MINUTES
FOR THE MEETING OF
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: April 18, 2023
TIME: 9:00 am
PLACE: Online via Zoom and in person
Meeting ID: 834 0987 2314

Chairperson Chang called the meeting of the Commission on Water Resource Management to order at 9:02 a.m. and stated it is a hybrid meeting being held in the Kalanimoku Building boardroom, remotely via Zoom and live streamed via YouTube. It was noted that people may testify via the information provided online. Chairperson Chang reminded the public not to use the chat feature for any comments as it presents a Sunshine Law issue. Chairperson Chang read the standard contested case statement and took a roll call of Commissioners as well as introduced the Commission staff.

MEMBERS: Chairperson Dawn Chang, Mr. Michael Buck, Mr. Neil Hannahs, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer

COUNSEL: Ms. Kathleen Ho

STAFF: Deputy M. Kaleo Manuel, Ms. Nadine Pomroy, Mr. Ayron Strauch, Mr. Neal Fujii, Mr. Dean Uyeno, Ms. Katie Roth, Mr. Ryan Imata, Ms. Alexa Deike, Mr. Barrett Won

OTHERS: Dr. Ryan Longman, University of Hawai‘I, Maj General Mark Hashimoto,
U.S Marine Corps, Colonel Kevin Williams, the Chief of Staff for the JTF
Red Hill, Sarah Moody, Naval Facilities Engineering Command Hawai‘I,
Captain Cameron Geertsma, Commanding Officer for Naval facilities Engineering assistance command Hawai‘I, Kevin Nakamura, Chief Medical Officer for the defense health agency region Indo-Pacific; Mark
Vaught, Mahi Pono, Cal Chipchase, Molokai Ranch, Harold Edwards, ITC
consultant / contractor.

All written testimonies submitted are available for review by interested parties and are posted online on the Commission on Water Resource Management website.

Chair Chang requested a motion to take C1 and C2 out of the agenda order.

041823:00:07:15

MOTION: (HO/MEYER)
To: Take item C1 and item C2 and move up.
UNANIMOUSLY APPROVED

(HO/BUCK/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER/CHANG)

041823:00:08:10

A. APPROVAL OF MINUTES

March 21, 2023

PUBLIC TESTIMONY – None

Commissioner Kagawa-Viviani minor edits (technical)

MOTION: (BUCK/HO)
To approve the March 21, 2023, minutes subject to the proposed amendments by Commissioner Kagawa-Viviani
UNANIMOUSLY APPROVED
(BUCK/HO/HANNAHS/KAGAWA-VIVIANI/KATAYAMA/MEYER/CHANG)

041823 00:10:37

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Informational Briefing on the Pacific Drought Knowledge Exchange by Dr. Ryan Longman, University of Hawai‘i

Mr. Neal Fujii of the CWRM Planning Branch introduced Dr. Ryan Longman, with the University of Hawai‘i and a fellow at the East-West Center, and an associate researcher at the Water Resource Research Center at UH.

PRESENTATION GIVEN BY: Dr. Ryan Longman, University of Hawai‘i

Dr. Ryan Longman provided a slide presentation on an overview of The Pacific Drought Knowledge Exchange (PDKE). It was framed within the context of the data life cycle, which includes data monitoring, processing, storage, access, analysis, product creation, and dissemination. It encompasses many of these elements. (Slide presentation attached.)

Chair Chang thanked Dr. Longman for his presentation.

QUESTIONS/COMMENTS

Commissioner Ho: are you coordinating or is the school of public health interested in your research and the effects climate change has on public health and the environment?

Dr. Longman: it’s an open research question. I’m sure there’s an interest in that. I’m not particularly working with anybody in public health but it’s certainly an area to explore and certainly something that they might be able to utilize.

Commissioner Ho: as you were going through this, I was thinking this is something that we could probably use.

Dr. Longman: It's just a matter of identifying the type of data needed and getting it to the people that need it.

Commissioner Buck: thank you Dr. Longman and his team saying that his presentation was the most precise, accessible presentation ever heard from the University of Hawai'i. I have never seen or was aware of many of those products. I have one question and one comment for future potential work for them. The question is: I know these are based on certain climatic models. What's the plan to verify the models and update some of the existing fact sheets that you have? And the comment is: a future need that we have, and it really relates to an issue we're dealing with today is the commission has really looked at some of these large episodic storm events as opportunities for our dams and reservoirs for water storage, but we do lack sometimes is the actual science that can kind of predict the amounts of some of these episodic storm events that can help us do some of the financial analysis to really help the majority of private landowners to see if they can maintain these dead dams and reservoirs. Episodic storm events are hard to model but that is one data element that as you look for future needs, I know the Water Commission could really use. Thank you for a great presentation and great work.

Dr. Longman: to the comment first, saying with the Mesonet coming online. This is data that is available in five-minute resolution. We may not be able to predict what's going to happen in the future but can get a really good idea of how much rainfall the storms are bringing to the island now once they have that high-resolution data. I think that that could be a model for what could happen in the future. If you can determine how storms might change you can base it on the information that you have but until they have that really high temporal resolution data. The second, that Mesonet station gets installed, and they have about 20 installed right now they start using that data. They start pulling it into the portal in real-time with data acquisition and product development. In terms of the question, a lot of the products and they're developing like the rainfall maps, and temperature maps are all work that they've spent years on. They have been working on the Hawai'i climate data portal for a decade and conceptually for two decades. If you go back to Tom's (Thomas Giambelluca) tenure probably 4 decades, I don't want to date Tom too much, but it's been a while so the work that they do, and the mapping they publish that in peer viewed scientific journals. The future projections is not on their shop it's on the periphery and can only use what's out there so when folks develop something they make use of it but it's just a matter of more folks putting their head down and looking into the future and then us utilizing and leveraging their efforts to get that information to folks in Hawai'i.

Commissioner Hannahs: (thanked Dr. Longman for the presentation saying it was excellent) I was struck by your data utilization and your data life cycle slide. But there was something missing from that. You get to dissemination and what I was looking for was data utilization. Once we have the information what do we do with it? I think it's really important and that's why I said the implications which may not be so much on you as so much on our DLNR leadership and so forth that we recognize how then do we take this and have sounder policies. Then I looked at your models, your co-production models which I appreciate are better than the other options that you presented before it. I guess we're not just looking at the value of information for its own sake so that we can adapt to here's the trajectory and here is where we will end up so here's how we're going to live. I think part of our job is to really optimize, develop optimal strategies and move us toward a strategic optimization model. So that we're again sensibly taking the information we have and making better policies. What comes back to Commissioner Buck is we just read in the paper Civil Beat today and we're thinking what do you do with one reservoir? Kalihiwai reservoir on Kaua'i. We're going to close another

reservoir and there's a big dispute over the investment value of that and who bears that investment. Those are great examples of how we need to take the information that you're providing and really put it in the hands of policymakers and make better decisions that are informed by your science. I'm not sure if that's a statement or a question but I'd really like some discussion on that from both you as well as our staff.

Dr. Longman: (Thanked Commissioner Hannahs). I often get this question. My capacity is at a limit when it gets to that dissemination point considering all the things that I'm doing. But you want your data and your work to have value and I'm not in the Ivory Tower approach so when I get to the dissemination part you would hope that in the co-production model that you're actually creating something that somebody wants, and they will utilize it. I have gotten feedback from people like Sierra McDaniel at Hawaii Volcanoes National Park who has used the information to make restoration decisions on planting silver sword species and for managing invasive species during certain times of the year. I'm getting some anecdotal information from folks that are using it for in terms of the ranchers in Hawai‘i. The ranchers have to make decisions and what's going to happen is they're going to either make the decision with no information or they're going to make it based on some information that we provide them. I'm not telling them what to do but it's a piece of information they can have that they might not have access to on the other hand. I can say is that we want to create the data and
information the most relevant information for folks to utilize and find out what they need and give it to them in a format they can use.

Commissioner Hannahs: Ranching is a good example; you can look at your data in one decision you could adapt and reduce the stocking rate but when we have community goals to increase food production, we've got to take your data and figure out how do we have the stocking rate we want on our ranch lands that meet our food production goals and make sense with respect to the burden upon the land and the utilization of the resource. It's not all your kuleana we need our public policy representatives in this to step forward.

Deputy Manuel: No, I think the goal is to utilize the data both in short-term and long-term decision-making. Reflecting on our kuleana to manage permits for example and bring forward recommendations to the Commission to the extent that we have a robust data set to work off the better. The trends are what we've been most interested in from a long-term Hawai‘i Water Plan perspective and for you folks as decision-makers and policymakers to make decisions based on new relevant Hawai'i-specific data versus these larger climate models that we've been basing our decisions off of.

Commissioner Kagawa-Viviani:(thanked Dr. Longman) I have a question and then I
have an offer. One, for the Hawai‘i Rangeland Information Portal which is super cool. Are you folks thinking about sort of intermediate range like two-to-three-year projections? I think that sometimes the scale at which decision-making happens; if you're going to manage head and all it's also like the El Niño kind of windows that are extremes that really swing decision-making. Three months is good, but I remember working in cattle country and that window of time was kind of important.

Dr. Longman: the ranchers that we've talked to and work with, Hawai‘i Cattleman's Council. On a day-to-day management level, we're finding that they're interested in the short term mostly. But I think it's probably some larger planning thoughts as you're looking into developing in the future. The information is useful on that but I'm very careful, I'm not a modeler in terms of what I do so, it's an almanac perspective, it just says that this happened past El Niño, this is what happens on average. It's

a real kind of careful way to get into that space in terms of projections. Now we can show the data and talk about what happened yesterday, last month, and what we think is going to happen, but I don't know if I have the capabilities to move too far into the future. But if that information is available in a robust way, we're happy to provide it to anybody that wants it and put it into the portfolio. That is something that we can do on a gridded basis.

Commissioner Kagawa-Viviani: In that case, I have a follow-up or preceding question. Which is, you were talking about the data life cycle and about the knowledge exchange which I think kind of closed the loop. I noticed there was an arrow back, but we start with the kind of sensory data I think you and are very familiar with. But what room is there to include other indicators based on the feedback with stakeholders? Maybe we're not measuring the right things. Is there a way to incorporate those recommendations, maybe not in your project but are they documented and placed somewhere for the future? Maybe we're not measuring the right metrics that matter to the stakeholders.

Dr. Longman: The portfolio is something we can do for anybody. So, we make the portfolio, and the next step would be to sit down with the stakeholder and go through the portfolio and say here is the information that you need. What else can we provide for you there? Then the idea of the knowledge exchange is to document lessons learned to get any information we can and compile it into a centralized clearing house to create these drought needs assessments; these things that encapsulate the broader issues and maybe even specific issues that might be relevant to other folks. So, there is that part of the exchange also it's kind of
bringing together information from individuals and putting it in a cohesive way where others can kind of learn from those lessons.

Dr. Kagawa-Viviani: that's kind of where the incorporation of local knowledge comes in but it's not something you carry out. Is it just something you document?

Dr. Longman: it's more documenting and disseminating it to others that might be interested in that information.

Dr. Kagawa-Viviani: Maybe as I sit on the commission for a couple more years, we can have more informal dialogues and think about ways that the continuing work of Hawaii Climate Data Portal (HCDE) and PDKE more directly guide commission work. This is focused on drought, but I think Dr. YinPhan Tsang, when we're thinking about extremes, she's doing a lot of work on flooding and there's going to be more work done on flooding. She works with folks on Kauaʻi as well so that would be a good complimentary informational briefing.

Dr. Longman: The Pacific drought knowledge exchange is not limited to drought information and will also include flooding information. A fire risk and warning tool is being funded at a high resolution by Sayed Bateni at the Water Resource Research Center. The goal of the HCDP is to achieve water balance for the state, which will incorporate information on rainfall, runoff, aquifer recharge, and evapotranspiration. Dr. YinPhan Sang is developing a gridded soil moisture product to allow for effective precipitation analysis. The ultimate goal of the HCDP is to provide a comprehensive water balance for the state, which will take a couple more years to achieve.

Commissioner Meyer: (thanked Dr. Longman for his work) I've been in the water and water management business for over 40 years. Your information is tremendously valuable to water utilities, public and private professionals, farmers, ranchers, and the public in terms of warning about drought

and flood events. I feel that this work is filling a significant gap in the field and encourage you to continue the excellent work.

Commissioner Katayama: (thanked Dr. Longman for his presentation) This has helped me gain perspective. I'm interested in understanding the timing of climate cycles and how your research can help in long-term water balance decision making. Who are the decision makers that you work with in developing this model, and how do you determine which areas to focus on? Specifically, about whether high-risk or low-tolerance areas for weather swings are prioritized. Overall, I'm seeking to gain a better understanding of your work and how it can be applied to address climate change.

Dr. Longman: For the first question regarding whom they are working with on modeling projects, they take a stakeholder approach and work with those who are willing to collaborate with them. There is no specific targeting involved, and it is more about networking and the capacity to help. We can make a portfolio quickly for anyone. Overall, our approach is flexible and open to collaboration.

Commissioner Katayama: who are the decision makers that you are collaborating with at these various sites that you've selected?

Dr. Longman: Our collaboration partners vary depending on the project and location. We work with the resource management unit in Hawai'i Volcanoes National Park and individuals who manage land resources such as ranchers. We aim to work with people who will actually use the tools and data and try to identify them early on. I am currently working with the Hawai'i Cattleman's Council to meet with individuals who manage livestock and see if this tool can help them.

We also work with organizations such as the Natural Resources Conservation Service, USGS, and Nature Conservancy, who put us in touch with the right people. It is really a grassroots project, and there is no specific model for identifying resource managers.

Commissioner Katayama: Your research, what is the window for climate trends?

Dr. Longman: the climate in Hawai'i has crazy annual variability with wet and dry years. The last eight of nine years have been the hottest on record and the next El Niño could send temperatures off the charts. We've been in a La Niña for the last three years so we have not felt the full effects of what the atmosphere and the ocean is doing and the next El Niño could occur next winter and bring a hot and dry winter. Rainfall trends are uncertain, but temperatures are rising, and models predict a much warmer environment in Hawaii in the future. This will cause species, certain agricultural products, and people's health and comfort to be at risk. Mitigation efforts are somewhat working, but we need to plan for a warmer world without any doubt.

Commissioner Katayama: well, I think that's a challenge for this group is how do we protect our water resources so we can continue to enjoy a healthy and vibrant lifestyle. So, I think this research is key. We really need to have the ability to make long-term decisions that will protect our future so hopefully, you can help us. There are a lot of (Commission-designated) Water Management Areas on Maui that could probably benefit from your work.

Chair Chang: I have some final comments. I really appreciated this presentation and as a process person in support of community engagement, I view the tool as leveling the playing field, providing access to information for informed decision-making without paying for a consultant. The tool is

helpful for various issues, including climate change, shoreline erosion, and trends in water issues. I believe that

the tool will assist in making informed decisions and provide greater flexibility in incorporating changes into permit conditions. I appreciate the cultural integration and indigenous knowledge incorporated into the tool and praise its balance, credibility, and integrity. Finally, I'd like to thank the staff for their excellent work and believes that the department will use the tool frequently.

Commissioner Hannahs: thank you Chair Chang for your comments. I like your idea about making the tool a part of the staff protocol. He suggests highlighting the relevant data sets, including agency reviews and the Ka Pa'akai Analysis, and creating a template for staff to ensure that there is a review against those data sets for matters that come before us. I believe that this is possible and I think that creating a template will make it automatic for staff to check the relevant data sets.

Deputy Manuel: I agree that the tool can be incorporated into their discussions on climate data and that I can work with staff to utilize the data in their analysis and recommendations. I suggest that building the tool into their routing and review process can make their submittals more robust. I believe that we can make the water plan a living document by utilizing the tool and incorporating it into our discussions.

Dr. Aurora Kagawa-Viviani: thank you Commissioner Hannahs and Deputy Manuel for your input and I suggest a formalized way to pull in the HCDP or PDKE information as part of the assessment. I believe that this could be a tangible way to make it happen. Thank you Dr. Ryan Longman, how to access the HCDP or PDKE and his contact information for the general public who may be interested in following up?

Chair Chang: could make the slides from the PowerPoint available to post on CWRM website so people can have access to it?

Dr. Aurora Kagawa-Viviani: or links to it?

Dr. Longman: you can access the Hawaii Climate Data Portal and the Pacific Drought Knowledge Exchange by simply searching on Google. I didn't really get into the weeds on the portal, but the Hawaii Climate Data Portal offers an interactive tool where one can make a rainfall map, and real-time data can be accessed through an API. Cyberinfrastructure can also help with accessing the data. Currently for the portfolio, one has to email me or the HCDP, but eventually, it will be a tool for everyone.

Chair Chang asks if anybody in the audience has any testimony for this item. Thanked Dr. Longman for his presentation and the good work. She recessed for a 5-minute break. Item C-2 is next on the agenda.

RECESS – 10:04 AM

RECONVEYED – 10:13 AM

041823:00:01:11:37

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Joint Task Force Red Hill, Navy, and Defense Health Agency Overviews/Updates of Defueling, Site Remediation and Closure, Red Hill Shaft Recovery and Monitoring, and Medical Support to Families

PRESENTATION GIVEN BY: Maj General Mark Hashimoto, U.S Marine Corps

Thanks everyone for the opportunity to provide updates from organizations involved in the defueling, site cleanup, aquifer-related activities, and medical support to families. Navy Region Hawai‘i and Naval Facilities Engineering command, have provided several detailed updates to the commission since the beginning of 2022. Joint Task Force Red Hill and Defense Health Agency will be providing information directly to the commission for the first time. These organizations have made many public appearances to ensure that questions and concerns associated with the response to Red Hill can be addressed. Each organization will present a brief update on what they are doing, mainly focusing on updates, and looking forward to discussions.

PRESENTATION GIVEN BY: Colonel Kevin Williams, the Chief of Staff for the JTF Red Hill

Colonel Kevin Williams, the chief of staff for the Joint Task Force Red Hill, thanks everyone for allowing them to present their mission and update their timeline. He works for Admiral Wade and will discuss their mission and timeline while also answering any questions. (See PowerPoint presentation.)

PRESENTATION GIVEN BY: Sarah Moody, Naval Facilities Engineering Command Hawai‘I

Sarah Moody, with the Naval facilities engineering command Hawai‘i, specifically on the Red Hill environmental team that was stood up in response to the events that happened in November of 2021 impacting the drinking water system. They have been tasked with a specific mission of the recovery and remediation of our aquifer and the water sources in Hawai‘i and specifically the drinking water system that serves Joint Base Hawai‘i. She will provide an overview and continue with a PowerPoint presentation. Red Hill Remediation Actions Schedule.

General Mark Hashimoto mentioned that there is a fine print at the bottom of the document, and this is related to Colonel William’s statement about preserving decision space. The document is subject to change, and they want to make sure people understand that. The accuracy of the document is as of today.

Chair Chang appreciated the disclaimer.

PRESENTATION GIVEN BY: Captain Cameron Geertsma, Commanding Officer for Naval facilities Engineering assistance command Hawai‘i

Captain Cameron Geertsma, commanding officer for Naval facilities engineering assistance command Hawai'i, that’s the NAVFAC side of the house, but then there's also the Commander Navy region who he’s representing today, Admiral Barnett, as his staff civil engineer went over Red Hill Tank Closure on PowerPoint presentation.

PRESENTATION GIVEN BY: Kevin Nakamura, Chief Medical Officer for the defense health agency region Indo-Pacific

Kevin Nakamura, chief medical officer for the defense health agency region indo-pacific. They are the lead agency responsible for health care for individuals and families that were impacted by the Red Hill JP5 fuel contamination incident. In early January, they started the Red Hill Clinic to take care of military service members and military beneficiaries. (See PowerPoint presentation.)

Chair Chang opens questions or comments to the Commissioners.

QUESTIONS/COMMENTS

Commissioner Hannahs: thank the presenters for their excellent presentation and I note four fundamental commitments: to mitigate or remediate the contamination that's in that aquifer, to defuel the tanks to eliminate future risks, to develop a community-accepted plan for repurposing the tanks, and to take care of the affected citizens. I have concerns about how long the system will be offline and I'm pleased to see a comprehensive plan for dealing with it. If I read this correctly, the tanks will be defueled by June 2024?

Captain Cameron Geertsma: Yes sir.

Commissioner Hannahs: is asking if there is an end date for the remediation of the contamination and if you are working towards a specific date for when the water systems can be brought back online for drinking? I acknowledge that things can change and it's important to have a plan and variance reporting, but I'm seeking a better understanding of the timeline for remediation.

Sarah Moody: there is currently no clear timeline for the environmental remediation of the Red Hill facility, as a comprehensive site assessment and defueling of tanks are needed to identify contamination not only from the events that happened in November of 2021 but also look for any potential contamination from other things that have happened at Red Hill over the last 80 years. There is the pursuit of a water treatment plant for the Red Hill shaft, but regulatory approval is required before it can be approved as a drinking water source. The temporary project for this is set for 2025, and the permanent project for 2027, after the tanks are defueled. The Navy Aiea Halawa shaft is being pursued on an emergency basis and treatment options are being explored as a contingency measure for the community's protection.

Commissioner Hannahs: what I take from that is that this system which supplies 25 percent of drinking water for O'ahu will be offline at least until 2027?

Sarah Moody: there is potential in 2025 to have a temporary system stood up in place while the long-term system is being built but that is dependent on regulatory approval.

Commissioner Hannahs: so, the tank repurposing, that decision would be made next month with the DOH's approval? Did I read that correctly?

Captain Cameron Geertsma: a decision-making process with the Department of Health (DOH) and regulators, potentially related to supplement number two. Currently, we are following option one but are open to changing to another methodology if necessary. I want to emphasize the importance of submitting all relevant information to DOH to make an informed decision in partnership with their

team. We do not want to speak for DOH but believe that it is important to keep the momentum going and support moving into other options if necessary.

Commissioner Hannahs: It is important to create a plan for remediation and defueling once a decision has been made about which option to pursue in order to move towards closure on the issue. There is the need for a clear goal and tracking progress towards targeted outcomes and appreciates that progress is being made in this direction. However, I note that this plan addresses only one-third of the overall issue, which includes determining how long the O'ahu-based system will be offline. It is also important to consider the pressures on other parts of the system that are meeting the demand that was once met by this part, and whether they are meeting existing allocations and future demand sustainability. Additionally, the need to develop new sources that don't rely on the offline aquifer.

Deputy Manuel: we are working on understanding the whole system and aquifers as a whole, and managing everyone's uses, including the Navy, is important from a regulatory standpoint. Data is important and I encourage others to support the commission's regulatory role by providing timely and accurate data. There may be other priorities to consider but the ones mentioned are in alignment.

Ryan Imata: we want to stay on top of any plans to open up sources in emergency situations and are actively monitoring data to understand potential environmental impacts. I agree with Kaleo that reporting is important, and actively monitoring the data that comes from reporting is the second component of our efforts.

Chair Chang: We are trying to work more closely with the Board of Water Supply to have a collaborative engagement with them, which will help make better decisions with good data. There are some bills in the process through the legislature that may give us additional tools to manage and regulate the system better. The governor's office is looking at this comprehensively, and the Navy has to partner with them to help make better decisions through good data.

Commissioner Hannahs: how often can we track or anticipate tracking the progress against the milestones?

Chair Chang: I suggest that the Navy may not have to come to CWRM on a monthly basis but instead provide written updates. The purpose of creating a platform was to get good information and provide the Navy with an opportunity to give accurate, current information. I suggest that they provide the commission with more regular updates, which may not necessarily be in-person presentations but could be written.

Commissioner Hannahs: they should come before the commission at least quarterly to have a report unless there's a significant variance, in which case they should report to the commission whenever it occurs.

Ryan Imata: to address the Commissioners' concerns, we can forward the schedule for Navy outreach meetings, which can provide opportunities for the community engagement and updates on remediation and closure efforts. This way, the Navy doesn't have to directly address these issues to the Commission during their meetings, and the Commissioners can receive more regular updates. However, the commission may need to request updates on allocations and other matters they are responsible for as necessary.

Commissioner Kagawa-Viviani: I am in agreement with Commissioner Hannahs regarding the usefulness of the synoptic view of plans, particularly because the written plans can be difficult to understand. I suggest that it would be helpful to have alternating presentations from the Navy or organizations represented in the group and the groundwater staff to understand and have a more informed view of the aquifer sector areas such as Waimalu, Moanalua, or Pearl Harbor. I also suggest that the public meetings be shared on the commission's Red Hill page so that the public can access them. Can I get clarification on some terms used in the Navy's infographics, particularly in the Gantt chart. There were three or four words that were repeated – dewatering, repacking, and unforeseen repairs, and maintenance before defueling.

Colonel Kevin Williams: Dewatering is removing built-up condensation from the tanks to prevent corrosion and repacking is the process of reintroducing fuel into the lines to stabilize the equilibrium before defueling. Unforeseen repairs and maintenance is a window of time set aside to ensure that all conditions are set for repairs and response drills and training to ensure that all personnel are certified and ready to go. The tank bottom procedure review involves draining the remaining fuel from the main tanks, which is not at the pipe that drains into the main line. The overall process involves a series of iterations that use the same safety. We can simplify the information in the Gantt chart and provide further updates as we drill down with regulators.

Commissioner Kagawa-Viviani: it does help, and it is my understanding that there's tremendous pressure from these tall tanks, which is part of the safety issues, and that moving fuel is risky business.

Colonel Kevin Williams: The repairs being done are to ensure the integrity of the system for defueling, and they are being done deliberately and with the help of regulators and third-party quality validation. The dewatering process is also being used to check and ensure the response plan is in place for safe operations. The team is moving fast but also prioritizing safety.

Commissioner Kagawa-Viviani: there have been concerns about the possibility of a change in the defueling plan due to national security during the window of unforeseen repair and maintenance Colonel Williams, do you have any comments on that. She also appreciated the explanation of technical terms and believes it helps establish better transparency and dialogue. However, there is still significant concern about the lengthy timeline and the possibility that the plans may change.

General Mark Hashimoto: we are committed to the Secretary of Defense's decision on March 7th to defuel and permanently close the Red Hill facility and that that is the only decision that is out there and that is what we are moving toward every single day.

Commissioner Kagawa-Viviani: I had one more question for NAVFAC, Sarah Moody, as I was a bit confused about that diagram. I see a lot of monitoring and investigation and also remediation and actual remediation. Why is it called remediation when it's more monitoring? I was frustrated because there isn't even a discussion of what you are going to do besides measure.

Sarah Moody: we are actively working on remediation efforts at the site of the spill that occurred in November 2021 at Red Hill. We have already excavated contaminated soil, are using vapor monitoring ports to remove any remaining fuel and are skimming and removing fuel from the aquifer. There is a need for a larger, holistic approach to environmental care and remediation at the entire facility, beyond just the specific site of the spill. The remediation efforts will continue until everyone agrees that they have been successful and that monitoring, and remediation activities are occurring

concurrently.

Commissioner Kagawa-Viviani: can you confirm that there's still free product coming into the shaft as mentioned? It's about a tablespoon per month?

Sarah Moody: yes. So usually, we only see a sheen of free product after a large rain event and when we do, we're able to collect it with the skimmers and the booms in the shaft and it's an average of a teaspoon to a tablespoon a month right now.

Commissioner Kagawa-Viviani: what do we know about transport of safe dissolved contaminants beyond the Navy Sentinel Wells and immediate proximity, including the additional nine? As someone smart told me the horse is out of barn. (Meaning that the contaminants have already been released, and so the question is what is known about the situation?)

Sarah Moody: The original goal of adding 22 monitoring wells was to create a plume delineation to identify where contamination had moved and to monitor if any contamination had moved, then to put them on the outskirts of Red Hill, to be able to either tell us if there had been a large transfer or indicate if any contamination was moving to those locations. The results that they are getting from those P Wells or plume delineation wells show that they don't have a lot of contamination outside of the immediate area of Red Hill. Their heat maps are showing that it's contracted down to the area directly below the tanks from the historical spill since 2014 and then right around the Red Hill shaft where they continue to do operations. The purpose of monitoring wells is to gather weekly data to give definitive answers on any transport of contamination and to look at it from a comprehensive standpoint, including any byproducts of the breakdown of fuel. So, they are looking at it from a comprehensive standpoint of not just current free-flowing fuel but if there are any byproducts of the breakdown of fuel. That's also the efforts of the modeling of what they're trying to do is to be able to create a model to identify where any contaminant may go if an event were to occur or predict potentially where any contaminants went from the events that occurred in 2021.

Commissioner Kagawa-Viviani: There was a February 2022 heat map that looked like there was a plume that quickly dissipated. Is there a current interpretation on your end? Was it just advected away or was that natural attenuation? Is their understanding of that because that heat map really lit up in 2022 and if you're not picking up anymore where did it go?

Sarah Moody: a lot of it was removed directly from the Red Hill shaft. The continuous pumping of the gas allowed them to get free product off the top of the shaft and allowed them to remove as much as possible. I think there is a level of natural attenuation and that if you speak with experts, they will say that's occurring as well as what's happening in the strata. We do hope to eventually pursue studies that will give them more definitive information on natural attenuation.

Captain Cameron Geertsma: there is data related to monitoring wells and TPH hits and spikes. The presence of TPH doesn't necessarily indicate a large amount of contamination. The current data shows fewer TPH hits than during the most extreme scenario. The goal is to recover every last drop of fuel, and the science behind defining natural attenuation and modeling transport. Partnerships are important and positive progress to make risk-based decisions. The end date for the project will depend on permitting, transparency, and belief and the focus will be on closing the site permanently before beginning broader remediation. Working on both remediation and closure simultaneously poses some challenges.

Commissioner Kagawa-Viviani: The Navy does not have a good track record in Hawai‘i of stewardship like Kaho‘olawe, Mākua, and Waikāne that have UXO that still cannot be restored. There's this recommendation or option one by the Navy as the least impactful environmental option because there won't be trucks. It’s sort of in Congress with the reality that many people still can’t do ecological restoration in certain areas because of UXO or because of contamination. So, what may be fast for the Navy to close the books on leaves a long legacy for Hawai‘i and residents. I want to challenge you to think about what's best in the short term and then there's what may make sense for the rest of us in the long term. We are here for generations and beyond so please consider that DOH recommendation.

Commissioner Buck: for start, reducing the amount of non-potable water being put in Hālawa stream. Also, the long-term remediation is being considered, including the establishment of appropriate monitor wells outside of Red Hill are critical. There are legal issues with monitoring wells on private land, but it is critical to put them in to deal with the contamination and spread of the plume, something that both DOH and DLNR can work with the private landowners. The Navy has offered resources and they’re willing to put the wells in, but until they are in place, it will be difficult to establish the type of science needed to understand how we can open the aquifer again. From a planning perspective it may take one to three years to have that type of science that they feel capable of opening the aquifer again. Finally, to remind the Navy that the Water Commission is not an official regulator, but they have broad regulatory authority with permits and permit modifications. The Navy’s request for emergency use didn’t go to the Water Commission, but there’s a lot of issues on the aquifer besides the Navy’s use of it. Over pumping, even in the short term, could affect other issues that the Navy may not be aware of. The presentation provided by the Navy has been positive and productive, and it is appreciated.

Commissioner Katayama: (question for Ms. Moody) Could you describe the organization that will be managing the water system long term? There are a lot of improvements, enhancements, and measuring devices that will be installed within the next two years. What would that organization look like and how would that organization be able to capture and maintain institutional knowledge, which was an issue faced in the Red Hill problem. Is there a better use for the water instead of putting it into the stream if the Navy continues to pump three million gallons a day or 1.8 billion gallons a day. He requests help with the organizational structure going forward long term.

Sarah Moody: when it comes to water, the water system for Joint Base Hawai‘i it is a multi-faceted integrated approach, it is owned by the Joint Base Commander and overseen by their Public Works Officer from the technical infrastructure standpoint. Their team specifically supports the monitoring of water quality and environmental approach related to events that occurred at Red Hill to ensure that the water system remains safe. The operations of the water system will remain with the Joint Base staff and the water teams, and they will continue to support and maintain institutional knowledge by creating collaborative efforts amongst their team. The team was established to provide additional support to deal with the large problem set while the Joint Base staff manages and oversees the drinking water system.

Commissioner Katayama: with all the changes that are being instituted and implemented, is that the appropriate organization to manage this system moving forward?
And, if the turnover rate in that organization is every three or six years, how do you accumulate that institutional knowledge that you can be able to assess and react to any kind of abnormalities to these systems?

Captain Cameron Geertsma: the fuel systems operators and water systems operator are two different factions and organizations. The failure in Red Hill was a fuel systems issue that led to fuel being released into a wellhead that got into a system. The Water systems operators have been working for the joint based public works department for up to 40 years and are essential to the local community. What they are looking at in terms of transition for informational purposes is that the Department of Defense and United States Navy are working together to manage fuel across all locations globally so that they are protecting the environment and communities and operating smartly. As the Joint Task Force completes its mission, there may be a transition back to Navy ownership, but it will not affect how operations are managed and permitted. Lastly, those people are hard-working individuals that have worked tirelessly for a year in a half trying to get to the point where we are.

Commissioner Katayama: I guess captain, long term you have now 22 additional Sentinel Wells you have a lot more monitoring responsibility. Is the present management's organization able to do that?

Captain Cameron Geertsma: the answer is no, but currently, they can maintain and do what they need to do. In the future in 2024 and 2025, we are looking for opportunities to increase staff to make certain that they don't fail in their inability to monitor, and we are seeking support from Congress members and Senators to aid in this growth. Communication allows us to move forward with speed and not uniformed, ill-informed speed but to shorten some of those times lines so that regulators can make those decisions with us.

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Commissioner Katayama: one more question. Is there a risk and threat assessment through the aquifer being assembled or is that comprehended over the DoD facilities? Overall, for all the aquifers, all the DOD facilities to put things in perspective. I think Red Hill has been top of mind and clearly visible. But do we need to worry about the other sleeping dogs?

Captain Cameron Geertsma: an initial assessment was conducted at various sites and facilities in the Indo-Pacific region, from far Eastern Japan to Guam. Diego Garcia back to Hawai‘i to evaluate potential risks in partnership with the Defense Logistics Agency (DLA) and NAVSUP. The assessment included evaluating the proximity of water systems and the potential impact on those systems. I am uncertain as to where it's at as the focus is specifically on Hawai‘i. The Department, maybe with NAVFAC headquarters is really looking at that.

Commissioner Katayama: Thank you.

Commissioner Ho: simply because the tanks have been defueled doesn't excuse the military from their regulatory oversight of the Department of Health to bring safe drinking water to its customers. So, it may require long-term monitoring and it is going to require remediation. There will be lots of steps in between but they will be under regulatory requirements for the aquifer.

Chair Chang: is the data was available?

Sarah Moody: all of it is available.

Commissioner Ho: the department (*Department of Health)* continues to ask the Navy for data that is readable and accessible. It's one thing to give us data but it's another thing to be able to synthesize it and read it in a in a quick fashion that our people and Board of Water Supply is able to understand it.

Captain Cameron Geertsma: data availability and improvement is important to protect the community. There is a need to collect and share data while ensuring regulatory compliance and

governance. There was a statement made by Dr. Ho and mentions that involvement of EPA Region 9 and the Assistant Secretary of the Navy is discussing the governance structure and methodology for sharing data. It appears that resources have been a topic of discussion among the commissioners.

Sarah Moody: we have received feedback and are making improvements. One of these improvements is the creation of an interactive map for drinking water that allows people to find their home and see their results. We are also pursuing a similar approach for groundwater to increase transparency and public outreach. It can be challenging to present scientific chemistry data to a lay community, and therefore we are incorporating tools to aid in understanding and increase public understanding.

Chair Chang: we just have this juxtaposed against Dr. Longman's presentation which was practical and useful. My last point is more of a comment and its sort of the line of Aurora's comments. Kathy Ho and I we were very privileged to be part of Kahoʻolawe, during the transfer and I remember the Commissioners. I was with the Deputy Attorney General's office and advising the Kahoʻolawe Island Reserve Commission and I do remember Auntie Frenchie, Emmett, many of the Commissioners asking, "Dawn should we take the island back?" And I said, "As your lawyer, no. You're not going to have enough money and you're not going to have enough time. But as a Hawaiian, of course you have to take it because we will never get it back under any other circumstance." General Hashimoto and it is publicly rhetorical. I know the Secretary of Defense has made a commitment to close and remove. But I want you to think about, will there become a point in time when U.S. DOD says we've put as much technology and money as we can, and this is as good as it's going to get. And it may not be good enough. But again, this is totally above our pay grade with that answer. I don't know what that is we're still struggling with Kahoʻolawe; no surface clearance, no subsurface clearance, people can't even you know it's not habitable. But we took it back because that's as good as it's going to get. So, I know looming against all of this is that ultimate. What are we eventually going to get back? This is so much more critical from a public health and safety perspective. But again, just bear in mind that is sort of for some of us the elephant in the room. At some point in time will the Department of Defense may say we've done all that we can. No, don't need to answer.

Chair Chang recessed for a 5-minute break and appreciated the presenters and answering questions.

RECESS: 11:36 AM

RECONVEYED: 11:44 AM

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PUBLIC TESTIMONY:

Katherine McClanahan: The testifier restated their written testimony.

Healani Pale-Sonoda: The testifier restated their written testimony.

Susan Pcola-Davis

- Sent in a written testimony but has additional concerns.
- Condensation is being removed from fuel tanks this week to check fuel quality, and if it is low, the fuel can't be reused.
- She asks if dewatering needs to be done prior to defueling again since condensation builds up.

- Requests for new heat maps showing plumes and monthly updates on a website.
- Tank tightness was not explained in the Gantt chart, and she asks for tank cleaning to be added to the executive summary.
- She asks about safeguards during dewatering to prevent fuel release.
- The failure mode effects analysis can help prevent catastrophes.
- Thanks, the task force and asks them to ensure the valves are replaced and working properly.

Dani Espiritu:

- She is from Waimalu and expressed concern about the impact of the Red Hill facility on their community, particularly the last loʻi kalo in the area.
- They are unsure if they should be relieved that the aquifer is being recharged or concerned about the spread of PFAS contamination.
- Her family has a severed relationship with the land due to military contamination and expressed concern about the future of freshwater streams on the island.
- She questions how the commission will regulate PFAS without disclosure of what chemicals are being stored at the facility and how to hold the DOD accountable for their commitment to gather every last drop without disclosure.
- She raised concerns about the 200,000 gallons of legacy fuel and what true remediation looks like in Forest Rock.
- Also expresses concern about the Aiea Halawa shaft being put back online and how it could affect the spread of fuel and other contaminants to the loʻi kalo and streams in the area.
- She raised concerns about the repurposing of tanks for non-fuel use and the lack of conversation around foreclosure and decommissioning.
- She asked if there are capabilities within the commission to hold the Navy accountable and how to access the 43 monitoring wells that will be constructed.
- She urged the commission to hold the Navy accountable to timelines and harsh punishments to protect the future generations.

Gina Hara:

- Public from Halawa requests a focus on remediation, which has not been discussed in the meeting.
- Remediation should involve everything from the top to the bottom of the aquifer, not just skimming the top of the water.
- Natural attenuation (doing nothing) is not a viable option, and indigenous microorganisms that feed on toxins should be considered.
- There is a need for an accounting of what toxins should be considered.
- There is a need for what toxins have been brought into Hawaiʻi and what is missing in the aquifer.
- The current system of meetings is not effective in addressing issues, and there needs to be more focus on remediation.
- The public requests at least a two-hour meeting focused solely on remediation.

Anne Wright:

- She is glad that the water going into Hālawa stream has been reduced from 5 million to 3

- million but notes that a lot of water has been wasted and needs to find a way to be used.
- They request a statement from the Secretary of Defense, as well as video of all the PFAS, which they believe should be made available to the public.
- She also mentions that civilians have been living with the military on their lands and need better care.
- She appreciates the information provided but believes that some basic questions still need to be answered.

Chair Chang closes Public Testimony. She greatly appreciates the presentation by everyone. Some good comments by the Commissioners who appreciated the comprehensive testimony.

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B. ACTION ITEMS

1. Approval of Stream Diversion Works Permit Application (SDWP.5951.6) and Special Conditions to East Maui Irrigation, Company, LLC, for Abandonment of Stream Diversion Works No. 184.6, Allowing Applicant to Breach and Remove the Kapalaʻalaea Dam, Reseed, and Add Erosion Protection; Papalua (Piiloi) Stream, Haʻikū, Maui, Tax Map Key: (2) 2-8-007:001.

PRESENTATION GIVEN BY: Deputy Kaleo Manuel, CWRM Branch

Deputy Manuel read the summary of request as submitted and stated that staff stands on its submittal. Deputy Manuel then read the staff's recommendations.

QUESTIONS/COMMENTS

Commissioner Buck: Kaleo, seems like the theme for this meeting. Obviously, our East Maui decision was abandoning a lot of unnecessary diversions, yet we talked about the potential for storage of reservoirs. So, did any analysis go into it? Is this a potential reservoir or dam that could offer opportunities to store excess water? And if not, as you know there is a Senate Bill 1066 that the commission might be setting up a priority list of capital Improvement projects that could include restoration of the dams and reservoirs. So, the question is, was any analysis done on this reservoir? I know you read the news today and the land board is looking at a decision on Kalihiwai on Kauaʻi. It's just important that we kind of go through that thought process before we close down these reservoirs. Is this an important reservoir, whose partner? What would it take to restore it? Does it offer us opportunity? so that's much of a comment. But I'm just curious about this one. Was any analysis done in that regard?

Deputy Manuel: Mahalo Commissioner Buck. I will start the response and then we do have the applicants here and they may be able to address directly more of your comment about analysis of use etc., So, specifically to the Water Commission, that level of analysis of use of reservoirs for storage etc. in this context isn't something that we've looked at. Right now, this is just a stream diversion works permit as it relates to dam safety. Dam safety is working with the applicant to review it. I don't know as a state as a whole who is ultimately responsible for driving this analysis. Is it department of AG? Is it State Engineering? In DLNR, right now the Water Commission isn't doing that level analysis. Something that we could look at and into but that's not currently what we're looking at. Right

now, it's purely from the regulatory perspective that we're looking at it. It could become more of a component, for example, of the State Water Projects Plan. And just to note, this is a private dam. Right now, private property so to an extent the state works with private parties to help support them and analyze that. But we've never really done that analysis on non-governmental plans to look at this approach comprehensively.

Mark Vaught, Mahi Pono: Aloha Chairperson Chang and fellow Commissioners and Deputy Manuel. Mahalo for having us. In early 2000, we did an internal analysis of this dam. Not just historical, but in a time that I've worked here in my 25 years. We're looking at the amount of time that reservoir actually held water. When we were in sugar, we've been farming all these years and at that time even on a conservative basis we were looking at like 20 percent of the time. Now with climate change, as we had that excellent presentation done earlier, you know climate change is a whole other different animal. The changes in the atmosphere and in the area. I've seen over my 25-year career, we will be taking even less amounts of water in the reservoir and speaking briefly with dam safety over the years. I've been working with them closely for many years and you know we've been talking about this remediation of this magnitude would be anywhere from possibly from 12 to 15 million dollars and for something like that to hold water 15 percent of the year. Water is important but for 15 percent of the year that's just a tough pill to swallow for anyone. Is it an important reservoir? It is, but we've been able to function without it since 2007. We haven't operated it since 2007 and then you add the IIFS that's coming in. That's just even less water that's available for the reservoir so, we just felt that this was the time, plus there are safety hazards in there that could potentially get worse so we felt like this was the time to address this and so we came up with our own internal analysis.

Commissioner Buck: Mark, I appreciate that. I think we totally understand that a lot of the private dams and reservoirs are a liability right now from private landowners. I think we are pushing the legislature to understand that, and it has to be a modicum of public funding in partnership with private landowners, to at least preserve the important reservoirs that offer a whole multitude of benefits. So, I hope in your analysis, and I totally appreciate it from your perspective, that you keep that in mind, and you can share with us some of the factors. What would it take on the public side to help you preserve this might not be the reservoir that we're talking about, but I think in the future there will be public funds available to try to partner with private landowners to be able to restore and bring these reservoirs and dams back up to a level because if they don't produce a lot of public benefits, in addition to potential water storage during dry times and to capture episodic rain event. So, I just appreciate, because I know you do have a lot of dams and reservoirs in your portfolio, that if you can provide us that kind of context that will help, at least the public policy makers to identify the public benefits involved and the types of contributions from the public side that would work in partnership with you to keep some of these dams' reservoirs in place. Thank you.

Mark Vaught: thank you for your comment's, Commissioner Buck. We've taken all of that into consideration and we are working on remediation projects for other dams and reservoirs that we feel would be more strategic and more beneficial, not just for the farm because these are all just farm reservoirs, they don't supply anything to the public. But we're talking about making improvements to other dams and reservoirs that are going to be more strategically important for us.

Commissioner Buck: well, I would check out Senate Bill 1066. And it does ask the Commission for next year to come up with a priority list of capital improvement projects that include both public and private contributions. So hopefully we can use your data to come up and help move up some of the list of these priority reservoirs. Thank you.

Commissioner Kagawa-Viviani: thank you, Deputy Manuel for presenting that. I guess I'm mostly responding to some written testimony received and will probably hear about it later, not about the agricultural use for climate change but the other end of it. I first read stream diversion and then I read dam. Those sort of confer different levels of hazard and risk to downstream communities. I wanted to better understand what the status of the engineering review is, and any potential dialogue was SPHD since the submittal was posted. Archaeological features might not be on site, but they might be affected by changes in the flow regimes especially during high rainfall events.

Deputy Manuel: I'll start and see if we can address some of these questions. Again, so related to what's before you are what we have authority over. The stream diversion, in this case in the stream, the dam itself is what is diverting water. That's just a design and how it was developed. So, one of the permits that we require stream diversion works abandonment. If you're going to formally abandon a diversion in this case, because it's also a dam, they have to comply with safety standards and their application and review process. So, what we're trying to do is make sure that on our books the diversion is taken off. It's no longer a diversion, something that's allowing the applicant to divert water. But on the dam safety side how that's designed, how it manages the water flooding etc. that application is still in process based on what we understand. There's still going to be a process that DLNR and dam safety is going to look at in terms of managing potential downstream impacts. We also submitted this to SHPD but haven't received a response yet. If SHPD does come back to the commission with recommended preservation or archaeological inventory, then we would add that as conditions to this permit. And if the applicant is not happy with that then we come back to the Commission basically and say here's the situation this is what SHPD's recommending we're saying to add it as a condition. But the applicant may have concerns or not want to address that. Those are things that we can address as part of this process. Right now, we're taking our piece of the pie in this larger decommissioning effort to make sure we're meeting our compliance requirements. So that's my simple response to where we're at.

Commissioner Kagawa-Viviani: so, does engineering division have regulatory oversight?

Deputy Manuel: they have regulatory oversight over the dam and how it's designed for decommissioning. They issue permits and manage it and fine and have regulatory oversight. The Board of Land and Natural Resources manages that process.

Commissioner Kagawa-Viviani: So, they have a separate approval if they agree that removing the dam itself, not just permitting the dam but removal meets their requirements. I'm just worried that if we approve something then we take on the liability in case it becomes a hazard. So, we're seeing these as parenthesis.

Deputy Manuel: that's the way I understand it. I apologize that dam safety is not here or engineering is not here and maybe I can ask Ryan to run down the hallway and see if we can get somebody from engineering to jump on. That would be great. They reviewed the application, and their comments were, we are working with the applicant on their dam removal application and will be coordinating that. And so again the applicant is here and is going through all of the regulatory requirements in order to be compliant with the work that they're proposing. I don't know if Mark has any additional information to share based on their conversation with dam safety. But, from our perspective, we're coordinating on the Water Commission side and dam safety will be reviewing it on the Land Board side which is purely within their authority and regulatory review.

Mark Vaught, Mahi Pono: we've been working with dam safety for quite a while on the removal of this and meeting all of their requirements and their criteria. Design criteria, restoration criteria, all of that. As Kaleo mentioned, we are in SHPD review. They are reviewing this currently and I know that Pilale bay, a lot of the archaeological sites there are awesome. And they've definitely been inventoried. I'm sure that SHPD would have something to add about that.

Chair Chang: Aurora, do you have anything else you want to add to that? Can I just tag on following up with that comment Mark. Under the engineering and the abandonment on the dam safety side. What is going to be physically done? I'm thinking of environmental impacts. Because the Water Commission is saying there is no EA trigger but I'm wondering, is there a trigger at the dam safety site?

Mark Vaught, Mahi Pono: dam safety gives us the requirements to complete removal of the embankment, and they do flow dynamic studies to decide the width of the breach in the actual removal so we have to take out the entire embankment that has to be removed off-site and then all of the sedimentation has to be protected and the stream bed has to be protected with thousands of yards of rip rap just large boulders and rocks that are placed along the bottom to keep the sediment from flowing out. There's embankment restoration on either side of the stream banks that has to take place so that we minimize any downstream impacts along the way. It's a whole transformation of as best as possible restoring everything to what it was prior to this dam being built in 1885. That's the goal of dam safety and the restoration of ecology, and the rest of the entire waterway being restored to pre-contact or pre-erection of the dam itself.

Chair Chang: do you know whether they're going to require an environmental assessment to be completed?

Mark Vaught, Mahi Pono: I don't know. I don't believe so. I'm not sure we went through this before with them Kaupakalua dam and that wasn't required for that. But again, we were given a list of the requirements, and I didn't see that on the requirements. That may be a question for dam safety.

Chair Chang: we'll check with them prior to coming to the board because I'm just thinking that's a lot of restoration of the embankment. You are moving a lot of potential dirt, soil and putting rocks there might be some impact so. That might be a more relevant question to the engineering department than to CWRM because before us, is only the abandonment of the stream diversion.

Deputy Manuel: So, in this case there's overlap where the thing that is diverting water is the dam. It functions as that and most diversions do too, but sometimes we just have a pipe or a pump that's located in the stream. In this case what we are primarily doing, and this is ultimately tied to follow-ups of abandonment of diversions following irrigation throughout the decision in order, is working with East Maui to get through this to take the kuleana off. Knowing that once this is done, we don't have to regulate them as a diverter, and they are no longer required to report to us and meet all those compliance requirements, kind of cleans up the books. But this is part of that formal process.

Chair Chang: I appreciate that clarification. And I appreciate the good work that you guys are doing Mark. I guess sometimes when there's overlapping jurisdiction you don't want something to fall through the cracks right. Okay.

Commissioner Kagawa-Viviani: is Dr. Ayron Strauch or if someone from stream protection and management division is present. She is concerned about the downstream implications of removing a

reservoir in the context of climate change. She believes that the engineering division may have more information on how these changes will flow. She also expresses worry that restoring the area to pre-dam period may not be feasible due to changes in the stream dynamics caused by climate change. She asks for clarification on the stream dynamics and their implications.

Dr. Ayron Strauch: the dam in question is an in-stream dam that captures high flow events in the stream. The frequency of these events is changing due to climate change. Peak flow estimates are based on a long-term record and not projected future events. The peak flow for a two-year flood event is roughly 300 million gallons per day, while the dam's capacity is only 100 million gallons. Currently, the peak flow would overtop the existing structure every other year. Removing the dam would not affect the regularity with which high flow events pass through.

Commissioner Kagawa-Viviani: so that's the periodicity. You don't have this 100-million-gallon buffer, so you actually are going to increase, maybe the frequency of like if you're downstream, you're

going to increase the frequency at which we see these bumps and I guess I just want a better understanding.

Dr. Ayron Strauch: there are still upstream diversions in the watershed that capture lower flow events. However, even with the dam in place, the two-year storm event was still overtopping the existing infrastructure, meaning that removing the dam would not significantly impact the frequency of high flow events downstream, but may have a small impact on their magnitude.

Commissioner Kagawa-Viviani: okay that was my question. I'll pass it to Wayne. I'm processing.

Commissioner Katayama: looking at the requirements of other diverters. How does it affect them during the low flow? Because now you have no release even if you had 100-million-gallon storage that somehow was controlled, you have no control now so, how does that impact those diversions and those users?

Dr. Ayron Strauch: what I understand about the watershed is that the diversions downstream are owned or operated by East Maui Irrigation. How they manage their system, whether they release water from the reservoir or not, would only be impacting themselves. Is that what you're asking? What is the implication for downstream users? I don't see it being consequential.

Commissioner Katayama: so, during peak flows. The attenuation of the flows, how does it affect downstream users or facilities at the stream mouth for example?

Dr. Ayron Strauch: downstream landowners are primarily EMI themselves. The larger flood events: the one in 10-year flood that is now occurring more regularly, as you might be expecting with climate change. It was 1300 CFS so approximately 900 million gallons per day. That dam is going to have no impact on that flow event, and we don't predict that the removal of the dam is going to substantially affect the magnitude or the frequency of the high flow major flooding events.

Commissioner Katayama: EMI manages low flow events so that's not an issue. The engineering division is going to go through all this analysis as well.

Dr. Ayron Strauch: Of course, the engineering division is going to go through all this analysis.

Commissioner Katayama: okay, good. Thank you.

Commissioner Meyer: thank you very much. This dam presumably was built for a good reason because it was necessary either to slow down large rainfall events and flooding. But secondly, I would think it was built as a storage device for irrigation of farmland. Whether it's HC&S or other users somebody spent a fair amount of money to build it in the first place. Is that need prospectively non-existent today? In other words, is there no reason for that additional storage? Is it something that is really unnecessary prospectively for the future as a storage device?

Mark Vaught, Mahi Pono: we took all that into account. This was back in the early 2000s when we did our own internal review and that was with sugarcane and the projection came and Mahi pono took over. Now we're looking at storage which the plan is to use half of the water that we used back when we were in sugar. And that's currently what we're doing. Because that reservoir doesn't hold 100 million gallons. My records indicate 52 million gallons and that was prior. I have only been here over 25 years and we haven't dredged it or tried to remove anything so that has settled in. So, there's probably even less storage in it now. It's expensive to rebuild. They're also very expensive to bring into compliance, maintain and operate. Then you carry the liability that goes along with that. Now we're talking about climate change where water is even less. So is it worth expanding that amount of money to preserve something that's even less and it just becomes more and more difficult to manage, it's a question of economics as far as maintaining or bringing the dam into compliance. Remediating all the things that we need to remediate. It just ended up being that unfortunately it's not going to be as beneficial to us as we would have liked it.

Commissioner Meyer: hypothetical question, if there were a government agency responsible for managing distribution of water resources would it make any sense to have a governmental agency take over the responsibility of this dam and to manage it for the community interest in the long run? One of the things that's poignant in my memory was the sort of devolution disrepair of the West Maui ditch. That was largely made unfeasible in terms of operation by virtue of the decommissioning of reservoirs along the way.

Mark with Mahi Pono: I cannot speak about the history of the West Maui system. The current location of Kapala'alaea dam where it is located and the ditch that it does supply, that water is only farm water. It doesn't service the community in any other way, but just brings water across to irrigate crops. I think that has the smallest watershed of all of them.

Commissioner Meyer: thank you for answering those difficult questions and sharing your wisdom in that respect. EMI's position with respect to the decommissioning on that and there are good reasons for it from your perspective.

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PUBLIC TESTIMONY

Lucienne Denaie:

- Chairperson of the Sierra Club Maui Group.
- The streams affected by the dam are not part of the East Maui decision and are not regulated by IIFS.

- The land where the dam is located is no longer owned by EMI but by Kamehameha schools for conservation and restoration.
- She raises concerns about the impact of high storm events on traditional Hawaiian practices and infrastructure.
- She suggests involving the ʻAha Moku Council and conducting an inventory of the area around the dam.

Jason Kent:

- Consultant for East Maui Irrigation.
- He clarified that an environmental assessment is not required for the project since Nationwide permits number 3 and 13 will be applicable.
- An endangered species Section 7 consultation with the U.S. Fish and Wildlife service is required and has been completed.
- They are waiting for Nationwide permits from the Corps of Engineers for Section 404 and section 401 blanket coverage from the Department of Health.

Joyclynn Costa:

- She is the ʻAha Moku representative for Hamakualoa and has some concerns about the proposed project.
- She was not able to listen to everything, but also did not find any communication in her emails about the project.
- She has reservations about the way the project is being approached and wants to learn more about the history and intent behind the dam or diversion that was put in place in 1885.
- She believes there needs to be more consideration given to the cultural significance of the area and wants to reach out to kuleanas in the area to gather more information.
- She is also concerned about the lack of response from Departments that were contacted about the project and asks for more time before making a decision.

Chair Chang closes Public Testimony.

Commissioner Hannahs: regarding local consultation with ʻAha Moku Council as well as immediate residence. Is it possible to add them as a layer in concurrence to SHPD recommendation since its subject to?

Deputy Manuel: based on the conversation and having to wait for SHPD and because this is also tied to a jurisdiction of DLNR, I'm comfortable in terms of timeline differing a month or two to do specific outreach. The recommendations:

- Kamehameha schools, if they are a downstream landowner, if they have any comments on the application.
- Department of Transportation based on Sierra club's comments about whether the drainage in the road is sufficient to handle additional flows.

I'm comfortable with taking a quick pause but would like to check in with Mark if there are any critical timeframes.

Mark Vaught, Mahi Pono: I want to address the Department of Trans in terms of consultation. We ran the required design flows that they asked us to run through that watershed and they responded that it was okay to move ahead. The culvert that we do have in place on the highway is sufficient to take the

design plot that they gave us. As far as delaying, we are sitting on SHPD, and it can be a lengthy review as they turn over all stones, but it's good because they do you know they do turn over all the stones.

Chair Chang: I want to address a kind of procedural issue. In my view from the Commission standpoint, we have the Constitutional obligation Article 12 Section 7. Based on the information that's presented to us, I do not believe that that is kuleana of our staff. In my mind that is the kuleana of the applicant to provide sufficient information to make that analysis. I am proposing that Mahi Pono, the applicant, talk stories with Joyclynn to address some of her concerns as part of your application to us.

Mark Vaught, Mahi Pono: ultimately if our goal is to decommission this dam and it's going to affect downstream, something that Joyclynn feels strongly about, then yes of course.

Chair Chang: Mahalo. I really appreciate that. The burden is on the applicant and then the commission applies the information provided. If we don't have enough information, then we shouldn't take action. Makes sense commissioners?

Commissioner Hannahs: That sounds like a deferral. The other option that I thought is to say we approve it if you get the concurrence of SHPD and if you want to add ʻAha Moku

we could condition it. That way we don't need to see it or touch it again if the concurrence is there.

Chair Chang: I don't want to delegate Ka Paʻakai to SHPD. My preference would be, that Mark, you tell us when you're ready to come back. This reservoir has been abandoned for quite some time. It will give you guys time to talk story. That is more appropriate that we have the landowner talking story with these families who have a connection. I don't think we should be accepting that responsibility on behalf of the applicant.

Commissioner Kagawa-Viviani: I think that's really important to have that dialogue. But then in the future there might be settings where an applicant has a vested interest in maybe taking a selection of that information. There might be certain powered dynamics and local dynamics where I think the commission staff, I want to look to the commission staff to say, is this a good Ka Paʻakai analysis? Is it complete? Are we doing more than just citing an oral history but speaking to the living practicing practitioners here today. I don't want to supersede the staff's role in this because they have so much experience with multiple applications, but I agree with you like we don't want to prevent direct communication.

Chair Chang: I appreciate that. In my mind from a legal standpoint staff can do the assessment based upon the information provided. So, if there is not enough information, they should let us know that or we can make that assessment or like these public meetings I really appreciated Jocelynn's comments. A public platform provides the opportunity for the community to tell us you don't have enough information and then we can make the assessment to defer. I don't have a problem legally saying I cannot fulfill my constitutional obligation therefore I'm going to have to deny the application. I hope we don't have to do that, but again I don't want to place that burden on our staff. Because then that shifts in my mind, a legal burden from the applicant to CWRM staff to do.

Commissioner Buck: I have no problem with the deferral especially since we're dealing with an applicant who's really trying to do the right thing. But I think we owe it as we try to get better relationships with restoration of dams and reservoirs. We have three different divisions in our

department that are involved, and we need to kind of coalescing and get more organized so we can communicate to the landowners either restoring or removing dams that the department can have a much more coordinated approach, rather than having them step through all three different division approvals.

Chair Chang: that's a good point. As the chairperson you're right I mean we should be facilitating that coordinated effort rather than having landowners go through so many different hoops. There should be much better coordination. We will work on that.

041823:04:05:22

MOTION: (HANNAHS, MEYER)
To defer item B-1 to allow applicant time to confer with Aha Moku Council and other affected parties so that the Commission can do a proper Ka Pa‘akai analysis.
UNANIMOUSLY APPROVED
HANNAHS/KATAYAMA/KAGAWA-VIVIANI/MEYER/HO/BUCK/CHANG

Chair thanks everyone who provided comments.

RECESS: 1:08 PM

RECONVEYED: 1:18 PM

041823:04:17:00

B. ACTION ITEMS

2. Approval of Stream Diversion Works Permit Application (SDWP.5970.4) and Special Conditions, Molokai Properties Limited, Abandonment of Stream Diversion Works No. 862.4, to Remove Pipes and Concrete from Stream by Use of Hand Tools, West Kawela Stream, Kawela, Moloka‘i, Tax Map Key: (2) 5-4-003:026; and

Declare that Project is Exempt from Environmental Assessment Requirements under Hawaii Revised Statutes Chapter 343, and Hawaii Administrative Rules Chapter 11-200.1

PRESENTATION GIVEN BY: Deputy Kaleo Manuel, CWRM

Deputy Manuel stated the summary of the briefing item to include some recommendations and amendments involving work activities that may impact the environment, particularly water birds and invasive species. The recommendation includes implementing measures to minimize the impact on the environment, seeking concurrence from SHPD for abandonment of diversion, and following the U.S. fish and wildlife service recommendations. An amendment was made to declare the project exempt from EA requirements. He asks that the same recommendation is made for item B-3 as well.

QUESTIONS/COMMENTS

Commissioner Buck: are we removing the abandoned pipes and concrete from the stream channel?

Deputy Manuel: yes.

Commissioner Buck: there seems to be, I don't know if there's confusion or that something just the public testimony wasn't unsure of, but we should make sure we're really clear about that at least in our minutes at a minimum.

Deputy Manuel: the intent of that is to remove, basically get rid of, the abandoned diversion and remove the pipes and the concrete from the stream itself.

Commissioner Buck: we have so much rare opportunities to actually restore streams, and this is the one on Moloka'i that we picked, so I think it's really important in this context.

Cal Chipchase: we are available for any questions the Commissioners may have.

Commissioner Buck: How long has the ranch been utilizing this diversion?

Harold Edwards: I have to guess it's probably in the neighborhood of 80 years or more. I think they've been around quite some time.

Commissioner Kagawa-Viviani: do you guys have to hike in or fly in and does it include plans to completely remove it from the site?

Harold Edwards: it'll be a matter of hiking in, and everything will be moved away from the stream bed and stored at some appropriate place off-site.

Commissioner Kagawa-Viviani: okay, I've had to fly out concrete blocks from Makaha and that was one of the concerns raised in written testimonies so just being clear that that's part of the plan.

Cal Chipchase: asks that Harold clarify his statement; when you say off-site you mean out of the stream area for possible use in a reactivation of another location. I just want to make sure that we are clear with the Commission in light of the public testimony.

Harold Edwards: thank you for that clarification. Correct.

Chair Chang: removal offsite is not one of the conditions?

Deputy Manuel: our recommendation and priority is the diversion within the stream channel, that's where we focus on. Based on testimony and the conversation, you folks want to recommend that could be taken off site then that's fine, but that's not within what we're recommending. We're just focusing on removing the actual diversion from the stream and the pipe out of the stream so it can no longer divert water. That's within the purview of this body, the Water Commission. =Maybe we can address that after everyone testifies.

041823:04:25:15

PUBLIC TESTIMONY

Teave Heave:

- She is a born and raised resident of Kawela and a member of Molokai No Ka Heke.
- She expresses her support for the action to rectify the mess caused by old pipes and diversion materials in the area.
- She requests clarification on what "removal" means and suggest that it should involve properly disposing of these materials outside of the forest.
- She believes this is a small step in the right direction towards fully restoring Kawela.

Mahesh Cleveland with Earth Justice:

- An attorney from Earth Justice representing an organization that filed a petition in 2019 to amend flow standards for the central Moloka'i streams.
- He asks that the ranch be compelled to go through the formal abandonment processes for the specific purpose of cleaning up many of the derelict pipes that are left unused. He expresses concern about the permit's unclear language regarding on-site storage for disposal and the need to

  clarify whether any of the pipes could potentially be reused and stockpiled for future use.
- The Kawela watershed, where the pipes currently sit, is not the same watershed as the intakes that are being considered for potential future reactivation.
- He suggests that MPL has a facility a little bit further down the road where the various intake pipes converge into a warehouse and could be a logical place to store unused pipes.
- He also mentions that the East Kawela dam around to the East Kawela tributary intake, and the vast bulk of that pipe is not within the stream bed but instead just laying along the access trail.
- Finally, he expresses concerns about leaving the pipes on-site and suggests that the pipes should be taken somewhere they can sit with MPL's other stuff if they are going to be reused.
- He also submitted written testimony including pictures.

Kahekili Pahakala:

- He would like to ask the commission to urge MPL to remove their rubbish from our streams and our riverbeds up on our mountaintops.
- He feels really sad to see things up there that don't belong. Growing up his mother was a lei crafter so they would go to the mountains to go pick different flowers and ferns to make leis for graduation and special occassions. His mom had no daughters to pass this tradition onto so, he took it upon himself to carry on the tradition and pass it on to his kids.

Kamaki Manangan:

- He just asked that MPL takes out their rubbish from our mountains.

Adrian Sibayan:

- As a community member, asked that the MPL dispose of their rubbish out of East and West tributary.
- Also think it's dangerous to have old metal and pipes on public access trails.

Lana Corpuz:

- Testifies on behalf of the community of Molokai and expresses her disappointment with MPL's management of the land.
- She states that it has been a year since they agreed to clean up and restore the land, but nothing has been done.
- She emphasizes the importance of responsibility for landowners to take care of their land for the future of Molokai.

Mahesh Cleveland with Earth Justice:

- The State Ala Hele trail system runs through the mountains where the pipes and derelict materials are located, and the Molokai community often accesses these areas through that trail.
- The last picture shared yesterday showed Kahekili and Kamaki walking next to a pile of rubbish on the trail.

Leihiwahiwa Ritte:

- She expresses concern about the derelict pipes that have been sitting in the area for a long time and have no use.
- She doesn't understand why they're still there to begin with and suggests that MPL team up with the community to dispose of the rubbish properly.
- She has passed by their disposal site on numerous occasions and describes it as a messy and lazy way to dispose of the rubbish.
- She believes that hauling the pipes out of the area is common sense and that MPL should be able to bring them right back down.
- She concluded by stating that it's unfortunate that the Water Commission has to order MPL to pick up their own rubbish, as it goes against what we are taught from a young age about picking up after ourselves.

Commissioner Hannahs: thank the community and the applicant for testifying and taking action to close the diversions down. Removing ʻōpala and returning the property in the condition it was received or better is standard practice. I propose inserting a recommendation to remove the pipes and concrete in accordance with a plan approved by commission staff and to ensure that any proposal to reuse the materials is credible and stored appropriately. I trust staff to evaluate the proposal and ensure proper storage.

Chair Chang: I guess I would take that one step further. I don't know if we even need a plan. My fear is liability, it's in the Ala Hele trail that's adjacent to that. I would believe that MPL, Cal, and your team see that this is appropriate to remove property from the state lands. All the abandoned infrastructure that was part of that stream diversion.

Cal Chipchase: He appreciates the suggestion but doesn't believe it's within the commission's jurisdiction to order removal of the materials beyond the stream area. He invites Harold to explain why the materials may be appropriate for reuse and why stacking them away from the stream but on MPL-owned property is appropriate instead of moving them down. He also emphasizes the importance of staying within legal jurisdiction.

Harold Edwards: Molokai Ranch is the sole owner of the land in the forestry area, and not state land. It is difficult to access the area and there is a high cost of using a helicopter. The Ranch hopes to comply with the Water Commission's intent without incurring excessive financial costs. Removing all

surplus pipes is time and resource constrained and materials that cannot be reused could be removed gradually over time. There will be significant effort required to access and remove materials from the project site.

Cal Chipchase: Harold can you further comment on the potential to reuse if Kamoku was reactivated.

Harold Edwards: the black pipe that was referred to earlier is HDPE pipe and it could be cut into smaller links to be handled and then refused and used quite happily one ridge over, rather than taking it all the way out and having to pack it all the way back in. When the time came to hopefully reactivate the Kamoku intake.

Deputy Manuel: I suggest an amendment that if the pipes are planned to be reused, they should be stored in a manner that does not affect safety along the trails or any of the trails used for these traditional and customary practices. The concern is about the impact of storing pipes and equipment on the access for gathering and the need to access these resources.

Cal Chipchase: for MPL, we'd be fine with that recommendation. And frankly fine with Commissioner Hannah's recommendation that we submit a plan to staff that incorporates the science those kinds of guarantees.

Commissioner Katayama: thank you chair, that was sort of my question for Kaleo. Is that in the staff submission the landowner is listed as MPL so, I think that was clear. My other question is what is the range of public access to this area? Is it limited to the trail? Is it a sort of free-ranging access? If you could clarify that and then my last question is how far beyond the stream does the commission have the right of governance?

Deputy Manuel: I understand the legal questions surrounding access to private land and our job is to ensure that if anyone is gathering lei material in the forest, we support and ensure it happens within their jurisdiction. We can make feasible recommendations to protect the public trust, but within the context of the Water Commission's authority; the diversion works permit and the actual materials used are usually within their authority. The potential amendment to store the pipes in a way that doesn't affect health and safety along the trails is in alignment with their public trust duties.

Commissioner Katayama: but the suggestion that we have the ability to govern the precise placement and use of these materials once removed. Is that covered within our authority?

Deputy Manuel: I'm not governing that at all. My proposed recommendation is to ensure that materials are not stored in a way that blocks trails or impacts health and safety when access is needed. The proposed recommendation is in line with the commission's obligation under the code and the Constitution to remove diversions, but in a mindful way. I'm open to the AG's providing further guidance on the matter.

Commissioner Katayama: Does a landowner have any right to acquire enjoyment of his property?

Deputy Manuel: The land in question is private property, and the testimony received is related to access. Under Article 12 Section 7, access to undeveloped lands is protected for Native Hawaiians. The proposed language is not meant to impose specific requirements on the landowners, but rather to protect their right to access. The amendment is to ensure that materials are stored in a way that does

not impact health and safety on the trail. The focus is on managing the practice while protecting the right to access.

Commissioner Katayama: Okay good Kaleo, thank you very much. That's helpful.

Commissioner Hannahs: I am guilty of holding onto items that I think I will reuse someday, just like the pipes. If there is a permit or a plan to reuse the pipes, it makes sense to move them to the site efficiently. However, without a plan, they could sit there for a long time.

Harold Edwards: The decision to reactivate Kamoku hasn't been made yet, and the request of the Water Commission to remove all pipes out of the stream could create a financial burden on the ranch. I suggest allowing the ranch to take care of the pipes and only revisit the issue if there are concerns about how they are stored. He does not want to create more burden on the ranch than necessary.

Commissioner Hannahs: It's currently our authority to permit these structures and in permitting them I think we can condition what happens when they are removed when they are no longer allowed.

Harold Edwards: I'm going to defer to legal counsel on that one.

Cal Chipchase: we are discussing the potential reactivation of Kamoku and the request from the Water Commission to remove the pipes from the stream. I suggest that the request could be met with several mandates of effort rather than creating a financial burden on the ranch. The lifetime of the improvement and the use of the material should be considered. The need to condition the removal of structures when they are no longer allowed and the potential to reuse the pipe at Kamoku for the reactivation of the diversion. I agree with the suggestion to require a plan that staff approves and commit to not stacking the pipe in a way that impacts health.

Commissioner Buck: no, maybe you make a recommendation. I think we've learned the hard way with all due respect. It's really hard to micromanage things on site. I support Commissioner Hannah's recommendation with a plan approved by the staff. The minutes are very clear. I have total trust in the Molokai community that if they're not happy with what they see they will come back to us. And I truly believe maybe this is a dream Molokai Ranch is trying to improve their relations with the local community they're going to do the right thing. So, I would move to approve item B2 with the amendment that a Commissioner Hannah's recommended.

Chair Chang: I don't think we're ready for our motion just yet.

Commissioner Kagawa-Viviani: if the area under consideration is in a conservation district and confirms that it is based on the submittal. My personal experience as a master's researcher working on Kamehameha lands, where they had to adhere to certain rules when pouring concrete. With the decommissioning of telescopes on Mauna Kea it is possible to organize Heli-ops to transport materials, and I know from my own experience coordinating with a watershed partnership. The materials may be grandfathered in, but I encourage the Commission to consider ways to leave the place better in the spirit of stewardship. I appreciate the steps already taken in that spirit, particularly regarding the water and lands of Molokaʻi.

Chair Chang: I believe that the Water Commission needs to balance the interests under Ka Paʻakai and have heard from the community about traditional customary practices being exercised in the area and people with lineal connections to the place. I believe that appropriate mitigation measures should

be adopted, such as the removal of the pipes, and suggests that the Molokaʻi Properties prepare a plan approved by the staff but would like to see a deadline to ensure timely removal. Harold and Cal, when do you think you could remove the pipes?

Harold Edwards: obviously the good weather days. I would think the time limit of like six months or less would be reasonable.

Chair Chang: that makes sense and I suspect that many of the people that testified today might even be willing to help.

Harold Edwards: that's a good chance, I would say.

Chair Chang: this is the beginning of a cooperative relationship. I have a hunch they would probably expedite this even quicker than six months, but I think six months seems to be reasonable. This may be an opportunity to create a bridge with these community members to work hand-in-hand with Molokai Properties to make them whole and bring this place back.

Commissioner Hannahs: I'm prepared to make the motion that we adopt the recommendation of staff with the amendment that the removal of pipes and concrete be in accordance with a plan submitted by MPL and approved by commission staff within six months.

Deputy Manuel: also, to accept staff's amendments to section 2 related to the declaration of exemption.

041823:05:08:02

MOTION: (HANNAHS/BUCK)

To adopt the recommendation of staff with the amendment that the removal of pipes and concrete be in accordance with a plan submitted by MPL and approved by commission staff within 6 months.
BUCK/HANNAHS/KAGAWAI-VIVIANI/KATAYAMA/MEYER/HO/CHANG
UNANIMOUSLY APPROVED

041823:05:09:38

B. ACTION ITEMS

3. Approval of Stream Diversion Works Permit Application (SDWP.5971.4) and Special Conditions, Molokai Properties Limited, Abandonment of Stream Diversion Works No. 866.4, to Remove Pipes and Concrete from Stream Intake by Use of Hand Tools, Unnamed Tributary to East Kawela Stream, Kawela, Molokaʻi, Tax Map Key: (2) 5-4-003:026; and

Declare that Project is Exempt from Environmental Assessment Requirements under Hawaii Revised Statutes Chapter 343, and Hawaii Administrative Rules Chapter 11-200.1

Deputy Manuel stated the summary of the briefing item to include some recommendations and

amendments involving work activities that may impact the environment, particularly water birds and invasive species. The recommendation includes implementing measures to minimize the impact on the environment, seeking concurrence from SHPD for abandonment of diversion, and following the U.S. fish and wildlife service recommendations. He also mentions an amendment to the submittal to declare the project exempt from EA requirements.

QUESTIONS/COMMENTS

Commissioner Hannahs: I would suggest we consider this with the same amendment regarding the removal of pipes and concrete in accordance with the plans supplied by the applicant within six months and approved by Commission staff.

Commissioner Kagawa-Viviani: I did not receive the Earth Justice's late testimony. I just want it on the record that we don't have those pictures but we're still making decisions.

Cal Chipchase: no comments.

041823:05:13:07

PUBLIC TESTIMONY

Mahesh Cleveland:

- Chapter 343 of HEPA requires an environmental assessment for actions that may cause significant environmental impacts, triggered in part by presence on conservation lands.
- Leaving the refuse in the conservation lands may cause environmental impacts and raises a question of whether the project would be exempt from Chapter 343.
- Cutting up the pipes and carrying them closer to their final destination outside of the Kawela watershed and placing them somewhere outside of that area may make the project exempt from Chapter 343.
- He suggests that the Commission consider the environmental impact of leaving trash in the forest and not assume that the project is exempt from Chapter 343.

Cal Chipchase: the decision that is being considered by the commission regarding the removal of diversion from a stream, which is evaluated as exempt and appropriate. I believe that the exemption declaration is entirely correct, and that the Commission's authority does not extend beyond the approved action. If there were other actions to be considered, such as whether to stack materials in a concentrated area, it would also fall under the existing exemption. There may be legal discussions and debates about the grandfathering of the materials but the action being proposed is appropriately declared as exempt and recommended by staff. I acknowledge the opposition from an advocate, but I believe that it does not change the analysis or support for the decision, which is consistent with previous decisions made by the Commission.

Chair Chang: Harold's plan to put the abandoned material on conservation land raises concerns. I suggest that this raises the question of whether it constitutes a violation of OCCL regulations or whether an OCCL permit is required. She implies that if Harold had instead said he was going to remove the material from conservation land, the issue would not arise.

Cal Chipchase: I acknowledge the concerns raised about Harold's plan to put the abandoned material on conservation land and suggests that the issue falls within the jurisdiction of the Chair of the Commission as well as the BLNR. We can have a conversation with Michael about the appropriateness of the conservation land for the material but does not want the commission to get hung up on those discussions. The current recommendation to submit a plan within six months that is approved by the staff is the appropriate course of action for the commission at this time.

Chair Chang: I appreciate that because I think you're right. If your plan says you're going to put it on conservation land, we would then ask you for an OCCL consultation.

Tara Rojas: I'm offering commentary on behalf of Molokai community. The community knows what is best for their own community and should be listened to. It's important to get our water back and make things right after years of struggle.

041823:05:19:33

MOTION: (HANNAHS/KAGAWA-VIVIANI)
To adopt the recommendation of staff with the amendment that the removal of pipes and concrete be in accordance with a plan submitted by MPL and approved by commission staff within 6 months.

BUCK/HANNAHS/KAGAWAI-VIVIANI/KATAYAMA/MEYER/HO/CHANG
UNANIMOUSLY APPROVED

D. NEXT COMMISSION MEETINGS (TENTATIVE)
May 16, 2023 (Tuesday)
June 20, 2023 (Tuesday)

This meeting adjourned at 2:22 p.m.

Respectfully Submitted,

Nadine Pomroy

NADINE HŌKŪLANI POMROY
Commission Secretary

OLA I KA WAI:

M. KALEO MANUEL
Deputy Director

WRITTEN TESTIMONIES RECEIVED:

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