

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

DATE: April 16, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 865 9665 4551

Online link to the video recording of the April 16, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/936056200>

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

STAFF: Deputy Dean Uyeno, Dr. Ayron Strauch, Mr. Ryan Imata, Ms. Katie Roth, Ms. Alexa Deike, Ms. Cody Chacon, Ms. ‘Iwalani Kaaa

EXCUSED: Dr. Lawrence Miike, Ms. Kathleen Ho

COUNSEL: Ms. Miranda Steed

OTHERS: RADM Steven Barnett, RADM Marc Williams, Capt. James Sullivan – Navy Closure Task Force; Mr. Mark Vaught – East Maui Irrigation; Mr. Gregory Barbour, Dr. Alex Leonard – Natural Energy Laboratory 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.

20240416 00:18:53

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Navy Closure Task Force Red Hill Update April 2024

PRESENTATION GIVEN BY: RADM Steven Barnett, RADM Marc Williams,
Capt. James Sullivan – Navy Closure Task Force

The Navy Closure Task Force presented the status of the decommissioning of the Red Hill Bulk Fuel Storage Facility and their efforts in environmental remediation and public health.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: In previous years, your tank cleaning was cleaning tanks for putting fuel back. How is this different?

RADM WILLIAMS: That’s a good question. If you go to the next slide...

COMMISSIONER KAGAWA-VIVIANI: I can hang on.

RADM WILLIAMS: The short answer is where we used to do clean, inspect, repair to reinstate or reuse, now it’s clean, inspect, repair to decommission. Essentially the exact same process except for the tail end where the tank cleaning verification, which is really hey, making sure we’ve removed all product, that it’s met the regulatory expectations of, hey, the tank is now clean. Whereas before it would be hey, we would do tank tightness testing and other things so that we can place it back in service. Just really slightly different end state, exact same process up until that point.

20240416 19:45 – RADM Williams resumes presentation

CHAIR CHANG: I was just going to ask, what’s the size of your workforce?

RADM WILLIAMS: Several hundred at the height of it and then you have, besides the folks that are in working throughout the tank, you also have folks running things back and forth to the port staging areas and so forth. As sludge comes out and it’s containerized, we don’t want to leave it up on the hill. We’re getting it out of there and stage it, so you’ve got lots of activity back and forth on top of ongoing regular facility maintenance that has to occur: elevators, electrical systems, legacy water system, all that routine maintenance that has to occur on an ongoing basis.

CAPT. SULLIVAN: Sampling, continuing...

RADM WILLIAMS: Yeah, sampling.

RADM BARNETT: We have rovers that will be walking to see if there's any of the water that's leaking or dripping out. One thing I will tell you is that, by having a team doing the prep and then moving to prep the next and move to prep and then another team comes in. Hopefully what we're going to see is that we're going to get some best practice and some learning so we can kind of keep those same teams, lots of sets and reps just like a good football practice or something. Then hopefully we'll be able to garner some speed at a safe rate there. The other thing is what I'm trying to get my mind around is how do we present this to the public to show what's going on? We do have an app so we're trying to think, whereas Admiral Wade and the JTF could show gravity doing its thing and taking fuel down thousands...how we represent that to show the community. We're trying to get our minds around what's a good optic to show because it's going to move at the speed of molasses. It's going to be kind of slow.

CHAIR CHANG: Has this presentation been given to your community advisory board?

RADM WILLIAMS: No, it has not.

RADM BARNETT: Not yet because we want to make sure that we get the full approval. There's been a skeletal discussion of how it's going to happen but until we can get the DOH approvals and the final things, we want to go there but we can start turning that to kind of say this is...

CHAIR CHANG: You might even want to ask them. They're lay people, you'll have to figure out what's the best way to communicate.

RADM WILLIAMS: Even the pipeline removal, there's pieces of pipeline removal that are in support of tank cleaning so the spools and some other things they have to take in order to hook up the ventilation system, we start to capture some of that 4,000 gallons of residual fuel. We've got 10 gallons captured, so we're down to 3,990. How do you present that? And then it's stuck at that number for months and so people wonder and then they start getting frustrated like, well why isn't the needle moving? Because it's very lengthy process.

CHAIR CHANG: Anecdotal, but I think maybe relevant to this is in Lahaina, during both the cleanup and the recovery, they've hired cultural practitioners or cultural monitors and I think those monitors who are actually from Lahaina has elevated trust, sensitivity but they are actually on the ground and they are part of the team. I think that they add a level of again, credibility and I think they have an interest. Something for you to consider is utilizing that kind of quality. Something to consider.

RADM BARNETT: I'm familiar with that from my time in California using culture monitors there. Thank you.

COMMISSIONER HANNAHS: I have an additional thought for you on that example you gave of being stuck on a number. The question is, is that where you're supposed to be? If you establish milestones, you're doing a much better job of having those highlight variants. Here's the whole plan. It's good to refresh our memory of the whole plan, especially when it's long term, but focus on at least one slide or somehow embed on your slides an ability to speak to key variances. Variances can be good, variances could be bad, and they should be explained. So okay, we're behind on this goal, we're stuck here at this number because we're behind on this goal because of a supply chain issue or a permit issue or whatever and we expect to get this and reforecast. Then we expect to get this done and here's the new schedule, that way it provides transparency. Right now, it's kind of overwhelming. We see the whole plan every time, it's a little bit overwhelming but it's coming before us quarterly so what was it for? What did we expect to have happen from the last quarter to this quarter. Did it happen on these key lines of effort?

COMMISSIONER KAGAWA-VIVIANI: You have this timeline and you just explained that on this top line that there's potential delay because of the unexpected air quality monitoring. I think this is a lot of information. Broken down and explained a little bit more slowly, maybe you have people who are good at that for me it's science translation, but you can do that. For engineers, you want to be efficient and provide as much information as possible in as little time as possible, but it's drinking from a fire hose. You have some good materials. Pictures are useful, diagrams that don't have all the complexity but the key parts. Especially for most people who've only seen it through a few pictures.

RADM BARNETT: Presentation is important. We'll take both of these for action, thank you.

20240416 00:29:16 – RADM Williams resumes presentation

COMMISSIONER KAGAWA-VIVIANI: While you're on this slide, my understanding was that at Red Hill Shaft, the capture zone efforts were continuing for a certain amount of time during defueling. Is that part of this?

RADM WILLIAMS: I actually have a slide in about four slides where I will focus all on...

COMMISSIONER KAGAWA-VIVIANI: I'll wait.

RADM WILLIAMS: Yeah, we're going to talk about what we call GAC flow optimization shortly.

20240416 00:31:16 - Capt. Sullivan presents

COMMISSIONER HANNAHS: Are you keeping data on this? Can you show a graph that shows a trajectory of reduced report of complaint?

CAPT. SULLIVAN: We do within that we're continuing to work on the Safe Waters website to make sure that it's more user friendly. All of the EDWM (Extended Drinking Water Monitoring) data will also go into there and we'll continue to add graphs and ways that you can sort the data that'll show the change in the number of detections, where those detections are, the maps that will lay all those out. So yes, all that'll be tracked and will be available.

COMMISSIONER HANNAHS: Even the kinds of contaminants?

CAPT. SULLIVAN: You can sort by if you were only interest in a specific analyte, you can sort by that analyte. You can sort by all TPH, you can sort by a neighborhood. You can really toggle to sort any way that you want but we are also always interested in your feedback. As you play with the website, if there's things that don't work or new features that you would like, we're open to those discussions as we continue to improve and also adapt it to where our goal is to make it more friendly for an app and phone as opposed to right now, computer-based where you got the whole screen is where it's most effective and easy to use, but we do need to transition.

COMMISSIONER HANNAHS: Summarizing some of that into a report. It's one thing for us to go on, it's available for us to go online and find it. But since you have a pattern of reporting to us, next update, just kind of bring [inaudible] instead of a data set telling us.

CAPT. SULLIVAN: In some of the other meetings that we did not make one specifically for this but like at the FTAC and some of the other forums, we had a graph very similar that showed the detections of periods. I can show you an example of it, but that gives you the actual numbers and graphs and show the changes. We have these available, I did not bring an updated one for today's forum.

COMMISSIONER HANNAHS: We can look at that for the next update.

COMMISSIONER KAGAWA-VIVIANI: I have a specific question. You're doing the same suite of targeted analyses as the long-term drinking water, are you doing VOCs and SVOCs or what methods do you use?

CAPT. SULLIVAN: It's still the VOCs, SVOCs, but it is a slightly different list of analytes and that was what was...so back in January, we pulled together all the drinking

water experts from the Navy, we pulled in public health, the Department of Health, and the EPA all together to try to figure out...really there was two things. The first task was what is causing the low-level detections and I'll hit on that in a moment on the next slide, but what is causing those low-level detections that we saw across the entire distribution system in period seven, even? Then the second thing was to develop what is the best plan going forward for after long-term monitoring completed in March of 2024, the Navy was not done. We were going to continue what should that be and so they talked about what are all those analytes that we could add that we should change, that we should focus on that really are not applicable and we should take out of it so that we can speed up the analysis and then any methods that should be changed. I'll talk in a minute when we talk about the low-level detections and that the quenching the sodium thiosulfate that is now part of this system and talk about the difference about method 1815 and what we're utilizing now.

COMMISSIONER KAGAWA-VIVIANI: I guess I asked because I'm aware that these hydrocarbons break down and change form so they wouldn't necessarily look the same and are you adapting those methods to that.

CAPT. SULLIVAN: And one thing that is important, one change of Extended Drinking Water Monitoring, the EDWM, is that when we do have detections in LTM, it had a list of, well first you flush, then you do this, and it kind of just laid out this is the process you follow. EDWM is a little bit more exploratory to try to figure out to where when we start to see detections, we don't just follow a prescribed method, we actually do a lot more analysis on it. There's a piano method and someone much more smart on chemistry that we could have explain it in the future. It's much more diving into the science behind it, the forensics to figure out truly what could be causing those detections, not fuel related, but what else could it be and so forth. That's kind of the focus of EDWM.

20240416 00:41:02 - Capt. Sullivan resumes presentation

COMMISSIONER HANNAHS: I commend you for this effort. It's not lost on me that you're doing this in context of lawsuits where the nature of this work and the release of information about it could create legal exposure, and yet the public health and well-being is being put as paramount here. I note that.

RADM BARNETT: Yes, sir. We got to keep getting it right.

20240416 00:43:03 - Capt. Sullivan resumes presentation

CHAIR CHANG: I'm a lay person, but I think I understood. Was this conveyed to the community? Because I know that they were not, they had some...

CAPT. SULLIVAN: We've discussed this several times at FTAC, is where we really laid it all out and answered a lot of questions. We've also at the CRI and different forums like that we've had these discussions, we've laid it out within the military community. Captain Soho and Admiral Barnett held all of the command leaderships at the installation, brought them in, had this discussion. There is skepticism and there has been the argument, so you're telling me you did 8,000 samples and they're all erroneous? No, those 8,000 samples are still very, very valid and they proved what they could, but the fact that there was the noise and this chemical reaction, it doesn't in any way invalidate that test but we just had to dig deeper to figure out what it is that was causing those low level. That was some of the concern that we have received from the public, so far. We do anticipate that as we continue to make sure all these technical documents are correct and agreed upon by the regulators and release those, we do anticipate more discussions and there are some individuals who are very passionate about it and the science is not necessarily going to matter because emotionally or physically, they are still experiencing symptoms that we can't explain. They're not going to believe it and we will continue to try to investigate further as well as to discuss it.

RADM BARNETT: Which is why I wanted the medical team, even though I don't have doctors, is why I want them to explain to help these folks who are presenting with items. We're going to have to, kind of like you're saying, as we get final approval from Washington DC to release this, we need to have a strat rollout plan which we're working on and how do we communicate that because like you said, some folks are engineers, some folks aren't. How do we get that out with the videos, fact sheets, and things like that.

COMMISSIONER KAGAWA-VIVIANI: Going back to the quenching issue, my understanding of this was that it would create false positives, correct? If the chlorination was causing these sort of elevated TPH detections but on the other side of it, the testimony that comes through, the complaints, people were still seeing sheens and odors. Has there been any progress in rectifying that? Sometimes it seems after someone comes back from a break and it might be in the household, has your team done a little bit more water quality focus?

RADM BARNETT: That's why it's important for the Water Quality Action Team, when they show up, go there and they can say, well, show us the sheen that you're talking about. Sometimes they'll go, well, where are you getting the water from? Well, I'm getting it from my refrigerator. But when was the filter changed? That's when the engineers come in and we can kind of say, hey, let's pull the records, let's see when you're thing...or sometimes it may be the container that they put under there that may have some film. That's why we want the water quality expert there that can do just that.

COMMISSIONER KAGAWA-VIVIANI: Has that been running very long? Have you guys started to?

CAPT. SULLIVAN: It's been probably a little over a month or so and there hasn't been an ah ha! where we went to a house and unfortunately, it's often that the report that's called in is not what is seen necessarily by the inspector, but you even have...

RADM WILLIAMS: We had the initial six houses that the EPA (Environmental Protection Agency) did an investigation on in October and then the most recent they did 12 additional houses and most of those were identified via Facebook poll in the CRI. They weren't even fed directly to us, they were fed to...the EPA really didn't find anything that validated, but again, strengthened our approach of the Water Quality Action Team.

COMMISSIONER KAGAWA-VIVIANI: Have a systematic approach.

RADM WILLIAMS: [inaudible] Is it a filter issue?

RADM BARNETT: We went and took a water, we did an autopsy on water heaters. We went and took a sample, picked the one house that had...

CAPT. SULLIVAN: It was the second highest reading we'd ever had on the installation and we pulled that water heater out and completely cut it apart, checked the internal components of it, sampled the water, sampled the, I'm losing the word of the heating element in there...

RADM BARNETT: The coil.

CAPT. SULLIVAN: While we didn't come up with a lot of conclusive, we didn't find any buildup of TPH, we didn't find any gunk, anything that was concerning in that, but we'll continue with efforts like that as required.

RADM BARNETT: With the medical side, too.

COMMISSIONER KAGAWA-VIVIANI: That'll help. I know we've talked and it's not our Commission lane, but it's still something that kind of keeps coming towards us. It's really hopeful to know that there's more coordination with the medical end of your [inaudible].

CHAIR CHANG: Sometimes I find from DLNR, if you can believe it, not everybody trusts DLNR. Sometimes it is helpful to get some independent assessment separate and apart from DLNR as a quality assurance for communities. I know we will never change some members perceptions or understanding of it, but I think sometimes it helps having that independent assessment other than us to give some credence to the results.

COMMISSIONER KATAYAMA: Admiral Barnett, could you put in perspective for me the efforts in the aquifer and the stability there because that affects a huge population. I know that a lot of your conversation has been focused above ground.

CAPT. SULLIVAN: Drinking water. Once it's into the system and once...

COMMISSIONER KATAYAMA: And rightly so; however, could you put in perspective work on the monitoring of the aquifer?

CAPT. SULLIVAN: We always are very careful because we don't want to confuse people talking about the difference between drinking water and groundwater and obviously we all know that they're tied. Where do you get your drinking water from? It's from the aquifer. First, all of our water continues to come from Waiawa Shaft which is six miles away, it's not coming from the Red Hill Shaft. But at Red Hill, since the onset of the crisis and until today and as well as Admiral [inaudible].

COMMISSIONER KATAYAMA: Is there some part of the presentation that will [inaudible].

CAPT. SULLIVAN: We actually for today's presentation, we weren't intending to go deep into remediation so I'll talk just a couple minutes on that if that's fine.

COMMISSIONER KATAYAMA: Thank you.

CAPT. SULLIVAN: Within the remediation of the Red Hill Shaft, we do continue to maintain the Capture Zone which I'll talk about on the next slide as required in the Red Hill Shaft Remediation Plan, was the plan that was developed at the onset of the crisis with the regulators and the Navy, again, which was the strategy for how we were going to recover the water quality of the aquifer. We continue to move forward that and maintain the Capture Zone and I'll talk about the water that continues to be pumped into the stream in our efforts to try to reduce that. In addition to the Capture Zone, we continue to, like the WAI report had many great recommendations, many of which we're already doing and will continue to do. Monitoring wells, we continue to drill monitoring wells and sample those on a regular basis to gain as much information as possible about any movement of contamination, any new spikes or like after we had the rain event over the last few days, I do expect we're going to have some unusual results as it may have freed up any pockets. Any major rain events, we'll see something unusual from time to time. So monitoring wells, the soil vapor, we continue to monitor soil vapor underneath all of the tanks, continue to expand the groundwater monitoring wells. I think some of your folks are part of the discussions, the SME (subject matter experts) level discussions where we're trying to identify new locations where we can drill monitoring wells, working with Ernie Lau and Erwin on what those locations are for actual recovery. We've removed a lot of the soil, we talked about pilots that we're interested in doing. We are

actually right now kicking off the soil vapor extraction pilot to where we've got the equipment that is now set up. They're doing some of the last walkthroughs this week with the intent of next week that system becomes operational. That's where we are pushing air into areas that we believe through all of the characterization we've done, we've identified some places that we believe there's some fuel that's trapped, pushing air in. At the same time, we're sucking air out and to try to pull anything that's trapped. That's just one pilot, we actually did get the letter this morning that's the regulators had approved our natural source zone depletion study where we're continuing to look at what can we do to increase the bugs eating the fuel that might be trapped in there. Do we add heat, do we add oxygen? What are those things that we can do to increase the consumption of any contamination. The site assessment that's going on right now is part of looking at Red Hill as a whole facility. We've had a lot of focus following the 2014 releases and the 2021 releases at Adit 3 as well as the tank farm, but let's look at Red Hill as an entire facility and right now the site assessment is being and developed. The work plan that looks at the history of the facility, where releases may have occurred, where other facilities used to lay, where there's any potential risk in all of the areas that we need to sample and study to develop the complete comprehensive remediation plan for Red Hill. That's being worked with the regulators right now. By this summer, June is when our first work plan is going to be submitted to them and the site assessment, while we wish it was a super quick, it's going to take several years. It'll identify additional sampling that's required and then remediation focus in certain areas. As Admiral Williams mentioned, that remediation will continue for many years at Red Hill and the Navy remains committed to that. I'm not sure if that hit on any details, I'll hit more on the Capture Zone here in a second.

COMMISSIONER KATAYAMA: Well, that's the critical infrastructure item for the entire island and the civilian population that relies on that water source.

CAPT. SULLIVAN: And one very important one that I failed to mention was the modeling that is occurring. There are two different models that are in effort, the Navy is working on our groundwater model to identify where we believe that any flow or any contamination from the past has gone as well as any future and the University of Hawai'i working their independent model, but we're supporting them. Two different models are still in progress that will help inform what happens subsurface, where is the aquifer, where is it flowing.

CHAIR CHANG: That would be helpful, Admiral Barnett, maybe at the next update if you can focus on the remediation because to me, that's our lane. I am also aware of the Red Hill WAI report and that report was not intended to supersede or circumvent in any way the existing regulators, DOH and EPA, but it was looking at approaches to accelerate remediation because just letting it sit for the next 30 years is probably not acceptable. But opening up Red Hill Shaft, that raises a lot of questions. What impact does that have? I think it would be really helpful to focus on that because to me, that is really key for CWRM.

COMMISSIONER HANNAHS: Thank you, Commissioner Katayama for bringing us back to our focus and your encouragement that that should be a key part of the report to us. I get you reporting to another audience, maybe they're less interested in that, but for us it's pretty key.

COMMISSIONER KAGAWA-VIVIANI: My understanding was you have both groundwater model and the contaminant fate and transport model. Is that the one you're also referring to? There's two, [inaudible].

CAPT. SULLIVAN: The fate and contaminate transport will come later. We're still tracking to get the groundwater model, September 2024 is when we're tracking to have that complete but it's not going to be as much of that more 3D. The fate and transport model, that will come after that, we'll continue to work on. It's all part of the groundwater modeling effort, but deliverables will come in various stages of completion. The September one is not going to be the complete fate and transport model.

COMMISSIONER KAGAWA-VIVIANI: Given the monitoring wells, it seems like the whole release could provide basically a tracer in some sense to shape and inform the contaminate fade and transport model, which my understanding was the DOH has some of these back in 2023, had a lot of comments and they were being addressed.

CAPT. SULLIVAN: They are being addressed as well as the University of Hawai'i that there will be a tracer study that we're working with them on to actually put tracers in, and let's get a real tracer complete analysis. Unfortunately, that's not as quick as we would all love. It takes a little bit more time, but there will be a tracer study as part of the University of Hawai'i's effort.

CHAIR CHANG: I've mentioned this before especially for more on the DLNR side, having better, for CWRM as well, monitoring of nearshore waters. What impact if anything are we seeing? And we need some good baseline, but we don't have the resources to install some of those monitoring devices for nearshore waters or streams, just to see what impacts it may have on the ecosystem far beyond drinking water, ground water.

CAPT. SULLIVAN: I think right now the only stream that we're monitoring is the Hālawā Stream [inaudible].

CHAIR CHANG: I think we'd like an expansion of that just so that we can make some informed decision making on, just so the more information we know about where the fuel may have migrated to, if any.

CAPT. SULLIVAN: Especially at the SME level when they get together and talk about that, the subject matter experts, like CWRM participates in a lot of the round tables and they can have a lot more of that, much beyond my ability to talk to.

CHAIR CHANG: Because I'd like to have our Division of Forestry and Wildlife who does watershed protection as well as our Division of Aquatic Resources who has interest in water quality. I think those need to be part of the conversation from a DLNR standpoint.

20240416 1:04:13 - Capt. Sullivan resumes presentation

CHAIR CHANG: Any measures to accelerate that would be greatly appreciated. I mean that's a lot of waste and if we could use that, whether it's agricultural, R-1, flushing toilets, golf courses, something else other than waste.

CAPT. SULLIVAN: As we mentioned, I know that Captain Sohaney, the Base Installation Commander, he's briefed the Commission in the past. I know that he is always working at Admiral Barnett's direction, water conservation measures across the base, understand that the pumping compliance, the 15 million gallons that we have at the Waiawa Shaft, measures that have been fairly effective to reduce the consumption to where we are right now, right at that rolling average. But our consumption has been drastically reduced and measures are in place and continue to be in place to how we can reduce.

CHAIR CHANG: I appreciate that but when we see all that water...

20240416 1:08:34 - Capt. Sullivan resumes presentation

COMMISSIONER HANNAHS: On the communication side, are you approaching that with the same rigor in terms of setting some targets and tracking your impact and progress? The nature, what are you using as descriptors are key indicators of whether people understand or whether you're getting the message, it's two-way communication. If there are some indicators there and that you could track and then show us as well as the general public, then they kind of know that your communications efforts are being effective. Clearly you're communicating.

RADM BARNETT: Are they being received, is it being effective? Measures of, what's the word I'm looking for, measure of effectiveness. Got you, sir. I'm going to get with my public affairs team on that. I get briefs on that, but that's a good point. Okay, so this is out there, did we hit the target?

COMMISSIONER HANNAHS: Chair, this is probably the last time I'll see these gentlemen on this side of the table. I just want to comment on the...

CAPT. SULLIVAN: You coming to our side?

RADM BARNETT: I got a uniform, I got a flight suit. I'll get you a flight suit, sir.

COMMISSIONER HANNAHS: I used to have one! The progress we've made in number one, accepting the mission, and then creating a coherent plan to achieve it and sustaining leadership towards it and resourcing it, is progress. The nature of our early conversations when this issue would come before us was fairly hostile and opaque and we've made great strides. Thank you for your leadership and as I depart and others step into the overseer role here for CWRM, I just encourage you to continue on the track of relentless pursuit of the targets and transparency about what's working and what's not working.

CHAIR CHANG: Commissioner Hannahs is going to higher ground, literally, he's going to be leaving our commission and he has been confirmed to sit on the Mauna Kea Stewardship Authority. Literally, higher ground. His mission has changed, but his commitment remains the same, but his last meeting will be next month.

COMMISSIONER HANNAHS: June.

CHAIR CHANG: June, two more months. Greatly appreciate it.

COMMISSIONER MEYER: I just wanted to offer this, perhaps a hint or a piece of information that might be beneficial. Had some experience with diesel spills, light end product spills in Maui and also on O'ahu in the past. One of the bets being as old as I am, as you look back and see mistakes people made in different perspective, but by way of a couple of hints. On Maui, small-scale spill of diesel into a sandy soil aquifer, was only about 30 feet down. Two things seemed to work in terms of remediating the aquifer and the soil's condition. One is removing the soil, sending it to Arkansas and having it baked for a while to get rid of it that way. The other is skimming and the only thing that worked in terms of remediation of the water effectively was skimming, even pumping from a foot down, two feet down, five feet down into the aquifer was ineffective, relatively, because of the floating nature of the product especially a light end product like JP5. Secondly, there was another incident a larger, I believe it was in Wahiawa. It was Del Monte, it was a fuel truck that was fueling agricultural equipment several thousand gallons were spilled and they had a very similar problem. It was in a more perhaps comparable position, too, and you've got much more difficult circumstances, the depth of the aquifer, soils' conditions are not uniform. But those were two areas that seem to be most effective at remediating those groundwater spills.

COMMISSIONER MEYER: Within the capture zone, our skimmer operations are 24/7 right now. As the Capture Zone pulls it, but unfortunately we're only able to skim what comes into the development tunnel.

COMMISSIONER MEYER: Understood, but for what it's worth.

CAPT. SULLIVAN: I appreciate that, sir.

COMMISSIONER KATAYAMA: Chair, may I ask maybe Dean or Ryan to look at the aquifer and sustainable yield with what the Navy is doing, what the Board of Water Supply is doing, the restoration of Red Hill, Hālawā and just look at context of the pressures that we're seeing on that aquifer and the sense of urgency of restoring that Red Hill as a long-term source of water supply? I think that would help and put in context with what Captain Sullivan has just described to us.

COMMISSIONER MEYER: Exactly.

CAPT. SULLIVAN: I know we didn't talk about it today but the Navy Aiea Hālawā Shaft, we also are working efforts for the reactivation of that shaft in the near future to include right now the installation of the same GAC technology we're utilizing at Red Hill to where it is the charcoal but also a final tank that includes PFAS. The construction of that actually began this week so temporary facility, temporary treatment in order for us to push to reactivate Navy Aiea Hālawā Shaft to ease the burden of the aquifer in other areas.

COMMISSIONER KATAYAMA: Thank you, that's very responsible. Appreciate that.

CHAIR CHANG: Modeling is critical, if we don't know where that field has migrated, taking water out through those shafts may put it more at risk. I think everything's sort of moving in... this is a very complex issue far beyond my understanding.

COMMISSIONER KATAYAMA: It's a very fluid issue.

COMMISSIONER KAGAWA-VIVIANI: I do have one request and I think the PFAS treatment is something that hasn't been discussed much so if you folks are able to at a future update on the aquifer remediation, share. I mean PFAS is an emerging contaminant, it's something on the horizon for all of us and so I'm learning from your folks experience because DOD has the capital to do this kind of work.

RADM BARNETT: We're waiting on further guidance from DOD and so once we get that information, we'll definitely look forward for opportunities where we can...

COMMISSIONER KAGAWA-VIVIANI: Share just what are the technologies available for that because I think turning on Hālawā Shaft, and I'll just share from my tracking of the USGS conversations shutting off of Hālawā actually recovered some parts of the region. Head was increasing but the issue is the quality of the water and concerns about...

COMMISSIONER KATAYAMA: We need both, we need to understand both.

COMMISSIONER KAGAWA-VIVIANI: Right and together. Anyways, I think it would be really helpful and you guys have made huge strides and so there's a lot to gain by getting this right. Appreciate that, thank you.

RADM BARNETT: Thank you.

PUBLIC TESTIMONY – None

20240416 01:18:57

A. APPROVAL OF MINUTES

1. February 20, 2024

20240416 01:19:44

MOTION: (KATAYAMA / KAGAWA-VIVIANI)

To approve minutes as submitted.

APPROVED: KATAYAMA/CHANG/MEYER/KAGAWA-VIVIANI

ABSTAIN: HANNAHS

2. March 19, 2024

20240416 01:20:50

MOTION: (KATAYAMA / KAGAWA-VIVIANI)

To approve minutes as submitted with non-substantive edits.

UNANIMOUSLY APPROVED

(KATAYAMA/CHANG/MEYER/KAGAWA-VIVIANI)

20240416 01:21:10 - Break

20240416 01:31:43

B. ACTION ITEM

1. **Approval of Stream Diversion Works Permit Application (SDWP.6011.6) and Special Conditions, East Maui Irrigation Company, LLC, Modification of Stream Diversion Works Nos. Diversions 156 and 209 on the East Kōlea Stream; Diversion 232 on the Ka‘aiea Stream; Diversion 142 on the ‘O‘opuola Stream; Diversions 168, 267, 255, and 187 on the Nailiilihaele Stream; Diversion 177 on the Hānawana Stream; and Diversions 145, 243, 144, 236 and 244 on the Ho‘olawa Stream to Fix Leaks, Add Baseflow, and Provide Habitat Connectivity, East Maui, Tax Map Key(s): (2) 1-1-001:042, 50; 2-9-004:004; 2-9-012:029; 2-9-014:001, 004, and 009**

PRESENTATION OF SUBMITTAL: Dr. Ayrton Strauch, Stream Protection & Management Acting Branch Chief

Staff stated the summary of request to approve SDWP applications submitted by the East Maui Irrigation Company in East Maui. This submittal was unanimously approved.

QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Ayrton, in some cases we are making adaptations to existing infrastructure in order to achieve our purpose that are kind of old. Do we take into account the life of the infrastructure that’s going to be there and if it degrades or breaks down and compromises the instream flow standards, do we have the authority to go back and say, okay, more work needs to be done?

DR. STRAUCH: Definitely, I believe that the operator of any stream diversion can upgrade or repair a diversion without a permit, as needed, as long as the original design doesn’t change and they’re not increasing the capacity in that sense.

COMMISSIONER HANNAHS: That’s their option. Do we have the authority to, if it breaks, to go back and say, no, this has to be done?

DR. STRAUCH: If they’re not meeting the instream flow standard, yes, or the intent of the instream flow standard. But as these get built, they are trying to design them with longevity in mind.

COMMISSIONER KAGAWA-VIVIANI: I was wondering, are any of these streams currently monitored by the Commission below the diversions? All of them or some of them?

DR. STRAUCH: We currently have monitoring stations on Ho‘olawali‘ili‘i below the Lowrie Ditch intake, on Nā‘ili‘ilihā‘ele below the New Hāmākua intake, on ‘O‘opuola above the Spreckels Ditch intake, and on Ka‘aiea above the Center Ditch intake.

COMMISSIONER KAGAWA-VIVIANI: So the idea is to leave them in place, have these changes happen, and then track it for some amount of time to make sure we're effective, okay. Is that data available? We got to find it on that website I keep forgetting. It might be helpful to make sure just for transparency sake, we let people know like, hey, look this is available for you if you don't believe us or if you want to see the effects for yourself. Just because these are places that are hard to access, so you can see it virtually. Thanks.

CHAIR CHANG: Ayron, who pays for the monitoring?

DR. STRAUCH: We do.

CHAIR CHANG: Why don't we pass that on to the applicant?

DR. STRAUCH: What mechanism do we have to do that?

CHAIR CHANG: As a condition for monitoring. I mean how are we supposed to monitor without having...

DEPUTY UYENO: Dean Uyeno, acting Deputy. These gages are pressure transducers so they're recording data every 15 minutes. It requires staff to go out every three months. I think that's something that we've certainly considered in the past and how to do that, whether it's purchasing the equipment, we have had other operators purchase equipment and Ayron has assisted with installing them.

CHAIR CHANG: Ayron looks like he's got sunburn probably from running all around yesterday.

DR. STRAUCH: I was in Waikoloa, yesterday.

CHAIR CHANG: How do we enforce if we don't have appropriate monitoring systems? I would like us and I know we've been talking about that but how do we ensure and elevate transparency and the public's confidence without the necessary tools, but why should those be our burden to have to pay for those?

COMMISSIONER KAGAWA-VIVIANI: Can I comment? As I do monitoring work, people trust their own data. If you have say, a diverter, we would see this in Nā Wai 'Ehā, if they don't trust the diverter, they're not going to trust their data and so it does help to have the Commission do this but maybe there are opportunities to have other...

CHAIR CHANG: If we make that a condition that we have to monitor, so to me that should be part of the cost of the application. I want us to think about it, we may not be

able to do that right now but I mean I do think for us to do our job, we need the tools. We should consider having the applicant, where they can, to provide for those tools.

DEPUTY UYENO: To Commissioner Kagawa-Viviani's point, especially in these cases where it's a gage that's being used for enforcement of the instream flow standard, that's where I think we should be doing the data collection over the diverter. In some cases we've worked with the diverters to fund downstream USGS gages which are a lot more costly, but having that third party...

CHAIR CHANG: That independence.

DEPUTY UYENO: Is better.

CHAIR CHANG: And EMI has been really, I mean they've been willing to do a lot to meet the IIFS. They have been making appropriate changes, but it would be in, I would suspect, their best interest, too, to elevate the level of compliance.

DR. STRAUCH: Streamflow monitoring is a very complicated and technical thing to do and it's not necessarily just the cost of the equipment. It is our time and we take it very seriously and we dedicate about five days every two to three months to be in East Maui, if not more regularly. And that's just for routine monitoring, not the other site visits we do and the installations that we work on. It's a big part of the Stream Protection and Management Branch, so we definitely see the benefit. We are still fiscally limited and we don't have the staff or time to be everywhere all at once, there's a lot of perennial streams out there, so we have to balance across our time.

CHAIR CHANG: I also think for informed decision making are there trends, are we seeing differences in the quality of water, the flow of water? Having all of these stream gages are really critical in addition to enforcement, but also just for good, informed decision making as we consider things like climate change. I would, Dean, like us to start looking at what we're doing, what we're considering for permit application fees or water permit fees. The cost to manage this program far exceeds what are we charging, \$25, \$50. I mean that's just absurd, so from an administrative standpoint I think the staff need the tools and resources to effectively do your work. Hopefully at some point in time we don't have to have Ayrton literally running into all of these streams, but we may have tools that can make his job more efficient. That's just a comment, but I do want us to really look at that. What can we do to ensure that there are appropriate tools and how do we pass that on to the people who are benefiting from the sources?

COMMISSIONER MEYER: Could you dimensionalize that? If you took all the streams and water courses of surface water, how many monitoring situations do you think there are out there, right now?

DR. STRAUCH: How many locations do we monitor?

COMMISSIONER MEYER: Yes, how many if we were going to put a comprehensive program into all water courses for surface water in the state?

DR. STRAUCH: We currently fund about 50 USGS gaging stations. We've convinced other agencies to fund another 12 or 15 and that's through USGS. Within the Water Commission, we operate about 55 streamflow monitoring stations that are continuous and another dozen or so that are just point...

COMMISSIONER MEYER: A comprehensive program for all water courses?

DR. STRAUCH: Every single one? Wailua for example, is a very complicated watershed that has at least five major tributaries and we monitor three of them and we help monitor four of the ditches in there, but that doesn't mean that's a comprehensive monitoring plan. It's just the most practical that we can implement. There are some streams that maybe we don't need to monitor, especially I know we've talked about monitoring the Hanakāpi'ai or Kalalau Streams on the Nāpali. But really, yes, other than monitoring for climate change impacts to our natural environment, it doesn't serve a management role which we're trying to focus on. What is necessary to implement a sound management plan.

COMMISSIONER MEYER: In a sampling approach. Thank you.

DR. STRAUCH: There are probably 120 gages necessary, if not 150 statewide as a minimum, and we're at maybe 100.

CHAIR CHANG: That's doable, that seems to be an attainable goal. If we can ensure that the costs are appropriately...to those that are...I don't know how we do enforcement without that tool. I think that it would be in their best interest. There's perception that they're not complying. In the absence of having tools, how do we confirm that? Again, I think that there's some benefit to the applicant as well. Long-term, not so long-term resolution, hopefully we can think about that sooner rather than later.

DR. STRAUCH: Our previous deputy had requested adding about five USGS gages a year to the annual cooperative agreement, which is about \$250,000 to \$300,000 needed, in addition to the operating and maintenance costs. That's where we were hoping to do the request from the legislature).

CHAIR CHANG: I know that Katie is going to give a report on some of the Congressional funding that we've got, but I think if it's a shared cost with the applicant, that's something that we should consider.

KATIE ROTH: Just a quick comment, there was a 2020 study done by the USGS that outlined monitoring needs statewide and that accounted for upwards of \$170 million worth of needs. That's something that we do reference when thinking about costs and what we could take on as an agency.

CHAIR CHANG: That might be a little bit too big.

KATIE ROTH: Yeah, it's a huge amount of money needed but just to put it into context.

CHAIR CHANG: Sort of taking it in phases or prioritizing where are the more key places, especially if we have to enforce. So think about that.

PUBLIC TESTIMONY

MARK VAUGHT: I just appreciate all the work that CWRM staff has done in preparation for this and just ask the Commissioners to take this into consideration.

CHAIR CHANG: Thank you, Mark. Have you heard just the previous conversation about having the applicant install or pay for some monitoring gages?

MARK VAUGHT: I have. We currently pay for some USGS gauges but are willing to have that conversation.

CHAIR CHANG: Very good, thank you so much. I appreciate that.

LUCIENNE DE NAIE: Thank you for the opportunity to comment on this permit and thank you for getting these permits moving along thanks to EMI and the staff for the tremendous amount of work put into all the reports and all the field work that Ayrton has done. I have a couple of comments, I'm testifying on behalf of the Sierra Club here, Maui group. First of all, do support having some allocation for Hawaiian Home Lands and for their non-potable use. I'm assuming that would be through Ha'ikū Ditch which goes to Pūlehunui, their future development. Hope that that can work out because that is a water source for them. Secondly, I'd like to speak to the proposed modifications for the Hanawana, this is the Diversion 177 or commonly known as Lowrie or L13 to prevent clogging. This is action 2.8.1 for those of you who follow that. My understanding is from having visited that intake a number of times over the years is that there's two problems. One is that the pipe clogs up and the other is that the pipe clogs up because the area that is available to accumulate water to go into the pipe is actually not very large and of course, it's subject to debris. I don't know if just putting in the larger pipe, modifying the pipe, will really solve the problem there. At the time when we did the site visit, it was discussed having some sort of a bypass. The whole stream at that point, Hanawana Stream runs into the Lowrie Ditch and the pipe is just above that intersection with the ditch and the pipe. The pipe is kind of a stop gap measure, but a channel that would go

over the ditch would be a better long-term implementation. I wonder if anyone from the community was out there to discuss the size of the pipe that was needed. There's a number of people that do depend upon that pipe. This is a popular neighborhood, Hanawana, it's not someplace where nobody lives, I'd say several hundred people live there on little farms. Once again that this is why having the community involved and understanding what is proposed with an on-site visit is just so important. I understand we don't want to hold up these permits in any way, but if there is time when we talked about this other on-site visit for the previous permit, it would be good to include Hanawana in that site visit along with other streams mentioned like Ho'olawa and Waipi'o, etc. Moving on about the discussion of passing the costs of the monitoring and gages onto the applicant, it is common that conditions of zoning at the county level do pass costs of like monitoring for water quality onto the applicant. However, there is that caveat that the applicant chooses their own consultant. I agree with the comments that the best and most reliable information does come from the CWRM staff and so if there was a way that a fund could be established to help support that and expand that and it was legally permissible, I think our community would be in support of that. Also, I just want to say that in general, there has been a lot of thought put into the recreational uses. The Ho'olawa Stream, especially, has a lot of recreational use and is well managed and it has a lot of diversions. A few are being modified, but once again that is a place where really the community, this is in their backyard, literally. Twin Falls community, the community should be standing there understanding what is proposed to happen where on at least one public visit. If that can be arranged, doesn't have to hold up any of the implementation, but if that could be arranged, it would really be keeping with the intent of the 2018 revisions to the streamflow where the idea was to really do this in a manner that was easily understood to the public. That was one of the goals that was set there and I think a lot of efforts were made. I have to say, we used to have regular visits in our neighborhood with CWRM staff and EMI staff and talk about how things were being modified. It didn't seem to be prohibitive to do. It was fewer diversions, but it happened and it was very productive. Thank you for your time and understanding and for moving these permits forward so that we can start seeing our stream flows protected and monitored on a long-term basis.

DAVID FRANKEL: Aloha, I work with Lucienne with the Sierra Club. I want to mention three things quickly. First, I want to thank both Ayron and Mark Vaught for this submittal which represents some progress on the ground and we're hopeful. Secondly, I want to address Chair Chang's concern about paying for monitoring. Your Deputy AG may be concerned about your legal authority in this context to assess a fee, but clearly the Board of Land and Natural Resource has the legal authority under 171-55 to require that A&B (Alexander & Baldwin) pay for monitoring of these streams. That's clearly within the Board's jurisdiction, no question. You folks probably can do it as well, but there's certainly no question the Board can do it. Finally, the Board has now been assessing a fee to require A&B to pay for some watershed management which is progress. The charge the Board is assessing is not as much as we think it should be, but it's better than it was

before when it was nothing. The Board could and should also be charging A&B a fee to monitor the streams. We've been asking that for years and Chair Case wouldn't let us get to first base on that, but hopefully that can be a discussion the Board of Land Natural Resources has. The third thing I want to mention is it would be helpful if you folks imposed some sort of deadline. This is, I believe, the third set of applications for modifications of structures on the Huelo streams. You approved the first one, I think it was last May. My understanding is no work has occurred on those diversion structures. My information may be outdated, but I would like you folks to ask A&B, EMI what the status is of the alteration diversion structures and what's a deadline for these. We recognize, as Commissioner Hannahs pointed out earlier, there may be in the Red Hill context, that there may be reasons why deadlines can't be met. Maybe there's a permitting issue, maybe there are weather conditions, whatever. I think it's important that you folks set a deadline and also get a status of what you guys have already required because we have no idea what the status is of all the modifications you've already made and when these ones will be made. Thank you very much.

DR. STRAUCH: Just the standard Stream Diversion Works permit has a two-year window and obviously there are other potential permits necessary whether it's an SMA, whether it's CDUP, whether it's Army Corps that have to be obtained for certain permitting requirements. I believe that the Stream Diversion Works permit can also be extended, but at the moment there's a two-year window.

CHAIR CHANG: Thank you for that clarification.

COMMISSIONER KAGAWA-VIVIANI: I just appreciate, Ayron, this detailed rundown and the testimony. And the comment also about progress, maybe this is for Mark. Given like the number of modifications that are happening, do you folks have a capacity or staff who could maybe just develop a web dashboard to show where these different projects are at and maybe what the holdups are on some? Okay, we're waiting for this permit or that permit, just so you're not answering the same questions all the time. There's probably real reasons that things may be held up.

MARK VAUGHT: Mahalo for your question. I would have to check into the web dashboard thing, to be perfectly honest, I'm not that smart so I don't know too much about technology and what that entails, but I'm willing to ask the questions. I do know, I'd have to check with our our consultants as far as the permitting because I know that's where things were getting a little bit sticky, going all the way through the permits and SHPD (State Historical Preservation Division) and everything else. But I don't know, I could find out and try to update the status on the permits.

COMMISSIONER KAGAWA-VIVIANI: And I just want to share, I'm learning with my students. There's some amazingly easy web mapping tools that are now available. I'm just thinking, I teach a class and I might have students mock something up to get the

ideas going about what a potential communication...I understand you guys don't have as much money as the US Navy for these kinds of things, but I think it would be helpful... these ideas of dashboards I got from you (pointing to Commissioner Hannahs). I've seen what helps.

MARK VAUGHT: I'm pretty sure the Navy has a lot of money.

COMMISSIONER KAGAWA-VIVIANI: I'm thinking about like Maui College students and these data science projects. I'd be happy to maybe suggest some ideas. That was more of a comment and an idea.

MARK VAUGHT: Appreciate it, thank you.

CHAIR CHANG: Can I ask, Ayron, how many streams are we actually monitoring that are related to this in East Maui, specifically on this agenda item.

DR. STRAUCH: Oh on this agenda item, including what we pay USGS to monitor?

CHAIR CHANG: Yes.

DR. STRAUCH: In some locations, there are multiple monitoring stations. I know Honopou is no longer diverted, but it was originally. We have a long-term monitoring station that we pay USGS to maintain on Honopou. We're monitoring at Ho'olawali'ili'i, we're monitoring Hoalua, natural flow. We're paying USGS to monitor Nā'ili'ilihā'ele, natural flow. We're monitoring the IIFS at one location on Nā'ili'ilihā'ele. We're doing point measurements on Ohanui and Kailua, we're monitoring 'O'opuola continuously, the IIFS. We're monitoring Ka'aiea continuously, the IIFS.

CHAIR CHANG: Maybe I should ask you the other way around.

DR. STRAUCH: I'm sorry I don't have a number, I have to go through in my head where they're located.

CHAIR CHANG: I probably interfered with your walking through.

DR. STRAUCH: I would say roughly 14 places in the Huelo license area.

CHAIR CHANG: How many are not being monitored?

DR. STRAUCH: It depends if you want to monitor natural flow conditions above the system or regulated flow conditions of the IIFS.

CHAIR CHANG: No, that's a question I'll ask you. If the locations are dependent upon areas...

DR. STRAUCH: For example, Ho'olawanui, we've done a partial record gaging for two years and the low flow conditions in that station are very tightly related to the index station or the Honopou Stream flow. We can say with confidence whatever is flowing in Honopou, we can calculate what is flowing in Ho'olawanui. In Ho'olua, the relationship is less confident, so that's why we added a natural flow monitoring station to monitor natural flow conditions that exist in Ho'olua over time. Again, with changing climate patterns, changing forest cover, we want to know how much water is available to meet all of the off stream needs. Nā'ili'ilihā'ele is a big watershed. We added a USGS gauge to that stream or really reestablished a discontinued USGS gauge in 2021. That station monitors above the Wailoa Ditch. We monitor below the new Hāmākua Ditch.

CHAIR CHANG: If I was to make a recommendation?

DR. STRAUCH: But there are three other locations I could potentially monitor, just it's not really accessible. Once these structural modifications get met, we know for a fact that the low-flow is going to stay in the stream. So do we need to absolutely monitor every location? No, that's why the recommendations were kind of put or designed to keep the low flows in the streams structurally instead of manually. There are some places in the state where the IIFS is met because somebody's opening a valve, and we don't want to have to run around and make sure all those valves stay open.

CHAIR CHANG: If I made a condition that or recommended a condition that the applicant and CWRM coordinate a monitoring program?

DR. STRAUCH: I mean we work well with USGS, I mean EMI.

CHAIR CHANG: Yeah, that's the impression I'm getting. Is that something so that you could prioritize? Again, my concern is compliance and our ability to enforce and our ability to also raise the level of confidence that what is going on is actually happening. Is that something if I recommended a condition that CWRM and the applicant work together to fill in the gaps of where we don't have adequate monitoring?

DR. STRAUCH: To me, it would depend on what defines adequate monitoring because we monitor pretty much every stream in some capacity. The question is once the modifications get implemented, do we see the response in the hydrology that we expect and that's where we're monitoring streams that we have low certainty. We're implementing a very well-coordinated monitoring plan.

CHAIR CHANG: Do you need any more monitoring?

DR. STRAUCH: We need more money and more staff.

CHAIR CHANG: Okay, but for this agenda I cannot go beyond the agenda item.

DR. STRAUCH: I think on Huelo we already spend a substantial amount of our resources monitoring. We were working with DAR to monitor the streams, stream health in terms of biota. There are only 365 days a year, but we have implemented what we can.

CHAIR CHANG: This may not happen again, so it is an opportunity. I don't want to make a condition if there's no need for it.

DR. STRAUCH: We have allocated our resources appropriately to effectively monitor the Huelo region.

CHAIR CHANG: Okay, with that being said then I won't make any. As you look at future submittals, if that is something you want the Board to consider, I would recommend that staff include that as a condition based upon what's the rationale, how much do you need, what are you recommending. But based upon what I'm hearing today, it may not be necessary because you've got a good working relationship with Mark and his team and you do seem to have adequate resources.

DR. STRAUCH: Really what's limiting us as a State would be staff on Maui, whether it's in DAR or CWRM. People that can do things more regularly than we can when it comes to very time intensive investigations like biota surveys.

CHAIR CHANG: Okay, that may be above my pay grade right now, it's probably not above my pay grade. It's probably at my pay grade, I think the buck stops here. But that's a larger question, so I'm going to go back to the agenda item.

20240416 02:16:56

MOTION: (HANNAHS / KATAYAMA)

To approve staff recommendation as submitted.

UNANIMOUSLY APPROVED

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

20240416 02:17:22

B. ACTION ITEM

- 2. Request for Modification of Conditions 1a. and 1d. of Well Construction Permit approved at the August 16, 2022 Commission meeting – Approve with Special**

Conditions the Natural Energy Laboratory of Hawai‘i Authority and Hawai‘i Housing Finance and Development Corporation, APPLICATION FOR WELL CONSTRUCTION PERMIT, Ota Well (Well No. 8-3957-006), TMK (3) 7-5-001:165, Lanihau 1-2, Moeau Ahupua‘a, Keauhou, Hawai‘i

PRESENTATION OF SUBMITTAL: Ryan Imata, Groundwater Regulation Branch Chief

Staff stated the summary of request which is to amend certain conditions in the well construction permit for the Ota Well on behalf of the Natural Energy Laboratory of Hawai‘i Authority (NELHA) and Hawai‘i Housing Finance and Development Corporation (HHFDC). A contested case was initially requested by Hui Ola Ka Wai through their attorney but was later withdrawn. This submittal was unanimously deferred and may be presented before the Commission in 60 days.

QUESTIONS / COMMENTS

CHAIR CHANG: Ryan, there are quite a few people that want to provide comment. I think the Commissioners have all read, so if you want to just highlight the recommendations? I know we’ve all read the recommendations, but I do want to hear comments.

20240416 2:33:44 - Ryan Imata resumes presentation

COMMISSIONER KAGAWA-VIVIANI: I have to say I did a lot more homework for this meeting and was able to fill some of the gaps that I think really weren’t covered at the last informational briefing. Specifically wrapping my brain around the complexity of the Kona system where there are three compartments, how does the depth of this well, is it expected to hit that deep confined aquifer and go through three different compartments?

RYAN IMATA: No, the Ota Well is intended to hit that high level water where all the...let me do a quick screenshare.

COMMISSIONER KAGAWA-VIVIANI: I look at the permit and what is it? Proposed well is at 1,687 ft with drill to 1,780, so about 100 feet below sea level.

RYAN IMATA: Can I share screen? The host has to enable my screen sharing, Dean, or ‘Iwalani? The Ota Well is as I said, the intent is to drill it along this high-level band of water to get that to be productive. That 100 feet below sea level, I think that they can comment on the design, but the intent is not to tap into the deep confined lens or even the basal lens. The basal lens is not productive anyway and I think Keith Okamoto from the Department of Water Supply is here and he can talk about the plan stating that there should be no development of any water supplies within the basal lens. They definitely

don't want to tap into the basal lens. Drilling deep enough to tap into that deep confined lens is kind of risky and I think that it's more appropriate that they drill it into that high level. I think they're anticipating that that'll be productive. Hope that answers your question.

PUBLIC TESTIMONY

ASHLEY OBREY: I'm Ashley Obrey, here on behalf of Hui Ola Ka Wai. We've been here before on this issue and I think since the outset, there have been problems with process with respect to the Ota Well. Start with Ka Pa'akai, you know this analysis really well, but for the sake of just the record, making written findings, about identifying practices, determining the impacts of this particular action on those practices, and identifying feasible action that can mitigate for those impacts. That was raised in 2021 and technically I would say that it has not yet been done because even assuming traditional and customary practices were properly identified as per the first part of the framework, how could it be complete when we don't have a clear picture of what these impacts are? You mitigate for specific impacts. We know that the EA (environmental assessment) only assessed impacts at the wellsite and we haven't had the chance to do any further study to understand what the impacts are. In 2021 decision-making is deferred after former Deputy Director Kaleo spent over a year talking with community, certainly Native Hawaiians. Somewhat of a compromise was reached, certain mitigation measures were deemed, quote, acceptable as conditions to the approval of Ota Well. I would say this really is a compromise because in our opinion, there are still some legal problems, but there's a consensus in the community, we're willing to go forward with this. Yet, on that day it was the applicants themselves who chose to seek out and request a contested case hearing based on two of these conditions which are now before you today. This was a contested case, obviously never happened and then no one heard from them for over a year. Maybe some people did, but certainly not my clients. There are discussions being had over 2023, I hear, and we didn't hear from them until the end of January of this year. I presume we're among the last to know about these proposals, so we asked for more information on the proposal in writing. It took a little bit understandably, but we just wanted to see what exactly is going to be proposed to you, I want to know the verbiage. We did raise concerns, we asked questions, we made suggestions. For the record, there were some objections made to these proposed modifications, but to date we've never gotten any response to these concerns to these questions, not even after last month's informational briefing which we had to kind of push for them to do. Our testimony talks a little bit about the details of some concerns with respect to these modified conditions, so I don't want to take up too much time with it. I think the bigger of the two would be the monitoring program. If Chair, you're authorized to make the decision to approve a monitoring plan but there's a lot that we don't know about what this will look like, we don't know the term, we don't know who's responsible for implementing it. As it stands, it just talks about the applicants initiating and designing it but nothing beyond that. How is this all going to be shared out with the community? What is a cause for concern? What

are these triggers? I was hearing all this information about the AMP (adaptive management plan) and I just would like to see that integrated into this condition. In terms of metrics, what are the metrics we're looking at? What are the actions the Water Commission is willing and able to take to mitigate any impacts that are discovered? This is the first well since this failed designation. It's a really important step, we know there are a lot of other people waiting to see what happens today to see what happens going forward. If the wrong decision is made today, that just sets up this landslide. There's probably a better water-related word I should say, but that's what today is about. Re-opening these conditions just raises a host of concerns that have been exacerbated by the fact that key stakeholders were not involved in the process, at least in terms of my client. So, comes back to process. Is Ka Pa'akai complete? No. Do we understand the impacts? No. Is today's decision-making guided by an approved water use and development plan? No. Related to that, has a sustainable yield been established that considers the decline in recharge rates and climate change and these distinct sources in Kona? No. Do the conditions as drafted meaningfully mitigate for these unknown impacts to Kona's freshwater and coastal resources? I'm really not sure, I don't think any of us can be. So, does this present a problem in terms of the public trust and the State's duties? Yes, I would say it does. An agency must take the initiative in considering, protecting, advancing public rights in the resource at every stage of planning and decision-making. The Waiāhole court said that. We appreciate the staff's work from the time of Deputy Director Manuel up until the current time. I know this is a complicated issue, I think everyone's recognized that. You may know where I'm going, I do want the opportunity to let there be dialogue and to hear testimony from everyone. I'm happy to put my request on the record now. It's not my job, but I would like to continue to keep the dialogue going and then maybe you abstain from decision-making. I would like to request a contested case hearing on behalf of Hui Ola Ka Wai so that there can be a more full and robust record for your consideration.

CHAIR CHANG: It's my understand you're asking for a contested case.

ASHLEY OBREY: Correct.

CHAIR CHANG: Are you asking that no decision be made?

ASHLEY OBREY: Yes.

CHAIR CHANG: Do you have an objection to us hearing all the other testifiers?

ASHLEY OBREY: No objection.

CHAIR CHANG: I have a few questions for you.

ASHLEY OBREY: Sure, of course.

CHAIR CHANG: What are you proposing?

ASHLEY OBREY: If it were as easy as redlining the conditions, which I think in part we kind of tried to do.

CHAIR CHANG: No, more than that. There's been an identification, cultural practitioners have come forward expressing their concerns that we don't know what the impact of drilling these wells are on nearshore waters. You're saying we should wait, it's premature, this program we don't know enough. So what would you recommend in lieu of...are you recommending there be no further wells being drilled until and what are you proposing? How would we find that answer without doing this monitoring program? What would you recommend?

ASHLEY OBREY: I understand that there's a lot to be considered and the whole previous conversation about what it costs to do monitoring, I understand that there's a lot of resources that it takes. So for me to just throw out there that that's what you should do to start, I understand it's not as simple as that. Obviously studies do need to happen. In an effort to kind of take a step back and think about the planning for the region again, I think we've talked about in the testimony. There's the Water Resource Protection Plan to readdress sustainable yield in Kona and then moving forward to update that Water Use and Development Plan for this specific area that would take into account these groundwater dependent ecosystems and the traditional customary practices. With the proper planning because this isn't a designated area, this process is super important. I may not have the same scientific background as the people on staff, so I don't know that I could design anything in particular, but I think taking a step back with more of a planning in mind is very important before wells are drilled.

CHAIR CHANG: Under Ka Pa'akai, the third test is reasonable mitigation measures. What I'm hearing you say is because this appears to be a proposed reasonable mitigation, monitoring to determine what impact. But are you suggesting that reasonable mitigation would be no further development until all of these other measures like the Development Plan be updated? I'm trying to understand what would you consider reasonable mitigation when we don't have sufficient information to determine the impacts?

ASHLEY OBREY: I think that's exactly what my concern is and maybe it's a chicken egg thing and I can respect that, but I do feel like there really needs to be time spent on trying to understand what these impacts are as part of a planning process, as part of pulling in other experts to look at it. There was the modeling by USGS, I don't even remember which year it is now, but there's some information out there and it's enough to give rise to that pause, that precautionary principle that there's more out there to be discovered.

CHAIR CHANG: Would you agree that the third part of the analysis, Ka Pa‘akai, reasonable mitigation, is left up to the Board? That’s the commission’s decision.

ASHLEY OBREY: Yeah, sure.

CHAIR CHANG: Let me ask another question. Your concern is about process and I appreciate that, me too. The process is about community engagement, did you read staff’s recommendation 1e, “to ensure better communication and coordination in the region with community, the agencies benefiting from the use of the water from Ota Well, including, not limited to NELHA, HHFDC, DHHL, and DWS shall hold an annual community meeting in Lanihau 1 and 2,” and I’m going to mispronounce, “Moeauo Ahupua‘a to share updates on these mitigation measures and their respective projects.” Do you find that to be a reasonable process for community engagement?

ASHLEY OBREY: I think it is a reasonable process for community engagement; however, the fact that it’s coming before really understanding...how do you make that meaningful if the decision has already been made and anything that comes out of these meetings, how do you adapt to what information comes out of these meetings? At that point the well is operational; however, many more well applications have come before you folks. We still don’t really understand what’s going on down below, down at the coast and it’s just more and more piled on top of each other and no real plan in place with what we’re going to do about it. That’s just the concern. I appreciate, there are things in here in terms of conditions and that’s why my client was agreeable to this initially was because there yes, there are really good things in here, but there’s a little bit of a conflict because I think Ka Pa‘akai does specifically say, what is the effect of this action on traditional and customary practices? I think that’s the part that’s missing.

CHAIR CHANG: But wouldn’t you agree even under Ka Pa‘akai where we don’t know what the impacts are, that it does permit us to make reasonable mitigation measures at least to confirm or to use that as a basis to set conditions on the applicant?

ASHLEY OBREY: Sure, you can impose conditions.

CHAIR CHANG: Let me read you condition 1d, “NELHA and HHFDC shall design, fund, and initiate a coastal groundwater monitoring program for Lanihau 1 and 2 Moeauo Ahupua‘a, modeled after the land-based portion of the program currently in place at NELHA’s Host Park at Keāhole Point. The coastal groundwater monitoring plan shall be submitted within one year of the date of approval of this permit and is subject to the chairperson’s approval. This plan shall include the location of the wells, anchialine pond sampling sites. Four sampling locations shall be established, one at each of the two anchialine ponds as well as two new shallow monitoring wells. Samples shall be drawn from these locations quarterly and analyzed according to the standard procedures in NELHA’s water chemistry laboratory. Results must be reported to the Commission and

shall be made publicly available on an annual basis or sooner should a given test result give cause for concern.” Do you think that’s reasonable mitigation to address some of the concerns you have about what is the modeling program, how are they going to report back to the community?

ASHLEY OBREY: In concept, like I said I think there is good stuff there. I think there were a lot of details that are missing that raises concerns in terms of how to give it teeth in the long term or beyond just what’s on this piece of paper. Those are the questions that were raised that we never got answers to.

CHAIR CHANG: And you raised them with us or with NELHA?

ASHLEY OBREY: With NELHA, we put it in our testimony last month and I’ve not heard anything.

CHAIR CHANG: I probably did this a little backwards. I [inaudible] the applicant speaks first and I forgot about them, I didn’t see them on. I will ask the applicants exactly whether they’ve answered your question or not. This is 1f, “NELHA shall submit an annual report to the Commission by December 31st of every year on how these special conditions 1a to 1e have been met.” I want to fully understand and appreciate understanding Ka Pa’akai did take into consideration reasonable mitigations to address potential impact. The question is we don’t know what impact this will have so there’s this modeling program designed to do that. What I’m hearing you say is and I don’t mean to put words in your mouth, but we should do nothing until we do these other plans before we can move forward on any. And it’s not just Ota Well, I’m assuming your concerns would be the same for anybody who comes in with a Well Construction and Pump Installation Permit along this entire coastline.

ASHLEY OBREY: I think that’s pretty fair. It’s not Ota Well specific. Unfortunately, they’re the first to come here and this is where we are. The idea of doing nothing, I understand doesn’t sound good, but it has been a couple years since this well was first brought. There would have been time to do something. I’m not putting it on the staff per se, I’m just saying there was time.

CHAIR CHANG: Do you think this was something that they did, which is to meet with and I’m going to give you an opportunity to come back because I should have let the applicant speak first. We could have got an overview program, but it does appear as if from the time last year, over the last eight months at least, based upon the informational briefing, they did meet with the community, they did meet with DAR, they did meet with various entities to come up with this modeling program. It sounds like they did something during this gap period, but do you feel like it wasn’t enough or you want to hear from the applicant?

ASHLEY OBREY: Maybe a little bit of both and I'm not looking for an answer per se, but just put it in your brains is if this were approved and this monitoring program starts to do its thing and we learn something from it, can that break be between the Ota Well and the next well? I know I'm not explaining myself right, but do you know what I mean? Is there going to be a stop gap and it's not just like?

CHAIR CHANG: [inaudible] proactive management program. If we're finding during this monitoring program, oh my god, the impacts on nearshore or it's the pumping is occurring. I think we could put measures within our conditions because they're supposed to come and report to us every year and it specifically says how these special conditions have been met or sooner should test results give cause for concern. There appears to be safeguards within some of these conditions that if during this monitoring program there's something alarming, okay, stop. We have the ability to say, okay, stop pumping, let's find out what's going on. But there seems to be some safeguards within the conditions to address some of the concerns that you have.

ASHLEY OBREY: I guess on top of that, will the Commission wait to approve additional wells to see what happens here?

CHAIR CHANG: We're only going to take the one before us.

ASHLEY OBREY: But that's the concern is just the big picture because of the unknowns and because of the complexity of it and being able to understand the big picture.

CHAIR CHANG: I'm going to give you another chance to come up because I do want to, I apologize, I should have taken the applicant. With that, I do have the applicants. I have Greg Barber and Dean Minakami. Greg, do you want to go first? I apologize, I should have let you speak before I took Ashley.

GREG BARBOUR, NELHA: I'm Greg Barbour, I'm Executive Director at Natural Energy Lab and I have with me Dr. Alex Leonard, our Chief Program Officer and Mr. Jerome Kanuha is here with us. (*Chair Chang leaves the meeting*) He's a lineal descendant of this ahupua'a and wanted to say a few words. I'll summarize, we've spent quite some time talking with people to try to understand a monitoring program that would be adequate and we felt that switching from offshore to onshore was a better alternative, especially if you can develop a regional monitoring program which will help everyone understand water flows in the area and management help with management decisions. We did ask for some changes to 1a but they're fairly straightforward, really for clarity. We support the recommendations from the staff and that's kind of a summary of what we went over last month. If you have any questions, I'd be happy to answer, otherwise Mr. Kanuha would like to address the Commission.

COMMISSIONER HANNAHS: Before Mr. Barbour yields to Mr. Kanuha, any questions of Mr. Barbour? Why don't you continue with Mr. Kanuha.

JEROME KANUHA: Aloha, I was born in this ahupua'a. About three years ago, I wrote that letter to Kaleo stating that who's going to monitor the resources that came down from that hill at the ocean because I still own the ahupua'a down below, but where the water comes down, Niumalu is the name of the place. Niumalu is adjacent to Lanihau, the ahupua'a is called Keaupū. My family had that place for 400 years, the well over there is called Puhi Springs, where as kids we used to grab the water, take home for 'au'au and drink water. The abundance of freshwater fish in Kailua, my question was at that time when this thing came up is, who's going to monitor and how they're going to monitor and make sure they take care of mauka to makai? That's what my question was when I wrote that letter with Leimana DaMate. While reading what's happening now, they were having hālāwai, having a lot of people putting their input into this, all these meetings, I did not go because I felt that there were too much guys in a pot, would create a hazard. In Kailua and Kona, we do need affordable homes. County needs the water, I need the water to have my house, my family live in our property. We still own 80 acres of it in that area. When I did that three years ago, I felt that it was important to realize that the water was life, it still is life, but how do we monitor if we don't have somebody out there doing it the right way? Reading what NELHA has done and the Commissioners has recommended to do, and I think it's the best thing for us to happen, to push this thing forward and let's go forward. Not dwell on a lot of input from a lot of people because that's the problem we have. I'm in support of the project, I wasn't three years ago because they never had their ducks in place, now they do. I'm a big supporter for the Kanuha 'ohana that still own land in Kailua. I appreciate you guys listening, open your ear and listen to everybody else, what they have to say. I understand that young lady has a lot to [inaudible] in Kona, but we don't have housing, we don't have the water. Thank you for listening, I've been here a long time listening to all you guys, so mahalo and aloha. We talk to you guys later.

DEAN MINAKAMI, HHFDC: I'll just quickly, Chair Chang. Good morning I'm Dean Minakami, Executive Director of the Hawaii Housing Finance and Development Corporation. We would like to ask for your support, conditions 1a and 1d which NELHA has been working very hard with the community to address concerns that were raised. This will allow HHFDC's Kamakana Villages to proceed and Kamakana Villages is an affordable housing development on HHFDC-owned land. It will include about 1,600 homes, an elementary school, and commercial uses. The project is fully entitled, we have a developer on board, and it's only the lack of potable water that is restricting the project from moving forward. I will say that we do have some concerns about the conditions. We fully support watershed management, but we see it should be recognized that HHFDC is only developing this well to provide water for affordable housing. Once the well is dedicated or once it's built, it will be dedicated to the County so we won't receive any revenue from this well. From our perspective, it's just a capital expense, a very large

capital expense with no revenue coming in. Our share of cost will come from our affordable housing fund. We feel that watershed management, it is in the best interest of the general public so there should be a holistic approach to funding watershed management initiatives, not placing the burden solely on those who are constructing the wells. That summarizes my testimony.

CHAIR CHANG: Thank you very much, Dean. Don't worry, Dean, we're trying to figure out a way where we can spread this cost around.

DEAN MINAKAMI: Thank you.

CHAIR CHANG: That's a good thing.

KEITH OKAMOTO, HDWS: I'm Keith Okamoto, Manager Chief Engineer for Department of Water Supply County of Hawai'i. First off, I want to mahalo Chair Chang, the Commissioners for all the hard work you guys do. I know there's a lot of heavy lift that you guys have to deal with on a regular basis so mahalo for your guys efforts. I also want to mahalo Ryan and your staff. I think we understand as our agency is very under resourced at the moment, the challenges that your staff also faces with all the work they have to do. I wanted to put that out there first and foremost. I wanted to testify in support of this well permit application and the work that went into getting to the point where NELHA and HHFDC are where they're at now with their proposed revisions and staffs' recommendation for this particular well. We agree that there's a lot of unknowns in the region, but how can we find a reasonable path forward that balances the needs of our community with the concerns of the stakeholders in the area. I have the highest respect for all those who, the practitioners, ultimate respect for Uncle Jerome Kanuha. We've met with him several times also. To me it carries a lot of weight with whatever comments he has as an actual lineal descendant from the region. So want of mahalo Jerome and Greg, Alex, and Dean folks on a lot of the work that they did to get to this point. We were part of those discussions. Ultimately the plan is to turn it over to the Department to operate and maintain. I think there's the devil in the details through a lot of these conditions that I think we can figure out, but I really believe that this has presented a path forward to hopefully give us and the Commission some of the information that's needed to help us make informed decisions for this particular well, as well as future wells in the region. And if there's any questions for us, we'll stick around and be ready to answer them as best we can.

CHAIR CHANG: Keith, can I ask you, Ashley Obrey did raise a good point about future wells. This monitoring program that's being recommended by NELHA, HHFDC in coordination with their outreach, is this something that the water department supports for future well development in this region?

KEITH OKAMOTO: Yeah, and I think she's right. This permit right now is important because if accepted with the conditions, will set almost like the standard for future wells in the region. We think it's very reasonable from our standpoint. Our wells that we'll probably be bringing forward in the near future is a little bit different. Our wells that we'll be bringing forward is to recapture some of the lost capacity that we've lost when we've repaired our wells and downsized them. Our intent is also to reduce our dependence on the wells that tap basal because just in general, we think there's higher quality water up mauka, potentially in the deep fresh, as well. We think that will also have less impacts than pumping from basal on nearshore groundwater dependent ecosystems. I don't have the scientific, any basis for that just my non-scientific thoughts on that.

CHAIR CHANG: I'm even more non-scientific, but would we get some good baseline data from starting this modeling program now to better evaluate future impacts?

KEITH OKAMOTO: That's what we're thinking because I think NELHA has already kind of been doing some of that more towards the north and if we monitor nearshore groundwater monitoring wells, I think we can see how if we're pumping up mauka, if we have a baseline, if we're monitoring some of these nearshore, onshore monitoring wells, see whatever different water quality parameters are determined. I'm guessing salinity, chlorides, conductivity all indicate the level of sea water to freshwater, I guess, proportions, set a baseline, see what happens over time with these pumping up mauka and then has been said, we can determine whether there's actual impacts and possibly quantify them to some degree with those type of monitoring efforts. The prior recommendations, again, I don't want to fault staff. I think they did the best that they could, but offshore monitoring, my concern is our ocean is massive. The dilution factor may not give you information that's even worth considering if we were to monitor parameters offshore. So, when Greg and Alex proposed this onshore nearshore monitoring, that made a whole lot more sense to us, as well.

COMMISSIONER KAGAWA-VIVIANI: Thank you, Keith. I was wondering if Hawai'i Department of Water Supply invests in watershed protection? I'm mostly familiar with O'ahu and the efforts of Honolulu Board of Water Supply, but does Hawai'i Department of Water Supply already have watershed protection programming?

KEITH OKAMOTO: Yeah, we do have it programmed. We're actually, I'm sorry to admit, we're late to the game on that. We have budgeted annually now \$100,000 for watershed protection, we've also recently went in and partnered with Hawai'i Community Foundation and our Hawai'i Congressional Delegation to secure, what was it Kawika for FY 24 Congressionally directed funds for watershed protection?

KAWIKA UYEHARA, HDWS: I believe it was an application for \$1 million.

KEITH OKAMOTO: \$1 million, yeah. And what we intend to do with those funds is, I think similar to what some of the other counties are doing, is put out an RFP so that the folks who really know what they're doing with boots on the ground can utilize those funds and put it to good use. Our criteria would be because our island is so huge and we only have water systems spread out sporadically, we've worked with DLNR DOFAW and UHERO to identify priority watersheds for our utility. We'd like those funds to be utilized in those priority watersheds. Thanks for that question.

COMMISSIONER KAGAWA-VIVIANI: So hence the interest in supporting specifically that Honua'ula area.

KEITH OKAMOTO: Yeah, that to me made sense, too. One of the concerns we had on the original conditions was of course the accountability, would some of the funds be used on a different island or something to that effect. This one, since there's an existing program, again that made a lot of sense to appropriate it to that group who's doing the good work over there.

COMMISSIONER KAGAWA-VIVIANI: Then given what HHFDC mentioned that they would be then turning over the well to Hawai'i Department of Water Supply, would that cost of \$13,000 a year, it seems to make sense to be part of a watershed, source water protection program. Is that something that HDWS would be welcome to shoulder?

KEITH OKAMOTO: Yeah and I think we'll probably utilize some of those funds that we've already set aside for our annual budgets for that effort, but just for procurement purposes, what we probably have to do is put out an RFP, something to that effect. Now, when our permits come in to this body for review and approval then maybe we can set aside specific amounts tied to that particular well permit, similar to this Ota Well permit. We would support that, as well.

CHAIR CHANG: Dean, we would more than welcome your participation with our DOFAW watershed protection.

COMMISSIONER HANNAHS: I'm not sure whether it's for our staff or some of the testifiers. There's a lot to support in this in terms of shifting a paradigm and supporting, by the way, some really worthy projects, but Ms. Obrey's fear or concern about opening a floodgate, it's going to open the opportunity to get more information and how long is it going to take for us to get that information so that it can inform future decisions? Well, inform the impact of the decision we're making as well as implications for future decision making. Can we hold back the floodgate, if we open this up, are they just going to come in or do we have the time to gather and understand the information?

CHAIR CHANG: I was thinking about that, too as Ms. Obrey and I were having a discussion. This is a question maybe for Greg Barbour with NELHA because it appears

based upon your presentation the last time, you do have information, you've been monitoring for quite some time. Can you confirm that or not?

GREG BARBOUR: Yes, we have. We're near the airport, so we're north of the Kona town by seven miles and we have 14 ground monitoring wells here. I would say majority of them, we've been monitoring every three months for probably 30 years. I would say perhaps 10 of them we drilled around 2000, maybe 2005. They were more recent wells. Yes, we do that and we have that in our end report and we publish that online.

CHAIR CHANG: I'm assuming that that's going to be helpful information. I thought baseline would be moving forward, but you seem to have some pretty good baseline going back potentially 30 years ago to now.

GREG BARBOUR: Yes, but I don't know. Maybe Keith might know more about applicability to, I think we're in a different aquifer.

CHAIR CHANG: That may be true. Let me ask you Greg, Ms. Obrey indicated that she had sent some questions to NELHA on behalf of her clients. Have you guys had an opportunity to review them and respond to them?

GREG BARBOUR: Yeah, we reviewed them and we responded to her. In terms of the details, we understand they're not as precise as some people would like and that's something we can work out, the finer details, but it's really hard to do that right now. We think that taking a more incremental approach like you were talking about earlier where we would report every year, as we report every year and we have these community discussions, we could start out with a suite of parameters that we would sample for, but we can add more every year. Our position is we agree with Ryan that we should start as soon as possible a year before and we can work out those finer details as we go along to add more parameters to our testing. That's not unreasonable and I don't think we'll know until we start doing it and keep moving forward, would be my feeling. A lot of her comments were not related to us and out of our control, so we couldn't respond to those and I think we talked about those last meeting that we had in March. I want to say that we have been talking with a lot of people and there was a concern mainly with the process, with the Native Hawaiian Legal Corporation that they didn't have enough time. I think when we talked with DHHL and I think Jonathan Scheuer recommended that we request an informational briefing, first, so we could reach a broader segment of the community and we could help more people understand what we're proposing and give it a full month to be out there in the public for review and comment. We did that. My feeling is we've done a lot, I'm not sure what else we can do who, we can talk to especially with the statewide informational briefing last month with your Commission and then this one again today where people can provide testimony. To be honest I'm not sure what else we can do.

CHAIR CHANG: Alright, thank you so much Greg. I've got two other people.

COMMISSIONER HANNAHS: I'm not sure, that's another subject, but in terms of being responsive to my particular question maybe it is for Dean or staff. You've got their historic data from another aquifer, if we approve we'll launch a project where we will begin data collection. How long before it can be used in a meaningful way for our decision making?

DEPUTY UYENO: I'll defer to Ryan on that.

RYAN IMATA: It's going to be an iterative process and I think that's conceptually what the adaptive management plan is looking at, is as we start to collect more data, it's not going to be one point in time where we sort of have this paradigm shift about how we regulate, rather it's going to be an incremental, all these little increments and steps in terms of collecting data. For example, the monitoring network that is going to be a condition of this permit will answer one part of the question. It's not going to answer the entire question and so I think we're going to need to look to the development of Keauhou Water Use & Development Plan and look to the adaptive management plan to start to guide us into what data we should be collecting to start answering the question. I can't really give you a time commitment in terms of one point in time, but I can tell you that we're going to work hard at making sure there's an iterative process to collect better information that helps you guys make more informed decisions. I hope that answers your question.

COMMISSIONER HANNAHS: Part of the impetus for making, approving this decision was to really fuel or contribute to the development of that process. Let me ask the question another way then, maybe going back to DWS. Do we anticipate a bunch more well proposals coming through?

KEITH OKAMOTO: From our standpoint, we know of several. Again, we have two in progress that are primarily to recoup capacity, so it's not really adding additional pumping strain onto the aquifer resource, it's to replace the ones that we've lost. I think our permits might be a little bit different from NELHA's and I believe Hawaiian Homes is working on one of their own for their La'i'ōpua project. We did get an invite to some kickoff meeting that they'll be having this Thursday, I believe, and it's specifically a Ka Pa'akai type event. There's at least three additional wells that I'm aware of, possibly four. I think there's another one that HHFDC might be working on as well. I defer to Dean on that one in this particular region. Again, we're committed to stay south, more south and stay higher level. Even with those who intend to turn wells over to us, we're telling them we're not going to accept the well that's drilled into the basal aquifer, at this point. We're not going to accept, that's the big one because we think that one would have the greatest potential to impact the nearshore groundwater dependent ecosystems and potentially cultural practices.

COMMISSIONER KAGAWA-VIVIANI: I have a question, a bit of a follow up for Ryan. Specifically we're talking a lot about adaptive management but that AMP was drafted and I mean according to your own notes in like 2018. What's the status on it and when can we expect to see it? It seems premature to develop a monitoring plan when there's actually a scoping, good information to use to inform that plan. We're putting the cart before the horse a little bit.

RYAN IMATA: I think Katie's here, she might better be able to answer that question. We did provide comments on the Adaptive Management Plan and sent it back over to National Park Service. I don't know if Katie wanted to expand on that a little more?

KATIE ROTH: Aloha Chair, Commissioners, Katie Roth of the Planning Branch. The Adaptive Management Plan is still in draft form. It's been something that the Planning Branch was tasked with trying to complete when I came on board about two years ago now. I have been on maternity leave the last six months, so that's definitely put a wrinkle in plans to continue work on that plan. As Ryan mentioned, we've been communicating with NPS and there's been some back and forth. There does need to be a lot more work on it in terms of developing what that monitoring component looks like. We've been soliciting input internally from Commission staff and what that needs to look like, but I think at this point we need to kind of broaden the scope. I've also been thinking about how that Adaptive Management Plan which is intended for the Kaloko-Honokōhau region intersects with the Keauhou Water Use and Development planning process, intersects with our Hāpuna deep monitor well that we're proposing to drill. There's a lot happening in this region so I'm trying to figure out how we put all those pieces together to come up with a more holistic, comprehensive understanding and path forward in terms of our planning processes because there's a lot of plans happening and I want to make sure that they're all communicating and working collaboratively together.

COMMISSIONER KAGAWA-VIVIANI: How well developed is it in terms of assessing groundwater dependent ecosystems and traditional customary practices? My understanding and this has been a lot in the last couple days for me to catch up on years of dialogues, but that National Park Service was initiated as a cultural historic park and so they have a vested interest in more than just damsel-flies. They have a lot of knowledge that we should be drawing on even if it's not Lanihau and if we're not incorporating that or having some dialogue with what NELHA is planning, it's a lost opportunity.

KATIE ROTH: Absolutely, Jonathan actually pointed it out to me a few days ago. There is an analysis that was done on impacts to traditional and customary practices in that region, the extent to which that is incorporated in the current Adaptive Management Plan, I need to take a look. When Kaleo was here, we also discussed trying to partner with folks at the University of Hawaii to fund research regarding implications and impacts of water resource development on GDEs or groundwater dependent ecosystems. That hasn't

gone anywhere, unfortunately, due to funding restrictions, but that's also part of the conversation. How do we get funding to support the research that's actually needed to answer some of these larger questions.

COMMISSIONER KAGAWA-VIVIANI: Final question is sort of both for Ryan and Katie. How familiar are you with the recent publications by say Britney Okuhata and a number of people doing isotope work in Kona because there's actually a bunch of information out there on the connectivity between high level and basal. They're looking at 30 to 70% of basal coming from high-level based on isotope analyses. I'm not seeing that addressed here. I was kind of going to wait, but I was like okay, I have my list.

KATIE ROTH: I can speak for myself, I have not looked at that research in detail, although I have had ongoing conversations over the last year with folks at UH, Leah Bremer, the folks who are actually involved and thinking more about groundwater dependent ecosystem impacts.

COMMISSIONER KAGAWA-VIVIANI: There are different realms. There's the groundwater dependent ecosystems work, folks looking at the coast, but then there's the geochemist and earth sciences and they have studies that go back to Tillman, Fackrell, many students of Craig Glenn's that have worked in Kona. I highly, highly recommend that that be included because if you're going to launch, and this is my academic side, if you're going to launch on a study, you have to do a thorough literature review, otherwise you're just making stuff up on the fly. I think that's not us, on the Commission, doing our due diligence. There's a lot of information I didn't know until I started poking around last night and we really owe it to ourselves. This is a precedent-setting permit to cite and include those resources and include an assessment of NELHA's baseline data and really pull together some of this regional knowledge there is...it is there. Then the other thing is if there are dialogues, and it's not for you, it's maybe for the applicant, you've had these dialogues so you have senses of what people are concerned about. These are called biocultural indicators. Those are beyond measuring chloride, salinity, temperature and are really important for linking the physical processes and biological processes and those cultural values that shape management. I think this is a really good opportunity to do a solid job because of the attention that the 'Ike Wai Project had put and we should be harnessing that. I'll try to put all my files and push them to you guys.

RYAN IMATA: If I can add that condition 4 of the original permit approval required a tracer isotope study to look at differences between different seasons and in determining flow direction from the Ota Well, that high level area and the basal lens. It is a condition of the permit to further the research that UH did and I think that's a good first step. Maybe that can be done in conjunction with the UH research to provide...

COMMISSIONER KAGAWA-VIVIANI: There is research that's already been published, Ryan. It's been published. We should in our staff submittal we should be citing it, that's

what I'm saying, to show that we are doing our due diligence in evaluating the permit. Anyways, we can go on.

WENDY LAROS: Aloha Chair Chang and the Commission on Water Resource Management. I am Wendy Laros, I'm the president and CEO of the Kona-Kohala Chamber of Commerce. Since our establishment in 1968, our organization has worked to enhance the quality of life for our community through a strong sustainable economy on Hawai'i Island. We have over 460 members, those are businesses and organizations. We are the fourth largest chamber in the State. Our mission is to provide leadership and advocacy for a successful business environment in West Hawai'i. Water development and housing are top priorities for the Kona-Kohala Chamber. We strongly support freshwater resource development, maintenance, protection in West Hawai'i. We encourage streamlining government regulation to provide predictability for development and we support housing projects at all inventory levels and the necessary infrastructure to develop more housing. The development of the Ota Well in West Hawai'i aligns with our priorities and we strongly support this project. We urge the Commission to approve the recommendations provided by the CWRM staff and work with the permit applicants to move forward. It's already been said, you know what the results are, but 2,330 housing units in Kona will be a game changer. The Kamakana Villages at Keahu'olu are very important to this community, so we really want to see that move forward. Natural Energy Lab of Hawaii Authority, NELHA, they'll receive water credits to complete the buildout of the Hawai'i Ocean Science and Technology Park and it's very important what they're doing there with research, education, and innovative commercial activities that provide economic diversity to our region which is primarily tourism. These are very important projects, we'd really like to see this move forward. We are confident that the benefits of this new water source will significantly contribute to the well-being of the community and we appreciate the Commission's attention to this important West Hawai'i water resource and look forward to a positive outcome. Mahalo for the opportunity to testify.

ROY HARDY: Thank you, Chair Chang, and aloha to the rest of the Commissioners there. I wasn't planning on testifying, just available for questions simply because I do have a lot of background on these issues. But after listening to all the testimony, I did want to make a few comments just to share what little mana'o I have working with the Commission since its inception in 1987. I think after listening to everything today, obviously there's lots of unknowns. There's concerns of connectivity at the high level, Ka Pa'akai, concerns of the practitioners, the needs of the community, all these competing things. When I saw the recommendations, I thought they look pretty good, but these lingering pieces of these unknowns that are still kind of in the way. You have a contested case request in front of you today, as well, but today is really a culmination of something that started back in 2007. 17 years ago when Jerry Bell called me when I was head of the Groundwater Regulation Branch, she was the superintendent at the national park and she was asking how to help with the concerns of the national park with all the wells that were going above and nearby the national park and how they would affect it. Then there was a

whole length of round tables done by the Park, by the Department of Water Supply. So, there's a lot of information. There's also a lot of information with NELHA offshore. A lot of that stuff went into the designation that finally resulted in a no designation because the Commission felt that the aquifer wasn't threatened. A lot of talk about GDE and offshore things, that's kind of a separate thing, I think. What you have in your submittal and what was kind of going forward before I left the Water Commission was a bunch of things to help try and mitigate that particular concern. GDE, groundwater dependent ecosystems, there are things in the Water Use and Development Plan, drilling south of the QLT Well which this Ota Well is doing and following that draft plan. No more drilling in the basal, another mitigative step to address these GDEs because we don't know what's complex. There's a lot of new literature that's out there as Commissioner Viviani has pointed out, these bioindicators, how do you amalgamate all these things together? I know that staff, when I was there, we had the Symposium 1 which basically was trying to get the science part together with the practitioner part, the native knowledge. It seemed like a pretty good thing, although there weren't triggers or a plan on what to do with this information, which is why there was supposed to be this Symposium 2. It's even mentioned in your submittal and it was the April 2021 right before I left that there was going to be this Symposium 2 and some plan in doing this to get those people at the table conversing about this. It was nice to see Greg Barbour and NELHA sitting at the same table with Mr. Jerome Kanuha. That's kind of a mini symposium in my opinion, but it needs to be a bit broader with more of the scientists, more of the guys who have years and years of experience on both the practitioner side and on the scientific side. I think that Adaptive Management Plan, Ryan answered the question rather well. That's supposed to be one of the offspring of a symposium as well as all the parts for that Adaptive Management Plan. You have these monitoring questions, okay, what exactly do you have to look at? Watershed protection, well that's part of Adaptive Management Plan, I would imagine. Offshore monitoring, that's another thing. All to get at this issue about GDEs and the concerns of the practitioners and people who are concerned about the ocean. Anyway, long story short, my comment would be try to reconsider that Symposium 2 to make it a little bit broader for everyone involved for the community and with the goal in mind of trying to come up with this Adaptive Management Plan. But in the meantime, things can move forward because I think the resource itself, the aquifer, is not threatened. It's the things that we're using that aquifer for, seem to be the concern. Anyway, that's my comment and really I guess a question, what happened to the Symposium 2 that this Commission required? I think that's still in limbo, I don't know if it's going to move forward. Thank you.

DR. JONATHAN SCHEUER, DHHL: Aloha mai kākou, members of the Commission. For the record, my name is Jonathan Likeke Scheuer, here today on behalf of the Department of Hawaiian Home Lands, though I do have over a decade under my belt dealing with North Kona water issues and other capacities, as well. I want to start off my remarks, I feel the energy in Greg's voice when he's testifying about how long he's been waiting for this and there's lots of energy and lots of time that have been spent on this

permit and other issues and I think it's sort of some of the emotional content of what we're struggling with here and what you guys are ultimately struggling with. It's been years since they first applied for a well in an undesignated area and yet they're still waiting for a permit. I know many community members have been waiting for even longer since 2017, the Water Commission denied designation in part on the adoption of a final Keauhou Water Use and Development Plan that has not been done, as well. Even before that, and I was glad that Roy mentioned the meeting with Jerry Bell because I was going to mention it, too, the concerns that Kaloko Honokōhau National Historical Park started when pumping was way less in this area, started in 2007. Actually, the request from Jerry Bell was like, hey, we understand there's this mechanism called designation that actually empowers the Water Commission to put conditions on permits and consider impacts and consider the location and pumping levels of wells and the response from staff at the time was, no, actually you should just get together and talk story with people about it which led to the creation of the Kona Water Round Table which did generate some dialogue, but not necessarily any meaningful framework for making decisions and protecting traditional and customary processes. Of course, sitting here for DHHL, we have beneficiaries who've waited this century for the promise that was accepted by the State of Hawai'i at statehood to deliver homesteads and water is a major barrier for us developing homesteads. You have written testimony that we submitted to you signed by Kali Watson. We cited two main interests that we have in this particular well. We are, thanks to the agreement of HHFDC and NELHA, going to get a small portion of water from this well for homesteading if this goes through. Because of that, we want to see the well go through in as expeditiously and responsible manner as possible. The second concern mentioned in our written testimony it's like if there are things that would lead to a legitimate contested case hearing, that would lead to a legitimate delay of this process, we'd much rather have you take the time needed to address those things. Listening to the testimony from Ms. Obrey and some of the comments, is there known data about the impacts of well development in North Kona that's in your possession that were not even considered in the staff submittal? Katie mentioned it and I'm only talking about this because I wrote it, the Water Commission specifically asked during the designation process for a report on traditional and customary practices at Kaloko Honokōhau, as well as a report from the National Park Service on what they thought the impact would be on more wells. It's not mentioned in the submittal, but it's on the Commission website, it's in your possession, and it's not referenced at all in the thing. Are there things in your possession, is there research in your possession that's not referenced? Can you make even the first finding on Ka Pa'akai, the scope of traditional and customary practices, relying on an applicant's outreach solely when you have some people saying, hey, we weren't outreached to in the process. Can you get to the third part of Ka Pa'akai without relying on somebody who's challenging the first part of Ka Pa'akai. This really gets to and we, DHHL, it was mentioned by Keith, one well. We actually have two wells that DHHL is pursuing because working with the Hawai'i County Department of Water Supply, we need at least two wells to develop all the lands that we have in Kona. One is towards Keauhou in partnership with Kamehameha Schools, one is on a private property a little

bit farther north but not super far north in the aquifer. I appreciated Keith's mentioning we have a first meeting this Thursday in Keauhou trying to cast, actually not a selected thing but as broad as possible to practitioners like, hey, we're developing water sources here, we want to hear from everybody who might be willing to talk to us, we have consultants who are helping us do that. We're going to do our part, but I think that we will really need your help as the Commission. In the sense, what I'm talking about is that doing a Ka Pa'akai analysis without the Hawai'i Water Plan really, fully updated and meaningfully in place is really hard because the Hawai'i Water Plan and particularly the Water Resource Protection Plan, which is your guys kuleana and adoption of the Water Use and Development Plan for Keauhou, which is the County's kuleana, after and then gets approved by you, gives the framework for looking at not well by well impacts, but regional impacts. Of course it's a single aquifer, so you can't say that this well is just going to affect this area. It's going to affect this area more but you manage it as a single aquifer because you've made the decision as a Commission that this is an interconnected water body. Particularly for the Water Resource Protection Plan, we all know and it's been alluded to in the staff submittal, there's this so-called high level water body which is really a slightly confined portion of the basal water body, inland. There's the basal lens, thin, shallow, very subject to over pumping, already significantly over pumped in some areas and then there's this deep confined ground water, fresh, below saltwater which has some level of connection and we have some data on it. But the Water Resource Protection Plan that is in place literally assumes it's all basal aquifer and sustainable yield is based on that. Particularly for wells in the high level and especially for the pending wells that people are thinking about putting into the deep confined water, people are going to try and say well we're going to take this much of sustainable yield, but is that overall sustainable yield for the aquifer really just applicable to this small deep confined area? Really, I think the job that the Water Commission has is update the Water Resource Protection Plan, talk about how these are three separate parts somewhat connected, somewhat disconnected from each other, probably adopt different sustainable yields for each of those which you could then start to assess impacts of development of those things. Then, it would be really a good time for the County to develop the Keauhou Water Use and Development Plan because if they try and update it now without having an updated Water Resource Protection Plan, all they have to do is they have to write it in compliance with the Water Resource Protection Plan. If the Water Resource Protection Plan says it's all a basal aquifer, that's pretty hard for them to do and if you go through these steps, then you can actually get to, okay, in the context of overall protection of the resource in this area, how do we think about the impacts of this particular well? Whether it's our wells coming up, whether it's this well or whether it's other wells that are coming up. It's really I think the kuleana you guys have and the concern I have is that there has been a lot of conversation since 2007 and before, but there is this pattern of we'll get to it, we'll get to it. We'll get to it, but we got to get through this thing now. We'll get to it, we'll get to it, but at what point does this Commission say, okay, we got to get to it because it's jamming everybody up on this back end when they're just trying to develop a project. My list, by the way of things I've seen in documents, there's at least 14 pending

wells in Keauhou, 12 of which are production wells which include wells proposed for the basal, the high level, and the deep confined. It's not a small amount. I'd be happy to answer any questions.

CHAIR CHANG: Can I ask you and I greatly appreciate your testimony and the articulation. I just want to confirm, is your testimony that until CWRM adopts the Water Resource Protection Plan one, two and then the County adopts the Water Development Plan, that no further well should be developed in this aquifer?

DR. JONATHAN SCHEUER: That is not my testimony, to be clear. Water Resource Protection Plan was adopted in 2019, there were concerns at that time that it was not reflecting these water resources. The Keauhou Water Use and Development Plan was partially adopted in 2017, but never confirmed by the County Council. That's seven years now. Since then, the Water Resource Protection Plan is already overdue. I think there should be some focus and attention paid by this body to updating those so that not every well coming up suffers from, oh, do you want us to wait till those are done? The Department's testimony specifically on this well is regarding the concerns raised by NHLC (Native Hawaiian Legal Corporation). We don't want to see this go into contested case, it will harm us as well as the well applicants and there's been, from what we've heard, some concerns about whether or not Ka Pa'akai is complied with. I'm talking to you both about specific comments on this and the overall context that we're facing here.

CHAIR CHANG: I don't want to misrepresent, so what is your position? From DHHL's perspective, can the Commission approve this well?

DR. JONATHAN SCHEUER: What our testimony is, to state it again what's in our written testimony, we're encouraging you to be very deliberate in determining whether or not the concerns that have been raised by NHLC regarding compliance with Ka Pa'akai, including the things I mentioned like do you have evidence in the record, your own possession that's not being considered?

CHAIR CHANG: Evidence meaning?

DR. JONATHAN SCHEUER: On the existence of impacts from further water development in this area and traditional and customary...

CHAIR CHANG: And you're referring to [inaudible]...

DR. JONATHAN SCHEUER: Among other things as well as scientific information that has been published about the interconnection between high level, deep confined, and basal groundwater. Do you have that evidence, do you have information on the record that you're not considering? To me, that would be if I was sitting in your shoes like, oh, wait

we want to make sure if we're making, you have your information from the applicant, but then you have to make your own independent findings on Ka Pa'akai, right?

CHAIR CHANG: Based upon the report that you're familiar with and what you've just cited, what did those findings provide us if we had them before us? What would they tell us with respect to this particular well?

DR. JONATHAN SCHEUER: With respect to this particular well, I was familiar with, so just again to be really clear, I'm here on behalf of DHHL. I prepared those reports when I was working for a former client which I no longer work for. I'm not representing the National Park Service, I'm here representing the DHHL, but you're asking about my former work with the National Park Service. Those reports included one report from a National Park Service hydrologist which concluded that based on all the available evidence they had including on biological indicators in the park that if you maintained existing levels of withdrawals that impact the park, the park would be okay. But if you go beyond those, if you do additional water development, they would expect to see significant harm.

CHAIR CHANG: Significant harm specifically to?

DR. JONATHAN SCHEUER: Again, not one of the pair of reports that was requested by the Commission that I prepared, so now I'm digging into my memory and they are in your possession. It was by Dr. Paula Cutillo. One of the things had to do with the salinity impacts on the nymph stage of a federally listed, endangered damselfly that the non-scientific description is like, there's a goldilocks zone for it. If the anchialine pool is too salty, it cannot reproduce or mature to adulthood. If it's too fresh it cannot...it has this happy median. There were things about limu and the juvenile stages of water birds that actually require certain access to fresh water before they fledge, if I recall correctly. Then a report that I did along with Dr. Bianca Isaki looked at historic, existing, and planned future traditional and customary practices at the park, including practices related to some of the resources referenced in the first report. But again, just to be really clear you're asking me about work that I did and DHHL's position is that we just want you to be thorough in your decision-making so that there's not a successful contested case, so that this well can go forward.

CHAIR CHANG: It's very difficult to distinguish because you are relying upon those previous...

DR. JONATHAN SCHEUER: It's part of your record.

ASHLEY OBREY: Thank you, Ashley here. I appreciate the opportunity to clarify a couple things. To be clear, the Water Commission should not be able to adopt mitigation measures before impacts are properly considered and assessed. Chair, you asked if it's

okay to add these conditions when there may be an unclear picture of impacts and I think more conditions are always better and I think that's where my agreement was, but the bottom line of the argument is that mitigation is meant to address specific impacts. We have to study them, you have to analyze them, and asking if monitoring is an appropriate mitigation measure assumes that you know what you're mitigating for. It's a hard question to answer from where I'm sitting, but ultimately Ka Pa'akai cannot be completed without that. I think this has been said already, so I can skip through it more quickly, but the Ka Pa'akai analysis obviously didn't address that National Park Service report that identified traditional and customary practices and other reports and studies in the record that could have contributed to some of the analysis of impacts which would be important to Ka Pa'akai. That's the one issue and then the second issue, let's assume we can get to this mitigation, our other point was that as drafted, these conditions aren't crafted in a way that really allow you to do your job in order to really understand the situation and understand how to make it meaningful. The triggers can't really be based on feelings, a feeling of being concerned. I think there needs to be something more solid. The County admitted this is the start and I think Jonathan added to it with what other wells are coming online, but this is the precedential thing. This is setting the standard for what's to come in Kona and stepping back as I mentioned as Jonathan just mentioned, there are all these plans that you're obligated to do to ensure that your decision-making is consistent with the Water Code and with all the different factors you're supposed to consider when making these decisions. And this goes beyond Ka Pa'akai, so that still exists even outside of the Ka Pa'akai issue. I think just ultimately Hui Ola Ka Wai felt left out of the process, we had concerns, we were basically asked to bring them here because they weren't answered and I'm still a little baffled as to why some of the questions weren't answered because they weren't really complicated, I don't think. But here we are and I appreciate not wanting to be the bad guy that holds things up, that's not the intention. I live in that community, this stuff is important to me personally, as well. I think things got to be done right, that's where things always go wrong. The process isn't followed and something that could have been good for a community and I'm not saying whether or not this particular well is good but doesn't get a chance to go because things weren't followed properly. I think that's it unless you have any questions.

CHAIR CHANG: I have a question. Would you agree that Ka Pa'akai is personal? That a person who is asserting traditional and customary practice that you have to prove that you are being impacted by this project, but it's not just any Native Hawaiian. I couldn't be someone from Moloka'i coming over to Keauhou saying, oh, I have a traditional and customary practice there. You have to establish how this particular project impacts your traditional and customary practice. That's how I read Ka Pa'akai. Do you read it differently that it is broader?

ASHLEY OBREY: I mean Ka Pa'akai as a framework an agency must follow to make decisions, I see that as separate from whether someone has a valid practice.

COMMISSIONER KAGAWA-VIVIANI: Are you asking if somebody needs to be a lineal descendant?

CHAIR CHANG: No, as I read Ka Pa‘akai in the Constitutional obligation, it says that you have to establish that you personally or you are descendant from someone who has traditionally customarily practiced in this particular area that’s being impacted by the proposed project. That’s how I read Ka Pa‘akai. Do you read it that any Hawaiian can come and say, I’m being impacted by this? I’d like to understand your client, their connection to place and what impact are they asserting is being or what traditional and customary practice are they asserting is being impacted by this particular well construction?

ASHLEY OBREY: I have to go back to where I was going earlier to say that how Ka Pa‘akai is a framework for an agency and I understand what you’re saying, I think you’re talking about like standing and maybe I’m muddying things in my mind. But Ka Pa‘akai, it’s just whether or not an agency went through that process. Did you identify these practices and these resources in an area? Did you identify the impacts that will likely occur from this planned action and have you considered what action you can take to mitigate those impacts? That’s one thing, claiming you have a traditional and customary practice that is being affected, it’s obviously related because that’s an impact that’s someone that’s been spoken to, but it’s a separate, it’s a different obligation.

CHAIR CHANG: I see the law differently, I see our constitutional obligation based upon the same analysis that as an agency we are required to go through that analysis so the facts that were presented at least by ‘Aha Moku at the time of the 2022, the hālāwai and the requests that came in. You’re requesting here today this contested case based upon your client’s impacts. As I read Ka Pa‘akai, if we go back and we look from the point of the original case, I want to say Kapuniai, but not Kapuniai, Hustus versus. First, we started from you have to live in that that ahupua‘a, you have to be a descendant and then the court said, no you can be brought. But even under Pele Defense Fund, you have to show that you practice. It may not have been from [inaudible], but your practice and they did substantiate that they practice, even if they are from Moloka‘i, they practice the religious practice. In my mind when I look at that constitutional obligation and the line of cases, you still have to have a traditional and customary practice to place that has to be impacted. Traditional Hawaiians that at least the way that I was raised, it’s maha‘oi if I’m from Kāne‘ohe, I do not go to Kona and say, okay my family. I’m trying to understand what is the practice, what’s being impacted, how are your clients being impacted by this particular?

ASHLEY OBREY: That’s fair. Our client, and I’m sorry if I didn’t make that clear earlier. I think in previous testimonies we’ve talked about it, but Hui Ola Ka Wai has maybe about 20 to 30 odd members including ‘ohana. It spans people who are fishermen, gatherers, kia‘i lokoi‘a, so there’s a good majority that works at Kaloko Fish Pond on the

National Park Service property and they exercise traditional and customary rights along the shoreline and particularly at the fish pond, as well. Some individuals that are part of the hui were among the people that former Deputy Kaleo Manuel talked with in the first go-around of Ka Pa‘akai. If that’s the point we’re trying to get at, yeah, it definitely goes without saying they have an interest in terms of their rights being affected by any decision.

CHAIR CHANG: I’m trying to understand it, are your clients, is their assertion that pumping this well is going to affect their ability to continue to gather?

ASHLEY OBREY: Yes, but the assertion is in specific legal issues is that Ka Pa‘akai hasn’t been complied with, that there’s issues with upholding duties to the public trust, for failure to study the impacts and understand the impacts, not being guided by these plans that should be in place prior to decision making.

CHAIR CHANG: Are you saying that we have to make an exhaustive research?

COMMISSIONER KAGAWA-VIVIANI: May I make a suggestion? One thing I noticed in reading this submittal was I compared 1d from its original form and its current proposed form and the big difference between those two, I think there’s a lot of merit in switching the monitoring from offshore to onshore. I think we can all agree, but one thing that got lost was this consultation. There’s that very first sentence of 1d in its prior form and I think it’s important to preserve that. I think that’s maybe what Ashley Obrey is speaking to is that actually if you look at 1, I can read 1d in its original form and I think it’s important. I was going to make a suggestion that we put it back in and also because NELHA has already sort of engaged with it. We just need more...

CHAIR CHANG: Because that was my understanding of what we had asked them to do, at least I had asked them to do is you need to do consultation, not the Water Commission, but NELHA has to do that consultation.

COMMISSIONER KAGAWA-VIVIANI: But read the terms, so 1d as proposed is “NELHA and HHFDC shall design, fund, initiate coastal groundwater monitoring program”...But the initial started as “working with practitioners and ‘ohana to determine what resources to inventory and in coordination with DAR to avoid duplicative efforts, the applicant shall fund, design, implement...” I think the loss, even though they engaged in it, the loss of that sort of erases well one, that’s our documentation. If we adopt 1d as proposed in this submittal, someone reading this two years down the line will say, oh, well you know this is the template, we don’t have to consult. What I’m saying is I think preserving that and then it’s going to ask, I was going to ask for a deferral so we could do a little bit more homework and they met with many people. Can we get letters of support that demonstrate that they do have the support they claim they have and mostly, basically to show that we are asking our applicants to do what they need to and that we’ve done

our homework, that they've met these benchmarks because they have done it but are not showing it on our records.

CHAIR CHANG: You're right, there hasn't been good administrative documentation. My recollection is that when they came to us last month, they said they had met with 75 'ohana, organizations and I did ask and had encouraged staff and NELHA to include that as part of the record because you're right, the record as was submitted, there's just a few testimonies. In my mind that's what I thought they were doing, they were consulting. Again, I'm wondering what is, I am in no way going to in any way dismiss Ashley and her clients because they come forward with legitimate concerns and she participated, but how far are we required? Because we're not doing the consultation, we have to build our record based upon what they submit to us.

COMMISSIONER KAGAWA-VIVIANI: Right, we can ask them to submit documentation and especially if a stakeholder or community member doesn't feel consulted, if we can help facilitate that. And the reason is, I think we can have a better monitoring program because of it. I'm doing this right now, I'm scoping 'Ewa. I'm being like, you're in this pūnāwai, what do you care about? I care about the fish, I care about the 'ōpae'ula, I care about this, and they all care about different things. Those are bioindicators that when they see the fish going down, they know something's happening up mauka. I'm bringing this up, it really speaks to the broader issues of a lot of our addressing of traditional and customary practices seems to be very surface water focused. Kona is 100% groundwater and we as a Commission need to do better at understanding and we are behind, but we can catch up as fast as we can. This is not just an us thing, it's groundwater management everywhere. What we don't see is really hard to manage, but I think with kia'i lokoi'a and a current practice of kilo, I mean basically NELHA's engaged in kilo with sensors. This is what I do in a professional setting, but what else can we learn from watching the organisms that in my mind are integrated biosensors? They integrate information on what species limu is growing and when that limu changes, the fish go away because their food isn't there. We can have better science and the hard part is I'm an ecologist, but I'm also a hydrologist and I know these guys speak different languages. We do need to sit down together and kind of work through what's called the grown zone of not understanding each other because I'm very hopeful that if we can get through that part, we'll have a much better system. Communities don't have money to put sensors in with \$1000, \$10,000 loggers, but what if we partner? Folks who maybe have been here for two years or 10 years don't know what folks who've been here for generations know about the resource, so how can we not go into more conflict but use this as an opportunity to really try and understand those different perspectives and get them together. For me, it's what are those things that we should be kilo-ing and watching and what's the frequency? When I design a study, this is like Red Hill, you monitor monthly, you're going to miss that [inaudible]. What is the frequency of change? Some things if you worry about PCBs and sediment, they're not going to change, monitor once a year. Other things like flows or I don't know, nitrates, you're going to have to measure more

frequently and then when you see something collapsed, you know it's because this happened or that happened, the spring went down because they were pounding piles for the rail. They have information that is very useful for us to use as management. I don't think we've been tapping it, maybe this is an opportunity. Sorry, I'm heated because this is stuff I really care about and I think it's also an imperative for us on the Commission to, groundwater is really hard, but I think especially because it comes up on Maui and Hawai'i Island. Our younger islands are very porous, you don't have the luxuries of caprock as much and so it's going to require different way of doing things.

CHAIR CHANG: I'm trying to figure out a process. I got a request for contested case hearing, but I'm also hearing from Commissioner Aurora a potential recommendation that may address some of your concerns. Because we can't even entertain a motion if there's a contested case hearing and you can always request a contested case hearing so long as it's before the close of the meeting. It is up to you, but would you consider withdrawing your contested case, let's see what Commissioner Viviani comes up with, and then you can decide. Or you can still do your contested case and we can at this point in time after the last, you'll be the last, we can take no action. Sorry to put you in the position, but she may be able to address both Jonathan as well as yours. She may or may not, but she's trying to come up with...

COMMISSIONER KAGAWA-VIVIANI: It's worth a try, I'll take a shot. I won't take it personally.

CHAIR CHANG: If it avoids and gets us closer, it's worthy of trying. Up to you, Ashley. I will leave that up to you.

ASHLEY OBREY: I'll say that I don't think of a contested case hearing as having to be contentious or anything bad. I understand the not wanting to hold up the process and so I respect that as well. I'm happy to hear it, but my clients have sort of made a decision about wanting to make sure that the best information is before the Commission, but I don't think it's a bad thing to hear ideas because it's only going to make a record that you guys can maybe utilize in another meeting for another time, too.

CHAIR CHANG: You tell me what you want to do because what you decide to do may dictate what we do next.

ASHLEY OBREY: I'm happy to withdraw it briefly to hear this but knowing that I'm going to bring it right back after the close of her discussion, so I don't know if that's worth the Commission's time.

CHAIR CHANG: I think it's still worthy to hear what the Commissioners may be suggesting as it may create a path forward for your consideration. I am in no way telling you not to if you still feel like that's what your client requested, then you have to do what

your client requested. So am I hearing your willingness to withdraw your contested case, let's hear what Commissioner has to say, and then you can decide what you want to do?

ASHLEY OBREY: Correct.

CHAIR CHANG: Okay.

COMMISSIONER HANNAHS: My need for a biological break, give her five more minutes to revise.

20240416 4:13:15 – Break

COMMISSIONER KAGAWA-VIVIANI: I guess in my assessment of this submittal and the testimony and the knowledge I have gained in the last week about Ota Well and the broader context of Keauhou's, I'll just say, failed or non-designation, I think it would be helpful for this applicant to do several things and for staff to do several things to help us ensure we're making an informed and well supported decision. Because this is precedent setting, it will be scrutinized, etc. NELHA already has important baseline data, I think having as an addendum or I don't know the formal legal language, but having as an addendum a summary of their information to date of observations and trends would be very helpful documentation. From NELHA and HHFDC, letters of support from the community consulted and maybe a template but also maybe their specific suggestions of reflecting the conversations that the applicant has had with their 75 to 100 folks connected with. I think that will demonstrate that the outreach was effective and that there is broader support, especially if it can speak to the traditional and customary practices that we need to make sure are addressed as part of our mandate. Then the proposed details and maybe it's framed and written in a way that it's not committing them, but proposed details of monitoring. They've done this a little bit, they've indicated two sites, but a little bit more detail since they have done consultation on the metrics whether it's physical, they spoke to the physical and chemical, they did not really speak to the biological [metrics] or in any detail. So give us more details on that and especially the sampling frequency for each of those. I propose if they can develop their vision for what that monitoring could be done, what could be done in collaboration, as what I call community science or citizen science, that would be really compelling. Then on the staff side, I think we need to provide ourselves a more rigorous summary of the published information, specifically three things and then a fourth item. 1) The current state of knowledge regarding the hydrogeology of Kona; there's lots of studies but synthesize the information on the features of interest: the high-level water, the basal, the deep confined, and specifically the connectivity of those and base it on the geochemical and geophysical studies. That is sort of Ryan Imata's and contacts' wheelhouse. 2) Then what Katie spoke to about GDEs, can we document the current state of knowledge regarding Kona groundwater dependent ecosystems. I am not very familiar with them except for anchialine ponds and 'ōpae 'ula, but there are multiple species that are of management

concern and they're documented by the National Park Service, so let's use that. Which species, where they exist, any information on their life cycles including sensitivities, goldilocks effects, whatnot. It's helpful to have that information in the record. 3) And then potential or established linkages to traditional and customary practices if they're ecological. I also know there's pa'akai making in the area, so there's other traditional and customary practices, so that's the third item for staff. While it's the job of the applicant to do the Ka Pa'akai analysis regarding traditional and customary practices, we need to make sure that we are competent and knowledgeable enough to evaluate that. If we have a report from the National Park Service, offer it there or maybe other reports. I don't know if Kumu Pono Associates has done work in this region. We should be using the best available information to evaluate applicants on their Ka Pa'akai analysis. 4) Finally, a fourth item would be to at least begin to propose mitigation options. Say if monitoring revealed a trend towards detrimental effects and assuming we are sampling at the frequency needed, what are the course corrections? Is it halt pumping, is it step it down? Provide scenarios. Yes, we don't know exactly everything, but we can show that we are thinking about it in intelligent, articulate ways and leave that as a paper trail to show that as a Commission, we are doing our best to make informed decisions in a complex system. We can't just say it's hard, and that there's no effects. That's logically problematic, so I don't want to be negative, but I think three things again. Addendums from the applicants and then staff come back. What I would like to request is a deferral, but I would want to know from staff how long it might take? I think it could be doable within two months, but that's my thinking.

GREG BARBOUR: Thank you, Chair. A couple things I wanted to point out is that the National Park Service is in a different aquifer from where we're drilling this well and the National Park Service itself pointed that out to you in their initial letter in 2018. So, any study done on groundwater impacting the park is a different aquifer. I think it would be hard to infer any implication on the adjacent aquifer. Number two is unless I'm mistaken, I thought the staff submittal indicated that they did the Ka Pa'akai analysis. If that's not correct, we should further understand that, but it was very clear that the staff did that. I think Dr. Leonard wanted to say a few words, thank you.

DR. ALEX LEONARD: Chair Chang, aloha, members of the Commission. I would like to clarify what Director Barbour just referred to, the aquifer. He's thinking about it differently than you would. Obviously we are all of the same Keauhou Aquifer; however, I think it's reasonable even the hydrologists, even the National Park will recognize that not all water flows everywhere and that the waters that flow from the Ota Well catchment area are likely to not flow towards the National Park and therefore it's highly unlikely, there's virtually no scientific support for the concept that this particular well would have any negative impact on cultural and traditional practices that are taking place at the park. Which I think goes to your question, Chair Chang as to what Ms. Obrey referred to as standing with respect to questioning the Ka Pa'akai analysis. To Ms. Obrey's concerns about not answering some of her questions, specifically the details of the monitoring plan

and this also goes to Commissioner Kagawa-Viviani's comments. There were no specific details attached to the original wording of condition 1d. It was in fact left entirely up to NELHA to determine what would be an appropriate sampling program and monitoring program in this respect had we gone forward with that. We specifically left those details out of this revision for that very same reason, believing that it was not just up to us to decide what the parameters should be, but through consultation with community and subject matter experts. I am not a hydrologist, I'm not a geologist, I'm a PhD marine biologist. I know more about fishes and limu than I know about rocks and so I would want to rely on input from subject matter experts in determining what are the appropriate parameters and the frequencies of sampling, of course. Of course we understand the relationship of sampling frequency relative to time variant changes. The sampling program was not described in detail is not because we haven't thought about it, but because we didn't want to impose it at this time because I don't think that anybody in this room or that room right now knows exactly what we should and should not be sampling and measuring for. I think that's a subject for discussion that can be had as the project moves forward. That was always our intent and going to the Ka Pa'akai analysis, when this project was initially started, state agencies, that wasn't even a word that was being passed around at the time. It was just coming to the level of consciousness of State staffers and it was the Commission itself that directed CWRM staff to undertake the Ka Pa'akai analysis as a condition for non-designation. That was always understood and I believe that Mr. Hardy would testify to that fact. In fact I believe that staff under his guidance did conduct what they felt was a sufficient Ka Pa'akai analysis, now whether that that is in fact considered sufficient now and I certainly understand that perspective has changed. Chair Chang has made very clear that she believes that it is the applicant who should be responsible for the Ka Pa'akai analysis. I believe that that is a relatively recent focus and we were all coming to terms with it. I still have not found a public servant who really understands what the Ka Pa'akai analysis really is and what it should look like, how it should be done. We're all trying to figure this out and we're happy to continue to figure this out. We're happy to continue to have conversations, but I think that it's important to take into the history of this project and our request. Finally, going to comments about triggers and responses. As I testified in the last meeting, I do not believe that it is up to NELHA or that that it is NELHA's purview to declare what an appropriate trigger is or response. We would collect data, but I believe that it is up to CWRM to figure out what to do with them. For example, one of the parameters that I believe is considered to be very important in my discussion with some subject matter experts is to measure the thickness and depth of the leading edge of the of the basal lens as it enters the ocean. That would be a very big indicator of the amount of flow through that system at that time, should give us an indication of water depletion should it be occurring. However, I'm not the person who's going to say, well, if it drops by 2% we need to do something. I don't know that, that's not me.

COMMISSIONER KAGAWA-VIVIANI: Let me clarify, that was something that I suggested the staff really should do, so I'm in agreement with you.

DR. ALEX LEONARD: Thank you, Commissioner. As to the responses, again I believe that that is up to CWRM and some hopefully community approved adaptive management plan that meets the various conflicting needs of the people who live here. With that I think I will finish talking, thank you.

COMMISSIONER KAGAWA-VIVIANI: May I ask a follow up question? Hypothetically, how much time would you need to secure letters of support from the people you were connected with in the community?

DR. ALEX LEONARD: We've done nothing but that since the last Commission meeting. A lot of the people that we talk to are very busy, some of them don't want to go on the record for whatever reason.

COMMISSIONER KAGAWA-VIVIANI: For those who are willing. I've done this before for my own research proposals is you provide the template and if they're willing to submit it in support, that's helpful documentation to know. Otherwise, it's just your word that you met with a bunch of people, but at least some of them I'm sure if they believe in this.

DR. ALEX LEONARD: I believe you should have maybe 10 or 12 such letters of support in your information packets now from people who have submitted.

GREG BARBOUR: Yeah, we had about 12 people that submitted testimony is our understanding.

DR. ALEX LEONARD: Not counting those who testified verbally today.

COMMISSIONER KAGAWA-VIVIANI: But these don't necessarily speak to folks who engage in say traditional and customary practices in Kona and I know you've talked to some, right? What we have are organizations that have economic interest in seeing water developed, but I think for us it would really be helpful to see the evidence that you connected with folks as you explained in your last meeting.

GREG BARBOUR: Just to be clear, we tried to connect with as many people that Deputy Director Manuel spoke with when he developed these conditions. We have no idea who he spoke to, we can't find anybody that knows who he discussed these proposed conditions with. We even asked Native Hawaiian Legal Corporation, could you let us know? They didn't respond to our request to find out who Deputy Director Manuel spoke with. He didn't speak with us, he never discussed those proposed conditions with us before he brought them to the Board, so we don't know who he discussed it with, we couldn't figure out who to follow up with. We did talk with 'Aha Moku, I thought they were going to be here today. I thought they presented a letter of testimony. We talked with

several other kūpuna in the area, I thought they were going to present testimony. Jerome Kanuha was here, he is a lineal descendant and I believe spoke for the [inaudible]. We can try again, we can do it in a month, we'll try again, but my point would be is we received no comments in opposition to our proposed modifications to the conditions. We didn't receive any opposition except for perhaps Native Hawaiian Legal Corporation who was asking for more information. I guess they would be the only ones in opposition.

CHAIR CHANG: Greg, I think for me similarly, it's having that administrative record documenting whether you get support or not. I'm all about process, who did you speak to, what were some of their comments. I mean the Ka Pa'akai analysis is based upon the facts that are presented to the Board. The Commission should not be doing any independent outreach, we should be relying upon...I looked at what was presented in 2022, 'Aha Moku testimony, some of the other testimony to help me identify what are the valued cultural, natural, and environmental resources including traditional and customary practices. I think Jerome Kanuha was very helpful, he's from that ahupua'a. I think that to me, especially by him saying he originally was opposed to this but now he has a better understanding. I think for me, what I'm looking for is a good record, one documenting who you spoke to. If you don't get any letters of support, I'm more interested in the process that you undertook to consult, from what period of time to now, who did you meet with, what were some of the information you shared, what were their comments? If you could include things that specifically related to traditional and customary practices because again, I know that you spoke to Uncle Charlie Young, you spoke to Jerome Kanuha, you spoke to other people from this area. Those to me are very credible people who come from the area who have in instances, do have a connection to the place. I think that's important, but that's not part of the record that's before us and to Jonathan's point, if we get litigated, what's the record that we're going to show to defend the action that we take? Right now, the record is a little sparse because we have a lot of what you're saying, not documentation confirming what you're saying. Again, I think to put you in the best light, it would be helpful to have that. What I'm hearing is one, Aurora came up with her recommendations, I also hear a request for a deferral to provide staff and NELHA opportunity to come back. I also know that NELHA has been waiting for a while and so time is of the essence. I'm hoping you still have those funds available, but what is a reasonable time in light of some of the comments that Aurora came up with for Ryan, Dean, you guys to address from staffs' standpoint and then Greg, from your standpoint to come up with some of this additional information to support your application? 30 days?

RYAN IMATA: If I can weigh in a little bit, I respect and understand Commissioner Kagawa-Viviani's request and even with respect to Ka Pa'akai and most of what has transpired so far. The Commission approved the permit and the Commission approved the Ka Pa'akai analysis back in 2022 so while I'm not necessarily adverse to providing, doing a deeper dive into the research, I think that that was kind of presented to the Commission in 2022 and was approved by the Commission in 2022. What we're putting forward is really just the amendments to 1a and 1d and I think what Aurora, part of the

things that she's talking about are maybe addressed in the Adaptive Management Plan and I think quite frankly I'm just going to be honest here, should have been really addressed in a GDE Symposium 2. Where does that leave us today and timewise? My thoughts are that given the fact that the Commission approved this, I think we should focus our efforts on looking specifically at conditions 1a and 1d rather than opening up the entire process all over again. That's kind of my thoughts and I think if we focus on 1a and 1d as the areas where we're going to put the scrutiny on, I think that we can come back pretty timely.

CHAIR CHANG: Except that, Ryan, I've got a potential contested case because I think there's concerns that we didn't adequately address Ka Pa'akai. I will tell you from my understanding of Ka Pa'akai, it is the Commission that's supposed to make the findings and I don't know whether there were findings in 2022. I think there was a report by the Commission and staff, excuse me, there was a report prepared by staff, but I think Ka Pa'akai, based on my understanding, the court cases require this body to make specific findings on one, identification of the valued cultural resources. What I'm hearing today is Ms. Obrey's clients are alleging that we haven't satisfied Ka Pa'akai analysis, the record, we haven't made those specific findings. I will say within the record there might be, but I don't know if in 2022 there were findings made by the Commission to do that. The court has said you cannot delegate that, so even to staff. I think we need to move on. Dean, listening to all of this, can you come back? First, let me ask Greg, are you willing to come back in 30 days? Now, I haven't even heard from Ms. Obrey, whether she may still file the contested case, but are you willing to come back in 30 days?

GREG BARBOUR: Sure, absolutely, but she said no matter what you do, she's going to file a contested case.

CHAIR CHANG: That's ok, I cannot, that's up to her, I'm just asking you. Dean, can you do that?

GREG BARBOUR: Yes, absolutely.

DEPUTY UYENO: You want us to compile all of the data and synthesize it into some summary? I don't know if that 30 days is sufficient.

COMMISSIONER KAGAWA-VIVIANI: Can you use ChatGPT? Sorry.

DEPUTY UYENO: What is that?

COMMISSIONER KAGAWA-VIVIANI: Oh my goodness. I don't know, if it was me personally, I'd need two months just because it's a bit of literature, but I don't know your guys' workload as the Leg(islature) eases off. Maybe it's possible to prioritize that and I am happy to help coalesce the researchers that might really help to vet it.

DEPUTY UYENO: I'm thinking minimum two months.

COMMISSIONER KAGAWA-VIVIANI: Yeah.

CHAIR CHANG: Okay, so I go back to you, Greg. Are you willing to come back? Now that, I haven't even considered the fact that Greg Barbour could ask for a contested case, but Greg are you willing to come back in 60 days?

DEPUTY UYENO: Another question, too, is the funding. You might want to get clarification on the availability of funding.

CHAIR CHANG: Their funding?

DEPUTY UYENO: For the well.

CHAIR CHANG: Oh yeah.

GREG BARBOUR: Yeah, we can definitely come back.

CHAIR CHANG: Do you still have funding for your well?

GREG BARBOUR: We have no funding whatsoever.

CHAIR CHANG: I don't mean to belittle that, but you still are going to move forward with the well, assuming you get the permit with these conditions?

GREG BARBOUR: Yeah. Just for clarification, we are in Governor Green's budget for \$5 million. House version did not include the \$5 million, Senate version did not include the \$5 million, but we could always ask the, I see Dean is back, the HHFDC board for approval to use some of their funds. Dean?

DEAN MINAKAMI: Yes, that's correct. We do have a budget for Ota Well, so if the permit were approved, we could move ahead with funding the house portion of the well.

COMMISSIONER HANNAHS: Can I be clear what we're looking for then? To satisfy Ka Pa'akai, we will have explicit identification of cultural practices in the area, we will understand the impacts upon the practices, we will understand if there is any need for a reasonable mitigation, there will be a record of how that was determined, who was talked to, who was consulted, what studies, what individuals were consulted so we know how that was determined. That technically is all the promise of the applicant, then there will be your analysis, staff's analysis as to what you feel about that so your record may be determination of the record presented us from the applicant?

DEPUTY UYENO: I'm going to ask Commissioner Kagawa-Viviani, could you share the writeup that you had with me then I can share that on the screen if you want.

COMMISSIONER KAGAWA-VIVIANI: It's on my Evernote, I will email it to you, how about that? Does that work?

DEPUTY UYENO: That works.

COMMISSIONER KAGAWA-VIVIANI: Sorry, this is me thinking aloud, wording.

DEPUTY UYENO: Sorry, I was going to try and type it while you were talking, but...

COMMISSIONER KAGAWA-VIVIANI: No, I don't provide the most straightforward sentences.

CHAIR CHANG: We may not need specific language, but...

COMMISSIONER KAGAWA-VIVIANI: It might take like 10 seconds to get through.

COMMISSIONER HANNAHS: While she does that, can I ask a question of the Chamber of Commerce, Ms. Laros? If she's still there?

WENDY LAROS: Hi, I'm here.

COMMISSIONER HANNAHS: To what extent does the Chamber offer any educational classes or sessions for discussing the importance of investment in water source protection since they're all users of the resource? And resource monitoring? We had an earlier discussion on the importance of having that data in order to make intelligent decisions about allocations and development of water resource. Are you doing any of that? Thirdly, does your membership have a good understanding of Ka Pa'akai analysis and why that is so critical to bodies like us? How the decisions or the submittals that come before us for which somebody is waiting for a resource to develop a project and so forth must go through the analysis that we're talking about. The more our public knows the responsibilities of the Commission and the framework of balancing that we have, the more efficiently we can process things. I just wondered if you're doing anything at your level as an affinity group for business to promote a better understanding of the responsibilities and why that's important.

WENDY LAROS: Thank you for that question. We have an economic development committee and during COVID we went to all virtual meetings. We have over 50 people on that committee, it's chaired by a gentleman named Ross Wilson, Jr. He's been in the community a long time, from Hawai'i. What we've done over the last two plus, we've

had water development as a top priority since the end of 2021, so all of 2022, 2023, and now we're into 2024. Through our economic development committee, we've actually had Chair Chang has come and spoke with us, we've had, it was Lt. Governor Green come speak to us about water, we've had, is it Leimana DaMate came and spoke to us about Ka Pa'akai. She came and gave us an overview along with Charlie Young. They both presented and so we've been educating our membership through that conduit, economic development committee. Then last year we did a mayor's luncheon up at the Hāpuna, the Westin Hāpuna, you know that property and we did three different panel discussions on our top priorities of housing, water development, and we also have astronomy. We did have Keith was part of the panel, Greg was part of the panel, and we had some County, Mayor, that kind of thing. We actually had a panel discussion for our entire membership, anyone that came. There were about maybe 220 people that attended that. A lot of people after that event were very surprised, their big aha! moment was how crucial water development is in West Hawai'i to all of the rest of our needs, which like I said in my testimony, how important housing is. How important housing is not just for the overall community, but our employers need employees, and employees can't find affordable housing. It's all connected and so we have been doing quite a bit with our entire membership and the West Hawai'i business community on educating them about this important topic.

COMMISSIONER HANNAHS: Thank you, I appreciate that. Wendy, thank you for those efforts.

CHAIR CHANG: Ok, with that, I'm trying to think procedurally. I think we completed discussion, we've completed public comments, were you going to make a motion?

20240416 4:54:57 - Motion to defer (Meyer)

CHAIR CHANG: Before we take an action, Ashley, I'm going to give you an opportunity. Are you going to request a contested case hearing or are you going to wait for 60 days?

ASHLEY OBREY: I've given it a lot of thought and I think the kind of information that Commissioner Kagawa-Viviani is trying to get is the kind of thing that I think we're looking for in the first place out of a contested case hearing. I have a very high expectation for 60 days from now if we aren't going to go forward with this contested case hearing request, but I think if that's...we are going to stay withdrawn.

CHAIR CHANG: I greatly appreciate your willingness to work with, I would urge you if you would prefer to send comments directly to CWRM, comments that you may have about your members, their practices. Please feel free to send it over to them. The more information we have about your concerns, copy NELHA and HHFDC as well, but the more information we get, it only helps us make an informed decision. I greatly appreciate

your willingness to work with us. I also realize while we're doing this, we'll see what happens in 60 days, but I think this is an attempt to try to address Jonathan's question about minimizing risk and recognizing we have greatly appreciated your comments as I think we have seriously taken them into consideration.

ASHLEY OBREY: Appreciate that.

CHAIR CHANG: Unusual, yes.

DR. JONATHAN SCHEUER: With the chair's discretion, just to really emphasize the position of DHHL. We want this not to get caught in a contested case. Really appreciate the move to deferral and the deliberations that you've had to the degree that we as a beneficiary but not the applicant can be somehow useful to the applicant to NHLC or you guys in this process, we would hope that you would call on us over this next 60 days.

CHAIR CHANG: I agree. I would urge Greg, Dean, reach out to Jonathan. Jonathan, if they don't call you, call them, whatever you guys do, but I think we just want the best information before we make a decision and I think there's been some really good discussion.

DR. JONATHAN SCHEUER: That was the crux of our testimony.

CHAIR CHANG: Okay, fair enough and I think this is kind of a compromise, recognizing your concerns but yet time is of the essence. 60 days, everybody kind of agreed. With that, I'm going to call for the...

DEPUTY UYENO: Would it be appropriate for NELHA to reach out to NHLC and see if?

CHAIR CHANG: I was hoping that they were supposed to be doing that. We can't force anybody, but all you can do and I know they've told us that they've tried to communicate, now whether... You both can meet in the middle of Māmalahoa Highway in the middle, you meet at a particular time, meet on the shoulder, don't get hit by anybody, but however it would be beneficial. This is not the forum to meet for the first time, this doesn't help the Commission. Greg, he's hearing Dean, Ashley is here. With that being said, Greg you heard that? Ashley she said she'll meet you on the curb. He's got a thumbs up, thank you, thank you, thank you.

COMMISSIONER KAGAWA-VIVIANI: Can I just have a last point? I think it's sometimes very difficult for practitioners to have any trust with scientists. I live this, but I think there's more to be gained if we can find ways and it's not always malicious or intentional. It is just, speak to my own training, we have certain blinders and don't understand 'ōiwi ways of understanding place or seeing land. I think if we can understand

that we're looking at water from very different angles and find ways to really at the end, he ali'i ka 'āina. Think about that, maybe that's a way to kind of lay down the daggers a little bit and just try and see. I appreciate this Commission and the applicants for entertaining my soap boxing.

CHAIR CHANG: No, thank you for helping us find a path forward. We'll see what happens, but I think it is worth the while. Two months versus two years doesn't get us any closer. With that being said I'm going to call for the vote.

20240416 05:00:50

MOTION: (MEYER)

To defer submittal for 60 days pending receipt of additional information and staff analysis.

UNANIMOUSLY APPROVED

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

20240416 05:01:15 – Lunch

20240416 05:36:32

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

3. Briefing on the FY24 Congressionally Directed Spending Funds Awarded to the Commission on Water Resource Management

PRESENTATION GIVEN BY: Katie Roth, Planning Branch Chief

Staff provided an overview of Congressionally Directed Spending and the projects that will be funded by these awards which include sealing abandoned wells, Hawai'i Mesonet Network, water security audit and repairs, and deep monitor wells. *Chair Chang not present.*

QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: The "we" is CWRM itself? The State of Hawai'i?

KATIE ROTH: Yes, myself and Kaleo put together project proposals and then we talked with our Congressional delegation, their staff offices and basically put forward project ideas, funding proposals and submitted those.

20240416 5:37:49 - Katie Roth resumes presentation

COMMISSIONER KATAYAMA: How many wells does the \$2.4 cover of the thousand?

KATIE ROTH: Of the wells, how much would it cost?

COMMISSIONER KATAYAMA: How many wells can you seal?

KATIE ROTH: That's a good question. Aback of the envelope estimate, it can be quite expensive, so my estimate would be maybe three or so based on what I've been told. I think it depends on the well site and what actually is needed to seal the well, but it can be quite expensive is what I've been told.

COMMISSIONER KATAYAMA: This earmarking request would go on every year then?

KATIE ROTH: No, this is a one-time thing.

COMMISSIONER KATAYAMA: No, but for this kind of project.

KATIE ROTH: It could be, yes. It could be something that we petition for funding again.

COMMISSIONER KAGAWA-VIVIANI: While we're asking questions, so DOH is also interested in it? I know that DOH also has funds that sometimes they can use. Could it be like a shared?

KATIE ROTH: Yeah, I'll talk about that in a few slides, but there is some matching requirements needed for this money. I'm in conversations with DOH right now to see if we might be able to take advantage of set aside money through Drinking Water State Revolving Fund. NRCS (Natural Resources Conservation Service) has also expressed interest in supporting this type of project so I'm talking to them as well.

20240416 5:39:36 - Katie Roth resumes presentation

COMMISSIONER HANNAHS: Does it have to be public money match?

KATIE ROTH: No.

COMMISSIONER HANNAHS: If we had a landowner or some developer of an asset, we could leverage their?

KATIE ROTH: Yeah, I believe we could. I'd have to look at the EPA guidelines.

COMMISSIONER KATAYAMA: It just can't be government match, federal government.

COMMISSIONER KAGAWA-VIVIANI: I think it can't be federal.

KATIE ROTH: I have to look at the guidelines, but I don't recall there being major restrictions on match. I'd have to consult the guidelines.

20240416 5:42:05 - Katie Roth resumes presentation

COMMISSIONER MEYER: Do you have a distribution on the abandoned wells, where they are?

KATIE ROTH: We do. I think we developed maps, too. I think we have visuals of where those would be. I know we have a spreadsheet that's organized by island.

COMMISSIONER KATAYAMA: [inaudible] sugar and pineapple.

COMMISSIONER MEYER: Don't we use just surface water?

COMMISSIONER KATAYAMA: No way, if surface water is 200 feet deep.

20240416 5:42:52 - Katie Roth resumes presentation

COMMISSIONER KATAYAMA: Congratulations, good work.

COMMISSIONER HANNAHS: Do I read these as these were our priorities?

KATIE ROTH: They were, based on conversations with staff, referencing some of our plans like the Kaua'i Water Plan.

COMMISSIONER KATAYAMA: So probably funding, right? Who has the money.

KATIE ROTH: Yeah, depending on what federal agency, what they could fund. Exactly, but obviously we've had conversations today about the need for more monitoring and things like that so those could be future projects in the pipeline. Mahalo to our Congressional delegates.

COMMISSIONER KAGAWA-VIVIANI: It takes a while to get here and then are you already thinking about the next cycle and there must be a seasonal rhythm to it?

KATIE ROTH: Yeah, right. I don't believe we've been contacted, but I'd have to double check with the offices, but I know that they were kind of delayed this year in getting the federal budget finalized. We just found out pretty late in the game so I don't know if that now stalls things for the next year.

COMMISSIONER KAGAWA-VIVIANI: It would be great to do more projects with DOH around wells in common.

KATIE ROTH: The CDS money is it's not restricted to state agencies. I know the County has applied and received funds, various county programs, I think even private entities can solicit for funding as well. My hope was just to kind of set a precedent internally for how we prioritize different projects even though we may not be the lead, we have a vested interest in seeing a lot of these projects happen to fulfill our mandates and public trust duties.

COMMISSIONER KATAYAMA: Do the projects have to be shovel ready?

KATIE ROTH: No.

COMMISSIONER KATAYAMA: As long as you can encumber the funds.

KATIE ROTH: Yeah.

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C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Update on Implementation of Waimea Watershed Agreement, Waimea, Kaua'i

PRESENTATION GIVEN BY: Dr. Ayron Strauch, Stream Protection and Management Acting Branch Chief

Staff shared a brief update on the status of the Waimea Watershed Agreement which is yet to be accepted by all parties. *Chair Chang present.*

QUESTIONS / COMMENTS

COMMISSIONER KATAYAMA: Can you go back to the previous slide, please? Do you have a guess on how much water we took over this past weekend and do you have a survey on what's left? Things like this I would think are at risk isn't it?

DR. STRAUCH: Believe it or not this structure has survived pretty high flows and Waimea's flows were not as substantial as Koloa relatively speaking or Wailua over the past weekend. I'll let...or Hanapēpē.

COMMISSIONER KATAYAMA: Or 'Ele'ele.

DR. STRAUCH: KAA (Kekaha Agriculture Association) has a camera on the system, so they should be able to know. I've been busy and I have not had a chance to reach out to see if their infrastructure is still in place. I'm sure they'll be available to answer questions.

CHAIR CHANG: I've got, are they here? Delanie and Josh.

DEPUTY UYENO: Josh Uyehara is here from KAA.

JOSH UYEHARA: Good afternoon, Chair, members of the Commission, Josh Uyehara here with KAA. On that particular question, I would actually defer to Mike Faye who's also on the Zoom, he's our Executive Director.

MIKE FAYE: Thanks, Chair, and Commissioners. The question I think was asked was did that infrastructure survive this past weekend? Yes, it did, it's operating well. One thing Ayron didn't mention is that besides the CWRM and USGS monitoring stations, we monitor the flows also at some of these locations, not all of them. That gate that is in that last picture that you saw, we have monitoring devices on there, measurements that we can take at that gate, so we know how much water is going out or we think we know how much. We compare it against the CWRM number just to make sure we're in sync. That survived. If you looked at that picture the water level basically came up to the that platform and the concrete structure over the intake screen and completely covered the whole bottom of the valley there. That happens about maybe half a dozen times a year.

COMMISSIONER MEYER: Just out of curiosity, how old are these systems? Josh, Mike, do you know?

MIKE FAYE: The original system was built in 1912 up there at Waihulu, the lower part in 1908. We installed that automatic gate about two years ago, three years ago.

DEPUTY UYENO: Let me just preface that. Commissioners, I know we had brought a stream diversion works permit application to you folks in January and that got deferred based on discussions that KIUC had proposed modifications to the diversions and installation of gaging equipment. With the withdrawal of the pump storage hydro project, you folks decided to defer that, so KAA, Kekaha Agriculture Association and Kaua'i Island Utility Cooperative were going to meet together on that and the plan was to bring it back to you folks at this Commission meeting. However, last week when we met with the parties, they are still in discussions as far as costs, but you folks had also asked for a briefing just to see where we are at on the implementation of the mediation agreement. That's why we asked Ayron to provide you folks that update. Dawn Huff is also here for KIUC along with their representative, Jordan Inafuku and they can have answer any questions we may have.

CHAIR CHANG: Dawn, did you want to share anything or are you here for questions?

DAWN HUFF: I'm just here for questions.

CHAIR CHANG: I see that your lawyer is here, too, Jordan Inafuku.

JORDAN INAFUKU: Aloha, Chair.

CHAIR CHANG: I see ADC, Lyle Roe is here. Did you want to add anything?

LYLE ROE: Nope, I'm just here to answer questions as they occur and as I can answer them.

CHAIR CHANG: Doug Codiga is representing.

DOUG CODIGA: Hey, good afternoon, Chair and Commissioners. Doug Codiga, outside counsel for the Kekaha Ag Association and Josh will be representing KAA. Just here to answer any questions.

CHAIR CHANG: I take it, Dean, they're going to come back after they've had more time to talk and resolve funding issues?

DEPUTY UYENO: Correct, I haven't touched base with them this week yet, but hopefully we'll bring that back to you at next month's Commission meeting.

CHAIR CHANG: Next month you think you'll come back?

DEPUTY UYENO: Hopefully.

CHAIR CHANG: Your report, it's independent of what KIUC, the withdrawal of the project? Okay. Delanie and Josh, Jonathan, or Ashley, do you just have no place to go and you wanted to stay with? You're welcome to come up.

DR. JONATHAN SCHEUER: Chair, for the record DHHL is one of the parties to the agreement and I like the rest of the screen am here to answer any questions if you have.

CHAIR CHANG: I thought you guys were hiding out over here with us or something.

COMMISSIONER MEYER: Chair, it's your fault, you gave them cookies.

CHAIR CHANG: If it only takes cookies, I'm going to bring a big jar next time. Ashley, did you want to add anything? Okay, just hiding out inside our boardroom here, but thank

you. I appreciate you guys being, everybody being available to address any comments that we have.

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D. ANNOUNCEMENTS

1. Waikoloa IFSAR Public Fact Gathering Meeting, April 18, 2024, 5:30pm – 7:00pm, Waimea Community Center
2. Kaua‘i Water Use and Development Plan Public Hearing, May 21, 2024, 5:30pm, Kaua‘i Community College

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E. NEXT COMMISSION MEETINGS (TENTATIVE)

May 21, 2024 (Tuesday)
June 18, 2024 (Tuesday)

The meeting adjourned at 03:30 p.m.

April 16, 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/>