

MINUTES
FOR THE MEETING OF
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: February 15, 2022
TIME: 9:00 am
PLACE: Online via Zoom
Meeting ID: 864 2230 7138

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 being live streamed via YouTube for public viewing due to the ongoing Covid-19 pandemic. It was noted the meeting was set to take live oral testimony and written testimony received would be acknowledged upon the submittal item. Chairperson Case took a roll call of the Commissioners.

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

COUNSEL: Mr. Colin Lau; Ms. Linda Chow

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

OTHERS: Mr. Avery Chumbley (Wailuku Water Company) (WWC); Mr. James Geiger (Counsel for WWC); Mr. Paul Mancini (Counsel for WWC); Mr. Hōkūao Pellegrino (Hui o Nā Wai ‘Ehā); Ms. Crystal Smythe; Ms. Emilou Alves; Mr. Isaac Moriwake (Earthjustice); Ms. Clare Apana (Sierra Club Maui); Ms. Mary Ann Boyle Velez; Mr. Robert Street; Ms. Joyclynn Costa; Capt. James Meyer (Joint Base Pearl Harbor-Hickam); Capt. Randy Harmeyer (JBPHH); Mr. Jeremy Mitchell (JBPHH); Mr. Travis Hylton (JBPHH); Mr. Delwyn Oki (U.S. Geological Survey); Mr. Rylen Nakama (USGS); Mr. Tom Giambelluca (University of Hawaii); Ms. Catherine Rong (UH); Mr. Yinphan Tsang (UH); Mr. Don Thomas (UH); Ms. Kathleen Ho (Dept. of Health)

All written testimonies submitted is available for review by interested parties and is posted online upon the Commission on Water Resource Management website.

Chairperson Case notified that the Red Hill agenda items was set to be heard at 2:00 pm.

021522 00:05:20

A. APPROVAL OF MINUTES

January 7, 2022
January 18, 2022

PUBLIC TESTIMONY – None

**MOTION: (HANNAHS/KATAYAMA)
To approve the minutes as submitted.
UNANIMOUSLY APPROVED
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER/SETO**

021522 00:06:18

B. ACTION ITEMS

- 1. Clarify the Distribution Points for South Waikapū ‘Auwai as Part of the Implementation of the Final Decision and Order for CCH-MA15-01 and Order Wailuku Water Company and Waikapu Properties, Inc. to Implement Certain Actions to Initiate Delivery of Water to the South Waikapū ‘Auwai, Nā Wai ‘Ehā Surface Water Management Area, Waikapū, Maui**

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

Mr. Uyeno read the summary of request as submitted and stated that staff stands on its submittal. Mr. Uyeno then read the staff’s recommendations #1-4.

Chairperson Case asked Commissioners for questions then decided to hear public testimony before taking questions from Commissioners.

PUBLIC TESTIMONY

Mr. Avery Chumbley, Wailuku Water Company (WWC) – Thank you Chair Case and Commissioners. Good morning, Wailuku Water is prepared and ready to assist and finalize this conversion. The only remaining issue that we have is that the meter-located at the distribution point just below the filter station, is non-functional and that meter needs to be replaced by Waikapu Properties.

I understand that they either have ordered it or are aware of that conversion that needs to be done for that meter. Other than that, I believe they've taken care of the rest of all the hookup.

Mr. Paul Mancini, Counsel for Wailuku Water Company – replied I have nothing to add to that.

Mr. James Geiger Counsel for Wailuku Water Company – replied nothing to add but will be available for questions.

Mr. Hōkūāo Pellegrino, Hui o Nā Wai ‘Ehā – Aloha e Chair Case, Deputy Director Manuel Commissioners and staff. It has now been 482 days since the South Waikapū kuleana kalo farmers and water use applicants on the South Waikapū kuleana ‘auwai except for Mr. Suzuki, have had any water flowing into their ‘auwai.

They've been unable to cultivate kalo, lo‘i have completely dried up, cracked, and are full of leaves. Longevity of this resolve is of unreal proportions. How much longer must the kuleana suffer? While the Hui and the kuleana are truly grateful to Mr. Atherton and Mr. Ting for going above and beyond to build community relations by literally reconnecting the lifeline these people depend on, there's no doubt that Wailuku Water Company will continue to make every part of this result difficult, if not impossible, to work even in the short term, and forcing us right back to square one again, returning to this Commission.

Look at the hoops and bounds it took us to get here today. The pipeline built with full disclosure and approval by all parties, including the Commission and Wailuku Water Company back in October of 2021, yet Wailuku Water Company refused to allow the water to flow into this pipe via Reservoir 1 and into the ‘auwai to kuleana users as dated on February 1st, 2nd & 3rd, through multiple email exchanges between Mr. Atherton, CWRM and Mr. Chumbley. Even Chair Case and Deputy Director specified to him that this was approved and should be opened immediately following the completion of the 4-inch line.

What happened next was even more degrading based on Mr. Chumbley's response to the Commission, Chair and Deputy Director. That Aunty Crystal and the Alves ‘Ohana to literally write 2 sentences specifying that they were aware of the new system and that they approved it, even though they had already advocated for this short-term solution. With all due respect Commissioners and Chair, at what point are you going to realize what we are dealing with in Nā Wai ‘Ehā? As mentioned, this issue is far from over, even when the pipeline is charged and flowing into the kuleana ‘auwai.

Yesterday, February 14, 2022, a certified letter arrived at Mr. and Mrs. Chumbley's residence on behalf of the Hui and South Waikapū kuleana users Alves, and Smythe, formally requesting the Hui access through their property to exercise their appurtenant rights and traditional and customary rights as Native Hawaiians, for use of Waikapū Stream, water to cultivate kalo on their kuleana land via historical ‘auwai that still remains today. We are waiting for an immediate response as to whether it will be agreeable to these traditional and customary rights being exercised or not. Maybe this is something he can clear up and share his stance on in front of all of us today. That would be a great question for you to ask following my testimony.

We have also reached out to the State Historic Preservation Division to make them aware that the pre-western contact ‘auwai system is predominantly intact on that land and that they conduct the site visit to map, photograph, and document its current state to ensure that while we await Mr. Chumbley's response, that absolutely no destruction and modification occur on that parcel of land in that highly sensitive area. The Hui has also taken photographs of its current state and portions of the ‘auwai which include detailed remnants of stone lined ‘auwai system through multiple LCAs that tie into Waikapū Stream.

This quest to restore the traditional South Waikapū kuleana ‘auwai is not something new. In

fact, written testimony by former Wailuku Sugar Agribusiness employee and kalo farmer Alfred Santiago stated in 2007 during the first Nā Wai ‘Ehā contested case the following, ...“historically an ancient ‘auwai took water directly from Waikapū Stream to the kuleana users on the south side of the stream”... (I'm just going to paraphrase because you have a lot of testimony, and I included this in the written testimony and it's very it's very important that you read through that particular part for the record).

In closing, Hui o Nā Wai ‘Ehā and the South Waikapū kuleana users which include the Alves and Smythe ‘Ohana, formally and respectfully request support and approval by this Commission to allow access for the restoration of this historical and traditional South Waikapū kuleana ‘auwai, not only as a means to be independent of Wailuku Water Company system, but because it is their traditional and customary and appurtenant right, that according to the Water Code 174C shall be upheld and protected by this very Commission. The Hui humbly asks that these discussions take place beginning today whether it is before all of you, or whether it's an executive session with your attorney general; we would like to know the stance of this commission on this matter and put this on the record. While the short-term solution is being resolved today, a long-term solution is an urgent need and something that cannot wait another 480 days to resolve, pau and I'm here for questions.

Mr. Isaac Moriwake, Earthjustice – *deferred until after all kuleana users have testified.*

Ms. Crystal Smythe, South Waikapū kuleana farmer – Good morning, Chair and Commissioners. Thank you for allowing us to appear once again on this morning's agenda. Hōkūao Pellegrino, the President of Nā Wai ‘Ehā, has clearly expressed our concerns, and emotions and we can only at this time plea once again that we receive the full support of this Commission in our quest and petition to have water to our ancient kuleana kalo.

Thank you for your time and please I ask that I not have to reappear at this Commission another time; thank you.

Ms. Emilou Alves, South Waikapū kuleana farmer – Aloha Commissioners and interested participants, on behalf of myself and my family, the Alves ‘Ohana, we appreciate all that Mr. Atherton did in placing the pipes to our ‘auwai but as you well know according to Hōkūao, we still have no water.

I would like to also move forward in planning to reinstate our original South Waikapū ‘auwai. We did submit a written testimony and we're hoping that we could have a plan to reinstate our traditional South Waikapū ‘auwai as soon as possible. I think we made a formal request to the landowners, but we're still awaiting the response on whether they'll grant us access to restore our ‘auwai. We have hiked up ‘auwai recently and we have it all clean it looks great and there's a few minor or major things that have to be done; but I believe that restoring the traditional ‘auwai is doable; thank you.

Mr. Isaac Moriwake, EarthJustice – Thank you and good morning, everyone again. I want to thank Deputy Director Manuel and the Commission for taking action on this important matter of protecting constitutionally and traditionally protected established rights to kuleana water.

This is the Commission's kuleana to uphold, recognize, and protect these rights. I have nothing really to add to Mr. Pellegrino's testimony and the testimony of the individual kuleana right holders. They really speak for themselves. I just wanted to highlight a couple issues. I heard Mr. Chumbley today saying that he demands there's a meter to be put in. I'm not sure if he's demanding that bit of implementation happen before the water gets released and provided; I hope not. This Commission was already informed of this fixed short-term solution last October. It's regrettable that this short-term fix took 4 months to get going. It's been 16 months altogether that this paramount kuleana right has been completely cut off.

I do want to thank Mr. Atherton for providing this short-term solution. Commissioner Hannahs said 4 months ago, he described Mr. Atherton as a good Samaritan and that really sums it up. He's being a good neighbor by providing this infrastructure to reestablish the delivery access of this kuleana right. I appreciate him taking responsibility as a good neighbor, but I want to highlight both for the short-term but for the longer-term solution that the kuleana owners and Hōkūāo have highlighted, it's not Mr. Atherton's responsibility. It's Wailuku Water Company or specifically his predecessor that put in that ditch and connected the kuleana users to that route in the first place. We can discuss this further going forward because there has been an expressed request to reestablished the traditional 'auwai but like I did in October, I'm going to highlight again for this Commission that this issue is still ongoing, it's not going to go away and really we have to collectively, with the Commission taking the lead, because the Commission is the modern day konohiki to reestablish this kuleana right for the long-term so that we're not going to be in the same situation several months from now or tomorrow.

One last question Wailuku Water Company raised about the Commission's jurisdiction. The Decision and Order is up on appeal. No one has requested a stay, it's in full legal effect, the Commission has the jurisdiction and authority to implement it in the meantime; so whether this is amending the previous decision or issuing a new order to require this implementation there's certainly authority for this and precedent for it in the previous Na Wai 'Eha instream flow standards case 2010, the Commission issued subsequent orders to calibrate the instream flow standard for South Waiehu kuleana at that time. Let's not get wrapped up or tripped up by these false legal technicalities, let's get this done. It's long overdue and it's constitutionally required. I'm here to respond to any questions, including legal ones if they come up.

I appreciate again the Commission and Mr. Atherton for being solution oriented in trying to uphold the law and principles behind these kuleana rights.

Mr. Mike Atherton, Waikapū Properties – I'll give you an update of where we are. The CLA valve that was back ordered came in yesterday afternoon. I sent the boys down to pick it up this morning and we'll install as soon as we get it. We had to put new sand in the sand filters. The main 8-inch main line hasn't been maintained very well so we went and re-did it and had a couple of leaks we had to fix. I'm hoping we'll have this thing up and running this week.

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Chairperson Case read the standard contested case statement.

(end of public testimony)

QUESTIONS/COMMENTS

Commissioner Hannahs – (to Deputy Manuel) asked why this matter is back on the agenda as it comports with the D&O and actions made in January and wanting to ensure the D&O is enforced and to make sure everyone gets what they're supposed to and not to delay any needed assets required to raise kalo.

Deputy Manuel – out of caution and reassurance, to get the Commission to collectively weigh in on this decision, we're bringing it forward for your complete decision making. We'll be taking up Item B-3 to delegate authority to the Chairperson to make these administrative implementation orders or implement the order of the Commission. It is consistent with the intent of the order because the formal delegation maybe wasn't explicit so that we can expeditiously implement those. I do think it's within the Chair's, as well as my power, within the Code to implement the orders and for clarity this is more formal to the Commission, so all users understand what's expected of them in order to meet the intent of the Commission.

Chair Case – added we think we have this authority and that you want us to do this; but to the extent anyone thinks that's not clear, we're bringing this back to finalize it and asking for delegation to make it crystal clear.

I want to understand whether it's Mr. Atherton or Mr. Chumbley, what would stop us from ensuring that the pipe is turned on tomorrow or today?

Mr. Chumbley – replied if the Commission in its order today is requiring Waikapu Properties to report their usage, it would seem that it's important that the water meter below the filter station be installed and be operational so that the volume of water distributed from the water filter is the gross amount. The meter which will be installed prior to the CLA valve before Mr. Suzuki's lateral will then be the volume of water that's used and dropped to the kuleana users, so you need to net out the two volumes for reporting purposes. It seems to me that the meter at the filter station is an important part of your order and requiring the reporting and tracking of the volume of water that's distributed and used.

Chair Case – it's important to get the water going then to measure it at this point.

Mr. Uyeno – I did go out in the field last Monday and spoke with Mr. Duane Ting of Waikapu Properties, and accordingly also to my understanding the meter there is working and that's how Waikapu Properties is getting charged.

Mr. Chumbley – Chair, that's not my understanding, that's incorrect. When Kumu Farms was using water out of Reservoir 1 prior to the order to cease that usage, that meter had not worked for some time and the conversion to a lower filter station was done, so that the tracking and the usage of the water delivered to Waikapu Properties which was being used by

Kumu Farms was being measured at the lower filter station not at the upper filter station because the meter was inoperable.

Chair Case – you were providing water to someone who wasn't authorized without measuring it and now we're arguing about not providing water to the people who are authorized to have it until we're triple sure all the meters are working right.

Mr. Chumbley – the water delivered to Kumu Farms was being measured at a lower filter station.

Chair Case – *reiterated stance* and added I just want to make really sure that whatever the Commission does today, makes it really clear that you turn on the water to the 'auwai today.

Mr. Chumbley – I don't think the CLA valve, the pressure reducer, is installed yet. I don't believe it can be turned on until all of the remaining apparatuses are installed, otherwise you could have a rupture of the line due to high pressure. That's up to Waikapu Properties folks to get all that installed.

Chair Case – asked for Mr. Atherton's comment as it sounds like the valve is ready to be installed and asked if it could be installed this week and want to make sure the water is delivered when installation occurs.

Mr. Atherton – we got the CLA valve yesterday and picking it up right now; we'll get it installed today if we can. We have a leak in the pressure reducing valve that we're going to fix today, and I'll turn the water on as soon as those two things are done, and I'm told that it's okay to do that.

Chair Case – our plan is to tell you It's okay to do that as soon as you're ready, valve wise. I want to make sure Mr. Chumbley is clear that's what's going to happen.

Mr. Atherton – Okay, I understand.

Mr. Chumbley – Once we receive notice that the CLA valve is installed and they're ready to go, we're fine with the conversion. I still feel that the meter needs to be replaced at the top filter but at least you can get it running sooner than later.

Chair Case – asked Mr. Chumbley where do you turn the water on?

Mr. Chumbley – the water is distributed from the filter station into the eight-inch main line. The kuleana 4-inch hookup line has its own separate control valves.

Chair Case – that Mr. Atherton (and thank you very much, Mr. Atherton for your help with this) fixes that valve and then you tell Mr. Chumbley it's ready and Mr. Chumbley that day turns it on, is that right?

Mr. Chumbley – agreed.

Chair Case – asked on the comfort of the way submittal is drafted.

Mr. Chumbley – it's my understanding Chair; the responsibility lies with Waikapu Properties for that line at after the filter station.

Mr. Uyeno – ask for clarification of Mr. Atherton and or Mr. Ting, regarding replacement of the meter at the filter station where it drops to the 8-inch main line.

Mr. Ting (Waikapu Properties) – that meter is out-of-order, and as soon as we have it, we'll get it put in as it was new to us, it could be a month; but if water is that much more important, I feel we should turn it on, but we do have it on order.

Mr. Atherton – there's been delays on orders and supplies.

Deputy Manuel – proposed amendment to the motion; to meet the intent of getting water to the kuleana farmers immediately is that once the CLA valve is installed, water shall be turned on and that in the interim while that meter is being ordered and coming that we work with the kuleana users to measure the volume and the way it's designed, they could do a bucket measurement to determine the quantity of water that is flowing while the meter is being installed.

Mr. Chumbley – clarified there's 2 meters in this new system. The first meter is located just below the filter station at our distribution point. The second meter is located on the 4-inch tap in line, which will deliver water to Mr. Suzuki and the kuleana users just prior to Mr. Suzuki's lateral. That one I understand that Waikapu Properties has that meter, and that meter will be installed at the time that the CLA valve is installed; so, it's the second meter up at the filter station at the top is the one that's causing some confusion.

Deputy Manuel – if that is the main quantity being measured is being met, the majority of the water that's delivered will be measured at that new 4-inch meter off of the lateral in the interim the remaining quantity that is measured at that very top by the filter station is to determine the amount of water that Waikapu Properties pulls as an aggregate minus the kuleana users. From my perspective, I'm comfortable working with Waikapu Properties to ensure that they put in that meter and as soon as possible to start to determine how much water they're using.

Mr. Chumbley – 1,875 gpd

Deputy Manuel – it's a small amount of water compared to the total amount coming down that pipe and knowing that number is de minimis compared to the quantity flowing to the South kuleana 'auwai and that meter in place is sufficient to turn on that system; that would be my recommendation.

Chair Case – asked Deputy Manuel to repeat the modifications to the recommendation on page 15 & 16 of the submittal.

Deputy Manuel – noted there's no need to amend, as the language is there that address the main issues brought up and have been addressed (item #4). Item #3 which is WWC to provide the 0.272 to that filter station and the meter is installed.

Mr. Uyeno – added to amend item #4; to have Waikapu Properties to notify CWRM upon installation the flow meter at the sand filter station once that’s received and installed.

Chair Case – added also to notify Wailuku Water Company.

Deputy Manuel – to add an item #5 that once the CLA valve is installed that water shall be provided immediately to this system. That's the biggest hang-up to get water to the users.

Commissioner Katayama – asked Mr. Atherton, has he pressured tested the 8-inch line? And at the pressures you’re going to charge it with?

Mr. Atherton – we've been using it for a long time. We reserviced the 2 pressure reducing valves. The line hadn't been really maintained very well by Kumu, so we went through the whole system.

Commissioner Katayama – commented there’s no issue with testing the line after you install the CLA valves.

Mr. Atherton – we'll pressure test it and hoping in a couple of days. We'll turn it on as soon as it's done if we got permission.

Chairperson Case called upon oral testifier who joined in the meeting late

PUBLIC TESTIMONY (CONT'D)

Ms. Clare Apana, Sierra Club Maui – I would just like to go on the record for Sierra Club Maui and Mālama Kakanilua, that we support the Kuleana water owners and really, I'm happy for the result. Thank you very much to Mr. Atherton, Mr. Ting for your help and support of the kuleana water users. The question of 174C, I don't know if it's been answered very clearly but I think that's an important responsibility for the Water Board, an important clarification for all of the kuleana water users, water owners on Maui. Thank you very much for moving forward and a solution that will hopefully not have to bring all of these people back to your board.

(end of public testimony)

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**MOTION: (HANNAHS/KATAYAMA)
To approve B-1 as amended.
UNANIMOUSLY APPROVED
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/SETO
Commissioner Meyer recused self from vote**

RECESS: 9:52 AM

RECONVENE: 10:02 AM

021522 00:59:35

B. ACTION ITEMS

- 2. Approve Interim Water Use Permits to Mary Ann Velez (Higa) (SWUPAs 2241/2242N), Jordanella Ciotti (SWUPAs 2247/2248N), and Greg Ibarra (SWUPAs 2245/2246N) on the Wailuku Town Kuleana ‘Auwai and Order Wailuku Water Company and Mahi Pono, LLC to Implement Certain Actions for Commission Staff to Assess Water Loss, Nā Wai ‘Ehā Surface Water Management Area, Wailuku, Maui**

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

Mr. Uyeno read the summary of request and stated that staff stands firm on its submittal as submitted and notes that the exhibits from the January 18, 2022, briefing item A-3, as well as written testimony are attached to the submittal and are available online. Mr. Uyeno then read staff's recommendations #1 through #4.

021522 01:03:14

PUBLIC TESTIMONY

Ms. Mary Ann Boyle Velez, Wailuku Kuleana ‘Auwai User – I just wanted to testify and confirm that we don't have any water coming down right now, and I was told that this process that we're requesting, will allow everyone to know how much water is coming down our ditches to see how much water they need to get to our property because we haven't had any water since the siphon broke.

Mr. Robert Street, Wailuku Kuleana ‘Auwai User – I went through this staff and also I went back to the YouTube that happened last month and I'd just like to make a correction on a statement that I made about the beginning point of Wailuku Town ‘Auwai system coming off of the Waihe'e Ditch, and I misspoke that I said 400 meters should be towards Waikapū, the Hopoi Chute and they both end up down here where we are at Kalua Road, and I take that correction for the Commission.

On the summary of requests, you're asking Mahi Pono to install a berm, and I am questioning that because there is really nothing wrong with Spreckels Ditch and how it flows. The reason why the water is coming back here is because there's no water being dropped in after we're using it on Kalua Road which would normally flow towards Waikapū. So, I don't think at this point it's necessary that Mahi Pono do anything and we let the system, once we get the water back, let the system correct itself.

On page 4 you have the SWUPAs for Ka'anapali Kai and Vernon Bal as well as Mary Ann Velez, Jordanalla, Ciotti, and Greg Ibara. I just want to inform you that Vernon Bal,

even though that water rights haven't been distinguished, they're still active and well and the person that bought that property is Jerry Cook; and he is very much interested in reactivating the water rights just to give you a heads up on that and he is right across the street from where the midpoint valve is located.

On page 5 the last paragraph there's a quote that the Commission staff also received an email from Mr. Chumbley the distribution valve located on Imua Family Services property had also been tampered with and the main valve was found to be closed nearly all the way. On January 24th Chumbley forward an email from Mr. Dean Wong, of Imua Family Services, implying that Mr. Street has been making "his way up our property and turning the water pumps on the property because he does not know what..." I'm not going to go any further. I have no idea what this gentleman is talking about.

One of my recommendations that I sent to Hōkūao Pellegrino, is that someone or some other Hawaiian scholar, educate these occupants of 2471 Main Street, Wailuku Water Company and the Commission of Water Resource Management what the word kuleana means. Including what kuleana lands mean, kuleana water right, and what kuleana alahēle e hiki aku ai means; and that is your implied easement.

I have a right, I believe, with that implied easement to access any part of the Wailuku Town 'Auwai system. We did not give up our access rights to the Kama 'auwai, even though it's not functioning at this point. We have another system that has been put in place and I'm asserting we have a right to access that system as part of the kuleana concept. To make things clear I've contacted the Public Works Department. There is a steel plate at 486 Kalua Road on the mauka side. I've asked them to identify it and what its usages are. That is an unknown system on our street that needs clarifying.

I have a problem with the Commission and team Manuel understanding that the kuleana water users have a first right, if they're growing taro, to water. It's not Mahi Pono, Tropical Plantation, MMK, Pohakulepo Recycling, and Wailuku Water Company or whoever they're selling water to, Ka'anapali Kai. They are not the first ones on the list, we are those that are actively growing kalo; and that has not been recognized and acknowledged by the Commission. Because if it had, we wouldn't be without water for the last 4 months, our system is totally dried up. It's jammed up Spreckels Ditch; the lo'i is dead, everything is gone.

I point the fingers squarely at Avery Chumbley and Wailuku Water Company. I'm just sitting to rethink about Mahi Pono and that berm, get the water flowing again. Get the baseline data that everybody is seeking to determine exactly what flow that we need and take it from there; but to cut us off. I'm done, I've had it, I don't know what else to say. Are we going to get compensated for the loss of our water and the damage that is done?

We need to just get the water back into the system and get it flowing and take it from there, but you have to recognize that we have appurtenant water rights and they need to be respected and they haven't been. One more statement, the person or an entity on Kalua Road that has chosen not to exercise their water rights, that doesn't mean their water rights are extinguished; they just didn't go through the process, and I'd like that entity to be recognized even though they didn't go through the process, they haven't been allocated any quantity of water. They're still relevant in the equation of what happens which they're entitled to,

because they have appurtenant water rights and when they do decide to exercise it, they need to go through a process.

Mr. Avery Chumbley, Wailuku Water Company – Thank you Chair Case and Commissioners. I want to first start by saying that Wailuku Water’s obligation under the D&O, is to deliver water to the designated distribution points and that’s exactly what we’re doing. The implementation beyond that point seems to be a lot of the issues that we’re all facing you and us, on the dysfunctional ‘auwais which are the responsibility of the kuleana users and the individuals off those ‘auwai. We’re delivering water at the distribution points where we’re obligated to do so.

In regard to the recommendations from staff, #1 and #2 are implementation issues and the only comment I would make is that you give the kuleana users clear guidance and specificity so there’s no confusion on what you’re asking them to do. With regards to item #3, I do have some concerns about the 60-day period and the 500 gallons per minute which could be as high as 720,000 gallons per day, released into the ‘auwai; that’s more than 9 times the allocated amount to those kuleana users under the D&O.

From September to December 5th, Wailuku Water was delivering at the distribution point the required amount of water. On December 5th, we had the storm. Waihe’e siphon was shut down which meant there was no water coming through the system at that point. On January 7th, that siphon was repaired, and water flows were restored.

From January 7th to today, that’s roughly 6 weeks and Wailuku Water has been dropping the water at the distribution point that it’s required to deliver; it’s just not making it to the bottom.

There are significant decreases in the flows in Waihe’e River. On January 1st through today we’ve seen constantly lower than normal 38-year median daily flows, with the exception of January 12th of a spike event of around 195 million gallons of flow. Delivering water at 500 gallons per minute under that six-inch line that comes off Waihe’e Ditch, which valve is always left open and not adjusted, could result in a significant flow through the ‘auwai that’s unnecessary water that could be considered waste. The ‘auwai is basically wetted already to do a 60-day period and only call for at least one seepage run, makes no logical sense.

If the Commission and the staff wants to do seepage run and loss measurements, we’re happy to work with the staff during a two or three-day period prior to the designated date, will open the valves all the way, the flows can saturate the already wet ‘auwai and flow measurements can be taken. We don’t need to do it for 60-days; we’re in a water shortage and to be delivering that much water to this ‘auwai will cause more problems than what the staff realizes. That concludes my comments and I’ll leave any other comments to the attorneys for clarification.

Mr. Hōkūao Pellegrino, Hui o Nā Wai ‘Ehā – Aloha Chair and Commissioners. As you can see this is a very complex issue. Last week it got a little bit more complex. I notified Deputy Director Kaleo Manuel that here are other undisclosed water uses on this system that Wailuku Water Company did not provide. In the Kama ‘auwai going back towards Vineyard Street, is a pipeline that has been there for more than 40 years. This pipeline was live and

actually feeding non permitted but appurtenant rights users on Vineyard Street and along Main Street going up towards 'Iao Valley.

When I was informed by Mr. Wong of the Imua Family Services as they were trying to clear Kama 'auwai for their garden space line, a pipeline broke and immediately the landowners on Vineyard Street contacted Wailuku Water Company to find out what was going on. They backtracked and saw that the pipe had had been broken and Imua Family Services was unaware that this pipe even existed and that the water was flowing in that system to other users.

There's a lot of other challenges that are ongoing in this, while we the Hui supports the recommendations with some possible minor changes to item #3 related to Mahi Pono, there's a lot of other issues that are not fully being disclosed in regard to this 'auwai. According to documents in terms of the previous land owner of Ka'anapali Kai, an agreement with Wailuku Water Company was that they were to get unmetered amount of water in perpetuity, and that particular decision and order or agreement continues today.

One of the challenges we have is not that Imua Family Services shouldn't get water because they should absolutely get water, but I think there's issues around pressure. Amongst how much they are using at any given time which is above, but why is that there's no regulator above the system that regulates the use going through that system along with the system that goes into the Kama 'auwai because some of the kuleana users below the second valve are getting short changed.

Mr. Chumbley alluded to the fact that we shouldn't be wasting water and having 500 gallons per minute is going to be too much but prior to 4 months ago, water was reaching these kuleana users unmeasured. Not only saying that we have to provide a certain amount of water to these folks based on the decision in order, but yet, before that he was dropping unmeasured amounts of water that could be 200,000 or 400,000, we don't have any idea, which is why I think a full of 60 days seepage run and having these valves completely open to study what is occurring, is the right solution.

We need to figure out what is happening not only between that second valve and where the water drops up on Kalua Drive, but also the fact that this 'auwai hasn't had water for 4 months; so even if they were to open it up for one or 2 days, it's going take a lot of water to reach the end user, which is Mr. Ibara on Kalua Drive, due to the fact that there's going to be a lot of saturation that needs to occur. It's not black and white, it's complex but I think the Commission and staff putting forth these recommendations is the right thing.

Talking of waste, we're talking millions of gallons of waste that is backing up in the Hopoi Chute on a daily basis in a completely derelict pipeline that is just leaking water from the Ibara's all the way on pass Wai'ale Drive going to the Wai'ale Reservoir that feeds Mahi Pono. One of the corrections I'd like to make on record is and liked to be addressed is that I believe in the recommendation, says to have a berm built above Ms. Velez's property; but if there's any berm or fixing of that pipeline, it should be from the Ibara's going towards Mahi Pono. We don't want the water continuing to back up all the way past Mr. Streets to the Velez's property where it currently is; and it's constantly stagnant, it's stink, got tons of mosquitoes, it's a big issue. Hopoi Chute needs to be fixed or there needs to be a berm installed much lower.

Again, going back to this particular issue of the kuleanas, there's nobody on the system that's paying for water so there's a challenge there in terms of who's maintaining and the priority that Wailuku Water Company may not be putting on the system to ensure that all users are provided with water. The Hui would recommend that the endpoint not be the way at the top or the beginning point where the Waihe'e Ditch is, but that where that water comes out on Kalua Drive. I'd like the commissioners to have this discussion about these complex issues as well as these unregulated or undisclosed users that Wailuku Water Company knowingly had on the system but didn't share that information, Mahalo.

PUBLIC TESTIMONY (CONT'D)

Ms. Clare Apana, Malama Kakanilua – Mahalo Chair. I would like to address the Commission from Malama Kakanilua and hearing the testimony we 100% support the kuleana owners and the appurtenant rights that come with each generation to have their rights affirmed by this Commission and the DLNR, and their rights continue in such a way that there's not a fight for it every single generation.

I'd like to add that we support what Mr. Pellegrino just testified to that it's seems like this is a such a mess and it really needs to be straightened out. What doesn't change here is the fact that water keeps going down to South Maui. That's water that's supposed to be in the Wailuku moku by traditional rights and by plain common sense. Wailuku moku is growing, too, and we have water rights and are they addressed in this as time goes on and south Maui keeps taking water, unrestricted without having any kind of water plan? I mean you're talking about a little bit of water for people and you're willing to give Grand Wailea over 1,000,000 gallons a day. There's something wrong with that system. We should be serving the people of Wailuku moku first with Nā Wai 'Ehā.

We have kuleana water owners who are not being serviced, there should be no water that should be going out of our moku; I'd like to consider that also, because no one makes South Maui responsible for how much water they use and they keep taking and these people who are farmers have the first right to this water, and they are not getting anything. Thank you very much.

Mr. Isaac Moriwake, Earthjustice – Mahalo Chair and good morning again Commissioners and everybody. I was just going to stand on supporting the staff recommendation and make myself available for any questions. I understand first of all, that there may be some modifications of the exact approach, but I think the intent in the direction here is valid and similar to what you just approved in Waikapū; get the water flowing, measure it if you have to, and then we figure out the longer term is what I was going to say in total. However, Mr. Chumbley made some comment about kuleana responsibilities that I am compelled to respond to.

I heard some comment about kuleana owners having the responsibility for these dysfunctional 'auwai and that's just disingenuous. We're talking about established record in this case going back decades at this point but even decades before that. It's the kuleana's responsibility to maintain their 'auwai traditionally, yes, that's the principle, if that's their 'auwai. Here, we're talking about plantation ditches that the plantation put in and then

imposed on these kuleana owners.

If you recall last month Wailuku Water Company said themselves that their predecessor put in these water courses, ditches and then modified it over the years. Those references date to the 50s and the 70s. Same thing happened with Waikapū. I believe Mr. Pellegrino submitted Mr. Santiago, the former Wailuku ditchman's testimony, in this case, this record I'm talking about how there's two parts of the Waikapū 'auwai. The top part that the plantation put in, and then it drops into the traditional part further down which we're going to reestablish today hopefully. That was the traditional 'auwai and that's why the Waikapū community, the south side wants to reconnect that traditional 'auwai directly to the stream.

The point here is that this is not a traditional 'auwai. This is a plantation-imposed ditch system that service their fields first, and then because they had that obligation that was very clear from the very beginning that they had to service to kuleanas they incorporated the kuleanas in their ditch because they had no other choice. I just want to make very clear but because this is a longer-term issue that I mentioned with regard to Waikapū, it's going to come up. I think there's been somewhat of a wrong turn in sort of the Commission's understanding at least on paper, about kuleana responsibilities. We have to separate that traditional obligation to maintain your 'auwai versus what the water company and the processors have done to these kuleanas and put them in the situation. Basically, leaving them on an island, as far as access, and then stranding them there.

I want to emphasize in conclusion, this was never an issue in this case going back decades in why this case is impending, and decades even before then. You know that there was a ditch man Mr. Kamasaki who's still cut off from his kuleana water (he passed away) but his descendants in Waikapū, still no kuleana water access. He testified in this case 10 years ago; by understanding what the plantation was, kuleanas always took first. That was his job as a ditch man.

This was never an issue going back decades, and I sympathize with these kuleana owners including Mr. Street. This is unprecedented as I've mentioned in previous testimony and at this point, it just looks like harassment and spite. I heard from Mr. Chumbley he wants to work with CWRM, where was that earlier? Where was that constructive let's just work together? If that's his intent right now, then, so be it, but I just want to make very clear that this attitude of it's the kuleana responsibility for these dysfunctional ditches, let's eliminate that at this point. Thank you very much. I'm available for questions.

(end of public testimony)

021522 01:29:57

QUESTIONS/COMMENTS

Commissioner Hannahs – suggested two amendments to the recommendations and asked for Deputy Manuel's comments. 1) on recommendation #3, say “up to 60-days”; so as to not waste water and provide some wiggle room as necessary.

Deputy Manuel – it's doable.

Commissioner Hannahs – 2) on recommendation #4, regarding placement of the berm, strike the language that specifies “...upstream of the Velez-Higa property...” leave it blank or say, “put in a berm that prevents the stagnant conditions” or leave to your discretion and say “at a location determined by staff”.

Deputy Manuel – we’re open to that as well.

Commissioner Hannahs – the Commission doesn’t need to be telling you guys where to do that, you can figure that out in the field. If it’s acceptable (Chair), I’d offer those as amendments.

Chair Case – are you making a motion to that effect?

Commissioner Hannahs – I’m making those amendments but have a question with regard to non-permitted users; does it need to be in the recommendation or can just be investigated and bring back?

Deputy Manuel – we will investigate, it doesn’t have to be in this submittal explicitly and that’s part of our normal enforcement investigation that if unpermitted uses are happening, then we must follow up with those and require them to get and go through submitting a permit for their use.

Commissioner Katayama – (to Dean) asked on recommendation #4 of the rationale of it in putting in that berm?

Mr. Uyeno – deferred to Deputy Manuel.

Deputy Manuel – Speaking with Mr. Mark Vaught, who manages the system for Mahi Pono, and as indicated in testimony, the Hopoi Chute does drop water into Spreckels Ditch. There was water that was backing up towards the Velez property which we noticed in our site visit. And talking with Mahi Pono, I asked if they’re open to working with us (CWRM) to put in a berm or sandbags within the ditch to ensure water continues to flow down the system and not backflow. So, where that’s located and how it happens, we’re open to working with Mahi Pono. The amendment by Commissioner Hannahs is helpful for us to do that.

Commissioner Katayama – asked if that residual flow comprehend the additional water that’ll be introduced?

Deputy Manuel – that was built into the submittal; it includes the Hopoi Chute backflow as well as the added water flow during the 60-day period. Noting that a primary challenge with Spreckels Ditch (per Mahi Pono), is they aren’t pulling water from Wailuku into the ditch as before so normally water would continue to flow through the system, so there’s a natural build-up at the head of the ditch and is the back-up what we’re seeing.

The intent with the flow-through the kuleana properties that will add flow into the ditch also with the Hopoi Chute water, it needs to be kept moving downward and toward Mahi Pono and will work with them. The intent is we’re trying to be explicit as possible so there’s no confusion what we’re trying to accomplish; but in the effort we were too specific, and the recommended edit is welcomed.

Commissioner Katayama – noted the berm may not be needed but will leave up to staff to figure it out.

Commissioner Kagawa-Viviani – asked on recommendations #1 & #2 and on Mr. Chumbley’s comment about being more specific on how that gets implemented. Is that something staff will work with the kuleana users to help in ensuring percentages?

Deputy Manuel – staff will work with the kuleanas and system users to figure out how best the system operates. We identified item 2 because at the distribution point on Kalua Road where the three properties take water, there could be modifications to ensure those that have larger quantities per the Decision & Order get that percentage. The prorated amount was based on how much the Commission originally intended to award to each of those end users while honoring the Commission’s intent in the distribution of water and management of the system.

Commissioner Seto – asked if a permit is needed for installation of the berm in the ditch?

Mr. Uyeno – no; it’s managed by Mahi Pono and is a man-made feature.

Commissioner Seto – asked is it considered a water of the United States?

Mr. Uyeno – not to my knowledge.

Commissioner Seto – asked to check with Army Corps Regulatory Branch to see if that Department of Army permit is required and that is no NPDES permit required for installation of the berm.

Chairperson Case asked for a motion

021522 01:38:36

Commissioner Hannahs – moved to approve the recommendation subject to two amendments. On recommendation #3-insert “up to 60-days” and further amend recommendation #4-to order Mahi Pono, LLC to make improvements in Spreckles Ditch to prevent stagnant conditions.

**MOTION: (HANNAHS/KATAYAMA)
To approve B-2 as amended.
UNANIMOUSLY APPROVED
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/SETO
Commissioner Meyer recused self from vote**

Chairperson Case thanked everyone.

021522 01:39:58

B. ACTION ITEMS**3. Delegation of Authority to the Chairperson to Modify Any Orders of the Commission in CCH-MA15-01, Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Nā Wai ‘Ehā Surface Water Management Areas of Waihe‘e, Waiehu, ‘Īao and Waikapū Streams, Maui for the Purpose of Allowing for Implementation of the Decision and Order**

PRESENTATION GIVEN BY: Deputy Kaleo Manuel, Commission on Water Resource Management

Deputy Manuel noted he stands on the staff’s submittal then read the staff’s recommendation #1 and #2.

QUESTIONS/COMMENTS

Commissioner Buck – noted his full support of item B-3 and thanked Deputy Manuel and staff in their hard-work in trying to implement the D&O of the Commission and noting the many hours spent talking about the implementation and issues in regard to Nā Wai ‘Ehā.

021522 01:42:12

PUBLIC TESTIMONY

Mr. Avery Chumbley, Wailuku Water Company – Thank you Chair Case and Commissioners. Good afternoon again. I’m going to speak more in a lay term and defer to my attorneys to address some of the other concerns. I don't believe this is necessary because under 174-C and HAR 13-167, it already gives the Chair and the Deputy Director significant powers to do implementation.

My concern from my lay perspective is the difference between the modification of the D&O and implementation which are two distinct different items. With that, I’ll end my testimony, thank you.

Mr. James Geiger, Counsel for Wailuku Water Company – Good morning, Chair and Commissioners. I think Avery hit the nail on the head, and that the concern we have is modification. It's clear that the Deputy Director has the ability to implement decisions of the Commission. The concern is passing down the ability of the Commission who has issued an order, to delegate the ability of the Commission to change that Order, that the Commission has entered. It's one thing to implement a decision and a policy that the Commission has made. It's a separate thing to say you can modify those decisions.

So, we would ask that the Commission respectfully consider removing the language about modification but go ahead and make it very clear that the Chair and the Deputy Chair has the ability to make implementation decisions and orders consistent with what the Commission has adopted in its decisions and orders. If there are any questions, I'd be happy to answer them.

Mr. Hōkūao Pellegrino, Hui o Nā Wai ‘Ehā – Hui o Nā Wai ‘Ehā supports the recommendation for delegation of authority to the Chairperson to modify orders of this Commission and Decision and Order, Mahalo.

Mr. Isaac Moriwake, Earthjustice – Aloha again. Earthjustice supports the staff recommendation that really needed flexibility and responsiveness. I mentioned this in a previous item with whether it's modifying or bending an order that's up on appeal, or just simply issuing your orders, I think the intent is the same here which is to recognize the Chair and the Deputy existing authority to implement the Commission's orders, I think that's the intent. As you mentioned previously, maybe we just need to make it crystal clear to that extent we support this action, thank you.

Ms. Joycelynn Costa, Maui Resident – Maybe I misunderstood, which Chair? Who is it that the delegation is giving full authority to?

Chair Case – replied, the Chair of the Water Commission.

Ms. Costa (continued public testimony) – Okay, I would be in support with the kuleanas. My experience on boards and with authority as a member is sometimes for me the fiduciary responsibility of each member. I sometimes hesitate to defer the responsibility of my fiduciary to just one person. But in this case, listening to the kuleanas who should have first rights and first say, I would defer to what they recommend, and I would support the measure. Thank you.

(end of public testimony)

QUESTIONS/COMMENTS

Commissioner Hannahs – in response to Mr. Chumbley's concerns, I want to point out that the recommendation does provide a second point and that these modifications will be reported back to the Commission. So, at some point of which the Commission feels the Chairperson is overstepped, we have an ability to intercede.

Commissioner Kagawa-Viviani – asked for clarification of technical difference between “implement versus modify”

Chair Case – called upon Deputy or AG and added the purpose of this is to implement the decision that the Commission made when they issued an order after years of the complex order and work, to the extent this involves tweaks to the system to make sure that everything is working right may be considered an implementation.

If it's something like the situation where in order to get water to the ‘auwai users, the amount of water that is delivered to a dysfunctional system needs to be for the time being, more than what the Commission originally ordered; but it's the same as what was going on before so

that we can figure out what the problems are here and try to do the solution.

That's a technically a difference in the order itself. The amount of water that Wailuku Water Company is to deliver at the delivery point.

Commissioner Kagawa-Viviani – noted it's like in B-1 and B-2; the process of implementation.

Chairperson Case asked for a motion

021522 01:49:41

**MOTION: (BUCK/KAGAWA-VIVIANI)
To approve B-3 as submitted.
UNANIMOUSLY APPROVED
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/SETO
Commissioner Meyer recused self from vote**

RECESS: 10:54 AM

RECONVENE: 11:08 AM

021522 02:04:58

B. ACTION ITEMS

4. Accept Chairperson's Recommendation to Designate the Lahaina Aquifer Sector, Maui as a Surface Water and Ground Water Management Area under HRS Section 174C-41, and to Notice and Hold a Public Hearing

PRESENTATION GIVEN BY: Deputy Kaleo Manuel, Commission on Water Resource Management

Deputy Manuel read the summary of request and noted we are at #3 of the Designation Process with steps #4 and #5 to follow. This stage is part of the process and provides public ample time to continue to participate, collect feedback, receive testimony, add additional data as it may be presented. Since last month we received over 30 testimony which all were in support and 2 with concerns or objections.

A presentation made to the Maui Board of Water supply which action was taken on the item in support. Written testimony received from Chair Frampton about his concerns, but ultimately his support to keep the process moving forward. A presentation will be made on 2/22 to Maui County Council to their committee that focuses on water and CWRM are still engaging in this process and coordination at the county level and to keep this conversation moving forward.

Noting that staff stands on the staff submittal but referenced the precautionary principle that the Commission does have the authority to regulate, administrative control over water

resources, both surface and groundwater and manage it holistically in an integrated fashion.

Deputy Manuel thanked all who submitted testimony and acknowledged the traditional knowledge and the lived experience testimonials from practitioners and kalo farmers within this region that create the data set to help inform the decision making of this Commission.

Both the summary of justification and staff recommendation was read.

021522 02:10:30

PUBLIC TESTIMONY

Ms. Tamara Paltin, Maui Council Member – Aloha Chair and Commissioners. I'm the West Maui resident representative on the Maui County Council. First, I would like to express my strong support of groundwater and surface water management area designation for the Lahaina aquifer sector. Your commission staff submittal shows designation is sorely needed in West Maui. Climate change is already having drastic impacts on our west Maui community reducing rainfall and extending drought conditions. We're currently in drought right now despite heavy rains in December. We are at the point of serious concern for long-term water resources, and we are regularly discussing the need for more wastewater reuse in our council meetings.

Unlike what Director Pearson said, we should not go slow in protecting our resources. We need to act quickly in the best interest of future generations. People in West Maui are concerned now and do not want to wait for all of the designation triggers to be met. We want to be proactive in protecting these resources, especially with so much planned development coming to West Maui in the future.

We have 289 low-income units being built right now. We have over a 1,000-units at Pulelehua that have already received approvals, and it's just growing. Those are just affordable components. Pulelehua is half affordable and half market. From water resources in Nā Wai 'Ehā, we have learned that groundwater withdrawals in one aquifer area can impact another. The best way to protect our groundwater resources for the future is to designate all of these proposed areas and manage them together.

We've also seen when things are piecemeal designated, people jump from one source to another. Thus, if one is impaired, they flood the next source that isn't. We also know these aquifer boundary lines are arbitrary. There is no real distinction between aquifers. All of these wells are like straws in the same cup. Similarly, there is no real distinction between ground and surface water resources. Managing one without closely managing the other, makes no sense when this is by far our most precious resource; same concepts if we only manage the ground, everyone will jump to surface and vice versa.

The State Water Commission is the best entity to oversee the responsible use of water to ensure it is in line with the law and the public trust. You can lean on the precautionary principle where there's scientific uncertainty you should choose in favor of protecting the resource.

I would also like to thank the West Maui community members who have testified in support

of designation at previous Water Commission meetings and the County Board of Water supply meetings. Many of them have the highest rights to water under the law, and yet they have the least access to water. Their rights and kuleana deserves to finally be protected. At the community member's request, I will be introducing a resolution in the next few weeks on the council floor. In advance of that resolution the Council has invited the Water Commission Staff to present about the role of designation in protecting our ground and surface water resources. Mahalo, for all you do for our wai. If we have time, I am of available for questions, Mahalo.

Dr. Jonathan Scheuer, behalf of Dept. of Hawaiian Home Lands – Aloha mai kākou. Good morning, Chair Case and members of the Commission. I am here on behalf of the Department of Hawaiian Homelands. We submitted written testimony last month during the briefing on this matter and we stand by our support of moving forward with the proposed designation process, because it enhances the Commission's ability to defend DHHLs rights in the resource going forward.

Only thing, I would add is that we really appreciate the staff submittal specifically addressing the testimony that has been provided so far. I thought that was a very valuable addition to the analysis and we're grateful for the staff, and the Commission for including that. I'm more than happy to answer any questions related to DHHL's interest in these matters.

Mr. Ke'eaumoku Kapu, 'Aha Moku o Maui – Aloha Chair Case, Water Commissioners and Deputy Director Manuel. I'm a resident of Lahaina where my 'ohana has stewarded 'āina kuleana in Kaua'ula Valley since time immemorial. I have the Land Commission, Royal patent and TMK numbers in my written testimony before you.

We have waited 20 plus years for the Chair's recommendations and are grateful that today we have the potential to move us towards designation of our aquifer sector as surface and groundwater management area. I remember 20 plus years ago, our 'ohana went to EarthJustice and met Kapua Sproat for the first time to do a site visit with kuleana of Kaua'ula Valley, thinking maybe can kōkua with our water challenges. Nope, because Lahaina was not a water management area; couldn't do what we needed for our kuleana.

I never understood the significance for a long time, until today. We fought long and hard for the industry flow standards and for Kaua'ula in particular. The planning resistance from land companies across West Maui who were claiming our 'āina. Now, despite all of Ayron's hard work and this commission's having adopted those instream flow standards, still get pilikia and the amount required by law are not in our stream. The companies are still taking all the water.

We know, we're right next to the hydro-plant. But too long we have raised the same issues over and over again, waiting for something to be done. This is our lives that we are talking about, even though our 'ohana has kuleana and the rights that go with it, we have no water from our stream. Sometimes we have no water for days to even bathe our babies. We have to bathe them in buckets. The biggest nightmare is our kalo getting pocket rot because no intake management or cleanup. Sometime for months, we need we clean when we need to as

always and have for generations from my great-grand kupuna and my father's time; and now to my me and my son.

Now we are threatened that we are tampering with their system, 'auwe! Since when did our public trust become theirs? So, we no longer touch, for fear of more complaints from each company. Now we call their manager to get their asses up here to fix it. But let me tell you, the kuleana who are supposed to have the first right to water, always need to wait.

I shared with you in January and I telling you again now, in Kaua'ula across West Maui we have serious conflicts of our water use, historic ones that are continued to the present; that's one of the criteria for designation. Your staff noted that in the submittal. Please support your staff and please stand with us the community and beneficiaries of the public trust by designating our community through farmers kuleana and call of words, with all the rights the Water Code is supposed to protect; finally, we have a chance to try. We have suffered enough. Pleases pass, Item B-4. Mahalo and I'm happy to answer any of your questions.

Ms. Karyn Kanekoa, Hui Nā Mamo Aloha 'Āina o Honokōhau – Good Morning. I'm testifying on behalf of Hui Nā Mamo Aloha 'Āina o Honokōhau, a 501 C-3 nonprofit made up of one Honokōhau Valley residents and lineal descendants committed to protecting the wai and restoring lo'i throughout Honokōhau valley.

Mahalo nui for this opportunity to give testimony today in support of the Chair's recommendation to designate the Lahaina aquifer sector as a surface and groundwater management area. As a Hui we're dedicated to protecting our most precious resource wai. When it comes to protecting and managing wai there is no such thing as being too cautious or prudent. In Honokōhau, we have experienced deadly, decreasing rainfall and drought in recent years, anticipated declines in rainfall based on future projections will negatively affect the groundwater recharge and stream flow, resulting in less water availability, therefore, putting kalo cultivation and stream life at risk. We also need a factor in the projected growth and development in West Maui.

We believe the designation and the water use permitting that goes with it, are the best tools to address these challenges. We strongly believe that this designation happen now before it's too late. As Jeff Pearson stated in the last meeting, there's not a lot of water in West Maui we're right near the edge now, with what we provide for our customers in West Maui.

So, I ask you, what's the harm in enhanced management and protection through integration of surface and groundwater uses? With the ongoing serious disputes over water issues or water use in our community, we support designation because it is necessary for proactive management of our water resources. Use of water for kalo cultivation is a protected trust use which is supposed to have, like Uncle Ke'eaumoku, said, the highest protection under the law. The designation of the whole Lahaina aquifer sector from 'Ukumehame to Honokōhau as a surface and groundwater management area, will help the Commission balance requests for water and ensure that public trust uses, and native Hawaiian rights and practices are protected.

It wouldn't make sense to leave Honokōhau aquifer out of the management area; and we

know firsthand from living there, in farming kalo, that designation is necessary in Honokōhau in order to ensure that we will have wai in our stream for generations to come, and that our mo‘opuna and hanauna e hiki mai ‘ana will never be forced to stop farming kalo because of lack of water in the stream. Mahalo nui for taking the time to listen to my testimony today.

Ms. Lauren Palakiko – I'm a resident of Kaua‘ula Valley. I'm born and raised right across the street from where the muliwai is outlet here. This place has always been a big concern for me, and much more now that I'm the wife of a kalo farmer here. Mauka to makai connectivity is imperative to our native ecosystem. However, even with a breaking connectivity between the dam and the siphon where we get our water for the kalo. Kaua‘ula Stream was filled with life such as or ‘o‘opu, ‘ōpae, prawns and more. There is enough water coming down, that the muliwai was running so much that the GM at Puamana was able to cultivate his own lo‘i.

This was probably about 2014-15. On June 6, 2019, our muliwai dried up for the first time that I can remember. Besides after rainstorms, it has not run since then. A week later after the muliwai stopped flowing that whole area was an ‘o‘opu graveyard. I noticed a drop in the water had occurred after the Launiupoko Irrigation Company had installed a few big blue pumps down the road; they were pumping water up and that's when I noticed our muliwai stopped flowing.

Although I can't prove that these pumps led to the muliwai drying up, I thought it was worth noting that the day after they removed these pumps on October 29, the muliwai did start to trickle water again. This past summer was really hard on the lo‘i here. We used to get 1,400 gallons per minute and that was extremely low for our stream and lo‘i. Then LIC started running it at 1,200 gallons per minute. Dave Minami, who is the previous LIC Water Manager advises us to email Peter Martin to see if there are any changes that could be made; so, we did, and Peter responded that CWRM's decision was for them to give us a 1,000 gallons per minute. Now, they are currently running us at 800 gallons per minute. The mud in our patches is showing, the water temperature may be rising which all could be leading to rot and loss of our crops. Sometime before 2019 would have been proactive to designate Lahaina as a water management area. It's now beyond crucial for our native practices for our farming and our ecosystem to do so. Thank you for your time.

Mr. Charlie Palakiko – Aloha. I'm a kuleana landowner of Kaua‘ula Valley. My family and I have been raising kalo on this land for over 30 years. When we first restart our family patches in the mid-80s, we fed our patches water from holes for years because there was no water in the stream. In the 30-years we restored our ‘auwai and got the stream running by negotiating with West Maui Land.

Since then, I've seen the water drop drastically from reaching the muliwai, to now a dry stream killing many stream life such as all ‘o‘opu, ‘ōpae and prawns and also affecting our kalo patches. As of today, water to our patches is extremely low causing dirt to show in them. I called West Maui Land and was told our water is being pinched because their water was running low. I was told the siphon 100 gpm which is equivalent to a little over 1,000,000 gallons a day. This is not enough, and it's been getting worse.

As you can see, we are already running into problems, and they're not complying to the IIFS which they are supposed to be releasing 2,000,000 gallons at the dam, which is not being done at this time. We've been at a standstill for the last 2-1/2 years not being able to expand because of decreasing water flow. This is why we need to be a designated water management area. We need a third party to fairly manage the developer's water they're taking. Thank you for your time.

Ms. Madison Palau-McDonald – Hello, Chair Case, Deputy Director Manuel and Commission members. Mahalo for the opportunity to testify today. I've had the privilege of working with community members in Maui Komohana who are directly impacted by your decision.

I want to express my strong support for designation today. At bottom, designation provides the best opportunity to protect and preserve resources in our new climate reality. Failing to designate will perpetuate the status quo; IIFS will continue to go unmet, well reporting will remain a struggle and municipal and commercial uses will continue to benefit at the expense of protected public trust purposes like a appurtenant rights, traditional and customary practices and domestic uses.

As a native Hawaiian, it breaks my heart to see community members denied their rights protected under Hawaii's Constitution and the Water Code. As a law student, I'm grateful that designation will give your Commission the tools to address these issues in an integrated and comprehensive manner that will ensure that water resources are equitably and sustainably stewarded. Maui County cannot do this alone. So please fulfill your fiduciary duty under our public trust and vote to designate today, Mahalo.

Mr. Erik Meade – Aloha Chair Case and Commissioners. Good morning and thank you for allowing me to testify. I'm a law student at William S. Richardson, and I'd like to offer my praise to the Commissioners and staff for taking the initiative to move this issue forward. You've built an excellent record that provides more than reasonable basis for designation that coupled with the supreme court's recognition that the precautionary principle is an inherent attribute of the public trust domain, further supports designation.

The overwhelming community sentiment is that you've met legal criteria and that the community members feel it's vital. I urge you to stand with the community and your staff and please designate, thank you very much.

Ms. Bianca Isaki, behalf of West Maui Preservation – Aloha Commissioners. I'm here representing the West Maui Preservation Association, a nonprofit based in Lahaina. We submitted written testimony to your January 18th meeting in strong support of designation.

As Council Member Paltin testified, climate change is here. There's a long-term drought in West Maui. We've seen drought combined with diverters to release surface water as we seen it frustrates the commission's IIFS, such that for instance, Kaua'ula Stream is drier than even before the IIFS were amended in March 2018.

As staff noted, diverters are now turning to well-drilling to substitute for stream diversion. Three of the private wells that supply the gentleman's estate in Launiupoko had pump installations in 2020 after the March 2018 IFS Designation. Then on January 26, 2021, Launiupoko Irrigation Company reported curtailment of private wells number 3 due to rising chlorides. This well is fairly high up mauka at 751 feet in elevation. Those 3 wells have a combined 1,100 gallon per minute pumping capacity. In the absence of designation there aren't institutional mechanisms that will prevent these well owners from pumping up to installed pump capacity. Institutional mechanisms are needed to counteract existing use and development pressures to pump more from these private wells.

In Kaua'ula and Launiupoko, communities fought several attempts to stall even more developments, Makila Kai, Makila Farms, Polanui.

The concern that well owners who can increase pumpage will do so or at least imprudently announced plans to do so, is a real concern. This is a long way around to think we agree with the recommendation to examine permitted well capacity as your staff have recommended and considering designation.

Finally, our supporters in Kaua'ula also learned that the West Maui Land Company and the County are planning to install yet another well that hasn't been considered and recently examined a site on the north side of Kaua'ula stream, north of the Dizon kuleana; this is also an additional concern, thank you.

Mr. William Wood – My family and I are Honokōhau Valley residents. We support and accept the Chairperson's recommendation to designate the Lahaina Aquifer sector as both ground and surface water management areas. Living in Honokōhau Valley we have seen firsthand the mismanagement of water use by both MLP and the County of Maui Department of Water Supply.

Here are a few examples. The county had a bridge in Honokōhau Valley that was used to hold water lines above the river. It was originally built by MLP and Jerry McDonald. It was then taken over by the county Department of Water Supply in 2000; The bridge failed in 2018. The county was well aware that the bridge had failed, and the bridge system was obstructing the width of the river. Here's a quick photo. The bridge laying in the river-wall to wall. Here's another one of the bridges in the stream. In 2018 after the bridge failed the county was aware of this, but nothing was done.

During the tropical storm Olivia there was a big flood that came through and a lot of large logs came down and got stuck on this bridge eventually building up a big dam before it broke free sending catastrophic flooding below which destroyed land, homes and lo'i. After the flood, Ayron Strauch came up to take a look at the area and help us clarify what exactly had happened. After tropical storm Olivia, the flow in the stream was greatly diminished and we repeatedly tried to contact MLP to restore the water flow but did not receive a response.

Meanwhile MLP was wasting the water which was overflowing into the sea at Honokao'o. This is documented in the 2019 wastewater complaint. We are on a little island in the middle of the Pacific, and we should not allow so many straws to take from our cup treating this

valuable resource as a commodity to be bought or sold. When you're looking at who is in opposition of protecting West Maui's aquifers, you'll see the faces of developers looking for foreign money and the people that are responsible for selling the water for those developments.

We strongly support CWRM to designate West Maui as the surface management area as well as groundwater, so that we can be assured that the use of our precious resources will be reasonable and beneficial for the future of our small island, thank you very much.

Ms. Kanoelani Steward – Aloha nui kākou. As a West Maui community member, I support the designation of the Lahaina aquifer sector as a surface water and groundwater management area, and strongly urge the Commission to accept this recommendation from the Chairperson. As stated in the staff's submittal this designation is a way to proactively manage water disputes over surface and groundwater in the Lahaina Aquifer sector, especially since there are established interim instream flow standards that are not being met in West Maui which essential shows that off-stream uses are being prioritized over instream uses.

As you know, designation is another layer of legal protection to regulate reasonable and beneficial uses of water. The Commission has a constitutional duty and as stated in HRS Chapter 174-C, the Commission is to ensure the availability of this precious resource will meet the present and future needs of the people. The climate crisis of the future is uncertain which will directly impact and affect our water sources. The future housing that is planned for the Lahaina aquifer sector will also directly impact and affect our water sources. The current water disputes are already affecting our native Hawaiian practices.

Therefore, designation can only benefit the present and future needs of the people of West Maui. In the staff submittal the Maui Department of Water Supply said that the move to designate is being too cautious. However, I strongly disagree as do many of us community members as designation is a proactive move that can put our public trust resources and environmental protection at the forefront of regulation.

Designation is an important tool to manage water use as it will ensure that all water use in our area is consistent with the public interest. Please hear and internalize our mana'ō as we, the community share strong support for the recommendation to designate the Lahaina aquifer sector as a surface water and groundwater management area; Mahalo nui.

Ms. Sanna Kauhane (*via video provided by Ms. Steward*) – Aloha kākou. I'm testifying here today in strong support of this designation. I feel that it is crucial that this surface and groundwater designation happens for all of West Maui as a whole, rather than singling out certain problem areas for sole designation, such as simply the Honokōwai system or the Launiupoko system.

As mentioned in the staff submittal, surface and groundwater here in West Maui are hydrologically very clearly integrated. So much so that it is difficult to draw boundary lines between systems. With that being said, it would be careless to move forward without

managing all of our surface and groundwater together holistically. The recent implementations of instream flow standards have been somewhat helpful to restoring stream flow; but we are now seeing groundwater being taxed more heavily. Increased enforcement of IFSs will only shift the burden further to groundwater withdrawals which will return full circle to further impact our groundwater dependent ecosystems, stream flow and coastal discharge.

Designation will ensure that our region will be managed collectively as a whole, so that we can avoid simply shifting the weight around from one aquifer system to another which could prove catastrophic for future generations to come. Two of our aquifer systems are being threatened. If that doesn't say trigger, I don't know what does, because that says trigger to me. I urge the Commission to take this proactive responsible step in the right direction, Mahalo.

Mr. Kalama'ehu Takahashi – Aloha kākou Chair and Commissioners. Mahalo for opportunity to testify this morning. I'm here to testify on B-4 in support of the designation of the Lahaina and West Maui Aquifers as a as a ground and surface water management areas.

I'm in support because this process serves a holistic and proactive approach towards protecting this precious resource from development as well as climate change and ensuring accountability across the board, particularly those of the land irrigation companies that have historically mismanage this resource as seen in on Willie Wood's testimony, mahalo nui.

Until today, in other informal conversations these companies are still gatekeeping these resources ultimately denying the kuleana landholders as well as other kalo farmers and others wanting to revive these practices such as the Hui Nā Mamo Aloha 'Āina o Honokōhau. As 'Anakala Ke'eaumoku mentioned, there have been years and years of struggle for wai and has severely affected not only their appurtenant right to farm kalo as kuleana landholders, but also their basic necessities to live under 'āina kuliwi, which we should all have the right to as Hawaiians.

As Councilmember Paltin mentioned, there are also housing developments up and coming unless we have a way to hold current developers accountable for the impact on the resource, we're basically drinking the streams dry and all these resources dry. I also wanted to cite a quote by Jeff Pearson referring back to the January 18th meeting saying there's not a lot of water here in West Maui and we are right near the edged in what we provide for our customers in West Maui. To deny the scarcity of this resource is also to deny the claims for necessity of water and needs for this type of measures to be taken. Also, in the January 18th staff submittal referencing the Launiupoko and Honokōwai aquifers of the sustainable yield on page 7 of that submittal says that Launiupoko will be within 115% of the sustainable yield and Honokōwai will be within the 170% range of the sustainable yield.

I don't think that we can really move forward and rely on these unsustainable, and in my opinion, comic criminal practices of mismanagement of this resource for communities and our future. Mahalo nui for your time to the Council Members, Deputy Manuel and CWRM, other community members and 'ohana that have been here. And I wanted to ground truth one of the testimonies earlier. I had the opportunity to visit Kaua'ula to harvest kalo for our

ceremony relating to Makahiki and I would like to say that the water was in fact, very low, and the water did feel warm and so I see this I see this water issue not only talking about our appurtenant rights and for subsistence practice such as farming kalo; but also something that could jeopardize the cultural religious future and the relationship to these resources. I implore you to consider both sides both sides of the argument, Mahalo again.

Mr. Kekai Keahi – Aloha. My family's come from the ahupuaa of Panaewa in the valleys of Kanahā and Kahoma. The designation is super important for us on the west side. In Kahoma for example, they've been 2 times the developer, West Maui Land shut the water off to Kahoma Stream and dried the entire river. We lost almost 80% of all of the species that we fought long and hard to restore in that stream because they wanted to fill up the reservoir, and that was that was brought before Ayron and I'm pretty sure you dealt with that.

The second was because Kamehameha Schools owns the land, they gave management duties to West Maui Land to handle the intake and after one of those storms, they didn't get back to the intake to clean it out and dried up the river that time also. The designation I believe would help us out in that in that area.

Second, looking at Kanahā, we got the Waipuka and Kanahā wells and the salinity and chloride levels in those wells from way back they discovered chloride levels way beyond the 250 parts per million that was set by Federal Government. It's what led to the complete de-watering of Kanahā Stream to dilute this water they were drawing from the well; so, it was happening way back, and the County knew of this. The problem is we're looking at the County government as the ones to make sure that our public trust is taken care of but they're the ones that turn the blind eye to the to the problem and created another problem by diverting Kanahā Stream.

Recently in the past few years we've been going into these drought situations which I never did remember having when I was growing up. We got to pull back and if we use over a certain amount, we get fined. There is private systems like Launiupoko and Ka'ānapali Resort they don't experience these drought conditions as they continue on watering their golf courses, the swimming pools are continued to be filled, the hotels continue to have their guests take showers and do whatever they want; it's like a free for all, while the community have to go on water restriction and the risk of being penalized for using an excessive amount of water during drought conditions. I don't think that is right. That is a public trust that water belongs to everybody. If because you're a private water company, doesn't mean that you don't fall under these drought condition measures and that's what we experience all the time.

Also, the fictitious lines dividing the Lahaina sector in the different aquifers, we cannot look at those lines as this area has this much amount in sustainable yield and then this sector is on this aquifer, is okay? This is the proverbial straw in the cup that we've been using to exhaustion to describe the situation here. We're just hoping that it's being heard and I'm sure you understand the situation that's why staff is putting in this the designation.

Another thing has to do with the county as I was reading their questions to you folks, and one of it was the county does not support a designation for the entire aquifer sector because some aquifer systems included in this initiative have no basis for designation. We're looking at triggers and what will trigger a designation. In my opinion, we're beyond the triggers. The

gun is already fired. We just trying to find out where the bullet is going to hit? We do not wait and go up to the to the very edge of a cliff to say, stop! - I can see the cliff from far ahead and say I am not getting any closer before I fall off. We cannot do that.

The county and its developers are saying by this designation happening, it's going to completely stop development and people are not going to have a chance to own their homes, which is false and just scare tactics. It's sad to know that the county who's supposed to protect this water resource for us is fighting against us, the public.

There will be a lot more people here to testify because we meet a lot, but they just couldn't make it today; but want to let you know there's a lot of people in this community who support this designation, thank you.

Ms. Blossom Feiteira – Good morning madame Chair and Commissioners. I am a lifelong resident of Maui, Native Hawaiian practitioner born and raised in Lahaina. I want to thank you for the opportunity to submit testimony in support of the designation of the Lahaina sector surface and groundwater management area. We've heard a lot of testimony today about the issues and challenges of our kuleana farmers, native practitioners, insufficient monitoring of the IIFS and West Maui. One of the key things I think that is important for you to know about is that all of the above is very true and it's been ongoing and been a struggle in West Maui for many of the local families and Native Hawaiians on West Maui.

One of the other things I wanted to bring to your attention in the designation of the West Maui as an aquifer sector is also very important in terms of the maintenance and of future restoration of significant historic sites in Lahaina. The Mokuhinia complex is a Nationally Registered Historic site with the Department of Interior, sits right in the middle of Lahaina Town. The diversion of water, since 1890 has significantly impacted this area to the point where in 1905, they buried the pond due to stagnated water. The other impact that happened along the shoreline is that the streams of Kaua'ula and Kahoma that fed into the Mokuhinia Pond, also provided for a muliwai to be established that fed the Poalima of Pakala, Makila, and Polanui, the shoreline across West Maui.

At a time when the muliwai was fully functioning, you had a very diverse and vibrant shoreline ecosystem that had different varieties of limu, varieties of fish species, and it was considered to be by the kupuna of Lahaina, their nursery. The tiger sharks would come in once a year to spawn in that area, and it was the baby sharks that fed through that ecosystem that fronted Moku'ula and Mokuhinia. With the diversion of water, we saw immediately a degradation of the ecosystem, less fish, less limu, warmer waters, and overall degradation of the environment that led the kupuna oftentimes to kapu that place for no fishing and gathering because it just simply wasn't there.

The County of Maui is currently in the process of finalizing their archaeological inventory survey and are preparing an RP for the restoration project known as the Moku'ula project and this designation is so important in bringing back that pond. Without it, it can never happen. Stagnant water is not a good thing. The less water that comes off the streams and the underground aquifer system, clearly would have a major impact on this very significant site. I would ask you all to support the designation in your decision, making today, Mahalo for the opportunity.

Mr. Archie Kalepa – Thank you Madame Chair for this opportunity and for you guys considering protecting the water, the surface water management system in West Maui. I just want to say from a hands-on perspective starting with Kahoma Stream. The stream was dry for over 130 years. A few of us worked hard along with CWRM to open up that stream from mauka to makai and it's been an educational process and I want to tell you why the things that we've seen that's happened in the stream from the 'o'opu coming back, to allowing families to plant kalo in that valley again, it's just been overwhelming. More importantly where does this water go?

We only see water running but I think it's helping our aquifers by streams being open, our aquifers allowed to stay filled; number one. The other thing is it's important for us to maintain instream surface water management and you've heard it from a lot of people today the importance both cultural, environmental, historical, and being faced with what is our future look like?

I think it's very important for us to open up all streams from mauka to makai and the reason is because there's a lot of things that are happening. The limu are dying because there's no fresh water for the limu to spawn, our aquifers are dry, there's not enough water to sustain current communities in West Maui, and so I would encourage you to protect the surface water management system for all of West Maui so that we may have a future. I'm 9-generations plus from Lahaina and I hope my kids can stay home and not have to leave because there's no water for them to use when they become community leaders in this place that we love and call home, West Maui. So please consider protecting the surface management water system in all of West Maui, thank you.

Mr. Hōkūao Pellegrino, Hui o Nā Wai 'Ehā – Good morning, Chair and Commissioners. I want to say mahalo to the Commission's staff. We have seen on the west side of Maui the ability for the staff to go above and beyond and to take care of the interim instream flow standards without a contested case. That's unprecedented in my opinion based on what's happened in Nā Wai 'Ehā. It shows that the Commission is committed to protecting both groundwater and surface water areas, so mahalo to staff for their ability to be proactive in their approach.

Now, many people will say that Nā Wai 'Ehā was the guinea pig to help push this along, but I'd like to also think that we're trailblazers. What you've seen here today and in past commission hearings in regard to this issue, is you have a community that is ready to act, collaborate, and to work with all parties. It's not an easy process as you know with Nā Wai 'Ehā, but they've shown their commitment and that in my opinion deserves the highest and best protection and ensure that the descendants of these individuals, kuleana users and the Native Hawaiian families who have been there for generations, continue to not just live but thrive, cultivate and sustain the community they reside.

Hui o Nā Wai 'Ehā strongly supports the designation for both groundwater and surface water management for West Maui and mahalo to commissioners as well for taking this upon you; I know it's a huge kuleana for all of you and I know that you have an entire community much

bigger than Nā Wai ‘Ehā that stands alongside and behind you to help support this implementation process, mahalo.

Ms. Fay McFarlane for ‘Aha Moku o Maui – E kala mai. The Commission has a copy of my written testimony and I just wanted to add detail to that which I had written to the Commission about regarding the private wells and DWS wells that are not included in the Water Use Development Plan. Last week we were up in Kaua‘ula looking and trying to document all of the kalo damage and the lo‘i down to about half of what it was several years ago; and that's due to drought and rot. While there, a contractor that came up who was a consultant that was contracted by the Department of Water Supply to dig a new well and this well hasn't been noticed to CWRM and I don't think they contacted anybody from groundwater about it. It was unclear whether the well is going to connect to the private Launiupoko irrigation service area. They couldn't answer questions what size pump, how it's going to get power, what the alternate sites are, if it's too rocky, can't get through the pōhaku. I wanted to point out in your staff submittal on page 12 talking about some of the LIC wells that are not permitted.

Also, to page 19, there's four other water companies besides DWS and there's no accurate reporting or recording of these wells. Designation is really the only way to go. The Department of Water Supply has painted this as a home rule issue and if it was working, we wouldn't be in the situation that we're in now. There's no hydrology or science to back up the concerns that they've raised until the Department of Water Supply has any better reasons for the commission, they haven't brought anything forward that's convincing or persuasive. Mahalo for your time.

Ms. Clare Apana, Sierra Club Maui – We'd like to support this designation and continue to support it and we especially mahalo Tamara Paltin for taking this to the County Council. We are so impressed by all the testimony that has come forward from this community and the steadfast work that the kuleana have produced in this area is just amazing. We would also like to ask that you be sure to consider and take care of the problem with the wells and how they affect the kuleana water users and as a matter of fact, perhaps they are stakeholders in the aquifer and should be given the right to have prior informed consent for any well. Sierra Club thanks you for your work and supports this designation, Mahalo.

Ms. Joyclynn Costa – I just wanted to testify that I'm in support of this measure, although I hold firmly with the kuleana rights that go back to the Water Commission 174C, that there should be no diminishing or extinguishing of these rights; and I think these people from mauka to makai have suffered both diminishing and extinguishing of these rights for way too many years, thank you.

(end of public testimony)

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QUESTIONS/COMMENTS

Commissioner Hannahs – Mahalo the community for their eloquent testimony unanimously in favor of support in passing the recommendation and asked Deputy Manuel from after listening to testimony and hearing of some conflicts with cultural rights in regard to well drillers, landowners, operators, and contractors; can we condition permits for attendance at Ka Huli Ao native rights training? To use education as a preemptive tool to conflict.

Deputy Manuel – I think it's a creative solution to create bridges between water users in understanding how they are a part of this ecosystem but will need to look into that further and if it's something the Commission want to add as a special condition, we could add those as it's within the discretion of the Commission. We're open to it and can bring language to the Commission to consider.

Commissioner Hannahs – the point arises from this discussion and not directly germane and don't want to compromise on our ability to act on this motion before us; but something to think about.

Deputy Manuel – will work with staff and think through it on a more system wide basis but it's a great recommendation to mediate potential conflict before it occurs.

Chair Case – noted there are a few written testimonies that raises questions and or objections, but this stage still needs to go through public hearing and still time for input from the public.

Commissioner Katayama – (to Chair) for the recommendation be more generic in the sense that we will authorize you to start the process to designate the Lahaina Aquifer sector Maui as a surface and groundwater management area under HRS 174C-41, and can delete Item 2, and give you the authority to start and complete the process, to whatever conclusion is drawn and to broaden your authority rather than take incremental steps towards designation.

Deputy Manuel – I appreciate the intent to broaden the scope and in working with our AG's, these are the recommended actions the Commission must make and take explicitly to provide that due process as enumerated in The Code. This language is specific to the Code implementation and after holding the public hearing, we'll comeback with the recommendation for approval by the Commission.

Commissioner Katayama – what is the purpose of item 2?

Deputy Manuel – per the Code, we're required to notice and hold a public hearing on the matter. Similar to other provisions, as example, updates or amendments to the Water Plans and could delegate that in future actions that we don't have to do this, but right now it is explicit.

Commissioner Katayama – it's not explicit in 174-C?

Deputy Manuel – no. *(read the step in the submittal referring to the process and reiterated it was discussed with AG's and asked Deputy AG Colin Lau for comment)*

Mr. Colin Lau, Deputy AG – replied under 174-46, the Commission has to render a decision that's upon the recommendation from the Chair, and then what happens, then the Commission

decides whether to designate or not and gives public notice. It's all part of due process so if anybody wants to appeal the decision, then it would happen at that that point. It's better to just compartmentalize each particular step at this point rather than just giving delegation of authority to the Chair because it does need to come back to the Commission.

Commissioner Katayama – I understand in the process 46 says that; but if you look at 42 it covers item-2.

Deputy Manuel – Mahalo for the question, I appreciate it.

Commissioner Kagawa-Viviani – in the designation process, are there other actions that may be part of this process that precede step 5?

Deputy Manuel – not in the current statue; we would hold a public hearing based on that and it requires us to develop findings of fact then we would bring back to the Commission to make its final decision. The decision after this would be a formal decision by the Commission to either accept, deny, or defer the recommendation of the Chair to designate.

Commissioner Kagawa-Viviani – in the findings of fact, you could incorporate and address some of the questions that were raised.

Deputy Manuel – yes, it’s all part of the process and to build that record; so testimony received today would also be incorporated as well as the public hearing.

Commissioner Kagawa-Viviani – commented on the scientific aspect such as the West Maui hydrology and land management and asked for that to be incorporated for Commissioners understanding of the designation if it’s not already included.

021522 03:15:42

**MOTION: (KATAYAMA/HANNAHS)
To approve B-4 as submitted.
UNANIMOUSLY APPROVED
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER
Commissioner Seto was absent during the vote**

Chairperson Case thanked everyone including staff, for all their hard work on this in a very thoughtful and inclusive manner; also thanked all testifiers.

RECESS: 12:20 PM

RECONVENE 12:49 PM

021522 03:20:45

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. **Status of Combined Petition to Amend the Interim Instream Flow Standards and Allegation of Waste By Moloka‘i No Ka Heke for Streams in the Surface Water Hydrologic Units of Waikolu (4003), Kawela (4037), Kaunakakai (4039), and Manawainui (4041), and Reservation of non-potable water for the Department of Hawaiian Home Lands, Moloka‘i**

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

Dr. Strauch gave a PowerPoint presentation on the item noting its summary with recommendations to include a combination of in-stream flow standards, abandonment of unused diversions and DHHL reservations which will protect instream values and provide better balance for instream and non-stream public trust uses while maintaining existing, non-public trust uses. In Moloka‘i, the primary focus is on Central Molokai, with streams in the Waikolu, Kawela, Kaunakakai, and the Manawainui surface water hydrologic units diverted to support agriculture, landscape irrigation, and industrial uses.

A topographic map was shown and briefly explained of the Mountain water system and Moloka‘i irrigation systems. The Mountain water system managed by Moloka‘i Ranch has (7) stream intakes. Mountain water system has two pipelines that are interconnected. Dr. Strauch explained and showed photos of each intake on the Mountain water system line noting the largest source of water being the East Kawela intake (diversion 867) which has a continuous streamflow record maintained by USGS. Median streamflow on East Kawela is about 340,000 gpd. The stream is largely dependent on rainfall driven by runoff without much groundwater resulting in very low flow conditions when there is no rainfall. When the intake is operating about 58% of the days have “0” flow remaining in the stream.

The East Kawela Tributary (diversion 866), West Kawela (diversion 862), and Kamoku intake (diversion 862) have been inactive since at least 2005. The Hanalilolilo intake (diversion 864) is the second largest source of water with a median streamflow available is roughly between 180,000 gpd and is the second largest source of water. The Kalihi (diversion 868) and Lualohe (diversion 867) intakes has remained inactive over six years.

The Kawela Seepage run map was shown and briefed on. The Kawela instream flow value table were shown noting a high density of archaeological sites with an outstanding ranking for recreational resources. There is a critical habitat for threatened or endangered species as well as a freshwater habitat for stream life and damselflies noting an inland fishpond which is now a wildlife refuge. Restoration of spring flow via increased recharge on the mauka portions will improve nearshore environments including the growth of limu that is collected by the community as well as nearshore ecosystem productivity.

The Mountain Water System has (7) reservoirs that serve as a source of storage to supplement the lack of surface flows when it doesn't rain. Estimated maximum annual evaporative loss from the reservoirs is approximately 33,000 gpd. The end uses of both non-potable and potable water uses were touched on noting various utilities and end users also

noting the current average volume for uses non-potable water for livestock was also discussed. The overlap is that the Hanaliolio intake draws water from Waikolu Valley which affects the availability of water for the MIS and DHHL.

The Moloka‘i Irrigation System (MIS) has (4) stream diversions, (6) wells and the Kualapu‘u Reservoir. Dr. Strauch briefed and showed photos of the dams (intakes) and wells also showing the Napuleloa Spring located at well #6. There’s a lot of USGS stream gaging activity on Waikolu Stream over the years which continue to provide valuable information. Waikolu Stream is one of the highest ranking biological resources in the State with all (5) ‘o‘opu species found as well as a large population of hihiwai and ‘ōpae. Waikolu Instream values also ranks high with outstanding recreational and riparian resources. The MIS system was built for the Department of Hawaiian Home Lands (DHHL) to provide non-potable water for homesteading and agricultural needs. Noting the operation of the Hanaliolilo intake directly effects water available for DHHL.

The recommendations and its consequences were noted and explained as well as the proposed actions and next steps to consider for the water systems.

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PUBLIC TESTIMONY

Dr. Jonathan Scheuer, behalf of Dept. of Hawaiian Home Lands – Aloha kākou Commissioners and Chair Case. We're very grateful to your staff and Dr. Strauch for the submittal today. We're also particularly grateful to the members of Moloka‘i No Ka Heke who brought the issue of the management of the Moloka‘i water system to the Commission's attention. And are also very much grateful to the members of the Moloka‘i community who've supported in testimony today the reservation proposed for the Department of Hawaiian Homelands.

I just want to confirm for you that despite the recent and approval of our water use permit for groundwater for some of our needs in Central Moloka‘i, the Department still has significant unmet needs for non-potable water uses especially in the Kalama‘ula section. This proposed reservation would be very significant for the department. You may or may not know that among the primary purposes of the Hawaiian Homes Commission Act, is that it should be implemented in order to provide adequate amounts of water and supporting infrastructure so that all the set aside homelands can always be usable and accessible.

This of course is a significant challenge given the nature of most of the lands that Congress set aside for our homesteading, but this is a meaningful step forward if you take it. Last thing that I would note is that for a number of years the Department has supported seeking reservations of groundwater or surface water for DHHL in conjunction with the setting of interim instream flow standards so we're very grateful that the commission took an affirmative step to do these two things at the same time. We recognize that while we're a public trust use of water, we're an off-stream public trust use of water and so we recognize that we have a particular role to play in the consumption and use of water in Hawaii, and we feel that the staff submittal does a good job at addressing that particular role in the context and the need to restore streams and protect other public trust uses. I’m very happy to answer

any questions, Mahalo nui.

Chairperson Case called upon Mr. Mahesh Cleveland who then deferred to the Moloka'i community for oral testimony and asked if there's still time afterwards, he will then provide testimony and noted Earthjustice also provided written testimony.

Mr. Walter Ritte, Moloka'i Homesteader – Aloha members. First, I'd like to congratulate the people on Maui for what they're trying to do with their mountain. We tried to do that 30 years ago and we were successful in designating our mountains, and now it's taking us all of this time from 30 years to try and figure out how we're really going to protect our rivers, so I'd like to thank Sarah Sights for designating our island 30 years ago.

Our submittal really is trying to protect our stream and its life, wanting to make sure that everybody understands where we're coming from. We also want to protect our aquifer that are getting saltier and we are positive that this committee supports us and is going to allow Moloka'i Ranch to keep operations going according to their 62,000 gallons a day that they listed as being their needs.

We're not going to be harming anybody; our proposal is to protect what we tried to protect some 30 years ago. The problem is we got 7 diversions up in the mountains and Moloka'i is 37 miles long and the diversions of the pipes are 20 miles. The diversions are taking water 20 miles all the way to West Moloka'i that has created huge problems in our mountains. The history of the problems is not new. Bernice Pauahi Bishop once owned 1/3 of our island; her lands got sold out to Moloka'i Ranch and they tried to raise sugarcane, put their wells along the shorelines. All their wells went salty, then they went mauka.

It's been a 100 years now from them going mauka and taking the water to their ahupua'a of Kawela. Right now, we're supporting a lot of the work that your staff did. We want to congratulate him for spending so much time on Moloka'i and also bringing us up to speed about what he's trying to accomplish. We support a lot of the things that he's talked about. The one thing that we do not support is the amount of water that he wants to keep in that stream.

I think we can keep a lot more water in that stream because the problems of getting Ag water to Moloka'i Ranch has been solved since 100 year solution. That solution he was talking about is the MIS. We got 1,000,000,000 gallons of water that can help farmers on Moloka'i. We don't need to be taking water of our streams that they did 100 years ago when we have water coming out of Waikolu, and I wanted to make that really clear and allows us to say we don't support Q80; we really support Q40. That's going to be important for us as it will bring life back into our rivers and allow water for Moloka'i Ranch to have 62,000 gallons a day. We're not going to run them dry but we're going to increase the life protection of our streams at Waikolu.

I just wanted to let you guys know that this is important for us. It's been 100 years of misuse of these rivers, there's 7 diversions and we want those diversions to be taken care of in our mountains to come back to life, because we all know that climate change is not being helpful in putting water into our rivers right now. Every single island has the same kinds of problems. Aloha and thank you very much for allowing us to testify.

Ms. Lana Corpuz Moloka'i Homesteader – Aloha Water Commission. Mahalo for your time. I'm from Kaunakakai and I'm here to talk about agenda item C-1, with regards in putting an IIFS into Kawela Stream. Just a little comparison for perspective I'm going to assume you watched Moana the Disney movie.

In the movie, Maui takes Tafiiti's heart and she's a creator of all life. As soon as he takes her heart, there's this plague of death that moves throughout and that's what the ranch is doing by taking water out of Kawela Stream. We've seen our island pretty much die; we can visually see it's turning brown.

So, we're hoping that by putting this infrastructure in that we can get Kawela River and the rest of our island back to healthy; and that it be the life giver that it once was, Mahalo.

Ms. Teave Heen Moloka'i Homesteader – Aloha and Mahalo Commissioners for your time to testify and your support and complete understanding of the critical needs of our 'āina at this time. I was born and raised in Moloka'i in the ahupua'a of Kawela and I'm testifying on behalf of my 'ohana and Moloka'i No Ka Heke on item C-1 in full support of the investigation into Moloka'i Property Ltd., water misuse, the environmental damages and the water right violations.

I stress the importance of the formal guidelines to be upheld in its entirety until properly rectified. I also support the setting of interim instream flow standards for Kawela, Waikolu, Kaunakakai and Manawainui. This oral testimony is detailed just to Kawela because it's more personal to me. I ask that as you determine the interim instream flow standards for Kawela, to please be mindful of the devastating historical impact that decades of water deprivation have done to the stream in the surrounding habitat.

Our kupuna described Kawela as a beautiful spot with lush green gardens and fruitful farms. So we know that it was once a thriving ahupua'a with salt beds, rich nearshore reefs, abundant springs, and thriving fishponds. Now, it's a giant desolate and for no other reason other than the extensive damages caused by an absence of water. The Kawela Stream, the river is what we call it, is right behind our home. As children, we'd spend endless afternoons at this river swimming and exploring. The boys would be hunting, and we'll find petroglyphs and just exploring our backyard, cultivating strong connections to 'āina and solidifying place and purpose.

Now these people need connection not only to each other, but to place; and water was that connection and without it there is no life. I remember the stream provided life for species like the 'ōpae and the 'o'opu. It would swim at us in the ponds that we built and near the muliwai we would build rafts and practice throwing net on baby 'oama and mullet. Near Kakaha'ia we would gather 'a'ama-black crab, it was in the kiawe trees and when we shake the tree the crab would come raining down. We'd pick mangoes in the patch down below Kawela plantation. Like most families, we relied heavily on our island for sustenance. Now, sustenance are all things that provide nourishment, the necessities of life. When my father was out catching fish and food types of sustenance, the river and her surroundings were

providing us children with a different type of play, a type that is hardly found now.

The stream provided us a refreshing place to wash away our troubles, and her different habitats taught us about the many cycles of life. As we got older, we witnessed the stream drying up. It got hotter, drier and the river only ran on the heavy rains. The muliwai got backed up and now there is no connection. The surface water doesn't flow from mauka to makai. Once a perineal stream, now hardly makes its way to the ocean. All this can be reversed only if sufficient amounts of water are set free.

The streams got to flow, our 'āina cannot be put second to development to increase economic demands and neglect, or in this case, just straight water theft. The 'āina needs us to put it first. I feel by holding Moloka'i Property, Ltd., accountable to historical damages, that would help. And if all possible, I would ask that you please set IIFS that will satisfy the environmental needs and revitalize Moloka'i future, Mahalo nui for your time.

Ms. Momi Afelin, Moloka'i Homestead Resident – Aloha kākou. I'm from Kahananui and a member of Moloka'i No Ka Heke. In my work, I coordinate community engagement and research at our loko i'a here and for our limu hui. As Teave mentioned, the mixing of freshwater with saltwater along our shorelines is essential for the limu to grow. The limu that feeds the pua-the baby fish that come into the shore that eventually become the fish that our community relies on to eat. Not only are these activities vital to the nearshore marine, and ecosystem, but they're also important for our community to maintain the sustenance lifestyle.

According to the Governor's Moloka'i Sustenance Task Force study of 1994, 28% of Moloka'i families acquire their food through sustenance activities. That number jumps up to 38% for native Hawaiian families. In a recent 2018 survey by Sustainable Moloka'i, up to 64% of our community practices some type of sustenance traditions. Diverting streamflow in Kawela means the best freshwater to support the limu and i'a of the stream and wai for the nearshore environment, while the environmental impacts of these diversion shouldn't be understated, I also urge you to consider the impacts that this has on our community. By disrupting the nearshore ecosystem, we lose the ability to practice these traditions and prevent the intergenerational knowledge transfer from Kupuna to keiki.

How can kupuna teach their keiki how to gather and how to clean 'ele'ele if it doesn't grow anymore because you don't have enough fresh water at our shores? With that said, I'm asking that you strengthen the IIFS to ensure that a greater amount of water is kept in the streams at all times before any diversions can be made to protect our lifestyle and our food security. I ask that the IIFS be set at Q65 and that you implement measures to ensure these IIFS will be monitored and be enforced. In addition, I ask you to ensure Moloka'i Ranch clean up their 'ōpala in the mountains when they abandoned their diversions as we saw in Ayron's pictures, there are pipes upon pipes there in the mountains.

Lastly, I ask that you address the waste complaints noted in the petition expeditiously. If Moloka'i Ranch is taking 370,000 gallons per day of water and only reporting 62,000 gallons of use, where is the rest of the water going? I ask that this be addressed and that we ensure the wai of Moloka'i is being used responsively, Mahalo.

Ms. Mahina Poepoe, Moloka'i Homestead Resident – Good afternoon, everybody. I am from Moloka'i. I wanted to hop on and support getting this moving along, establishing these IIFSs as listed in the agenda and require the decommissioning of the derelict dams and cleanup of the littered materials and the DHHL reservations.

I wanted to thank staff for taking action for investigating and for Ayron for putting together such a very thorough report. I know that this is information only today so I won't go into detail because I'm assuming this will be scheduled again soon, and I do humbly request that you prioritize agendaizing this for decision making as soon as possible. At that time, I will come back with more substantial testimony. I do want to say that I think there's more room and emphasis that should be given to the public trust purpose of water in its natural cycle. Mauka to Makai connectivity is needed; so, I'd like to understand better whether the recommended IIFS will achieve that consistent connection and to what extent it's expected.

I support the scenario that puts maximum water back into its natural cycle. I support putting all the water back, but I know that's not going to happen. I can conclude, ask you to again prioritize this for decision making, scheduling and begin the process of reviving our deprived water courses, ecosystems, riparian nearshore areas as this are a century's worth of damage, destruction, and death that will take decades to heal; it'll take more than my lifetime to heal, so the sooner we get that started the better, Mahalo.

Mr. Kahekili Pa-Kala, Moloka'i Homestead Resident – Aloha everybody. Thanks for having me. I am a lifetime Moloka'i resident. My background is fishpond and 'hupua'a restoration. I just like to say I support Moloka'i No Ka Heke and the staff's recommendation to enforce the IIFS, but I would request that it would be a little bit more. Like Mahina said, all would be nice. I know a lot of people got more things to say as there's not too much time so, I'll just leave it at that. Thank you for your time, Aloha.

Mr. Lohiao Paoa, Moloka'i Homestead Resident – Aloha Commissioners. I want to say Mahalo, to Kaleo and Ayron as well as the Commission for allowing me to testify. I'm testifying on behalf of my family as well Moloka'i No Ka Heke. I'm the son of Donna and Mel Paoa. I'm a lineal descendant of Kawela, ahupua'a. My kupuna is buried in Kawela and my kids are raised in Kawela.

I've already submitted written testimony, so I'll just say a few things. I'm in support of the staff's efforts to set interim instream flow standards for Kawela, Manawainui, Kaunakakai, and Waikolu. Although I appreciate the staff's recommendations, I believe Kawela needs more water. I asked the Commission to please take a deeper look at the amount of water being diverted versus the amount of water actually being used by the diverter.

Q80 flow is not nearly enough water relative to the importance that the Kawela Stream has on the 'āina and its people. Obviously just from hearing earlier testimonies with West Maui, setting interim instream flow standards is just a start. I want to stress the importance of regulation and monitoring after the IIFS are set. I am in support of the order to formally abandon 3 of the 5 inactive diversions, those being East Kawela tributary, West Kawela and Kalihi. Please make the diverters clean up their mess, simple.

Finally, I want to encourage the Commission to take this Moloka'i water issue seriously, because your decision truly affects every single person on this island. There's so much history and potential in this ahupua'a. Mahalo again, I appreciate the Commission's hard work over the years and look forward to helping you guys make the right decision, Aloha.

Mr. Richard Westlund, Moloka'i Resident – I live in on the West end and I'm also the President of the West Moloka'i Association, which is the homeowners association of about 600 families on the West end. The reason I really wanted to be here is that there were some confusions that the diversion of Kawela Stream was being utilized as Ag water for Kaluakoi, which is totally inaccurate. There has never been any Ag water delivered to the West End.

In the sense of conception, it was developed with Ag water with promised Ag water, but we have never seen that water. In the earlier slides it did show that there is potable water being used for a corporal purpose on the West End, yet we have probably one of the highest water rates in the nation, and we try and restrict people's uses by rules and regulations but it's all potable water.

The point I'm trying to make is that we can probably do something without diverting streams to supply. The west end is changing; it used to be a pro-development area and people were golfers, and that's changed. The people that are here now have settled in, the golf course have been closed for 15 years almost and the people here like the island. The makeup of the West End is changing, you're seeing people buying and there are local Hawaiians. They're not just mainlanders coming over; its people looking and when they're purchasing, they don't have Ag water. They want to plant and do something.

One thing that I would like to introduce is, in this presentation they were talking about that the West End has no Ag water. It's using some potable water for agricultural purpose, and it would serve the West End without going into diverting streams, etc. and we understand that water is a valuable resource; but the West End could flourish, and we could grow products and we could flourish again if there was Ag water flowing through here. The current water situation is everything that is delivered to the West End is all under one tariff, which is potable water tariff, and so just wanted to make a point that the west end is changing, and the local people here want to grow stuff. The prices are so high here they can't which is intentional to protect the water source on the island.

That was the reason that we did this. There are now changes going on in the West End and are people here who would love to participate in the community to be able to grow products and resources and bring that to the island. Thank you very much for this opportunity.

Mr. Mahesh Cleveland, Earthjustice – Thank you, Chair. Aloha Commissioners. I'm an attorney with Earthjustice. We represent Moloka'i No Ka Heke in this matter, many of whom you've heard from today. You have our written testimony and it's detailed but based on information presented in the staff submittal, it would be both practicable and manageable to set much higher IIFS for the Moloka'i mountain streams.

Given that context, this commission should not shy away from protecting any streams to the

maximum extent practicable. The encouraging and even exciting thing about this scenario is that you could do it. You could restore 240,000 gallons a day to Kawela Stream tomorrow, as we have requested, or even more, and the end users will not miss a drop. Setting a Q50 median flow would not curtail any current off stream uses or those plans for the future. The solution here is not to take more water, it is to more effectively use the water that is taken.

With nearly 50 million gallons of available storage capacity in the Mountain Water System network of reservoirs and tanks, there is ample room to meet and grow beyond the 62,000 gallons used daily and we don't need to see Kawela stream drain dry.

All of those off stream needs can be readily met while maintaining abundant stream flows to provide for Kawela's needs. The whole time this system has been operating the diverters had their finger on a scale. Based on available information, the mountain water system would drain every drop out of Kawela stream for months' worth of time out of every year, and the combined effect of this practice dates to around 1900, has been to deprive Kawela watershed community of uncounted billions of gallons of water that should have flowed down that mountain through the aquifer and into the ocean as nature intended.

We can and need to reverse this. We can meet all needs while ensuring that no water is taken from Kawela for several months of the year, instead of taking every drop. It's going to allow the rebuilding of Kawela instream and near shore resources as you've heard folks talk about. There's an opportunity for this commission to act strongly in favor of protecting the resource without worrying about negatively impacting the availability of water for off stream users. As the staff submittal discusses, the mean diverted flow in 2019 to 2021 was 370,000 gallons a day while reported uses in 2021 were 62,000 gallons a day.

Any of us, if we saw a child piling food on a plate and throwing away 83% of it would probably have something to say; this same principle applies here. They simply don't need to divert anywhere near the amount of water they habitually taken, so that water should remain in its natural course. If needs grow, they could be met not by diverting more water again, but efficiently maximizing the storage capacity that already exists. The reservoirs are on the mountains. Some of them are in serious disrepair but it's not like they would need to dig and build new reservoirs when all they got to do is use what they have to 80% capacity or higher.

Kawela and her community have been carrying the burden of this mismanagement for all these years. It's time to fix that. Please remember at this high level of flow, restoration can be accomplished without having to compromise off stream uses, and that's to Kawela. We also asked that actual median flow Q50 IIFS be set for the unused diversion works at Kamoku and Lualohe, which staff intend recommended to be left in place, and that if any future owner of those diversions wishes to seek to reactivate those two diversions, they should be required to obtain a new Stream Diversion Works Permit, some of them over a 100-years old and been sitting defunct for decades.

If someone wants to use them, they can petition to re-amend the IIFS to allow for that and jump through the hoops of getting the diversion structures fixed and operational. There's no need to let them sit as they are. I think one Kamoku structure being kept is halfway leaning over and so these things would have to be evaluated to be reactivated. If the Commission will not set a numerical IIFS for Waikolu Stream at the Hanalilolilo intake as we've asked, we ask for your commitment to do so before implementing DHHL's 150,000 gallon

reservation which Moloka‘i No Ka Heke supports. For the other three unused diversion structures, we ask that you also require the diverters to submit a cleanup plan in addition to the formal abandonment permit request as the health of those streams is of primary importance. In your commitment, that our formal complaint against waste, will be formally addressed and resolved by the end of this calendar year because as we've noted, the action that staff proposes you take now isn't going to address that at all and we want to keep this moving. We look forward to the establishment of the IIFS and continue to engage with this Commission and its process as you move toward a resolution of these and the other longstanding water resource issues on Moloka‘i. Mahalo for your time.

(end of public testimony)

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QUESTIONS/COMMENTS

Commissioner Hannahs – (to Ayron) reference on page 6 relating to the phrase “in mythology” and advised caution in use of that phrase as the literal meaning is a fictional story and the more we come to understand our own language and history, we recognize this was data captured that these stories represent data capture of real life events and real natural phenomenon; in many cases we haven't figured how to decode it; but in an oral society it was important to capture it and be able to pass it on from generation to generation with such astute insights about what was going on in a place that allowed us to survive for generations and millennials.

Dr. Strauch – noted he was paraphrasing a written text as it was not in his own words but understands Commissioner Hannahs’ statement.

Commissioner Hannahs – I thought it was important to put that on the record, because I think people have a misunderstanding of the deeper meaning of these stories and the extent, we share them. Asked in regard to the system losses as it seems like a high percentage of loss compared to modern industry standard and can we be more explicit in addressing that?

Dr. Strauch – answered to make more clear recommendations regarding; I've identified the annual evaporative loss from each reservoir and combined is what we have for an annual evaporative loss from the system. The benefit of having a reservoir is getting you through the dry period when we're keeping all the water in the stream, though I don't necessarily want to recommend decommissioning entire reservoirs but there may be opportunities to reduce evaporative loss by putting a cover on a reservoir or by identifying which reservoirs have the highest evaporative loss and focus on upgrading the infrastructure.

Commissioner Hannahs – we've been trying to use policy and setting our decisions and orders to drive investment to modernize infrastructure that is very inefficient. We should be consistent and assertive. In the Kukui decision and the order of the Supreme Court for alternative use analysis that has not been done. What are the consequences on permits when somebody disregards an order of the court?

Dr. Strauch – it was related to a groundwater permit application but to the extent that alternatives to groundwater could be available as an alternative to surface water and deferred

to further comment to Deputy Manuel.

Deputy Manuel – the point of the order is that alternative analysis is required before the Commission makes a decision. There was a water use permit for Well 17 that was considered as part of that case. Anybody that comes in for a water use permit, we have an obligation to evaluate whether or not they're reasonable and practicable alternatives to that water use. We have an obligation to also hold users accountable in their responses even if they aren't presenting alternatives, we need to do our own research and analyze whether that's practicable.

Chairperson Case noted this is still in process and appreciated the very thorough work (Ayron) provided and thanked all that were present to testify on the subject and look forward to the next steps of the process.

RECESS: 2:14 PM

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021522 04:50:42

D. RED HILL ITEMS

1. Non-Action Item - Status Update from Red Hill Permitted Interaction Group (The Group) on Scope of Investigation Approved on January 7, 2022, Meeting.

Deputy Manuel introduced the submittal item and noted that Chair Case appointed Commissioners Kagawa-Viviani, Buck and Meyer to serve as members of The Permitted Interaction Group (The Group).

PRESENTATION GIVEN BY: Commissioner Paul Meyer
 Commissioner Aurora Kagawa-Viviani
 Commissioner Mike Buck

Commissioner Meyer noted that in regarding Red Hill, the AG who's the legal advisor stressed on the follow-up of water use permit modifications for the Navy's three well permits, to address the issues of the Commission concerns. The concern and goals are to reiterate what the Commission decided at its last meeting in regard to the permanent defueling and decommission of the tanks and fueling facility similar to what the Navy accomplished in California and Seattle.

Secondly, to achieve aquifer and soil remediations as these are longer-term issues. Thirdly, it's likely we're going to have a longer-term emergency water shortage due to the contamination of the Pearl Harbor (PH) aquifer water source and at its January meeting, the commission adopted a position that would use the full range of its authority and capacity to work with all stakeholders to monitor, evaluate, and enforce both short and long-term efforts and actions to eliminate the threat of the current Red Hill Bulk Storage Facility to O'ahu's water resource.

Commissioner Meyer noted the Commission's legal authority and also the Findings of Fact and the precautionary principle of what is known. Also touched on The Group's initial scope of work such as water shortage issues, expansion of monitoring networks, wells that monitor and test wells that need to go into place to accurately measure the contamination and its dissemination through the aquifer, and to also address funding sources in how it gets paid for. Also noting that the group and Commission is still reviewing its practical legal options that the Commission can pursue.

The NAVFAC Water Use Permits were noted which CWRM has legal authority to modify.

The Group has identified several priorities including update permit modifications and special conditions to the NAVFAC permitted wells, recommend permanent decommissioning of the RH underground fuel tanks, and prepare for a water shortage or water emergency.

(Commissioner Kagawa-Viviani continued on the following portion of the presentation)

Commissioner Kagawa-Viviani noted the importance of understanding the situation around Red Hill and the fuel release and how it connects to the Commissions' responsibility. It's important to understand that the geology of this region is highly complex as well as the contaminant being a very complex material. The Commission should actively support timely, rigorous and transparent modeling, sampling and monitoring, and remediation. The advisory group recommends a precautionary principle where data are sparse as gaining a strong understanding of what's happening.

The Group (and Commission) take official notice of key DOH issued documents that were approved or signed off on in early January, such as • DoH Hearing Officer's D&O, FoF, CoL; • IDWST Drinking Water Sampling Plan; • Red Hill Shaft Recovery and Mitigation Plan (RHSRMP).

From scoping, it was suggested to rely on the Navy's version of the groundwater model, but one that reflects comments submitted by Department of Health EPA, Board of Water Supply USGS, and other experts because of the strong existing disagreement of the groundwater models. The water shortage assignments were briefed on noting to investigate whether a water shortage exists in the Pearl Harbor and Honolulu aquifer sector area pursuant to HRS §174C-62, and whether the Pearl Harbor Water Shortage Plan (PHWSP) is activated and should be followed. The key question is how long will it take to remediate and recover all the waters affected by the Red Hill contamination? - assuming no further releases as it will affect when decisions are made to utilize those wells again as the Commission's role is to look at things in the bigger picture.

The Pearl Harbor aquifer is crucial for meeting municipal water demands of O'ahu and supporting numerous but poorly assessed public trust purposes. The effective areas roughly 90% of the pumping for Honolulu is Honolulu BWS. With a high demand in the primary Urban's Center and more resources in Central O'ahu - 'Ewa and Wai'anae also draw from that area. There's going to be need for dialogue and coordination with Board of Water Supply in what role the Commission has in imposing or supporting restrictions and recommend a holistic approach taken to the water shortage assessment. We're responsible as municipal and permitted uses are part of our responsibilities in accordance with our public trust mandate. We need to consider not just the direct effects of this event but also the

indirect and how pumping patterns will impact non-municipal water uses and other stakeholders.

(Commissioner Buck continued on the following portion of the presentation)

Noting the many Zoom meetings with the Navy with over 60+ people over 5-8 different agencies. There's over 200,000 gallons leaked that have been reported. Questions to the BWS were posed noting it could take years before the Halawa Shaft is reopened. This is when the precautionary principle will apply.

The DOH'S hearing officer's D&O, Finding of Fact #71 were highlighted. The legal authorities were stated noting much collaboration between agencies is still needed in regard to decommissioning of the tanks. The next steps will also include permit modifications of the Navy's permitted wells.

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QUESTIONS/COMMENTS

Commissioner Hannahs – appreciated “the Group” for their call of duty and efforts on behalf of the Water Commission.

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D. RED HILL ITEMS

- 2. Non-Action Item - Presentations and Updates Related to Red Hill from the Following:**
 - a. State Department of Health – Update on Drinking Water System Flushing and Water Quality Data Collection**

Chairperson Case notified that Commissioner Seto is an ex-officio representative from the State Department of Health who sits on the Commission

PRESENTATION GIVEN BY: Commissioner Joanna Seto on behalf of Department of Health for DLNR-Commission on Water Resource Management (CWRM)

Commissioner Seto provided a slide presentation and noted the agenda. The Navy water system users under advisory should avoid using the water for drinking, cooking, or oral hygiene; also, to avoid using the water for other domestic needs as bathing, dishwashing, and laundry if there is a fuel like odor. Pets are also under the advisory as well. The Navy and Army have also set up Water Rapid Response teams to assist their customers. The symptoms from exposure were noted.

The flushing status were highlighted with the map shown and explained. The Stage-4 sampling results report (flushing zone I-1) were noted which can be found upon the JBPHH-safewaters.org webpage.

The initial sampling of the zone I-1 effort included 10% of homes and non-residential buildings which includes 135 homes; 6 non-residences; and 1 school. The long-term monitoring will include additional sampling of 5% of homes per month, per zone (months 1-3 after the first sampling); and 10% of homes per zone over each 6-month and remaining 3-month period (months 4-24 after initial sampling).

The DOH guidance to amend the public health advisory were explained and the contact numbers of the DOH-Safe Drinking Water Branch, US Navy and US Army were provided, to state any general public concerns. The DOH's mission statement were also given.

021522 05:34:30

D. RED HILL ITEMS

2. Non-Action Item - Presentations and Updates Related to Red Hill from the Following:

b. Naval Facilities Engineering Systems Command Hawai'i (NAVFAC Hawai'i) – Update on Drinking Water Systems Recovery and Red Hill Shaft Recovery and Monitoring Plan

Captain Gordy Meyer, Commanding Officer & Region Engineer (NAVFAC Hawaii) introduced the NAVFAC Hawaii team: Mr. Jeremy Mitchell, Deputy Public Works Officer Jt. Base Pearl Harbor-Hickam; Capt. Randall Harmeyer, Public Works Officer (JBPHH); Mr. Travis Hylton, Environmental Business, NAVFAC Pacific.

Cpt. Meyer thanked the Commission and stated the agenda of the presentation.

PRESENTATION GIVEN BY: Mr. Jeremy Mitchell, JBPHH

Mr. Mitchell summarized the JBPHH water system reporting with average monthly use of 20.333 mgd and noting the monthly reporting being up to date as of January 2022, with weekly submissions to CWRM since December 22, 2021.

PRESENTATION GIVEN BY: Capt. Randall Harmeyer, JBPHH

Cpt. Harmeyer presented on the Water System Recovery and Flushing Plan (WSRFP) which is now in the stage-4, portion of the plan with the discharge of water through the GAC systems noting the applicable permits obtained.

The distribution system updates, sampling and testing, and long-term sampling were highlighted noting the various stages in also, the reviewing reduced irrigation plans for common areas, housing and environmentally sensitive areas to maintain the health of our grounds, trees, and the well-being of residents but also carefully begin reduced irrigation; in some places by as much as 60% from what was previously before November.

(Cpt. Meyer added) that as we reduce irrigation, we'll look closely to how that impacts our pumping rates at our wells to ensure that we do not overcharge our wells and the permits we

have.

PRESENTATION GIVEN BY: Mr. Travis Hylton, NAVFAC Pacific

Mr. Hylton presented on the Red Hill Shaft Recovery and Monitoring Plan (RHSRMP). The plan was signed on the January 26, 2022, jointly developed by the Interagency Drinking Water Systems team which consists of the Department of Health, U.S EPA and Navy with extensive contributions by Dept. of Land & Natural Resources (DLNR) Water Commission (CWRM), Div. of Aquatics, and Div. of Forestry/Wildlife, that provided ecological input and water resource impact offset.

Overall, the plan is a general roadmap for the recovery of the Red Hill Shaft with focus on an intermediate goal of creating a groundwater capture zone to counter the potential for contaminant migration offsite with defining the levels of monitoring involved. The 5 mgd GAC operations were explained with continuous water-level and stream monitoring as well as effluent beneficial use study underway.

One of the most important parts of the RHSRMP is the groundwater monitoring both at level and in water quality. To accomplish this, we currently have permit applications with the Commission for 10 monitoring wells surrounding the Red Hill shaft at 8 locations to get a better site picture of what the extent of the contamination may be around the release site within the Red Hill tunnel in the vicinity of the Red Hill Shaft; with collaboration from other agencies to assess what is the best point to do groundwater monitoring and in what priority.

Fuel recovery is being done primarily within the water development tunnel using skimmers and absorbance. The remediation activities were stated noting that geophysics ground penetrating radar electro resistivity studies taken to give a better look deeper under the tunnel, to be able to target where to extend vapor monitor probes deeper to track down the fuel that may be in the unsaturated zone. All of these are rolling up into development of longer, broader remediation strategies for the site for the soil, unsaturated rock, media zones, and the groundwater itself with the continuing of the process in cooperation with the Department Health.

The RHSMP does identify there have been impacts to water resources from this incident and are working towards addressing to make things better also through the Pearl Harbor Water Resources Master Plan addresses the area of conservation, water reuse, enhanced recharge, source protection, production capacity expansion which have been started on which will be conducted in a stakeholder driven environment; with the ultimate goal of lessening the Navy's water footprint and increasing water security across the island. Also, to pursue watershed protection efforts through the DoD Readiness and Environmental Protection Integration (REPI) Program is another effort showing promise with effort also from the DLNR.

The beneficial reuse of the affluent and the PHWRMP will also pursue things identified in the Red Hill Shaft Recovery and Monitoring Plan to the converting irrigation to non-potable sources and upgrading the wastewater plant to reuse affluent and pursue other conservation measures such as water audits and metering.

021522 05:54:30

D. RED HILL ITEMS**2. Non-Action Item - Presentations and Updates Related to Red Hill from the Following:****c. United States Geological Survey – Red Hill Synoptic Groundwater-Level Surveys and Seepage Runs, December 2021 to January 2022**

Mr. Oki thanked Chairperson Case and the Commissioners for the opportunity to present.

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

Mr. Oki presented on data USGS recently collected following the Red Hill fuel release. The work was done in cooperation with the Navy and collaboration with a number of stakeholders including the Commission on Water Resource Management, and the Honolulu Board of Water Supply. An aerial map was shown of the (3) Shafts and of the Bulk Fuel Facility Storage Tanks. A timeline of the events of November 20 – December 3, 2021, were explained noting the Hālawā Shaft hydrograph of the groundwater levels.

The two main objectives of the study were highlighted and the survey of the data measurements of the (30) wells were noted which can be accessible at <https://waterdata.usgs.gov/nwis>. The participating agencies in the Synoptic Survey included the Navy, The Commission on Water Resource Management, the Board Water Supply, and the USGS. In general, there's a pattern of decreasing water levels as you go from southeast to northwest that is consistent with our previous understanding of water levels in the area. However, there are still uncertainties and limitations of the survey which were highlighted.

PRESENTATION GIVEN BY: Mr. Rylen Nakama, U.S. Geological Survey

Mr. Nakama presented on the data collected of the seepage runs. Seepage runs consists of multiple stream flow measurements collected at select sites along a stream on the same day, and generally under low flow conditions. Seepage runs is basically a snapshot of local stream flow conditions and are useful for determining losing or gaining reaches as well as quantifying those gains or losses. Hālawā Stream has been channelized and heavily developed in certain ways and noting the importance of the Red Hill Shaft discharge as a point of study with the GAC filtered systems.

USGS established 8 sites for the Hālawā Stream seepage run noting that USGS operates 2 gages on that stream with the data of those gages over the years showing Hālawā Stream as having intermittent flow and not flow consistently throughout the year and run dry in summer months and only showing flow in the winter times, or events as in hurricane season. The seepage run results of the North and South Hālawā Stream were shared and explained.

Mr. Oki stated the summary and conclusions of the study and presentation.

021522 06:13:37

D. RED HILL ITEMS

2. Non-Action Item - Presentations and Updates Related to Red Hill from the Following:

d. University of Hawaii – Red Hill Response and Research

PRESENTATION GIVEN BY: Mr. Tom Giambelluca, UH

Mr. Giambelluca presented on the activities that the University of Hawai'i provided in response to the Red Hill crisis which consisted of a broad group of 56 faculty, students, staff, and community members outside of the University and across the U. S. campuses and agencies to assemble expertise to address various multi-faceted aspects of this problem. The UH Red Hill Task Force assist to provide expertise in water quality sampling and monitoring, laboratory testing, analytical lab testing; the groundwater team includes hydrogeology as well as modeling of water flow and contaminant transport; and a team for logistics and coordination of the various activities and communication and outreach.

One of the main areas of contributing to the immediate crisis is by increasing the capacity for water quality analysis as this has been a limitation of the Department of Health, Board of Water Supply, and the Navy in responding and having to send samples to the mainland. The other main focus is on coordination of relevant research in analysis, investigation, and monitoring.

UH has an existing water analytical chemistry lab at the Water Research and are very actively ramping up equipment capacity and soon will be adding personnel to increase capacity in that lab in which the lab is able to do analysis under EPA protocol in regard to the water quality analysis.

A graph of the contaminant level for control samples were shown as well as the residential samples the military housing area. As well as the DOH heatmap area of complaints noted along with the different types of testing methods. The lab and tests can confirm the presence of jet fuel using dilute samples to a detection limit of 10 parts per billion and verified the use of this for the stream and community contributed tap water.

Mr. Giambelluca noted the work of Yinphan Tsang who is doing the surface water sampling and have done surveys of the biological and ecological health of Hālawā Stream in the past which now provides a baseline. Once it was announced that the Red Hill Shaft was going to be pumped with water to pass through a GAC filter and then into Hālawā Stream, Ms. Tsang took additional samples to provide an immediate baseline for subsequent analysis following the beginning of release of the water into the stream. Her team has set up 8 survey sites and done the pre discharge measurements and will do the post and quarterly as well.

The research on the hydrogeology investigations in the Moanalua and Pearl Harbor Hydrologic Units of the Honolulu Aquifer were highlighted and explained. The NSF Rapid proposal to a look at the interaction between the hydrocarbon petroleum contaminants and the microbiology of the groundwater, to produce results that provide new information on how the microbiome is affected and how the microbiological processes affect the contamination.

University of Hawai'i is actively pursuing federal support of various activities such as lab equipment and project studies as well as a request for support of a task force program such as

DoD-Hawaii-USAPI Water Security Program to address the long-term monitoring and comprehensive research.

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Chairperson Case thanked Tom and all the presenters regarding the Red Hill issue.

QUESTIONS/COMMENTS

Commissioner Hannahs – (to Commissioner Seto) referred to the reference DOH made of calling the Red Hill issue an “incident” to the fact there were 76 incidents noted whereas UH referred to as a “crisis” as the word “incident” could be misleading to the public perception.

Commissioner Seto – it has been identified as an incident at this time and may be multiple sources for this incident. There's also identified with a hazard evaluation emergency response office incident number.

Commissioner Hannahs – (to Cpt. Meyer) asked if the Navy are the closest to understanding this system (as a whole).

Cpt. Meyer – replied, absolutely when it comes to the well and water distribution system.

Commissioner Hannahs – referred to the added costs since the issue and to the cost benefit in regard to relocation and if it can be shared with the public.

Cpt. Meyer – can't speak to the entire Navy on the future plans of Red Hill but are focused on the remediation and water recover efforts. There's the Secretary of the Navy assessment going on at Red Hill, and a larger discussion on fuel needs across Dept. of Defense and locations.

Commissioner Hannahs – referenced the “Advisory Group” (formally was known as P.I.G.) and asked on having that same discussion with that stakeholder group in the federal chain of command.

Commissioner Buck – replied no, not at the higher levels of cabinet.

Commissioner Meyer – we haven't been invited into that circle yet.

Commissioner Hannahs – (to Cpt. Meyer) asked from an engineering standpoint, can this system work and be reliable?

Cpt. Meyer – I only can speak to the large distribution system and not the operational systems of Red Hill as that's the Navy Supply Systems Command. I can answer to the well and remediation efforts.

Commissioner Hannahs – asked if its possible to get that representation to the table?

Cpt. Meyer – I will see if that's possible to get the representatives here to speak on behalf of the Navy on any Red Hill operational matters.

Commissioner Hannahs – referred to contingency planning and relocation and looking at other sites.

Cpt. Meyer – have done past studies on relocation and further investigations are ongoing. The Secretary of Navy commissioned efforts on Red Hill and as well as other needs as we look at the Department of Defense fuel needs across the Pacific, not just in Hawai'i.

Commissioner Buck – added that the Navy did an extensive relocation effort and did identify sites, but I believe it was under the assumption it had to be the same size and also be underground. They did identify sites outside of the aquifer on their land that might be opportunities.

Commissioner Hannahs – encouraged the Group to engage also with other branches of the Navy regarding site locations.

Commissioner Kagawa-Viviani – (to Commissioner Seto) what defines safe drinking water when the advisory is lifted?

Commissioner Seto – the guidance to amend the public health advisory included looking at all of the maximum contaminant levels which are normally regulated by the Safe Drinking Water Branch as well as a screening level of the total cumulative, total petroleum hydrocarbons that could be found in the in the water to ensure that all those did not exceed maximum contaminant levels. Other portions of the guidelines include looking to see that the water coming from the source, Waiawa Shaft was clean, and the distribution system flushing was done well and correctly; as well as following our checklists which are included in the removal action report and available online, however the sample reports are not on our web but found on JBPHH website.

Commissioner Kagawa-Viviani – asked on the EALS in regard to the taste and odor threshold; how does DOH give the public assurance?

Commissioner Seto – regarding the total petroleum, hydrocarbon and environmental action level the department has developed a risk-based action level for the JP-5 based on EPA's risk assessment methodology and in accordance with the Department of Health technical guidance or environmental hazard evaluation. Part of the process involves adding extra safety buffers to account for the exact details which are unknown by science. Levels of the chemical found in the water above the levels, do not mean that health effects will occur but below the level is predicted to be safe and these models are used to guide cleanups of spills of hazardous chemicals.

Commissioner Kagawa-Viviani – commented on the difference of the purveyor of water and regulator define as acceptable may differ.

Commissioner Seto – to be clear, the water source is now just the Waiawa Shaft which is nowhere near the location of the Red Hill shaft or The Red Hill Bulk Fuel Storage Facility.

Commissioner Kagawa-Viviani – clarified in regard to the “tap” water being safe to drink; and asked (the Navy) what are the Navy plans to sort of manage demand as we move into the

dry season?

Cpt. Harmeyer – we are watching very closely our water usage as we're close to our limit of that particular well and we can't meter every single type of usage but look at minimal irrigation and reviewing closely on a daily basis on how it affects the draw at Waiawa and look at any other operational mitigations to take on the installation of other types of water uses as we don't we don't have a major industrial use of water that we can reduce. We're aware we have a limit and have a mission on the base.

Cpt. Meyer – added that we're about 30-40,000 gallons, over I permit over the last month which was due to an unusually high usage amount as we were flushing the distribution lines and homes and don't think it should counteract with that flushing of the system.

Commissioner Meyer – (to Mr. Giambelluca) asked on the mobility and persistence of petroleum-based contaminants in a confined aquifer, could you characterize kerosene or JP 5 relative to other kinds of petroleum-based contaminants, like gasoline diesel, residual fuel oil? And how does kerosene match up in terms of mobility and persistence?

Mr. Giambelluca – certainly well outside my own area of expertise and deferred to Ms. Catherine Rong, Lab Tech at UH.

Ms. Rong – can't say much about the mobility but as far as detecting the different types of petroleum hydrocarbons like kerosene versus Jp-5 versus anything else, we would be able to see a difference because those fuels contain different types of compounds, they're going to show up differently on the chromatogram. We would be able to make some sort of identification provided that we have those standards for the other types of fuels.

Mr. Don Thomas, UH – added that in general, the lighter hydrocarbons are the less persistent; the heavier heart hydrocarbons are more persistent in the environment; and likewise, gasoline would be considered a lighter end and bunker fuel are on the heavier end. If wanted to know what the persistence is here, we probably need to do so testing under conditions that mimic conditions under Red Hill.

Commissioner Katayama – (to Mr. Giambelluca) referenced the slide referring to the grant pursuing for testing facilities in respect to assure a quality aquifer with the quantity and quality of water.

Mr. Giambelluca – we want to be able to investigate all known and unknown contamination that has occurred around DoD or in DoD facilities throughout Hawai'i and other U.S. affiliated Pacific Islands, and look at it from every perspective such as what are the transport mechanisms, the fate, how is it being degraded by the by microbes, how effective have remediation efforts been, if there have been any. And looking at toxicology and all the social science aspects as well as unknown sources that may be future threats around DoD. We intend it to be very comprehensive water security program.

Commissioner Katayama – is that something that will be applicable for what we're looking at in water management areas where we need to protect the water resources as we get urbanization.

Mr. Giambelluca – yes; we are targeting funding source of DoD and will have some ties to military installations, but we can generalize a lot of these problems if we are addressing these issues around military bases but, is still under development and discussions and will need to be presented to our Congressional delegation.

Commissioner Buck – (to Commissioner Seto) asked if DOH has seen the letter of request by the Group in regard to equal partnership as part of DOH Emergency Order in regard to evaluate the safety of the Red Hill facilities.

Commissioner Seto – We are consulting with our attorneys as this was a result of an Administrative Order so the Department of Health is the party so we'll consult with our attorneys, and certainly you're able to get the documents and we would accept any comments. The water that caused the contamination was from the Red Hill Shaft and the water being given to the current residents are from Waiawa Shaft. The DOH along with EPA and Navy has tested that water and found it to be safe for drinking.

Chair Case – are we actively monitoring the groundwater levels at Waiawa Shaft to determine whether there's an impact of the increase pumping on any water dependent ecosystems are, farming, cultural practices, or other uses?

Mr. Jeremy Mitchell – pumping at Waiawa hasn't really increased substantially since the beginning of this event. The levels indicated by our transducer hooked up to our SCADA system have been consistent across the past 2 years and have not changed since the event.

Chair Case – what about the impact of the shutdown of Hālawā Shaft on groundwater levels on other wells and pumpage to the west? We're pumping 5,000,000 a day out of the Red Hill Shaft to keep ensure contamination doesn't spread but it's not necessarily a short-term thing; and because we're not pumping water from the Hālawā Shaft to provide water to people of Honolulu, we're pumping more water from other shafts, are we monitoring those groundwater levels? And progress on groundwater modeling? What are the impacts to the aquifer in terms of movement of contamination and supply of water?

Mr. Ryan Imata, CWRM Groundwater Branch – the Navy submit to us daily pumpage and also receive chloride data on a weekly basis which provides good indication of aquifer health as they started to increase pumpage on Waiawa. We are continuing to collect that data and have since requested data from Red Hill Shaft during the remediation efforts and are getting on top of Honolulu aquifer system data as we're coming out of the winter months and increase reliance on the HBWS.

Our Survey branch does have a deep monitor well a mile from Waiawa Shaft and are monitoring that too and to ensure that increased pumpage in any area doesn't have detrimental environmental impacts.

Deputy Manuel – added as Ryan was speaking more specifically to the water resource, but regard to GDE or springs, no one is actually managing, monitoring or collecting that data and you've highlighted a big data gap. The current uses happening in Waiawa or at the Sumida Farm, are based on existing or historic pumping. Understanding with climate change being a discourse shifting pumping throughout this region, we should start to consider and look at how do we collect and monitor those additional metrics and fill those data gaps and could

consider as a Commission for well users to make sure that they're mitigating their impacts on resources and other public trust uses.

Commissioner Hannahs – it's not too late as Waiawa pump is pumped at an historic average as its not yet having to supply the needs of the people displaced and when they move back home, that's when we could see the impact you're referring to and should get those monitoring in place in time to start monitoring that.

Mr. Imata – added, we have deep monitor wells in other locations that we routinely take water levels and chlorides. We have a robust network of Monitor Wells for Pearl Harbor specifically in the region of Waiawa.

Commissioner Buck – we're concerned with the East-West movement of water and how it could affect the Hālawa Shaft and Travis (Hylton) has been doing a great job in coordination of agencies to come up with priorities but, how can we help you expedite determination of wells once we determine where all the wells need to be?

Mr. Hylton – the permit applications are in for the 10 wells and 8 locations on the site and those are on Navy properties so they can go quicker. There is a full permit process that your staff is expediting and certain requirements that to be processed through Historic Preservation and got our cultural resources SMEs to ensure there's not imposing on any cultural artifacts.

As we identify the sites, the whole cooperative team the Board of Water, CWRM staff, and the Department Health are going out to ground troop sites looking at what the considerations are. There are many things that go into it in terms of landowner, potential for legacy contaminations from other sites from leaky underground storage tanks off-site, and logistical matters; but very appreciative of staff's assist and have been in close communication and will continue to communicate in what can be done to help the process along.

Commissioner Buck – commented that Governor may be able to issue an Emergency Order to expedite permitting issues from the State as it can take years for all that to happen and we don't have that kind of time.

Mr. Imata – added we convened the multi-agency meeting yesterday and we all weighed in our priorities for monitor well locations, the multi-agency group consisted of CWRM, EPA, Board of Water Supply, USGS, the Navy, and DOH, and came up with a list of 10 wells to be the primary focus of installation for this year.

Commissioner Kagawa-Viviani – (to Mr. Hylton) regarding treatment at Red Hill Shaft, what is the limit of detection on your methods and what are we cleaning in this process?

Mr. Hylton – (*spoke of the types of contaminant and detection levels*) and noted the GAC system is not meant to be water cleaning system for fuel recovery, it's an environmental protection for what we're discharging to the stream. The recovery is happening through the skimming and the absorbance in the well. We're looking to keep the influence low, so that we can prolong the get the life of the media (GAC). There's also organo clay that's protective of any slugs that may come through

Commissioner Kagawa-Viviani – asked if skimming was continuing while the GAC treatment is ongoing.

Mr. Hylton – the skimmer is not used while the pumping is happening as it will affect pumping as the water level is moved. Barrell skimmers are used within the shaft to collect any product off the surface passively, that will rise and fall with the water level as its pumped.

Cpt. Meyer – there's also absorbent pads in place.

Mr. Hylton – *further explained the process of the use of the absorbents.*

Cpt. Meyer – added there's not a significant amount of emulsion of product on the top. In the last month through those absorbing pads, we've collected about 10 gallons of a fuel.

Commissioner Kagawa-Viviani – referenced on the fuel-water mixture released how do you know what you're doing is effective in terms of containing contamination to the shaft? Were there elevated levels at the existing monitoring wells around the tank farm?

Mr. Hylton – the existing monitoring wells around the tank farm have had levels at times above the EAL which has been more frequent since May 6th and November 20th but are intermittent and hard to define what's actually happening and why it's so crucial to get more monitoring wells so we can better characterize it. And in knowing how the capture zone is going to be effective rides on the 10 new monitoring wells.

Commissioner Kagawa-Viviani – asked on the release if it was 19,000 gallons of straight fuel?

Cpt. Meyer – it is part of the Pacific Fleet Command Investigation which has not been released and are not sure of the exact number; there were (2) incidents related which is the May 6th and November 20th.

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PUBLIC TESTIMONY

Chairperson Case noted that Dr. Beamer was a very long-esteemed member of the Commission

Dr. Kamana Beamer, Ka'ohewai Coalition/O'ahu Water Protectors – Mahalo for having me here and thank you for holding this important hearing and meeting. Aloha to Chair Case and Commissioners, you folks are champions, it's been a long day. There's a number of important issues that folks are hearing and still see you working hard and being attentive on this particular issue.

I have a couple of comments here. I really want to applaud the presentation that I saw from the Working Group, the P.I.G. I really want to stress some of the things that I saw as it is very clear by the code you folks have a broad authority and you are the overall trustee over wai. I want to support this investigation in terms of linking the Navy's water usages to

decommissioning the tanks. Like Commissioner Viviani stated, we still don't actually know what happened. There're multiple reports this November 20th release that was initially 1,600 now might be 19,000 and I've seen 20,000. Somehow that's related to a May 6th release.
(Dr. Beamer continued public testimony)

Now the new story is that fuel sat for months and apparently leaked again in May. David Day was correct that this is a ticking time bomb. It hasn't been properly managed and after all these months we still don't even know what happened and don't know where the plume is. I've met some of the families at an event this past week. A woman whose daughter ingested fuel on base, that still has detectable levels of fuel in her bloodstream. This is really serious and egregious.

I believe the Commission has the authority to link water usages to the decommissioning of the tanks. This is a continued threat to the source. Some of the analogies that I would use, this is like a de facto. Essentially the Navy's poisoning or contaminating the Hālawā aquifer is going to affect other users rights, and like a decreased sustainable yield for all of O'ahu.

If this was a stream for instance, and you had a user of the stream that was damaging all downstream users and potentially for years or decades, the Commission would take broad authority to address that event and that damage that was being done to other users. So, I think you folks have broad authority.

With the wells that aren't being pumped as these questions are emerging, that plume is still moving, it's going somewhere. I think testing in the springs like we heard from Tom Giambelluca and others is critical and important for the long-term but addressing the immediacy of the threat that we still don't know what's going on, is paramount. In this unprecedented crisis, this has never been tested by the water code; we've never been here before. I want to stress this is something if the AGs feels we don't have the authority to link those things, is something worthy of fighting in court. It's never been determined and ultimately you folks have qualified immunity as long as you are taking the precautionary principle and trying to protect the public trust. The AGs are there to advise you. You may even consider getting outside Council because this is such an unprecedented crisis an issue.

I'll be monitoring and just thankful for your work and efforts. Again, this is the most egregious assault to Hawai'i's public trust I think ever and strongly encourage you to use all tools and authorities at hand to mitigate this, Mahalo nui.

PUBLIC TESTIMONY (CONT'D)

Ms. Gina Hara – Hi. Thank you for the opportunity to speak again. This is the second most best meeting the injunction hearing that I've been to over the last 7 years. There are so many things I want to say, but it's important to address the 100 parts per 1,000,000,000 is what the Board of Water has always said is the safe EAL amount. There are 5 letters going back and forth between the Department of Health and the Board of Water, begging them to please consider 100 parts per 1,000,000,000 because at 160 parts per 1,000,000,000, you can smell the petroleum.

What happened was the Red Hill Well, the R. H. spiked at 1,600 after 2014. When it spiked the Department of Health raised the EAL to 400 parts per 1,000,000,000, which was objected

to by the BWS and they're not here today. What concerns me, is now it went down to 300 and in Christina Jed article quoted 300, another time it went to 200; this is from the public's point of view, and when they say safe levels, it seems many times more dangerous.

The same thing happened with the 1,600 spiked parts per 1,000,000,000. That's 16 times the danger just in the monitoring well. I wanted to bring that up and sorry if I sound rude.

The second thing is in 2014, the 17 patches that they were using to test the tanks, they forgot to put it back and the alarms did go off and that's why there was this huge leak over several days. The Navy always will say it's a human error whenever we went to go testify these past 7 years and human error is significant. In a Taiwanese study I looked up wanting to know what other people do around the world, international studies show that 60% of catastrophic leaks come from human error. In Fukushima, it was human error the lack of judgment, an accident.

I know the Navy might be here, but I'm not trying to attack you; we just got to talk about it like this. At the time as a public person from Hālawā Valley, I ran to the Department of Health and asked them about that. It was like my whole presentation was on microorganisms. I said, how come we don't prepare for this kind of spill? Right now, we should flush it with microorganisms to chase the fuel, the JP. We should have a fire engine ready to put it down the hole and why aren't we using Korean natural farming that makes the indigenous microorganism with the JP-8 fuel-eating microorganisms which lives around there, attenuate them, make slurry, and take care of it right now. Every time I went to a meeting, I would grab the highest official Navy person and tell them this idea and you can imagine what happened.

Then there would be a second great meeting where they don't want the public to talk or 400 people testifying, they just want to show the scientists and meet and greet. With every scientist, I gathered them together and asked what do you think of this idea? They all said, it's a great idea and the Navy PR person would try to shut me up and say, there's no scientific study for that; how do you know that works? I said, they just said it was a great idea; it doesn't cost hardly any money. They're using microbes on their testing and all we need to do is try some indigenous with theirs, test it on the core samples and see if there are any byproducts or further dangers. If you are talking about remediation, that's remediation not a paper study.

My suggestion to you CWRM is the amount of toxins coming in, not just with the military, but in general, any chemical if you don't calculate where it's going in the out, it's staying in our environment and going into the water. So, you need to invest heavily in micro mediation. It's come a long way since in 2019. There's a lot of idle remediation, I will send you the links. Thank you for your time.

PUBLIC TESTIMONY (CONT'D)

Ms. Rebekah Garrison, Hawai'i Peace & Justice – Good afternoon, Commission. I am a water drinker, a member of O'ahu Water Protectors and a community organizer for Hawai'i Peace and Justice. Hawai'i Peace and Justice is a grassroots organization that strives to create a more peaceful, just, and sustainable Hawai'i. Thank you to the Commission on Water Resource Management for prioritizing the protection of the island's most precious

resource the clean, unpolluted drinking water.

Hawai'i Peace and Justice strongly supports the immediate defueling and permanent decommissioning of the entire Red Hill Bulk Fuel Storage Facility. The Navy's negligent behavior concerning Kapukaki also widely known as Red Hill, is nothing less than an assault of the public trust. Poisoning the aquifer since the facility's inception, the Fuel farm at Red Hill has been grossly mismanaged. from the beginning of construction.

None of us know with absolute certainty how much fuel has been released from this corroding facility nor where the fuel plume is migrating to. After 72 leaks dating back to 1947, the Navy has put its own service members and all of O'ahu in crisis. As a result, the public, those fellow water drinkers you all swore to protect, no longer trust the Navy to safely operate their wells. Considering that the Navy has put all of our lives and livelihoods at risk, Hawai'i Peace and Justice requests the Commission to do everything in its power to urgently act to protect public trust resources. Please protect the fresh drinking water of hundreds of thousands of O'ahu residents before it is polluted beyond repair.

It does not take a rocket scientist to know that storing fuel over an aquifer is not a good idea. Proving time and time again, the Navy cannot adequately maintain the 20 corroding fuel tanks holding 200,000,000 gallons of fuel in mere 100 feet above O'ahu sole source aquifer. None of us asked for this burden much less Kapukaki. Drain the tanks, shut down the facility, and prioritize the lives of all who call O'ahu home. Again, the public does not trust the military. One thing is for certain, in the next few months, we will continue to be fed lies by the United States Navy, but we trust that you commission, will do the right thing, thank you very much.

PUBLIC TESTIMONY (CONT'D)

Ms. Marti Townsend – I'm testifying on behalf of Earth justice. Thank you very much for this opportunity. I also wanted to make a point to thank the members of the Permanent Interaction Group for their hard work. It really did show in the presentation. I also want to take a moment to thank Commissioner Seto for her work. She really has been working very hard before the water crisis began and you can continue to see that she is working day in and day out, and I really wanted to acknowledge her. It is clear that Commissioner Seto and Department of Health need a lot of help that there are huge data gaps.

There is no one monitoring the impact to the streams, taro farms, fishponds and to the near shore waters. I strongly urge the Commission to actively engage on Red Hill, to walk hand in hand with the Department of Health to protect the waters of O'ahu. It is a huge oversight that the Board of Water Supply is not here to testify. I can't understand how that could possibly be justified. The next hearing on Red Hill needs to include the Board of Water Supply. They have the most up-to-date information and best view in terms of what's really going on. Most importantly, they have the trust of the public.

It needs to be a trifecta of local and State leadership that protects the watershed and the drinking water supply. We do support the idea of the Water Commission using its authority to regulate water use through permits to direct the decommissioning of this significant threat to the drinking water supply of O'ahu and stream water resources, thank you very much.

(end of public testimony)

QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – (to USGS) asked to briefly explain the first figures on the presentation slide relating to the hydrograph.

Mr. Oki – both Red Hill Shaft and Hālawā Shaft contributed to the recovery, but mostly Hālawā as that’s where we’re monitoring.

Commissioner Kagawa-Viviani – asked on the increase from 13 feet to 16 due to Hālawā Shaft shutting off or both?

Mr. Oki – both shut down on roughly the same time. After Red Hill Shaft shut down, perhaps BWS started reducing pumping on the Hālawā Shaft end of November, early December.

021522 07:43:09

*Chair Case thanked all participants and motioned to go into Executive Session.
Commissioner Meyer thanked everyone who participated as it was enlightening and heartfelt.*

MOTION: (CASE/HANNAHS)

To go into Executive Session to consult with attorney on questions and issues pertaining to the Commission's powers, privileges, immunities and liabilities pursuant to HRS 92-5(a)(4)

UNANIMOUSLY APPROVED

CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/SETO

RECESS: 5:15 PM

RECONVENE: 6:03 PM

E. NEXT COMMISSION MEETINGS (TENTATIVE)

March 15, 2022 (Tuesday)

April 19, 2022 (Tuesday)

This meeting adjourned at 6:04 p.m.

Respectfully submitted,



RAE ANN HYATT
Commission Secretary

OLA IKA WAI:



M. KALEO MANUEL
Deputy Director

***Please refer to the Commission's website at:
<https://dlnr.hawaii.gov/cwrn/newsevents/meetings/> to read/view the written
testimonies received.***