

MINUTES
FOR THE MEETING OF
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: August 16, 2022
TIME: 9:00 am
PLACE: DLNR Boardroom
1151 Punchbowl Street, 1st Floor
Honolulu, Hawaii 96814
& Online via Zoom-Meeting ID: 823 5351 3684

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:00 a.m. and stated it is a hybrid meeting held live and remotely and being streamed on YouTube for public viewing purposes. It was noted the meeting was set to take live oral testimony and that 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. Joanna Seto

COUNSEL: Ms. Julie China

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

OTHERS: Mr. Chris Curran (USGS), Mr. Greg Barbour (NELHA), Mr. Dean Minakami (HHFDC), Ms. Denise Iseri-Matsubara (HHFDC), Ms. Leimana DaMate (Aha Moku), Mr. Kurt Inaba (HDWS), Mr. Kawika Uyehara (HDWS), Mr. Chris Curran (USGS), Ms. Madison May (USGS) Ms. Eva Blumenstein (MDWS), Mr. Barry Usagawa (HBWS), Commander James Sullivan (NAVFAC HI)

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A. APPROVAL OF MINUTES

June 14, 2022

PUBLIC TESTIMONY – None

MOTION: (BUCK/SETO)

**To approve the June 14, 2022 with non-substantive edits as recommended.
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER/SETO
UNANIMOUSLY APPROVED**

July 19, 2022

PUBLIC TESTIMONY – None

MOTION: (BUCK/SETO)

To approve the July 19, 2022 with non-substantive edits as recommended.

UNANIMOUSLY APPROVED

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B. ACTION ITEMS

- 1. Approve with Special Conditions the Natural Energy Laboratory of Hawaii Authority and Hawaii Housing Finance and Development Corporation Application for a Well Construction and Pump Installation Permit, Ota Well (Well No. 8-3957-006), TMK (3) 7-5-001:165, Lanihau 1-2, Moeauo Ahupua‘a, Keauhou, Hawai‘i**

PRESENTATION GIVEN BY: Deputy Kaleo Manuel, CWRM Deputy

Deputy Manuel stated the summary of request and stands on the submittal as drafted and highlighted amendments that were made since the April. In general, NELHA and HHFDC are the applicants for this new proposed production well, and if proven productive, will be dedicated to the Hawaii Department of Water Supply. Deputy gave a brief timeline update noting in April 2021, the Commission deferred action and asked staff to work towards conducting a symposium to further understand impacts to traditional and customary practices.

Since July 2021, numerous meetings were held with various community/stakeholders, NELHA, HHFDC, National Park Service, and ‘Aha Moku to provide informational updates and collaborate on mitigative measures.

Deputy Manuel provided a brief background on the location of the proposed Well and noted the current sustainable yield of the Keauhou Aquifer System (KAS) is at 38MGD, noting the 12-month moving average as of June 30, 2022 at 14.452 mgd or roughly 38% of the sustainable yield; noting the reporting of 34 of 36 production wells. The goal of the well is to develop 672,000 gallons per day of use and pump tests will determine the productivity.

Deputy Manuel reviewed the Ka Pa‘akai analysis as noted on page 13 of the submittal. As part of that consultation and analysis, it was clear that resource management and practices exists from Mauka to Makai and elevates this concept of ahupua‘a and it continues to live and thrive in this region. There is a need to look at things holistically and cumulatively when looking at water resources and its use and when issuing individual permits; they need be considered within the context of the whole and some analysis of that cumulative impact.

In the process working with the lineal families, identified feasible actions are recommended and noted in the submittal. (*Deputy Manuel read the vision statements and noted the staff's recommendations*)

QUESTIONS/COMMENTS

Commissioner Buck – acknowledged Deputy Manuel's work provided and feels that we have made a direct connection between water harvesting and the management of the watershed areas and have built a framework the Commissioners established early on and provides a very responsible way of permitting water from an area as this.

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PUBLIC TESTIMONY

Mr. Gregory Barbour, Natural Energy Laboratory (NELHA)

- In attendance with Dr. Alex Leonard, Chief Projects Officer
- share the Well equally with Hawaii Housing Finance Development Corporation (HHFDC)
- Dept. of Hawaiian Home Lands (DHHL) will get a portion of the water as per agreement between NELHA and DHHL
- Ongoing and upcoming sustainable developments, climate mitigation projects, food security, energy security, ocean conservation and ocean technology projects.
- Been (7) years since this first started; completed all proper analyses and studies
- Acknowledged Deputy Manuel and CWRM staff
- recommending the conditions of 1, 4, and 5 not be applied until the pump installation and use permit are received for the well.
- the quality of the water is not yet known so conditions 1, 4, and 5 are not applicable but agree to them.
- for condition 1.a., believe the annual recharge rate and annual pumping volume is a better measure.
- relating to Forest Management Reserve costs, agree to a 5-year reassessment, but would like to see an audit of what the monies are used for, and this be sunset after 20-years.
- 1C – continue to use water as efficiently as possible; and do say we have reduced our water consumption by 25% over the past 5 years.
- Cannot include a condition for the wastewater treatment plant, as it's a county project which doesn't have control over; and will not be appropriate to finance it.
- should not be solely responsible for the surveys but do support the efforts of monitoring.
- There're many other reasons why the water quality would change, not just from pumping from one well, but of the many wells in the area, and can't specifically say they're all related to this one Well
- willing to contribute \$5,000 annually for 20 years
- 1E seems a duplicate of condition #5

- Condition #4 - willing to fund this study up to \$20,000 but need to know it's scope and can't agree to an open end on the cost but believe the cost would be around \$15,000
- condition #5 is unclear and don't know what the proposed mitigation measures are by the NPS; after identification of those, willing to collaborate on that.
- tried hard to do everything properly over the years; been patient to ensure everybody's concerns are addressed and receive a lot of input
- need to move forward and believe its position is reasonable and fair.

QUESTIONS

Commissioner Hannahs – thanked Mr. Barbour on work doing for sustainable development and climate change awareness as it's hugely important and related to the work of this commission. Did you take a look at the vision and goals that were developed by the group of practitioners and are in agreement with those?

Mr. Barbour – replied yes.

Commissioner Hannahs – I understand to cap, define your contributions and liabilities, that's good business, but perplexed by your 20-year sunseting of the contribution to watershed management and protection and stimulation of recharge. What in your data and evidence in reviewing climate change suggests that will be less important in the future than it is now?

Mr. Barbour – sorry if I implied that it's related to climate change as we don't believe it is. We don't know if we'll be using this well at all or how long into the future. For us to pay in perpetuity for a well (we have several desalination projects) or we may move to another source of water unrelated to this, so to commit this agency forever doesn't seem proper.

Commissioner Hannahs – of course if you're not using the well; but is there a way we can condition this to the active use of the well that would be acceptable?

Mr. Barbour – it's part of the whole regional water scheme and we're just one user and don't know the language to that.

(PUBLIC TESTIMONY – CONT'D)

Mr. Dean Minakami, Hawaii Housing Finance Development Corporation (HHFDC)

- Ota Well will be supporting our plan, Ka Makana Villages; affordable housing community
- project has a potential to produce up to 2,000 homes and North Kona
- project stalled for many years; received land use entitlements
- lack of water available is the main impediment.
- submitted and stand on testimony
- main concern is the proposed fees will raise the high cost of affordable housing and worsen our housing shortage
- concerned about practicality of some recommended conditions
- can commit to using water efficiently and to use reclaimed water to the extent

- practicable, but only for source of reclaimed waters available.
- don't feel it's reasonable for HHFDC and NELHA to be responsible for upgrading the Kealakehe Wastewater Treatment Plant to produce R-1 water
- not fair for either entity to solely fund a marine survey for waters impacted by other land uses or other variables that affect the coastal ecosystem.
- have submitted alternatives for consideration.

Mr. Robert “Bobby” Command, County of Hawaii & Alternate Member of NELHA Board

- *read testimony of Mitch Roth, Mayor, County of Hawaii*
- must build thousands of affordable homes during the next 5 years to satisfy a desperate shortage of housing
- adequate potable water is the only major obstacle to the creation of thousands of affordable homes in North Kona.
- development of a reliable and renewable well system will enable the construction of affordable planned communities.
- if we discovered water and drilled production wells today, affordable workforce housing could be available in less than 2 years.
- development of North Kona as an employment center and healthy, sustainable community, would also add to the economic and social stability of Moku o Keawe; live and work and play in the same community; relieve pressure on the rural areas to convert fertile agricultural lands; spur innovation and opportunity; relief the burden of the high cost of living; provide a sustainable future; potential to reduce dependence on the supply chain
- Roth administration is committed to the long-term success of these goals
- Hawaii County is seeking an opportunity not just to survive, but to be an economic, social, cultural and sustainable leader in the Pacific, the State, and the world community – made possible by potable water. “wai o keaniani”
- ask CWRM to grant this application for development of the Ota Well.

Mr. Charles Young, Aha Moku Board

- reside at Kealia, South Kona, HI Isle
- submitted written testimony on behalf of the Aha Moku
- *read line from testimony ...* “Aha Moku sees the mitigation measures as a step in the right direction for the Commission on water resource management to take and carrying out his duties and responsibilities and as an opportunity in furthering the collaboration of all stakeholders in the process”...
- these measures are meant to bring all the agencies and stakeholders together to sort through what needs to be done in a more holistic way
- many participants who participated who represented native Hawaiian interests are also realtors, land managers, business, and resource managers
- the view from the ‘Aha Moku could sometimes be interpreted as being a narrow Hawaiian point of view, but it's also very contemporary.
- we all have a genuine concern about the resource
- a lot of consent and consensus, but also a lot of descent within the group because of varying and individual ideas

- over the last 20 years, served on the Hawaii Island Burial Council, West Hawaii Fishery Council, and Kona Development Plan Action Committee.
- Applaud Deputy Kaleo Manuel for work done as well as the Commissioners and Chair Case for encouraging that work; it sets a precedent and is called out in the mitigation measures
- learned that whatever development impacts our community, we have a front row seat to help guide and steward the place.
- ‘Aha Moku is not alone in its concern of water resource management for West Hawaii as it applies to marine resource or coastal waters is of high importance
- sent a letter on May 12th to the (Hawaii County) Planning Director regarding water availability and conservation as our major priorities.
- the community shares the direction of the mitigation plans in the Ka Pa‘akai analysis
- also applaud the attempted directions of NELHA and Hawaii County

Loke Aloua

- Mahalo to the Commission for their time in hearing the voices of the people
- here today to speak about affordable housing as it’s just as important to protect the “wai” as it is to have affordable housing.
- affordable housing should not have been tied to “Ota Well”
- need to reconsider planning at other levels to create the housing and identify the water sources.
- Approve “as is” as it’s necessary.
- there are (14) ahupua‘a currently pumping from that never ever gone through this same process
- NELHA currently pumps 600,000 gpd with access increasing to 1.2 million gallons
- proposed project is in one of the driest regions; been around for 45-years, utilizing 870 acres of land
- this water belongs to the kanaka and the land
- attended various meetings over the past 7 years.
- progress must be made; sustainable yield needs to be revisited; it should not be modified or downsized
- support the ‘Aha Moku; we all have the responsibility to protect the water resources

Ms. Malia Kipapa

- from the lineal descendent of the Moku of Kona, Ahupua‘a of Pahoehoe
- in support of Item B-1
- satisfied with the Ka Pa‘akai analysis which elevated conversations with ‘ohana and community
- knowledge and thoughts exchange during this process were vital; provided input on historical and future use of wai in relation to Kona
- all have collective kuleana to engage in process as to continue to coexist with proposed development and providing valid feedback and encourage pono practices in Kona and broadly throughout pae ‘āina.
- echo comments of testifier Charlie Young and Loke Aloua
- (water) resources being expended and don't know about it until invited into these

- types of conversations on managing and mitigating
- Mahalo to Deputy Manuel for the encouragement of families to come forward to share and providing a safe space to discuss
- could discuss more but understand this will take time to change mindsets; to assure the relationship of water and how it relates to ‘āina and people.
- comfortable with the recommendations being provided to the applicant

Ms. Ashley Obrey, Native Hawaiian Legal Corp. on behalf of Hui Ola Ka Wai

- client group of Kona practitioners and Kea i loko i‘a has long expressed concerns about groundwater management in Kona; potential impacts to the shoreline; lack of approved water use and development plans to guide decision-making
- Mahalo Deputy Director Manuel, the Commission, ‘Aha Moku, and those involved in the process to diligently go through the Ka Pa‘akai analysis
- consultation resulted in proposed conditions to mitigate impacts but is the bear minimum; a compromise but still are reasonable, feasible actions
- approach of convening a community is a step forward in managing water (in Kona) and sets a higher standard on how to approach these issues
- the staff submittal suggests the cultural perspective of water implying water resource management is holistic and cumulative
- the precautionary principle and Commission's duty to protect wai proactively
- still an unclear picture of shoreline impacts; the EA for the well had a very limited scope; need to address additional withdrawals in Keauhou as climate change continues
- USGS model demonstrates the high level is in contact with the basal aquifer; argument of disconnect cannot continue to inform an action by permit applicants and agencies
- impacts of all future pumping in Keauhou is guaranteed and cannot be disputed
- resource management discussions need to be on a regional to a regional perspective
- second look at designation to ensure our public trust resources are managed in a responsible way and is consistent with the commission's duties
- no CCH requested (by Hui) as there was a mutual understanding and agreement with conditions; CCH burdens people to do what's legally required of other entities
- applicant’s stance on some of conditions was concerning; there’s a need for a larger assessment
- raised the fact as to whether the housing is affordable?
- if the Commission negotiates or water-down these set conditions, potential upcoming CCH
- support the proposal but as limited to just Ota Well with these circumstances and facts; need a broader conversation about water management and future approaches

QUESTIONS

Commissioner Buck – can you inform the Commissioners on other aspects you're supporting that are not currently in this proposal?

Ms. Obrey – I can't speak to the breadth of what existed as I did not personally attend those meetings on behalf of the Hui. From conversations in the broader community, there was more being asked for that is not before you today or asked of. There's so much more that needs to be done in Kona in terms of understanding impacts, traditional customary practices outside of the (4) ahupua'a for this permit that still needs to occur.

(end of public testimony)

QUESTIONS/COMMENTS

Commissioner Hannahs – (to Mr. Command) Thank you for your testimony on behalf of the Mayor (Roth). With the Kealakehe wastewater treatment plant issue, does the county have plans to upgrade that to R-1?

Mr. Command – Yes, there are plans to do it but, priority is the question. Our number one priority at this time is to upgrade the Hilo wastewater treatment facility. It's at a critical phase that needs to get all of our attention and need to do as soon as possible. It's a \$175 million dollar project

Commissioner Hannahs – the recommendation as written requires the applicant to upgrade the Kealakehe Treatment Plant to R-1 at their sole expense or something you'll share as I assume that plant serves a larger universe.

Mr. Command – it serves all of Kailua-Kona and our responsibility, a county facility; we're going to upgrade it, just a matter of when.

Commissioner Hannahs – have you talked to the applicant about what their fair contribution would be?

Mr. Command – haven't had any substance of conversations about that.

Chair Case – is it that the county upgrades the facility and the applicants, the landowners pay to do the connections?

Mr. Command – in certain instances, yes. The sewer infrastructure was put in in 2011. There is a dry sewer that connects to The Ka Makana Villages area and is part of ARA money (American Recovery Act).

Chair Case – I understand that it's a capital project; do the users pay for the facility on a pro-rata basis or pay for their connections?

Mr. Command – pay a user fee in this particular case.

Chair Case – reiterated, a user fee to use it and pay for installing their lines to connect to it if you have R-1? (*shared an the example of Lahaina in West Maui*) how does it get reused? Do users pay for part of the capital to upgrade the facility or pay a user fee to access that water

and put in their own lines? Figuring out where we should be putting the focus.

Mr. Command – It would be a user fee for the resource, and we would put in the infrastructure up to the property line, and from there they would be responsible for hooking up to the system then pay a monthly fee. That line is planned to go all the way to Keahole Ag lots and serve all the properties along that corridor.

Chair Case – so, you have a county plan to upgrade the facility to be able to distribute R-1 wastewater for reuse and put in the lines to distribute that water.

Deputy Manuel – added managing water from mauka to makai was an important concept. The community knows there are other impacts to water resources and the coastal ecosystems beyond water and coastal discharge; that the quality of water is an important thing to consider. As you traditionally manage water throughout the ahupua‘a, there are ways to mitigate that discharge. Highlighting that how you use that water is a critical point to protect resources.

Goal was to have these projects strive to, reuse water, conserve, minimize waste, and that we collectively support the county in the upgrades to R-1 because it will reduce the amount of good groundwater relied on and use for irrigation. Using the best quality of water for the highest and best use which was reflected in the community’s conversation and sentiment.

It's not necessarily tied as a condition to each of those, but more like a collective strive to reach these goals. It wasn't a hard statement of “you have to pay for an upgrade” so want to make that clear on the record.

Mr. Young – the holistic view is that you take clean water out of the aquifer, we pollute it then return it polluted, doesn't make sense. The mitigation measures being proposed is that step in a direction towards thinking we ought to be returning it in the best possible condition and if we recover some of the water instead of wasting it, that will put less demand on the aquifer. So why wait until we must go to court?

Mr. Barbour – we're not connected to the regional sewer system and there's no plans for us to connect to it, but we support the county's efforts to upgrade that system.

Mr. Command – we're in line with all the goals that have been stated here today, it's the matter of cost and priority. One of our goals is to get agriculture off potable water and use reuse. The County is open to talking about this.

Commissioner Buck – for item 1.c.3. – “once the Kealakehe Wastewater Treatment is upgraded by the County to R-1 capabilities, the permittee shall connect to the facility”. Does that capture the intent of what we're trying to say in this permit application?

Deputy Manuel – could be doable as feasible; as mentioned, NELHA is not currently connected. If they have non-potable demands that could be met from R-1 water, the intent is that would help to support their projects as well as reduce pumping in the future.

I was going to add “...therefore request that these projects strive to support...” (then those three items). For item C.1. and c.2., is general practice and part of our kuleana to ensure

there's no waste and being efficient. Seems one of the hang-ups is the issue with the third item and would welcome your recommended amendments. It meets the intent of the conversations with practitioners.

Commissioner Buck – your suggestion is a bit cleaner, and I support that for amending item 1C.

Commissioner Kagawa-Viviani – (to NELHA) as stated you're not connected to the regional sewer system; what is NELHA's waste management?

Mr. Barbour – we're not big polluters; almost all water is used for aquaculture and is lost to evaporation.

Commissioner Kagawa-Viviani – is there processing before that water is discharged?

Mr. Barbour – we have approved wastewater treatment systems for each individual site but almost 95% of the water is lost to evaporation.

Commissioner Kagawa-Viviani – appreciate the work in the proposal from 'Aha Moku. What becomes clear in listening and reading is that the use of the well or construction is the beginning of the process of usage if it's determined the water is useable and the cost of pumping; but it removes the resource from both the ecosystem and has downstream effects on traditional and customary practices.

Harvesting of this water creates a waste issue- the more water used and wastewater created the more processing necessary and risk of downstream nitrogen impacts to coastal resources. (*to staff*) Is there a way to pay into a fund to support all watershed management as a form of creating a reciprocal relationship and in contributing in management and research? There's also the issue of the impacts and mitigating how coastal resources are affected by this usage, withdrawal of fresh water, addition of nutrients and pollutants; is there a way to pay into a fund that could support the capital improvement? It provides an opportunity for everybody, including users of the water to be good stewards.

It goes beyond the scope of this particular permit, but it also sets precedent

Deputy Manuel – these recommendations and special conditions are tied to what the feasible actions are, as identified in the Ka Pa'akai analysis with 'Aha Moku, specific to that process. How do we invest in our forest and management and in upgrading for R-1 reuse? There're potential sources for example, the revolving funds from Department of Health. It's bringing people together to look at how to leverage resources to focus on cumulative goals that can get us to become better stewards.

The Commission have various funds which we collect fees and can get donations for example, we received a donation from Pūlama Lāna'i to help with funding our climate change study impact to recharge.

Highlighting that the recommendations and attached conditions are specific to this process on this permit but there are other opportunities for partnerships and collaboration.

Commissioner Hannahs – I was confused by Mr. Barbour’s comments because we're not talking about the current NELHA operation on whether it's connected, we're talking about the new 2,000 units that are coming online. It seems irresponsible from our standpoint to bring on 2,000 new units without contemplating how we connect those that would provide an R-1 level of outcome for the water. On the other hand, it seems unfair to put upon NELHA and the 2,000 developments of the units, the full cost of upgrading a plant that serves a wider service area.

I love the idea we're attaching this dialogue to the withdrawal of the water that needs to be treated, but it's a much larger conversation. In the spirit of NELHA trying to define their contribution, if that's a conversation they might have with the County as to what an appropriate contribution would be on their behalf and get back to us on a later date? We expect that some fair commitment of capital be developed. I think the County would welcome and this could catalyze the funding needed.

Clarifying that we want some assurance to think seriously about making contributions to proper treatment of wastewater for new developments that are needed, and we want to support with water allocations.

Mr. Minakami (HHFDC) – Regarding the matter in housing developments typically pay for capital costs, especially for County, it’s typically through an impact fee or facilities charge. On O’ahu, we connect to the Board of Water Supply system. There is a water facility fee the development will pay to BWS for its capital investments. I would think the County of Hawai’i is doing the same for this reclamation facility or could be made up in the annual user fee. It’s the most equitable way to spread the cost of capital improvements among multiple users. We'd be willing to pay our fair share for any service or user fee.

(Commissioner Katayama technical difficulties)

Commissioner Buck – check on item 4.b., clarify the date is August 1, 2021?

Deputy Manuel – thanks for that catch. So for the time period of 120-days and would recommend that be amended-to submit that scope for item 4.b.

Commissioner Katayama – on the fee assessment governance process, we have a general management action plan that identifies what the \$525,000 per year what the Water Resource Protection Plan is. How is that developed and what's the genesis of that plan and budget?

Deputy Manuel – this is tied to the watershed management plan that is developed by DOFAW and outreach by community, as part of the Honua’ula Forest Reserve Management Plan. In conversations with the practitioners, they recognize DOFAW as a caretaker of those forests at this point in time and the need to work with those that have capacity and access to do the work of forest restoration and management. That’s how it was tied into the recommendations and mitigation actions as recommended by ‘Aha Moku.

(Chairperson Case asked Commissioners for corrections to the language of the recommendations)

Commissioner Buck – added in 1.a. after the word “year”, to put “during active use of the subject well”. The word typical ain’t going to fly anymore in the future, especially in a water stressed area. I encourage all water users to realize that the times have changed. Climate (change) is coming and the ability to spread the costs of maintaining the public trust which includes traditional cultural Native Hawaiian rights, as well as watershed protection, needs to be incorporated into use of the water at all levels. The public trust is not “free” anymore; it costs money to manage the resources.

Chairperson Case asked Deputy to summarize language.

Deputy Manuel – what I hear is to take out the extra “b” in recommendation 1; “...shall be special conditions...”; Adding to 1.a. is after the word years, put “during active use of the subject well”; Item 1.c. at the end of the first sentence to amend to say “...these projects shall strive to support that...” and list the three items.

It's more a goal to reach in your project development as well as support in general we collectively as a community, support those efforts.

Chairperson Case – reiterated on the date of August 2021.

Deputy Manuel – the date for 4.b. – I recommend striking August 1, 2021 and say “... no later than 120 days after approval...”

Commissioner Kagawa-Viviani – I know we want to strive, but if we could get more concrete on how permittees and potential water users can contribute to the water recycling efforts which would alleviate demand and connect with DOH on water quality. Is there a way to provide actual specific recommendation and action?

Deputy Manuel – because a lot of this is tied to the implementation of and or technicalities of funding or how these systems are operated, the intent from the recommendation of the ‘Aha Moku is more value set driven versus the mandate to contribute monies at this point. It was to support the efforts to be responsible stewards not necessarily a mandated fee or contribution to the project upgrade.

I'm comfortable with the recommended amendments versus the more specific because I don't know what is or isn't possible at this time. We would benefit from that value statement within the action item versus striking it out because we can't come up with a specific number or contribution.

Commissioner Kagawa-Viviani – okay, we'll put a pin in that and think about how we operationalize it.

Commissioner Katayama – is there a definition that we use for waste?

Deputy Manuel – I need to double check in the code if it's defined and would tap on my branch chiefs and our Deputy AGs. It's also considered in a lot of the court cases that we've heard; the analysis and discussion on waste is defined in those dockets and further defined in the code. Waste is something that we have a responsibility over.

Commissioner Katayama – on water resource management plans and the frequency to address issues at hand, is there a mechanism in place to encourage incubator type activity as we go through and look at approving capacity development either we defer or not assess at all? It's part of our responsibility how we look at these resource plans.

Deputy Manuel – this is what came out of the consultation and that analysis of this group. Your recommendation and ideas of supporting incubator projects and other types of work that would help to mitigate impacts is something we can consider in the future permit reviews and in our planning processes.

Commissioner Hannahs – I appreciate that these are aspirational and represented values but would be nice to put our money where our values are to ensure they're achieved.

For item 1.c.3 add "...an impact fee for connecting HHFDC development to the Kealakehe Wastewater Treatment Plant and providing proportional support for its upgrade to R-1 capability shall be negotiated between applicant and the County..." We want them to not waste water, to reuse water, and be ready to pay their proportional share of an impact fee to the County.

Commissioner Seto – (for HHFDC) In terms of how they would be supporting the payment of the fees that we're going to be imposing on them; Does it pass down to the affordable housing owners in maintenance fees?

Mr. Minakami – Yes, our project developer for Ka Makana Villages is Stanford Carr Development and would be responsible for all of the development costs for the project. They would have to pass down the fees to the homeowners and that's our concern. We have many fees, from transportation to utility costs and fees always increase. We're concerned it's just another added fee which ultimately could just make the project infeasible in which case, the housing doesn't get developed.

Chair Case – I want to be careful the wording doesn't impose on these users something that is county standard. It sounds like the capital and expense to build out to R-1 and provide connections to sites, is a county expense and county-wide because the county services everyone.

Everyone recognizing that getting to R-1 is a priority and the Hilo wastewater situation sounds very important. I don't want us to kick the can down the road. I want the word support to mean we will advocate for it and keep the discussions going between the county and project developers, the 'Aha Moku, and communities. It's not just something that we're going to do when we feel like it, we got to get there.

We're running out of water, getting a drier society, drought, fires, population increases, and this is not getting any better. We need to move from the idea of water reuse to something that we all recognize is a critical part of our overall water budget.

Commissioner Hannahs – I agree. From the standpoint of the nature of this project, the County and can say "0", we don't want any money. Your proportional share for this project, HHFDC in light of its affordable nature, it's what they choose to assess.

We're saying to contemplate this because it's not good for the resource or T&C practices to have this water treated to less than R-1 that shouldn't be going back into our system. We want this to be contemplated ahead of time, and not just bring on another 2,000 units that can't bear the whole cost by itself; let's start fixing the problem.

Mr. Command – agree with Neil and Kaleo, even to the point of working with HHFDC towards an MOU maybe with CWRM as well. We're committed to doing it, it's a matter of tremendous costs in upgrading that facility. Again, our number one priority is ensuring a reliable system in Hilo as it could be disastrous if it broke down.

Commissioner Kagawa-Viviani – about the Water Resource Management Fund, when Commissioner Katayama asked if there could be incubator projects funded through that, could water reuse projects also be funded under or “paid into” it, or is it only specific to activities of DLNR-DOFAW?

Deputy Manuel – the use of the that fund is explicitly authorized under 174-C-5.5. It's quite open-ended but could justify supporting research but I don't think right now that CIP work is explicit. There is a State revolving fund dedicated to help support reducing total TMDLs; this project could qualify for that, and I think there's opportunity for creative and further conversations with Department of Health. We've gotten a lot of money coming down the pipe from the bipartisan infrastructure bill.

In the near future, we could collectively elevate this as a priority and work with DOH and the County of Hawai'i and help support in accessing federal and state funds, and advocate with our legislature to get resources because we understand how important this facility is in this region to continue to allow for more connections, development, but really the protection of resource and balancing the use. We need to multi-prong it and that's why a lot of the recommendations are loosely written. Again, agreeing to a value set that we can all work towards achieving. The ones that are specific are identified.

I don't want to pigeonhole us into focusing on one avenue of water resource management when it is supposed to be holistic in nature.

Chair Case – we just need to confirm whether the word support is going to be general and philosophical in nature or something more specific. I'm in favor with leaving it with the word support, so let's clarify that. *(asked Deputy to read the proposed language)*

Deputy Manuel – the language proposed would cover c.1., 2., and 3. and add “...that these projects strive to support...” the projects themselves are striving to...water is not wasted and use efficiently, water should be used as much as possible, support that the Kealakehe Wastewater Treatment Plant be upgraded to R-1 capacity...” This language is not necessarily saying they'll be the end users and recipients of the R-1 because infrastructure may be limited or they may not be able to connect, but by upgrading it would reduce the injection of wastewater that affects these near shore and coastal ecosystems.

In the conversations, the community understood the benefit on both sides. Reusing it, but also managing water quality in order to protect access to resources they rely on.

I didn't include Commissioner Hannah's recommended amendment on the third one but if you want to elevate that we can.

Commissioner Hannahs – I recognize the chat shouldn't be used but thought it's a sufficient way to show you the language that I came up with.

Chair Case – (Commissioner Hannahs) proposes in c.3., an impact fee being negotiated between NELHA and HHFDC and the County to help fund connection of this development to the Kealakehe Wastewater Treatment Plant, as well as provide proportional support for the plants upgrade to R-1 capability.

Chair Case – I don't agree with that language because I think it veers into the capital expense that the county has said is their expense. If you're going to use R-1, you're going to have your own expenses to do a connection and to figure out to use it appropriately. I don't think this works that everybody contributes to the capital expense of the delivery of the R-1 water.

Commissioner Hannahs – fair enough, thank you.

Mr. Command – clarified the dry infrastructure already exists to connect. It's a matter of upgrading the plant to R-1.

(Chairperson Case proposed to not include Commissioner Hannahs language; Commissioner Hannahs agreed and informed we're back to support as a general word)

Commissioner Kagawa-Viviani – clarified that item 4.b. was also revised.

Deputy Manuel – yes *(reiterated clarification of 4.b. amendment)*

081622 01:46:04

MOTION: (BUCK/HANNAHS)
To approve B-1 with recommended amendments.
UNANIMOUSLY APPROVED

Chairperson Case thanked everyone for their efforts especially the community members, 'Aha Moku representatives and others working to ensure the direction of balancing use of our resources, respect for our 'āina and how we use the water that we get in a sustainable way. Also, thanked HHFDC, NELHA and the County for their participation in these discussions; and especially Deputy Manuel for facilitating this process.

It really is an applicant responsibility to lay out this framework and we are paying a lot more attention to this framework, the Ka Pa'akai analysis; the thought process into these questions about how we use and reuse our resources. The fact that the Deputy Manuel was able to guide the process was excellent and I want to encourage applicants to take this as a model, initiate these discussions and keep the communication going.

Members of the community want to have a more direct communication with NELHA and HHFDC on their plans and hope this sets those relationships in motion and can continue. This has been a tough one for years for a variety of reasons; dry weather, impacts to

groundwater dependent ecosystems and customary practices along the shore in Kona. It's an unusual place where water comes down from somewhere and springs out of the coastline and something that we have to protect as work to balance these public priorities like affordable housing and hope it can continue going forward.

RECESS: 10:49 AM

RECONVENE: 11:02 AM

081622 02:02:24

B. ACTION ITEMS

2. Request a Delegation of Authority to the Chairperson to Enter into a Joint Funding Agreement with U.S. Geological Survey for Statewide Hydrologic Data Collection and Water Resource Monitoring for Federal Fiscal Year (FFY) 2023

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

Dr. Strauch stated the submittal request and noted it's CWRMs annual cooperative agreement. Page 4 of the submittal was highlighted noting the rainfall and groundwater monitoring parts of the agreement remain the same as FY2022. With respect to streamflow monitoring, the addition of 2 low flow stations that were previously funded by a separate one-year agreement last year to this agreement, with hopes of additional funding, to upgrade them to real time, monitoring.

A couple of stations are being transferred to other cooperators on Maui Island. Mahi Pono will assume funding responsibility for one station on Wailuku River. The Commission is assuming responsibility for a new station on Waikapū Stream. This is part of our monitoring efforts with regards to Nā Wai 'Ehā surface water management area.

Hawaii County Departmental Water supply will assume funding for a low flow station above the Waikoloa Stream diversion in Waimea (Hawaii Isle). The Commission is temporarily assuming responsibility from the City and County of Honolulu for 2 stations in Kaukonahua below Lake Wilson and on Wahiawa Ditch. We hope the Department of Agriculture and/or ADC assume a more active role on the North Shore and the management of Lake Wilson / Wahiawa Reservoir and assume responsibility for ditch flow monitoring there.

Also noted the (2) additional stations along Hamakua Coast

PUBLIC TESTIMONY – none

QUESTIONS/COMMENTS

Commissioner Hannahs – referred to the new climate bill and asked are there resources there available to expand our network or receive support for these kinds of expenses?

Deputy Manuel – I haven't looked into detail about that specific bill and referenced Planning Branch Manager, Ms. Katie Roth who has expertise in accessing federal funds. We've been proactively looking at all federal funding available. We will continue to look at how to leverage our State resources with Federal funding and access as many of those programs possible.

In the context of sustainability, this may be a one-time infusion of federal funding and a lot of these monitoring networks need that infrastructure built in. We are working with USGS and other federal partners on those kinds of larger federal requests.

081622 02:07:45

MOTION: (HANNAHS/KAGAWA-VIVIANI)
To approve B-2 as submitted.
UNANIMOUSLY APPROVED

081622 02:08:09

C. NON-ACTION ITEMS / INFORMATIONAL BRIEFINGS

1. Analysis of Non-Instream Water Uses Relying on Water from East Maui Streams

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

Dr. Strauch gave a PowerPoint presentation highlighting the streams of East Maui in relation to the non-instream uses. Maui has an uneven distribution of rainfall and have large elevational gradients resulting in an uneven distribution of perennial streams for aquatic habitats, vegetation, and an uneven distribution of groundwater recharge.

On Maui, there's also an uneven distribution of demand for agriculture and potable water supply. It's especially apparent at high elevation, noting the upcountry region of Maui has a large potable water demand and is mostly dependent on surface water resources because of the high electrical costs to pump water uphill. This region is growing in population and in agricultural demand (*noted the climate changes [declines in rainfall, increased drought periods]; highlighted the sources of water from the hydrologic units; and outlined the non-instream uses of East Maui surface water of the Upper & Lower Kula, EMI Systems, Maui County DWS Upcountry System*)

The future demands notes delivery to DHHL to meet non-potable needs at Pūlehunui and Kēōkea; increased demand for potable water to meet population growth; and increased demand for non-potable water for agriculture demands.

There are a number of wells in the subject area, but many are contaminated with legacy pesticides and require additional treatment.

Photos of the stream intakes, diversions, and reservoirs were shown and highlighted as well as the various streamflow data.

QUESTIONS

Commissioner Buck – noted on the Upper Kula streams IIFS which was set and are the primary source.

Dr. Strauch – the instream flow standards are below the lowest irrigation system near Hana Highway; but Honomanū is not diverted by the upper Kula system.

Commissioner Buck – so there's no water being pumped up there (to upper Kula) and the IIFS are set for those.

Dr. Strauch – yes

(continued presentation noting and explaining photos of stream intakes, diversions, and stream flow data of the various water systems and treatment facilities, as well as Mahi Pono uses and timeline [diversified Ag], IWREDSS data)

Estimate that the 1:5-year drought demand for most (Mahi Pono) crops will need between 2500 & 3200 gallons per acre, per day for lower fields and 2400-2800 for its upper fields. The Mahi Pono wells were highlighted and noting the sustainable yields for the area(s). The anticipated non-potable water demand table structure for Mahi Pono were also highlighted.

QUESTIONS

Commissioner Hannahs – how does the Mahi Pono projected need compared to HC&S historic use?

Dr. Strauch – the historical usage of sugarcane on the central plains estimates at 120-180 mgd which was all surface water; they had access to a lot more groundwater because of the artificial augmentation of the of recharge (*further explained on the dry-season demands*). The extent to which that historic pumping is sustainable is yet to be determined, which is why a future deep monitoring well is planned to be built in the Ha'ikū aquifer region.

continued presentation

DHHL's request for water reservation and projected water demands from East Maui were explained, noting also its Pūlehunui Regional Plan and the total request for non-potable needs to be at 1.28 mgd and 2.943 for potable needs. In Kēōkea-Waiohuli, the projected total request for non-potable needs to be at 9.85 mgd and 7.87 for potable needs.

Part of the alternative analysis for examining non-instream uses is looking at recycled water availability. There are a number of recycled water treatment facilities that could potentially meet some non-potable needs in the central valley.

A table of the East Maui Irrigation Ditch flows versus stream flows were explained noting the 2018 D&O. The water availability balance table were also shared noting that there is sufficient water available at median flows (Q50) but run into a deficit at low flow periods. There is a need to implement a management plan that addresses the irrigation needs and the critical infrastructure needed to maintain the farm(s), while also servicing public trust needs.

QUESTIONS

Commissioner Buck – the Mahi Pono farm plan does not include any contributions from West Maui?

Dr. Strauch – this is strictly East Maui; there's about just under 6,000 acres that are met with water from West Maui. That water does not contribute to the acreage that is serviced by water from East Maui.

Commissioner Buck – asked on the IIFS; does this include all of the streams on the table?

Dr. Strauch – yes; after 2018 D&O, this is the median estimated flow available through the EMI system currently today.

continued presentation

This includes the available sources of groundwater that offset surface water for Mahi Pono but does not include the potential recycled water. A data set from exhibits introduced during the 2010-18 Contested Case Hearing were shared. There has been a steady decline in rainfall and streamflow for the 1984 to 2013 period of record. A table showing the observed decline in water availability in East Maui streams and irrigation ditches were highlighted noting that updated data/statistics is needed to align with current climate patterns. Estimates used for the previous decisions are no longer relevant in the current climate period.

Proposed solutions as rebuild/replace diversions; fix leaks at diversion points; increased storage of raw water; reestablish pump line pump from lower to upper Kula pipelines; add additional pipeline capacity from Waikamoi to Pi'iholo water treatment facility; and increased groundwater monitoring to understand recharge patterns on basal aquifer.

The water code requires a dual mandate that we must protect and balance the public trust uses but also provide for reasonable and beneficial uses.

end of presentation

Chairperson Case appreciated Ayron's in-depth presentation and data sets presented and also his hard work in the field.

QUESTIONS/COMMENTS

Commissioner Buck – commented on how critical the upper elevation pipelines and water sources are at upper Kula; the IIFS are set on the (4) major streams and the importance of watershed protection and are seeing historic changes on many of the streams; a lot of the Kula water is used for public trust either domestic or municipal. Seems like some of the

planned up-country development may not be realistic if there's decline in water. I'm not sure of the additional 12 streams that we're considering on the amount of water that would be available. In previous D&O's we allowed the use of diverted water to allow flow again and need to relook at that and the farm plan output.

I don't agree with using surface water for an energy crop as it's not the best use of water. There are leaky reservoirs and not clear on the amount of water that can be pumped.

Are any of those takeaways not consistent with your presentation?

Dr. Strauch – that's accurate; what I'm trying to reiterate is that we have sufficient source, at medium flow to meet existing and planned uses. In a drought situation, we come into problems. Even in naturally flowing streams, low flows affect in stream uses. There are consequences for drinking water supply that were not anticipated because of little water available.

Some of these can be mitigated by increased usage of groundwater for drinking water supply or increased storage to level out the highs and lows of availability. I'm here to lay out the anticipated non-potable demands and potable demands of surface water from East Maui and any future action is going to have consequences.

Commissioner Buck – with this change in climate and the historic data, it may not be following the precautionary principle of water allocation.

Dr. Strauch – we need better data and getting better data through real-time monitoring. UH is developing more robust estimates of rainfall and recharge, we need better groundwater monitoring for estimating actual recharge of the basal aquifer. The thinking is that high flows will get bigger and low flows would get lower and median flows would be in the acceptable range, but the problem becomes what happens during drought?

Commissioner Meyer – appreciated the presentation as it showed a lot of moving parts and complex data but did not mention on the upcountry waiting list which is a 30 plus year old list for those awaiting domestic water meters. Asked to summarize on that and its gross numbers of demand.

Dr. Strauch – all that was from the Water Use and Development Plan which came from Maui County.

Commissioner Meyer – those numbers are telling the fact that people have been waiting for over 30 years for requests for domestic water service. Do you have any current numbers, estimates as to what the gross number of meters are in consumption?

Dr. Strauch – no; there's about 7 mgd if you were to total all of the applications on the meter list

Commissioner Hannahs – (presentation) was amazing yet alarming as well. Where are you in your community discussions of this data? Is this the start of it or have you had a lot of discussion with the stakeholders?

Dr. Strauch – we've been moving forward with discussions with the County, Mahi Pono and DHHL with regards to their off stream uses.

Commissioner Hannahs – there's a lot of people affected by this information that need to understand it better and we need to understand the impacts upon them better as well. Does this data suggest we're under spending on watershed protection in our State? Particularly we've declared a state of emergency because the axis deer. Is that affecting the resource that we have, and can this data help rationalize greater investment in those activities?

Dr. Strauch – we did watershed modeling in my previous UH capacity and looked at changing land cover from heavily invaded strawberry-guava forest to a native forest, across the Hamakua Coastline consisting of 80-90 watersheds. if you were to take current conditions and replace all the invaded forest with native forests, the water resource benefit is about 5 to 8% recharge and stream base flow. Not substantial, but still important and will make a difference during low flow conditions.

The upper Kula water system is in need of repair and we're not going to get 2 mgd of the streams just by improving the forest cover although there's other tangible benefits of reforestation. It's a sensitive cost benefit analysis as opposed to investing in storage of surface water.

Commissioner Hannahs – understand but the gap is so big, we need to do everything at this issue to recharge more and reclaim more and 5 to 10% will help. Aren't the effects of axis deer more severe than that as there's less on the ground you had in Hamakua, so if we can get the population control.

Dr. Strauch – we don't tend to see too many axis deer in East Maui watersheds.

Commissioner Katayama – appreciated the presentation and asked how efficient are we in capturing the peaks of these rain events so we can spread it over the dry periods, and is there the potential for improvement and tools to be more efficient?

Dr. Strauch – for the upper Kula system, we can capture a little bit of flow during peak events in the instream reservoir, but they're small. The big storage is off stream. The ability to get water from the stream during these episodic events to those reservoirs is hampered by the transmission pipeline. What is the max capacity that the pipeline can take from these streams during these high flow events?

A good middle ground is the lower Kula system as there's quite a lot of base flow generated from groundwater recharging the stream and is sufficiently large catchment basins for each of the diversions. You do get large episodic events that don't get diverted because the transmission pipeline reaches capacity quickly. There's insufficient storage at the lower Kula system which is why investing in that to help level those peaks and valleys in supply versus demand would be important.

081622 03:22:22

PUBLIC TESTIMONY

Dr. Jonathan Likeke Scheuer, for Dept. of Hawaiian Homelands

- DHHL submitted its revised reservation request for waters connected with the East Maui Irrigation System and those streams in December of 2020.
- Happy to see the Commission starting to consider those requests
- Did not realize this presentation was going to include a consideration of DHHL reservation request.
Thought this presentation was primarily focused on Mahi Pono's proposed off stream uses.
- Would want to review to help beneficiaries understand the significance of this presentation and what it means for future DHHL use of its lands at Pūlehunui and Kēōkea.

Ms. Lucienne de Naie, East Maui Resident and Maui Sierra Club Rep.

- appreciated Ayrón's research; request to have presentation posted on website.
- we need the best data and need to adapt.
- 'Apuahokumoa and Haipua'ena (streams) have only connectivity standards and not IIFS.
- from the 2008 and 2010 Commission hearings, in regard to the restoration of the 25 streams, staff did identify several long-term strategies for the lower Kula and Kamoli system; upkeep with the recommendations from prior hearings.
- spread the use of the upcountry system to more groundwater; there are private wells up country with large capacity and are not used.
- Ag working group could do a presentation to CWRM
- need to get the right numbers in our water use and development plan.
- in Mahi Pono current reports to the land board every month, it estimates current average at 1,500 gallons per acre.
- need update on the status of the well that's being proposed in Pukalani to serve DHHL as it could be a solution.
- the upcountry meter list, is roughly 1,500, but the WUDP does not reflect those current numbers.
- over the last 5 years, larger projects are drilling their own wells and are not using stream water; they're on the county meter list and is figured in the demand but it's not county demand, it's demand on the aquifers.
- need to take care of our ecosystems in the lower watersheds; stop the leaking in the system; need to make the diversions more efficient; don't waste water; and to take care of the lands below the fence lines which produce a lot of water for the ditch systems that communities below the highway and the farming of Central Maui depend upon.
- investing more funding in DOFAW was a good recommended first step suggested by Chair Case and can enlist community support.
- Maui County is proposing a water authority to get leverage funding from Federal and State sources to have people in the community work to improve the watersheds.
- encourage a community presentation to propose solutions to complement Ayrón's work.

Mr. Darren Strand, Mahi Pono

- farmed in Hawaii now for 22 years, and this area of Maui for 18 years and is a manager at Mahi Pono
- appreciated Ayron's presentation.
- Mahi Pono is moving forward on farm plan; in line with EIS; currently planted 5,800 acres; between now and the end of the year, plant another 3,200 acres; in 2023 will plan to plant another 3,500 acres
- have 5,500 acres in in pasture and several 100 acres in real crops; on target to finish planting just under 16,000 acres by 2025.
- we're implementing practices for water efficiency on the farm such as using moisture sensors and timing the irrigation that we have water coming across the ditch systems and going directly to the fields
- upgraded on-tree irrigation from a drip system to a vanget system, a micro sprinkler
- started pumping groundwater several days a week; using about 5 million gallons of water per day from that source.
- yielding about 17,000 pounds of sellable fruit to various stores; pumpkins, carrots, sweet potatoes beets, kales, lettuce, onions, and various citrus trees with 100% of harvest being sold in the state of Hawai'i; Mahi Pono feel is making a significant impact on the local food production.

QUESTIONS

Commissioner Buck – trying to understand the economics of the maintenance and of the delivery system and heard there's opportunities to capture increased storm output but one of limitations is the transmission system cannot handle those higher flows and increase reservoirs. Do you have improvements in the ditch system that would be able to take advantage of high storm events?

Mr. Strand – Ayron is probably more familiar with our transmission system but know we spend a lot of effort preparing for those high storm events to impound as much of that water as possible and use it in the right area of the farm. The transmission system is not my area of expertise in our operation.

Commissioner Buck – there's a lot of public trust opportunities and so someone needs to frame that up. We all know to increase reservoirs and larger transmission systems to certain ditch outlets to capture those. Would be great to get a realistic number to do a cost analysis and as a community, raise the funds and help increase a more efficient use of the water. If you have engineers, it would be helpful for us.

Commissioner Meyer – what's your capacity for utilization of R-1 water closest to Kahului and downhill from Pukalani?

Mr. Strand – as with the infrastructure that's necessary, I'm probably not the best person to speak to; the challenges that R-1 bring agriculturally on food crops, it raises a set of food safety standards. I think we're fully prepared and eager to have the opportunity to use R-1 water. In a lot of ways, the management of R-1 water is very similar to brackish water.

We have a set infrastructure system that moves water around our farm. In the past, we've had dual systems to use treated water and those aren't always efficient. My concern would be the food safety standards in place and being able to meet those requirements and a dual system management can be cumbersome.

(PUBLIC TESTIMONY – CONT'D)

Mr. David Frankel, Counsel

- a lot of data and technical issues need to consider.
- the Kamole treatment plant capacity is 6.1 million gallons a day. The County water department staff testified under oath about it.
- the amount of water consumed by the Kula Ag Park is significantly less than presented; the park routinely uses less than 1 million gallons a day; that number needs to be reflected in terms of other Ag uses that are not Mahi Pono; it would reduce the demand. significantly
- assumption that no more than 20% of the water used can come from groundwater because of the concern about salinity; but at current uses, that's not true at all. 20% number isn't valid when essentially low volume total of irrigation being done.
- EMI ditch lining issue was not mentioned in the presentation
- poorly written finding of fact in the water Commissions decision back in 2018.
- as a baseline, the Commission should be asking staff if 64% of the base flow is restored to all these streams, how much water does that mean? Concluded that 64%, is the minimum needed for the reproduction growth and recruitment of native species.
- CWRM do not have information on the current demand of the streams that are de watered; currently, A&B is authorized to take all the water from these 12 streams because there are no meaningful IFS.

Ms. Tara Apo-Priest

- thanked Ayron for his eye-opening presentation.
- testifying in strong support of setting a meaningful instream flow standards for these 12 streams.
- important these streams are allowed to flow through every level of the watershed, being an integral part of our ecosystems from mauka to makai, to the ocean, supporting near shore marine environment and fisheries, local fishermen, and native Hawaiian gathering practices.
- environmental protection is also a protected public trust purpose and should receive priority.
- the Huelo communities are not connected to the county water system and some residents still need to truck in water during drier times to support their domestic and agricultural needs, while millions of gallons a day are diverted from the streams.
- community voices may have been underrepresented and need to be considered in your analysis.
- Mahi Pono is the largest current end user of East Maui water and have historically overestimated the amount of water needed for diversified agriculture and their domestic need is much smaller than the amount diverting.

- large amount of water is wasted in transport and storage and could be mitigated; this should be a priority; less water wasted means more water available for all needs
- hold our large end water users accountable to the highest standards of water conservation and water efficiency.
- glad to hear that Mahi Pono is looking at measures to conserve water as best practices reduce the demand on water for this area.
- setting IFS standards and allow water to return to the streams provides the opportunity for local communities to thrive, pursue farming efforts, support their domestic water needs, restore concepts of ahupua‘a water models and resource management and sustainability that have been successful with native Hawaiians.

Mr. Zen Powers

- testify in support of establishing instream flow standards.
- born and reside near Ho‘olawa Stream.
- the rivers stopped at the Ha‘ikū ditch a prime mosquito breeding habitat which is a public health concern, a threat to our native bird species; this area has recently been identified as a potential reintroduction area for the native Hawaiian crow.
- after sugar stopped in the central valley, noticed constant flow in Ho‘olawa Stream; blight affecting the mango trees along the river.
- mismanagement has caused a number of concerns for our community.
- remnants of rusty metal throughout the stream.
- see that stream life and environment is returning; ensure it can continue to live, grow and thrive in this area.
- section of Ho‘olawali‘ili‘i that is completely diverted
- want the water resources managed that acknowledges the endemic stream life and communities as well as supporting domestic and agricultural uses up country and the central valley.

Ms. Char Schulenburg

- Kihei resident; immediately adjacent to Lā‘ie wetlands
- support our ecosystems of the instream flows.
- echo Ms. Tara Apo-Priest testimony
- near the wetlands is a big fishpond that is no longer used – Kealamoimalia.
- Kihei communities deal with large storm events that affect the nearby fishponds; so, in terms of sustainability and resiliency, we need to think of the whole
- to bring our ahupua‘a system back, we need to bring all elements of people together through these discussions, have an authority on the brown water events to the fishponds and the reefs.
- need an authority on watersheds
- overwhelmed with all information; need experts in areas to come together and share dual processes on flooding mitigation, catchment, storage areas, infrastructure
- what are some more reasonable, cost-effective ways? The pumping of water up to Kula is not feasible.
- need more data and to think about this in a broader sense.

Ms. Mary Ann Pahukoa

- appreciated the presentation
- Mahalo Lucienne for clarifying data
- East Maui resident; testifying since 9-years of age; descendant of area.
- return stream flow in Huelo streams; Waipio Stream dry since 90s and dewatered at 100%
- have catchment system but to date having to drive to Ke‘anae to shower.
- no water rights; all water going to Mahi Pono
- East Maui food production supersedes Mahi Pono
- interim instream flow standards work if they are regulated and monitored
- Mahi Pono needs to be using recycled water; do more to protect the watersheds
- too long have the streams been abused by large corporations
- the communities are the ones who walk and are on the streams on a daily
- urge commission to protect our water resources for the benefit of all

(end of public testimony)

081622 04:05:13

QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – thanked all those providing testimony today to get a sense of what you see and experience. In May, walked part of the ditch system and it was eye-opening to see the stream dewatered and in (4) different locations. These are gaining streams, but it doesn't change the reality of what you're experiencing or know on the stream. It's also equally challenging to think about the broader landscape of Maui as it's not just the dry areas that are getting dryer.

Commissioner Hannahs – thanked all the testifiers. (Ayron) do you have a sense of when this will be coming back?

Dr. Strauch – either a draft in September and an action in October.

Commissioner Buck – having participated in the East Maui visits, being able to have a draft then hearing testimony, and come back in another month is a reasonable strategy.

Chairperson Case thanked Ayron on the detailed presentation and hope to see it available online as it's helpful to understand the whole.

RECESS: 1:08 PM

RECONVENE: 1:32 PM

081622 04:10:28

C. NON-ACTION ITEMS / INFORMATIONAL BRIEFINGS**2. Update on Drought Conditions and Next Steps for Water Shortage Planning in Pearl Harbor**

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

Mr. Fujii gave a PowerPoint presentation highlighting the next steps for water shortage planning in Pearl Harbor. The outline of the briefing was noted. Parts of the State of Hawaii shows all island under moderate to an extreme drought condition (*updated map is published every Thursday*). Dry season will continue with below normal rain fall throughout all islands. We rely a lot on the water levels in the state monitor wells to tell us conditions on the aquifers and trigger certain things in the Pearl Harbor Water Shortage Plan

The current 12-month moving average pumpage chart of Waipahu-Waiawa, Waimalu, Ewa-Kunia Aquifers along with their water level observation data were shared. The PHWSP was adopted by the Commission August 18, 2020. It established a permit classification system and actions taken in the event of a water shortage. We are currently in Stage-1 "Watch" (*Stage-1 triggers and actions were highlighted along with the established permit classification and stage cutbacks*).

Staff response actions and next steps were noted which includes coordination with other agencies, increased data collection and monitoring, public messaging, and emergency rule to declare a water shortage.

QUESTIONS/COMMENTS

Commissioner Buck – what would be the timeframe for an emergency rule?

Mr. Fujii – the emergency rulemaking is under Chapter 91 and public notice requirements

Commissioner Buck – *asked Deputy AG Julie China*

Deputy AG – need to get the rule drafted, do a special meeting if you do it between your normal meetings.

Commissioner Buck – clarified if the commission could approve an emergency rule without going through public hearings or legislation and the actual commission meeting is the public meeting?

Deputy AG – I can double check and talk with Neal about what needs to be done; do have to approve emergency rule making and there's got to be a rule that goes out when you do make the approval.

Commissioner Kagawa-Viviani – how responsive are the deep monitoring well water levels to annual rainfall?

Mr. Fujii – it's a lot more responsive than transition zone. We looked at what different triggers we could use; chlorides, water levels, rainfall, and/or deep monitor wells.

The rainfall network was either not robust enough or not enough years of data in certain places. For Hawai'i, Kevin Kodama is one of the experts that puts all the data to a weekly analysis. Yes, it's meteorological but could also be hydrologic if the stream flows are low, (there may also be) agricultural drought in certain areas.

Mr. Barry Usagawa, Hon. Board of Water Supply – (BWS) monitor head levels on a monthly basis and think it's responsive as it's like an indirect connection to hydrology. When it rains, we cut back pumpage when demand goes down and pick up head level increases, it's immediate.

We only monitor monthly however, when it's low, we'll increase that to weekly. In terms of recharge, it's on a monthly. In 2003, we had a serious 6--year drought and in 2004 had high rainfall and the head level took 6--months to rise. Also depended on where, how much rain, and conditions. It's pumpage that drives the head levels.

Deputy AG – for emergency rule making, it's an abbreviated thing and can do relatively quickly but it's only good for a 120-days and can't be extended. In situations where we know will go beyond the 120-days, we recommend regular rulemaking in addition to. You need to state the reason in writing for emergency rule making and have your draft emergency rules set up already. Those are things you can prepare for and have ready to go in the event you decide to perceive in this manner.

Depending on how you want to approach it, you can do it with or without public hearing, but it will have to be approved by the Commission.

Mr. Imata – clarified if Commissioner Kagawa-Viviani's question was regarding time lag between the deep monitor wells and water levels in other wells.

Commissioner Kagawa-Viviani – the precept of monitoring wells that are used to identify drought conditions; what's the difference between when you use the drought monitor as a trigger versus water levels? What's the timeframe of getting out of a drought?

Mr. Imata – spoke with Mr. Patrick Casey, CWRM Geologist confirmed our deep monitor wells are located far enough from pumping centers. In terms of the deep monitor well profile, we'll see a significant lag time between water levels and impacts to the midpoint of the transition zones.

Mr. Usagawa – coordination between the Water Commission and the Board of Water Supply and to all large utilities; it's helpful the State has a water shortage plan. When we start seeing low water levels, we take action. Immediately we (BWS) put out conservation messaging to our customers. We don't have authority over the other users and private sectors and the military, we have no jurisdiction over them so, that coordination between the BWS and the water commission is important. If we're experiencing low ground water levels, then we need all well users to cut back.

Ms. Katie Roth, CWRM Planning Branch Manager – (to Commissioner Buck on rule making) it can be quite cumbersome and was a concern discussed with the AG's if that was a process that could be avoided, or whether we could amend HRS-174-62 to eliminate the word "by rule".

Unfortunately, we need to continue with the process of rule making because if we don't do it by rule, we could potentially open ourselves to contested cases. We do recognize the need to respond to these types of situations which are emergencies. In the case of Pearl Harbor, we've hit that trigger for drought conditions. Also recognize the Red Hill fuel leak is also exacerbating and compounding the threat of future water shortage.

We are actively looking into clarifying within HRS and our admin rules to add the ability to make decisions during emergency situations involving water contamination.

Commissioner Kagawa-Viviani – I realize the definitions we're using are very "O'ahu" centric in terms of looking at groundwater monitoring wells especially when we're looking at Maui. I'd like to better understand if those triggers that were defined for the Pearl Harbor Water Shortage Plan, how'd they get modified for areas where permittees are less dependent on groundwater.

Mr. Fujii – we could talk more about that offline.

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Chair Case noted more comments to be heard from the applicants and others on item B-1

B. ACTION ITEMS

- 1. Approve with Special Conditions the Natural Energy Laboratory of Hawaii Authority and Hawaii Housing Finance and Development Corporation Application for a Well Construction and Pump Installation Permit, Ota Well (Well No. 8-3957-006), TMK (3) 7-5-001:165, Lanihau 1-2, Moeauo Ahupua'a, Keauhou, Hawai'i**

Mr. Barbour (NELHA) – we would like to preserve our right to a contested case. Can you please let me know if there's something else, I need to say to do that or is what I just said adequate?

Chair Case – you should ask for a contested case now; and do it orally before the end of this meeting. If you intend to pursue it, you must follow it up in writing within 10 days with the Water Commission, and you should contact the Commission secretary or staff for the proper forms.

Mr. Barbour – for item B-1, today, August 16, this is NELHA and we are asking for a contested case hearing.

Chair Case – if you decide not to pursue it, you would just not file the written request in writing within 10 days.

Mr. Charles Young ('Aha Moku) – are we going to be allowed to see what the grounds for the contest case are? Should it be filed at that point, and to what extent are we going to be

allowed to be parties of standing in the contestant case? At this point we're not making any overtures or any requests to be a party of it, but I do want to understand how that might work should it happen.

Ms. Ashley Obrey (Native Hawaiian Legal Corp.) – we are present here because we heard this was coming and we're available. We're reserving our right to apply to be a party if it goes through, but at this point we weren't planning to raise the need for a hearing. I'm speaking on behalf of Loke (Aloua) as well.

Chair Case – clarified you are not requesting a congested case yourself right now?

Ms. Obrey – no

Chair Case – what you're saying is, if there is a contested case, you would want to be a party, we're not making that decision right now, and whether you're a party or not would be decided in a different proceeding with a hearing officer.

Ms. Obrey – in writing do we need to submit something?

Chair Case – first, it would be an application in writing for a contested case by NELHA. And within 10 days, if that happens, it would come back to the Commission to determine whether there's a right to a contested case. If so, then the Commission would make a decision on that point. If there was a decision that they had a right to a contested case, we would make a vote on that and on the process for a contested case hearing. At that stage you would make your request to be made a party. (*reiterated that it needs to be followed-up in writing by NELHA within 10-days*)

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D. RED HILL ITEMS

1. Navy Update on Remediation Efforts (*For Information Only*)

PRESENTATION GIVEN BY: Commander James Sullivan, Red Hill NAVFAC Environmental Officer, NAVFAC Hawaii

Provide an update on remediation efforts on and around the Red Hill Aquifer and in the vicinity of Red Hill. Primary focus areas are in ensuring the safety of the drinking water system and then remediating the contamination in and around Red Hill. Continue to expand monitoring network with (22) total wells will be drilling, 3 already complete, 3 are in progress and the remaining completed by next fall.

Requested from the Board of Water Supply information about any of their monitoring wells in the vicinity of Red Hill to have common understanding of what's going on with the aquifer as well as the ability to take samples to ensure the safety of the overall drinking water in the aquifer.

Continuing to work on excavation of soil and the leech tank area outside of Adit-3. We've

removed the tank and 12 foot of soil in that vicinity and continue with another 1,000 cubic yards of soil removal that'll take it within 10 feet of the water level in that area. Within and throughout all of the tunnels, continued soil vapor monitoring points to ensure any hotspots are identified to continue to evaluate, determine and remove any contamination that may be there.

In 5 different locations, have taken cutouts and borings within the floor, to help characterize levels between the tunnel and aquifer. We've completed our first deep soil vapor monitoring port down to a 75-foot level to characterize any layers of fuel that might be caught in the strata and how best to remove contamination that may be there.

Outside of the tunnel regarding the pumping from the Red Hill shaft GAC system going into Halawa Stream, we've have discussed with the DOH and EPA in figuring out how we can minimize pumping to the lowest amount possible to ensure that we maintain the capture zone required to remove contamination from the area.

QUESTIONS/COMMENTS

Commissioner Buck – we've been asked by stakeholders to minimize or adapt the permit to allow you to continue putting the 5 million gallons into the stream, in discussions with Department of Health, what are the timing and criteria you're utilizing to see if you could reduce the amount you need to put back in the stream and maintain the aquifer?

Cmdr. Sullivan – yet to be determined but like to do asap; all of the decisions and coordination will be based off of data we receive to date and the science behind to still maintain that capture zone.

Commissioner Kagawa-Viviani – what is the frequency of soil vapor monitoring?

Cmdr. Sullivan – need to circle back on that.

Commissioner Kagawa-Viviani – is the intention of that to also provide a warning system for potential future leaks?

Cmdr. Sullivan – it identifies if there's a new presence in an area we have not added in the past. It would be an advanced indicator to look at the subsurface to identify any hotspots to identify any contaminant.

Commissioner Kagawa-Viviani – has there been any movement on the possible reduction of pumping at Red Hill Shaft and reuse of the treated water otherwise going into Halawa Stream?

Cmdr. Sullivan – we continue to look for opportunities; there is a wastewater treatment facility. If there's way to do an interim GAC system that could be utilized. We've had discussion with Department of Health about possible ways to use the non-potable water for irrigation. Unfortunately, the infrastructure is not in place and would take a long time. We believe the quicker solution is still the GAC solution, but we're open to ideas and concepts

Commissioner Hannahs – it's obvious you're managing a lot of activity. From your report,

what are your critical decision points and when are we going to get there? We can hold you more accountable if we know what you're trying to accomplish, what those critical milestones are for decision making; are we doing things leading to an outcome?

Cmdr. Sullivan – I wish I could give you firm dates and milestones. Our goal remains firm of restoring the quality of the water in the Red Hill shaft to drinking water quality but don't have a timeline for reaching that milestone.

Commissioner Hannahs – is that reasonable? Can we set targets if you have an annual plan? It gives us something to try and accomplish within a time frame with variance along the way. This reporting we're getting consistently has no end to it. Is it reasonable to set an annual plan and report on it every month or on a periodic basis?

Cmdr. Sullivan – the first step is we're still in that characterization and are pushing to get the characters of the remaining soil complete this fall. Once we know what those levels are, we need to identify technologies available to remove that soil. The characterization of the level between the concrete of the tunnel floor and the aquifer where that fuel may be within those layers, we don't know exactly what technology we're going to use. That's the first step that the plan is characterization of that site

Commissioner Hannahs – that's exactly what we're looking for that characterization and activities that support acquiring that need; then the next step to develop a plan to remediate or remove it. It takes a step by step on a critical path toward an end.

Chair Case – you did characterize getting the Red Hill shaft back to drinking water quality, but I think it's broader than that from our perspective, which is the health of restoring the aquifer. You could clean up water and then filter it from the Red Hill shaft. We need to make sure there's not contamination in the aquifer spreading elsewhere on a continuing basis.

Cmdr. Sullivan – agreed

Commissioner Buck – what's the current status of the over pumping on Waiawa and the potential violation of that and action by the Commission staff?

Cmdr. Sullivan – it's the joint base leadership including the Public Works Officer. They've had a lot of discussions with members of the staff of this commission specifically into that detail. The Navy is aware of that and taking all conservations measures, but I can't speak on behalf of the Public Works officer and Joint Base Commander but heard was very productive meetings.

Deputy Manuel – Ryan and I met with navy personnel to go over the violation and look at next steps as it relates to the permit modifications this Commission requested, we pursue. We were made aware there was a water leak found on the system and they're working on fixing it and that could be related to the over pumping and help reduce waste or some leakage in the system. Other longer term fixes including studies to look at leak detection, submeters on their system and talked about potential recommendations which the Commission asked the permits to be modified. Ryan and I are working to take it to the next level to modify the permits, to that formal process. The goal is to get the public notice out to notify everyone we are recommending modification with conditions of those permits.

It was a good meeting, have some follow ups and more specifics can add to the permit modifications based on that conversation.

Commissioner Buck – commented on the recent editorial regarding one water source.

Deputy Manuel – in conversations with the Navy, that is a huge threat to a public water system that provides drinking water to families relying on one source without any redundancy or backup. We did look at whether Aiea-Halawa could be put on as a backup well in case something happens to Waiawa Shaft to ensure that some water is made available.

We've asked is there a way to coordinate with the Board or other water purveyors to make sure there's backup or support if that system goes down. That is problematic for a public water system to rely on a sole source. From the Water Commission's perspective, we had that conversation with the Navy and want to make sure that they're not left with just one well supporting thousands of customers and to start looking at trying to get online.

We need to coordinate with DOH because they're the ones that certify the systems as safe for drinking. It requires DOH as an active co-trustee of our water resources.

Mr. Imata – in our discussions with the Navy, they are concerned about having a single source supply of the system. In terms of quantities, Waiawa Shaft has an allocation of 14.977, Red Hill Shaft has an allocation of 4.659. Aiea-Halawa Shaft in comparison has an allocation of 0.697 mgd. It's very small and will not meaningfully supplement Waiawa Shaft. They want to get it online to supplement storage and the system overall.

They are talking to DOH about the parameters to bring that source back online. They are (NAVFAC) implementing strategies to get a contract out this year to do a study on the system on where they can put additional meters, to do an adequate water audit on the system. Another project for next fiscal year is a Pearl Harbor Water System Plan, to evaluate the potential for non-potable uses with alternative sources of water.

We wanted to bring it back next month to get a better idea after that leak is fixed, of what the total pumpage out of Waiawa going to be then brings them back into compliance. Will bring an update back next month.

Commissioner Buck – the news about the water leak is disturbing, the sole source pumping, over pumping. Commander, one reason we have these meetings every month is to bring more transparency to the issues, so the public knows. It seems we find out about these things after the fact. We appreciate you being here and you on the job.

Commissioner Seto – the Department of Health Safe Drinking Water Branch is working with the Navy on the concern regarding the single sole source drinking water distribution system. They are also looking at the Aiea-Halawa shaft to start up again as well as the interconnections with the Board of Water Supply and other water systems. There is discussion but has been no actual decision made.

Commissioner Kagawa-Viviani – what is the metric for returning the Red Hill Shaft source of water to drinking water quality? What are the contaminants that would be tracked that

need to drop in concentration at the shaft?

Commissioner Seto – the Safe Drinking Water Branch has the responsibility of approving the startup of the Red Hill Shaft as a drinking water source. Have started developing a list of requirements for the Navy to complete before they approve of the startup of the shaft. It does include the science behind the quality of the water in the shaft. The parameters will be determined based on environmental action levels because TPH is not a regulated contaminant of drinking water (it never should have been in our drinking water).

The program is looking at many different lines of evidence before they determine whether or not the Red Hill Shaft can be turned back on.

Commissioner Kagawa-Viviani – we should have an idea of what is this on the order of years, potentially tens of years, or 50 plus years, what kinds of timelines we know from previous experiences of petroleum, that it takes to get things back.

Commissioner Seto – there are other aquifers that have pollutants in them which have been treated to become drinking water sources. We have to balance that with what we know and don't [know] to make sure we have drinking water that meets water quality criteria and maximum contaminant levels.

For timing, the SDWB wants to make sure that potential for future contamination of the Red Hill Shaft aquifer is minimized.

Commissioner Kagawa-Viviani – it seems the Navy wants to maintain the capture zone and that gradient at Red Hills Shaft. Using that water may not make sense, but it's possible this could be seen as a long-term investment in both maintaining that capture zone to present spread and minimizing reliance on Waiawa. We shouldn't abandon that potential use of Red Hill Shaft for dual purposes.

Commissioner Seto – I agree the water from the Red Hill Shaft could be used for non-potable uses and reduce the potable requirements of the Waiawa Shaft. There's a balancing act to be found.

Commissioner Kagawa-Viviani – even if you can treat the water to drinking water quality, how much of a challenge might be to have the public acceptance of that water?

Commissioner Seto – the environmental action level is 266 parts per billion for the cumulative total petroleum hydrocarbon ranges. That is the number we are using currently in the department to ensure the water remains safe to drink. It should be "0".

Commissioner Hannahs – commented on the frustration of not having the proper authorities present at CWRM meetings to help answer some of the questions and provide insights to updates as it delays the information process by months. Have you considered a crisis management structure to represent all the silos?

Cmdr. Sullivan – I understand the frustration and work very closely with the Joint before and the group responsible for all of the pumping operations. It's a commitment that we need to ensure that for each of these meetings if we know the topics, we have the right people

available to discuss. The meeting occurred last week was a good meeting with a lot of additional information that I believe is going to be presented in the future. That is why I did not prepare or have anybody additional in this meeting.

Commissioner Hannahs – thanks for considering that and when you see your own topic lists based on what you've been doing, you can anticipate what some of the questions might be plus discussions of past meetings. From our side, Kaleo, perhaps we can have hot items we want them to brief us on and have some discussion ahead of time so that the Navy send the proper representation.

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PUBLIC TESTIMONY

Ms. Susan Pecola-Davis

- Points made by the Commander, Commissioner Seto and questions raised by other Commissioners in regard to opening Red Hill Shaft.
- The environmental action level of 266 parts per billion
- testing done in the housing to original EALs of 300 of Tph gasoline, Diesel 400 and oil 500.
- questioned why the EALs were raised in the middle of the sampling
- after going through the GAC, how often is the waters being tested at Halawa Stream?
- more information on the “leak” Deputy Manuel and Mr. Imata speaking of
- Commander Sullivan to provide a presentation versus audio.
- Who the Joint-Base Commander is?

Ms. Gina Hara

- Halawa Valley resident; been testifying from 2014.
- shocking to hear information presented by Deputy Manuel and Mr. Imata
- on chat with community members
- transcript of meeting; seems DOH has a conflict of interest
- need more communication with the community
- CWRM notes a violation notice for \$5,000 a day; we can't put a value on water.
- Navy continues to delay solutions on over pumping, water waste, fixing leaks, and stopping contamination
- TPH should be “0”; aquifer continues to be contaminated
- CWRM is the authority to control the Navy's abuse; how long will it continue to happen?

Ms. Healani Sonoda-Pale

- Member of O'ahu Water Protectors.
- this crisis caused by the Navy is the worse O'ahu and native Hawaiians face
- Navy should take responsibility for polluting our aquifer and wells; shut down all recreational uses of water before asking for additional wells.

- mistake to give them additional water, poor caretakers of our water resources, still watering golf courses.
- been drinking bottled water since November; still paying a water bill
- hold the Navy responsible; is there a plan to provide clean drinking water to the rest of the 400,000 residents if there's another disaster?
- the public commission need to be representing the public's interests.

(end of public testimony)

COMMENTS/DISCUSSION

Commissioner Kagawa-Viviani – thanked testifiers for reminding us of what it's like outside of the bureaucratic space. In listening to testimony, re: conditions we wanted to tie to the permits of the 3 wells the Navy had formerly used that is now using at Waiawa: I don't have a timeline of where or when that hearing will be but had put specific conditions for the need for contingency plan if/when another release happens given the long-drawn-out timeline of defueling, the plan for remediating not just what's coming out of the shaft, but what's in the aquifer. It's moving slowly on the procedures because this is new territory for a commission-initiated modification of permits.

Deputy Manuel – I echo Commissioner's comments and hear the community. We are working to work through this situation and hold everyone accountable. Part of that is getting access to data and information, hence the meetings with the Navy in order to request information from them to work clearly, articulate what we need to modify their permits. What their current water uses, we have an aggregate number. We need to know specifically how much water is going to the golf course, to housing, to help support the families that rely on this public water system and figure out how we can get them into compliance as soon as possible.

I want to clarify we haven't made any recommendations to give them water or increase their allocation. It's something that still needs to go through that process. At this point we're still trying to get access to data information from the Navy in order to make those recommendations. When we move through the modification process, we have recommendations that are based on needs on the information available to us and get that in the next week or 2 and bring something back to the Commission for formal action. In terms of timeframe commitment, get something to this commission while I'm still here; again, my last meeting is in November. A lot is contingent upon the data we get and whether we can come forward with recommendations

Commissioner Buck – we have taken no action to give the Navy more water. We're in discussion with them of their violation of over pumping. The Commission has taken no action and has not considered any action to grant the Navy any additional permits.

Commissioner Kagawa-Viviani – as I understand it, Commissioner Meyer has stepped off the permitted interaction group. Would it be possible to fill that vacancy in sunshine or does that need to be agendized?

Commissioner Meyer – asked if Commissioner Hannahs is going to step up.

Commissioner Hannahs – that’s a negative

Chair Case – it has to be agendized.

Commissioner Kagawa-Viviani – can I request that be on the next?

Deputy Manuel – I have to look at the original action, but I think the Commission delegated to the Chair to appoint the P.I.G. members. If we need to agendize it, I’ll work with the Deputy AGs to bring that back for action to appoint another member or the action taken prior is sufficient for Chair to swap out P.I.G. members

Deputy AG China – a review of your staff’s submittal should tell you what you’re able to do.

Deputy Manuel – I’ll coordinate with the Deputy AGs then if we do need to agenda, we can bring something formerly to the Commission next month.

Commissioner Meyer – that’s my recollection; does anybody know what exactly the structure of that lava tube in the Red Hill shaft looks like? The depth, diameter, which direction it runs, how far down the shaft it is?

Deputy Manuel – I think that’s deviating from the agenda item; we can bring that back and I’ll have staff work on putting together something that would be useful for the Commission as a whole as well as community, to get feedback on that because more than once it’s been referenced and want to make sure we provide you with as much information we have available.

Commissioner Hannahs – maybe we need to come up with a critical path; these are the decisions we need to make; we don’t let them tell us what our timeframes should be. We tell them what they need to do. They have certain performance requirements, and they report to and are accountable to us, based on the logic model that we create to support our decision making. I’m not sure we’ve done that and maybe that would be a good legacy of your leadership and resolve with the Navy and all other departments involved in this so that we get the information we need quickly as possible to make a timely and sound decision.

Deputy Manuel – what you mentioned is embedded in the spirit of the Group recommendations on modifications in terms of data and access and our own independent access to do our own monitoring. Those are conversations we are having with staff and with Navy to start that relationship building as this is going to be a long-term process. That commitment to remediation is important and establishing that relationship. My commitment is to move this and get to a place of knowing and clarity on process by the end of the year or get an update at my last meeting.

Chairperson Case thanked everyone for their participation.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

September 20, 2022 (Tuesday)
October 18, 2022 (Tuesday)

This meeting adjourned at 3:08 p.m.

Respectfully submitted,



RAE ANN HYATT
Commission Secretary

OLA IKA WAI:



M. KALEO MANUEL
Deputy Director

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.*