

MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 18, 2022  
TIME: 9:00 am  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor / Online via Zoom  
Meeting ID: 818 3970 1221 / passcode: 345439

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:01 a.m. and stated it is a hybrid meeting held live, remotely on Zoom and being streamed on YouTube for public viewing purposes. It was noted the meeting was set to take live oral testimony and by way of telephone, and written testimony received can be found upon the Commissions website. Also noted the chat feature on Zoom is strictly for technical questions. Noted that agenda Item B-1 has been withdrawn from the agenda. Chairperson Case read the standard contested case statement and took a roll call of Commissioners.

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

**COUNSEL:** Ms. Miranda Steed

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

**OTHERS:** Mr. Mahesh Cleveland (Earthjustice), Mr. Cal Chipchase (Cades & Schutte), Ms. Darene Matsuoka (Cades & Schutte), Mr. Todd Svetin (Molokai Ranch), Mr. Tom Nance (Water Resource Int'l), Mr. Harold Edwards (ITC Water), Dr. Jonathan Scheuer (for DHHL), Mr. Glenn Tremble (West Maui Land), Commander James Sullivan (NAVFAC HI)

*101822 00:06:02*

**A. APPROVAL OF MINUTES**

September 20, 2022

PUBLIC TESTIMONY – None

**MOTION: (SETO/HANNAHS)**

**To approve the minutes as submitted.**

**BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER/SETO**

**RECUSED: CASE**

**APPROVED**

101822 00:07:03

## B. ACTION ITEMS

### 2. Follow-up Actions Related to the April 19, 2022 Commission Decision to Amend the Interim Instream Flow Standards and Complaint Against Waste by Molokai Properties for the Kawela (4037), Kaunakakai (4039), and Manawainui (4041) Hydrologic Units Filed by Moloka'i No Ka Heke (CDR.5310.4) By Requiring The Temporary Modification of Diversion 867 on East Kawela, and Monitoring Streamflow at Lualohe (Diversion 863) and Kamoku (Diversion 865) Intakes, Moloka'i

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

Dr. Strauch stated the summary of request and noted since the recommendation to approve the interim instream flow standards (IIFS) staff made 6 site visits to the system and installed 3 monitoring stations each positioned to monitor IFS with exception of Lualohe and Kamoku intake that's not currently active so it's monitoring the natural flow conditions and have continuous data loggers at each station, hoping to use the data at Kamoku and Lualohe for future Commission action, whether for abandonment or utilization for off stream use.

Photos of Lualohe, Kamoku and East Kawela Intakes were shown noting the monitoring/measurement stations. Also coordinated with USGS for installation of a continuous real-time monitoring station at East Kawela above the East Kawela dam and getting that information to the Commission, the public, and to stakeholders is important.

There were a number of follow-ups staff and Moloka'i Properties were to follow-up with including the abandonment of the East Kawela tributary and West Kawela intakes, evaluation of the reactivation of the Kamoku and Lualohe intakes, evaluate other unused stream diversions, system efficiencies, and determine the MPL – PUC determination.

East Kawela dam continuously is plugged with trapped gravel and noticed at several site visits, no water was being restored, thus did not meet the intention of the Commission action, and staff requested MPL seal the intake immediately which they subsequently plugged the intake with a plywood board; although under low flow conditions there's still leakage around that plywood and hoping they'll offer a better solution to seal the intake more effectively.

Staff stands on its written submittal and follow-up actions as noted.

## QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – besides the valve, has staff found anything else within the 180-days investigation?

Dr. Strauch – it was up to MPL to get quotes for reactivation of each of the intakes with substantial costs per intake, depending on its location and necessary permitting. In terms of developing a better data set to quantify water availability at Kamoku and Lualohe intake, with the continuous monitoring, we'll get a better handle on a realistic view of water availability, if they were to be reactivated.

One of the benefits of the Mountain Water System, the reservoirs can store water during higher rainfall periods for use during low rainfall periods. As the Commission has made it a priority to capture higher flow events throughout the State and take advantage of these reservoirs to keep low flow events in the stream. We need to quantify water availability during those high flow events and are doing that at Lualohe, Kamoku, and East Kawela with the USGS stations. We are on track to be able to make better recommendations.

Commissioner Kagawa-Viviani – noted since the April meeting, we were working towards full restoration, but this submittal only mentions on Q50s and what happened between now and then?

Dr. Strauch – were working on gathering those data; there's just very little high flow data available for the last few months as we've been in such drought there's no quantification of those higher events; thus, hold off on full restoration until we have a better understanding but move forward on Q50 restoration of East Kawela.

**101822 00:18:43**

### PUBLIC TESTIMONY

Ms. Darene Matsuoka/Mr. Cal Chipchase, Counsel for Moloka'i Properties (MPL)

- in agreement with recommendations in the staff submittal
- will continue to work with the community and staff

Mahina Poepoe

- Mahalo for efforts
- strong support for full and permanent restoration of Kawela Stream and abandonment and removal of East/West Kawela intakes
- MPL has been horrible water stewards of both surface and groundwater; non-compliance of full restoration of flow
- global water crisis; example of Red Hill (O'ahu) that a single entity can have a huge impact on the community and island for decades
- documents show working with DHHL on restoring some diversions, which should not occur
- reminded that on July 2021, CWRM passed the motion that DHHL report back within a year in regard to Groundwater Dependent Ecosystems (GDE) and traditional & customary practices (T&C); DHHL has yet to provide report
- water is kuleana, not entitlement; decisions CWRM makes will have an impact for generations
- hold egregious water users accountable; restore wai/life to desecrated 'āina

## QUESTIONS

Commissioner Buck – (to MPL) what's your position on full restoration?

Mr. Todd Svetin, Moloka'i Ranch – we support staff submittal; we'd like to modify to the Q50 for our surface water needs, not full restoration.

Commissioner Buck – I'm interpreting that as you're not in favor of full restoration of Kawela Stream.

Ms. Matsuoka – we would like to proceed with the Q50 consistent with the staff submittal and recommendation. We want to continue to work with CWRM staff to fully restore East Kawela for purposes of the study, evaluating during high flows as mentioned. During that time, period East Kawela will be fully restored. Once that data has been collected and reviewed, we can proceed based on the actual data and apply that to our evaluation of the system.

Commissioner Buck – disapproved of using the plywood board to mask a correction.

Ms. Matsuoka – when we had the order come in in April to fully restore East Kawela, based on staff recommendation we did completely open the valve which has remained open. What could not be foreseen, was debris being caught in the intake which backed it up and caused water being diverted. When we were notified of that, staff suggested putting plywood in place for a temporary seal which met the intent of CWRM staff.

Speaking with Mahesh Cleveland (Earthjustice) yesterday, it was known that water is seeping around the plywood board, which we then contacted ITC and came up with other ideas to address that, in which then was forwarded to CWRM staff. MPL staff is there now implementing those. Now, it would seem East Kawela is completely and full restored.

## PUBLIC TESTIMONY CONT'D

Mr. Timmy Leong

- this Commission committed to a goal of full restoration of East Kawela Stream at the April 19, 2022, meeting; 180-days since passed; started with great promise but ended in failure
- has been diligently monitoring stream flow since 4/19/22 (stated days of monitoring); saw increase of young fish in stream that attracted stilts and other wildlife
- witnessed on 9/29/22 at East Kawela intake, all the streamflow diverted and being able to meet the Q50 IIFS
- 10/14/22 seen plywood board seal which did not stop water flow
- consider removing Kawela intake to allow better streamflow, no monitoring and maintenance needed.
- the stream has a memory and knows which direction to flow; it knows the way home

Ms. Teave Heen

- lifelong resident of Kawela, Moloka'i
- full support of decisions made CWRM April 2022 meeting: IFS, abandonments, clean-up, waste management, and (MPL) utilizing their current water storage facilities including alternative water sources for their needs.
- 180-days was a waiting period for MPL to come up with a phased approach plan to establish full restoration which has not been done
- MPL continually disregards and continue to waste valued water and time; community wants to see immediate actions of the proposed (CWRM) staff recommendations; MPL could've done more in the 180-days
- water still being diverted; plywood board not doing much; ongoing heavy leakage
- agree with removing the dam; it's outdated
- unreasonable for community to continue to wait for results/solutions as water resources is dire
- Mahalo and urge Commission's efforts to get MPL to do what is needed

Ms. Momi Afelin

- Mahalo Commissioners and staff for 4/19/22 decision and supporting community and the natural resources of Kawela River; it was a win for 'āina; still has optimism
- MPL continues to disregard water resources; failed to restore flow; still no proper solutions posed; continue abuse of water
- Community and ahupua'a of Kawela has waiting over 100-years for this decision
- Commission has not properly enforced actions/decisions on MPL
- urge Commission to exercise its duty, power, and enforce recommendations to fully restore Kawela Stream.

Mr. Kahekili Pa-Kala

- wanted to "bash" everyone but see there is community support to fully restore Kawela Stream
- maddening to see the plywood contraption MPL used to stop waterflow into the intake
- urge Commission to get MPL to what's required/right to return the water to Kawela Stream

Ms. Lana Corpuz

- MPL showed nothing in the 180-days; little to no change to Kawela Stream
- Commission not doing enough to enforce MPL to comply with recommendations
- our 'āina, wai, its animals and people are the most precious resource; community will continue to stand together to protect its resources
- reminded Commission to fulfill its duty to protect the resource
- urge Commission to enforce MPL to fully restore Kawela Stream

Mr. Kamaki Manangan

- urge Commission to fully implement and enforce 4/19/22 decision addressing the waste of surface water diverted from the streams and the Mountain Water System
- urge Commission to amend recommendations to maximize the potential for restoration of Kawela ahupua‘a provide reasonable and beneficial off stream uses; use alternative sources to meet the MWS needs

Mr. Leelan Corpuz

- full support of the restoration of Kawela Stream
- (*stated CWRMs mission statement*) which has not been fulfilled to protect Kawela Stream
- no enforcement of recommendations; MPL did not comply with 180-day recommended actions
- valve clogged; did not provide hardly any water to the stream; plywood is insufficient; water still being diverted
- continue abuse of water by MPL; much cleanup needed at East & West Kawela tributary/intake
- time is of an essence; community can't wait much longer; full restoration is needed of Kawela Stream

Ms. Leihwahiwa Ritte

- full support in restoring Kawela Stream
- non-compliance with recommendations by MPL; continue to disregard and waste water and resources; plywood board is useless
- no (Stream Diversion Works Permit) SDWP submitted to abandon intakes
- no enforcement by CWRM on recommended actions
- MPL have access to reactivate intake to provide water to meet their needs without diverting water from Kawela
- urge Commission to restore Kawela and protect its resources

Mr. Lohiao Paoa

- Ranch (MPL) has been non-compliant for past 6-months
- community has not seen any results to restore Kawela Stream
- this petition has nothing to do with DHHL
- continued waste of water and resources by MPL; community continues to suffer
- urge Commission's enforcement and fully support restoration of Kawela Stream

Mr. Walter Ritte

- what happened to full restoration of Kawela Stream?
- MPL posed no solutions on restoring stream; MPL needs 45,000 gpd for needed use
- Ranch needs to fix system and reservoirs
- urge Commission support for full restoration of stream; remove the dam; Kawela

Stream provides water to multitudes of community and businesses.

- MPL needs to figure out the alternative and move efficiently and quickly; community waited long enough
- DHHL is not part of this
- Kawela Stream needs to be fully restored now

Mr. Mahesh Cleveland, Earthjustice for Moloka'i No Ka Heke

- community is frustrated at MPL's non-compliance and MPL's repeated water waste and diversion of Kawela Stream
- site visit with community members in May 2022; no apparent restorative effect to stream
- need Commission's immediate and tangible action to enforce MPL to comply with full restoration and end the wasting of water
- can be accomplished without affecting off stream uses to balance resource protection with reasonable, beneficial uses; the ahupua'a is in dire need of the water
- MPL has no intention or plan to install the infrastructure needed to justify the 96,000 gpd increase for future planned uses
- there are millions of gallons of storage capacity, unused
- the valve only provides a trickle of water
- Commission approved full streamflow to Kawela; current situation is not working
- urge Commission to give staff discretion to return to Kawela within 30-days of today for temporary implementation of water type measures to put water back in stream immediately while MPL works on alternative sources
- Moloka'i No Ka Heke and community members are always willing kokua
- it's entirely practicable and feasible for MPL to utilize the smaller diversion to meet their needs and most reasonable readymade solution for immediate beneficial impact
- MNKH objects to MPL's disposal of alternative sources instead of seeking them to provide for their needs
- ask Commission to bring focus back and a timeline for a goal of full restoration of Kawela Stream

Dr. Jonathan Scheuer, for Dept. of Hawaiian Home Lands (DHHL)

- since April 2022, DHHL worked with Moloka'i Ranch and the Public Utilities Commission (PUC) to determine if water from the MWS requires regulation from PUC; ongoing conversations
- attended site visit w/CWRM, Earthjustice and community at the various Kawela Stream areas; and attended meeting to work on issues brought up today
- met with MKR regarding DHHL's possible takeover of Lualohe and Kamoku intakes
- Commission made clear in April; the goal was full restoration of Kawela; provision of a timeline in restoring Kawela Stream in the 180-days
- modified (and read) condition 5 of recommendation for MPL to reconnect diversion 865 on Kamoku Stream, diversion 863 at Lualohe intake, and diversion 868 at Kalihi intake including system modifications; MPL to conduct a water audit to determine accurate system losses and efforts to reduce loss; identify alternative water source; diversion abandonment(s)

- not sure if MPL complied with any of the condition 5 recommendations
- *(read part of Earthjustice written testimony regarding developers impose burdens of off-stream uses on Kawela Stream)*
- DHHL has a constitutional and statutory obligation to make water lines useable and accessible also per the State water projects plan which CWRM approved
- DHHL has a potential water demand of 38 million gallons per day on Moloka'i to make lands useable and accessible
- DHHL overall discussions with entities would not cause any further deferrals of action on stream restoration; DHHL understands the importance of fully restoring fully Kawela Stream

Ms. Mary Pale

- lifelong Moloka'i resident
- support full restoration of Kawela Stream
- limu and other resources is diminished

Mr. Josiah Ching

- lifelong Moloka'i resident; grew up at Kawela, concerned Aloha 'aina
- support all resident's testimony on matter
- noted MPL historical misuse of water; ongoing diversions and water waste
- water is in dire need at Moloka'i
- urge Commission action of full restoration and restore marine ecosystems

Mr. Adrian Chibai

- still a lot of misuse occurring; diversion still happening
- community waited too long for action
- little to no water flowing during site visit to area
- dam needs to be "broken-down"
- let the stream flow freely for Kawela

*(end of public testimony)*

**101822 01:14:15**

QUESTIONS/COMMENTS/DISCUSSION

Ms. Matsuoka *(responding to comments)* – heard concerns and statements made regarding facts (of April 2022 Order). *[read a portion of the April 2022 Order-modified]* Our understanding of it to be a "goal" as we did not know if it would be feasible *[read a portion of the April 2022 submittal regarding instream and off stream water uses]*. What we've done was to evaluate feasibility or possible to fully restore East Kawela.

If the intention was to fully restore East Kawela at that time, then there would be no reason to do a phased approach or evaluation, it would have been ordered. So, at that time, staff placed



a Q50 flow upon East Kawela, an interim instream flow to put some water back in the stream until a further study could be done (*stated portions of the staff recommendations which MPL stated completion*) noting that MPL did/does not want to overstep direction from the Commission and further explained MPL's stance regarding the open valve. Clarified the update by MPL to CWRM has been made (*attached to submittal, Exhibit-2*), abandonment permits are in process which CWRM recommended be submitted in November, MPL did submit a Q50 plan (*also attached in submittal*), board in place to make certain area water-tight (*currently for approval*).

Noting issue in possible reactivation of Lualohe, Kalihi, and Kamoku intakes due to lack of data and dependent on where stream gage placements will be; thus, impossible to decide without further data. Also noting the plywood board placement (per staff recommendation) to ease clogging. Communicated and appreciated conversation with Mahesh (Earthjustice) and note a more direct line of communication between parties.

As noted to not overstep CWRM, continued recommended proposals from MPL will be made with appropriate directive/approval from Commission. Hopeful these will resolve the full restoration of East Kawela until an evaluation or data collected can be done and we can further determine, especially during high flows on water available through different intakes.

*(introduced Mr. Harold Edwards, ITC Water, to comment on the reservoir and capacities)*

Mr. Edwards – the Mountain Water System has (4) reservoirs: Kawela, Dole and the two 15 mil gallon reservoirs. The Dole reservoir been out of service over a decade and has serious leakage problems. In the last 6-months, reservoir-2 has sufficient liner damage and thus removed from service. The reservoir up at Punānā will also need to be removed from service because of large evaporative losses and possible reline a 250,000-gallon concrete reservoir at the west end to provide for the west-end distribution system to help with evaporative losses.

Ms. Matsuoka – commented that the original proposal in April was based on our reservoir capacity with understanding that all of the reservoirs established on Moloka'i were active and connected to the MWS, which is not the case. MPL balanced evaporative loss to address that along with its location and storage capacity storage of each, with the reservoirs storage capacity attributing to having water and restoring East Kawela. Storage capacity allows MPL to collect during the wet period. During drier periods, the storage capacity is used.

The concern is during dry periods, if there aren't enough flow at intakes and without East Kawela, current needs will not be met and with DHHL pulling from their reservation, it will diminish water available to the ranch. Still more data is needed

Mr. Edwards – staff report in April noted it needed 50 million gallons of storage, but what's available is about 20 million gallons, but depending on droughts; but once DHHL comes into play, it will likely be insufficient to carry the system.

Commissioner Kagawa-Viviani – referenced about the offline reservoirs and its capacity levels and liner issues.

Mr. Edwards – MPL and the state government has same issue, lack of capital to develop resources. The #2 reservoir, the 15,000,000-gallon needed to be removed from the MWS service as it wasn't able to be repaired. The 7-million-gallon reservoir on the west-end is in process of being removed to address the evaporative loss issues. The Dole reservoir has been out of service for two decades.

Commissioner Kagawa-Viviani – how much would it be to put those mountain reservoirs back online?

Mr. Edwards – roughly \$600K for reservoir-2 and \$200-300K for the Dole reservoir to be put back online.

Commissioner Kagawa-Viviani – (to Darene) referenced on the evaporative losses of the 15 mil gal reservoir and noted should East Kawela be fully restored, there's not enough to cover for DHHL's reservation, accordingly would also not meet MPLs current needs, but hypothetically its mostly conditioned on DHHL use.

Ms. Matsuoka – deferred to Harold of ITC water; noting the portion about the transmission limitation across DHHL property, has nothing to do with the reservation for DHHL; the line is smaller across DHHL land, which essentially limits the amount of water delivered in the system.

Commissioner Kagawa-Viviani – MPL had 6-months to assess your existing infrastructure and capacity.

Mr. Edwards – with the transmission capacity on the west-end, historically, Moloka'i Ranch had two lines going through Ho'olehua area to take water to the west-end (*further explained the movement and distribution of the water lines going to the service areas*). When the Mountain Water hits the Ho'olehua boundary the pressure is dropped low then pumped up for Ag uses. Currently, it's about 80,000 gpd, enough to meet current needs.

In the long-term it would not support appropriate use of non-potable water to the west-end. The bigger issue is capital but do has resources for the diversion at Kawela in good working condition, but not capital to deal with Kalihi and Lualohe. MPL is basically trying to keep the MWS productive.

Commissioner Kagawa-Viviani – referenced the cost of the reservoir repairs to be put back online; what's the itemized breakdown given the pipe is disconnected – seems \$200K to fix a pipe is high.

Mr. Edwards – it's more than that as it's been out of service over a decade; recently me and others attempted to get to Lualohe intake but couldn't as the trails are in disrepair and couldn't make a full assessment. Likely, the transmission line would require complete replacement from the intake to the main trunk line. The numbers we came up was a rough estimate.

Commissioner Kagawa-Viviani – reiterated the 180-days was more than enough time for MPL to make needed assessments and hope this can be rectified.

Commissioner Hannahs – This commission has been clear that reservoirs are key to our water security future. Seems like your decisions are working against the climate trends and desire of the Commission to protect our public trust assets by storing it when we have it. You claim there's no available capital, where did you look, and can you identify sources that might be available?

Mr. Edwards – I was referring to the corporation itself and MPL can reply to that.

Ms. Matsuoka – on reservoir capacity, there are (4) in the mountain; (1) is beyond repair, the smallest of the reservoirs and because of its condition, will not be reactivated; reservoir-2, the 15 million gallon will likely be reactivated. We're not eliminating storage capacity, it's the state of the reservoir and if it can be salvageable (*referred to Harold on the west-end reservoir*).

Mr. Edwards – it's the reservoir at Punānā, that's part of the MWS.

Ms. Matsuoka – another reservoir at Punānā can be sealed to eliminate evaporative loss and maximize storage capacity; MPL is committed to repairing. There's potential for MPL to look at additional storage if needed and rebuild certain reservoirs. It comes down to how much water is available and storable. With those (current) reservoirs and capacity, we would reactivate and fix that. We believe that would be enough to store during the wet seasons and ensure DHHL, MPL users have water available.

With the Lualohe and Kalihi intakes, access was impassable thus given an estimate to apply on what could potentially be a fixed, which is \$200,000 at minimum and have an estimate for path clearing. There are now gauges on all 3 of those streams with a total of 6 measurements taken at various points so far. Based on those measurements and the cost estimate to reactivate that intake, MPL is planning on reactivating Kamoku intake. There are also (2) intakes that could potentially go to DHHL. DHHL can continue to look at this to determine if they want to take over these intakes, those discussions are continuing.

Commissioner Hannahs – we need more storage; we're keen to see storage capacity and efficiency. We recognize there's a business benefit to this, which is covered by your investment but there's also a public trust benefit because you're preserving your distressing demands upon a diminishing public trust asset.

We need creative financing and to recognize this is a blend of public trust and business benefits. We encourage to take a more open-minded view, not just with MPL, but with all our big users. We have reservoir systems where we can store more water.

I've heard no evidence that suggest we should back off the desire to restore Kawela Stream to 100% (*referred to Ayron regarding East Maui changes that benefitted/satisfied*) what do you think would really work and how fast can we get it done?

Dr. Strauch – the issue is the intake itself is quite deep. Any attempt at blocking the top foot, is insufficient because water is going to leak underneath the board. The clear solution is to shovel the gravel in front of the intake and sandbag it up so that we can place something to seal it and make it watertight.

Permanent modifications require a Stream Diversion Works Permit which the Commission needs to approve. We've dealt with what can be done on the fly without a permit. Clearly, it hasn't worked so let's make bold modifications temporarily but in-line with the restoration goals.

Commissioner Hannahs – are you prepared to make that recommend amendment or addition to the staff recommendation?

Commissioner Buck – in April, we said full restoration was our goal. We gave MPL 180-days to determine a timetable (*further clarified actions*) with issues still going on. I support Commissioner Hannahs comments and I would like to add that modification for full restoration of Kawela streamflow. It's critical we set a timetable that any modification is for full restoration of the stream.

My recommendation is to add action 1.2, for full restoration of Kawela streamflow; an action 2.1 for the enforcement of the IIFS, bring that to the Commission for enforcement of the IIFS. Our goal is very clear, given MPL a lot of time and still have not seen the commitment and timetable for full restoration.

Dr. Strauch – (*shared a map of the (4) reservoir locations and given explanation of each and explained on the Q50 IIFS*). Noting that under low flow conditions this stream is not going to make it to the mouth, it's a losing reach. Low flows are critical for high elevation restoration and habitat. When there are high flows, those are observed at the mouth. The recommendation is not going to affect streamflow observed at the mouth daily (*showed graph and explained the average flows*).

If we set an IIFS at the median flow (*noting the red line on graph*) all the low flows will stay in the stream, but a small amount during high flow events can be taken out. Of the 8 million gallons flowing on September 15<sup>th</sup>, about half a million gallons would be diverted. The modifications as proposed, keep all of the low flows in the stream. The advantage of reservoirs is you can fill them when there's high flow events and these modifications allow for that. If you eliminate the ability to divert the small portion available during high flow events, those reservoirs will remain dry (*noted the graph of the flow duration curve*).

The recommended Q50 protects all the instream uses, low flows, habitat, ecosystem services, groundwater recharge, and still allow a small fraction during high flow events for water to be diverted.

Commissioner Buck – what about the eventual goal of full restoration?

Dr. Strauch – that was my rationale for maintaining a Q50 IIFS.

Commissioner Buck – if we ever pursue full restoration, there will be not adequate flows into the reservoirs?

Dr. Strauch – the non-potable system will not be able to utilize the reservoir capacity as designed

Commissioner Kagawa-Viviani – is there a way to temporarily do the Q50 without a SDWP?

Dr. Strauch – I'm in favor of complete restoration as a temporary basis tomorrow. The issue is after all the existing reservoir capacity is depleted, there's nothing left to refill the reservoirs and when DHHL start acting on their reservation. The DHHL reservation of 150,000 gallons per day is 3x more than the Moloka'i Ranch current use. The ability to take those small fractions during high flow events and store them, will be able to sustain long-term through dry periods of all the public trust, DHHL and MPL uses.

Commissioner Kagawa-Viviani – (*asked for DHHL comments*) the Kawela flows, reservoirs, and DHHL reservation seem to be tied together; the rationale for not returning flow to Kawela is based on understanding of DHHL's future use, is this something to be addressed now or later?

Dr. Scheuer – my understanding based on the April meeting, and why DHHL was supportive of the proposed reservation for DHHL of 150,000 gallons a day, was that reservation was not coming from streams tributary to Kawela but coming from streams tributary to Waimao. I am unclear that somehow continued diversion from Kawela is necessary to provide water for DHHL as originally it supposed to come from Hanalilililo, tributary to Waimao (*deferred to Ayron for clarification*).

Dr. Strauch – the 150,000 gallons per day is the maximum capacity divertible from Hanalilililo; but not available on a daily basis. If DHHL wants 150,000 gpd there needs to be additional sources and need to capture higher runoff events and store them for it to be consistent 150,000 gpd.

Dr. Scheuer – DHHL was supportive of the reservation as we understood it was not going to interfere with the community and Commissions desires of full restoration of Kawela. If DHHLs needed reservation affects your ability to restore Kawela, I would want that explored to see DHHL's reservation is secured in a manner that does not harm instream public trust uses, while we pursue our off stream public trust uses.

Commissioner Hannahs – (to MNKH/Earthjustice) does the Q50 protect all of the instream public trust uses and allows a portion of those excess flows to be diverted into storage which helps diminish the demand.

Mr. Cleveland – if that same concept can work for East Kawela, then it can work for other smaller alternative inputs. Kamoku and Lualohe could be diverted, that if the intakes and overall infrastructure including the storage, are designed to capture and store, it will be more than enough water to meet the west-side 42,000 gallons a day of reasonable, beneficial off stream uses. DHHL's reservation is out of Waikolu watershed and have 6.1 million gallons reserved including 150,000 gallons a day reserved from the mauka regions of Waikolu which is represented only by the Hanalilililo intake.

There's no reservation to DHHL from the other hydrologic units and agree that this is not necessary to one another. If you cancel out the 150,000 gpd reservation and look at MPLs reasonable beneficial uses of mountain water and its sources, MPL got 42,000 gpd of need and still want to divert from the Q50; this will provide them substantial unnecessary water needs and they still have diversions across the system. The pipes laid are heavily in the

forest. It's there and can meet MPLs needs and urge the Commission to fully restore Kawela

We see the reason MPL pushing hard to rid itself of alternative sources is because it knows those streams can meet their paltry needs compared to what they've been diverting consistently for so long. CWRM staff noted that the Ranch was diverting 9x the water it uses, it's outrageous and egregious this level of waste is. MPL has all the tools it needed to meet all users needs; let's stick to the recommendations in April, the 'āina has been bearing the brunt of this.

We support the recommendation for a temporary full restoration and strongly object to the Commission backing down on this. The mistrust between the community and the Ranch and between Hawaiian Homelands, have been going on for decades. The community wants water in the stream because there's no justification for that level of waste, particularly until DHHL is ready to use its reservation, that intake can provide all MPLs off stream uses and by then, the Ranch should be able to effectively reactivate the smaller intakes. MPL have no legitimate plans to use more water in the future and if so, submit them to this commission.

Commissioner Hannahs – in your original testimony, you said that no amount of community meetings has ever put water back into a stream; in your testimony now, you reinforce why we have that as part of the recommendation that you do sustain the lines of communication with MPL and DHHL which has value for future long-term relationships and create transparency.

Dr. Scheuer – thanks Mahesh for the correction cited; DHHL has no objection to support immediate and temporary full restoration of East Kawela and have not heard MPL object also to those actions taken and offer a positive path forward.

Commissioner Buck – offer to propose amendments to submittal

Chair Case – that'll be a motion with amendments?

Commissioner Buck – I recommend approving Item B 2; action 1.2 "... to allow full restoration of East Kawela Stream flow..."

Add action 1.3 – "MPL will work with the Commission to allow full restoration of Kawela streamflow in the interim while these formal plans are being approved"

Commissioner Hannahs – noted to correct the header, spelling of "permanent"

*Chair Case asked for a second which was seconded by Commissioner Hannahs.*

Commissioner Buck – recommended edit to 3.1 – to edit to "90-days" not 30-days

Commissioner Kagawa-Viviani – requested for staff to put it in writing for Commission to visualize

*Deputy Manuel shared screen and typed and read out the amendments/edits. Deputy noted action 2.1 to bring an update to Commission in 90-days regarding the violation of IFS. Dr. Strauch noted that it also relates to USGS gaging, which is not within CWRM control. Deputy also noted 3.1 are the modifications or amendments recommended.*

Commissioner Kagawa-Viviani – commented on action 1.1

Deputy Manuel – agreed to strikeout action 1.1 for consistency with the current proposed amendments.

Commissioner Seto – asked do we need to keep it just for the temporary implementation while 1.2 is being done?

Deputy Manuel – suggests that 1.3 addresses it – “MPL will work with the Commission staff to allow temporary immediate full restoration of streamflow while these actions in item 1.2 are considered”

Chair Case – *verified with Commissioners Buck and Hannahs on proposed amendments - (Buck and Hannahs answered “yes”)*

Commissioner Katayama – (to MPL) – when you mentioned reservoir capacities, are you addressing the ability to distribute water or is that the total holding capacity of that reservoir?

Mr. Edwards – that’s the storage capacity.

Commissioner Katayama – what is the actual usable capacity for distribution?

Mr. Edwards – those are the net useable numbers; less than 10% of additional volume as the DLNR dam folks would regulate it.

Commissioner Katayama – are any of these regulated reservoirs?

Mr. Edwards – no.

Commissioner Katayama – the estimated budget amounts in exhibit-2, is that for Q50 diversions?

Mr. Edwards – correct, for Kawela; Lualohe being a Q80 diversion, and Kalihi did not have an instream requirement.

Commissioner Katayama – in this case, we’re changing Kawela to full restoration, how would that affect the diversion?

Mr. Edwards – would have to work with staff on what’s acceptable to meet that requirement.

Commissioner Katayama – commented we’ve heard a rationale for Q50 moving forward. How does a change from Q50 to full restoration affect the uses and how do we move forward?

Dr. Strauch – At the moment, there’s no DHHL demand from the system. There are reasonable, beneficial uses reliant on it but those can be met with existing reservoir capacity in Hanalilolilo supply. With the added demand of DHHL, it can’t be met with just Hanalilolilo. Is the difference between full restoration and Q50 IIFS getting you substantial

protection of instream values - in our estimate, no. The small fraction of water available during those high flow events that could be diverted with a modified intake will not have an appreciable effect on instream values.

I understand the lack of trust amongst the various groups, but if we can get these modifications approved and installed, we're going to see 100% of the low flows continuing in the stream with a noticeable difference at the high elevations in terms of protection of endangered species habitat, restoration of recharge in the middle lower reaches, and still be able to utilize the reservoir storage capacity.

Commissioner Katayama – what is the risk of going from a Q50 to full restoration?

Dr. Strauch – less source available to fill up the reservoirs; we are promoting the utilization of storage to carry water through these dry seasons while we protect in stream values. Without the ability to fill up the reservoirs, there'll be very little off stream use.

Commissioner Buck – commented on balance, overwhelming community support, streams used for over 100 years, few opportunities to restore streamflow, value of the public trust, issue of lack of capital and reminding this water is free, no one is charging for this water.

Commissioner Hannahs – clarified made amendments to item “1” but 2 through 6 remain intact, correct?

Commissioner Buck – agreed and do not have recommendations for those.

Commissioner Kagawa-Viviani – *asked Deputy to share screen for clarification of item “1” concerning restoration.*

Ms. Matsuoka – concurred that MPL staff is currently at the mountain site

Commissioner Kagawa-Viviani – asked on the type of work being done there.

Ms. Matsuoka – noted on CWRM's direction the valve was opened and the plywood board put in place and after speaking to Earthjustice (on 10/17), noted water was leaking around the board in which ITC notes two proposed solutions.

Mr. Chipchase – the two proposed solutions were emailed to CWRM staff (last night), approved, and MPL staff is currently working on and would have a report by the end of the day.

Ms. Matsuoka – *shared screen and read the two proposed approved solutions and noted there'd be two opportunities then to restore any water.*

Commissioner Kagawa-Viviani – noted that's a temporary modification and asked to hear the comments from ITC.

Mr. Edwards – Walter Ritte and I go back 25 years on water issues on Moloka'i. The unattended consequences potentially of the decision to require full restoration and not give the Q50 a try, is the cost going forward to operate the system with what we see to be very



limited capture from the remaining intakes that are available, may lead MPL to the economic decision they can't afford to maintain the mountain water system. A lot of demand is limited and when hopefully a community friendly, more robust, MPL comes back on the scene, with real uses for non-potable water it's not going to be available as in the short run, will walk away and the system will further deteriorate.

The opportunity to avoid groundwater sources to replace this missing mountain water source, will be the inevitable solution. I urge the Commission to think about the chart Ayron showed, this new paradigm. Let's take those metered flows that's above Q50 to the storage it can maintain, and keep the system going and, in the future, bring back some economic activity and let the streams and community be at a better place.

I urge the Commission to defer on pushing forward full restoration at this time.

Commissioner Kagawa-Viviani – suggest amendments to 1.3 – reiterated “MPL will work with the Commission staff to allow temporary immediate full restoration of streamflow while these actions in item 1.2 are considered” and noted temporary full restoration does not preclude the possibility of an eventual restoration.

Commissioner Seto – add action 2.1 to include specific date (January 16, 2023) and asked (MPL) with the April decision, Commission asked to analyze whether wastewater reuse is a potential additional water source to meet its non-potable needs, was that done?

Ms. Matsuoka – that was done and did report to staff on it, also had subsequent discussions about it. There are no alternative sources through wastewater.

Chair Case – *verified with Commissioners Buck and Hannahs on proposed additional amendments - (Buck and Hannahs answered “yes”)*

**101822 02:32:37**

**MOTION: (BUCK/HANNAHS)**

**To approve B-2 with recommended amendments.**

**BUCK/CASE/HANNAHS/KAGAWA-VIVIANI/MEYER/SETO**

**UNANIMOUSLY APPROVED**

**OPPOSED: KATAYAMA**

Ms. Matsuoka – thanked Commissioners for the opportunity to speak today; MPL will be requesting a contested case hearing.

*Chairperson Case noted to follow-up the request in writing to the Commission within 10-days*

RECESS: 11:33 AM

RECONVENE: 11:44 AM

*(Commissioner Katayama exited for the remainder of the meeting)*

101822 02:44:41

## B. ACTION ITEMS

### 3. Find that Olowalu Water Company, LLC, Owner and Operator of Diversion 961 Violated the Interim Instream Flow Standard on Olowalu Stream and Impose Fines and Order Modifications to Diversion 961, Olowalu Surface Water Hydrologic Unit, Lahaina, Maui

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

Dr. Strauch stated the submittal request and noted the date correction on page 3 of the submittal to reflect August 9, 2018. Noting that IIFS on Olowalu Stream was to be met 100% of the time and when insufficient water was available to meet the IIFS, zero water was to be diverted through the Olowalu ditch. In the recommendations, staff was going to work with the water company on an implementation process within 100 days with modifications to the system to be made.

Dr. Strauch further explained some actions taken noting the timeline and of the violations and referenced the remediation plan of Olowalu Water Company. DLNR-DAR conducted a site visit in 2018 and noted the mitigation plan approval in concept in July 2018. Olowalu Water Company was given a 6-month window and CWRM staff has been continuously monitoring Olowalu stream since 2017. CWRM has continuous record data and conducted 26 site visits thus far and noted the continued violations. Staff stands on its written submittal and recommendations.

#### QUESTIONS/COMMENTS

Commissioner Buck – was there any other communication from Olowalu in between the October 7<sup>th</sup> correspondence concerning their potential modifications?

Dr. Strauch – we've requested they report their diverted water use and implement various parts of the remediation plan. It has taken a long time to implement any of the recommendations and we've been doing our best to follow up with them, granted 2020 was during the pandemic so we didn't see them in the field very often.

Commissioner Buck – how does that line up with the 2018 violation?

Dr. Strauch – the suggested settlement they proposed to staff, was part of the requirements imposed on the original Commission order from 2018. While in the field with OWC in July 2022, there were leakages from 3 different locations that still have not been addressed. There's actual technical language in the code stating we cannot settle if what is proposed they're required to do.

Commissioner Meyer – are the circumstances similar as dealing with somebody in the past; what's the basis for this kind of fine, certainly I understand the legal basis for it; but there's another angle, aspect to fines.

Deputy Manuel – your comments are well received; the IIFS’s are our primary mechanism to ensure we’re protecting instream flow and one of the challenges is no one is abiding or following it, then we’re not following our mandate. While the fines are hefty, highlighted in the submittal is the severity of the situation and could levy more substantial fines for these violations.

In conversations with staff in implementing and monitoring the IIFSs, the communications and opportunities provided to the diverter to correct and make necessary improvements have gone unrecognized and unmoved on. At this point in time, staff are recommending the penalty proposed to show the severity of our responsibility and upholding our obligation to protect the public trust. It is a balance and are looking at \$250 a day for the violation, not the maximum \$5,000.

We recognize this is a substantial amount, that if you are violating the IIFS, it can rack up to fines that are heavy to the diverter. We have an obligation to protect instream values and do that through the IIFS and holding diverters accountable.

Commissioner Meyer – appreciate the comments.

Chair Case – added we do have precedent for substantial fines; levied and paid.

Deputy Manuel – the Commission has levied finds historically and more than this amount, which ultimately resulted in a change in behavior and modifications to protect instream value. It’s a tool we have; I think the Commission has been very judicious in its use of authority to really work with diverters and community to correct behavior and make modifications prior to just levying fines.

Commissioner Hannahs – commented on the Kamehameha Schools fine received which led to getting its attention and it’s what we want to accomplish here; attention to rectify the matter. We need people to honor the responsibilities we must protect this public trust asset and to promulgate policies that help us do that and those to abide by the policy. It’s an enforcement tool and hopefully get some reconciliation.

Mr. Cal Chipchase/Ms. Darene Matsuoka, Counsel / Mr. Steve Miller, Olowalu Water Co.

Mr. Chipchase – I appreciate Ayron’s report and the comments from the Commission. I put forward the proposal we had made. I thought I was being responsive to comments. I take on me for misunderstanding what was wanted in the proposal from us. This certainly has our attention as we just saw the submittal on Saturday and had an idea of what type of penalty staff was looking at imposing and acceptable and have been paying attention to it before that.

Darene and I have been on this one less time than Moloka‘i Ranch but want to assure the Commission that OWC has full intent to come into compliance. There’s additional work and remediation done with respect to the leaks over the last couple of weeks and that we’re responsive to those concerns to the management of the resource.

We've been working with Ayrton and others and did a site visit. While the road to getting to compliance has been slower, it's not because of unwillingness or indifference as there's absolutely an intention to be in full compliance with the IFS and with staff's recommendations, including their next agenda as amended IFS if that's passed.

We would respectfully request today as we've only received the staff's report on Saturday, we haven't had an opportunity to sit down and see whether a resolution can be reached on an amicable basis accepting some level of responsibility but working with staff to ensure that the main goal of compliance going forward rather than bankrupt a small purveyor that only has 60 customers.

Can we reach an agreement where compliance is assured? If we have an opportunity to talk to staff and come back to you, we might be able to agree and accept the proposal. I would ask for 30-days, the next commission meeting in order to have those discussions.

Commissioner Buck – Can you describe to us what happened between May 15, 2018, when you received the violation and October 5, 2022, when you're recommended mitigations to address that?

Mr. Chipchase – I've only been involved less than the period since the NOV was issued. A couple of things were done 1) understand the situation why staff believe that there was a violation? 2) why that occurred? 3) what can we do to address it? That included meeting with staff in the field and having informal discussions that we can appreciate the situation and how we can fix it. With those discussions we've put forward the proposal which we intended to address the violation and remedy the situation. Between 2018, and today, I'll turn to Steve.

What I've been able to assess at worst negligence not understanding what the situation what was needed to comply; why the approved diversion 273 could not be sustained. That was their sincere, misguided understanding based on their PUC approval and diversion permit approval and not realizing they were in violation of the IFS. If there had been more dialogue with staff earlier and addressed it earlier, I think we could have been here fixing the situation sooner.

On OWC's end, it's not being aware of these violations; if they had been, I believe they would have corrected it sooner, that's my understanding. When I look at the way the fines were assessed it was for 553 days over that 4-year period; not every day, but a portion of that day based on instream measurements and a gauge located downstream of the diversion. It's about a bit more than \$800 a day for those 553 days. It's a substantial fine from a total and daily fine standpoint.

Something a lot less would have gotten their attention in this situation of the goal being in full compliance and can achieve that with a less significant fine that doesn't risk the company and the customers it services. Having the opportunity to discuss those with staff would benefit everyone.

Mr. Steve Miller for Olowalu Water Company – plead ignorance as I’ve only been with the company a little over a year. My understanding is I believe our staff who operates the system believe they were in compliance and have said there was always water in the stream, regardless of how low the stream levels were. We have a system to measure diversion which was based on what we believe were allowed to divert. Had anyone brought this to our attention earlier, it would have been corrected much sooner. We’ve lost Dave Minami, who managed this system for over 20 years and have new staff learning the system.

Almost all of our time and attention has been on the Kaua‘ula Stream diversion and trying to satisfy the Kapu’s and downstream valley users to get water as a priority in a system that isn't designed to do that. There hasn't been a lot of attention on the Olowalu diversion. It may be negligence, but definitely not something our company is trying to get away with getting more water for our 50 users. It’s big, not only for the size of the fine, but not having time to respond and go through this page by page. We respectfully ask for a deferral, at least 30 days to come back with specific responses on what went on between 2018 and 2022.

Chair Case – are there steps if the commission were to give you 30-days besides reviewing the submittal, the steps towards implementing compliance measures?

Mr. Miller – yes, absolutely. One of the priorities is to have data so we know what the stream flows are. That's our responsibility and should have been done a long time ago. CWRM made 50-60 visits and recorded data and never told us what it is and said we’re using too much water. The first steps are to get data loggers installed. the first steps are to get data loggers installed. Ayrn already suggested locations and the type of devices and technology and can be done right away.

Dr. Strauch – as part of the implementation, back in 2018 we discussed where we’re going to monitor and had a data logger installed. Following the site visit in July 2022, it was suggested to move the device closer to the diversion, easily accessible for the operator and less seepage loss (*referenced item B-4*). Staff subsequently moved all of our equipment to just below the dam and awaiting on a piece of equipment to assist in having real time monitoring.

Moving forward there will be easily accessible data, clearer to the operator. Unfortunately, in 2018 after the plan got approved, things got shoved aside and the plan never got implemented and OWC did not make the necessary modifications.

Chair Case – besides data, is there something can be done within 30-days the operator should be doing in addition to analyzing the submittal?

Dr. Strauch – modifications to the intake wouldn’t take much. the control gate the operator uses to divert water into the ditch currently is raised off the ground (*shown on page 13 and described the fix*)

Chair Case – (to OWC) is that something you can work on and completed?

Mr. Miller – yes, absolutely. The important thing is that we have Aaron's knowledge to help us develop what’s needed. If it’s in the plans and specs and been approved, then getting it done is something we can definitely do.

Mr. Chipchase – we can arrange working with Ayron a time to get out here in the next 30-days to look at that modification and ensure it's what he has in mind.

Dr. Strauch – what's proposed in figure 1 is what Olowalu company proposed would be done, they need to implement that.

Chair Case – since he already spent so much time in the field and know his schedule is busy, I wouldn't want his schedule to holdup your implementation of the plan.

Mr. Chipchase – understood chair.

Commissioner Hannahs – on item 4 of the recommendations, is there a specific plan that can be initiated immediately as eliminating waste is a constant desire of the Commission.

Mr. Miller – that's something we need to discuss with our operations people

Mr. Chipchase – in talking with the operations yesterday, that was corrected at least two weeks ago.

**101822 03:20:07**

### PUBLIC TESTIMONY

#### Ms. Tiare Lawrence

- Kamalu o ka Hālāwai, founding and board member – hui dedicated in preserving mauka to makai connectivity in West Maui streams
- praise CWRM staff for the detailed submittal and history of violations well documented
- disagree with the counsel as they have been well informed and aware by the staff of the violations for 4-years
- OWC counsel provides excuses as stall tactics for CWRM not to implement the fines
- (I) documented illegal activities which led to the 2018 violations
- OWC has failed to complete their plans
- OWC does not own the water and cannot infringe on others who have rights to the stream and upon aquatic resources; failure to mitigate and remedy the IIFS proves negligence
- encourage enforcement of the recommendations to protect our public trust and enforce the full amount of \$441,250 as a significant financial deterrent to entities for companies work towards changing and correcting their poor behavior
- West Maui Land Company has a long history of land use, shoreline and water violations at Olowalu, Kahoma, Launiupoko, and Kaua'ula
- urge Commission to do what is pono

#### Ms. Teave Heen

- support imposing the fines against Olowalu Water Company

- witnessed how easily those IIFS can be violated and excused on
- the time of ancient Hawai'i, swift penalties were imposed to water violators
- the State Water Code needs to be taken seriously
- support CWRM recommendations

*(end of public testimony)*

#### QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – given this was extended for so long, how many exchanges occurred?

Dr. Strauch – when we run into staff in the field; I don't have documentation of how many individual exchanges. Before Dave left, I would talk to them quarterly about system operations. He was tasked with managing 3 water systems and all the infrastructure that distribute the water. In early 2019, somebody decided it wasn't critical to make the modifications so every violation after January 1, 2019 was their own fault.

Commissioner Kagawa-Viviani – (to Deputy) how many official communications in writing were exchanged outside of that notice?

Deputy Manuel – what you have is in the record of the submittal. I really appreciate the conversations of Item B2 and B3, as well as with the diverters. As an agency with tremendous task to manage water resources for the State, and as diverters admitted today by their own negligence not knowing what's going on their operated system, how do we get water users to be better stewards and meet the obligations? That's the challenge we're having here.

We set systems, policies and orders in place that are blatantly ignored or disregarded. The order in 2018, made it very clear it's the obligation of the diverter, to meet the IIFS and not staff to chase them down and notify them. The burden is not on us as an agency, it's the actual diverter who has the burden they're meeting the IIFS. That's our fiduciary and constitutional obligation in administering the Code.

It's frustrating working and supporting staff and have private companies come up with reasons why they cannot meet their obligation. We've tried to communicate with them as indicated and nothing stopped them from making improvements to the system, they've made recommendations and haven't done them.

We are left without any other recourse than to present a fine and violation to this commission to get motion, so deferring an extra 30 days, is not going to alleviate the fact for 4-years they've not met their burden as a diverter. This commission has an opportunity to help shift and change behavior of all diverters and water users in the State to become better stewards. The Commission is not trying to make money. We want people to honor that relationship with water.

I support staff who are trying to do their best and stand behind the staff submittal as drafted and do not recommend deferral. We need action and waiting another 30-days for improvements to be done will not benefit anybody especially since they had since 2018. We need to hold ourselves and all water users accountable to protect this resource.

Dr. Strauch – our last site visit was on October 7, 2022; the 3 points of leakage were still leaking water. The system modifications I'm recommending not only for this situation, but all water users are such that the operator doesn't have to invest in personnel and CWRM won't need to invest in staff measuring daily.

Commissioner Seto – (to Cal/Steve) does any of the fines that are going to be imposed on Olowalu Water Company impact the capacity of the regulated drinking water systems?

Deputy Manuel – Olowalu is an irrigation company not a public drinking water system.

Dr. Strauch – they do operate a separate potable system.

Commissioner Seto – is the companies separate and the financial capacity of the drinking water system will not be impacted by this fine?

Mr. Miller – don't know; they're separate functionally and physically but owned by the same owners. All customers are served by both companies for potable and non-potable.

Commissioner Buck – agreed on keeping the fines as is to get the companies attention; it's clear they've been negligent for over 4 years but defer for 30-days and see what the company can do and hold the fines the same, that might end with a better solution. I think it's important that the Commission discuss it and shouldn't reward anyone from being completely negligent and understand where staff is coming from and I'm willing to consider the deferral for just 30 days.

Commissioner Hannahs – appreciate Kaleo's passion and support on this including staff for their hard work and that others will get a better understanding of the profound kuleana of our Commission to protect the water resources and enforce the actions of the Commission. I have some empathy for Cal, Darene and Steve; you're new to the company but the company is not new. Experienced people as Mr. Minami and Tremble were on board. There's a willfulness about the negligence that is troubling and that weighs on the gravity of fines.

I think Commissioner Buck's idea of the 30 days in terms of bringing a turnaround but there have been ample opportunities for turnaround and cooperation over these last 4 years by those who knew what to do.

Commissioner Kagawa-Viviani – I'm concerned if we defer and try to get into compliance, we still may end up in a contestant case. If we defer, do you waive your right to contest the case?

Mr. Chipchase – we couldn't waive our right to a contested case. If it went down into direction that we couldn't support today, we would invoke that, not because we want to but to have that additional time to resolve this matter, that's ultimately our goal. I hope Kaleo and Ayrton would support me in this; I certainly tried to be earnest since we've been engaged the



less than 6 months on this matter trying to understand the nature of violation and what we can do to address it. I don't see that changing over the next 30-days but would make a sincere effort with them including making these changes that Steve mentioned.

I was under the impression that all the leakage been fixed at least 2 weeks ago, I want to find that out. I'm prepared to come back in 30 days and explain those things and if we haven't gotten on the same page with staff with respect to the fines, then it's ultimately your decision.

We'll make the efforts discussed to bring the company into compliance and fully resolve this matter.

Chair Case – the IIFS isn't the issue, the issue is the violation of the IFS. I'm very eager to see actual significant, tangible implementation within 30 days and support Mr. Buck if you were to make that motion. I'm very frustrated and very impatient as with staff because this is really affecting people's lives unfairly.

Commissioner Seto – asked if we push this to next month, will that affect November's agenda?

Chair Case – it affects the length of the meeting.

Commissioner Seto – essentially, they are ordered to do everything on there and are only getting from them will be the update of all the actions that they've taken on these 6 items.

Chair Case – correct.

Commissioner Buck – asked for Commissioner Meyer's comments.

Commissioner Meyer – I certainly don't want anybody to misinterpret the question I asked about how this compares to what the Commission done in the past. I was probing what's been our course of action in similar situations. I'm supportive of enforcement of the rules and regulations this Commission has.

I don't think we have to back off or modify any of those, the resource is too important. You just can't allow drinking water or the resource to be jeopardized. I'm supportive of the recommendations from staff and a little uneasy about putting it off for a month but if that can move the ball forward, get the diversion works modified and other improvements made immediately, it's worth holding off a determination on the fine.

Commissioner Buck – we defer for 30-days, not reducing the level of the potential fine, and have the company come back and report to us what they've done to implement the plan they approved in 2018, then we can make our final determination of the fine.

Commissioner Hannahs – added to include a plan going forward to be a plan and timetable for their implementation.

Commissioner Buck – agreed.

Commissioner Kagawa-Viviani – clarified on the fine

Chair Case – if deferring the action, it’s deferred.

Deputy Manuel – if we defer, we would comeback to the Commission with a recommendation at that later time that may or may not include amendments to the recommendation as drafted. What I’ve heard is to give the company time in good faith to work expeditiously in the next 30 days to improve and implement modifications that were proposed in 2019 and revisit the fine and or violation that's being recommended.

Chair Case – the motion is to defer with comments to guide staff and Olowalu on expectations.

**101822 03:47:49**

**MOTION: (BUCK/MEYER)  
To defer B-3 with comments.  
UNANIMOUSLY APPROVED**

RECESS: 12:47 PM

RECONVENE: 12:57 PM

**101822 03:57:09**

**B. ACTION ITEMS**

**4. Amend the Interim Instream Flow Standard on Olowalu Stream Below Diversion 961 to Reflect a Change in Monitoring Location and Hydrologic Conditions, Olowalu Surface Water Hydrologic Unit, Lahaina, Maui**

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

Dr. Strauch stated the summary of request, gave a brief background information, and showed and explained a map of the diversion point as noted on Olowalu Stream, noting the seepage run studies, drought conditions, and site visits and meetings with Olowalu Water Company. Dr. Strauch noted the staff recommendations and noted the map correction of the seepage run.

QUESTIONS/COMMENTS – none

PUBLIC TESTIMONY – none

**101822 04:02:47**

**MOTION: (HANNAHS/MEYER)  
To approve B-4 as recommended.  
UNANIMOUSLY APPROVED**

101822 04:03:26

## C. NON-ACTION ITEMS / INFORMATIONAL BRIEFINGS

1. ***(For Information only)* Reservation of Non-Potable Water for the Department of Hawaiian Home Lands and Amended Interim Instream Flow Standards for the Surface Water Hydrologic Units of Waikamoi (6047), Honomanu (6051), Nuaailua (6052), West Wailuaiki (6057), Waiohue (6060), from East Maui streams in the Nahiku, Keanae and Honomanu regions, Maui**

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

Dr. Strauch gave a PowerPoint presentation highlighting the streams of East Maui noting the original 2018 Decision and Order did not consider the reservation of non-potable water for DHHL in in the balancing of water uses. The Commission also ordered staff to gather additional data to achieving the appropriate amount of biological habitat for freshwater biota as well as implementing the modifications to various intakes to achieve the IIFS. Because the streams flow standards are interim, it's to be revisited periodically every 4-5 years reanalyzing data available to make adjustments.

Noting updated hydrologic data and climate changes, showing trends of less water availability. CWRM and DAR staff conducted over 50 biological surveys at multiple elevations across the hydrologic units of East Maui. Dr. Strauch shared the goals of the conducted studies of CWRM and DAR highlighting the estuaries, 'o'opu migration patterns, and abundance of species at certain elevation points.

### QUESTIONS

Commissioner Meyer – has this data been available a while or is it brand new?

Dr. Strauch – it's new; we're still gathering data also with DAR and RCUH; at some areas require helicopter access.

Commissioner Meyer – were you surprised see this trend?

Dr. Strauch – yes; *(explained the surveys conducted)* and noted the full restoration hasn't had the impact as anticipated.

Commissioner Hannahs – noted break in time from 2011 to February to 2020; what happened in that period and does 2020 represent the true baseline and was it trending downward from 2016?

Dr. Strauch – the restoration happened in 2016; DAR gathered data up until 2011 and CWRM helped provide funding for DAR 2019-20. Hydrologically we know what’s going on as we have stream gaging stations. Following the 2018 D&O, some diversions could continue to be utilized but many streams have been fully restored temporarily as the system isn't being operated to its full capacity.

Commissioner Meyer – are there other variables not taken into account like invasives, predators etc?

Dr. Strauch – we do count the number of invasive species, and it’s another avenue I’d like to analyze and now have data for 60 surveys across the island of Maui of native and non-native species interactions. The ‘o‘opu and ‘opae can migrate upstream more effectively than the invasives. A bigger unknown question is if there’s other factors such as fishing in the marine environment or traditional and customary gathering in these accessible reaches; but all we know is what we see in the stream.

*(continued presentation)*

There is large abundances of species at Nuaailua and Honomanu but none at Waikamoi. Nuaailua and Honomanu estuaries are key to understanding recruitment. Nuaailua was designated as a connectivity stream and Honomanu a habitat stream. Dr. Strauch explained the conclusion from the stream studies.

## QUESTIONS

Commissioner Buck – has the department has any position on artificial transplanting of any native species

Dr. Strauch – not speaking for DAR but unofficially they had a staff member that moves native species around the island at times.

*(continued presentation)*

Dr. Strauch showed a map and explained Honomanu hydrologic unit and explained its 4 main intakes in relation to the IIFSs in the region. Dr. Strauch recommended to request the abandonment of 3 of the 4 diversions; the Banana Falls, Center Falls, and High Falls intakes and to allow for the main Honomanu intake to be utilized as originally designed , allowing for as much water downstream under natural flow regimes.

Dr. Strauch highlighted the DHHLs reservation for Pūlehunui and Keokea-Waiohuli from the Hūelo Streams. As part of that reservation, Dr. Strauch suggests specific recommendations to modify the 2018 D&O. He highlighted and explained the water availability balance chart and the summary of recommendations for each of the hydrologic unit.

*(end presentation)*

## QUESTIONS/COMMENTS

Deputy Manuel – noted Ayron’s continued engagement with all stakeholders in the area

including East Maui Irrigation Co., Nā Moku ‘Aupuni ‘o Ko‘olau Hui, Mahi Pono, and Sierra Club-Maui relating to the recommended proposals

Dr. Strauch – Na Moku is in support of the restoration efforts at Nuaailua and Honomanu noting its critical fishing areas and traditional and customary gathering and understood the reasoning to the modifications of the other surrounding IFS. Met with EMI and Mahi Pono to address Sierra Club’s petition to amend IIFS in Hūelo and on modifications to the original 2018 D&O relating to updated data collected. Mahi Pono supports the efforts.

Met with Sierra Club and discussed stream-by-stream recommendations with the goal ensuring stakeholders are on the same page with regards to modifications to protect instream values while providing for drinking water supply for DHHL’s non-potable needs while also providing water for diversified Ag in the Central Valley.

Deputy Manuel – thanked Ayron on informing the Commissioners of on-going conversations regarding recommendations.

Commissioner Buck – was EMI and Mahi Pono willing to these recommendations?

Dr. Strauch – they’re currently not using as much water as the system could provide and not using the system in all areas. The issue is it will take a lot of engineering for some modifications to meet the IIFS; it is not acceptable to release water from a sluice gate any longer (*noted some of the intakes geographic locations*). I don’t think they’re going to be using water from Nahiku in the near future, except for extreme drought.

Commissioner Meyer – have you met with the other big users like DWS, etc?

Dr. Strauch – met with Eva (Maui DWS) back in July and discussed modifications to the system. They have a hands-off approach as they’re not going to get involved in EMI’s operation of their system. Haleakala Ranch has spring sources high up on the mountains. They’re not benefactors of the EMI system. This is not affecting MLP.

Commissioner Meyer – DWS had no comment?

Dr. Strauch – these are not affecting the upper and lower Kula systems.

Deputy Manuel – in our conversations with them, we’ve asked them to take on more of the monitoring functions like some of the USGS gages in Honomanū as they benefit from that diversion. Ayron has done a great job in communicating.

Commissioner Meyer – although HDWS can take up to 14 mgd at Wailoa Ditch.

Commissioner Buck – commented on the great job done by Ayron and that every historic kalo community upstream in Maui still remains un-diverted.

Chair Case – is the DAR data enough to take action on?

Dr. Strauch – in the upper reaches, we have 10-quarters of data with 3 previous surveys done in 2010-11 to compare to. Adaptive management is a good course of action. If we see

abundance of population, we can make recommendations to fully restore.

Deputy Manuel – we’ve been increasing our coordination with DAR on various biological things that connects with priorities. The goal is to continue to collect that data and see if there’s heavy presence of native species and can focus our efforts there and create that success and see if it’s applicable to other streams. We need more data, and a lot comes down to funding and staff.

Chair Case – we’ve been hearing anecdotal statements from practitioners that stream-life is significantly increasing, whether you’re going from very low flow to full restoration. How do you reconcile that with this DAR data?

Dr. Strauch – the DAR data collected back in 2010-11 was not for every stream but seen large numbers of biota at various areas that’s been fully restored and abundance in the estuary.

Commissioner Kagawa-Viviani – questioned on having the mid-reaches long-term data?

Dr. Strauch – because of cost and due to the pandemic, certain streams and areas requires helicopter access; for those that don’t, DAR continue to do stream mouth surveys and mid--elevation surveys, there’s no high elevation surveys in those two streams (Nuaailua and Honomanu). Upon my recommendation, we should continue to gather data on those streams (*explained on the second data sets in also collaborating with DAR*)

The key is that we’re gathering sufficient data to make an informed decision, continuing to collect data in key locations on a quarterly basis to monitor decisions. I would recommend revisiting the IFS every 5-years.

Commissioner Kagawa-Viviani – commented on monitoring of the different zones and from pre to full restoration.

Dr. Strauch – they're definitely nuances and antecedent hydrological conditions; as a baseline and in all these surveys, we have not seen any substantial increase in biota following full flow restoration and are just adults included in these abundances.

**101822 04:52:11**

### PUBLIC TESTIMONY

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

- been in repeated discussions with CWRM regarding the streams in subject.
- excited to have the reservation requests filed in 2020, considered.
- supportive of the attempt to balance instream and off-stream public trust uses.

*(end of public testimony)*

*Mr. Mahesh Cleveland requested to address the Commission on Item B-2*

Mr. Cleveland – in response to Moloka‘i Properties Ltd. to request a contested case for Item B-2, Moloka‘i No Ka Heke also requests a contested case and will follow-up in writing within 10-days.

RECESS: 1:53 PM

RECONVENE: 2:00 PM

*Commissioner Meyer exited the meeting at 1:55 PM*

**101822 05:01:21**

**D. RED HILL ITEMS (For Information Only)**

**1. Update from Navy on Red Hill Aquifer Recovery and Water Management Efforts**

*Deputy Manuel noted that there's a current immediate water-line break crisis, at Pearl Harbor-Hickam so Cmdr. Sullivan is giving the update from the field and at times may not be available to address questions.*

PRESENTATION GIVEN BY: Commander James Sullivan, NAVFAC-Hawaii

*Cmdr. Sullivan apologized as he's in the field currently physically monitoring at the noted current water-main crisis.*

Cmdr. Sullivan noted on the recent 36-inch main break which occurred on the Pearl City bike path the past Friday morning and those repairs continue to be in progress. It's a dynamic situation with the different pressures and challenges and additional breaks through the system evolving every moment that has the effort of entire working team.

Cmdr. Sullivan thanked BWS as to the reestablishment of one of the Navy and Board of Water Supply interconnections and help us keep that pressure up within those zones.

With remediation and contamination efforts continuing within Red Hill, we're following the process of identify, characterize, and remove. We're identifying where any fuel might be. Characterization is once contamination identified we develop a strategy and the appropriate technology to remove it, whether it be direct excavation, soil paper extraction, or other new technologies to look into.

There's fuel in surrounding soil near Adit-3 within Red Hill. We've removed the tank as and 30 feet of the area in the vicinity about a 1,000 cubic yards total of soil and in process of getting calculations and verifications of how much fuel there was.

With the tunnel operations, we've identified 3 hotspots to do a deep soil boring to determine if there were any layers of fuel within the tunnel floor and the actual aquifer. Only one hotspot identified contained thin and small layers of fuel and will begin soil vapor extraction.

Within the well, we continue with all operations from the past months continuing to use skimmers, pumping into the GAC system to get that capture zone and pull any contamination and release into Halawa Stream. We're working to reduce the amount of pumping as we understand the extreme value of all water and minimizing any waste of water. We're working closely with Department of Health and EPA, and we have a plan for to reduce that pumping.

#### QUESTIONS/COMMENTS

Commissioner Buck – thanked Cmdr. Sullivan for his update provided and asked on progress of the 5 million gallons at Halawa Stream to be reused?

Cmdr. Sullivan – we have not identified a solid reuse but focused on taking 4.3 million gallons and reducing it to 3 million gallons soon and lowered to 1.7 million as the plan and time progress.

Commissioner Kagawa-Viviani – since using the skimmers, do you have an estimate of cumulative fuel recovered?

Cmdr. Sullivan – it's fractions of a gallon over a 45-day period collecting anything that exists; minimal contamination there and the skimming operation does not get a very large volume.

Commissioner Kagawa-Viviani – in general it's a good sign and seems to be decreasing over time.

Cmdr. Sullivan – yes; we also use the absorbent pads with very little fuel coming off.

Commissioner Hannahs – also thanked Cmdr. Sullivan and asked on key outcomes the Commission seek in the steps necessary to achieve milestones and restore Halawa Aquifer to safe and productive use. We'd like to know what that plan is and project to complete those steps and report to us monthly or periodic basis on your progress of your mitigation strategy.

Is it adequately established or is there more to do and how frequently do you monitor and still there's the defueling issue. We're trying to move this to a mission-oriented reporting system identifying our key needs to framework and project critical paths to monitoring progress. Do we have the Navy's cooperation?

Cmdr. Sullivan – absolutely; we understand the need to clearly articulate the outcomes and milestones intended in the process that you can hold us accountable. For the Monitoring Wells network, we've established working partnering with the Board of Water Supply on identifying locations of both our wells and ones we can co-locate and assist each other in a joint well and/or drilling, joint sampling, and sharing of data and did that October 11<sup>th</sup> & 12<sup>th</sup>.

Commissioner Hannahs – we also look forward in those collaborations to jointly assess progress to accomplish our mutual mission.



101822 05:16:26

PUBLIC TESTIMONY

Mr. Matthew Gyer

- thank CWRM on public safety efforts in assisting on getting the fuel out of Red Hill
- concern of recent water main breaks; unconfirmed reports of community smelling fuel again in their water; two water bottling companies in the vicinities of Red Hill
- reassure people the status of monitoring the water of the bottled water companies

Mr. Ryan Gallagher

- resident of Ewa Beach/Iroquois Point
- appreciated Cmdr. Sullivan in providing a brief update; expected a more thorough update
- appreciated Commissioner Hannahs comments
- not enough updates from the Navy and communication with the public
- unsure of what's going on with the water and remediation; mitigating the contamination; water is undrinkable
- concern for family and neighbors; faced with the choice of continuing to stay and become sick from drinking our water, or do we pay \$2 a gallon for drinkable water?
- hold the navy accountable

QUESTION

Commissioner Hannahs – another value of the plan is creating an opportunity for public transparency. (to Commissioner Kagawa-Viviani)- is there a place for citizen science contribution-do we have a way or place to test those samples, so the average citizens can be part of our monitoring system of our water and centralized data source?

Commissioner Kagawa-Viviani – at UH there's a group accepting tap water samples; it's not testing but an open-ended screening; website: redhill.hawaii.edu provides instructions information. This also supports research and method developments. There are specialists who can interpret and characterize and at no-cost to residents.

Mr. Gallagher – am aware of sampling as am a UH-Law student. The concern is that seems to be the only public testing and it doesn't identify JP series.

Commissioner Kagawa-Viviani – DOH is the one who should be notified as UH is more educational research study.

Commissioner Seto – the Navy has a response office and been sending out teams to collect samples and with Department of Health providing oversight of that collection. The JBPHH has a safe waters website providing information.

PUBLIC TESTIMONY CON'TD

Ms. Susan Gorman-Chang

- represent Faith Action for Community Equity, representing 24 member groups
- disappointed in no plan presented by the Navy; ongoing delays with no results or long-term solutions
- communities can't wait any longer; been delivering bottled waters to community
- Navy has no accountability
- urge Commission to hold the Navy accountable for long-term remediation

Ms. Susan Pcola-Davis

- those living at Iroquois Point have a long commute just to pick up water
- the Navy should setup a more direct point of access to distribute water to those families
- Navy is not prepared for emergencies
- An immediate plan of action is needed by the Navy to resolve ongoing issues

Ms. Gina Hara

- *(also submitted written testimony)*
- Mahalo to CWRM for ongoing Red Hill discussions
- following situation for past 8-years.
- is there a Joint-Task Force created for this situation
- still inconsistencies from the Navy; no alternatives presented
- community and others pose good solutions
- Navy continues to over pump and waste water; need immediate protection of the aquifer

*(end of public testimony)*

#### QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – clarified the research done with the Permitted Interaction Group, that data was not provided to DOH until months after it was collected. My understanding was DOH was awaiting the Navy to provide data which occurred late and there's time lags between agencies.

Commissioner Buck – asked for an update on the permit modification process.

Deputy Manuel – we're finalizing process and met with AG's and plan to publish the public notice soon with the modifications as approved in June and recommended.

Commissioner Hannahs – is the permitted interaction group still meeting? What is the process to develop this management reporting model?

Deputy Manuel – staff can work with you folks individually to develop that reporting mechanism. I see the value of creating that to show progress or lack thereof related to Red Hill, or another group could be established just for that.

Commissioner Hannahs – commented on keeping the other agencies involved like DOH, EPA, BWS, and UH so that everyone is in same loop and kept abreast of activities and tasks.

Commissioner Kagawa-Viviani – does the P.I.G. continue under the existing scope?

Deputy Manuel – need to review that as drafted. The primary purpose was to move towards modifications and better ways to communicate. We welcome the support of the Commission in framing and identifying what's a priority and what should we report back as there's other stakeholders involved. There are many ways but just need to think it through on the most effective ways.

Commissioner Kagawa-Viviani – my understanding there was an item in the scope that's open-ended to help staff as needed. We'd make good progress and should continue to work these ideas and how to facilitate transparency.

Deputy Manuel – appreciate comments and in conversations, being mindful of sunshine requirements under its law and following that in public sessions.

Commissioner Buck – as we'd be experiencing administration transition, the P.I.G. really provides a valuable service. The management model which is reinforced by the Navy is a critical piece. I understand we finished the scope of our work and the need to move on and established a new Permitted Interaction Group focusing on public transparency, the actual application, and management model; and to do that before transfer of administration would be very helpful.

Chair Case – agreed

Commissioner Hannahs – also agreed it would be a good transitional tool and if possible, to have a strawman by our November meeting?

Deputy Manuel – can't make any commitments considering how much items were deferred and am committed as well as Chair to bring back for resolution and understand the urgency as we're coming up to one year since the Red Hill event occurred and getting framework for the next administration to focus in on.

*Chairperson Case thanked everyone for their participation at today's meeting and to staff for their commitment and hard work.*

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

November 15, 2022 (Tuesday)  
December 20, 2022 (Tuesday)

This meeting adjourned at 2:46 p.m.

Respectfully submitted,



RAE ANN HYATT  
Commission Secretary

OLA I KA WAI:



M. KALEO MANUEL  
Deputy Director

---

---

**Written Testimonies Received:**

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