

MINUTES
FOR THE MEETING OF
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 20, 2022
TIME: 9:00 am
PLACE: DLNR Boardroom
1151 Punchbowl Street, 1st Floor
Honolulu, Hawaii 96814
& Online via Zoom-Meeting ID: 865 1822 6020
passcode: 697583

Commissioner Hannahs presided over the meeting as Chair and called the meeting of the Commission on Water Resource Management to order at 9:02 a.m. The meeting was live and being held remotely and live streamed via YouTube for public viewing. It was noted the meeting was set to take live oral testimony and written testimony received can be found upon the Commission's website. Commissioner Hannahs took roll call and read the standard contested case statement.

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

ABSENT: Chairperson Case; Mr. Wayne Katayama

COUNSEL: Ms. Miranda Steed

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

OTHERS: Ms. Caroline Ishida (PUC); Ms. Carolyn Laborte (PUC);
Mr. Avery Chumbley, Mr. James Geiger (Wailuku Water Co.); Mr.
Hōkūao Pellegrino (Hui o Na Wai 'Eha); Mr. Isaac Moriwake
(Earthjustice); Ms. Lucienne de Naie (Sierra Club-Maui); Mr. Mark
Vaught (Mahi Pono); Mr. Doug Codiga; Mr. Joshua Uychara (Kekaha Ag
Assn.); Ms. Dawn Huff (KIUC); Ms. Delanie Prescott, Counsel (ADC);
Mr. Lyle Roe (ADC); Dr. Jonathan Scheuer (for DHHL);
Mr. Robert Whittier (DOH); Mr. Thomas Giambelluca (UH-WRCC)

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A. APPROVAL OF MINUTES

August 16, 2022

PUBLIC TESTIMONY – None

MOTION: (BUCK/MEYER)

To approve the minutes of August 16, 2022 with non-substantive edits.

BUCK/HANNAHS/KAGAWA-VIVIANI/MEYER/SETO

UNANIMOUSLY APPROVED

092022 00:05:52

B. ACTION ITEMS

- 1. Authorize the Chairperson to Enter into a Memorandum of Understanding (MOU) with the Hawai'i Public Utilities Commission to Encourage Information Sharing and Collaboration Between the Agencies and Delegate to the Chairperson to Finalize MOU and Make Non-Substantial Edits as Appropriate**

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

Mr. Fujii stated the summary of request and noted background information in relation to jurisdiction and regulatory authority over water resources statewide. More of the type of work at the Water Commission and the Public Utilities Commission have been overlapping and intersecting and found that there is a need for better collaboration, communication, data sharing information, thus the MOU was agreed upon to better share information and keep each informed of activities. The staff recommendations were read.

PUBLIC TESTIMONY

Ms. Caroline Ishida, Counsel for Public Utilities Commission (PUC) – appreciated the opportunity to enter into the MOU with Commission on Water Resource Management (CWRM); been meeting and exploring a number of different topics and sharing ideas about various public proceedings. This will help to memorialize this relationship and continue into the future.

Chair Hannahs – appreciated the collaborative spirit

QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – asked on explanation of a “CPCN” (Certificate of Public Convenience and Necessity)

Ms. Ishida – the permit that water or wastewater utility needs to receive from the PUC, to be able to operate. Whether the utilities providing service for the present or future public convenience, it's the main inquiry from our standpoint into an application. It's helpful for us to alert the Water Commission to the fact that's been filed with us in case there are any issues that affect both of our agencies.

Commissioner Kagawa-Viviani – appreciated the clarification.

Commissioner Buck – one of the key issues that we're facing is some of the water delivery systems that are on to your regulatory authority are providing very important public trust resources that may not show up in your normal evaluation like Nā Wai 'Eha and West Maui. We appreciate your cooperation, and how we value those public trust resources and how you integrate those into your regulatory authorities and in support of it.

Commissioner Meyer – echoed Commissioner Buck's comments and stated the role of the Public Utilities Commission in many respects parallel to, and certainly collaborative and complementary to the role of the Water Commission and closer cooperation would only make things smoothly and would benefit from the collaboration.

092022 00:15:18

**MOTION: (MEYER/SETO)
To approve Item B-1 as submitted.
UNANIMOUSLY APPROVED**

Chair Hannahs – thanked the PUC and appreciated the collaborative spirit

092022 00:15:56

B. ACTION ITEMS

- 2. Approval of Stream Diversion Works Permit Application (SDWP.5895.6) Hui o Nā Wai 'Ehā (Applicant) and Michael and Dana Pastula (Landowner) to Reestablish the North Waihe'e 'Auwai by Reconstruction of a Rockwall to Divert 1,392,326 gpd for Previously Approved Surface Water Use Permits and Find that a Petition to Amend the Interim Instream Flow Standard is Not Required; Waihe'e Stream, Waihe'e Surface Water Management Area, Maui, TMK: (2) 3-2-004:001**

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

Mr. Uyeno stated the summary of the briefing item and read part of condition 1 of the staff recommendation and stand on the submittal. Mr. Uyeno continued to read the staff recommendations.

QUESTIONS/COMMENTS – None

092022 00:21:34

PUBLIC TESTIMONYMr. Avery Chumbley, Wailuku Water Co. (WWC)

- acknowledgment in the recommendations that the Commission amend the existing D&O within the 120-days, January 17, 2023
- acknowledge WWC has no further responsibilities or actions that can be held in violation once this is approved (today)

Mr. Uyeno – noted WWC did register the Field 1 intake on Waihe‘e River which the North Waihe‘e ‘Auwai users formally did receive water as noted from Spreckels Ditch. That pipeline was destroyed in the 2018 flood and part of it is to transfer that water source. We’ll work with WWC to formally transfer it to the Hui if Wailuku Water is amenable to that.

Mr. Chumbley – we have no objections to that

Mr. Uyeno – we’ll work with them in a future action.

PUBLIC TESTIMONY CONT’DMr. Hōkūao Pellegrino, Hui o Nā Wai ‘Ehā

- the flood of February 18, 2018 will not be forgotten; roar of the river boulders the size of cars tumbling down Waihe‘e River had not been experienced for about 100 years
- flood caused heavy damage to the North Waihe‘e kuleana ‘auwai, lo‘i kalo systems, homes, and properties; took 25 acres of lo‘i kalo on kuleana lands offline for more than four (4) years.
- Prior to the 2018 floods, Waihe‘e ‘ahupua‘a was the largest kalo growing region today in Nā Wai ‘Ehā; the cultivating acreage superseded Waikapū, Wailuku and Waiehu.
- impacts affected many kuleana kalo farmers and community; kalo is used to sustain many farming ‘ohana.
- expresses deep gratitude and aloha to the Waihe‘e community; and to Michael and Dana Pastula for everyone’s trust and support through this challenging process over the last four (4) years.
- the Hui spent countless hours working with landowners, community and Commission staff in this lengthy process; Mahalo to Deputy Manuel and staff in guidance; Mahalo to Hui board members for assisting in data collection and needed community engagement; Mahalo to Mark Vaught of Mahi Pono to help best strategize a plan of action for the ‘auwai restoration; Mahalo to SHPD (State Historic Preservation Division) in support of the permit application process.
- Appreciate the collaborative effort in moving forward with (Commission) approval.
- The Hui supports staff recommendations with a request for clarification on recommendation #3 and noted: prior to the 2018 flood damage, the North Waihe‘e kuleana ‘auwai predominantly took its water directly from Waihe‘e River with minimal amount of water coming through the Spreckels pipeline that dropped into the

po'owai intake, flowing into the 'auwai. – being the pipe has since been damaged and no longer flows into that system, thus need clarity on this particular action and want to ensure the Hui is not on the “hook” on this matter and does not affect kuleana users as well as North and South (kuleana) permittees.

- Ask Commission to vote in support of staff's recommendations as it will help return farmers to their lands to cultivate kalo.

Mr. Uyeno – need to assess if there's users still on the pipeline that were fed from Spreckels Ditch. There may be one (1) user remaining. The point is to transfer the intake which was originally registered to WWC and instead become the diversion for the North Waihe'e 'auwai intake. It may be an administrative change rather than abandonment by Wailuku Water Company, but still need to determine if water from Spreckels Ditch is providing water to anyone.

Chair Hannahs – asked if the Hui was ok with clarification.

Mr. Pellegrino – it does provide clarity.

Chair Hannahs – clarified if the Hui agrees with the particular action on item #4.

Mr. Pellegrino – yes, we started the process and hopefully complete before the end of the year.

PUBLIC TESTIMONY CONT'D

Mr. Isaac Moriwake, EarthJustice

- thanked Hōkūao (the Hui) for taking the lead and thanked Mr. Uyeno for staff recommendations.
- expressed Earthjustice support in the matter through this long process as this is an example and model for community initiative and collaboration to reopen this traditional 'auwai
- thanked Commission staff in moving this forward and highlight the key aspect in this recommendation of allowing the kuleana users to continually maintain this traditional 'auwai as it's only a matter of time the “rocks” will give way to the next flood occurrence.
- recognize the recommendations and Commission approval will ensure those traditional uses and new/existing diversion with the ability of kuleana users to maintain their 'auwai with minimal “red-tape”.
- recognized Mahi Pono's effort and collaboration with the Hui (*iterated the 2019 stipulation agreement between Mahi Pono which MP committed to give back to the community and assist in restoration of the po'owai for the North Waihe'e 'auwai.*)
- recognize testimony of Mr. Stanley Faustino, an original kuleana user when this case started; Mr. Faustino submitted original testimony on September 14, 2007.
- (*Isaac memorialized [read] main aspects of Mr. Stanley Faustino's testimony; noting Mr. Faustino recognized it would not be pono to take water for use on his land if there was not enough (water) to support the river and ocean; Mr. Faustino has since passed away*)

- this item came full circle and supports its recommendations.

Chair Hannahs thanked Isaac for testimony also recognizing Mr. Faustino's testimony

PUBLIC TESTIMONY CONT'D

Ms. Lucienne de Naie, Sierra Club-Maui/Maui Tomorrow Foundation

- thanked Commission and staff
- testifying on behalf of Maui Tomorrow Foundation (MTF) who gives broader support to the Hui over the years as many supporters live in Nā Wai 'Ehā; MTF is also part of historic water use permitting process.
- this effort is a great example of collaboration and support among groups and community in finding best solutions.
- proud of the Hui's efforts and Mahi Pono's support in support of the restoration of the 'auwai; and thanked all for continued support.
- hopes the Commission will continue to support future efforts of the Hui.

Ms. Miki'ala Pua'a-Freitas

- born and raised at Kapuna Waihe'e, at the foot of the 'auwai
- support submittal item
- been a long road to get to this point and thanked board members of Hui o Nā Wai 'Ehā, Deputy Manuel, Dean Uyeno, Mark Vaught, and those in getting to this point.
- *recognized Mr. Stanley Faustino and described the happenings of the 2018 flood, noting Mr. Faustino remained at home when flood occurred.*
- 'ohana has stewarded and maintained the North Waihe'e 'auwai for generations and run a small farm with the biggest crop being kalo; since the 2018 flood has cultivated only dryland kalo.
- naysayers in regard to this system, simply need to gather more information
- the 'auwai has been a beacon of strength and longevity for the community; it brought together many community groups working together for the same effort and outcome.
- Mahalo to all those involved in the restoration of the 'auwai and look forward to cultivating lo'i kalo in the future.
- The past 4-1/2 years has since lost community members/lo'i farmers as: Mr. Stanley Faustino, Mr. Assi, Mr. Mike Rodrigues, Mr. Kenneth Kahalekai, Mr. John Duey, and Mr. John Lynn
- urgency in getting water back into the 'auwai.

Mr. David Lengkeek

- moved to River Road in Waihe'e in 2007
- 'auwai runs through property and has been dry since the 2018 flood.
- the devastating event stopped wetland kalo cultivation on the north side of Waihe'e valley.
- property makai of home has 3-acres of centuries old lo'i kalo and had the opportunity to farm a dozen of those kalo patches and was taught by Mr. Chris Diaz on how to

- farm kalo.
- faced environmental and other challenges but spent the last 10-years rebuilding area and growing kalo and within that timeframe has harvested thousands of pounds of kalo which sold to Aloha Poi in Wailuku; perpetuation of Hawaiian culture is motivation.
- regularly has maintained 'auwai area and clearing land in regard to restoring optimal water flow; and neighbors provided same efforts.
- been almost (5) years with no water to provide for kalo patches and hope the restoration efforts will be successful.
- request Commission's full support of the restoration to restore the 'auwai/po'owai, ensure water flows throughout Waihe'e valley with mauka to makai connectivity; perpetuate the Hawaiian culture, and malama 'āina.

Mr. Kely Rodrigues

- new to the Waihe'e valley community; Uncle Mike Rodrigues was former kuleana farmer.
- feels responsibility to carry on Uncle's legacy; keep his vision alive for the next generation(s) and ensure water flow.
- hopes to continue to farm kalo and see 'auwai and waters restored.
- support submittal and recommendations; Mahalo to all involved and hope to learn more in this process.

Ms. Sesame Shim

(‘ōlelo Hawai‘i)

- full support of submittal and recommendations.
- since the 2018 flood, the North Waihee side has been without water to farm kalo.
- impacts to traditional and customary practices of native Hawaiian rights
- crucial the integrity of the 'āina is maintained; Waihe'e was once the largest producer of kalo in Maui.
- ancestors are looking upon those to continue to perpetuate the culture and be resilient.
- water is the only and most important element for the valley, 'āina and communities to continue to thrive and kanaka to farm the 'āina.
- request Commission approval of submittal/recommendations to set the foundation for North Waihee po'owai.

Ms. Ka'imilani Kamai

- from Pukalani; student at Kekaulike Kai o Puni
- Mahalo to CWRM in presenting this submittal action item.
- Life is water and water is life.
- since the 2018 flood, there has been no water flow in 'auwai which pose a challenge for the local farmers to produce agriculture and impact native, traditional rights.
- what little water there is, is being diverted.
- tourism impact has taken more water; Commission has its duty to fulfill to its people (public) to ensure kuleana can receive water and generations after will have a future

with water.

Mr. Mark Vaught, Mahi Pono

- pleased to be a part of this project and assist in moving it forward.
- on behalf of Mahi Pono, recommend full support by the Commission.
- Mahalo to Hōkūāo of Hui o Nā Wai ‘Ehā who did most of the “heavy lifting”

(end of public testimony)

QUESTIONS/COMMENTS

Mr. Moriwake – agree more clarification needs to be on recommendation item #3

Chair Hannahs – asked if there’s specific language to consider

Mr. Moriwake – along the lines to what Dean (CWRM) suggested and noted paragraph 54 (of submittal) is somewhat factually misaligned. The point of the Commission’s decision, the flood already occurred and the pipe was wiped out and don’t think anyone on the North Waihe’e side was receiving water from Spreckels Ditch or had the ability to do so.

Could just be to correct that factual “mistake” in paragraph 54 or follow with Dean’s suggestion. In any way there should not be an amendment to the water use permit themselves.

Deputy Manuel – recommend omitting item #3 and address it in a proper proceeding whether it's a minute order to amend the D&O; it was a chance to clear up the record but note Wailuku Water Company’s testimony to not be responsible because the D&O also makes them responsible to provide water via Spreckels Ditch. Not certain as agendized we can make that amendment, it’s an AG question because this is specific to the stream diversion works permit (SDWP), not the water use permits (WUP) that are part of the Nā Wai ‘Ehā contested case hearing.

Staff will work with counsel to find the proper way to address this issue of liability for WWC and to clarify what’s happening on ground in relation to Spreckels Ditch and Waihe’e.

Chair Hannahs – does this fall into the category of discrepancy of the reality versus the order and events happened after the record which we could not consider those events?

Deputy Manuel – correct.

Mr. James Geiger (Counsel for Wailuku Water Co.) – if you are inclined to delete Item 3, we would like an inclusion of the record that Wailuku Water Company would no longer be responsible for delivery of this water. We’re willing to cooperate with Commission staff to transfer this whether abandonment or transfer, whatever works best for everyone.

Chair Hannahs – we understand that, and Deputy Manuel mentioned that as well.

Mr. Moriwake – request further follow-up after decision is made (regarding of item #3) and agree with the path Deputy Manuel suggested.

Chair Hannahs – to delete item 3?

Mr. Moriwake – yes and leave the further cleanup for later.

Deputy Manuel – hear concern but the action WWC is proposing is not agendized and need to be cautious on that. If we're attaching it to the SDWP would be one thing, but action you're recommending may go beyond the scope of approval today.

Commissioner Buck – if we delete item number 3 but let the minutes reflect the Commission will act in the future in making sure WWC allocation on Spreckels Ditch is reduced and not responsible; we're so close in moving forward on this.

Deputy Manuel – we can say “within 120 days of the date of approval, Commission staff will work with Wailuku Water Company and North Waihee ‘Auwai permittees to address and resolve source of water distribution and delivery responsibilities in appropriate proceedings”.

(reiterated and clarified stance of amendment)

Chair Hannahs – yes, we want to move forward

Commissioner Buck – move to support the action item with the deletion of item #3

Deputy Manuel – I'm re-wording #3 to address Wailuku Water Company's concerns about liability to provide water.

Commissioner Buck – iterated in Nā Wai ‘Ehā decision, Commission foreseen implementation challenges and hoped on opportunities to set a framework to allow community and all participants to move forward. This is the first Nā Wai ‘Ehā been on that shown support from everyone and thank everyone's efforts and participation and hope this can be a model for future action.

Chair Hannahs – recommendation is to approve items 1, 2 & 4 as submitted and #3 with the amendment as stated by Deputy Manuel.

Deputy Manuel – shared screen and read amended #3 recommendation. ...“within 120 days of the date of approval, Commission staff will work with Wailuku Water Company and North Waihee ‘Auwai permittees to address and resolve source of water distribution and delivery responsibilities in appropriate proceedings”.

Mr. Moriwake – that works for the Hui

Mr. Chumbley – works for us

Commissioner Kagawa-Viviani – asked if it will be bought back to the Commission?

Deputy Manuel – we'll have to determine what is appropriate, because it's part of the

contested case. It may require a minute order, which doesn't get brought back in a public proceeding.

Commissioner Seto – are we trying to get solution by the 120 days of approval, or just working it through?

Deputy Manuel – to address and resolve; based on staff analysis and working with all parties, it's a legal paper edit but need to work through the language that would give confidence to all parties moving forward and be clear about what those responsibilities are post this decision today. *(re-stated item #3 amended language)*

092022 01:19:09

**MOTION: (BUCK/KAGAWA-VIVIANI)
To approve Item B-2 as amended.
UNANIMOUSLY APPROVED**

Chair Hannahs appreciated everyone's efforts and time and those of the public testifiers in supporting of this and in the continued protection of all public trust uses.

RECESS: 10:21 AM

RECONVENE: 10:30 AM

092022 01:29:16

B. ACTION ITEMS

- 3. Approval of Stream Diversion Works Permit (SDWP.5804.6) Application and Special Conditions to Abandon Registration of Stream Diversion Works and Declaration of Water Use No. 475.6, North Waiehu Ditch Intake by the Wailuku Water Co., LLC and Find that SDWP.5804.6 is Exempt from Hawaii Revised Statutes, Chapter 343 North Waiehu Stream, Waiehu Surface Water Management Area, Maui, Tax Map Key: (2) 3-2-014:001**

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

Mr. Uyeno stated the summary of request and described the general area and the environmental condition and stated he stands on the submittal and its recommendations.

QUESTIONS/COMMENTS – None

092022 01:31:16

PUBLIC TESTIMONY

Mr. Avery Chumbley, Wailuku Water Co. (WWC)

- Wailuku Sugar built this intake in the early 1900s-a rock stacked diversion at the edge of the stream which brought water to the lower Waihee Ditch that provided water to some fields in Waiehu area.
- Wailuku Water Co. formed in 2005 and abandoned use of this intake around 2012 due to vandalism and landslides; has not used this system since 2012.
- it no longer provides water to sources that WWC delivers to.
- support staff recommendations and have no objections to it.

Mr. Hōkūao Pellegrino, Hui o Nā Wai ‘Ehā

- supports staff recommendations and have no comments/objections.

Ms. Michele Ho‘opi‘i

- oppose abandonment.
- this water provides water to ‘ohana kuleana property, original descendants of the Hawaiian Kingdom – land patent RP3975-LCA3438, presently known as TMK 3-2-0-1-8, parcel 27
- cultivated kalo for generations on this land; in which traditional and customary practices are still current.
- *(stated part of the Nā Wai ‘Eha D&O and iterated “they” are that family/user that’s supposed to receive that water) from the Waihe‘e Ditch.*
- request the Commission look into it.

(end of public testimony)

QUESTIONS/COMMENTS

Chair Hannahs – do you have a registered use or are in the D&O?

Ms. Ho‘opi‘i – not in the D&O; my mom who since passed was providing information during that time; I’m now the legal landowner to our kuleana property.

Chair Hannahs – asked Commission staff to reply.

Mr. Uyeno – during the proceedings when the initial application process for the water use permits was going on, I met with a kalo farmer and Michele’s mom, Maggie Ho‘opi‘i and advised them at that time to apply for a WUP but informed but she opted not to. We are aware of their use but it’s something that couldn’t go into the record in the contested case hearing.

At this point, the users that have received permits from Wailuku Water should be receiving water from WWC via the Waihe‘e Ditch.

Chair Hannahs – are there other practicable alternatives if the Ho‘opi‘i family wishes to revive

kalo cultivation?

Mr. Uyeno – I will continue to advise Ms. Ho‘opi‘i to apply for a water use permit.

Ms. Ho‘opi‘i – I have submitted one and believe it’s going through the process. The existing diversion already in Waihe‘e Ditch also fed my family property.

Mr. Pellegrino – Hui o Nā Wai ‘Ehā did work closely with Auntie Maggie before she passed and was not aware of all the contested case and apologize on that matter. In this particular case that WWC has not complied with providing water to kuleana users that do not have water use permits, as there are others in Nā Wai ‘Ehā with similar situation. I would like to recommend that we defer this matter until we can look at it further and ensure all kuleana users have access to water whether it's traditional system or WWC system.

Mr. Uyeno – I would argue our best path forward would be to follow-up with Wailuku Water Company to ensure compliance with the D&O that the water is provided from Waihe‘e Ditch.

It doesn't make sense at this point delay the abandonment of the North Waiehu intake. WWC is understanding. It's a way to get to the intake, a maintenance issue, and is a fairly leaky ditch system, so would not advise continued use of it. Would be more efficient to receive water directly from Waihe‘e Ditch in the future.

Mr. Chumbley – I agree with Dean's recommendation we proceed with the approval of the abandonment of this intake. WWC is no longer the landowner on which a large portion of the North Waiehu Ditch presides.

Around 2010-12, we attempted to get an easement from the current landowner and unable to do so which would've allowed us to divert water at a lower elevation. In the 2021 D&O, there was an applicant who was denied a permit that requested water from North Waiehu Ditch. There are no current permit holders that should be getting water from North Waiehu Ditch.

Mr. Moriwake – for the record on providing water for the Ho‘opi‘i’s and kuleanas, and I thank the Ho‘opi‘i family for coming forward to remind us of that outstanding obligation. This goes back to the 2014 settlement the Commission adopted and ordered that specifically called for Wailuku Water Company to provide water from Waihe‘e Ditch to the kuleana’s in lieu of North Waiehu. That requirement is still outstanding and believe the Commission also reincorporated it in its latest order and should be revisited to ensure in getting that water the kuleanas are entitled to.

Commissioner Kagawa-Viviani – (to Ms. Ho‘opi‘i) are you currently receiving water from the ditch?

Ms. Ho‘opi‘i – the water from the North Waihee ditch can’t come through because of the collapse from storms; I have no water coming to the property other than us trucking water in to feed our crops. We're bringing water from the river or our home to keep our taro alive. We're not planning on doing commercial. It's been a struggle in providing for our subsistence farming.

Commissioner Buck – when we did the initial decision and order, we knew they were potential applicants that chose to not participate in the initial permit opportunity, and we didn't build in extra water. We were aware people would come and claim their traditional and customary rights of water. I believe this issue of abandonment would not affect or deter anyone from receiving water from Waihe'e in the future.

The appropriate action is to recognize we will have future people in this same manner, and we do have an obligation to provide that water. At this point the abandonment of this diversion would not deter or affect their ability in receiving water in the future. I'm in favor of B-3 as I understand it.

Chair Hannahs – in effect, we are abandoning a diversion that doesn't exist anymore, because it's been destroyed. We are not agendized to take up Ms. Ho'opi'i request for water usage but it fits that pattern of use we've supported in the past. We believe this could be met if it's approved, through resources coming from Waihe'e.

Deputy Manuel – I appreciate the testimony today and it paints a picture of implementation and the need to continue to work with all users within Nā Wai 'Ehā and find ways to meet everyone's needs.

I agree with Commissioner Buck and CWRM staff, that formally abandoning the North Waiehu intake is appropriate and consistent with the D&O. We would work with Ms. Ho'opi'i in her application and look at the most efficient way to get water to support their needs when their permit application is reviewed.

Chair Hannahs – wished Ms. Ho'opi'i well and noted the commitment of the Commission to work with her through this process.

Ms. Ho'opi'i – Mahalo nui; I appreciate everyone's input and testimony.

092022 01:47:00

**MOTION: (BUCK/SETO)
To approve Item B-3 as amended.
UNANIMOUSLY APPROVED**

092022 01:47:35

B. ACTION ITEMS

- 4. Approval of Stream Diversion Works Permit (SDWP.5805.6) Application and Special Conditions to Abandon Registration of Stream Diversion Works and Declaration of Water Use No. 1184.6, Kama Ditch Intake by the Wailuku Water Co., LLC. Wailuku River, 'Īao Surface Water Management Area, Maui, Tax Map Key: (2) 3-3-018:002**

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

Mr. Uyeno stated the summary of request and noted this diversion was previously active and washed away in the late 60s due to a storm event. The action here does not trigger HRS Chapter 343 for an environmental assessment. Staff stands on its recommendation and noted the added special condition of recommendation 1a.

QUESTION/COMMENTS

Chair Hannahs – in this case there's some remnant concrete in the stream, and you're not conditioning abandonment upon removal, how do you make that choice what are criteria for deciding what can be left or removed?

Mr. Uyeno – being on that site previously, it blends into the channel like bedrock or large boulders. The stream is still able to move and flow around. It's not a concern to health and safety (made aware of photo in submittal).

Deputy Manuel – added that structures as this, there may be larger impact by bringing in equipment to remove them which can cause permanent damage, rather than to leave it in the stream as is as Dean indicated. It is a case-by-case and based on our conversation with the diversion holder, as well as community and others if there's a desire to remove that, we'll coordinate and do a recommendation to the Commission. At this point, we did not receive any comments to date but open to testimony today.

Chair Hannahs – appreciated comment for the record.

092022 01:51:21

PUBLIC TESTIMONY

Mr. Robert Street, Wailuku Town Kuleana 'Auwai User/Farmer

- who owns the Kama 'auwai?
- Kama 'Auwai is predated and one of the antiquities that exists in Nā Wai 'Ehā
- Kama 'Auwai fed the Wailuku Town 'Auwai end-users on its system which kuleanas have appurtenant rights to that has never been extinguished.
- Does Wailuku Water Company and the Horcajo's claim to own Kama 'Auwai?
- recommend sending this item to SHPD for further review/assessment.
- Wailuku Town 'Auwai end-users should have proper claim to Kama 'auwai although have never received water from Kama 'Auwai, that system has not been abandoned by end-users.
- Wailuku Town Kuleana 'Auwai system has not had water since July 1st.
- *(discredited Deputy Manuel and Mr. Uyeno on issues pertaining to Wailuku Town 'Auwai Kuleana system/users)*

QUESTIONS/COMMENTS

Deputy Manuel – (intervened) and noted that the item (Mr. Street) is discussing is not agendaized and thus the Commission can't speak to the matter. (*Referred to condition 1a of B-4 submittal of staff recommendation*). We're awaiting SHPD's concurrence on this recommendation and if SHPD requires conditions, amendments or follow-up, that the Commission delegate to the Deputy to attach those conditions to this abandonment permit as appropriate.

Mr. Street – it's also your responsibility to get us water (*continued displeasure of Deputy Manuel and staff in not fulfilling public trust duties and reiterated Kama Ditch should be preserved*).

Chair Hannahs – what we're abandoning is the registered right to divert, as a diversion which is no longer used. If new users who wish to make a future application to revive that system, that could be considered.

Mr. Street – it could, anything is possible.

Chair Hannahs – the action here precludes that. It just recognizes this has been a historical diversion no longer in use, but future uses may emerge that could be considered.

Mr. Moriwake – thanked kuleana users for stepping forward in these contexts. I acknowledge that the Kalua Street kuleanas are still not getting water and hopefully follow-up action to resolve that longstanding or ongoing injustice. Mr. Street raises an important point of the historic nature of Kama and also Kalani 'Auwai as it pre-dates the plantation era. These were the original 'auwai that the plantations appropriated.

There could be some interest in the kuleana landowners to this resource and shouldn't be wholesale abandoning it, not stating it's the intent here, but certainly SHPD should review for the protection of preservation and future generations. To the extent of the abandonment, it specifically addresses Wailuku Water Company interests in the diversion leaving the question of "are there other rights in this 'auwai system source".

Deputy Manuel – I acknowledge Isaac for that frame. The action proposed today doesn't distinguish anyone's right to reestablish a diversion or reconnect Kama 'Auwai. The abandonment per the D&O is to clear up that responsibility for the reporting, maintenance, and management of that diversion on behalf of Wailuku Water Company. It's ultimately removing Wailuku Water Company from the situation.

The action you're proposing on future uses would be available to anyone if those rights or applications were received or desire to reestablish the Kama 'Auwai intake for their end uses. This action doesn't displace or stop anyone from that right.

Mr. Street – who owns the Kama 'Auwai?

Chair Hannahs – not sure it's relevant to this question because it's not an ownership issue this is an abandonment of a prior permit that's no longer in effect. This is not the first time Mr. Street's been before us and expressed certain frustrations about getting greater access to

water - do you have a permit application in process?

Mr. Street – we have a SWUPA [Application for Surface Water Use Permit] for our property and haven't had water since July 1st.

Chair Hannahs – it's a practical concern, you have permitted use but how in getting it delivered.

Mr. Street – we haven't gotten help from Kaleo or Dean.

Deputy Manuel – I apologize, for the record we have been working with Mr. Street and all of the Wailuku Kuleana Town 'Auwai users very actively since this issue came up. This shouldn't be discussed on the record because it's not agendized. We will bring back to the Commission, sometime next month or November with recommendations to address Mr. Street's concerns about Wailuku Kuleana Town 'Auwai and end users.

Chair Hannahs – let's stick with the matter at hand but know Mr. Street your matter is also important to us but when its fully agendized.

Mr. Street – understand, and request to get put on next month's agenda regards to the Wailuku Kuleana Town 'Auwai system.

Chair Hannahs – I'll leave it for the team to agendize; if it's not next month, there's only a few more meetings this year where this administration is going to preside, and they're doing their best as you can see from today's agenda the number of items to push through. We thank you for your continuing patience.

PUBLIC TESTIMONY CONT'D

Mr. Avery Chumbley, Wailuku Water Co. (WWC)

- The Commission is on point; this matter agendized today is an abandonment of a registration and has nothing to do with a historical 'auwai or the Kama Ditch.
- this intake diversion was put in in the early 1900s and used until 1960 and was abandoned due to severe storm damage and has not been used since.
- the concrete is on the far south edge of the stream channel and barely in the stream itself and been pushed away after every storm.
- in support of staff's recommendation with no objections.
- request Commission approval of submittal recommendations.

Mr. Hōkūao Pellegrino, Hui o Nā Wai 'Ehā

- agree with staff's recommendation.
- the Kama and Pi'ilani 'Auwai system was pre-western contact and is over 500-years old and both 'auwai named after high-ranking ali'i; thus the system itself is historic
- much of the Kama 'Auwai after the diversion is still intact and the Hui is working with certain landowners to ensure those portions are protected and preserved.
- reached out to SHPD as there's pipelines in the Kama 'Auwai which reversed

delivering water through its system to other users; some permitted, others getting water on the Kalua intake on Waihe'e Ditch, but inside of the Kama Ditch

- we support this intake abandonment permit; but want to make known that immediately after the intake, there are uses although the Kama Ditch does not have water in it as a ditch would have.

(end of public testimony)

092022 02:06:46

**MOTION: (BUCK/KAGAWA-VIVIANI)
To approve Item B-4 as amended.
UNANIMOUSLY APPROVED**

092022 02:07:35

B. ACTION ITEMS

- 5. Approval of Stream Diversion Works Permit Application (SDWP.5806.6) and Special Conditions to Abandon Registration of Stream Diversion Works and Declaration of Water Use No. 1280.6, Everett Ditch Intake by the Wailuku Water Co., LLC and Find that SDWP.5806.6 is Exempt from Hawaii Revised Statutes, Chapter 343, Waikapū Stream, Waikapū Surface Water Management Area, Maui, Tax Map Key: (2) 3-5-003:001**

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

Mr. Uyeno stated the summary of request and referred to some of the photos in the submittal. The staff recommendations were also stated and noted that staff stands on its submittal.

QUESTIONS/COMMENTS – none.

092022 02:10:12

PUBLIC TESTIMONY

Mr. Avery Chumbley, Wailuku Water Co. (WWC)

- the Everett Ditch intake was installed in the early 1900s by Wailuku Sugar Co. to provide water for the upper elevation areas around Wailuku Town and part of the Waikapū area.
- this diversion was last used in the 1970s and not used since.
- Commission staff is correct - there is a portion of the underground tunnel, which some seepage of water that goes into, which then flows along the north bank of the Waikapū stream but is all returned back to the stream.

- *(shared screen of photos of noted area)* - noted on the recommendation in removing some portions of the steel grates that go across the width of the streambed (*further described the steel grate*) and noted it cannot simply be “cut-out” with a blow torch or grinder – using an excavator and a ho-ram (air hammer) is the only way to remove the steel grates.
- portion of the rails may flow downstream while its being removed; impacts of removing grates may cause more damage and problems.
- suggest leaving as is; it’s in place at least 70-years; the intake is full of rock and rubble and very little water is seeping into the tunnel.
- there is another access way that can be utilized to assess and stop what seepage is going into the tunnel.

QUESTIONS/COMMENTS

Mr. Uyeno – if Commission is okay with it, we’re fine. I can’t speak to the difficulties in removing the grates. I do understand and agree with as best they can seal the intake to prevent any residual seepage into the ditch would be good to keep the water in the stream as much as possible.

Deputy Manuel – referred to Dr. Ayron Strauch to opine.

Dr. Strauch – the solution by Wailuku Water to concrete the intake where it might be leaking out of the stream, would solve the issue. We just want to ensure all the water stays in the stream. I don’t believe the existing structure is a barrier to movement of amphibious species, impacts or recreational uses.

Chair Hannahs – not excited about leaving rusting old railroad ties in the stream. Would you agree that removing them could be disruptive given the heavy equipment it would take?

Dr. Strauch – I would predict any equipment put in the stream to rip up something that’s been in there for a 100-years, might increase the downstream transport of sediment and debris. May require a DOH permit but the simpler solution would be to concrete the intake.

Commissioner Buck – the Commissioner’s depend on the staff; suggest moving to next item while applicant-staff come up with final recommended language to consider? *Noted on the previous submittal item.*

Chair Hannahs – suggested to continue public testimony.

PUBLIC TESTIMONY CONT’D

Mr. Hōkūao Pellegrino, Hui o Nā Wai ‘Ehā

- this intake is a bit complicated.
- according to USGS, there were upwards of 200,000 gallons going into the system, with most of it returning (to the stream).
- growing up in this area, there were water flowing in the system even when the diversion

- was plugged or not in use.
- there are non-permitted users
- agree with Wailuku Water Company that putting in heavy machinery to remove grates would cause more damage to downstream and (19) users
- to ensure water stays in stream; Waikapu Stream are at lowest flows and IIFS have not been met over a year.
- if heavy work is to be done in the stream, the Hui and users requests advance notice.
- support the closure/abandonment of this diversion.
- wanted clarification on the amount of water and where it's going to.

(end of public testimony)

QUESTIONS/COMMENTS

Mr. Chumbley – the location of the intake is about 6-1/2 to 8 feet below the current bank on the north side of the stream. To get an excavator into the stream bank with a ho-ram or rock ram to break the steel rails and the concrete we have to cut that bank down. Once so, and if there's flash floods and high stream flows, you could have additional soil erosion and degradation of the bank on the north side.

This could be a reason not to take heavy equipment into the streambed or do the removal of the railroad rails. With regards to sealing the tunnel, we can do that without any excavator equipment. It can be done by hand-mixing and won't require putting any cement or materials into the stream itself (*further described the process*).

Counsel for WWC – suggestion to recommendation 1.a. – delete the words “cut and remove” and replace with “to seal with concrete” – it should handle the problem if the Commission is willing to allow the change.

Mr. Pellegrino – could a steel plate could be welded over? There are still active traditional and customary rights of access to the valley for gathering native stream life. Concerned of safety of others who may venture there as it's in the middle of the stream and if the coverage could be on the areas where the railroad ties are exposed.

Mr. Chumbley – not sure if that would be a solution or make a difference. The rocks and rubble filled the hole to the level of the rails themselves. There's no deep indentation that someone's going to trip over if they go up there.

Most people I've seen up there walk along the trail along the north edge of the stream. Trying to weld in standing running water is not a possibility and there's no way to bolt that down because you wouldn't be able to drill into those type of rails. The best solution is to leave it as is.

Mr. Pellegrino – what about signage? Every storm changes the streambed and when we're gathering native stream life, we are actually in the stream.

Mr. Chumbley – the rails are embedded in the concrete under rock and rubble. If the solution

is to put up signage, we'd be happy to do that.

Chair Hannahs – it's prudent and cost efficient.

Commissioner Kagawa-Viviani – (to WWC) how long will the sealing of the ditch take?

Mr. Chumbley – 1-day

Commissioner Kagawa-Viviani – suggested added language to recommendation 1.a. to include “to notify Hui o Nā Wai ‘Ehā when worked is scheduled”. And noted that eventually steel corrodes and if it will be a liability for anyone.

(to Ayron) – would it be a hazard for anyone walking there?

Dr. Strauch – I've walked up the stream channel a few times you're just as likely to fall on a rock then on the structure itself. I wouldn't think it provided a greater hazard than the stream as is.

Chair Hannahs – it's not been made by a commissioner, but I'd entertain a motion of suggestion by Wailuku Water's Council to approve the recommendation as is subject to the removal of that clause from the words cut and remove the remaining portions of the eroding metal grates on the Everett ditch intake to the word “and”

Commissioner Buck – and add with notification to the community.

Deputy Manuel – confirming if we want to add the signage (for liability purposes) as an additional condition; once this abandonment occurs would the liability fall on potentially the state or others in this proceeding? It's cautious for us to recommend signage if we allow the diversion to remain in the stream.

Commissioner Buck – we've dealt with the liability issues with signage, it's complicated. Our intent to remove these diversions is at least trying to restore things back to the normal. I think the signage may increase the liability at this point.

Deputy Manuel – appreciate that comment.

Chair Hannahs – will not put it into our action/recommendation today if WWC and the Hui want to put signs up, we have no jurisdiction over it.

Deputy Manuel – read the amended 1.a. language “...Seal with concrete the beginning portion of the open ditch to ensure water remains in the Waikapū Stream and it's not diverted off stream and to extend advance notice to Hui o Nā Wai ‘Ehā when work is done...”

Chair Hannahs – change to “extend advance notice to Hui o Nā Wai ‘Ehā when work is to be conducted...”

092022 02:31:48

MOTION: (KAGAWA-VIVIANI/MEYER)
To approve Item B-5 as amended.
UNANIMOUSLY APPROVED

092022 02:32:25

B. ACTION ITEMS

6. Approval of Stream Diversion Works Permit Application (SDWP.5807.6) and Special Conditions to Abandon Registration of Stream Diversion Works and Declaration of Water Use No. 1186.6, Reservoir 6 Intake by the Wailuku Water Co., LLC, Waikapū Stream, Waikapū Surface Water Management Area, Maui, Tax Map Key: (2) 3-5-011:049

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

Mr. Uyeno stated the summary of request and noted this diversion has not been in use since the 80s. Noted the photos of the diversion in the submittal and the general area of the diversion. This action does not trigger HRS Chapter 343. Mr. Uyeno then stated the staff recommendations.

QUESTIONS/COMMENTS – none

092022 02:34:46

PUBLIC TESTIMONY

Mr. Avery Chumbley, Wailuku Water Co. (WWC)

- this is the most complicated one
- this intake was put in the early 1900s and serviced the sugarcane fields around Waikapu area and provided water for HC&S below the highway.
- it filled Reservoir-6 located off East Waiko Road
- in the 50s-60s when urbanization started, the north side of the stream is entirely residential
- Reservoir-6 was abandoned based on a stipulated agreement from a previous D&O in a contested case; the intake filled Reservoir-6 with about 4 to 6 million gallons of water which was distributed from there.
- Reservoir-6 was last used in 2006 and the intake has not been active since.
- *(shared picture and noted the diversion area and described its environment which consists of over 1,000 square feet of concrete)*; Honoapi'ilani Highway is 20 to 30 yds away from diversion area.
- what is the larger impact should major removal of infrastructure be done? It's been in place since 1929; challenge to get equipment at that area of streambed with no access on the northside as well, due to residential area; possibility of access on the southside.

- removing (concrete) parts of the wetted area is possible but concern on rock and rubble movement once the channel is open which pose deeper erosion of streambed.
- recommend no other part of the concrete be removed (*only wetted path*) as it created a stable embankment. If much is removed, possibility the rock and rubble will flow and clog downstream under the bridge, which cause a potential failure of the bridge.
- Once the County tried to clean-out under the bridge which since has not been done for decades.
- talking through this with everyone is the best way to come up with a solution that works for all.
- (*shared a photo of the control gates in which staff recommends abandonment and noted its use*); noting to remove the steel structures above the ground level; both gates are shut and are inoperable and abandoning it in the “shut” position is the best solution.

QUESTIONS/COMMENTS

Chair Hannahs – do I understand you'd also cut them down to be right on the surface?

Mr. Chumbley – correct; the current valves are down below the tunnel which could be 6 to 8 feet below ground level. Trying to dig up something that's already sealed, doesn't make sense. Removing the structures above the ground level would be the solution to that.

PUBLIC TESTIMONY CONT'D

Mr. Hōkūao Pellegrino, Hui o Nā Wai 'Ehā

- the Hui stands strongly on this recommendation as laid out in the action plan.
- the County and DOT did some cleaning under Honoapli'ilani Bridge at Waikapū Stream a few months ago and also did work there in 2016 due to flood debris build-up.
- on the south bank, the landowner has been cooperative allowing for machinery to go into the stream.
- from a community standpoint, we'd like to see this diversion and most of it removed.
- it can be done in a way that continues to stabilize the stream as well as infrastructure makai of that as it's been done by EMI and other state entities.
- noting majority of this diversion should and can be removed safely.
- traditional and customary practices in the area.
- full support of staff's recommendations as is.

Ms. Lucienne de Naie, Sierra Club Maui

- I'm very familiar with this area.
- we do need to find a solution.
- I'm aware in questioning other projects about how they intend to remove old concrete (*noted on alternative ways in removing old concrete*)
- we need to think outside the box in finding the most optimal solution.

(*end of public testimony*)

QUESTIONS/COMMENTS

Mr. Pellegrino – similar to the Everett Ditch intake, request when work to be done, the Hui and community is notified in advance as it's a residential area (*gave example of when County did stream work, community was not notified*). Understand that 100% of infrastructure can't be removed but request majority of the foreign materials are removed from the stream to ensure the stream returns to its natural state as much as possible.

Commissioner Buck – inquired on Ayron's perspective on habitat and staff opinion on requirement to remove the below ground components of the control gate.

Dr. Strauch – the overhanging lip is an issue; if the concrete were broken up sufficiently, it would be like boulders in the stream, and would eventually erode. I don't think the entirety of the concrete needs to be removed but removal of the overhanging lip would be beneficial however that gets accomplished.

Chair Hannahs – would that meet DAR's concerns?

Dr. Strauch – not going to speak for DAR but [compared to] the other three streams in Nā Wai 'Ehā, this supports the least amount of habitat. Removing barriers for upstream migration will benefit even the one 'o'opu that makes it.

Deputy Manuel – Item 1b talks about sealing the tunnel and what we're asking for above ground is the removal of the control gate infrastructure on the top of the bank and sealing the intake to prevent any water from leaving the stream, that's the recommendation of 1b. I think that addresses questions and testimony presented today.

Mr. Uyeno – Wailuku Water Company acknowledges there is some seepage around the currently placed steel gates, if they can seal that with concrete to prevent any seepage and as Deputy noted to remove the infrastructure at top of the bank, should suffice.

Commissioner Kagawa-Viviani – (to Mr. Pellegrino) what is sufficient advance notice?

Mr. Pellegrino – One week is fine.

Commissioner Kagawa-Viviani – (to staff) based on the submittal recommendations, seems like the main objective of 1.a. was to allow for fish passage then you said remove the overhanging concrete lips, not the complete, whole diversion. If an excavator is needed, my concern would be that this be a big alteration and require like heavier duty review. Can you clarify what your objectives of 1.a. were?

Mr. Uyeno – the target was to comply with the Division of Aquatic Resources (DAR) comments. Ideally, we'd want full removal of any diversion structures, more importantly is to restore connectivity with the stream so there's no overhanging lip.

Need to keep in mind as Ayron noted, this is one of the less biological diverse streams in Nā Wai 'Ehā. Below this section, it moves through sandy soils and there's a lot of loss. There's

wetlands below and just up above this is the Waihe'e Ditch intake which goes across the entire stream channel which is still in place.

Commissioner Kagawa-Viviani – (to Mr. Pellegrino/Ms. de Naie) it sounded like the community's interest was in favor of complete removal or partially remove the overhanging lip.

Mr. Pellegrino – we'll support Commission staff's recommendations. As a kupa of Waikapū, our stream gets a bad "rep" that based on historical data there's minimal aquatic biology in our stream which has drastically changed since the restoration of our stream in 2014 (*described the amount of hīhīwai seen*). There hasn't [sic] been any formal surveys done and would like to work with Aquatic Resources on that. There is 'o'opu nākea and hīhīwai throughout the stream and those that live here all well aware of that.

Commissioner Buck – are we removing the full concrete overhang lip or doing it in portions to ensure appropriate habitat? (*asked to clarify staff recommendations*).

Mr. Uyeno – (*shared screen of photo of diversion area*) the diversion is 20 to 30 feet below from the downstream lip (*described the area of the diversion*) just above the intake grates it gets into a natural streambed. Full removal would be a very large task, it may require Army Corps of Engineers (USACE), DOH and may require a long permit process. Our intent is to ensure at the bottom, there's connectivity to the lower pond.

With the sealing of the grates, the intake section should be fully submerged and should have a fairly full stream channel that organisms can traverse.

Chair Hannahs – you're recommending sealing the grates?

Mr. Uyeno – sealing the gate.

Chair Hannahs – this is just fill?

Mr. Uyeno – correct.

Deputy Manuel – we're to remove the overhang, but it's really addressing the overhanging concrete lip in order to provide fish passage, that's the core root. (*read suggested recommended amended language*) "...to modify the overhanging concrete lip at the low-flow downstream edge of the concrete apron, below the diversion intake to provide for fish passage...and enhance the connectivity..." – with the additional notification to provide advance notice to Hui o Nā Wai 'Ehā of when work is to be conducted.

Counsel for WWC – Wailuku Water would be agreeable to that proposed change.

Chair Hannahs – does this address community's concern?

Mr. Pellegrino – being frank, we'd like to see as much removal as possible. Not making this a big matter, but looking at what's happening on East Maui, there seems to be a lot more effort

from Commission staff in regard to particular situations on that side. This doesn't sound as thorough. Not trying to wipe away history, but it's important for the community to see these structures removed from the streams and return it to its natural state as they once were.

Chair Hannahs – understand your concerns.

Ms. de Naie – I kāko‘o what Hōkūao stated; it's a matter of justice. People have suffered for many years because these diversions deprived them of water they were legally entitled to. The stream life has no voice except us. We should try to restore as much as we possibly can, dedicate ourselves to repairing and restoring, regenerate. I understand the Commission has a tough role. We should aim high and see what we can accomplish.

Commissioner Kagawa-Viviani – I want to see these streams restored as much as possible, however, in an urbanized area when you do you restore flow, you're also dealing with decades of a different kind of flow regime and geomorphology. Maui rivers are forceful and will need an USACE review in removing a big structure it will change flow. I'm concerned if we are considering a big removal, then we need to think about liability of the Commission and State.

Chair Hannahs – noted Commissioner Wayne Katayama joined the meeting at 12:03 p.m.

Mr. Chumbley – as noted, this would be the most difficult. I don't want us to lose focus on the professionalism, knowledge and experience of what staff recommended and they have taken into consideration various options and have come up with a recommendation that will work. Removal or modification of the lip will allow full connectivity for habitat. The grates are full, so higher flow levels will see greater flow of water downstream. Once that lip is removed, there will be connectivity all the way up.

The difference between the intake and the lip, is not all solid, concrete. There's a lot of boulders so there's different levels and depth of water. Trying to remove the majority of the cement or all of the intakes could result in significant impact. It's been in this condition this way since 1929. Let's modify the front lip, allow the connectivity and get something done in a reasonable amount of time.

Mr. Moriwake – staff came up with a recommendation to remove it all and now we're negotiating on the “fly”. Maybe it's directing Wailuku Water Company to work with the State and Hui to come up with a plan to move forward. The Hui's concern is still having the structure remaining in the stream (*noted on the Commission's East Maui's decisions*).

Commissioner Buck – move we approve B-6 as clarified by staff. It's a positive step in the right direction and understand everyone's public testimony in trying to restore the stream to its original state. Removal of the whole lip would delay the process and may cause more damage. Time to move forward and take the next step in restoration.

Chair Hannahs – asked Commissioner Katayama's stance on item matter.

Commissioner Katayama – no comment at this time.

Commissioner Kagawa-Viviani – my concern is if we move to approve staff's

recommendation, that includes the removal of the whole structure in the future. If it's an option to explore, I would be in favor of a deferral to work out the procedural options. We can do the minimal to ensure fish passage or remove the whole structure to restore the integrity of the stream.

Commissioner Seto – has staff discussed the removal of the entire apron with DOT (Department of Transportation)? If that's going to impact the bridge further down, that would be a consideration to remove the entire apron.

Mr. Uyeno – no, we have not.

Deputy Manuel – DOT was not consulted in this specific abandonment permit.

Chair Hannahs – after hearing today's testimony, would that be a good idea?

Mr. Uyeno – in this case, it would be a good idea to consult with DOT if we were to move to recommend full removal of the diversion. Also, would ensure Wailuku Water consult with Army Corps of Engineers and Department of Health.

Deputy Manuel – based on the conversations today, we also haven't received concurrence with SHPD and may need to attach additional conditions. We can defer this for a month and give us (staff) time to work through some of these issues and come back with clearer language and having at least started the conversations with DOT and others. We can circle back with the Commission hopefully at the next Commission meeting.

Commissioner Meyer – that's a great suggestion; let's get DOT on it as they have a bridge there and it's important too.

Deputy Manuel – having heard testimonies today, I can work with staff, the applicant and others involved to address concerns.

Chair Hannahs – noted that staff will work on consultation with all parties and others involved. What does modify mean and what would it take to do it and its consequences of that.

Commissioner Kagawa-Viviani – in general and to understand what a minimal modification requires, or the different stages of modification requires and be able to see the different options.

Deputy Manuel – noted that, there's no cookie cutter, that spectrum varies, and every single case and stream is different. I hear the critique from community and will say that staff did review this and talk about various suggestions, and don't want it to come across that we didn't put as much effort as we did in East Maui on those abandonments as we did here. It is case-by-case, and we can work with everyone and reach out, do a bit more and bring back something more cohesive. I support the deferral.

Chair Hannahs – it's a tricky balance to understand the context of what drives decision-making without what it appears to be holding different stakeholders to different standards.

092022 03:15:02

**MOTION: (BUCK/KAGAWA-VIVIANI)
To defer Item B-6.
UNANIMOUSLY APPROVED**

Chair Hannahs thanked all parties for a healthy discussion and standing for your principles while also being considerate of other points as well.

RECESS: 12:17 PM

RECONVENE: 12:46 PM

092022 03:18:10

C. NON-ACTION ITEMS / INFORMATIONAL BRIEFINGS

1. Proposed Interim Instream Flow Standard for Huelo Streams & Department of Hawaiian Home Lands Reservation, East Maui

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

Dr. Strauch gave a PowerPoint presentation on the briefing to request a surface water reservation of 1.3275 million gallons per day (mgd) for the Department of Hawaiian Home Lands (DHHL) to meet their foreseeable future non-potable water needs in Pūlehunui Region serviced by the East Maui Irrigation System from Huelo Streams.

Staff is requesting that the Commission consider the recommendations for amending the interim instream flow standard (interim IFS) for the streams in surface water hydrologic units of East Maui. These streams are diverted by several water delivery systems. The mean annual rainfall varies by areas which effects availability of groundwater and surface water, causing the natural streamflow to decline substantially. There are various publications from the USGS and the Water Commission to quantify the availability of surface water.

A brief background history of the D&Os was stated and the geology of the Ke‘anae Valley were noted mentioning these are gaining streams from high elevation. In the Kula area, the streams are generally losing water to the groundwater table. A map of all the diversions were shown in the noted hydrologic units. There are a various watersheds or hydrologic units with differing surface geology which impacts surface flow as well as the passage of various species.

Kōlea is a small hydrologic unit of low to medium flows diverted by 3 different irrigation systems. The primary management proposed is to increase the length of stream habitat available for the endangered damselfly without increasing upstream movement of non-native fish, specifically in East Kōlea. Photo of the Kōlea Ditch intake were shown with the recommendations noted.

The geology of the Punalu‘u hydrologic unit with its biological information and proposed management were noted.

The Ka‘aiea hydrologic unit diversions were shown noting diversions at 4 different elevations with the goal to increase connectivity below the Wailoa Ditch, also at Spreckels and Center Ditch. The proposed management and modifications for implementations were stated. Photos of Spreckels and Center Ditch were briefly explained.

‘O‘opuola is a bit smaller watershed but has high potential to support aquatic species in the lower elevations. We conducted several partial record gaging stations across this watershed at high elevations, and seepage runs to quantify the gains in base flow downstream. It’s also diverted at 4 different elevations. The recommendations were stated and the proposed modifications for implementations were explained.

Puehu is small watershed with 2 streams, both of less than 0.1 cfs and ends at a terminal waterfall. There’s limited instream uses with the recommendation to continue to provide for non-instream uses.

Na‘ili‘iliha‘ele is one of the larger watersheds a number of tributaries and registered diversions. Its noted proposed management and modifications for implementations were stated. Immediately downstream is the Papa‘aea reservoir intake with the goal to get greater flows downstream.

In the Kailua hydrologic unit, the goal is to increase downstream flows primarily for recreational usage. Its diversions and the proposed modifications were noted

Hānawana hydrologic unit instream uses, geology of the area, and intakes were shown and briefly noted.

In Hoalua hydrologic unit, its diversions noted, and no proposed modifications recommended if sufficient management of the non-native vegetation warrants adjustments to the instream flow standard.

In the Waipi‘o hydrologic unit, below the Lowrie Ditch are a number of registered diversions for riparian usage. The recommendation is to seal and abandon the Lowrie Ditch at Waipi‘o stream to meet all riparian uses downstream of Lowrie Ditch.

Ho‘olawa is one of the larger watersheds with a number of streams. Ho‘olawa has 2 main tributaries with a number of diversions. The proposed management and the modifications for implementation were explained.

Phase 1 of the prioritization of the modifications were noted.

December 2020, the Department of Hawaiian Homelands put in a request for non-potable water sourced from the East Maui Irrigation System for 2 different developments, Pūlehunui and Keokea-Waiohuli. The recommendation is to address the Huelo Streams petition to amend instream flow standards in concert with the Pūlehunui non-potable water reservation. We’ve seen a continual decline in surface water availability, therefore a decline in ditch flow.

The overall goal is to recognize instream uses. A table of the availability of stream flows were touched on. The Water Commission’s mandate “...we must balance the public trust uses and provide for a reasonable and beneficial uses for non-instream needs...”

Chair Hannahs recognized Ayon’s hard-work and discipline into its research and recommendations that factor in a balanced approach.

QUESTIONS/COMMENTS

Commissioner Buck – asked on a timetable on integration of all the recommendations?

Dr. Strauch – in July we discussed the hydrologic data available and efforts to quantify water availability especially on smaller streams that have not been monitored by USGS as well as conduct seepage runs to quantify groundwater gains and flow below Wailoa to Lowrie Ditch, and to the mouth of the stream. We’ve also monitored biota across the region in a controlled manner. Commission staff have spent the last 2 years verifying all the registered instream uses. There are also recreational uses in many of these streams. In August, the Commission staff presented on non-instream uses to utilize non-potable water from East Maui.

This addresses the petition to amend instream flow standards filed with the Commission last year, taking the availability of hydrological data then evaluating the non-instream uses with a recommended plan.

Deputy Manuel – (to Ayron) to help contextualize this proposal with the prior decision of the 27 streams. You only spoke on a portion of DHHL’s reservation they’ve made a request for. If you could prep the Commissioner on how you’re addressing the remaining DHHL’s reservation.

Dr. Strauch – under low-flow conditions, there is not as much water in Huelo compared to the entirety of the system including the streams originally petitioned in 2001; we’re looking at addressing concerns with the other 27 streams originally addressed in the 2018 decision and order by making recommendations and to reserve the remainder of the request for DHHL.

There's more water available when we consider more streams. We have learned more since 2016. We’d like to take that new information and adjust the recommendations as Commission had hoped we would to do.

092022 03:55:26

PUBLIC TESTIMONY

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

- December 2020, a request made from DHHL to the Commission for water reservation at Pūlehunui and Keokea-Waiohuli
- partially in response and request of East Maui Irrigation, Alexander and Baldwin / Mahi Pono, and the Department of Land and Natural Resources Land Division.

- before any water can be leased from East Maui there has to be a reservation and request from those sources sufficient to meet DHHL's needs.
- went through a beneficiary consultation process after a DHHL analysis which then was approved by the Hawaiian Homes Commission.
- note the complexity of the CWRM staff recommendations.
- taken a bit back DHHL's entire request was not presented today.
- to what degree DHHL's two requests and the proposed interim instream flow standard amendments maybe related to each other?
- water at higher elevations is in greater demand, value and a greater significance; DHHL lands at Keokea-Waiohuli are at a higher elevation; without pumps, lower-elevation water can't be delivered.
- struggling on the principles that relate to which diversions are recommended that upper elevation diversions are more valuable for off-stream than lower elevation diversions; relationship to off-stream demands would be needed
- based on the presentation, not sure if DHHL's water needs of Keokea-Waiohuli could be met.
- noted error on page 3, 8 & 10 of staff submittal.
- the law is clear that anytime the Commission make a decision regarding a surface water source, you're (CWRM) is obliged to ensure there's sufficient water for DHHL.
- need a clearer standpoint on the overall principles are in guiding where these reservations are going to be taken from, in relationship to the elevation of the diversions.

Ms. Lucienne de Naie, Sierra Club Maui

- Sierra Club did submit the petition a year ago for the IIFS to be considered for these streams; streams that are treasured by our residents and visitors alike.
- pleased to see that modifications are proposed to grant more flow and connectivity.
- concerned about improving the one pipe that address current but may not address future needs.
- the water of Hanawana Stream where it meets Lowrie Ditch, there's no more stream, it's completely subsumed into the ditch.
- that pipe currently in the Lowrie Ditch does not serve all downstream users; a permanent solution needs to be addressed.
- at the latest EMI/Mahi Pono quarterly meeting, it was noted they don't need or use the water from Lowrie Ditch; Commission should inquire if it holds true for future use to allow more connectivity of the stream.
- Hanawana have no public water supply like the rest of Huelo making the streams a useful part of the community infrastructure.
- we support Dept. of Hawaiian Home Lands having their requested water as its constitutionalized.
- we're at a great starting point and hopeful that Commission can define its specifications for its recommendations.
- hopeful that farmers receive the water for their agriculture uses given the climate constraints.

Ms. Blossom Feiteira, Hawaiian Homes Beneficiary

- based on item C-1 recommendations, respectfully request the Commission restore the allocations as originally requested for DHHL's reservation for Keokea-Waiohuli.
- the more water available mauka, the easier and faster the lands can be restored.
- Drought impacts are visible from Central Maui to the slopes of Haleakala, particularly on Hawaiian Home Lands.
- adequate water available from mauka to makai will ensure healthy lands and provide more farming opportunities; and ensure continued recharge of its aquifers.
- water is needed in Pūlehunui for the Ag lots.

(Ms. Feiteira incurred connectivity issue)

Mr. Ke'eumoku Kapu

- have 'ohana residing in Pūlehunui struggling with water issues to provide for their agricultural crops.
- I hope the Commission entertains an idea on what the original condition was to allow water to be allocated for them (DHHL).
- an advocate for traditional and customary rights to put the land back in order as after the plantation days, it made things more complicated pertaining to water.
- support DHHL water reservation and for CWRM to look at other opportunities on the instream flow standards and how those areas can be reactivated
- He ali'i ka 'āina he kauwā ke kanaka

QUESTION/COMMENTS

Chair Hannahs – are beneficiaries of that area involved with axis deer management.

Mr. Kapu – yes, definitely; I as well try to attend those meetings and it's important that everyone be involved in that because the axis deer is out-of-control. I hope the County and State can work together on a solution. The deer is overtopping our environment to a point we need resolution soon. There's a lot of hunters and community supporting the efforts and trying to find solutions.

PUBLIC TESTIMONY CONT'D

(continued testimony of Ms. Blossom Feiteira)

- the priority for us beneficiaries is to ensure the lands are available for us to utilize effectively; but there's no water availability.
- having water available open lands currently occupied and open lands for new beneficiaries which recharges the aquifer and restores and repairs the 'āina to makai.
- note considerations on the allocations; request the DHHLs reservation be a priority.

(end of public testimony)

QUESTIONS/COMMENTS

Commissioner Buck – spoke of the 2018 order, it's contested cases, noted it's a complicated issue and want to understand on a final solution with the ability to take the noted streams and look at it holistically and its geographical area.

Dr. Strauch – we're no longer in a contested case and can start to amend interim instream flow standards (IIFS) as necessary. We have more information now than did for the 2018 D&O regarding habitat use and community needs in Honomanu, for example.

Some modifications I would recommend coordination for the rest of the reservation for the DHHL. Bottom line, of the Huelo streams, under low flow conditions there's 11 cfs. DHHL's reservation is 11 mgd which is roughly 16 cfs, thus there's not enough water to meet the reservation as requested.

Dealing with the Huelo Streams, we're going to modify the system to protect instream values while reserving a certain portion of the available non-instream water for DHHL. Whether there was a reservation or not, we would have revisited certain streams addressed in the 2018 decision and order. One wasn't dependent on the other.

Commissioner Buck – I understand that high elevation water. I'm cognizant of the larger range of stakeholders as we change the decision and order in East Maui and how we're going to go through that in public form within the Water Commission.

Deputy Manuel – this is complex. A condition DHHL pointed out is the lease being proposed, for East Maui system requires reservations for DHHL to be considered and acted on prior to issuing the lease. That's coming up at BLNR and our CWRM kuleana is to look at how we're going to meet the needs of DHHL. The other trigger is 171-58, the water license being proposed.

Chair Hannahs – we know you're aware of the issues and their complexity and trust that you'll be bringing them forward in a manner that provides us full context.

Commissioner Kagawa-Viviani – how does domestic use of surface water squares up with your recommendations for the Huelo streams to the comment of no public water system.

Dr. Strauch – the Wailoa Ditch feeds the Kamole Treatment Facility. There are 2 higher level irrigation systems that feed the 'Olinda and Piholo water treatment facilities that generate potable water; the county contracts with EMI to maintain these systems but they don't serve EMIs needs, they serve the County.

Commissioner Kagawa-Viviani – I'm speaking on the testifiers that don't have service delivery; there are those that rely on surface flows for their household use.

Dr. Strauch – there are registered riparian usage. A testifier in August testified their domestic needs are met with a catchment system and rely on streamflow to supplement but that's not a potable system demand. The potable system the County operates is dependent on the Wailoa Ditch.

Deputy Manuel – those domestic or users that are riparian to the stream may have existing

registered diversions and may or may not have a stream diversion works permit. The domestic uses are de minimis but need to be evaluated as applications come in and staff accounted for those riparian uses.

Dr. Strauch – the riparian uses tend to be a few thousand gallons a week (during the dry season), but that’s not for human consumption but used for agriculture or around the household. We’ve verified all those end uses. During the wet season, they depend on rainfall.

Chair Hannahs – we look forward to getting this back. This has been a long haul with the contested case and all your work. It’ll be a big accomplishment.

Deputy Manuel – forward your additional questions or comments to Ayron so we can incorporate and address them when we bring it back to Commission.

092022 04:21:36

C. NON-ACTION ITEMS / INFORMATIONAL BRIEFINGS

2. Update on the Mediation Agreement for the Waimea Watershed Area, dated and signed April 18, 2017 (re: Pō‘ai Wai Ola/West Kaua‘i Watershed Alliance’s Combined Petition to Amend the Interim Instream Flow Standards for Waimea River and its Headwaters and Tributaries, and the Complaint and Petition for Declaratory Order Against Waste, for Waimea; Island of Kaua‘i, State of Hawai‘i)

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

The groups met 12 times since the last update held on November 2020 meeting.

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

Dr. Strauch provided a PowerPoint presentation on the update on streamflow and ditch flow monitoring to support the implementation of the Waimea Watershed Agreement noting the two irrigation systems at West Kaua‘i, the Kōke‘e and Kekaha systems. The management goals were stated noting a) to provide mauka to makai flow and ensure habitat protection, 2) support Ag and renewable energy as beneficial uses of water, 3) support DHHL’s needs, 4) ensure maintenance of ditch systems. There’s a need for additional data. The 2017 Infrastructure diagram was briefly explained as well as the new monitoring infrastructure with its modifications including the USGS and CWRM stations.

Various photos of the ditch intakes and IIFS monitoring, and stations were shown and explained.

QUESTIONS/COMMENTS

Chair Hannahs – to ensure the ditch systems are maintained for present future use, in some cases, are they improved as well and getting more efficient systems.

Dr. Strauch – there is a plan to replace certain portions and Kekaha Agriculture Association (KAA) have made repairs to reduce leakage.

092022 04:36:25

UPDATE GIVEN BY: Dr. Jonathan Scheuer, for Dept. of Hawaiian Home Lands

Since our November 2020 presentation to you, we finalized our Pu‘u ‘Ōpae settlement plan for homesteading around Pu‘u ‘Ōpae reservoir which will be enabled when the West Kaua‘i Energy Project goes through. The implementation of DHHL plans is largely dependent on the actions of other parties in the full implementation of the settlement terms and conditions. Working with Earthjustice and Ka Huli Ao, we provided an update for beneficiaries and community on June 1, 2022 and also assisted KIUC (Kaua‘i Island Utility Cooperative) in its efforts. At the recent Hawai‘i Council of Planning Officials held on Kaua‘i, Pu‘u ‘Ōpae settlement plan was awarded outstanding planning award for the year from the Hawai‘i Chapter of the American Planning Society. We’re looking forward to implementing it and continued work with the parties.

QUESTIONS/COMMENTS

Chair Hannahs – with the additional deserved infusion of cash going to the agency to reduce the waitlist, will any of that have consequence?

Dr. Scheuer – there are legislative directives associated with the \$600 million dollar settlement. The primary goal of the legislature is to produce more house-lots. On Kaua‘i, we’re proposing subsistence agricultural lots at Pu‘u ‘Ōpae which people can but are not required to live on. The vast majority is going to be producing residential lots in areas of homesteaders requests which the department is prepared to move on as quickly as possible to achieve those goals.

092022 04:39:17

UPDATE/PRESENTATION BY: Mr. Isaac Moriwake, Earthjustice for Pō‘ai Wai Ola

Mahalo also to Dr. Strauch in getting the monitoring installed/done at the needed areas.

It’s been two years since the last update, there’s still work to be done. The trajectory is toward a positive direction and better compliance. We’re at five plus years after the signing of that agreement. We’re still in Phase 1 and still don’t have full compliance with bigger goals posed for implementing Phase 2 (*noted displeasure of project implementation timeframe reminding this was a Commission order adopting the settlement, therefore, completely forcible by law*).

Deadlines and (non) compliance were explained; the Phase 1 IIFS at Kekaha Ditch and modifications of its diversions were stated; IIFS violations at the lower Waimea River were

explained; concerns for future implementation were made known; and status of the last five -years were briefed on.

Ensuring compliance and more work to be done for phase-2 implementation in moving forward while continuing to work with all parties involved.

092022 04:51:13

UPDATE/PRESENTATION BY: Ms. Dawn Huff, KIUC

Ms. Huff presented on the Kōke‘e modifications and flow monitoring plans – Phase One IIFS. At this point in time, KIUC is not an operator on the Kōke‘e ditch system. It’s operated through Agribusiness Development Corp. (ADC) and Kekaha Agriculture Association, but KIUC agreed to do modifications and flow monitoring to implement Phase 1 (*this update is covering those plans*).

The timeline of Phase 1 was briefed on; the known permit applications submitted to various agencies as well as permit status were noted; a photo of the Kawaikōi diversion were explained; and next steps of Phase 1 were briefed on.

The West Kaua‘i Energy Project (WKEP) has been in development for 10-years. It would utilize the Kōke‘e ditch system and the Pu‘u Lua, Pu‘u ‘Ōpae and Mānā reservoirs. Based on the mediation agreement the Phase 2 IIFS would go into effect once the project is online and operational. The West Kaua‘i Energy Project would deliver water for DHHL at Pu‘u ‘Ōpae reservoir.

Timeline of the WKEP and the geographical photo layout were explained noting the project land cover and use of energy; photo of the Pu‘u Lua reservoir were shown noting the proposed rehabilitation of it.

092022 05:08:37

UPDATE/PRESENTATION BY: Mr. Joshua Uyehara, Kekaha Ag Association (KAA)

KAA manages the ADC infrastructure and ADC lands on West Kaua‘i. KAA realizes the operational benefits of the comprehensive state of the art monitoring capabilities that’s been installed and we’re moving forward with additional diversified agriculture and production on the Mānā plain.

KAA’s guiding principles were made known; graph of its water use of the Kekaha Ditch from 1980-2022 were shown noting its current average use of 8.7 mgd; delays in permitting were noted as well as the diversion modifications and monthly water reporting to the Commission. Its real-time monitoring was briefed on as well as the IIFS compliance graph regarding Waimea River average flows.

Update of KAA’s management and operations and its future actions were noted along with an update of its diversified agriculture current and future plans.

(end of presentations)

092022 05:20:12

PUBLIC TESTIMONY

Mr. Lyle Roe, ADC

- ADC stands on Kekaha Ag Association's testimony

Mr. Kawai Warren

- Waimea/Kekaha homesteader
- status regarding Waimea River IIFS and KIUC's plans
- community concerns: Waimea River is running low; KIUC hydro plans shows the water not returning water back to the river; instream life/biota concerns of Waimea River; conditions of lower rivers
- request updated survey of Waimea River
- Mahalo to Ayron on gage installations

(end of public testimony)

QUESTIONS/COMMENTS

Commissioner Buck – appreciated Ayron's work; this is a great project with many different aspects. We want this to be successful and we need a more definitive timelines and deliverables. We have enforcement opportunities which we don't want to use but the delay in Phase One is a concern and urge all parties to work more efficiently together.

Chair Hannahs – feels like we mediated to create shared goals and parties contributed to the achievement in somewhat independent ways as I seen a bunch of siloed reports of activities. The Commission's interest is best served if we can manage outcomes rather than activities. We need to bring your activities into collaboration around that outcome and contribute to its achievement regarding IIFS measurement, habitat protection, and presence of species.

What are our goals for agriculture, renewable energy and how do the water fits into achieving those goals as well as DHHL needs and ditch system efficiency? I can't see it in terms of the outcomes, but we do understand we're responsible to enforce the collective outcomes that you set and agreed upon. We need to overlay acritical timeline and create a critical path to coordinated achievement.

Commissioner Katayama – *(disclosed served on the ADC Board)* hoped for a more collaborative approach to solving these problems. Because Covid, seems like the way we do business has changed radically, like a month-to-month adjustment and how you've factored impacts on the environmental health issues around us. We need to work collaboratively to solve these issues and all these groups have a unique skill set. State and Federal funding sources may also help as we look at sustainable systems and balance for all instream uses and users.

Deputy Manuel – as Ayron noted, we’ve met 12 times. One of the next group activities is a site visit with all the parties in early November to revisit these systems. I’m hopeful it will lend a sense of collaboration and working towards solutions. We are the space for community contact, communication, and transparency.

Maybe we need to revisit the mediation agreement and re-adjust the timetables we committed to in the first phase and set harder lines we can regulate to understanding all the moving pieces and revisit the metrics on deliverables and outcomes we're all trying to achieve. Further outreach with community would benefit all of us not only at Commission meetings but also in the community itself and reconnect back to communities in which we serve. It’s our role to regulate and protect the resource.

Mr. Moriwake – agree with Deputy Manuel’s comments and clarified it’s been a long process but with the focus on collaboration to forge a better path forward which has been noted. Credited Deputy Manuel and Dean Uyeno for coordinating meetings and Ayron for installation of the needed stream gages. Suggested enforcement and clarity on deadlines and anticipate follow up Commission action if the KIUC project continues to move forward. The Commission needs to fulfill its kuleana in preserving the Waimea resource for generations to come.

Chair Hannahs commented that all parties need to be on the same page to accomplish the same shared goals and thanked all parties on their progress and continued efforts.

RECESS: 3:06 PM

RECONVENE: 3:16 PM

092022 05:38:16

D. RED HILL ITEMS

1. CWRM Staff Updates on Timeframe for Water Use Permit Modification Process and Enforcement Recommendations (*For Information Only*)

PRESENTATION GIVEN BY: Mr. Ryan Imata, CWRM Ground Water Branch

Mr. Imata presented an update on the submittal item noting these are recommendations and open to discussion and revisions on how the Commission wants to pursue the modifications to the water use permits. The [Navy’s] three water sources come from Red Hill, Aiea -Halawa and Waiawa Shafts. The graph table of the allocation amounts of the water sources were explained. The current use of Red Hill Shaft and staff’s recommendations for it were also briefed on along with the future modifications.

The Aiea -Halawa Shaft is the smallest source on the system and is currently offline/shutdown. It’s current uses, staff’s recommendations and its future modifications were noted. CWRM wants to see specifically for their end uses the quantity being used from all 3 sources, commensurate with what they're using the water for.

The Waiawa Shaft is currently the largest use. Currently, Waiawa is supplying the entire system and thus going over its allocated permitted amount as the other two sources are offline. The current uses and staff's recommendations were briefed on.

The process/timeline (next steps) were noted. Unsure if commission ever needed to initiate water use permit modifications but there is due process involved to further that action. Now is a good opportunity for the Commission to discuss how to deal with these issues.

DISCUSSION

Commissioner Buck – appreciated briefing and noted from the Permitted Interaction Group for a long-term aquifer remediation plan also financial responsibility.

Mr. Imata – agreed.

Commissioner Buck – a major purpose is to consolidate the State of Hawaii's legal and enforcement authority to augment DOH's emergency order to ensure the Navy is committed to the long-term requirements and responsibilities and allow us to use our water again. Understand the spectrum of complexities and timeframe but need to start process asap and ensure that P.I.G. recommendations are a part of that as well.

Commissioner Kagawa-Viviani – is the next step is to have an action item at the next meeting so we can move upon this process forward?

Mr. Imata – it's considered; based on Attorney General advice, to accept the application and process it for review, it's not for commission "action". The intention is to present this, recognizing we engage the public. We can do additional outreach to solicit comments. The Field Tank Advisory Committee meeting is in November, and thus this will be too late on our end. We can think about that about how to solicit comments instead of relying on the publishing of the public notice, as not everyone sees the public notices in the printed newspaper.

Intent is to start process of public notice, receive comments and bring back to the Commission in November. A potential contested case hearing or an objection could be raised on the modification, then we'd have to go into a 180-day process and have a public hearing to implement this, following requirements of the Admin Rules.

Deputy Manuel – the public notice is the official start of the process; our goal is this month. Additional technical recommendations will also go into the public notice and provide time for the public and the Navy to provide comments or objections. If there's no objections, we don't need a public hearing. If there's objections, there'll be a public hearing which then go straight into a contested case hearing; but within that objection we must determine if it has standing.

There are processes in our Admin Rules to follow. The public notice is the start and the formal way in which we engage on these modifications. We brought it back to commission this month before issuing the public notice to solicit community feedback and may refine recommendations based on public testimony and guidance from the Commission.

We have the P.I.G. and staff's recommendations and testimony and need to hear from the Commission for potential refinement to also include in the public notice.

Commissioner Kagawa-Viviani – we've received huge amount of testimony since January 2022; is what gets noticed is what needs to be decided upon or can it be modified after without going into a contested case?

Deputy Manuel – the challenge is this is a commission modified permit modification and so we need to come up with what that looks like. We've got feedback from the group and staff and hearing from the community on potential other modifications.

Based on testimony received throughout this time period and based on recommendations, these are the modifications we recommend in consultation with our AGs. We need to determine whether testimony, other modifications and recommendations are warranted, and can be attached to the water use permit in future modifications then fold it into the public notice.

To date, not all testimony received is applicable to the actual water use permits the Navy holds. A lot of testimony does fit within what the group recommended, which is a long-term remediation plan which we want to add as a condition of the permit(s).

Chair Hannahs – there's all kinds of layers of information here, some very pertinent to a specific action that will be before the Commission; others are general context and background information (*gave example of plume containment with its data info online*). We're one of the keyways which the public engage on this issue; this meeting and another can be via our website and hope it can be launched.

Is there a nexus for attaching defueling to all Navy well permits? It's an existential threat that affects the whole system.

Mr. Imata – that's open to discussion. There may be interest in it and not restricting those who are using water from the system who have already and still suffering from the contamination of the system, but I think it's a decision the Commission needs to make, but aware of the fact it might impact military families affected by any restrictions on the water use permit.

Chair Hannahs – not restriction, but a condition; there may be a difference.

Commissioner Meyer – Ryan has a good point. It seems almost punitive that people would be being punished if the permits were cut back and water rationing took place, all that would be the dependence of the rank and file and not necessarily the folks who are making the decisions with respect to remediation of the tanks and of the Red Hill.

Commissioner Kagawa-Viviani – asked Deputy Manuel on clarifying next steps

Deputy Manuel – to let us know if there's anything specifically today, based on testimony that you want to include in the public notice. When we issue the public notice, as part of that, we receive comments and based on those we can modify the permits.

There's a chance here for the Commission to help us further refine those modifications presented or could also go with what the P.I.G. and staff recommended, issue the public notice, and receive comments. Both is legally sound and consistence with guidance from the AGs.

Commissioner Buck – urge to start process; incorporate enforcement and legal capabilities; clean-up and aquifer remediation.

Commissioner Seto – who are the members of the P.I.G.?

Deputy Manuel – Chair Case appointed Commissioner Hannahs to serve since Meyer stepped down. Commissioner Buck and Kagawa-Viviani are also members.

092022 06:17:29

PUBLIC TESTIMONY

Mr. Wayne Tanaka, Sierra Club

- Mahalo to Commission and staff on time and efforts.
- modifications need to be stronger and quicker; it's a matter of due process for the military
- shorten public comment period to two weeks as the timeframe to formulate a plan has taken long and the Navy has had ample time for action.
- at this point in time, over 1 billion gallons of water has been dumped into Halawa Stream; demand accounting for the Navy's water usage
- the affected military families can be protected with the conditions; encourage to read (Sierra Club) testimony on conditions; there are still many families reporting major issues with the water such as petroleum or over chlorination and (CWRM) can address them with modification conditions.
- Mahalo Commissioner Hannahs and Buck for their recent newspaper article recognizing the larger context of the situation.
- protect our watersheds, water sources, fix leaking infrastructure, stop wasting water, do more metering and monitoring, and impose appropriate and beneficial use of the system of the public trust.
- With uncertainty of where plume is and where it's going, public is denied access to an entire region.
- Navy stated it will take 20-40 years for the 5,000 gallons fuel to naturally attenuate and be pure again; fuel tanks are still very vulnerable
- CWRM have a unique authority and position and can hold the Navy in violation.
- what's done today, will impact the rest of future generations.
- the public share the same concerns and made similar recommendations; and consider them moving forward.

Ms. Rebekah Garrison, Hawaii Peace and Justice, Oahu Water Protectors and Shutdown Red Hill Coalition

- Mahalo to Commissioners for remaining steadfast in efforts to protect the sacredness

- of clean unpolluted drinking water.
- history of settler colonial power, wealth, and violence in Hawaii is inextricably tied to land water and theft; and led us into the disaster we're in today.
- our kuleana service is to the broader community; remind the Commission of the harm the public still faces
- public asked to cut-back 10% of our water consumption while the Navy asks for more water and continue to waste water.
- U.S. Military should not be beneficiaries of Hawaii's public trust; the Commission must enforce its own rules; impose fines, mandate better water usage, fix leaks, and enforce conditions of the permits or take the permits away.

Mr. David Mulinix

- Mahalo to the Commission for hard-work and to ensure protection of the public
- the Navy is not taking care of Red Hill and not doing enough to ensure military families have safe drinking water.
- some military Hawaii families are in Washington D.C. to get their legislators and EPS's attention on this issue; military is the biggest polluter in the world
- the Commission must not give the Navy more water; military families should not have to cut back water use; the public should not continue to suffer.
- Navy need to clean up their own mess and find another water resource; the Commission need to impose hefty fines.
- Board of Water Supply are the heroes and public are asking CWRM to be the same kind of heroes.
- this protection is for the entire public community and O'ahu itself; the public is entrusting the Commission to uphold its duties.
- currently, is the most dangerous and serious issue the public is facing.

Ms. Michelle Arvizu

- prior resident of Doris Miller residential (military housing); now reside in Kapōlei; 'ohana serves in the Navy
- directly impacted by fuel leak of November 2021 and feels like nothing improved.
- urge the Commission to bring forth harder deadlines and regulations for the Navy with understanding the need for more/current data
- the Navy is taking too long and are responsible for the damage caused to the environment but especially to the military families and O'ahu.
- suffering from health complications from fuel in drinking water.
- crucial to hold Navy responsible; there's more than enough public support
- urge Commission to act swiftly on their water permits.

Ms. Susan Gorman-Chang

- Chair of Environmental Justice Task Force of Faith, Action for Community Equity made up of 24 organizations
- timelines should be quicker, there's the same and many testifiers each month
- a November action by the Commission is sufficient

- the “Navy” is at fault and has hurt its community – adding conditions to their permits is a reflection upon them
- nonprofit, Mutual Aid Society distributes bottled water monthly to military housing families.
- Navy has duty to military families to provide housing and safe water.
- the Commission needs to use its legal authority and hold Navy responsible

Ms. Danielle Espiritu

- core of organization is based upon Hawaiian values and cultural practices.
- Malama area and of Kalawao Springs; springs are in projected pathway of fuel spread; if it spreads to area, it will destroy the last remaining lo‘i kalo in the area
- Kalawao was once abundant in freshwater springs, lo‘i kalo, fish ponds, and other offshore fisheries.
- Commission needs to set timelines and parameters for the Navy and in need for better monitoring
- community stands to protect its 'āina which the Navy has blatantly damaged.
- this crisis is unprecedented and the Navy should be held more accountable as lives were destroyed.
- place conditions to their permits or take them away; should not receive additional water.
- protect our aquifers from further risk of permanent contamination; regulate over pumping, ongoing leaks in the navy's water system, and remediate contamination.

QUESTION

Chair Hannahs – do assess water quality there and see any evidence or presence of the underlined plume?

Ms. Espiritu – there’s a group currently testing at Sumida Farm and beginning on organizing groundwater testing from the spring end of September; but (no evidence) nothing as of yet.

Ms. Susan Pcola-Davis

- inquired if the Commission receives copies of the various Navy presentations to various boards and entities.
- (*outlined/highlighted recent presentation given by the Navy at the recent Aliamanu/Salt-Lake Neighborhood Board meeting*) – DOH permit, GAC discharge into Halawa Stream,
- Commission and Navy need to keep public informed with up-to-date information.
- hold the Navy accountable; condition their permits; should not take more water.

Ms. Choon James

- Mahalo to Commission for continued efforts in protecting Hawai‘i’s environment resources.
- thanked Navy for their service of national security.

- all is accountable for stewardship of the lands and water and service to the public.
- this water issue is top priority and requires urgent attention and for all involved to do what is right.
- time is of the essence; clean water is life; urge for quicker action/responses.

Mr. Puaena Ahn

- echo all previous testifiers on this issue
- hope the Commission is really thinking of all written and oral testimonies submitted.
- request urgency in the matter; life giving water has been contaminated.
- Navy needs to remediate urgently and timely.
- water is life and the Navy has destroyed both.

Ms. Tara Rojas

- 'ike kupuna is the foundation of Hawai'i
- all must continue to protect the 'āina and wai
- urge immediate remediation and hold Navy accountable; take away their permits and don't allow any more water for them.
- Pearl Harbor was once abundant with fresh oysters and sea life; now, all waters there is toxic
- Navy known for years the leaks and spill would occur but did nothing.
- public is continuing to suffer
- more urgency needed from the Commission and the Navy; cleanup and restore the aquifers; timelines not strict enough.

Ms. Gina Hara

- Mahalo for allowing the public opportunity to speak on the matter.
- From Halawa Valley; testifying for the past 8-years at various meetings.
- what are the alternatives the Navy provided?
- too many delays and excuses; people's lives are still at risk; military families still unable to drink tap water.
- Navy is unaccountable and should be fined millions of dollars.
- Oahu military families travelled to D.C. to urge support and shutdown Red Hill.
- take their water permits away and don't allow them anymore water; Navy continues to waste water.
- Commission needs to be vigilant and continue to support the public; show its legal authority to the Navy.

Mr. Alfred Medeiros

- from Wai'anae, Oahu
- camped for 10-days in front of the U.S. Pacific Fleet Commander area.
- where is the Navy representative today? No presence here shows no respect to the public and Hawai'i.
- \$5,000 fine is way too low for the damage caused to the most precious resource; fines

- need to be substantial
- depend on fresh water for farming agricultural crops
- placing too much stress upon one aquifer.
- it's been too long and seems nothing has been done.
- take their permits and water away; can't wait another 50-years for something to be done; Navy has been given too many chances.
- must continue to preserve and protect our natural resources; without water, there's no life.

Ms. Healani Sonoda-Pale

- pull Navy's permits; need to defuel all tanks.
- been given too long to remediate problem; public continues to suffer.
- impose heftier fines; demand full remediation; firmer timelines.
- urge Commission to hear the public's concerns and in full support of the public.
-

(end of public testimony)

COMMENTS

Commissioner Buck – start public notice asap; rank orders some of the modifications in priority, especially the P.I.G. recommendations; reuse of Halawa Stream water. Thanked all the testifiers and apologize if any of your public recommendations are not part of the public notice. Urgent to start the public hearing process and permit modification right away.

RECESS: 4:50 PM

RECONVENE: 4: 57 PM

(late request for public testimony on Item D-1)

PUBLIC TESTIMONY CONT'D

Ms. Kiara Lorenzo Rodrigues

- Mahalo to Commission in hearing testifiers concerns
- urge balance and preservation of its natural resources
- hold the Navy accountable; need urgent timeframes

(end of public testimony)

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D. RED HILL ITEMS

2. Presentation by Department of Health on Geology of Red Hill Area, O‘ahu

PRESENTATION GIVEN BY: Mr. Robert Whittier, Dept. of Health

Mr. Whittier gave a PowerPoint presentation on the geology of the Red Hill area highlighting the volcanic formation and other features. The importance of the geology is what guides the moving of groundwater and this contamination released from the Red Hill facility into the greater aquifer. Our islands are formed from volcanoes, its lava and rock formations and sediment and coastal deposits.

Coastal deposits are very important as they oppose discharge of groundwater to the ocean, giving a thicker freshwater lens. Saprolites are important as in its clay-like form, it fills the conduits to which groundwater and contamination will flow.

A geologic map of Oahu was shown noting its formation by two volcanoes. The geology of Oahu's was explained highlighting the dikes, rifts, and sediment deposits in relation to the formation of the Red Hill area, formed largely of ash and sediments. The boundary between Moanalua and Waimalu aquifer is on the ridge and bisects the Red Hill Fuel Storage. A certain amount of compartmentalization is between each aquifer systems.

Groundwater movement have distinctly different migration potential. It could move contamination down towards Pearl Harbor into the ocean. The other could move contamination with the Red Hill facility to the northwest to the primary water sources. The ashy sediments that made up Pearl Harbor, could also provide a barrier to ground waterflow.

The cross-section map of the Red Hill Water Development Tunnel was explained noting its layered system of soil and saprolite which capped the lava flow and are both resistant to water infiltration, however, would allow it but without recharge. Further down the water table is the Pahoe type lava which are also a conduit for groundwater flow which also provide water transmission properties. More of the volcanic properties were noted and explained of the aquifer around and of the Red Hill area.

Lava tube formations were explained noting there was a lava tube identified within the infiltration gallery of the Red Hill Shaft. With the groundwater it will follow the surface of the lava flows. Oil floats on water as with jet fuel, which is an oil. The lava tube is not a shale pipe that is going to be a robust conduit for contamination to move through.

Clinker zones were explained highlighting they have an advantage over lava tubes, can be quite thick, can cover a large lateral spatial area, and can have a significant impact on groundwater and contaminant transport. Clinker zones like the lava tubes will follow the dip of the lava beds, that makes it more difficult for oil type contamination to follow the clinker zone once it reaches the water table.

Summary of closing thoughts were noted stating the geological uncertainties in groundwater flow and movement in the Red Hill area due to its geologic and underlying formations and known sediments. Much effort, research and data are still needed to determine its factors.

QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – how much do we know about the subsurface of where Red Hill Shaft is and lower?

Mr. Whittier – in the diagram showed, a lot of that was pre-Red Hill and that's why it showed it not going down to the water table. For the wells the Navy installed, it does go to the water table but most stop 20-30 feet below it and we're not getting a good picture of that geology. Some of the later wells have gone a few hundred feet beneath the ground surface and we could potentially look at that more with geophysics.

Chair Hannahs – in light of what's going on underground, what should be of utmost concern to the Commission?

Mr. Whittier – the interaction the SMEs the DOH has with that of CWRM and continue that as we do interact on various problems such as well integrity, contamination migration; continuing that partnership is most important.

Chair Hannahs thanked Mr. Whittier for his time and his in-depth presentation.

092022 08:00:31

D. RED HILL ITEMS

3. Update by University of Hawai'i Water Resource Research Center on Hālawā (O'ahu) Stream Survey, Analytical Capacities, and Collaboration

PRESENTATION GIVEN BY: Mr. Craig Nelson, University of Hawai'i WRRC,
Red Hill Task Force

The presentation focused on the household tap and surface waters regarding Red Hill in coordination with government agencies and the UH analytical team on water quality sampling and monitoring. The UH RH Task Force team initiatives and key research focused areas were noted as well as the Halawa Stream biodiversity group and its collaborators which completed 4 full biodiversity surveys of Halawa Stream.

The survey methods, the GAC sampling sites and discharge point, as well as the timeline of surveys were highlighted. There's a lot more water in the stream with the potential to attract native migratory species and potential impacts to stream water quality.

The stream monitoring noting the graph of the stream's temperature, water characterization and migration of native aquatic species were noted, showing 'o'opu that have been seen at survey sites downstream from the GAC discharge point.

Fluorescent screening was done in effort where measured tap water using a rapid fluorescence technique screened samples that were contributed by the community or collected community tap water samples throughout the area. The accessible and interactive Tap Water Screening dashboard developed by UH grad student, Sean Swift was explained noting it received 25,000 hits since its release a couple of months ago. It presents the data

from 172 samples of tap water collected throughout the area. Positive results have been shown from tap fed by the Red Hill Shaft but none from the Board of Water Supply system.

The outcomes/goals were highlighted noting it's not an EPA certified but performed to quickly provide information to the community as it was of high importance. The enhanced analytical capacities of the WRCC have improved capacity to run targeted analysis of groundwater and tap water based on EPA methods.

The full list of VOC analytes was shown noting the ones found in the water samples collected from ground or tap water at or around the Red Hill area. The key take-aways were stated noting the understanding of what UH-WRCC are doing for the community, the Commission, Board of Water Supply, Department of Health, and the Navy as well.

Chair Hannahs thanked and recognized UH's efforts and continued collaboration and noted Mr. Nelson's contact email.

Deputy Manuel noted that the presentations can be found upon the Commission's website.

PUBLIC TESTIMONY

Mr. Alfred Medeiros – Mahalo for presenters and asked on how to obtain the reports and data presented today?

Chair Hannahs – reiterated Mr. Nelson's contact email and asked Mr. Whittier for his contact information.

Mr. Whittier – noted the presentation will be forwarded to the Commission and stated his email address.

Ms. Susan Gorman-Chang – commented on the rapid screening and the samples.

Mr. Nelson – stated that after samples are screened, it moved to UH's analytical facility.

(end public testimony)

Deputy Manuel thanked the community for their time today noting their voices and concerns are being heard. Also thanked the Commissioners for their thoughtful deliberations and dialogue.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

October 18, 2022 (Tuesday)

November 20, 2022 (Tuesday)

This meeting adjourned at 5:47 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 to view written testimonies received at:
<https://dlnr.hawaii.gov/cwrn/newsevents/meetings/>