

MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 14, 2022  
TIME: 9:00 am  
PLACE: DLNR Boardroom  
1151 Punchbowl Street, 1<sup>st</sup> Floor  
Honolulu, Hawaii 96814  
& Online via Zoom-Meeting ID: 849 4264 6634

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:06 a.m. and stated the meeting was live and being held remotely and also being live streamed via YouTube for public viewing. It was noted the meeting was set to take live oral testimony and written testimony received can be found upon the Commissions website. Chairperson Case read the standard contested case statement and took a roll call of Commissioners.

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

**COUNSEL:** Mr. Colin Lau, Ms. Cindy Young

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

**OTHERS:** Ms. Fenix Grange (DOH); Mr. Dennis Lopez (DOH)

Chairperson Case announced that Item C-1 was going to be heard first and that the chat function was strictly for technical questions that arise.

*061422 00:06:28*

**C. ACTION ITEMS**

- 1. Accept Findings of Fact and Chairperson’s Recommendation to Designate the Lahaina Aquifer Sector Area as both a Surface Water and Ground Water Management Area including the Honokōhau, Honolua, Honokahua, Kahana, Honokōwai, Wahikuli, Kahoma, Kaua‘ula, Launiupoko, Olowalu, Ukumehame Surface Water Hydrologic Units and the Honokōhau, Honolua, Honokōwai, Launiupoko, Olowalu, and Ukumehame Groundwater Hydrologic Units, Under the Authority of § 174C-41, HRS, in Accordance with Designation Proceedings begun on November 28, 2021, Island of Maui, Hawai‘i.**

Deputy Manuel introduced the submittal item and Dr. Ayron Strauch of CWRM.

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

Dr. Strauch provided a PowerPoint presentation of a brief overview of the Findings of Fact with regards to the surface and groundwater management areas in the Lahaina region. Surface and groundwater sources are used to meet both potable and non-potable demands throughout the Lahaina Aquifer System such that reductions of the availability of surface water following the establishment of interim instream flow standards have resulted in increased reliance on groundwater resources. Both surface water and groundwater sources are frequently exported transferred beyond their hydrologic unit of origin to meet the ever-growing water demands of urban development and gentlemen estates. The existing trends of rainfall for the island of Maui was shown and the Lahaina region in particular was explained which shows significant declines in rainfall that's projected onto each surface water hydrologic unit.

There are four continuous monitoring stations in West Maui and have seen a decline in base flow, total flow, and stream flows that are at or below what is considered long term Q90 or low flow conditions. Therefore, there is less surface water to meet the demands that Lahaina area has that includes portable and non-potable demands as these streams support both drinking water supply, non-potable needs as well as instream uses that include public trust uses.

These high elevation sources of groundwater contribute to the needs that are met by the surface water irrigation systems. Most of the groundwater sources that are in the low elevation system draw upon basal water, and there is an interconnection between high elevation groundwater and basal water.

The listing of the groundwater development tunnels was shown and briefly stated. We have met the criteria for designating in the home Honokōwai and Launiupoko groundwater hydrologic units as we are over sustainable yield.

Highlighting that Maui County DWS is a small portion of the water purveyors of the Lahaina region. The argument that we should just work with the county doesn't alleviate the problem that we have multiple systems that are not managed by the county. The major water supply systems in West Maui were highlighted noting its daily usage of water. Noting that the county projections don't account for wells that aren't in the authorized plan use estimates.

The Honokōhau hydrologic unit supports water usage across West Maui into the Honokōwai hydrologic unit of which offsets groundwater needs or sources. It's a dual system where the use and demand of potable and non-potable waters are reliant on both ground and surface water. We can't just designate one. We have conflicts throughout the Lahaina region. While establishing interim instream flow standards has helped to protect instream uses, it has not alleviated the conflicts that continue to exist throughout the Lahaina region.

Deputy Manuel – thanked Dr. Strauch for the continued data and science as to help frame why CWRM is making its recommendations and noted his appreciation for the public's participation in this process and acknowledgement of all testimonies received in support as well as opposition and staff stands on its recommendations of the submittal.

Noted it's an unprecedented action in the context that the Commission is taking a holistic, proactive and precautionary approach to water resource management. It's a great opportunity to shift the way we manage resources as a Commission in the state of Hawai'i. We're feeling the effects of climate change and crisis and do need to act swiftly and make bold decisions and feel that designation is the best tool accomplish it.

CWRM has been engaging with the community since 2011 in going through this process. As the Water Commission, we have the authority to regulate and ensure compliance with the Water Code; the County does not have that authority. The Commission can enhance our protection and management through designation and the permitting process which allows us to protect the resource.

As affordable housing is a priority and a crisis, this designation will not impede upon providing for affordable housing; but with the data that was presented and with climate change, there will be reduction in overall water availability in the future and this designation will ensure that it protects public trust uses. While some testimony may not agree with designation, stating it will halt development or be tied up with litigation, those statements are untrue as we've gone through designation before and know what the process looks like. With Nā Wai 'Ehā and on Moloka'i, it is specific to those regions and noting that every situation is different. Geology on each island and region is also different so every community needs to be evaluated in its own region areas.

The entire island of O'ahu is a designated water management area except for the district of Wai'anae. O'ahu has continued to grow. Water and the permitting process is not prohibited or prevented development from occurring and it encouraged and pushed the Board of Water Supply and other developers to become more efficient in how we use water and look at alternatives in meeting demand and need and become better stewards of our resources.

It's evident. We've reduced our overall water demand although we've seen development increase over the past couple of decades. Designation doesn't prevent us from collaborating and continue to work together. We will continue to work with communities ensuring there's balance. The permitting process provides a transparent process for us and the public to engage and provide input on projects and water use in a region.

Commission staff is committed to work with the resources we have and ensure to work efficiently, diligently, and effectively through the permitting process although we do need additional resources and staff and will continue to advocate for those. If we limited our actions and decisions based on capacity of government, movement will not happen, and I don't think that's a criterion to defer this action.

As highlighted, there continues to be serious ongoing disputes over water in this region and now is an opportunity for the Commission to provide a space and process to look at this region holistically and manage the resources. We believe this designation will help enhance the protection of our resources and to protect the public trust. The law and science supported that we need to be precautionary and ultimately, it's the commission's duty and obligation to act before any crisis develops.

E 'ai kekahi e kāpī kekahi. This is truly an opportunity for us to ensure that we steward the

resources proactively and ensure we have a sustainable water, resilient future for next generations especially in an uncertain climate future.

*Deputy Manuel read the summary of the staff's recommendations.*

#### QUESTIONS/COMMENTS

Commissioner Buck – thanked Ayron and Deputy Manuel and commented on Maui DWS testimony that it only supports Honokōwai as being designated and asked what would the ramifications be of that?

Dr. Strauch – if we designate just Honokōwai and Launiupoko, we have difficulty issuing permits for end uses when the same uses rely on water from different sources. For example, the Mahinahina Treatment Facility in the Honokōwai groundwater hydrologic unit relies on surface water from the Honokōhau hydrologic unit, so there would be a water use permit for the county or for another entity to draw groundwater in Honokōwai, but the same uses are met with surface water from Honokōhau. It would be impossible to bifurcate the permitted end uses between groundwater and surface water because the entire system is blended.

Deputy Manuel – added the adjacent aquifers provide water to uses within other adjacent aquifers and the systems themselves integrate these hydrologic units, so choosing to designate one will be very challenging overall.

Commissioner Hannahs – asked if the outreach has been open to the public or limited to certain stakeholders?

Deputy Manuel – anytime we held a public hearing or public meeting it's publicly noticed, and everyone's invited to attend. Our commission meetings are also open to the public and everyone gets notified at the same time. The Findings of Fact highlight those from establishing the IFS.

Dr. Strauch – in 2011, we started with community groups and water purveyors; held (3-4) public fact gathering meetings (in-person) in 2016; which all are publicly notified and open to everyone. Understanding there's no mechanism other than designation to force end users to evaluate alternatives available. It is our hope that as development moves forward, the utilization of R1 becomes more prevalent and offsets the lack of water from surface water resources so that we can better protect instream and public trust uses while supporting agriculture.

Commissioner Hannahs – appreciated Deputy Manuel's opening remarks and Ayron's presentation and asked on water capacity to support new developments.

Deputy Manuel – there is still sufficient sustainable yield in some of the aquifers; it may mean that development needs to shift away from our centralized water systems. For example, Maui County would need to look beyond Honokōwai and Launiupoko which is over allocated. This gives us the opportunity to space that out to ensure we're not over allocating in one aquifer versus the others.

Commissioner Hannahs – commented (the intent) this will ensure proper balance of the

resource while responsibly support future developments and meet current needs.

Commissioner Meyer – asked when and where was the designation meeting made public on Maui?

Deputy Manuel – the public hearing is when we had a formal process or meeting on Maui about designation; discussions of designation have occurred with individual parties and others water purveyors, including the Maui Department of Water Supply, Hawaii Water Service, Maui Land & Pine, and others, related to designation.

Commissioner Meyer – are you saying there wasn't a public presentation of the issue of and proposal for designation?

Deputy Manuel – because of Covid, we've conducted meetings via Zoom in January and February at our normal Commission meeting schedules which we presented twice on the matter. We've also presented before the Board of Water Supply and the Maui County Council, at their request, to share our recommendation for designation and provided opportunity for community (public) to engage.

Commissioner Meyer – but these are community meetings per se, either before the Commission or selected bodies.

Dr. Strauch – As required by the Water Code, we held a public meeting on April 26<sup>th</sup> (2022)

Commissioner Meyer – where?

Dr. Strauch – in Lahaina

Deputy Manuel – the public notice identified Waiola Church at the Keopuolani Hall; the same facility/location we utilized for our November 2019 Commission meeting.

Commissioner Meyer – asked if April 26<sup>th</sup> was the first public meeting regarding designation.

Deputy Manuel – clarified that all Commission, Board and Council meetings are publicly noticed and available to the public to participate.

Commissioner Meyer – how was that April 26<sup>th</sup> meeting publicized?

Deputy Manuel – under the statute, we're required to produce a public notice, which is also printed in the newspapers and was uploaded on the Commission's website. We've met the timeframe requirements and deadlines which was agendized by a certain period, per the Code.

Dr. Strauch – it was noticed in the Maui News and Honolulu Star-Advertiser on March 30<sup>th</sup>, April 6<sup>th</sup>, and April 13<sup>th</sup>.

Commissioner Buck – thanked everyone on the 184 written testimonies received thus far. Commented in 1978 the constitutional convention initiated that water is a public trust for Hawai'i. It took the legislature 9 years to come up with the Water Code. It's important to

understand the history that this was a collaborative approach with specific triggers, which was an agreement between the State and Counties.

In all testimonies received, I did not hear about protecting the watershed and its important to know where the water comes from.

There's also a lot of testimony of creating a working group. There seems to be an unrealistic expectation how people are using water today is how they can use water tomorrow. They're not dealing with climate change, the Water Code, and our legal responsibility for instream flow protection and native Hawaiian rights. I'm critical about what a collaborative working group would look like, the timetable, deliverables. How are we going to control the private water purveyors? We can't just say having a working group is fine, but these conflicts are not going away, and I'm interested to hear any specifics about those.

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### PUBLIC TESTIMONY

#### Ms. Christi Keliikoa representing Maui Councilmember Tamara Paltin

- Councilmember attended several meetings on this issue and provided testimony in support of designation.
- Appreciated the work of the Commission and staff's thorough review in initiating this process to protect West Maui water resources and stand on previous testimonies.
- Provided comments at (8) separate occasions before the County Board of Water Supply, Maui County Council, and 4 times before this commission.
- At each of these public meetings, community members turned out overwhelmingly in full support of designation, along with formal support from the Board of Water Supply and County Council.
- interesting to see that people would testify this late in the process to defer or deny designation
- many families in West Maui struggle without enough water to meet their domestic needs; many whom live in the valleys where this water originates
- request Commission honor these families and vote in support of designation as it provides additional protection of the water resources and designate this proposed region as a water management area for the benefit of present and future generations.

#### Ms. Eva Blumenstein, Maui Dept. of Water Supply

- noted written testimonies from MDWS, County Planning Department, the Mayor supporting (DWS) position.
- sustainable resource use in West Maui must be a collaborative effort.
- worked closely with the Planning Department and community to develop the Maui Island Water Use and Development Plan (MIWUDP); unanimously adopted by County Council earlier this year; focus on stewardship and invest in watershed protection and restoration.
- aligns with the Maui County General Plan and the West Maui Community Plan which was recently adopted; the plans integrate land use, and water resource planning

- to allow for responsible growth.
- the MIWUDP is a guidance document and may not substitute designation where warranted.
  - 2 months prior to Council adoption of the plan, CWRM determined the State needs to make this allocation on behalf of the county.
  - the State Water Code provides the option to end-users within the aquifer section to assess the groundwater situation and devise mitigation measures.
  - believe that proactive guidance by CWRM to interpret and use the USGS water models and monitoring data to ensure sustainable pump distributions.
  - MDWS is committed to work with all parties to implement strategies that were adopted in the MWUDP; that includes allocating end uses and balance the use between the different aquifer systems, expand R1, aggressive conservation measures, monitoring well in Launiupoko aquifer
  - collaborate with all purveyors on contingency plan on water shortage actions, fair distribution of funding for watershed protection and restoration.
  - concern of climate change impacts, water quality, conflicts of surface water use with implications on groundwater use.
  - designation doesn't generate drought plans or hydraulic studies we need to quantify the interaction between groundwater and stream water flow.
  - the water use permit application process doesn't provide the funding mechanism initiative ability to expand recyclable distribution; the WUDP is the tool to account for CIP budget and the collaboration between agencies to accomplish that; on track projections for 3 mgd of R1 use by 2025 and up to 5 mgd by 2035 in West Maui which will offset diversions to meet IFS and to distribute pumpage.
  - concerns on some interpretational data and a couple errors in the Findings of Fact.
  - request Commission to defer designation; feels it has been “fast-tracked” and without collaborative approach.

#### QUESTIONS/COMMENTS

Commissioner Buck – asked to describe the regulatory authority the county has over protecting public trust resources on private lands? As we've heard 75% of the current water use in West Maui is under the control of private purveyors.

Ms. Blumenstein – referred to the WUDP as the tool but clarified (MDWS) does not have the jurisdiction; stated the Land Use decision should be guided by the Water Use Development Plan; it's the way to integrate water resource and land use planning. Which also holds true that CWRM also has limited jurisdiction. There are multiple mechanisms that can be done without designation to accomplish the same thing. We need that collaborative effort and the buy-in to the Water Use and Development Plan to implement those strategies.

Commissioner Buck – understands the importance of collaborative approach and planning but clarified that the County of Maui does not have any regulatory control over private water developers on private lands.

Commissioner Kagawa-Viviani – what are your metrics used by which you are responsible for in protecting public trust resources which are normally under the Commission's purview?

Ms. Blumenstein – our role is under the WUDP in collaboration with the Planning Department and use demand, supply, guidance spreadsheets to review existing use and projected demand over the next 20 years (*explained how that data is used*)

Commissioner Kagawa-Viviani – reiterated that MDWS does not track the same variables as CWRM.

Ms. Blumenstein – the CWRM have not approved the plan; it's been adopted by County Council, but the implementation matrix would have those qualitative measurements in which those public trust uses will be met.

Commissioner Kagawa-Viviani – it's not necessarily the Department of Water Supply job to monitor 'o'opu migration for example

Ms. Blumenstein – no, that would be compliance with IFS.

Commissioner Kagawa-Viviani – how does the Maui Department of Water Supply address water shortage issues across non DWS purveyors?

Ms. Blumenstein – there's a gap in collaboration when it comes to drought plans and contingency planning between the county and private purveyors of West Maui and is something this initiative brought to the surface.

There's strategy in the WUDP and is something we should've done a while ago. Are we consistent in our drought response? Do we have sufficient continuous agreement back up each other? What does aggressive conservation mean for the county system versus a private purveyor? So, asking for a deferral is not stalling but opportunity for larger collaboration.

Commissioner Kagawa-Viviani – disagreed; deferring does seem like stalling, so what kinds of timeframes are you thinking about and what are the guiding principles?

Ms. Blumenstein – it's a good opportunity and can set a realistic timeframe of 6 months; have Commissioners review the Water Use and Development Plan; we're holding a public hearing in September; and to look at strategies that have reasonable solutions. The private purveyors understand the critical momentum of doing this and in working with the County.

Chair Case – can you please explain for example you want to ensure adequate water for affordable housing through the Water Use and Development Plan, how does that work?

Ms. Blumenstein – by prioritizing source use and development for planned growth within designated growth areas. So, when a new project comes in for land use entitlements should use the WUDP as guidance.

Chair Case – who makes that decision if their proposed water source is different from what DWS outlined in the plan?

Ms. Blumenstein – it'll be the Planning Department's recommendation and the decision by the Planning Commission, the County Council, or Planning Committee, depending on the type of land use permit. It's the integrated work and the key is to have the private purveyors



on board as part of this collaboration as we all need the same water resource.

Commissioner Meyer – in regard to this collaborative effort, who do you see collaborating with on an ongoing basis on these issues in terms of the WUDP?

Ms. Blumenstein – in terms of having a working group, part of their role should be to implement the WUDP and include the lead agencies already tasked in the plan which includes CWRM, DOH, Planning Dept., MDWS, DHHL, and EMD. In terms of the working group, the key role is to private purveyors as part of the issue why we're here is because they're non-compliant. In terms of strategies this working group should focus on, is not just balancing the water budget and not straining individual aquifer systems but also aggressive conservation and fair distribution of watershed protection funding.

Commissioner Hannahs – thanked Eva for being here and efforts in a collaborative effort and asked is there anything in designation by a CWRM that precludes the collaboration you seek?

Ms. Blumenstein – there's certain processes like we have source development that is specifically to meet clients with IFS for Kanaha Stream to provide for planned growth. They are late and currently in the EA process and have a pump installation permit application pending and if you designate, that is a new water use to be considered after existing uses have been accommodated.

Our well development in the Launiupoko Aquifer, we have three alternative sites in the EA process and are new uses. The timing of moving forward with meeting IFS and getting well distribution accomplished will be delayed.

Commissioner Hannahs – those complications already exist.

Ms. Blumenstein – they are because the water use permit for a new use would be administered after an existing use permit as that's how it was handled in past designations.

Commissioner Hannahs – we'll give that some consideration and expedite all decisions; does this working group exist?

Ms. Blumenstein – it was formally existing as part of the WUDP, but it hasn't been a formal group, and this provides the opportunity to do this.

Commissioner Hannahs – commented that if the group is not already formed, it will take time to form and will take away the sense of urgency in completing and how does it help in getting to it sooner.

Ms. Blumenstein – CWRM should've done this first instead of fast-tracking designation; and feel it hasn't been enough engagement with DWS or private purveyors to look at alternatives to draw conclusions for each individual aquifer system, is it the correct approach to designate an entire community planned district? This needs to happen regardless of destination.

Commissioner Hannahs – added what great work Ayrón has been doing in regard to community engagement across the pae ‘āina. With both opposition and for designation, what do you tell those who advocate for it?

Ms. Blumenstein – we can accomplish this on the local level but it's going to be up to us all to end this conflict as we want sustainable source development and prioritize public trust uses. What are those tools to do it? I have not heard otherwise that we would have the same administration of the water use permit application process and I do see that as a risk to the community and the delay of affordable housing construction. We don't have existing uses to have priority to existing use permit applications; I'm concerned about how that will impact the department's reliable capacity to serve planned growth. We don't have existing wells so designation I believe, will delay that further.

Commissioner Hannahs – if people feel that designation is the means for getting the resource issues addressed, they'd still voice their opinions in whatever venues allow like contested case, public hearings etc. that could impede the normal planning process and permitting.

Ms. Blumenstein – there's a risk or chance of contested case which would impact wells distributed and planned growth.

Chair Case – are you saying the regulatory approach is to take each project as they come into the land use commission or county planning commission on a case-by-case basis and decide if the project can go forward, including whether their planned water sources appropriate?

Ms. Blumenstein – yes, in terms of determining the appropriate source for individual projects

Chair Case – I'm saying if it's the County's approach to ensure that the projects that go forward have a suitable water source that would be decided on a case-by-case basis?

Ms. Blumenstein – yes, for specific developments; there are other strategies in terms of improving the interconnection between the subsystems and the private purveyors and conservation measures and separate strategies that are more of a commitment

Chair Case – I'm sincerely trying to understand how you'll get the overall balancing without it being a Wild West. Private purveyors doing whatever they want-and come in on an individual basis, first come first, serve; it's a rush thing versus we have these existing uses and authorized planned uses and want to make sure they have water. I don't understand what the mechanism is other than designation to ensure they have water.

Ms. Blumenstein – it's one of the challenges in developing a WUDP as a utility for private purveyors to use, collaboration is key. There may be MOU's or other source agreements that need to be approved by county council and the WUDP can be used as a guidance.

Chair Case – but none of those bodies have the focus that the Water Commission has to ensure reasonable and beneficial use of water. I'm teasing out the difference between this designation process as a way to ensure water is appropriately allocated among all users, public and private when there's no tool to ensure that people collaborate.

Commissioner Meyer – added regarding the West Maui Watershed partnership which began in late 1980s as the Pu‘u Kukui Preserve which is still the largest pristine preserve in the State and the unsung hero was you, our Chair. You had a formidable hand in creating the watershed partnership that preserves the natural resource.

Chair Case – thanked Commissioner Meyer and noted Mr. Meyer was also instrumental in negotiating the conservation easement that provided that protection.

RECESS: 10:32 AM

RECONVENE: 10:41 AM

PUBLIC TESTIMONY CONT'D

Dr. Jonathan Scheuer, for Dept. of Hawaiian Home Lands

- testifying in support of the proposed action.
- participated in many designation discussions before the Commission
- co-author of “Water and Power in West Maui” which recounts 125-years of struggles over water in this region
- disagree with last testifier on some points
- the Water Commission has a duty, control and power over all water resources in the State, regardless of an area being designated or not; but lack the tools to protect public trust sources of water in non-designated areas.
- The (4) protected use of water are: 1) water in its natural state; 2) water used for traditional & customary rights and practices; 3) domestic needs of the general public; and 4) water used and reserved for DHHL.
- in designated WMAs, CWRM has the power to protect water by rulemaking; and all water use permits are conditioned upon the rights of DHHL.
- Well construction-pump installation permit and stream diversion permit in non-designated areas do not have that power.

Ms. Denise Iseri-Matsubara, Hawaii Housing Finance & Development Corp.

- glad to hear CWRM’s support regarding affordable housing.
- shortly after HHFDC written testimony submitted, had an opportunity to learn more of why this designation is being sought.
- thanked Chair Case’s leadership and Deputy Manuel’s proactive efforts for water stewardships.
- The State as well as private sectors invests millions to ensure affordable housing feasibility; an investment for low-income housing is located in Lahaina, Kaiāulu o Kūku‘ia.
- before last week, it was unclear that projects as these would be considered existing uses or future uses that would have to be processed after all existing use permits.
- the building community needs to better understand how these water use permits are going to be processed and the length of time once you designate; will it be subject to contested case hearings? These types of projects operate on a thin margin.
- learned that designation may help to prioritize affordable housing.

- some concerns and uncertainty within the building industry: example in Keauhou (HI Isle)-the water permit policy changed from ministerial to discretionary which left housing to a stand-still in North Kona; moratorium in effect; impact to housing.
- request for a brief deferral on action to foster better understanding

## QUESTIONS/COMMENTS

Commissioner Buck – asked for clarification on the moratorium

Ms. Iseri-Matsubara – how a change in the water use permit policy has resulted in a moratorium on housing for North Kona.

Commissioner Hannahs – appreciated the testimony and asked regarding Keauhou that each area is different and its hard to generalize for that process and permits. Appreciate willingness and desire to perhaps be a facilitator in educating the building and development community. As a past president of LURF, my hope is that we’ve evolved past those days of polarized views and see ourselves as one community that promote the well-being of our ‘āina and society.

I’m not in favor of deferral for a one-month education process as it’s a longer-term commitment to bring all constituencies closer together but thank you for that opening to build stronger relationships within the community as a whole.

Commissioner Kagawa-Viviani – (to staff) explain any change in the permitting process.

Deputy Manuel – with Keauhou, the commission in its decision to deny designation in Keauhou, added eight (8) specific actions that staff should pursue and achieve in order to protect resources and meet its public trust obligations. One of those conditions includes consultation with ‘Aha Moku and practitioners to determine traditional and customary practices that require water and whether or not the proposed well development would have an impact on those practices and also go through the Ka Pa‘akai analysis. The CWRM also added conditions to well construction permits to also protect those uses. As highlighted, we have yet to issue a permit in Keauhou.

About a change in policy, the permits themselves were delegated by the Commission to the Chairperson to approve so it wasn’t necessarily ministerial which stems back to 2004 when the WCPIP standards were adopted. However, those standards don’t account for impacts to T&C and other public trust uses specifically in that case. There is some level of discretion that staff must go through in order to review permits.

Chair Case – in Keauhou, the decision itself to deny designation was because the sustainable yield criteria were not met and had to do with water withdrawals for uses that didn’t include protection of groundwater dependent ecosystems and traditional and customary practices. It’s different from this Lahaina situation where the sustainable yield is already exceeded.

The Commission has been trying to find a mechanism in Keauhou to protect those public trust uses in the absence of the sustainable yield criteria.

Commissioner Kagawa-Viviani – with the O‘ahu permits, it seems to move better with the support of the Commission staff to work through the Ka Pa‘akai analysis (*and asked Dr. Scheuer*) in regard to the working group in Kona that was formed as part of that designation conversation.

Dr. Scheuer – the National Park service went to water commission staff in 2007 as they were interested in designation but concerned of the impacts of wells; so a working group formed that met (4) times but the group was closed after DWS formed its own working group which was called the Kona Water Roundtable which proceeded to meet for almost a decade but avoided critical questions about how can water use impacts to public trust uses be controlled? Which led to other issues and still this period of uncertainty of how to protect public trust resources in a non-designated area?

The suggestion of a working group is there's precedent not just in Keauhou but frankly the first group was created by the legislature when the Code was passed and a review commission on the State Water code was mandated to review the Code's efficiency after 5-years of implementation; it held hearings around the State and the consensus recommendation was to designate the entire state and get away from the designation process. It was also used as a tactic in Waimea on Hawaii Island.

The working group process has been proposed and implemented many times, but ultimately has never been able to address the fundamental duties that this Commission has.

#### PUBLIC TESTIMONY CONT'D

Mr. Dennis Lopez, Dept. of Health Safe Drinking Water Branch

- DOH-SDWB stands on its written testimony

#### QUESTIONS/COMMENTS

Commissioner Buck – since the Department of Health does not support designation, is that the official position of DOH or your interpretation of dealing with the water quality issues Honokōwai?

Mr. Lopez – I'm standing behind my branch's testimony under criteria two under the Water Code HRS 174 C(4); and looking at water quality from the Safe Drinking Water Act utilizing mcl to evaluate water quality. I can't speak for the entire universe of water quality but focus on our testimony.

Commissioner Buck – is it on water quality specific triggers or are you opining on the designation for a water management unit?

Mr. Lopez – based on item #2 which is within the jurisdiction of DOH.

#### PUBLIC TESTIMONY CONT'D

Ms. Pamela Tumpap, Maui Chamber of Commerce

- Oppose action item C-1
- on the evidence cited by the Department of Health testimony on April 14<sup>th</sup> and the County of Maui Department of Water Supplies testimony on April 25<sup>th</sup>
- understand that designating the entire Lahaina aquifer area is not needed and only (1) of the (6) aquifer systems is in the sector meet the qualifications
- the mayor's office, Department of Planning and Department of Water Supply oppose the overall designation but are supportive of Honokōwai.
- if all of West Maui is designated as a water management area, it could severely hinder the development of affordable housing which is a growing need for this community.
- West Maui is a major hub for commerce but severely lax affordable housing and rentals
- need solutions and not afford to lose any momentum
- have no record of CWRM reaching out to the Maui Chamber of Commerce on infrastructure and housing issues; putting notice through a public notice assumes that all stakeholders have been informed
- many nonprofit organizations that are key partners did not opine their comments
- request a deferral of action and suggest the creation of a working group model; have collaboration with more partners at the table.
- water is a critical resource and need better outcomes that focus on balance and sustainability that does not hinder the development of affordable housing, rentals and future water resources.
- Appreciates all the work and discussions had.

Dr. Victoria Keener, UH East-West Ctr.; Pacific Research Prgm.

- to provide research on the impacts of future climate change on groundwater recharge to help inform the Commission's decision.
- these results specifically concern the future climate and groundwater projections.
- The USGS models represent the uncertainty in future climate conditions and serve as a guide for evaluating risk; planning should use all available conjecture projections and consider the risk tolerance.
- findings show that land use management and strategic locations could help mitigate the impacts of climate change on groundwater recharge.
- in central and leeward Maui, wet and dry climate projections show future reduced rainfall and groundwater recharge with implications for agricultural production, development and water resource development; additional water conservation efforts are needed in these areas.
- in higher elevations of West Maui, rainfall and groundwater recharge are projected to decrease under one scenario
- scenarios were developed with input from dozens of stakeholders on Maui to represent different management decisions when combined with future rainfall productions; land use decisions can influence and mitigate the impacts of climate change.
- a scenario in which urban development occurred jointly with watershed protection resulted in increased groundwater recharge for source aquifer systems.
- initiative should then promote integrated land and water planning and consider a range

of future climate, risks and management strategies.

- aquifers would experience from 9.2 to 64% less recharge under the dry climate projection by the end of the century; with wet climate projection, these aquifers experience declines of as much as 4-5%.

## QUESTIONS/COMMENTS

Commissioner Buck – referred to and asked for comment on page 34-35 in the findings of fact

Dr. Keener – the submittal seemed to focus on the dry future climate scenario, and we feel that all of the available projections should be used when considering the rest of the future resources.

Commissioner Kagawa-Viviani – clarified about the dry scenario projections and under the wet projections shows a decline

Dr. Keener – correct; there is decrease in both the wet and dry scenarios.

Commissioner Kagawa-Viviani – asked on the climate change projections for increased evapotranspiration losses and about changing future of non-usable consumption.

Dr. Tom Giambelluca – projections were based on changes in precipitation and not on the climate change impacts on evapotranspiration and these as conservative and add to the negative changes in water resource availability as the climate gets warmer. There's a bit of uncertainty about the precipitation projections and certainty that it's getting warmer. There're higher temperatures which mean higher evaporation which will reduce supply and increase demand.

Commissioner Hannahs – do you agree in the wet scenario it's projected to occur more episodically with peak events that leads to the land use changes that might help capture and recharge.

Dr. Giambelluca – it's uncertain in terms of future projections of precipitation but one area of consensus is that while the average precipitation in some area will decline and high extremes will likely increase.

## PUBLIC TESTIMONY CONT'D

Mr. Stephen Miller

- we all need water and need to preserve and conserve it
- objectives of CWRM are a matter of the administration; logistics are concerning.
- a lot of testimony about unintended consequences of the wide range of the scope of this designation
- how long will it take to approve permits for all existing users before any new permits can be reviewed? / will there be staff increase? (in Nā Wai 'Ehā, people are still waiting on permits) / Why is there a discrepancy in argument on sources like the Department water supply disputing the methodology that CWRM used to justify the scope of designation, while ignoring USGS data that would show otherwise?

- feel only Honokōwai qualifies for designation.
- agree with DWS recommendation to collaborate with stakeholders to achieve objectives that minimizes unattended consequences.

Mr. Wayne Tanaka, Sierra Club

- submitted written testimony in support of designation
- designation warranted for environmental, social, cultural, and economic reasons
- competing perspectives of designation
- upon the internet when Launiupoko or Makila real estate is searched, you'll see multi-million-dollar listings with swimming pools, grass lawns all on Ag lands and presumably approved by the County Planning Department.
- most of these Ag lots are farmed with “palm trees” – it shows we aren't using these Ag lands to support local food production and food security.
- without a designation, this water will continue to be used for gentlemen estates without having to justify impacts to water and food security, affordable housing, DHHL, etc.
- with designation, it will be a motivator for true collaboration and ensure protection of the public trust.
- the Commission as regulators and trustees have a duty to protect its public trust resource.

Ms. Elena Bryant, Earthjustice

- Earthjustice is in full support of designation
- applaud the Commission's foresight in proposing designation as a critical and necessary tool to manage water resources proactively and comprehensively and the type of intergenerational approach essential to preserve Maui's water future and combat impacts of global warming.
- fulfill the Commission's constitutional and statutory kuleana to protect public trust resources
- stand on our written testimony submitted on April the 26, 2022
- address the request by some to defer a decision on designation as it undermine CWRM and the Maui community who expressed their overwhelming support for designation.
- since 2016 when designation proceedings began, the Commission diligently followed all steps outlined under the Water Code and HAR to designate.
- the Maui County Council, county mayor, and County Waterboard have all been consulted; the Maui County Dept. of Water Supply unanimously voted to support designation in January 2022; the Maui Council also unanimously adopted a resolution supporting designation.
- at the Commission public hearing of April 26, 2022, 62 testified in person, 60 provided written testimony overwhelmingly in support.
- suggesting a working group is offensive to the 'ohana who have actively participated in this process that seek water justice for multiple generations.
- heard from testifiers who are descendants of the Kumuli'ili'i that are still awaiting water for over 100-years.
- in the staff submittal, 2 of the 3 surface water designation criteria, and 6 of the 8



groundwater designation criteria are met; the Commission is using its resources to address the range of issues that are currently affecting water in West Maui.

- the precautionary principle also supports the duty to designate and guides this commission to protect the resource.
- urge the importance of including adjacent aquifers to ensure proactive and comprehensive management; piecemeal designation would encourage off stream users to artificially drawn boundaries to meet their water needs.
- the management of well location and amount of water use daily can best be regulated in a designated water management area.
- multiple informal complaints have been filed with the commission regarding the lack of stream flow, the waste of diverted surface water, delivery of water issues that spans the entire Lahaina Aquifer sector area.
- emails from private commercial interests have been circulated to encourage folks to oppose designation based on the misplaced fear of what designation might do.
- the Hawai'i Supreme Court in Ko'olau Ag has made clear that water management areas do not affect interests of any potential water users; designation ensures that public purposes like affordable housing are considered ahead of private commercial interests and the rights of individual water users are fully protected in the permitting process.

Mr. Steven Lim, for 'Ukumehame Water Association/'Ukumehame Homeowner's Association

- UWA and UHA are the legal and beneficial owners of the private water system serving the 45 subdivided lots in 'Ukumehame agricultural subdivision.
- oppose the Findings of Fact and recommendations, particularly the 'Ukumehame hydrologic unit as both surface water and groundwater management area.
- request commission defer this action.
- the 'Ukumehame hydrologic unit, the water use does not meet any of the criteria for water management area designation; at this point withdrawals are 57% of sustainable yield.
- water uses in this system differ from the others and should not be lumped in together; it's an independent water system that is not interconnected with the other water systems in the Lahaina Aquifer Sector and cannot resolve over pumping from the other areas.
- support establishing a working group

Mr. Jeff Ueoka, Maui Land & Pineapple

- Mahalo to Deputy Manuel and staff for bringing matter forth.
- Consider that all water use permit applicants to show reasonable beneficial use for the requested water; question on length of time for issuance of permits as history has shown that water use permits in water management areas are taking years.
- has the Commission thought about and developed plan for the water use application process if designation occurs?
- State law indicates the Commission may allow existing reasonable, beneficial uses to continue in an amount equal to the average water use over the 3-month period immediately preceding the application.
- individuals with water meter reservations from the county or private systems don't

- think qualify as existing users, as they have no use history.
- the law requires new users to establish their proposed use of water can be accommodated with the available water source and won't interfere with any existing legal use of water.
  - In Nā Wai 'Ehā, the 'Iao Aquifer was only subject to designation for groundwater.
  - see clarify on individual permit application process if designation occurs.
  - here's 6 municipal water systems in the Lahaina that are interconnected and independently owned and operated per the finding of fact report in staff submittal that furthers the notion of a very complicated process.
  - 90-day period for existing use permits to be acted on if designation occurs.
  - not sure if designation will serve to resolve all the conflicts between water users but instead will prolong them.
  - MLP was a founding member of the process for watershed preservation; the relationship with MLP and Honokōhau residents have been improving and hope to continue moving forward without litigation.
  - MLP is a large landowner in West Maui and will be involved in the water use process and hope for a clear process to be established.
  - support and echo the county of Maui in a deferral of designation and forming of a working group and made a commitment to some water purveyors to participate in that process

Mr. Ke'eaumoku Kapu

- Lahaina resident of Kaua'ula Valley
- awaited 20+ years for designation and request the Commission vote today in favor of designating the entire Lahaina Aquifer Sector as surface and groundwater management area.
- testified before CWRM in January, February and at its public hearing in April 2022; also testified at the Maui County Council and the Board of Water Supply.
- many community members have been actively participating in this process; claims of a rushed process is offensive to those who have been engaging on this matter for many years.
- met with resistance from land companies across West Maui who put claims on the 'aina; there's still pilikia regarding IFS despite all CWRM's hard work; the amount of water required by law is still not in our streams.
- serious conflicts remain in all of West Maui over water use.
- almost all criteria have been met to designate; request full support of the Commission to stand with the community and the beneficiaries of the public trust
- the kuleana's were never asked to participate in a working group
- working group would not work but could still happen after designation; community members should be involved.
- support agenda item C-1

Mr. Kekai Keahi

- why did the county de-water Kanahā Stream? It was to bring the chloride levels in their wells down to make it potable; occurred decades ago.
- water issues have been brought forward many years ago
- need to operate on a precautionary principle as we're already on damage control
- IIFS that were mandated are not being legally met; designation will help that
- Working groups will not work as it's hard to come to an agreement; compromise has been made unwillingly by the community-who is always forced into a bad situation.
- it's the community who brings the solutions to the table, not the county or developers.
- my keiki was 1 or 2 years when this water issues been happening, he'll be 18 this November.
- the community, especially on the West Side is in overwhelmingly support for protecting and making sure we'll have water; not for the developers to have it for sale.
- I fully support designation

Mr. Charlie Palakiko

- agree with previous testifier; been in this struggle for 20 years and have not seen anything resolved with the water issues; situation gotten worse and seen less water.
- fully support designation
- believe more in the state than a private entity to protect kalo farmers rights

Ms. Lauren Palakiko

- born and raised in Lahaina and resident of Kaua'ula Valley
- testified before on the conditions of the 'aina due to the lack of water
- why would we have to try so hard to get protection for our islands water?
- anyone oppose in preserving and protecting water are for their own interest and profits.
- currently dealing with Launiupoko Irrigation Company who has full control of the water
- 'ohana are kuleana kalo farmers
- LIC is not held accountable for their mismanagement of water that impedes a kuleana's riparian rights.
- Dept. of Water claims they work closely with community however have yet to see action on their part as they are not in support of a designation.
- on O'ahu, CWRM demonstrated competence and the ability to manage aquifers while sustaining development.
- time is not on our side as climate change is rapid; triggers have been present.
- Nā Wai 'Ehā has shown the effects of neighboring aquifers, that it is all connected.
- water leads to life that feeds the people, trees that clean the air and beautify, and keeps our streams running and native life alive.
- full support of designation of the entire Lahaina aquifer sector

Ms. Uilani Kapu

- support designation of the entire Lahaina aquifer sector
- water resources need protection from the Commission as a state entity
- the County tried to put a bill together 10-15 years ago which did not pass.
- ‘ohana is kuleana land owner and lineal descendant of Kaua‘ula Valley and have been fighting for water rights for decades.
- grandchildren’s lifestyles have been extreme; shared testimony to the Commission both oral and written.
- Mahalo Chair Case and the Commission and request a vote to designate to ensure water protection in the area for future generations.

Dr. Kapua‘ala Sproat, Ka Huli Ao

- has come before the Commission for 25 years.
- worked on designation and related water permitting issues across pae ‘āina including, ‘Īao, Nā Wai ‘Ehā, Waiāhole, and Moloka‘i.
- tracked this effort since beginning but weighing in now and has provided information to affected communities regarding this issue
- flabbergasted in which this has been mired in politics
- CWRM is the expert agency with kuleana to fulfill
- CWRM (Ayron) for years have been gathering data across Maui, installing gauges, measuring stream flows, meeting with stakeholders
- Ayron is a trained hydrologist with post-doctoral work focus on climate impacts, hydrology and freshwater ecosystems; providing expert opinion based on years of field work and years of USGS and other data.
- with regard to the findings of fact, it covers all of the legal and scientific basis
- serious disputes exist for both ground and surface water
- no triggers, no working groups, and no further delay
- the Mahinahina Treatment Facility is a perfect example of blended systems and why this action is needed now
- all of Hawai‘i was supposed to be designated and all allocations was to be made through water use permitting
- Maui county opposed the Water Code passage and designation was a political compromise to get it passed in 1987; Maui County had its chance for 30+ years and now the Commission must step in.
- a water use development plan is no substitute for designation; voluntary compliance hasn't worked.
- almost all of all O‘ahu been designated for decades and no development has been halted but inspired demand side management which encouraged municipal purveyors to be more efficient.
- Prior to Redhill the Board of Water Supply did not create a new source but made prior uses more efficient to meet demands.
- support (CWRM’s) hardworking staff and honor the community members and vote to designate – e ‘ai kekahi e kāpī kekahi

Mr. Todd Apo, Hawai'i Community Foundation

- stand on written testimony
- appreciate the “balances” going through and has been going through the Maui initiative and the freshwater initiative; noting this resource needs a great deal of care.
- from HCF’s standpoint, all issues need to be looked at beyond water use, affordable housing, but all of the impacts also to cultural practices, agricultural, and other impacts within the region.
- HCF is ready to continue to participate through both initiatives and other ways to help the community for the future.

Ms. Kanoelani Steward

- Lahaina resident
- strong support of the designation
- appreciate the Commission’s proactive approach to managing its public trust resources.
- the county department of Water Supply cannot meet water management challenges alone, or with the working group that’s been proposed.
- designation will not impede on affordable housing or development.
- designation will force everyone to the table to collaborate appropriately to allocate water for future development, and therefore future water uses can be manage effectively.
- reduction in rain and decrease in overall recharge in West Maui aquifers
- surface and groundwater systems are intricately connected; designation can enhance and protect all the water resources.
- the Maui Kumuhana community have participated in this process since the beginning with public testimony unanimously support for designation.
- developers and gentlemen estate associations do not speak for the broader community.
- urge the Commission to kāko‘o the kama‘āina of the area and community in support of designation.

Mr. Kalei Kauhane (*video testimony*)

- Honokōhau Valley resident; kalo farmer
- support the designation for all of West Maui

Ms. Sanna Kauhane (*video testimony*)

- Honokōhau Valley resident; kalo farmer
- support the designation of Lahaina Aquifer Sector
- 2 aquifer systems at 90% sustainable yields.
- crucial that region be managed collectively as a whole; cannot single out sole areas of designation-no boundary lines between our aquifer systems; surface and groundwater is hydrologically integrated

- implementations of IFS have been somewhat helpful; increase enforcement of IIFS will burden further the groundwater withdrawals and further impact groundwater dependent ecosystems, stream flow, and coastal discharge.
- urge Commission to effectively manage water resources in the region as whole to ensure protection of resources for future generations to come.

Mr. Maka Kanekoa (video testimony)

- Honokōhau Valley resident; kalo farmer
- support the designation of Lahaina Aquifer Sector

Ms. Karyn Kanekoa, Hui Na Mamo Aloha Ai no Honokōhau (video testimony)

- Honokōhau Valley resident
- support staff's conclusion that 2 of 3 surface water designation criteria, and 6 of the 8 groundwater criteria for designation have been met.
- more development coming to West Maui
- Honokōhau and Lahaina region experiencing steadily decreasing rainfall and stream flows.
- maintaining the appropriate amount of water and temperature for lo'i is challenging.
- designation and the permitting requirements are critical to address water availability by mismanagement and climate change.
- Kuleana water users with appurtenant rights have the highest water rates and are at the mercy of plantation ditch systems operators.
- ground and surface water resources are connected and should be managed together to ensure sustainability
- support vote to designate Lahaina Aquifer Sector

Mr. H. Kalamaehu Takahashi

- Ka'anapali and Honokōhau Valley resident
- support to designate Lahaina Aquifer Sector
- water resources are all connected; kuleana should steward resources in the area
- kanaka that lives in the area are still without water; developers should not have first rights to water.
- Mahalo to all the 'ohana and kupuna who has taken up this water fight for decades.

RECESS: 12:08 PM

RECONVENE: 12:17 PM

PUBLIC TESTIMONY CONT'D

Mr. Dean Frampton

- advocate for balanced use of island's resources.
- thank Commissioners for dedication of this effort.
- support designation of the Honokōwai aquifer; request to defer designating the rest of the aquifer sector for 60-days.
- agree and support the larger purpose of designation for integration, efficiency, accountability, well spacing, reasonable planned growth, and efforts to balancing resources.
- information gap between CWRM and Maui County; sustainable yields and high-level tunnel recharge should be resolved before designation.
- discrepancies in the language of the Water Code; seems O'ahu centric and geared towards the Honolulu BWS; the Maui Board of Water Supply is an advisory board and do not share the same authority as O'ahu.
- feels MDWS was left out of the designation consultation process.
- agree that mismanagement of private purveyors has occurred and needs to be corrected.
- expressed concerns with the permitting process; lack of clarity on how permits will move forward.
- allow a community working group; ask for collaboration among all stakeholders, public and private.

Mr. Hokuao Pellegrino, Nā Wai 'Ehā

- Mahalo Chair and CWRM for hard work on this issue.
- organization made up of 68 kuleana kalo farmers and over 600 community members environmental stewards, advocates, and educators.
- support to designate the entire Lahaina Aquifer Sector
- Nā Wai 'Ehā is the only place in Hawai'i with a surface and groundwater management area designation, established in 2009; done collaboratively and included a multitude of stakeholders as kuleana farmers, the Maui County, MDWS, and CWRM.
- there's a need to preserve the water resources of the Lahaina aquifer sector.
- disheartening to see Mayor Victorino's administration and MBWS refuting water resource experts and years of scientific data of the West Maui region.
- there's a more proactive approach and comprehensive scientific data versus what Nā Wai 'Ehā had 13 years ago.
- this process has been transparent, collaborative, and forthcoming to protect the water resources for future generations.
- West Maui is drier and needs immediate protection from over pumping of wells, diverting of streams that assist in recharging groundwater aquifers and provide critical lifelines for traditional and customary rights of kuleana kalo farmers, and diversified agricultural production.
- Fear mongering on behalf of housing agencies, developers and corporate water companies continue

- From the Hui’s experience on designation, it allows for water use permitting to be used as a mechanism to balance the needs of water resources while prioritizing public trust purposes; looks at approaching development through resource management and sustainability.
- since the 2009 designation over 3,000 homes have been built from Waikapu to Waihe‘e, with another 4,000 homes to be built in the next 10 years in this region.
- Noting West Maui is a different situation with different environment and hydrology.
- prioritize instream and kuleana uses.
- benefits of designating have profound positive impacts to stream life, restoration, groundwater recharge expansion, food production of kalo and other traditional crops, and revitalization of kuleana lands.
- designation of Nā Wai ‘Ehā made movement towards a more community-based water resource management and incorporates all key stakeholders.
- West Maui is resilient and has generational knowledge and ability to collaborate with CWRM and all other parties.

Ms. Gretchen Losano

- ‘ohana resides at Honokōhau Valley; has appurtenant water rights for kalo cultivation.
- support staff conclusions that the surface and groundwater criteria have been met for Lahaina aquifer special management area designation.
- first-hand experience with plantation ditch system operators’ negligence.
- ‘ohana lost home during the September 12, 2018 flood of tropical storm Olivia due to a poorly maintained collapsed bridge under the jurisdiction of Maui County Department of Water Supply and Maui Land and Pine.
- majority of Honokōhau Stream still being diverted.
- not enough water to maintain one lo‘i patch; several families live below who cannot grow kalo due to insufficient water supply.
- need to ensure water for keiki to continue to grow kalo in Honokōhau.
- suggestion of a formed working group is insulting to community and ‘ohana who live and farm the area.
- urge Commission to vote for designation.

Ms. Kaliko‘okalani Teruya

- 11-years old and reside at Honokōhau Valley
- support the Lahaina aquifer designation and urge Commission to do the same.
- ‘ohana house washed away from tropical storm Olivia; currently reside further down the valley and unable to grow lo‘i kalo due to lack of water.
- As a native Hawaiian I have water rights that legally come before hotels and gentlemen's estates.
- climate change continues to affect rainfall and need better water management for now and generations to come.
- how many meetings are needed for people to understand the seriousness of this? been to so many already.
- Please vote to designate the Lahaina Aquifer as a special management area.



Mr. Erik Meade

- law student at UH-William S. Richardson School of Law
- attended previous meetings on designation and offered testimony.
- Mahalo Commission and staff for initiative in moving this forward.
- staff built an excellent record for the basis for designation coupled with the Supreme Court recognition that the precautionary principle is a corollary to the public trust doctrine, further supports designation.
- thanked community members who continue to testify; frustrating to see others who'd came late into this process and attempt to circumvent it.
- Commission has more than met the legal criteria; community members have expressed support at multiple meetings on how vital it is to designate the entire region as a water management area.
- health of our nearshore waters is mirrored by the health of our streams as the health of our communities depends upon the health of its water sources.
- designation is a tool to protect the water; a working group doesn't have to be either or but help ensure it delivers on its promises.
- urge the Commission to vote to designate.

Ms. Madison Palau McDonald

- strong support of designation
- recent law student graduate
- refreshing to see Commission uphold its kuleana public trust duties; comprehensive process; quality of staff submittal reflects the effort, time and research.
- concerns about how permitting process and for a working group.
- in Nā Wai 'Ehā, permitting has been a long process because plantation successors are non-compliant and halting process for everyone.
- for Lahaina designation, water allocation will be easier as most applicants pull directly from a nearby stream.
- complaints of permitting wait time are misconstrued when there are those with appurtenant rights who have been waiting decades to exercise their water right.
- plantation successors continue to abuse water.
- a working group will halter process
- the county admitted it has no jurisdiction; only the (CWRM) commission has that power to ensure collective collaboration and protection of the water resources.
- everyone had the same notice and opportunity to attend all meetings and provide testimony.
- support and vote to designate the entire Lahaina aquifer sector.

Ms. Tiare Lawrence

- strong support of designation
- commend the Commission and staff for the work on the draft and community outreach efforts.

- water management area designation is sorely needed in West Maui and the Lahaina region.
- decreasing rainfall and streamflow.
- private water companies and developers who seek deferral
- without proper water management, damage and inadequate water supply to the aquifers and unsafe levels of contaminants will arise frequently.
- continuance of lack of proper management among the big land companies and private water purveyors.
- developers are spreading fear within the communities
- designation will not impede on affordable housing but will enhance the protection of the precious water resources.
- request the Commission to vote in favor of designation and to support the West Maui communities in preserving the wai for its future.

Ms. Healani Sonoda-Pale

- member of the O‘ahu water protectors and citizen of Ka Lāhui Hawai‘i
- kanaka maoli generational ties to the stream and wai in area with kuleana to care for the resources.
- Over 2,000 years kanaka maoli understood the importance of wai and has stewarded the resource
- stand with the water protectors of Maui in full support of designation of the Lahaina Sector Area.
- private developers water interests’ conflicts with kanaka maoli interest of wai
- a working group will only work for particular interests and not for the betterment of the whole region

Ms. Darene Matsuoka, Cades & Schutte

- construed myth of if there’s no designation, the water resources are not protected and only want to make money.
- oppose designation at this time-not the right approach to management this instance
- more people are trying to be a part of the process and should be considered.
- most of the 184 written testimonies received are against designation at this time.
- Existing (permitted) uses will get processed first and there’s no proper plan to handle the new uses; will lead to a MDWS moratorium
- request deferral of 6 months and establish a collaborative working group.

Mr. Cal Chipchase, Cades & Schutte

- have been actively following the process.
- since November 2021, only (1) public meeting was held for this matter, with no remote option, besides the normal monthly Commission meetings; expected more due process on this matter instead of the bare minimum.
- many community members did not feel heard before this process began; including the Maui County stated it wasn't consulted with.

- Maui Mayor asked for a deferral in favor of continuing consultation as well as business owners and residents living in the area.
- disagreements on the data being used to support designation; the precautionary principle must be used.
- a moratorium is a consequence of getting this wrong.
- establishing a working group will give an opportunity to collaborate with all major stakeholders in this region to address the balance and protection of the resource.
- contested case or litigation may arise
- deferral of C-1

Mr. Lewis Wizig

- homeowners at West Maui; will be impacted by designation; learned of matter 2-days ago.
- process is rushed and flawed; proposal represents a fundamental shift in the management and allocation of water, thus the viability of the community and value of homes.
- process should be more thorough, inclusive, thoughtful, include multiple opportunities for public input, and consensus based on fact and science.
- public needs to better understand the impact and be able to review a proposed action plan; and judge the commission's ability to successfully implement that plan.
- testimony today has been inconsistent and skewed.
- DOH found the water quality issues within the Lahaina aquifer to be of legacy contamination; not be made worse by groundwater withdrawals or water diversions.
- DOH's assessment for the need of designation of the Lahaina aquifer sector is that the criteria are not met for 5 of the 6 aquifer systems.
- MDWS letter of April 25, 2022 to CWRM stated it supports designation of the Honokōwai aquifer system only.
- the lack of landscape irrigation is a fire hazard to homes.

QUESTION/COMMENT

Commissioner Kagawa-Viviani – concerned of the facts presented by the DOH are taken out of context; they were only commenting on 1 of the 8 criteria in that assessment on legacy contaminants

PUBLIC TESTIMONY CONT'D

Ms. Consuelo Apolo-Gonsavles

- Lahaina resident
- full support of designation
- need transparency, doesn't trust the County
- designation is needed; waited 20-years

Ms. Blossom Feiteira

- support the designation of the Lahaina Aquifer
- lineal descendant of Lahaina
- seen firsthand the impacts of diversion of West Maui streams has done to the environment, community, and impact on traditional and customary practices.
- The water Commission has a specific kuleana to ensure protection of water resources with equitable distribution to the state and people.
- designation can provide revitalization of traditional muliwai that will help to repair shorelines, revitalize and restore sacred sites of the area.
- When diversion began in Lahaina, degradation of its shoreline began; closure and decimation of our taro farms, other agricultural opportunities, and decrease in Lahaina's water quality.
- without designation, continued deterioration of the natural environment and waters will continue to occur.
- ask the Commission to uphold its duty in protecting the water resources of all West Maui.

Ms. Sesame Shim

- Mahalo to Commission for providing the research and multiple opportunities for education and collaboration for the community and all stakeholders.
- support the designation of the Lahaina Aquifer.
- CWRM determined there is harm to the groundwater quantity and quality by saltwater intrusion as current and authorized planned uses of the Honokōwai and Launiupoko aquifer systems approach. 90% of sustainable yields.
- historic and ongoing disputes over current planned uses for non-public trust purposes is affecting the availability of water.
- climate uncertainty will continue to affect the aquifer recharge and stream flow.
- inextricable relationships between surface and groundwater; one affects the other.
- laws in place to uphold the public trust.
- the people and keiki will be impacted by the loss of its water resources.
- gentlemen estates have pushed the region into a housing crisis with the need for more affordable housing.
- we can both properly manage our resources and provide affordable housing.
- the lineal descendants of the community who testified today speak for the generations that came before and those after them
- urge the Commission to support designation.

Mr. Leonard Nakoa

- Mahalo to Chair Case and Commissioners.
- Leave the water battle to those that was in it for 20-years
- the problem is with the Planning Department permitting process
- if new water permits take long to receive, it means we can make sure the first process ones are going to the right places.

- County departments are not working together.
- CWRM staff (Ayron) and (Deputy) Kaleo has been working hard and collaborating with everyone
- support CWRM staff to designate the Lahaina Aquifer Sector

Mr. Bruce U'u

- lifelong resident of Maui
- agree with Deputy Manuel's proactive and non-reactive approach; support his stance
- support management of all resources
- concerned about housing crisis
- confused on the County's stance on collaboration
- former Planning Commissioner
- how will this be vetted so it does not affect part or all the community?

Mr. Ivan Lui-Kwan

- join HHFDC and Maui County's stance to defer designation and allow a reasonable amount of time to kukakuka (collaborate) and bring parties together.
- witness too many different oppositions today
- Mahalo to Chair Case, Commission members and staff for hard work in this matter.
- seems the broader community had missed opportunities to be heard and 2/3 of the written testimony received has concerns about designation.
- allow reasonable time for parties to come together to advance harmony.
- concern of apparent conflict between CWRM and MDWS; collaboration is key
- who's correct on the question of whether designation will or will not negatively impact the development of affordable housing?
- we need to figure how to mitigate and eliminate the potential impacts of impairing development of affordable housing.

QUESTIONS/COMMENTS

Chair Case – clarified that it's more of a disagreement then conflict as have seen cordial working relationships.

Mr. Lui-Kwan – acknowledged and clarified it was more of a difference of opinion between CWRM and MDWS

Chair Case – agreed that MDWS did want to address questions raised.

Commissioner Buck – added there's respect for MDWS as their one of the premiere water agencies and agree the need to collaborate but noted that Maui Department of Water Supply only controls a small part of the water in West Maui; 75% of the water are controlled by private water purveyors who deals with a 100 year old water system, undercapitalized, and expectations of their water availability is not consistent with Hawai'i's water code and climate change.

What do you feel will change in 3-6 months? Do we need a regulatory framework to force people to collaborate as this issue has been going on for 20-30 years?

Mr. Lui-Kwan – we've been around long enough to understand things aren't perfect and can never satisfy everybody and not going to get full agreement on these issues. As heard by Dean Frampton and Eva Blumenstein, there were no prior conversations with MDWS about this issue. It's a collaborative effort to gather more information to try and figure out how to address the issues and mitigate potential impacts.

Also, land uses – water is all part of the land uses whether it's for kalo or housing, water is just one component of the land uses and more the coordination with the land use processing is needed.

Commissioner Hannahs – there may be some disagreement on how to manage this resource; the record is clear by all parties that water is a life-precious resource. Also, some say to designate only part of the system while some say to look at the whole system, but all are pointing to the same thing, to see how this system is managed.

I don't think there's a dispute between Board of Water Supply and CWRM on what the needs are on that issue. There's an analysis that's a trigger for water management designation and is not one of those factors for both surface and groundwater designation of that area disputed?

Mr. Lui-Kwan – agreed

Commissioner Hannahs – do you agree this is a highly disputed area?

Mr. Lui-Kwan – I understand and agree with your position that's a trigger for designation. Despite the contentiousness of the different positions expressed by testimony today, we all have the same objectives and want the same thing. Everybody recognizes the water resources are precious and the obligation and need to conserve and protect it and want to have a fair and equitable distribution of the water.

The concern is - are there consequences to the designation that maybe unintended? Is the Department of Water Supply correct that this designation is going to negatively impact the development of affordable housing? Is HHFDC correct in their stance?

Asking to give the parties more time to support meaningful development

Commissioner Hannahs – share your optimism of the amount of common ground that exists in terms of people's desires for a vibrant healthy resource, support meaningful development, be equitable of what's instream, diverted, used by mankind, and how we promote our cultural practices.

Whether we have a working group or water designation area management, our collective work is just beginning; and for all parties whether you disagree or not, to get together and start to resolve these issues.

Mr. Lui-Kwan – agreed

061422 04:22:00

PUBLIC TESTIMONY CONT'D

Ms. Lahela Aiwohi, Waiehu Tele Lines

- lifetime Kula, Maui resident
- defer designation of all West Maui aquifers; not here in opposition of a designation, as there is a known urgency and needs to be addressed; it's a responsibility of all, including the Commission.
- appreciate all studies conducted.
- sympathize with the West Maui communities
- need collaborative teams working together
- agree that all want the same solution
- Nā Wai 'Ehā is a prime example of multi collaboration among major stakeholders, the County of Maui and CWRM.
- County of Maui stated there were not included in discussions
- ask Commission on the need to find balance and solutions and request more time is needed for guidance, collaboration and community involvement/input.

Mr. Sandy Baz, Managing Director, County of Maui, representing Mayor Michael Victorino

- Mayor Victorino received a letter from CWRM on November 29, 2021 requesting input – deferred to Maui Department of Water Supply to provide comments
- the mayor is responsible for a lot of different factors that are in the Charter County code, the State Constitution, and specifically related to this item, responsibility over the Department of Water Supply's operations, Department of Planning operations; the Planning Commission and the Board of Water Supply are an Executive Branch.
- comments from those departments reflect the mayor's concerns
- *[read part of the State Water Code declaration of policy]*
- as the municipal water supply, MDWS does provide domestic use and want to ensure to continue to provide that for residents.
- ensure that MDWS concerns are addressed and discussed (with CWRM).
- concern that Mayor Victorino has not had the opportunity to provide input or discussion after the public hearing of April 26, 2022 *[cited part of HRS-174(C)46]*
- wants continued engagement in the process.
- ask to defer designation to allow more engagement
- effort of MDWS regarding the Water Use and Development Plan and request the Commission review prior to designation.
- Referred to the County Code Chapter 1412 which referred to as “show me the water” - the county water availability policy acknowledging and affirm that water is a natural resource, natural cultural resource, must be protected, preserved, and managed as a public trust- establishes a policy that requires verification of long-term, reliable supply of water before applicable subdivisions are approved.

## QUESTIONS/COMMENTS

Commissioner Buck – if the Commission decides to defer who would you recommend in the county to provide leadership for collaboration?

Mr. Baz – our expertise is Miss Blumenstein as she's the administrator for our water planning division, the director of our water supply is another good resource, the director deputy, and our Maui mayor specifically on a designation of an individual.

Commissioner Buck – we're aware this issue is not just technical and a bit political process and being able to put together all the private water purveyors; but the board of water does not have the authority as shown so if there's a deferral, there needs to be strong leadership in the Maui County organization to provide what it needs on a very short time frame.

Commissioner Meyer – appreciate your comments and echo Mike Buck's comments. We need a right delegation and serious attention for this collaboration as it moves forward to be successful. Thank you for clarifying points on the mayor's position as there were different views on that situation.

Commissioner Hannahs – regarding the mayor's engagement that he deferred comments.

Mr. Baz – he deferred comments to the Department of Water Supply which they provided comments and been consistent in their comments to the Commission.

Commissioner Hannahs – clarify that DWS remained engaged in the process throughout.

Mr. Baz – yes, in written testimony and verbal testimony and been consistent in their comments

Commissioner Hannahs – I appreciate your role and advocacy of domestic use as a beneficial use; I hope you saw in Nā Wai 'Ehā and East Maui the decisions that weighed into the Commission's decisions on both of major contested cases, we're trying to provide for that resource and balance needed.

Mr. Baz – we appreciate that very much as the responsibility we have in providing safe, clean drinking water for the public.

Commissioner Hannahs – The mayor and the (Maui) water department is opposing designation; the department's advisory board of water supply is in favor and the County Council is in favor of designation, so we're getting mixed signals from the representation of leadership on Maui. Is the Mayor's chief executive officer doing something to get everyone on the same page?

Mr. Baz – am not aware that he shared anything with me specifically about that. They are different, the County Council's political body, it's our legislative body and the Mayor is in charge of executive operations, the Board of Water Supply's an advisory committee to the Board, to the Department which doesn't really have authority other than very certain circumstances.



PUBLIC TESTIMONY CONT'DMr. Kai Kaahui

- *Read from written testimony submitted*
- request deferral

Mr. John Kaahui

- *Read from written testimony submitted*
- request deferral

Mr. Isaac Moriwake, Earthjustice

- benefit of this extensive process over months, that you've heard it all.
- the staff submittal and findings of facts fully cover it.
- this process with all the meetings, testimonies, consultations is an impressive and amazing amount of work which shows the true spirit of public service.
- certain interests and large water purveyors disagree with the recommendations.
- the law makes clear that the water commission has final decision that's legally unchallengeable
- designation is an initial step that starts the process
- this Commission took the lead in this region to establish historic instream flow standards and curb wasteful diversions to protect the resource and the public trust.
- there's been fear mongering, misinformation and politics surrounding and clouding this; that confirms why designation is necessary here to bring some rule of law, public oversight, and accountability.
- stall tactic of a working group is not a credible response; designation and regulation doesn't prevent collaboration or working groups; it facilitates and encourages that type of dialogue
- take action now and shift to a new ethic of water stewardship and accountability; kuleana of the public trust.

Mr. Willi Wood

- taro farmer in Honokōhau Valley.
- Mahalo to Commission
- strong support of the designation
- those against the designation seems to be monetarily involved.
- watershed protection does not happen through the purveyors.
- last 100 plus years water on West Maui has been used to benefit big Ag and developers
- community ready for oversight from CWRM
- privatization of West Maui watersheds has been detrimental to native practices.

Ms. Fay McFarlane

- Launiupoko resident
- support the precautionary principle and recommendation to designate.
- critical situation as state and county can't oversee appropriate spacing and distribution of wells without designation and are near exceeding sustainable yields.
- no science has been presented by DWS or luxury developers.
- projected sustainable yields don't account for present conditions
- commissioners need to apply the precautionary principle in developing the county's water use development plan.
- West Maui should be designated due to water shortages and water conflicts.
- most public spent countless hours of testimony in support; it's developers, private purveyors and those in luxury development who never shown up before who want deferral

Mr. Troy Ballard

- *read written testimony*
- Mahalo to Deputy Manuel and staff
- strong support for the designation

Ms. Kai Nishiki

- Mahalo Commission and staff for their hard work.
- urge Commission to honor and support staff's recommendations
- support the designation and public testimony of support.
- a community advocate and advocate for affordable housing.
- was concerned in the beginning of how designation would affect affordable housing; until speaking with CWRM which provided insight.
- support and advocate for designation and stand behind our Lahaina community.

Micah

- support the designation; kalo farmers and community.
- too much water disputes; need to perpetuate native cultural rights.

Mr. Kaulana Kapu

- kalo farmer, reside in Kaua'ula Valley.
- thanked Commission, Ayron and Deputy Manuel.
- lack of care of resources by private sectors.
- over 20 years of water waste in the valley.
- support designation to ensure water for future generations.

Ms. Yolanda Dizon

- family reside on kuleana lands.
- no time for deferment; water battle has already been too long; struggled without water far too long to sustain crops and survival.
- support the need for affordable housing but not with the cost of water; if there's no water, how can there be homes?
- support designation of the Lahaina Aquifer Sector Area

Mr. Skye Kamaunu

- support Lahaina families for the designation of the Lahaina Aquifer Sector Area.
- Lahaina once regarded as the “Venice” of the Pacific; due to mismanagement of water, it is now dry and desert like.
- collaboration doesn't work as the community always gets pushed to the side.
- time for complacency to stop; it's time for action.
- urge designation to support native kuleana rights.

*(end of public testimony)*

RECESS: 2:18 PM

RECONVENE: 2:26 PM

**061422 05:20:21**

## DISCUSSION

Commissioner Buck reminded the public that commissioners are not allowed to speak to one another on matters outside of a sunshine meeting and read a statement made by Supreme Court (upon another Commission action) stating “...Commission must not delegate itself to a role of merely empire, passively calling balls and strikes for adversaries appearing before it, but instead must take the initiative in considering, protecting and advancing public rights in the resource of every stage of the planning and decision making process...”

Noted that the Commission's fiduciary responsibilities are clear in Speaking of the precautionary principle and protection of public trust resources and that designation was designed as a compromise between the State and the counties. The county of Maui had 25+ years to deal with this and the action of the triggers stated in the water code is clear and is leaning towards designation and note the Maui County Department of Water do not have the regulatory authority to deal with this. 75% of West Maui's private water purveyors are undercapitalized and deal with a derelict 100+ year old water (delivery) system. Also haven't seen historic collaboration in the past and will need regulatory framework to provide that collaboration. Even with designation, a collaborative approach is needed.

Concern there is a political process in the Water Code and if there's a deferral, a 90-day process would be the maximum that I would support, with specific timetables and targets.

Commissioner Kagawa-Viviani reflected on the Findings of Fact and scientific data and was surprised at the volume of last-minute form written testimony that repeated the same language and spread fear mongering. Commissioner stated concern that data was misconstrued which undermined the credibility of the opposition but did hear a lot of concerns about the permit process and a need for people to feel heard. Also looked into the “show me the water” and affordable housing situation and noticed a track record for water being blamed for holding up permits.

We know the housing crisis in Hawai‘i has far more to do with global economics and real estate investment than water permits. It's clear that a lot of people don't understand what designation means or looks like. It's the Commission and staff to help people better understand what designation means. Being on the Red Hill Permitted Interaction Group realizes that the bureaucratic beast moves slowly with a lot of inertia. What helped was the Commission staff had access to data and had pre-existing relationships with permittees, but they don't have that for undesignated areas. We know West Maui is drier and more challenging area and staff will need those tools like data and access.

The permit process has legitimate concerns that need to be addressed and for Commission and staff to figure out a workflow for existing users and ways to work with permit applicants.

Overall, the commission's job is to protect the resource and public trust in balance with reasonable and beneficial use; no other entity has that responsibility.

Collaboration is key and is not a prerequisite or alternative to designation but is necessary implementation of climate ready, equitable water planning. The conflicts are with people who don't have political or economic standing that don't have lobbyists. The Commission holds an important lever in holding that space for collaboration. Good resource governance involves the state, private sector, and civil society. As a state entity, we are also responsible to civil society and is important as a commission to craft that space for collaboration.

Commissioner Meyer noted collaboration is a very powerful tool which get people to make accommodations and compromises to reach mutual agreements. With enforcing of rules, the Maui government, and permitting, it's especially important when it involves citizens that live in the same community; we share an island, a community, and responsibilities and its important when trying to collaborate on divisive issues. Injecting a new set of laws and bureaucracy from those who sit in Honolulu, makes it tougher to make collaboration work. In that sense, is it a low-risk alternative to designate? Perhaps from the commission's perspective. Is it the best way? I really don't think so.

Give the community 6-months to reach the point where collaboration can work, is key. I don't think there's a bunch of misperceptions, the issue of only 25% of West Maui waters are distributed by the Maui department of water supply; it's a red herring. The Maui Department of Water supply runs the show, and these other companies involved all use the assets dictated by MDWS and are publicly regulated utilities and serviced by guidelines. Department of Health certifies the quality and efficiency of the systems that deliver this water which is not an ancient system.

We have a choice, a safe alternative that may not be best for the Maui community, be more expensive, and a problem for the staff to deal with; or let collaboration possibly work and trust the Department of Water Supply, the whole County organization from the mayor on down which haven't been given that chance. Also, to look at the Maui Water Use and Development Plan which been 20 years in the making and have a better understanding of Maui's water management going forward. I'd say to trust in the County of Maui and give it 6-months for them to effectively collaborate and help resolve and work out these issues.

Commissioner Katayama added we need to approach examining the water system in a holistic view and being collaborative is the only way we can efficiently manage our resources. We need a bit more missionary work in meeting expectations of what a management area means and view timetables. There were concern about the impediments caused by water management area - can we address those? That'll be a great way to foster a holistic look at the water system.

It is about a balancing all resources allocated and one element in a highly critical working group needs to be CWRM to ensure all the key representatives are at the table. It's important for us to meet expectations if we designate this as a water management area and do long-term and address issues to provide more comfort with the community as we move into decision. I applaud the work done by staff but still there's questions that need to be resolved and would be a lot easier to manage the area with a lot of collaboration.

Commissioner Hannahs added impressed by the new generation to the study of water policy and water issues and no matter the outcome here, we should continue to engage them. Our Hawaiian practitioners who take time out of their jobs and away from their families to be here every step of the way who work hard in the streams, on their mala and lo'i to be productive to practice a way of life and perpetuate our culture, are passionate about affordable housing and the desire to provide a home for their children and grandchildren to live are capturing my attention.

We need to sift through that to say what's our job here, and who wasn't at the table with a voice and upon whose benefit? We need to make our voice heard and that's the 'āina and water itself. There's no question if you look at the condition of this resource as a result of climate change, continue draw down as we grow our communities, it's an area of concern. It's our job to take care of this resource. It's urgent as we need to get in there and deal with the resources, people are hurting on the land, or people who desperately want an allocation to get that development permit to build affordable housing.

The law provides a process for us to take care of the resource. It's urgent, triggered and we have analysis and meet it. I feel a compulsion to act to take on and to support this measure. How we designate this, or what regulatory regime applies? If the people are in discord and they aren't brought together and that we don't achieve collaboration, you'll have a hairball of mess. If we designate and everybody's still beefing, things are going to slow this process and the one who won't win is the resource.

Have deep appreciation and respect for staff and the fine work that they do. Nobody disputed the quantitative analysis, community outreach, or legal analysis. A working group is good over a long-term commitment but will not work in terms of an urgent situation as this. It'll take more time than 90 days or 6 months, it's not realistic for meaningful decision making.

Paul, I understand on the matter of local decision making in resolving discord and achieving collaboration but feel that leadership matters more than geography. You can live in the same community and be at odds because the leadership is polarized. On our team, I think the leadership is committed to balance and committed to each of these constituencies that we're trying to get together to collaborate. The biggest risk is at the end of this calendar year when there's change of leadership. It has been an honor to serve on this commission as we differ in our backgrounds and sometimes our perspectives, we have come together to balance as best we could.

We need to start bringing people together like the leaders in our business community like Todd Apo, Micah and Ivan; we understand that's important. The old paradigms that are hangovers from plantation era and land and power era versus community grassroots, we got to put that behind us and recognize a new era that we're all in this together. I've been privileged to serve on this water commission, more importantly, it's our job so I'm willing to support this recommendation.

Commissioner Kathy Ho added as she read and listened to testimonies, heard comments of fellow Commissioners, what strikes the most was the duty to the resource. It would remiss duties to disregard the recommendations of the staff. There are concerns of permitting and its timeliness and to possibly get more staff to assist with that. Other concerns heard was there were not enough collaboration and reach out to the community although listening to staff there were engagement and I trust it will continue. As our duty to the resource, I would have to agree with the commission staff.

Chair Case – thanked Commissioners for their thoughtful comments and added that it's a complicated set of facts. It's our third public meeting on this with evolving set of recommendations that's thoughtfully laid out and thanked staff for their tremendous work on it for many years which we've had in different forms over the last several years, including review of IIFS and waste complaints.

The bottom line is there are criteria for designation; scientific and these aquifers are oversubscribed especially in Honokōwai and Launiupoko. Very clearly, all are interconnected both hydrologically surface and groundwater, laterally with water delivery, diversion and delivery mechanisms; and we do have conflict.

We have longstanding community members, kuleana users who don't have water for their homes and their kalo farms; new developments that are using a lot of water, and a very slow process to get to an R1 treatment plant which will help all kinds of ecosystem connections. We also have our public trust obligations which includes (housing) affordable housing. There are mechanisms in the process of designation to organize that, and there's a yearlong process in which to file claims for designation which staff are very committed to sort out the process to make it easy and efficient as possible.

We can consider existing uses and authorized planned uses to get ahead of this to make sure what's in the pipeline has water and what we've heard today is the county is very focused on their plan but the mechanism for implementing it isn't there. It's this commission that has that mechanism in this situation. The county doesn't have control over all of the water systems.

I was interested to tease out what the county's approval processes was, and it is case by case; not holistic, not water focused, it's overall project by project focused. There's calls for further collaboration and a working group and do think we need to start now and collaborate further as we go along as this discussion has been going on for many years. We can't necessarily make people come to the table, but we do have this mechanism to organize that collaboration.

I will support the staff recommendation on this.

Commissioner Hannahs – moved to approve and accept staff's recommendation.

Commissioner Kagawa-Viviani – commented I do support designation sooner; we need to be sure we do it right as it sets the stage for collaboration. We need to be clear that our role as Commission and commission staff is to continue to be invested in those relationships that allow for collaboration and it be explicit in this process as it was expressed very clearly. We want to hone good long term water stewardship and want to give people the abilities and leverage for access to data, resources, and to support to management on the ground.

Commissioner Katayama – added if we go on to this path, how does this build trust with the county management? Part of the power of collaboration becomes the trust element, the glue that holds this together. A public information meeting addressing the list of questions and concerns would help open up the relationships rather than having conflict.

Chair Case – I think public meetings are a very important part of this and can move forward with those kinds of meetings, but they will be more focused as people would want to know how to work through this process and that they'll be heard- this is the water that I need now or will need (*asked Deputy Manuel to comment on the process going forward*).

Deputy Manuel – Mahalo to Chair and Commissioners for the dialogue. Staff's recommendation is to designate; there's commitment from staff and so the agency needs to participate, must engage, support collaboration, and community trust building; and staff continues to do so. Ayron is on Maui almost every week, sometimes twice a week since 2014. The rest of the team will be committed to moving that forward throughout this process.

Trust building does take time and requires everyone's efforts and collaboration at all levels even if designation moves forward. We are committed to help provide technical assistance throughout the permitting process which the Commission staff have done in other designation proceedings and permitting processes as we're obligated to do as a public agency and service to the community.

Commissioner Katayama – more in terms of capacity bringing on additional capacity, are we able to meet that on a timely basis as there's a lot of other projects that you need to address in terms of customer relationships from people who want water that don't have it and people that need permits for existing uses. Have you gotten your arms around the total increase of workload? Are the resource allocations appropriate?

Deputy Manuel – as an implementer of the commission's orders, I've evaluated how we're going to implement this and the steps in allocating staff resources and potentially partnering with other agencies in supporting us which is also our kuleana to support the value that we need to place in water.

We have a strong but mighty team of 20 to 25 staff but need more and collectively advocate more resources to this Water Commission to do proactive work, trust building, more relationship building, more coordination and with the county and not rely on the county to carry on this kuleana. We have a responsibility at the State level to manage water resources.

Our administration is wrapping up in 6 months, but this is important, and this work will continue. I have no doubt in the capacity of the staff at the Water Commission to do their job well.

Commissioner Katayama – are you planning to have public meetings to explain the process?

Deputy Manuel – we've talked about that with staff, and we must follow the code which requires a public notice. Once that public notice is issued, if a decision is made to move forward, applications for existing uses would have a year to apply. We want to roll that out, share information with community on what the permit process looks like and the commitment to get out in the Lahaina community everyone has an opportunity to engage in that process.

Commissioner Hannahs – it's an important question and I'm glad you asked it. On a personal note, I've work for a trust when it became badly broken to the point where all trustees had to be removed. The way to rebuild that trust was to keep your eye on the higher goal and the mission that you had. With values to be inclusive, be respectful, be problem solving, try to balance things, be transparent, then to be accountable.

I see all those qualities in our staff here. They're not doing this for money, to get rich not, or have an easy job, you. They care about the resource that in our care it's in our trust and are inclusive about it. They've been respectful to everybody, solved problems and did best to balance as we did with EMI and Nā Wai 'Ehā decisions; those things build trust.

Commissioner Kagawa-Viviani – seconded the motion and noted to be present on island to help support CWRM and the process

**061422 06:10:18**

**MOTION: (HANNAHS/KAGAWA-VIVIANI)**

**To approve Item C-1 as submitted.**

**CASE/BUCK/HANNAHS/HO/KAGAWA-VIVIANI/KATAYAMA/MEYER**

**UNANIMOUSLY APPROVED**

*Chair Case thanked and appreciated everyone's input. Commissioner Hannahs thanked Commissioner's Meyer and Katayama as they voiced reservations on the matter but was grateful everyone came together to make an important decision.*



RECESS: 3:19 PM

RECONVENE: 3:31 PM

**061422 06:25:12**

**A. APPROVAL OF MINUTES**

May 17, 2022

DEFERRED

**061422 06:25:12**

**B. NON-ACTION ITEM / INFORMATIONAL BRIEFING**

**1. Informational Briefing on the Provisional Honolulu Water Shortage Plan**

PRESENTATION GIVEN BY: Mr. Jeremy Kimura, CWRM Planning Branch

Mr. Kimura gave a PowerPoint presentation on the briefing item which highlighted the drought scenarios and triggers to have a Water Shortage Plan for an area like Honolulu which has really high demands and with the situation of Red Hill which left pumping to be more stressed.

The Honolulu aquifer sector stretch from the Moanalua to Waialae-East aquifer system areas, the primary urban cores of Honolulu. Mr. Kimura provided background information as it pertains to HRS 174C-62 published criteria. Related efforts include the Pearl Harbor Water Shortage Plan (PHWSP) (2021); the Hawaii Drought Plan (2017); and the State Water Conservation Plan (2013).

The goal of the Honolulu Water Shortage Plan (HWSP) is to protect the health of the aquifers and public trust uses, meet requirements as set forth in HRS 174C-62, and facilitate a collaborative framework for addressing water shortage conditions. Mr. Kimura stated the known differences of the PHWSP and the HWSP with note to collaborate with the Board of Water Supply (BWS) and use their extensive network to help determine when water shortage conditions exist.

A chart and graph of the Honolulu Aquifer Sector allocations and reported water use were shown. Stages 1 through 3 of the triggers were highlighted.

**QUESTIONS/COMMENTS**

Commissioner Buck – commented why, are we so hung up on the water quality trigger as 174C-62 doesn't say anything about water quality, it makes things confusing.

Chair Case – it's a matter of making sure there's no confusion by further clarifying.

Commissioner Buck – DOH action would be to not use the water because of water quality issue then would look at the pumping.

Commissioner Kagawa-Viviani – added because it's not explicit in the Pearl Harbor Water Shortage Plan, it was an issue.

Commissioner Buck – 174C-62, which is our authorizing language, talks about a water shortage declaration, it doesn't say we need other determination.

Commissioner Meyer – I agree with you, if you got a water shortage it's explicit; then use the code, and not need to turn to Department of Health further.

Commissioner Ho – some would disagree in that if there is an emitted substantial endangerment due to contaminant in the water which caused the shortage, you should touch bases with the Department of Health to determine whether to use the water.

Commissioner Meyer – understood.

Commissioner Buck – I agree, and that's why DOH is a member of the Commission.

Mr. Kimura – added CWRM wants to make sure the Commissioners have what they need as a decision-making body to be able to manage the situation in the shortage. Is this plan sufficient? This should give you the ability if there's a shortage, you have the tools to manage it. When the Red Hill situation came up, this was used as another vehicle to manage it. For a water shortage, the HWSP is the best way for the Commission to interact and coordinate with DOH.

Commissioner Buck – the Commission should be able to declare a water shortage if they believe there is one. These might be factors to consider but shouldn't be dependent on the Board of Water Supply and Department of Health for us in our own analysis.

Mr. Kimura – our understanding when we look at 174C is that we must publish a criterion to determine if a shortage exists. What's the criteria the Commission's using to say a water shortage is happening. Maybe it's a semantic language or something we can change. As mentioned in Honolulu, we don't have that monitoring network as we do in Pearl Harbor. We're relying upon our networking with the Board of Water Supply to use their data and independently verify what is happening.

Commissioner Buck – when you say trigger it's a but for this action. These are just factors you will consider in your declaration of a water shortage, but you're not dependent on other agencies or county organizations to do something; should be the Commission staff with the Commission to make a final determination.

Commissioner Kagawa-Viviani – added that part of this came out of reading the water quality and quantity aspects. There's no in-house capacity within the commission to look at water quality and we're dependent on understanding DOHs thresholds at which they regulate.

Commissioner Buck – agreed.

Mr. Kimura – noted that as the decision-making body the plan will be implemented through the Commission. We envision if the staff is seeing data that supports a shortage, we'll bring that to the Commission in a meeting for the approval process.

Commissioner Hannahs – wanted to know the empirical thresholds for them to consider something low.

Mr. Kimura – *(furthered explained the slide pertaining to the BWS index wells).*

Commissioner Hannahs – asked if they look at these well by well or on a blended basis to determine shortage.

Mr. Kimura – on a blended basis and across the aquifer sector to determine what's going on. The difference is that we as a Commission have the authority to declare a shortage for a system.

Commissioner Ho – does it take into consideration those wells that are down and when they'll be back up?

Mr. Kimura – can't speak for their operations side; but we do collect a monthly report. I'm sure the Board wouldn't pump to the point where it's critical, that's ultimately going to bring up chlorides.

Mr. Neal Fujii, CWRM Planning – noted that for the board, their caution alert and critical stage is outlined in the rules and regulations and do have certain conditions that exist. They're also working on their own water shortage plan that we think is going to complement ours.

Mr. Kimura – added we've met with the Board to talk about how we're going to collaborate in a water shortage situation and how best to work together to protect the resource and will have more discussions before we finalize the plan and go back to the Commission for adoption, and we'll have the Board present to talk specifically about some of these things.

*(continued presentation)*

Mr. Kimura continued with the actions to implement the plan and requirements of each stage 1 through 3. The water use permit classification priority levels were noted, and the next steps highlighted.

#### QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – clarified on the graph table, is that agricultural irrigation? Irrigation for landscaping versus Ag crops?

Mr. Kimura – we tailored the priority use table for Honolulu, so landscaping, no agriculture.

Commissioner Kagawa-Viviani – noted at some point you might use that model for another area’s water shortage plan. It would be important to define that as it could get confusing, so how would we balance and mitigate for long-term as we want to protect the resource and food systems.

Mr. Kimura – that's where the stakeholder engagement and outreach is a big component. If we amend this plan, we will do more stakeholder engagement on what makes sense to people in a shortage situation.

Commissioner Kagawa-Viviani – like in the BWS, is there a way to also incorporate a similar way of forecasting 6 months out rather than waiting for thresholds?

Mr. Kimura – if it’s something that Commission feels we should do like a forward look or a seasonal type of implementation, we can look at that. We know from historical pumpage that we're going to exceed sustainable yield in summer months. We're seeing in the first stage that USDA drought disaster declaration is a trigger to curb as it’s a climactic, meteorological trigger. The Governor did request a USDA drought disaster declaration for O’ahu; you can say we are there already and may need to prevent that. We’ll definitely look at a forward and seasonal type of trigger.

Commissioner Meyer – noted on Aurora’s point of view regarding agricultural irrigation under the water shortage declaration of a 30- or 60-days period during which farmers could continue to irrigate their crops and asked to check with Maui Department of Water Supply if it’s still in effect.

Mr. Kimura – agreed.

*Chairperson Case thanked Jeremy for his hard work on this and look forward to seeing it again.*

**061422 06:59:09**

## **C. ACTION ITEMS**

- 2. Take Action on the Recommended Actions Proposed by the Red Hill Permitted Interaction Group to the Commission on Water Resource Management Formed and in Accordance with the Scope of Investigation Defined under Item B-1 at the January 7, 2022 Meeting, Regarding the Red Hill Bulk Fuel Storage Facility Emergency**

PRESENTATION GIVEN BY: Ms. Katie Roth, CWRM Planning Branch

Ms. Roth stated the summary of request and noted that staff stands on its submittal and recommendations.

*(The Permitted Interaction Group covered salient points)*

Commissioner Buck – noted to connect the Navy's use of water and their commitment to fund and recover the water in the aquifer. These actions if approved, will augment the Department of Health emergency orders with a focus on longer term aquifer recovery. It will notify the numerous other planning efforts in public what the subject areas and data elements the Commission will require for a comprehensive aquifer recovery plan.

It'll encourage interagency coordination by establishing a transparent enforceable and detailed framework for aquifer recovery. Provide estimates for short and long-term costs of aquifer recovery to the relevant appropriators and Hawaii Congressional delegation; enable a level of public transparency and consolidate the State's legal authority for addressing the full range of aquifer remediation and recovery.

There's lots of ongoing planning processes being done, the latest by the EPA. The REMAC (Regional Emergency Medical Advisory Committee) are not committed to budgets or that agencies have commitments and budgets which is critical and an important part of this proposal. The Water Commission is not an author of that plan, we're considered a technical support. Convinced that we need to put the full range of authorities the Water Commission adds to assure the Navy does what they need to help clean up the aquifer.

Remind other commissioners in 2014, we had pages of concern and because we're not a primary author of the Administrative Order on Consent (AOC), we thought the final approval not to par. Now is the time for the Commission and the State of Hawaii to outline and utilize its full range of authorities to ensure that we have commitments, especially from the Navy with resources and financial, that will help our Congressional delegation with long-term aquifer remediation.

This issue is going to transcend this administration and current commissioners and take years. It's critical we put our marker down and be fully engaged with our full range of authorities.

Commissioner Kagawa-Viviani – added provided the background research that's more of the extensive part in the submittal. Commissioner Buck summarizes the main things we're recommending as actions are that we modify the Navy's three (3) water use permits tied to Joint-Base Pearl Harbor-Hickam and the Navy water system that was affected. Right now, there are no terms tied to those permits. We want to make sure we're in good alignment with what the public and DOH was expressing, which is that the aquifer needs to be remediated, regular updates on that process. It's been helpful in getting Red Hill on the (CWRM) agenda for supporting transparency.

There's a need for water quality data sharing not just within AOC, but also the public and municipal agencies that have a stake in this because of concerns about potential impacts to Halawa Shaft, as we need to know if there's contamination, when is it clean enough to use again? We want to see modeling progress on groundwater models, contaminant, and transport models as it tells where the contaminants dissolved or floating on top of the saturated zone as there are those who's reliant on spring flows that's concerned about the safety of their operations.

Lack of data creates public anxiety and fosters distrust. There needs to be contingency plans and timelines. It seems the defueling process is going to drag out with odds increasing of another release the longer it stays there.

We're in dry conditions and want to see their Water Shortage Plan Implemented with regular updates provided. As everything shifted to Waiawa, there's over allocations and concerns is the Navy doing its due diligence in terms of protecting this public resource. There's opportunity to launch ourselves into a new era of conservation.

Related to our public trust responsibilities, no agency is doing sampling and monitoring of water chemistry (except at Halawa Stream). There are other areas where groundwater surfaces in the Pu'uoloa area that has a lot of surface groundwater interaction.

Instead of not measuring anything and assuming nothing's happening, let's have a proactive approach in monitoring and ensure we have an eye on those resources. We need to hold the Navy accountable on all levels of responsibility and remediation.

Because this is a commission-initiated permit modification, our consultation with the Attorney General's (AG) office indicated that it needs to follow the same process as a new permit which requires a public hearing and suggest that process be initiated as it'll take time. Also, want to ensure (the P.I.G.-Commission) had authority to address water shortages.

Commissioner Meyer – added there's no question that modifying the water use permits is one thing we can and should do and use it as a mechanism. The key elements that'll go on for years are the remediation and the monitoring and testing. We need commitment from the Navy to fund the budget and establish what they are. The Honolulu Board of Water Supply are probably best at monitoring and testing and have the largest volume of samples and if they could be the ones to complete the monitoring and testing with their costs, absorbed by the Navy on an ongoing basis, would provide some comfort with testing and data sharing.

Commissioner Kagawa-Viviani – noted that UH is receiving funding from the Navy.

Commissioner Meyer – agreed that UH would be another great alternative.

#### QUESTIONS/COMMENTS

Commissioner Hannahs – grateful for the Public Interaction Group's service and commented on Ret. Colonel Ann Wright's written testimony as pragmatic and candid and concern of the statement of 2-years to defuel and proposed to "truck it out" - is there any validity in that perspective?

Commissioner Buck – this is trying to augment what Department of Health is doing and has the primary responsibility for monitoring; but we want to be there at the table and is critical in these planning processes, this is what the Commission wants and sends a message to the Navy of our expectations.

Commissioner Hannahs – asked if defueling is a DOH matter?

Commissioner Ho – replied yes; Dept. of Health and EPA are working together on the defueling plan in conjunction with the Navy and other stakeholders.

I appreciate the work that was done on this, and the fact that we are all trustees of the

resource. There are ways we can protect the resource that may or may not include amending the water use permit. My concern about the amendment to any water use permit is if the intent of the Commission is to amend the water use permit to include remediation, groundwater modeling, defueling and contingency plans, the Department of Health and EPA provides for that under the emergency order and the AOC.

If the commission chooses to amend its water use permit to include these terms, it might lead to inconsistent enforcement which also may lead to delays in the remediation or the defueling. There are ways we can do this and protect our resource like having a formed committee for review plans and modeling.

The rules clearly state we have authority over chloride but not clear about other contaminants, which may be a legal call for our attorneys; so, I'm wondering if we have that ability to get involved in this kind of action.

Commissioner Buck – clarified, we're not trying to duplicate what Department of Health is doing. Your (DOH) ability to enforce usually ends up in fines and as far as the Navy, I don't think that has much influence on that. Our leverage is their use of water; thus, we're trying to inform the planning processes of what the Commission thinks is important.

Chair Case – added can we do this by saying the condition trigger is non-compliance with the Department of Health enforcement mechanisms? Seems like the order of #1 and #2 is reversed (in the submittal). Where you fit #1, you can say that process shall consider these things, and then do the official report from that process which includes addressing the items in #1 in the submittal.

With the defueling, it seems to me to be the Department of Health kuleana, whereas our kuleana is making sure that once it's defueled, the aquifer is cleaned up; to me is the biggest part we're trying to get at.

Commissioner Ho – we have hired experts as well as the EPA and the Navy which all be used towards the aquifer recovery. That's why in my mind I was trying to figure out how, if it's put into a condition of a water use permit, as these documents are living documents, how would you enforce it if you needed to enforce it?

Commissioner Buck – it's trying to make that connection between the Navy's cooperation and financial resources, to their use of the water and the Water Commission as that authority, DOH does not. We can fine them but it's taxpayer money anyhow. We all agree that the Navy should financially support aquifer remediation and recovery.

What this is saying is that if you expect to use water in the future as much as you do, this is an additional piece that the state of Hawai'i has. We're just trying to augment the Department of Health but we're working together, and this is the full range of authority and leverage. There's some lack of confidence in the Navy and the AOC has no commitments in funding.

Chair Case – asked Commissioner Ho what's the best way to do that to bolster using this tool what you are trying to accomplish?

Commissioner Ho – your suggestion of a condition that as part of their water use permit, they comply with the EO and any subsequent agreements with the Department of Health for the decommissioning and defueling of the tanks for aquifer recovery; if that's the condition, it would help us.

Commissioner Kagawa-Viviani – how do we aide in the transparency aspect that rebuilds public trust?

Commissioner Ho – having these informational briefings that we've had with the Navy, also Fuel Tank Advisory Committee which is statutory required, we could continue. With the water quality data sharing, I thought we had that worked out where the Navy is sharing with us all the information where we immediately receive it and its online? If CWRM needs that, its available online.

Commissioner Kagawa-Viviani – noted that one of the challenges is it's in an opaque form of pdfs which makes it difficult.

Commissioner Ho – that's one of the issues; the public was saying the need for more transparency and timely data, yet there still needs to be analysis. Department of Health is doing analysis, but it takes time. Anyone who has the expertise can look at it in in real time as well.

Commissioner Meyer – I think your suggestion about including performance by the Navy on the decommissioning and defueling of the tanks to adequate standards in avoiding spills and mishaps, should indeed be in default under the Water Use Permits which would be helpful to provide additional incentive to adding weight and gravitas to the Department of Health program.

Commissioner Ho – I will not have to enforce those conditions, so I would refer to your lawyers.

Commissioner Meyer – none the less, I think adding consequence to lack of performance is worthwhile to the State and all of us.

Commissioner Ho – as long as it's tied to the emergency order so that we don't have inconsistent enforcement.

Commissioner Buck – is it important to leverage the State's future water use with their commitments and actions to recover and remediate, does that add something to it? I'm trying to build the most leverage from the State of Hawai'i, in cooperation and partnership with Department of Health adding the water commitment which is key in this. There's still concern on the new EPA plan so our ability to control the Navy's future use of the water is very important.

Commissioner Hannahs – does the concept of being in good standing apply here? The Navy's standing predicated upon them satisfying certain conditions.

Commissioner Buck – absolutely; if they came today and asked for a permit, we would never give it to them. Their permit is pre-water code and has no special conditions and derelict for



the Commission to not engage now. Our AG said its within our legal authority to modify their permit to reflect what's going on. They've polluted the most important aquifer in the State, and unless they clean it up, why should we let them continue to utilize the water?

**061422 07:31:53**

PUBLIC TESTIMONY

Ms. Rebekah Garrison

- Organizer, Hawai'i Peace & Justice; Member, O'ahu Water Protectors; and the shutdown Red Hill coalition.
- O'ahu Water Protectors stand in solidarity with Maui Water Protectors.
- Mahalo to Commission for opportunity to testify on this urgent matter and crisis.
- the Navy mishandled Red Hill; documented in the Court of Public Opinion that the people of Hawai'i and many of the Navy's own employees do not trust the military and with respect to Kapūkakī
- look to the Commission to prioritize the protection of the resource, clean unpolluted drinking water.
- supports more robust permit conditions and an appropriate response to the Navy's egregious acts of violence against Hawai'i's public trust and O'ahu sole source aquifer
- encourage the Commission to enforce Navy compliance with public trust water resources; mandate restructure by enforcing strict conditions of accountability; restricting water usage to address waste of over pumping and shortages; conservation efforts and measures imposed
- Navy's permitted water use should be reduced by the same amount of water pumped from the aquifer and released into Halawa Stream; failure to adhere to State Water Protection Plans should result in in exorbitant daily penalties.
- require transparency with respect to public engagement; require the Navy to provide financial support to restoring the watershed.
- aware that the Navy is over pumping by 1 million gallons a day.

Mr. Wayne Tanaka, Sierra Club

- submitted written testimony with considerations to motivate the Navy and the Department of Defense to treat this situation as an emergency.
- conditions are also authorized under the Commission's constitutional authorities.
- Navy has not completed its groundwater protection and workflow response plan; no way to enforce those or hold them accountable for non-compliance.
- continued over pumping and daily water waste; will dump more than 1.5 billion gallons of water into Halawa Stream by the end of 2022
- it's an existential crisis and threat; thus, enforce and impose conditions to motivate the Navy
- appreciate the Commission's continued efforts, discussion, thoughtfulness, and concerns

Ms. Gina Hara

- thanked Commissioners for their hard work
- Dept. of Health has limited authority, including the EPA in this matter
- 880-page report but only 180 pages viewable to the public
- Dept. of Health did not divulge the contested case hearing and without it, the public would not have known 19,000 gallons was missing.
- more transparency; hold more meetings; more funding needed; Navy's accountability

Mr. Alfred Medeiros

- from Wai'anae, O'ahu Water Protector
- too long for things to move forward
- military is still abusing and wasting water; it's the public that's always burdened.
- public health still at risk; people already gotten sick
- make it a mandatory for them to defuel and remove the tanks asap.

Dr. Kamana Beamer

- commend Commissioner's for courageous work on Lahaina
- O'ahu Water Protector
- trustees of our water resources need to tie these water use permits for the Navy to cleaning and mitigate our aquifer.
- CWRM meetings are the few open and transparent opportunities for community to address and discuss these issues.
- expect, you know, unanimous vote in favor of pushing these conditions.
- This is the most extreme urgent crisis we've ever experienced on our public trust resources; we've (the Commission) noted problems since 2014; cannot let this get lost in bureaucracy.
- not acceptable having this placed with/on AOC and EPA; the Water Commission has consistently been ignored.
- as trustees, it is the Commission's primary duty to the resources; urge to take courageous action.
- urge everyone to work together to solve this urgent crisis; urge Commission's leadership to accomplish this
- letter from Congressman Kahele from the Secretary of the Navy received which states the Navy pumped over 537 million gallons of precious water out of Red Hill to clean and mitigate the poisoning they've caused.
- continue to keep this public, open and transparent; need to do things differently and creative.

*(end of public testimony)*

DISCUSSION

Chair Case – noted the recommendations and suggested to switch recommendations #1 and #2 as we the need to go through the process to look more specifically at conditions. And add language about making compliance with the Department of Health’s requirements on Red Hill.

Commissioner Kagawa-Viviani – I would support that; and wanted to initiate the conversation by giving some specifics based on our analysis.

Commissioner Buck – part of that is informing all other planning processes; we know we’re going to have a public hearing in a process; agreed with the renumbering.

Chair Case – clarified to change the order of #1 and #2, and #2 would say that these are items we would specifically consider in that public hearing process; and add a condition for compliance with the Department of Health; a proposed condition for consideration in the review process for compliance with the Department of Health orders with respect to Red Hill.

Commissioner Kagawa-Viviani – added we tried to focus on what was within the Commissions purview given the water shortage created by the contamination; we initially did have defueling in there. Putting it back in and saying we’re in alignment with compliance with DOH’s defueling is in line with the initial P.I.G.’s discussions.

Deputy Manuel - shared screen and provided language based on Commissioners edits as discussed and as noted below.

**\*RECOMMENDATIONS**

Staff recommends that the Commission:

- 1) **Initiate a Commission process to modify the three NAVFAC Hawai‘i Water Use Permits and permits of other Pearl Harbor and Honolulu Aquifer System water users as appropriate for managing the anticipated water shortages.**
- 2) **Items to be considered, but not limited to, in the public hearing process to modify the Navy’s three water use permits with special conditions to require the development of a comprehensive aquifer remediation and recovery plan that includes implementation schedules, responsible agencies, and funding requirements.** Primary authors for such a plan should include the Commission, DOH, US Department of Defense, and EPA. This plan should build upon and support current planning efforts such as the existing Red Hill Shaft Recovery and Monitoring Plan, the Pearl Harbor Water Resources Management Plan, the recently configured Remediation and Restoration Action Plan Committee, and relevant Emergency Orders and directives from the DOH. Areas to be addressed in the plan should include:
  - a. **Remediation progress:** Demonstrated progress on remediation measures for existing contamination. This includes aiding remediation efforts for contamination that extends beyond Navy property;

- b. **Water quality data sharing:** All ground and surface water monitoring results and risks are shared with the Commission, DOH, and the HBWS in a way that is transparent, complete, and timely;
  - c. **Modeling progress:** Demonstrated progress on groundwater and contaminant fate and transport modeling;
  - d. **Contingency plans:** Development of and funding to implement an immediate aquifer recovery and remediation contingency plans in case of release during defueling;
  - e. **Water shortage plan implementation:** Navy must regularly present and make meaningful progress on water conservation, recycling, and shortage actions to account for their impact on the aquifer.
  - f. **Sampling and monitoring** of water chemistry and physical properties and biota at spring-fed sites, including wetlands, lo'i kalo, and loko i'a, potentially affected directly by the contamination from Red Hill or indirectly through altered Navy pumping patterns.
  - g. **Compliance with DOH Orders with respect to Red Hill Bulk Fuel Storage Tank Facility, including pipelines and aquifer recovery.**
- 3) **Ensure, with Commission action, if necessary, that existing policies to address water shortages can be utilized and effectively and equitably enforced to address the anticipated water shortages and/or water emergency resulting from aquifer contamination.** Such policies, in addition to addressing water use permit holders, must also consider the broader scope of the public trust, including protection of traditional and customary rights and practices associated with numerous fresh and brackish springs of the Pu'uoloa/Pearl Harbor region.

*Continued discussion on funding agreements and timelines.*

Chair Case – asked for a motion to approve the amended recommendations.

Commissioner Kagawa-Viviani – how soon can that next step be implemented?

Deputy Manuel – we have to work with the AGs on the public notice about the modifications and to conduct the public hearing; work with staff to try to expedite that review and drafting to ensure the language is legally accurate that this is something that clearly outlines the next steps. Hopefully by next month we'll have something to report to the Commission. I understand the urgency to keep this process going.

Commissioner Kagawa-Viviani – noted it wasn't an action item but suggests keeping this on the monthly agenda as people have become accustomed to having monthly access.

Deputy Manuel – it's still a commitment from me to coordinate with DOH and other agencies including the Navy. If there's any specific entity you'd like a report back from next month, please let me know.

Commissioner Hannahs – how was the AOC comprised? Should CWRM be part of that AOC?

Commissioner Ho – it’s a regulatory document, an agreement that exists; I don't know if it can be amended.

Commissioner Hannahs – exist between whom?

Commissioner Ho – the Navy, EPA and DOH; it’s an emergency order from the Department of Health to the Navy that continues to exist which considers the defueling and aquifer recovery.

Commissioner Hannahs – is that something we would want? Agreements get amended all the time.

Commissioner Ho – it’s an order the Navy decided not to contest; it’s between the Department of Health and the Navy.

Chairperson Case – agreed it will be difficult to add on to it.

Commissioner Hannahs – added to turn instead to our internal communication and making sure they are clear and thorough.

Commissioner Buck – by doing this action and approving, you now have inserted the Water Commission much more at the table; and commented the Department of Health is doing a good job; they’re undermanned, and this is a huge issue. This is an emergency, and we support the Department of Health actions. We’re just trying to join them and strengthen their ability.

Commissioner Ho – appreciated the comments.

**061422 08:07:38**

**MOTION: (BUCK/KATAYAMA)  
To approve C-2 submittal as amended.  
UNANIMOUSLY APPROVED**

Chairperson Case appreciated everyone’s hard work and of the impressive summary of information and thoughtful approach to how the Water Commission can best support this process to make sure we end up with a healthy aquifer.

**E. NEXT COMMISSION MEETINGS (TENTATIVE)**

July 19, 2022 (Tuesday)  
August 16, 2022 (Tuesday)

This meeting adjourned at 5:14 p.m.

Respectfully submitted,



RAE ANN HYATT  
Commission Secretary

OLA I KA WAI:



M. KALEO MANUEL  
Deputy Director

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**Written Testimonies Received:**

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