

MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: August 15, 2023  
TIME: 9:00 a.m.  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor  
Online via Zoom, Meeting ID: 864 4816 3089

Online link to the video recording of the August 15, 2023 Commission on Water Resource Management meeting: <https://vimeo.com/857645449>

Chairperson Dawn N. S. Chang called the meeting of the Commission on Water Resource Management to order at 9:07 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 and introduced the Commission staff.

**MEMBERS:** Chairperson Dawn Chang, Mr. Neil Hannahs, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike, Ms. Kathleen Ho

**COUNSEL:** Ms. Julie China

**STAFF:** Deputy Director Kaleo Manuel, Ms. ‘Iwalani Kaaa, Ms. Kathy Yoda, Mr. Bong Cheng, Dr. Ayron Strauch, Ms. Katie Roth, Mr. Dean Uyeno

**OTHERS:** Dr. Chris Curran (USGS), Ms. Lucienne de Naie, Mr. Wesley Mundy & Ms. Jodie Mundy (Item B-2), Ms. Michele Ho‘opi‘i (Item B-3), Mr. Mark Juergensmeyer (Item B-4), Mr. Avery Chumbley (Wailuku Water Co.), Mr. Jim Geiger (Wailuku Water Co.), Mr. Hōkūao Pellegrino (Hui o Nā Wai ‘Ehā), Mr. Bruce Tsuchida (Townscape, Inc.), Ms. Sherri Hiraoka (Townscape, Inc.), Mr. Norman Rizk (West Moloka‘i Association), Mr. David Jolly & Ms. Karen Steentofte

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

*Deputy Director Manuel requests to move up C-1 on the agenda; Chair Chang approves.*

20230815 00:06:22

**A. APPROVAL OF MINUTES**

July 26, 2023

PUBLIC TESTIMONY – None

Commissioner Miike suggests non-substantive formatting edits.

**MOTION: (MIIKE / HO)**

**To approve the July 26, 2023 minutes.**

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/KAGAWA-VIVIANI/HO/MEYER)**

20230815 00:09:58

**C. NON-ACTION ITEMS / INFORMATIONAL BRIEFING**

**1. Introduction to the U.S. Geological Survey Hydrologic Network in the Pacific Islands by Dr. Chris Curran, United States Geological Survey (USGS)**

PRESENTATION GIVEN BY: Dr. Chris Curran, USGS

Dr. Strauch of the CWRM Stream Protection and Management Branch introduced Dr. Chris Curran, with the USGS Pacific Islands Water Science Center, Assistant Center Director for Hydrologic Data. Dr. Curran gave a presentation on the USGS cooperative agreement and USGS activities related to water in Hawai'i. He highlighted the hydrologic monitoring network and stream gaging operations including how data are collected, processed, reviewed for quality assurance, and delivered to the public.

QUESTIONS / COMMENTS

Commissioner Katayama: Thank you very much Dr. Curran. Quick question, for FY 24 what is the number of gaging stations you are planning to install?

Dr. Curran: For FY 24, that's a fair question. We have two gages that we still have to install this year. And I can tell you we have, our FY 24 agreement includes 46 stream gages. We have 17 rain gages. We have 5 wells. In terms of installations, I don't think we have...Ayron do you have that off the top of your head? I'm not sure. I know that we have been working with Ayron and Deputy Director Manuel to try to pass on some of the cost share and responsibilities to other agencies. I think we've been successful. This coming fiscal year we have the Kaua'i Department of Water on board for some installations, so those are going to be new installations, but they were assisted with the help of communication from CWRM.

Commissioner Katayama: So, the number of, go ahead Ayrton. I'm sorry.

Dr. Strauch: Let's not get into item B-1 yet, but are you interested in the network that's growing statewide that's beyond just CWRM-funded?

Commissioner Katayama: Absolutely. And I guess what I'm trying to understand, is the number of stations a function of how many other co-funding agencies there are, as opposed to something USGS undertakes on its own?

Dr. Strauch: I can get into that.

Commissioner Katayama: Ok. Can I ask one more editorial comment from Chris? Recently there was a three-state agreement on how to share water in the Colorado River. Can you sort of provide an overview on what data was used to determine that?

Dr. Curran: For the Colorado River?

Commissioner Katayama: Yes. There is an agreement I think California I believe, Arizona, and Nevada.

Dr. Curran: Yeah. That entire system has been contentious for decades. You know there was a lot of, it's the result of many years of litigation. I have to say I'm not intimately familiar with it. I don't want to over speak, but I can guarantee you that water data collected by the USGS was a foundational piece of that agreement because as a neutral party, rather than for example, the California State Water Authority managing things, USGS is a neutral party, it's recognized as a neutral party. And so, we have a pretty extensive stream gaging network throughout California and up into Lake Meade area. And I know that data was and is being used heavily to monitor streamflow in the Colorado River. I'm sorry I can't provide you with more information, I'm just not super familiar or I don't have the latest information on that. But I could direct you to our California Water Science Center or we could get information from them if you had more questions.

Commissioner Katayama: I was looking more at the framework like a model going forward to resolve water issues. That's a huge water issue.

Dr. Curran: And you know I mean again USGS is just not a regulatory agency. So, our mission is to collect the science and collect the data and we don't get involved in deciding how much water people get or even how it's managed. We would provide technical advice on the data. And we would develop models for helping understand the natural system and we would share that information, but that's the limit of what we can do and be engaged in.

Commissioner Katayama: Ok. Thank you, Chris.

Chair Chang: Any other questions? Commissioners? Oh yes, Aurora.

Commissioner Kagawa-Viviani: Thank you, Chris Curran. I have a question. The USGS Water Science Center does a really good job at measuring stage and discharge. You mentioned briefly that water quality is also measured and I think that is becoming increasingly important with climate change considering changes to temperature that also give us insights into what is happening with or other geochemical tracers. So, what is the USGS doing to incorporate that kind of newer understanding, of understanding how flow and the other variables that might be of interest to managers? Or is there, this is not a co-op agreement, but you know what is the Water Science Center doing to think forward?

Dr. Curran: Yeah. So, in the Pacific Islands Water Science Center, the water quality work is being done in our studies section so that was the green, back to that org chart, that was on the green side. For the most part, a lot of the water quality work that's currently being done is looking at turbidity of streams, looking at doing sampling, doing discrete sampling for water quality parameters. I think that if you're looking for concentrations, it's important and trying to understand the flux, the movement of things like contaminants, it's important to know how much water is in the channel. So, for the most part, our stream gaging network is sort of the foundation for a lot of water quality work, especially continuous water quality monitoring. The gaging stations can be outfitted with sensors that measure water quality parameters continuously. So that's currently what we're doing now here on O'ahu and at several sites. And once that's set up, then we have staff that go out and do sampling as opposed to measuring stream flow. Their role is strictly water quality sampling. I don't know if I answered your question.

Commissioner Kagawa-Viviani: Thank you.

Chair Chang: Neil.

Commissioner Hannahs: Yes, Chris thank you for your presentation. You began with a discernable sense of pride that we've been in partnership gathering this data at least back to 1917, so over 100 years. So, what is the value of having that historic record?

Dr. Curran: Well, I think that we know that the climate is changing and the older record, first of all, the older record is really invaluable for helping us understand the baseline. How the baseline describes what the conditions were 100 years ago. From that baseline then we're able to assess things like long-term change in flows or even water quality in some cases depending on the length of those data sets. So, we can always go out and collect more stream flow today, but we cannot go back in time and make measurements. So really the older information is very important. Especially in watersheds that maybe have less anthropomorphic effects, more natural conditions. Those older gages like Hālawā Stream, very important for understanding how quickly things are changing.

Commissioner Hannahs: So, I take it it makes sense if you could lengthen that longitudinal record you would. And I wonder if your data collection capabilities include accessing for instance, old sugar plantation records who were really good record keepers about water as well as in pre-contact times, the records of the observations of Hawaiian ancestors who were keen observers, analyzers, and recorders. But their method of

recording data was just different. It was in chant and it was in story that had to be decoded. Does that capacity exist within your agency? Or have you considered partnering with local organizations to kind of help you extend that record?

Dr. Curran: Yeah, that's an interesting thought. I know that there are more models coming out that simply are using the question of whether there is or isn't water in a stream. Especially the ephemeral streams and that kind of information certainly would probably exist during the timeframes you're talking about, pre-European arrival and timeframe. I don't know of any, and that's not to say that it's not being done. I don't know, I'm just not familiar with any current projects that are being done to link those older and more recent data sets. It's certainly a fascinating idea and I think it's worthy of more exploration and discussion for sure.

Commissioner Hannahs: I think Ayron Strauch is pretty aware of those sets and who's kind of a local partner to partner with on that. We'll leave that to you folks to consider.

Chair Chang: Chris can I follow up with Commissioner Hannah's question? So based upon this baseline, can you summarize briefly some of the trends that you're seeing over the 100-year period of time, the data that you've been collecting? Just high level.

Dr. Curran: I'm not ready to do that on my own yet. Ayron is actually looking at the data much more than I've had a chance to. Full disclosure, I've been here two years and it was a big challenge just kind of learning where I'm at, learning what I know now. So, I'm continuing to learn, but actually trying to understand some of the trends. What streams are, where flow is decreasing over time. Ayron's given talks and he's got a better idea of this than I do.

Chair Chang: Fair enough. We have our own in-house expert.

Commissioner Kagawa-Viviani: If I can add on that. There is a USGS report related to 2016 looking at trends and low flows.

Chris: There were a couple fact sheets and Delwyn Oki did a report back in 2004, I think it was, and then Bassiouni and Oki published a report that looked at data from 1913-2008. Chui Chang did a good assessment report for all water data in Pacific Island's Water Science Center. I think that was 2016. So, we have reports that are published and available.

Chair Chang: Very good, thank you. Other questions Commissioners? Oh, there's Paul. Go ahead.

Commissioner Meyer: Thank you very much, Chris. Thank you for your presentation and for your work. They're greatly appreciated. As you know it's vital to anyone concerned with water in Hawai'i. Really appreciate it. I'm glad you mentioned Ayron's name. Ayron if I might, do you have any observations or comments based on the presentation this morning?

Dr. Strauch: Just that it is as previously mentioned, the length of record is really key. And thank you to the Commission who has supported re-establishment of some discontinued stations across the State. I believe at least 4 that I can name off the top of my head, have records for anywhere from 40-80 years before they were discontinued. And then in the last 5 years we've been able to reestablish them. So, getting that data collection back on track to be able to monitor those trends over time is really key. And just high level observations, low flows are declining. We've also seen in the last 6 years, a number of significant flood events. Very unusual to have that number across the State in a short time period. Take it as you will.

Commissioner Meyer: Thank you, gentlemen. Chris again, thank you very much. Your work really is vital to us. Appreciate you.

Dr. Curran: Thank you.

Chair Chang: Thank you Paul. Ayron, are you noticing dip trends on water quality based upon the different kind of uses? Agricultural uses from plantation days to something more diversified now?

Dr. Strauch: Unrelated to Commission work, prior to this position I held a research position at UH and one of the things I studied was impacts of land use change on water quality. And if you transition from forest conditions to more diversified agriculture, you get increased runoff and with that, sediment loads. And with that sediment loads, nutrients, and that sort of thing. Yes, with changing land cover, previous USGS scientists have also studied this, have also documented how in degraded environments, for example, you get heavier loads of different chemicals. So, I don't think that's anything groundbreaking.

Chair Chang: Ok. Only reaffirms sort of anecdotally what was. Very good. Any other questions Commissioners?

Commissioner Kagawa-Viviani: I just wanted to highlight the water alerts are very cool and I wasn't aware of that. I think they will be a very good tool for people especially given USGS gold standards in terms of flood awareness. Usually, I'm just refreshing the website during a hurricane for instance. For folks who are getting flooded out that they can set the lows and highs. I'm glad this is recorded and public and people should shout it from the rooftops and make it work for them. I appreciate you highlighting that.

*Chair Chang thanks Dr. Curran for his presentation. Deputy Manuel acknowledges that there are no individuals on Zoom or in the boardroom waiting to testify on this item.*

20230815 01:11:08

**B. ACTION ITEMS**

- 1. Request and Delegation of Authority to Chairperson to Enter into a Joint Funding Agreement with U.S. Geological Survey For Statewide Hydrologic Data Collection and Water Resource Monitoring for Federal Fiscal Year (FFY) 2024, 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 OF SUBMITTAL: Dr. Ayron Strauch, CWRM Stream Protection and Management Branch

Dr. Strauch provided a summary of the Joint Funding Agreement and gave updates on monitoring stations across the State.

QUESTIONS / COMMENTS

Chair Chang: Questions? So, ADC didn't respond?

Dr. Strauch: They did not.

Chair Chang: Maybe we should send them another letter.

Dr. Strauch: They also lost their chairperson, so they've been going through some transition periods.

Commissioner Miike: Seems to be a simple yes or no.

Dr. Strauch: I agree.

Commissioner Miike: Dawn, do you know if ADC is still a state agency or is it a?

Chair Chang: It's administratively attached to DBEDT. So, they do have an acting director, Mark Takemoto. Maybe it's time, maybe we just have to revisit because Wahiawa Ditch, I mean that may end up becoming a state...

Commissioner Miike: Or maybe we can just turn the water off. Make them answer.

Chair Chang: Well, there will be people above our paygrade who will not be happy with that. Ayron, what is our cost here? There's a table one and a table two.

Dr. Strauch: Yes.

Chair Chang: So, is that what we're paying? Is that what this is?

Dr. Strauch: Yes. We are paying the \$999,964 of the total agreement cost which is \$1,231,078.

Chair Chang: Is that out of a general fund? Where are we getting that from?

Dr. Strauch: It's a combination of general and special funds.

Commissioner Hannahs: And that's on plan, I mean we anticipated this, we have the funds for it.

Dr. Strauch: Yup.

Commissioner Katayama: Ayron, excuse me chair.

Chair Chang: No, no please go ahead.

Commissioner Katayama: That's the table I'm sort of getting to. Is that the normal ongoing operating cost for the entire system, about a million a year?

Dr. Strauch: Unfortunately, with inflation the costs went up quite a bit, unanticipated costs. I had anticipated that the costs would be more like \$950,000 for us, but it was about \$50,000 more than expected just because of inflation. We have over the years, I don't know if I documented it in this, but we've added something around 17 stations since 2014 to improve our understanding of the impacts of management on water supply as well as climate change and re-establishing some of these long-term stations so we've really built up a more robust network than what existed 10 years ago and that has cost.

Commissioner Katayama: So, the USGS relationship is always going to be an 80/20.

Dr. Strauch: Unfortunately, I believe their matching dollars have remained static for like 30 years. I mean Chris might be able to comment on the Federal side, but just because we add another station doesn't mean, on the Federal side, they get more money.

Commissioner Katayama: I guess that was sort of the genesis of my question with Chris is that, what's the breaks on, we have a plan or we have a dream of what gaging stations are important to us and it seems like the ceiling becomes Federal funds if we want to maintain that 80/20 relationship.

Dr. Strauch: Agreed. Deputy Manuel was able to request from the legislature with the previous chair's assistance, addition to our general funds that help support the additional gaging five years ago. Our ceiling isn't necessarily the Federal side, but it is a combination of Federal and State.

Deputy Manuel: If I can, Chair, we've been coordinating with our counterparts at USGS and as well as our Congressional delegation to really look at increasing the Federal matching percentage and the funding that goes to this specific program and this is in



partnership with other state agencies that benefit from USGS data. It's a nationwide attempt to try to increase that budget, that Federal budget which then also helps us go across the street and ask for additional funds to show the leverage that's happening. We've consistently every year asked for an increase to our base funding to add potentially five gages and focus on streams every year which on average what we budget was about \$250,000. And if we do that every biennium, we should be able to over the course of, I think we pencil it on it'll take 20 years, but that's the reality right and we've been trying to be realistic about our asks as well as the capacity of USGS to install gages.

Commissioner Katayama: Is that consistent with what our assumptions are with the climate change models that we've been looking at over the past year or two?

Dr. Strauch: Is that funding?

Commissioner Katayama: No, the amount of gaging stations that we're putting in to try to manage.

Dr. Strauch: We have a Water Resource Monitoring Needs Assessment the USGS published three years ago.

Deputy Manuel: Yeah, 2020.

Dr. Strauch: That identifies all the climate, surface water, and groundwater monitoring needs that the State has. You use that as kind of our baseline, but obviously we need 80 more stream gages or something like that and we have to make a decision on which one to add next year. We really focus on very high priority sites that are involved in litigation, involved with the water leasing process, tied to instream flow standards; areas that we call hot, hot areas for us.

Deputy Manuel: As well as streams that can act as proxies for larger research. So that was the balance with the monitoring program and attempt to say 'Hey, with the budget we have, let's come up with a strategy to build out our monitoring system in anticipation of climate change. Obviously, we may need to redirect resources as needed, but in general if this is the path and the plan that both USGS as well as us here at the Water Commission can take, we can move and adjust as needed, but we needed like a general plan, right? A navigation plan to get us where we need to go.

Commissioner Katayama: But a 20-year horizon seems a bit far.

Deputy Manuel: I used that number broadly based on various criteria and limits. A lot of it's budget, the other one is USGS's capacity to install gages. You know the more money we get the more Federal funding they get, they can bring on more staff and add more gages. So, there are a lot of conditions that need to be considered whether that timeframe increases or decreases.

Chair Chang: But we know that data is critical to informed decision making. How do we share the cost? There are others who are benefiting from this work. I mean we're just now going after the county water departments, but I mean are there other whether they're military, whether they're private purveyors. Can we assess like some kind of a monitoring fee? How do we do this? We need to think about it.

Deputy Manuel: Chair, the Water Resource Protection Plan adopted in 2019 looked at how to help sufficiently fund this type of data collection at work because getting people to pay for data is really difficult. Obviously, we wish we had data when we want to make decisions, but we are not always investing in it proactively. So, part of that strategy was to look at ways in which we could look at, for example, regulatory fees or that would then be shared amongst all users that would go towards funding stream gages that they benefit from as end users. Those things we've been working through. A lot of it has to go through rule making in order for us to pursue those types of fees. And or if there's need for legislation then that's something else we need to consider. I will say it's hard, it has been difficult and challenging to add more fees to things, but data collection somebody's got to pay for it. We're looking at multiple ways to do that. We're also looking at accessing other Federal programs that can help us support the work that we're doing. I know in prior conversation, I think it was Commissioner Hannahs, brought up ideas of philanthropic supports. We have tried to coordinate as much as possible with other organizations to leverage funding.

Dr. Strauch: To build on your question, we are not the only cooperator. For example, the City and County Department of planning and Department of Environmental Management are cooperators for maybe six stream gages related to water quality monitoring or NPDS development. Army does monitor or cost share a couple of stations, so like the Waipahu Stream near Wheeler Field, that's a stream up in Mililani. And then Army Corps of Engineers also supports certain streams, especially in the Ala Wai watershed.

Deputy Manuel: Department of Transportation also is a huge presence, mostly for flood-prone streams to protect highways and bridges.

Chair Chang: All right. Any other questions? Do I have a motion? Oh, I'm sorry. Paul do you have one? No?

Commissioner Hannahs: Lucienne, I think, is here for public testimony.

Chair Chang: Oh I'm sorry, Lucienne, you're here for Item B-1? Would you like to provide testimony?

#### PUBLIC TESTIMONY

Lucienne de Naie: Yes, I would. Excuse me, I need to plug in my computer, it tells me it's about to die. All right, there we go, we're plugged in. Thank you, I really appreciate all the discussion and moving the report by Director Curran up so that we really could get this big picture of how the monitoring program works. I'm testifying in full support of

having the authority to proceed to get the data we need. It's obvious that USGS is the gold standard of getting this kind of information and presenting it in a way that it can, been applied where it needs to be applied. Fun fact, when we were a territory and didn't have a Department of Land and Natural Resources, USGS acted kind of de facto as our, for our territory as a Department of Land and Natural Resources. They did lots of gages and monitoring and studies and reports and things, so they're a long and trusted partner. I would like to echo Commissioner Hannahs' comments that there is longer term knowledge available. I would like to suggest some partner groups and I'm sorry, I'm a little disorganized today. I don't have this in writing, but I will send in writing. There are partner groups in all parts of the island that do have what's called generational knowledge and a lot of information about streams for instance can be derived from the amount of infrastructure for kalo cultivation that is around those streams. A lot of times these areas have had archaeological dating as well so we can know that in the 1500s, there was enough water to support so many acres of kalo cultivation. And I do know, having worked with some of the former USGS staff members that have come to Maui to Na Wai 'Eha or East Maui where I live, that they are interested in knowing what the local families who have watched things for years and years have seen. They don't always have a way to quantify that, but they do take it into account when they are trying to plan their test runs and things like that. They can get a lot of good advice. So please consider in this model your local, cultural organizations and there are many in Maui. There are cultural organizations, and I will send in a list and contact information, in every part of the island and these are great resources. I also want to say that we really need to understand how our aquifers and our surface water interrelate. For instance, an earlier USGS report indicated that restoring stream flows to even you know, basically small amounts, but significant amounts, actually helped the health of the county well system in Na Wai 'Eha. I'm sure the same would be true in West Maui. I think the USGS study in 2012-2013 concluded that as well. We really need to be very long-range thinking about stream flow standards and the good that they do in order to keep the aquifers recharged and because we depend on the aquifers so much. Thank you to Director Manuel and Chair Chang and all the Commission staff and members for supporting this important work and to USGS for always being there for us.

*Chair Chang thanks Ms. de Naie for her contributions.*

*(End of public testimony)*

**20230815 01:28:53**

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

**To approve staff submittal.**

**UNANIMOUSLY APPROVED**

**(MIKE/KATAYAMA/HANNAHS/CHANG/KAGAWA-VIVIANI/HO/MEYER)**

*Chair Chang thanks Dr. Ayron Strauch.*

**RECESS: 10:32 AM**

RECONVENE: 10:44 AM

*Commissioner Ho exits the meeting.*

**20230815 01:41:10**

**B. ACTION ITEMS**

- 2. Approval of Surface Water Use Permit Application (SWUP.5880.6) for New Use and Special Conditions, Wesley and Jodie Mundy for 153,125 gpd; and Find that Amendment to SWUP.2157.6 issued to the Wailuku Water Company is Not Required; Waihe'e Stream, Waihe'e Surface Water Management Area, Maui, TMK: (2) 3-2-017:042**

PRESENTATION OF SUBMITTAL: Dean Uyeno, CWRM Stream Protection and Management Branch

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

QUESTIONS / COMMENTS

Chair Chang: Commissioners do you have any questions for Dean?

Commissioner Miike: Before I do, should we hear from the applicant? I have a number of questions... Avery Chumbley's.

Chair Chang: Yeah.

Commissioner Miike: Should I wait till then?

Chair Chang: I'm kind of like interested in getting staff's response to both. Well I'm interested in their response to Avery Chumbley's letter.

Commissioner Miike: I'll just hold off, ok.

Chair Chang: What's staff response to that?

Mr. Uyeno: Frankly, I'm not fully aware of what's going on on the PUC side, even though we did do some coordination or consult with them on West Maui as part of the West Maui designation. As far as Na Wai 'Eha's concerned, I think those questions would be best left to Mr. Chumbley and Mr. Geiger.

Chair Chang: All right. With that being said, I think that was Commissioner's request that we'll hear from Wesley, the Mundys.

Wesley Mundy: Good morning, Chair and Commission. My name is Wesley Mundy, this is my wife Jodie. We purchased this property close to two years ago and Jodie being from the area, her family's been on Malaihi Road for about three generations or more. And there's actually a family lot below us, about a mile that has been engaged in farming activity for that period of time that the family's been here and as our goal to restore kalo to the area. We remember being up here on this particular lot with regards to taro and agriculture and just being part of this community. Thank you for taking the time to hear us and I'm gonna do our best to answer your questions.

Commissioner Miike: I have a question for them.

Chair Chang: No, please go ahead.

Commissioner Miike: Mr. and Mrs. Mundy, you say you're going to try to restore. Have you looked and researched the land to see whether it had appurtenant rights because your application says you're not asking for appurtenant right nor are you asking for traditional and customary rights. Do you know anything about your land? And why didn't you apply for appurtenant rights if you don't know that it had water.

Wesley Mundy: The reason we didn't apply for appurtenant rights is when you look at the conditions related to this property. When Mr. Chumbley sold the property initially, I believe it's Mr. Singer, it's mentioned in there that the appurtenant rights or that service water rights did not transfer. So, it's my understanding that there we do not have appurtenant rights on this particular property. However, if I'm wrong, I would be very happy to correct that and add that to the application.

Commissioner Miike: Thank you.

### PUBLIC TESTIMONY

Avery Chumbley: Hi, thank you Chair Chang. Avery Chumbley, President of Wailuku Water Company. As a note I've been with the company now 41 years. Chair, before I talk about the B-2 application, I had tried to send a note to the secretary to provide a comment on your C-1 item and I would offer to the Commission, Wailuku Sugar Company has daily rainfall records going back to 1887, which is 136 years of rainfall records across Na Wai 'Eha from Waihe'e to Ma'alaea. And we are more than happy to share that data and that information with the Commission. And we were recently recognized by NOAA and USGS for 125 years of continuous data submission so I offer that up. And I think as Commissioner Hannahs had noted it's important historical information.

Chair Chang: Thank you very much Avery. You can send them to Ayron, send them to the Water Commission to...

Dr. Strauch: He already submits them.

Avery Chumbley: It's not quite that easy. It's in this big book about this thick. So, if you have somebody from UH that can come spend time and convert that into electronic data, I think it's worth your while.

Chair Chang: Fair enough, fair enough. Okay, thank you very much you want to comment on B-2?

Avery Chumbley: Yes, I do Chair. Thank you. We've provided detailed testimony, approximately 10 pages, and to put some of this into context I'd like to say this is the first time since June 28, 2021 which is 26 months ago, when the D&O was initially filed that there are SWUPA applications before the Commission for delivery service off of the Wailuku Water Company system. There have been four previous SWUPAs awarded, three of those were directly off of Wailuku River. One of them was directly off of Waihe'e River. So, this is the first time that SWUPAs have been up for consideration off of the Wailuku system. We take no position on the volume of water sought by the applicant or the proposed allocation in the staff submittals. We do however, have concerns over jurisdictional issues and significant operational issues. Our detailed testimony talks about some of the jurisdictional issues and I'd like to ask our Council Jim Geiger to expand on some of that. They are complex legal issues that I think that this Commission needs to consider before it takes any action today. So, with your consent Chair if Jim could explain some of that.

Chair Chang: Yes. Please go ahead, Mr. Geiger.

Jim Geiger: Thank you, Chair, Commissioners, Avery. We have an issue of concurrent jurisdiction that we're facing with this particular Surface Water Use Application. Wailuku Water Company has a surface water use permit issued by this Commission and we have to follow the terms of that particular permit. In addition, we are subject to the jurisdiction of the Public Utilities Commission because we are a regulated utility. One of the conditions that we have imposed on us by the PUC is that we have to maintain the status quo; we can't take on new customers, we can't change any rates, and we basically can't deliver more than what we are, what we did. So, if this permit is granted without having consulted with the Public Utilities Commission and gotten some agreement and understanding with how their jurisdiction impacts this particular permit, we are faced with either potentially either violating this Commission's directives or violating the Public Utility Commission's directives. And I don't think that the Commission wishes to put anyone, whether it's us or any applicant or any permit holder, in that untenable position. In review of the staff report I noted that there was no indication that the Public Utilities Commission had been contacted even though we were aware that there was a memorandum of understanding between the Commission and the Public Utilities Commission. That was confirmed by Dean's comments or earlier that in fact the staff had not contacted the Public Utilities Commission with regard to Na Wai 'Eha permits. We think that it would be very important for this permit application as well as future permit applications if that consultation was had and the staff of the Commission as well as the staff of the Public Utilities Commission could meet together with us so that we could determine the best way to handle these types of requests. I don't think anyone wishes

people who have an application and rights to receive water be denied water, but at the same time I don't think this Commission or anyone else wants to, by their actions, put a permit holder in violation of another permit or certificate. And so our position on this is that we believe that a short deferral of the application would be appropriate to allow Commission staff, PUC staff, and the company to coordinate as per the memorandum of understanding on how best to handle these type of applications. And if there are any questions, I'll be happy to answer the questions.

Chair Chang: Thank you very much, Mr. Geiger for the explanation. Commissioners, do you have any questions? So, I mean what I'm hearing you say Mr. Geiger because I got a copy of an MOA, but it's not signed. Do you know whether this is in effect?

Jim Geiger: We do not. We believe that the Commission approved the MOU/MOA, but we have not seen a signed copy either.

Chair Chang: Okay, but you're not necessarily suggesting that the MOU prohibits each PUC or CWRM to exercise their own authority, but what you're suggesting is pursuant to the MOU there should be some coordination?

Jim Geiger: Both pursuant to the MOU and the fact that there is concurrent jurisdiction. In this case, you know, you may have other situations where you have Water Management areas where you do not have a regulated utility. Obviously in that case the concurrent jurisdiction would not come into effect. But in this case because we have a regulated utility in a water management area, both the Public Utilities Commission and this Commission have jurisdiction and we want to make sure that what one board does, does not place a permit holder in jeopardy before the other board.

Chair Chang: Okay yeah, I understand what you're saying. Yes, Larry?

Commissioner Miike: From what I understand, by the way Avery you're looking good after 20 years and I haven't seen you in a while. I know I'm not looking good.

Avery Chumbley: Good to see you, Larry. You still have dark hair, mine's all white.

Commissioner Miike: I haven't dyed it yet. From what I understand every submittal, there's a direct conflict here. The PUC saying we can't, they can't change any of the water and then we're saying we're going to give it to them if the Commission approves. So I'm sorry, Commissioner Meyer has his hand up.

Commissioner Meyer: Oh no, go ahead. I'm sorry, I do have a question for Counsel Geiger. I wanted to ask, it would seem that this has potential to invalidate the Certificate of Public Convenience and Necessity of the Utilities. Is that in fact the case? Seems contrary to the rules and regulations of that certificate.

Jim Geiger: We are concerned that the action that this Commission takes would in fact have an adverse impact on the Certificate of Need and Necessity before the PUC, yes.

Commissioner Meyer: That would be my impression as well.

Jim Geiger: And that's why we think coordination and communication is critical for these permits from this point forward.

Commissioner Meyer: Yeah, I wish I'd had more time in this one to research it myself, but thank you. Chair, I would recommend that we refer this to the AG for further review. I think it's a significant enough issue that the Commission really ought to be on firm ground here, but a deferral for a month would certainly be adequate for researching that question, I would think. Thank you again. I'm sorry to interrupt, Mike and please carry on.

Chair Chang: I see Mr. Mundy has his hand up. Did you want to clarify something? Go ahead.

Wesley Mundy: Well, I just wanted to make a make a point with regards to and to be fair I'm not familiar with the public utilities, the permit and that process, but however from what Mr. Geiger said, things need to be maintained as a status quo with regards to the draw on the water and we're not requesting an additional draw on what's currently flowing. We're just asking to be able to utilize what's already flowing through our property. And put that to proper use as opposed to just going down the drain so to speak. So anyways that's the point I wanted to make.

Chair Chang: Mr. and Mrs. Mundy, do you have any objections? Mr. Meyer has suggested a deferral, Commissioner Meyers, based upon...there are other people here who may want to testify, but do you have an objection to a one-month deferral?

Wesley Mundy: I mean with regards to it being reviewed, Madam Chair.

Chair Chang: By the Attorney General, yes.

AG China: I have, I can wait for their response.

Chair Chang: Do you have any objections to a one-month deferral?

Wesley Mundy: At this point, I mean I don't see how one month deferral would necessarily impact our total production. We were hoping to move forward on however, the purpose or the question with the deferral is does it affect their current PUC? And it really, our request shouldn't affect that because we're not asking for an additional draw, we're just asking to utilize the current draw. But in regards or respect to your question, we wouldn't have a problem with the deferral, no. But just as long as, yeah.

Chair Chang: Thank you. I appreciate the cooperation. I see Hōkūao's hand up. Go ahead Hōkūao.



Hōkūao Pellegrino: Aloha Chair Chang, Commissioners. I have a testimony that I wanted to provide, but I'd just like to ask before going into that, that everybody pause on any decision making in regards to this only because the next water use permit application applicant that's coming up is off of the same system. It's a family that has generational ties to Wai'eahu. Yes, they're utilizing the same system. It's a family that has been waiting for water for a very long time. I'm concerned that any type of deferral, even a month, when the reality of that sometimes can take much longer. That's a family for sure that has been waiting to receive water to restore, not restore, to reopen their lo'i that have gone dry for some time now. So, I just, I think before any decision, I'd like to see if that next applicant could also be a part of this discussion or at least sharing out that that piece.

Chair Chang: Thank you very much, Hōkūao. Is there anybody else? Oh, Mr. Mundy your hand is up.

Wesley Mundy: Apologize and thank you, Hōkūao or Mr. Pellegrino for your insight. We're very familiar with the next applicants. They're our neighbors who've actually been very helpful to us in understanding some of the history and to my wife, the lineage that their two families actually share. Their grandparents actually farmed the same land together. We found out through conversation and some records and archives and whatnot that my mother-in-law had. But with regards to this, would it be possible to get maybe get in a or maybe with an approval subject to a later review by the PUC be an option also? I just thought I'd present that.

Chair Chang: Neil.

Commissioner Hannahs: I want to respond directly to that, but you know Mr., Commissioner Miike had a good number of questions. I want to make sure that we honor your interests.

Commissioner Miike: Yeah. I have several things. By the way Hōkūao how are you doing also? I haven't seen you in a long time. I assume Hōkūao, I'm assuming you're talking about the Ho'opi'i application?

Hōkūao Pellegrino: Yes, Commissioner Miike.

Commissioner Miike: I don't have any concerns over the Ho'opi'i one right now on these issues about to raise, but I do have some about the Mundy. According to the application you folks didn't ask for either appurtenant rights or traditional customary rights and yet the Commission staff is suggesting the traditional and customary rights. It's sort of like unique to me that an applicant asks for something and the Commission is going to give them something they didn't ask for. Well, that's one thing. The other thing is that I'm not clear and I'm assuming this is being guided by the contested case which was then issued as a decision in order which according to, I think Avery's thing is on oral arguments in front of the Supreme Court next month and ends in September. But the way that this decision and order is written is not clear to me in terms of traditional and customary rights. First of all, it says that any applicant who qualifies as a Native Hawaiian and who

does not intend to grow kalo for commercial purposes qualifies. And then it also says that in the executive summary that an applicant's is separate from the land. So, what I read that is and Julie can answer this, is that mean that any Hawaiian, who can meet the definition of Native Hawaiian in essence, descendants from citizens of the Hawaiian Kingdom, regardless of whether they have a history of traditional and customary rights have now the right? Is that correct Julie?

AG China: I'd like to go into executive session to discuss this if you want to.

Commissioner Miike: Oh, why? I'm just, okay anyway that's one question. The second question of that part is, it looks as though as far as the land it had to have been used according to the decision and order. It had to have been used before 1892 for these kinds of practices. Not a problem with that, but the current Supreme Court decision says that an applicant had to have traditional and customary rights that trace back at least to 1892. And from the decision and order it looks like that no longer is a requirement. Also, in the executive summary says that the statement that it is established that the application of a custom has continued in a particular area. It's ascribed to me, well no, that's a direct quote from PASH. I'm clear and we can go into executive session as Julie suggests. Is that now being, is this decision and order saying that you're breaking away from that? If any Native Hawaiian going into an area that was had traditional and customary practices now has the right and I'm distinguishing between a practice that is traditional and customary versus the right to that practice. Okay, looking back at my, in an executive session I brought along my proposed D&O versus the final D&O and I'll show you what was kept out and what was kept in. Okay, so that's one question I have is that whether we're talking about Mrs. Mundy because her family lived in that area qualifies or whether just because she's Native Hawaiian she qualifies. From what I just heard you say Mr. Mundy, your wife's family has actually been there for a long time and so I just want to know whether they just happen to live in the Na Wai 'Eha area or whether they were actually living maybe right on the land that you now own and whether your family really can qualify on what the current Supreme Court qualifications are. Okay, the second part is that for 45 years now, the second part is your understanding that your appurtenant rights were extinguished when the land was sold. For 45 years now the Hawaii Constitution said that it preserves appurtenant rights and for 36 years, the Hawaii Water Code has definitely stated that appurtenant rights are preserved and the only difference between riparian rights and appurtenant rights is that riparian rights cannot be severed because a Supreme Court had ruled that they had a statutory basis and that appurtenant rights don't. Well we now have a statutory basis since at least 1987 and a constitutional basis since 1978. And then in the D&O which also was in mine, a decision about a Supreme Court stands and I quote, until the decision has been reversed or overruled by the court of last resort in the Hawaii Supreme Court or there's another issue or altered by legislature in that I addressed the legislator enactment piece in my proposed D&O. That was taken out of the D&O and the conclusion was reached that the Supreme Court has not acted. So, from my standpoint since at least 1987 and probably since 1978 the Supreme Court has already ruled that you cannot sever an appurtenant right anymore. So, what I would say is that if they go through this thing, the Mundys to me, probably can prove, you would have to do this

though, that they not only have traditional and customary rights under the current standard, but they also have appurtenant rights under what I say should be the law.

Chair Chang: Okay, you want to go into executive session?

Commissioner Hannahs: I'm not sure if we're going to go to executive session, but I have just a simple question that's kind of apart from the D&O issues that Commissioner Miike has raised. Mr. Chumbley, what constitutes a customer to you? Are they going to be, what's your criteria and do the Mundys meet that?

Avery Chumbley: Okay yeah, Commissioner Hannahs this is where it gets a little bit difficult over the cross-jurisdictional overlap between the PUC. The original PUC document that we filed along with the amended document, amended application calls for the CPCN [Certificate of Public Convenience and Necessity] to be issued as two categories of users. A user was identified as someone who was getting a delivery of water from the Wailuku Water Company system which could mean the kuleana users or any other institutional type users. And then there was the category that we identified as customer which were the individuals under contracts or license agreements. So, in the case of the application, both the users and the customers are generally within the same definition as someone receiving service from the Wailuku Water Company system.

Commissioner Hannahs: So, the second part of the PUC order that prohibits you from adding any new customers would apply to users as well?

Avery Chumbley: We believe it does, yes. Now I would also mention that the risk of a violation of the suspension order with the PUC puts all of the users within Na Wai 'Eha at risk, not just the Mundys and not just the Ho'opi'i. It's everybody because if we are deemed to be in violation of that suspension order, the PUC basically could shut us down. That means no one gets water, including the County of Maui and including all the kuleana users. So, this jurisdictional overlap is something that really needs to be addressed between the Water Commission and the PUC before any new applications are approved that take water out of our system. The four applications that were previously approved since the D&O was issued, were all directly off of the river or the stream, so they had no impact to the Wailuku Water Company system. Now if Mundy and Ho'opi'i could take water directly off of North Wai'ehu stream and not out of our system, it may not be a violation of the suspension order. But we still just don't know that until we have this exchange between the two overlapping jurisdictions.

Commissioner Hannahs: Or it may be that users don't constitute customers in the PUC's eyes but that needs to be clarified and going back to Mr. Mundy's point, just as an alternative pathway to outright deferral might be a kind of approval subject to receipt of confirmation from the PUC that the action does not constitute a breach of the PUC order that regulates Wailuku operation. I'm not offering that yet but there's a couple of pathways that we have.

Avery Chumbley: I think Commissioner, you know I don't want to prolong the applicants permits, but I'm concerned that any approval and authorization of a permit today by the Water Commission puts that CPCN at risk. And I don't mean this as a threat, but if a conditional approval or even an outright approval would require me to ask for a contested case. There's too much at risk here. A deferral of 30 to 60 days to work with the PUC and get this resolved is really the right thing to do for B-2 and B-3 applications.

Commissioner Hannahs: Thank you for your testimony.

Chair Chang: Commissioners, do you have any other questions or is there a motion? I think, yes.

Commissioner Miike: If we are going to defer it, I would request that of the issues that I raised that the staff, if they are going to continue to recommend, address my issue which is whether they can find out from the Mundys whether they may have T&C rights under the current law and the appurtenant rights, but mainly with T&C law because the way that it's written now, just because the Mundys lived there they were given T&C rights. It's just not, inadequate as far as I'm concerned. So anyway, it will help to clarify as well.

Chair Chang: Okay, no I appreciate that.

Commissioner Hannahs: So, the deferral, but you really have two purposes: one, to sit with PUC resolve those issues if we can and secondly, have staff sit with the Mundys to review T&C, their rights.

Commissioner Miike: And clarify because it's very fuzzy right now.

Commissioner Katayama: Chair, has the issue with, related TNC use for home-use only been clarified? What can you do with any surplus production?

Chair Chang: Kaleo, I don't. My understanding is under Article 12 Section 7. We are obligated as a Water Commission to ensure that traditional customary practices are preserved and protected. So, there is a separate analysis that goes into all of the Water Commission action to do a separate traditional customary practice analysis and that is one to ensure that. And I mean I too I have a little, maybe I disagree with a little some of our analysis, but essentially the analysis is to determine does the applicant's proposed use have an impact on traditional customary practices? Now in this case the applicant may actually be a practitioner who's entitled to separate rights, but I think our analysis as a Commission is to determine that the action that's before us, is our action granting this permit going to impact traditional customary practices? This one, the analysis is on the applicant and I don't really think that that's the appropriate analysis. I think the analysis is identify what the traditional customary practice is or what the resources are, two what impact does the proposed action have on traditional customary practices, and then three the mitigation. But in this particular process we are treating, we're determining whether the applicant has traditional customary practices. That to me is an independent, I mean they either have it or they don't, but that's not the analysis that we go through. To me that

shouldn't be the analysis and because you know the burden. And we're using a Hanapī, that was a criminal action where the burden shifted. The burden shifted because Hanapī utilized traditional customary practices as a defense to criminal trespass. So, the court says that in the context of criminal trespass the burden shifts to, in that case, Mr. Hanapī, but in the case of us in a civil action the burden is ours or the burden is the applicants. I shouldn't say the burden. The burden is the applicants to demonstrate that their actions will not impact traditional customary practices. I'm sorry, that's a long-winded kind of explanation.

Commissioner Katayama: So, are we clear on the path that we're taking?

Commissioner Miike: All I'm saying is that, I agree with all that. All I'm saying though is that it was the staff that took on the burden of which is the applicant's to prove that they have traditional and customary rights. If it's Mundy, I don't have any problem with the staff helping them on that, but what I don't understand is that the way that the decision and order on the Nā Wai 'Ehā cases, it's so general that I have no idea what they're talking about to satisfy being a traditional and customary practice which has a right to it.

Chair Chang: Yeah and I guess I, look at now.

Commissioner Hannahs: Mr. Mundy, Mr. Mundy.

Chair Chang: I mean I'm going to take first Mr. Mundy and then I'm going to take Hōkūao. Go ahead Mr. Mundy. You have a question?

Wesley Mundy: Thank you, Chair. No, I wanted to just address the question of why we didn't put in, go for Hawaiian rights and again appurtenant rights which I explained why we didn't look at that initially. And with regards to the Hawaiian rights, this being our first process of doing an application like this after the application was submitted, we had learned about those options and we were told that this forum here would be an opportunity to bring that up and to talk about it more. So obviously we're more than happy to abide by what the process is and to add what needs to be done. So just wanted to make sure we answered that question.

Chair Chang: Because you said, Mrs. Mundy, is it your grandfather or grandmother they are related to the Ho'opi'is who are from the area?

Jodie Mundy: No, they're very close friends.

Chair Chang: Oh, close friends okay.

Jodie Mundy: Yes, and they worked at the farm, the taro farm before.

Chair Chang: But you are not from, are you from this ahupua'a? Are you from this area?

Jodie Mundy: Yes, I am. I was brought up here.

Chair Chang: Do you know whether your family also grew taro in this area?

Jodie Mundy: Yes, yes.

Chair Chang: Okay, okay. So, I think the point that we're trying to make is you may have the right to continue to exercise traditional customary practices independent of any appurtenant rights. Your rights run with the land as someone who has a lineal connection to that place through your 'ohana, that you have independently traditional customary practices that you can assert which is the forms of basis for why you have the right to use water. Which is a little different from appurtenant rights or one that comes with, I mean you have an inherent right as someone if you can show that your 'ohana did practice there. Hōkūao, did you want to say something?

Hōkūao Pellegrino: Yes, you know whether there's going to be a deferral or not, I just wanted to be on record to at least provide a little bit of our testimony in support of the Mundys and the requests for kuleana water regarding their Surface Water Use Permit. The use that they are requesting is in direct alignment with the work of our organization and you know while the staff support and recommending this approval of the water use permit is now on the table, we just would like to thank the staff for the work, the Water Commission staff for their initial support. And if the Mundys need any assistance in working on their appurtenant rights requests or just any kind of information in regards to their lineal and cultural ties to Wai'ehu. Hui o Nā Wai 'Ehā is there to support them and happy to work with them to ensure that they are receiving the type of support on all levels. So, Hui o Nā Wai 'Ehā is again in support of their water use permit application. Mahalo.

Chair Chang: Thank you for that offer, that's very kind of you. Do I have a...Commissioners, do you have any other questions or a motion?

Commissioner Kagawa-Viviani: I have just a reflection of what I'm hearing. It sounds like the applicant and staff have to kind of revisit the application given the additional knowledge they now have. The staff have some homework to reach out to PUC to clarify and make sure that what we're doing doesn't create more tangles and that you had a request on the Ka Pa'akai analysis part of it, as well. So, staff have two assignments or three assignments. The applicants have another assignment. Is that, am I getting that correct?

Chair Chang: I think so. I mean I will tell you I am, I need to have a better understanding and maybe I think Julie suggested we go into executive session, but what the impact of this MOU. Because I cannot imagine PUC asserting jurisdiction over, I mean we have to be able to work independently so. But what I'm hearing you guys tell us both Mr. Geiger and Mr. Chumbley is that the difference is it's how the water is being taken out of the system. If the Mundys would be taking water directly out of the stream as part of their traditional customary practice that's different versus they're taking it out of your system, is that correct? And the fact that they're taking it out of your system is what triggers the PUC and that order? Okay, okay. Hōkūao, do you have a clarification on that?

Hōkūao Pellegrino: Yeah, I do want to make one point is that although the source of water for these two applicants are coming from Wailuku Water Company's system, you know first and foremost that you know the original intakes and the po'owai for these users were likely obliterated at the time of plantation which forced them to connect to these systems, but secondly the 'auwai system that flows to these particular properties, both including the Mundy's and Ho'opi'i's and others' below them, is actually the traditional system. A good portion of it is the traditional system. So, you know I want to make note that while maybe the intake and the source now currently comes from the Waihe'e Ditch, the system that flows forth is still very much part of that original traditional infrastructure. And so again I don't know if that has any play in all of this, but I think that's important to note that not the entire infrastructure is not necessarily Wailuku Water Company, but the intake portion is, which has, you know, they don't have any other choice to be connected to that system. Mahalo.

Chair Chang: It does seem like there's a factual question and then there's a legal question. Do I have a, Kaleo, do you have a recommendation? Oh Mr. Mundy, your hand is up.

Wesley Mundy: Thank you, Chair. Just and again just to point out with regards to the draw on the water. We're not asking to be an additional draw on the ditch. This water is already flowing and is already servicing farmers below us and we're just asking to be able to use what's currently flowing through. And as far as being a customer I guess that would come under the decision of the PUC, but with regards to the actual use and the impact on the system we're not looking to be an additional impact on the system. It's already flowing and with regards to, as I understand the Ho'opi'i's and not to speak for them in any way shape or form, but just to point out when you walk the Waihe'e Ditch which flows behind our property you can see that the mechanisms for distribution still exist just at some point in time they were damaged, not repaired. And so this kuleana water flowing from you know a source up in the mountains doesn't start at the Waihe'e Ditch. It starts at another location as Mr. Pellegrino pointed out. So, and again our intent is not to be an additional impact on Mr. Chumbley's operation, it's just to currently use what's already flowing through the area. Thank you again.

Chair Chang: Thank you. Kaleo, did you want to make a recommendation or?

Deputy Manuel: Yeah. Hearing what's said, I think maybe to clarify the MOU with PUC and our staff conversations with their council as well as their staff. The MOU really was about consultation and data exchange and as part of this process as we're getting through and issuing new Surface Water Use Permits or going through that process, there are rules right? We have to put a public notice out. During that period that's when we expect these comments to come out. Unfortunately, for various reasons people don't always participate in that set time period and it comes up at these meetings before we get testimony or these concerns. So totally hear Wailuku Water and Commissions concerns. Similarly, we can reach out to PUC more directly per the MOU agreement and then we can coordinate that or at least ask them for their comments and their feedback on this and try to bring it back in a timely manner. So, I'm not against deferral to provide more facts and data to you

folks so you feel comfortable making any decisions. I don't, I'll ask Dean, maybe Dean has any comments as well as staff that's going to have to work on this. But I guess pre-deferral or even pre-executive session if that's where you folks decide to go, you might want to take up B-3 as well since Ms. Ho'opi'i is here, but in the waiting room and maybe have that deferral one time. I don't know if that's an option.

AG China: Yeah, that's fine.

Chair Chang: Yeah, I'm open to that if the, I mean is the Commission, are you open to that option? You know we'd put this in advance here B-3? Yeah, yeah because they seem to be similarly situated.

Deputy Manuel: I just wanna, since she's here, give her the opportunity.

Chair Chang: Yes, yes, yes.

Deputy Manuel: I'm assuming the similar testimony from Avery and folks as well as Hōkūao would apply to B-3 also. Just want to make sure we get that on the record if there is a deferral, so there's direct items to staff on what those follow ups are going to be.

Chair Chang: Right, right. Very good. I mean I think that's efficient. I respect consistency.

Chair Chang: Okay, hang on. So, Mr. Mundy, we're going to hold your item. We're going to hear from Mrs. Ho'opi'i and then we're going to try to make a ruling on both, okay? So just hang on tight.

Wesley Mundy: Okay, thank you.

Chair Chang: Thank you very much and likewise Mr. Chumbley, Mr. Geiger, and Mr. Pellegrino because I suspect it's the same so just hold on tight. Go ahead, Dean.

*(End of public testimony)*

**20230815 02:31:30**

## **B. ACTION ITEMS**

- 3. Approval of Surface Water Use Permit Application (SWUP.5934.6) for New Uses with Special Conditions, Michele Hoopii for 256,555 gpd; and Find that Amendment to SWUP.2157.6 issued to the Wailuku Water Company is Not Required; Waihe'e Stream, Waihe'e Surface Water Management Area, Maui, TMKs: (2) 3-2-018:027, 031, 032, 033**

PRESENTATION OF SUBMITTAL: Dean Uyeno, CWRM Stream Protection and Management Branch



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

### QUESTIONS / COMMENTS

Chair Chang: Okay Ms. Ho'opi'i, I'm not too sure if you've heard the previous conversation, the discussion. But did you want to add anything?

Michele Ho'opi'i: Aloha Chair Chang and Commissioners. Well, I first want to express, thank you to Rebecca for all the help that she has given. My family has come from Wai'ehu since before the time of the Mahele. I have also submitted in my application a verification from OHA stating that they verified the genealogical tie to the original awardee or the property, the kuleana property. And we've been growing taro on that land for generations. The water did initially come direct from north Wai'ehu Stream and was severed because of vandalism and other things that took place. If you're asking, can you please remind me what you're needing me to comment on related to Wes and Jodie's?

Chair Chang: No, well this one is more on yours. We're deciding to take the two matters together since they seem to have similar issues raised by both you know Mr. Chumbley as well as Mr. Geiger regarding the potential impacts to the PUC compliance and then second it was you know, providing, we were looking at providing a deferral until that legal question can be addressed. The consultation with PUC to ensure there's no adverse impact.

Michele Ho'opi'i: Right.

Chair Chang: So, I think that's the issue is, okay, well, one, we're contemplating a deferral for 30 days to permit staff to meet with PUC to coordinate under the MOU. And are you comfortable or have any objections to that?

Michele Ho'opi'i: I find that just a little bit hard to answer simply because I'm not aware of what the MOU is or the PUC requirements are. We have been waiting a while for the water and so I was hoping that it could be approved pending the PUC follow-up, but I guess I would have to defer to the Commission to make that decision.

Chair Chang: You know I appreciate that. I'm sorry, if you have access to our website Wailuku Water Company's testimony, I believe, was submitted and you can see what their concerns are. They're not necessarily saying that they have an objection to the use of the water but it's the process. That there is this, they have a PUC order, we have this MOU with, you know, the Water Commission. Wailuku Water Company and PUC and we may need to coordinate with PUC to ensure that we're not putting Wailuku Water Company in jeopardy so that we can move forward.

Michele Ho'opi'i: Understood, which is why I'm saying I'll leave it to the Commission. I don't have one way or the other because the approval and all the forwarding approvals need to come from the Commission. So, if that's what needs to be done, yeah.

Chair Chang: I greatly appreciate this because I think Mr. Chumbley said if we do proceed forward, it is likely that they will request a contested case hearing. Okay Mrs. Ho‘opi‘i, Mr. Mundy’s hand is up, but I’m going to provide you an opportunity. Do you have anything else you want to add?

Michele Ho‘opi‘i: I don’t think at this time, thank you.

Chair Chang: Okay, thank you. Mr. Mundy, your hand is up.

Wesley Mundy: Thank you, Chair. I wanted to and if I’m wrong please correct me, Michelle, but as I understand it the water distribution to that property was actually previously, has already been approved. And they’re just requesting that it be restored. So, if it was already approved would that even make it an issue for the PUC Commission? Because again it’s not adding to the draw, it’s using, it’s restoring an already approved draw that has been in place for I believe before Michele’s, passed generationally to her and her portion of the family. And again if I’m wrong please correct me, Michele, but that would seem to make it not a PUC issue and maybe not even in line with our application.

Michele Ho‘opi‘i: Actually, okay so I was, my family was not part of the Na Wai ‘Eha case because we already had water coming to the property. Both where I’m asking and both on the other side of Malaihi Road. The problem is that the ditch was severed, cutting off our water to the property. So, I’m a new user not even related to anything that the Na Wai ‘Eha case was related to.

Wesley Mundy: Thank you, thank you.

Chair Chang: Commissioners, do you have any questions? Larry?

Commissioner Miike: I guess a couple. If it’s a new use then we still, still falls under the concerns that I previously expressed. The second part is that looking at Ho‘opi‘i’s application, it would have from my standpoint, met what I quote-unquote call the old standard of what T&C is. But what I’m concerned is that whether the analysis was done assuming that the new standard on the D&O was used and I’m worried that if that is so, if the Supreme Court looks at this issue and raises it and changes it, whether it would affect our approval of their permit. So that even though I look at it and say, “looks to me like it’s a slam dunk case, they have both appurtenant rights and T&C rights,” but if the Commission made its decision under what is the new standard of T&C I’m just worried about the legality of it.

Chair Chang: Yes, Mrs. Ho‘opi‘i?

Michele Ho‘opi‘i: I wanted to add, the water used to come through from north Wai‘ehu Ditch through Maniania Ditch and the plantation at that time, there was a diversion to have the water redirected up towards how white pipe is running. So, from the sugar plantation to Wailuku Ag to Wailuku Water Company, that’s the course of where the

water was flowing. So those are the entities that had to redirect our water to the property. So, Wailuku Water Company is just a lead from the past previous entity owners so we technically was still getting water through Wailuku Water Company, Wailuku Sugar. So, it's not like we're a brand new user. We've been having water to the property from way back Mahele time. And just to give more clarification the property is in conveyance to me from that LCA awardee to my tutu, to my tutu, to my tutu, my mom and then me and my other siblings. So, what I'm saying is that we've had existing water to the property since before the time of the Mahele. It's only because it's been severed at the point of white pipe that we now do not have water. We've had continuous water up until 2014.

Chair Chang: You're entitled to water based upon your relationship to this land and as you have historically, your family has exercised traditional and customary practices so the fact that the water isn't running and you're trying to restore that. But you have an independent right as a traditional and customary practice.

Michele Ho'opi'i: Yes, but I'm wanting to make clear that I'm not technically a new user.

Chair Chang: Right, right. I appreciate the point of clarification. I think that and you know quite frankly if you can assert a traditional and customary practice, that is a pre-existing right that runs with the land. But I am curious to see the intersect between PUC, the Water Commission under this MOU because I'm having a hard time seeing how the PUC can trump our jurisdiction, but it may just be a matter of coordination and it may just be a matter of consultation. I am concerned that if we proceed forward, we've got an indication that there will be a contested case hearing which will put us into a much more protracted process versus giving us 30 days to see if we can do the PUC consultation to confirm that we have the right to proceed forward on these permits.

Deputy Manuel: Yeah, can I just add for clarification? In the conversations with PUC in the development of the MOU, they made it very clear that they're not the experts on water rights and that they defer all of those decision making to this body. And that a lot of times in sequencing, which is also tied to kind of a decision in Nā Wai 'Ehā, they basically put a hold on the CPCN until the decision was made by this body in order to determine whether appurtenant rights or other water rights still existed or granted. And then they would act on the application or the docket before them. It's just a sequencing issue more so than I think a jurisdictional issue has been framed, but again we are supportive of kind of clarifying that and getting and maybe even having the PUC present or staff here to answer any questions this body may have in a future decision making on these two items.

Chair Chang: Yeah, I appreciate it. If Mr. Chumbley and Mr. Geiger weren't on the call asserting that they may file a contested case hearing, I'd be real comfortable with just going with that. But I mean I think moving cautiously I mean that's kind of what I'm thinking. Mr. Geiger your hand is up?

## PUBLIC TESTIMONY

Jim Geiger: Yes, Chair. Thank you very much. I know we're not entitled and have no right to do this, but again in the spirit of cooperation to the extent that if the Commission decides to defer for consultation I think it would be helpful if a representative of Wailuku Water Company could be in the room so that we could have our questions answered and feel comfortable with whatever coordination is adopted by the Commissions.

Deputy Manuel: If I can. Mahalo, Jim for the request. You can make the requests; I will say that because you are a party before the PUC oftentimes in our conversations directly with the PUC they cannot have conversation with you as a regulator. So that's where the MOU came into play and where we were trying to agency to agency look at policy and jurisdictional issues. So, I will make the request, but having you as a party with a docket that's open, they're really reluctant having this ex-parte communications with you or with somebody in the room. So totally understand the operational issues. Let us take the first step and then hopefully we'll have findings from those conversations and then if it's possible to bring you in and other parties that may have standing in that conversation, we'll do so.

Jim Geiger: Appreciate that, thank you.

Chair Chang: Avery, your hand is up. Oh, you're muted.

Avery Chumbley: It keeps muting itself. I guess you don't want to hear me. Thank you, Chair. Deputy, I would note that it's not ex-parte communication if the PUC attorneys are present and our PUC attorney would be present. Then as long as both of those are there then it would be appropriate. Mr. Geiger is not our PUC attorney. Doug Codiga in Honolulu at Schlack Ito is the PUC attorney so without having us involved in the discussion to be able to raise the issues, I think we would be missing a lot of the critical points that need to be deliberated on. Thank you.

Chair Chang: Nope, you raise a good point, but what we'll do Avery, we'll make the request and it'll be up to them. They may want to have separate meetings, I don't know, but I think...

Avery Chumbley: You may want your Deputy Attorney General, Julie, there too.

Chair Chang: Okay, so with that being said, do I have any other questions? We're having a real nice free-flowing conversation, so any Commissioners do you have any further questions, comments? Do I have a motion? Hōkūao, I'm gonna let you one more time before we make a motion. Go ahead.

Hōkūao Pellegrino: Sorry, I didn't have a chance to speak.

Chair Chang: Oh, I'm sorry. You're right, my apologies to you.

Hōkūao Pellegrino: Mahalo, Chair. I just again wanted to go on record that Hui o Nā Wai 'Ehā is in support of Ho'opi'i 'ohana's request for a water use permit and any assistance

that they need, additional assistance that they may need we're waiting to support. I also did want to note that I did but I didn't specify in my testimony prior to this which I was going to repeat on this particular docket was just one particular concern. Again, this is probably kind of moot at this point because it looks like both items will be deferred but I did again want this to be on the record that just one of the concerns that we had not necessarily with the applicant but pertaining to the source. And it's been our understanding, our organization's understanding that over the last two to three years water use permitting specifically in Waihe'e and Wai'ehu have not been receiving adequate flow amounts from both sources which includes the Waihe'e and Spreckels Ditch based on the total amount allocated to users. I believe CWRM staff is well aware of some of these challenges especially specifically to the south Waihe'e kuleana 'auwai via the Spreckels Ditch. Again, that's not necessarily pertinent to this however, there are some similar challenges based off the Waihe'e Ditch system. So, we just ask that the Commission staff continue to support, you know, and having staff maybe come out continue to measure some of these sources not only for the different kuleana ditch and 'auwai intakes, but also from the main source for which these traditional systems connect to. You know we can be giving water away all day or at least approving water, but if it isn't available then really these don't mean anything right? So, I just wanted to put that on record on behalf of Hui o Nā Wai 'Ehā, again that we support the Ho'opi'i 'ohana and the Mundys and that there are some source challenges as well. And hopefully that we can get that rectified at some point, mahalo.

Chair Chang: Thank you very much for that, Hōkūao. With that being said, Aurora did you want to make a formal motion to defer?

Commissioner Kagawa-Viviani: I had a question first that earlier there was some discussion about going into executive session. Do we need to?

AG China: I think with your decision to defer, you've covered pretty much everything.

Commissioner Kagawa-Viviani: Is 30-days sufficient, Kaleo?

Deputy Manuel: We'll work with staff to try to expedite this and bring it back as expeditiously as possible. Because it involves another agency we're also on their time schedule as well, but we'll relay the urgency to try to bring it back in time for September.

Commissioner Hannahs: Do we need to set a date, a time or can we say until such time as, you know, this meeting has occurred?

Chair Chang: Yeah, I mean I don't mind keeping the pressure on especially for the families who have been waiting. So, this puts us, the onus is on now on us to move this matter along and if you need additional time you can come back to us and ask for a deferral, but we will try to have. And you know those of you on Maui you just really can appreciate how that you know Maui's becoming a priority for so many other things. So, we're going to, staff is going to try their best to meet this deadline within 30 days coming back and bringing this matter after consulting with PUC. Okay?

*(End of public testimony)*

**20230815 02:55:13**

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

**To defer items B-2 and B-3 for 30 days to permit Commission staff to coordinate with Public Utilities Commission staff and address questions raised.**

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/KAGAWA-VIVIANI/MEYER)**

**20230815 02:55:20**

**B. ACTION ITEMS**

**4. Approval of Stream Diversion Works Permit (SDWP.5931.6) Application, Installation of a Portable Submersible Pump; Find that a Petition to Amend the Interim Instream Flow Standard is Not Required; and Approval of Surface Water Use Permit (SWUP.5928.6) Application for New Use with Special Conditions, Mark Juergensmeyer, 3,850 gpd for Diversified Agriculture and Domestic Use; Wailuku River, 'Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:008**

PRESENTATION OF SUBMITTAL: Dean Uyeno, CWRM Stream Protection and Management Branch

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

QUESTIONS / COMMENTS

Chair Chang: Commissioners do you have any questions for Dean?

Commissioner Hannahs: I have. Commissioner Miike, do you have a problem with C? The extinguishing of the appurtenant rights given your prior position?

Commissioner Miike: It's the same thing, but in this case it's not going to be really applied except for that point that small amount is priority three that would have been one. I do have a comment though, but I was waiting to see if they were going to say anything.

Commissioner Hannahs: Okay.

Chair Chang: Do I have the applicants? Oh, I'm sorry. Go ahead, Larry.

Commissioner Miike: Actually, you know the Code exempts domestic use from the permit requirements. I don't have a problem with using the permit to follow that, but

another way would be that they would have to register their use as a way of us accounting for water and for use with putting conditions. All I was pointed out was that the Code actually says you don't need a permit for domestic use.

Chair Chang: Important. Good point. Mr., is that Mark? I'm sorry, I can't see your last name.

Mark Juergensmeyer: Yes, you have to unmute me. Am I unmuted?

Chair Chang: You are unmuted, yes.

Mark Juergensmeyer: Yes, when I was the founding dean of the School of Hawaiian Asian and Pacific Studies at UH Manoa, I was quite close to the Hawaiian community and had a role in preserving the last lo'i in O'ahu. Today if you go to the School of Hawaiian Studies, it's now split off from the school that I helped to found, you'll find the lo'i still standing which I'm really quite proud. So, when my wife and I retired a couple years ago, we came to Maui. I wanted to have a place that we could kind of preserve some of the Hawaiian tradition of creating a bamboo house in Polynesian style which I don't live in. It's definitely a kind of retreat house. Actually, the only people living there now, are from Lāhainā because as you know we've had this horrible tragedy on Maui and so I've divided my place for evacuees at least for present. But most of it's an orchard of papaya, of banana, of guava, lychee and the like, but I'd like to grow kalo also. The catchment system provides water for much of the, particularly during the rainy season, but I need water for kalo and then of course when it's very dry and the river is right there. All I'm proposing is that in times of necessity it would be an occasional use to put this temporary pump which is like a three foot pipe into the water for a couple hours and be able to fill up the catchment tank and then remove it so it would not be permanently in the water and that's my request: an occasional use of water using this temporary pump; primarily so I can grow kalo and have a small lo'i on the site.

Chair Chang: Questions? Was that use considered, Dean, in the application? Lo'i kalo? Okay.

Mark Juergensmeyer: It was my understanding that there are appurtenant rights from the documents that I have that go back to Kamehameha the Fourth because at one time it was a Mahele with the, not for a village because it's a kind of flood area from the river, but an area in which kalo was grown. So, I don't know whether the staff took that into consideration. That was my understanding.

*Chair Chang notes that there are no individuals on Zoom or in the boardroom waiting to testify on this item.*

**20230815 03:05:00**

**MOTION: (MIKE / MEYER)  
To approve staff recommendation.**

**UNANIMOUSLY APPROVED.**

**(MIKE/KATAYAMA/HANNAHS/CHANG/KAGAWA-VIVIANI/HO/MEYER)**

*Deputy Manuel suggests to hear from in-person testifiers for item C-2 before lunch; Chair Chang approves.*

**20230815 03:07:08**

**C. NON-ACTION ITEMS / INFORMATIONAL BRIEFING**

**2. Briefing on Moloka'i Water Plan Preliminary Draft by Maui Department of Water Supply**

PUBLIC TESTIMONY

David Jolly & Karen Steentofte:

- Residents of Moloka'i's West side for 10 years.
- There are many ecological issues & the current system doesn't provide sufficient water to address those issues.
- Hoping Townscape can create a plan to bring all residents together.
- Townscape has been good at listening to all the voices on the island.

*Chair Chang thanks them for their testimonies.*

LUNCH: 12:15 PM

RECONVENE: 1:10 PM

**20230815 04:06:37**

**C. NON-ACTION ITEMS / INFORMATIONAL BRIEFING**

**2. Briefing on Moloka'i Water Plan Preliminary Draft by Maui Department of Water Supply**

PRESENTATION GIVEN BY: Sherri Hiraoka & Bruce Tsuchida, Townscape, Inc.

Katie Roth of the CWRM Planning Branch introduced Sherri Hiraoka and Bruce Tsuchida with Townscape, Inc. Townscape shared a preliminary water use and demand presentation for the island of Moloka'i including water resource issues, existing water production, future water demand, and a framework for allocating water. There was much discussion over increased allotments and cheaper water delivery for the West end of



Moloka'i. After extensive community outreach, they discovered shared values among the residents and received constructive feedback on an earlier draft proposal.

### QUESTIONS / COMMENTS

Commissioner Kagawa-Viviani: Thanks. This is really helpful just to see you, Bruce and Sherri. I was wondering you know in your growth projections when there's low growth to high growth that's growth in demand? I guess I'm thinking about this as like you see growth sometimes the assumption is population but you could have the same population or declining population wanting to do ag and have increased production. So that's a little bit disentangled in the following slides but can you speak more to how you constructed that framework for growth because I think it needs to be on really unpacked.

Sherri Hiraoka: Well, we're actually just kind of revising all of that right now. The difficulty we're having is just in the kind of information we can find. I know for like the Honolulu Watershed Management plans we really tie the water demands to a per capita number. It's been difficult to do that for Moloka'i just because there are a number of private systems and, just being able to figure out, just tie that to specific numbers. So, I think for in our revisions we're trying to just take another look at all of that. We had done I think a more broad brush like you were suggesting where it was a growth in water demand, a 0.5 increase in water demand, but yeah we're taking another look at all of that.

Commissioner Kagawa-Viviani: I guess...oh, sorry go ahead.

Bruce Tsuchida: Can I comment here just briefly? Part of the problem here for the demand projections is there's a major difference in what position, politics, community focus. A major difference between many of the folks who are living on the west end of the island and other folks, central and east Moloka'i. Many of the folks on the west end say they want and need and should have a lot more water, especially for agriculture and other folks in central and east Moloka'i have the position that west has always been dry. It's never been good agricultural land and therefore should not be demanding water from other parts of the island to satisfy agricultural use that doesn't belong there. So those are two very different positions, obviously. And we don't have at this point in time a good answer for those differences in position relative to water and water supply.

Commissioner Kagawa-Viviani: Sure, and it's not your folks job to have to arbitrate that, I guess. But I guess what this reminds me of is last month's meeting on the East Honolulu and how we calculate, how we think about water use in general, not just here. Agricultural water use needs to be cheap to support agriculture but it's not an, you know it's not a high value. So, like if somebody in the southwest on the continent is a purveyor, they'd rather sell it to somebody who can pay a higher rate than a farmer. And given Moloka'i's aspirations to be a certain kind of landscape, I think it'd be useful to disaggregate kind of how we think about demand and not just agricultural and domestic or municipal but also like unpacked regionally because the value and access to water is, value is high on West End, access is low. And it's plentiful. I really appreciate those pie

charts because I've been around the discussions around the Kualapu'u, but I had not seen the whole island in view. And I think regionally the value as you pointed out, the value sets but also like for the O'ahu Water Plans, we don't really have to deal with sort of population growth and agriculture are usually in the same areas except maybe Central. So, like really thinking about how the metrics are appropriate for Moloka'i and then different sectors might be helpful. And I'll think about how maybe if there's a way to sort of display the data or calculate things that might be more helpful for people to see or for you folks to think about. I just wanted to comment on that. You know that projections of growth, because Moloka'i doesn't, having spent time with folks there, population growth is something they're quite afraid of. Maybe really unpacking that in terms of what growth and water needs are in the future. Am I being clear?

Chair Chang: Neil.

Commissioner Hannahs: Yes. Bruce, Sherri, thank you very much for your work and I know your work and I know what you put into it and so I really appreciate how challenging this is and what you're dedicating in terms of your talent and your time to produce this plan. I was pleasantly surprised at the fact that the values are shared and I'm wondering whether or not using those values as guideposts for resolving the demand battles could be an effective way to proceed in the next steps ahead because if you said they're broadly shared that means West Side folks and East Side folks all believe in those things. So, isn't it a way to test solutions or plan action items by saying, what does this do? Does this align with our values or does this meet a need that has emerged or exists over time or will emerge in the future but doesn't really align with our values? Because then you have to revisit the values in that case. So, I would just encourage, you know, if we make this a tug of war over your needs versus my needs, you know you got winners and losers. But if we elevate the discussion to values that we share then how do we all participate in and manage this resource in a way that is consistent with those values and then maybe that has to change our demand profile and so forth. But rather it be a personal battle of West Side guys won this one, Eastside guys won that one. It's about no, our values prevailed and we adjusted our behavior and our expectations because we all believe in those values. So, I'll leave that with you or do you want to comment on that? Do you think that it's a pipe dream? Or is that a perfect world, yeah it works on paper but not in reality?

Sherri Hiraoka: Thank you, Neil. I would say that I think that that's what we were hoping to do with the values and we actually did dig a little bit deeper and under each of the values we do have some principles and took some goals and principles to really strive for. And our intent was to use all of that, as you were saying, to help identify water resource options and then to kind of look at those and say, okay what seems to make sense now. Not just you know yes, that can provide water for this demand, but does that align with the values and the goals and the principles. As far as whether or not that's a pipe dream, we'll see. We're gonna try. I'm sure that some of the aligning will feel very natural and will make a lot of sense and some of it might be a little bit more difficult and we'll have to do a lot more work. So, we're gonna try.

Commissioner Hannahs: Well, I think it's the right approach and good luck with it. A couple more thoughts, Commissioner Miike. While I was pleasantly surprised by that, I was shocked not to see more discussion of watershed management and the threats to watershed represented by an ungular population that is really getting out of control. Did I miss it or are they not speaking about that?

Sherri Hiraoka: They are speaking about that. We were just trying to figure out what to present in a short amount of time.

Commissioner Hannahs: Okay, okay.

Sherri Hiroaka: But yes, that did come up.

Bruce Tsuchida: Well no, I have to comment here though, Neil. I understand your question and as you know for the watershed plans we've been doing for Board of Water Supply for the various watersheds on O'ahu, we've dug pretty deeply into watershed management issues and ideas and potential projects. However, for Moloka'i any depth of watershed management thinking and planning is not and I have to emphasize is not part of our scope. The Water Department not to put words in their mouth, but basically said that's not their purview and that's not the kind of plan that they can or will fund for Moloka'i Water. So, although there is some mention of those issues and principles in our preliminary draft plan, we do not have the scope or capacity to dig deeply into those issues. Very important clearly but will not be part of this plan.

Commissioner Hannahs: I mean there's not much to if we keep letting the source be degraded, there's going to be less and less to distribute no matter how you look at it. And when I look at those values you got plenty of places to put those points. You know there's so many of those values address the issue of, are we caring for the 'āina at the source of where this water is? Are we encouraging the rain to fall? Are we capturing it and having it recharge and so forth. I don't know, I get maybe you're getting some pushback on that issue on creep of mission or mission creep or scope creep, but you can't talk about water without talking about source and the management of that source. The last thing is and this came up in an earlier conversation are you looking at the effect, the relationship between increased agricultural use and recharge because I saw that big spike in planned agricultural use. So, is that going to have a beneficial effect? If we make that investment to take that leap of faith then we're going to take water and I don't know whether it's coming from another ahupua'a or whatever and put it on the agricultural crops, is that going to yield an increase in the underlying groundwater aquifer?

Sherri Hiraoka: I guess I'm not sure how much you would want to see about that. I don't think that we could do any specific studies. I mean a lot of that is going to depend on the kind of agriculture, the type of irrigation practices, and whatnot. So, it's something that we can mention as a possibility, but I don't think it's something that we could quantify.

Commissioner Hannahs: I guess that's the point. Yes, please mention that because you do aerial spray that you know all this water, a lot of evaporation and so forth. You can put a

million gallons out there and it has very little effect versus more effective best practice delivery systems that are way more efficient and have the beneficial effect on the natural systems, I think gotta be in this report somewhere.

Sherri Hiraoka: Okay, thank you.

Commissioner Hannahs: Thank you.

Chair Chang: Larry.

Commissioner Miike: First to comment on what Neil just said. It seems to me that the more efficient you are in your irrigation practices the less water goes down to the aquifer. It'll never leak so, that's an issue. In my experience with Moloka'i and past Water Commission hearings, when you have a public hearing you are viciously attacked, but when the meeting is over people come up and are very gracious about it. So, take it with a grain of salt what you get. You know seems like you're getting personally attacked. My main question is looking at your map about various aquifers and the amount of water being used now, it seems to be that unless you start diverting water from the streams two or three beyond Kalaupapa, you're about maxed out on surface water usage. So, it seems inevitable that if you're going to have population growth decided by how people, where they want to live, you're going to have to move water across ahupua'a. The only alternative is that you force people to move to ahupua'a that have a lot of water and I don't think that's reasonable. So, I think it's inevitable that you're going to have to begin to share water across and no matter how people divide, unless they want growth that's going to happen.

Commissioner Hannahs: They don't.

Sherri Hiraoka: Thank you.

Chair Chang: Sherri and Bruce, you know sitting here at DLNR what I've come across in many communities but Moloka'i in particular, it is just the mistrust of government. And I think it's a missed opportunity by the county to not, watershed management I mean that is critical to the people on Moloka'i. And sometimes I think we put ourselves in these little vacuums and we say okay that's out of our lane, you know maybe that's a DLNR, that's the county, but the people on Moloka'i they look at it in a very holistic way and when we don't look at it through their lens I think we really miss an opportunity. Because you know people on Moloka'i and they are the most territorial people. I mean Western people do not tell Eastend people or Central people what to do. And they're all good with that. I mean they're very respectful, but I don't know when you talk about community, I mean what kind of community engagement and participation have you been getting? You know it is a challenging community, but Bruce you are probably one of the best people in this area to do this and your opening comment was that this is the most contentious, complex. I would say from DLNR I'm really challenged with Moloka'i, too and I realize you got to just show up and you have to be present. What are some of the challenges that you're

finding because this is such an important plan for them and it's for us as well. What are you finding?

Sherri Hiraoka: Well, I would say that there's technical side stuff and then there's community side stuff. Technical side stuff it's just and we've experienced this with any and all of the water planning that we've done. It's just the type of information we can get if we get information from different sources that don't always match up, different types of data sets so trying to figure out okay what can we do with what we have that seems to make sense and then what assumptions do we have to make to kind of fill in the gaps. So, I would say that's part of it for Moloka'i specifically there are a number of, there are more water systems than we've had to work with in the past so there's that public and private. And in some cases there's some interconnectedness between the systems so that makes it a little bit more interesting. I think on the technical side there's that. On the community side you know people have been really gracious. They're very sure to let us know what they think and what they want, but they've been very gracious and we've been very appreciative about that. But water is a precious resource and the water use especially geographically is changing and things that are in the land use plan are different from what you know the land uses that have been there in the past and so that is going to have implications for the different resources. And I think that's what we're coming up against and so the community is challenging us to help them figure out how to move forward on that.

Bruce Tsuchida: Yeah, more specifically if I may as you folks will know, one of the major problems with land use and planning and water for Moloka'i is Moloka'i Ranch. Their water system is from all accounts that we've heard dilapidated, deteriorated and in very bad shape. Their water rates are reportedly the highest in the United States. West End folks are saying they need a lot more water and they need water at much more reasonable rates, but they're not gonna get that anytime soon given the status quo with the ranch. The ranch has been up for sale for many years, hasn't been sold. Will it be sold? Who knows, but unless and until there can be new owners and new managers for the West End water system, I'm afraid that these problems will persist. So, no easy solution to that.

Commissioner Hannahs: I just want to speak up a little bit for the Moloka'i community because you have to pay the price for some of the post-traumatic stress that's been imposed upon them and people didn't listen. People, you know, colonized, people did things that really affected them, and they weren't a part of the process. And so yeah you take some blows maybe or you get some of that blowback as soon as you walk in the door. But when you sit down, they're at the table vigilantly. They show up, they're articulate, it's multi-generational, and when you start speaking to values, that's what I'm so hopeful about the values, they're really beautiful values and they just want to see alignment with those values. And you would keep the discussion there and then be true to that. Don't just waha, it can't just be words it has to be action and align with that. Things fall into place a lot easier than if you just have kind of a defensive action about, oh I didn't do that or she did that or he did that or the ranch did that and so forth. They don't lead to good places, but if we can get the values we can lead to better places.

Commissioner Kagawa-Viviani: I do have a question for Townscape. When you did these meetings were you meeting with people sort of communities separately in place? Did they have an opportunity, you hear everybody, but do they have an opportunity to hear each other directly or go to those places you see? I mean okay so that has been part of the process?

Sherri Hiraoka: We did both. We did individual small group. We did kind of pop-ups in different communities where we had a table set up. People could drop by; we were open for like several hours. We could talk story, that kind of thing. And then we also did have the larger community meetings with everyone.

Commissioner Kagawa-Viviani: But do they have an opportunity to hear each other sort of outside this draft? I know they probably talk on island, but to see the implications of if West End needs more water then these guys might not, might see a decline. You know has there been the ability to have that discussion and then also in your plan are you including, I've seen this done you know like potential scenarios as straw man, straw people to shoot at. Is that incorporated into what you folks are gonna do like here's one scenario, what do you think? Here's another. Is that in there?

Sherri Hiraoka: That is something that we're kind of still working on because we are still revising the water demands, but that is something that's pretty interesting. It sounds like something that could be helpful in I guess helping people to understand the perspectives of the different people and the different parts of the island and the different types of water needs. So, thank you.

Commissioner Kagawa-Viviani: Yeah, I think I saw it in written testimony people don't want to be feeling like they're pitted against each other so how can this process try to bring people together or understand where that compromise lies? You know here's one extreme situation, all the water goes to West end; okay, that's unacceptable here. Okay, keep it all on the East end; okay that's unacceptable. So, it might help people sort of get more tangible and focus on solutions, so I just want to suggest that. And I'm sure there are other good ideas that come out of community.

#### PUBLIC TESTIMONY

Norman Rizk: Yes, my name's Norman Rizk and I came to kind of flesh out some of the things that Sherri and Bruce are talking about the West end. I'm the president of the West Moloka'i Association. It's an organization that represents owners of 811 properties in the West end and the owners and their families are actually about 2,000 people. The whole population of Moloka'i is 7,300 so it's not a small group and what I would hope to do is give you a brief view of the West end from the residences' point of view, filling out some of the things that were just discussed by Sherri and Bruce. And I just want to say from the beginning that we have a lot of confidence in Sherri and Bruce trying to tie all this together and bring people together around a solution which I do believe is very possible given the amount of water on Moloka'i. We're only using nine percent of the sustainable

yield right now. The concern has been this, on the West end, has been mainly because of our numbers and being on the driest part of the island. We still only get about five percent of the water and we get our water from and our rate payers too, Moloka'i Public Utility, which is a utility owned by an offshore company Guoco, a corporation domiciled in Hong Kong. So, it's not just the ranch, it's the owners of the ranch and historically management decisions are pretty much forcibly based on the oversea owner's financial goals, not on the needs of the people of the West end. This was most obvious in 2008 when they tried to shut down the whole water system and we were threatened with getting 50 gallons a day of water by trucking. So, this is why it's such a sensitive point. Things are better now to a certain degree, but access to affordable water is still a huge issue. Right now, we're provided with only very expensive potable water at about seven to eight dollars per thousand gallons. And because our largest lots are Papohaku Ranch Land lots are zoned agricultural, we are required to devise "farm plans" dedicating at least 51 percent of the property on the lot to general agricultural use to obtain a building permit. So, this is nearly impossible without any ag water. So that's a major problem. Now 50 years ago if you look back, the West end development plans from these offshore companies were mainly those of a high-end resort, but I would say the West end in the 25 years I've been there has morphed into a community that shares many characteristics with the rest of the island. Our HOA or Homeowner Association, in fact, just changed the CC&Rs to encourage rather than prohibit commercial agriculture. It's part of what Sherri was talking about. Essentially none of our members really want a densely populated resort with widespread commercial franchises, so I'd like to put to rest any fears in the community that granting water would mean explosive growth. Nobody in the West end wants explosive growth either and people move there for the values. So, in fact if you do a survey as we've been doing this last month of all of our owners on the larger lots, these are 50 to 20 acre lots, about a third of them right now living on about 450 acres say they want to use water right now for small-scale agriculture, reforestation, and erosion control. And the erosion control is a big deal because of the ungulates trampling the land and silting out the reefs every time it rains. (*Chair Chang exits meeting briefly.*) So, I think what West enders would like would be to grant an appropriate amount of ag waters for these purposes. We could work out the exact recommendations with Townscape. We'd also have to figure out the infrastructure of financing and whether there's any Federal infrastructure dollars that could help. Many people in the West end would like the County to take over the water system since we're not sure that Guoco has our best interests in mind or shares our values. If we had some ag water we could supplant the use of potable water for planting which is really inappropriate, not financially viable. And it would also settle the litigation and the increasingly divisive disputes over rights to groundwater from the Kualapu'u Aquifer which is being potentially oversubscribed. So, these things are all possible. It's a question of setting aside the differences and coming together to express values that I think many, many people share. And about Townscape, you know a lot of our people were really upset after the first draft, but I think Sherri and Bruce have really, really addressed that. We had like 150 letters and emails the first draft, but we have a lot of confidence in them and we very much appreciate their working, in as Bruce said, a contentious environment. And we want to collaborate with them. That's what I'd like to say about it. Mahalo for your attention and it is true that your eventual decision will help determine the fate and character of the West end of the island, but I do think it is a

solvable dilemma and the resources are there. It's more a question of people coming together.

*Commissioner Hannahs thanks Townscape, oral testifiers, and those who provided written testimonies.  
(End of public testimony)*

Commissioner Hannahs: So, when might we see you back with something, with the next step, Sherri?

Sherri Hiraoka: Well, it's going to be several months. We're revising still the water demands and then we need to go through the process of identifying the water resource options, putting together a public review draft to share with the community, and at that point we can come back and brief you on that.

Commissioner Hannahs: Six months, two months, five months?

Sherri Hiraoka: It'll probably be early next year.

Commissioner Hannahs: Right, hope to see it before the end of my term in June.

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

September 19, 2023 (Tuesday)

October 24, 2023 (Tuesday)

*Chair Chang re-enters meeting.*

The meeting adjourned at 2:08 p.m.




Respectfully submitted,

*'Iwalani Kaaa*

‘IWALANI KAAA  
Commission Secretary

APPROVED AS SUBMITTED:



DEAN UYENO  
Acting Deputy Director

WRITTEN TESTIMONIES RECEIVED:

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