

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

DATE: February 20, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 873 8807 0620

Online link to the video recording of the February 20, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/915749465>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 09:00 a.m. and stated it is a hybrid meeting being held in the Kalanimoku Building boardroom, remotely via Zoom and live streamed via YouTube. It was noted that people may testify via the information provided online. Chairperson Chang reminded the public not to use the chat feature for any comments, as it presents a Sunshine Law issue. She read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

MEMBERS: Chairperson Dawn Chang, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike

STAFF: Mr. Dean Uyeno, Mr. Neal Fujii, Dr. Ayron Strauch, Ms. Alexa Deike, Ms. ‘Iwalani Kaaa

EXCUSED: Mr. Neil Hannahs, Ms. Kathleen Ho

COUNSEL: Mr. Colin Lau

OTHERS: Ms. Eva Blumenstein, Maui Department of Water Supply; Ms. Jessica Fritsche, Carollo Engineers

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

<https://dlnr.hawaii.gov/cwrm/newsevents/meetings/>

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A. APPROVAL OF MINUTES

January 30, 2024

PUBLIC TESTIMONY – None

20240220 00:06:44

MOTION: (KAGAWA-VIVIANI / KATAYAMA)

To approve minutes with non-substantive edits.

UNANIMOUSLY APPROVED

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

20240220 00:07:27

B. INFORMATIONAL BRIEFING

1. Briefing by Maui Department of Water Supply on the Development of a Water Shortage and Conservation Plan for Department Water Systems

PRESENTATION GIVEN BY: Ms. Eva Blumenstein, Maui Department of Water Supply (MDWS) & Ms. Jessica Fritsche, Carollo Engineers

Mr. Neal Fujii, CWRM, introduced Ms. Blumenstein, planning program manager and Ms. Fritsche, consultant who provided a briefing on Maui DWS' water shortage plan, water conservation plan, and next steps in the process.

QUESTIONS / COMMENTS

COMMISSIONER MIIKE: I have a question on the Stage 3 groundwater with the chloride levels. What's the relationship with that target versus degradation of the aquifer where it has difficulty recovering? When you get down, fairly high chloride levels, it takes a while for the aquifer to recover. I'm wondering if you have any idea about the relationship with Stage 3 versus the difficulty of the aquifer getting back to drinkable water?

EVA BLUMENSTEIN, MDWS: Mahalo, Commissioner. I can just get started and turn over to Jessica, as well. That's an excellent question and one I have pondered for some specific well fields that have historically had spikes of very high chlorides such as the

Kanahā wells in Launiupoko Aquifer that has through two decades recovered. But we don't really know what that threshold is, will this well field recover? Is it detrimental to the aquifer? For those purposes as Jessica mentioned, they based the chloride or 95% of the Stage 3 chlorides on the findings from the USGS 2012 report on groundwater availability in Lahaina. There are other areas where, in 'Īao Aquifer the Mokuahau well fields, for example, have seen some excessive chlorides over the years where it has recovered. But we do not know what that upper threshold is where you could have a damage to aquifer. This is just based on the historic production and chlorides data that we've seen for each system. Jessica, if you want to add anything?

COMMISSIONER MIIKE: Perhaps you should also have some target where you don't draw any water from that particular aquifer because the way your stages go, you keep drawing water. You're trying to reduce demand, but I'm assuming that you're still trying to draw water out of an endangered aquifer.

DR. STRAUCH: Ayron Strauch of the Stream Protection and Management Branch. To carry on that part of the conversation, in Kā'anapali in the Honokōwai Aquifer, Hawai'i Water Service manages a well field there of seven or eight wells. Their wells quite rapidly hit that 250-500, even higher, chloride content. They just shut down the well for weeks, if not months and they transfer the pumpage to the other wells. Not that that helps with the County system because they have a limited well field, but it might benefit all parties if well pumpage gets distributed across the aquifer a little bit more evenly to increase the likelihood that any individual well that hits that target will recover rapidly.

COMMISSIONER MIIKE: That's part of this water shortage plan, although it wasn't listed in any of these because it was focusing on demand, reducing demand?

DR. STRAUCH: This example involved a private water system, Hawai'i Water Service, which isn't part of the County water shortage plan, I don't believe.

COMMISSIONER MIIKE: Let me ask the County, then. In your water shortage plans, would you also be doing what he has suggested that the private sector has done? Instead of just focusing on reducing demand, how about trying to do structural changes in your withdrawal from the aquifers?

EVA BLUMENSTEIN: Yes, and that's what's been done historically when you see those peaking chlorides, you turn off that pump or find other ways to distribute water throughout the system. The way Carollo Engineers has proposed the response actions are demand side, but it doesn't mean that those correlate to supply, they really have to translate to supply side operation measures as well. I don't know if Jessica wants to address that part.

JESSICA FRITSCHÉ, CAROLLO: That's part of the reason that we did the operational grouping of wells and we did the weighted production is because that is how the County operates now. When one well peaks in chlorides, they shut it down and they attempt operationally to get supply elsewhere. We did the groupings for that reason, we know they already have that flexibility in place and we didn't want the triggers to be set on just a single well, speaking on chlorides, as historically that has happened. I can also just speak a little bit to the data and that historically the chlorides do go back to average levels following those peaks.

COMMISSIONER KAGAWA-VIVIANI: I have a question related to the chlorides, as well. If it's weighted production, that means some wells are going to be much, much higher than those thresholds, right? Because you're looking at the system average at a given time. That suggests Maui is planning to exceed those secondary requirements. My question is, you're considering single sets of thresholds for very different geologic and hydrologic context across the system and some of them have quicker and some of them have slower recovery. Could you fold in the best science? I remember Scot Izuka's report on, I can't quite remember. Ayron, do you remember the report he presented a year ago on pumping effects? Hydrogeology. Was that also from Maui?

DR. STRAUCH: It was statewide.

COMMISSIONER KAGAWA-VIVIANI: Can we be sure that we're considering that current science and that's more recent than the 2014 report that you're referencing. I know you guys want consistent triggers for groundwater, but some areas that you're considering are wholly groundwater dependent while some of them are mixed. Maui can sort of mix to bring the chlorides down to remain in compliance, but for the areas that are 100% groundwater, wouldn't you want to have more sensitive triggers? Would it make sense to do a little bit more tuning just for managing the aquifer and those very different geologic regions. Is that a question or comment? I guess it's more a comment.

EVA BLUMENSTEIN: This is what we wanted from you also because we're still figuring out the final format and what's going to work both operational and for the Department. This is again, protecting the resource, making it reasonable, mandates or actions we can impose on the public. It may need to have a little more site specific while not being too...like Jessica said, we looked at well fields both from an operational standpoint and chlorides standpoint. Those ultimately is going to be how we implement the plan, but the way it's presented here for the triggers, you're just seeing the triggers for the whole system or district like Lahaina or Upcountry. In Central, it's actually 8 or 9 well fields.

COMMISSIONER KAGAWA-VIVIANI: You have systems that have more or less spatially distributed wells, so your system vulnerability is different, tuning for that. I have a follow-up question for Commission staff which is, the utility is focusing on what it can

measure, chlorides? But that doesn't always address what we're responsible for which is the effects on decreased spring flow or streamflow. We're going to need to help provide information to them on that. Ayron, I don't know if you have comments.

DR. STRAUCH: We are working on a comprehensive monitoring network with the County of Maui and they've been great cooperators with the USGS stream and groundwater monitoring across the county. There might be some issues with some of their metrics like 50% of the three-year average daily flow might not capture the acute stresses that are occurring on a three-week or four-week window, especially if there is no storage. That might affect both on the use side as well as the resource side. There are many ways to communicate hydrological drought and it's not necessarily meteorological drought, but things that are affecting instream resources that we also need to consider. There are many ways to talk about the data that could be a little bit more effective.

COMMISSIONER MEYER: This is really a question for Eva. What would you think about including a requirement that understates three conditions for groundwater management, a well recovery/well management plan be submitted to CWRM for review and approval only within a reasonable time period, say 30 days or something like that and only under Stage 3 conditions for groundwater. Would that be too much of a burden? Do you think it would be a reasonable requirement? Addressing the question of well recovery.

EVA BLUMENSTEIN: Maybe that should be already proactively defined. We sort of anticipate where those problem areas are, at least the well fields where we have seen a spike in chlorides and we know they have recovered operationally before. For sure for some areas there's been up coning such as Mokuhau well field. If that was defined specifically in the shortage plan for the water use permit, that might be helpful now that that's defined upfront. The trigger would be when we're in the Stage 3.

COMMISSIONER MEYER: It may not be necessary. CWRM could probably do something later if it was necessary but having it in there might be a road sign and provide some level of assurances that the utilities are watching the recovery program as well.

COMMISSIONER KATAYAMA: For my own education, this plan, I presume, focuses on DOW (Department of Water) reach and you mentioned that you have an ordinance pending before the Maui Commission, as well?

EVA BLUMENSTEIN: We have a draft ordinance that we are tweaking now based on the feedback from Carollo Engineers' analysis. We hope to propose that in May.

COMMISSIONER KATAYAMA: My question and if you can help me with this, as you go through the various stages that you have outlined, what are your management tools/compliance ability and do you have the ability to reach out to other purveyors that

are comingled with your resources? Or is this water plan just focused on the DOW resources?

EVA BLUMENSTEIN: Yes and no. We only have jurisdiction over our system and our sources, but we recognize this problem and challenge going back a decade and more, of course. Both in terms of there is a resource impact, not just an individual well operational capacity impact, it doesn't matter who owns the source. We all lose if we are having a deteriorating aquifer or stream. For those reasons, we made a point in the scope here that we want to address both potential interconnections and shortage triggers of private purveyors. That's why that's the formal part of the scope, we're meeting with the larger purveyors, the West Maui, the Department of Hawaiian Home Lands on Moloka'i, to explore what are the opportunities. Can you just buy in to this shortage trigger? Should they be different? Can we have contingency agreements with what we do in a shortage, including system connections? In terms of the bill that would impose some mandatory restrictions on water behavior, we are proposing some of those provisions would apply to private systems as well. That would make sense in terms of irrigation schedules, even though the County doesn't have jurisdiction, we cannot pull their meter, it's more like a buy-in from those systems to be consistent throughout the county when it comes to customer behavior and the severity of restrictions.

COMMISSIONER KATAYAMA: In the overall management of the system, who would be the organization responsible to ensure that the water systems remain intact?

EVA BLUMENSTEIN: The individual public water systems are responsible to ensure that we can meet demand. This is where we kind of needed assistance with defining that. We didn't have clear indicators or triggers. It also left a lot of uncertainty on the customer side. Like , if we're in a Stage 2, are these reasonable reductions and will we accomplish the needed reduction with those measures? That is what we engaged Carollo to do.

COMMISSIONER KATAYAMA: Is there a compliance element to this?

EVA BLUMENSTEIN: I'm sorry, compliance?

COMMISSIONER KATAYAMA: Yes, from the more critical stages especially if you're in 2 to contemplating 3. Is there an organization that will ensure there is compliance?

EVA BLUMENSTEIN: Yes, for the Department, this would amend the existing County code. The compliance and enforcement of that now is fines and the last resort is the pulling of your water meter. We haven't proposed any changes to the enforcement and penalties on it. If the County decides to adopt a bill that expands these restrictions to private purveyors, we don't have that ability to monitor or enforce. That's what I'm talking about, we need the buy-in from those to have similar enforcement mechanisms in place.

COMMISSIONER KATAYAMA: Ok, thank you, Eva.

COMMISSIONER MIIKE: Since we're talking about Water Management Areas, the Commission has the power to limit the permit amounts, whether it be a County or private. At least from our side, we can do an overall reduction and I suppose that leaves it up to the purveyor to decide how they're going to reduce allotment. We do have some powers over that.

CHAIR CHANG: Dean, the bill on the emergency water shortage, doesn't that also address some of the issues that are being raised here?

DEPUTY UYENO: Yes, the intent is to give us emergency powers regardless if it's a water management area or not.

CHAIR CHANG: Right, that was one of the bills that was vetoed last year. Is that bill still alive this session?

DEPUTY UYENO: Only in Senate Bill 3327.

CHAIR CHANG: It's part of the larger bill. Not the individual bill, but as part of the overall. We'll discuss that. Commissioner Hannahs isn't here, but he raised a similar question to Wayne's question. This is a DWS report, but it seems like it deserves a broader reach with the private purveyors. Eva, you mentioned that part of this plan was to reach out to the various other stakeholders, private purveyors, also Hawaiian Home Lands. What was the response from these stakeholders to the draft water management shortage plan?

EVA BLUMENSTEIN: The community engagement with the broader community was on the long-term conservation plan and where the community is going to be impacted. The shortage triggers, the potential interconnections, and contingency plans we are addressing next week, the next two weeks. We don't have the feedback, of course you're invited to the process and invited to participate, but we're having one-on-one meetings with director and their management throughout the next two weeks, too. So, I don't know yet.

CHAIR CHANG: That really is a missing component to this plan. Any other questions? I'm assuming there are members of the public who have signed up to provide comments to the Maui County's plan.

COMMISSIONER KAGAWA-VIVIANI: This is for Neal, Planning Branch, I assume you have some conversations with other private purveyors. Is Maui DWS the only entity working on this, especially for the designated areas? Do you have knowledge of how progress is with other purveyors? We eventually will need it, right?

NEAL FUJII: Honolulu Board of Water Supply, they have their own conservation program. As far as a proper plan, they came out with their water shortage and recovery plan for O‘ahu specifically to address the Red Hill issue. Honolulu Board of Water Supply is very aggressive in their water conservation. You live on O‘ahu, you see all of their advertisements. Maui is a close second. You see the ordinances that have already been passed regarding water conservation, show me the water bill, there are the new golf courses, non-potable. They’re very progressive in that sense. Kaua‘i Water Department, they have a water conservation program, but I don’t know if they are developing a proper plan. The Big Island, they also have water conservation efforts, but as far as an actual plan written up, I have not seen that.

COMMISSIONER KAGAWA-VIVIANI: What I was meaning specifically since we’re talking about Maui today, other private purveyors on Maui. For instance, on O‘ahu where we have Pearl Harbor water shortage plan, we have Board of Water Supply and the Navy’s water shortage plan, right? We have water shortage plans for every permitted or most permitted entities. Have you heard anything from other private purveyors or non-DWS purveyors on Maui about their work? Because it seems like we should be running these.

NEAL FUJII: In terms of water conservation, no, we haven’t hear from the private. On Maui, the big ones are on the West side. Hawai‘i Water Service, I haven’t heard from them.

COMMISSIONER KAGAWA-VIVIANI: Maybe we can nudge while we’re all thinking about this together. And I bring this up because it’s anecdotal, what I’ve heard of Texas where they have different irrigation water districts. You have people who are progressive next to people who aren’t and the conservation in one district benefits another and there’s inter-district tension because of it. The whole point with management is that we consider all of these together.

NEAL FUJII: Good point. In water management areas, the permit holders are required to submit a water shortage plan, which is what Eva is talking about and it’s going to be turned in as part of their application for a water use permit. Each of the permit applicants are supposed to submit a water shortage plan. Now, the water shortage plan is not the same as a conservation plan, but there are elements that are very similar and they blend into each other. For example, Maui’s shortage plan, their 0 stage is just their general conservation. That could be a model to follow. The Commission has some say in that when they issue the water use permits. The way it works is the Commission only adopted the Pearl Harbor Water Shortage Plan and the way that plan is we have three stages of shortage. In Stage 2 is where we ask the water use permit holders to implement their existing water shortage plan that they had submitted. That’s how it fits in the individual shortage plans versus the aquifer sector wide.

COMMISSIONER KAGAWA-VIVIANI: I assume our CWRM side efforts will start moving shortly or in this calendar year as we consider permits and these submitted water shortage plans, is that correct?

NEAL FUJII: What's the question? Sorry.

COMMISSIONER KAGAWA-VIVIANI: Maui DWS is really aggressively tackling this shortage plan right now. It would make sense for us to also think about our aquifer system area plan, as well. Maui DWS can encourage their other purveyors to do their part, but we also can so I think we should. And let us know if we can understand how the Commission is doing our part to consider water shortage. I think that would be a good sign of leadership. Let us know if we're making progress on it.

NEAL FUJII: Sure. We'll keep you guys posted.

CHAIR CHANG: There are several legislative bills that may have an impact on this. There are some tax incentive bills and hopefully with the County's outreach, I'd be real curious to see.

EVA BLUMENSTEIN: I want to mahalo you, also. We really look for your feedback here, comments, what you see is lacking or whatnot because there is a void right now. There isn't a statewide or an aquifer or any shortage plan for any Maui County designated area. We understand the Commission will ultimately review, you can approve, or have us modify the plan. We're really going to make the best effort to cover what's needed both by district and site specific and our best effort to get buy-in from the private purveyors, but it'll probably be a while. We have consulted with the Groundwater Branch, with Ryan Imata and Bob and Patrick in getting a better understanding of what triggers would make sense or not. There are still so many components, I heard just from Ayron that maybe we get some of the surface water triggers wrong. The earlier we can address those, the better. This plan is not final. Mahalo for any feedback, criticism, we'd like to hear.

COMMISSIONER MEYER: Thank you for your work in this area, this is a really important plan and you're right on point, as far as I'm concerned in terms of direction and the steps you're taking. Thanks for the effort. You've got a very tight timeframe here in terms of getting this done. It's aggressive and again, thank you, it's admirable.

CHAIR CHANG: I want to have an understanding on your BCAs (benefit cost analysis). Your BCAs, does that take into consideration the amount of water that's being used? I look at, for example, irrigation and that has a really high value. Your BCA on that was 64.3, but the agricultural use is 4%. How is that calculated?

JESSICA FRITSCHÉ: Thank you for the question. On the irrigation demands, we are looking also at turf grass irrigation and plants and that's most of that. We're actually not taking into account agricultural users in the conservation plan. We have BMPs as a recommended measurement, agriculture BMPs, Best Management Practices, in there but the irrigation measures that we're speaking of targets watering of lawns essentially.

CHAIR CHANG: Your BCAs are reflective of the proportion of water use.

JESSICA FRITSCHÉ: The BCA estimates how much, implementing that measure, what would be the water conservation savings in gallons associated with that. The way that you get to the BCA, the benefits side of it, say DWS did not have to treat or pump that water. So there is a cost savings associated with saving that gallon of water. That is what's in the numerator of that value and then there is a cost to implement that program. Because there's the irrigation scheduling is really just marketing time and enforcement essentially, some labor hours in there, it's marketing hours. There's no fixture associated with it, you don't have to give away a \$100 rebate to replace a toilet, so there's not a lot of material cost in there. That's the reason that has such a high BCA value.

CHAIR CHANG: I see. I just want to make sure I'm comparing apples and apples and we're managing community's expectations.

PUBLIC TESTIMONY

DR. JONATHAN SCHEUER, DHHL: Aloha mai kākou. Thank you, Chair Chang, and members. For the record, my name is Jonathan Likeke Scheuer. I'm here today with the Department of Hawaiian Home Lands. I have questions, but I understand I'm just addressing them to you. I will also address my praise for Eva to you, I share Commissioner Meyer's gratitude for this work. It's very important work. Certainly, I appreciated Neal's description of where various counties are and it's great that Maui is stepping ahead in a way that we would love to see all four counties step ahead in seriously addressing shortage and conservation issues. I have a few questions, one, and I appreciate the distinction Neal Fujii drew between the overlapping, yet distinct water conservation plans and water shortage plans. But I would like to reiterate that when DHHL was give the opportunity to review the draft Pearl Harbor Water Shortage Plan, and this was about three years ago, one of the questions we asked was do you have triggers related to potential contamination of the aquifer? The response of CWRM staff at the time was like that's not for the shortage plans. It just seems that it might be useful in addition to these triggers around salinity and triggers around streamflow that should there be some event where contamination actually drives an inability for the system to deliver water, that that could also be some kind of trigger? Just a question. I'm not clear on how transparent the reporting on these triggers are so that interested members of the public will know, are we getting close? Are we not getting close? And then my fundamental set of questions have to do with whether and how equity was considered, equity and public

trust principles were considered in the responses that are the 10%, 20%, 30% mandatory shortages. Across the board cuts, whether it's of water or taxes or anything tend to have inadvertently inequitable outcomes. If you have a very large lawn and you have to reduce it by 10%, it's different on your impact and your family's than if you have a small garden. Right? That you're taking care of and you have to reduce by 10%. Certainly, on Maui, both in the beneficiary community of Hawaiian Homes as well as the general community, there is often very frequently articulated concerns around water use between locals and tourists. Particularly given the challenges that were explored by you and your questions about public and private systems. Very, very frequently you hear folks Upcountry and Central Maui scratching their heads, wait, why can I not wash my car and then I look down at the resorts and everything is green and lush and the tourists are driving washed cars. Then also, particularly for DHHL, and I don't necessarily have an answer for this, but if DHHL uses are a public trust use, why are they also cut across the board as non-public trust uses are during various levels of shortage. I'm not trying to express that there's not a willingness by beneficiaries to reduce water in times of shortage, but what does it mean to have higher public trust use of water. And then fundamentally, I think, the last two points I'll say is the articulation, if I heard it correctly from the Maui Department of Water Supply was that this allows for future growth in the system without developing additional sources. And so, I think a lot of folks just ask why are we concerned then? What is the ultimate goal to conserve water? And so, if I remember correctly and I often do not, but even during the 20- and 30% mandatory shortages Upcountry late last year, people were not complying, right?. And so, you have to ask why are people not complying? Do we have effective, as Commissioner Katayama was starting to question, enforcement mechanisms, monitoring mechanisms to do things. But I think also what drives compliance sometimes is if people feel that the rule is fundamentally inequitable, they tend to be a little less willing to comply with it. Those were just my comments, but again echo the deep appreciation for the work that MDWS is doing and we're looking forward to our conversation about interconnections between their system and our system on Moloka'i are going to be happening this coming week. Mahalo nui.

CHAIR CHANG: Thank you very much, Jonathan. Eva and Jessica are still online so I'm sure they're taking all of comments that you've raised. Thank you so much. I'll take people on Zoom. Kapua, did you want to provide a comment of B1?

DR. KAPUA SPROAT: Aloha mai kākou, my name is Kapua Sproat, for the record. I've been tracking Maui issues for far too long. I'm here today in my personal capacity and like everyone else, I really want to mahalo Eva and the County for doing this important work and especially for sharing your progress with the community. I did have just a couple of things that I wanted to flag for the Commission, though some of my mana'o has already been captured by the Commissioners and Dr. Strauch. I do have serious concerns about using mean surface water for the surface water triggers. I'm not sure what that means and as we all know given the historically low flows that Ayrton has been measuring all over but especially on Maui and in the Wailuku River, I worry about using

a three-year average which is what was flagged on slide 13. I hope that Eva will continue to closely coordinate with Dr. Strauch on those triggers and will incorporate a hard floor in addition to an average as well as the other issues that Dr. Strauch flagged. Same for the groundwater, I think there should be hard stops on individual wells so we're not just mixing with surface water to make sure we get to where we need to with respect to chlorides. I'll just underscore the point that Jonathan made with respect to the public trust prioritization across the board. We aren't seeking equity, a lot of folks aren't. They're seeking justice and fairness, especially where surface water is being taken. I'd encourage the County to look at prior public trust prioritization in incorporating the cuts. This is a question for the County that doesn't need to be answered now but just something to think about. I remember when the County opposed designation of Maui Komohana in June of 2022, it said no need because it was utilizing a working group in order to kind of coordinate with the other water purveyors. This is especially important as you folks well know in Maui Komohana where the County is less than 30% of the water that's being provided. What's the status of that? I think as Commissioner Katayama highlighted, coordination is going to be absolutely essential and if some of that is taking place, great. If the county rule isn't amended and Eva isn't able to enforce with respect to private purveyors, then I think the Commissioner's role in water use permitting and the individual shortage plans are going to be even more important as Dr. Miike highlighted. Mahalo to everyone.

WAYNE TANAKA: Good morning, Chair, members of the Commission. Wayne Tanaka for the Sierra Club of Hawai'i. Just have some comments, first I just really want to appreciate the information and the discussion that's provided in this briefing. I really appreciate the stage zero concept and its emphasis on the importance of proactive efficiency and waste mitigation measures. Along those lines, I did want to emphasize a few areas where I think efficiency and waste mitigation could be improved, whether by the County or by the State or even through your own advocacy as individual experts and probably some of the most informed folks on water issues, current water issues Statewide. For one example, according to the County, its intake infrastructure at Kamole Weir requires on average about 2 million gallons of water more per day than what Upcountry actually uses. That's about three quarters of a billion gallons per year and given how precious and increasingly scarce our water resources are becoming, it may be worth investing in ways to improve the efficiency of this infrastructure among other things for the security of Upcountry folks. There's also county-wide dependency on unlined reservoirs that collectively leak tens of millions of gallons of water per day and my concern is if there is a prolonged drought, for example, and we do not prepare by requiring reservoirs to be lined or requiring less wasteful infrastructure, these reservoirs could empty themselves during prolonged drought periods and that would leave ag users and others high and dry. I do appreciate the progress that's been made regarding reuse. After many, many years the Lahaina Wastewater Treatment Plant is finally on its way to recycling some of its wastewater and in that case we not only are reducing the strain on potable water sources by not using them for landscape irrigation and so forth but we're

also reducing the impacts on the nearshore ecosystem. My understanding is the Maui Komohana community, this is a high-level topic of discussion within that community, as well. Finally, along the lines of what Dr. Scheuer was saying, contamination in my mind is tantamount to the waste of what would otherwise be drinkable water. We know, this island in particular, how contamination can create water shortages, sorry my video stopped, even when there's relative abundance. PFAS or forever chemicals, we're beginning to really become aware of them and how they effectively last forever and can migrate throughout environment into our water sources over the course of decades or even centuries. While we have currently limited options to deal with the existing contamination of these forever chemicals, what we can do is prevent even further harm by banning them. There are legislative vehicles in the Hawai'i Capitol like HB 1896. There's federal legislation that could be strengthened like the FAA Reauthorization Act. These things could use your support, the Commission's support or even just your individual support as advocates and experts and stewards of the water resources. Those are just some comments and thoughts, not all these things are controlled by the County, some are in your wheelhouse, some might require legislation, but all in all I'm just very glad for this discussion and hope that we can all work together to address these efficiency needs and protect our water security and our future. Thank you.

CHRISTI KELI'IKOA: Thank you for the opportunity. I am an executive assistant for Council Member Paltin, so I'm speaking on her behalf, I'll just give you her testimony. She apologizes that she is not able to be here today because she's appearing before the legislature and she has been deeply engaged on these issues and works tirelessly to craft housing solutions for those impacted by the August 2023 fires. After hearing this item and also thinking ahead to item B2, in particular, it's incredibly important to Council Member Paltin and the community, which has repeatedly asked to be centered in decision-making that impacts Lahaina especially with respect to the fire recovery, and based on the information that is presented and will be presented it's unclear whether any more information will be shared for Leiali'i, in particular. While she's always supported housing solutions, she's also concerned that water for the Kā'anapali project appears to come from the Honokowai Aquifer which is already threatened with over pumping. In wrapping up, Council Member Paltin would like to request to be kept abreast of the water sources for the temporary emergency housing being considered for Kā'anapali 2020, Leiali'i and any other potential sites and requests regular updates for what comes of this for each of the temporary emergency sites being considered. Mahalo.

KALAMA'EHU TAKAHASHI: Aloha mai, Kalama'ehu Takahashi here. Just was mainly here to get more information but just wanted to mahalo CWRM and DWS for organizing these efforts. Sorry, I'm unable to start my video because we have issues with connectivity where we're reporting in from, so I'm going to respectfully leave my video off for the time being. Certain reservations that I have also with the Kā'anapali 2020 project are in fact that they are drawing from the Honokowai Aquifer which is an aquifer that has been previously identified as some place that's been overdrawn at the current time and I think that's something that we should look to consider. I would also like to just mahalo and echo the sentiments of Dr. Scheuer's and Dr. Sproat's comments earlier as

well regarding equity and the inclusion of the Lahaina communities in future consultations and these efforts. Particularly as a researcher for our culture research firm, I have serious issues with the lack of cultural historical information that is layered into these sorts of metrics and we're talking about impacts and what we propose as certain uses. Denying the fact that these areas are in the footprint of the Malu 'Ulu o Lele and that these are chiefly and also highly populated areas in the cultural historical past is not an excuse for us to be fast tracking these types of projects for the benefit of people that we cannot guarantee are going to be our local community members. I would just ask that we have more inclusion and consultation with the community in regard to the histories of these things and looking forward to more accountability to our private purveyors and users if they refuse to comply with integrating resources with the larger community. And just to keep the community more involved. Sorry, all over the place but here for information. Thank you for your time and willing to answer any questions or anything like that moving forward.

COMMISSIONER KAGAWA-VIVIANI: Yes, I have a question for testifier Kalama'ehu Takahashi and you mentioned your concern over the lack of assessment of impacts and certain uses and as a cultural resource specialist and someone from the area, knowledgeable, if you have thoughts on the metrics that matter. If the metrics we're using aren't the right ones, do you have suggestions? You might refer to streamflow, but if you have pointers, if you can articulate them then we can make sure to include them.

KALAMA'EHU TAKAHASHI: Yes, thank you. Off the top of my head I would say that examining traditional water systems prior to the current ones that we are operating within which were illegally built and had a very heavy impact on our cultural resources and the and the socioeconomic parameters and lifestyle and even policies to a certain extent that allows for us to live within a utopian setting where our communities, their families, and future generations for an extended amount of time beyond their own lifetimes would be able to sustain the populations that are living in these areas. For example, I don't know what the metrics would be but if we were to look at the land use and the irrigation metrics for using the square footage of a golf course or a water feature or a waterfall, how much water that uses as opposed to some other uses such as the regrowth or reforestation of the Malu 'Ulu o Lele, I think that would help to solve a little more issues. When we're talking about housing and spacing, feeding our families and just trying to prevent any sort of other climate disasters like the fire from occurring again, I would just like to sum it up by saying that we should examine our cultural past and integrate these systems and integrate that knowledge, use that as the basis for socioeconomic justice and equity that we can use as we try to navigate these spaces towards mitigating the current issues and the issues that we're going to face as a community in the climate future under these extractive economies. Sorry, again just all over the place, but please let me know if that was an answer to your question. I'm not an expert in all these things like the measurement and certain stuff like that but I do see the value in honoring our stories and our histories and what the landscape was like before the arrival of these foreign interests and these destructive powers. I don't have an issue with who's living here and who's consuming these resources, but it's just that we collectively need to find ways to

[inaudible] these resources. [lost connectivity] We have descendants of the mahi'ai, we have descendants of the konohiki, we have descendants of the ali'i and stuff like that and that's the reason why we should look to our communities. They know the best, they have the most stakes, they've been here the longest, and I think that they'll be here much further afterwards. That's it for now, although I apologize I cannot answer the question clearly at this time. I am also available to be contacted thereafter for further just talk stories or opportunities for us to collaborate in these conversations moving forward.

COMMISSIONER KAGAWA-VIVIANI: I just want to suggest for broader conversation, we have the metrics at the Commission that we use because that's what the technology enables, but for these tricky problems, maybe thinking more creatively and expansively about metrics that aren't measured by the Commission but are measured in partnership with community to know that we're making progress towards the goals we're going towards. In education we use SATs but we know they're flawed metrics. So, what are the metrics we should be using because that's kind of the way our system operates at county and state level. We do need metrics, as flawed as they are, if they get us closer to measuring the things we value then that's going to lead to better decision making. Please do, as you think about it if there are metrics that the Commission or Maui DWS can consider as they think about conservation and triggers, not just from the public utility, drinking water side but more broadly. I think that will help the Maui water conversations.

CHAIR CHANG: I guess in my mind, tagging on to Aurora's comment, whether they're metrics or not, we have Ka Pa'akai analysis that really looks at quantifying impacts through traditional customary practices, but what I hear a lot in all the different conversations we have is just the need for community engagement. Too often communities aren't part of the process to participate in at least providing information. Our Commission meetings we provide a public forum and I also appreciate Eva. You guys have had several broader community meetings in the different areas to also get input, but I do think we all have to try more deliberately and consistently to engage communities whether they're in a working group or through community meetings, rather than when a decision needs to be made up. I guess that's each one of us, each one of the government entities trying to do that in our own relevant way. That's my own comment.

COMMISSIONER MIIKE: Listening to many of the comments, what they're really asking is for reapportionment of current water uses which I think at least for the Department from Maui, is beyond the scope of what they're trying to do. I think the onus falls on the Commission to take a look at that. We've always just sort of handed out permits as they applied, but the bigger issue is looking at the overall area that we're giving out permits, how should those be apportioned? Some of the issues that have been brought up was that we have priority areas, we have public trust purposes and they probably don't match how we just handed out permits as they came up one by one. I don't want to put this burden on the Department of Water Supply on Maui, otherwise

their shortage plan will never move and I think that should be for us to address in some future agenda.

CHAIR CHANG: I think you're absolutely correct, but it just reemphasizes the need to have water management area designations because that is the vehicle to ensure this much more comprehensive coordinated view.

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B. INFORMATIONAL BRIEFING

2. Briefing on the Commission's Approach to Addressing Water for Temporary Housing Needs for Areas of Maui Affected by Wildfires

PRESENTATION GIVEN BY: Dean Uyeno, Acting Deputy Directory & Stream Protection and Management Branch Chief

Staff provided an update on CWRM's water permitting process for temporary housing projects serviced by Maui DWS and private purveyors.

QUESTIONS / COMMENTS

CHAIR CHANG: This is really a desire of transparency so that the Commission was well aware. Things are moving very fast on the Maui temp housing and FEMA is primarily taking the lead here. The state is deferring to the county and their priorities, but both CWRM, State Historic Preservation Division, our Engineering Division, our Land Division, all of our different divisions are playing a role in assisting on the Maui temp housing. But water is really critical so we felt comfortable in reviewing both the Code that if the county is a provider, then that would be considered an existing use versus if we had a private purveyor, that would require a new permit. We just wanted to update you on that.

COMMISSIONER MIIKE: What proportion will there be between the Department of Water Supply and private?

DEPUTY UYENO: With the existing use permits that were filed?

COMMISSIONER MIIKE: No, when the temporary housings are being put up, any idea about which ones are going to be covered by private purveyors?

DEPUTY UYENO: No, not at this point. Things have been changing almost weekly so I could tell you one thing today and it might be different tomorrow, honestly.

CHAIR CHANG: Larry, we are encouraging them like with State Historic Preservation Division to facilitate this process because we're not trying to cut any, to stay with county purveyors.

COMMISSIONER MIIKE: If these are temporary housing, then they're going to be built much faster than regular housing. As far as the timing permits, do we have a process that we can speed it up or?

CHAIR CHANG: For new permits?

COMMISSIONER MIIKE: Yeah.

CHAIR CHANG: Unfortunately, they're following under our existing process set forth in the code so that's why we're encouraging them to try to utilize county water supply to facilitate the process because otherwise we would have to go through all the 140 permits before we issue out a new permit.

COMMISSIONER MIIKE: That's right, I forgot about that.

CHAIR CHANG: Which is quite significant, yes.

COMMISSIONER MEYER: Most of that what I presume would be for household use and would therefore require treatment most likely by either a private or public utility?

DEPUTY UYENO: Domestic uses.

COMMISSIONER KAGAWA-VIVIANI: I was digging a little and I understand there are three candidate sites, two of them being in sort of West Maui Lahaina aquifer sector. The one that FEMA put forth as having a final EA and finding a no significant impact is the Kā'anapali temporary housing and then my understanding is that another potential one is Leiali'i. Kā'anapali is currently serviced by Hawai'i Water Service and Leiali'i/DHHL is serviced by MDWS, is that correct?

DEPUTY UYENO: The DHHL, I'm not sure.

COMMISSIONER KAGAWA-VIVIANI: This is why we're looking at private or MDWS as having implications for the Commission. Then yesterday in the news there was a groundbreaking for a Kā'anapali employee, sorry Kapalua. Sorry, obviously I don't know West Maui geography very well, but that would be under an existing use, right? Because they already...

DEPUTY UYENO: Could be, we haven't gotten the full details on that.

COMMISSIONER KAGAWA-VIVIANI: Ok, so there's different arrays of temporary housing, too, like private, federally funded and I am not a housing person.

CHAIR CHANG: It is a moving target, so I think the State is trying to utilize the FEMA funds as the priority. We are trying to direct them to areas that we think both from a Historic Preservation Division standpoint less cultural resources, minimal impacts, already existing archaeological inventory survey will facilitate the process because they also have to comply with Section 106, likewise with CWRM. Ultimately the decision will be made by FEMA and the county and the state, but we're trying to direct them to, if you're looking for facilitated process, giving them some guidance like utilize the county. We've been in discussion with the county as well.

COMMISSIONER KAGAWA-VIVIANI: Pertaining to water, specifically the Kā'anapali group housing since it's served by wells in Honokōwai that have historically had some chloride issues and writing off of B1 ask, is Hawai'i Water Service working on a water shortage plan? Because it's maybe not a problem now, but as housing infrastructure is built and temporary housing becomes something else, we're going to be putting strain on Honokōwai, which is already strained and that's our responsibility. I know things are moving fast there, but how are Commission staff thinking about how we take a regional approach?

DEPUTY UYENO: That's certainly something we're going to have to look at in the bigger picture as we go through the water use permit applications. My understanding is Hawai'i Water Service has been doing it now is that they've been rotating the pumpages on their batteries of wells to avoid the chloride issues. If they see an uptick then they'll shift their pump to other sources within their system.

COMMISSIONER KAGAWA-VIVIANI: So, it's just within. On item B1, Eva mentioned working on interconnections so my understanding from reviewing the Maui Water Use and Development Plan, Lahaina sector is that there are no service interconnections in between different purveyors in the system. Is that true?

DEPUTY UYENO: I believe so.

COMMISSIONER KAGAWA-VIVIANI: There's no backup redundancy. That's something maybe not necessarily for us but could be an issue in the future. My question to Dean is how are we as a Commission thinking about our due diligence to ensure protection of public trust in this area where we've already had some challenges like Commissioner Miike mentioned? We've tended to just award permits, but how are we putting some bounds on that? Have we given thought to that?

DEPUTY UYENO: Honestly, I haven't given too much thought to it yet. I haven't had a chance to really review all the water use permit applications that have come in. Certainly, our staff, Alexa, and Ayrton in particular, are well versed in the area. I think it's really

going to come down to a balancing of priority uses and the public trust. There's going to have to be cutbacks for certain uses that aren't public trust uses and certainly we're going to have to look more critically at water shortage plans in this area and how we apply those plans in water shortage situations. In the next agenda item, we're going to bring up some bills and we left out the ones that are basically dead, that have been deferred or didn't get a hearing. As was mentioned in the prior submittal item, there was a bill for emergency water shortage situations and emergency declarations. Right now, there's only one bill that remains and that would have been a great tool that in this situation where you have water purveyors, you have both private and County and in those water shortage situations, I think was mentioned prior, there's very few if any controls over the private purveyors and how that water is used. I think that bill that was introduced would have given us a little more power in those situations or our ability in those situations to spread out the use so that it's ensuring that it is for public trust uses in water shortage situations.

COMMISSIONER KAGAWA-VIVIANI: Ayron mentioned some innovative suggestions way back in September/October about R1. Has there been any progress on that? I know FEMA money expires and you need to move fast but that could alleviate. My understanding is the Lahaina wastewater treatment plant does produce R1, well some portion of it is treated to R1 and some portion of that R1 is used but there's a lot that isn't.

DEPUTY UYENO: Ayron may be able to speak to that better. The county is certainly working towards expanding their use of R1. There is currently a bill that is seeking to provide tax incentives for the purchase of reservoirs and such to expand the R1. It kind of just took a broad brush that we can go over, but I think we're certainly promoting to the County that they expand their R1 use in the region.

CHAIR CHANG: If I can just add on to this. The Lahaina fire has definitely required all of us to really pivot. Right when CWRM was beginning to start focusing on the Water Management Area designation and looking at the water use permits, it might have almost been that same day the applications were due is when the fire hit. Now, moving into the recovery stage, Maui temp housing has really become a critical focus of CWRM and how do we help facilitate. I think that the approach that CWRM has taken on saying what's an existing water use that doesn't require a water use permit, one really trying to support the County here, the county DWS in all of their efforts. If it has a county connection then it should help facilitate that process. Because the Maui refocus has required us to be more reactionary than proactive, the way that we're approaching it is still trying to be one, supportive of the County, recognizing that private purveyors, we don't have as much control over that. I'm trying to support the Maui County including both in legislation on how to provide them more resources to emphasize alternative reuse or recycled but also giving them the tools to also potentially acquire some of these private systems to supplement what they have. This has really required CWRM to dedicate a tremendous amount of resources to assisting on the Maui temp housing. Again, this is just temp housing. This effort is not intended to look at permanent affordable housing, this is just

Maui temp housing for the Maui residents who have been displaced by the Maui wildfires.

COMMISSIONER KATAYAMA: Just again, background. You have 140 permits currently, more to be added. I guess two questions. One is what kind of resources are you going to avail yourself for these permit reviews to do it in a timely manner? I sense that timing is important. Secondly, because this is for temporary use, is there a sunset on these permits?

DEPUTY UYENO: For the first question, our staff is reviewing them now. They're focused on working their way from Honokohau – south. They're meeting weekly and we're meeting weekly as a staff. They're meeting individually to review permits, draft letters that need to go out if information is missing. How fast that goes, I think last year we gave a general idea of mid 2024 that we could start to address them. I think we're at a phase where it's at least that long if not maybe a little longer.

COMMISSIONER KATAYAMA: How does that comport with the sense of establishing these housing units?

DEPUTY UYENO: We are advocating that Maui DWS serve the projects. If it is private, that's a discussion we're going to have to have as far as temporary housing goes. They are temporary, there is a requirement that they need to be, I don't know if the term is removed or taken down or what have you, but there is a sunset date. My understanding is that FEMA requires the housing cannot be left there in perpetuity. How that plays out we still have to have those discussions.

COMMISSIONER KATAYAMA: That to me maybe helps in terms of taking rather than a real comprehensive holistic view, it's just establishing residency with the understanding of a sunset, that you can reexamine the process again. I think if your timetable for actually granting permits is within the view of whoever the purveyor is or whoever the residents establishing that, I think that's what you need to drive towards. Thanks Dean, I know it's a challenge.

CHAIR CHANG: To say the least, but they've been doing remarkable in really trying to facilitate. I think the temp housing, they're looking at two to three years. Most of these housing, they're modular so they're all being shipped in. A lot of them are coming in on barges as we speak and trying to have spaces available to put them. Again, these are intended only for temporary but we'll see what happens at the end.

COMMISSIONER KATAYAMA: So, there is a sunset on these?

CHAIR CHANG: I think it is two to three years, the term of the emergency proclamation and FEMA's commitment.

PUBLIC TESTIMONY

ELENA BRYANT: Aloha Chair Chang and Commissioners. My name is Elena Bryant testifying on behalf of Earthjustice and I'd like to make six brief comments on agenda item B2. First, we want to thank Commission staff for briefing this issue in a public meeting because it encourages transparency and given the significant community interest in this issue, we appreciate that the Commission is updating the community in this way. That said, without specifics including sites it's not as helpful as it could be so to be useful the info briefings really need to include specific sites. Second, we support temporary emergency housing for Lahaina residents and we agree that it makes sense in this situation that water for the temporary housing would be covered under Maui DWS' existing use because it's only shifting end uses from Lahaina to the new temporary housing site. We also agree that any new purveyor would be required to apply for a new water use permit. Our interest here is making sure we aren't heading into another plantation disaster capitalism situation and we're here to help you maka'ala and ensure everything is pono given that you are truly our kahuwai pono. Third, we are concerned about the possible use of an emergency proclamation in this matter. While you folks haven't directly addressed that, it's the clear implication given what the Governor has shared of potential sites via the news. This is a significant concern given that the Governor has not been pono with his use of emergency proclamations in the past so we're closely monitoring this to ensure that any EP would honor the public trust and ensure that emergency powers are not abused as they have been in the water context in Maui Komohana in the wake of the fires. Fourth, we are wondering which sites are being considered. There's been talk in the news by the Governor for example about Leiali'i and other talk about Kapalua and Kā'anapali as mentioned by Commissioner Kagawa-Viviani and without more information on sites, the briefing is less helpful. The community needs to know what's on the table. Fifth, based on Eva's presentation on B1 where the highest use for Maui county is 291 or so gallons per day, we expect that the requested allocation for temporary homes presumably without irrigated outside areas via any County system should be in alignment with the County's actual numbers like 300. Even that's generous. Based on Eva's presentation, it seems like it's more around 200 in most areas and 300 in areas with larger lots which isn't what you'd get with temporary emergency housing. Regardless, there doesn't seem to be a need for 600 GPD of allocation in the state water system standards if the County's actual numbers are closer to 200 or 300. Finally, we believe it is critical for the community to continue to be updated as the temporary housing projects proceed and so we respectfully request that the Commission continue to hold these types of informational briefings but with information on specific sites and if it doesn't plan to do so, we would respectfully request that Earthjustice continue to be updated on this issue moving forward. Thank you for the opportunity to comment.

KAULU LU'UWAI: My only comment is that I know, Chair, you said that the housing issues are likely temporary at this moment, however I'll just urge the Commission to consider thinking of this holistically and understanding that infrastructure will be put in place with these temporary housings. I guess my suggestion to the Commission is to look at it as if there is a potential for these housing projects to become permanent. Just keeping that in mind because of the amount of investment and infrastructure that will be put in

place so please consider that as you go through the permitting process and consider the water distribution. Mahalo.

WAYNE TANAKA: Wayne Tanaka from Sierra Club of Hawai‘i. First, I really appreciate the opportunity to get some insight into what’s going on with the temporary housing project. I also really appreciate the Chair’s comment about the importance of community involvement and engagement in the last agenda item and I think that’s particularly heightened for disaster recovery with so much at stake and with some of I guess the missteps we’ve seen in Maui Komohana and then some other uses of the executive emergency authorities. We want to state our support for the Maui Komohana community and their involvement in their recovery efforts. I support the Commission’s effort to keep the public informed and to express our caution against using emergency authorities to unnecessarily evade community engagement and consultation, particularly when the community are the folks that are most familiar with their ‘āina and most invested in their long-term well-being and can help identify some unintended impacts and also can actually support some of the priorities that the Commission has mentioned including R-1 reuse. I do want to encourage the Commission to continue keeping the public informed including with some of the specifics that may make these kinds of meetings, these briefings more meaningful and accessible. I would respectfully suggest maybe having a meeting in Maui Komohana for the next briefing or presentation on these matters, particularly when you have more specific information for them to consider. With that, thank you so much and looking forward to hearing more.

COMMISSIONER KAGAWA-VIVIANI: Given the testifier’s sort of press for community involvement in a process that is essentially kind of bureaucratic and needing to be fast-tracked, we got a couple suggestions, but are there other ways in which we can help support transparency given the contention of water issues and the interactions with housing and the distrust that needs to be reestablished.

CHAIR CHANG: I’ll take that one on and then Dean you can add to that. Our intent with this agenda item was really to provide the Water Commissioners an update on the approach that CWRM was taking on the temp Maui housing. Given that it’s a Water Management Designation area and how are we addressing this and so it wasn’t really intended or designed to be on specific Maui temp housing projects. I think the County may be having some forums on discussing Maui temp housing and in our view that would be more appropriate there. Here at CWRM I have been trying through our Water Commission meetings to provide a public platform to inform the community but in this particular instance it was really to update the Commissioners on how we were approaching the permitting process given the Water Management Designation, but not specifically intending to talk about Maui temp housing. Just a clarification. I appreciate the fact that there’s been many comments about that, the lack of transparency. I am all about process but I’m also wanting to be very cognizant that to a large extent these projects are in flux. We are but one component of the regulatory review process and the State is really trying to support the County of Maui in their determination of priority areas, locations. We provide guidance to facilitate the process, find a location that you’ve

got water rather than trying to be reactionary, trying to assist them. Where do we have existing water resources in particular I think as a matter of policy for me, too. I'm really looking at how do we support the Maui County, Maui water department because it is consistent with our water code as an existing use permit. But determination of housing areas, we're leaving that up to the County and FEMA and who's really identifying those. If there is a suggestion that we have this on our regular agenda, that was probably not our intention, that we weren't going to be providing updates to the Water Commission on specific Maui temp housing projects if that's what people were looking for. Were you interested in that, Aurora?

COMMISSIONER KAGAWA-VIVIANI: No but reviewing the final EA and the one or two sentences on water resources and knowing that there was a 9-day comment period, I wasn't aware of this until Civil Beat posted the link. Anyways, I guess it didn't sound like they had talked to anyone and especially because Honokowai was the one section that has problems. If I went back to the Lahaina designation and DOH (Department of Health) has a lengthy description of how chlorides regularly exceed thresholds, six out of nine wells. I just want to make sure that we are not creating potential problems we're going to have a harder time dealing with down the road and that we also are maka'ala to that issue. Hawai'i Water System has a certain number of wells, I mean where's that water going to come from? So, we're not reacting as much and I know we're all in reaction mode but how can we be more proactive and maybe we have to give a little more attention and background to the decision makers who are making these really quick decisions and consolidate information for them just so we don't have more problems down the road and that was the whole point with designation.

CHAIR CHANG: I will assure you, CWRM staff that participate in these discussions, they are conveying those sensitivities. I think they have a good appreciation for the concerns that have been raised and they make those very clear in some of those internal discussions.

COMMISSIONER KAGAWA-VIVIANI: And then let us as Commissioners know how we can back up and allow you to do that work, too. Again, I say nobody can fire me from my volunteer position.

CHAIR CHANG: This was really a courtesy to the Commission and to members of the public to give you an idea of how CWRM is making determinations as they provide input into the ultimate decisions about these different projects. With that determination comes a lot of sensitivities and that's why the determination to support DWS if the County is providing that it's an existing use. Private purveyor, that's a new use that requires a new permit that will go through all that engenders so much more of the regulatory review processes and participation. We're trying to be very helpful to Maui temp housing. We have residents that need more stable housing, I take not permanent, but they need stability so we are all trying to be part of a solution but yet at the same time not compromise the

positions that the Commission has taken in the past regarding many of these sensitive and critical issues. I'm trying to walk this very fine line.

ELENA BRYANT: I just had an additional comment. You had mentioned that it's the County and FEMA who are going to take the leads in choosing the location which we completely understand and agree, but I just wanted to note in order to make the determination about whether a use is reasonable beneficial, the Commission does need site specific information. I think this is important especially if the Commission isn't going to be issuing a water use permit which is the case with the County and so I just wanted to add that.

CHAIR CHANG: Appreciate that comment. What I can share is I think our CWRM staff include that balance as part of the contributions that they make to these discussions. Thank you very much.

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B. INFORMATIONAL BRIEFING

3. Briefing Summarizing Select Legislation of Note Related to the Commission on Water Resource Management from 2023-2024 Legislative Biennium

PRESENTATION GIVEN BY: Dean Uyeno, Acting Deputy Directory & Stream Protection and Management Branch Chief

Staff shared the status of House and Senate bills relating to or directly affecting CWRM.

QUESTIONS / COMMENTS

CHAIR CHANG: If I could just add to that. I didn't want, knowing that the bill is from last year, and that the counties subsequently did raise concerns to the Governor about this. I met with the county as well as Chair Ichiyama encouraged and I told her that I was going to meet. I've met with the county, all the water departments. It was great conversation. I think we're going to try to do this on a regular basis, meeting with the county water departments. I think that their opposition was more...because I said nobody opposed the bill during the hearing. Let me just put it this way, I think that they were and I'm not going to speak on behalf of the counties, they appreciated the outreach. I think they were more comfortable with an incremental increase rather than going up to the \$60,000. I said, okay we will decrease it to \$25,000 and I'm hoping that that will be a more acceptable compromise with the county water departments.

COMMISSIONER MIIKE: Was the Governor's veto based on the counties' objection? I mean he's the big elephant in the room right now.

CHAIR CHANG: That's my understanding. That's why I said I will reach out to the county water department because I don't want to waste people's time if it's going to be vetoed again but I think that was my guidance. Talk to the county water departments because that's where the objection came from.

DEPUTY UYENO: LURF (Land Use Research Foundation) and the Hawai'i DWS (Department of Water Supply), I think in the initial hearing, Kaua'i County had also provided testimony and subsequently I think only Hawaii Department of Water Supply and Honolulu Board of Water Supply had some testimony along with LURF and others. You may want to take a look at those testimony to see where their positions are.

COMMISSIONER MIIKE: Let me ask you, what is the objection to a high penalty?

DEPUTY UYENO: I think the way the Code and the Bill points out is that it's a daily fine. So, it could conceivably, theoretically end up at these high million-dollar fines right. We tend to work with the counties whenever we notice something or something happens with the wells. We measure on a 12-month moving average. We certainly work with even the counties and private purveyors whenever we're setting instream flow standards. We try to work with them as much as possible.

COMMISSIONER MIIKE: What kinds of violations are we talking about?

DEPUTY UYENO: Could be anything, over-pumping, not meeting the instream flow standard. But in a lot of cases, especially like the instream flow standards. Understanding our staff and understanding how measurements take place and the difficulties in getting out to intakes, it's difficult to accurately measure and maintain an instream flow standard especially when the weather is changing daily. We're more apt to work with the diverters in those cases than to come down heavy with a fine, but if it's a continued violation that we see and they're not listening to our staff then that's when we'll tend to take an action.

COMMISSIONER MIIKE: In addition to a penalty, can you take away? For example, if they have a well can we shut it down or if you're doing a diversion, can we cut it off? That's within the power of the Commission, right?

DEPUTY UYENO: I think it's possible. That may constitute a takings action that we would have to bring before the Commission.

COMMISSIONER MIIKE: It seems to me that if you have a violator who doesn't care about what the fine is and they keep on violating, but it every day there's a fine...

CHAIR CHANG: Alexa did an analysis of all of our violations, to a large extent, we're not into punishment as we are into mitigation, do something and move. A lot of the violations have turned into mitigation measures but I think it is helpful to have a stick if you don't get compliance, so looking at alternative ways to get people in compliance. I think for the objections to the \$60,000 was we went from \$5,000 all the way up to \$60,000 even though we showed a real good rational basis. It was consistent with DOH, it followed EPA (U.S. Environmental Protection Agency). I think there was just suspicion, I will be very candid. I think there was just suspicion of CWRM's intention so I said okay, we'll do it incrementally.

COMMISSIONER MIIKE: I'll give up my shirt.

CHAIR CHANG: I'm hoping with better coordination with the county water departments, I suspect we will never change LURF's mind, but the county water departments, I think we are trying to be much more collaborative with them and talk about these, in particular legislation, ahead of time and I should have spoken to them earlier. I'm hoping that this one will proceed forward.

20240220 2:52:25 - Deputy Uyeno continues presentation

CHAIR CHANG: If I could just add to this. I'm not too sure if you recall at the same time as Red Hill there was a WAI, Water Alliance Initiative. It was a coordinated effort between state and county agencies and governments with respect to the remediation of the Red Hill, not to circumvent or in any way to intervene with existing regulatory processes, either by DOH or EPA, but more to supplement. The WAI report asks for more than what DOH could do. It includes research but it also looked at an ecosystem approach to remediation and so I think the determination was that DLNR (Department of Land and Natural Resources) was in the better position to oversee the coordination of this effort to implement the WAI initiative. That's why it's being placed in DLNR with some capacity.

20240220 2:55:39 - Deputy Uyeno continues presentation

CHAIR CHANG: If I can just add to this one. I was trying not to take this personal but I thought this might have been the anti-Chair Chang Bill, but nonetheless that was my caution to the legislators is not to change the organizational structure of CWRM in response to an incident but make sure that it is done in a very thoughtful way. Let me share from my perspective, I see CWRM as an integral part of DLNR. I'm really looking at how do I manage mauka to makai, how do I look at ecosystem water resources, how do I look at ecosystem management. CWRM is an integral component of those discussions internally with other DLNR divisions, separate and apart from the regulator, and the expertise that they bring. To take them out of DLNR and to truly make them a totally independent agency would in my mind...we miss the opportunity to do true indigenous resource management. That's why we have comments, we have opposition, and we have support for various components of this measure, but it is moving through the legislature

so if any of you have got any comments, I'd welcome that, but otherwise that was some of the thought process that went into our testimony.

COMMISSIONER MIIKE: I wouldn't support that bill. I think it has too many changes and it's basically a reaction to what controversy was when some of us opposed, but I won't comment on all of it. One of the things is that to make a chairperson from one of the appointed areas, you and I know that chairperson is not just a figurehead position. It takes a lot of energy and I don't see how any one of us would have the energy or the commitment to be the chairperson and be that involved. For that reason alone, I would oppose it. As far as the conflicts of interest, I think the current laws are adequate. We don't need that, but anyway, for what it's worth, I wouldn't support this.

CHAIR CHANG: Your comments are always worth a lot.

20240220 3:00:55 - Deputy Uyeno continues presentation

COMMISSIONER MIIKE: 2060?

CHAIR CHANG: Don't worry, they put those takes effect on those dates just to keep the bill alive, but if it moves forward that's just a placeholder. They'll change it should the bill move forward.

20240220 3:04:42 - Deputy Uyeno continues presentation

CHAIR CHANG: I think that was Land Division, they were much more concerned. They thought that was going to be transferred to Land Division. I said I don't think that's the intention. I think the intention is possibly to transfer these over to the county water departments. We have amended our testimony to provide more comments because I think we do support the counties having management over the water infrastructure.

20240220 3:05:57 - Deputy Uyeno continues presentation

COMMISSIONER MIIKE: If that goes through, the part about the executive director, how is the executive director appointed?

DEPUTY UYENO: They would have to be approved by the Commission.

COMMISSIONER MIIKE: Right now, Dawn would pick someone and then we would approve. I think some of the executive offices like Office of AG (Attorney General) is the Governor that reports.

DEPUTY UYENO: I don't know. Chair may have some based on the KIRC, Kaho'olawe Island Reserve Commission. I think it would be similar in nature to that.

CHAIR CHANG: I think the way that that's done is the Commission actually they do their own solicitation and they hire so it's not even someone from either the Governor or the Chairperson, the Commission on its own. A truly administrative attached agency like KIRC and like Mauna Kea Authority, they are totally independent. They have their own office, they have their own staff but they select their own executive director.

DEPUTY UYENO: They still rely on the personnel services, fiscal services of the Department.

CHAIR CHANG: At DLNR, we provide HR and fiscal support but they are truly independent. CWRM is a little on the hybrid side. They're not truly independently attached. I'd like to say the best of both worlds, some say the worst of both worlds. I don't know, depends upon which way you sit, but there would be a distinction in the administration if they are truly administratively attached like KIRC and Mauna Kea.

COMMISSIONER MIIKE: I would have preferred keeping the way it is but clarifying that if we approve hiring, we also approve firing.

CHAIR CHANG: Fair enough. I don't have an objection to having the first deputy be an executive director that's not politically appointed that could be appointed by the Commission. It's essentially an exempt position, but they're not subject to change of administration.

COMMISSIONER MIIKE: Then the other part would have been like in the past that we would be able to get independent counsel but only under certain circumstances when there's clearly a conflict. Right now, the Attorney General can say no and that's the end of it, even though from my standpoint there was a clear conflict like the original Waiāhole case. I think the court was pretty spot on with saying if there's a conflict then you should have [inaudible]. But if there's a conflict but there was no way around it, for example when Michael was in your position, DLNR was a party in it and then he was also the Chair over it. In a situation like that he can stay on because there's no resolution in other words. I would have preferred it that.

CHAIR CHANG: There are some agencies that they do have authority to hire their own attorney and I think that the way that this provision is drafted, the AGs did oppose that. There are certain circumstances where there is a clear conflict of interest.

DEPUTY UYENO: I believe just to address your concern, this bill authorizes the Commission to annually evaluate the executive director's work, so basically can hire and fire them.

COMMISSIONER MIIKE: What are the chances of these bill's going through?

CHAIR CHANG: It's moving notwithstanding. My sentiment is if you're going to reorganize CWRM, make sure you're doing it for the right reasons not in response to an incident because I will share with you, there's tremendous value having CWRM part of the Department. I bring them into meetings that we have like on this Maui temp housing. They wouldn't come into those meetings, they'd have to wait till there's a regulatory process, a permit that comes to them. But in situations where we're looking at watershed management and impacts on nearshore waters, CWRM participates in those discussions. I find them to be an integral part of the overall. If we're looking at a truly ecosystem-based management, an ahupua'a-based management, they need to be at the table during the planning process not at the purely regulatory process. I see CWRM as being more proactive in that role, but if they become a regulator and administratively attached, that opportunity wouldn't be available to us as it is now. That's my mana'o on that one.

20240220 3:16:30 - Deputy Uyeno continues presentation

CHAIR CHANG: It creates this Red Hill remediation special fund. The intention is that the State is going to Congress and we have spoken to our Congressional delegates about providing additional funds specifically for Red Hill remediation and those funds would be placed into this special fund to be managed to implement the WAI initiatives.

PUBLIC TESTIMONY

ELENA BRYANT: I just wanted to quickly address the comment about House Bill 2703 which is also relevant to Senate Bill 3327. I don't think either bill is an anti-Dawn Chang bill, it's about giving the Water Commission independence and it finally implements the 30-year-old review Commission recommendations. As I'm sure this Commission is aware a lot of these bills seek to implement recommendations of a Review Commission report issued in 1994 in the same initiative that created the Water Code. A Review Commission was established to perform a comprehensive review of the State Water Code five years after its enactment and a seven-member commission held multiple public information meetings, public hearings throughout the state and 30 years ago it issued a 200 plus page report with recommendations for improving the Water Code. Fast forward 30 years, for people working on water issues for generations, it's heartening to see that finally there's a potential for these Review Commission recommendations to come to fruition with the goal being to allow the Commission to act proactively and be free from political influence. I think that's the driving force behind these proposals and so I just wanted to comment on that. Also, to comment on the statement Dean had made I think it was about SB 3327 and the ability to retain independent legal counsel. The comment about the AGs providing sound and timely advice to the Commission, we did review the testimony that was submitted on that bill and the irony of the Department of the Attorney Generals taking the position that this Commission shouldn't be able to retain and consult independent legal counsel is remarkable, especially considering historically and recently the AGs have been wrong on the law. Respectfully, if you look at the AG's track record

on appeal in this area, they've lost every case and this has caused a multitude of problems for the Commission. The fact that the Commission is getting bad advice is part of the problem. The AG's testimony on this bill also is case in point for why the Commission's ability to consult independent legal counsel is so important. That testimony made multiple misstatements of law including that commercial ag was a public trust purpose that was squarely addressed by the Hawai'i Supreme Court in the Waiāhole Case and wrote the exact opposite of what the AG is claiming. I think that it's important for this Commission to be able to consult independent legal counsel in situations and that bill also just gives the Commission the flexibility to do that when necessary. That's all I wanted to comment on this briefing. Thank you.

WAYNE TANAKA: Wayne Tanaka of Sierra Club of Hawai'i. I just want to say this is awesome. I really think getting briefings like this is something that more boards and commissions should be doing especially since you're essentially relying on the administration to advocate on bills that could impact your ability to fulfill your kuleana. I'm also glad to see that we are aligned on many measures including the penalties bill. I did want to note for that bill HB 1544, the stated justification last was that increased penalties would somehow result in the max penalty being automatically levied on county departments of water supply and then that would impact housing security. To be frank that was just ridiculous and non-credible fear mongering. The Commission has almost never pursued penalties except against egregious violations and the express language of the bill requires the Commission to consider a whole range of factors in fine amounts. The fear mongering from LURF that the Governor unfortunately listened to was not grounded in legal and political reality. And just for perspective, right now with your \$5,000 a day maximum penalty a violation involving just five MGD (million gallons per day) would be subject to a max fine of 1/10th of one cent per gallon. Obviously this needs to change if there are bad actors that are recalcitrant and don't want to stop violating the Water Code. We are looking forward to supporting the Water Commission as you advocate in support of this bill and there's a lot of community support for this measure as well. I did want to add a couple things about HB 2703 and SB 3327 which is the bill that Elena from Earthjustice just talked about. It would basically democratize the Water Commission's leadership and sets some employment protections for staff and it's absolutely not personal to Chair Chang. It really has been a long time coming for 30 years from before Waiāhole. It's been a long-standing recommendation and it would help protect the Commission and its staff from both the perception of political influence as well as awkwardness of balancing public trust mandates with other less substantive considerations. The public trust needs to be independently and objectively upheld and the Commission would be able to speak clearly and act objectively with some of the insulation that these measures would provide including at the legislature and without having to worry about certain special interests with political influence such as LURF without exposing the Governor and his administration to political liability. Just want to express my gratitude to Chair for agendizing this item and I'm happy to answer any other questions that the Commission may have. Thank you.

DR. KAPUA SPROAT: Aloha, I'd just like to underscore one point that the Sierra Club just made with respect to the penalties bill. I think a lot of the focus has been around the

departments of water supply because they along with LURF led to the bill being killed last year, but I do want to uplift what the Sierra Club mentioned. This bill is very important to a lot of communities, especially in Maui Komohana for example, where we have had repeated violations of the interim instream flow standards and where even the Commission's own staff has struggled with diverters to try and have the law fulfilled. The ability for the Commission to be able to implement maximum penalties doesn't necessarily mean that it will and as we all know I've been appearing before the Commission for more than 20 years now, we've seen huge fines in only a small handful of cases and I trust the staff in the Commission to be able to work with that. Mahalo to Chair Chang for negotiating that agreement with the departments. I would note that the initial \$60,000 recommendation would make this the same as DOH. \$25,000 is much better than \$5,000, but I also think there's no harm in standing by the \$60,000. Mahalo for this briefing and for the work that your staff has been doing on the Commission. It's been heavy at the legislature, it's been a big lift.

COMMISSIONER KAGAWA-VIVIANI: I have a question as somebody who doesn't, but probably should track legislation more carefully. Both House Bill 2703 and SB 3327, do they say that the DLNR chair cannot chair or just that other officials can?

CHAIR CHANG: Specifically says is ineligible to serve as a chairperson. So DLNR Chair and DOH Chair, we only serve as ex-officio.

COMMISSIONER KAGAWA-VIVIANI: I'm just going to admit my ignorance in public here. You submit in support or opposition but what is the ability for the Commission to weigh on revisions or direct that?

CHAIR CHANG: You are always free to provide your own testimony as an individual. That was part of the briefing is one, to provide you an update of the legislation. There's a lot of legislation but so that because some of these things are relevant to some of the issues we discussed previously regarding Maui. It's also to get an inclination because we do represent the Commission as well. I didn't want to, in particular SB 3327 and House Bill 2703, the whole reorganization of CWRM. For me it's important, I am just but one Commissioner so I am interested to hear if any of the other Commissioners have any thoughts about this. Then it can fashion our collective testimony as well.

COMMISSIONER KAGAWA-VIVIANI: There's a lot packed into it. And also understanding how the companion bills may move.

CHAIR CHANG: They're not totally companion, but they have similar provisions.

COMMISSIONER KAGAWA-VIVIANI: What I appreciate is this briefing at this point in the year because I think in the past it's been afterwards and it's like, oh maybe we could have weighed in or said something.

CHAIR CHANG: This was intentional.

COMMISSIONER KAGAWA-VIVIANI: We should be able to find the testimony that staff submitted.

DEPUTY UYENO: Status and you can also sign up to be notified when a hearing is coming up.

CHAIR CHANG: You can always ask us but if you go on the legislative website and you put in these bills you can find it.

COMMISSIONER KAGAWA-VIVIANI: This is a really, I think, a helpful rundown and also understanding of the rationale.

DEPUTY UYENO: There's a little more breathing room. Michael Yoshinaga who used to be part of the Commission staff, retired at the end of last year and divisions have been tasked to take on their own review of all the bills. That was a huge lift and thank you to Alexa, especially, for helping to review that and Neal and Nicholas on his team and Ryan Imata for reviewing the bills. Initially we were tracking 150 bills, fortunately we didn't have to testify on all of them but at least monitoring many of them. We're still monitoring a bunch but primarily testifying on these that you see before you.

COMMISSIONER KAGAWA-VIVIANI: As well as processing permits. A lot of this, from what I understand, is motivated by that 1994 report. I guess some things are still problematic and some things may not be anymore and I would wonder about staff's take on that '94 report. Just weighing in on that.

DEPUTY UYENO: I mean we certainly would be happy to send it out to you folks to take a look at. Personally, I haven't had a chance to review it yet, it's on my list of things to do.

COMMISSIONER KAGAWA-VIVIANI: When did you start at the Commission? I'm just wondering. Before that?

DEPUTY UYENO: '98.

COMMISSIONER KAGAWA-VIVIANI: It would be interesting to see, as this is your job, to see how much of that could make sense.

DEPUTY UYENO: There have been several reviews. I think there was one '78 prior to the Code. That one was already envisioning water shortage issues occurring on O'ahu

and Maui. That was one that Alexa had found. There was a '94 one and one other one, I thought.

ALEXA DEIKE: 1985, that was the Advisory Commission report to draft the Water Code, but that was the drafting of the water code itself.

DEPUTY UYENO: In reviewing the bills, she went back and found these documents and took a look at them. We can forward them out to you folks.

CHAIR CHANG: In mind there's been a lot of court decisions that have really provided us those additional guidance on public trust principles. The whole implementation of Ka Pa'akai, so in my mind a lot of the issues that were raised in that report have been addressed. Some of them may not have been but I think that time has changed. Alexa's also going through a rule amendment review because we haven't amended the Water Code since its original adoption and that's 1987.

ALEXA DEIKE: The rules haven't been amended, the Code has.

CHAIR CHANG: Right. She's really putting a lot of effort into that. There's a lot on CWRM's plate, they're trying to juggle a lot of things but I think having guidance from the Commission and for me, that's what's important. I'm only but one Commissioner so whether it's Maui temp housing or whether it's bills, I think it's important to provide the Water Commission an opportunity to weigh on some of these. These are policies. In my mind, the Commission drives policy, staff implements our policies so some of these legislation, it is a change to policy. I think it is important if you have thoughts about that, let us know. They are important.

COMMISSIONER MIIKE: I would appreciate it if the staff, when these bills come up, let us know about it because we might want to testify as an individual. I certainly would have wanted to do that at some point.

CHAIR CHANG: We'll do that.

DEPUTY UYENO: May I ask that you sign up on the website for email notice? Only because we're tracking a lot of bills. If you tell us which one specifically, we might be able to let but oftentimes we'll get 48-hours' notice to submit testimony. Testimony has to be within 24 hours.

COMMISSIONER KATAYAMA: Usually that's the case really short terms.

CHAIR CHANG: I think you can do that on the website, right?

COMMISSIONER KAGAWA-VIVIANI: Send us the link with some instructions. I had to remember my login.

DEPUTY UYENO: It’s just enter your email and then you have to select the bills that you want to track.

CHAIR CHANG: Is this week lateral?

DEPUTY UYENO: Lateral just happened last week Friday.

CHAIR CHANG: A lot of the bills are going to whittle down so we will know this week what survives. Again, a lot is also happening, there’s a huge briefing that’s going on at the legislature. It may be pau by now before WAM (Senate Ways and Means) Finance committee on Maui. A lot of things are in flux, in motion and legislation is one of them. There’s just a lot going on.

COMMISSIONER MIIKE: I for one, when I was active, hated legislative session because they always expected us to be there even though we weren’t needed.

CHAIR CHANG: You’re right, there is an expectation and it’s very difficult both to physically be present as well as maintain the operation. We have a new First Deputy Ryan Kanaka‘ole. Ryan is a former AG. Ryan’s task is primarily legislation so that’s been very helpful in reviewing leg(islature). The fact that we’ve changed now, all of the divisions are required to review all of the bills. It’s really given everybody this holistic approach to how even bills that were not necessarily admin bills because CWRM has no admin bills but as you can see there are a lot of bills that affect them. This has been a full court press with each of the divisions to dedicate the time and the resources to one, stay up with legislation. Also, our budget, as well as responding to legislators but at the same time they have to keep the daily operations of their division moving forward. It’s a lot. I appreciate this staff, CWRM has got unbelievable staff. The professionalism, the work, their work ethics, the values that they bring, I’ve really appreciated CWRM staff.

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C. NEXT COMMISSION MEETINGS (TENTATIVE)

March 19, 2024 (Tuesday)

April 16, 2024 (Tuesday)

The meeting adjourned at 12:35 p.m.

Respectfully submitted,

Iwalani Kaaa

‘IWALANI KAAA
Commission Secretary

APPROVED AS SUBMITTED:

A handwritten signature in black ink, appearing to read "Dean Uyeno".

DEAN UYENO

Acting Deputy Director

WRITTEN TESTIMONIES RECEIVED:

Please refer to the Commission website to read and view written testimonies received:

<https://dlnr.hawaii.gov/cwrn/newsevents/meetings/>