

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

DATE: March 19, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 895 4403 6522

Online link to the video recording of the March 19, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/926145250>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 09:08 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 also read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

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

STAFF: Deputy Dean Uyeno, Mr. Ryan Imata, Ms. Queenie Komori, Mr. Neal Fujii, Dr. Ayrton Strauch, Ms. ‘Iwalani Kaaa

COUNSEL: Ms. Julie China

OTHERS: Mr. Joshua Delary & Mr. Jay Malloe, Waiakea Bottling Inc.; Mr. Mark Vaught, East Maui Irrigation; Mr. Gregory Barbour & Dr. Alex Leonard, Natural Energy Laboratory of Hawai‘i Authority

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

20240319 00:10:13

A. APPROVAL OF MINUTES

February 20, 2024 - Deferred

20240319 00:11:29

B. ACTION ITEM

- 1. North Shore Water Company, LLC Request for Modification of Water Use Permits, Mokulē'ia 1 & 2 and Crowbar Ranch Wells (Well Nos. 3-3310-001, 3-3310-002, 3-3410-001), TMK (1) 6-8-003:005 (Mokulē'ia 1 & 2), (1) 6-8-003:040 (Crowbar Ranch) Existing Water Use Permit Nos. 777 (Mokulē'ia 2) and 813 (Crowbar Ranch) Proposed Modified Water Use Permit No. 1088 Existing Use for 0.351 mgd; Mokulē'ia Ground Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Ryan Imata, Ground Water Regulation Branch Chief

Staff stated the summary of request in that the Commission approve the modifications and reduce allocation.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Is it typical to bundle multiple wells under a single permit? What are the criteria?

RYAN IMATA: That's a great question. A lot of times what happens is if wells are close together, we consider them to be batteries, but in the case of the Board of Water Supply, they might have a Wahiawa 1 one station and a Wahiawa 2 station that have their own independent allocations. I think in this case when they're all tying into one end use and the end use is going to be reflective of that 0.351 total, they can pump from each well as they would need to. Another example would be the Navy system where they have Red Hill shaft, Waiawa shaft, and Halawa shaft. Each of those have their own allocation. In this case though because the end use is consistent and the wells are relatively close to each other, I think it's more appropriate to give them one water use permit than giving them one for Mokule'ia 1 and then one for Mokule'ia 2.

COMMISSIONER KAGAWA-VIVIANI: Are there implications for, just looking at the map, there are a number of wells in the area. Can you talk us through - do you see any

problems as pumping is shifted across those that we should be thinking about, or given the hydrogeology, is that not a concern?

RYAN IMATA: I have to check, they will need to get pump installation permits and those will require pump tests.

COMMISSIONER KAGAWA-VIVIANI: From the submittal and the attachments and doing a little bit of my own background, it seems North Shore Water Company draws from other wells and those aren't being discussed today. Maybe it's outdated, a draft EA (Environmental Assessment), there was discussion of a few future potable wells to support that system. Is that factored in?

RYAN IMATA: Not yet, they haven't applied for them and I believe that 3310-001 and -002 will meet the existing demands but the applicant is here to expand on that.

COMMISSIONER KATAYAMA: Exhibit 1, of the well locations, all of those are active wells?

RYAN IMATA: Probably not. Whether they're pumping or not, I'm not sure.

COMMISSIONER KATAYAMA: I guess my ultimate question is, in your analysis of the monthly pump usage for the two pumps, what is a sustainable yield from this aquifer relative...I know this is a small amount withdrawal, but just to put everything in perspective, how much headroom do we have in this aquifer?

RYAN IMATA: That's a good question, that's why I like working from my computer. I can do this and blow up the map and see what the sustainable yield is. Mokule'ia, Queenie, what's the sustainable yield? I can pull it up on the website. Mokule'ia has headroom, I'll just say that. It does have headroom.

COMMISSIONER HANNAHS: It's pretty under-subscribed.

RYAN IMATA: What I do remember is allocations that we issue are under sustainable yield and the total usage is...

COMMISSIONER KATAYAMA: I see the total usage is way under.

RYAN IMATA: That's just for the two wells, but if we're talking about the entire aquifer...

COMMISSIONER KATAYAMA: Well, we want to put it in perspective from where we sit. I think the individual approval of this permit in context is okay, but again helping us put everything in context by aquifer is very helpful. We have all of these well permits, whether they're active or not, but they all have allocations allowed to them.

RYAN IMATA: I'll apologize for that, I should have been clearer in that presentation. Typically, in a management area if I'm asking the Commission to approve an allocation, all 17 MGD, thanks Queenie, if I'm requesting the Commission approve an allocation, criteria number one is that there's available resource. What I'll do is I'll inventory all of the existing allocations, I'll inventory all of the DHHL (Department of Hawaiian Home Lands) if there is a DHHL reservation and other existing applications, just from an allocation standpoint what's available. Then, we also provide a table showing the 12-month moving average of all of the wells in the area. Again, I apologize for not supplying that information here, but I thought that because it's being reduced from 0.500 to 0.351 that that information wasn't super pertinent. I will put it in next time.

COMMISSIONER KATAYAMA: Again, put everything in perspective relative to... from my point of view, this well change in pumpage should be ministerial, really. That's okay.

RYAN IMATA: That's true and part of the reason why we presented this to you today was because it was the subject of a contested case hearing. I just wanted to make sure that the well was...

COMMISSIONER KATAYAMA: That has been extinguished because of the 72 parcel.

RYAN IMATA: It was stayed. I think due process would allow the objector to still file for a contested case hearing based on the information that we provided today which...

COMMISSIONER KATAYAMA: Doesn't appear so.

RYAN IMATA: I can't say, but I don't think so.

CHAIR CHANG: When Commissioner Meyer asked about, oh what are all the different wells, are they required to report to you to provide CWRM regularly?

RYAN IMATA: All well users are required to report their monthly pumpage, chlorides, and generally non-pumping water levels, although we don't get a lot of those.

CHAIR CHANG: Do you get regular reports from all of the wells?

RYAN IMATA: I can't remember what the percentage is in Mokule'ia, but we have pretty good reporting percentages. In an effort to increase our reporting compliance, we had a project maybe four or five years ago. It was an outreach project. We hired a consultant to go out to all of the wells in management areas at first and teach them how to read their meters. We've increased the compliance for reporting quite significantly through that outreach program. We're not 100% perfect but we also have an online system that people now log online to report their pumpage and their chlorides. It's a pretty easy system and we're constantly refining it and just trying to get perfect data.

CHAIR CHANG: What I realize is without good data, we have a difficult time making informed decisions. I'm also wondering, for those who aren't complying, do we send them notices that they're not in compliance and give them an opportunity to cure their non-compliance? Because I'm assuming that is part of their permit conditions.

RYAN IMATA: If they don't have a water use permit, they still have to report. The thing that we've been struggling with over the last couple years is compliance and an avenue to find people in violation. One thing that we've looked at is the CRV process through Bin to maybe take these very routine non-reporting things and just hand them off to that program to implement. The other thing is I'm kind of excited about reorganizing our branch to actually built in a compliance section because I know there's been a lot of discussion from Commission and from the Leg for us to look at things like four-year non-use. I want to expand it beyond just reporting components and make sure that people are pumping in their allocations. We issue allocations, what good is it unless we enforce it. We're not perfect, again we're implementing projects to try to get those things done.

CHAIR CHANG: How do you cover those administrative costs for monitoring, requiring them to provide reports, monitoring updates and then inputting. Do you get that through general funds, do you have a source of funds? Because what I'm trying to get to is and maybe this is a rule amendment that we are charging an annual fee for all well permits.

RYAN IMATA: We've talked about annual registration fees, too.

CHAIR CHANG: Annual registration fee so that we have a source of funds to help with that administrative cost of monitoring. I'm not in any way suggesting we're going to do that here but I really do want us to look at that. Again, if we're looking for good data we need to make sure you have the capacity to do that. The only way, we have to have a source of funds to do that. I would like us to look at whether that's a rule amendment, whether we put that in because there's a new water well permit that's coming. I'd like us to look at that being a standard condition that we require not only a one-time fee for a new well but an annual registration fee. Whatever we call it, but some kind of an annual because I do think we need to share those costs. The fact that you come in late and we charge you a fee, everybody else who's got a permit they should also share in those costs for us to get good information. A little diversion but I think administratively I'd like us to move in that direction. We've taken this particular agenda item as a good launching point for a lot of other issues, but I'll bring it back to this particular agenda item.

COMMISSIONER HANNAHS: I have one more question on that. I had trouble reading the end use of parcels because I couldn't rotate this. I don't have authority to rotate the screen and plus it's blurry. Is that what's there now? It looks like a perfect match of the quantity of the allocation that they seek to all of the uses that are there. And those are current uses?

RYAN IMATA: Bob Strand represents them and can answer those questions.

COMMISSIONER HANNAHS: So, they have adequate water for all the uses that are in place?

RYAN IMATA: All of the existing uses, yes. This table in and of itself doesn't show the exact calculation. They show the units and I guess that's how it calculates out. For example, I'll just use the first one. Single family duplex customer meters I think is 54. If you multiply that 54 by...exhibit 2.

COMMISSIONER KAGAWA-VIVIANI: It's super blurry. It's unreadable.

RYAN IMATA: I'll just describe what it says. Basically, the table on the right-hand side, the box table, that's the Department of Water Supply water system standards has an average daily demand for different types usage. They'll identify on O'ahu, it's about 500 gallons per unit for a single-family residence. They have 54 customer meters and they multiplied that by 500 gallons per unit and came out with 27,000 gallons per day. Totaling all of those existing uses based on the duties that are described in the Department of Water Supply table, they came up with basically 0.351 MGD. I substantiated that with the graph that I showed on page 3 showing that they're actually pumping 0.2.

COMMISSIONER KAGAWA-VIVIANI: According to the North Shore Water Use and Development Plan, it's actually 8 MGD for sustainable yield for Mokule'ia. I'm seeing different numbers. Since that question came up. But it's under used, so it's overallocated in terms of permits but the actual use is much lower than sustainable yield. We've got some things to think about. This is from Mokule'ia Water Use and Development.

RYAN IMATA: So, you're seeing the total uses on Mokule'ia Water Use and Development?

COMMISSIONER KATAYAMA: She's saying the allocation is over.

COMMISSIONER KAGAWA-VIVIANI: The allocation is oversubscribed and it says on page 1-26 of Northshore Water Management Plan final, it says 8 MGD sustainable yield, water use permits issued 2010 is 8.025 but the water use in 2010, and that's what's been reported, is 0.175. Either we don't have recording or we don't have usage.

DEPUTY UYENO: This is the Board of Water Supply plan.

COMMISSIONER KAGAWA-VIVIANI: This is on our website, WDPOA 2016 NS pdf on the planning branch's website. Maybe for that broader context of Mokule'ia, we have some things to think about but for this particular permit...

DEPUTY UYENO: I believe based on our report from our database 17 MGD is the sustainable yield and allocation is 7.817.

COMMISSIONER KAGAWA-VIVIANI: 8 and 17 are very different. Is this an outdated document?

RYAN IMATA: I don't think Mokule'ia has ever been 8. It's always been around 17. This is from our website, it shows 17.

DEPUTY UYENO: This is the County water use and development plan for the North Shore.

RYAN IMATA: If that identifies the sustainable yield as 8 then that's wrong.

DEPUTY UYENO: I'm looking at the numbers now.

COMMISSIONER KAGAWA-VIVIANI: This is a 2008 map. That's a big difference!

RYAN IMATA: We'll have to look at that a little bit deeper, but yeah just based on my knowledge of the situation I knew that we weren't over allocating water, plus they're requesting a reduction.

COMMISSIONER KAGAWA-VIVIANI: It doesn't have bearing but I personally have some homework to do to understand this aquifer sector area.

RYAN IMATA: I can, too.

BOB STRAND: Bob Strand, I represent Dillingham Ranch and the North Shore Water Company. I don't have much to add to Mr. Imata's presentation, but I'm happy to answer any questions.

PUBLIC TESTIMONY

MIKE BIECHLER: To that point that was just being made regarding the sustainable yield changing, I could just touch on that. It's maybe not great for my arguments but just in the spirit of transparency. The sustainable yield was changed from the long-standing sustainable yield of 8 million gallons per day by the 2019 Water Resource Protection Plan. You can find more details about the issues regarding that in Protect Mokule'ia Hui's objections that were filed on May 25th of 2020 which kind of initiated this whole proceeding. The Water Resource Protection Plan changed assumptions. You have to read into multiple footnotes in the resource protection plan and then go to a different document that's referred to in it to get to the fact that they changed the assumptions about how water was coming down gradient from the Wahiawa aquifers and going into the Mokule'ia aquifers. Before they were doing it by linear distance of adjacent aquifer. The Mokule'ia aquifer doesn't have that much adjacent area to the Wahiawa aquifer whereas Waiialua aquifer does. Then they now changed it to make it equal between the three aquifers under some new assumption which was not really well explained. At any rate the

water resource protection plan of 2019 increased sustainable yield in Mokule‘ia from 8 to I believe 16 or 17 million gallons a day.

My name is Mike Biechler. My house straddles the line of the Waialua and Mokule‘ia aquifers. I also have a small orchard, one acre farm in the Mokule‘ia aquifer and someday I anticipate that I may be sitting in front of you or going through this application process for a well on my farm, as well. We’ll see how that goes, but I’m also a staunch environmentalist and fiercely protective of the environment around the area where I live: the ocean, the water resources where I live, especially the nearshore ocean resources. That’s thoroughly detailed in our contested case and if it gets back to that point, we can address those issues more. That’s kind of how I come to sit before you today and I’m a representative not just of myself but I’m also the representative of the organization, an unaffiliated group named Protect Mokule‘ia Hui comprised of a number of people but six named representatives including myself that filed and were granted a contested case and are going through that process. Right before the hearing was about to happen, this amendment came through, this letter requesting to amend. I’ll start off by just explaining what my end request is and then maybe give you my reasons afterwards. My request is that the Commission defer action on this application to address the issues and gather more information. It seems like some of you have hit on some issues that maybe need some additional information and clarification before action can be taken. I do understand some of your inclinations that maybe this should be administrative because they’re actually requesting less water or something of that nature, but what they’re asking for does have serious effects on the aquifer and my position and Protect Mokule‘ia Hui’s position is that the contested case hearing is stayed, not extinguished. We’re not required to refile an application for a contested case hearing since this is an amendment to a stayed application subject to a contested case hearing. I think procedurally because of the way this came to be, we would not have to file an application for a new contested case hearing to continue disputing any issues that have arisen in this.

As it may, if the board sees it otherwise I may just for good sakes demand a contested case hearing if that becomes necessary. I’ll reserve the right to that if that comes up. Getting to the merits of what’s actually presented here, I think one thing that needs to happen or needs to be clear if this is going to be approved is, what’s happening with these other permits? There’s a number of wells on the property, some of them have been capped and closed but some of them are open and have very large allocations. The Shop well for example, well number 3410-03, has an allocation of 1.5 million gallons per day and their own record in their EIS (Environmental Impact Statement) which is the most recent pumping data I’ve seen for it when they were going forward with this project, their EIS shows that they use 53,000 gallons a day but they have 1.5 million allocated. There is this four-year non-use provision and I for the life of me can’t figure out why this hasn’t been revoked. I do believe there’s a communication from the Commission to the Dillingham Ranch, Aina LLC the prior land owner, saying use it or lose it and I think they kind of got held up when they finally submitted this water use application. If this is getting resolved, I think the issue of these revocations or these other permits and allocations does need to be addressed as well because they have a 1.5 million allocation and they’re using 53,000. There’s clearly some stuff going on here. Maybe it would be

better to part and parcel it all together especially since they're asking for the Crowbar Ranch well to be put together with the upper-level wells 1 and 2. To the issue of where the water is going, I think there needs to be more specificity regarding the TMKs. The two documents I have, one is a chart or graph that was attached to their letter asking for a stay, the other is this thing that was attached as exhibit 4 to the staff submittal. Going to the exhibit four attached to the staff submittal, there's one lot that's curiously on there two different times, tax map parcel ending in -37. It's account number 1 and 1a, that's Mike Daily. I believe that is the lot immediately next to the polo fields and then at the end of the third page there's also a lot named KN1 Kaena North LLC which I could not find that entity. Regardless the TMK is the same so it's not clear what's going on with that if that's referring to the same two meters, if they're double counting that customer because it appears that TMK already has two meters but it's listed again there. My main concern with this list of TMKs that will be served with this is that it contains every single parcel in the Dillingham Ranch with like 2,600 acres or whatever. That it contains every single parcel when you see these DRA1 and DRA2. If you go to the chart that was attached with their original letter I believe it's now exhibit two here, this has a little blue line at the top of it and the only water reference at all on this as going to something that could conceivably be on those parcels is equestrian. It says equestrian, 150 horses, 75 gallons per horse, that would be 11,250 gallons per day. All the other things, I guess there is a ranch office...I will try to summarize. I have a pending contested case, so I have what appears possibly as much knowledge as anyone on the topic here, but I appreciate your desire for brevity. There's a lot of discrepancy between what's listed on this letter that was attached to their request for a stay and the TMKs that they've presented. Basically, they haven't done any effort to meet their burden to demonstrate that it's reasonably beneficial or that they're using it in the amount that's needed. The records show they need it in 200,000 gallons per day, they're asking for 350,000 gallons per day based on some spurious calculations. They are entitled to what's reasonably beneficial and what's necessary, not just whatever they want. I think they need to put that information, any information to meet their criteria in the application. The only place they provided any information that could conceivably meet their burden regarding the effects on existing uses, existing uses being nearshore water resources and Native Hawaiian cultural practices, which three of our Protect Mokule'ia Hui members are claiming damage to their Native Hawaiian cultural practices. That needs to be described somewhere, that needs to be in the application. You need to be able to look at this information as the board deciding this thing and find out what are the likely effects of this on the nearshore water resources. They've only referred everyone to an EIS. It's obsolete because it's for a product that's not happening, it's 900 pages long with thousands of pages of appendixes and not even the most diligent person at the Water Commission has read that, I'm certain of it. It is a massive document and the references are scattered throughout and I don't know how you could possibly think that you have the information regarding the effects of this on the nearshore surrounding uses. My last point I will make is regarding the bundling of these two wells. They're not drawing water from the same place. The Crowbar Ranch is in the caprock, it's down low. If you took everything that the applicant has said in their contested case hearing and all their filings together, they adamantly believe that that caprock where the Crowbar well is, is not connected to the aquifer where wells 1 and 2 are. Wells 1 and 2 are high level above 200 feet elevation,

Crowbar Ranch is at 30 feet elevation or 25 feet elevation. They've maintained that the Wells 1 and 2 are an artisan aquifer that's not connected in any way, against all logic and knowledge of how water works, not connected in any way to the other aquifer and it makes no discharges to the nearshore marine area. I adamantly disagree with that but that's been the position they've espoused this whole time and so connecting them on one water use permit when they're drawing from ostensibly separate aquifers and at much different manners and everything is a little bit nonsensical. I wouldn't have any complaint or concern about considering Wells 1 and 2 a battery, they're right next to each other, they're at similar elevations, that makes sense. I think that is common I don't think it makes sense to put Crowbar together with Wells 1 and 2. They're extremely different and I do truly believe and we have documents that can show it, we've had Charlie Ice, I mean lots of people have said this over many years that there is subwater discharges into the nearshore marine area and the effects of that need to be considered. That's the basis for our contested case hearing and is an issue that remains even if this is granted today. Again, my request is that you defer action on this amended application today to obtain more information, to get more clarity on the effects on the nearshore marine area, issues regarding the water usage and things of that nature that I've laid out. If in fact you don't take that recommendation and you do decide to approve this, I truly believe that you need to make the revocation of other non-uses but existing allocations allocated to the applicant or on the property. Those need to be resolved here, they need to be subject to the revocation or modification of those permits. That's actually what they said they would do in their EIS. They said that they would revoke all the other ones, give up all their other allocations if they got what they wanted and so hold them to that, please.

COMMISSIONER HANNAHS: I think Mr. Biechler raises some interesting points and there's a lot of discrepancy in the data, information we have, but sometimes a 100-mile journey begins with the first steps. I think having a return of some of the resource to clarify what's going on with these wells and true them up, if you will, is a step in the right direction. It doesn't solve all the problems and I think we need to get to those, but I can't see where in terms of Ka Pa'akai or any other analysis that the reduction of, and we're not even changing how much is being pumped. What's being pumped is being pumped and that's under the new amount let alone the former amount of the allocation. I don't see the harm in taking that step and using that as the impetus for taking more steps to find out who's doing what out there and to really true up the amount allocated to the uses that are permitted so we have a better understanding of what's the gap between that and sustainable yield.

CHAIR CHANG: I'd like the record to reflect that we have Commissioner Larry Miike who has just joined us on Zoom.

COMMISSIONER KAGAWA-VIVIANI: I have a follow up comment and a request for staff, specifically Ryan. Maybe sometime in the next couple cycles, update us on those discrepancies on Mokule'ia. I came in after those changes so the documents that are even on the Commission website, including that Board of Water Supply report don't reflect the current status and we need to be able to articulate that we are making good decisions for the aquifer and show that we are doing our due diligence to consider public trust in these.

I think we have homework, I don't know if it's an update on the aquifer, maybe in an informational briefing down the road I think could be helpful just so that we're all on the same page.

CHAIR CHANG: I did find Mr. Biechler's comment about the Crowbar Ranch well, it does seem to be a substantial distance. I can see Mokule'ia 1 and 2 and given the fact that there's a reduction I'm more comfortable, but is there a reason why that's also being included? I know your comment was because it's all being used for the same allocation. It is a substantial difference so if we're looking at close location, a reason why Crowbar Ranch?

RYAN IMATA: Normally when we issue an allocation, we'll render the previous allocation superseded, one permit will supersede the other permit. In this case because the Mokule'ia 1 and 2 Wells can't be brought online tomorrow or even next week, they require PUC approval. From an inventory standpoint, I don't want to have one allocation for Crowbar Ranch and then one allocation for Mokule'ia 1 and 2 but it's a chicken and egg thing because I think they have to go to PUC with the approval of the water use permit prior to getting approval from PUC.

CHAIR CHANG: Is that right?

BOB STRAND: That's correct. Right now, the only well that's operative is Crowbar Ranch well and it's got issues and it doesn't have enough water pressure for fire flow protection purposes. The long-term plan at the ranch was to drill the mauka wells which were drilled, cased, and capped and eventually when they are activated, which requires pumping and we have to get PUC approval for the expenditures and everything, the Crowbar Ranch well will no longer be used. Those two mauka wells, together with the reservoir that would be placed up there, would be the main source of water with one well being pumped at a time, the other one being a backup. They'd be operated in tandem or battery as Mr. Imata said and Crowbar Ranch well would still be there. I suppose if both wells went down we might use it but that would be a last resort because right now it's doesn't have water pressure sufficient for fire flow protection. The long-term plan is to put the two mauka wells online but as Mr. Imata said, it starts here. This is the first step, getting the water permit from the Commission then we have to go to the Public Utilities Commission, we have permits from the city and county, we have an easement from BLNR, so there's a whole plan going forward. This is the first step to get approval, for these three wells eventually to be permitted, but with the mauka two wells replacing the Crowbar Ranch well [inaudible].

CHAIR CHANG: Assuming you get PUC approval for Mauka wells 1 and 2, will you resubmit your application to DPP for the 72 residents?

BOB STRAND: First of all, Dillingham Ranch 'Aina sold the property. We have no plans to resubmit it. My understanding is the new owner doesn't have any plans to resubmit it. They have I think seven large lots that they plan to do some housing, they could do maybe a couple of houses in each lot. Mostly it's going to be maintained in

agriculture there now at the 72-lot subdivision. The approval is all expired so nobody has any plans to re[inaudible].

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MOTION: (HANNAHS / KATAYAMA)

To move forward with further work that would clarify amount of water that is being utilized under permits that exist to reconcile the record.

COMMISSIONER KAGAWA-VIVIANI: I also heard the comments about effects on nearshore and in that clarification can you address what the Commission is doing to evaluate the potential effects on the nearshore? That might be a technical question. I don't know what we're already doing or if that's going to be a new development, but at least come before us and help us understand how we evaluate potential nearshore impacts.

CHAIR CHANG: I would hope that that would have been discussed at the initial permit.

20240319 00:58:40 - Chair Chang leaves the meeting

COMMISSIONER KATAYAMA: I would like a clarification. The amendments to me are independent of the permit application. Can we de-link them somehow and treat recommendations 1 and 2 as part of the permit and these other requests for staff as independent and not subject to getting the permits approved to move forward?

COMMISSIONER KAGAWA-VIVIANI: So, it's now part of the record of the minutes.

COMMISSIONER KATAYAMA: I think rather than being amendments to the permit application, it should be a recommendation to staff that in future analysis and presentations that they comprehend this.

COMMISSIONER KAGAWA-VIVIANI: Thank you for the clarification.

COMMISSIONER KATAYAMA: We're going to decouple the...

COMMISSIONER HANNAHS: Yes, the change in the allocation to the applicant is not conditioned upon anything [inaudible], it's what's set forth in the submittal, but as part of the record, in adopting this motion, we'd like staff to have...in future cases a better record upon which to make our decisions.

DEPUTY AG CHINA: Can we withdraw that first motion and just restate it so that it's absolutely clear?

20240319 01:00:58

MOTION WITHDRAWN (HANNAHS / KATAYAMA)

20240319 01:01:05

MOTION: (KATAYAMA / KAGAWA-VIVIANI)

To approve staff recommendation as submitted.

*As a matter of record: Develop a plan for monitoring effects of changes and uses on nearshore resources.

UNANIMOUSLY APPROVED

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

20240319 01:02:21

B. ACTION ITEM

2. Derrick's Well Drilling & Pump Services, LLC, Application for Well Construction and Pump Installation Permits, Wai Well (State Well No. 8-3802-016), TMK (3) 1-6-141:024; Kea'au Aquifer System Area, Hawai'i

PRESENTATION OF SUBMITTAL: Ryan Imata, Ground Water Regulation Branch Chief

Staff requested that the Commission approve the application for both well and pump permits with a pump capacity of 450 gpm (0.096 mgd) for a water bottling plant.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: I have a question for the applicant because there are some discrepancies in the application where there's pump capacity at 450 GPM and expected use 0.096 million gallons per day, but later on in the cultural impact assessment the number 0.482 MGD. With a 450 GPM and if you're running full-time, it's .65 MGD, what's the actual usage because we're not in a designated area so there isn't reporting but the pumps...

RYAN IMATA: There is reporting.

COMMISSIONER KAGAWA-VIVIANI: Okay, but what's the actual use because there are two different numbers presented.

COMMISSIONER HO: After the pump test, under this new scheme, do you come back to the Commission to report or is your section delegated the authority to change the MGD based on your study?

RYAN IMATA: That's kind of uncharted water because this is the first one that we're presenting to you. I see two ways to look at it, one way is you could delegate authority to the chair to approve the production of a pump installation permit to where there are no adverse impacts associated with it or you could require us to bring it back to the Commission. I can see it one of two ways. I was thinking about that as I was presenting the pump test and what's the procedure. Again, this is the first time we've done it so I don't know. It's certainly up to you guys.

COMMISSIONER HO: Then your rules, do your rules define adverse effect?

RYAN IMATA: No, what we do look at is in our geologist analyzing the pump test, they'll take the constant rate pump test and they'll evaluate it to see if there are any what we call recharge boundaries. We plot the draw down of the well on a logarithmic graph. As a pump test goes on you're going to see the water start reducing and then if all of a sudden the reduction of the water level just kind of slows down, you hit a recharge boundary. So are you starting to impact a stream or it's starting to impact some other resource and that's the avenue by which we might not at that point restrict the pump, but we might require more effort into figuring out what that is. One possible way, I don't think that's applicable here but one possible is requiring somebody to amend the instream flow standard if they're impacting surface water. There are strategies that we employ to either reduce the pump capacity or have them apply mitigative components. I can tell you that I don't think we've ever looked at a pump test and saw that. There might have been one like 25 years ago.

COMMISSIONER KATAYAMA: It's just a math question. At 450 gallons a minute, how does that equate to the 0.096 million gallons per day?

RYAN IMATA: It doesn't. Normally the 0.096 is what they put on their application as what they think they'll need. What we do is we always go and we multiply 450 gallons per minute x 60 x 24.

COMMISSIONER KATAYAMA: That's a normal capacity.

RYAN IMATA: We check what the maximum is and understand that if they're going to pump 0.096, they might be pumping for two or three hours or something like. I think most wells don't want to pump for 24 hours.

COMMISSIONER KATAYAMA: my experience is that once you start a well you don't want to turn it off because restarting wells to get that inertia is very expensive. Anyway, that's not my question, just the clarity in the math. Can you refresh my memory on the process of these permits? This seems like a pretty modest water usage in a non-water management area. Where is the demarcation between what you bring to the Commission versus something that you would handle as an administrative and that we can delegate to the chair? In all the impacts that you've described, it seems that there are resolutions that will not endanger the aquifer or the water resources in that area that we need to address as a commission. Kind of help me through what the evolution of this process is.

RYAN IMATA: I'm actually eager to talk about that. The Commission had a requirement to approve well and pump permits but as staff was presenting to the commission, the agendas were like super long because we had 10 or 12 wells coming before the Commission that were very routine and have very minimal potential impacts for the resource, quantity wise. In an effort to delegate authority to the chair to approve those permits, we developed the Hawaii Well Construction and Pump Installation Standards in 1997. Through the adoption of the well standards, it was determined that if a well complies with all of those standards, those standards are designed to make sure that there's not going to be impacts on the environment. It's not just from a pumping standpoint it's also from the standpoint of if you drill a bore hole and you install a casing in there, is there adequate grout there to protect contaminant from coming down? The well standards are designed around much more than just pumping in and of itself, but pumpage is a big part of that. That's why we require pump tests and that's why we require staff to approve those pump tests prior to us finalizing and saying and endorsing the pump size that's installed. Fast forward to December of last year and the Commission made a decision to instead of delegating authority to the chair to approve all permits, the decision was made for anything that was not an individual domestic well to come to the Commission even if it complied with the Hawaii Well Construction and Pump Installation Standards. That's where we are today. I can opine but that's certainly not within my capacity.

COMMISSIONER KATAYAMA: I think that's for this side of the table but thank you.

COMMISSIONER KAGAWA-VIVIANI: I have a technical one. Since we're learning about these details, can you explain how a step draw down test tells you different things than a constantly? How does it work?

RYAN IMATA: I'm not the best at understanding the step draw down test, but basically it's a step draw down test but it's actually increasing, it's not decreasing the pumping rate. You have to have a variable speed on the pump, so you throttle it down. I've seen a pump test where he actually throttled it down with the valve and you can imagine valving off a pressure that's pumping like 500 GPM. The whole assembly was shaking. There are variable speed pumps that you can put in to vary the rate or you can throttle down a permanent pump that can only run at one rate. The drillers here, they can expand on that too. Basically, looking at three discrete pump rates allows us to establish or determine certain aquifer properties and I can't tell you technically how that's done but we can determine like transmissivity and storage values which are data points that we put into our database so that we can understand the aquifer. The step draw down test really is for us to understand aquifer properties, whereas the constant rate test is looking more at the production or the productivity of the well and the impacts to salinity draw down. Roy Hardy is probably watching.

COMMISSIONER KAGAWA-VIVIANI: More questions for an offline science conversation already for me.

COMMISSIONER KATAYAMA: Just to make it clear on this pump rates of 450 gallons per minute, you should put the total pump capacity, which is probably like 0.6 MGD, then in a separate statement saying that the applicant tends to use 96,000 gallons per day or whatever it is.

RYAN IMATA: I apologize.

COMMISSIONER KATAYAMA: No, I just kind of peaked my math skills on this.

COMMISSIONER KAGAWA-VIVIANI: On your nine-point checklist, I'm curious. We have an affirmative duty to protect the public trust and the way in which these are addressed in points 5 and 9 really focus on archaeology or historic structures. I think it kind of misses some of what has often come before us as traditional customary practices. In this case the applicant did a really nice job with their cultural impact survey, so that really helps us. Is there a way you can recognize that in your process? Like point 10, that they clearly articulate because we've seen applications that don't and I think we want to incentivize that for applicants. If you want it to sail through, do your homework before. We don't have the time to follow up on it but that they demonstrated they've given us information to feel good about approving or disapproving. That's my only feedback to you.

COMMISSIONER HANNAHS: Thank you for raising that and that aligns with some points that Chair Chang wanted me to make with respect to Ka Pa'akai Analysis. Feeling like the record needs to be strengthened so that we're making decisions based on a record and so it needs to be explicit in that record, not implied or something that you could extrapolate or calculate what our findings are. With respect to the identification of valued cultural, historical, and natural resources in the project area including traditional customary Hawaiian rights, in addition to what's indicated in the report, she wishes to add the fact that, for the record, in addition to publishing a notice, staff also reviewed or the applicant also reviewed Kepa Maly's report identifying resources along the coast of Kea'au but none in the project area. The project area was formerly pasture land for cattle and therefore subject to grazing and excavation for the slaughter house. She'd like that language specifically inserted into the record. Secondly, with respect to the extent to which those resources will be impacted or impaired by the proposed project, we have a finding based upon the CIA(Cultural Impact Statement), based upon the record that's there, there were no identified impacts of the proposed project on traditional customary practices. That's the second point Chair would like to make explicit. Finally, in terms of any feasible action that should be taken based upon the CIA, there appears to be no feasible action that should be taken by WC, the applicant, in granting the water permit. It's left there for us to conclude and the chair would like that those conclusions to be really explicit in the record.

RYAN IMATA: So, clarification, she wants those statements made by staff in our submittal?

COMMISSIONER HANNAHS: Yes, after you looked at the CIA and so forth, these are your explicit findings.

RYAN IMATA: Got it, so I think that what we're providing here are the answers from the applicant, but we need to make definitive statements in terms...

COMMISSIONER HANNAHS: Based upon the record of the applicant, this is what we conclude. I think it's a matter of a normal process and rigor that you would like in addressing our Ka Pa'akai Analysis.

COMMISSIONER MIIKE: This is in a water management area?

COMMISSIONER HANNAHS: No.

COMMISSIONER MIIKE: Now that's my issue and also with the Ota Well. My understanding is in an area governed by the common law, the Commission has permit authority over well construction and pump installation but it doesn't have authority for water use permit. On the other hand, it seems to me that in both this case and the Ota case we're actually going step by step even though it's not called a permit, putting such conditions on the water use that it is becoming a permit. I want to know for example in this case, what kinds of requirements are you having on how much water is actually being drawn because besides not being a permit, it is still a public trust resource and the use should be reasonable and necessary. But how do we make a distinction between deciding on the water use in a permit in a water management area, in a non-water management area?

RYAN IMATA: That's a question for me? I will just say that in a non-management area one would have correlative rights and I think that on the one hand, we need to assure that people are not wasting water to address what you said. You can't waste water, but at the same time if you're in a non-management area and the Commission doesn't issue allocations and require somebody to show that their use is reasonable and beneficial, then what's the regulatory mechanism to require someone reduce their pumpage to a certain use? We're in this regulatory, nebulous region where we don't have an allocation. It's my thought that in a non-management area, someone can change their use tomorrow to use it for pasture irrigation or something else. There's no establishment of what a reasonable and beneficial use is. I think it's a hard thing in a non-management area. The other way is that designated as a management area, you can control what people are using it for as reasonable and beneficial uses.

COMMISSIONER MIIKE: What I'm a little disturbed about is that what happens then in a non-water management area. Really the only people that legally speaking would be harmed were other people that have water rights under the common law. You have to watch out about that but we don't have any direct way to make sure that it's reasonable and necessary. Remember, the original legislative proposal was to make the entire state a water management area and the compromise was the situation we have now. I've always been disturbed about how the hell we deal with water in non-management areas and in

the past you just said, okay we're going to do it through a well construction and pump insulation permit, but after that you really can't say anything about how much water they're going to be using because you don't really know. That's why I asked the question of how are we dealing with wells in these kinds of situations. In the surface water area, at least we have interim instream flow standards which can limit how much water, you can't dewater the stream, but in this particular case we don't have anything that says you can't go beyond even what would be endangering to the aquifer. I remember the 'Īao aquifer system where we were at 100% and we still weren't designating it, which I thought was kind of a crazy situation at that time. Anyway, maybe we can discuss this more with the later discussion on the Ota, which by the way I tried to find information on what the hell the Ota Well is and I can't find anything on that issue.

COMMISSIONER HANNAHS: Did you want to respond to Commissioner Miike or Dean? Did you want to respond further, this nebulous area?

RYAN IMATA: I would almost equate instream flow standards as sustainable yield, too. We have two regulatory mechanisms to make sure there's no harm. Number one, there's the pump test and despite the fact that they can change the use tomorrow, they can't increase the pump from 450 to 500 GPM without coming back to the commission. So based on the pump test we should understand what 450 gallon per minute impact is going to have...

COMMISSIONER MIIKE: Hang on for a second, let me ask you a question. You said that if they decided to up the pumpage, they can't do it before coming back to the commission, but what criteria would you have to deny that under a non-water management area? What can you do to say you can't do that?

RYAN IMATA: Requiring them to run another pump test that is in compliance with the standard.

COMMISSIONER MIIKE: But as long as the pump test and everything else is okay, you can't really stop them can you?

RYAN IMATA: That would meet the second factor is that once you get up to close to sustainable yield, you could designate and then like what happened in Lahaina, now it's designated and now everybody that was using a certain quantity of water now has to prove that it's reasonable and beneficial. I'm not saying it's correct, but I'm saying that the establishment of reasonable and beneficial use happens at the point where the aquifer is pushed to the extent of sustainable yield.

COMMISSIONER MIIKE: But that's my problem. Up to that point, you can't do anything. You got to wait till they start endangering the aquifer before you can act.

RYAN IMATA: Right, but there's two parts to it. There's the pump capacity and there's a reasonable and beneficial component. On the one hand, we have no ability to establish

whether a use is reasonable and beneficial, but we can definitely limit the pump capacity and that to me is going to have the impacts on the resource regardless of what the reasonable and beneficial use is. Someone could say that water bottling for a million gallons per day is reasonable and beneficial but that might have impacts on the aquifer and so we restrict the pump capacity as the protection of the aquifer. Does that make sense?

COMMISSIONER MIIKE: But you're still not able to in a particular well put a limit on it as long as the aquifer is not in danger. That's a discussion for another time, but it's always bothered me that we have limited authority in a non-water management area but we seem to be creeping toward a permit system in a non-water management area.

COMMISSIONER KAGAWA-VIVIANI: Maybe a thought and a suggestion and idea, you probably have a lot of data from various pump tests. Has anyone in staff ever worked to put that data together to do some modeling and then anticipate? You can ramp it up, if everybody had their pumps at max versus if they had it at 75 and you could run simulations to see. That's maybe not within the staff's but partnering with USGS or partnering with to anticipate that kind of stuff and help come back. Every single well might be okay but we might be depleting discharge in the nearshore fisheries. No individual well owner has the capacity or knowledge or skills to do that, but it is our responsibility so maybe that's something, an extended discussion. We have data, we need to make use of it and use it to inform. You're smiling and nodding, you've had this conversation.

RYAN IMATA: As a matter of fact, the one thing that we are sorely lacking within Groundwater Regulation Branch or what I'm proposing to reorganize the groundwater branch is that particular expertise. My intent is to convert my hydrologist into a groundwater analyst so that we can put all this data together and somebody can manage contracts with GS or partner to implement groundwater modeling based on what you're saying. I'm kind of anticipating that. As of right now we don't have the capacity of staff to really even drive the discussion. Roy had modeling experience but we don't have that experience.

COMMISSIONER KAGAWA-VIVIANI: It exists so whoever is listening, it exists.

RYAN IMATA: I definitely want to go in that direction.

COMMISSIONER KATAYAMA: I think to help with Larry's point of view, when we have a 450 gallon per minute pump rather than recognizing what the intended use is at 0.96 MGD, you should really put in the full pump capacity and use that as your benchmark for the allocation. What the applicant wants to do or wants to use, it's up to them, but then again you have a cap on it that they cannot exceed on a 24-hour period. Going back to a sustainable yield calculation, if all the pumps are turned on every day for 24 hours a day.

JOSHUA DELARY, WAIAKEA BOTTLING INC: My name is Joshua Delary, I'm the director of production and engineering for Waiakea Water.

JAY MALLOE, WAIAKEA BOTTLING INC: I'm Jay Malloe, I'm director of quality at Waiakea Water.

20240319 1:34:49 – Chair Chang returns to the meeting

JOSHUA DELARY: We are here representing Waiakea Water. Thank you, I actually got really intrigued with all your questions and a lot of things that we do that we actually like to be involved in, that aspect as well as testing samples, stuff like that. This permit is for us to drill a new well for our facility adjacent to our other two wells there.

COMMISSIONER KAGAWA-VIVIANI: What's the expected per day usage because there's some very different numbers?

JOSHUA DELARY: Yes, there is very different numbers. The numbers that we utilize, we actually track every drop that comes out of the ground. We have flow meters on all of our pumps, our well technicians, our staff there at the well record every fill going into our tanker. Every drop that is taken out is recorded through our flow meter. The current usage that we're doing, it's about 18 minutes to fill. It's got an 18-minute run time on our pump and that's for 6,000 gallons, so it's not a constant 24-hour run time.

COMMISSIONER KAGAWA-VIVIANI: That's where the 96,000 gallons per day comes from. Then there was a 482,000 gallons per day number in the cultural EIS. Was that for the whole facility?

JOSHUA DELARY: I think that was probably for the whole, I'm not 100% sure on that.

COMMISSIONER KAGAWA-VIVIANI: That number is way too high compared to what you folks are anticipating?

JOSHUA DELARY: Yeah.

COMMISSIONER KAGAWA-VIVIANI: I just wanted that clarification, thank you.

PUBLIC TESTIMONY

DR. JONATHAN SCHEUER: Aloha mai kākou, for the record my name is Jonathan Likeke Scheuer. I'm testifying in my individual capacity on this particular item. To start off, I really have no particular concern with this proposed well, but I want to just respond to some of the dialogue between Ryan Imata and Commissioner Miike because Commissioner Miike was offering some really thoughtful questions about the limitations of the commission's powers in non-designated areas. I just want to give some response to some of the things Ryan said because I think it's really important for the Commission to understand this in relationship to this agenda item, the upcoming Ota Well item and other

things. There was an assertion, if I heard it correctly, that two ways in which public trust and other interests in water are protected in non-designated areas are through the management of sustainable yield and through the use of pumps. I just want to be really clear and this has been an area of scholarship of mine, first of all five-day pump tests or four-day pump tests are not designed to assess impacts on public trust resources. If the well is far from the coast or from a stream or another resource that you're caring about, you very well will have long-term impacts on a public trust resource and it's not going to be detectable by a 5-day pump test. A 5-day pump test will detect potentially, if there's no geological blocking that impacts on nearby wells. Secondly, just to be really clear the way the Water Commission has set sustainable yields, it's actually not analogous to how instream flow standards are set, it's actually the opposite because you set instream flow standards by first determining the minimum amount of water that's needed to protect public trust resources in the stream. The way the State, the Water Commission has chosen to set sustainable yields is actually to determine the maximum amount of water you think you can extract. It actually starts rather than a precautionary approach, with an extractive approach and to be really clear sustainable yield is not designed to protect public trust resources. You can pump all you want from Launiupoko or the Honokowai aquifers below sustainable yield and not restore important public trust resources like Mokuhinia. You can completely harm fish ponds, anchialine pools, the nearshore environment at pumping rates far below sustainability. It has to do with where the well location is, how deep the well is, and how much it's pumping. In terms of as you figure out your process for what's delegated, not delegated and how you consider non-delegated permits and non-designated water management areas, I just think you need to keep in mind you can't rely on pump tests and sustainable yield as any assurance that you're fulfilling your duties in terms of protecting public trust resources. I feel very strongly about it, sorry if my tone was a little strident on this one, but it is something that I [inaudible] you guys have come to a conclusion. I'm happy to answer any questions, thank you for listening.

COMMISSIONER MIIKE: Just to answer Jonathan, sustainable yield is whatever the Commission decides is sustainable yield so he does have a valid point which is that it's not just based on the science of how much water you can draw out of it, but also the effects on other things. We've always stuck to more or less a quantitative approach. I don't know how you deal with trying to put in other factors, but Jonathan does have a good point.

COMMISSIONER MEYER: I would suggest that we discuss the topic more thoroughly in executive session at some point in the future.

CHAIR CHANG: Would you like to go in now?

COMMISSIONER MEYER: I don't think it needs to happen right now, this is a larger issue.

COMMISSIONER KAGAWA-VIVIANI: You wanted to view all of these permits.

CHAIR CHANG: Let me be clear about that. When I came on board, it was with respect to delegation, I felt that the Commission makes policy and the Commission should be aware of what's being delegated. I did ask staff to inventory for me all of the delegation authorities, what has been delegated and their reliance on a 1997 action was outdated. I think it did require um a more thorough review given the changes both in law and in facts and in the situation of water. We have Ka Pa'akai Analysis that we utilize, we have the environmental considerations, we have a much more engaged community; therefore, for me I did have some concerns about what should be delegated and what should be administrative or ministerial. I wanted that to come before the Commission for guidance, so I am not wetted in stone that everything should come before the commission. In the past we talked about many of those water well permits dealing with Hawaiian Paradise domestic use. Their usage is actually very small, it's necessary, therefore domestic use to me. That's a category I think the Commission can make, a decision that can be delegated to the chair and delegated to the first deputy. When we were talking about the Hāpuna well, there were comments about how should we address that so I am more looking for guidance...

DEPUTY AG CHINA: Can we try to stick to the item?

CHAIR CHANG: Fair enough, I just wanted to explain myself. Back to the agenda item.

COMMISSIONER KAGAWA-VIVIANI: I think the applicant, I appreciated the job that they did on the cultural impact assessment and I would like us to keep on that in the future.

CHAIR CHANG: I do think it is important that the Commission makes specific findings, I do believe that is what the court has required us to do on actions. I went through all the documents and I did appreciate that the cultural impact assessment was prepared which gave me the facts upon which...but I do believe that is the commission's obligation to do that.

20240319 01:45:32

MOTION: (KATAYAMA / HANNAHS)

To approve staff recommendation as submitted.

UNANIMOUSLY APPROVED

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

20240319 01:47:03 – Break

20240319 02:00:48

B. ACTION ITEM

- 3. Approval of Stream Diversion Works Permit Application (SDWP.5991.6) and Special Conditions, East Maui Irrigation Company, LLC, Abandon Registration of Stream Diversion Nos. 234, 254, 238, 273, 260, 150, 262, and 173; Remove Pipes and Seal Intakes; Ho‘olawa, Waipi‘o, Oanui, West ‘O‘opuola Tributary, ‘O‘opuola, ‘O‘opuola Tributary, and Makanali Streams, Maui; Tax Map Key(s): (2) 1-1-001:042; 2-9-014:001-002, 007, and 009; and**

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

PRESENTATION OF SUBMITTAL: Dr. Ayron Strauch, Stream Protection and Management Branch

Staff stated the summary request which is to approve Stream Diversion Works Permit Application (SDWP.5991.6) submitted by East Maui Irrigation Company, LLC (EMI) that proposes to abandon specified Stream Diversion Works and to remove pipes and seal intakes to restore flow on the Makaanali, ‘O‘opuola Tributary, ‘O‘opuola, West ‘O‘opuola Tributary, Oanui, Waipi‘o, and Ho‘olawa Streams, Maui.

QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Ayron, there are 20 something streams affected by our East Maui decision, so how many more are coming? Is this it in terms of what needs to be done or is it phased work?

DR. STRAUCH: These are all the diversions that are being abandoned. The permits for modifications was approved in June of last year, I believe, and that work is still forthcoming because they’re subject to other permits such as SMAs (Special Management Areas) or CDUP (Conservation District Use Permits) or Army Corp concurrence, that sort of thing. The Commission has already approved modifications to stream diversions in the Huelo area and these are the approvals for abandonments of the remaining diversions associated with that 2022 decision.

COMMISSIONER HANNAHS: After this, this will be all the infrastructure work that needs to be done to effect our ruling?

DR. STRAUCH: I believe so.

DEPUTY UYENO: There is one more application that is still pending, I believe the agency review period just wrapped at the end of last year. We should be preparing that submittal for you shortly.

COMMISSIONER HANNAHS: And that’s for what?

DEPUTY UYENO: To modify a number of about 15 diversions in the same Huelo area. That should be the last of it. We will also be coming back to you to report on the category four diversions which were from the prior action further east, specifically for the Waiakamilo hydrologic unit.

MARK VAUGHT, EAST MAUI IRRIGATION: Aloha Chair and Commissioners. Thank you for hearing this, we appreciate all the hard work of the CWRM staff in really taking on this project and we stand with their recommendations on the submittal.

PUBLIC TESTIMONY

LUCIENNE DE NAIE: My name is Lucienne de Naie, I'm representing the Maui group of the Sierra Club. I'm also a Huelo resident that lives in this area and is familiar with many of my neighbors who live in this area and their uses of these various streams. Sierra Club did ask for these streams to be restored several years ago and grateful for the approval of the Commission; however, it has been very difficult to track the process. You notice no public comments, you notice no comments from Aha Moku Council. We have requested from the very beginning even on those streams that you approved on January 30th, the category 1, that there be a community site visit. Seeing is believing my neighbor Moses Kahiamoe, Sr. says and there's truth to that. Seeing little pictures and charts with confusing numbers and two sets of numbers, it's called this, it's called that, the public cannot participate. I'm sorry, that's only for policy wonks. You really need to stand there at a place where people may be familiar from going with their families and look and say, here's what we're planning to do here, is this kind of what you folks were hoping would help things? We've had years to do this. We waited several years, there's just been no outreach. We are happy to reach out to people in the community and organize these kinds of accesses, we've done so before with Ayrone, it's turned out very well. You get useful comments, you find out what's really going on. It should be a standard condition, everything that is being requested in the Huelo area and our intention is not to delay this permit. This site visit should have been offered before this meeting. This site visit should be offered after this meeting as a condition if it hasn't been before because there's still more permits coming up that require Army Corps, we're being told. We participate in these quarterly meetings, they are very confusing, the time frame is very compressed, many different agencies need to report. There's tiny little pictures that flash on your screen. We continually ask, please let us just stand there and look at these places. It's not too much to ask, it's a respectful thing for we are an applicant in a way, the Sierra Club is because we ask for this to be done. One of our board members lives right by Ho'olawa Stream, one of our Sierra Club Maui group board members. She asked me, what's being planned? I go, God it is so confusing I've asked for a site visit so someone can explain it to us. Even the staff didn't realize there were still more permits to do. We need a time sheet, we need a spreadsheet that shows what is in this phase, what is in that phase. We've requested that, it has not been delivered. We understand the staff is really busy but we are willing to help set up some sort of a visit and seeing is believing. If we can see what's proposed, we can really offer meaningful comments. Also, we are confused over which intake on Waipi'o Stream number 8, L8 or L9 is actually meant by 238. On one

staff report from 2022 it's said to be Lowrie Intake 8, on the most recent one it's said to be Lowrie Intake 9. They're very different intakes, this is the one that requires the overpass. We'd sure appreciate knowing more what's going on. We appreciate that these are being approved and moved forward and modifications made but gosh we live there, these things are in our backyard and the cultural impact documents that are offered are fragmented. Often, no questions were asked about these particular streams or diversions. We want to have a good process, we want to have a speedy process. Aha Moku reps would come to a community meeting, they live right in the Community, community members who live and depend upon these streams would come to a site visit but it's very hard to hike to these places on our own. The roads are bad, there's gates, there's no key provided for our community use. If you drive an all-terrain vehicle, you can get to them fairly easily so you could have a very successful site visit if access were allowed that was driving access and the community was invited and those who could show up on that day would show up. Please, please, please make that a condition of every permit in the Huelo area. A thousand people live in the Huelo area, it's not unoccupied...

CHAIR CHANG: Can I ask, Mark, is that possible?

MARK VAUGHT: I think that's pretty much up to the Commission and the staff. For the majority of these, I think there have been visits, there just haven't been recent visits, but they are aware of what's going on out there.

CHAIR CHANG: There's something to be said about an independent assessment and I mean in the long run, I think this community needs to work with EMI. I do see some value. Commissioners, do you have comments or anything additional you want to add?

COMMISSIONER MIIKE: I don't want to delay the abandonment process, but maybe Lucienne, it would be best to go ahead and do it and then you guys go and check all these thing to see whether it's been accomplished.

LUCIENNE DE NAIÉ: We can't get access easily.

COMMISSIONER MIIKE: That's what I'm saying is that if they do the abandonment then you guys go over there and look it over and see whether it's done, what was supposed to be done and whether you people have any kind of suggestions if there's something else to be done.

LUCIENNE DE NAIÉ: Commissioner Miike, when I bring this up with EMI, they go, it's up to the commission. So, the ball is in your court to tell EMI to please do this. I'm sure they will comply, otherwise they don't think it's their kuleana.

COMMISSIONER MIIKE: What I'm asking is that if we do put this as a condition, would you be happy with that? But to go ahead now and do the abandonment and go and then you guys go in and check?

LUCIENNE DE NAIE: Yes, I already stated we have no wish to hold this up but please you have another set of permits coming up so make it that before you see those, there also needs to be a community site visit so that our only choice shouldn't be holding things up in order to have something that we've requested over and over and over again. We requested this on category 1 permits that were approved in January. I couldn't make it to that meeting and let you guys know that. It's just sad. We requested it in 2020 for those permits.

CHAIR CHANG: What I understand you're saying, you have no objection to Commissioner Miike's recommendation or comment about making this a condition after that the community can see whether the abandonments have been completed.

LUCIENNE DE NAIE: We would actually like a site visit before they are started, not to hold them up, but to understand what is being planned before it's done.

COMMISSIONER KAGAWA-VIVIANI: Given the logistical access challenges, is something like drone footage that gets a little bit further away from looking at the specific structure be helpful? I'm just saying this because I know it would be for me, trying to visualize where and what is going on.

LUCIENNE DE NAIE: Possibly, but that's a lot of commitment time. We have to have a community meeting to view the drone footage and then if people have questions what are you going to say? Well, we can't go up and see it, they won't let us go. It's better to stand there with people who have lived here all their lives and have them look at it and you can drive to all of these places.

CHAIR CHANG: I understand the community, is that 1, is that 10, is that 20, is it 50? If we had a representative that and a representative of the community would accompany CWRM staff and the applicant to ensure that these the conditions have been complied with?

LUCIENNE DE NAIE: You should have several representatives because each stream is different and you can't expect one person to know every stream well, it's not fair.

COMMISSIONER HO: Do we, the commission, have the regulatory authority to require an applicant to do something like this or do we just strongly encourage the applicant in a letter to embrace the community's concerns? I just don't know if we have that regulatory authority to require the applicant to do something. We could maybe have as a part of the application process, make the applicant go through a community meeting, but I guess that's a question for the lawyers.

DEPUTY AG CHINA: I don't see anything that it's a requirement, but if CWRM needed more information or something then that's one thing.

CHAIR CHANG: What I'm also hearing, Mark, if it's a condition you're more apt to do it versus I don't get a feeling that you're going to voluntarily do this.

MARK VAUGHT: It's not that we're withholding this opportunity, I know just over the years there have been multiple visits to some of these areas but discussions like this hadn't been had at that time. CWRM staff has been there, Lucienne has been there, we haven't all been there together talking about exactly what is happening. That's, I think, what she's looking for, but to entertain something like that we have to limit the group size so that it's easier to get around, it's easier to move, it's easier to access. I do understand that and I think representatives of the community, certain representatives, absolutely. If that's something that they're looking for and you're going to make it a condition of this permit, then we're willing to comply. I just know that this has been done before.

DR. STRAUCH: I just wanted to add that most, not all, of these sites are easily accessible. One you have to walk down the stream channel maybe a thousand feet, that's the Ohanui one, unless a new trail is blazed. Not Ohanui, Old Hāmākua one. The Waipi'o site, the current landowner because the land ownership has changed, the current landowner does not want people on the parcel and correct me if I'm wrong, Mark, but even EMI staff have been threatened on that parcel. I would say of the seven, five are easily accessible but these are still not ADA (Americans with Disability Act) accessible. It's a fairly narrow road. I could lead a group of five to all of these in half a day if we were diligent about sticking to the task. That is not a hard ask.

CHAIR CHANG: Part of this is building trust and the community having to independently verify has there been compliance. I think it is something worthy to consider, but I also understand liability issues, I understand issues related to size of the group, so some kind of compromise.

LUCIENNE DE NAIE: May I speak, Chair Chang to address some of your concerns? Sierra Club has a liability insurance policy.

CHAIR CHANG: Is that to your members, Lucienne?

LUCIENNE DE NAIE: It covers anyone on any of our activities so our activities are not limited to our members so this can be considered an official site visit activity. The insurance policy, the liability, is to cover the landowner, not the participants, so the landowners are covered on that liability. The community could agree to limit the number of participants but we would need to make sure that there were people that knew about the various streams that we were visiting. That's all. These other past visits that we've had, we had one visit that was part of a contested case where several community members, like about six, and Mark and one of his staff people and Mike Kido who was a biologist who was looking at the streams went. We had no idea what was being proposed for any of those streams at the time, so you're not looking at that, you're just looking at the stream conditions in general. It's kind of like not on the same topic so this would be the first visit where what is being proposed is being looked at on site at the streams, for the record. I appreciate Ayron's suggestion and I think it would be very workable.

COMMISSIONER MEYER: I would think a reasonable number of people would be like three or so for one vehicle, passengers, and that sort of thing. It would certainly cut down on the intrusion and be much more easily scheduled. I don't know, Mark, what you and Sean think about that in terms of group size or Ayrton for that inspection?

DR. STRAUCH: I think two vehicles at max, so whatever we can fit into two vehicles.

COMMISSIONER MEYER: There you go, thanks Ayrton. That makes good sense to me and I think there ought to be those parameters, they ought to be agreeable. I don't know if they need the Commission's intrusive presence on that, but certainly we have some thoughts here that are on the table the Commissioners could deal with.

COMMISSIONER KAGAWA-VIVIANI: I wasn't around for the EMI decisions, but I think it's a neat opportunity to change the tenor of what's been happening on East Maui. Having Ayrton there, the things we see in pictures but pointing it out, I know I really valued the crazy day trip out there and being on site. To have Mark and other representatives of the community with Commission staff to explain what's been done, what's been planned and actually a large part of it is also in the drive on the way where that dialogue can be outside of the three-minute testimony and hearing space, I think could be very helpful for longer term. I was going to ask Dean about the quarterly meetings, maybe they haven't been as helpful so this is a complimentary action. I'm kind of hopeful and interested and excited about the possibility of this.

LUCIENNE DE NAIE: This was requested at the last quarterly meeting. If you look at the tape you will see and frankly I think five people is more practical because you might have a driver of our vehicle who may just be a driver and provide the vehicle.

CHAIR CHANG: I don't want to get too much into the details, but I do see value and it's probably helpful maybe for Mark if we gave him cover, that we made it a condition because EMI isn't the only one where this is going to come up. West Maui, almost wherever we have issues, I think it is helpful seeing the place, having an independent assessment by the community, verify. I think it does move towards trust as well as towards ensuring that there is compliance.

COMMISSIONER HANNAHS: The decision and order was meant to reconcile a contested case that was dividing our community so we took actions to do that and part of it is what's happening in the streams with terms to water flow, with respect to infrastructure, but it's also how we build community. I think you're spot on in terms of let's not miss the opportunity to create stronger relationships in managing this very important resource by the many stakeholders who are involved. It's kind of hard to think about that as a condition, I just wish it would happen. I do get that on one hand, Mark is willing but there may be some other landowners who you need some leverage over and so if our decision helps give you, this is a requirement of the Water Commission for the management of this infrastructure and these streams, then I'm happy to vote for that.

COMMISSIONER MEYER: If I might suggest again Mark and Sean and Ayron as well, an important element here aside from the insurance policy is individual release and indemnities that are absolutely mandatory in this kind of situation for a landowner. Any participants, I would think, would be required and should willingly provide release and indemnities on acceptable form. Shifting gears for a second, Ayron, I'd like to ask under the conditions where the ditch is under a grated intake because you mentioned the rebar and bedrock and the extensive heavy equipment work that might be necessary to remove these. Has it been considered to perhaps deal with these grated entries over the ditch condition being resolved with a steel plate being fabricated which fit and perhaps was attached with bolts that would be perhaps less intrusive, certainly a lot less expensive? I mean moving heavy equipment to jackhammers and demolition equipment into areas like this is first of all it's very expensive and difficult, but it also does some damage in its own right. Might it not be easier to deal with those conditions? I think there are a few with just a steel plate application.

DR. STRAUCH: Most of these locations are fairly accessible in terms of distance from a drivable, passable road so I think pneumatic drills or whatever could be used. In terms of grates that are flowing over ditches that were acting as stream diversions, I think sealing them whether it's through concrete or steel plate, I think it might last a little bit longer but that's up to the applicant. The bigger issue is the concrete walls that dammed up flow to generate the head necessary to get the water into the ditch. In other circumstances, if they are existing on the ditch itself a very careful amount needs to be removed but also not damage the infrastructure. That's where the applicant is going to do their best to remove as much as possible and we're comfortable with the amount that they propose to remove. In theory, the entirety of it, but again we understand that there might be some that is not removable simply because it's integral to the ditch.

COMMISSIONER MEYER: I realized it's a site-specific individual piece by piece analysis but thanks for sharing that.

COMMISSIONER HO: I want to renew my concern about whether we have the authority and I make a motion to go into executive session.

20240319 02:34:00

MOTION: (HO / HANNAHS)

To enter Executive Session to confer with its attorney under HRS 92-5(a)(4).

UNANIMOUSLY APPROVED

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

20240319 03:15:22 – End of Executive Session

CHAIR CHANG: We're back from executive session. We conferred with our Deputy Attorney General on our duties, privileges, and liabilities and immunities related to item B3.

MARK VAUGHT: I'd like to apologize for wasting everyone's time. If a site visit prior to this is going to be able to move things forward in a way that's going to be more collaborative than between myself and Dr. Strauch and whomever else on the CWRM staff, we'll arrange something. I apologize for wasting everyone's time in executive session.

COMMISSIONER KAGAWA-VIVIANI: It was a good discussion.

CHAIR CHANG: Nope, no wasting anybody's time. You had us think about this, but greatly appreciate your willingness to do that and offering that. Based upon what we heard, Mark is willing, EMI, to work with Dr. Strauch and the community to facilitate a site visit.

COMMISSIONER KAGAWA-VIVIANI: Mark mentioned it's like a before construction and I think there was an interest in maybe a compliance site visit. Commissioner Miike is shaking his head, so go with what we got.

20240319 03:16:33

MOTION: (HANNAHS / KATAYAMA)

To approve staff recommendation as submitted.

UNANIMOUSLY APPROVED

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

20240319 03:20:00

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Summary of Hydrologic Conditions, Instream Values, and Surface Water Uses in the Surface Water Hydrologic Unit of Waikoloa (8161), Hawai'i Island

PRESENTATION GIVEN BY: Dr. Ayrton Strauch, Stream Protection and Management Branch

Staff presented a general summary of conditions in the Waikoloa Surface Water Hydrologic Unit on Hawai'i Island.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Is Hawai'i DWS online? I was curious about that, there must be reasons when and why they rely on those wells and better understanding. I'm curious about how they manage their system and balance all the sources. Two, with the alternative source just on the other side, if you look on the leeward

side there's that use, but that area also feeds Waipi'o, right? My recollection is that the Hāmākua Ditch dewatered Hi'ilawe and so the implications of thinking about when we move an alternative, already creating potential other issues on the other side.

DR. STRAUCH: I go into this in the IFSAR (Instream Flow Standard Assessment Report), but I didn't want to go into too much detail in this presentation. The Commission is currently monitoring both ditch systems for the Department of Agriculture. We have a good working relationship with people on the ground. We're not talking about dewatering an entire stream as an alternative, we're talking about when needed, divert some of the water from the Upper Hāmākua Ditch into this reservoir. The Upper Hāmākua Ditch has the available capacity, it's already diverting water. Department of Agriculture utilizes only about 1 MGD of what's diverted, it just gets moved through the system. I know from experience on the ground and previous DLNR Water Commission reports about the Lower Hāmākua Ditch that there is substantially more water diverted than is utilized on a daily basis. That is simply because there's leakage loss, there's a lot of homesteads that are maybe taking water from the ditch that nobody knew about. If you saw how much water was delivered to the Pa'auilo Reservoir at the end of the Lower Hāmākua Ditch, you'd be astounded at how much water was diverted out of Waipi'o Stream. The issue isn't with the Upper Hāmākua Ditch, it's with the Lower Hāmākua Ditch and addressing how that gets operated in terms of ensuring a continuous flow past each of the intakes, would go a longer way towards ensuring instream values in Waipi'o Valley and Wailoa Stream are being met. I just think of the water, Waipi'o has a lot of water. Taking a small amount as a backup as an alternative for drinking water supply is kind of an easy ask versus the millions and millions of gallons taken by the Lower Hāmākua Ditch that gets lost in the system.

COMMISSIONER KAGAWA-VIVIANI: Thanks for explaining that. Then the wells, do you know more?

DR. STRAUCH: In terms of the groundwater geology?

COMMISSIONER KAGAWA-VIVIANI: Those sporadic periods at when Hawai'i Department of Water Supply utilized those ground water sources do you do any more about why and when?

DR. STRAUCH: I don't know, they don't necessarily line up to low flow conditions per se, but I'm not sure why exactly they operate them at those short intervals or just to keep them operational.

COMMISSIONER MIIKE: It's related to those groundwater wells. If you do the 1.4 MGD into the streams, do you have any idea about how much more they'll have to pump that groundwater and what it would cost them? Also, whether they've raised that issue at all?

DR. STRAUCH: If they had 150 million gallons of storage, I don't think they'll have to operate them at any more so than they currently have. I don't know where the breakeven point is in terms of surface water storage and existing water demands or future water demands because they have not updated their water use and development plan since I think 2003. There is a big difference between 115 million gallons of storage and 165 million gallons of storage, but their current system demand is 1.8 million gallons per day. It's either somewhere around 100 days of storage or 80 days of storage, that's for just utilizing surface water and assuming no additional surface water. Again, the ability to capture runoff events from Kohākōhau and from Waikoloa to even when there's three days of high flow events, they can fill up a reservoir pretty quickly. They have.

COMMISSIONER MIIKE: So, they've never really raised any issue about extra cost for them for using more groundwater?

DR. STRAUCH: The Waikoloa wind farm that was tied to the pumpage of certain groundwater wells for the county has not been fully utilized so they have been sued in terms of the violation of that power purchase agreement with the operator of the wind farm. I don't know if it would cost them more or if they would be able to utilize existing electricity that they are already needing to pay for. Obviously pumping wells costs more money than letting the surface water flow into their system.

COMMISSIONER MIIKE: What would it cost to rehabilitate that 50-million-gallon reservoir?

DR. STRAUCH: It kind of depends on Dam Safety's questions. There was some thought that they could just re-line it, but then I think they needed a new engineering study to look at the subsurface around the reservoir to make sure it's stable.

COMMISSIONER HANNAHS: The foundation, we'll see what the community says come April 18th.

COMMISSIONER KATAYAMA: Ayron, do you know what the timetable is for updating the Water Use and Development Plan is?

DR. STRAUCH: I would have to defer to Planning Branch. I don't know if Neal is still in the room, but I'm not usually in on those conversations.

COMMISSIONER KATAYAMA: But that's part and parcel of all of this, putting everything in context would be helpful.

DR. STRAUCH: If you look at the numbers, the most recent demands are somewhere around 1.4 MGD and then I've estimated the impact assuming a demand of 1.8 MGD.

I'm already providing some buffer in terms of extreme demand from that system. I also know that there's additional developments possibly in the works, but whether they have allocations from the system, that doesn't come across our desk. We just look at their water audits.

COMMISSIONER KATAYAMA: It's difficult to judge, put it in context.

PUBLIC TESTIMONY

LIBBY LEONARD: I wasn't actually planning to comment, I wanted to learn more about what was going on with Waikoloa so I could learn more about what was going on with the water and also with the kalo farmers who want more water to grow kalo. That's basically all I have to comment on.

CHAIR CHANG: Did you get the notice of when the public meeting is going to be? Thursday, April 18th, 5:30 to 7, Waimea Community Center. Ayrn, have you received any comments from Hawaii Department of Water at this point?

DR. STRAUCH: No, and we sent the draft Instream Flow Standard Assessment Report to both Department of Planning at the County of Hawaii and the Department of Water Supply and I've been in email communication with Department of Planning, but DWS has not been responsive. We do have a meeting scheduled for next week or the following week with them so I'm sure this will get brought up.

CHAIR CHANG: That'd be helpful just to get some coordination.

COMMISSIONER HANNAHS: Ayrn, are you holding meetings with DHHL as well on this?

DR. STRAUCH: Yes.

CHAIR CHANG: Are the ranchers involved in some of this discussion with you as well?

DR. STRAUCH: Not too much. The primary management action being proposed is below the County's intake and so I'm not really concerned about the small amounts of water diverted by Parker Ranch. The County delivers very little water for agriculture, some, but it's not for ranching per se. The Department of Ag system, separate from this system, delivers to other ranchers.

20240319 04:03:05 - Lunch

20240319 04:36:33 – Commissioner Ho left the meeting

20240100 04:36:49

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Natural Energy of Hawai'i Laboratory Authority's Request for Modification of Special Conditions 1a and 1d of the Well Construction Permit for the Ota Well (State Well No. 8-3957-006)

PRESENTATION GIVEN BY: Ryan Imata, Ground Water Regulation Branch Chief;
Gregory Barbour & Dr. Alex Leonard, Natural Energy
Laboratory of Hawaii Authority (NELHA)

Staff gave an informational briefing on the status of the Ota Well.

QUESTIONS / COMMENTS

COMMISSIONER MIIKE: Can you describe the Ota Well? You always talk about the Ota Well but what's the capacity? Just describe it briefly.

RYAN IMATA: The Ota Well is a proposed well that's planned to be drilled in the high level band in the Keauhou region and it's above the Kaloko Honokohau National Park but Queenie, it's to the south? I don't think it's in the particular ahupua'a that was being looked at for the Keauhou designation. Nonetheless, the Commission did require some special conditions attached to the issuance of the permit.

COMMISSIONER MIIKE: What was the capacity?

RYAN IMATA: It's pretty large, yeah Queenie? It's over 400 gallons per minute.

CHAIR CHANG: And the purpose?

RYAN IMATA: The purpose was to primarily I think to supply the Kamakana development. It is a mixed-use development.

CHAIR CHANG: Maybe explain the applicants.

RYAN IMATA: Sorry, I know you're coming at this without too much context. The applicants are Natural Energy Laboratory of Hawaii Authority and HHFDC (Hawai'i Housing Finance & Development Corporation) are the applicants and the well is intended to be dedicated to the Hawai'i Department of Water Supply at some point. I think that's it.

CHAIR CHANG: Larry, I think HHFDC intended for it to be an affordable, it was a housing project Kamakana Villages in Kona. NELHA was also going to get an allocation of that water for their facility and then the rest, they would eventually dedicate the system to Hawai'i Department of Water Supply.

COMMISSIONER MIIKE: It's into the caprock?

RYAN IMATA: It's in the high-level band in Keauhou where all of the high-capacity production wells are.

CHAIR CHANG: Do we have a map or anything?

RYAN IMATA: I'm sorry, I'll send you one after.

COMMISSIONER MEYER: How deep is the shaft?

RYAN IMATA: I don't know, sorry.

COMMISSIONER MIIKE: Maybe you can send us the original application so we know what they're proposing.

CHAIR CHANG: I think there were several of us who were probably not here when that decision was made.

RYAN IMATA: Got it, I should have been more comprehensive in my presentation.

20240319 04:42:07 - Ryan Imata resumes presentation

GREGORY BARBOUR, NELHA: Aloha, my name is Greg Barbour, I'm the executive director at the Natural Energy Lab here in Kailua-Kona. I have with me Dr. Alex Leonard, our project manager and Dean Minakami from HHFDC was here earlier but had to go to the Capitol. He sends his apologies for not being able to stay. I can provide a summary of what we are requesting in our modifications and thank you for making the time for us. Like Ryan said, this informational briefing we wanted to give you an idea of what we're thinking and trying to get some feedback and have a public forum for discussing our proposal. I do have a map and I will give some more background to the project. I want to start by thanking Chair Chang. Immediately after session she invited Dean, who is the executive director of HHFDC and myself to meet with her and she gave us very good guidance and gave us some direction. She said that if you're interested in avoiding a contested case hearing, if you're interested in resolving this and trying to make a request to CWRM board for modification, then the ball is in our court, is what she told us. She said we have to go out and do our homework and she suggested that we go out and talk to all the stakeholders in the area in West Hawai'i, on the island of Hawai'i

and we did that. First of all, we came up with a proposal for modification for the two items that Ryan showed on his slide deck and then we started talking to people. Actually, now it's been over a hundred people, in the past six months over 30 different organizations. Our discussions included lineal descendants of the area, cultural descendants of the area, as well. Aha Moku, we reached out to the Native Hawaiian Legal Corporation and I think they're here today, and then we talked with a number of government agencies including the Division of Aquatic Resources, the Division of Forestry. We talked with the Department of Health, we talked with DHHL Hawaiian Home Lands, which by the way they're a partner with us in this project in addition to HHFDC. We talked with the county Planning Department, we talked with the county Housing Department, we talked with the mayor's office, we talked with the county water supply. We talked with a number of private developers in in West Hawai'i, including Lili'uokalani Trust, we talked with Lanihau Partners, I think we talked with one other developer but the name escapes me. Kamehameha Schools, we talked with them. I think we did our homework, I think we did follow Chair Chang's advice. I think we have very good, proposed modifications that make much more sense. They clarify what's being proposed in terms of the conditions and so I'd like to explain those to you right now, if I could share my screen.

CHAIR CHANG: Let me just clarify one point, Greg. I do not recall advising you to avoid a contested case, but I did nonetheless advise because both HHFDC and NELHA were not comfortable with the modifications. I did say you do have a permit, if you want those conditions modified, I would encourage you to meet with the community and then come back. After you've met with the community and developed a proposed modification of those conditions and we can bring that back to the Water Commission. That's kind of where we are. Over the year, you've done the outreach. Based upon that outreach, you're going to present to us these proposed modifications. I don't know who else is on this call, but if there's any lawyers on this call and if I advise you're not going to get sued, I probably could get in trouble. Don't worry, please go ahead with your presentation.

GREGORY BARBOUR: Sorry, Chair for misspeaking, I think you're correct in [inaudible]. Here's a map. This is Kailua-Kona town here. This is the Queen Ka'ahumanu Highway here. This is the upper-level road right through here. This is our well site, it is proposed for 1.0 million gallons. This is the Honua'ula Forest Reserve which is part of condition 1a and this in the blue is the ahupua'a for this wellsite and it's shown here. The proposed use of the water would be one-third for NELHA and that would be 330,000 gallons. One-third would be for HHFDC, Hawaii Housing Finance Development Corporation. They have an affordable housing project probably in this area right here generally just above town and they would get 330. DHHL, we entered into an agreement with them that we would provide them 2.6% of the water, so less than a third for sure, 2.6%. The way it works with the County of Hawai'i is that you drill the well, you develop the well, and then you dedicate that well to the County and they keep one-third peak use. We'll end up with only one-third and HHFDC will end up with one-third. HHFDC, their

development at Kamakana Village is stopped because they cannot get water credits, so this well if it was drilled and it was approved for use would provide up to an additional 2,000 affordable housing units in West Hawai'i that are badly needed. That's kind of a summary background of our project. The condition, I believe it's 1a that Ryan showed, we originally were opposed to that, completely opposed to that because we had no idea where that funding would go. We wanted to be assured that that money would be used to preserve that Honua'ula Forest Reserve and after numerous discussions with the Division of Forestry, we came to an agreement that that water would be used to build a fence line generally in this area. I say generally but it's basically straight across here and that that would be to keep the ungulates out of the upper-level area, I believe. They're really trying to protect this native species in this area and we agreed as long as there's a specified use for those fundings and we could be assured that that money would be used for that fence line. Then we came to an agreement where we're not opposing condition 1a anymore. We are saying that in the yellow that these payments would be limited for a period of 30 years and not in perpetuity and then like Ryan said, we had been discussing this with Kaleo between the August approval. We were going to come back for reconsideration in October of 2022 and I'm not exactly sure what happened, why that was not agreed to. The items in red were items that Kaleo had agreed to and it was just really for clarification that that funding would be used for that forest reserve indicated there. That's a summary of that. Maybe I stop there and ask if there are any questions?

COMMISSIONER HANNAHS: Thank you for your contributions and your willingness to negotiate some of these terms rather than have us all stuck in a fruitless contested case. The first, I want to applaud all the outreach you did, I mean we thought the work that Kaleo started, that Chair Chang is also supporting of really having the community reach out and talk to each other directly rather than have us be the arbiter of different perspectives, is really the way to go. Seems like you embraced that. I hope that you feel that you have a better understanding of how to align with their values and the expectations of the other stakeholders in this system. I want to applaud that work. The condition 1a ties to a sense of worldview or concept of reciprocity that for the benefit of the use, we have an obligation to contribute to the protection and the enhancement of the source. I think it's fine to make that direct and so that that contribution you're making goes right to the source of the Honua'ula Forest Reserve. That's terrific and it may be used for fencing or they may have other great uses for that money. I don't think we're going to specify to them how to use it, but I think that's good. What bothers me a little bit is 30 years. I don't know where 30 years comes from. I understand a business wants to cap its liability, I get that, but to me that should be associated as we originally intended for the life of the well, not in perpetuity for the life of the well. If your well has no use after 20 years, why should you be paying for this for another 10? Likewise, if your well has a useful life of 50 years, why should you not be paying, making a contribution to that source from which you're drawing benefit for the 20 years beyond the 30 that you're proposing? I just have an issue with that because I think what we're trying to do and not just with you but with other users and we've talked about this from Maui, where is the

contribution of the system users to the system source? I think we're exploring more ways to create that attachment and I just hope you'd reconsider the original language we had there of tying it to the life of the well.

GREGORY BARBOUR: Thank you for that input, Commissioner. That's why we're having this informational briefing today, really get a reading if the Commission feels that we're headed in the right direction.

COMMISSIONER HANNAHS: I think in many ways you are, so I appreciate it.

CHAIR CHANG: I want to add to that, Greg. I, too, appreciate that you took it very seriously and took to heart the recommendation of engaging with the community. I want you to know I am trying to work with CWRM on how can we be equitable so that we're not just charging the last person in, so that there is a system of, how do we assess all well permittees to share in the benefit because we haven't historically and regularly done that. I do want you to understand that we are looking at this from a holistic department view on how can we be more equitable in sharing the cost of watershed management, sharing the cost of administering, monitoring the program. Again, just appreciate this discussion, your consideration, the fact that you took this very seriously. I want to be very clear, we are not expecting NELHA, HHFDC to bear this burden on your own, we will be looking at all users and having them share in the contributions. As Neil said, reciprocity for this is a shared responsibility for all of us, all users. How do we ensure that that's equitably distributed?

GREGORY BARBOUR: Condition 1d, and I want to make a correction that the second to last slide that Ryan had in his slide deck, we made an error. We should have deleted that before we sent it in. Those are amendments to 1d and what we're saying is the last page that he had is what we're proposing to replace it with. I can explain that to you in a minute. The idea of 1d is it was very broad. It was hard to understand what the purpose was. It was monitoring the waters offshore from the old airport, which is where my mouse is now, for the two miles down to the Kona Surf Hotel. It was offshore monitoring. After we talked to experts in the field and after we understood that no one is doing nearshore onshore monitoring of the basal lens, so before the water gets to the ocean, there's absolutely no monitoring in West Hawai'i, as far as I know. Maybe down at the park but generally it's the missing link. If you're trying to understand our position, if you're trying to understand the impacts of pulling water out of the basal lens from this well, which by the way is around 1,800 ft, so it's tapping that basal lens which comes out along the shoreline, what we're proposing is we would drill two monitoring wells. Those are the dots in yellow here. One is at the old airport on state property, one would be in downtown in Kailua-Kona on state property behind the Queen's Palace. Talking with lineal descendants, they had indicated that there used to be a spring in that area and that's state property. Another proposed location that in discussion with the County of Hawai'i, they also have a park further down, that magenta dot there, is so we could drill three

wells. The idea is that we would be able to monitor the basal lens before it reaches the ocean. That will give you a much better idea of the anthropogenic impacts on the basal lens rather than if you're sampling offshore. There are a number of other variables and it's hard to understand causal relationships. Is it global warming, was there a lot of rainfall, climate change condition, rising seawater? Monitoring the offshore water is not going to help understand the impacts of the basal lens because it's already entered the ocean. That's our position. We talked to a lot of people, nobody has disagreed with us on that condition and I think it's an elegant solution that Alex, Dr. Leonard came up with, especially since it's the missing link. It'll provide a lot of information and that's what we're proposing versus offshore monitoring. The other two sites would be the orange dots and those are two of the anchialine ponds in this area. We currently monitor 120 sites every 90 days. We've done that for over 30 years both onshore and offshore. We have 34 monitoring wells here at NELHA and we're just at the north end of this picture here. We also have four anchialine ponds that we monitor and we do that every 90 days. Our water quality lab staff feels comfortable that we could complete this monitoring and have very credible data. We are an EPA certified lab and I think our people do very good work. It would provide a lot of good baseline information to West Hawai'i, to understand what's going on. One of the bright spots of this proposed modification is that a lot of other people said that this could turn into a regional monitoring program for all of West Hawai'i. If we had other monitoring wells along the shoreline, onshore, and these wells, we don't know how deep they would be, perhaps 35 ft, perhaps 50 ft. That's something that we can discuss as we move forward. If we had a regional monitoring system along the shoreline of the basal lens, that would be invaluable to a lot of the decision makers in this field. I think it would be very valuable to your agency, as well. I know that when we talked with the Division of Aquatic Resources, they were all in favor and I would say excited about this proposal. They do offshore monitoring. Some of what we were going to do in the original condition would be duplicative, so they were supportive. I'll stop there, but I think it's an elegant solution. I think it will provide a lot of very good information to decision makers for the future. I'll stop there.

COMMISSIONER KAGAWA-VIVIANI: I don't think I was aware of that monitoring framework. What are you measuring and monitoring for every 90 days and then is this reported to an agency? What's done with the data that you guys have been collecting for years?

GREGORY BARBOUR: That was part of our original permit conditions when we got a CDUP for our project which began 50 years ago. We submit an annual report every year and we put it online. All of our information is online for everyone to see, basically to understand the impact of what we're doing here. Is there any impact on the offshore waters? I don't have the list with me, but I do...how many?

DR. ALEX LEONARD: Dozens of parameters, what we would call Standard Marine Water Quality Parameters, anything from physical characteristics to chemistry such as

various nitrogen species, phosphorous species, inorganic solutes, turbidity. It's a fairly extensive list. Basically, we're looking for any signature that would indicate contribution of runoff from land into the nearshore marine environment.

COMMISSIONER KAGAWA-VIVIANI: Do you have any bioindicators that are part of that suite?

DR. ALEX LEONARD: We have what we call our annual biota survey. We have a number of transects set up offshore, they're surveyed to do reef fish counts and coral health and growth, coral abundance assessments. We monitor that over time, as well.

COMMISSIONER KAGAWA-VIVIANI: And the anchialine ponds have their own different metrics?

DR. ALEX LEONARD: Have their own specific program, yes.

COMMISSIONER KAGAWA-VIVIANI: So, this is adding on new sites into an existing framework?

DR. ALEX LEONARD: That's the idea, yes absolutely. Let me just say that the details of the proposal for the Lanihau monitoring program are not worked out yet. The language of the original conditions was quite vague, very open-ended. I think the intent was for us to sit down with CWRM and other stakeholders and work out the details later. We intentionally kept it that way in our response now because we'd like to include everybody to make sure that we are answering the questions that people feel are important. From our perspective, this gives us a window on the groundwater as it flows into the ocean. It gives the opportunity to look for man's impact on that water flow both in terms of quantity and quality. We have the option to look for trace chemicals, petrochemicals, run off from streets and then also very importantly because of the ongoing discussion about the hydrology of this area, it gives us a much better opportunity to look at tracer studies to look at where the water is actually coming from.

CHAIR CHANG: I really appreciated you embracing this challenge and designing a model that was relevant and appropriate for both the community as well as our intention. I know that DAR, they do a lot of offshore monitoring. Rather than being duplicative, what I understand is you found the gaps, where's the missing data points, and designing this framework and it was in consultation. Alex, I would like you to talk a little bit about your experience doing the outreach because I know you did a lot of it and the benefits that you got. One other point I'd like to make is I know that Keith Okamoto with Hawai'i DWS, he too is embracing this regional approach. Hawai'i County is looking at identifying inventory, where are all the monitoring wells, and where can they supplement that. I don't even know if we could have even come up with this model, but I think for me at CWRM and with DLNR, we are looking for good data and this is a good approach

to get us that information to look at mauka to makai. I know you did share previously because you did a lot of the outreach and I think I'd like the Commission to get a flavor of the people that you spoke to and some of the discussions and just how you walked away given your community engagement.

DR. ALEX LEONARD: Thank you, Chair Chang. Where we really started with this was trying to understand what was at the root of the questions being asked by the community. When Covid hit and we were unable to hold the community meetings that had been proposed for these discussions, Kaleo took it upon himself to go out and reach out to people himself, had these hālāwai meetings with a number of lineal and cultural descendants and in conjunction with 'Aha Moku. They came up with these series of recommendations but mostly it was a question about man's impact on the environment. They came and it was really Kaleo, I believe, who came up with the idea of the biological monitoring plan that was the original proposal for 1d. That's something that is easy to point at. The concern is, is the groundwater flowing into the environment impacting resources, fish for example or 'ōpihi, or limu along the shoreline? Very valid questions but it was hard for us to get our hands around what was behind those questions and because we're missing this piece in the middle. Talking with, for example, Charlie Young who was present in those meetings, he fully embraced this idea because it really got to the heart of the community's concerns. That's really what they want, that's really what people want to know and because they are concerned about the bigger picture, but nobody had yet come up with a way of getting to where they wanted to get to. Talking with neighboring landowners and developers and all of them seemed very keen, very eager to see this happen because they understand that what really is needed here is a regional network. If we're going to be responsible about our resource conservation and management efforts, we need more information than we have. Overwhelmingly, people were supportive of that concept, applying this elsewhere. I reached out to the people that had been originally consulted by Kaleo, principally it's the Kanuha family who are lineal descendants of this area and I've had a number of conversations with Jerome Kanuha about this and he assures me that he speaks for his family and the 'ohana. He was very supportive of this, he says that this goes to the heart of the community's concerns and he's very keen to see particularly the site in downtown Kailua-Kona being evaluated because that was his grandmother's property at one point in time. He remembers there being a natural spring that emerged at that location, so he again is very supportive. I think that's about it.

COMMISSIONER HANNAHS: Chair, I join you in commending the effort and the work that you proposed, really adds value. You could have just taken an easy way out or a cheaper way out and so forth but you try to do the right thing to help us all understand. I think that's commendable. For our written record, I just want to correct something Greg said, that the area is from the old Kona Airport State Recreation Area to Royal Kona Resort. I think you said Kona Surf, it's to the Royal. It's not that broad, it's to the Royal Kona.

GREGORY BARBOUR: Yeah, thank you.

COMMISSIONER KATAYAMA: Ryan, for my verification the last slide in red, does that replace the entire 1d?

RYAN IMATA: Yes, I believe that's what Greg was saying.

GREGORY BARBOUR: Yes.

CHAIR CHANG: To clarify, they're going to pay for this.

COMMISSIONER KATAYAMA: There are other parts of 1d that if you look at...

RYAN IMATA: What I did was I basically copied this from NELHA'S letter to us because it was represented that the yellow highlights were their proposed changes, then Kaleo had done the stuff in red. There wasn't a way to cross out the second to last page and represent that that's what the applicant was proposing. They are proposing to replace it.

COMMISSIONER KATAYAMA: Replace the entire section. That's helpful.

COMMISSIONER HANNAHS: At the beginning of that, working with practitioners and 'ohana and DAR and so forth, are we going to lose that language because I think they've done that?

COMMISSIONER KATAYAMA: That was my question.

COMMISSIONER HANNAHS: That should be retained.

CHAIR CHANG: Okay, that makes sense. See Ryan, on the original one it says working with practitioners and 'ohana, but on the one they took that out. I think you're right because it more accurately reflects their outreach. When I came on board, Ota Well was this crisis, nothing is going to move forward without Ota Well. If you've known me after a year, I'm process but I'm also about staying in our lane and in my view it is the applicant's responsibility to do the outreach, not the department. I think Kaleo felt it wasn't happening so he wanted to do it, but I think having the applicant go out there and do this, they were able to fashion something so much more meaningful and so much more relevant given their own expertise, as well.

COMMISSIONER KATAYAMA: Greg mentioned that at the end of the day, the well was going to be turned over to DOW (referring to the Department of Water Supply). The applicant is somebody else, how does all of these conditions and responsibilities fall and

who becomes ultimately responsible? Again, just to help me balance the equation on this process because we have a lot of conditions here generally.

RYAN IMATA: Maybe discussing with Greg, perhaps with the dedication of the well to Department of Water Supply, the responsibility for the conditions of this then falls upon Department of Water Supply. Is that kind of what you're saying?

GREGORY BARBOUR: These conditions would be applied to NELHA and HHFDC. I can tell you in discussions with DWS that a condition of dedicating that well to the County would be that we continue to pay for these conditions.

COMMISSIONER KATAYAMA: So, you would be responsible for the monitoring, the reporting?

GREGORY BARBOUR: Yes, we've agreed to do that. It's not an issue as far as we're concerned.

COMMISSIONER KATAYAMA: I guess you triggered this and I had to think about it, Chair. Under 1a on that fee that we're assessing, you said that would be an approach and holistic pattern. Have we determined that policy on how these fees and how it's going to be, or is this a one off?

CHAIR CHANG: the intention is we will have conversations both with CWRM and even the AG's office. Do we need to do a rule amendment, can we just put that as a condition? I don't know what the answer is, all I know is I think the outcome has to be a more equitable sharing of these costs.

COMMISSIONER KATAYAMA: In determining that amount and for that period of that, are we there?

CHAIR CHANG: Dean, are we there?

COMMISSIONER KATAYAMA: I don't need an answer, but philosophical question. If you're going to put in for lack of a better word, tax on users.

CHAIR CHANG: Registration fee.

DEPUTY AG CHINA: It's a fee, it's not a tax.

COMMISSIONER KATAYAMA: Whatever you want to call it, a license or whatever it is. Is a mechanism in place for this process to be equitable and not arbitrary and capricious? I don't need an answer right now.

COMMISSIONER HANNAHS: It's a very specific number, can you shed light on how it was calculated?

DEPUTY UYENO: No, I don't. I wasn't involved in the...

RYAN IMATA: I think it was proportional to the amount of pumpage of the well.

COMMISSIONER KATAYAMA: Again, you're focusing on one user and that is not equitable. I don't need an answer today.

CHAIR CHANG: But it may be the one-time fee up front is based upon a calculation then there's an annual registration fee that you pay every year. We have not worked out the details, but I think that is the goal because in talking to NELHA and HHFDC, that was an issue. How come we're the only one that's being charged this? Point well taken. It made me think, okay I think we have to find a more equitable way. It's not that we can say we're not going to do it, but how do we equitably distribute especially for those who already have a well permit. How do we make them share in this because they have limited capacity and to go out and monitor and to do all these other great things, we need capacity or we need resources. This is something we are exploring.

COMMISSIONER KATAYAMA: But in this case this applicant has also agreed to other conditions in terms of establishing monitoring ongoing.

CHAIR CHANG: It's probably a good model for us to look at for future applicants who have similar kinds of requests.

COMMISSIONER KATAYAMA: I agree.

COMMISSIONER MIIKE: This is not a water management area, correct? Everybody has equal rights that are correlative rights of overlying landowners. The issue in the future is that suppose this well goes in and we start seeing some effects, it's not just this landowner that has to decrease their use. All the others have to do it in some equitable way and if someone else comes in later on and it affects it, it's not first come first served in this area. It has to be, so that's an issue we're going to have to face as long as we're not in a water management area. I also want to raise the issue for now is that we're placing a whole lot of mandatory conditions on this well drilling permit. We had a discussion about that before, that's all I got to say about that.

CHAIR CHANG: Fair point. Part of this was they wanted to move forward, NELHA and HHFDC, contested case hearing was filed, encouraged them to meet with the community to come up with some conditions that would be more acceptable to them. As a result, they withdrew their contested case. That's not to say that somebody else may not file a contested case, but at least they have found a path forward.

COMMISSIONER MIIKE: But if we put it in the conditions, a different issue all together.

PUBLIC TESTIMONY

LOKE ALOUA: I'm Loke Aloua, my attorney Ashley Obrey of Native Hawaiian Legal Corp has submitted testimony and I'm not going to regurgitate that. I just hope that there can be some answers to what the process is going to be moving forward with responses to our hui's questions, for NELHA regarding these revisions that they are requesting. That's one thing for sure and then I just have just some other comments so please look at the letter. I'm not going to recover it, but I keep hearing the term equity thrown around in this meeting and I really have to say, there is no equity until there's true justice for the illegal seizures of Hawaiian lands and waters by the continued illegal US occupation. NELHA sits on 800 acres of stolen land. These people were evicted upon NELHA's creation. Families were taken off these lands and if you look back through the historical record since 1848, Native Hawaiians have been asking for access to these lands to live on and they've been denied that access. This is just a continuation of that colonial legacy of denying Native Hawaiians land while also creating the situation of not enough housing. We have 800 acres at NELHA, we have at least 500 million gallons of water being used there, we have zero homes, zero families housed, but somehow they have access to all of these resources. We cannot be talking about equity in this space until we're talking about true justice. What we're trying to do is damage control. The other thing is you folks keep talking about a regional approach. The Department of Water Supply hasn't provided an updated water use and development plan to provide the regional approach that we're looking for. This well by well is not going to work. We need something that's updated which this Commission has asked for under Chair Case. You guys had a lot of really great comments for the Department of Water Supply and somehow those plans are not provided. We have environmental reviews right now sitting on our laps for two more wells that are already waiting for this to move through. Josh Green has secured \$5 million from the legislature this year for this project, which is still going through the consultation process, I'm critiquing the process, we're uplifting NELHA when really we need to be uplifting Kaleo because Kaleo is the reason that this had worked out. Without Kaleo, I'm really curious how this going to work moving forward because he was a source of trust for the community. He really held us together, he brought us together, and it's not to knock on NELHA'S efforts but it's to really put Kaleo back in his place. Another comment on Kaleo is ever since Kaleo left, we've been left in the dust. That was partly my concern which I shared with Kaleo. When Kaleo was in the position I said Kaleo, what going to happen when you no stay? What can happen to us as a community? He said just trust the process and Kaleo isn't here and that's not Kaleo's fault, but it shows that if Kaleo's not here what's next for us as community members? I'm requesting transparency over the process to really know what to expect next because I'll be honest, ever since Kaleo left it kind of just feels like NELHAs going to do what they want. We

asked NELHA, okay we have to take some time to think about what they gave us, so we asked them, hey we have some other additional comments. It was like a stroke of a brush, hey guess what you guys like know, you guys go CWRM, you guys go sit inside a meeting and then that's when we're going to address your concerns. That's not community. I've never ever told anybody in my community as somebody who's responsible to my community that kind answer. That's not one answer. I just really need your guys help, CWRM, please help with the water use and development plan. Please help to get us some answers for the questions we have. We just want to know and we would like it in a written document so that we can have it for our documents and to share with our keiki about what is exactly happening here. Even if in the end things are going to stay as they are because I'm just me, I'm just trying to bring some things forward. In the end, we need some radical realigning because climate disaster is on its way. My family and I was just in Lahaina running away from those fires and I tell you taking water from the aquifer, you're increasing the surface air temperature, all of those temperatures everything is rising and everything is in sync. What happened in Lahaina is happening in Kona and we're lineal descendants of Lahaina and we moved to Kona because we're lineal descendants of Kona from my grandma's side. Now we're getting the same issue repeating itself in Kona and nobody here, not even me, should be tapping my back telling me I did one good job because we have so much that we have to repair. There's so much that we have to prioritize. Kona needs help. There's two more wells coming, 2 more million gallons. If we're looking at projections USGS gave you folks for what the recharge might be, looking at mid-century we're looking at a decline of 33 - 53%. That leaves us with just a few million gallons of water left under your folks equation for sustainable yield, but folks are saying today, hey the outdated plan is final, the WUDP, therefore we get more, there's more water to use. That's a problem. Sustainable yield is changing, it shouldn't have changed. That doesn't indicate environmental health but then at the same time we're talking about, this is really great for regional approaches. There is no regional approach. This is well by well. We want regional approach, too. Please help us, I know you guys know this because a lot of you guys we've seen but we need that WDP updated. NELHA, you need to do better. This isn't your first time, you've been in Kona a long time, you need to do better to show up for your community and to help us because this is the only first time you're doing this kind monitoring. Show up for Kona. Pau already guys come take, take, take, no can. I talk to businesses at NELHA and they tell me we get issues with NELHA. We need transparency over the process as well because not everybody that should have been in these meetings was talked to. I talked to kuleana landholders who have title in Lanihau, they never was talked to and that's not to say that all the people that were talked to weren't valuable, but it is to say that we still aren't getting the people that we need to at the table. We just need more transparency and I'm also bringing this up because I'm asking for transparency from future wells that we work with 'Aha Moku and outside of 'Aha Moku because not everybody believes or can trust 'Aha Moku yet. We need a process for the broader community to come in because I cannot be sitting over here giving all these answers to everybody because it's really not

all fine and dandy. It's not all good, you guys. Please help us. Thank you, but please help us.

ASHLEY OBREY: I really appreciate your time on this issue. I'm here with Loke and Kimberly, who's also on the call. They're part of Hui Ola Ka Wai who's been a part of this process for quite some time now since this well was first proposed. With this long history of how things have gone and the well-being, decision making on the well at first being deferred for the purpose of consultation, trying a little bit better to understand the impacts. The year and a half long process that Kaleo went through of talking to community, a number of meetings, a number of discussions and drafts to reach like some consensus on the conditions that were approved back in August 2022. Then there was this really long pause after NELHA's request for contested case hearing and not sure what was going on and my client Hui Ola Ka Wai had not heard anything from NELHA until January 31st. My understanding from this meeting is that there had been discussions being had for about six months, so it's a little frustrating because I think this hui has been a part of the process from the get-go and rightly so, there's expectation that we would have been among the first talked to. Not to say the only ones talked to, I agree with everything Loke said. There are a lot more people in the community and I don't think it's the burden of Hui Ola Ka Wai or anybody to go tell NELHA who they should be talking to but there needs to be a better process to make sure more community is involved. I think that would have been remedied by more open-door meetings, public meetings and just more advanced notice. The WDP is important, we keep talking about this regional approach, the necessity of really thinking through how best to approach Kona's water at this point. This is the first well since the failed designation, this is setting the tone for everything that comes after because this is in a designated area. There's no regional plan to rely on so there's just a lot of concerns and I think we put a lot in our testimony, it's about four pages. The process is really important, I think that's the bottom line. We can appreciate that this is an effort to increase mitigation efforts and I think mitigation is always great, obviously, but without going through the process, without really understanding the impacts, without talking to all the right people or at least creating opportunity for all the right people to sit in the room, it just makes it hard to know where things are going. I think Loke also pointed to the fact that there were some concerns that were raised in the emails back and forth between myself and NELHA addressing some of the concerns we had about the red lines and things and so there was still some outstanding questions. There were some modifications that we would have requested and maybe some of it was touched on today, but not really. If we can force some of that information out before any kind of decision making down the line, I think that's really important as well. Just to reiterate the comments that Hui Ola Ka Wai just really wants us to all get on the same page in terms of what's next for water for Kona and how we can work together to make this a process that really works for the community. I think that's all.

CHAIR CHANG: Can I ask you, what would you want to see as your as process? What are you recommending?

ASHLEY OBREY: We put general bullets in the testimony, I don't want to completely read everything but I'm going to reference it so that I don't miss anything. We're talking about ensuring that there are these open meetings, that it's not just like we're going to make a few phone calls here and there and talk to a hundred people, but I don't really know who's been talked to. I don't know who was invited to these meetings outside of the select few that were chosen and I'm not sure how those people were chosen in the first place. Figuring out ways to make things more open and transparent. I may not have the perfect solution, but I'm trying to throw out these ideas. Working on that water use and development plan, I don't know how we engage DWS in the right way to get things moving.

CHAIR CHANG: Have you asked them?

ASHLEY OBREY: I have not recently, I have not. It has been raised in the past. I'm trying to remember at a meeting, some kind of finance meeting a while back. It's been at least over a year for sure.

CHAIR CHANG: That's really their schedule, right? We will encourage them.

ASHLEY OBREY: I think it's important, we're thinking about the public trust and our kuleana, your kuleana, not you specifically, but as a body, as the State to make sure that these resources are managed properly for future generations. You can't do that without those plans and those plans are part of the Code and the whole thing. I think that's an important step and maybe that would play, the next bullet that we shared in the testimony, talking about requiring full environmental study for all wells. Whether or not that's a requirement under the law I think that's part of the planning process. Just thinking through what this is going to look like yeah from a regional perspective and how all these wells will work together long term. It's all there and I don't mean to just reiterate, but I think there's some things in the written testimony that could be helpful. I know there are others who want to speak so I'll be here for questions if anything.

KIMBERLY CRAWFORD: Aloha Chair, Commissioners, and Deputy. Again, we have more of our detailed points in our testimony submitted by Ashley and Native Hawaiian Legal Corp. Today I just really wanted to remind us why all of these conditions are so important and as times have changed I feel like it is important that the way that we make decisions change. When we're throwing around the word equitable to everybody and how we start imposing, what's it registration fees and things like that, reminding us that as we grow smarter, as we grow wiser, these things are what come with that kuleana that we carry. As we've been hosting students for the last spring session, one of my favorite things to reiterate is this full circle connection from mauka to makai because we're drawing the water from up mauka but it does in fact make its way makai and the importance of every single drop of that water. If you can imagine the way the forests used

to look with the koa, with the kukui, with the 'ulu, with the ferns, with the lichen, and everything in between and how that water used to be purified and put into the aquifer and then that water would make its way down to the kai where it would grow all of the diatoms. It would grow all of the limus, it would grow the phytoplankton and the zooplanktons, and that would feed our nearshore fisheries, our reef fish, our herbivores, and it would work its way up the chain. It would then feed our predators. When our herbivores and our predators and our reef fish would spawn, that spawn would go out into the ocean and feed our pelagic, it would feed our whales, it would feed our 'ahi, would feed all of these mea 'ono that we have out there that we are so fond of in Kona. Kona gets to be known as the sports fishing capital of the world and I just kind of want to reiterate that and kind of share the irony that we are allowing this well to be permitted for NELHA who wants to increase their growth capacity of these fish in cages in the name of resource management and sustainability by removing those resources from their place where they're supposed to be. I think what they're doing is just barely scraping the top of what their kuleana is to give back. Although housing is needed and all of these things are needed in Kona, we live in a multigenerational family house, it's really important that we step back and think about what the damage is done what would be better and how to move forward in the most pono way. I think they're really just scraping the top of the barrel of what their kuleana needs to be to give back to the community in their capacity of taking. Mahalo.

COMMISSIONER KAGAWA-VIVIANI: We had a couple well permits today and I've been thinking in the case of where we have surface waters, the Commission works with USGS to have stream gauges but we really haven't thought as much as maybe we should about those groundwater connections. Hawaii island, in particular, the streams aren't on the surface, so how do we do our due diligence in terms of monitoring? Sure, there's deep monitoring wells, but maybe there's some lighter weight methods. I don't know what they are, it does sound like what NELHA has proposed at the near onshore basal monitoring is probably...I don't know what the costs are but they do seem useful and more feasible. Each island is different. On Hawai'i island, all the water comes out below ground. It doesn't have to be massively expensive geophysical research. That's nice, university does it, but I think there needs to be different approaches to monitoring and I do think that community members have a lot of knowledge. They know where the punawai are, they know where the lu'uwai are and that's information that I think we need for decision making. It's better if it doesn't have to emerge out of these conflicts. I would like to see us also request the water use development plan updates from Hawai'i County, just to say how's it going, what's the status, and create that forum so it's not individuals who are frustrated who are having to ask. The other comment I have is less for staff, but I ask to testifiers. I think it seems like NELHA has made a good faith effort, but I work in the sciences and oftentimes people are intimidated by community or may not know who in the community to talk to or understand the texture of that community. What is the ability of a group and they pointed out that not everybody trusts Aha Moku. Aha Moku is what we see on the state side, but what's the ability of Hui Ola Ka Wai to convene or help

identify who isn't being talked to because I think it's a little hard to assume that NELHA knows or has the pull or has the credibility. They might invite someone to talk, but what if they don't show up? Is there some way for a community organization like Hui Ola Ka Wai to create some of that space? I'll just put it out there, maybe it's naive of me. I'm new to this Ota Well conflict and Keauhou failed designation preceded me, but I do see some kuleana on the Commission side and opportunities for helping us do the right thing.

CHAIR CHANG: Katie and Kaleo sought federal funds for more monitoring and they were successful. We've been really pushing for, I've been pushing very hard to do more data collection with different monitoring. Can we give an update on that, Julie? It's not on the agenda.

DEPUTY AG CHINA: It's not part of the agenda, maybe next meeting.

CHAIR CHANG: Okay, maybe next time we can do that.

COMMISSIONER KATAYAMA: May I ask if you can give a little historical context on that contribution of \$13,940?

RYAN IMATA: I can't, I didn't come up with the number. I think that's described in 8/16/2022. I was actually thinking about this when I sent you guys the original application and some of the information. I'll also send you all the submittals that describe that. Sorry, I can't answer that off the top of my head.

DEPUTY UYENO: If I may, the formula that they came up with was actually something that had been proposed as part of the leasing process for East Maui in order for the applicant in that case to help fund the watershed management plan. Rather than reinvent the wheel per 171-58(e), the applicant is supposed to come with the watershed management plan, but in that case a watershed management plan already exists. How can they basically help support implementation of that plan? In this case for the Ota Well, they hold that formula that they use in that case and it's in the submittal where it's water use in MGD / available water in MGD * the annual management cost. There is a watershed management plan for the Honua'ula Forest Reserve and so that's where the total cost for that was identified as \$525,500 per year. Based on the water use and the available water came up to that amount. That's all in the submittal and I believe there's a table of values in the back of...

COMMISSIONER KATAYAMA: Where's that other 498,000? Where is it?

DEPUTY UYENO: DOFAW (Division of Forestry and Wildlife).

COMMISSIONER KATAYAMA: So, they want to tax themselves on that, feed themselves on that?

CHAIR CHANG: They have to go and get that money. They seek funding, they seek federal partners, other watershed partners, but that's what it costs them to fence, to manage that watershed.

COMMISSIONER KATAYAMA: I understand that part of it, but there's a bunch of water of which a million gallons is for this. What about the rest?

CHAIR CHANG: That's what I say, what about the rest?

COMMISSIONER HANNAHS: But you can't get there in one step. We take a little step forward and start to reinstitute this nexus between the users and the source, but do we drop all the federal or state funding we get for watershed management? No, we're going to take that while we can and create a better balance of contribution between the users and generic contributors through tax payments or philanthropy. I just feel like directionally, we're correct. We are far from there, but it's a step you take and then the next one and the next one that gets us closer.

COMMISSIONER KATAYAMA: I guess the question is equity. We've had testimony on that.

COMMISSIONER HANNAHS: But if a system is not logical, how do we move from an illogical system to a logical one if we're going to protect equity? Because equity now is, nobody has to pay.

COMMISSIONER KATAYAMA: It's like building a toll bridge, this is the structure of the toll. Beginning today we will now assess a toll on whoever is using this resource, whether it's a road, a river, or a well.

CHAIR CHANG: But it's not just going forward, how do we bring everybody else who's...

COMMISSIONER KATAYAMA: That's this toll concept is that you're using it whether you've been using it for the last 10 years or today. If you're going to use it, you got to pay for it.

CHAIR CHANG: Yes, so that's a registration fee, annual registration.

COMMISSIONER KATAYAMA: Whatever it is, whatever path forward.

CHAIR CHANG: At least we have some mechanism to determine based on a geographic...how would we determine what that start off is and then we can...The first

time, that's what you got to pay, but ongoing everybody's got to put in some kind of a registration fee.

COMMISSIONER HANNAHS: What does that look like? Is that like a rules amendment? A statutory thing?

CHAIR CHANG: Like I said, I'm not sure. I think it may be a rule amendment. If we want to start charging a fee because that's rule making, how can we assess one person this and not? I think that's what we're working with the AG's office, we do have a draft set of rules that have been prepared. We're looking at that and it does include a fee structure. I think we're moving in that direction. While we move forward, we still got to catch up and still do the day-to-day operations. It is a changing mindset, but we're getting there. I do feel like we're getting there step by step.

COMMISSIONER HANNAHS: That probably won't come before the Commission before I leave, but I'll come as a private citizen to support it, absolutely. I'll testify as favorable testimony.

CHAIR CHANG: Notwithstanding, I recognize it's not a perfect solution but when applicants are required to go out there and do their outreach, many times they can fashion something that may be...

COMMISSIONER KATAYAMA: I agree with that. Is it the authority or the legitimacy of charging a fee?

CHAIR CHANG: We all have to pay a car registration fee.

COMMISSIONER KATAYAMA: That is memorialized.

CHAIR CHANG: We are finally moving in that direction.

COMMISSIONER HANNAHS: I just want to pick up on Loke's point that Kaleo played a valuable role here. I get the swim lane stuff, but sometimes there's a valuable role to be played as to create an impetus or catalyst to bring parties together because we have staff who have great relationships across the pae'āina and where they can help bring people who otherwise don't know each other, they're operating in their separate circles to talk and catalyze those discussions. I think it's valuable, but it's better if that's happening in the community level.

CHAIR CHANG: More organic and it's more relevant.

COMMISSIONER HANNAHS: Sometimes we have to stimulate it.

CHAIR CHANG: This one ended up causing us a little bit...but I think we're back on track. We're in the right direction, so I'm encouraged by where we are. I'm not saying it's perfect and I'm not saying it's going to, who knows there still could be a contestant case hearing notwithstanding this. I am about process, but it is about relationships at the end of the day. The applicant and the community have to have a relationship. We as a Commission and staff, we will step out but they have to have a relationship that sustains the resource as well as the implementation. Unless we create that opportunity for them to do that, we will continue to be the buffer and I have gotten my share of licks.

COMMISSIONER HANNAHS: That's what a buffer is!

CHAIR CHANG: But I don't share it with anybody!

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D. NEXT COMMISSION MEETINGS (TENTATIVE)

April 16, 2024 (Tuesday)

May 21, 2024 (Tuesday)

The meeting adjourned at 03:15 p.m.

March 19, 2024

Minutes

Respectfully submitted,

Iwalani Kaaa

‘IWALANI KAAA
Commission Secretary

APPROVED AS SUBMITTED:



DEAN UYENO
Acting Deputy Director

WRITTEN TESTIMONIES RECEIVED:

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

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