

**MINUTES
FOR THE MEETING OF
THE COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: September 19, 2023
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 841 8030 7799

Online link to the video recording of the September 19, 2023 Commission on Water Resource Management meeting: <https://vimeo.com/870950451>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 09:04 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. She read the standard contested case statement and took a roll call of Commissioners and introduced Commission staff.

The following were in attendance:

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

STAFF: Mr. Dean Uyeno, Mr. Ryan Imata, Mr. Neal Fujii, Dr. Ayrton Strauch, Ms. Alexa Deike, Ms. 'Iwalani Kaaa

COUNSEL: Cindy Young

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

20230919 00:06:31

A. APPROVAL OF MINUTES

August 15, 2023

PUBLIC TESTIMONY – None**20230919 00:06:53****MOTION: (HO / MEYER)****To approve the August 15, 2023 minutes.****UNANIMOUSLY APPROVED****(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI/HO)****20230919 00:07:28****C. NON-ACTION ITEM / INFORMATIONAL BRIEFING****1. Update on Water Resources in the Lahaina Aquifer Sector Area**

- a. Wells in the Fire-Impacted Area**
- b. Interim Instream Flow Standards**
- c. Water Management Area and Water Use Permit Applications**
- d. Water Resource Alternatives**

PRESENTATION GIVEN BY: Ryan Imata, Dean Uyeno, Dr. Ayron Strauch

DEAN UYENO: Good morning Chair, good morning Commissioners. Dean Uyeno, Stream Protection and Management Branch and currently Acting Deputy Director. We're providing updates to you folks on the water resources in Lahaina Aquifer Sector Area. We've divided it up into four sections. First is wells in the fire-impacted area, Interim Instream Flow Standards (IIFS) & Water Management Area, and Water Use Permit Applications, and lastly water resource alternatives. Ryan Imata will be available on Zoom, so he'll be presenting the first section regarding wells in the fire-impacted area.

RYAN IMATA: Good morning, Chair, Commissioners, members of the public. For the record, Ryan Imata, Hydrologic Program Manager for the Ground Water Regulation Branch. I'm going to be presenting you an update on the wells in the fire-impacted area. So, a couple of days after the wildfires devastated Lahaina, one of our concerns was wellheads in the fire-impacted area. We put a map together as soon as we could find out the extent of the damage and we superimposed both the fire-impacted area and the wells that were in the area and subsequently requested our Conservation and Resource Enforcement (DOCARE) officers to go and do some reconnaissance and to see what the status of all of the wells are. So that's the map that we based our initial reconnaissance on. You'll see the orange is the fire perimeter and the green are the wells in the impacted area. So, I'm going to go over what our officers found for each of the wells in the area.

Here's a summary of all of the wells. There were twelve wells in the impacted area. The cliff notes is that two wells appear to sustain some damage. The initial reconnaissance said that one of the wells, I think one was Lahaina Shaft, I'm not sure if it was Pump A or

Pump B, appear not to be impacted, but there were some impacts above ground of pump equipment. I'll go through each one of these in the subsequent slides.

The first well can see is 5240-001, that's Mill Shaft Pump C. That's an abandoned well, appears not to have been impacted. Photo #3 is 5240-002 which is Lahaina Shaft Pump B appears to not have been impacted. That's a below ground vault, so I think that was kind of protected from the impacts of the fire.

Photo #9 is 5240-003, that's Lahaina Shaft Pump A. Again, that's similarly below grade vault, so the impacts were not as significant. Photo #11 is 5240-005, the Methodist Church well. That one, the pump house appeared to be burned down and there were remnants of the pump house surrounding the well, but it's kind of unclear regarding the wellhead itself. We have to follow up and have our Conservation Resource officers go out and check out that wellhead.

The numbers are out of order, but 5240-002...we went over these already. I think that's a duplicate slide. They do show additional pictures of the vaulted area.

5240-007 is Lahaina Recreation Center. That's another irrigation well that appears not to have been impacted because it is in the below, like a vault below ground. The next well, the pump house appears to be intact, 5240-008. That's the second Lahaina Recreation Area irrigation well. Appeared not to have been impacted.

5240-009 Kahoma Irrigation Well, that's a condo irrigation well that appears not to have been impacted. 5241-001, the Lahaina Surf building pump house. 5241-001, that's an irrigation well, appears to have sustained some damage, but again the wellhead, it's kind of unclear as far as the integrity of the wellheads. So, that requires some further investigation. That's the second of the two impacted wells.

These again, that 5341-001, that's the Wahikuli Pump L appears to be below ground and not impacted by the fires. 5341-002 is the Front Street House well, that's an unused well. Clearly appears not to have been impacted.

This last one is 5440-001 Oil Road. That's the Wahikuli Irrigation well. That appears not to have been impacted by the fires.

Summary, none of the Maui Department of Water Supply's municipal water system well sources have been impacted. LIC (Launiupoko Irrigation Company) did inform the Commission that one of the pump controllers of one of the two pumps in Lahaina Shaft A was damaged and is not operational. LIC is using their remaining pump in Lahaina Shaft A at about 1,000 gpm and reduced down to 700 gpm at night to deliver water to the lower Makila Reservoir. And then reiterating that our officers' inspection on September 3rd and 4th appear to show that only two of the wells in the fire-impact area have sustained fire damage but do require some follow up to determine the extent of the damage of the wellhead...I think we're entertaining questions after the entire presentation, but I'm happy to take any questions now if you have any.

DEAN UYENO: If I can just add...one of our concerns regarding some of the vault wells, as we see here, Pump B, is some of the runoff or when there are high rainfall events, runoff, overland flow, getting into these vault wells. We are working with the well owners to shore up or help protect, add some level of protection to these well sources. In the meantime, we have worked with FEMA (Federal Emergency Management Agency) and they are in touch with EPA (Environmental Protection Agency) to provide some BMPs (Best Management Practices, put some BMPs in place in the interim. We do also have concerns and so we contacted, Joanna Seto of the Department of Health regarding water quality concerns in the fire-impacted area. We did also make FEMA aware of some of the wellheads just in the process of cleanup efforts to help ensure that none of these wellheads are damaged in the process and if they're going to go in with heavy machinery. We have provided them these reports and our preliminary information that we sent to our DOCARE officers to assist in, help them identify these locations in the aftermath of this event.

COMMISSIONER KAGAWA-VIVIANI: Thanks Dean and Ryan. So, this is like the status of the infrastructure, but what do we know about heads and chlorides current status and pumping rates as they've changed pre, post-fire?

RYAN IMATA: I don't have any updates right now on head levels or salinity levels. I believe that Department of Health and EPA is taking a look more at water quality issues, but I don't have any updates for you right now.

CHAIR CHANG: This presentation, Dean, is on our website too, right?

DEAN UYENO: We will post it after this.

CHAIR CHANG: Ok, you will post it. Alright.

COMMISSIONER HANNAHS: Question. So, do we have an idea of when we're going to get that information? Pumpage and water quality.

DEAN UYENO: At this point we haven't reached out to the well owners. I think it's certainly something that we can do. We've just been kind of sensitive to the situation out there. We're not sure if we're able to even contact some of the well owners at this time, but that's certainly something we can work on.

COMMISSIONER HANNAHS: As we think about rebuilding infrastructure, how are you going to prioritize that?

DEAN UYENO: As far as the wells go? It will be up to the individual well owners, I believe, in what their future plans are in rebuilding and how they intend to use the wells.

COMMISSIONER HANNAHS: So, those permits were allocated based on what we knew about sustainable yield and water quality then. So, isn't it pretty urgent to get the

information about what the water quality is now and how that affects sustainable yield so that we can know whether our permits can be retained at their current levels? Or do we have to make adjustments?

RYAN IMATA: We should be clear that there are existing water use permits that were applied for, but as you'll see as we go further into the presentation, that we do need to act on the water use permits. In terms of prioritization, we will present it to the Commission and the Commission will make the decision on how to proceed with each of the allocated amounts. In essence, there are no allocated amounts, but I do hear what you're saying, Commissioner, that I think that we do need to assess first of all the availability of water. Quantity-wise, I don't think that's really going to be...sustainable yield is not so much impacted by the fire damage, but certainly water quality may impact the availability of water. We're going to have to make that assessment prior to bringing existing and new water use permits before you in the near future.

COMMISSIONER MIIKE: I understand that some of these were not working pumps, but are they all out of commission right now?

RYAN IMATA: I think Lahaina shaft A is online. But as far as the rest of them, they may be operational, but as you saw with the devastation, for example if the...and I'm sorry I don't know the extent of the end-use areas, I don't think we were able to superimpose that. But for example, the Lahaina Recreation Center. My assumption is that the recreation center and all of the irrigation that is required had been impacted by the fires. The wells could be operational, but whether they need that water right now, that I don't know.

COMMISSIONER MIIKE: The wells that are in the affected area, they were used to supply water to the burned-out area?

RYAN IMATA: Yeah, so what I'm saying is that we haven't superimposed the end-use areas of those particular wells. I think our primary concern right now was to look at the wellheads because if the wellheads were compromised, say one wellhead was burnt and was exposing groundwater to surface runoff and contamination. That was our immediate concern and so that's what we looked at initially. But yeah, we can certainly look into the end-uses and see if those were in the affected areas to see if the wells, if they're currently online and if they need to be brought online in the near future.

COMMISSIONER MIIKE: That was the reason I asked the question was that, if they're not functioning then what would the users be using in place? And your answer seemed to be that they don't need it because they can't use it.

RYAN IMATA: Yeah, like I said, we hadn't superimposed the end-use areas onto the map, so you're right. If the areas were impacted, they can't use it, then they're not going to be using it.

COMMISSIONER KATAYAMA: Thank you, Chair. Thank you, Ryan. I guess from a 30,000-foot perspective, can you put in perspective for us as Commissioners, how are you balancing the priority with well restoration, with community use. We have a lot of wells that are, right now, inactive, but somebody is working on a priority of restoration. I guess if you're serving domestic water use versus irrigation, hopefully domestic water use gets a higher priority. I think in restoring use, you have kind of several issues that you need to work on. One is stability of the wellhead. I assume most of these wells are electric powered, so you got to restore electrical service to that and then distribution service to get to the affected communities. Who is working on that balance and prioritization? And are you able to help guide us through this process as we look at how to allocate the water or if the water usage is well within our maintaining the aquifers?

RYAN IMATA: Thanks for that question, that's a good question. One thing that I will note is that as we summarize these 12 wells, we found that they were all for landscape irrigation or park irrigation. And I don't think there is a prioritization in the sense of having municipal sources. As we proceed with the designation, that's part of how we look at designation and prioritization, is really to present to the Commission the bigger picture of all of the applications for all of the wells in the area, so that the Commission can issue allocations based on that prioritization. Of course, we'll make recommendations to the Commission. Ultimately, the Commission decides on how to allocate for existing uses and also new uses because we got some new use applications for some of the wells. Again, the focus of this portion of the presentation is primarily on the status of the wellheads, so issues pertaining to allocations and how we make recommendations are going to appear later in this presentation. I'm not trying to not answer the question, but I think that those kinds of prioritizations can be addressed in the subsequent portion of this presentation that will then also address a lot of other issues, you know regarding surface water and infrastructure upgrade. Because that's where I think where there are going to be bigger concerns about being able to provide domestic water and prioritization. It's coming further in the presentation.

CHAIR CHANG: Ryan, if I might. The purpose of this was really to provide you with updated facts. CWRM (Commission on Water Resource Management) is working with DWS (Department of Water Supply). I do want to make very clear, the Water Management Area, the West Maui Designation, that is still in effect. So, there is going to be a presentation on what staff is doing on that. But this was really just to provide you information and the community on the wells and then walk you through all of the different phases that we're going through. I think as Ryan said, a lot of the questions that are coming up may be answered as we go through and talk about the West Maui Designation process, where we are in the permits and then what will be coming forward to the Commission. We also are trying to be really sensitive. Maui Board of Water Supply, they are just, they're triaging. And so we are, likewise, trying to be a support system to them, but I think for purposes of this presentation it was to provide you a status update on the status of all of the wells that we are aware of.

COMMISSIONER HANNAHS: Chair, if I might though. Triage with respect to meeting people's needs is one thing, but I heard you say something that if the destruction of

infrastructure might have created certain risks to the resource, contamination of the resource, that needs to be priority. We can't let that happen, whether that old well is privately owned or not. It's the public trust that gets damaged if repairs are not made to protect the resource. Are we fully empowered to do that?

DEAN UYENO: Yes, that's why we've been meeting with EPA or FEMA, EPA through FEMA. They are the leads on the clean-up efforts. That's why we've notified them to prioritize getting, especially these vault wells that you see on the top there. To get some BMPs (best management practice) in place to prevent runoff from going directly into these wells. The good thing about some of these wells, Pump A, Pump B, is that they're mauka of the burn area, fire-impacted area. Some of the other agencies are, USGS in particular, they're doing some sort of sediment sampling from runoff, and so they are looking for heavy metals, VOCs. Fortunately, these vault-type wells are mauka of Lahaina town, so we don't anticipate the same contamination that we may see in Lahaina town area, potentially running off into these wells because they are mauka. However, we are still concerned with the runoff.

CHAIR CHANG: For purposes of priority, we're working along with unified command and priority first is recovery and debris removal. With the debris removal is ensuring that the existing infrastructure is safe from further contamination, whether that's our wells or whether that's near-shore waters. We've also been tasked with providing potential infrastructure requests for funding, so trying to make that part of the FEMA ask. We have been working with DWS as well as with our own team to provide both FEMA as well as the State; the Legislature has been asking us as well. We are trying to respond appropriately and accordingly...we recognize everybody's trying to do the best they can. We're working with initially just the debris cleanup, making sure there's no further damage, but also including, making sure we have monitoring measures in place. And then on top of that, what's the kind of funding that we need to request, either to improve, upgrade, or replace these facilities. This is sort of an assessment of where we are at this point and time. But that was the intent of at least this section of the presentation, was to provide you with that information.

DEAN UYENO: Our preliminary assessment with DOCARE was just to get a visual inspection of the wells, a visual assessment. Based on that, one of the things we're afraid of, again as Ryan mentioned, a direct conduit for contamination right to the aquifer. It appears at this point that the wellheads are still in place, even though some of them have sustained some fire damage. The next step will be to go in and inspect those two wells that were damaged to make sure that there's no potential for contamination.

COMMISSIONER KAGAWA-VIVIANI: Thanks Dean and this question is for Ryan or you. You know, that's great. I'm not really an infrastructure person, I'm mostly interested in the aquifer. What is our monitoring capacity for this area of West Maui? What is it now? And what could it be as we try to understand the status of the aquifer in terms of quantity and quality. Because they could provide access points for sampling if people are concerned. And not just source drinking water because these are the lower regions right? But people are concerned about coastal water quality and the groundwater discharge. So,

if you could expound on that and explain? Because maybe we have an opportunity to also put in more monitoring capacity.

RYAN IMATA: One of the things we've been working on with the Department of Water Supply on Maui and actually we've had, I think, two meetings in the past couple of weeks on jointly funding a deep monitor well in the area. So, we're exploring different places that we can put a deep monitor well and putting a priority on that so we can understand the profile of the aquifer in the area because there are so much competing uses and that will definitely help us to understand the coastal discharge and to help us to understand just the thickness of the aquifer and the transition zone. We definitely are working on trying to establish a deep monitor well. Also getting input from the US Geological Survey on where they think an appropriate deep monitor well is. That addresses the issue of the aquifer thickness. Now on water quality issues, I think that's a separate issue that we need to address. Water quality is something that we can work with Department of Health on. Department of Health is definitely the experts on understanding water quality and the impacts to the environment based on that.

CHAIR CHANG: If I can just add, too. Thank you, Aurora for that because we have been concerned about near-shore waters, as well. In coordination with DOH and EPA, they are installing, you might have seen several monitor gages inside the near-shore waters to monitor that. We realize informed decision making, so we need good data. We are trying to get USGS and the EPA to support the placement of more water quality monitors.

COMMISSIONER KAGAWA-VIVIANI: So, that's in the near-shore areas?

CHAIR CHANG: Yeah, and then trying to do some in the streams as well.

COMMISSIONER KAGAWA-VIVIANI: But, for this area if the streams aren't flowing, a lot of it is coming through groundwater, so if there is a good spatial...if one deep monitoring well is very expensive and it only gets you one point. If there's an opportunity to, I don't know. I don't know the infrastructure in this area, but if there are these abandoned wells, could they also be repurposed into shallow monitoring facilities? Just windows into what's happening to the aquifer because I think there's concern and the way to battle concern is with information. I just want to put the bug out there.

CHAIR CHANG: That's a good point. I will tell you what, we've got a lot more to the presentation. Ryan, take those notes.

COMMISSIONER MEYER: It might be helpful to reach out to the four or five public utility, water utilities on the West Side, starting up with Kapalua Water and then working down through all of the utility companies, including Department of Water Supply, of course and asking them how their production wells are doing right now, the status. And secondly, whether they have any quality results, any hits, any contaminants. And they ought to be able to get those reports almost overnight to you because they do have to stay on top of those things on a day-to-day basis. It might be useful information on a preliminary basis at this point and I think part of the issues that we'd like to be

enlightened about relate to that potable water supply and the public sourcing, if we could. It'd be getting the information quickly.

RYAN IMATA: We did reach out to LIC regarding the pumpage from Lahaina Shaft A, so we're in discussion with them now. I don't mean to put you on the spot, Commission Ho, but I know that the Department of Health and your Safe Drinking Water Branch has been in discussions with Department of Water Supply and the other purveyors regarding water quality. Don't quote me on this, but I don't think any water supply wells were super significant hits in water contamination. We will reach out and we'll work on Department of Health on water quality issues for sure.

DEAN UYENO: With that, I'll call up Dr. Ayron Strauch of our Stream Protection Management Branch about instream flow standards.

DR. AYRON STRAUCH: Good morning, Commissioners. Ayron Strauch, hydrologist in the Stream Protection Management Branch. I'm going to first talk to you about natural flow conditions in West Maui. We have a number of natural flow gaging stations that you have funded over the years through USGS and through in-house staff efforts. These are the natural flow condition stations, one on Ukumehame, one on Kaua'ula, and one on Honokōhau that we fund through the US Geological Survey. And one on Honolulu and one on Olowalu that CWRM maintains. We also have a number of regulated flow or instream flow standard monitoring stations throughout West Maui. One on Honokōhau at MacDonald's Dam, one on Honokōwai below the irrigation system, one on Kaua'ula that USGS maintains, one in Kahoma Stream down in Lahaina town, one on Olowalu and one on Ukumehame that are below the irrigation systems. I'll take you through the data that we have so far.

As you might be aware, West Maui has been in a pretty bad drought for the last few years. I'm going to present all of the data somewhat similarly in style, where we have a continuous record gaging station presented and then flow duration statistics which we can get into the details, or I can give you the summary. The flow duration statistics for the previous three years are compared to the 30-year window which we made instream flow standards on. I'll start with Ukumehame. The medium flow estimated for Ukumehame is about 5.0 cubic feet per second or 3.23 million gallons per day. In the last three years, our monitoring has shown a 22% decline or 22% less at median flow than what would be predicted. This is natural flow conditions and under low-flow conditions, 8-10%.

On Olowalu, we only have about one years-worth of data, so I'm not going to present a set difference, but compared to USGS estimates, we are just about there. Keep in mind that USGS estimated flow at the Upper Olowalu intake and this location's at just above the Lower Olowalu intake, so there is a little bit of uncertainty with regards to natural seepage loss that we've been trying to address with seepage runs funded through the US Geological Survey.

On Kaua‘ula Stream, we’ve seen about 40% reduction in stream flow across flow duration statistics compared to what would be estimated naturally in the stream. Median flow is about 3.3 mgd, low flow is under 2 mgd in the last three years.

And then in Honokōhau, this is the gaging station above the Honokōhau Ditch Intake above all the groundwater gains. The 30-year estimated median flow was about 13.6 mgd and the last three years we’ve only been at only 10.7 mgd. Lower flow conditions are in the 5-10% less than predicted range.

Why might that be? Well you’ve probably seen this slide from me before. We’ve had less rainfall. There have been continued declines in rainfall, especially in the mauka portions of these watersheds for a number of years. This is data from long-term trends from 1920-2012, from 1983-2012.

Here is a different data set from 1990-2009 broken down by watershed, percent decline in rainfall. As you can see, it ranges from 7%-12 or 14% decline by watershed.

More recently, this is monthly data from the Pu‘u Kukui rainfall station that Maui County funds through the US Geological Survey. The top graph, the black line is the average monthly value for that location from 1978-2007 and the bars represent each month’s cumulative total per year over the last 3-4 years. As you can see, we’ve been below average consistently for the last 3-4 years. Another way of looking at the data is the cumulative rainfall deficit. Looking at the cumulative amount of rainfall that we are not receiving at this location over time. As you can see from the graphs, the black line is the average and the gray line is where we’re at as of July 2023. We are just not making up the reduced rainfall in the dry season. Essentially, we’re in a new climate pattern.

With that in mind, I’ll talk to you about instream flow standards. In March of 2018, you approved instream flow standards for four hydrologic units in West Maui: Ukumehame, Olowalu, Launiupoko, Kaua‘ula.

We have a monitoring station below the Ukumehame Ditch. The instream flow standard is established at 2.9 mgd which is represented as what we knew as the Q60 flow or the magnitude of flow that occurs 60% of the time, which means naturally 40% of the time there isn’t enough water in the stream to meet the instream flow standard. This is the monitoring that we have the last three years. This is not a real-time station. We actually visit the station quarterly, depending on our budget. We were last there at the end of June and as you can see, during the wet periods there is obviously more water and during the dry periods less water. That would be expected based on natural flow conditions and the current instream flow standard is established at Q60 flow.

These are two pictures depicting Ukumehame Stream. One in lower Ukumehame, just above the highway and one in upper Ukumehame, above the USGS gaging station. As you can see, there were taken on the same day. The Ukumehame like most West Maui streams is a losing stream meaning water naturally recharges the aquifer as it flows downstream.

Ukumehame also supports one of the most diverse assemblages of native and amphidromous species in West Maui. There are three of our amphidromous 'o'opu and then hīhīwai.

Olowalu, last year we did an extensive update on Olowalu and potential violation following that recommended mediated settlement. Olowalu Water Company has modified the diversion to fix the leaks. They have provided for the necessary flow through the diversion or over the diversion through these low flow channels to ensure that they are meeting instream flow standards and they've modified the existing accordingly.

We also have a newly established instream flow standard monitoring station immediately below the intake and we only have a few months of data, so it's too early to make any conclusions.

We did conduct biota surveys on Olowalu in July and as you can see, similarly to Ukumehame, Olowalu is a losing stream. Both locations are above the lower Olowalu Ditch intake. This is the Lower Olowalu Stream at about 200 feet at Upper Olowalu Stream, about 400 feet. Also a losing stream.

In Kaua'ula, I believe in April of 2022, Commission voted to suspend the current instream flow standard in order to provide for the traditional customary practices and domestic needs of kuleana families in the valley. Based on new gaging data provided by US Geologic Survey that the Commission has funded, we now know that there is insufficient water to meet the IIFS at the upper diversion. The tradition and customary needs of the Kapu 'ohana in the valley, the kuleana domestic needs, the traditional and customary practices below the siphon, and the agricultural needs of Kamehameha Schools.

For example, in July while we were there conducting biological surveys, 4.2 cfs or 2.7 mgd was flowing over the dam at the upper intake; however, no flow was observed at the siphon. The only water that was available downstream of the siphon is what was being released at the Kaua'ula siphon, that's on the right.

That means that if the operator were to meet the IIFS at the upper diversion, there would be no water available for the Kapu 'ohana, which gets their water via the irrigation system.

We also want to make sure that we're protecting instream values below the site, including water available for traditional and customary practices and for native amphidromous biota.

There is also domestic need for water via the system. These are the sand filters that provide water for the kuleana families.

I just also want to point out that Kaua‘ula Stream has substantial seepage loss as described. It starts even above the stream diversion. The stream diversion identified in that little brow rectangle. The USGS gaging station is just above it. Based on seepage runs conducted by US Geological Survey, the seepage loss in higher up in elevation and continues all the way down to the mouth. We do know that when we restore sufficient flow below the siphon, we get recruitment of amphidromous species. We’ve seen biota in Kaua‘ula Stream below the siphon in previous years.

Our current status is that on the left-hand side we have two instream flow standards. The goal was to provide mauka to makai flow as well as water for traditional and customary practices, other instream values, domestic needs, and meet some of the agricultural needs of the region. However, we are currently getting a substantially dry stretch of stream and there is not sufficient water to meet all of these needs. There might not even be sufficient water in the stream naturally to run mauka to makai based on estimates of flow that USGS is providing. I’m suggesting that in order to meet traditional and customary practices, to meet domestic needs, and to protect the stream better, we eliminate the instream flow standard at the upper elevation and we modify it at the siphon so that we protect all of those instream bodies that occur below the siphon. So, we want to make sure we’re protecting traditional and customary practices, domestic needs, and Kamehameha Schools tenant needs.

In Kahoma, we have instream flow standards for Kahoma Stream and Kanahā Stream. Kanahā Stream provides for domestic water needs, county. We don’t currently have monitoring there, but USGS is planning on installing a station that Maui County funded. In Kahoma, we’ve been monitoring down in Lahaina town. This is the Kahoma intake at about 1,800 feet in elevation.

Also, monitoring in the stream in Kahoma Valley.

Here’s the data from the USGS station from Lahaina town. We estimated based on USGS data for 2014 that there should be about 2.65 mgd in the stream at about this elevation. Now this doesn’t account for the unregistered stream diversions that have been found following substantial restoration of stream flow. So, this is regulated flow. We have seen consistently 40% less water and this kind of trends with previous estimates across West Maui that there’s just not the rainfall at the higher elevations to sustain stream flow.

We have at least three, if not four unregistered stream diversions in Kahoma Valley that meet domestic needs and irrigation, small agricultural plots.

Finally, in May of 2021, instream flow standards were established by the Commission in Honolulu and Honokōhau Valleys.

In Honolulu, the Tropical Storm Lane and Olivia destroyed the intake, so that intake was no longer operational by Maui Land and Pine. On the lefthand side is actually Honokōhau Ditch that runs underneath the stream. That’s the concrete structure. Honolulu flows naturally over it as you can see. Upstream and downstream of this intake,

approximately the same, the stream is also losing reach, so it doesn't flow at the mouth. We've been documenting that the percent of time it does not flow at the mouth for the last three or five years. It's been about 70-80% of the time it does not flow at the mouth under natural flow conditions.

Now those same Tropical Storms Lane and Olivia cut a new channel around Diversion 770 Aotaki Weir which is the primary intake for Honokōhau Ditch. That channel is circled in red on the lefthand side. That provides for a continuous flooded path downstream.

We also have instream flow standard monitoring at MacDonald's Dam in the valley below the return of water at another added adit called Taro Gate.

We have estimates of groundwater gains in the stream below the USGS gaging station. We are also making measurements in the ditch and continuously monitoring instream flow standard down in the valley.

This is our monitoring station under low flow conditions in Honokōhau.

This is the continuous record gaging stations for USGS data, in black, and our continuous record in blue. The bottom screen is the last six months or seven months or so. Essentially under low flow conditions, we are cutting millions of gallons into decimal points to maintain the instream flow standard. I would say the operators, despite the remote location are doing a pretty good job being responsive to returning flow when needed to the stream. Just overall, we don't have as much water available for things like the County, who gets their water out of this system as well.

COMMISSIONER MEYER: Do you have a feel for what the springs around McDonalds, above McDonalds have done over the last say year and a half, two years.

DR. AYRON STRAUCH: Not in terms if there's been a trend in spring flow. We've only made a few point measurements. They're really difficult to get to and we just don't have the time or budget to make continuous monitoring of those sources. We have maybe three different measurements. As USGS estimated, the springs and development tunnel discharges vary overtime with recharge, so as it rains more, there were more groundwater gains to the streams. We are also monitoring Honokōhau Ditch at Māhinahina Weir. This is just after the County gets their water. It's primarily installed as a way to monitor potential system waste. Water was being diverted out of Honokōhau that wasn't being utilized by the county, so just want to make that note.

COMMISSIONER KAGAWA-VIVIANI: it's pretty clear that rainfall's declining and streamflow is declining. Input into our aquifer bank account is declining. Two questions, what is surface water usage versus groundwater usage withdrawals like in the area? Just to orient myself, is it mostly surface water withdrawals or is it 50/50? Do you know?

DR. AYRON STRAUCH: in the County systems, for example, that rely on both surface and ground water, I would say it's probably about 60-70% surface water. But, Commissioner Meyer might have a better idea off the top of his head.

COMMISSIONER KAGAWA-VIVIANI: The other question is, the USGS did a seepage run, that's a snapshot in time. Does the gaining, losing locations, can that change with the aquifer status? Say, the aquifer is filling up because there's a rainier year. Does that length of gainings change continue downward?

DR. AYRON STRAUCH: There are specific points that are known springs that discharge directly into the stream. And then there are more diffuse locations that might provide for more groundwater flows into the stream. In Honokōhau, there are at least four known locations where spring water flows into the stream. That's what contributes to those gains. You can see water pouring out. Two of them are tunnels, two of them are just points. The other locations that are known as gaining streams, they are primarily in the region of high elevation dike water. They're very well defined and as soon as the stream leaves that high elevation water region, they start losing streamflow. That boundary doesn't vary over space.

COMMISSIONER KAGAWA-VIVIANI: The third question I have is, we have these records of stream flow, so say they may be above the diversion, but they're declining and you might attribute it to changes in rainfall, but if they're responsive to basal and it's all dike...

DR. AYRON STRAUCH: These are at 1500, 1800 feet in elevation far above the basal aquifer.

COMMISSIONER KAGAWA-VIVIANI: So, they're really telling you the mauka signal, they're not telling you as much about.

DR. AYRON STRAUCH: Most of Maui, the basal aquifer does not interact with the stream at all.

COMMISSIONER KAGAWA-VIVIANI: This is just to help me understand some of the numbers and the picture you are laying out.

COMMISSIONER HANNAHS: We're getting less rain. Are we managing lands up in the upper areas to optimize the capture of that rain. Are you in communication with West Maui watershed partnership? Are they fully funded? Are the things that they've identified need to be done to better capture the rain that we do get.

DR. AYRON STRAUCH: We work hand in hand with DOFAW, as our missions align. I'll just make a generic statement that they're not fully funded just as we are not fully funded they could use obviously use more resources to protect the forest, to revegetate. We've had a lot of mauka regions that have either been invaded by non-native species,

have burned, have been impacted by invasive ungulates. Now we have axis deer problems that we didn't have before. Everybody is scrambling to make the best use of their resources and obviously we could do a better job of protecting our mauka lands.

COMMISSIONER HANNAHS: Are there ways by policy or by rule we can condition investment in the optimization of capture with permits to withdraw the resource we get down the stream? You want to withdraw it, take care of the mauka and make sure things are happening there so we have it there for your use and for other people's use. Is there a way to condition that?

DR. AYRON STRAUCH: I'll just state that you are the policy makers.

COMMISSIONER HANNAHS: Can we see opportunities before us to where we consider that.

CHAIR CHANG: Yes. East Maui Irrigation, we are developing watershed management plans and having cost-shares. So, yes. We are trying to find vehicles to either incentivize or motivate others to share in the cost. As Ayron said, DLNR, we get underfunded, undoubtedly. I think people are beginning to appreciate what it means by having good watershed protection about how to manage invasive species, including guinea grass. Unfortunately, this heightened awareness may make funds available, but our team is working the best they can with what they've got. But we've also got great partners that we're working with. The watershed management partners have been excellent. We are seeking greater investments as well as cost-share with those users. I am trying to make sure that we are creating that condition, that they are sharing in those costs.

COMMISSIONER HANNAHS: In Maui Komohana, it seems like there is an opportunity with all the gush of resources coming in from all kinds of sources that maybe some of the resources, in addition to rebuilding can be put into the resource itself. Not just to our kanaka needs, but the needs of the 'āina, to supplement what we have. Second question, there was such a media coverage about that somehow having instream flow standards prevented us from fighting the fires, the wildfires. When I look at your pictures and see the minimal flow that's in the stream, in your view did the existence of those instream flow standards have any relationship in our ability to fight those fires?

DR. AYRON STRAUCH: No.

COMMISSIONER HANNAHS: He said, no. It had nothing to do.

20230919 01:23:18 - BREAK

DEAN UYENO: Good morning, Commissioners. Continuing on the agenda Item C-1, Update on the Water Resources in the Lahaina Aquifer Sector Area. We're going to talk about Water Management Area and Water Use Permit Applications.

As you may recall, last year in June, the Commission adopted, then Chair Suzanne Case's recommendation to designate the entire Lahaina Aquifer Sector Area as both a ground and surface water management area. The map that you see here shows the six groundwater hydrologic units, as well as the surface water hydrologic units. For groundwater, will go from the south, Ukumehame, Olowalu, Launiupoko, Honokōwai, Honolua, and Honokōhau. As far as surface water management areas from the south are Ukumehame, Olowalu, Launiupoko, Kaua'ula, Kahoma, Wahikuli, Honokōwai, Kahana, Honokahua, Honolua, and Honokōhau. In the second bullet there, what you see in bold are the reasons for designation which included harm to groundwater quantity and quality by saltwater intrusion, serious historic and ongoing disputes, climate uncertainty with drought and declines in rainfall and recharge. And then because there is an interaction and connection of both surface and groundwater, we believe that they should be managed in an integrated matter, hence a designation for both as water management areas.

The next slide describes the findings and justification with regards to the Commission's constitutional duties under the Public Trust Doctrine. Even though the Commission established instream flow standards for all the perennial streams in West Maui, except for Honokōwai, public trust uses remain threatened or unfulfilled. We had violations, just as an example, in October of last year we brought an action item before the Commission for a potential violation of interim instream flow standards in Olowalu. In November, as Ayron alluded to, there was a mediated settlement on that matter. Other public trust purposes that are threatened by the lack of stream water include cultivation of lo'i kalo and other traditional and customary Native Hawaiian practices which rely heavily on water in its natural state, of course mauka to makai flow and healthy native stream fauna. Another concern was the 2 mgd of stream water for DHHL or Department of Hawaiian Home Land that may be impacted by other off-stream non-potable uses in Kapalua and Kā'anapali. Lastly, overall designation expands the Commission's toolbox to protect water resources and regulate reasonable and beneficial uses of water, including public trust purposes. During the Water Use Application Process, the Commission can make a determination if a use is reasonable and beneficial and if any other public trust purposes are impacted.

This slide gives a short summary of the Water Code's criteria to designate an area as a surface and groundwater management area. As you can see on the upper portion under the surface water criteria, two of the three surface water criteria were met, including diminishing surface water supply and serious disputes. In the lower section you see the groundwater criteria that was met for six of the eight criteria, including increases in water use or authorized plan use, reaching 90% of sustainable yield, water quality degradation, diminishing groundwater supply, chloride content of existing wells are increasing, serious disputes, and then number eight, water development projects that have received any federal, state, or county approval may result, in the opinion of the Commission. As Ayron presented earlier, there is significant reduction in rainfall and recharge of the aquifer. Throughout the whole area, there have been historic and ongoing disputes. We did also want to highlight that DOH had submitted a finding to the Commission that the water quality in Honokōwai aquifer is being threatened.

Additionally, there is case law that supports the Commission's regulation of ditch systems, systems that cross multiple hydrologic units. Some of the maps in the following slides will show, for example Honokōhau which crosses multiple hydrologic units. There is also a cross-over and interconnection of the hydrologic units in Launiupoko. This is just an example of the Honokōhau Ditch system, how it crosses across hydrologic boundaries and so on.

This table that you see above is from the June staff submittal of last year on designation. It relates back to the groundwater designation criteria that when increase in water use or authorized plan use may reach 90% of the sustainable yield, that the Commission must designate. At Honokōwai we're already above 90% of the sustainable yield when you combine current use and authorized plan use. We also want to highlight here that DHHL's reservation of 770,000 gpd of groundwater is included in the authorized plan use figure. Also, Launiupoko aquifer, we were approaching 90% of sustainable yield. The table on the bottom left shows the updated twelve-month moving average for the month of August from 2022-2023. Groundwater use in Olowalu, Launiupoko, and Honokōwai increased. This is due to the fact that Launiupoko Irrigation Company and Olowalu Water Company have both installed pumps in their skimming wells to offset stream water use. So, LIC's skimming wells is one of the ones discussed earlier that was in the fire-impacted area and the reported water use in July from that well was 1.243 mgd.

This shows the pending well applications that were included in the table on the previous slide when we calculated that 90% of the sustainable yield was being reached. Just want to highlight here that the pending well applications on the bottom for Pulelehua 1, 2, and 3. These wells are intended to serve the affordable housing project of Pulelehua.

The six drinking water purveyors in West Maui, there's a total of six private water companies that provide potable and non-potable water. We just want to highlight that Maui DWS accounts for only about 23% of the total water use of West Maui. The resorts in Kapalua and Kā'anapali are served by Hawai'i Water Service Company, see in the center there. One of the reasons for designation was that there are users on the Honokōhau Ditch that take prior to the Maui DWS water treatment facility in Māhinahina. With water use permit allocations, the Commission can ensure that Maui DWS will receive its water that needs to serve its end uses.

This slide is also from last year's June submittal. It shows the water system sources and uses in the area. All systems, Maui Dept. of Water Supply and the private water systems rely both on ground and surface water. We just want to highlight the blue sections here. These values have to be updated as Launiupoko Irrigation Company and Olowalu Water Company have both installed pumps into their two skimming wells and now have two well sources each. The sections in yellow are end uses of the Honokōhau Ditch which show available flow under Q50 or median and Q90, low flow conditions.

This is just a map to show the complexity and the interconnection of ground and surface water between the hydrologic units from Honokōwai to Honokōhau via the Honokōhau Ditch.

Now, we'll talk about water use permits. Again, the effective date of designation for the Lahaina Aquifer Sector Area was August 6, 2022, which means that existing users had one year to apply from this date to file a water use permit application with the Commission. Water use permit applications were due on August 7th, but because the 6th fell on a Saturday, users were allowed to submit their applications on the following Monday, August 7th. The Commission sent out two notices, one via registered mail to all existing users who declared their uses, had registered stream diversions or well, and people who had obtained stream diversion works permits or well construction pump installation permits with the Commission.

To give you a brief rundown of the timeline of the Water Code suspension by the Governor's Emergency Proclamation on August 9th, Lt. Governor Luke suspended the State Water Code in response to the fires and this was part of the 3rd Proclamation. On September 9th, Governor Josh Green reinstated the Water Code in the 7th Proclamation for the wildfires. We want to highlight that the designation of the Lahaina Aquifer Sector Area remains in full effect at this time. The Commission staff at this time has begun inputting the Surface and Ground Water Use Permit applications for existing and new uses into our system, but we're proceeding cautiously and proceeding slowly out of respect to the Maui residents that were affected by the Lahaina fires. At this time, we're holding off processing. As I said, we are moving slowly in this matter because we're not certain who exactly has been impacted by the fires. As we're reviewing the applications at this point, we're slowly starting to reach out to the applicants.

This next table summarizes all of the permits that we've received as of last Friday, September 15th. The top row is the total number of applications we've received. Of course, G is for ground water use permit applications, S is for surface water use permit applications, E is for existing use, N is for new uses.

Just another look at the next system, Ukumehame in the south. Just shows the water use permit applications that we've received for the integrated surface and groundwater units. This map shows the well and stream diversions in Ukumehame.

Followed by a summary of all the applications that we've received. The blue are for existing, the green tables are the new uses.

Next for Olowalu, again you can see the ground and surface water sources in the hydrologic unit.

This is a summary of the applications we've received.

This is for Launiupoko, Kaua'ula, and Kahoma hydrologic units. This is one of the more complicated regions that we'll be looking at.

Here are the groundwater use permit applications for existing use.

Here are the groundwater applications for new use and the surface water use permits for existing use.

As well as a handful of new uses.

Lastly, moving into the Honokōwai, Honolua, and Honokōhau aquifer and surface water hydrologic units.

These are the groundwater applications for existing use. Just a note here, TY Management Corporation did submit information, but I believe it was in support of Hawai'i Water Service's application.

A handful more of existing groundwater permit applications, one new use application, followed by the existing Surface Water Use Permit applications.

Again, these are surface water use permits for existing uses in Honokōhau.

Continuing Honokōhau and one new use application received.

With that, we'll move into water resource alternatives. Any questions?

COMMISSIONER MIIKE: I'm sure a lot of people here are waiting to hear about what happened with the Emergency Proclamation and the suspension of the IIFS. From my viewpoint, whatever happened, it went around the wrong way. If you're going to be using off the streams, first you have to look at the fact that interim instream flow standards were set, which said how much water you can take off the stream. Rather than suspending the IIFS, what should have been seen as a competing use and if any water was going to be used for emergency fire or for in the future, putting water in the reservoir for fire. If it's going to come out of anything, it should have come out of the other users because these are competing users and the Commission has set up priority designations. So, all I'm saying is in the future, if the County is serious about setting something up like that, the County should apply for a permit and we should deal with it in the usual way as we do for permit applications. If there's not enough water for all the people applying, which seems to me that's what's happening already, then we deal with that and that process. Not just saying, "Oh, we suspend the water and the stream flows and take it out of the streams." That's the wrong way to do it.

COMMISSIONER HANNAHS: Going back to last November, because of the potential fines to Olowalu Water Company, we instructed them, and Kaleo Manuel was critical in negotiating a settlement where the moneys would not just come to State coffers but go into the improvement of the system for the benefit of the public trust as well as the benefit of Olowalu's own customers. Was that done?

DEAN UYENO: Ayrn, what was the status?

COMMISSIONER HANNAHS: Wasn't the reservoir for capture and storage?

DEAN UYENO: That one they had to do in three years. They had to get back with us with their plans to complete the work within three years.

DR. AYRON STRAUCH: They repaired the dam.

COMMISSIONER HANNAHS: And they did restitution for the cultural area?

DR. AYRON STRAUCH: They have been providing in-kind services, including the use of industrial woodchipper for the cultural lands to utilize. They have also been providing the staff to operate it. They first started work on the dam itself, fix the leakage, repair the dam to provide for fish passage, and meet the instream flow standard. That's what they've done up to this point. Their second or third phase will be to, assuming, drain the reservoir, dredge it, and repair it.

COMMISSIONER HANNAHS: They're acting on that?

DR. AYRON STRAUCH: Yeah.

COMMISSIONER HANNAHS: Your view, are they acting with the same urgency they've asked us to abandon policy? Are they acting equally urgent with their own investment opportunities?

DR. AYRON STRAUCH: I can't say one way or the other. We don't have the ability to keep tabs on them more than every so many months.

COMMISSIONER HANNAHS: When you look at this list of applications, there's a lot of business and land-owner interests here. And yet when I see the testifiers for this hearing, all we see is the community. So, if this is of such concern to them, if they have such interests in the outcome, where are they?

DR. AYRON STRAUCH: I can't speak for them.

COMMISSIONER HANNAHS: Maybe that's not a question for you to answer, but I mean are you in discussion with them outside of the hearing structure to really get them...these were people who opposed designation in the first place. Now they say the urgency of the wildfire risk means we should get rid of designation, we should eliminate instream flow standards. Where is the testimony to explain to us why they feel that's necessary?

DR. AYRON STRAUCH: I will state that we were in communication with regards to Olowalu and we've received an update via letter, written form, on the status of all their projects two weeks ago. As it applies to Kaua'ula, we had a stakeholder meeting with affected parties in Kaua'ula in July. We've been working towards a resolution that protects public trust uses.

COMMISSIONER HANNAHS: When I think about why we should designation an area, you're just supporting designation in those comments because when a community can't come together in and of itself, it needs somebody to help them. I want to commend our staff and the team with Kaleo's leadership, as well as your own work to help do this, to bring the parties together, to really put a list together that doesn't favor one party. It lists them all and allows us the opportunity to balance. The message needs to get out to the community that somehow doesn't want to be here that they need to show up to if we're to balance their interests. What's your timeframe for bringing your applications forward?

DEAN UYENO: We anticipate it'll be a while. There's over a hundred applications, we have to review it, recognizing we do have some staffing limitations, so we do have to prioritize. Also, we do need to take them to public hearing. If we go to public hearing and there are any objections then we may be in a contested case hearing format at that time, which means we'll have to reassess whether we combine them all or not or take them individually. At this point, we're just starting to review the applications, starting to process them, and it's hard for me to give you a definitive timeline at this point.

CHAIR CHANG: If I can just add, I've met with CWRM. The fires have really sort of refocused our attention to rededicate to prioritizing. I want to reassure everybody that the water management area designation is effective. We are in no way going to withdraw that. It is here, we're moving forward with that process. We want to be mindful, CWRM may end up doing more outreach to the community to try to, as you say, see if there's...I think Kaleo was really good at that, was really good at doing those conversations to bring competing interests before they come to the Commission. So that makes Commissions' lives a little easier. We want to emulate a lot of that process that he's been doing and make sure that we honor that process because I think that really does help. Again, we are trying our best with the capacity that we have, but also the priorities that we have given the fire. We are trying very hard to work with DWS and that's going to be the next presentation. What are some of the other options we're looking at. One, we are challenging both CWRM and DWS, how do we create this infrastructure so that we're focusing and utilizing public lands and not having to look at private lands so we have more control of the distribution and the allocation. We recognize that this is not an easy issue. We recognize that we need to be more mindful and thoughtful to this community. Everybody on Maui is sort of in a state of limbo so we don't want to push anything, but rather work with the community when they're ready. Our staff is just in the process of gathering all the permit applications, reviewing them. We would like to keep the Commission updated. This was intended to be an informational meeting, informational briefing only, no action. But really give you an update, as well as give the community an update. I say the same thing you do, Neil. Show up. If you really have concern, you got to show up and if you don't, I mean there's different reasons, but show up and participate. I would urge everybody, again it's not only participate before us, but when we're looking for funding at the Legislature. Mahalo to Senator Fevella for being here and Senator Keohokālole for being here earlier. We really need to work with our elected officials. I appreciate everybody who's here today, but staff is working diligently as they can to try to keep this process moving forward. I just want to reassure everybody here that the staff

continues to work to proceed with the designation process. Nobody has told us not to do it, so we are continuing to work full speed forward.

COMMISSIONER KAGAWA-VIVIANI: Dean or Chair, I just want to make a request that there's been discussion or requests to have the next meeting on Maui. Just as we had requested the Navy's presence quarterly to give us updates, I think it would be highly appropriate to request that over-represented private interests in ground water, which we know feeds the streams, to be present. I say this because the reason why designation happened was because IIFSs weren't working because the violators, including many of the applicants for...I guess my understanding of West Maui Land Company is it has many subsidiaries including Olowalu, including Mr. Tremble whose name I remember from that violation, were part of the group that were sort of spurning the Commission's orders. They were not, at least in earlier points in time, making good faith efforts to cooperate. I think carrot or stick, I think that designation sort of brought out the amount of resistance to cooperating. The narratives, last night I was going through my notes from June and back then there was the pleading to slow down, to slow down on designation. It was moving too fast. Climate change wasn't an issue. Oh, there's plenty of water. There's no disputes. We can handle it on island. And yet the evidence sort of pointed elsewhere and that's why we listened to evidence and took that step. It's hugely disturbing and made me physically sick to see those letters from Mr. Tremble. Interestingly cc'ing an affordable housing official on a firefighting issue requesting a policy roll out. And, I just want to say I think we as a Commission have extra work to prove that we are upholding State Code and it's obviously shaken people. I miss Deputy Manuel because he did do a lot of lifting and it means more work for us and we're just going to have to saddle up and do it, but I would request that we not be afraid to ask people to do their part. If we are to kahuwai pono as a Commissioner, it's not Deputy Manuel and he would say this. It's not seven of us, everybody. And especially it's not the people who have to take off work to come fly over, but the people who have been the beneficiaries. I don't want to demonize anybody, but we want to give people the encouragement to do the right thing. Maybe it takes more nudging. I have a toddler, I have to push him to do unpleasant things like brush his teeth. Obviously I'm speaking out of frustration. I think we can be a little more creative, assertive, and clearly with 277 pages of testimony, there is a pleading from the people we serve. I know we can't meet outside, we have to hold things in Sunshine. Let's think specifically about ways we can restore the public's trust in our ability to mediate this really complicated issue. I've talked to my students in class, Lahaina is our Colorado River. We're going to have to think real hard, use all the tools we can, technically, diplomatically, and whatnot to make it work. Thanks for letting me soapbox for a minute. I do think having the applicants or at least inviting them directly to be present at our next meeting would be helpful. We also need to hold a space where it's not going to become a yelling match. That's on us as the Commission. Let me know how I can help with it.

CHAIR CHANG: I appreciate that, Aurora. I do want to just address two points that you made. One, with respect to Mr. Tremble, CWRM, I have sent a letter out to him that the IIFS...he needs to comply with that. That the initial letter that I sent him, now that the Proclamation has been changed to unsuspend 174, they need to comply. Two, with respect to why isn't this meeting on Maui, I will share with you that was our initial

thought. But we did receive a letter from, in my mind very credible cultural practitioners who are from Maui who asked that we not hold the meeting in Maui for September, but we consider holding it in October. I honored and respected that request. We will try to be in October, come to Maui and hold the meeting there. Hopefully it'll be advertised and all those who may be impacted by this designation will show up and will share what they have to share. We want to be very sensitive to this community. I appreciate all of who you have shown up. Those of you who have to pay on your own money, your own time, taking off work. You're dealing with your own loss to come here because this issue is so important. Clearly the CWRM staff and the Commission, we greatly appreciate that you've taken the time to do...it's obviously a really important issue to you and I think that helps the Commission put in perspective. If it's important, you show up. So again, I appreciate that.

COMMISSIONER HANNAHS: You cited the letter, correspondence between you and Mr. Tremble and there are two other things I observed about that. Number one, you came to our Deputy's aid and honor and defended his performance and so did Mr. Tremble, he said he was a man of integrity. When I consider that and the testimony we're receiving, that number one we're understaffed and number two that he was very competent in his work, that's what leaves the public so perplexed as to why is he not there. You've declared it to be a personnel matter which we respect, but we'd urge you to consider that in your personnel review that he was considered effective by both sides of at least this issue. I think we could look to other parts of the State and say the same thing. Number two, we need the help. We need bodies on board who can hit the ground running. Our hope is that this is an expeditious review and that someday soon we will have a confident player back on the field.

COMMISSIONER MIIKE: I'm so old with this Commission that I was on the original Waiāhole case and many of you know how long that dragged out. Given the complexity of the Lahaina designation and the number of permit applications, I expect something like that to happen. Sorry, but I don't think we can make final decisions on the permit applications because somebody will object and ask for a contested case and when that happens, everybody who is asking for permits cannot afford to not participate. It's just a practical warning that this is going to drag out a long time. I think the sooner that we can process those applications, the sooner we can see the pathway to finishing.

CHAIR CHANG: Senator Fevella, when we come in for our request for more Staffing for CWRM, please consider it.

SENATOR FEVELLA: I always supported it.

CHAIR CHANG: You have, you have indeed.

SENATOR FEVELLA: It's up to the Governor to give you the money, right? You got to be asking the Governor.

CHAIR CHANG: Senator Fevella, you have been very supportive of the Department so we thank you for that. Thank you.

‘IWALANI KAAA: We have Sunshine Law violations happening on Zoom and I was hoping you could repeat the instructions.

CHAIR CHANG: Is it the chat? I will ask all of you on Zoom to not chat because it is a Sunshine violation. I apologize to you, I know you want to ask questions. We are going to take questions very soon or comments, but I would ask you that you not chat on the Zoom. I greatly appreciate that if you can honor that. I don't want this meeting to be where we have to stop it.

CHAIR CHANG: With that being said, we're going to move to the last section of this presentation which is a presentation on water resource alternatives.

DR. AYRON STRAUCH: Thank you, Chair. Ayron Strauch, Stream Protection and Management Branch. At some point in a few days post disaster, we were tasked with exploring how best to support the infrastructure needs of Lahaina with regards to water and whether that was related to developing a plan that identifies important surface water sources like reservoirs that could be utilized for firefighting capabilities or what other infrastructure needs the community might have to expand water use. This is a little bit out of what I would consider our wheelhouse and that we are generally regulators and protectors of resources and not developers. But understanding that we have the best on-the-ground knowledge of how these resources are integrated and the infrastructure that exists and the knowledge out there, we came up with a few alternatives with which the state might be willing to invest in to expand the availability of both potable and non-potable water, knowing that both are going to be critical moving forward to meet domestic water needs to meet the water needs of potential housing projects as well as the irrigation needs of the region. Whether that's for agriculture whether that's for a green belt whether that's for redevelopment of wetlands, you name it. I'm going to go over two alternatives that we have summarized here.

The first option is the expansion of R1 use. We've talked about this for a number of years that this is going to be a critical component of all water resource strategies in Lahaina. The expansion of recycled water use distribution and reservoir improvements are going to be articulated and then option two, repurposing existing sources or particularly Honokōwai Development Tunnel sources.

As you know the Lahaina Recycled Water Reclamation Facility exists in Honokōwai. This option one, I've identified a number of benefits including increased, storage of recycled water for distribution, reduced reliance on surface water for non-potable needs, reduced groundwater injection of recycled water, and increased storage of non-potable water for agriculture and firefighting capabilities.

The existing Water Reclamation Facility gathers water from Lahaina all the way up to Nāpili. This is the County's infrastructure map right here with the Lahaina Wastewater Reclamation facility in the middle of that map.

Then the existing distribution system or at least what was existing two years ago. This is the existing distribution system map. Most of the use is in Kā'anapali with the golf course and some landscaping irrigation demands being met. There is a pipeline that uh transmits water to a reservoir within the golf course on the right. I wish I had my pointer. Then recently the County has purchased the Honokōwai reservoir at the 300-foot elevation which is on the left, right there. They've tested out the pumping facilities and they can get water to that elevation and they are working on expanding the distribution from that reservoir towards new users in that region. Historically there was a pipeline from that reservoir up to what's called the Field 140 Reservoir at the 700-foot elevation with which Maui Land and Pine blended that water for agriculture irrigation. That pipeline is no longer usable but replacing that would be a tremendous benefit and replacing the pumping infrastructure to get water to that elevation would allow for the distribution of recycled water throughout Maui Komohana.

This is a bird's eye view of the region. Lahaina Wastewater Reclamation Facility is down in the bottom middle area. The Honokōwai Reservoir at the 300-foot elevation is identified right there, thank you Dean. Then the field 140 Reservoir is at about the 700-foot elevation along the Honokōhau Ditch right there. The County's Māhinahina Water Treatment Facility is located just to the left of that location. Then there's also, the state owns Lower Field 14 Reservoir which is just above Field 140 Reservoir. The Field 140 Reservoir is currently owned by Maui Land and Pine but is another opportunity that the State or County can invest in to store recycled water. The Honokōhau Ditch ran all the way to Kahoma Gulch, essentially and Wahikuli Reservoir via crossing Wahikuli Gulch and Hāhākea Gulch. Wahikuli Reservoir was decommissioned by the state a number of years ago, but it still exists. It's just not connected to anything. It could be repurposed to store recycled water. It could be downsized to reduce seepage. It could be lined. There are a number of opportunities that might exist to improve storage of non-potable water in that area.

I drew a line on the ditch just to show where it exists there are a number of siphons across Honokōwai Gulch that could be slip lined with a R1 pipeline. I believe Department of Health guidelines require a closed system for recycled water utilization, so we'd have to run a pipeline from the reservoir through or alongside the ditch to other end users.

This is just a repeat of the existing pipeline that occurs up to the 300-foot elevation and then we need a new pipeline up to field 140 Reservoir.

This is an overlay of the region with land ownership. Kā'anapali Land in purple, the State of Hawai'i in blue, and Maui Land and Pine in that dark brown, and Kahoma Ranch in the light brown. As you can see, one of the complexities of this issue is that the ditch itself crosses multiple landowners, so rights of entry or easements would have to be

obtained, but that there are potentially a large number of non-potable uses within this area.

Here's the Field 140 Reservoir when it was full about maybe five or six years ago.

This is the inflow from Honokōhau Ditch.

This is the other view looking mauka of the reservoir.

This is Honokōhau Ditch along the side.

Then as the ditch drops underground and then pops out at the siphon. This is where infrastructure would need to be improved to get non-potable water that's temporarily stored in Field 140 Reservoir southward.

Here's a look at the Honokōwai Gulch at the siphon and this is where historically water would cross Honokōwai Gulch or when there was no need for it, might be discharged into Honokōwai Gulch which that does not occur anymore.

Here's the historic picture of the flows from the ditch into the siphon.

On the south side of Honokōwai Gulch, this is what the ditch looks like. It's primarily lined in certain areas, at least as it runs through Kā'anapali Land Management. The pipeline for recycled water would probably have to be separate from this flow of water which originates in the Honokōwai mauka area.

Then as the ditch passes into State lands there was less investment in it and the ditch is not lined so again a pipeline would be preferable.

Similarly, as the ditch crosses State lands.

Two of the biggest issues are the crossing of the gulches. Wahikuli Gulch is relatively shallow so flume was utilized. That flume would have to be repurposed for recycled water distribution.

Then Hāhākea has a siphon, but that siphon leaks and so it would have to be slip lined.

There's leakage on the left-hand side. If you look closely that's when there was excess water.

In Kahoma, we have Wahikuli Reservoir which is owned by the State which could be repurposed to store recycled water for the region and then a new pipeline that crosses Kahoma Gulch and Kanahā Gulch which follows the existing Lahaina Pump 2 Ditch. Could be utilized.

That ditch still exists through Lahainaluna High School and then runs along into a property owned by Kamehameha Schools.

Here's land ownership of that region. Kamehameha Schools is in the pinkish color and the State of Hawai'i is in the bluish color and then West Maui Land or Makila Land is in the purple color. Again, the Lahaina Pump 2 Ditch crosses multiple landowners, so Rights of Entry would be necessary, but the ditch itself exists and a pipeline could be easily placed within it in this region. It at least could terminate at Makila Reservoir in which it could be utilized throughout the Launiupoko region to offset surface water resources.

Here's a picture looking mauka and Kaua'ula, the ditch is running left to right. That's that line of boulders. The ditch is about six feet deep in this area. It's dry. It's been dry for some time.

This option there are a number of pros and cons I've identified: old pipeline stitches and reservoirs are already in place which is Pro. You don't have to build something from scratch, it could be a gravity fed distribution system once water is pumped up to the Field 140 Reservoir. We get increased storage of R1. It's at an ideal location or elevation to support firefighting and agricultural needs in the region. We don't have to deal with instream flow standards. The County can if they were to be the manager of such a facility, could charge for non-potable use and that money could help support the maintenance of the system. It could repurpose the decommissioned Wahikuli Reservoir. Again, ideally located for firefighting and agricultural needs. Cons are that you need to purchase Field 140 Reservoir, the Honokōhau Ditch crosses multiple privately owned parcels, and multiple gulches to cross adds cost to engineering, although at this elevation is relatively accessible. That's option one that we came up with.

Option two is repurposing existing groundwater sources. Up in Honokōwai at a pretty high elevation there are multiple development tunnels that discharge directly into the stream and the benefits identified by these groundwater sources that, direct availability of potable water for the region. We know potable water is in high demand. We have housing projects that need to come along and we need to offset the availability of water that might not be there from surface water resources. It is also at a high elevation such that water could be gravity fed into any system across the region.

Where is this located? In Kā'anapali Land Management's region above Kā'anapali development is our two reservoirs, Horner Reservoir and Hanaka'ō'ō Reservoir which are fed by the Honokōwai Ditch. The Honokōwai Ditch originates at way up in the gulch. It was captured surface water from Kapalua and Amalu historically as well as development tunnel water.

There are two development tunnels, Development Tunnel 20A which is on Kā'anapali Land Management land, discharges approximately 2 MGD, but again it varies over time. USGS and CWRM have made the following measurements and ranges from 1.8 to 2.5

approximately MGD. A pretty substantial flow of water discharges from this tunnel and this discharges directly into the stream and is captured by Honokōwai Ditch.

This is the interior of the tunnel if you've never been there or have any desire to look into a tunnel.

20B on the other hand is on State land. This also feeds the stream and is captured by Honokōwai Ditch, but this is owned by the State.

The tunnel discharges directly into the stream. This is what it looks like in the interior.

We've made fewer measurements, but the following measurements somewhere around 0.5 to 0.8 mgd or so of flow. Again, that could be utilized for potable needs if needed.

This is standing on Honokōwai Ditch intake or the dam in the gulch. The Honokōwai Tunnel 20B is immediately across the stream channel in the middle of that dark section, if you can circle it...right there, that's the tunnel. It's really close to the start of the ditch which means that there's very little infrastructure that needs to be placed within the Gulch itself. The ditch starts at this location and immediately goes through tunnel all the way and pops out above those previously identified resource.

Here, this is the start of the ditch again just within 50 feet or 80 feet of the development tunnel which could be relatively easily repurposed for drinking water and you could run a pipe through the ditch so that we can separate the potable from the non-potable water.

So here's the map of the ditch itself and as it crosses State and Kā'anapali-owned land, any potential potable water system would then at some point after the portal of the tunnel, could be connected to the County's drinking water supply, for example.

The pros and cons of this option, groundwater source is already developed. It's already dug, no need for a permit to drill a well, for example and it's reliable, anywhere from 0.5 to 0.8 mgd or so. Water could flow by gravity to the County system so you don't have to pump it from this elevation. It reduces cost to operate the tunnel. 20B is on State land so permitting might be a little bit easier or whatever. Instream flow standard does not have to be modified and we can meet potable needs for DHHL or other new developments in the area. The cons are the pipeline would have to cross some privately owned land and access is a little bit challenging to run a pipeline through the tunnel, but it's doable.

CHAIR CHANG: I mean when Ayron says he was tasked right after the fire, I pulled all of CWRM together and said, let's be part of the solution not the problem. I would tell you within a couple of days they came back and impressive so we've shared this. They've had discussions with DWS, they're exploring this. I mean when we look at is something that can be optimistic. I mean this is two, this is a potential source and we tried to focus on where can we provide DWS water more efficiently rather than having to go through private purveyors. We do have land issues, but for the most part this is an available source. I applaud CWRM. They took this seriously. We're also looking at, can we get

monies for infrastructure to accomplish what they... Again, working with DWS to explore this as a viable option to provide a solution that can supplement some of the realities that we're facing. I'm very impressed with CWRM staff that quickly took on this challenge and are continuing to explore this with the right people.

COMMISSIONER HANNAHS: Chair, I join you in commending staff. Ayron, you called them options not alternatives, so you could actually do multiple, you can do them both. Is there a case for using the power of eminent domain where if a landowner resists allowing an easement for this critically important infrastructure that's needed for the public interest, is it possible to use eminent domain to acquire that easement?

DR. AYRON STRAUCH: You know I'm the stream guy. I would say it's up to the County because it would ultimately have to be County infrastructure. They would have to be the manager, owner of whatever was constructed. I'm assuming it would be part of DWS's system so they would have to address that.

COMMISSIONER HANNAHS: That's more for option two, trying to think...

DR. AYRON STRAUCH: Even the recycled water facility would have to be managed by a single entity and they are most set up to do such a thing.

COMMISSIONER HANNAHS: Love that we're thinking of recycling or putting more water into the system in play. What's the sentiment for restoring Wahikuli Reservoir into use? Who do we have to work with?

DR. AYRON STRAUCH: That's state-owned, Engineering Dam safety.

COMMISSIONER HANNAHS: But is it Department of Ag?

DR. AYRON STRAUCH: No, DLNR.

COMMISSIONER HANNAHS: It's us? What's our sentiment for moving forward with that?

DR. AYRON STRAUCH: I think as long as we meet dam safety standards, we can do what is necessary if we have the money and again, we're not the entity that does that.

COMMISSIONER HANNAHS: When you look at the resources of insurance and FEMA and philanthropy and so forth that's coming into the scene right now. If they could see the impact of investment being really a long-term improved use of water and mitigation of the risks for wildfire because you have less land in fallow, weed production, and more land in active productive use, that might be a compelling impact for both the insurers and the federal government and FEMA and philanthropy. We might consider making, I don't know who makes that case, but we might put that together so we could actually have both.

CHAIR CHANG: We came up with the idea, but we're looking to the County to implement because we really want them to be the end users and distribute. It's consistent with their legal mandate that they have under the court order with respect to R1. We recognize that the county was challenged with their immediacy, but we knew that...I tell you we've got the best staff, so tasking them with providing the County some options. But you're right I think we could do both, we could do both.

COMMISSIONER KATAYAMA: I guess my comments are one where each of the alternatives, I think you need to identify Champions because I think that's critical in how we put it together. For option one, what would really help me put things in perspective is not only land ownership but land use overlay. That would address the benefits of how much R1 water would be used both short term as well as in future development and putting in place things like greening off places to mitigating again, fire control. In option two, the development wells, is that the horizontal well? Okay. We've been through that ad nauseum and got it and you're right, should be portable water use long-term, in fact, near term. Is there a third option in how you capture high flow uses? You demonstrated Q50 flows and you have these spikes. Is that a low hanging fruit that we can address?

DR. AYRON STRAUCH: Definitely, I think it was an option we explored especially when it came to...the County has very little storage of non-potable water that then could be treated for potable water. They have two potable water treatment facilities, one in Lahaina, one at Māhinahina and those rely on non-potable water to be converted into potable water, but there's very little storage of that. In discussions with them, the available storage that would be able to gravity feed water to the Lahaina Water Treatment Facility, for example is in the 8-to-10-million-gallon range which is fairly small. For comparison, the Olinda Water Treatment Facility is somewhere around 130 million gallons of storage so it might not, unless we were to totally rebuild a brand-new reservoir or repurpose Wahikuli Reservoir and pump uphill because the Wahikuli Reservoir is at a lower elevation than the treatment facility. There isn't the existing storage infrastructure that would make it worthwhile for potable water needs.

COMMISSIONER KATAYAMA: But isn't that sort of a low-hanging fruit where you can now actually construct reservoirs that make sense for servicing existing needs as well as future development?

DR. AYRON STRAUCH: Knowing the costs that it takes to take one of these 100-year-old falling apart reservoirs and upgrade them to meet dam safety standards, the financial benefit is limited from a private owner's perspective.

COMMISSIONER KATAYAMA: I would suggest that that's why you make a new one if that conforms to what we need and where we need it. I know that agriculture has placed their reservoirs where they needed it historically, but I think that has changed. I think all of these options are needed to be done together. Great presentation, thank you.

COMMISSIONER HANNAHS: I just want to build on that because the barbell mentality of it's either for commercial or it's philanthropic or government responsibility is kind of

archaic. There's many things that are hybrid these days and this is one of those things. There's a measure of contribution and of an investor for which they're going to get a reasonable return and then you're addressing a public trust interest so there's an interest of government or philanthropy to support that. It's going to take a little bit different kind of deal making mentality and approach. We put the funds together that's necessary and not be stopped at the gate because we can't get an investor to do it or we won't use government money that's going to have a private inurement to an investor. You got to get past that to kind of more sophisticated deal structure.

CHAIR CHANG: We have submitted a request as part of our FEMA package for purposes of water resources and so you know President Biden has given us an opportunity to put in. With the options that CWRM has come up with, now whether they get submitted as part of the package is another thing, but we have submitted all of those options to the governor's office to be included in his package. I think they are they're vetting all of that, but you know I think the challenge is we have to be part of the solution and we need to start looking at alternative sources. Drought is inevitable. The Drought Council just met about a month ago and we hadn't met for like, since five years. The trend is we're probably going to have a very dry, dry winter and we're not going to even have a wet season, then we're going to go into a dry summer again. It is only going to get more challenging and difficult for us. Like I said, greatly appreciated CWRM, totally embracing the task, taking the challenge with recognizing, let's not look at where we've got...it's going to take us permitting. What can we do with what we've got available? These were really viable options that utilize existing infrastructure. Paul, anything?

COMMISSIONER MEYER: A matter of money.

CHAIR CHANG: Yeah you're absolutely...and the will to do it. I also think we need to create incentives for our partners, private landowners to see the benefits of this. I think that we are, the Water Commission when where we're in a unique position. I think the foresight of the Commission to do this designation does put us in a position to look at the entire system as a whole and all of the resources that we have available. Again, I want to reiterate this designation, we're still moving forward. Now we have other options to consider as part of that designation. The timing unfortunately, the fires, but we know that fire suppression, the servicing of our traditional customary practices, and other needs, we're going to have to find a good way to balance that. I don't know what the solution is but we know that we have to look at this comprehensively.

COMMISSIONER KAGAWA-VIVIANI: I have a question for Commissioner Ho and maybe you can answer it and maybe you can't. I understand wastewater and drinking water regulation is under DOH. What do you see as like maybe the hurdles that we need to consider or the players who need to be engaged, in addition to the infrastructure and landowners? What do we need to be thinking about?

COMMISSIONER HO: I would say that yes, indeed DOH has to be in coordination with CWRM staff on these options. I think they should be talking to each other. For me, I would have liked to at some point in the future once all of this is fleshed out to see a

recommendation from CWRM staff about this, in addition to costing it out. Because we always have to balance that we have limited resources. I would like to see that at some point in the future before we come to a resolution on that. Thank you for giving me the opportunity to speak, also. I recognize that we all, the Commissioners, have comments but I also want us to be cognizant of the fact that we have 277 people who have submitted testimony on this exact project and so to the extent that we can keep our Commissioners comments to a limited so that we can hear from the people.

CHAIR CHANG: Yes, thank you Kathy. I appreciate that reminder, Kathy.

PUBLIC TESTIMONY

Jade Chihara

- Born and raised in Lahaina
- Family lost everything in the fire
- Reinstate Kaleo Manuel, monitor the IIFS in Kaua‘ula Stream- no water on Sept. 13th

Ty Kawika Tengan

- Lives in Pālolo, O‘ahu; from Wai‘ehu, Maui
- Speaking on behalf of Keolamau Tengan, brother, who evacuated his home in Kula; wife’s cousin, Melva Honeygirl Benjamin who perished in the Lahaina fire
- Testified before the Commission on behalf of kalo farmers in Nā Wai ‘Ehā and East Maui
- Maintain Maui Komohana water management area designation, ensure interim instream flow standards are being met, reinstate Kaleo Manuel as Deputy Director, staff to uphold the Water Code, allow the kupa (citizen/native) & kama‘āina of Lahaina to lead in decision-making

Kekai Keahi

- From Lahaina
- The hīhīwai, ‘ōpae, pohole, and taro (presented to the Commission) are from Honokōhau Valley
- The narrative in the articles were used as leverage to oust Kaleo Manuel
- By protecting the public trust, will regain the public’s trust; lost the public trust through the Emergency Proclamation
- Are here to protect “hu‘i anu ka wai mauka” for future generations

Tiare Lawrence

- Generations of her family have lived in Lele, historic name for Lahaina
- Lost family home in fire
- With the return of wai, families have been able to move back to their ancestral homes and cultivate kalo
- Lahaina needs regenerative agriculture, wetland restoration, true workforce housing for generational residents, and tourism management

- Applaud Commission under Kaleo Manuel for establishing IIFS and Ayron for gathering good data

Kanoelani Stewart

- Born and raised in Lahaina; lost home in fire
- Wrote masters thesis on water in Maui Komohana; answers to today's water problems lie in Hawaiian repository of newspapers, language, practices
- Uphold the law, respect the IIFS, and water management area, reinstate Deputy Manuel, and listen to the kama'āina of Lahaina

Kalama'ehu Takahashi

- Resident of Lahaina and Kā'anapali moku
- Corporations like West Maui Land and Launiupoko Irrigation need to be held accountable in upholding the IIFS
- Uphold the law, uphold designation, reinstate Deputy Manuel
- Call upon working-class 'ohana to stand together in resisting corporate control of resources and demand a future that puts the people's needs and 'āina first

John Carty

- From Save Honolua Coalition
- He applied for a water use permit for his farm which feeds the community
- Special day when the yacht was removed from Honolua Bay; the spirit of the land, water, and people was there, honor that spirit
- Reinstate Kaleo Manuel, make water a public resource, make sure Hawaiians and their science are at the forefront of decision making

Karyn Kanekoa

- Lived in Lahaina her entire life
- Corporate interests, tourism, and mismanagement have led Lahaina to where it is now
- Demand the Water Code, keep designation of Lahaina, reinstate Deputy Kaleo Manuel, enforce IIFS, put needs of people and 'āina first

Ke'eumoku Kapu

- Lahaina is agitated & overwhelmed; their group is feeding 600 – 1,000 people a day and he has a group of 80 who are participating in the cultural monitoring within the burn area
- Had asked Chair Chang if this month's meeting could be held on O'ahu, then on Maui in October
- Reminds Commission of 1897 Supreme Court ruling, Horner v. Kumuli'ili'i; have been fighting for water rights since then
- The community has gone through legal routes to ensure water rights
- To be pono, reinstate Deputy Kaleo Manuel, proceed with water use permit application, prioritize water for public trust purposes (water in its natural state, lo'i kalo, loko i'a), provide water for kuleana 'āina
- Nā 'Aikāne o Maui submitted an application for Moku'ula island and Mokuhinia

- Wants to be at the table when decisions are being made and mauka to makai flow on Kaua‘ula Stream

U‘ilani Kapu

- Manage Moku‘ula and Mokuhinia, the piko, and one of the most sacred places in Hawai‘i
- The ‘āina is crying for help, need to restore the piko
- Bring back Kaleo Manuel, reinstate who we are, allow the wai to flow

20230919 03:36:00 – LUNCH

Maka Kanekoa

- Reinstate Kaleo immediately
- Standing up for Honokōhau, his home

Wili Wood

- Live in Honokōhau Valley where he raises lo‘i kalo with his family
- Reinstate all West Maui IIFS, keep designation of ground and surface water, honor Water Code, reinstate Deputy Kaleo Manuel today
- Narrative put forth by West Maui Land Co. and Gov. Green that Kaleo refused to release the stream water is a shameful lie to secure water for fake farms and gentlemen estates

Hōkūao Pellegrino

- President of Hui o Nā Wai ‘Ehā, from the ahupua‘a of Waikapū
- Weak arguments and false narratives put blame on Kaleo Manuel and kalo farmers for the destruction of Lahaina
- Gov. Green’s statements that there is no State-wide water policy and that he would attempt to eliminate the surface and groundwater management designation, contradict each other
- The governor should retract his statements and apologize to the people of Lahaina
- Reinstate Kaleo Manuel, follow through on the existing designations of Maui Komohana Water Management Area, hold those corporations accountable, follow the State Water Code

Lauren Palakiko

- From Lahaina; also representing her husband, Charlie, who is a kalo farmer
- Charlie has been in a battle over water rights with Launiupoko Irrigation Company for over 20 years
- The Water Code and West Maui Water Management Designation benefit all the people of Hawai‘i and the economy
- On June 6, 2019 they witnessed their muliwai (river mouth) become dry and an ‘o‘opu graveyard
- Reinstate Deputy Kaleo Manuel, mauka to makai water connectivity, expect the Commission to be ke kahuwai pono who oversee the rightful sharing of the water

Keith Keahi

- Kalo farmer in Honokōhau
- A narrative came out that Kaleo Manuel and kalo farmers like him were the criminals; Peter Martin is the criminal

Kalei Kauhane

- Peter Martin is a bully, referenced the article in The Washington Post
- Charlie Palakiko, who was labeled a “bad guy,” has provided poi to the community for over 20 years; the ‘āina that he works is pono, what he does is pono
- Put in good infrastructure, let the river run from mauka to makai, the heart is the water

Pa‘ele Kiakona

- Represents the next generation
- West Maui Land Co. has exploited fire and environmental degradation for its own agenda, example: wrongful removal of Kaleo Manuel
- State Water Code & designation of West Maui should be upheld, equal share of public trust water resources, prioritize water for working class Native Hawaiians and non-Native Hawaiians, moratorium on new applications or permits for anything that does not contribute to betterment of environment and Hawaiian culture customary rights, reinstate Kaleo Manuel, and West Maui Land Co. to comply with IIFS

Namea‘aea Hoshino

- Comes from the Keahi and Haia ‘ohana, generational families of Lahaina
- Have had to deal with big corporations like Pioneer Mill, West Maui Land Co., and Launiupoko Irrigation
- Lack of water has forced many families to move who had once grown kalo; is a concern for many and the next generation
- Reinstate Kaleo Manuel

Archie Kalepa

- His father’s and mother’s families fought for water, included on the palapala in 1897, Horner v. Kumuli‘ili‘i
- Kupa of Lahaina
- Through IIFS, immediately saw rebound in native stream life and his ‘ohana restored their ancestral lands and cultivate kalo
- Sailing in a storm for last 150 years, need a sail plan all can agree on, re-calibrate star compass; values are love and protect your land, family, and community
- Also speaking on behalf of ‘ōpae, ‘o‘opu, hīhīwai who do not have voices, a part of Lahaina community
- Reinstate Kaleo Manuel, have IIFS in perpetuity

U‘ilani Tevaga

- Wounded masculine and greed has started all of this
- This happened because the pleas of the community to restore the waters have not been heeded
- Peter Martin chose to put his company over the community
- Return water to the streams, reinstate Kaleo Manuel, justice for places like Kahoma Valley, uphold State Water Code, investigate West Maui Land

Mikiala Pua‘a-Freitas

- Kalo farmer from Waihe‘e, Maui, Nā Wai ‘Ehā; her water permit was denied, but will not stop her from growing kalo
- By suspending the Water Code and IIFS, caused further harm to the community
- Set a date to reinstate Kaleo Manuel

Darrilyn Alvarez

- From Lahaina, Maui
- By supporting kalo farmers, you support the community
- Lies put forth by Peter Martin and Glenn Tremble perpetuate settler colonialism
- Reinstate Deputy Kaleo Manuel

Cornel Dizon

- From Mala, Lahaina
- Lost house in the fire
- This community is built around love and respect, no other place like it
- Please help the community, kupuna & next generation

Shansi Vasquez

- Born and raised in Lahaina
- Water, our most precious resource, is being exploited by companies like West Maui Land Co.
- IIFS need to be upheld and regulated

Malihini Keahi-Heath

- Her tutu took care of the water intake in Kanahā/Lahainaluna Valley
- At one point they had 27 taro patches
- Peter Martin has done so much damage to the community
- Want to rebuild Lahaina and only way to do that is if there is enough water
- Reinstate Kaleo Manuel, he had empathy, could talk to him

Mialisa Otis

- Uphold Maui Komohana Water Management Area Designation, ensure IIFS are being met, reinstate Kaleo Manuel as Deputy Director
- Community over commercialism, kia‘i over corruption

Ja‘me Palakiko

- From Kaua‘ula, Lahaina
- Push for funding to regulate and monitor private water companies

- In support of mauka to makai waterflow, especially in Kaua‘ula
- Since the fire, the water level in their stream is lower than usual

Ku‘ulei Palakiko

- The mantle the Commissioners have as “ke kahuwai pono” needs to be activated
- Wai is at the core of it all; kanaka and honua, corporations and profit
- God is a god of abundant life, not a god of destruction as Peter Martin referenced
- Let the Commission’s actions speak louder than their words

Deandre Makakoa

- From the Ka‘ahanui family of Lahaina, Maui
- Home in Wahikuli burned down
- Our stake in this is for future generations, West Maui Land’s stake is to line their own pockets

Manuel Kuloloia

- Family is from Maui, ancestors buried at Waiola Church
- Words have power
- Gov. Green needs to listen to the people

Senator Kurt Fevella

- Water diversion never was pono, criminals shouldn’t be able to run our water
- It’s his job as a legislator to change the laws and he will
- CHAIR CHANG: (internet issues) ...as a result, we did a lot of outreach, worked with the farmers and as a result, this Commission made that designation. Now, we’re in the process of trying to implement that. I’m not going to speak on behalf of the governor. All I’m going to tell you is that I think the governor has heard this community. They heard that this Emergency Proclamation, suspending the Water Code was divisive. It caused the Hawaiian community to have a reaction like what you heard everybody here. In his 7th Proclamation, he unsuspended that and he said, no (inaudible). I’m not defending that, I’m not speaking...but I’m just telling you that we do have the tools and nobody is going to let Kaleo’s legacy... And as I said at the beginning, that’s a personnel matter. But I want you to know that this Commission and the staff are continuing the good work and we’ll address Kaleo when that time comes up. I appreciate your passion and your support for the department. Sure, we’ll find an opportunity to talk.
- Do not bring back tourists to Lahaina, yet
- Governor Green needs to listen to the people to be the voice of the people

20230919 06:43:55

B. ACTION ITEM

- 1. Approval of Stream Channel Alteration Permit (SCAP.6026.3) Application and Special Conditions, Hawai‘i Department of Transportation (DOT),**

Kamehameha Highway Resurfacing, Laiewai to Waipuhi Bridge, Hau‘ula and Ma‘akua Streams, O‘ahu, Tax Map Key(s): DOT Right-of-Way

PRESENTATION OF SUBMITTAL: Dean Uyeno

Staff stated the purpose of the project is the reconstruction of existing pedestrian bridges at Hau‘ula and Maakua Streams. The work may require the temporary use of scaffolding to install the reconstructed pedestrian bridges.

QUESTIONS / COMMENTS

CHAIR CHANG: I just have two. In Recommendations A & B I would change the “should,” “the permittee should brief” to “shall,” “they shall brief the neighborhood board.” In Recommendation B, “the permittee should employ,” “the permittee shall employ best management practices.” It should be mandatory.

CHAIR CHANG: DOT, the applicant, do you have anything else you want to add to the presentation? Or do you have any issues with my change recommendations to “should” to “shall”? DOT, are you there? Go ahead, Jennifer.

JENNIFER RUSSELL: We have no issue with adding the “shall.”

CHAIR CHANG: Very good. Does your consultant, do you have anything else you want to add?

PUBLIC TESTIMONY - None

20230919 06:47:52

MOTION: (MEYER / HANNAHS)

To approve staff recommendation.

UNANIMOUSLY APPROVED

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

20230919 06:48:18

B. ACTION ITEM

- 2. Request for Preliminary Approval of the Memorandum of Agreement between the State of Hawai‘i, Department of Land and Natural Resources, Division of State Parks and the Commission on Water Resource Management Regarding Installation and Maintenance of a Monitoring Well and Related Features at Hāpuna Beach State Recreation Area, South Kohala, Hawai‘i Island**

PRESENTATION OF SUBMITTAL: Neal Fujii, Ryan Imata

Staff stated that the Commission on Water Resource Management would delegate authority to the Deputy Director to enter into a memorandum of agreement (MOA) with the State of Hawai'i Department of Land and Natural Resources Division of State Parks (State Parks) to allow the installation of a monitoring well within the Hāpuna Beach Recreation Area.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: I just have a brief one. If you can just, because we have a large public audience, you want to just explain the value of this deep monitoring well?

NEAL FUJII: Absolutely. The Waimea Aquifer system, which if you refer to your Exhibit, let's see...the map over here. Oh, it doesn't have the map. Waimea, there's a lot of high level up in the Waimea town area, but much of the hydrology is unknown in the basal area. And there also may be some very deep fresh water in the area. The purpose of this well is really to get a better idea of the geology, hydrogeology, also to see if there is any deep fresh water in the area. If it turns out not to have the deep fresh, they'll adjust the specifications and the depth of the well and things of that nature. That's really the, one of the aquifer systems that we don't have too much data for, so this is going to help with the science and understanding what we know. It's also in a good location because it's a state park, those types of easements and issues.

CHAIR CHANG: I just want to clarify, this is a CWRM initiative and that's why CWRM is doing the Ka Pa'akai.

NEAL FUJII: Yeah, Ka Pa'akai and consultation with Historic Preservation, all that's going to occur kind of during the permitting process and Engineering division's going to help us do that.

COMMISSIONER KAGAWA-VIVIANI: Is this the one time we'll see this or will it come back to us?

NEAL FUJII: Yeah, the permitting itself will come back to the Commission. It's going to be like any other well that like an outside party would. This time it's going to be like Engineering division coming in for the permitting and not necessarily CWRM personnel. Does that make sense?

RYAN IMATA: Sorry Neil, I should clarify. Ryan Imata, Groundwater Branch. It's actually going to be a ministerial permit, so we're not going to bring it back before the Commission (inaudible). But we can certainly do some informational briefing once it's drilled and once we've determined if we can find a deep confined lens or whether it's going to be a drill as a conventional deep monitor well. Thanks, Neil.

NEAL FUJII: Thanks for the clarification.

COMMISSIONER MEYER: Just curious, how big a shaft is that diameter? Do you know?

NEAL FUJII: No, I don't.

RYAN IMATA: Casing diameter? Are you talking about the casing diameter? I think the conventional deep monitor wells are about a 6-inch diameter well. We're still discussing whether if we find the deep confined lens if we're going to put two nested wells in one hole or possibly drill two holes. Because we're so close to the coastline, into the basal lens it's not that deep. What we could do is we could drill down into the basal lens, see where the basal lens is and see if there's a deep confined. We could put one deep confined well in and then move over and drill another conventional well.

COMMISSIONER MEYER: Thank you, I was just curious. That makes good sense.

COMMISSIONER KATAYAMA: Just for my own understanding, what differentiates a well permit being a ministerial versus what comes before the Commission?

RYAN IMATA: That's a good question.

COMMISSIONER KATAYAMA: It shouldn't be.

RYAN IMATA: I don't want to take up too much time on this. Back in 1997, the Commission adopted the Hawai'i Well Construction Pump Installation Standards. That was to ensure that any well that's drilled is in compliance with our standards and doesn't need really sort of discretionary decision on part of the Commission. There are occasions, and I'll list two of them, where we would bring a well to the, well three maybe. One of them is if there are serious disputes about it. And the other would be if they're looking for a variance or any deviation from the well standards. And also just as a matter of course, when it's in a designated water management area and we bring the water use permit to the Commission for approval, at the same time if there's a pump installation permit, we bring that to the Commission just so that the approval process. We're not approving a pump installation permit prior to someone getting a water use permit. So, those are three instances we would bring applications to the Commission. There's also in certain cases, like with the Keauhou designation requiring some applications come to the Commission. We bring those, too. But over 95% of our well applications are approved ministerially, delegated to the Chair through the Hawai'i Well Construction Standards.

COMMISSIONER KATAYAMA: Oh good. Thanks, Ryan. That's all.

CHAIR CHANG: Maybe Ryan or Dean or Neal, I'm trying to distinguish Ka Pa'akai. Is there ever a question as to the impact of an exploratory well on the nearshore waters, that we would require some kind of a monitoring requirement?

NEAL FUJII: Ryan can answer.

RYAN IMATA: Generally, monitor wells don't have the kind of impacts that we would see via production wells. You're not going to see any kind of depletion of freshwater coastal discharge or even impacts on other wells. We have to be very concerned though about puncturing into that deep confined and potentially causing short circuiting of the two aquifers, cross connection between the two aquifers. So, we're very cognizant of that and want to make sure that the impacts are minimal.

CHAIR CHANG: I think it is just really important that we clearly distinguish that because of community's concerns. Anytime we talk about a well permit, what are impacts? I think it is important that there's a distinction between well construction and an exploratory well permit.

RYAN IMATA: It's not exploratory, it's more (inaudible).

CHAIR CHANG: Yeah, deep depth. Sorry, my mistake.

COMMISSIONER KAGAWA-VIVIANI: Sorry, I do have a comment then. In this case, we are talking about deep monitoring wells, but it sounds like it's being used for exploratory purposes or understanding. But being cognizant that even though this might not have impacts, it might invite other types of...it's going to drag up different kinds of questions and concerns and we should be prepared for that.

RYAN IMATA: That's a great point. And one of the things that Kaleo always advocated for was for us to have a better understanding of deep confined lens. Because I think there's talk about drilling wells into that deep confined lens and Kaleo's hesitation was always that we don't have a good understanding of what's happening with the deep confined lens. But we are focusing a lot of our efforts on trying to understand that deep confined lens so that questions can be answered and we can present the best information to you guys as decision makers.

CHAIR CHANG: But I think as you're doing your Ka Pa'akai, you need to be cognizant of clearly articulating the difference between potential impacts on this well and another type of well.

PUBLIC TESTIMONY

JONATHAN LIKEKE SCHEUER: Chair Chang and Commissioners my name is Jonathan Likeke Scheuer for the record. While I appear in front of you for many clients, I'm giving this testimony as my own. There is nothing that I have seen in the staff submittal that indicated that there was an attempt to drill into and discover a deep confined freshwater aquifer with low salt water in the submittal. The first I heard of it was happening to listen to the oral presentation from staff right now. I'm going to urge

you to defer action on this matter for a number of reasons. Mostly and this is I think starting to hint at from Commissioner Kagawa-Viviani, if on the State's dime you determine that there is deep confined groundwater in this part of Hawaii Island, you effectively have de-leveraged all the risks that private entities will face in trying to exploit that resource for commercial purposes. It is, even if not designed explicitly as an exploratory well, functioning to identify a new water source which, given my understanding of the history that you have done a similar well along Hinalani Street and it has continued to leak water and has not been successfully capped for many, many months now is a dangerous proposition. I'm happy to answer any questions and I'm sorry to take time away from the people who have waited hours and hours like I have to testify on the Maui matters, but this matter requires testimony and I urge you to defer action.

HEALANI SONODA-PALE: I trust Likeke's professional opinion and I will ask you, I will testify to ask please defer. This doesn't feel right in my na'au and we're talking about our wai. We've been talking about wai all day when it comes to Maui, but this is O'ahu and I've been at these meetings so many times and we're in a fight for our life and our future. I want to just say please defer so you can take a more careful look at what's happening here, thank you.

COMMISSIONER MIIKE: I would like to hear from our staff in response to what Jonathan said.

CHAIR CHANG: I'm going to do one question at a time.

COMMISSIONER MEYER: Do you have any detail on the grouting protection should artesian conditions be encountered?

NEAL FUJII: I'm going to have to defer to Ryan again as far as construction details and specifications.

RYAN IMATA: Yeah, thank you. The question is about grouting with respect to finding the deep confined. I think our intent is really to approach this with a lot of caution. Again, what we learned from the Kaloko deep monitoring well and quite frankly a lot of other wells in the area is Jonathan's comment about potential short circuiting of the aquifer. We take that very seriously and we don't want the intent of the well to cause any kind of adverse impacts. So, as I think as they are progressing with drilling, if they find a deep confined lens and as soon as they punch through, the intent would probably be and we have to consult with our consultants on this, but the intent would probably be to seal it up. And potentially just develop, you know one well or the other well, whether we do it as a nested design or we drill two wells. Again, the intent is not for us to in any way turn this into any kind of production well. Kaleo and our staff had long discussions about the utility of this well and the utility of understanding the deep confined lens because one thing about the Big Island and actually quite frankly many areas throughout the State is we don't understand the geology of deep confined lenses. So, that's the intent of this proposed well. I will note that the action that you are taking today, too, has really no

bearing on the actual permit itself. This is just a memorandum of understanding between CWRM and State Parks because the well is being drilled on State Parks land. Thanks.

CHAIR CHANG: Larry, you had a question?

ROSA PUALEI'IA MONTA: Aloha, Rosa Pualei'ia Monta, checking in from Kamuela, Hawai'i. I just wanted to, I didn't even know this was on the agenda today, but I just want to encourage you guys to defer also because this is another situation where we have a very resort dense area down on the coast and Hapuna has been without water for a long time. It's one of the few areas that our community is able to use and it's changed a lot in the years as far as the local demographic using it versus what it's used as now. I strongly encourage you to look more into this issue because if you all have ever been to Waimea, I want you to picture what you picture Waimea to be like because it's always been green and now it's brown and all of that water goes downhill. Gravity pulls it down to the coast. So, whether you're drilling down there or up here to feed down there, it still affects our aquifers and our water up here so please defer, mahalo.

DR. KAMANAMAIKALANI BEAMER: Aloha mai Commissioners and e kala mai, I was here to testify on C-1 and just learning about this issue here. I'm calling in from Waimea. I just want to express my concern on multiple fronts. The Commission was briefed previously on the changes in the precipitation and the recharge rate for the Waimea Aquifer. I believe at this point we are beyond sustainable yield if we take into authorized planned use for Waimea. There was a proposition to combine two of the aquifers that never passed and as it stands with the data that we have and we heard that in earlier meetings by Dean, we're over 90 percent of sustainable yield and Waimea Aquifer should be designated. I'm extremely concerned with this idea that we're going to find deep water and somehow that that will change the present and current status. The work of the Commission should be directed towards addressing the issues that we have now with the data that is available and particularly with the lack of understanding of these deep-water wells as Jonathan has stated. We wouldn't want it not to be correctly done and potentially lose precious fresh water or get mixing with salt water. I would recommend the Commission also defer and I will state that you know this is another instance where if we had Deputy Manuel here, we could ask a lot more pertinent questions and I think the community might have a little more trust on this particular issue. Mahalo for your time and look forward to testifying on C-1.

TARA ROJAS: Aloha, my name is Tara Rojas. I just wanted to say as well just sitting there you know I didn't realize what this issue was, but I just wanted just to bring this to attention that it says right here, Item B-1, the summary of request that the Commission on Water Resource Management Commission to delegate authority to the deputy director to enter into a MOA with the State of Hawai'i Department of Land and Natural Resources Division of State Parks to allow the installation of a monitoring well within the Hāpuna Beach Recreation. Then I just you know put it up really quick and I was looking at this and it says right there, the time of performance. Just to keep in mind that this kind of decisions, like where did it come up from? It seems that not a lot of people are aware until we were here and we hear about it and these are the type of things that continue to

keep happening. The MOA says, shall be executed as of the date of Commission approval for this submittal. If this is going to be approved really quickly you know so we can continue on with the testimony for Lahaina, Maui, that is to be of concern. It said it would remain in effect for 10 years after which it is renewable at the option of all parties. Then there's other information about that, but just to keep that in mind. Then lastly says right here, consistency with the Hawai'i Water Plan, the proposed MOA will assist the Commission in accomplishing goals identified in the Water Resource Protection Plan. It says the goal of this WRPP 2019 update refers to the goal of constructing new deep monitoring wells in critical aquifers to gather and utilize data to identify impacts from pumpage, climate, and land-use changes, fresh water sustainable yields, and monitor recharge trends. Then the purpose of it is again to test the Waimea Aquifer System by collecting data but the thing is this type of thing I think we should all look at. What is this Water Resource Protection Plan and it's under Task 1.8.1 of the 2019 update of that WRPP. I guess we should be aware of what this is and to know that how this process is that this type of thing can pop up. It seems like a nonchalant, okay we'll just approve these things, but if somebody came up and spoke who knows about it and says uh-uh. Even sitting there was just like something in the na'au that this is the type of things that we need to know what's happening because it's going to keep coming up. Things are going to keep getting passed and so we have to just continually be aware. Mahalo.

KĀPUA SPROAT: Aloha mai kākou, for the record my name is Kāpua Sproat and I am also testifying today in my personal capacity. I, like many others in this room and outside, I actually came to testify on C-1 and I will do so later, but I wanted to share my significant concern. Looking at the submittal as it's been presented, the MOA defers the Ka Pa'akai analysis until later on. I'm just wondering, my question for you Chair because I know you're very committed to Ka Pa'akai analysis, you understand that this operationalizes the Water Commission's kuleana under Article 12 Section 7, so it's really important to do. To me, if the MOA is going to be entered into and then the Ka Pa'akai analysis is going to be done at a later date, it puts the cart before the horse because shouldn't the Ka Pa'akai analysis be done first to examine precisely the issues that Jonathan and other folks and Dr. Beamer and other folks are raising so that this Commission can make an informed decision about whether or not it's sufficiently protecting traditional and customary rights and resources under Article 12 Section 7? My additional concern is that if it's being delegated then what opportunity will the community have to participate in the process? Because in my experience it's often, and I'm grateful that the Commission is taking on the kuleana to do the Ka Pa'akai analysis. I will say that without Deputy Director Manuel, I have significant concerns about the staff's ability to be able to facilitate this kind of work in communication and in partnership with the community. There's two points. One, this puts a cart before the horse but two, especially if the Commission is going to move forward with this without the assistance and guidance and knowledge and integrity of Deputy Director Manuel, I have concerns about what additional protections or opportunity there'll be for the community to analyze the Ka Pa'akai analysis or provide input to ensure that it's adequate. I would also strongly recommend deferring action not just because I would like to testify on C-1, but also because I have significant concerns and I know Neil and Ryan and everyone else want to make sure that this is pono and do the right thing.

COMMISSIONER KATAYAMA: I think with this conversation that we've been having, how would you better understand the aquifer without doing monitoring wells? Having heard today's testimony before the Commission, earlier you described what kind of permits come before the Commission and what kind of permits are handled ministerially. Wouldn't this show that the permit should now be handled through a Commission review? And we can move forward with executing supremely because it has nothing to do with the permit. You will then work on the permit. It puts things in the proper perspective where the Ka Pa'akai analysis would be done at the time of the permit presentation and it shouldn't take any longer for either one, right? Other than getting on our calendar. Does that sound reasonable hearing the public's testimony today?

CHAIR CHANG: Maybe I'll speak up as the Chair of the department. Clearly all of you have raised some very legitimate questions about whether it's ministerial or whether it should be a Commission action. I think that's a very legitimate question. We've had some internal discussions about that. I appreciate, Kāpua, the question about Ka Pa'akai and even Jonathan's question about what does this mean. Perhaps, Dean, we should consider deferring this matter to really address some of the larger policy questions that have been raised here. I think that seems to be appropriate.

ERIK MEADE: I would also advise deferment. We understand so little about how our aquifers are connected that if we, through punching these holes create a connection, we not might not be able to stop it. And again, if Deputy Director Manuel was here, I trust his input greatly and I would maybe feel more confident that we had the data. We have a lot of ways to understand what is under the ground now. I would like to have more detail about whether we're doing seismic testing. We can use minor charges to get information about what is under the ground we are on to make sure that we are not potentially connecting things that haven't been connected before. Thank you.

COMMISSIONER KAGAWA-VIVIANI: Can I add a couple specific things maybe for the staff to consider the concerns that were raised and should be addressed in the next submittal? And include the Ka Pa'akai analysis on the front end. At least to address the concerns (inaudible). To the extent that these can really be considered and really justified. We value the O'ahu deep monitoring wells for helping us understand our aquifer. We do need them in other places, but the geology is different on different islands. How are we addressing, thinking about this proactively and very consciously, given the drama around the other wells that sort of preceded my time. But like let's take that in, address it in the front, and then make the next necessary steps. And why it's needed for Waimea, just as Dr. Beamer had mentioned. To really justify it so it's on record. I'd appreciate that.

20230919 07:18:14

MOTION: (MEYER / HANNAHS)

To defer staff submittal.

UNANIMOUSLY APPROVED

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

B. ACTION ITEM

Executive Session

20230919 07:21:10

MOTION: (MIIKE / HANNAHS)

To go into Executive Session pursuant to HRS 92-5(a)(4) to consult with the Commission's attorney to address items B-3 and B-4.

UNANIMOUSLY APPROVED

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

20230919 07:46:10

B. ACTION ITEM

- 3. 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

Staff stated the Surface Water Use Permit Application should be approved for new uses to Wesley and Jodie Mundy for kalo and diversified agriculture. The use for kalo cultivation is considered under the priority for the exercise of traditional and cultural practices. The requested amount of water is reasonable and beneficial and can be accommodated within the allocated amount for off stream uses by permitted users across the Waihe'e, Waiehu, 'Īao and Waikapū surface water management areas.

QUESTIONS / COMMENTS

JODIE MUNDY: Aloha everyone. My full name is Jodie Nihimaile Mundy. My maiden name is Iwamasa. My father, Thomas Iwamasa, was half-Japanese and half-Hawaiian. My grandmother, Lilian Kikala, was full Hawaiian. My family's property in Wai'ehu was passed from my grandmother to my father in 1974, located on Mala'ihī Road, less than a mile from my property which I purchased on April 2021, the subject of this permit application. From my grandmother's garden and lo'is to the hills above Wai'ehu, our

neighbors farmed produce like bananas and kalo. I recall the properties at the top of Mala'ihī Road having cultivated lo'is to include the property that I now own. I'm connected to Wai'ehu through my father and grandmother. Approval of this service water use permit will allow me and my family to cultivate the part of Mala'ihī Road again. Mahalo.

PUBLIC TESTIMONY

HŌKŪAO PELLEGRINO: Aloha Chair and Commissioners, thank you again for the opportunity for me to provide some quick testimony. Hōkūao Pellegrino, President of Hui o Nā Wai 'Ehā. As I mentioned in our August meeting on this particular item that Hui o Nā Wai 'Ehā is in full support of the Mundy 'ohana and their commitment to growing kalo and to restoring their ancestral kuleana land. We very much appreciate the Commission, the Commission staff, interim director Dean for their swift action. And thank you as well, Chair, for holding true to ensuring that we were able to get the answers that were needed in that one-month period. We very much appreciate that. We also support the staff submittal and recommendations to allocating the water for the Mundys. Thank you again and I'll be here for any questions if need be. Mahalo.

CHAIR CHANG: Thank you very much. I see Michele Ho'opi'i. Did you want to provide any testimony on this item?

MICHELE HO'OPI'I: Aloha, Chair Chang and Commissioners and staff. My name is Michele Ho'opi'i and I am testifying in support of Jodie and Wes' application, specifically for their traditional and customary rights. Their family is and has been a long-time family on Mala'ihī Road. I know that Jodie's tutus do go back as far as the 1800s and they have practiced taro farming. I support their application. Give them water so that they can continue their traditional and customary practices. Mahalo.

CHAIR CHANG: Thank you very much. I see Avery Chumbley and James Geiger. Did you want to provide any testimony or comments?

AVERY CHUMBLEY: Yes I do, Chair. Chair Chang and Commissioners, thanks for the opportunity to provide both written and oral comments on both B-3 and B-4. Our comments are similar on the pair of the two. My name is Avery Chumbley. I'm the President of Wailuku Water Company. And as I stated back in August, these are the first two SWUPAs that will be delivered off of the Wailuku system since the June 2021 D&O was issued. The other previous three came directly off of the river. We do not object, as we said in August, to the quantities being proposed to the allocation in both of these SWUPAs but Chair we do disagree with the staff submittal that these permit holders would not violate the PUC order as we understand it. In the Ramseyer format on both page 15 and 20 of both submittals, the statement says these SWUPA holders would be a user and not a customer and could not violate the January 9, 2009 PUC order. We still continue to disagree with that, Chair and to that extent, I'd like to ask Jim Geiger to expand on that issue. And also we have Doug Codiga with us today who is our PUC attorney who can provide the additional comments on specifically on those issues.

JIM GEIGER: Good afternoon, Chair and Commissioners. Jim Geiger on behalf of Wailuku Water Company. I want to thank you for your attention; I know it's been a very long day. You've heard a lot of testimonies, so I will try to keep my remarks short. We read the staff report in their meeting with the PUC as addressing only our amended application that was filed last May, May of 2022. We don't read it as having addressed the Suspension Order that was issued in 2009. And in particular in the Suspension Order, it starts out stating, the status quo shall be maintained and applicants and their affiliates are prohibited from adding any new customers. At that time, Wailuku Water Company didn't have a category of "users." We only had a category of customers. And so based upon what was before the PUC at that time, we understand that to include everyone. If we had anyone new, we are not maintaining the status quo and therefore we would be in violation of the PUC suspense order. We've asked for the suspense order to be lifted for some time. The PUC has not taken action. If the Commission proceeds forward, we fully expect them filing a motion to specifically lift the suspense order as to the two permit applications that are before it today. We don't know exactly how long it would take, but we would expect that to happen. For clarification purposes, we could ask for a special condition to be added that states that the permits would be conditioned on the issuance of the lifting of the suspense order from the PUC. We think as a compromise position, simply modifying the standard condition #3, as in our written submittal, to add at the end, "including compliance with the applicable rules, regulations, and orders of the Public Utilities Commission" will suffice. And with that, I will stop my comments and be able to respond to any questions you may have.

CHAIR CHANG: Mr. Codiga, did you want to add anything? Doug?

DOUG CODIGA: Nothing further to add, Chair. Thank you.

CHAIR CHANG: Thank you very much. Do I have anybody else on Zoom who wants to provide comments on this matter?

ISAAC MORIWAKE: Good afternoon.

CHAIR CHANG: Good afternoon, it's almost evening.

ISAAC MORIWAKE: So it is. Good evening Chair Chang, Commissioners. Like everyone else, I was here for C-1 so I'll stay on for that but having heard this matter and being a long-time legal practitioner before of course this Commission as well as the Public Utilities Commission, it definitely piqued my interest. I just want to be clear on what was proposed by Wailuku Water Company because I believe they were raising the PUC as potentially as a barrier to the Commission, this Commission issuing a permit. And I heard them proposing some kind of condition on the permit, subject to PUC approval or something like that, but I thought I heard from Dean's staff presentation that the PUC already signed off on this. As far as they're concerned, this is not a customer and they're a user and that, of course, aligns with this Commission's understanding of the kuleana right holders or users on this system where they have a right to the water flowing

to this ditch system. They're not customers of this water company. What I'm hearing is that the Commission understands that, going back to their orders in this case. The PUC understands that and said so in so many words to the Commission staff Acting Deputy. So, what's the problem here? Let's just move forward, right? If you have any questions, again because of my decades of experience at least collectively on both these Commissions, please feel free to ask. I thought there's no problem here.

CHAIR CHANG: Appreciate the free legal advice.

COMMISSIONER HANNAHS: I was going to ask Dean, but what's the problem with their additional language? It just says it'll be, if the PUC changes its mind or something, they're insulated.

ISAAC MORIWAKE: Was it that simple as just subject to PUC jurisdiction or whatever?

COMMISSIONER HANNAHS: What we believe to be PUC's determination is that matters of water allocation are ours. And if we tell them they have water to allocate, that doesn't create a harm to Avery folks. So?

ISAAC MORIWAKE: Sorry, is that the...

CHAIR CHANG: Well, I think there were two separate...what I heard Wailuku say. First, I heard one condition being it was subject to PUC lifting, but then I also heard. I would agree. That one made me uncomfortable, but the second one was by Mr. Geiger saying, just comply with our terms and conditions of peace.

ISAAC MORIWAKE: If that's just some boilerplate provision, you're just saying the sky is blue, fine. But I heard what you heard as well, which is let's go through another round of this with the PUC, clarify the distinction between customer and user, no.

CHAIR CHANG: That's what I heard, that there were two different proposed conditions. One was subject to PUC lifting the condition and then the second one Mr. Geiger said, as a compromise why don't we just say you comply with all PUC orders, which we are. We are complying with the order.

ISAAC MORIWAKE: Thank you.

CHAIR CHANG: Did you hear Mr. Meyer? He said, "Who should I send the bill to?" Who are you going to send the bill to?

ISAAC MORIWAKE: As you know, we work pro-bono.

CHAIR CHANG: This is what we appreciate. This collective together, finding a solution. Questions anyone?

EVERY CHUMBLEY: Chair, I'd like to ask either Jim or Doug to opine on that and clarify because what I'm hearing is several different things and I think that they can bring some clarity to what was just debated.

CHAIR CHANG: Mr. Geiger, what I heard you say, there was the one condition which was subject to PUC lifting versus you said as a compromise that they comply with all the PUC conditions. Could you just clarify that?

JIM GEIGER: That's correct, Chair. We could've asked for something, a condition being put on here that it was subject to the PUC lifting of the stay. We thought it was probably, accomplish the same thing by adding just that, comply with all rules, orders, and regulations.

MICHELE HO'OPI'I: When we submitted our permit, it did not stipulate that we had to do any PUC requirements.

CHAIR CHANG: Yeah, okay, okay. While you're here, do you want to add to the conversation?

ISAAC MORIWAKE: Now I'm hearing the further explanation, even that language makes me uncomfortable. It might put the onus on these right holders to have to wait while Wailuku Water Company says, you have no right until you go to the PUC get some declaratory action or something like that, you know? Look, just because we're paranoid doesn't mean they're out to get us, but we've been doing this stuff for Nā Wai 'Ehā for twenty years and we've seen a lot of rigmarole. Let's just cut through all of this. PUC has spoken clearly, right? This Commission has spoken clearly. These are not customers, period.

CHAIR CHANG: Let me ask you, if we get sued by Mr. Chumbley, will you defend us?

ISAAC MORIWAKE: Absolutely, as friends. You might be aware, this is public information, that this shibai about the Water Commission has to defer to the Public Utilities Commission is an issue that the water company has raised on appeal on Nā Wai 'Ehā case. They're going to lose.

CHAIR CHANG: Okay, we'll bring this back to order. Thank you very much, I appreciate the additional commentary here.

ISAAC MORIWAKE: If they want to sue, that's what you have deputy attorney generals for and this issue is tee'd up in other forums for a legal ruling. This is no reason to put these people through further delay and headaches. They asked for a permit, they're right holders. They should get it. And they're not customers.

EVERY CHUMBLEY: Chair, it's not the applicant that this decision is putting to risk. What you're putting to risk is Wailuku Water Company and its operation in its entirety to all of the people who get water through our system.

VICKY HOLT TAKAMINE: Aloha mai kākou, I'm Vicky Holt Takamine. I'm a Native Hawaiian activist. I now have a new title, vigil aunty. My question is, is Wailuku Land Company a traditional customary practitioner? Do they comply with giving water back to where it came from? According to our kānāwai, traditional land use, and water use. If you take water out, you have to bring it back to the system in the same condition so people down the way can use the water. Farmers, fisherman, all the natural...are they complying to that? Or do they just suck off the water for their own use? These are Native Hawaiian traditional customary practitioners who want to continue kalo farming, who have a right to that water. Wailuku doesn't own it. You don't own that water. It's not yours. You need to share like we have shared with everybody that comes. You don't have any rights to that. Period.

CHAIR CHANG: I appreciate the mana'o. Do I have anybody else?

SENATOR FEVELLA: Chair, I just get one question. I wasn't going to stand up, but all this...

CHAIR CHANG: This is the third person who told me, I wasn't going testify, but you come up.

SENATOR FEVELLA: I'm drowning in all this water. Bottom line is, I like know what year Wailuku Water Company took over the water because it sounds like this family goes to the 1800s. Was Wailuku Water Company in the 1800s?

CHAIR CHANG: You can ask us and we can ask them.

SENATOR FEVELLA: Ok ask them because I don't know. Because if they're not then, they're not even listening to what your staff just said? The PUC, they're not customers. I mean come on, I graduated Campbell backdoor, but I understand. I understand what was just said. It's clear as day. The only thing they're muttering is it's their water. Now this one's clear. Thank you, Chair.

CHAIR CHANG: I appreciate that. With that being said, Commissioners...

TARA ROJAS: It sounds like basically this. This is my little one's when we started, when all of this started, when we were awakened in 2019. Whether it's 'āina, whether it's wai, whether it's 'iwi kupuna, it's the same thing. It seems to me that when you have either a little one or generational families, what we're hearing right now, the families who want to go back and practice their culture, they have the right to do so. Yet as soon as you put this on, different dress, different motives, and then you get this added in. When you have this here, whether it's hidden kind of there so those who are in front can see. Whether you come with it in here, pocket, side pocket, envelope, whatever it comes in. It seems that this, what we continue to see, this over this. When it should be this way around. And that's all I wanted to say.

CHAIR CHANG: I do want to make an addition to the staff submittal. I would like to add a recommendation #5, that the board find that Jodie Mundy has established that her family has lived on the ridge of Mala'ihī Road in Wai'ehu ahupua'a for more than three generations where her family has cultivated kalo and the practice was handed down from her grandparents. Additionally, she has provided information that her planned use is not for commercial purposes, therefore she has established a traditional customary practice. In addition, Michele Ho'opi'i, who is also exercising traditional customary practices has also provided supportive, factual testimony to support Jodie Mundy's assertion that she is exercising traditional customary practices. I would just want to add that to the staff's recommendations.

20230919 08:14:00

MOTION: (HO / HANNAHS)

To approve staff submittal as amended.

UNANIMOUSLY APPROVED

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

20230919 08:14:38

B. ACTION ITEM

- 4. 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

Staff stated the Surface Water Use Permit Application should be approved for new uses to Michele Ho'opi'i for kalo and diversified agriculture. They recognize appurtenant rights and that this use is considered under the priority for the exercise of traditional and cultural practices.

QUESTIONS / COMMENTS

CHAIR CHANG: I would like to make an additional recommendation. I would like us in the future, when we're asserting traditional customary practices, that we are making specific findings. If we can in the future, staff, specifically identify in the record the findings that make that traditional, customary practices. I would go to page 11. Michele Ho'opi'i, do you have anything you would like to add to this submittal?

MICHELE HO‘OPI‘I: Thank you, Chair Chang. Just wanted to add that my family does have a long history there in Wai‘ehu, Mala‘ihi Road, specifically the area that we’re talking about, the Land Commission award is a little bit more in the cane field. As I have put it in my application, I am the sixth generational, lineal descendant of the original awardee, who was given the title for the property that I am requesting water for. I’d like to make it clear that I am not a customer. We are kuleana families that have been here for generations. We’ve had water coming to our property since then, since the Mahele. And because of the different water ways that were diverted and interrupted from the plantation era to present, we have since lost our water to the property, so that is why I’m here requesting my application be approved. Mahalo.

PUBLIC TESTIMONY

AVERY CHUMBLEY: Our testimony is the same for item number B-4. We do not agree with the staff’s conclusion and we ask that you amend standard condition #3 to include the additional language that we have provided.

CHAIR CHANG: Thank you. Mr. Geiger or Mr. Codiga, would you like to add anything?

JIM GEIGER: Nothing further. I’d be happy to answer any questions. The same arguments as we made previously for item B-3 would apply.

DOUG CODIGA: Nothing further, Chair.

CHAIR CHANG: I have Hōkūao. Would you like to provide comment?

HŌKŪAO PELLEGRINO: Sure. Aloha again, Chair and Commissioners. Again, mahalo nui staff for their tremendous and detailed work on this particular applicant, the Ho‘opi‘is, who we know very well have long, lineal ties to the Wai‘ehu ahupua‘a. And just appreciate their patience and diligence and commitment to growing our ancestral crop, restoring their kuleana land, and again for the staff’s recommendations. Mahalo nui for your support. Thank you.

CHAIR CHANG: Is there anybody else in the room that would like to provide testimony on this? Dean, I would just add, making sure that we do add to the, if you’re going to add it to #2. Maybe we should just make a separate #4 and specifically if you could include the specific facts as found on page 11. “She’s a sixth generational lineal descendant of the original Mahele awardee and that her family has been continuously using the property and had the flow of water.” Perhaps you can just summarize. Alright with that being said, Commissioners do you have any questions or do I have a motion?

COMMISSIONER MIIKE: Chair, she also has appurtenant rights on this piece of property, correct?

CHAIR CHANG: And you do include that, right?

DEAN UYENO: Yes.

CHAIR CHANG: It's #2.

COMMISSIONER KAGAWA-VIVIANI: Item 2.

20230919 08:22:11

MOTION: (HANNAHS / KAGAWA-VIVIANI)

To approve staff submittal as amended.

UNANIMOUSLY APPROVED

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

20230919 08:22:37

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Update on Water Resources in the Lahaina Aquifer Sector Area

- a. Wells in the Fire-Impacted Area**
- b. Interim Instream Flow Standards**
- c. Water Management Area and Water Use Permit Applications**
- d. Water Resource Alternatives**

PUBLIC TESTIMONY

Alfred Medeiros

- DLNR works for the people, not Peter Martin
- Need to have community inclusion as much as possible
- Restore the waters, let the people of Lahaina lead the way, don't sell out to big developers

Candace Fujikane

- Grew up on Maui
- West Maui Land Co. continues the settler occupation practices of Pioneer Mill against the kuleana 'ohana
- Restore Moku'ula, reinstate Deputy Kaleo Manuel

Wayne Tanaka

- Writ of mandamus was submitted to the Supreme Court saying because environmental court put a cap on water that could be diverted from East Maui, there was not enough water for firefighting
- As ke kahuwai pono, Commission has kuleana to ensure public trust is upheld

Kapali Keahi

- The Lahaina community worked hard to pass IIFS and water area designation
- West Maui Land's actions were an orchestrated attempt to turn the community on each other, State administration, and the Water Commission to undermine water protections in the guise of affordable housing and future fire suppression
- Lahaina is still suffering from the inefficacy of plantation life
- Demand government transparency, to be included in any discussions affecting wai decisions

Sesame Shim

- Testified more than a year ago on behalf of designating Lahaina as a Water Management Area
- Believing the false statement about Kaleo Manuel by West Maui Land is an embarrassment on this administration
- Reinstate Kaleo Manuel, continue the designation of Lahaina WMA, maintain current IIFS, regulate the public trust, fine West Maui Land

Dr. Kamanamaikalani Beamer

- Reinstate Kaleo Manuel, a man of integrity who has worked hard for Hawai'i and its water
- Chair and Commission must right the wrongs that have been said about him

Rep. Mahina Poepoe

- Represents East Maui, Moloka'i, Lāna'i, Molokini
- It is possible that Deputy Manuel's removal was an opportunity to get rid of him because of a previous dislike; it appears to be retaliation
- Was Deputy Manuel's redeployment lateral? Was there a probationary period pending investigation preceding his removal and reassignment?
- Reinstate Kaleo Manuel

Samantha Dizon

- Born in Wailuku, raised in Pukalani, living in Kaua'ula Valley
- West Maui Land/Peter Martin shut off their water 10 days after the fire in 2018 with no notification, again in March 2022
- Reinstate Kaleo Manuel, honor the Water Code

Vicky Holt Takamine

- Kaleo Manuel is a dedicated haumana in her hālau
- Reflected on how similar the situation with Kaleo is to the overthrow of Queen Lili'uokalani by developers
- First director to implement the Water Code as it was intended
- The lāhui has stood up for him today, no one in the administration has corrected the false narrative about him

Sweet T

- Reinstatement of Kaleo Manuel, water diversion needs to stop, return the water to the people of Lahaina, stop treating kānaka ʻoiwi as third-class citizens, people over profits
- Native Hawaiian water rights supercede all other water rights

20230919 09:17:42 - BREAK

Elena Bryant

- Testifying on behalf of Earthjustice
- Agendize the reinstatement of Kaleo Manuel, declare in writing that Maui Komohana IIFS are in effect, confirm in writing that West Maui Land Co. authorization to fill reservoirs during emergencies is revoked, commitment from the Commission that they will uphold Water Management Area designation
- **CHAIR CHANG:** I do want to say for the record that a letter has been provided to Mr. Tremble withdrawing, in light of EP 7, 174 is in effect. And I specifically withdrew the letter that I had provided him pursuant to the EP, informing him that he is to comply with the IIFS and we're going to enforce that. That was sent out.

Holly Doyle

- 3rd-year law student at William S. Richardson School of Law
- Testifying on behalf of Elena Chang, Kawai Scanlan, Dru Hara
- Assisted the Maui Komohana community with water use permit applications
- Center kānaka voices, uphold the public trust in aloha ʻāina, reinstate Kaleo Manuel

Dru Hara

- From Niu Valley, Oʻahu; law student at William S. Richards School of Law
- Assisted Maui Komohana community in preparing their water use permit applications
- Listen to the voices who have spoken today, issue water use permits to priority users who filed applications to exercise appurtenant and traditional customary rights, reinstate Kaleo Manuel, respect WMA designation, enforce IIFS, return the water to the kānaka who have stewarded the waters since time immemorial

Mariana McCallum

- From Kahuku, 2nd year law student at Richardson, alakaʻi at ʻAha Hui o Hawaiʻi
- Actions after the fire show the Commission cannot be trusted
- Reinstatement of Kaleo Manuel, include the people of Lahaina in discussions on water management in Lahaina, uphold designation and Water Code in favor of people of Lahaina
- **CHAIR CHANG:** I'm not going to get into personnel matters, but I want to be very clear. The decision to redeploy Kaleo Manuel was not the Commission's, it was my decision. So please do not disparage the Commissioners, okay? It was my decision.

Mahesh Cleveland

- Attorney with Earthjustice; worked with Honokōhau community to establish IIFS & Lahaina injection wells
- Supports the development of more R1 capacity by the County of Maui to offset stream water use
- The community felt like their voices were heard when Kaleo Manuel was Deputy

Philamer Felicita

- Resident of Waipahu, descendant of Filipino plantation workers
- Water is a basic human right
- Regain the trust of kama'āina, stop entertaining entities like West Maui Land Co., reinstate Kaleo Manuel, uphold State Water Code, ensure proper compliance, respect WMA in Maui Komohana

Keola Nakanishi

- Did there a neutral investiagtion of Kaleo Manuel? Any other comments from the Commissioners?
- COMMISSIONER HANNAHS: With respect to Kaleo, I think the Chair is listening and will take the testimony under advisement, thank you Keola for that opportunity to set this up, but I was jotting some notes that what do we make of all this today? One of the things I'm hearing is today's public testimony constitutes the filing of a complaint about a CWRM permittee. Peter Martin doing business as Kahoma Land, Makila Land, Launiupoko Irrigation, Olowalu Water Company and so forth, that he's abused the public trust asset that's in our charge, that he's denied at times the rights of beneficial users of that public trust asset, that he deliberately distorted information that created about our policies in the exercise of political influence for personal gain, and fourth that he maliciously defamed the character of a dedicated CWRM public servant who's just dispatching his duties. That to me, the sum total of this testimony today is a complaint that if somebody were diverting too much water, if somebody did something they weren't supposed to do against our policies and interests, we would pursue that complaint, investigate it, and then there would be action and recommendation back to the Commission. I'm not sure, do they need to put this in writing or does this hearing constitute the filing of that complaint? What's our process for this?
- CHAIR CHANG: Dean, we have received information, in particular from Kekai Keahi has submitted to us. The staff is reviewing that. It's based upon some specific allegations. We are looking at that, we are investigating. My letter has gone out to him to be very clear that my previous letter permitting him, giving him the authority to, is no longer effective. That as of Emergency Proclamation #7, effective at that point in time, he must comply with the IIFS. Now the staff has the ability to continue, to pursue that investigation. There is some specific allegations that have been raised. Kekai has provided us some specific video or some pictures. We are pursuing that. Staff has been instructed to now pursue that as an investigation. They are looking into that. You're right, we have heard a lot of things today. I just want to be very careful. I would feel more confident investigating allegations that have been presented to us with facts. There's been a

lot of assertions today. I'm not going to in any way diminish all of the statements that were made. That to me is extremely relevant when we are looking at the designation and we're looking at all the permits. I think that's really relevant for the Commission. I think we do have sufficient information now to pursue a separate investigation based upon information that was recently provided to us. I hope that is okay.

- DEAN UYENO: The complaint that Chair's referring to is actually a part of Kaua'ula Stream that Ayron talked about today where there is a dry section. As you may recall in April 2022, we suspended the IFS mauka and makai, just below the diversion and just below the siphon return. I believe that is what Kekai was referring to in his video. Keep in mind that we are still monitoring the IFS, so there may be other violations that we need to follow up on. But also, I don't know if it was mentioned earlier today, our regular schedule out in West Maui is quarterly. We don't have the staff or the resources to do it more frequently. Ayron and his team regularly cover different areas, Kaua'i, East Maui, West Maui. We keep it on a quarterly schedule, so we do intend to resume monitoring in October of this year.
- COMMISSIONER HANNAHS: And if you need facts, people come forth with good faith testimony, advise them what you need in order to pursue the investigation and it'd be fair to ask Mr. Martin for responses on anything he's been alleged to have done, so that he has his opportunity to respond to it. Just putting that forward.
- DEAN UYENO: Anytime there's a credible complaint, we'll have them fill out as much information as we can on a form. We get that, we'll send that to the respondent for follow-up, and then we'll look into it more closely.
- COMMISSIONER HANNAHS: I think we just want to direct the conversation so it's productive and we follow through. Not just, okay you blew off steam good, now we'll go to the next meeting. Or that we resort to breaking the law or doing something because I said something and nobody listened. Let's figure out how to channel this in the most appropriate ways that are within our authority. It has to fall within the authority of the Commission.
- COMMISSIONER KAGAWA-VIVIANI: I just have some thoughts on Keola Nakanishi's question, but I also want to be respectful that there may be other people in the room who have testimonies. I'll hold my comments.

Kecia Joy

- Marine biologist for over 30 years, resident of Maui
- What does Chair feel she needs to do to regain the people's trust?
- CHAIR CHANG: For me, it's continuing to do the good work of CWRM, it's to empower the staff to do the work that Kaleo established the foundation. It is to continue to ensure that that legacy, the community engagement, the Ka Pa'akai analysis. I want to be very clear that Kaleo brings value to CWRM staff and to the Commission. None of that is being diminished by the actions that I've taken. But I also realize that Kaleo is a part of a larger team. Right after the fire, CWRM, they mobilized to come up with some options. They immediately went out and did some good. So, when you ask me what am I...it is to ensure that the good work of

CWRM continues, that we meet with the Water Commission, and that we continue the good work. That's my response to you. Thank you, Kecia.

- Do you have any intention of reinstating Kaleo Manuel?
- CHAIR CHANG: As I indicated at the beginning, that's a personnel matter and I'm not going to get into personnel issues at this meeting.
- Reinstatement Kaleo Manuel, restore Moku'ula

Erik Meade

- Recent graduate of William S. Richardson School of Law
- HRS 26-3584: the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board of Commission shall be determined by the board or Commission subject to the approval of the head of the department into the applicable personnel laws
- Reinstatement Kaleo Manuel

Kapua Sproat

- Has experience in Native Hawaiian law and water law, in particular
- CWRM is suffering without Kaleo's leadership, example is Item B-2 with Ka Pa'akai analysis incomplete
- Reinstatement Kaleo Manuel

Isaac Moriwake

- Rule of law & the Commission are under attack
- Chair's decision to redeploy Deputy Manuel is not hers to make, but the Commission's
- CHAIR CHANG: I, like you, have a lot of respect for you and the work that you. This isn't easy, I don't want anyone to think that this is easy. I don't want to get into...I just don't think this is appropriate. I am in no way diminishing or disparaging Kaleo Manuel. He probably has been one of the best water deputies...I knew Linnel Nishioka. I felt Linnel Nishioka, she was a great deputy. But Kaleo has provided Hawaiians who have been disproportionately impacted by Water Commission decisions. Kaleo has brought parity to that, undoubtedly to the dismay of others. Through his sensitivity as a cultural practitioner, through his knowledge on Ka Pa'akai, Kaleo has brought that equity back. He has given the voices that have not otherwise been heard in the Water Commission. Please do not take my actions in any way as diminishing the good work of Kaleo Manuel. I have the same high regard as you do. This is not the Commission's decision, this is mine. I would just leave that as it is.
- I would request that you stop talking about him in the past tense because he's still the deputy.
- CHAIR CHANG: He is indeed. He has not been fired, he has not been diminished in pay, none of his retirement is impacted. He has just been redeployed to another agency and division. I think it is publicly known that he has been deployed to the State Historic Preservation division. Out of his choice and mutually agreed.
- Out of his choice?

- CHAIR CHANG: Well, the choice of where would you like to go.
- I think his choice would be to...
- CHAIR CHANG: You're right, you're right. That is his choice is to be back as the deputy, but given the circumstances, that was the discussion. I am turning into waters that I would prefer not to.
- By saying it's a personnel matter, no one can talk about it. Not only is he gone, but we can't talk about it.
- CHAIR CHANG: I cannot talk about it, I cannot talk about it.
- The Commissioners should assert their authority to right this wrong
- Reinstate and clear Kaleo Manuel's name
- COMMISSIONER MIIKE: I want to add one thing. I was counting back to how many chairs I've worked with over my span of so many years, four. Most of them had eight-year terms. Dawn Chang is the best one I've worked with so far, even though I've been in here two months. I really respect her. I disagree with what happened, I don't know what the reason was, but as far as overall activity, I really respect her.
- You know as well as anyone else that it's not just the decision, but it's the reason, too. I think it's problematic that you don't what the reason of this decision was.
- COMMISSIONER MIIKE: Yeah, I understand that. Yes, very much.
- CHAIR CHANG: I do want to say, the Commissioners, they do not share my decision. They do not support the decision. I want to be very clear. These Commissioners, they are not in unison with the decision I made. Please be careful with that. When you talk about silence, these Commissioners are not silent.
- COMMISSIONER KAGAWA-VIVIANI: Excuse me, Chair Chang. We can defend ourselves. We're waiting for the appropriate time.
- CHAIR CHANG: I appreciate that. I do want it to be very clear, okay? They've made their voices heard.
- I'm sure you've had many a robust background conversations, but this is also a public conversation, as well.
- CHAIR CHANG: And that's where we perhaps disagree.
- On the transparency front? Oh, for sure.
- CHAIR CHANG: No, not on the transparency, on the personnel issues.
- COMMISSIONER MIIKE: Isaac, I want to assure you that in my short time with this Commission, this is the most active Commission members I've ever worked with. You're going to see a lot of action.
- CHAIR CHANG: Please note that everybody takes their kuleana extremely seriously. No one here, and the least of all me...in my confirmation, my grandson six years old, he wrote a letter to Senator Inouye. He said, "Senator Inouye, please give my Puna," they call me, "please give my Puna the job. This is her dream job." It is my dream job. I love the job every day, I will tell you, I love it every day. It doesn't mean that it's easy. I share similar goals like Kaleo. The opportunity to provide a platform for communities who have not otherwise had an opportunity to speak. Land Board, we're doing a lot of informational briefings, even CWRM. Informational briefings with the Navy. My feeling, as a community organizer, it is informed decision making. I want people to know that I don't

make decisions without thinking things through. We may disagree, but I do appreciate the candid opportunity to speak.

- COMMISSIONER HANNAHS: I want to build on this commentary, though. A couple things, when things don't appear logical, people get cynical. Right now, that's where we are. In the absence of information, things get made up. Secondly, one of the reasons you used to justify the personnel move, is you trying to protect the work of the agency. The work of the agency is not protected by this. This is, as Isaac has said and I fully agree, this is an inflection point. I've been in an organization that's lost trust and had to work really hard to rebuild it. We lose the trust that Kekai talked about, our work is going to get really, really difficult and the progress we make is going to be really, really challenging. The divisions it creates and the animosity within our community is going to be really, really bad and the threat to the resource that we are sworn to protect is going to be jeopardized. It's a lot to lay on, but you've embraced this. You've embraced this responsibility. Just know that it has those kinds of consequences.

Keola Nakanishi

- COMMISSIONER KAGAWA-VIVIANI: I'll break silence, I guess. Fully knowing that this is my first term and I am looking to serve again, but perhaps keeping quiet for the sake of that is not worth it. I'm uncompensated, I can't be fired, I'm a volunteer. That gives me a little bit of freedom and in addition, I'm an academic and I'm used to using that ability to speak freely. Yes, I don't have tenure. But what's the sake of staying quiet if all you do is holding out for five years until you have some job security. Life is too short. You asked, Isaac, is this an attack on the Commission? I think with everything we heard today and everything I've been watching from the IIFs, from designation. What felt like real violence when Kaleo was redeployed, especially seeing it from the back end. There's a lot, maybe I'm still too emotional to share, but I understood that his reappointment was not straightforward or easy. I understood that he felt like he had to navigate the transition and this is my first time navigating an administrative transition, so I thought that was sort of normal. It didn't necessarily feel healthy. When I was forwarded some of the correspondence, it was alarming and concerning. And it shook me because having watched the governor's vetoes on the water bills that were really in response to work I had helped with on Red Hill and the permitted interaction group and questions we had that were unresolved by the AG, seeking clarification. There were the vetoes, there was the emergency housing EP that sort of raised questions on how our operations and the Commission would be affected even though 174-C was still in effect. His redeployment for me was sort of this unbelievable view of tampering in the work of the Commission. At the same time, we saw how many people came today and that they didn't come to designation willingly, it was because that was the option that they would have to go through this onerous process of applying for permits and being regulated. Nobody likes being regulated. Navy doesn't like being regulated, the Board of Water Supply doesn't like being regulated, nobody likes being regulated. We get that, but they were willing to do that because it would create a more equitable power landscape for water. And I hauled my books, Water

Conflict. It's not just about water, it's not about wells, it's not about streamflow, it's about power. We know this locally that water conflict is about power relationships, sorry I'm processing aloud here, but it was so very stark to me of what the power landscape looked like on August 16th, a day after our last meeting. Where it was so stunningly normal after a horrible, front Civil Beat article and it felt like incredible whiplash to have just received a notification from DLNR news, Dan Dennison, that our deputy was redeployed. We didn't have a say in that and this is just my personal experience on it. I raised questions and I did not get any answers and then there were other answers that were sort of in the news about investigation. All to say, I think regardless of what is Kaleo, I think the bigger question is, what does it say about our governance? Our water governance but governance in general. We have people who believed in a process, who were onboarding who are suddenly feeling very betrayed. I watched betrayal with Red Hill, how Navy, people who spent their life working for the Navy felt betrayed. But this is a different kind of betrayal because people were just starting to believe in the system. Yes, we can treat Peter Martin as watering lawns as a waste complaint, but I think there are bigger issues at hand that don't necessarily happen through like HER 13-whatever. We should each think about and Kumu Vicky Holt Takamine's question too about or other people asked about what are we doing? Chair Chang, I know you said it was your choice, but I as a Commissioner also feel like I did not perhaps in those times in the immediate aftermath speak up. Isaac you were like, why is it silent? I didn't speak up because I didn't know and I didn't know what to say and we didn't know what was happening. Now I'd like to speak up and you know, we can make bad decisions in the heat of the moment, but also I've been called out on them. Halealoha Aiau called me out and then you mihi (repent). This is just me not being a bureaucrat, but that's how you start to work on the trust. The Navy recognizing that, yeah we screwed up, but it's going to be a long road and we're going to be held accountable. The concern to me is always when people stop showing up to the meetings, that they've given up on you. Right now, people are showing up, but when we stop seeing people, that's when they think governance has failed them. Our systems of governance work when people believe in them, when they engage in them. I think that's what's at stake. Hearing from staff, hearing from everybody today, yes there's a personnel issue, there's an investigation, the AGs publicly saying it's going to be a long time, at the same time there's designation, and yes, we want to move forward. But how do we move forward if we don't have capacity and definitely how do we move forward if we don't have that ingredient that allowed people to trust the Commission, that ingredient being Kaleo. I personally, I'm thinking about the individual statement of support, I may draft up and put in writing. He was serving as Deputy before I came in and so I have this expectation of the momentum of the Commission...it's like we shifted from fourth or fifth gear to first. The way I take it is, Kaleo was pulling a lot and it's going to be on other people to do that work and maybe it always should have been. I don't have any good closing words, but I appreciate the opening for talking because people don't understand that government is not some blob, government is people and we can also make mistakes, but we can also rectify them. I appreciate there being room to figure out

how to rectify that. We're getting specific recommendations on how to do it. Maybe we can't follow that recommendation, but we can work on solutions in the spirit of because I think we need the capacity, the facilitation capacity and skillset that Kaleo had and I don't know where we're going to find it. Definitely need it for West Maui, Maui Komohana.

Jonathan Likeke Scheuer

- Has appeared before the Commission on behalf of Hawaiian Home Lands and other entities
- The stage was set for Deputy Manuel's departure before the fire
- Rumors that WMA designation would be a hinderance to affordable housing have not been properly corrected by the Commission
- Reinstate Kaleo Manuel, provide adequate funding for the Commission to fulfill their duties, implement IIFS across the State, designate additional areas

Camille Kalama

- Roots are in Kīpahulu and Kaupō, family is now in Waiawa
- Has worked on the East Maui contested cases
- Nothing about protecting streams hurts the public, traditional and customary practices are good for the public
- Reinstate Kaleo Manuel, investigate the claims made by West Maui Land Co. and clear Kaleo's name

ʻĪmaikalani Winchester

- Born and raised in Nuʻuhewa, Oʻahu
- Will not find justice in the court of thieves
- Our destiny to set the waters free, to restoration, to the loʻi, to the fishponds, to pono

Davis Price

- There was no due process in Deputy Manuel's redeployment
- The political nonsense is distracting from the real work of helping the community of Lahaina
- Reinstate Kaleo Manuel

Kaʻulu Luʻuwai

- From Maui, grandmother's home was affected in Kula
- Attorney with Ka Huli Ao Center for Excellence in Native Hawaiian Law
- Attacks on Kaleo Manuel on social media are severe, need to be addressed, and his name cleared
- Reinstate Kaleo Manuel, deserves to be defended by this administration

Andrea Swain

- 2nd year law student at Richardson, alakaʻi at ʻAha Hui o Hawaiʻi
- Why are you doing what you're doing?

- CHAIR CHANG: I have never forgotten why I started what I do. I've always been a community organizer, law school was a tool. I've always, always remembered where I come from. But I'm glad you came back. I'm glad my conversation with Isaac moved you to come back. Please know I've never forgotten where I come from, my own family, my roots, and my foundation. Yes, I remember, I remember.
- Reinstatement Kaleo Manuel, listen to the voices of the Maui people
- CHAIR CHANG: Please know that I always think about that. People might disagree with the decision, but I'm always thinking about what is in the best interest of the department. My clients are the people of Hawai'i, so I do think about that. I think you may be giving me much too much kuleana than I deserve, but I have heard you. I have heard everybody here. I've greatly appreciated everybody's heartfelt sentiment. Know that I don't walk away being impacted by everything that's been said. I thank you for coming back.

Troy Ballard

- Post-JD fellow attorney with Ka Huli Ao Center for Excellence in Native Hawaiian Law
- Listen to the community, respect designation, reinstate Kaleo Manuel

Na'ālehu Anthony

- Working together with the Commission on Red Hill, largest assault on Hawai'i's water in decades
- The way in which spaces like the Commission has operated are no longer viable because it determines whether the kupā o kēia 'āina stay or go
- Community of Maui expects a different relationship with the County, State, landowners, and tourism in order to rebuild a better Lahaina
- Honor the Water Code, reinstate Kaleo Manuel, support the Lahaina community

CHAIR CHANG: I'm going to give each of the Commissioners an opportunity to say something in closing.

COMMISSIONER MIIKE: I turned down the pizza because I didn't want to record it as a gift. I have nothing more to add. I have heard everything and I stayed alert for twelve hours. Thank you all and the people that are still watching.

COMMISSIONER HANNAHS: Mahalo to everybody who's been a part of this today. Dawn, your grace in accepting and receiving really pointed criticism is remarkable and only matched by your persistence in doing something really stupid. I feel like I'm talking to somebody who's in a car ready to drive down a busy street, you're going to hit somebody. You're going to hit somebody and they're going to get hurt. I don't know whether to yank you from the driver's seat or flat the tire of the car, but that's what I see. We're headed in a really bad direction. I know if I try to offer right now a motion to agendize to support Kaleo's reappointment, agendize that, AG will say no because they've taken a position that this is your deal. Until that's resolved in the courts, that's not going to go anywhere. What I think I can do legitimately is we have an agenda, we're going to meet on Maui next month. I don't know what the agenda item is, but you need to

explain, somebody needs to explain how we're going to rebuild, restore trust in that community. That needs to be on the agenda. What's your plan to drive down this street and not hit anybody, let alone be headed in the right direction. For our community, the evolution in my time, it'll be 50 years next year working in this Hawaiian community and to see the change in the staunchness and the engagement is just like lightyears, lightyears how we've grown. Just really proud to be a part of this. When I crystalize that spirit, I thought of a quote of Frederick Douglas fighting for the abolition of slavery in 1857. I just shared this with another group. He said, "If there is no struggle, there is no progress. Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing of the ground. They want rain without thunder and lightning. They want the ocean without the roar of its waters. The struggle may be a moral one or may be a physical one and it may be both moral and physical, but it must be a struggle. Power concedes nothing without a demand. It never has and it never will. Find out just what any people will quietly submit to and you've found out the exact measure of injustice and wrong which will be imposed upon them and these will continue until they are resisted." Our people are past the point of resistance, so expect it and fueled by that spirit. Anything less would be accepting injustice. Anything less would be walking backwards and losing the progress we've made. They're not going to let it happen. Let's do the right thing.

COMMISSIONER HO: I got this job in July of 2021, I think, and shortly after that, we had the Red Hill in November. It was Department of Health right away, day two of the incident said, don't drink the water. The Navy that day said the water was safe to drink. I recognize value of water, but I also recognized we issued an emergency order to shut down Red Hill, but it was the collective voices of the people of the State of Hawaii that came together, that really solidified the closing of Red Hill. I applaud you for that. It is the collective voices of everyone coming together for a single flash point, in this case there were four flash points. People coming together as a unity to bring your voices to the body to help us make decisions. I also really respect you Dawn for carrying that burden and it is a heavy burden, I know, because I had to take decisions against my employees as well. It's a difficult task and I know that it is a tremendous burden on you and I know you're going to do the right thing in the end. Thank you everybody for coming and for sharing.

COMMISSIONER KAGAWA-VIVIANI: I appreciate all the perspectives from the testimony today. I've been experiencing it through my own window, but in three, four, multiple dimensions now. It's clear that there's been a lot of pressure on you, Chair Chang. But as Dr. Scheuer pointed out, this preceded you and the whole incident took me back multiple times to the Lahaina Designation Hearing, and so coming out of this today, there's a couple things that I understand need to be done. I'm sorry, I forgot your name, there were lots of names today. But the social media aspect and the things that I am not aware of. My students yesterday were explaining Tik Tok to me and I'm still wrapping my head around it, but just how much certain messages travel and how information is so different than how I gather it and how you guys understand it. Yet, that's the reality that so many people live in, is through that. What I'm getting to is, I get now that my silence is not okay because if something were to ever happen to Kaleo, that's blood on my hands. I'm feeling motivated to write a public statement of support. I think it would be stronger coming from the Commission and we don't need to necessarily talk about the personnel issues, but I am feeling highly motivated to explain also the work of the Commission and why he was instrumental for that progress. He set new bars for what Commissions could and

should do in terms of upholding the Water Code. The other thing I'm thinking about too, thank you Dr. Scheuer, is that whisper network. Another way that information gets out and if you are in PRP or the carpenters union, that is your reality, that designation equals a housing moratorium. That we need housing more than ever. I don't know how to engage that conversation, but I would be very, very interested in engaging directly with, I think specifically it's PRP or carpenters union. Understanding what are the anxieties and let's address those because it doesn't have to be a zero-sum game. I think especially Lahaina forces us to see that that's not true. But other than saying it's not true, well then how do we make it not true? How do we address those concerns that so many people, I'm learning this, on Maui are contractors and so they do rely on that income stream. If we aren't building, then what are they doing? What are their job opportunities? Window washing at the hotels? How do we address the economics? It comes back to, I'm going to get academic, but there's this idea of three modes of governance, it's an oversimplification. There's the bureaucracies that we exist in, but there's also the market. I hate economics, I don't like to think about it, but the reality is it has a lot of power, and the housing market is definitely interacting with our water situation, especially on Maui but also Kona. Then there's civil society and it's sort of a triad and I had the privilege of speaking at the West Maui Speakers Series on Zoom back in April. It's clear it's lopsided. The idea is a three-legged stool, the bureaucracies, the market, and civil society. What we see is civil society coming up to rebalance things, but it also requires action on all of these other modes of government and coordination. How do we take some of those ideas, really actualize them to help us solve our problems? I'm deeply interested in seeing how to make that happen. I'll think more about it on how we can engage or ask around on how we can engage this housing-water conversation and get past these either-or binaries because it's harming people who have good hearts. Thank you for the opportunity to share that, put ideas out. Maybe other people have better ideas that can help us move the needle.

CHAIR CHANG: This is not easy. I cannot even begin to imagine how Kaleo feels, I cannot. Let me just address this, several things. One, it's never been CWRM's intention or directives to in any way blame the kalo farmers for the fire. That came out as a Civil Beat article in light of the correspondence that was made. That has never been a narrative we at CWRM have ever supported or advocated. We continue to support the IIFS...Proclamation 7, I will tell you in a conversation with Kathy Ho, clearly we could see the division in the Hawaiian community about the suspension of 174-C, the suspension of the IIFS, the threat of the West Maui Designation being withdrawn, created a tremendous amount of tension, contention, fear, anxiety. Everything that was said here was at threat so long as that suspension was in place. Through a conversation with Kathy Ho about how do we address this? I approached the governor, and I said continuing to suspend 174-C is only going to divide the Hawaiian community soon after the BBB mess. I said I would urge you to consider unsuspending that. Fortunately, he did. My determination to redeploy Kaleo was not a unilateral decision. That was a request I had received from the Attorney General's office based upon an investigation. But I made that determination, not the Commission, I did not confer with the Commission, I did not confer with anybody else. I told Laura Ka'akua being the Chairperson is probably one of the loneliest jobs you have. It's not like you can share some of these decisions, but I do own that decision. And that was based upon a request that was made to me based upon an investigation. I will tell you, I had to think about what was in the best interest of the department, including CWRM, contrary to what we heard today that many felt that that decision put at risk everything that CWRM has done, all the trust. I

recognize that, I recognize that, but having Kaleo continue to be in that position would have put a cloud over Kaleo, would have put a cloud over everything that CWRM did. I recognize that some of you would disagree with that. Understand that that wasn't an easy decision, but it was one that I shared with Kaleo. I also realize he has been in a tremendous amount of pain because he has not been able to say anything. I appreciate you bringing to my attention the social media. Like I said, I can never imagine how difficult this has been for him. How painful it has been to be personally attacked and not be able to say anything. Neil is right, silence gets filled with a void and that void is going to be filled with misinformation and it creates that opportunity. I think you need to appreciate the position that I'm in. There's an ongoing investigation. I have to be very careful about drawing that line and people may not appreciate that, but that is something that I have to consider. Being the Chairperson has been the best job. This has been my dream, but it is also the hardest job. My children have to call me every single day, are you okay mom? Are you alright? You okay? I'm good. I am so grateful for the opportunity to serve in this position, I truly am, but it is a very difficult position. Sometimes you have to make hard decisions that people do not agree with, I get it. I have heard every single person who has spoken today. I've heard the concerns, I've heard the voices, I've heard the emotions, and I've heard the heartfelt plea to make it right. I want you to know that I'm going to take all of this. I've heard you. Nothing has been wasted on me. I thank all of you that took the time to stay here with us, to provide us information. I recognize that something has to be done before October when we go to Maui. I don't know what that decision is going to be, but I recognize something needs to be done. We are planning our next meeting to be on Maui. We'd originally planned this meeting to be on Maui. I will tell you, I greatly appreciated a letter that came from Ke'eumoku Kapu...and Kapua mahalo for giving me the...Ke'eumoku Kapu, Archie Kalepa, and even Kekai, asking me to hold it on...now they could've raked me over the coals on social media and say, see how insensitive this Chairperson; she goes to Lahaina and didn't she feel what we? But they didn't. They trusted enough to reach out to me to ask...that to me, I will tell you when I received that, I wept because it was so significant that they could have taken a different route. They could have just said, see look at her, she don't even care. I am tremendously grateful for their reach out to me and to make that personal plea because I know that they didn't have to do that, but they did. We responded and they came in full force today and I am grateful that they all came. They took time off and you're right, at a point in time when many of them have lost their homes, they've lost loved ones, they've lost their community, but they took time to be here because they knew how important it was. I get it, presence is important and I knew how important it was. I heard their overwhelming plea and cry to reinstate Kaleo. I heard that, I heard that. Please know it has not gone on deaf ears. I have great aloha for them for making that gesture and for physically being here. I am grateful to all of you for staying as late as you have with us. I don't know what's going to happen in October, but I do recognize that there's an expectation that something will be done. All I can say is I understand, I've heard everybody, and thank you all for being here. Thank you for your courtesies to me and to the Commission. I do firmly believe you know this isn't easy.

D. NEXT COMMISSION MEETINGS (TENTATIVE)

October 24, 2023 (Tuesday)

November 21, 2023 (Tuesday)

The meeting adjourned at 09:22 p.m.

Respectfully submitted,

Iwalani Kaaa

‘IWALANI KAAA
Commission Secretary

APPROVED AS SUBMITTED:



DEAN UYENO
Former 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/>