

MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: November 21, 2023  
TIME: 9:00 a.m.  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor  
Online via Zoom, Meeting ID: 895 1964 6935

Online link to the video recording of the November 21, 2023 Commission on Water Resource Management meeting: <https://vimeo.com/894309563>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 9:04 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. Chairperson Chang read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

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

**STAFF:** Deputy Director Kaleo Manuel, Mr. Dean Uyeno, Mr. Ryan Imata, Mr. Neal Fujii, Dr. Ayron Strauch, Ms. 'Iwalani Kaaa

**COUNSEL:** Ms. Miranda Steed

**OTHERS:** Major General Mark Hashimoto, Vice Admiral John Wade, Rear Admiral Stephen Barnett, Rear Admiral Jeffrey Kilian, Captain James Sullivan, Dr. Yinphan Tsang, Tsang Stream Lab

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

**20231121 00:05:10**

*Item A has been deferred.*

**A. APPROVAL OF MINUTES**

October 24, 2023

**20231121 00:05:20**

*Item B-1 has been deferred.*

**B. ACTION ITEM**

- 1. Approval of State of Hawai‘i, Department of Land and Natural Resources, Division of Aquatic Resources Application for a Well Construction Permit for Kalauha‘iha‘i Restoration Well (Well No. 3-1643-002), TMK (1) 3-7-011:003 for Fishpond Restoration Use, Wai‘alaie-East Ground Water Management Area, O‘ahu**

**20231121 00:05:56**

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

- 6. Discussion with the Department of the Attorney General regarding the status of Keahi v. Chang, Civ. No. 1CCV-23-0001078. The Commission may go into Executive Session pursuant to Section 92-5(a)(4), Hawai‘i Revised Statutes, in order to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities, and liabilities. (No staff submittal)**

**QUESTIONS / COMMENTS**

**COMMISSIONER MIIKE:** Chair Chang, I had requested and it was listed as a last item. I’d like to know why it’s being moved up now?

**CHAIR CHANG:** This is to accommodate the Attorney General, her schedule. That she's physically here and she'll participate. She'll advise us in executive session, so that's why it's been moved up.

COMMISSIONER MIIKE: Okay, the other thing is that if you go immediately to executive session, I'm going to object.

CHAIR CHANG: Okay and the objection is?

COMMISSIONER MIIKE: The objection is right now it is not clear whether the Attorney General represents the Commission. I know she represents you. Second of all, since we have taken opposing positions on the lawsuit she cannot represent both sides and so Attorney General has taken a public position which really is in compartment with yours and the Commission is in opposition. She cannot, according to the Hawai'i Supreme Court, represent us, the Commission.

CHAIR CHANG: Would you like to go into executive session with the attorney general to discuss that matter?

COMMISSIONER MIIKE: All I'm saying is that she is not our attorney right now. She is your attorney, she is not our attorney so I couldn't see how we can go into executive session with our attorney if she is not our attorney.

COMMISSIONER HO: Chair, I move that we go into executive session to discuss the matters regarding the status of Keahi v. Chang.

**20231121 00:07:59**

**MOTION: (HO / KATAYAMA / HANNAHS)**

To go into Executive Session pursuant to HRS 92-5(a)(4) to consult with the Commission's attorney to address item C-6.

**YES- (KATAYAMA/HANNAHS/CHANG/MEYER/HO)**

**NO- (MIIKE)**

**ABSTAIN- (KAGAWA-VIVIANI)**

QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Just as a point of clarification, does the AG have a standing to make that motion or does a Commissioner have to make that motion? The motion to move into executive session.

CHAIR CHANG: The motion was the motion to move into exec...

COMMISSIONER HO: I'm not, I made the motion.

COMMISSIONER HANNAHS: Oh, you Kathy? You made the motion. I thought somebody on the Commission probably ought to make the motion.

COMMISSIONER HANNAHS: I just have a question to Larry's objection. Given the positioning on the agenda, you anticipate that there would have been people here present wishing to speak to that issue had we left it at the original spot?

COMMISSIONER MIIKE: No, the reason why I wanted it last was that I wanted to accommodate all the people here to testify because this may be a little long.

PUBLIC TESTIMONY – None

**20231121 01:29:46**

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

**1. Department of Defense Updates on the Red Hill Bulk Fuel Storage Facility Defueling, Remediation and Closure, Red Hill Shaft Recovery and Monitoring, and Monitoring Well Development and Water Data**

PRESENTATION GIVEN BY: MajGen Hashimoto, VADM John Wade (Joint Task Force-Red Hill), RDML Steve Barnett (Navy Region Hawai'i), RDML Jeff Kilian (Navy Facilities Engineering Systems Command-Pacific)

The presenters briefed the Commission on defueling, conditions for closure, and environmental remediation initiatives currently in effect.

QUESTIONS / COMMENTS

CHAIR CHANG: As you complete your mission, will you be preparing any kind of final report that will be transition or also publicly available about what you accomplished during the defueling?

ADMIRAL WADE: Yes, at the end we will certainly put together a final report. There will be an internal DOD final report but also a publicly facing document. One of the key things coming out of the 2021 situation was transparency and we have again done our very best to be as transparent as possible. I think there's a lot of lessons learned here that can be applied not only to the Navy Closure Task Force but also Hawai'i and the remainder of the Pacific and quite honestly when it comes to environmental stewardship and the importance to connect with the public and the community which supports the military. The symbiotic relationship I believe, there's lessons to be learned globally with all of our facilities that we have in supporting our national defense.

COMMISSIONER KAGAWA-VIVIANI: It's good to hear that the personnel will transition, 15 to 20. What percent of your team is that? It's going to be a smaller team for closure.

ADMIRAL WADE: Admiral Barnett can talk to it. He has the slides and the composition of his team.

COMMISSIONER KAGAWA-VIVIANI: The other question I had or maybe observation is in your dialogues with community, the Navy has a certain definition of closure and you're trying to articulate that here but is it congruent? And where is it different from the public's perception of what the word closure means and looks like?

ADMIRAL WADE: That's a fair point and I'm going to defer that to Admiral Barnett since he's one, responsible for it but the other piece to it because I don't want to just leave that hanging right is that there's a lot of uncertainty for closure because there are still unknowns with respect to what the facility will turn into or become. There is a National Defense Authorization Act to do a beneficial reuse study. The Department of Health has mandated a review. There's also an internal Department of Defense so whatever course is directed which will not be fuel right will then drive what closure will look like. If it becomes, let's just say an alternate energy facility compared to a museum or just completely shut down it will then define differences in what closure means, if that makes sense.

COMMISSIONER KAGAWA-VIVIANI: I know it's an ongoing discussion and it's later on, but I think just recognizing that our technical definitions and I think you've stressed that there's defueling but it doesn't remove all the fuel and that closure is a different phase that still involves fuel.

ADMIRAL WADE: Yes, ma'am. If I could just highlight, the Joint Task Forces in our military are established for expeditionary means for hard complex problems that require cross-functional teams. The Secretary of Defense and AWMAC felt that a Joint Task Force was the right approach to remove the preponderance of fuel because that was the biggest threat for the community as I said for today, the future generations. But this notion that we'll get every drop out within the next 60 days after gravity defueling is done, it's just not possible. It's a physics problem, but what the Department of Defense is absolutely committed to do is to continue to do so as expeditiously or safely as possible and to ensure that the controls are in place to ensure that we don't have another mishap. That's why this transition, the turnover, and every control measure to ensure a deliberate and methodical approach is being taken.

COMMISSIONER MEYER: To date, the defueling seems to have gone pretty well and congratulations, that's great.

ADMIRAL WADE: We have more work to do.

COMMISSIONER MEYER: I understand that. More specifically 60,000 and another 32,000 gallons.

ADMIRAL WADE: We still have the fuel at the bottom of the tanks and the pipelines, too.

COMMISSIONER MEYER: Sledge, that sort of thing. Anyway, congratulations that's great. Last year seems to have been a different tone and a different methodology involved and that's just great. I have a question really relating to the removal of the pipelines, the removal of the residual fuel and the sludge. How does that happen? Mechanically, I envisage sort of pipes being cleansed with a pig and forcing the material out the end and then perhaps a solvent or some sort of other material being used, all of which is carefully disposed of and through a same solid tight pipeline process. How is that going to go because that sounds a little stickier than...

ADMIRAL WADE: Again, it goes to the complexity that I highlighted, but I'm going to defer that question to Admiral Barnett when he gets to his, he's going to talk to that because well it's important. If you go back to slide 2 and you see the integrated master schedule and I appreciate the feedback, sir that you highlighted that there's been a methodical and deliberate approach. It's been a systems engineering approach to be honest with you and the Navy Closure Task Force is working an integrated master plan, an integrated master schedule that again will sequence all these activities, the preparations for and the actual execution. I referred to what we did to get to where we are and what we're doing right now with a symphony. It's going to be the same thing and it's different instruments at different tempos at different crescendos and volumes. That's what's really going to have to happen and it's got to be planned, it's got to be methodical because this is a no fail mission and so Admiral Barnett will talk to that during his slides.

### **20231121 02:00:20 – Admiral Barnett Presents**

#### QUESTIONS / COMMENTS

COMMISSIONER MEYER: There are two areas that are perhaps longer term, maybe a little stickier perhaps. One is of course the remediation of the aquifer through skimming or treatment or whatever. What are your plans in that respect? Secondly what sort of programs are you putting in place for outreach to the people that have been exposed through drinking water systems and otherwise to these petrochemical issues?

ADMIRAL BARNETT: I'll let Admiral Killian talk a little bit about the remediation process. I think there's a slide...he can explain that. As far as the medical side we're working with our partners DHA on those folks that have been exposed. I know they're at our meetings and they're working that process. I can get you more information on exposure. I know they're working with Department of Health also. They're tracking them. I think they're doing a, it's not a survey, it's called a registry. I know that's in process, too so I can get you more information on that.

COMMISSIONER MEYER: That'd be great. Roughly how many people are involved in that exposure?

ADMIRAL BARNETT: I wouldn't want to venture to guess on that but, I can get you that information. I can put...

COMMISSIONER MEYER: I don't need to know that. I'm just curious. It's a large number.

ADMIRAL BARNETT: Yes, sir.

COMMISSIONER HANNAHS: Thank you for your report. The public outreach seems a simple phrase but it's a really difficult challenge. Have you identified clear stakeholder groups or constituencies that you're trying to impact and have clear goals for each of those system users? Certainly some stakeholders like us or the Board of Water Supply and so forth, the Department of Health would be another layer, the environmental community, the community leadership of political business and grassroots cultural stakeholders. "Ola i ka wai," that's our motto for this Commission so, it's kind of a sacred resource. Each of those has a constituency, to just blast things out to the general public one way is... One way to approach that if you segmented those and really have clear outcome targets of what you'd like to achieve with each of those. It'd be good to see those, to see how systematically you are with each of these major important constituencies you're trying to rebuild trust. I know it kind of starts with you, it's going to finish with the remediation team because you've got community outreach on both sides. You'll go so far to closure then they've got to pick it up in terms of the longer-term remediation.

ADMIRAL BARNETT: That's a great question and it's funny that you mention that because I've talked to Admiral Wade about that. He's going to give me his rolodex. [inaudible] I'm going to have the same strategic outreach coordinator, not a military person but who's going to be plugged into that. What I've done in my other regions which I think is going to work well here is I developed the bullseye and it was a bullseye type of chart. We can sit down and figure that. You're spot on, sir and that's key to it. The intent is to get to those individuals, those nodes where I can make sure the information is getting out. We are working a play and believe it or not that's one of the bigger areas that we're sourcing up right now is our strategic engagement team. That's one of the first ones, that and the knowledge management. Obviously we got engineering here too, but those are the folks that I need to get in front of me but, I showed them a bullseye and I said, hey, this is what I used in other places, how do we count it?"

ADMIRAL WADE: If I may, my mission from the Secretary of Defense through Admiral Aquino has been the defueling of the technical, the engineering but also the

communication piece with the community and multiple stakeholders. Not only those that may be very supportive but even critics. It's equally important and respect their positions. You have to look at this holistically. With this new supplement the Secretary of Defense has added a new mission to me and that mission is to ensure a deliberate turnover, so again the processes, the procedure. I have a team that's dedicated to this engagement because it's so critically important to inform what we're doing and why but then also to compassionately listen to and have a better understanding the concerns of the community and our military families. Admiral Barnett like he highlighted, they're going to take that playbook and then build on it because it's going to be for the long term, as you noted, and has a little bit more dimensions. I'm defueling, but he's going to have the closure but the environmental remediation. What closure means to one person may be different to another as you highlighted, ma'am. It's going to be equally important. That's the art, the science and then the art of the mission.

COMMISSIONER HANNAHS: I just want to express appreciation for your acknowledgement that what you hear is as important as what you say. That you want to send a signal that builds confidence. Let people know that you're listening to them and record those thoughts and address those as best you can, in our experience.

COMMISSIONER KAGAWA-VIVIANI: You said your team will be 200 individuals so basically maybe 10% of the staff will be from JTF. What positions, what responsibilities are those staff? Are they engineers or are they also the community face?

ADMIRAL BARNETT: It's going to be both.

COMMISSIONER KAGAWA-VIVIANI: That 10% will have perhaps some heavy responsibility to sort of transmitting that information. The other question I have is you say, "we will be here for the long term," but in Hawai'i that perhaps given the Navy's structure and the tours of duty, what does that mean when you say that?

ADMIRAL BARNETT: My task force is going to be primarily, I think of the 200 or so folks, the majority will be staying, that's the continuity. It'll be about 32 individuals that will be working here. There is continuity in the forces that are there. Obviously I'll be here as long as I'm ordered here and I will tell you I'm probably going to be here longer than any other place I've been, so that's good.

COMMISSIONER KAGAWA-VIVIANI: Longer than 10 months.

COMMISSIONER HO: He's been here longer than 10 months.

ADMIRAL BARNETT: I've been here longer than 10 months. That's the continuity there and that's one thing that I want to stress to the community is that I like to think I'm important, but what's more important are the folks that are here or the teammates that are behind. I'm just here to help move barriers. That's the key for that and additionally, my



strategic engagement person will be reaching out to each of you individually to discuss the case with you. We have to make sure we take all the information in, the good ideas so we make sure we're on track.

COMMISSIONER KAGAWA-VIVIANI: Just to confirm, the team that will transfer over is engineering and community engagement but, I think an important concern that I can hear is that are the monitoring staff or people who are knowledgeable about safety and monitoring, is that a significant part? Especially because of the connection with DOH.

ADMIRAL BARNETT: Will you mention that?

ADMIRAL KILIAN: When it comes to my turn.

COMMISSIONER KAGAWA-VIVIANI: I'm just getting ahead of schedule. One more and maybe it's been said elsewhere but can you speak a little bit to your experience closing other facilities because this is a different beast.

ADMIRAL BARNETT: This is a different beast. I know the Navy at large has experience with this. I haven't had any personal experience with it. I think what I bring to the table is the eye to be able to look at the experience just because I've been in regions for so long but also able to reach back to DC to talk to my friends. I don't have any personal experience but the Navy has closed a couple of facilities. I think one was in Point Loma and the other was in [inaudible]. Once again back to a region I'm familiar with if I can bring back lessons learned.

COMMISSIONER KAGAWA-VIVIANI: Perhaps build some knowledge transfer from those and I think showing the public.

ADMIRAL BARNETT: And the public engagement space.

COMMISSIONER HO: I just wanted to make a statement. I have always been somewhat of a critic only because Admiral Wade was singularly focused on defueling, Admiral Barnett has not only closure and remediation but he also has his other duties in region. I was concerned about that and I've had discussions with Admiral Barnett about that and he has assured me that if I have any issues and I've told him that I would be critical of that and that I really need him to be as focused and his team to be as focused as the defueling team was. Also recognizing that it should be of the same high priority that defueling had and we want it to be done in as expeditiously a fashion as we can, recognizing that we have the safety of the aquifer that needs to be taken into consideration. He has assured me that he will have that same focus and we will hold him to it.

ADMIRAL BARNETT: Please do. I'll tell you that I have a strong staff on the Navy of the Hawai'i side and they understand that. I have two chiefs of staff, got one admiral, but

you will have my commitment. Yes, there are a lot of things but I've got teammates that work for me whether you're talking wastewater treatment facilities, talking other things. There's a lot of things that I can kind of look over and give guidance on but I know how important this is.

CHAIR CHANG: I appreciate that. I just want to follow up. I had an opportunity to meet with you. Kathy Ho and I remember the days of Kaho'olawe. This is a very different Navy than then but it's everything. The walk is in the talk, so greatly appreciate the candor, the recognition, lessons learned and I'm hearing a lot of really good things, but I recognize as I transition from one administration to the next, there needs to be a seamless transition. As Admiral Wade transfers over to Admiral Barnett a lot of the questions I'm hearing from Aurora and others about community outreach. We wanted to try to provide a platform here so communities can get updated, but I just want to confirm that there is a seamless transition between personnel and messaging that goes from Joint Task Force, the defueling over to the closure and remediation, that that messaging continues on as well as the continuity of this because in Hawaii everything's about relationships. You develop a relationship and the challenge has been a lot of times with the Navy every two years that changes. I appreciate the fact that you have the institutional knowledge and commitment from your civilian staff who will continue on that but again the faces who interact with the community, are those also being transitioned from Admiral Wade to Admiral Barnett, that team of community engagement people? Because the last thing the community needs is community fatigue and there's just another person that I'm going to meet. Is there continuity with the community faces of the Navy who engages on behalf of the Navy with the with the rest of the community?

ADMIRAL WADE: I can jump in real quick. To be clear, I say this humbly but I have become the face of defueling. Admiral Barnett will become the face of closure. It's just because he's going to be out there like I was and just knowing him and we're neighbors and we've known each other for years that's his personality. That's for full transparency. General Okamura who is my director of strategic engagement, he must return to the Army, but he will turn over with a counterpart who will be responsible for the engagement for the community working under Admiral Barnett. There will be a transition of people but the mission will still be the same. The process will be the same and then if I can now turn over to you (General Hashimoto) because you have the umbrella of working in PACOM. If you can then highlight your...

GENERAL HASHIMOTO: I think what you'll find and not to get too far ahead of who the new General Okamoto is, you already know her. She's a longtime resident, local girl. She used to be part of the Marine Corps family, she now works for the Navy. I have full confidence in her and a multi-generational resident of Hawai'i and has the right touch. I think you'll be very, very pleased with her efforts.

CHAIR CHANG: Community members want to be candid and they probably aren't going to approach Admiral Barnett, but the people who are actually on the ground doing the outreach. Is there continuity with that group of people from one mission to the next?

ADMIRAL BARNETT: What I'll tell you is that for instance on my Navy region Hawai'i side we have individuals, community plans and liaisons officers, we call them civil officers. These are the folks that they're at the community meetings, they're out at the neighborhood boards and we're at these boards and Admiral Wade would send his team over. They would be at the board together, so there will be some continuity at the grassroots level. To a certain extent where, hey this is the same person that was there doing defueling, would be that continuity in there. Then we're doing something called a left seat, right seat turnover which is where his folks are in one seat, my new folks are sitting next to him and they're out there doing introductions seeing each other. Those new faces then, because as we know in any organization whether I can think of operational side whether it's flying or surface warfare actions or things, it's the transitions that you have to watch out for. It's the transitions going from one phase to another. That's where you on a scale of 1 to 10, you probably got to be 11 or 12 during the transitions because that's where things fall into cracks. My team is aware of that, but I think the left seat, right seat sitting next to their counterpart, meeting, talking story, getting those relationships so then say, okay get out of here, we got it.

COMMISSIONER HANNAHS: I think the assistance of a playbook also helps with the transition. You got the best playbook we've seen so far and when somebody comes in, they're not freelancing. We're going back to the script.

COMMISSIONER KATAYAMA: I was just wondering is somebody going to address the long-term, the organization that will be in there for the long term to monitor the health of the aquifer? And what resources would they have available to them for that?

ADMIRAL BARNETT: Yes, sir. Admiral Killian will address that with you and I'll make sure he does.

#### **20231121 02:31:40 – Admiral Kilian Presents**

#### **QUESTIONS / COMMENTS**

COMMISSIONER MEYER: The new Red Hill plant that's being designed, what would the design capacity be there?

ADMIRAL KILIAN: We would look to meet 10 to 12 million gallons per day. Historically coming out of Red Hill, we've pulled 5 to 6 million gallons. We can go back in our records and look where we pulled more but essentially it'll be a 10 to 12 million gallon pull.

COMMISSIONER HANNAHS: What I'm hearing and not quite seeing but I'm hearing, that you have an implicit goal of making sure that this system is safe and that it meets a certain quality. The more you make that explicit the better and to do that, number one, you gather data. That's the purpose of the sampling, it's not just the number of samples that you do but it's the knowledge that you have about the safety and the purity of the source. You do the sampling for a reason and you can share that. Secondly, you have a

response plan. It'd be good to see what your response plan is, that samples are going to come in from here to there and when they reach certain thresholds it triggers an action plan, I assume on your part. It'd be good to see that. You told us how many with the number of samples. What did the samples tell us? If we laid that data out it would give confidence that a lot of stuff is okay within the safety area and when it's not, here's our response plan to that. Third you have a commitment to transparency through all these community outreach things to tell people what you're doing, but I think you had that goal framework of the overall goal of having a safe resource and you handle that by gathering data by responding in cases of need and being transparent about it. I think a framework like that would help the public understand.

ADMIRAL KILIAN: I appreciate that great input. When we come back next meeting I'll bring a framework with me but I'll speak to it right now. Of the samples that we've taken, we've had initial tests, 21 exceedances. 20 of the 21 have been clear, we have one that's pending clearance right now. Just to give you an example of the 20, I think 18 are lead and copper. We find this is not uncommon, unfortunately this is true throughout all infrastructure, but I certainly will take that.

COMMISSIONER HANNAHS: That response is just spot on. That's exactly what people need to hear, not just that you did 100 samples but only 21 of them bad and 20 of them clear and here's what it was.

ADMIRAL KILIAN: That's all embedded within the long-term monitoring plan. We have notification requirements to DOH and EPA. Those trigger once we hit EALs. If we hit an EAL then we make those notifications, but that's a point well taken and I need to do a better job outlining.

CHAIR CHANG: The priority is safe drinking water. Another hat that we have here at DLNR is ecosystem. Are you doing any monitoring for ecosystem?

ADMIRAL KILIAN: The second piece of it is groundwater. I'll put that in the category of ecosystem. We are currently sampling at 35 wells two years ago. I know this is a two-year anniversary. 22 new wells were proposed and approved. Of the 22, 16 are complete, 3 are in progress now, and 3 more to follow both on and off Navy property. Furthermore, I have requested from BWS for them to provide consultation to us on locations that they think are best fit. We'll continue to have that dialogue. This is one thing I want to make sure you folks understand. I mentioned I'm not time constrained and I'm not money constrained, so if we need to do additional five wells or whatever the case may be then we'll do that. We will go where our data takes us and so I want to make sure that I communicate that to the community. I do have one thing I will ask the Commission, but I'll wait till I get to the end.

CHAIR CHANG: Besides just the monitoring, I'm interested in are you monitoring water quality in Pearl Harbor, in our streams, in nearshore waters? So that we've got some baseline data to make informed decision-making, we don't know what impact the leak has

had on our aquifer as well as waters that may have gone out to Pearl Harbor or in our stream. Are you doing any monitoring in our streams or our ocean waters?

ADMIRAL KILIAN: We are not monitoring the water quality conditions in Pearl Harbor. As we execute construction in and around the waterfront we're required to go through NEPA and that's a planning process that requires a variety of tasks, but that's not tied to this effort here. We're primarily focused on the Red Hill property and those that are adjacent to the property and then of course we test the water that comes out of the gaps because of the Hālawā Stream. That's the extent of it. Let me add one additional point. We just talked about water. Once our site assessment is complete, we use the word holistic a lot, I apologize but it will be a comprehensive holistic look including soil. There are areas where we're most likely going to have to clean it up. Most likely we know we're going to have to clean it up and as I mentioned before we'll go where we find it.

CHAIR CHANG: I'm going to hold you to that because I'm also looking at impacts to marine resources. We have no idea. I'm looking at least trying to get baseline data, at least knowing what the conditions are today. What's the water quality? Has it changed over time? Is the impact of the fuel in our aquifer in some way leaking out to our nearshore waters, our streams? But without those monitoring devices in place, it's hard for me to tell.

COMMISSIONER HO: I know that when this, maybe a year and a half ago or maybe even two years ago, when they were putting the water down the stream, Hālawā Stream, there were monitors out there and I don't know if it's continued.

ADMIRAL KILIAN: It has continued.

COMMISSIONER HO: Maybe you can talk about that. Is that what you're getting at?

CHAIR CHANG: But when you said, for me money is not an issue, oh I just jumped on that one.

ADMIRAL KILIAN: I've been given specific, direct orders that we need to execute what I'm briefing you on and so I don't start with how much does it cost, I start with how can we make it happen? And what type of contract do I write and what is the engineering approach to it?

CHAIR CHANG: Okay, well I want you to put that into your equations during your site assessment also looking at ecosystems, marine ecosystems, fish, impacts to limu. I just need to ensure that I've got baseline data now so our staff can make informed decisions, our Division of Aquatic Resources, our Forestry Management because we don't have the resources to put monitoring devices into the ocean or the streams. I guess that would be helpful.

COMMISSIONER KAGAWA-VIVIANI: Since you said this is the first time we're seeing, I didn't quite get the name of your division or organization. You said US Pacific Fleets...

ADMIRAL KILIAN: It's a long title. NAFACPAC.

COMMISSIONER KAGAWA-VIVIANI: NAFACPAC.

ADMIRAL KILIAN: Everything across, well I'm responsible for everything else.

COMMISSIONER KAGAWA-VIVIANI: This is great because I think a lot of the questions that we get on the Commission really relate to what is in your purview. You also mentioned there is an upcoming meeting and is that an open, you were talking about BREC closure, cleanup and then something coming in the next...

ADMIRAL KILIAN: I want to be careful because I use the word BREC, this is not a BREC action.

COMMISSIONER KAGAWA-VIVIANI: Sorry what does BREC stand for?

ADMIRAL KILIAN: Base realignment enclosure. That's not what this is. What I'm sharing with you is that we have professionals that work in that program that understand complex environmental remediation cleanup activities. I'm bringing those experts here. It's an internal meeting essentially to brainstorm an approach to this facility given that it is not a closure activity with respect to the law, but it's how are we going to approach this. We need those types of people to advise us.

COMMISSIONER KAGAWA-VIVIANI: That's great. That helps give me some confidence that the Navy has the capacity to address what we're being asked a lot. I would just ask as that those plans develop if that can be communicated and there be some way to have some dialogue on like, hey does this work for the things you are concerned about with the Commission, with DOH? Because we're interested in the aquifer. I do have a question. You mentioned that the Navy is working on four items and you spoke mostly about the last three. Item one, remove for immediate contamination. That is what's on the agenda in the coming weeks, is that correct or is there something you can tell us now about it?

ADMIRAL KILIAN: There are two parts of that so the next slide I'm going to walk through all the activities that we have in progress and that gets to the question that I think was asked earlier about the skimmers and then I'll come back to the discussion. Think of it really as near term, in progress right now, and then the future and the future meaning what does environmental remediation at Red Hill look like as we work through the closure process. What I mentioned just a few minutes ago was me pulling professionals here to Hawai'i to talk about once we get our site assessment, what's the next step? Everything that I'm describing there's a key few, I'm going to digress for a second. There's a couple things that Admiral Wade didn't talk about this but I will. As we look at

JTF sunseting and Navy Closure Task Force coming on board, I will tell you there are two things from an engineering perspective that have been outstanding. One is the establishment of the engineering controls during work that's going to continue. That will not change and that will fall under Admiral Barnett's purview but as the engineer in the background supporting them, we are going to ensure that that happens. The other thing probably most importantly is the integrated master schedule we call the playbook. That is an important piece but it's not possible right now for us to have a 100% playbook developed because we don't know what we don't know yet. This will be a living document that we will build as we go and then it'll be available for public consumption and at future meetings like this, so we'll continue to do that.

COMMISSIONER KAGAWA-VIVIANI: Question on the site assessment, my understanding is that the University of Hawai'i and USGS have been working on another study that was related to the geology of the region and are these done in parallel or are they working together?

ADMIRAL KILIAN: I think you read my mind. Let's talk about that so that's groundwater modeling. There are two groundwater modeling efforts in progress today, there's one that was actually initiated before the Red Hill release in November of 2021. That's being accomplished by a company called AE Comp. They provided what they call the best available model in June of 2023. I directed them to because I said I'm tired of talking about it, I want your best model available but send it back to Department of Health and EPA and get their feedback which we've received. That model is not approved. They've done a lot of work, there's a lot of science behind it. They are on schedule to provide us for resubmission the next best available model next summer. That's one effort. The second one that I think you're referencing ma'am is from University of Hawaii, is a completely separate effort. It's independent, I have no control over it. This is an Office of Naval Research funded, it's a grant to the University of Hawaii that includes an engineering services contract. They're completely independent from the Navy and they're working the modeling effort. I can't speak to all the details right now, but I can commit in the future to talk to the specifics about both of those models and outline the hydrogeology and geophysics and all that behind it. But the purpose of that and coming back to Chair Chang, to your question about Pearl Harbor is better understanding the flow of the groundwater underneath the Red Hill complex. It is complicated, it's heterogeneous information. We all know living on islands, we live on volcanic rock, it's not heterogeneous. What does that mean to the person who's not technical? It means there could be multiple pathways for anything to flow anywhere, groundwater, whatever the case may be. Those two studies will better inform cleanup efforts. I asked for an update on their schedule, I think we're probably going to be a year and a half to two years out before we get those studies back. I think that's okay because it helps us better understand, make informed decisions regarding cleanup actions and get after these things in the best way possible. I only talked about long term so let me come back to short term.

**20231121 02:59:13 – Admiral Kilian resumes presentation**

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Thinking about the treatment at Red Hill Shaft and trying to reduce the volume of water being pumped, it seems like it would be useful to use the groundwater monitoring data that has been collected at regular intervals to understand the nature of whether that is working. Have you done that analysis?

ADMIRAL KILIAN: We sample the groundwater wells and our data we collect it to help us better characterize it. If we see any type migration then that's a trigger. It requires regulatory agency notification but the groundwater wells are part of that overall system of systems if you will.

COMMISSIONER KAGAWA-VIVIANI: I know that the data is being collected, but will we get a chance to kind of see it or have you done an analysis and interpretation of it maybe with DOH to understand the effectiveness of that capture zone? I guess I've heard criticism because of the nature of the Maui style shaft that actually doesn't create a very strong gradient. Is the data we're collecting going to be sufficient to allow for that determination to be made and is that with the Department?

CAPTAIN SULLIVAN: I can address this one, ma'am. The subject matter experts that are working for both the Navy, the Department of Health, the EPA, CWRM has folks that are involved, the USGS. Our subject matter experts have got together many times on this topic and we have pulled together all the analytics of what we believe is happening. We've had those discussions, we had submitted it to the DOH and the EPA. There is still a little bit of a disagreement at the SME level and on the 15th of November, Dr. Ho and the DOH responded back with a letter that really is a path forward for how we can still resume or still proceed with a reduced flow at the completion of defueling as we continue to get our SMEs together to really come to an agreement. So, yes there are reports that we've submitted. They've been reviewed, there have been many, many meetings on this to try to work through those differences of opinions as the models continue to develop that will continue to inform it. Every day every piece of new information we get gets brought to that SME level, but where we sit right now today is on the 15th of November we do appreciate the letter that we just got from DOH that lays out a path that allows...we have to respond with the additional sampling that would be required as we move towards that reduced pumping.

COMMISSIONER HO: Aurora, what we didn't want to do is to reduce the flow while there was defueling in the event there was something. We kept it at that rate and then we are moving forward, after defueling we're going to be able to see whether we can reduce it.

COMMISSIONER KAGAWA-VIVIANI: That helps to understand the logic. A simpler question, is there still fuel coming into the shaft?

CAPTAIN SULLIVAN: Right now, skimming operations are running 24/7. We have a skimmer that is there as we're pulling, so we're to the point where we are getting less than a teaspoon a month that is coming, very small amounts as opposed to two years ago when



it was several hundred gallons were abstracted by the divers and everybody that went. To answer your question yes, there still is small amounts that are coming in and that is proof as Admiral Killian talked about the capture zone, that any contamination that still may be coming is being pulled and collected by those skimmers on the surface of the water.

COMMISSIONER KAGAWA-VIVIANI: It seems like at this point we're spending a lot of energy and resources and water. If we can catch it earlier on then that would be a more efficient strategy but you guys, I assume have thought through all of this. I just wanted to ask a question for the sake of public transparency.

COMMISSIONER HANNAHS: I appreciate the complexity of the task as reflected in the schedule and I also appreciate whoever gave us an 11x17 version of it so I don't have to pinch and expand. There's a lot of detail here and what I've heard in your responses to questions and the narrative you've offered are some really important points that don't jump out when you look at the schedule. I would encourage if not on this page which is pretty busy, another page says what does all this mean. What are the highlights of this and you've done that on the bottom of some of your prior slides because this is the punch line, this is what you take away from this. Give us the good news, give us the bad news as well. But tell us what's important in what's going on here. It'll just help.

COMMISSIONER MEYER: You mentioned 35 wells, 22 of which were completed or operational, if I have that correctly. How many of those are suitable for sampling the surface of the aquifer, skimming?

ADMIRAL KILIAN: They all go into the aquifer. When we pull, we put scuffers in and we pull them out, we pull the water out. We don't have skimmers in there, it's not a very big...

COMMISSIONER MEYER: They're not catching the petroleum product that may be floating on the top of the aquifer? These are water production wells.

ADMIRAL KILIAN: Monitoring wells.

COMMISSIONER MEYER: Yeah, but you're going to get the content of the aquifer, not the surface of the aquifer?

ADMIRAL KILIAN: That's correct. We do it at different levels at different depths.

**20231121 03:09:43 – Safe Waters Website presentation by Officer Dunn**

#### QUESTIONS / COMMENTS

COMMISSIONER MEYER: Where are the samples processed?

OFFICER DUNN: We have two different labs that process our data. The drinking water goes to a lab in Colorado and is processed, that's an EPA certified lab and then our groundwater samples are flown to Florida and sampled at the SGS lab there.

COMMISSIONER MEYER: Turnaround time couple of weeks?

OFFICER DUNN: Turnaround time is about a week and a half. We get the unvalidated results and then it takes longer for the validation to run through.

**20231121 03:14:43 – Admiral Kilian resumes presentation**

QUESTIONS / COMMENTS

CHAIR CHANG: Public accountability, I'm sure we'll be responding.

COMMISSIONER HANNAHS: We went through the website pretty quickly, but it looked really good from my standpoint. I wonder if you've had focus groups with key constituents to see if they're liking it, if it's impacting them the way you want it to?

CAPTAIN SULLIVAN: It has and we continue to receive feedback and take that feedback to update it. We have very separate websites. We want to make sure the drinking water and the groundwater are separate because it's different standards, but each of the different outreach booths will walk through with people that are concerned, concerned citizens or just general public that have questions and we'll walk them through the website and take their feedback for how we can continue to improve it as it goes on. Still have some work to do but we're open to any additional suggestions.

COMMISSIONER HO: Recently, there were 12 families that had indicated that there was some issue with their water. I think you guys went out to six of them, took samples. Are they reflected in your website?

CAPTAIN SULLIVAN: The long-term monitoring, when we get those validated samples back yes, they would be included within this data, but we do reach directly back out to any concerned resident. We will give them a result, we will talk through the results with them, and walk them through any concerns. Once that data is validated and the LTM sample is completed, it would be added to this website along with everything. It's not going to call them out separately, it would be included in the LTM sampling that we receive.

COMMISSIONER KAGAWA-VIVIANI: I'm not sure if it's a NAVFAC question or where in the Navy it resides but at least wearing my UH hat I've heard concerns over water sort of on the back end of the water heaters. Whose responsibility are the heaters and trying to make the connection between the calls coming in and where we test? There's this sort of netherworld of the heater.

CAPTAIN SULLIVAN: The water heaters, that has been a point of discussion over the last several weeks and we've been working very closely with the EPA and the DOH. We realize that we've tested the house, we know it is not fuel related, there are no other contaminations that we've identified through all of the normal testing. We've been working with the DOH and the EPA on how do we test the water heaters? How do we look at all of the rest of the system? For some of the residents that have shown that concern recently, in fact today right now I think it is still going on we have a couple of those houses where we're doing several things. We're flushing it out, we're checking the temperatures of the water heater, looking for any biological type growth, we're inspecting all of the fixtures throughout the entire house, we are draining and taking samples from the water heater. We immediately took a water heater sample and did the rapid test which it doesn't follow the Offland. It's not an EPA approved process, but we conducted the rapid test and we are taking samples of those water heaters. That actually has started today going to several of those concerned residents to do further, we refer to it as premise plumbing, but really to try to identify. We know what it's not, but after identifying what could be the issue that is causing concern. That's in progress.

COMMISSIONER KAGAWA-VIVIANI: So, no results yet.

CAPTAIN SULLIVAN: No results yet, but we'll continue to work with that.

COMMISSIONER KATAYAMA: There was a comment on your working relationship with the Board of Water Supply. Could you expand that a bit? He said you have a technical relationship that's getting better or did I misunderstand that?

ADMIRAL KILIAN: I characterize our relationship with Board of Water Supply as positive. We meet quarterly with the staff over there. We have primarily technical discussions as both of us are purveyors of water. I think that's an accurate characterization. We discuss things such as potential placement of monitoring wells, what do they think. We certainly want to draw on their expertise as experts on water here in O'ahu. It would be silly for us not to recognize that, so we correspond with them and meet with them in person.

CAPTAIN SULLIVAN: SMEs as well not just...

ADMIRAL KILIAN: Not just in my level but the engineers, the working level engineers do that.

COMMISSIONER KATAYAMA: You two are the biggest users on O'ahu from that aquifer.

COMMISSIONER MEYER: This is a question that's been weighing on me for a long time. It's hypothetical and you needn't answer if it's inappropriate. It's always seemed to me that to ship samples with all the protections and everything else off to the mainland, wait two weeks for results was a long way around. At the Department of Water Supply on Maui we had a CLIA certified lab suitable only for the samples generated by the

department on Maui with respect to its drinking water wells and sources and treatment plants and that sort of thing. It's only sized for that capacity but it's CLIA certified. It's got the mass spectrometers and the technicians and all that sort of thing. If a lab existed in Hawaii suitable for conducting all the sampling of your programs, would that make sense from your perspective?

ADMIRAL KILIAN: We'd use them in heartbeat. I prefer not to have to ship them.

COMMISSIONER MEYER: Why do you think it hasn't been done already?

ADMIRAL KILIAN: I can't, I have no aversion if there...

COMMISSIONER KAGAWA-VIVIANI: Can I answer something on that because on the UH end, that's been a discussion over and over again because UH was like why don't we have it at UH? But part of it is the level of QAQC that's required and the personnel needed and economy of scale.

COMMISSIONER HO: The Department of Health was given some money by the legislature to stand up a drinking water lab so we bought the equipment and now we have the proper CLIA certifications, EPA certifications. We're getting staffed up and are learning how to use the equipment.

COMMISSIONER KAGAWA-VIVIANI: If I can just add in, the role of UH was determined to assist in a non-regulatory fashion but leave the high-level meeting compliance matters to the much more resourced Department of Health.

COMMISSIONER HANNAHS: I want to express my appreciation for the representation that we have here. The leadership being shown, we didn't always have representatives who had authority over the matters being discussed or the information that was pertinent to the discussion or were very responsive. It feels like we now do. That's a huge step forward in looking at the clarity of your mission to defuel, to close, and remediate. That mission aligns with our interest of protecting the public trust resource and it aligns with what we've heard from the public in testimony. It's not just words, you have a plan and I get it it's a living plan. Some things that you think are going to work out aren't and so we'll track it and we'll monitor the effectiveness of the plan you set forth. You've resourced that appropriately both in terms of human talent and in terms of monetary talent and if that's an issue, there should be discussion of it and you're executing. I like the schedules and I love that. A little bit more focus on variance reporting in terms of here's where we plan plus or minus, let's see the deltas and let's reforecast or adjust our track so we can be accountable to our duties as well as to the public. Thank you very much for your presentation.

#### PUBLIC TESTIMONY

Rebecca Garrison

- Community organizer with HAPA and the Sierra Club of Hawai'i

- Will the Navy present Shutdown Red Hill Coalition's resolution in DC?
- Will the Navy relate to Washington that the community demands no reuse and that quantitative research with Nakupuna is grossly inadequate
- How does the Navy Task Force Red Hill define decommission? I ask this because I truly believe the definition should be drafted with the Insight of the community

Gina Hara

- To Admiral Wade: can you arrange for the long-term remediation plan to be connected to the Joint Task Force as long as possible? There will not be much progress with just the Navy involved
- Older Red Hill spills like the one at Kipapa Gulch should be included in remediation

Lacey Quintero

- Member of the Community Representation Initiative
- Disappointed in the public engagement
- What is being done for the families who report health symptoms that do not exceed the EALs? Will this be conveyed to DC to address the lack of policy?

Susan Pcola-Davis

- Why is the analyte petroleum hydrocarbon or gasoline not on the list of analytes?
- The 2024 date for the site assessment is unacceptable

Susan Gordan-Chang

- Member of the Community Representation Initiative
- How long will the flushing of over 2 million gallons a day last?
- Unsatisfied with the vague answers provided by the Navy

Tara Rojas

- It seems like remediation is always slow although there are funds

Tara Sutton

- Directly affected by the Red Hill contamination
- Suggests the Commission make water conservation recommendations to the military community

Healani Sonoda-Pale

- One drop of fuel means the process is still incomplete
- No reuse of this facility
- How many of the 7,279 samples that you took are rapid response samples?

David Henkin

- Attorney with Earthjustice
- Reexamine allocation of water that the Navy is permitted to use for their necessary functions

Kiara Lorenzo-Rodriguez

- Water is precious
- Protect the cultural elements that are affected by wai

Ann Wright

- What are the destructive means used to get the sludge out?
- Where is the sludge going to go?
- What are the long-term programs for remediation like biochemicals?

COMMISSIONER KAGAWA-VIVIANI: I realize in listening to the testifiers that maybe a lot of their concerns are directed to NAVFAC, what falls in the wheelhouse of NAVFAC. Because it's a later agenda item, can you tell me about how the Navy monitors its water use because my understanding is that a large part of the system is not metered or used to not be metered. Is that correct or incorrect?

ADMIRAL KILIAN: We meter it at the well.

COMMISSIONER KAGAWA-VIVIANI: At the well but on the customer side or in the distribution side, how do you monitor potential leaks?

CAPTAIN SULLIVAN: There are some meters throughout the installation but definitely not at every facility or every location. It is a combination of the monitoring at the source as well as at various points throughout the distribution system, but it is not everywhere.

CHAIR CHANG: I'm sure you were all taking down all of the questions that were asked. I always say the truth is someplace in between, so we thank you again for coming to give us these quarterly updates. Greatly appreciated this, very informative. The next three months, are we going to see a transition? Admiral Barnett, you're going to be front and center?

ADMIRAL WADE: You will still see me in March. As I said, the Secretary of Defense has added to my mission to ensure an effective transition and turnover. I've heard many of the concerns from the community on this transition and I'm committed to get it right.

CHAIR CHANG: You obviously made an impact on some of the members who were testifying as they thanked you. I know I can never squander that, people have put a certain kind of trust in us. I'm sure you're all walking away with hearing all of those comments.

*20231121 04:25:21*

## **C. NON-ACTION ITEM / INFORMATIONAL BRIEFING**

## **2. Informational Briefing by University of Hawai'i Biota Survey in Hālawā Stream, O'ahu**

PRESENTATION GIVEN BY: Dr. Yinphan Tsang, University of Hawai'i, Associate Professor in Hydrology

Dr. Ayron Strauch introduced Dr. Tsang and her team from the University of Hawai'i. She explained the effects of the Navy's water discharge from the Hālawā Shaft into South Hālawā Stream.

### QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Thank you for your research. Seems like the rising tide floated all the species or it benefited all the species. Will over time the non-native species propose a habitat transforming risk because they outcompete or they are predators of the natives?

DR. TSANG: That's definitely a very unfortunate situation but that's what we are seeing right now and so far. You are probably already aware that we are experiencing a quite unusual drought situation this year. I think that's also contributing to this unprecedented dry condition that might have increased this environmental stressor like hotter environment and allow those more tolerant invasive species that can stay there while our native is probably not so happy there. So yes, that's likely what's going on right now.

COMMISSIONER HANNAHS: Putting the drought aside, are there strategies that you recommended or that are available to really better reduce that non-native population?

DR. TSANG: The invasive eradication is challenging in many ways but it's not impossible. There are definitely other efforts I know of in different watersheds. For example Ala Wai watershed has been trying to take out the invasive species but, another thing that we should definitely try to understand is their differences in terms of their habitat usage and different preference. I think we can better create a habitat that is better suited for our native species, at the same time taking out the non-native species to restore our aquatic ecosystem.

COMMISSIONER MIIKE: Your results are what would be expected, you increase flow you get more recruitment of native species, but you get a hard time getting rid of non-native species. Did you do any studies on mollusks? Hīhīwai? No? Did you do any studies on whether mollusks were able to get back up?

DR. TSANG: Currently my lab doesn't have a study looking at the mollusk and funny that you asked this. I forgot to point out that the 'ōpae kala'ole and it was there and then I think there was some sighting going on with other mollusks, but then I was not actually ready to summarize that information, yet. Cory, I saw you light up. You want to say something?

CORY YAP: We didn't see any native mollusks. They're pretty cryptic, too. We didn't want to disturb the habitat too much, but there's a lot of non-native mollusks, the quilted melania and other types of snails that were listed on the non-native figures. Unfortunately those were very obvious and very dominant so not likely that many native mollusks around at least in Hālawa Stream that we could tell. We weren't about to flip over all the boulders and rocks though but, there was some rock scrubbing. If there were some present at least on those size rocks they would have showed up in probably the benthic samples at least. We didn't see any.

COMMISSIONER MIIKE: When they stop putting water into Hālawa Stream, everything will revert back to what it was, correct?

DR. TSANG: That's definitely something we are concerned with and that was exactly the reason to do this research. This is actually more of a question to Navy. As far as we have learned from the last meeting we had with Navy is that they are planning to discharge the water indefinitely. Please correct me if I misunderstood that. Anyone on the team, is that what I understand correct? I think that's what I understand. Our team does meet with Navy, CWRM, DAR, and Department of Forestry and Wildlife monthly and to checking our results. But that's what we got so far that we are learning the Navy is planning to continue this discharge. Yes, now that we are attracting the native species back, what if they decided one day to discontinue, what does that mean.

COMMISSIONER MIIKE: When we've had changes in the interim instream flow standards, those were more or less permanent. You could, for example in the Maui streams, you see a return of wildlife and that's probably going to go on indefinitely whereas these are episodic increases in streamflow so my expectation is when you stop it you revert back to the old signature. I guess you would agree with that?

DR. TSANG: I will agree, actually.

CORY YAP: I would say not that it's in high density, but the Tahitian prawns are also a amphidromous migratory taxa, so distribution expanded as well and they were able to climb further upstream the more continuity there was. Again, that's I think what all of us expected but I just want to point out that on the non-native taxes side that those have an ocean larval phase so they are definitely migrating from upstream probably at a higher incidence than it would have been without that water. That's it.

#### PUBLIC TESTIMONY

SUSAN GORDON-CHANG: Did I hear correctly that it is the understanding that the Navy will be flushing two million gallons of our water forever indefinitely?

- DR. TSANG: I actually was not aware of their full plan. My understanding is their gag discharge right now still continues on. I don't know when they're going



to stop. The gag discharge right now is 5 million gallons per day, but I wonder if what you meant in terms of two million gallons per day flushing is from a different area and different mechanism.

- SUSAN GORDON-CHANG: Oh no, the Navy said they were going to try to get it down to two million but I guess it's still five million a day so that's two billion and counting that they flushed into the stream. My comment to the Commission would be, we really need an answer from the Navy whether they're going to continue even five million or even two million or less a day indefinitely. I think we really need an answer from the Navy. That's just not sustainable like I said before with the drought we're in and climate change. I do appreciate all the research that you did, thank you so much. Looks like it was a lot of hard work and analysis so I appreciate that.
- CHAIR CHANG: I know that the Navy, they were taking notes while they heard all the comments. Let's hope they respond to your comments as well.
- SUSAN GORDON-CHANG: That's mind-blowing that their solution is continue and if that is their solution even at two million gallons a day I would hope that this Commission would then decrease their allotment or their permit by two million gallons a day because we can't live like this on O'ahu. Thank you.

COMMISSIONER KAGAWA-VIVIANI: This is for our staff, Deputy Manuel and Dr. Strauch. Can you refresh my memory whether we granted the Navy permission to pump Red Hill at 5 mgd for the purpose of plume containment? Is that correct?

DR. STRAUCH: That's a groundwater question.

COMMISSIONER KAGAWA-VIVIANI: This is where we get confused because I'm seeing you and the stream but it is a groundwater question.

DEPUTY MANUEL: Yeah I'll start, so the Commission didn't take an action to permit that use of water. Their water use permit is for Waiawa and in Red Hill the shaft itself was for their municipal system. So change in use from municipal to then using it as a remediation well to create this capture zone was something that was discussed by the Commission, but the Commission never acted on the water use permits of the Navy.

COMMISSIONER KAGAWA-VIVIANI: Then I guess I have a question for Department of Health because it seems to lie in the space between the Commission and Department of Health on when that flushing will end. From my understanding of our last item, that is in the works.

COMMISSIONER HO: Yes, like I said we don't want to decrease it while they're defueling. Once it's defueled we are in active discussions how to address this after defueling.

CHAIR CHANG: Thank you very much Dr. Tsang for your team's great work and the information. Encouraging but also managing expectations, it all depends.

**20231121 5:00:10 – Lunch**

**20231121 05:34:58**

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

**5. Update on Development and Implementation of Interim Instream Flow Standards in Southeast Kaua‘i**

PRESENTATION GIVEN BY: Dr. Ayron Strauch, CWRM Hydrologist

Staff gave an overview of the updated interim instream flow standards for Southeast Kaua‘i, including the process, timeline, and next steps.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Maybe it's just speculation and it's neither here nor there but, what was the logic for those initial boundaries?

DR. STRAUCH: It was set before my time, can't tell you.

COMMISSIONER HANNAHS: Were Commissioner Buck here, "so much water." You look at these pictures as compared to Maui Komohana, you've got abundance, just a blessing of resource.

COMMISSIONER KATAYAMA: There's a lot of change happening in terms of ownership. All of these parcels are for sale so it's going to be very interesting so I think we really need to get our arms around how to manage these water systems.

DEAN UYENO: I was just wondering if you wanted me to answer Commissioner Kagawa-Viviani's question?

COMMISSIONER KAGAWA-VIVIANI: Dean, you are there. You were around.

DEAN UYENO: I am here, been listening. The original hydrologic units were developed based on initially a 1990 Hawaii Stream Assessment Report that was created which just looked at the streams. We needed a way to code each of these areas that we're looking at and so I think in 1994 soon after that, the State developed watershed boundaries. These weren't so much for modeling purposes, was more just for a coding system. Between our data sets like Aquatic Resources and Office of Planning and us, we could have a common system that we would use and reference. Royce Jones who was one of the leading GIS folks in the state had developed these watershed boundaries that was further refined by NRCS and Pat Shade who used to work with NRCS and both US Geological Survey.

Then we took those and again ours aren't intended for modeling, it's more for creating a system that we could identify an area and code. There are some areas in the State that are not as refined or need to be looked at more closely. As we do our work across the state we come across these areas and we may be fixing them as needed as Ayron is doing here. We actually have a full short report that outlines the whole process if you're interested.

### PUBLIC TESTIMONY

TARA ROJAS: Aloha, yes. Tara Rojas. I have a question and you know that's great for hearing this information but my question to you is last year, 2022, one of the water meetings. It was mentioned and it was like in tiny, tiny, tiny little letters on the minutes on the report that 3 million gallons will be lost per month. That it was unknown where and it had been going on for a long time, if not years. Is that still going on? Have you ever found the source of that 3 million gallon leak? That's my first question. My second question is as noticed the properties and everything up for sale, are you guys aware of just the overdevelopment and the issues currently going on and having the water there for future generations?

- CHAIR CHANG: Tara, are you asking about Item C5?
- TARA ROJAS: Yeah, C5.
- CHAIR CHANG: Do you have a specific location where you say the 3 million gallons?
- TARA ROJAS: No, it's been a long time but, I remember it was a 3-million-gallon leak that they said and I came and I testified and I asked questions and they said they didn't know where it was coming from and that it was very difficult to detect because apparently some of the places would run onto private property. That was an issue. Another thing was they said if the leak is happening in an area where there's sand and with sand you cannot see the leak, the water bubbling up or where there's a leak as well as on dirt. They were saying that and I went back and I asked but it's been going on for years so they hadn't found the source of the leak and that's three million gallons per month for years and upon years. Is it still happening?
- CHAIR CHANG: I'm looking at Aaron across the table and I've asked him if he might know where you might be referencing and he's indicated no. Maybe if you could go back to your notes and identify the specific location, we can try to respond to that.
- TARA ROJAS: Well they could go into last year as well and look at the minutes and it's in really tiny letters under a table and it says 3-million-gallon leak.
- CHAIR CHANG: You are the investigative reporter, Tara. I trust that you will find exactly where that may be in our minutes.

*Ms. Susan Gordon-Chang presented testimony on a matter that did not pertain to Item C-5.*

KIARA LORENZO RODRIGUEZ: Aloha nō. I just wanted to make one comment and that was to do with the Koloa parcel that was, I think it's now the Kauanoē o Kauaʻi new development. I do want to make a comment that in the EIS there were seven pūnāwai there that were capped off and I, me again Kiara Lorenzo Rodriguez for the record, as a wahine maoli it's very important for us to ensure that we have this pūnāwai in case anything happens. If Covid has taught us anything it is that we need to be ready in times of need to be able to produce and harvest food for our people. These are concerns that have come across the board not only in the Kōloa ahupuaʻa but in all of Kauaʻi. So just keeping in consideration that we will do well not to waste this precious wai a Kāne, especially in one of what is to be said one of our most wet mōkūpuni, our most eldest. As the moʻopuna of this place it is our kuleana to ensure that our wai is taken care of. Ola i ka wai and happy makahiki season, mahalo piha.

**20231121 06:00:21**

## **C. NON-ACTION ITEM / INFORMATIONAL BRIEFING**

### **3. Informational Briefing to the Commission on Statewide Drought Conditions**

PRESENTATION GIVEN BY: Neal Fujii (CWRM State Drought & Water Conservation Coordinator), Dr. Ayron Strauch (CWRM Hydrologist), Ryan Imata (Hydrologic Program Manager)

Staff shared the general drought outlook for the state and provided an overview of the Hawaiʻi Drought Council meeting held on November 17, 2023. Current surface water and groundwater conditions were also discussed.

### QUESTIONS / COMMENTS

CHAIR CHANG: I'll just briefly add. The Drought Council hasn't met I think what was it, 2017 was the last. Then we came onboard and after Neal suggested we should really reconvene this group because it appears based upon National Weather Service, Kevin Kodama predictions, we're going to go into a much drier season. This was even before the Lahaina fire and then the Lahaina fire came and it's become even more apparent, the predictions are I would say dire. It looks like we're going from a dry summer, fall, winter, spring and then going back into a dry summer. I think what was particularly alarming, at least for me, was hearing from Maui County, Upcountry Kula when we maybe about two months ago we were talking to John Stufflebean. They had 30 days of water left because they are dependent on surface water. Two of the three wells were dry because the water was just not flowing into the streams, the one well or the one facility Kamole. The governor's office asked CWRM and DLNR, is there anything we can do as a State agency and what we realize is they are really challenged because they're at capacity. It's not as if

we could amend IIFS or amend the water permit. EMI, they're giving the county the water that the county can put into their Kamole facility. This is really real and Hawai'i island is taking a proactive approach. They're talking about a water conservation campaign, Keith is looking at doing more education but he sees it as well especially in the Kona District area. We did as a Drought Council suggest that perhaps the Governor and the mayors can get together with a collective message about water conservation because we know that with the drought is the inevitable cycle, dry, we're going to be more vulnerable to fires, invasive species come, and it's not going to get any better. I think we're looking at how do we change people's behavior to become much more aware of water is a limited resource. We've seen that in Red Hill, we're seeing that in Lahaina. We'll see what comes out of this but, I've come to realize several of the bills that were vetoed including House Bill 1088 would have positioned CWRM, the Water Commission in particular, to be in a position to declare an emergency and take appropriate actions. We are also discussing that with legislators as well as with the governor's office. I think the Drought Council recognized the fact that we represent different constituencies in the State of Hawai'i, that there's a common thread that weaves us together which is the public health and safety of the community and the protection of our water resources.

DEPUTY MANUEL: If I can Chair, the only thing I'd add is based on predictions, the peak dry period is January/February. We're not even at the peak dry period or you wouldn't say peak but the lowest rainfall that we expected is in January and February. Now is really a time to start to be proactive in message in preparation for even more restrictions on water use or more limits on systems capacities and then also our role as a regulator of water resources. Right now you heard Maui and Hawai'i Department of Water Supply looking at conservation efforts, but part of our challenge is also to make sure that private water systems are also carrying their weight through this drought season and are working towards conservation efforts. I think our strategy here is to get everyone on board whether on a private system or a public system. We have to get through this together in the next couple of months or hopefully couple months but it's kind of looking like it might be closer to a year. We might not get a wet season basically is what we're seeing so that's the only thing I'd wanted to add based on the conversations today.

CHAIR CHANG: I think that is important and that in my mind House Bill 1088 would have permitted us to bring in private purveyors.

COMMISSIONER MIIKE: I don't want to see like what happened recently with Lahaina fire where there were moves to suspend the IFS when the proper way to go about it in a water management area which has permits is to prioritize the permits first before you start thinking about changing the whole interim instream flow standards. Even in places without water management designation there are priorities under the common law in terms of appurtenant and riparian rights which still have primacy and people can still take away water as long as those rights are not being affected. I think to the extent we can, we should try to predict or be proactive about who gets water first and who starts getting cut first and how you would distribute cuts if you have to rather than waiting for something to happen and then precipitately try to do something. I know it's going to be tough but the

law is pretty clear about both the code and under the common law about the prioritizing of water use.

COMMISSIONER HANNAHS: It's good to see the coordination of these agencies and private players on the demand side. I can think of not just sitting and talking, looking at the information together but having collaborative strategies. Farmers in particular and ranchers choosing where they graze, how they graze, what animals they're using or what the crops are growing that are really predicated upon not what the rain they hope for but the rain they're going to get. The risks and using them to manage risk, I think is really important. Equally and I don't see it so much there on the supply side, if we believe our own 'ōlelo no'eau "*hāhai nō ka ua i ka ululā 'au*," the rain follows the forest. This should give impetus to our watershed partnerships and what they're doing, not only at the highest elevation levels of reforestation and dealing with the threats to the native forest but even down gradient. Really moving to every step of the way have agroforestry and understory that'll really optimize capture, minimize runoff and so forth. That combined strategy and having the public see the whole thing, not just their one little strand that they're passionate about or interested in. It's a holistic approach that needs to be understood by everyone in a holistic way. If the council could move in this direction, I think they could really promote a large public interest.

NEAL FUJII: We do have in DOFAW our watershed partnership. Definitely there's a connection there, we can bring them in.

CHAIR CHANG: That's become a priority in this budget session, it's all fire suppression. We've really been pushing watershed management and protecting the watershed to ensure we have fresh water. Sometimes it takes a crisis for people to appreciate and our need to be more proactive.

COMMISSIONER KAGAWA-VIVIANI: I just want to say something because this is actually the field I work in, but for natural resource managers, too they're not going to be planting in a drought because the climate effects are getting stronger, but the emphasis on fencing because what's happening now is the goats are nailing whatever is left. If you want to keep the sediment you've got to manage the overrun. I was just in Kona. I do have a question related before you leave the seat on what's the status of our water shortage plans, in particular Pearl Harbor water shortage plan? Because we kind of left that off somewhere last year. I think we're going to need to call it back, including Honolulu water shortage plan.

NEAL FUJII: The Pearl Harbor Water Shortage Plan is as we left it, was approved. That is we haven't changed it. We've talked about going back and revisiting that in light of the Red Hill crisis. Honolulu Water Shortage Plan, that has not been done. We are thinking about doing that just because that's the other area on O'ahu that has a lot of withdrawals and we do see some stress on some of the groundwater aquifers in that area, too. That's definitely something that we want to...hasn't been done. We do plan to coordinate with Honolulu Board of Water Supply who's come out with their own water shortage and recovery plan, part of it was in response to the Red Hill crisis as well. That's the status.

COMMISSIONER HANNAHS: I appreciate your point. Another example, dealing with axis deer. On Maui you're talking about the crisis of Kula, 30 days or whatever. How much of that is really exacerbated by the rampant population which is way over. It should be zero but even at a sustainable level, it's at the tens of thousands. We got to bring it down and that's where policies of both the Department of Agriculture... Whatever we can do on the ag side to foster more use of that asset because it is an asset and accelerate the decline of that population helps with the water.

CHAIR CHANG: It's really sad on Moloka'i in particular. We actually have a really good partnership with the U.S. DOD REPI (Readiness and Environmental Protection Integration) program and they have been extremely helpful in providing us resources for fencing. On Maui as well, DOFAW is actively and aggressively putting up fences as quickly as they can get resources to do that, so your point is well taken.

COMMISSIONER HANNAHS: That's the value of this council. When you have the many stakeholders is not just to get the information but to really plan and collaborate coordinated strategy together.

COMMISSIONER KAGAWA-VIVIANI: Since we talked about fencing and grazing, one of the tricky things and I don't think it comes up enough is that sometimes ungulates are your friends for fuel load. I know it's not within our wheelhouse as the Commission, but we have an interest in seeing the land managed a certain way. If there are ways that we can support or complement what's happening in DLNR and others, if that can come before us and we can be aware to support it even though it's not our decision.

CHAIR CHANG: To get an informational briefing from them. DOFAW is actively managing the watershed with watershed partnerships but all of the different strategies... Michael Walker, they are the fire protection force. They are the lead in forest fires and they have been actively, in fact he was just on 60 Minutes. Let's see if we can work that into our agenda at some point in time but doing a presentation by DOFAW on what they're doing both on ungulates, on invasive species, invasive plants as well as the different strategies that they're using.

COMMISSIONER KAGAWA-VIVIANI: Our forested watersheds can go poof really fast like in Mililani.

CHAIR CHANG: Mililani is a good example.

**20231121 06:27:45 – Neal Fujii resumes presentation**

#### QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: We had that discussion now because those slides still don't cover the supply side, the things we can do to foster more water being there. It's all demand side stuff. The encouragement is to just think holistically about this.

**20231121 06:28:46 – Dr. Strauch Presents**QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Remember the TNC publication about 25 years ago The Last Stand, The Vanishing Hawaiian Forest? It gave impetus to the rain follows the forest, the DLNR program. The back end of that included an economic analysis and I'm wondering if the time is now right to forge partnerships with our colleagues or other colleagues through Aurora at University of Hawai'i to do economic analysis of investment in infrastructure upgrades. That reservoir you pointed to, other intakes and so forth because we know why we want it. Farmers can't necessarily do it or land owners can't necessarily do it so how do we get that unstuck? I think somebody's got to do the analysis to show the return from the investment and also perhaps the need to get that return. Maybe there needs to be an infusion of grant money from either government or philanthropic sources as well as investment capital from that, but we can't just hope they see this. If we want to control our destiny at all we've got to help produce the evidence that'll help them see it. In the case of watershed conservation and so forth, we did that. It says, "you save this water here, this is the return you're going to get from its use" and so forth. It served a purpose in getting the investment in the watershed partnerships. Now we need to do it for water distribution and storage infrastructure.

CHAIR CHANG: Two years ago, we did get a legislature appropriated \$10 million for dams and reservoirs. It was a grant program. Unfortunately, they didn't provide us any capacity so we're going back to the legislature to ask. It actually creates a fund for private land owners to now apply for grants to restore their reservoirs or their dams because in light of what happened at Kaloko, liability concern is a mounting issue. Our engineering department, applying those standards, have decided what's high risk and you have either a choice to upgrade or remove.

COMMISSIONER HANNAHS: I made those decisions and spent those dollars and they're considerable, but it turns on some kind of economic analysis and we can give the environmental data and so forth but I think we need to couple it with an economic analysis.

COMMISSIONER MEYER: You're exactly right. For utility companies, public or private utility companies, they're limited in terms of their source of revenues, to revenue they get from their customers. They can't raise money for projects like this on a practical basis. That's exactly right.

COMMISSIONER HANNAHS: Got some scholars over there who can help us?

COMMISSIONER KAGAWA-VIVIANI: Not infrastructure. I'm thinking of who they are and I'll see one who's guest lecturing in my class on Wednesday. I'll put that bug in their ear. I'll just say Kim Barnett has done work on this and Chris Wada out of Uyehiro



and so it's time to revisit. Before it was Jim Rimiset but he's long retired. I have a question, thinking about the effort. So much has changed in the last couple months about what we think of as risk and where the investments need to be made. As we look at the El Nino development, we have our statistics for flows but we're already seeing that maybe we need to be more conservative in planning forward. Having been with you on the EMI looking at all the diversions, it was like a year or so ago, it occurs to me as flows drop and we do have some spots in the streams that are fed by groundwater, imagining future drying. We're going to have little pockets of 'o'opu graveyards in some places. So, how do we think about our IIFSs, if we are still updating them in these areas, to think about the populations of biota as a whole, regionally, versus stream by stream. I don't know if you've given thought to that, but how can we be of support thinking we're facing some rough couple of years, but I don't know the life cycle of different species of 'o'opu. Maybe a couple years can really take them out or maybe they can bounce back and they have refugia, but how do we need to be thinking about our long-term duty to supply people with water, to maintain our ecosystems, and then with the knowledge that you have about stream flows and El Nino projections, how do we put it together in an intelligent, more holistic way?

DR. STRAUCH: We definitely consider 'o'opu source and sync populations if you know population dynamics. There are definitely streams that are sync population so we might supply an instream flow standard for the ecosystem but it's not a robust, abundant, reproducing population of 'o'opu as opposed to a different stream that might have different characteristics like an estuary or higher vegetation along the riparian zone or that sort of different structural characteristics that make it a more conducive location for a nōpili to be happy and reproduce, that sort of thing. There are a lot of questions still out there on what is actually happening in the environment. We have an instream flow standard at Honomanū, for example. Honomanū is a losing reach and despite it being a really important environment for 'o'opu and for cultural practices, it dries up naturally for months at a time now. I'm not making a recommendation one way or the other at this point but that environment, still what you want to protect for an ecosystem. Those are questions that we can ask. I think it's definitely worth identifying streams that have potential, whether it's refugia or source populations so that we can sustain on a landscape scale our native species and identify those high-quality streams and definitely focus your protection on those priorities. I don't know if that answers your question.

COMMISSIONER MEYER: I think that's exactly the right answer and the answer that's headed in the right direction and that is to go through a categorization if you will of the streams and really ranking their productivity in terms of the environmental worth saving and should be cherished locations. Others perhaps need to be put more under harness under these drought conditions and extreme conditions we've got today.

COMMISSIONER HANNAHS: It's exactly how we approached East Maui, the EMI decision and order.

COMMISSIONER MEYER: It's a rationalization, but it's practical when it's going to be necessary.

COMMISSIONER MIIKE: The East Maui contested case began that process of identifying streams but first time that they are actually coming up with good habitat information. You can't really try to restore all the streams, you got to pick the ones that are best. The people that live along the stream that you don't pick are not going to be very happy.

COMMISSIONER MEYER: It's a painful, difficult process.

### **20231121 06:55:38 – Ryan Imata Presents**

#### QUESTIONS / COMMENTS

DEPUTY MANUEL: Just to add, you'll see a lag. The reported date is August so we're usually a quarter behind with for example the Board's data that we get so we haven't seen the drought numbers reflected in these graphs that Ryan is sharing.

COMMISSIONER KATAYAMA: Ryan, what's the status of the Hālawa Shaft?

RYAN IMATA: That's a good question. For the Board of Water Supply, the last that heard from them I don't think they're going to bring that online for quite a while. They are looking at a lot of different alternative sources to supplement or to feed the system there. I think there's an 'Aiea 497 that they applied for. They're looking at various other sites but I think they have an application in for Waipi'o Heights 3 and 4. That's kind of far though, that's in Waiawa so whether that's going to make up the water or those far farther out remote wells are going to make up the water for Hālawa or whether they're going to apply for wells closer to 'Aiea kind of remains to be seen right now. It's hard for me to comment on that. It's probably better addressed by the Board of Water Supply, but yes as far as Hālawa, I don't think that's going to be brought back online anytime soon.

COMMISSIONER KATAYAMA: Do you know what the reason for that is?

RYAN IMATA: Again, I can't speak for the Board, but I don't think that they want to pump it at the quantity that they pumped it at previously because of the potential for migrating any kind of contamination over to Hālawa Shaft.

#### PUBLIC TESTIMONY

TARA ROJAS: Basically it's everything you all said. We cannot do business as usual especially watching the reports and seeing that it's all down. Some of them are past the warning and are actually approaching the critical and the fact that, what you all mentioned earlier as well with having the information between CWRM, BLNR as well as

all these other entities that especially are focused on just continually developing whether it's master plans, these types of things really have to be taken into consideration. I do have a question for Ryan and then after that I do have one thing to add on to the Kaua'i one. I was trying to look for the information but one question, Ryan. I noticed that the 'Ewa Beach, Honouliuli, the millions of gallons per day is like 162 and then over the third 300. That reading I just want to know how, as we notice unnecessary watering of golf courses like for the Navy, that type of issue. How do also unnecessary uses like water parks especially with the flushing the system as well as the car system, the capstone, how does it specifically affect 'Ewa Beach given these numbers that we're given and the geology of the area? Then lastly is the Kaua'i one. I can't find the exact number but I did see from last year May in Kaua'i my testimony recorded and a side note is if this Commission as well as you know any commission like water commission on the other islands, do you all reread minutes of past meetings? Because you can learn a lot. I'm looking here that in addition to a lot of leaks, I think it was like 3 million total leakage reported for the whole year of last year in Kaua'i and in addition they have billing issues and if you don't revisit them it'll be easily forgotten and you'll just be on a loophole dealing with the same thing month after month, year after year. So, to reread previous meeting minutes because there's issue of morale and for the employees, the billers but it seems that the engineers are the ones really on top of asking the right questions. Regarding over development, billing, leakages, and everything I think that would be good for this Commission as well as all water commissions on the specific islands. Those three points and then in light of the drought as well. Mahalo.

- RYAN IMATA: Tara, I know you had a question for me. I think it's probably best and if the Commission agrees maybe it's best that you contact me directly. I wasn't quite clear on what your question was, but maybe if the Commission's okay with it, maybe it's best I put my email address in the chat. Maybe it's best if Tara directs her questions toward me?

*Mr. Anthony Loccitio presented testimony on a matter that did not pertain to Item B-3. Chair Chang requested that they speak on this after the conclusion of the meeting.*

**20231121 07:27:07**

## **B. ACTION ITEM**

- 2. Requesting Authority for the Chairperson to Enter Into a Memorandum of Agreement with the Department of Health to Receive Drinking Water State Revolving Fund Set-Aside Funding and Authority for the Chairperson to Enter into Contracts for Water Audit Training and Water Meter Testing Training**

PRESENTATION OF SUBMITTAL: Neal Fujii, CWRM State Drought & Water Conservation Coordinator

Staff requested authorization for the Chairperson to enter into a Memorandum of Agreement with the Hawai'i Department of Health to receive Drinking Water State Revolving Funds (DWSRF) Set-Aside funding. They also asked that the Chairperson enter into contracts to conduct statewide workshops for public water system personnel and operators.

#### QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: I've discussed this with Neil already but you know that's \$550,000 and I requested that we include some kind of digital recording or media. Because with this one-time funding or training, if we're interested in developing capacity we should think about the fact that there is workforce turnover and we need to ensure people get hired on after the workshops learn. You mentioned hopefully people will develop capacity but it would be good to not just hope. Maybe identify some metrics by which we know that we've spent this taxpayer money effectively, number of participants and maybe some other metrics that when we report back, we can demonstrate...

NEAL FUJII: Absolutely, there's going to be a report, but we definitely should think about getting something...a YouTube video?

COMMISSIONER KAGAWA-VIVIANI: I'll just say it would be nice to say two years from now we have saved X many million gallons of water by fixing leaks because of this added capacity.

NEAL FUJII: Measure of effectiveness, absolutely.

COMMISSIONER KAGAWA-VIVIANI: I don't know the specific wording but while we have this chance to talk about it we just want to bring it up, that's all.

#### PUBLIC TESTIMONY

TARA ROJAS: I think it's good because like I said I'm reading now, you had me on the on the search looking at previous minutes from Kaua'i and I heard that's good. It's going to be across islands and just the suggestion from Commission member that just mentioned having this recorded for trainings because I'm looking at the January 20, 2022 minutes, the draft minutes and it was talking about that chief engineer mentioning about benchmarks. There's no way to measure and the department does not have a pipe replacing program and the fact that right here, new people coming in, retired staff going out. It's good to have that available and for review. The second part to this that it's good for the meter, the reading, this training because of the fact that right now in 'Ewa Beach in the Gentry area it was brought up at the 'Ewa Beach neighborhood board meeting that there's apparently again a 15 million at the minimum, 25 million gallon per month leak from that development area. This one couple came forward, I mentioned it because the

Board of Water Supply had threatened to turn off the water for like 621 families or homes. This type of issue really needs to be looked at. I don't know actually the role and the length and your coordination with this Commission with the Board of Water Supply and individual development areas but this type of issue is currently happening and it has apparently been happening for many months and years. This is a leak that they cannot find but because of the distinction between a private development and then the state or whatever that they can't go in. There was another issue brought up with Billingham and Brenton Awai. It's good that you guys have this monitoring and my question was do you have information about that from BOW? I don't know your working relationship and then knowing about leaks that are happening with water reading and water leaks because you're going to be doing this training. If that is related, which I thought it was, if that helps you for gathering input and for having this training available because apparently it's the issue in Kaua'i meetings about meters and reading and all of everything that you're just discussing now for this MOA B-2.

**20231121 07:39:41**

**MOTION: (MEYER / HANNAHS)**

To approve staff submittal with the recommendation that recordings should be created for posterity and future training use.

**UNANIMOUSLY APPROVED**

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

**20231121 07:40:40**

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

**4. Informational Briefing on Well Construction and Pump Installation Permits**

PRESENTATION GIVEN BY: Ryan Imata, CWRM Hydrologic Program Manager

Staff provided a thorough overview of the current permitting process for well construction and pump installation. He expounded on the application review process, post-construction review process, and possible next steps.

**QUESTIONS / COMMENTS**

**CHAIR CHANG:** In your existing process, what you've covered to date the process, there is no public review?

**RYAN IMATA:** We publish it in our bulletin and anybody that inquiries about it can have our application and look at it and provide comments to us, but we don't write letters

to anyone specifically in the public unless there are certain conditions. No, I can't think of any conditions that require us to, I mean it's just very specific people that we might ask questions of.

CHAIR CHANG: So, there's no opportunity for public? I think that that was part of the comment that was raised on Hāpuna and that's part of my concern too is just this, a delegation that doesn't provide opportunities for public oversight. That's why I wanted this to come back to this Commission.

RYAN IMATA: What I was going to say was that the wells are published in our bulletin and anyone that has our bulletin is aware of wells that are on our application, that we're looking at the time.

COMMISSIONER MIIKE: Looking at your list of agencies that you sent, there's a letter from Kali Watson from DHHL saying that they'd like earlier review. You don't automatically send DHHL any of these reports?

RYAN IMATA: We don't send them applications for wells. We do send DHHL all water use permit applications.

COMMISSIONER MIIKE: It would be a simple matter just to include them in that list though, right?

RYAN IMATA: It's just putting them on our header and then having our secretary email it to them for comments.

COMMISSIONER MIIKE: Now in non-water management areas, once you approve this permit they can go ahead and pump up to the capacity of the well?

RYAN IMATA: You'll see as we go through the review process if we do approve the pump capacity then they can pump up to the capacity of the pump.

COMMISSIONER MIIKE: I have a little problem with that. As long as it's well within the sustainable yield of an aquifer, you routinely approve these or do you match that to what they claim they're going to use it for? I come in and say I want five million gallons. Do they have to provide a justification for the amount for the capacity?

RYAN IMATA: Good question. In a non-management area no, you don't need to justify the use as reasonable and beneficial; however, we do look at the pump capacity with respect to a couple of things. We look to see if the total MGD is within the sustainable yield and again remember that delegation of authority is only for wells that are in aquifers that reported pumpage is below 70% of sustainable yield. So, somebody can't just come in. I'll give you a good example, Mahi Pono came in for an application and this is where I said we have that provision for pump replacements where we're exempt from getting a permit from our office. But I have a problem with that because now Mahi Pono wants to put in pumps that would far exceed the sustainable yield of Pā'ia, so no. I think that

you're absolutely spot on. If the pump capacity shows that it's going to exceed sustainable yield, I think we have to present it to the Commission.

COMMISSIONER MIIKE: That's not my issue. My issue is that even if it's well within the sustainable yield, if someone comes in for five million or some large amount I would think that they'd have to justify why they're asking for such a large amount. I can see an exemption for a homeowner with a home well but someone could come in for such a large amount and we don't do any review of why they're asking for it, I really have problems with that.

RYAN IMATA: As we go through, there's one thing that will address your concern. The other thing is Kaleo has been very mindful about looking at our applications and saying, hey this quantity doesn't seem appropriate for what they're proposing to do. So, we go back and we ask and then we will present it to you guys if we need to in that case.

DEPUTY MANUEL: The code and the definition of wells talks about that wells are supposed to be evaluated for reasonable, beneficial. It doesn't say whether in or outside of management area and so as Ryan said oftentimes in our review or at least my review when an applicant checks what they've planned to use the well for, there are some basic categories and some estimated end-use based on pump capacity. Oftentimes your pump capacity is usually larger than what you anticipate your end-use being and in that analysis we get really good at understanding standards and comparing it to water system standards of the county or what this Commission has already approved in prior decision making as it relates to reasonable, beneficial. Staff as well as I have already put on those goggles, basically your goggles that on prior decisions, for example 2,500 gallons per acre per day for ag. In scenarios like that if those numbers are way off as Ryan said historically or at least in the years that I've been here, I've challenged staff to ask the applicant are you being efficient? Why is this number so high? If there's uncertainty or concern, I've always proposed to bring it to the Commission because it's something beyond the normal routine. Again, based on internal staff review and our expertise as staff. I will say as Ryan is going to get to it, a majority of the well applications that we do receive are small capacity, almost domestic wells where there isn't service by other large public water systems. Taking on the kuleana of owning and operating a well is a big one and costs a lot of money not only in the initial investment but also long-term operation and management. It's a long-winded answer. I think if we can get through the presentation and highlight all the stats then you can start to ask additional questions. The concept of five million we haven't seen, I haven't seen one well come across my desk for five million. A lot of times it's pump replacements for these shafts that are causing us pause, but all of those as Ryan talked about, we are wanting to bring back to the Commission because those are old. The shafts don't meet standards today. They were done before the code adopted these standards. All of these things brought together, we want to make sure that the Commission is aware of their obligation to protect the resource and also ensure that it meets reasonable, beneficial use standards. I would just suggest if we can get through it, I think it'll help inform the dialogue at the end.

**20231121 08:04:47 – Ryan Imata continues presentation**

CHAIR CHANG: I wanted to provide some context. The reason why I asked for this informational briefing is one, I also sit as the chair of the board of Land and Natural Resources. There's a lot of delegation that comes, but it always is to the chairperson. I had asked the staff to provide me background information. I said and this was in light of Commissioner Katayama's inquiry about ministerial versus discretionary so they provided me the 1997. This was the delegation authority and for me times have changed since 1997 and even in DLNR we do annual delegations. The different divisions will come to the board every year asking for a delegation to approve exemptions for EAs or things like that, so I felt very uncomfortable with a 1997 delegation. I also felt that that should be to the chairperson unless there's something specifically in writing from the chairperson to the deputy. Similarly, I also felt that I really wanted the Water Commission to vet this out because a lot has changed since 1997, Ka Pa'akai expectations by community, the more information we're realizing about the interaction between groundwater and surface water that I thought that this required a much broader dialogue with the Commission. And as Ryan said a lot of the permits that they're getting is Hawaiian Paradise and maybe that's an exception, but I thought it was still worthy for this Commission to have that discussion and then revisit the question of is it appropriate for delegation, do you want everything to come to the Commission or are there certain things that you're willing to delegate? At Hāpuna there were some members of the community who raised the whole question about the delegation and the well permit approval process so that's the backdrop of why this is coming. There's no decision today. Ryan, thank you for the comprehensive overview of your process and the considerations.

COMMISSIONER MIIKE: I'm pretty satisfied with the explanation. I think since it's such an old policy that you question, I think you should bring a recommendation to us about what you should do about it.

CHAIR CHANG: Okay that's fair.

COMMISSIONER HO: The types of permits that are being delegated, I don't have a...

CHAIR CHANG: The difference between ministerial versus discretionary because Ryan, I know that that was Commissioner Katayama's. You just have a total number of permits or do you have a separation of the types of permits?

RYAN IMATA: I kind of thought that that question was going to be asked. I can tell you just sort of anecdotally. I don't have statistics but I can tell you that you are seeing the ones that are in management area areas already which are not a lot. You can imagine water management areas they're pretty much tapped out, so we don't bring that many applications to you. Most of the applications that we do bring to you that are in that are for wells and pumps are also accompanied by a water use permit would be in Wailua and Mokule'ia as groundwater management areas. I'd say about 50 to 60% is Hawaiian Paradise Park with another 10 or 15% being the Navy monitor wells. Aside from that, there are wells going in in Maui but again now Lahaina is a designated management area.



You're going to see all of those. We do get a handful of wells on Kaua'i which maybe you're not going to see. I think that most of those are small residential wells, too. If they're not in compliance with the standards, we bring them to you, too. I guess the question is what's the breakdown of the ones that you don't see? If the question is what's the breakdown of...

CHAIR CHANG: A breakdown of all of the well permits.

RYAN IMATA: I would say maybe 70% is little individual domestic wells. You get maybe about 10% of wells that might be for systems like Kā'ū Pūlehu. You are getting maybe about 10 or 15% and maybe more now that the Board is looking for alternative supplies of municipal wells and then another 10, 15, 20% of Navy monitor wells. I don't know if that added up to 100%.

DEPUTY MANUEL: If I can Chair, what we can do is we can get the specifics in writing. We have that data, we have WRIMS which is our Water Resource Information Management System and we can populate those reports, instead of these round numbers. I think the purpose of this presentation is very high-level focus on delegation, but if we can provide the specific permit amounts per island, types of uses we can do that analysis and provide that in writing in a future submittal.

CHAIR CHANG: As part of that recommendation.

DEPUTY MANUEL: Yeah, as part of the recommendation. What I think I'm going to ask and help facilitate this conversation is based on what's presented, what feels right, what doesn't feel right, what are thresholds that you want us to consider and bring for the recommendations, what are you comfortable with, what are you not comfortable with. Again, as Ryan has said and I will speak for myself in this process. I've come into this as an appointed deputy operating under the practice that has existed since 1997 and prior and so now that there's a desire to revisit and evaluate this process it would help us to understand what is it that you want us to focus on and then bring back to you folks recommendation. If you can gear your dialogue to that, that would help us frame the recommendation that we bring forward in a future submittal.

COMMISSIONER KAGAWA-VIVIANI: I have a comment and a question. I came onto this Commission on the sort of tail end of the Ota Well discussions and I saw some of the contention around that because it's my understanding that well construction permits don't necessarily require Ka Pa'akai analysis and I think that was what came up at the last meeting. Ryan or Deputy Manuel, can you confirm or explain is Ka Pa'akai analysis part of a well construction permit generally in or outside of a water management area? Because you referred to it as part of the case law, but I didn't see it as part of the regular process of a well construction permit.

RYAN IMATA: Part of the reason why I presented that was because of the Chair's request and the comments that Ka Pa'akai, times are different from 1997 to today. What I will say is that yes, Ka Pa'akai is required in groundwater management areas and that's

what I present to you when I present you well pumps and water use permits. Specifically for Ota Well it was required as that was part of the denial of the designation of Keauhou, was a requirement to make sure that that was addressed. I will say and I don't know if this is correct, but for wells that are in compliance with the standards and where we have assessed that a pump test shows no impacts then no, we don't require Ka Pa'akai analysis.

DEPUTY MANUEL: Let me just add on very clearly the Ka Pa'akai as we've discussed and as Chair made a priority in her coming into this agency is the kuleana of the applicant. The application does not ask the three questions or Ka Pa'akai analysis is not asked of the applicant currently on well construction permits. Very simplistically I think Ryan highlighted in our review process if there's areas via Kīpuka or even in staff review that we've known, there's been issues with practitioners or we know there's an existence of resources then we ask the applicant to go through that extra analysis. Again, that is discretionary and staff have used that judgment right now. Currently in the application there is no Ka Pa'akai that's required.

CHAIR CHANG: And it is my legal position. I believe Ka Pa'akai applies to everything so long as there is a potential impact. Now the analysis may vary depending upon the scope, but I do believe one still has to do the analysis and I do believe the burden is on the applicant. If the applicant does not provide us sufficient information I believe then it is our constitutional obligation to say we're going to deny your permit because you haven't given us sufficient information to do the analysis. But I also think government agencies have not been very clear with applicants on what those expectations are. I think we are trying as we move forward to make that very clear and I think Kaleo and his staff have done a very good job of elevating Ka Pa'akai. I think that's where I saw somewhat of an inconsistency on these well permits. Some places maybe it's a subdivision where we've got other Ka Pa'akai analysis. I think we should be able to look at some of those as well, but nonetheless I think we still have to do the analysis.

COMMISSIONER KATAYAMA: Thank you, Ryan for the analysis. The genesis for my question was one, are we consistent? Do we have a standard that we request of all well applicants? And two, is there an area if there are special conditions and where the proposed drilling takes place, not post-drilling but for review prior to the drilling? For example, in the Keauhou the issue was that aquifer may be under pressure so is the engineering and the process sufficient to handle any issues arising from something like that? I guess internally if it's addressed properly in the application maybe it should be handled within the department; however, I am very sympathetic to a very efficient and orderly processing of applications and it should not be extraordinarily cumbersome as long as we feel that we're protecting the aquifer. In today's conversation with the Navy they asked on the status of the three applications they have within your department. From my perspective, are we being most efficient, are we being most consistent, and are we ensuring that we're protecting the aquifer under some unusual situations. I know that you've articulated the 70% rule but are there any other special considerations that should be disclosed prior to drilling?

COMMISSIONER HANNAHS: Can I build on that? I appreciate that point. In the commercial world we call it the customer discovery. How do people look upon this? Is it onerous? Is it impeding not only creating inefficiencies but impeding things that we want to have happen in our world that are good things: agricultural projects and sustainable food systems and so forth? What's broken about that that we can and should fix without compromising our mandates and obligations on our part for the resource?

RYAN IMATA: I think since Kaleo has been here he's been very good about moving forward things where he feels like we need to be efficient and that we don't need to put like super deep scrutiny into. For example, I'm talking about the Hawaiian Paradise Park wells. They're such small capacity pumps. The sustainable yield is so high and you know Kaleo just kind of lets those things, how do I say this he allows us to be efficient in approving those things, whereas I think where things have a deeper cause for concern Kaleo goes back and forth with us. I don't know how he has the energy to do it and to put the scrutiny on every application, but Kaleo definitely does. Why are they using this much, what are they doing this, why are they identifying this water level? I do think that right now we are pretty efficient in the way that we get things out. Again, I am severely understaffed in Groundwater Regulation Branch, that's why you heard the Navy asking where are those three wells and we are understaffed and we haven't been getting things out as quick as we can which is why I'm kind of an advocate for efficiency while also recognizing that we do need to address the concerns that the Commission brings up and to bring focus into those things that you guys think are important which is why we're reaching out today so that we can get the best feedback from you to make a recommendation.

DEPUTY MANUEL: Just so I can speak for myself, thanks Ryan. Like I've said in most public settings and I'll tell everyone is I take every signature seriously, having had signed permits. I review every single permit that comes across my desk similarly. You kind of catch up and you learn about where the hot spots are throughout the state and where you spend your resources and time with the limited resources we have. The identification of HPP, what you do see is this huge influx of permits because people just want water security. This is a rural subdivision in the middle of Puna oftentimes below poverty level that are really just trying to make sure that they have water for their own uses. When you look at that as a public trust use of water within the context of available yield, all of these factors get factored into at least staff's analysis and our analysis. Getting to your point about what parts of the system do we really and where we should be focusing on, we really need, if we're going to get into even further analysis which I think is fair and which is within the context of our constitutional obligation we need more resources. Staff are not going to be able to process permits, bring it to this Commission, and also build capacity if Ka Pa'akai is going to be the questions that are added to the permit application. It will backlog the industry. The industry itself has been built up around a process that has been in existence since 1997, so if this is an additional requirement I will say it will backlog the industry and based on my review of current industry consultants and what they're producing related specifically to well construction permits. I will say we do need to revisit this with our attorney generals who have looked at often times this delegation of authority as almost a ministerial process versus a discretionary process and

there's as a discretionary permit, there's additional triggers that happen. The instant requirement for 343. If everything is truly discretionary then everything triggers. Every permit, every use of water triggers 343. Right now that isn't the case for private wells on private property, at least that's the interpretation and analysis that staff have gone through. There are these implications as we go through this process and hearing Chair's concern about this dated delegation, I also share that we definitely want to revisit where it makes sense for us to manage our resources and also manage expectations on process because if including public participation, if we're going to provide even beyond the bulletin a venue for people to opine and comment on wells, it will prolong the process. It's just part of the reality of process and all of these things have push and pull points that this body obviously should consider in its decision making. I think we as staff, we're here to present what we're working with and what we have to deal with in a public, transparent process and then have real conversations about what are the next steps and what are the implications of those next steps.

CHAIR CHANG: I appreciate that. For me sitting both as Land Board and as chair of the CWRM, there's a heightened scrutiny upon us. There are competing interests, we have demand for housing and then we have watershed protection, we have traditional customary practices. I want to avoid, I want to minimize the risk for delays through litigation and contested case hearings and I'm all about process, an open process. I'm not necessarily advocating we're going to separate community meetings because I do not think that that is our kuleana as well, but I think the process through our CWRM Commission meetings provides a public platform for communities to be engaged either through informational meetings or through decision making. I do believe that we do need to have some criteria and I would just like the criteria to be vetted and that it's presented so we can get public comments. No we don't think you should be, that shouldn't be delegated or no, you should. To me, that's the cover that we need or that I need in particular as we're making decisions is that there's an opportunity for people to provide some input. At the end of the day we will proceed, but it is very difficult to manage competing needs, higher public expectation and I'm trying to find the path forward through both transparency but yet efficiency.

COMMISSIONER HANNAHS: I wonder if there's a lesson learned from item B-2 on the agenda of training and maybe that's videotape so we don't have to invest the human capital in doing it all the time. Where people who are ready to apply go through some kind of, here's what we're looking for, here's what's going to happen so you can anticipate the questions in order to provide the information that'll make this most efficient. If we cue them to the answers to the test, then it'll help them expedite the process. We don't have to put it all on us.

CHAIR CHANG: We need to provide them the tools, but I think it's also if an application is not complete then it is not an application in our process. I think we get criticized including the State Historic Preservation division for sitting on things too long, but I think it's because what's coming to us isn't complete. We have to have the courage to say, "you know what, this is not a complete application. These are the things that are expected

and you haven't included the Ka Pa'akai analysis, therefore it's not complete. Please do this and then come back when you're..."

COMMISSIONER MIIKE: I would have big problems if everybody had to meet the Ka Pa'akai analysis. There is a provision in the code about de minimis effect and so we should look at that as one way of avoiding having every little household do a Ka Pa'akai because if you do the Ka Pa'akai, that standard says 'we don't know' is not an answer.

CHAIR CHANG: In my mind it's a constitutional obligation beyond the code, so even if the code may have a separate standard. Again I also don't think if there are numerous houses in the same subdivision that are looking for a permit, there's no reason we cannot rely upon other similarly situated information, historic information, mo'olelo, streams that go through there, other kinds should be similar. I think that there are other ways to address that. CWRM can make our applications public. If you've got a well that you want to do, permit right next to this house, look at the application that's already been submitted. I don't think it has to be onerous, I think people think it's onerous, but I don't think it has to be as onerous as a perception.

COMMISSIONER MIIKE: I think it's onerous.

COMMISSIONER KAGAWA-VIVIANI: I have a thought and since I'm in a public hearing I just want to put it out there. It's probably a 10-year data compilation project for somebody but to be able to have a map and to say 'I want to put a well in this location. Whoa, there's some interesting, confined aquifers,' and suddenly it triggers. Okay, if you're in this region because it has this geology, here are the things you're going to need to do. Sorry, this is not more work for you, Ryan without five more people but maybe somebody in the audience will take this idea and run with it. I think we all want to know what documents, what historic reports for a certain area you people should be referencing. If it is Kepa Manley's report, here. We don't want to have to nag an applicant and it should be easy for them to piggy-back on the work that's already done. I have a thought going back to the main objective about delegation. It makes sense for me to not have staff, Deputy, Chair shoulder the responsibility for certain items that may be high risk or need to be in a public form. I don't know what those criteria are but between now and when this becomes an action item, I think this is a good start, wells in management area aquifers where conditions are established by the Commission. Being more specific about those regions maybe on a shape file, unusual hydrogeology, because that's going to apply to where wells have evidence of impacts to streams and then that's the same with it doesn't matter if it's maximum pump capacity or confined aquifer that's going to leak. We have to think about, again, the potential impacts due to human variables of construction and also the environmental variables and historical variables because some areas are going to be more sensitive to others or have more active practice. I think we can sit down with some maps and try and get some teeth around that.

DEPUTY MANUEL: Can I respond to your two points because I think they're spot on. The conversation about this map has been, at least since I've started in this water industry, has been the talk of the town. Everybody's wanting the cheat sheet to get to the finish

line. The challenge is and what the constitutional courts have said consistently is T&C are very specific and site based and practice based, so when you start to create these kinds of maps that articulate, "oh this is what happens in certain areas," it meets portions of the constitutional obligation in some context but it's not the end all be all. It creates this cheat sheet that oftentimes people feel like it's the bar that needs to be set but the challenge is the bar is a lot higher, at least that's what the courts have said. It's very specific and there are also concerns about sharing a lot of that data and information with certain practices in certain communities which was the case in the Ota well when we went or at least when I went out and discussed stuff with community. That's a challenge staff have articulated that it shouldn't necessarily, consistent with Commissioner Muike, be if you're an individual just trying to get a well and having to go through this additional analysis. People don't know where to go, they don't know, what do you mean Ka Pa'akai? Then they have to understand what Ka Pa'akai means and their constitutional obligation as citizens in the state of Hawaii. A lot of people don't get that and so there is this capacity that we're talking about that to be honest doesn't exist except within very small circles within the state and it's a huge ramp up that we're going to have to work towards. I'm not saying that it's not required and something we shouldn't be doing but it's just part of the reality when you ask people Ka Pa'akai, they have no clue. It is something that we need to do. I do want to get a feel for the group, what I'm hearing is adding Ka Pa'akai to the application. If that is something that we're going to recommend, then we need to modify applications and set that expectation from the beginning. That's a huge shift from the current practice and so we'll obviously check with AG's and work with Chair but the feeling from the body is we need guidance. If that is something that you, this body, believes is a requirement to put in a well and a pump, that's something we can pursue and we're open to that dialogue but that's currently not what we're doing and we really need guidance from you folks on this if this is something you want to do because I think that'll set the tone and the shift in the current practice.

COMMISSIONER KAGAWA-VIVIANI: Can I clarify that's not necessarily what I mean but there should be a flag if you're going to work in a certain area to do more and it doesn't need to require disclosure of sensitive information, but there should be a flag to say look closer.

CHAIR CHANG: SHPD, they have but it is TMK specific. You could go to...I know that Leo Asuncion was working on, OPSD, so there would be different layers of different kinds of whether it would be different kinds of sensitivities or zoning. I think there was an attempt and quite frankly that was the one of the purposes of the 'Aha Moku Council, was to design sort of this overlay not necessarily of specific practices but to say 'ohan from here, if you're going to do anything here you should talk to these people or there would be sort of bubbles of sensitive area, talk to community. It was not in some way to reveal confidential, 'ohana secrets but at least put people on awareness. Because true, if we're going to require this we better give people the tools, the access where to get it. There's a lot of people who have good intentions but they just don't know where. There's a transition period that we have to go through, we cannot start from tomorrow, everybody got to do this. But I think we do have to start elevating what the expectations are and get guidance.

COMMISSIONER HANNAHS: This is a pretty large issue, way beyond the duties of CWRM, but I guess the general disposition I have is not to lower the bar but to really as you said, raise the bar and give people resources so they can achieve that. It occurs to me that as those applications come in, we will become the repository for some really valuable information and making that an accessible repository with guardrails. Like Papakilo database, you can go do your genealogy there, you don't have to give it to them. They help you do it and then you make the decision whether you want to disclose. I think we should always honor that kind of choice and control and so forth but to the extent people wish to share, then we start to create rather than have all this wonderful information sit in the file of well permits. Let's bring it into an accessible database that then helps other people with their future well permits.

COMMISSIONER MIIKE: I'd have to go back and look at Ka Pa'akai again but I I'm not sure it applies to each and every situation. It seems to me that it cannot apply to absolutely everything we do. It's an impossible burden to overcome.

CHAIR CHANG: You're right, no you're right. It is case by case, but I think we have to at least embark on that analysis. I think just to develop criteria saying, okay these things it won't apply to something as very small as if it could be a well permit that happens to go right next to this stream or this trail. That small well may make a difference, so I think that I always think in my mind whenever I'm looking at a project, is there a stream that passes by? Are there trails? Are there native plants? There may be certain kinds of triggers that one may think are a minimal impact, but I agree it is case by case.

COMMISSIONER MIIKE: Your example, I'm at a loss to see how your ordinary person can overcome that burden by saying there is no impact. Maybe I don't know who can do that, I doubt whether CWRM can do that. I guess one of the issues for the Attorney General is does Ka Pa'akai apply to absolutely everything we do or are there others? It's a very heavy burden for an applicant to have to meet that.

CHAIR CHANG: But it's mitigation. You could have an adverse impact but you have reasonable mitigation. It may be monetary, it may be creating a buffer. I think Ka Pa'akai does require some analysis to determine if there's an adverse impact or potential. What are reasonable mitigation measures? To me that's all that the court is asking us.

COMMISSIONER MIIKE: But the court is asking that you show positively that there is no impact or if there is an impact, what are you going to do about it? That's why I think it's an insurmountable burden to a small person just wanting to put something towards their own homestead.

CHAIR CHANG: Fair enough, fair enough.

DEPUTY MANUEL: Maybe because there's public here and it's almost 6, if you want to do testimony and then we can continue the conversation.

PUBLIC TESTIMONY

TARA ROJAS: Three parts in three minutes. Slide number 10: I want to just bring to your attention I thought that was really great that CWRM staff held public hearings. Just to reiterate public hearing community input is important. I do have an issue as you all mentioned during the course of this conversation with community outreach being that only through subscription to bulletin is community able to know what's going on with these well permits. I just want to reiterate that and then maybe listen to your conversation, categories how you said individuals versus 'ohana and also / is on Homestead / is it business or commercial for-profit. Case in point that the question mentioned about 5-million-gallon request and then the response about usually it's in small capacity; however, I want to reiterate it was said that Mahi Pono applied for permit or permits that went and go beyond the sustainable yields. Yes, it is important to be very vigilant about that and to summarize the second part with and reemphasize slides 30 and 31. 30 is the Ka Pa'akai slides. 30 and 31 with the Ka Pa'akai and 31 and regarding Waiāhole and the public trust. I thought that was really important to reemphasize and then slide 32 Moloka'i about the precautionary principle. The three points on page 32 was really important to really reemphasize that. Actually it's on page 33 that again not affecting kanaka maoli rights and just to err on the side of precaution without the need to prove scientifically. Again reiterate slide 32 and just to end with this, that I do hope that CWRM does listen as you're saying right before I testified and make decisions from public community input rather than just coming with preconceived personal decisions already to make within the board. On the previous one I testified and then you're kind of ready just to pass it so I really do hope that this process is based off of again the public input that you may hear that day and then also decide to whether defer or postpone and again to really listen to the public. Public input is really important and that ending with public trust purposes having priority over private commercial uses, this being for water, 'āina and everything. I just wanted to bring that to reemphasize those points again.

JONATHAN SCHEUER: For the record my name is Jonathan Likeke Scheuer. I'm here on behalf of the Department of Hawaiian Home Lands. You have our written testimony, I'd like to expand a little bit upon it and also just draw some points that have arisen in the discussion. First of all I really want to thank you, Chair Chang for bringing this. This is actually one of the most important issues you've brought in front of this Commission or has been in front of this Commission for many years and I really thought it was an excellent presentation by Ryan. This has been something that has been a long-standing issue for the Commission particularly because there's been a mismatch between, as the Waiāhole case, one of the quotes Ryan didn't bring up that your responsibility to protect public trust issues applies to old waters without exception or distinction. It's not just in designated areas that you have a kuleana, but you've only had a real tool because of this delegation of authority to protect public trust interests in water and public trust uses of water in designated water management areas because of this delegation. The presentation was excellent again particularly including the administrative history. Some of those decisions are not online and so it's actually been years of trying to find out when was this delegated, what exactly was delegated. It's really good and this is something that I and



others for DHHL and for others have asked about and commented on for many years. I want to now move on to expand on to the discussion of delegation and how the public is informed that you raised Chair Chang because that was typically the answer that when we ask we said, well how do we find out about this? The response is, okay well it's in the bulletin. I read the bulletin every month, I'm probably one of the few people who do. But I just want to highlight for you some of the characteristics of the bulletin. It's not entirely clear in the section in the bulletin on well construction and pump installation permits, what's included and what's not. There are things in there that have been in there literally for decades and there's other things that if they appear at all, appear very limited. The way the bulletin is presented you can't actually download the data easily and put into a spreadsheet so you have to manually go through. I just want to highlight for you one particular thing about public notice, presumably the 90-day approval deadline when it appears in the bulletin and then there's 90 days, that's presumably the public's chance to comment. I printed out this month's bulletin and if you can see the yellow highlighting, you don't have approval dates on everyone but there were 30 instances in which the approval for the wells were issued prior to the 90-day deadline occurring. Before the comment period ended the wells were approved. There's actually one well in the Kahului aquifer by King's Cathedral where it's listed and maybe it's an error in the bulletin, but the application was approved before the application was filed.

CHAIR CHANG: I'm sure that was a mistake.

JONATHAN SCHEUER: There's a number in which the letter of assurance appeared before the application was filed, so I'm not sure that it's necessarily a mistake. Just to highlight that this isn't just unusual necessarily to this bulletin. When I was before you not speaking on behalf of DHHL at your September meeting but with concerns about the Hāpuna aquifer, I referenced the Kaloko deep monitoring well on Hinalani Street. Now this was a well in which the Water Commission was the applicant as well as the approving entity for the well construction and pump installation permit and if you recall that well was specifically designed to try and discover deep confined groundwater below salt water. It did so but it's pierced that aquifer boundary and for months now it's not been sealed and that water has been wasted, gushing out of that well. In that particular case the well construction and pump installation permit for that particular well appeared in the bulletin only after the application was accepted as complete. A letter of assurance was issued to the driller, the 90-day common period expired, and the permit was already approved and it just appeared once in the bulletin. There was no chance at all for the public to comment on how that is and I don't believe that's unique to this. Public notice under the existing scheme is significantly lacking. This also is significant when you relate in terms of public trust uses and there was some discussion of the use of public pump tests in how we might evaluate the impact on a stream or on an ankle line pool or a nearshore ecosystem. Pump tests under the existing rules go somewhere between three and I think at the longest five days. Let me just be really clear, that's not going to be sufficient in the vast majority of cases to identify any hydrological impact on a public trust resource. It will happen, it might happen over months or years but when you draw water out of the ground it's not for free. Eventually that water that you're taking out of the

ground is not flowing to the coast or not flowing to a stream or not flowing to some groundwater dependent ecosystem. The pump tests are designed to see whether or not that particular well can sustain that level of pumping and they do that well but they are not designed nor do they run in a way that can identify impacts to public trust uses. The other important thing and we talk about well, is the pumping near sustainable yield. The impact on a particular public trust use whether it is a limu bed or a fish pond or a stream resource, actually an individual wells impact on that public trust use of water will have nothing to do with whether or not you're at near sustainable yield. You could have a sustainable yield of hundreds of millions of gallons a day, but if you put in a big well right next to the resource you're trying to protect, it will be impacted. Conversely you could have a very small sustainable yield and you could be pumping over sustainable yield, but if it's very, very far away from that resource that you're trying to protect the impacts that you'll see will be minuscule to none over any meaningful time period. Impacts happen to these resources based on the location of the well, the depth of the well, and the pumping level but not at all in relationship to what the sustainable yield is of the aquifer. The consequences of all this for DHHL's beneficiaries one, is that there's some significant inequity. For our beneficiaries and others, if you happen to live in a designated area you get to find out who's pumping in your area and a meaningful chance to comment and see whether or not your rights as a DHHL beneficiary to a public trust use of water are impacted. If you're not under the existing scheme you're completely disadvantaged even if you manage to catch in the bulletin and you manage to send your comments in prior to the approval. There's no obligation under the existing practice for the Commission to even respond and there is certainly no due process available to DHHL or the beneficiaries in practice. I'll just also highlight for you this desire to be able to meaningfully comment and change and challenge particular land uses is what has driven designation processes around the state because it's been the only way that people can be involved. For these reasons again, really grateful for you bringing this up. It is a really critical and important issue for the management of water. It helps you solve some of the issues you have in terms of your mismatch between what your kuleana, responsibilities are versus the rights you have to implement it and DHHL is particularly and its beneficiaries are particularly impacted because we have reservations around the state that outside of designated management areas, people are impacting them but our ability to protect our reservation rights are very limited. I'd be more than happy to answer any questions. Mahalo nui.

COMMISSIONER HANNAHS: I just want to join. Thank you, Jonathan. You know this is coming back to us so if you or Tara have any concrete ideas that you want to suggest to Kaleo and the team here, we are going to review our policies and practices. I think they'd be most welcome.

JONATHAN SCHEUER: Most immediately I would suggest, Commissioner Hannahs for wells that are for domestic uses that are in line with the county's level of proposed domestic guidelines, so between 400 and 600 gallons per day would seem to me to be, with a very few exceptions are you're next to a fish pond or something like that. You could reasonably exempt and say that there's not...

COMMISSIONER HANNAHS: The de minimis rule.

JONATHAN SCHEUER: But just to keep in mind people file well construction permits and they call them domestic uses but they are for pools and extensive landscaping. I think you would need to tie it not just to, they're saying it's a domestic use but is it actually in-house domestic uses? The intent behind the court's protection of domestic uses.

DEPUTY MANUEL: The public notification, hearing the concern we've been working internally with staff and on our admin rules for example, on maybe strategies to address the concern about not being notified or not knowing if a well permit comes in. I think one of the draft rules that we're looking at is a well goes in that you're required to notify your adjacent land owners, just TMK adjacent, just be a good neighbor as part of the notification requirement so your neighbor would know, hey if you're putting in a well and I have a well at least I have a chance to determine whether it's impacting me. Or if I have T&C on my property, I want to know if it's going to actually dry up my lo'i or something like that. Those are other strategies that we're looking at pursuing through rulemaking to address some of the concerns about public notice. Hearing the concerns, we can also strategize and think of other ways to be more transparent and provide public opportunity. Just a question for the body right now, there's this transition period and context, currently there's delegation to chair to approve permits and there's quite a backlog of permits that are sitting on our desk right now for review and approval. I hear the urgency to bring something back or we are going to feel the pressure and get phone calls, Ryan and the team, where's my permit? Where's my permit? You heard a couple of them and seen some testimony today, so we can commit to try to bring some recommendations back on a revisit of the delegation as soon as possible but in the meantime that's still a month from today. I'm just curious...

CHAIR CHANG: What I'd like to do is work together with me and then we can develop this...

COMMISSIONER HANNAHS: Strategy.

DEPUTY MANUEL: On how to address it?

COMMISSIONER MIIKE: Simple, we as a commission will delegate to you and give you the authority to delegate to them.

CHAIR CHANG: No action at this time but that could be a future action Commissioner Miike, that could be a future action.

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

November 21, 2023

Minutes

December 19, 2023 (Tuesday)

January 16, 2024 (Tuesday)

The meeting adjourned at 6:09 p.m.

November 21, 2023

Minutes

Respectfully submitted,

*Iwalani Kaaa*

‘IWALANI KAAA  
Commission Secretary

APPROVED AS SUBMITTED:



KALEO MANUEL  
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/>