

MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: November 15, 2022  
TIME: 9:00 am  
PLACE: DLNR-CWRM Conference Room (*limited capacity*)  
\*1151 Punchbowl Street, Rm. 227 / and Online via Zoom  
Meeting ID: 857 7243 8936 / passcode: 477087

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:02 a.m. 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 used only for technical questions. Noted that Item B-9 has been withdrawn from the agenda.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. Cindy Young

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

**OTHERS:** Mr. Cal Chipchase (Cades & Schutte), Ms. Darene Matsuoka (Cades & Schutte), Mr. Glenn Tremble (West Maui Land), Mr. Harold Edwards (ITC Water), Dr. Jonathan Scheuer (for DHHL), Ms. Meredith Ching (for A&B/Mahi Pono); Mr. Avery Chumbley (Wailuku Water Co.), Mr. James Geiger (Counsel for WWC), Ms. Kristi Ono (Maui DPW), Ms. Gwen Rivera (Munekiyo Hiraga), Mr. Al Kam (PMK Capital Partners, LLC); Mr. Thomas Bashaw & Mrs. Carrie Bashaw

*Noted it is this administration last Commission meeting. Chair Case appreciated Deputy Manuel's hard work and commitment, as well as Commission Secretary, Rae Ann Hyatt; and noted the continued efforts of the CWRM's team in the protection of the State's water resources. Commissioners Meyer, Hannahs and Kagawa-Viviani extended their gratitude to the leadership team for their outstanding service through the years.*

**111522 00:07:02**

**A. APPROVAL OF MINUTES**

October 20, 2022

PUBLIC TESTIMONY – None

Commissioner Seto recognized non-substantive edits to be made.

**MOTION: (HANNAHS/KAGAWA-VIVIANI)  
To approve the minutes with non-substantive edits.  
CASE/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER/SETO  
UNANIMOUSLY APPROVED**

*111522 00:08:09*

**B. ACTION ITEMS**

- 1. Approval of Stream Channel Alteration Permit Application (SCAP.5927.3) State of Hawai‘i, Department of Agriculture Spillway Rehabilitation and Vegetation Clearing at the Decommissioned Tai Lee Reservoir, Kahawai Stream, Waimānalo, O‘ahu, TMK: (1) 4-1-024:068**

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

Mr. Uyeno stated the summary of request and stands on its written submittal and read the staff’s recommendations as noted in the submittal.

QUESTIONS/COMMENTS

*Chair Chase called upon Mr. Charles Jury and Mr. Todd Kawamoto for comment.*

Mr. Jury, Okahara & Associates for applicant – no comments to add.

Mr. Kawamoto, Yogi Kwong Engineers – no comments to add.

Commissioner Buck – noted he served on the Waimanalo Neighborhood Board and this issue also has been brought up when the Department of Agriculture (DOA) wanted to give back their ag reservoir to DLNR which stated it needed to be retained or back in its original format. Lots of dialogue with the community on management of the wetlands. What’s the plan for coordination between DLNR and DOA for retaining any ag reservoirs or rehabilitating them, such as this one?

Mr. Uyeno – can’t speak on the communication between DLNR and DOA with regards to the reservoirs or rehabilitating them; but this Tai Lee reservoir was abandoned long ago and at that point of it, is a dry streambed and DOA built-up structures in the surrounding area (*referred to site photo of figure 3*) where the stream channel would flow under that section, the culvert.

Commissioner Buck – thanks, I have no problem supporting this but just info for the Commissioners as there’s many old DOA reservoirs that are managed wetlands or retention areas during high rainfalls.

*111522 00:14:27*

**MOTION: (BUCK/KATAYAMA)  
To approve B-1 as submitted.  
UNANIMOUSLY APPROVED**

*111522 00:14:47*

**B. ACTION ITEMS**

**2. Approval of Stream Channel Alteration Permit Application (SCAP.5933.6) County of Maui, Department of Public Works, Kaupakalua Road Culvert Repair, Opaepilau Stream, Ha‘ikū, Maui, TMK: (2) 2-7-013:097**

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

Mr. Uyeno stated the summary of request and stands on its written submittal and read the staff’s recommendations as noted in the submittal.

QUESTIONS/COMMENTS

Commissioner Katayama – how long will the SHPD review take?

Mr. Uyeno – not certain; but everything has been submitted from the County of Maui Department of Public Works so hopefully in the next couple of months.

Chair Case – you’re saying that the analysis of potential impacts to traditional and customary (T&C) practices would be done as a condition to the permit?

Mr. Uyeno – we’d like them to reach out to Jocelyn Costa beforehand to get her insight on T&C practices in the area.

Chair Case – have we done our own analysis, and this is additional?

Mr. Uyeno – as far as historic sites, we don't believe any sites would be impacted, but as far as traditional customer practices, no, we have not done a review on that.

Deputy Manuel – there’s a Ka Pa‘akai analysis done and based on what we received, we don’t believe there’ll be impacts. Based on agency comments, DHHL recommended we reach out to ‘Aha Moku practitioners and so we added that as another outreach mechanism prior to conducting any work to address that and, if so, potential mitigate it.

Ms. Gwendolyn Rivera, Munekiyo Hiraga – added the Department of Public Works sent a consultation request to Jocelyn Costa, the ‘Aha Moku Po‘o, in July of 2022.

*111522 00:20:57*

**MOTION: (HANNAHS/SETO)  
To approve B-2 as recommended.  
UNANIMOUSLY APPROVED**

*111522 00:21:23*

**B. ACTION ITEMS**

- 3. Approval of Stream Channel Alteration Permit Application (SCAP.5909.6) County of Maui, Repair and Installation of New Revetment Levee 27, Wailuku River, ‘Īao Surface Water Management Area, Maui, TMK: (2) 3-4-020:075; 3-4-030:888 Parcel C; 3-4-032:001; and Imi Kala Street and Eha Street (no TMK)**

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

Mr. Uyeno stated the summary of request stands on its written submittal and read the staff’s recommendations as noted in the submittal.

**QUESTIONS/COMMENTS**

Commissioner Hannahs – is there risk to the dumped riprap to be dislodged and dam up the stream?

Mr. Uyeno – once they lay it down, it’ll be grouted.

Commissioner Hannahs – does it narrow the stream at all?

Mr. Uyeno – it’ll be in the same general area and condition as previously before the damage.

Commissioner Hannahs – noted the differences between the 2016 & 2021 photos.

Commissioner Seto – commented on the project timing coinciding with the low rainfall months of May-October.

Ms. Kristi Ono, Maui Dept. of Public Works – hope to start next year and will need to coordinate with staff’s recommendation with Hui o Nā Wai ‘Ehā and the contractor’s schedule

Commissioner Seto – is the timeline doable?

Ms. Ono – we’d like to avoid winter season months so we can work in the ideal stream conditions and avoid impact as much as possible.

Mr. Walter Chong, RM Towill – clarified the dump riprap will not have any grout placed. The grouted riprap is only along the streambank and is sized for the stream velocity and not intended

to be pushed along by the stream velocity.

Commissioner Hannahs – is there risk to downstream users and will their water be impaired during construction?

Mr. Chong – there will always be flow in the stream.

Mr. Uyeno – there are no downstream users taking water directly from the stream. With the restoration of the flow over the years, we've seen springs comeback to life from groundwater seepage and water use permittees that are receiving from spring sources from the stream are away from the stream channel.

Commissioner Kagawa-Viviani – have the Maui DPW concerns been addressed?

Mr. Uyeno – the main concern by the Planning Department was ensuring the flow remains in the stream that's around the project area and no disruption to fish passage; that's reflected in a special condition.

Commissioner Kagawa-Viviani – has Hui o Nā Wai 'Ehā been made aware?

Mr. Uyeno – no; it was an oversight on my part and not sure if Maui DPW has done public outreach.

Ms. Ono – we do reach out to Hui o Nā Wai 'Ehā anytime we do work on Wailuku River. As we get closer to construction, we intend to keep communications open with the community and in general.

PUBLIC TESTIMONY

Mr. Hokuao Pellegrino, Hui o Nā Wai 'Ehā

- thanked Maui County-Department of Public Works, Kristi Ono for updates and open communication.
- appreciate CWRM staff for putting the recommendation in
- the Hui supports the work and understand the stream will be maintained and no impact to aquatic species.

*(end of public testimony)*

**111522 00:32:45**

**MOTION: (KATAYAMA/HANNAHS)  
To approve B-3 as recommended.  
UNANIMOUSLY APPROVED**

**111522 00:33:18**

**B. ACTION ITEMS****4. Approval of Stream Channel Alteration Permit Application (SCAP.5926.6) Phase 1 Repair, conducted under an Emergency Authorization (EA.5849.6), and Approval of Stream Channel Alteration Permit Application (SCAP.5914.6) Phase 2 Modification Wailuku Water Company, Waihee Ditch Siphon Repair and Modification, Wailuku River, ‘Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:002**

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

Mr. Uyeno stated the summary of request stands on its written submittal and read the staff's recommendations as noted in the submittal.

**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

***111522 00:35:37***

**PUBLIC TESTIMONY**

Mr. Avery Chumbley, Wailuku Water Company (WWC)

- expressed gratitude to Chair Case, Deputy Manuel and staff for continuous hard work and efforts.
- has been a very wet evening into the day; the ‘Īao-Wailuku River is currently flowing at 250 cfs which is 170 mgd; phase 2 repairs are currently halted until the stream is safer to work in.
- noted the excellent presentation in the staff submittal of details provided.
- in agreement with submittal and have no objections to staff recommendations.
- anxious to get the phase 2 work completed (*noted the damage caused by the storm on 12/5/21*) and several weeks after, were not able to deliver water to any of the users past Wailuku River.
- submitted new SCAP for work to be done.

Mr. Hokuao Pellegrino, Hui o Nā Wai ‘Ehā

- stands on the staff’s recommendations
- requests continued communication to the Hui when stream work commences as there’s farmers above and below who may be impacted and made known awareness.
- Kuleana users that rely on Spreckels Ditch that comes from Waihe‘e .
- to ensure work is completed timely; winter months is approaching so will have rainfall with high streamflow.
- appreciate the work being done by WWC.

*(end of public testimony)*

**111522 00:40:10**

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

**To approve B-4 as recommended.**

**UNANIMOUSLY APPROVED**

RECESS: 9:43 AM

RECONVENE: 9:47 AM

**111522 00:47:11**

**B. ACTION ITEMS**

- 5. Address the Petition to Amend Instream Flow Standards (PAIFS.5784.6) by Amending the Interim Instream Flow Standards and Reserving a Portion of the Flow for the Department of Hawaiian Home Lands for the Huelo-Region Surface Water Hydrologic Units of Ho‘olawa (6035), Waipi‘o (6036), Hoalua (6038), Hanawana (6039), Kailua (6040), Nailiilihaele (6041), Puehu (6042), ‘O‘opuola (6043), Ka‘aiea (6044), Punalu‘u (6045), Kōlea (6046), East Maui**

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

Dr. Strauch briefly stated the summary of request and provided a presentation highlighting the various streams and subject of the submittal. Discussed extensively in July, August, and September of this year was the hydrology, geology, ecology, and instream uses of the various streams. Noted, the quick edits to action item 2.11.6 and added language under the implementation and that if anyone wants to join the quarterly meetings, please email us at [dlnr.cwrp@hawaii.gov](mailto:dlnr.cwrp@hawaii.gov) with the title “quarterly stakeholder meeting”.

The East Maui system feeds the central Maui agriculture, Maui Department of Water Supply and possibly soon support the DHHL’s reservation of non-potable water. There are over (400) diversions within the noted region. There are (15) remaining streams in the (11) hydrologic units to implement IIFS that varies in size, rainfall, fog drip, and groundwater recharge in geology with substantial instream uses.

The groundwater components are important as it makes up the majority of the baseflow to the streams in this region. There are substantial declines in rainfall over the last century, particularly from 1984 to 2013 coupled with recent droughts. In the Huelo Region, there are several stream diversions that are not EMI diversions which draw water from the stream(s) for agricultural and other uses.

Based on records from the 1984-2013 period, following implementation, water availability from the entire EMI system is roughly 69 mgd at median flow and about 13 mgd at extreme low-flows. Downstream gains in streamflow are heavily dependent on groundwater recharge.

A number of streams end in terminal waterfalls which restrict upstream migration of amphidromous species and alters the composition of biota that are available to inhabit the upper elevation reaches, noting that certain species do not migrate past the mouth habitat. Commission has looked at all instream values as defined by the Water Code and gathered new hydrological data to make recommendations to protect the instrument uses.

*(Dr. Strauch further described the biota, instream uses, hydrology, and recommendations of each hydrologic unit)*

There are a lot of modifications being recommended with various modifications requiring more extensive permitting. Under phase one implementation, staff recommended certain diversions get prioritized. The modifications to the EMI system are in conjunction with the request for non-potable water reservation needs for DHHL in Pulehunui and Keokea-Waiohuli. It will take engineering and agreements to get water from the EMI system to Keokea-Waiohuli as there's no continuous path for water from the EMI system to DHHL lands. *(Dr. Strauch further stressed the water availability in the Huelo Regions)*

#### QUESTIONS/COMMENTS

Commissioner Buck – appreciated Ayron's detailed presentation and noted assuming that approval of B5 is also directly related to B6 because of DHHL reservation, is that correct?

Dr. Strauch – not directly; B5 was developed independently. We're making recommendations specific to Huelo streams to protect those instream uses. DHHL made an independent water reservation for over 11 mgd which can't be met solely from Huelo streams as there's simply not enough water, even if Maui DWS did not take any water. Recommendation was to break the DHHL's reservation into a portion that would be met with other sources outside Huelo streams, thus we need to balance all the uses.

Commissioner Buck – was there a scenario built on increase of more storage of water and on some of the higher elevation reservoirs?

Dr. Strauch – most of the Huelo streams are not affected by water use of the upper and lower Kula pipeline system. Kailua has 2 small diversions that feed the Olinda treatment facility therefore the hydrology that was developed, will not be impacted by increased storage at the upper elevations as there's no diversions at the upper elevations.

Commissioner Buck – is exhibit-10 a true representation?



Dr. Strauch – yes, it is; the stream flows as estimated for 1984-2013 with the recommendations of what needs to be inactivated, abandoned, and or modified.

*111522 01:25:23*

PUBLIC TESTIMONY

Ms. Meredith Ching, Rep. for EMI/Mahi Pono

- appreciated Chair Case, Deputy Manuel and the leadership team of CWRM over the years.
- submitted written testimony in strong support of staff's recommendations.
- will abide by Commission's deadlines on permitting; 60-days could be tight as winter months are approaching and ask for understanding on timeframes as there's other intricacies involved in completing the work.

Mr. David Frankel, Counsel, Sierra Club

- pleased that more water will be restored to the streams.
- appreciated the meetings with CWRM.
- CWRM made a commitment the implementation will be revisited which helped address our concerns.
- ask CWRM to revisit IIFS in (4) years to understand the need to see how these measures will work.
- applaud CWRM's initiative in hosting of quarterly meetings regarding alteration of diversion structures.
- not much trust towards A&B
- need better description of how modifications will work and be in place.
- minor edits in staff submittal needs to be made.
- appreciate CWRM's hard work and pleased in steps to protecting the health of its streams.

Ms. Blossom Feiteira

- Hawaiian Homelands beneficiary
- appreciate CWRM submittal and supports its recommendations
- concern with submittal being attached to amending IIFS for East Maui streams; respectfully requests it be separated.
- unsure of impacts to DHHL water reservation and request a separate conversation to ease concerns

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

- Mahalo to CWRM for consideration and amount of work and effort put into the recommendations.
- fulfilling the Hawaiian Homes Commission Act is a condition of Statehood and of the Water Code.

- Keokea-Waiohuli lands of DHHL was originally assigned by Congress in 1921.
- families residing on those lands do NOT have sufficient irrigation water to utilize their parcels; there's immediate, current need for the waters reserving.
- encumbered funds to getting water to those lands, however the water reservation is utmost necessary to continue to do the work.
- DHHL lands at Pulehunui were historically served by EMI system which; water can still be obtained from; Pulehunui lands has gone through environmental review.
- if there's concern to defer action of certain IIFS; DHHL asks to not defer action on its water reservations for B5 & B6.
- IIFS have been set before without considering DHHLs reservations
- water reservation request submitted in 2020 based on knowledge of sufficient water availability, based on CWRM 2018 decision to provide for DHHLs needs.
- support CWRMs quarterly meetings and request to be included.

Ms. Helene Kau, Maui Dept. of Water Supply

- Mahalo to Chair, Commission and CWRM for continued work.
- support stream restoration and proposed amended IFS.
- concern of flow at Wailoa Ditch during drought will impact domestic needs for Upcountry residents.

Ms. Ashley Obrey, for Na Moku 'Aupuni o Ko'olau Hui

- if the Commission approves this reservation and IIFS for Huelo, it should not come at the expense of Waikamoi, West Wailuaiki and Waiahui streams that's part of B6.
- to that extent, the (2) items should've been heard together
- if the streams or others of the 2018 decision regarding reservations or modifications of streamflow, request Na Moku do have a seat at the table for discussion.

Ms. MaryAnn Pahukoa

- 'ohana resides at Huelo; part of Waipio Stream runs through property; generational lo'i in Ke'anae and surrounding areas
- grateful on the possibility of restoring Huelo streams; but note B5 & B6 do need to be separated and understand the need for DHHLs reservations.
- concerning that the waters go through Mahi Pono to get to Pulehunui.
- inactive upcountry wells can/should be utilized for Waiohuli.
- more discussions need to happen.
- generational families of Huelo don't have adequate water as well.

*(end of public testimony)*

QUESTIONS/COMMENTS

Dr. Strauch – clarified the edit to table 17 in the submittal.

Chair Case – is revisiting the IIFS doable?

Dr. Strauch – request for revisit (4) years after implementation as the need for the permitting to occur however some may be implemented quicker than others. The goal is to continue monitoring in conjunction with DAR of stream biota and continue to gather hydrologic data with new stream gauges; and we will also have a better timeline on DHHLs implementation of their planned use and potentially Maui County's Water Use and Development Plan.

Chair Case – clarified its not a sunset of the current IIFS, it will continue unless modified.

Commissioner Hannahs – there's risks and a desire to have more information at your disposal. Ayron's given us a strong factual foundation on hydrology, climate, rainfall, hydrogeology, aquatic biology and biota, the condition and function and extent of infrastructure, and public trust considerations and how we balance all these things. It's reasonable that there be a report on the progress and impacts of these IFS be presented to the Commission 3 years after implementation.

I'm appreciative and in strong support of your work and there's a logical nexus of the recommendations and deciding on this today.

Chair Case – iterated that (4) years is a better timeline as there's other requests to revisit other IFS statewide and don't want to overload in one geographic area.

Commissioner Hannahs – agreed and stated it just needs to be a reasonable period.

Deputy Manuel – in addition, if we adopt these quarterly stakeholder conversations, the dialogue about adaptive management approach should give us an indication of what we're looking at. It's a way for communication to happen at the staff level and with stakeholders of the region. Staff is committed to evaluate and update as new data is discovered.

Commissioner Meyer – commended Ayron and CWRMs great work at East Maui over the years and the results speak for itself. I don't have a problem with the IFS proposal it's well prepared and been over it extensively. However, the reservations seemed to be premature and suggest separating the two issues with B5 & B6.

Seems appropriate to allow discussions with major water users for a clearer picture. Were the other major public users not given the opportunity on a timely basis? The (4) year revisit is appropriate but to separate the IFS and reservation or to defer the reservation until more discussions.

Chair Case – asked Deputy Manuel's comments on bifurcation of the issue at hand. However, thought to not bifurcate DHHLs reservations when making major decisions.

Deputy Manuel – in 2017 the Commission adopted DHHLs reservations statewide and one commitment by the Commission when revisiting IIFS, was to reserve non-potable surface water for DHHL, it was a policy commitment made. We need to look at the whole picture and Ayron laid out an equitable approach to balancing our responsibilities to the public trust which includes DHHL. Now is the time to act on it and it's clear in the Code we're supposed to consider it.

Working with Ayrton over the past couple of years on these specific streams, he's always been inclusive, reached out to stakeholders while in the field, reviews stream diversions and always communicates and is will continue to do so. What's being proposed is based on the data we do have.

Dr. Strauch – Maui DWS potable system minimally meets DHHLs potable needs. This reservation is for non-potable water and to the extent that it will not affect the availability of potable water. Over the years we've been in communication with Maui DWS on East Maui and will be included in our quarterly meetings.

Commissioner Meyer – 90% of the potable water up country served by to the public by Department Water Supply comes from non-potable sources, is that correct?

Dr. Strauch – yes; but most upcountry areas served by Olina and Piiholo treatment facilities do not come from Wailoa Ditch water.

Commissioner Meyer – with a lot harvested at the weir treated and served up millions of gallons a day served up as portable water in addition to supplying Maui Ag Park and farmers.

Dr. Strauch – yes; and it was our understanding that Maui DWS would not be affected.

Commissioner Buck – thanked Commissioner Meyer for his comments and added that domestic water and Hawaiian Homelands are priority for public trust uses and need to deal with the balance at some time. In the future, if our quantity for domestic use is not reaching a certain balance, we may need to revisit a reservation. In our initial decision with East Maui, we didn't deal with DHHL at all, and your point is well taken.

Commissioner Hannahs – requested to hear from Dr. Scheuer

Dr. Scheuer – providing for our reservation in this submittal, which is primarily restoring stream flow to unrestrained streams, does not deprive the Department of Water Supply or other off stream users of their off stream uses.

It's clear in Hawai'i law you're to accommodate public trust uses and municipal uses are not identical to domestic uses of the public. We believe it's the clear obligation of this commission to reserve water for our use and provide adequate quantities during every major decision and to protect and provide for public trust uses above and before allowing for private commercial uses.

Commissioner Meyer – beg to differ; municipal use like the Department of Water Supply supplies most household water to Maui, it's a public trust use.

Commissioner Kagawa-Viviani – we may interpret the code a bit differently; in this submittal, need clarification of suggested revisions, is it 4 years post implementation or post this vote? It will go towards addressing Ms. Kau's concerns about Wailoa ditch and municipal use during the dry season. We need an active adaptive approach and commitment to meeting and define all of the stakeholders that need to be at the meetings.

Deputy Manuel – appreciated the comment and added to include those that participated in the EMI contested case hearing to be inclusive and add others as needed when things become more relevant. We’ll coordinate with the core stakeholders who have been present and knowing the goal is to be inclusive as possible in working towards solutions to meet everyone’s needs. We don’t need to define it now as the intent is to have an open dialogue and communication with all stakeholders which includes the community who’s impacted.

Commissioner Kagawa-Viviani – motion to approve

Chair Case – clarified the amendments are to 1) correct label of photo in table 17; 2) delete duplicate provision; 3) revisit in four (4) years; 4) CWRM conduct quarterly meetings with all stakeholders.

**111522 02:05:00**

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

**To approve B-5 with amendments.**

**UNANIMOUSLY APPROVED**

*Chairperson Case appreciated everyone’s effort in commitment accomplishing this huge milestone.*

RECESS: 11:08 AM

RECONVENE: 11:19 AM

**111522 02:17:04**

**B. ACTION ITEMS**

**6. Reservation of Non-potable Water for the Department of Hawaiian Home Lands From East Maui Streams in the Nāhiku, Ke‘anae and Honomanū Regions and Amend Interim Instream Flow Standards For the Surface Water Hydrologic Units Of Waikamoi (6047), Honomanū (6051), Nua‘ailua (6052), West Wailuaiki (6057), Waiohue (6060), East Maui**

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

Dr. Strauch stated the summary of request and provided a presentation highlighting the submittal item(s). In considering amendments to IIFS, the Commission must balance protection of public trust uses and provide for reasonable beneficial uses. The hydrologic units in question are related to the EMI irrigation system and revocable permit issues. Most streams have been restored since 2016 and have established a good baseline of biological data following the complete restoration of all these streams.

As defined, the interim standards need to be revisited periodically and the original IIFS were based on the original contested case hearing which includes hydrological data from

1942- 2001 and didn't consider the consequences of climate change. There's visible notice of species in streams areas of full restoration. From 2020 to 2022, CWRM and DAR conducted about 50 Biota surveys on Maui spanning multiple streams, elevations, stream types with and without terminal waterfalls, with the goal to quantify the current habitat of native biota under natural conditions. Presence of an estuary enhances recruitment of all species in the watershed.

In Waikamoi, the stream does not support recruitment of native species which is likely related to the stream mouth as it ends in terminal waterfall with no physical connectivity of habitat between the ocean and the stream (*briefly reviewed the stream mouth and mauka stream surveys and its conclusions*).

The USGS graph gage for Honomanū Stream was highlighted noting that despite full restoration, there were many days without streamflow resulting in a dry stream and no enforceable way to implement an H90 flow because of a natural losing reach that occurs at lower elevations to the mouth.

The takeaways were shared noting to take the request for DHHLs non-potable water reservation as previously discussed in B5. The water availability table were noting the large users and uses and notes about 70 mgd at medium flow available and 13 mgd at low flow conditions. The recommendations are to balance and improve protection of instream uses and to improve management of the system. There's limited water availability under low flow conditions. Staff recommends all the stakeholders get together and develop a Water Shortage Plan that allows for balanced use keeping stream protections in place.

The stream-by-stream recommendations were highlighted and noted edit for the implementation to be divided into phase 1 and 2.

## QUESTIONS/COMMENTS

Commissioner Buck – noted the importance to collect more data and iterated the 2018 decision and the staff's current recommendations and appreciate the implementation phase

Dr. Strauch – The amphidromous species lifecycle is ocean dependent, and as soon as water is put back at the stream mouth, they start recruiting. Two years is sufficient to understand the effects of stream restoration and recruitment; we now have four years of data and currently operating under full restoration in most streams and we can see those differences across streams and understand the unique challenges for recruitment for every stream.

Also, with the caveat DHHL won't need the entirety of their reservation and these might be the last streams that get diverted and will be revisiting all these streams every 4 to 5 years. Its clear certain streams need better protection and existing IFS for those streams need to be modified and part of that balance is increasing the availability of habitat by modifying these IFS which include public trust uses

Commissioner Buck – I do understand the ability to get more water in those streams and the importance for maintenance of the whole ditch system and a bunch of issues to balance.

Chair Case – added the importance of estuaries for stream life and for recruitment of reef fish and reef aquatic species. We have data showing that’s a significant part of the equation as well.

Dr. Strauch – Nua‘ailua and Honomanu are more accessible to public, gatherers, and fishermen. Those marine resources are critically important.

*111522 02:45:22*

PUBLIC TESTIMONY

Ms. Meredith Ching, Rep. for EMI/Mahi Pono

- Mahi Pono stands on its testimony in support
- the submittal is fact and research driven
- appreciate the work Ayron’s done

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

- largely reference testimony as in item B-5; it’s valuable to consider the IIFS in conjunction as DHHLs reservation(s).
- noting the relationship of this reservation process and the IFS process to the overall lease being sought from the lease areas by the State.
- HRS 171-58 governs the State's water leasing process and part G requires that prior to any lease issued, adequate reservations of water need to be set aside for DHHL.
- In 2020, filed the (conservative) trust-driven reservation request
- if CWRM decides to defer action on DHHLs reservation request, believe it would further defer action on BLNR consideration regarding EMI’s lease.
- DHHL reservation request combined with the IIFS amendments leaves the impression that DHHL will be responsible for drawing streams out.
- there's extensive nonpublic trust proposed uses of East Maui streams; DHHL are a public trust, non-instream use of those streams.
- under the Code and law, DHHL provide public trust uses both instream and off stream.

Ms. MaryAnn Pahukoa

- Mahalo to Ayron for his extensive presentation and to Commissioners work effort in balancing water allocations.
- Kupuna’s were original petitioners in the East Maui water cases.
- need assurance this water will solely be used for DHHL and not Mahi Pono.
- CWRM has authority to allocate water, restore watersheds, restore limu, and stream species.
- important to be a voice and be heard on these issues; more data is needed; streams need to be fully restored.
- important to have community stakeholders with generational ties at the table/meetings.
- Mahi Pono uses our water for Canada.

- CWRM should take on kuleana of hosting the monthly meetings, not EMI.
- need better protection of watersheds; water in Central and East Maui is priority as there's ongoing heavy drought conditions.
- DHHL should find another alternative source.

Mr. Jerome Kekiwi, President, Na Moku Aupuni O Ko'olau Hui

- lead plaintiff in East Maui water case
- Kupunas worked tirelessly in the 2018 decision for the historic release of East Maui waters
- encourage more data collection
- support the full restoration of Honomanu and Nua'ailua and the reservation of DHHL, farming, ranching
- don't support B-6
- heartbreaking to hear there's not much aquatic species at certain streams/areas.
- needed more discussion before decision making; include Na Moku at the table/meeting regarding East Maui waters.
- there's enough water, but need to find that balance

Ms. Ashley Obrey, for Nā Moku 'Aupuni o Ko'olau Hui

- testifying in opposition to amend the IIFS
- Na Moku filed petitions in 2001 for a number of streams in East Maui that directly impacted native Hawaiian rights; took 20 years to resolve petitions and see the restoration.
- the recommendations of B6 seeks to undo the process which Na Moku and others fought hard to accomplish.
- inadequate consultation by CWRM into the impact of flow reduction and traditional and customary practices.
- understands DHHL reservation and supports its programs; ask to defer recommendation on IIFS.
- more consultation/data, Ka Pa'akai analysis needed.
- staff submittal posted untimely; CWRM links to submittal were inoperable for a whole day and prevented improper notice.
- testimony from the original IIFS proceedings and current, stated T&C practices occurred in the streams that of B-6 is seeking to amend the IFS; witness accounts increase in stream aquatic species.
- noting it will take time to see things come back after over a century of diverted conditions.
- use precautionary principle that mitigates in favor of choosing presumptions to protect the streams.
- no legal requirement for the IFS to be amended as part of DHHL reservation
- intend to request a contested case hearing if no deferral is made.



Ms. Lucienne de Naie, Sierra Club Maui

- Huelo resident
- Understand DHHL and instream flows are equally protected under the Water Code and are highly regarded public trust purposes.
- Mahi Pono needs to provide more data for their off stream uses
- premature to give water to DHHL and lessen stream flows
- possible deferral should be made on B-6 decision
- these will affect historic streams; native families with lo‘i patches; no water allowed to go past diversions.

Mr. David Frankel, Counsel, Sierra Club

- supports reservation for DHHL and supports more water into the streams of Honomanū and Nua‘ailua.
- oppose amendments to reduce IFS
- more complete data is needed; (*described the ditch’s current functionality*)
- there are a lot of components that do not allow for full restoration of all the streams.
- more consultation needed with all the stakeholders
- constitutionally protected cultural practices occur on the streams recommended for amendment
- honor the original petition made by Na Moku almost 18 years ago.

Ms. Tara Apo

- support DHHL reservations
- thanked Ayon for analysis on increasing flows to Honomanū and Nua‘ailua.
- defer the reductions of the IFS to other 3 streams
- return of life to the stream ecosystems, protect and revive cultural and traditional practices, and sustain resilient communities.
- still too much ongoing diversions; need more data collection to understand full affects
- upset that BLNR granted Mahi Pono extended leases; need accountability and provide better solutions on water waste; legacy pesticides on land
- need to prioritize and address high levels of water waste; need other source alternatives

Ms. Helene Kau, Maui DWS

- regarding the reservation of non-potable water, the staff submittal analysis discusses alternatives for DWS and Mahi Pono but none for DHHL.
- in 2020 DWS recommended DHHL, and the State Department of Health not pursue requested variance for individual septic systems in the Kēōkea-Waiohuli master plan development, but to invest in centralized wastewater treatment and reclamation to secure a more reliable, non-potable source for Ag irrigation.
- in the submittal, CWRM is ordering the DWS to explore alternatives and are doing so.

- our understanding that domestic customers on the upcountry system have the same protected public trust status as DHHL, thus believe should not be an unconditioned reservation considering the decades that DHHL takes to develop land.
- DHHL should also explore alternative sources until their demand is met.

*(end of public testimony)*

## QUESTIONS/COMMENTS

Dr. Strauch – staff believes that Waiohue and West Wailuaiki do support tremendous populations of native species, but state there has not been an increase relative to the baseflow restoration that previously occurred. Across East Maui, where we've gone from no restoration to partial or full restoration, we have seen a rebound in amphidromous species. The conclusions regarding Waikamoi are valid.

The recommendation to amend the interim IFS wasn't in relation to restoration in Huelo and also not directly in relation to DHHL. It's taken together as it's both public trust uses, and a need to find balance. The recommendation for West Wailuaiki, Waiohue and Waikamoi, are in relation to the recommendation for full restoration of Honomanū and Nua'ailua, to find balance, better protect our stream ecosystems estuaries, and near shore environments. If all is restored, we'll get substantial return and will not affect the aquatic ecosystems.

Commissioner Kagawa-Viviani – appreciate Ayron's exhaustive research but would agree with testifiers, the analysis is incomplete. Need to know more data of intergenerational knowledge of the streams, impacts to reef ecology and an opportunity to fold in a more holistic analysis. On the administrative end, a reservation made in a non-designated area poses more questions like does it place constraints on licenses? Do we have formal checks on when water is "awarded"?

Dr. Strauch – therefore we're going to start hosting quarterly meetings and bring all the stakeholders together to discuss how to implement the reservation and a Water Shortage Plan. Under drought conditions, there's not enough water for all stakeholders and that's after protecting the streams and includes public trust uses. In other situations, we'd have a designated water management area, and currently don't have the capacity to add a DWMA to East Maui.

Commissioner Kagawa-Viviani – noted Maui DWS testimony in looking for alternative sources as we consider climate changes. UH added a new hire that does wastewater work which is seemingly important statewide.

Commissioner Meyer – *(referenced the water availability slide)* as it quantifies the shortfall for the greater upcountry community, is there a shortfall?

Dr. Strauch – these are in cfs and million gallons per day in parentheses; with B5 approved, this is estimated to be available from the EMI system and with B6 modifications, the estimated availability *(shown on graph)*. This includes the entirety of the EMI system within and outside the license area *(explained the availability at Q80 & drought conditions and note a shortfall of about 5 mgd)*.

We will need to work on balancing like in Nā Wai ‘Ehā, that region being a designated area where all public trust uses get cut back simultaneously under drought situations.

Commissioner Meyer – the numbers speak yards to me; DHHL users are served by the water utilities, have regular water meters, and get water from DWS. On Maui there’s been prohibition against potable users irrigating their lawns and landscaping for the last 6 months. Has consumption gone down upcountry?

Dr. Strauch – not familiar with DWS last 6 months metered use. DHHL gets between 100-200,000 gpd of potable water from the upcountry system of Keokea-Waiohuli and it doesn’t provide for subsistence agriculture or other community-based Ag plans.

Commissioner Meyer – (*referenced on household irrigation combined with extreme droughts, water allocations and dueling public trust uses*) and asked if it’s a sound conclusion.

Dr. Strauch – coming together with a water shortage plan to help mitigate some of this conflict and implement it as we move forward. Maui Island is under extreme drought conditions for the last 2 years, water shortage will remain.

Commissioner Meyer – it’s not going to be an easy situation to solve; suggest having further discussions with all the different users every couple of months and review this again to have a constructive resolution.

Dr. Strauch – quarterly meetings will help bring everybody to the same table and discuss all the different data streams being gathered. DHHL reservation won’t be acted upon for some time and not in dire straits and are trying to plan out 30 years in advance.

Commissioner Meyer – what’s the best way to work through the issues and resolve it collectively. I don’t have any problem with the IFS issues as proposed but with the issue of the reservation- and could be better to defer on that and maintain the discussion.

**111522 03:36:00**

*Chairperson Case called upon Alicia Hueu to testify as Ms. Hueu had connectivity issue during the testimony portion*

### PUBLIC TESTIMONY

Ms. Alicia Napua Hueu

- generational taro farmer of East Maui
- since January 2019 serves as the community coordinator for the Honomanu Restoration Project
- actively restoring the wetland taro patches at the base of Honomanu Stream since 2019; (6) active wetland lo‘i using excess surface water dredged and irrigate from overflow from Punalau Stream-which would normally use Honomanu stream but is bone dry.
- support the full restoration of Honomanu Stream; would enable to restore more lo‘i.

- before retiring, Mr. Skippy Hau provided notes on recovery of the native habitat and seen return of various native species including native ferns after clearing of the wetland.
- started restoration efforts at Waikamoi Stream and plans for restoring Nua‘ailua Stream area.
- Honomanu Stream warrants attention and accounting.
- Eastmauifarm.org

*(end of public testimony)*

## QUESTIONS/COMMENTS

Commissioner Hannahs – there’s value in the deferral because it gives more time for the dialogue to occur. All parties seem to be interested in having more discussion and listening to each other and I’m inclined to let this dialogue occur and we can bring it back later. One of the key risks is the erosion of the valuable trust and wouldn’t want to lose that by precipitously moving on one item but set back on other items. A bit more time on this issue would be well spent.

Commissioner Buck – to propose a motion and don’t want to defer issues; to support item B6 for action 1.1, 2.1, 2.2 and 2.3. delete action 2.4, 2.5. Do not see the urgency to remove the full restoration of those streams. We have an issue for all the stakeholders to get together and have conflicting public trust interests. We need to set the framework to deal with the reality of reduced amount of water use and use water more efficiently.

I’m ready to support DHHL reservation action. 2.1, 2.2 and 2.3. Don’t see the urgency to reverse the 2018 decision and order.

Chair Case – I don’t have a problem deferring this. I do hear it would benefit from a significant amount more considering and think it would be problematic to defer portions, and not differ other portions. We do need a holistic discussion on it and would be very beneficial to get the DHHL reservation in here now or to be understood in terms of the overall impact. It’s better to have it in place before a lease option goes out, and if we were to defer the whole thing, the DHHL reservation would come back, but do think to not piece meal it. It needs to be better understood by everyone participating here.

*Chair Case asked for a second. Commissioner Meyer questioned on the motion. Chair Case clarified it was Commissioner Buck’s motion to defer some parts. Commissioner Meyer agreed with Chair Case’s approach in terms of a motion. Commissioner Meyer noted that Buck’s motion may be approached in the future as discussion moves forward; Meyer agreed.*

*Commissioner Kagawa-Viviani stated support of Buck’s approval of item 1.1 but agree the IFS adjustments should be considered together and asked for Deputy Manuel’s comments.*

Deputy Manuel – we collectively benefit from conversations, and I’m hearing, deferral is potentially worth exploring. I can’t commit to anything as technically this is my last meeting. I really rely on staff and will say that Ayron who has been praised in this space, is trying to balance and look at things holistically. That also involves everyone else coming to the table looking at things holistically and oftentimes everyone is looking out for their own

interest, and we have to be the arbitrator. As Commissioner Hannahs and Buck mentioned, deferring is not necessarily the best option, but we can hear people out, but there needs to be some general coming together furthering the dialogue. I don't know if we're going to get there. It may result in better recommendations or may not.

Commissioner Meyer – how would you feel of having a couple scheduled quarterly meetings by the staff to have interested parties pulled together and discuss their issues and objectives, then revisiting this with the commission in 6 months?

Deputy Manuel – I think it's doable; it's working with our limited staff and resources, so I'm being cognizant of the need to balance that. We could set some expectations on the record in the deferral of returning back in six (6) months to put a timeframe on it understanding there are other processes that are tied to decisions this commission has to make related to DHHL reservations, or IIFS for off stream needs and instream use.

Commissioner Buck – I think action 2.2 and 2.3 are valid. They're justifiable with good science behind them. I don't think any delay would change anything; taking water from 2.1 in Waikamoi we knew that was a major source of water. We knew it was not as important for habitat compared to other streams and Ayron's science prove that. What I don't support is a lot of unknowns in water use. These issues will come up to the Commission in the future.

I don't think because we approve the reservation, 2.1, 2.2, 2.3, we also have to act to our reverse our 2018 decision in maintaining unrestricted streams, that might be an option in the future, but don't see why today we need to make that decision.

Dr. Strauch – we will be hosting quarterly meetings and can come back in 6 months; a deferral for 6 months is not the end of the world and DHHL is not going to act on their full reservation in 6 months, we are looking at the long-term. At the same time, we've seen Nua'ailua and Honomanū bounce back from no restoration to full restoration after 2016. These ecosystems and estuary are thriving and seen recruitment. That's the same data going into the other decisions. It's hard to swallow praising the same data for one thing and not for the other. I'm fine with the deferral, and we will come back after meeting with the community multiple times.

Commissioner Kagawa-Viviani – asked to hear from DHHL

Dr. Scheuer – what is the nature of a reservation? If a reservation is only awarded when DHHL most immediately needs the water, it defeats the purpose of the reservation. The reason why the legislature amended the Water Code and other statutes in 1990, to set up a reservation process because DHHL has been underfunded. The reason for taking a long time to develop its lands, other users came in and took control of water that should be available for DHHL. Reservations are a critical planning tool and putting them in place indicates to all other parties, you recognize there's a reasonable basis that's made for a public trust demand.

Reservations has enabled DHHL to secure funding for infrastructure and agreements necessary. I would interpret a deferral on our reservation request like this could be interpreted the opposite way, like “they might not get any water, why do we need to sit and talk to them?”

Secondly, we're always open to looking at alternatives. Our demand for KēōkeaWaiohuli is over 9 mgd. We receive a maximum of 500,000 gallons per day, of DWS water. I don't a way to create 9 million gallons of irrigation water out of 500,000 gallons of potable water. But certainly would (if you want to) reduce the reservation or condition it on examining alternatives if they're feasible.

Finally, in 2008, we wrote a letter to the hearings officer we have unmet demands and like the decision to reflect that. We didn't object, intervene or contest the 2018 demand settlement knowing it was important for those streams to be restored and the hard work of Na Moku and others to restore those streams be honored.

We filed our reservation request 2 years ago and have waited patiently. We did not ask the Commission to take it up in conjunction with other IIFS, but to take it up as a matter of your regular business and not sure why it has taken so long. Deferral will reduce the ability of DHHL to fulfill its mission. If deferral occurs, we ask the DHHL reservation request be taken up separately as soon as possible.

Parties as diverse as the Sierra Club and Mahi Pono have stated in this meeting, they have no objection they have no objection to DHHLs reservation request. Major objections have been to the IIFS, not the (DHHL) reservation.

Commissioner Hannahs – this commission has consistently supported DHHL reservation; the fact that we hold back on defer one action, one item shouldn't shake the community's faith and confidence DHHL is getting support from the Water Commission in getting what's needed to develop units for our Hawaiian people and interpret it the way Jonathan has suggested.

Secondly, if it gets bifurcated, let it happen rather than on the fly but as a result of those discussions with all stakeholders

Chair Case – I agree with that and agree with bifurcating them for future consumption and doesn't need to be on the same timeline but time to sort it out and should be considered separately on whatever timeline is sufficient for that part of the discussion.

Commissioner Meyer – point of order; we have a motion on the floor unless it's withdrawn and try to move forward with the recommendation proposed. It seems the most orderly, logical, and constructive solution.

*Chairperson Case asked for a second to Buck's motion; no second made. Chair then asked for a new motion.*

Commissioner Meyer – motioned to move ahead with Item 6 in its entirety, with the exception of the creation of the reservations and agreed it be scheduled for review by the Commission in 6 months.

Chair Case – asked you're moving to defer all of it except for the reservation or all of it and bifurcating it?

Commissioner Meyer – bifurcating it.

Chair Case – clarified, your motion is to defer this agenda item and ask the Water Commission staff to come back and hold discussions with community members on the IIFS issue, and when sufficient on the DHHL issue; bring them back separately on separate timelines.

Commissioner Meyer – agreed.

Commissioner Katayama – asked, is deferral of everything?

Chair Case – yes

Commissioner Katayama – then bifurcating 1 & 2?

Chair Case – yes

Commissioner Katayama – I’ll second that.

*Commissioner Buck commented action 2.2 & 2.3 has clear science on IFS to increase and asked why can’t we move forward on those right now? Meyer commented can’t currently view submittal. Buck noted those staff recommendations*

Commissioner Buck – asked on Meyer’s comfort to move forward on those specific items.

Commissioner Meyer – I’m satisfied with the staff’s recommendation on those issues but if they need to be deferred more appropriately for further discussion, that’s okay, too.

Chair Case – our job is to balance and can’t hear just one of them without understanding all of the proposals better.

**111522 04:00:07**

**MOTION: (MEYER/KATAYAMA)  
To defer B-6 with recommended amendments.  
OPPOSE: KAGAWA-VIVIANI  
APPROVED**

*Chairperson Case thanked everyone for their engagement in the dialogue.*

RECESS: 1:04 PM

RECONVENE: 1:30 PM

111522 04:30:38

**B. ACTION ITEMS**

**7. Approval of Well Construction and Pump Installation Application with Special Conditions for HWC-1 (State Well No. 8-1128-003) and HWC-2 (State Well No. 8-1128-004) to Water Resources International, Inc., TMK (3) 9-6-002:016, Nā‘ālehu Aquifer System Area, Hawai‘i**

PRESENTATION GIVEN BY: Ms. Queenie Komori, CWRM Ground Water Regulation Branch

Ms. Komori stated the summary of request and noted the main issue raised regarding the application is a potential impact to an existing well within a one-mile radius. To mitigate this concern, (4) special condition was added within the permit. Ms. Komori further stated the (4) conditions which are also listed in the staff recommendations.

QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – asked if the 5 mgd an additional proposal being pumped?

Ms. Komori – the landowners has pulled out the pump from the existing Pahala shaft but not abandoning the wells. This site has not been in operation since 2005.

Deputy Manuel – the existing Pahala Shaft is not going to be used. The volume is a replacement of the overall pump capacity in the aquifer. These are new wells that are being developed and proposed.

Commissioner Kagawa-Viviani – if there’s large usage, how does that affect near shore fisheries was a concern.

*Chairperson Case asked the applicant, Mr. Albert Kam for comment. Mr. Kam noted no comments to add.*

Chair Case – added was pleased with the extensive Ka Pa‘akai analysis done which can be read in the staff submittal and wondered who did the research.

Mr. Kam – noted it was done by ASM of Hilo.

Chair Case – commented it was a good model to go by.

Mr. Kam – noted the Ka Pa‘akai analysis addresses the pumping area which is a distance, about 5 miles away from the coastline. Do not foresee impact to coastal area. It’s an underground aquifer trapped under a perched water supply.

Commissioner Buck – asked in the future for staff to provide an overview of Ka‘u as heard of issues in delivery systems and made a motion to approve item B-7.



*111522 04:36:17*

**MOTION: (BUCK/MEYER)  
To approve B-7 as recommended.  
UNANIMOUSLY APPROVED**

*111522 04:39:45*

**B. ACTION ITEMS**

**8. Find that Olowalu Water Company, LLC, Owner and Operator of Diversion 961 Violated the Interim Instream Flow Standard on Olowalu Stream, and Accept Alternative Settlement in Lieu of the Total Estimated Fines and Order Modifications to Diversion 961, Olowalu Surface Water Hydrologic Unit, Lahaina, Maui**

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

Dr. Strauch stated the summary of request and noted since the recent 30-day deferral, time was spent to contemplate alternatives applicable to Olowalu and worked with the community and Olowalu Water Company to an agreement. The alternatives in lieu of the fine include providing in-kind labor, providing a woodchipper for its cultural reserve to control the non-native vegetation at/near the reserve site.

OWC will drain, dredge, and reline the lower Olowalu reservoir to increase efficiency and provide a reliable supply of non-potable water to meet agricultural needs, especially during dry conditions. OWC will also rebuild the lower Olowalu ditch intake to provide for a continuous wetted path to meet the instream needs.

Deputy Manuel added OWC will also assist with installation of a sand filter to help with the distribution of water throughout cultural preserve. The cultural reserve has a pipeline from Olowalu stream that provides non-potable water through drip irrigation. A filter for their irrigation system will prevent clogging and disruptions and they will benefit from that.

**QUESTIONS/COMMENTS**

Commissioner Buck – it's a great alternative but what happens when Olowalu doesn't perform?

Dr. Strauch – we will be checking in periodically with the cultural reserve and Olowalu Water Company. We've installed a new real-time monitoring station on Olowalu Stream and OWC already invested in new materials needed to modify diversion 961. We see the cultural reserve fairly regularly in the field.

Deputy Manuel – we added time commitments to the settlement agreement terms (*noted the conditions, timeframes, and continued coordination with community and OWC*). We will come back to the Commission if the agreements are not met and revisit the fines and penalties as originally proposed.

**111522 04:44:24**

PUBLIC TESTIMONY

Mr. Glenn Tremble, West Maui Land/Olowalu Water Company

- appreciate CWRM staff in discussions of the settlement.
- are sincere in completing the improvements and fulfill duties as responsible water providers to the Olowalu community and always been intent to do a good job.
- no intent to violate the law and apologize.
- made a number of improvements noted in the staff report.
- installed gauges in the stream and in weir with noted access on data to CWRM noting to be on the same page which posed a problem in the past.
- remedied repairs to the leaky ditch at the intake.
- awaiting on Army Corps of Engineers regards to a significant leak in the head wall of the dam; noted on the challenging fixes
- supportive of the plan and thankful for Ayron and Deputy Manuel; believe the community will benefit greatly by the efforts to improve the water system and cultural reserve.
- this meets our best interest.

Mr. Cal Chipchase, Counsel, Cades & Schutte

- supportive of Mr. Tremble's position and expresses appreciation of the Commission in allowing time for a collaborative resolution.

Ms. Darene Matsuoka, Counsel, Cades & Schutte

- in addition to the relining of the lower reservoir, OWC decided to reactivate its Snake reservoir; it's added value estimates at \$300K; will make the system more efficient.

Ms. Tiare Lawrence

- extend Aloha to Chair Case and Deputy Manuel for continued great efforts in restoring IIFS to West Maui.
- OWC recognizes they were at fault.
- support the staff recommendation with reservations to avoid a contested case.
- gratitude in achieving goal of proposed work to be done by OWC.
- to see hard dates of completion put into the settlement agreement.
- request community members to be present at final inspection/completion of work.
- CWRM to still consider imposing a lesser fine amount; and if OWC fails to comply with IIFS, impose penalties; hold OWC accountable

Ms. Kai Nishiki

- Mahalo to CWRM leadership for their service to the West Maui community to protect its water resources.
- support the staff recommendation and consideration to a settlement; also benefits the community.
- acknowledges a violation that did occur

Mr. Ke'eumoku Kapu

- Mahalo to Chair Case and Deputy Manuel for great work done.
- hope to Chair and Deputy be reappointed as needed great leaders.
- OWC also has the responsibility to managing water resources which they violated.
- gratitude with the new alternative settlement and support the staff's recommendations.
- need better reinforcement of our water resources.
- monitoring system with GIS and GPS monitoring be implemented to assist in CWRM's capabilities.
- Mahalo to CWRM in setting IIFS for kanaka, aquatic species, and watersheds.

Mr. Kekai Keahi

- taking harder stance against OWC as noted violations did occur from the beginning since the IIFS were set.
- did CWRM dismiss what happened in the past regards to OWC violations?
- CWRM has the authority to protect our water resources and to implement fines.
- hold OWC accountable and impose fines meant; also, to do the work in the settlement agreement.
- time for CWRM to make the hard decisions.
- don't let the community lose faith in the Commission.

Mr. 'Ekolu Lindsey

- submitted written testimony.
- support the creative settlement and the solutions.
- these types of settlement should be looked at more instead of going toward a contested case.
- noted challenges at the Kipuka Cultural Reserve which the settlement would assure assistance; ensure more water flow in that area.
- KCR does have extensive outreach programs to build longevity.
- look forward to better environment, quarry structures, and natural resources in the area and for the community.

Mr. Leonard Nakoa

- agree with testifier Mr. Keahi.
- OWC continues to violate IFS.
- the settlement is a “slap on the wrist” compared to years of continued violations.
- CWRM should still impose a fine
- Mahalo to CWRM staff and those who are leaving at the end of the administration term.

*(end of public testimony)*

### QUESTIONS/COMMENTS

Commissioner Seto – hearing the community on imposing a fine, is there a way for Olowalu to support a future project in addition to the proposed alternative settlement?

Mr. Chipchase – the way the agreement has been structured these are not things we would need to do. We have either completed or in the process of completing. The settlement is entirely work we would not be required to do and is the product of extensive negotiations that would benefit the community that we could implement and benefiting the entire system which is the backbone for the settlement. The work proposed ultimately exceed the value of the fine.

In addition to the settlement requirements, we’ve committed to relining an additional reservoir to make the system more efficient which benefits everyone including the stream. We believe the settlement itself hits all the items from enforcement and for corrective action. With respect, we would support the staff’s recommendation as presented.

Commissioner Hannahs – none of this would have been done by Olowalu Water had it not been for the settlement, is that correct?

Mr. Chipchase – it’s a fair statement; these were not on the table before discussing the settlement with Commission staff.

Commissioner Hannahs – have you gone through the value with staff of what those costs might be?

Mr. Chipchase – we have gone through them with staff; Glenn has a list of them.

Mr. Tremble – *noted line-by-line items and explained its purpose (sand filter, woodchipper, lining and dredging of the Snake Reservoir, etc.) and will exceed over a 1 million dollars.* We realize the importance of this, and we support and appreciate the staff work to generate a commitment going forward as we want to build that trust back into the community and why we’ve committed to these items.

Commissioner Hannahs – you’re adding a second reservoir to this proposal?

Mr. Chipchase – not to the proposal, but in terms of the settlement. We want the Commission to be aware we didn't stop at the settlement and took a more holistic look at the system to see on other changes and improvements we believe would be beneficial to the system. We're not trying to replace the value to the reserve and thought the proposal to benefit the reserve was excellent and that we're serious about improving the system.

Commissioner Hannahs – who are the beneficiaries of the lower Olowalu reservoir? Is it the cultural reserve or others?

Mr. Tremble – the culture reserve takes water on the way but mainly serves other customers. It's a gravity fed system so all the lands below the reservoir would benefit and would greatly improve the capability of the storage.

Commissioner Hannahs – if this is benefiting your customers, why is it like a concession to the community?

Mr. Tremble – it does help us serve our customer base and prevent water leaking; we're a PUC regulated utility and it's challenging to make it all financially work while managing the water as efficiently as possible

Commissioner Hannahs – we want the reservoirs fixed; in lieu of a fine obligation, if the effect of the project is to help your business, then we haven't achieved the community benefits necessary. It allows a more efficient use of a public trust asset and have more capacity to store when we get it.

Mr. Chipchase – we did look at it along those line that is consistent with our conversations with staff; the customers get water when there's water. It doesn't make us a more valuable or profitable company from that standpoint, but better manage the water resource. We've viewed it from a system water resource management as a benefit to the community rather than directly benefited the customers.

Commissioner Hannahs – it serves your company to better serve your customer

Mr. Chipchase – yes

Commissioner Kagawa-Viviani – how are we now o IFS implementation as my understanding Olowalu Water Company has done several steps required.

Dr. Strauch – as part of the implementation, they're going to replace two intake structures, the control gates on lower Olowalu ditch and replace a gate separate from the cultural reserve. An issue is under low flow conditions, there's a lack of connectivity because of leakage under the dam and they are in the process of repairing so the restored flow can provide for habitat connectivity.

Commissioner Kagawa-Viviani – do we have hard target dates

Dr. Strauch – in terms of modifying diversion 961; they can respond.

Mr. Tremble – we ordered the supplies and have to temporarily sandbag the stream in order to work at the close proximity to the headwall where the seepage is occurring and awaiting the Army Corps approval. There're no structural changes occurring, and the sandbagging will keep all the water in the stream while we do the leak repair.

Commissioner Kagawa-Viviani – stepping towards accountability, is there a way for community to participate in terms of seeing how this settlement plays out and the implementation of the IFS?

Dr. Strauch – it would be worth it when reservoir construction initiates. We could have a meeting on site to discuss the implementation and can simultaneously visit the diversion. When construction on the reservoir is complete, we can do a follow up site visit.

Commissioner Kagawa-Viviani – trying to ensure accountability

Commissioner Hannahs – items 1 through 5 can stand as submitted; Item 6, I would approve a fine in the amount of \$470,500, accept as credit toward payment of this fine, the cost of A) the sand filter that benefits the cultural reserve, B) \$168,000 for 48-months, chipper use and operation, C) 50% of the costs of the lower Olowalu reservoir repair.

*Commissioner Buck seconded the motion*

Chair Case – if all those things add up, then your calculation is fine. If not, it seems like a big change to the recommendation and I'm not sure how to assess it.

*Commissioner Hannahs explained the fine calculations and noted they can pay cash or the value of community benefits that is up to the level of the fine. Meyer agreed to the amendment.*

Chair Case – how do you document those values in the end?

Commissioner Hannahs – if we accepted an alternative settlement, we'd still have that issue and whatever staff works out to document the cost of those things (*further explained the breakdown of the cost items*)

Commissioner Kagawa-Viviani – If you sum up the settlement estimated costs, it does come out to potentially, \$478,000.

Chair Case – except for the 50% parts.

Commissioner Meyer – asked Mr. Tremble if the approach was reasonable.

Mr. Chipchase – I don't believe we could; the settlement was negotiated and a resolution of the fine, but to avoid a contested case as we do dispute some aspects of the staff's submittal and report. I don't want to belabor those and argue them. To understand how we resolve things in a way that avoids a contested case and legitimate disputes to the manner of calculation of the days that were assessed.

My rough math estimates \$498,000 of collective value. We looked at this as a holistically good settlement avoiding the contested case, the challenging of some things, building a better rapport with staff, the commission, and the community which all have extensive value beyond what can be tangible.

With respect Commissioners, we urge you to accept the staff submittal proposed settlement as drafted.

Commissioner Hannahs – one of your objectives is to gain the trust and confidence of the community and heard in testimony offered today we're not quite hitting that right now because they think you're paying for things that benefit you regarding the sand filter and the chipper. The reservoir does benefit you and your customers and that standpoint of equity, I believe helps build community confidence and offering community benefit in lieu of payment of a fine for past indiscretion, and building a reservoir, we've got a stake in it.

Mr. Chipchase – I appreciate the comments, we've known each other a long time. I heard the testimony as mixed. I can honestly say I was surprised at some community members who testified and supported the settlement as drafted, given the long-standing disagreements with the company.

If the Commission needs to see a greater value collectively out of the settlement, we committed to line the snake reservoir independently of the settlement agreement and thought the settlement provided enough value. If the Commission wants to see additional value in the form of a settlement agreement, respectfully, the Snake reservoir commitment should be included and that will substantially exceed the settlement or the fine amount.

Commissioner Hannahs – I like fixed reservoirs way better than cash; it's an acceptable compromise and I appreciate your willingness to put it on the table.

Chair Case – are you suggesting, adding the relining of the second reservoir and using 50% of the value of both reservoirs?

Mr. Chipchase – yes

Commissioner Meyer – motion we approve the settlement on that basis including completion of the renovation work on both reservoirs.

*Commissioner Hannahs reiterated the motion and stated to add the second reservoir. Mr. Chipchase agreed, and Meyer seconded the motion.*

Commissioner Buck – asked where in the recommendation is the amount of the fine?

Commissioner Hannahs – in the header of the of the submittal on the summary of request. We're accepting an alternative settlement in lieu of the fine amount and to include 50% of the cost of doing two reservoirs.

*Chair Case asked Mr. Chipchase if he also represents Mr. Martin. Mr. Chipchase do not represent him personally, but Mr. Martin is a part of Olowalu Water Company. Glenn Tremble is the representative.*

Commissioner Kagawa-Viviani – suggested an amendment to Item 3 regarding the diversion modifications to meet the amended interim IFS, can we attach a timeline to that?

Dr. Strauch – asked Mr. Tremble if 90 days would be sufficient?

Mr. Tremble – we’re waiting for the Army Corps reply. For the initial work, 90-days is fine but contemplating a more elaborate diversion intake to ensure IIFS is always met before we took any water and not leave it to operator error, but Harold can give a more realistic timeframe.

Mr. Chipchase – the staff report references a timeline that says within one year from the date of approval from the Army Corps of Engineers and CWRM, on page 20.

Commissioner Hannahs – I’m fine amending my recommended motion accordingly.

Commissioner Meyer – seconded.

Deputy Manuel – acknowledges both sides and working with staff communicating with community and the work that went into a 30-day turnaround to bring a settlement to the Commission. I’m cognizant of the initial question that Commissioner Buck asked on accountability. You have the commitment of the staff.

If this isn’t fulfilled the Commission will bring back the fine for action if there’s no good faith in meeting those obligations. Hearing the concerns from community about accountability, and how long it has taken to get to this place, I think we’re in a good space and have great momentum. It is a settlement, and everybody should be on board to meet those agreements in place, otherwise the commission can and will pursue the fine again.

**111522 05:43:55**

**MOTION: (HANNAHS/MEYER)**

**To approve B-8 with amendments.**

**UNANIMOUSLY APPROVED**

*Chair Case thanked everyone for their hard work in reaching an agreement.*

*Olowalu Water Company appreciated the staff and support.*

**B-9 - WITHDRAWN**



*111522 05:44:30*

**B. ACTION ITEMS**

**10. Approval of the Stream Diversion Works Permit (SDWP.5889.6) Application and Surface Water Use Permit (SWUP.5848.6) Application for New Uses, Thomas Bashaw, for New Diversified Agriculture, Irrigation, and Domestic Use for 4,450 gpd Wailuku River, ‘Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:007 AND Request Approval of Standard Surface Water Use Permit Conditions for New and Existing Uses**

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

Mr. Uyeno stated the summary of request and read the staff recommendation and noted Commission staff stands on its submittal.

**QUESTIONS/COMMENTS**

*Noted that Mr. Bashaw had audio issues*

*Chairperson Case asked Mr. Bashaw if he agrees with the staff recommendations. Mr. Bashaw nodded “yes”. Chair Case then asked Mr. Bashaw if he wanted to add more testimony and reiterated if what was said was enough. Mr. Bashaw agreed it was enough.*

*111522 05:50:24*

**PUBLIC TESTIMONY**

Mr. Hokuao Pellegrino, Hui o Nā Wai ‘Ehā

- Hui o Nā Wai ‘Ehā has no objections
- appreciate this process being more streamlined for community members knowing what others went through to get the water use permits in Nā Wai ‘Ehā, and the long rigorous process that came with it.
- understand this is an off-stream use because of the piping implemented or installed
- ensure all water permittees are complying and vigilant with staff’s recommendations with their permitted use.

*(end of public testimony)*

*111522 05:52:12*

**MOTION: (KATAYAMA/BUCK)  
To approve B-10 as recommended.  
UNANIMOUSLY APPROVED**

*Commissioner Seto exited the meeting*

RECESS: 2:55 PM

RECONVENE: 2:59 PM

**111522 05:59:24**

**B. ACTION ITEMS**

**11. Approve Implementation Actions to Provide Water to Mary Ann Velez (Higa) (SWUPAs 2241/2242N), Jordanella Ciotti (SWUPAs 2247/2248N), and Greg Ibara (SWUPAs 2245/2246N) on the Wailuku Town Kuleana ‘Auwai, Nā Wai ‘Ehā Surface Water Management Area, Wailuku, Maui**

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

Mr. Uyeno stated the summary of request and note on a site visit, Commission staff recommended the water use permittees at the end of the kuleana ‘auwai system, consider piping their system due to some ongoing neighborly disputes. On November 7, 2022, CWRM staff met with Mr. Robert Street who represents Jordanella Ciotti, and also met with Mr. Greg Ibara to confer on piping, which they both believe is best to leave the ‘auwai as an open ditch. Mr. Uyeno read the staff’s recommendations.

**111522 6:02:18**

PUBLIC TESTIMONY

Mr. Avery Chumbley, Wailuku Water Company

- this issue has been brought to CWRM numerous times.
- appreciate staff’s comprehensive documented history of the issues.
- concern of item 3 of recommendation; the high volume of proposed deliveries.
- Noted the USGS Parshall flume that was temporarily installed; over 3 times of the permitted volumes under the D&O.
- significant volume of system losses should be addressed as part of the condition.
- the D&O is clear the kuleana users are responsible to maintain their system.
- proposed piping at certain areas can reduce system loss.
- concern with the equity of applications these recommendations create for future matters; should not be held accountable for the waste or any system losses beyond WWC distribution point

Mr. Robert Street, Wailuku Town Kuleana ‘Auwai User

- recognized appurtenant water rights holder
- attended November 7th site visit meeting w/CWRM staff.
- discredited Deputy Manuel and Mr. Dean Uyeno of CWRM of mismanagement of the Wailuku Kuleana Town ‘Auwai system
- mismanagement of the Wailuku Kuleana Town ‘Auwai system by Wailuku Water Company.
- little to no flow of water on multiple occasions.
- recommend the midpoint valve be removed and other obstructions within the system.
- appurtenant rights users should have control of the ‘auwai.
- recommend working along with Imua Family Services.
- establish a flow rate that is consistent.

Ms. MaryAnn Boyle, Wailuku Town Kuleana ‘Auwai User

- couldn’t attend a November 7th site visit meeting with Mr. Dean Uyeno.
- wants the disputing among the neighbors to end.
- will follow the recommendation set by the Commission staff in regard to piping of intake.
- don’t understand the flow charts in the submittal; but know that on many occasions, water does not reach property.
- whom to call if there’s a problem or an issue? police are saying it’s a “DLNR issue”
- part of the ‘auwai is underground
- WWC states allotted amount of water is being delivered.
- huge leaks within the WTKA system

Mr. Greg Ibara, Wailuku Town Kuleana ‘Auwai User

- attended November 7th site visit meeting w/CWRM staff.
- did not conclude on the decision between he and Mr. Robert Street; but note on that side of the street, resides Mr. Street and Ms. Boyle and that it’s up to them what they want to do (with the water).
- states that Ms. Boyle believes if the piping is done as recommended, neighborly dispute will cease because water will be received.

Ms. Lucienne de Naie, Sierra Club Maui

- Board member of Hui o Nā Wai ‘Ehā
- problem possibly is the amount of water being released at the release point isn’t enough for a reasonable amount of water for use on their own homesteads.
- is the ‘auwai properly maintained; parts of the ‘auwai are underground; are on private land.
- need to determine the proper amounts of water to be released; it’s a complex system.
- many waited long for their water rights that belong to their lands.
- applaud the Commission’s efforts but need better solutions; more accountability for the system is needed.

*(end of public testimony)*

## QUESTIONS/COMMENTS

Commissioner Kagawa-Viviani – referenced Ms. Boyle’s question on whom to call if there’s water issues.

Mr. Uyeno – if they’re not receiving any water in the ‘auwai at their point to contact Wailuku Water Company (Avery Chumbley) to ensure the distribution point at Imua Family Services is releasing water or that the water is being released from Waihe‘e Ditch.

Commissioner Kagawa-Viviani – do we have a paper trail of those concerns as in the end it’s commission that is trying to mediate.

Mr. Uyeno – in the submittal and in the data, in July for about a month there’s a new resident who purchased a property that sits in the middle of all (3) property owners and started grading the area, then neighbor disputes occurred between Mr. Keola Gomes and Mr. Street. Our understanding of the situation was the water was being turned off intentionally during that period, so that Mr. Gomes would not be able to receive any water.

As far as these single day events when the water was not being delivered, I can’t speak to those as we didn’t particularly see any occurrence while the flume was installed.

Mr. Chumbley – *(further described on the flume installation on March 20, 2022)* and noted apart from 21 days where Mr. Street and others had shut down the valve systems on Imua Family property in effort of dispute with Mr. Gomes. July 1st, I received notice via email from Imua Family Services that Mr. Street came on the property and shut down the valves. I contacted Kaleo that same day and followed up, which Ms. Boyle also contacted me that she’s doesn’t have water.

I sent the crew up to the ditch to check the intakes and at Imua property and said everything was running properly. We were dropping the required volume of water in excess of 3x the required amount. During those 175 days the transducer was in the Parshall flume, the highest registered flow was 652,551 gallons in a 24-hr. period which is a tremendous amount of water. Where was it all going? I don’t know. The ‘auwai system is dysfunctional and doesn’t operate very well.

The water was going somewhere because between the Velez, Ciotti and Ibara property, they don’t have the capacity or ability to utilize median flow of 270,000 gallons a day.

Commissioner Kagawa-Viviani – based on the submittal and understanding that WWC meters are not functioning properly, and staff measured half of the flow, can you explain?

Mr. Chumbley – commented the totalizer may not be turning properly, but the transducer and the Parshall flume during those 175 days, was registering a mean average flow of 270,000 gallons. It doesn’t mean the meters are not working.

Deputy Manuel – having witnessed the meter at the midpoint valve, I’m not confident in the flow values even as Mr. Chumbley highlighted. I’m comfortable with the transducer data we did collect on the ‘auwai. Median flow equals about 270,000 gallons per day. I’ve been there when it’s below and when it’s slightly above that. I have more confidence in the flow rates via the Parshall flume and the transducer, not necessarily what’s reading or registered in the meter at the midpoint valve. Those values are what’s presented in the staff submittal.

The challenges are that the D&O of the Commission was based on the record in the contested case and what was applied for at that time. What the end users were accustomed to wasn’t quantified. We needed to better understand the system in place, it’s capabilities of delivery to the end users, system loss, and based on those amounts, how do we meet the needs of the end users.

Witnessing the median flow, it’s not gushing through the properties but rather flowing through the ‘auwai. There’s no real “waste” as I witnessed it was flowing through the properties. We’ve been trying to get steady and consistent flow into the ‘auwai that the end users can rely on a quantity that is delivered, to realize their property use. Part of this data collection was to quantify the appurtenant rights we recognize for all those properties, exceeds even the median flow.

While the Commission did permit only a portion of appurtenant rights in its decision making, they did recognize at full buildout, the appurtenant rights total approximately high 200,000 gallons of water and the challenge is a dysfunctional system which runs under the town of Wailuku. With respect to Mr. Chumbley in having kuleana tenants manage under county properties, we haven’t been able to establish that with the County Department of Public Works, who drains most stormwater down the road into the ‘auwai, which is another issue we’re working on with DPW.

There are tons of pieces that tie into the system, which we’ve ultimately wanted to get better data and perspectives on end uses to propose something more holistic and a recommendation that takes us one step forward and eventually to formally amend/modify the water use permits and go through that process. We need to work with County Department of Public Works and/or Department of Water Supply in management and maintenance of the system under the county road.

Commissioner Hannahs – do they have another alternative?

Deputy Manuel – most of the kuleana in the area got their water from the old ditches and with plantation, a lot of them were forced to convert to these systems. Waihe‘e Ditch is the main feeder at the beginning of the ‘auwai. Another alternative could be the Department of Water Supply potable system, but they’re worried about their own capacity to provide water for that and would charge them for the meter.

Commissioner Hannahs – piping would be exorbitant as its half a mile of it.

Deputy Manuel – a challenge is running a rover through the system to look at system losses and integrity of the channelized ‘auwai; we haven’t gotten feedback from DPW. We’ve tried to get a quote to do that type of inspection and later who would pay for the costs of the improvements.

Commissioner Hannahs – does the action and recommendation before us solve anything in your view?

Deputy Manuel – it clarifies that we want to continue to allow the full open pipe water to make it down to the kuleana ‘auwai users in the median flow quantities and the end users can work amongst themselves to get the needed water to support their proposed uses within their water use permits.

Commissioner Hannahs – how is that different from where we are today?

Deputy Manuel – this is codifying the actions; this was an interim action. Staff was working on implementation of the Commission’s orders. Within that context, we do need to formally modify the permits if this is going to be the current recommendation approved by Commission.

Commissioner Hannahs – reiterated the dysfunction of the system.

Deputy Manuel – it’s not perfect, but it works; water does make it down. A lot is communication amongst end users, setting expectations, and management of the various parts of the system.

Commissioner Hannahs – it doesn’t change the infrastructure, or the rights rather creates local control.

Deputy Manuel – it codifies what we’re currently working through now. There are future decisions the Commission will need to make related to the system (*noted the various system challenges*). We should look at ways to improve the system and the way(s) water is being delivered to the kuleana properties.

Mr. Uyeno – first, was to overcome the decision that was part of the D&O that set forth how much water Wailuku Water was to release at the Imua Family Services pipe. Under Chair’s order, we worked out a system with Imua Family Services of receiving water 2 hours each day and the rest to continue downstream. Working with the kuleana users over these last few months, we’ve gone through several iterations, leaving it up to them to decide and making sure they understand how they get their water and emphasizing it’s their responsibility to share that water (amount) based on their permits.

Chair Case – asked on (recommendation) 2A, at 9 30 am if the 3-inch valve at Imua Family Services shall be readjusted, is that Imua Services to “adjust”?

Mr. Uyeno – yes; during those 2 hours. they shut it down to 100 gpm and is still some water flowing into the ‘auwai but need to back it up enough to build up pressure to irrigate their property during those 2 hours; after that, the staff fully opens the valves.

Chair Case – in a motion, we should clarify who does what so it’s clear on the record.

Commissioner Buck – thanked the staff and note in the D&O, the Commission knew it would have some issues to deal with and commented on the dysfunctional system and unrealistic hope of delivery that the community will figure it out among them themselves. The second half of number 3 is not consistent with what we hoped for. The second part of 3B is that where we want to be for issues that come up as we implement this D&O?

Deputy Manuel – second part of 3, historically WWC did maintain from Waihee Ditch and the drop into the ‘auwai and used to maintain up to that midpoint valve. From Imua Family Services downwards, WWC didn't manage it. The idea with item 3 here is to continue that relationship, so WWC can check that portion of the system. So, if it's not WWC, then who is going to manage it from that midpoint valve? We're recommending that maintenance continues by WWC.

Mr. Chumbley – we have no objection to the second part of that; the Waihe'e Ditch has an intake in it. The pipe is left 100% open and it runs through a subdivision, has a flush out in the middle of a road in the subdivision, then comes to Imua Family Services property where under the D&O, is one of our distribution points where we drop water, then to the permit holders. We have no objection to fully maintaining.

Commissioner Buck – I trust the staff, and there's been so much “he-said, she-said” but; I'll make a motion to approve the staff recommendation as the staff has eyes on the ground and that knowledge.

Commissioner Kagawa-Viviani – Mr. Street mentioned working directly with Imua Family Services, Ms. Boyle and Mr. Ibara mentioned willingness to pipe. Is it possible for them to be working as a coordinated effort and would they need Commission help?

Mr. Chumbley – we would have strong objections to allowing Mr. Street, or any permit holders to have any access rights or ability to operate any portions of our system. Under the D&O we're obligated to drop it at the distribution point and will control it up to that point and not relinquish any right. As for Imua properties, they've complained about the trespass and do not want any permittees on their property.

*Chair Case asked for a second. Meyer seconded. Chair Case and asked if he was okay on the clarification that Imua Family Services is to open and close the valve. Buck & Meyer agreed.*

**111522 06:47:21**

**MOTION: (BUCK/MEYER)  
To approve B-11 as recommended.  
UNANIMOUSLY APPROVED**

*Chair Case thanked everyone for their hard work on this.*

**C. ANNOUNCEMENTS**

1. Water Resilience in Hawai'i Conference – October 28, 2022

Deputy Manuel highlighted that Commissioner Buck attended the conference and Commissioner Seto and Deputy Manuel was a panelist. The conference bridged the University and Academia researchers with agencies and community that are doing the work on the ground.

Commissioner Buck noted the positive feedback for the work the Water Commission has been doing especially for the designation for West Maui.

Commissioner Kagawa-Viviani was there in her UH capacity. The panel was on water policy and strategy that got merged with the freshwater initiative. Discussions included the Red Hill in crises, climate change and equity, and wastewater.

2. Native Hawaiian Law Training Course for Decisionmakers – December 5 & 12, 2022

Deputy noted the upcoming law training course.

Chair Case noted it's a requirement for (new) Commissioners to take this course and for those who want to brush up on the latest updates. Chair Case has requested for Ka Huli Ao to make the training sessions available by way of video recording, which is currently not.

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Deputy Manuel appreciated his time serving on the Commission for 47-months in working with the Commissioners and staff and thankful for the momentum created around water and believes it to be the most balanced Commission in CWRM history; and gratitude to Chair Case for the opportunity to serve alongside the past 4 years as well as collectively accomplishing a lot. Also thanked the Commission Secretary, Rae Hyatt for her service and support.

Commissioner Hannahs noted his deep appreciation to Deputy Manuel for his hard work, philosophy on opportunity, his embodiment on civil service, and leadership. Also noted Chair Case's leadership and the great assistance of the Commission Secretary.

Commissioner Buck commented this last 8 years will go down as the most historic term of the Water Commission.

Chair Case noted that Governor Ige helped to put together the Water Code in 1988 and is proud of the Water Commission accomplishments.

Deputy Manuel also thanked the CWRM leadership team of Mr. Dean Uyeno, Mr. Ryan Imata and Ms. Katie Roth for their service and continued efforts.

Commissioner Kagawa-Viviani also appreciated Deputy Manuel and staff for the continued work and efforts.



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

December 20, 2022 (Tuesday)

This meeting adjourned at 4:01 p.m.

Respectfully submitted,



RAE ANN HYATT  
Commission Secretary

OLA I KA WAI:



M. KALEO MANUEL  
Deputy Director

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**Written Testimonies Received:**

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