

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 19, 2021
TIME: 9:00 am
PLACE: Online via Zoom
Meeting ID: 851 7641 9228

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:01 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. 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: Ms. Cindy Young

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

OTHERS: Mr. Paul Subrata (Maui Land & Pine), Mr. Gilbert Keith-Agaran, (Counsel for Maui Land & Pine), Mr. Anthony Carrasco (Hawaii Water Service), Mr. John Kadowaki (Hawaii Water Service), Mr. Ken Kawahara (Akinaka & Assoc.), Mr. Austin Inouye (Akinaka & Assoc.), Mr. Avery Chumbley (Wailuku Water Company), Mr. Mike Atherton (Waikapu Properties), Mr. James Geiger (MRW Law), Mr. Paul Mancini (MRW Law), Mr. Isaac Moriwake (Earthjustice), Mr. Hōkūao Pellegrino (Hui o Nā Wai 'Ehā), Ms. Crystal Smythe, Ms. Emilou Alves, Mr. Robert Street

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.

Chairperson Case announced that Item C-1 will be withdrawn from the agenda due to a motion received in the Contested Case filed by Sierra Club.

101921 00:02:07

A. APPROVAL OF MINUTES

September 21, 2021

Commissioner Hannahs –noted corrections to page 23.

PUBLIC TESTIMONY – None

MOTION: (HANNAHS/KATAYAMA)

To approve the minutes with noted corrections to be made.

UNANIMOUSLY APPROVED

101921 00:04:08

B. ACTION ITEMS

- 1. Approve Amendment to Commission Order to Maui Land & Pineapple for Modification to Diversion 770 on Honokōhau Stream (Honokōhau Ditch Intake #1) Originally Approved on November 20, 2019, in Order to Meet the Instream Flow Standard for Honokōhau Stream, Surface Water Hydrologic Unit of Honokohau (6014), Honokōhau, Maui**

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

Dr. Strauch briefly stated the damages to the intake areas due to the 2018 Hurricanes (Lane and Olivia) which left the operations imperiled. In November of 2019, the Commission ordered MLP to upgrade the intake on Diversion 770 so that only the volume of water needed by MLP, Department of Hawaiian Home Lands, Maui Department of Water Supply, or others, would be diverted from Honokōhau Stream. In 2020, MLP replaced the damaged intake grates with new ones.

CWRM staff has since worked with MLP's consultant to explore options regarding the intake as it was deemed not feasible to add a remotely controlled operation gate to the intake and because of this, staff deemed the necessary solution of replacing the existing intake altogether and add a restrictor plate to the bottom and top of the intake.

This modification to the Order will align with the intentions of the original Order (e.g., keep more water in the stream at the source) and provide for improved management (e.g., remotely operable return flow), while being more practicable in implementation. Dr. Strauch explained some of the photos of the intake provided in the submittal.

QUESTIONS

Commissioner Buck – asked on the recommended timeline in item 1A – if 30-days is reasonable?

Dr. Strauch – yes, we feel it is as long as the weather cooperates.

Commissioner Buck – commented on previous testimony regarding the timeline of 1-year is too long and that 1A is the most important to happen right away and asked if he (Dr. Strauch) has any comments on reducing the rest of the timeline to 6-months?

Dr. Strauch – it will depend on the availability of supplies already on hand and flow conditions as a fairly dry period of time is more ideal.

Commissioner Buck – reiterated on the timeframe of item 1A

Dr. Strauch – we're also looking long-term and getting the modifications to Adit 16 and the ability to run a power supply system and communications in order to fine tune the availability to meet the IIFS is really important.

Commissioner Hannahs – asked on clarification of the relationship between Hawaii Water Service and MLP – does MLP retain ownership of the infrastructure and the assets and Hawaii Water Service is their operator?

Dr. Strauch – deferred that answer to Maui Land & Pine (MLP)

Commissioner Katayama – asked on required permits

Dr. Strauch – Dean can comment on what might be necessary, but at minimum, a Request for Determination.

Commissioner Katayama – and has that (permits) been calculated in the 1-year timeframe.

Mr. Uyeno – from our perspective we don't believe that a permit is required since the modifications are being done to the intake grate for the diversion and not to the actual diversion structure of the dam. Ken Kawahara can speak of other permit requirements that we're not aware of. I believe it's built into part of the timeline and would need to check with other agencies such as Army Corps of Engineers and Dept. of Health.

Dr. Strauch – noted on the staff submittal on page 13, the diagram is mislabeled (*shared screen and explained the diagram of the Aotaki Weir*)

COMMENTS/DISCUSSION (from Applicant/Consultants)

Mr. Gil Agaran (Counsel for Maui Land & Pineapple) – Thank you Chair Case. Present today is Ken Kawahara who's the consultant (Akinaka & Associates) as well as Austin Inouye; also present is Paul Subrata from Maui Land & Pineapple, John Kadowaki and Julian Gandara from Hawaii Water Service. Generally, we have one slight difference from what the staff is recommending, which has to do with whether or not to install the lower restrictor. As he pointed out, the Aotaki Weir and sluice gate allows us to make the adjustment that would operate similarly to what would happen with the lower restrictor. I would like to have Mr. Kadowaki give us an update on the work of what's been done in maintaining the system.

I would like to apologize as I was under the impression the community and staff wanted us to move quickly on the interim measures. I think Mr. Kadowaki has people there doing the work this week. Mr. Kawahara can describe what we submitted to staff that's attached to the submittal.

Mr. John Kadowaki (Hawaii Water Service) – workers have been working in clearing the trails as access to the Weir was nonexistent for the last few months, we got workers up there as early as a week ago and today we have a work crew installing the high flow restrictor and

also clearing in front of the gates as I did an inspection last week and the front of the gates needed to be cleared to prepare for any potential upgrades that needs to be done.

QUESTIONS

Commissioner Meyer – the implication seemed to be that possibly the lower obstruction to ensure the minimum flow, might be dispensed with by opening a portion of the clean out port in the diversion structure itself. (John) you indicated that might be a possibility to avoid that smaller restriction plate-is that reasonable?

Mr. Kadowaki – from my initial inspection the other week, it seems like by opening the sluice gate it would achieve the same as a restrictor and at the same time keep it from fouling so quickly because of the limited space on the screen. It would be my first preference as the operator to better utilized the sluice gate and with a better understanding of how it was designed in the first place, it could solve a lot of our current issues.

Commissioner Meyer – it seems logical to me because the sluice gate is in fairly deep water and as you say it will not foul as quickly as a diversion or obstruction on the actual gate. Secondly, with the power and communication systems for the equipment further downstream, it seems there are daunting problems there. Historically, there weren't any phone service or lines in the valley itself and secondly, the valley is steep and narrow and the amount of available sunlight or a site for PV or battery system is very limited in terms of the power it could generate; is there any thought of stringing power to the access road?

Mr. Kadowaki – Ken and their team is looking into using a hydro source; using the water flowing in the ditch itself to power whatever instruments that will be used at remote sites.

Commissioner Meyer – thank you, it's a great idea.

Mr. Agaran – the other reason we are looking at the lower site is because this site is less accessible and doing PV would be very difficult to do.

Mr. Ken Kawahara (Akinaka & Associates) – we did look at to expand (on what John Kadowaki said and response to Commissioner Meyer) on all different aspects to get communication as well as power for a remote-controlled mechanism. We also looked at trying to put power and communication through the tunnel, but it wasn't feasible. Because the tree canopy is high, we ruled out PV so we're looking at hydro as a permanent solution for power with batteries for the actual power. For communications we are looking at satellite or a tower, so it's not that easy and that's why we looked at an alternative for doing it at diversion 770 or referred to as Aotaki Weir.

When we went up the first time, we had to go up by helicopter and we went when Ayron and his crew were up there, it's challenging. That is why we're looking at alternatives further downstream yet above the IIFS measuring location. As far what Dean mentioned regarding permitting, especially on a low restrictor, it's also challenging. We're working on other projects in other streams around the state, and whenever doing work in the streambed and concrete is involved, most likely there is a requirement from the Army Corps permitting which is time consuming and costly too. If we're putting a low-flow restrictor, my assumption is it will be as much watertight as possible and may involve pouring concrete on

the streambed below the bar screens as it's not uniformed, and water could go around the sides.

There's always concerns about operation and maintenance and maybe adjustment of the sluice gate at the Aotaki Weir might be a better alternative. the assumption we're making is any adjustment is to comply with the IIFS and taking a look at the CWRM data online, I believe 95% of the time the IFS is being met. The last time it wasn't, was on September 8, 2021; it's not very often it's not being met and maybe the adjustment at the Aotaki Weir can address that.

Commissioner Kagawa-Viviani – asked for a refresher regarding the sluice gate as it was not mentioned in the submittal.

Mr. Agaran – referred to the diagram Ayron showed noting the correction of what was labeled.

Commissioner Kagawa-Viviani – versus where the restrictor plates would hypothetically be that the same location?

Mr. Agaran – it's close (in proximity) and basically treated as the same structure (*referenced the diagram Ayron presented*).

Mr. Kawahara – that diagram was created by my team

Dr. Strauch – (*showed slide #7 [Honokōhau Stream Intake #1 at Aotaki Weir] of the submittal presentation explaining the photos dated July 7, 2017 and July 11, 2019, of the intake and sluice gate, noting the floods. Ayron further noted if the wetted path is necessary as there is continual mauka to makai flow around the Weir in the newly created channel due to the hurricanes but it's not necessarily a permanent solution*)

Commissioner Kagawa-Viviani – they're saying rather than putting a restrictor plate to allow the low flow through the sluice gate, is that correct?

Dr. Strauch – that's what they're proposing.

Commissioner Kagawa-Viviani – is that a path 'o'opu can navigate?

Dr. Strauch – they don't like going through tunnels; there's still mauka to makai flow around the weir in the other channels; but I wouldn't say that releasing water through the sluice gate provides a wetted path for 'o'opu.

Commissioner Hannahs – are you saying that while water in the stream to meet the IFS, the water won't be sufficient to satisfy one of the purposes which is to allow a wetted pathway and migration of 'o'opu?

Dr. Strauch – there would still be a wetted pathway around the Weir through the newly created channel but the released water through the sluice gate will not support a wetted pathway over the dam.

Commissioner Hannahs – how many days in a year would you say that happens?

Dr. Strauch – not sure

Mr. Paul Subrata (Maui Land & Pineapple) – based on the recent data we saw and as Ken mentioned, there were a low number of instances, such as September 8th where the IIFS was not met. My understanding is that 95% of the time, it is not a problem.

Commissioner Hannahs – I'm trying to get a sense of who the responsible party is here when I see the system has been sold to Hawai'i Water Service - what is Maui Land & Pine's continuing ownership role is and the role of Hawai'i Water Service?

Mr. Agaran – Hawai'i Water is the operator but don't own the assets; the assets remain with Maui Land & Pineapple.

Mr. Subrata – that is correct; with the sale of Hawai'i Water Service buying Kapalua Water Company; it is solely related to the system under Kapalua Resort. As part of that sale, we entered into two agreements: 1) for Hawai'i Water Service to manage the two wells around Kapalua Resort as well as maintain the (West Maui) ditch system and became the primary operator and interface from Aqua Engineers. John Kadowaki is the primary person that is our representative that the community, engineers or others deal with that communicates to me on issues, should consulting be necessary.

Chairperson Case called upon Mr. Anthony Carrasco

Mr. Tony Carrasco (General Manager, Hawai'i Water Service) – Aloha Honorable Chairperson and Commissioners. As Mr. Subrata mentioned, we purchased the assets for the drinking water side for the customers in addition to the potable water infrastructure and are in an operation and maintenance an agreement for the ditch system in addition to the wells.

We've been in business under our corporate office for almost 100 years. Me, personally, I have close to 20-years of experience as an operator and superintendent in ditch systems similar to this. This is a bit more challenging but will ensure we can get this completed timely.

Commissioner Hannahs – thank you; I gather you're the guys in the field and boots on the ground but the ownership interests and responsible party in the event of issues is still MLP?

Mr. Subrata – that is correct.

PUBLIC TESTIMONY

Ms. Karen Kanekoa (Nā Mamo Aloha 'Ā na o Honokōhau) – Aloha Kakahiaka Chair Case and Commissioners. We are a 501(c)3 non-profit made up of Honokōhau Valley residents and lineal descendants. We are committed to restoring and protecting the natural resources, cultural sites and practices throughout the Valley. We'd like to start by thanking each you for taking the time in listening to testimony today and for all of your aloha 'āina efforts across the pae 'āina.

Although we do support the staff recommendations amending the Commission's 2019 decisions, we'd like to see a more clear and speedy deadlines for all recommended actions being that this

has been dragged on and somewhat neglected this past two years. We've waited idle long enough and the stream and people of Honokōhau deserve better. We're asking for stricter enforcement and harsher punishment when deadlines are not met.

We're pleased to have made progress with MLP and Hawai'i Water Service and hope to foster these relationships to ensure a healthy future for the stream, 'āina and people of Honokōhau moving forward.

I was going to ask for further clarification regarding the restrictor plates but, Mahalo Ayron for making that clear. We don't support using the sluice gate instead of putting a lower flow restrictor plate as it seems like it would be causing the same problems as taro gate does which is being dug up and requires a lot of maintenance to keep clean. In my opinion, the IIFS is only being met because the Honokōhau people have been going up there and cleaning the taro gate for a long time to ensure adequate flow in the river.

I'd like to also raise the point that the IIFS amount of 8.6 mgd may not be sufficient enough in the coming years to sustain and maintain healthy and flourishing stream life as well to sustain traditional lo'i cultivation throughout the valley. We want to ensure our mo'opuna will be able to continue farming kalo in Honokōhau. This is important to us being that the kahawai and 'āina can't speak for themselves.

There's an 'ōlelo no'eau that we live by: he ali'i ka 'āina, he kauwā ke kanaka – land is chief, man is it's servant. I hope we can all continue to work together using best practices to ensure Honokōhau stream life and its people can continue to live pono for generations upon generations. Mahalo nui iā 'oukou pakahi a pau and thank you for listening today.

PUBLIC TESTIMONY – CONT'D

Ms. Kanoelani Steward – (*'ōlelo Hawai'i*)

Aloha. I'm from Lahaina and currently reside in Honokōhau. Mahalo nui to the CWRM staff and the board for your continuous hard work. I'm testifying today in overall support of the recommended amendments to the Commission order with a few suggestions. While we appreciate that the water waste complaint is addressed and acted upon, the timeline for these recommendations failed to give us specific concrete deadlines. The timeline on page five of the staff submittal is extremely vague and states...within 90-days, MLP will submit final engineering plans for all plans for approval by staff add modifications to be completed within one year; potentially delaying overall compliance by another year to install these temporary and permanent restrictor plates. Even after looking at the proposed schedule on page 17 of the staff submittal, I believe the time to construct and install these restrictor plates can be cut in half and that MLP has had time since the November 2019 meeting to layout their plans to comply with the CWRM order to upgrade the intake at diversion 770.

The original formal complaint was filed back in April 2019 and here we are in November 2021, and nothing of the intake has changed and neither has the amount of excess water entering the intake. As Commissioner Buck mentioned with the deadline of 6-months, I kāko'o that and suggest within 6-months, MLP should have all permanent restrictor plates installed keeping all low and high flows in Honokōhau stream and provide proof of compliance as well as formal notifications when these projects have been completed.

It was mentioned earlier that a plate on the bottom may not be installed; I don't agree with that as the reason for both plates was to limit water at the top at the highest part which water enters the tunnel; so that water doesn't have to be re-routed again into the stream. Additionally, as mentioned, it has been difficult for MLP to maintain the taro gate so how can we ensure that they'll be able to maintain the sluice gate?

In conclusion, our native stream species depend on high flows as cues to make their way back to freshwater ecosystems to continue and complete their lifecycle. These are essential to instream uses, the timeline of these recommendations and deadlines for completion should be amended to ensure these high flows reach the ocean, Mahalo.

PUBLIC TESTIMONY – CONT'D

Mr. Mahesh Cleveland (EarthJustice) – Good Morning Chair Case and Commissioners. As most of you know, we also have a waste complaint on behalf of some Moloka'i folks and we've been talking with folks of Honokōhau about their waste complaint and mahalo for the opportunity to weigh in. In talking with them, they share a lot of the same concerns as the folks we represent on Moloka'i and often rising to the top of that is the sense that these large diverters seem to be allowed a unreasonably long time to address their wasting of water resources.

From a community advocacy point of view, we see too many reasons why things are not addressed; and coming here we're hearing they need a whole year but only to do half as much to put in the one (1) plate. I want to Mahalo Mr. Kadowaki and his team for moving on that plywood plate because it seemed like a real simple solution for which there was no real reason to delay.

As far as the steel restrictor plates, my understanding is community is opposed to relying on the sluice gate because if it becomes clogged or dysfunctional, it's a long hike to get up there to maintain it; whereas the lower steel plate is a more permanent solution to protect the streamflow and I think it's similar to what the Commission did at Lāwa'i (Kaua'i), by bracketing the flow so you don't waste or take below a certain amount.

From lived experience, before becoming an environmental attorney, I was a carpenter and a job foreman, so I have experience moving materials around. It's not easy to install a steel plate but it's not 12 months hard to do it either. What the community is expecting is firm and decisive solutions on this. Staff has recommended a good solution with the lower and upper steel restrictor plates, but urge the Commission to push back against this thought; maybe you don't need to do it? It's going to be a better long-term solution and it's there in the staff submittal. Six-months, assuming with what staff has said, an additional stream diversion works permit is not needed assuming there is a collective will to get it done; 6-months is a reasonable amount of time.

More broadly, we've all inherited this plantation paradigm of water management together and dealing with it; it will take all of us to shift from that towards a way out to face the same challenges going forward with water management and climate change. Just want to point out that with every time a can gets kicked down the road, it's the people pili to those waters that carry the burden of that delay or waste; and folks in positions of authority or power whether it's the Commission or diverters, we've got to come together. This Commission specifically is the

body with the most potential to help everyone to move forward with all these water resource management issues.

We support the staff submittal and ask that steel plates both go in and completed within a six-month timeframe is reasonable, doable and a long-term solution that the only roadblock is a lack to collectively get it done. I urge the Commission to adopt the staff's recommendation with the amendments we've suggested, Mahalo for your time.

QUESTIONS / COMMENTS

Commissioner Hannahs – (to Mr. Cleveland) you're okay with recommendation 1A-D?

Mr. Cleveland – originally we suggested that 1A was amended to include that clear timeline for installation of a plywood as it was a little unclear the way it was put together; it looked like the 90-days and 1-year applied to 1A even though it was clear from the staff submittal, that wasn't the case; and if anyone had questions you'd be able to point to it; given that Mr. Kadowaki's crew are already undertaking that, maybe the final decision could reflect it or to firm it up. If including a numbered deadline in 1A would help give that clarity or maybe a different approach in clarifying 1A is warranted.

Commissioner Hannahs – (to Mr. Agaran) wanted clarification on the Army Corps of Engineers permitting.

Mr. Agaran – I may have alluded to it, but I think it was Mr. Kawahara that mentioned it because of his recent experience and projects of this kind. While the staff says there's no state permits, we envision there is work that will happen in the streambed in order to install the lower steel plates. It is not concreted currently so it is not an even bottom and want to clarify the comment on the plywood. What's being installed was just the higher restrictor because it was thought of what we were proposing so it's the work that Hawai'i Water is currently doing. If there's going to be a lower restrictor and the plywood, that will take a bit more time as they need to go back up there (*referred to Mr. Kawahara in reference to any federal permits required-which would extend the amount of time the project will take*). As I've heard the testifiers and community say, they want to have this done sooner rather than later and think that requiring the lower restrictor is going to take longer because we can't control how long the federal government will take to review the permits.

Mr. Kawahara – thank you Commissioner Hannahs, real good questions. What Gil is saying is accurate. We are working with CWRM staff in Waimea, Kaua'i in helping to achieve the IIFS that was set and been working with the Army Corps of Engineers for a long time as well as KIUC. We're also working with other EarthJustice attorneys on that and they're well aware of how long it's taking with the Army Corps of Engineers.

From an engineering standpoint, I'm seeing that we want the IFS to be met all the time and per the graphs from the CWRM website, it's about 95% of the time. If that's the goal, I would think adjustment of the sluice gate or referred to as Aotaki Weir, would be quicker, less permitting and would be able to keep more water in the stream. There is a good amount going around that side channel for the wetted path and (after verifying with the Army Corps) that putting a permanent, higher restrictor plate on the bar screens, is not touching the streambed, so we don't think it would require an Army Corps permit. If we're going to put in a lower restrictor plate to make it watertight as possible, that would involve cutting a steel plate that's exactly on the streambed

where it's not uniformed or placing footing so it can slide into a channel where we would seal it; but I'm concerned about the water going around the sides.

If we're going to make it permanent, what level do we set it at as it's going to be trial and error in making sure the IFS is met. We haven't talked about what the height would be and for the higher restrictor plate, it will be trial and error and monitoring the CWRM data on the IIFS, but I don't think it would require an Army Corps permit based on our experience. In my mind, it's trying to get the goal as quick as possible.

Commissioner Hannahs – if we require the lower plate and as you say it would require an Army Corps permit, in your experience, what is a reasonable timeframe?

Mr. Kawahara – permitting with Army Corps will take over a year.

Dr. Strauch – added that Ken is accurate but that it's not necessary to make it 100% watertight as we're looking at restricting low-flows to the extent possible to create that wetted path and there is not necessarily a need for pouring concrete and redesigning the intake. Adding something to the base of the existing infrastructure could be possible without permitting and the plywood approach is a good trial and error for determining what elevation to set the next iteration at.

Commissioner Buck – referred to the alternate channel that was developed and asked if it runs low-flow during low-flow times or only during high-flows?

Dr. Strauch – it runs all the time. *(showed a photo diagram)*

Commissioner Buck – based on our public trust responsibilities and the precautionary principle, and of what you heard today (referred to the low-flow and sluice gate), do you still think the best recommendation is what you originally recommended?

Dr. Strauch – to meet the IFS, they can open the sluice gate; if the goal is to provide for the most wetted pathway you would need flow over the dam *(shared a photo taken in June 2021, of the pathway flow around the intake)*

Commissioner Kagawa-Viviani – clarified if that (the picture) is the channel that was recently created and stated if it will always flow.

Dr. Strauch – replied yes and we don't know how permanent it would be but survived since 2018.

Commissioner Buck – asked if not putting in the lower gate beyond the condition the sluice gate had to be maintained because of blockage, what I'm hearing is that not maintain the sluice gate impacts the flow.

Dr. Strauch – the sluice gate has a new cage around it to protect it, but it would benefit the instream uses if there was continual flow over the dam.

Chairperson Case asked Ayron if there was a picture of the sluice gate

Dr. Strauch – *shared photos of the sluice gate with the cage around and explained the environment area*

Mr. Subrata – asked if Tony and John (of Hawai'i Water Service) could further explain how the approach is different in maintaining the ditch going forward versus what happened (in the past) with Aqua Engineers who did not have that experience.

Mr. Kadowaki – we are contracted and responsible for maintaining the gates and I (we) do understand the community views of the historic maintenance of it. We are learning and evaluating of what needs to be done up there so we can continuously provide that service and meet our expectations.

Commissioner Buck – asked to make a motion for the Commission to consider as appropriate.

Chair Case – agreed.

Commissioner Buck – motioned to approve item B-1 of the staff submittal and put a 30-day timeline on item 1A and ask that Maui Land & Pine and CWRM staff to come back to Commission within 6-months for a progress report on the remainder of the recommendations.

Commissioner Kagawa-Viviani – asked to make an additional amendment being that there was discussion about the low-flow restrictor plate, to tryout the plywood.

Chair Case – asked if she's referring to the lower part of the plywood?

Commissioner Kagawa-Viviani – yes, that it stays in because we want to understand how it works and what the levels should be. I agree with Ayron in there's no need for it to be watertight as water moves through the subsurface too.

Commissioner Buck – I would assume if we're having a 30-day deadline on putting in the lower plywood restrictor, we would be able to learn from that and your comments would be consistent with the motion.

Chair Case if Mr. Kadowaki wants to make a clarification

Mr. Kadowaki – commented on the concern of the lower restrictor; if the bottom and sides is not sealed, it may potentially cause some undermining or damage to the gate structure itself.

Commissioner Kagawa-Viviani – asked if it could be assessed through monthly checking or a short timeline if that happens with the plywood?

Mr. Kadowaki – deferred question to Mr. Kawahara

Mr. Kawahara – I don't know the answer to that; when we were out there initially before the bar screens were repaired, we did not know of the discussion of the lower restrictor plate, so we did not look what was underwater at the stream bed and tried to piece it together with the pictures we had but are unable to determine what the bottom is like. The next time Hawai'i Water goes up there we asked them to take a look at how the streambed is and how deep is the water because we never envisioned the lower restrictor plate until this submittal came out. Ayron (and CWRM team) may have a better idea.

Dr. Strauch – *(showed a photo of the area of discussion and explained the environments of it noting it would be worth exploring the possibility of a plywood restrictor on the base of the intake as the over-arching structure survived two heavy floods.)*

Chairperson Case reiterated the motion as to tryout a plywood on the lower part (asked for clarification of the motion)

Commissioner Buck – the motion is to accept the staff's recommendation, have a 30-day deadline for Item 1A, have a 6-month progress report for the remainder of the recommendations as we learn more about the permitting and engineering involved.

Commissioner Seto – clarified that 1A is related to the highest flow plywood restrictor and we're talking about a lowest-flow plywood restrictor and not sure if we need to reword 1A.

Deputy Manuel – Commissioner Seto is correct, so Commissioner Buck you would have to propose in addition to 1A, it's a 30-day to install the upper higher flow plywood, then work with Hawai'i Water Service and MLP on a low-flow plywood temporary measure in order to determine the appropriate height for a low floor permanent restrictor, is what I would recommend as an amendment to 1A to deal with that based on the conversation today.

Commissioner Buck – agreed with Deputy Manuel and accepted that as the permeative amendment to the motion.

Commissioner Katayama – clarified the lower plate is 1B and that second part of it should be part of 1B in determining the installation of the lower restrictor plate.

Deputy Manuel – I agree; 1B is tied to the permanent restrictor plate but we can make that clear.

Commissioner Katayama – prior to the determination of the permanent restrictor plate, all of this trial and error on the lower plate is really part of 1B and should keep 1A purely to the higher flow rates; so basically, 1B would be a mirror of 1A.

Chair Case – clarified that the discussion is trying out the plywood on the upper and lower part before determining what the height should be and if the steel plates is the right way to go.

Commissioner Kagawa-Viviani – asked if the modification of 1A is to also include the lower plywood restrictor within 30-days as a temporary measure, is that correct?

Chair Case – reiterated that 1A would be to install a plywood restrictor plate to serve as a temporary mitigation measure to determine whether and how a permanent restrictor plate should be installed and 1B would be to install plywood restrictor plate to serve as a mitigation measure to keep the lowest flows from flowing into the ditch, to determine whether a permanent restrictor should be installed.

Commissioner Kagawa-Viviani – asked if the timeline is referenced

Chair Case – reiterated the plywood should go in within 30-days as it's something that can be done quickly.

Commissioner Seto – clarified 1C is regarding the permanent high plates so there's a mix of the plywood and permanent plates. The permanent plates are on 1B and 1C, whereas 1A is the plywood.

Chair Case – maybe we take out C and just require reporting back within 6-months.

Commissioner Seto – I don't know if the plywood for the lower flows would also require Army Corps approval as a temporary measure as well as Section 401 Water Quality certification.

Chair Case – they've talked about doing a plywood plate that didn't touch the bottom of the stream, is that right?

Commissioner Seto – it's for the upper, the highest flows, but for the lower flows, I don't know if that would trigger the requirement.

Dr. Strauch – our experience with the Army Corps tends to be that if you pour concrete or add fill, that requires permitting but things outside of that, generally do not.

Mr. Cleveland – not sure how this happened but it seems we've taken all the permanent plates off the table; *(noted the former discussions of the timeline and permitting pertaining to the permanent plates and plywood)* and asked for retention of the permanent top plates and give a chance to report back for the permanent lower plates.

Chair Case – agreed, it made sense and noted not to take out item 1C

Mr. Kawahara – asked on 1C (language) and wanted everyone to visualize that the bar screen is limited in height so if there's a huge storm, the water is going to go over the bar screen and over the higher plate if its installed, so it's not going to restrict the highest flows.

Chair Case – re-clarified the motion to leave 1A and 1C as is, and amend 1B to say, “install a plywood restrictor plate within 30 days as a temporary mitigation measure to keep the lowest flows in Honokōhau Stream from flowing into the Honokōhau ditch, to determine whether and how a permanent restrictor plate should be installed and report back within 6-months”.

Deputy Manuel – noted that 1A has a 30-day timeframe as well.

Commissioner Seto – asked if 1C needed to be clarified as Ken mention it wasn't the highest flows, 1A and 1C

Chair Case – replied, yes

Ms. Kanekoa – asked in regard to the lower restrictor plate, I understand that if work is being done in the stream that may require permits, but what if they were to do the work just behind the grate, wouldn't that be considered on their property and therefore no longer needing permits?

Commissioner Seto – it's still within the State water so that would not matter

Dr. Strauch – normal operation and maintenance of infrastructure is allowed

Commissioner Hannahs – it seems to me B, C and D are long-term commitments to the stream and A is the way to get there as interim means to provide interim relief to the stream as to provide opportunity to experiment where to put the permanent plates, we’re putting plywood and then figure out what that teaches us of where the permanent ones would go. Leaving the long-term commitment to put those restrictor plates in as well as the remote operability and power, we need leave that intact as our order.

Chair Case – agreed.

Commissioner Hannahs – asked Commissioner Buck on his thoughts

Commissioner Buck – apologized for stating an incomplete motion; but agreed the temporary ones (plywood) would have a 30-day time-period both on the lower and higher and 1B, C, and D, are the permanent ones and have up to 1-year, but we want a progress report in 6-months.

Commissioner Hannahs – so if we stated the motion to 1- approve the modification of the original order and that modification is B, C and D and as a new #2- take 1A to say to affect this order MLP and Hawaii Water will install plywood restrictor plates to serve as temporary mitigation measures as well as opportunities to understand optimal placement of the permanent plates – and continue the numbering sequence (of the submittal) with the 6-months instead of the 1-year.

Chair Case – wanted to be sure the motion is clear (*noted to Commissioner Buck it’s the same outcome but slightly different wording*).

Commissioner Buck – I believe the only thing that was missing from Commissioner Hannahs motion was that the plywood plates were both for the lower and higher parts of the stream; other than that, I think Commissioner Hannahs recommendations is approved and has clarity.

Chair Case – asked if all (Commissioners) was in agreement.

Commissioner Hannahs – noted a “chat” message

Chair Case – clarified that “chat” messages are only for procedural references about the Zoom meeting and are not part of the Sunshine process.

Commissioner Kagawa-Viviani – requested a short break to ensure the final wording (of the amended motion) is correct and to share screen of it for clarification purposes.

Chair Case – agreed and asked Commissioner Buck and Hannahs to work on the final language of the amendments.

RECESS: 10:25 AM

RECONVENE: 10:34 AM

Chairperson Case shared screen and read the motion of the recommended amendments to the staff submittal of items: 1A, B, C and D and items #2, #3 and #4.

Commissioner Buck asked on the timeline of reporting back. Commissioner Hannahs replied that if the item(s) can't be completed, the applicant and/or consultant are able to report back at any given time.

MOTION: (BUCK/HANNAHS)

To approve B-1 with recommended amendments.

APPROVED: CHAIR/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/SETO
AGAINST: MEYER

Commissioner Meyer voted against the submittal item with the added recommendations and amendments stating that more information and professional advice from the engineers involved is needed. Also suggests that Ayron should (go up there) look at the outflow from the sluice gate as (in his opinion) it's the faster, easier way to get the minimum flow in place. Secondly, the wetted path from the gate is an optimal path than over the top of the dam as the dam is about 10-feet tall and greater than a 1:1 slope; aquatic species will have a hard time navigating that rocky stream path. Believes voting to approve is premature without the guidance of other professionals who have experience of stream systems and would have a better sense of timelines.

Chairperson Case recognized the good points and direction stated by Commissioner Meyer and will incorporate those ideas of how to evaluate the recommendations moving forward. Chair Case also clarified the vote that was previously made and noted the item can always be brought forth to the Commission as there is a fix in place (as stated) and the need to move forward with timelines given.

Commissioner Buck thanked and appreciated Commissioner Meyer's comments and added on the history of working with Mr. Kawahara, HWS and the community involved and the need for immediate action. Also thanked Commissioner Meyer for his guidance and interactions with the local community.

MOTION PASSES

Chairperson Case thanked everyone for the careful discussion regarding B-1.

101921 01:47:04

B. ACTION ITEM

2. Approve Order to Wailuku Water Company, LLC and Waikapu Properties, LLC to Halt Delivery of Water to Kumu Farms from Reservoir 1, Waikapū Stream, Nā Wai 'Ehā, Maui

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

Mr. Uyeno stated the submittal item and noted the June 28, 2021, Findings of Fact, Conclusions of Law, and Decision and Order (D&O) (submittal pages #2-4). Added that beginning of 2020 into 2021, CWRM staff began receiving complaints of little to no water flow from sources on the Waikapū Stream. This matter was brought forth to the Commission during

the September 21, 2021, Commission meeting and on September 24, 2021, CWRM staff began site visits looking into the complaint matters. Mr. Uyeno briefed on the site visits thereafter and explained the various investigations conducted by CWRM staff in relation to the kuleana users of the ‘auwai as well as community members involved in the contested case hearing (CCH) matter. Photos taken at the various sites were shown and explained, highlighting the dry segments of areas.

Reminded that this is an enforcement / clarification of the Commission’s Decision & Order. Mr. Uyeno briefed and explained parts of the analysis (page #8-9) and stated the staff’s recommendation.

QUESTIONS

Commissioner Buck – asked on the 2.9 mgd IIFS, if the majority of that is met before the water enters Reservoir-1?

Dr. Strauch – the intake to Reservoir-1 on the South Waikapu Ditch is above the location of the IIFS and the operator releases water from the ditch back into the stream in order to meet the IIFS.

Commissioner Buck – that’s from the IIFS return flow ditch?

Dr. Strauch – replied, yes.

Commissioner Buck – are you satisfied that the IIFS is being met?

Dr. Strauch – yes, it is being met.

PUBLIC TESTIMONY

Mr. Avery Chumbley (Wailuku Water Company) – deferred and asked Chair Case if Mr. Mike Atherton of Waikapu Properties could provide testimony first as they are the more relevant individuals involved in the recommendation by staff.

Mr. Hōkūao Pellegrino (Hui o Nā Wai ‘Ehā) – asked if the Hui could provide testimony first as they are the complainant and have a better context of the overall situation.

Chair Case – agreed

Mr. Hōkūao Pellegrino (Hui o Nā Wai ‘Ehā) – (*Mr. Pellegrino read written testimony as provided*) and added, “lastly, Hui o Nā Wai ‘Ehā would also like an update of whether or not the CWRM IIFS real-time gaging is operable and recording accurate and continual data that can be used to verify IIFS compliance due to issues that have occurred along the streambed in Waikapū Stream...the Hui would like to have on record that the Commission on Water Resource Management through this investigation and complaint that Wailuku Water Company has been illegally selling water to water use permittees for a source they were not allowed to divert from that amount which went into effect following the final D&O on June 28, 2021. That’s 113 days and over 11 mgd, that should’ve been either in the Waikapū Stream or provided to the South Waikapū kuleana farmers.

Please commission, when will you bring the hammer down on these deplorable type of acts, corporate water theft and thugs, Avery Chumbley, Kent Lucien and Alan Kubo of Wailuku Water Company, Mahalo.”

PUBLIC TESTIMONY – CONT'D

Mr. Michael Atherton (Waikapū Properties) – Chair and Commission, I’m the manager for Waikapū Properties. We’ve been here in Waikapū for 14 years and own the Maui Tropical Plantation. All that time I’ve worked with Kumu Farms and what they say about Kumu is true; he’s a good farmer and been a farmer on Moloka‘i for over 30 years. I’ve been working with him and talked with him yesterday about moving along to Reservoir 92 and we would help put that system together and he’s cooperating as he always has, so that takes care of the situation with Kumu Farms and to get him on Reservoir 92 will take time to do, maybe 90-days to get the job done.

In order to find a temporary solution for the South kuleanas, we have an 8-inch main line that we installed 10 years ago for a possible coffee plantation; I can tap into that line and run the pipe over to the kuleana ditch and drop it in right where our property touches the first kuleana property and it would easily be able to reach the South kuleana users and their lo‘i.

At the same time, I’ve begun talking with Wailuku Water Company about possible acquisition of the South Waikapū system and been working with Hōkūao Pellegrino for many years on the Waikapū Country Town project, so I have a good rapport and talked with him about working with the Hui for a long-term solution which he agreed. I sat down with Avery and began that discussion and it’s an attempt on Waikapū Properties part for a longer-term solution to create a win-win-win for us.

Again, for a temporary solution, I’d hope I can get it down before the end of the month but might need a few more days; use the main line and tap in and put the water into the ditch; that’s about a mile plus lower than where it goes in now. I believe it would work and I can hook Suzuki up at the same time. I think that would be an interim solution until we can find a long-term solution and continue to work with the Hui and Hōkūao and Avery to see what we could do about acquisition of that for the future. It’s what we’ve talked about over the last week, preparing for this meeting and we’re ready for Kumu to make the move and with permission, see if we can come up with a temporary solution for the South kuleanas, thank you.

PUBLIC TESTIMONY – CONT'D

Mr. Avery Chumbley (Wailuku Water Company) – Thank you Chair Case and Commissioners. I’ve provided extensive (written) testimony, there’s 9-pages of a narrative and 15-pages of about 8 different exhibits. What I intended to do was try to clarify some of the inaccuracies that were represented on the September 21, 2021, meeting and I think I covered a majority of that in the (written) testimony I provided. It gives you a better understanding of the build and complexities of the system, how we’re currently operating it, and how we’re in compliance with our obligations to deliver water to the South kuleana ‘auwais.

With regard to the item on your agenda today, halting the delivery of water to Kumu Farms, you've heard from Waikapū Properties what they're proposing as a solution which we can support and don't have an opposition to. From an operational standpoint, limiting deliveries of water from Reservoir 1 to the South kuleana 'auwai, livestock operators will have a negative impact on the functioning of the Wailuku delivery system. The total impact of the delivery system and components will require further evaluation.

We do believe the smaller volumes that we divert to that system, the more problems there would be. We're willing to work with the parties and Waikapū Properties in their proposed solution, thank you Chair.

PUBLIC TESTIMONY – CONT'D

Ms. Crystal Smythe (Waikapu Kuleana Farmer) – *(Ms. Smythe read her written testimony as provided)*

Ms. Emilou Alves (Waikapu Kuleana Farmer) – Aloha Chair Case and Commissioners. I own Alaka'i Farms in Waikapū, Maui. Myself and two sons, Ho'okahi and Kai'ohu have been actively farming lo'i kalo at this particular property for the last seven years. Since October 2020, our lack of water has forced our farm to deteriorate greatly. We used to farm seven large lo'i patches and provide food for our family, friends and community, and now we're down to two small patches. We need water immediately to sustain our lo'i kalo.

I'm in support of the short-term solution to redirect the underground PVC irrigation from Reservoir 1 to the area of Mr. Suzuki's pipes. This way, the water only has to flow approximately 100-yards to Crystal's and our farm. Thank you very much for your time.

Mr. Isaac Moriwake (EarthJustice) – Aloha and thank you Chair Case and Commission members. I want to thank staff, the Deputy Director, for bringing this forward starting from last month. We wouldn't be moving forward here without Commission paying attention and finally taking action as this has been long overdue and the first step forward. I want to make clear that this is only the first step and not a direct response to the issue of kuleana rights that the Hui has raised here.

Initially, it seems that Wailuku Water Company is in support of moving forward. I did see arguments in Mr. Chumbley's response to the Hui's complaint of the Commission lacking legal authority to address this issue; that's false. I want to highlight the Code in Section 10 gives the Commission broad authority to hear any dispute regarding Constitutionally protected water interests, if there's sufficient water for competing needs, or whether or not a water management area has been designated, that's the plain text of the Code. This is obviously a dispute of constitutionally protected kuleana water rights.

We have that short-term temporary solution that's a band-aid. The pipe is under high pressure and may burst and require repair, it's only a matter of time. As the kuleana owners emphasized, we need to enable a long-term solution which is their constitutionally protected appurtenant right and traditional and customary right, to restore the traditional 'auwai. In the Commission's final D&O, it advised the kuleanas to find solutions that reduces water loss and increase system efficiency-is what the Hui and kuleanas are proposing here; to restore the

traditional 'auwai, get off the plantation system and connect directly with the stream as is their constitutional right. The Commission should be encouraging, enabling and empowering the kuleana owners to do this.

I understand there's been some confusion or disagreement about what's the Commission's authority along these lines. We, the Hui, represented by Earthjustice, have been making clear throughout this case that the Commission has the constitutional and statutory authority to protect the appurtenant rights that includes not just the paper quantity of water, but the 'auwai, water course and access rights. To say we can only give you a quantity, makes no sense legally or practically. It's like me selling you a house and not the driveway.

Again, we can't tell the kuleanas to reduce loss and improve efficiency, but not give them the recourse to do that. I want to make it clear that there's still more steps. We'll try to work with the parties to restore that traditional 'auwai and ultimately may have to come to this Commission to order that access. We may disagree on the Commission's authority. If so, let's put that on the table and make it clear where things stand and we can all move forward in figuring out how to protect that kuleana rights like they should be, once and for all; thank you.

Due to audio issues of testifier Mr. Street, Chair Case opened for questions by the Commissioners until Mr. Street establishes audio connection.

QUESTIONS

Commissioner Buck – (to Isaac or Hōkūao) what are the major pinch points outside of the legal jurisdiction of restoring the traditional 'auwai access directly from the stream?

Mr. Moriwake – it's been the Hui's and Earthjustice's position throughout this case that the kuleana water right is not just a paper quantity but comes with the right to the water course which is made clear in the history of water rights, going back 100+ years. My understanding is that there may be some disagreement, but this issue is not going away, and I thank you for asking that.

It seems the pinch-point is the scope of the Commission's jurisdiction and whether it is limited in only to declaring only paper quantities but not assuring access to these waters are actually used, whether through the plantation ditch system because that's the reliance that's been built up over 100 years. The kuleanas didn't ask to be put on this system, they were told it's the way it's going to be because the plantations were irrigating their sugar crops, draining the streams dry; but were told clearly (in that era) they need to honor the kuleana rights first. They respected that and put the kuleanas onto the plantation ditch system.

It's their right (appurtenant and traditional & customary) to restore direct connection to the stream. As Mr. Pellegrino pointed out, the documentation is there, the kuleana and kama'āina testimony is there. There's no dispute the 'auwai is there as you can see on the maps.

Whether the Commission is going to recognize its authority to move forward on that solution as the plantation ditch system may not much longer be in operation. Are we going to recognize that right and require that access if there's no cooperative solution or do we have to resolve this legal point from a higher authority?

Commissioner Buck – it is understood, but is it a landowner access, the need for the easement? What is it (outside of the legal issue) is holding the restoration back?

Mr. Moriwake – the opening of the ‘auwai (the traditional course) is on Mr. Chumbley’s land. That traditional ‘auwai could be opened tomorrow but Mr. Chumbley has indicated that he refuses to let that happen.

Commissioner Buck – (to Hōkūao) is there any updates on discussion that you’ve had with the landowner?

Mr. Pellegrino – there were two Commissioners on October 16, 2014, that came to Maui for the reopening and partial restoration of the Waikapū Stream for the IIFS, whom are not here. There was a question made before the parties while we were on Mr. Chumbley’s personal property, about accessing the IIFS gage; and it was made clear to the Commissioners, the attorneys on both sides and public present, that it (the gage) was personal property and that even for accountability and assuring compliance of the IIFS, there was to be no access.

I have personally walked up this ‘auwai up until a certain point on our north side because we can easily see where the intake is. I’m very concerned about what’s happening as I actually testify on this. I went up this weekend because our po‘owai was plugged and noticed there’s a lot of clearing going on where the traditional ‘auwai on the south side on Mr. Chumbley’s property is taking place. This is just me looking across the river. I’m concerned of issues on that land and the fact we brought this up to everyone’s attention that we want to restore that ‘auwai as want to make sure no work is done as it’s a historic site which is well documented on Hawaiian Kingdom government and land commission maps, native and foreign testimonies, and Wailuku Sugar Plantation maps showing this ‘auwai existed.

We would like to get this in sooner than later and put in the infrastructure that’s needed and ensure the kuleanas can manage this system independently as their kupuna once did. To me, it's the efficient way to ensure that the kuleanas get water like we have on the north side of the stream, but also there isn’t a need to have a 1.7-mile system that needs to divert almost twice as much to get them half as much.

With efficiency, accountability, and compliance, what better than to have the kuleanas manage the system themselves. If they don’t have water one day, that’s on them; it means they need to go up and clean.

I understand from a private landowner (view), how that can be concerning. On the north side of Waikapū Stream, we have built rapport and have generations of people live here so when we go up and clean the ‘auwai and po‘owai, there’s no issue. I can understand, opening it up for the first time, who’s going to come onto my land? These are practical things I’m thinking of and not trying to sit in Mr. Chumbley’s shoe, but if we can work together that an agreement can be made about who has the access to go up there to ensure only those allowed can clean the ditch. I understand it’s personal property and at the same time this is a traditional and customary right access issue that needs to be enforced and followed.

Commissioner Hannahs – asked if Mr. Chumbley wanted to weigh in on the discussion.

Mr. Chumbley – noted he was awaiting to be invited (into the convo) and wanted to think clearly of what he wants to express. Added, there's a tremendous amount of misunderstanding of what's being represented today. If this alleged traditional 'auwai usage was ceased in 1901, it's roughly 120 years ago.

I've walked up and down this property from one side to the other and I can assure you that the elevations of the stream are significantly different. The alleged po'owai off of the stream are different than what some of the documents that we have indicate. I personally believe that back when Wailuku Sugar bought Waikapū Sugar Company, that there was a diversion off the stream, but it was built by plantation people. It used cement and tunnels whereas traditional Hawaiian po'owai don't use that. Some maps we have shown conflicting and varying locations for this. The topography of the land today, is not conducive to allow for a po'owai diversion off of this stream in this alleged location; so there's a tremendous amount of misinformation that's being represented to you today.

Commissioner Hannahs – you're calling it "alleged" but if this was established that it was a traditional system, would you be able to accommodate it?

Mr. Chumbley – I can't say I would or wouldn't because I need a better understanding of what the locations and course would be of it.

Commissioner Hannahs – knowing this is in dispute, is there a process or something that is happening in the community or ways the Commission can help facilitate a resolution?

Mr. Chumbley – not sure how to answer that as I think some effort needs to be undertaken to better understand the conflict and in the varying locations of the 'auwai's of the stream

Commissioner Hannahs – in a statement, you said that you felt you're fulfilling the obligation to deliver water to these kuleana?

Mr. Chumbley – yes, we are. We're currently dropping out of the kuleana pipe out of Reservoir 1, the requisite volume of water at the top of the distribution point.

Commissioner Hannahs – (to Ayron) did your inspection confirm that?

Dr. Strauch – yes, they are meeting the required discharge from the pipe.

Commissioner Hannahs – and by the time it gets to the kuleana, was it getting there?

Dr. Strauch – the 'auwai loses a majority of the water, it's very leaky.

Commissioner Hannahs – does the recommendations you're making, resolve the issue?

Dr. Strauch – deferred to Mr. Uyeno

Mr. Uyeno – right now the action before you are to simply (as this is what we have control over) halt the delivery of water to Kumu Farms to ensure there's water available from Reservoir 1, or at least to make sure the water from there is going to who it's intended to, per the Decision and Order by the Commission; that's the cattle operations mauka of the ditch and the South Waikapu kuleana users. The other actions that are being discussed here are

really between the private parties, Waikapū Properties, Wailuku Water Company and the South Waikapu kuleana users and we couldn't speak to that in this matter. We're just speaking to halting the delivery of water to Kumu Farms.

Commissioner Hannahs – so I understand where we are, does the Decision and Order acknowledge the rights of the South Waikapu kuleana users to have water in certain amount; that amount is being dropped into the system by WWC at some point, but is not getting fully to there in adequate quantity to where they are.

We can figure that out over the long run and there's the option if we establish the old 'auwai, that may resolve it, but there's a long dispute there. What is immediately before us is this work around, by using our authority and honoring the agreements, to stop serving water to Kumu Farms, Mr. Atherton has now come forward and I think we should honor his diplomatic gesture here to make an investment that helps meet the water needs of the individuals, although it doesn't solve their longer-term problems - this recommendation is an immediate mitigative measure. As you're nodding, it seems like we're getting a short-term fix out of this and owe a debt of gratitude to Mr. Atherton in helping that fix to be realized.

We have a long way to work in terms of building community and understanding and how better to get along, but for the immediate recommendation, I didn't hear anyone oppose it; is a positive step.

Mr. Uyeno – correct.

Commissioner Katayama – is this recommendation temporary or permanent?

Mr. Uyeno – this recommendation/action item before you is a permanent action. It's part of the D&O and what was negotiated between Waikapū Properties, OHA, the Hui, and Maui Tomorrow Foundation.

Commissioner Katayama – with today's testimony, if they do that modification of delivery, would this still be appropriate? In other words, the termination of the delivery system to Kumu Farms from Reservoir 1.

Mr. Uyeno – halting of the delivery ensures there's water that would go more directly to the South Waikapu kuleana users rather than Kumu Farms which the Commission directed that they get their allocation from Waihe'e Ditch rather than Waikapū Stream.

Commissioner Kagawa-Viviani – what I've heard is that there is a constructive solution worked out and understanding of the technicalities of where water was going along the ditch, the diversion and who's doing what. I really appreciate this staff for illustrating and documenting that, but it sounds like some bigger issues were raised which are important, otherwise we're going to be piecemealing every dispute with the enforcement of the D&O. We're lucky in Mr. Atherton's willingness to mediate and find something that works short-term; but as Mr. Moriwake pointed out, there's some bigger questions about the Commission's jurisdiction in areas I don't understand that needs to be clarified in order to effectively move through the implementation an enforcement of the D&O.

There's a lot of trust that needs to be established and I don't think it can happen from us on O'ahu or virtual space but has to happen on island and don't know who has the power or

resources to make that happen. That mediation and facilitation of exchange has to be based in place from multiple people walking the water sources and understanding the systems, and from the flow path. What staff has been doing, needs more constant checking and maintenance and as Hōkūao says and what we know about streams is, you need to update the flow ratings and curves and recalibrate, which will require good relationships on the ground in Maui.

In condensing what I'm saying is, 1) there's the immediate solution proposed which sounds like it's gotten a lot of support from testifiers and from Commissioners; 2) but also big questions that maybe future agenda items or discuss in other forms.

Mr. Uyeno – you captured it well. If you look at the D&O, you can tell it's a very complicated decision that was carefully thought out despite the gigantic work the Commissioners did, it's still a very complex situation and every 'auwai, diversion, take-off of the current ditch system, is a complicated matter and how we address that, varies from case to case.

Regarding the continuous gage, Ayron goes out quarterly to perform checks on the rating curve of the real-time gage installed at Waikapū Stream. The issue Hōkūao alluded to was there was a recent unauthorized, unpermitted alteration to the stream channel just around the stream gage; I believe it's okay now.

Dr. Strauch – we get to Waikapū more regularly than our quarterly goal because it's more easily accessible, we can add it at the end of our field days, so generally we get to it every 6-8 weeks. Again, we're limited in staff and are stretched to the max.

Mr. Uyeno – we do our best whenever when we go out in the field and Ayron has done a great job making sure he meets with the community members and maintain as best we can our relationships with their community and private purveyors of water.

Commissioner Buck – (to Mr. Chumbley) as this is our first contact with you since we issued the D&O and a Zoom call isn't the best way to resolve these issues, I wonder if you're willing to offer us based on these challenges, any challenges you see or upcoming issues, the Commission can be more proactive as we try to implement this Decision and Order?

Mr. Chumbley – we believe there could be an alternative process, but we need to establish between the water commission, the diverters and community, some protocols. If we can come up with a way to deal with the implementation issues without having to use up the Commission's valuable time on smaller issues, I think we can accomplish a lot. It's a matter of dialogue and addressing issues between staff but having protocols in place that work for everyone. We made that suggestion at the August 24th meeting of staff and the AG's, but nothing has come of it yet.

PUBLIC TESTIMONY – CONT'D

Mr. Robert Street (Wailuku Kuleana Farmer) – Aloha mai and thank you. Aloha Pō'alua. I am off of the Wailuku Town 'auwai system. I can identify with Waikapū with what they're going through because we had our water cut-off here and are very upset about that after the Decision and Order. At this point, no morals, values, ethics, and spiritual void – I am done

with Chumbley. 1) I'm asking that Jay Allen Cogle and Kent Lucien come to the table, they're part of Wailuku Water Company, we haven't heard a peep out of them. My feeling is hele mai, noho i lalo, pakaukau, kuka kuka - come to the table and let's have a discussion of what's going on. 2) the State Commission on Water Resource Management, tasked us with maintaining the 'auwai system; we have problems with the system. Not only is it an old system, but the road wash from the County goes into our drainage in at least two spots and this goes back to the plantation days and needs to be dealt with. The County is aware of this and has a drainage system on Kalua Road but also has ours that's never been corrected. They have been put on notice that we need to tackle this incident as I don't want road wash into my 'auwai.

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

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

QUESTIONS/COMMENTS

Commissioner Buck – do you believe that a facilitated discussion needs the leadership from the Commission or are there entities on Maui that could do that, are you willing to participate or provide draft protocol on things you want to see?

Mr. Chumbley – we did provide some draft protocols to the Deputy AG and to staff at the August 24th meeting

Mr. James Geiger (Counsel, MRW Law) – in our discussion with the Deputy AG's, we were told that the staff of the Deputy AG would provide something to us and haven't received anything. We're happy to share the protocols we've put together with staff of the Deputy AGs.

Commissioner Kagawa-Viviani – to the Community testifiers and Earthjustice: if facilitated exchanges were to work, who would the parties be? Because of power differentials, the terms of the trust need be set by the community also. Otherwise, no one will come to the table.

Mr. Moriwake – with regards to the draft protocols, no one on our side has seen any of that. We don't know what that entails and would like to see it but have a lot of skepticism given the longtime history. We've done mediations before and with the power differential in terms of people not only refusing to discuss whether an 'auwai be open, but even refusing access on the land. Where is this mutual discussion going to take place and how's that going to happen?

The Commission needs to not micro-manage and do the job for everyone but be present at staff level to make sure this moves forward. It's obvious this languished for a year plus, and until the Commission scheduled this with an informational briefing and get everyone up to

speed, nothing happened. I want to make clear this is not a situation where the Commission advocates and says “you folks work it out” as it never worked out that way in this case, over 17 years.

Mr. Pellegrino – added, here’s a fine example of Wailuku Water Company’s inability to collaborate. The site visit which Commission staff came to Maui in September, WWC refused to allow us to be there when the measurements were taking place on Reservoir 1; and how ironic that based on WWC measurements with (CWRM) staff Ayron and Dean there, (WWC) they were in compliance. We have data provided in our last testimony and in our complaint, but that’s not taken into account.

What I’m saying is that you’re listening to one party saying they’re complying because you see them for one day? Yet, we provided data (off and on) for a year, and it’s taken at piecemeal. I don’t buy these protocols and collaboration that Mr. Chumbley and his attorneys are putting forth; especially that we haven’t seen any of them and is the first-time hearing of that, and that should be a red light in terms of whether they’re willing to collaborate or not. We’re always willing to be there but we’re denied access.

Mr. Chumbley – unfortunately, you’re being misled once again. We were never asked for any of the parties to participate in the September site visit, never denied anyone participation and unfortunately, you’re hearing alternative facts.

Commissioner Hannahs – looking forward, would Wailuku Water be open to that?

Mr. Pellegrino – the Hui is always open to having site visits with all parties.

Commissioner Hannahs – are we ready to turn a page and move forward with cooperation?

Mr. Chumbley – Wailuku Water has no problem provided that parties involved sign waivers of liability.

Commissioner Hannahs – I understand that request. Chair, we’ve been presented with protocols for engagement of the Wailuku Water in certain community discussions, then we need to make it clear to others and maybe others have protocols they’d like to suggest moving forward where we can all have an agreement how we can conduct these meetings-I understand why that’s necessary and then start having those meetings. There’s a couple things following-up on Commissioner Kagawa-Viviani’s point. We’ve made it clear in the D&O that we intend to enforce our order within the extent of our authority, but beyond that, there needs to be a community that comes together in some community-based management.

If anyone questions whether we care about this or not, we do. This is not just a paper authorization, and we will to the full extent of our authority, enforce. Going there one day and missing every other day, I get Mr. Pellegrino’s point, that we’re going to see things not necessarily reflect what’s going on 365-days a year. There needs to be an entity on the ground where these issues get aired and resolved; some come of good will, some malicious intent, you’re going to have all of it and we’ve got to be able to resolve it quickly there as at best, we’re a month late, or with staff, a week late.

My hope is that we follow up on the representation with the parties here, that we need to sit down together, there needs to be rules of engagement, let's put that on the table and let's get going.

Commissioner Kagawa-Viviani – regarding the comment Mr. Chumbley made, asked for clarification from Deputy Manuel or Dean, on how the site visits were facilitated?

Mr. Uyeno – in scheduling the September 28th site visit, we wanted to schedule them separately and scheduled with Wailuku Water Company in the morning and the community in the afternoon.

Deputy Manuel – I'm happy to hear Mr. Chumbley's openness and eagerness to meet with all parties. In previous questions and requests to convene conversations, and especially informal conversations amongst parties, I was told that wouldn't be useful by Mr. Chumbley and his counsel. I'm happy to hear that shifted and there is a desire and openness to want to engage in those spaces. It's a similar situation for the Wailuku Town 'auwai; I've offered to convene and bring parties together in site visits to walk and see the system; but I'm glad to hear that's on the record that's something he's open to doing, moving forward in trying to work on the ground in implementing the D&O of the Commission. I'm willing and able to try to convene all the parties and have people talk with each other at the same table and want to put that on the record, implementing better communications.

Mr. Chumbley – Kaleo is correct; I did express some concern about having the different parties get together. That was done in a context of not having any protocols or rules of engagement. You heard today the testimony of Mr. Street, that's confrontational; that's not going to get us anywhere when we come together. Provided all the parties have a set of rules we can all agree to, and a procedure that works for all of us, we're happy to do it. Absent that, I don't think we can get together; Mr. Street showed you that today.

Chairperson Case called on any other testifiers (Mr. Medeiros) who have logged on late

Commissioner Kagawa-Viviani – suggested that since protocols are being drafted by Mr. Chumbley, it might make sense for community members to articulate/draft their ideas of what protocols to be. It might be the role of the Commission to look at where that overlap is and working with Planning staff that have a lot of knowledge and institutional memory. It's not an agenda item but wanted to put that forth.

Chair Case – I appreciate your recommendation; this is a discussion that's loosely related to this agenda item and is an important discussion and I appreciate the Commission's engagement in the discussion. Are there any other questions as to the specific proposed action?

Commissioner Buck – made a motion to approve Item B-2 as per the staff recommendations.

MOTION: (BUCK/KAGAWA-VIVIANI)

To approve B-2 as submitted.

APPROVED: CHAIR/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/SETO

RECUSED: MEYER

MOTION PASSES

Chairperson Case appreciated everyone's appreciation as everyone knows the implementation of the D&O is complex and do need to take positive steps forward to respect everyone's interest in this situation and try to understand and respect them, and have civil conversations together on site as much as possible to understand the points of intersect on the ground, in the stream, in the 'auwai and work them out in a way that meets the intent and spirit of the D&O and the need for a vibrant community engagement in a system that's intended to be for everyone's benefit.

D. NEXT COMMISSION MEETINGS (TENTATIVE)

November 16, 2021 (Tuesday)

December 21, 2021 (Tuesday)

This meeting adjourned at 12:11 p.m.

Respectfully submitted,

Rae Ann Hyatt

RAE ANN HYATT
Commission Secretary

OLA IKA WAI:



M. KALEO MANUEL
Deputy Director

Written Testimonies Received:

October 17, 2021

Via Electronic Mail

Commission on Water Resource Management
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813
dlr.cwrn@hawaii.gov

Re: Agenda Item B.1
Approve Amendment to Commission Order to Maui Land & Pineapple for Modification to Diversion 770 on Honokōhau Stream (Honokōhau Ditch Intake #1) Originally Approved on November 20, 2019, in Order to Meet the Instream Flow Standard for Honokōhau Stream, Surface Water Hydrologic Unit of Honokōhau (6014), Honokōhau, Maui

Dear Chair Case and Commissioners:

Mahalo for the opportunity to comment on staff's proposal to amend the Commission's prior action addressing the waste of Honokōhau surface water resources.

As an organization advocating on behalf of communities seeking restoration of healthy waters and waterways throughout the pae 'āina,¹ we recommend further clarity and greater expediency in the completion timelines for the long-overdue implementation of this Commission's November 20, 2019 prior action in this matter.

We generally support amending the Commission's 2019 decision along the lines staff recommends, but respectfully suggest the following amendments to staff's enumerated recommendations on page 5 of the staff submittal:

First, staff's recommendation #1.a should be amended to include a clear deadline for installation of the temporary plywood restrictor plate necessary to prevent wasting of water until permanent steel plates are installed. As currently worded, the 90-day planning and 1-year implementation deadline established in staff's recommendation #3 could be construed to apply to all items listed in recommendations #1 and #2. The schedule proposed by Akinaka and Associates for installation of the plywood restrictor plate included a period of 2 weeks to inspect the project location, and 1.5 months for installation.² It is our understanding from discussions with community members that Hawai'i Water Services Company staff have already visited and inspected the site. Thus, we recommend including an explicit 30-day deadline for installation of the plywood restrictor plate in staff recommendation #1.a.

Second, and consistent with the clarification above, staff recommendation #3 should be amended to make clear that the deadlines contained in #3 do not apply to recommendation #1.a.

Third, staff's recommendation #3 should be further amended to shorten to six months the deadline for installation of the long-term steel restrictor plates. Another full year is an unreasonably long time for implementation of the Commission's decision, which is already nearly two years old. Considering the 90-day period given for finalizing plans, and given Commission staff's confirmation that these minor alterations to the existing diversion structuredo not require a stream channel alteration permit,³ it is more than reasonable for this Commission to insist on completion of this project within six months.

Timely resolution of water wasting complaints and prompt implementation thereof should be a priority, both for this Commission and for responsible diverters. Communities that rely on healthy stream flow, such as the people of Honokōhau, have been bearing the burden of wasteful diversion practices across these islands for decades. When a community takes formal action to contest the wasting of water, we respectfully urge that this Commission is obligated to act expeditiously on such complaints, and moreover, take a firm stance to cut through what often seem to be endless delays and deferrals of on-the-ground results.

He ali'i ka 'āina,

/s/ Mahesh Cleveland
EARTHJUSTICE

¹ For example, Earthjustice represents Moloka'i Nō Ka Heke in the combined petition and complaint filed with this Commission on July 1, 2019 (still pending), which includes a complaint against waste of Moloka'i's surface water resources (CDR.5310.4).

October 19, 2021

Re: Agenda Item B-2

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 like to provide the following written testimony in regards to Agenda Item B2:

1. Hui o Nā Wai 'Ehā strongly supports diversified agriculture on Maui and those organizations/businesses that manage and steward surface water resources properly and provide food for the Maui Community. Kumu Farms is a perfect example of this. Their model of large-scale diversified agriculture and farming practices are exemplary and meets a critical need. We absolutely support them and appreciate all that their owners, farmers and staff do for Maui and Waikapū Community.
2. Hui o Nā Wai 'Ehā requests the Commission to approve the order to Wailuku Water Company, LLC

and Waikapū Properties, LLC to halt delivery of water to Kumu Farms from Reservoir 1, Waikapū Stream.

3. In 2016, an agreement was made between Hui o Nā Wai 'Ehā / Office of Hawaiian Affairs and Waikapū Properties, LLC which specified that Kumu Farms would transition their agricultural operations from fields utilizing irrigation water from Reservoir #1 (Waikapū Stream) to fields that would utilize irrigation water from Waihe'e Ditch via Reservoir 92. The Hui, OHA and CWRM Staff have confirmed that this transition has been completed. Yet, for over 4 months, Wailuku Water Co. knowingly, has been selling water to Kumu Farms from a source they had no permit for and being denied access to utilize irrigation water from the source they were permitted to take from. This abuse of power, prioritizing paid customers all the while depriving water to the South Waikapū Kuleana Kalo farmers and WUPA permittees for over 1 year is despicable and clearly demonstrates a pattern of breaking laws and rules this Commission has tirelessly set forth over this 17 year case. Kumu Farms was forced by Wailuku Water Co. to be the pawn in this situation, something they don't deserve. Waikapū Properties, LLC has been very supportive of their use of Reservoir 92 via Waihe'e Ditch as outlined in the permit, yet Wailuku Water Co. refused to allow Kumu Farms access.
4. Hui o Nā Wai 'Ehā requests the Commission to order Wailuku Water Company, LLC to allow Kumu Farms (Waikapū Properties, LLC Ag Lessee), full access and ability to use water from Reservoir 92 sourced from Waihe'e Ditch as outlined in the June 28, 2021, Final D&O under Waikapū Properties, LLC WUPA 2205.
5. Hui o Nā Wai 'Ehā requests Commission Staff to return to Maui to conduct a site visit and confirm that Kumu Farms is no longer receiving water from Reservoir 1 and that they are solely receiving water from Reservoir 92 via Waihe'e Ditch as outlined in the Waikapū Properties, LLC WUPA 2205.
6. Waikapū Properties, LLC has communicated to the Hui that they are committing to redirecting the underground pvc irrigation line that feeds Kumu Farms which exits Reservoir 1 to the South Waikapū Kuleana Kalo Farmers and diversified ag farmers which would include; Suzuki (WUPA 2155), Harger (WUPA 2156), Alves (WUPA 2260), Smyth/Minamina/Brown (WUPA 2217), Higa (WUPA 2366), Kamasaki (WUPA 2368) totaling 265,188 GPD. It is important to note that this is considered a short-term solution for a long-standing problem as outlined in our filed complaint on this issue. This system will be much more efficient and lack the system losses observed in the open plantation ditch managed by Wailuku Water Co and access issues they were restricting. The metering system will also be much more accurate and due to the location, will be easier for everyone to access to ensure accountability by all users. Hui o Nā Wai 'Ehā and South Waikapū Kuleana Kalo Farmers are hoping for this new system will be installed and delivering water to all users by the end of October 2021. SEE HUI SCHEMATIC MAP ATTACHED TO TESTIMONY
7. Hui o Nā Wai 'Ehā on behalf of South Waikapū Kuleana Kalo Farmers has stated clearly and outlined in past Contested Case Proceedings and Testimonies, Recent Complaint re South Waikapū Kuleana Kalo Farmers, during recent CWRM site visits and Commission meetings, that we are requesting support from Commission Staff and Commissioners for our long term solution that provides kuleana water via the traditional 'auwai/po'owai system off Waikapū Stream which then fed the South Waikapū Kuleana Kalo Farmers. Native Hawaiian Traditional and Customary Access is currently being restricted and the ability to restore and reopen this 'auwai system by private landowner, Avery Chumbley on TMK 3-6-004-002. Hui o Nā Wai 'Ehā has evidence and documentation that demonstrates where the location of the po'owai/'auwai is located via Māhele Land Commission Awards, Testimonies, Surveys and historical maps dating back to the 1800s. Hui o Nā Wai 'Ehā further requests an immediate site visit by Commission Staff with Hui and land owner to begin the process of restoring this system. This solution is what South Waikapū Kuleana Kalo Farmers are

requesting which provides them the ability to manage their own system directly from Waikapū Stream as their ancestors once did and no longer having rely on old and inefficient plantation irrigation infrastructure that is over 1.75 miles long. Most importantly, this allows them the ability to exercise their traditional and customary rights and access to kuleana water directly from Waikapū Stream as it was done historically. SEE HUI SCHEMATIC MAP ATTACHED TO TESTIMONY

We understand that while these issues are complex, this Commission and Commission Staff absolutely has the power to enforce and follow through on these requests and orders. The solutions provided before you by the Hui exemplifies our ability to work in collaboration with Native Hawaiian kuleana stakeholders, neighbors, farmers and large landowners, We urge you to take action on these requests and work diligently on resolving these issues in a very timely manner.

Me ka ha‘aha‘a
Hōkūao Pellegrino

Aloha kakahiaka Chair Case, Staff members; and esteemed Commissioner’s, I am Crystal Smythe, the Great Granddaughter of John Minamina Brown; grateful to be in attendance this day; and to be able to express my sincere gratitude for achievements put forth from this Commission.

I have witnessed the Commissioner as being the most unappreciated position. I am compelled to share that I was reassured by the courage and distinguished comments attested too last month by this body. I experienced the integrity and hopefulness of the speakers. I felt my voice was “heard”; by Commissioner Aurora Kagawa when she spoke of systematic power imbalances; and the critical role of mediators.

I continue to pray for you all... e pule ho’oki’ole.

Hawaii’s water history is well-documented, and now digitized for posterity. Historically, the CWRM is the newest member on the scene; brought forth by fierceless wahine warriors; patiently waiting for water justice, which by the way, they never saw. In their own words, “They did it for their grandchildren.” And here I am today, “doing it for my grandchildren” when a 3year old comes to visit you; and has to ask, Tutu, “when is the water coming back?” How are we supposed to react?

Each day we live with the 100-year recurring corporate sin. In 1901 shutting down the ‘auwai, that was just the beginning. The plantation, and now this corporation works to be rid of kalo and it’s people; diverting water and selling it for backyard swimming pools. Who cares? Why are we once again at this juncture, like it’s still 1901 with gun-carrying ranchers for us to be wary of; and holding our water hostage.

We are still here; Appurtenant rights have never vanquished. We are gratified that this body has reiterated once more, that customary and traditional rights are superior, specifically with regard to lo’i kalo. We, the people, through business Community, and Nonprofit Organizations have evolved to work through issues with understanding; to tolerate the unequivocal injustice; we battle back with drone technology; ambassadorship; and deep kuleana.

We are still here, asking once again that the hard work and energy of this Commission be

recognized; and that you follow the most recent Decision and Order document as Jurisdiction allows.

Immediately, we ask that you change the water flowing to unpermitted Kumu Farms; bring the water directly back to the kuleana users via underground pipe; and further we ask that the CWRM staff do a site visit to verify that the relocated waterline has been installed without any diversion devices, especially with regards Clayton Suzuki.

Secondly, that this Commission will continue to advocate for the long-term solution; and support kuleana 'auwai users in re-opening the traditional 'auwai, previously closed by the plantation; and currently adversed by the corporate water company.

Lastly, may I please acknowledge the CWRM Leadership Staff for their awareness and ability to assist us during this exasperating and oppressive reality.

I look forward to your implementation and enforcement measures.

Mahalo Hou! Crystal Smythe, Granddaughter of Elaine Mullaney

From: Robert Street <hokuoihe@gmail.com>

Sent: Friday, October 15, 2021 12:13 PM

Subject: Fwd: 'E ho'i ka wai. Return the water': In ongoing battle, Kalo farmer finds water source locked up

Chair Suzanne Case,

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

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

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

Wailuku Sugar Company has always assisted in the maintenance of all the auwai in the Na Wai Eha. I question the legality of this decision. I personally have taken care of the auwai on this system. What I need is a legal instrument that will hold up in the court of law of this decision that was made by the commission. Just saying so is not enough. Having been born and raised in C.

Brewer and Company, I know Wailuku Sugar maintained all of the surface water distribution systems.

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

Those kuleana landowners who are entitled to an allocation of water should have it immediately.

Those kuleana landowners who are entitled to an allocation of water that was illegally denied be compensated.

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

If someone involved in Case Number CCH-MA 15-01: FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER fails to STOP AND PROTECT can that individual or entity be enjoined in any future legal proceedings in their professional, as well as their personal capacity?

That is my "pau kōkua ōleo o Waikapū".

Chair Case let it be remembered by all that "the Commission is to protect and managed the waters of the State of Hawai'i for present and future generations". Furthermore "the Commission on Water Resources Management and its responsibility in protecting the water resources of Hawai'i, recognizing that THE WATERS OF THE STATE ARE HELD IN TRUST FOR THE BENEFIT OF THE CITIZENS OF THE STATE. With that stated, The Commission on Water Resource Management, has failed to satisfactory articulate to those Kuleana Landowners, who have water rights how a private entity, (Wailuku Water Company) is able to profit off of a resource that is supposed to be "HELD IN TRUST FOR THE BENEFIT OF THE CITIZENS OF THE STATE".

a hui hou,
R. Street

This is written testimony for agenda item B "ACTION ITEMS" B-2 10/19/21 COMMISSION ON WATER RESOURCE MANAGEMENT

----- Forwarded message -----

From: **Jorrie Ciotti** <jorrieciotti@gmail.com>

Date: Thu, Oct 14, 2021 at 3:40 PM

Subject: 'E ho'i ka wai. Return the water': In ongoing battle, Kalo farmer finds water source locked up

To: Robert Street <hokuoihe@gmail.com>

<https://www.hawaiinewsnow.com/2021/10/13/battle-over-water-mauis-traditional-farmers-flares-up/>

'E ho'i ka wai. Return the water': In ongoing battle, Kalo farmer finds water source locked up

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

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 title 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 affirmed by HRS 7-1

Over the past 11 months, there has been no water 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

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 Am,Jansen

Kaaiialii Medeiros

Great Great Grandson of John Minamina Brown

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.

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'ohanawale 'ia kekahi kanaka ma ke 'ano kū'ē i ua mau 'ōlelo lā.

3. 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 apau 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.

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

WAIKAPU IAO WAIHEHU WAIHEE

Na Wai Eha

State of Hawaii, DLNR
Commission On Water Resource Management
P. O. Box 621 Honolulu, Hawaii 96809

October 15, 2021

Chairperson Case and Commissioners,

In the agenda published for its September 21, 2021, meeting, the Commission listed "Status of Waikapu IIFS Compliance and Water Availability Issues on the South Waikapu Kuleana Auwai" as a "Non-Action Item/Informational Briefing." CWRM September 21, 2021, Agenda, Item B.1, page 1. A staff report was provided to Wailuku Water Company (Company) less than 18 hours before the hearing and more than 30 hours after the deadline for public testimony. As Company provided a response to Staff in early September which Company believed would be provided to the Commission and Company did not learn that the information was not included in the staff report until it was too late to provide comments in compliance with the Commission's rules, Company did not sign up to provide testimony on the agenda item. By this submittal, Company will respond both to the September 21 staff report and the current agenda item concerning delivery of water to Waikapu Properties from Reservoir #1.

The Company reviewed the September 21 staff report, as well as the responses to questions of the Commission concerning the South Waikapu Auwai and noted that information provided about the Waikapu delivery system and the South Waikapu Auwai was inaccurate and should be corrected. As most Commissioners have not seen the Waikapu delivery system or the South Waikapu Auwai, the Company by this communication will provide an accurate description of the South Waikapu Delivery System and the delivery to the South Waikapu Auwai.

The Company's Waikapu system diverts water from Waikapu Stream at an elevation of about 1,200 feet above sea level. Waters in the Waikapu Stream are collected from a watershed forest reserve of about 7.7 square miles (or over 4,200 acres). From the diversion point, water is transported through open ditches and two tunnels that are just over 4,000 feet to a reservoir that is called Reservoir #1. The diversion, ditches, tunnels and Reservoir #1 are shown on the attached USGS Topographic Wailuku Quadrangle circa 1997. (Attachment 1) The first page is the entire Quadrangle, and the second page is an enlarged portion of the Quadrangle. The diversion in Waikapu Stream cannot be adjusted as it is a fixed diversion.

Accordingly, the delivery system requires control structures to return water to Waikapu Stream to prevent an overtopping or failure of a structure in the delivery system. There are three control structures designed to return water from the ditches or tunnels to Waikapu Stream. Some portions of the ditches are earthen, some portions of the ditches are lined with concrete, and some portions were lined with metal, most of which metal rusted away by today.

The first control structure is a window in the tunnel as shown on the attachment. The tunnel was dug in the early 1900s as a part of the development of the Waikapu Ditch System. This control structure has been used very seldomly, only in extremely high flow conditions, and not since the installation of the second control structure. The second control structure, located at about 930 feet above sea level, is in the ditch.

This control structure was installed in the early 1990s. While some amount of water re Waikapu Stream flowing past the diversion, the second control structure is used to control amounts diverted to Reservoir #1, with the remainder of the diverted flows returned to Waikapu Stream at that point. The return point is above the location of the IIFS Gaging Station installed in Waikapu Stream, which also is shown on the attached map.

The third control structure is located just before waters are delivered to Reservoir #1. This structure is an emergency release control gate to keep water from overtopping Reservoir #1 in the event that diversions arising from very high flows in Waikapu Stream threatened the Reservoir. It is located adjacent to the Reservoir for ease of access and operation in emergency situations. Despite statements to the contrary, the third control structure has not been used operationally for at least fifty years, either to return water to the Waikapu Stream or to deliver water to the South Waikapu Auwai.

While the statement that the third control structure (emergency release control gate) was used to deliver water to the South Kuleana Auwai was wrong, the statement that the third control structure (emergency release control gate) was vandalized was correct. Company reported instances of vandalism of the control structure in August 2020. Email of August 25, 2020. (Attachment 2)

However, that was not the first instance of vandalism or self-help of either the third control structure or of other structures the Company uses to divert and deliver water. Company reported other instances to Commission staff over the past five years to which the general response was that the Company should make a report to the Maui Police Department. As noted, the Company has not delivered water into the South Waikapu auwai through any of the control structures for over 50 years. Instead, water is delivered to Reservoir#1 which is used for storage and delivery to the South Waikapu auwai users and the Reserve. This structure allows for a more consistent delivery of water due to the flash flooding nature of the stream.

While the USGS designated instream flows of Waikapu Stream are Q^{90} of 2.5MGD, Q^{70} of 3.3MGD and Q^{50} of 4.3MGD, actual stream flows vary greatly from about 15 MGD to less than 2 MGD and change very rapidly. The rapid and large variations in stream flow suggests that a reservoir is an important part of a system that will provide for consistent deliveries of permitted amounts of water.

Reservoir #1 was expanded to its present configuration in 1967. The Reservoir was originally built around 1905. In April 1906, the day after the San Francisco earthquake, the reservoir failed. The failure result ed in the death of 5 persons in Waikapu which is about 1 miledownhill from the reservoir. The reservoir was repaired and remained in operation with a design capacity of about 4-Million Gallons. In 1967, the reservoir was expanded to the south; the capacity of the reservoir was doubled to about 8.1-Million Gallons. The change in size of the reservoir can be shown by comparing the USGS Topographic Quadrangle of Wailuku Stream {Attachment 3) circa 1955 with the USGS Topographic Quadrangle circa 1997.

Of note on the 1955 map is the inclusion of the South Waikapu Ditch which received

deliveries from the southeast corner of Reservoir #1. The South Waikapu Ditch, used to deliver water to the fields below Reservoir #1, ran initially to the roadway at the top of the pali adjacent to Waikapu Stream and followed the road makai. In 1974, the delivery point was moved to the present location in the middle of the south portion of Reservoir #1. This location is and has been the only point from which water is taken out of Reservoir #1 for all users since 1974. The structure consists of 2 twelve-inch pipes* are designed to rotate based upon the level of water in the reservoir so that the end pipes will be below the water surface but above the bottom of the reservoir.

(Attachment 4) The upper two-feet of each inlet pipe is perforated to allow water to flow into the pipes. The pipes join in a concrete box at the bottom of the reservoir and deliver the water into a twelve-inch pipe that runs makai under the reservoir embankment. The waters from Reservoir #1 initially were used for furrow irrigation of sugar fields below Reservoir #1 and for delivery to the South Waikapu auwai through the South Waikapu Ditch. In 1974 Wailuku Sugar Company converted the field below Reservoir #1 into drip irrigation to determine if that method would be a more efficient method for irrigation of crops. The experiment was a success so that the fields used for all agriculture production were converted to drip irrigation beginning in 1978. As drip irrigation required removal of debris and sediment, a filter station was put in place just makai of the toe of the reservoir embankment where the twelve-inch line exited the reservoir. See sketch. (Attachment 5) The filter station was installed in about 1974 and was moved to a different location in about 1984. The location of the filter station (which has been in the same location since 1984), is shown on the USGS Waikapu Topographic circa 1997.

When the conversion to drip irrigation was made in 1974, a six-inch pipe was installed, connecting the twelve-inch line that exited the reservoir near the location of the old filter station adjacent to the toe of the reservoir. The six-inch pipe ran to the north in the approximate location of the South Waikapu Ditch to a portion of the South Waikapu Auwai. The six-inch pipe remains in the same location that it was placed at the time of installation in 1974. The six-inch pipe did not have a valve or meter from its installation in 1974 to October 2020. Without a valve, the pipe would deliver between 600,000 gpd depending on the level of water in Reservoir #1. The higher the water level, the greater the head pressure at the intake and the greater volume of water that flows through the six-inch pipe. Waikapu Stream flows in the summer of 2020 were very low. The Company contacted staff and expressed concern that waste might be occurring in the South Waikapu Auwai in both June and July 2020, as water was being delivered through the six-inch pipe without any restriction beyond the head pressure created by the level of water in Reservoir #1. Given the low stream flows in the summer of 2020, the Company began looking at methods to control deliveries from Reservoir #1. Among the methods being considered was a valve.

Ultimately, in October 2020, the Company installed a valve on the six-inch pipe. At that time, diversions into Reservoir #1 were about 200,000 gpd. Accordingly, the Company set the deliveries into the South Waikapu Auwai at 160,000 gpd or about 80 % of the total amounts diverted from Waikapu Stream.

On February 12, 2021, Staff asked the Company to increase deliveries into the South Waikapu Auwai to 300,000 gpd. Company informed staff that an increase to that level was not possible as total diversions at that time were at or below 300,000 gpd.

Several acts of self-help or vandalism occurred between August 2020 and the present. A listing of some of the events and the response of the Company is attached. (Attachment 6). On March 5, 2021, the valve on the six-inch pipe was opened by others without the

Company's authorization. The Company assumes the act of self-help was to allow greater flows even though the water level in Reservoir #1 was very low. In order to prevent further acts of vandalism, the valve was secured to prevent it from being adjusted without the Company's authorization.

As noted, the amount of water delivered through the six-inch pipe changes based on the water level of the reservoir. If the water level in the reservoir is very low, the delivery will be lower. As long as the south part of the reservoir has water, deliveries will be fairly constant.

Beginning July 3, 2021, the Company conducted periodic bucket tests to determine whether deliveries of water into the South Kuleana Auwai met the amount provided in the Decision & Order of the Commission released in late June 2021. The results of the bucket tests were provided to Staff in mid-August. See, Email of August 24, 2021. (Attachment 7) The results showed compliance with the Decision & Order on each occasion except the first test.

The Company continued periodic bucket testing through the present. In addition, the Company installed a temporary Parshall Flume to allow for easier monitoring of the delivery of water into the South Kuleana Auwai. Readings were made each weekday and are listed in the attached table. (Attachment 8) A permanent Parshall Flume was ordered; delivery is expected in about 20 weeks.

The Company does not own the land on which the South Waikapu Auwai is located. If requests were made to the Company requesting access to the South Waikapu Auwai, the Company told the persons making the request to contact the property owner, Waikapu Properties. However, given the acts of self-help and vandalism that occurred over the past few years, it appears that access occurred.

Concerning deliveries of water to Waikapu Properties from Reservoir-1 that's been delivering water to the existing filter station. (Attachment 1). From Waikapu Properties, through its tenant Kumu Farms, operates the delivery system. The filter station is flushed twice daily, and the flush waters are delivered to the South Waikapu Auwai. The flush water is about 12,000 gpd which is in addition to the amounts required to be delivered to the South Kuleana Auwai under the June 2021 Decision and Order. From an operational standpoint, limiting deliveries of water from Reservoir #1 to the South Waikapu Auwai and the livestock operators will have a negative impact on the functioning of the Waikapu delivery system. The total impact of such a determination on the delivery system and its components will require further evaluation by the Company.

To summarize, the Company notes:

- The third control gate near Reservoir #1 was not used to return water to Waikapu Stream for over 50 years, if ever
- Reservoir #1 was expanded in 1967 to the south
- Before its expansion in 1967, water was delivered from the southeast corner of Reservoir #1.
- From 1974 to the present, the point from which water is released from Reservoir #1 is in the middle of the South half of the reservoir.
- Since 1974, water has been delivered to the South Waikapu Auwai through

a six-inch pipe that runs from the toe of the reservoir embankment to the north in the general location of the South Waikapu Ditch

- Until October 2020, the six-inch pipe did not have any device to control flows
- In October 2020, a valve was installed on the six-inch pipe to allow to control the amount to be delivered to the South Waikapu Auwai
- In March 2021, unauthorized persons opened the valve on the six-inch pipe to increase flows
- In March 2021, Company secured the valve on the six-inch pipe to prevent the unauthorized change in water flows
- Since July 3, 2021, Company has been monitoring the amounts of water delivered from the six-inch pipe, which deliveries were greater than 265,000 gallons per day except for one reading
- Company does not own the lands on which the South Waikapu Auwai is located and has no say on whether access to those lands is given or restricted

Should you have any questions, please feel free to contact me.

Sincerely,



Avery B. Chumpley
President, Wailuku Water Company LLC

Enclosures: Exhibits # 1 to # 8

Cc: M. Kaleo Manuel
Dean D. Uyeno

Attachment 1 - Page 1



From: James Geiger

SentTo: Avery B. Chumbley <abc@aloha.net> Tuesday, August 25, 2020 9:42

Cc: 'Uyeno, Dean D'; 'Alakai, Rebecca R' James Geiger, Paul Mancini

Subject: Waikapu vandalism

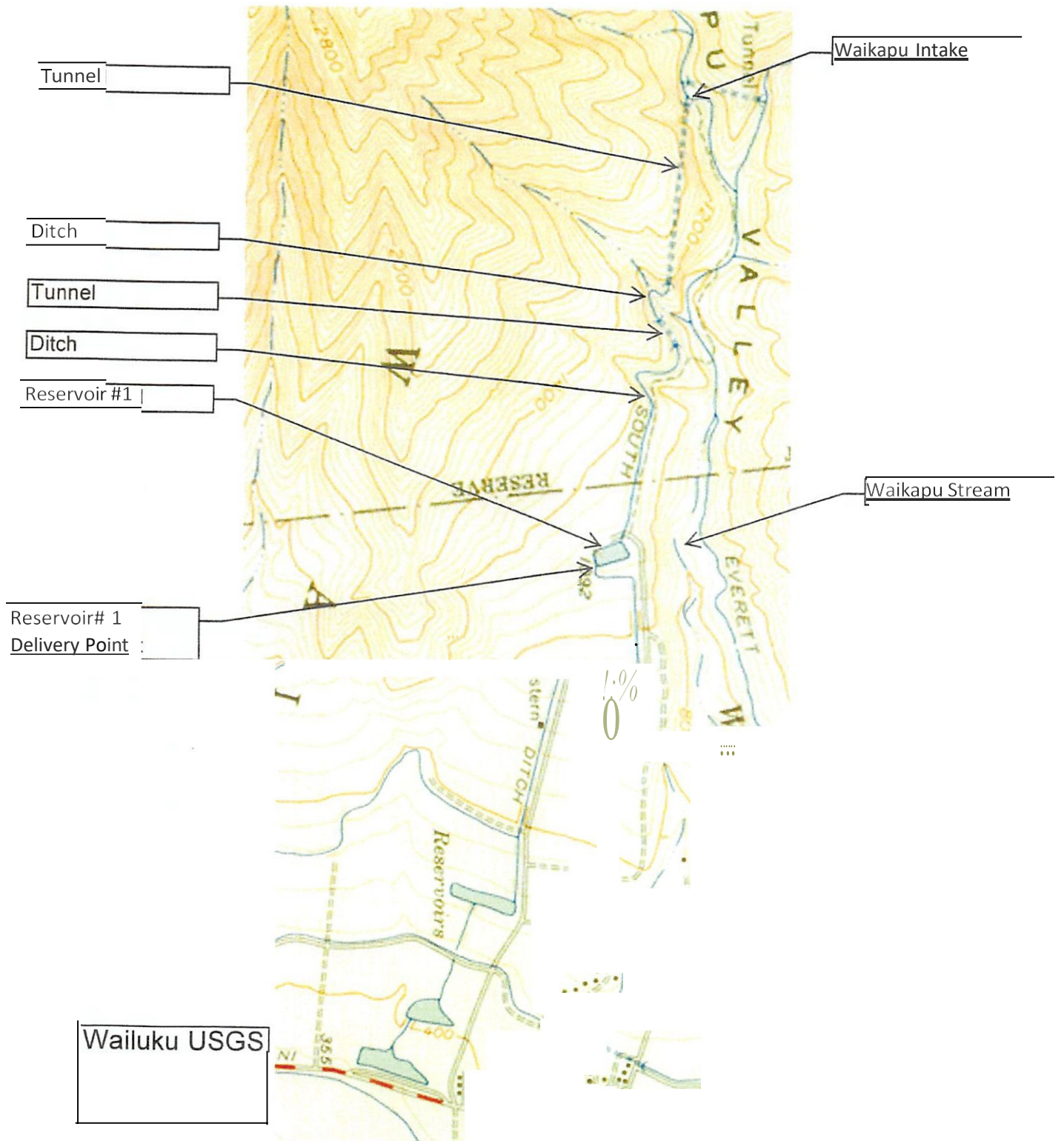
Aloha Dean & Rebeca. It has been reported to us that the son of Crystal Smythe (SWUP app# 2217/2218n) had directly contacted the Atherton group seeking permission to access Waikapu properties lands to create a self-help diversion directly off of the South Waikapu Ditch to gain water for their Kalo patch complaining that water dropped by WWC from Reservoir #1 to the Kuleana ditch was too warm. He was denied access and told that Waikapu Properties has no jurisdiction or control over the surface water crossing their property, it seems he was not satisfied with that response, yesterday we discovered that the emergency control gate off of South Waikapu Ditch just before the flow would go into Reservoir #1 was vandalized over the weekend. The chain and lock in the below picture does allow for WWC to control the gate height but it has been damaged. If this type of self help vandalism continues WWC will take the necessary legal steps to stop this criminal trespass and property damage.

Attachment 2 - Page 1



Attachment 2 - Page 2

Attachment 3 - Page 2



Photographs of Reservoir #1 Intake



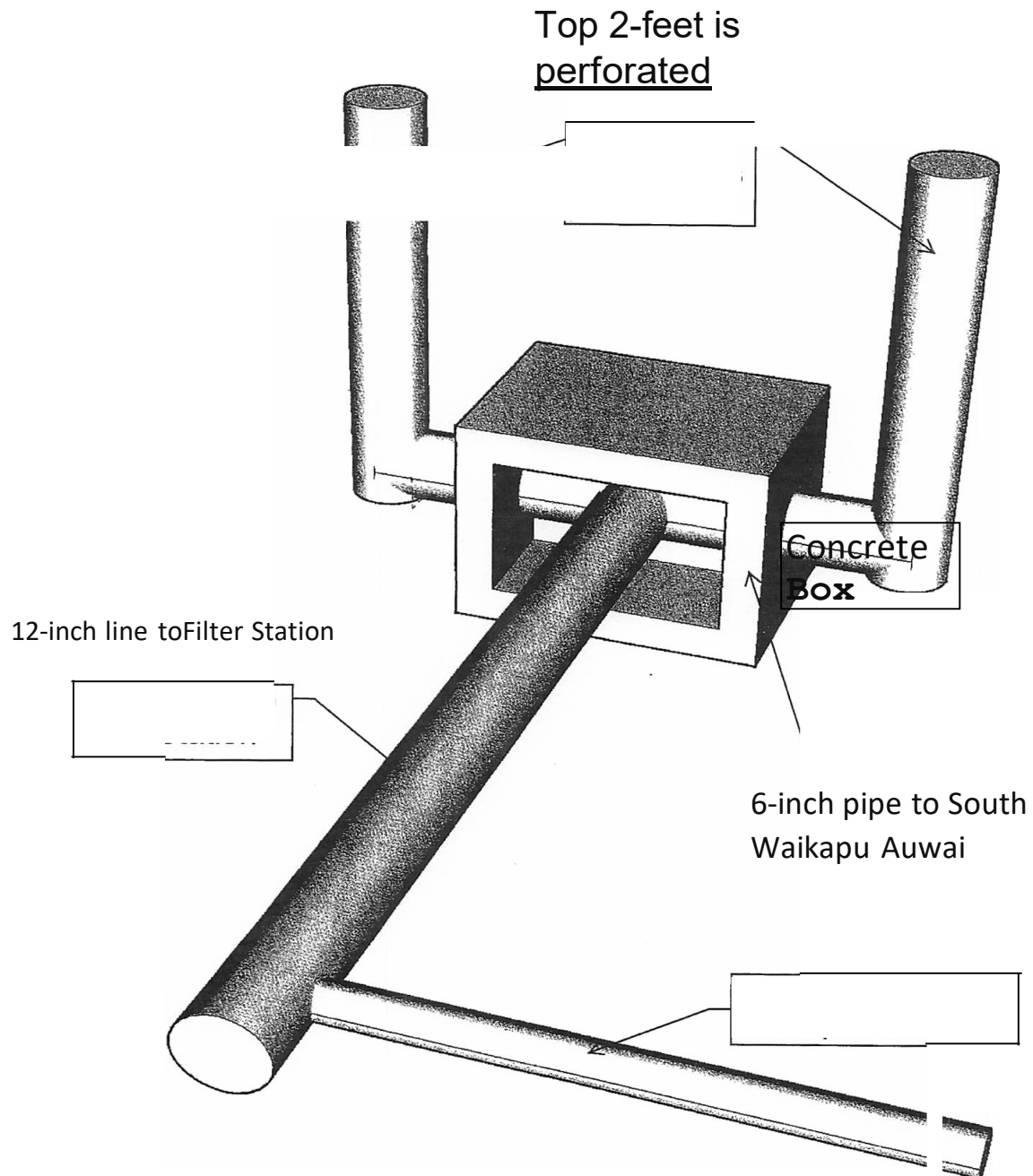
Reservoir #1
Delivery Point
Structure



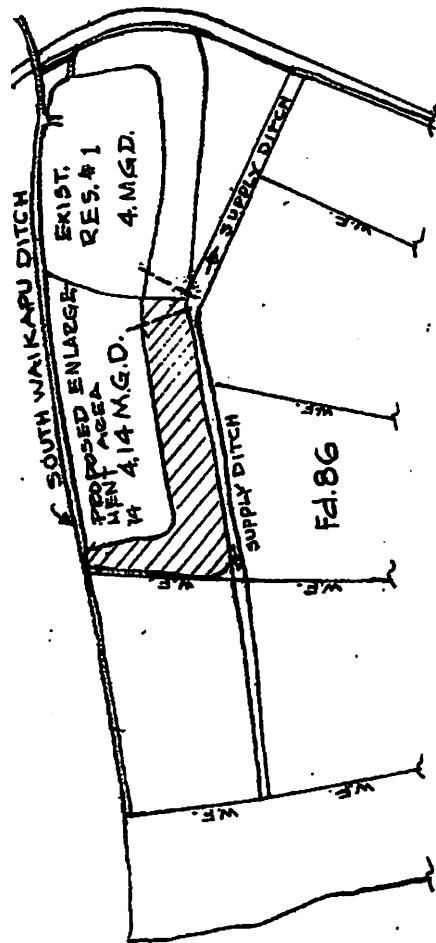
Reservoir #1
Delivery Point
Structure

Attachment 4 - Page 1
Attachment 4 - Page 2

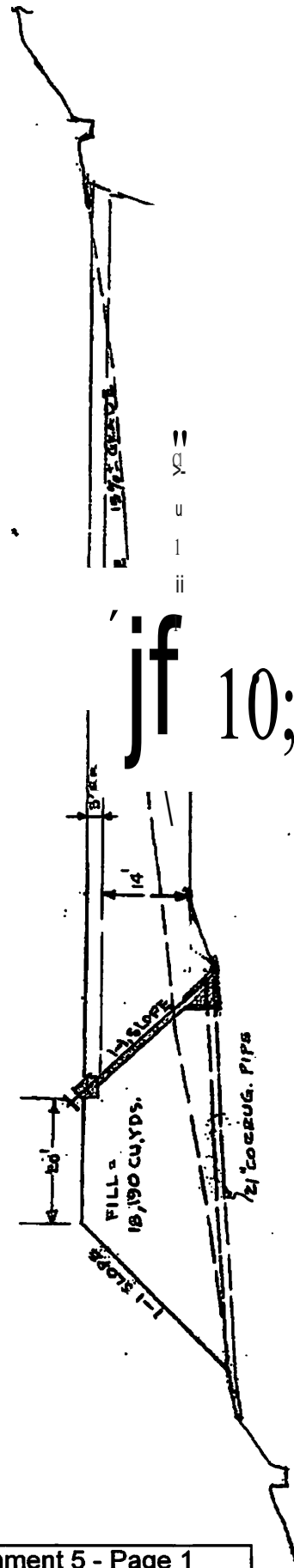
Intake Pipe



W3CO
 SKETCHES OF RES. #1
 SCALE (AS SHOWN)
 7/7/67
 WESLEY H.C. WONG (ENGINEER)



PLAN
 RES. #1
 1" = 200'



jf 10;

EMERGENCY RELEASE CONTROL GATE/ VALVE - ACTS OF SELF HELP OR VANDALISM

- August 26, 2020 - Emergency Release Control Gate damaged
- December 15, 2020 - Emergency Release Control Gate damaged
- January 31, 2021- Emergency Release Control Gate damaged
- February 10, 2021- Emergency Release Control Gate chained and locked
- March 5, 2021 - South Waikapu Auwai valve tampered
 - March 5, 2021- South Waikapu Auwai valve chained and locked
 - July 7, 2021- Emergency Release Control Gate damaged
- August 4, 2021- Emergency Release Control Gate tiled

COMPLIANCE WITH D&O

FILED JuNE 28, 2021 - DELIVERY

- A.39.c - Amount to deliver to South Waikapu Auwai - 265,000 gpd
- Bucket Tests

Date	Bucket Test Amount (gpd)	Flush Water Amount (gpd)	Total Delivered to S. Waikapu Auwai (gpd)
7/3/2021	198,158	12,000	210,158
7/6/2021	345,600	12,000	357,600
7/21/2021	244,800	12,000	256,800
8/4/2021	309,600	12,000	321,600

DELIVERIES TO SOUTH WAIKAPU AUWAI
(until daily Parshall Flume readings and not including 12,000 gpd flushwater)

Date	Bucket Test (gpd)	Parshall Flume Reading (gpd)
7/3/2021	198,158	n/a
7/6/2021	345,600	n/a
7/21/2021	244,800	n/a
8/4/2021	309,600	n/a
8/19/2021	423,360	n/a
8/20/2021	432,000	n/a
8/20/2021	268,322	n/a
8/27/2021	301,680	325,000
8/28/2021	n/a	320,000
8/31/2021	295,200	320,000
9/2/2021	316,800	330,000
9/7/2021	316,800	330,000

DELIVERIES TO SOUTH WAIKAPU AUWAI
(Not including 12,000 gpd flush water)

Date	Bucket Test (gpd)	Parshall Flume Reading (gpd)
9/13/2021	n/a	320,000
9/14/2021	n/a	320,000
9/14/2021	n/a	320,000
9/15/2021	n/a	320,000
9/16/2021	n/a	320,000
9/17/2021	n/a	300 ,000
9/20/2021	n/a	320 ,000
9/21/2021	n/a	300 ,000
9/22/2021	n/a	300,000
9/23/2021	271,440	300,000
9/24/2021	n/a	280,000
9/27/2021	n/a	350,000
9/28/2021	298,800	350,000

Date	Bucket Test (gpd)	Parshall Flume Reading(gpd)
9/29/2021	n/a	3 20,000
9/30/2021	n/a	320 ,000
10/1/2021	n/a	3 20,000
10/ 4/ 2021	n/a	320 ,000
10/5/2021	n/a	320 ,000
10/6/2021	n/a	3 20,000
10/7/2021	290,640	300,000
10/8/2021	n/a	300 ,000
10/11/2021	n/a	320 ,000
10/12/ 2021	n/a	320 ,000
10/13/2021	n/a	320,000
10/14/2021	n/a	320,000
10/ 15/ 2021	271,440	320,000