Farmers Alves & Smyth/Minamina Brown have priority use of water as outlined in the Final D&O.

#3: CWRM to ensure no other off-stream use of the South Waikapū Ditch & Reservoir 1 is occurring other than for permittee Waikapū Properties LLC which has an allocation for 1,838

GPD for cattle troughs.

#4. CWRM to either require Wailuku Water Co. and Waikapū Properties LLC to provide access for South Waikapū Kuleana Kalo Farmers/Users to maintain and manage kuleana ‘auwai (0.9 miles of open ditch) AND/OR to allow access to restore the traditional ‘auwai system from the Waikapū Stream (0.25 miles).

We humbly ask that you work diligently on resolving this issue in a very timely manner as a means to reduce any further pain and damage to these kuleana kalo farmers and other permittees who have been deprived of their rights and access to kuleana water by an evil entity who has made it their business model and mission to restrict and cut-off the lifeline and way of life of Native Hawaiians and others throughout the Nā Wai ‘Ehā community.

Me ka ha‘aha‘a,

Hōkūao Pellegrino

Hōkūao Pellegrino
(President)

Verbal and Written Testimony for CWRM Agenda Tuesday
9/21/2021

Waikapu Valley Stream: Kuleana Law Violations (Recurring)

This verbal testimony is requested to lift up the names of water warriors now in the heavenly realm, Aunty Bernice Kekahuna of Honopou, East Maui and Aunty Diannah La’i Goo of Waihe’e, as I carry on the kuleana.

Please be reformed that HRS 7-1 reads in part, as follows:

§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use. Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way.

The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use. [CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

The water being cut off by the corporate rancher up stream of Royal Patent 4948 is a clear violation of water rights afforded to kanaka maoli by virtue of CC 1859, § 1477 affirmed by HRS 7-1.

Over the past 11 months, no water has flowed in the natural auwai system; afforded to us for over 200 years. Our family has been entrusted to the ancestral kuleana of this place; and served as the original conservation stewards till now. This act of intentionally depriving water is an encroachment upon aboriginal rights of kanaka maoli, affirmed and guaranteed protection by the laws of Hawaii.

Since October 23, 2020, with no water in the auwai, I have continually asked how this continues to be allowed to happen, specifically addressing Dean Uyeno. To this date, no answer, verbal or written has been provided referencing any rules and/or laws to the contrary. In this matter, the Attorney General and Department of Land and Natural Resources (formerly known as the Ministry of Interior); is egregiously lawless.

Therefore, at this juncture, I implore you to not be complicit; and humbly ask that you have consideration and concern for Rights Established and Declared by Mo'i Kamehameha III; and affirmed as evidenced in HRS 7-1. Please allow me the courtesy of your intentions. For the sake of posterity, our cultural roots must be preserved and perpetuated. I want to be a part of a society in which my footprint mattered.

Respectfully Submitted I Remain, Crystal Mae Nalani Smythe
Daughter of Edwina Smythe

1839 KUMUKĀNĀWAI NO KO HAWAI'I NEI PAE 'ĀINA.

Ua hana mai ke Akua i nā lāhui kānaka a pau i ke koko ho'okahi, e noho like lākou ma ka honua nei me ke ku'ikahi, a me ka pōmaika'i. ¹ Ua hā'awi mai nō ke Akua i kekahi mau waiwai like, no nā kānaka a pau, me nā ali'i a pau o nā 'āina a pau loa.

2. Eia kekahi mau waiwai āna i hā'awi like mai ai i kēlā kanaka kēia kanaka, i kēlā ali'i kēia ali'i. 'O ke ola, 'o nā lālā o ke kino, 'o ka noho ho'opa'a 'ole 'ia, a me ke ke'ake'a 'ole 'ia, 'o nā mea a kona lima i hana ai, a me nā mea a kona mana'o i ho'oponopono ai.

3. Na ke Akua mai nō ho'i ka 'oihana ali'i, a me ka noho ali'i 'ana i mea e malu ai; akā, i ka hana 'ana i nā kānāwai o ka 'āina, 'a'ole pono e hana 'ia kekahi kānāwai ho'omalū ali'i wale nō, a ho'omalū 'ole i nā maka'āinana. 'A'ole ho'i pono ke kau i ke kānāwai ho'owaiwai i nā ali'i wale nō, a waiwai 'ole nā maka'āinana; a ma hope aku nei, 'a'ole loa e kau 'ia kekahi kānāwai kū'ē i kēia mau 'ōlelo i 'ōlelo 'ia ma luna, 'a'ole ho'i e 'auhau wale 'ia, 'a'ole e ho'okauā 'ia, 'a'ole e ho'ohana wale 'ia kekahi kanaka ma ke 'ano kū'ē i ua mau 'ōlelo lā.

4. No laila e ho'olaha 'ia aku ai kēia 'ōlelo, i mea ho'omalū like i nā kānaka a pau a me nā ali'i a pau o kēia pae 'āina; i ke'ake'a 'ole ai kekahi ali'i i kekahi o nā maka'āinana, i like ho'i ka malu o nā ali'i, a me nā kānaka ma lalo o ke kānāwai ho'okahi.

5. Ua ho'omalū 'ia ke kino o nā kānaka a pau, a me ko lākou 'āina, a me ko lākou mau pā hale, a me ko lākou waiwai a pau; 'a'ole ho'i e lawe 'ia kekahi mea, ke 'ōlelo 'ole 'ia kēlā mea ma ke kānāwai. 'O ke ali'i e hana i kekahi mea kū'ē i kēia Kumukānāwai, e pau kona noho ali'i 'ana ma kēia pae 'āina 'o Hawai'i nei, ke ho'omau 'ia ma laila, pēlā nā kia'āina, a me nā luna a me nā konohiki a pau.

Written Testimony for CWRM Agenda Tuesday 9/21/2021

Waikapu Valley Stream: Kuleana Law Violations (Recurring)

Please be reformed that HRS 7-1 reads in part, as follows:

§7-1 Building materials, water, etc.; landlords' titles subject to tenants' use.

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

[CC 1859, §1477; RL 1925, §576; RL 1935, §1694; RL 1945, §12901; RL 1955, §14-1; HRS §7-1]

The water being cut off by the corporate rancher upstream of Royal-Patent 4948 is a clear violation of water rights afforded to kanaka maoli by virtue of CC 1859, § 1477 armed by HRS 7-1.

Over the past 11 months, no water has flowed in the natural auwai system; afforded to us for over 200 years. Our family has been entrusted to the ancestral kuleana of this place; and served as the original conservation stewards till now.

This act of intentionally depriving water is an encroachment upon aboriginal rights of kanaka maoli, armed and guaranteed protection by the laws of Hawaii.

In this matter, the Attorney General and Department of Land and Natural Resources (formerly known as the Ministry of Interior); is egregiously lawless.

Therefore, at this juncture, I implore you to not be complicit; and humbly ask that you have consideration and concern for Rights Established and Declared by Mo'i Kamehameha III; and armed as evidenced in HRS 7-1. Please allow me the courtesy of your intentions.

For the sake of posterity, our cultural roots must be preserved and perpetuated. I want to be a part of a society in which my footprint mattered.

Respectfully Submitted I Am,

Dawnalyn Poliala Tomoe Smythe Fujiwara
Great Granddaughter of Elaine Pahialii Mullaney