

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

DATE: June 18, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 883 7811 5081

Online link to the video recording of the June 18, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/962656881>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 9:00 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, Dr. Lawrence Miike, Ms. Kathleen Ho

STAFF: Deputy Dean Uyeno, Ms. ‘Iwalani Kaaa, Ms. Katie Roth, Mr. Ryan Imata, Dr. Ayron Strauch, Ms. Alexa Deike, Ms. Alyssandra Rousseve, Mr. Nick Ing

COUNSEL: Mr. Colin Lau

OTHERS: Mr. Andrew Choy – Department of Hawaiian Home Lands (DHHL)

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

20240618 00:05:42 – *Katie Roth introduces Brittaney Key, who will be interning with the Planning Branch for the next six (6) months*

20240618 00:07:07

A. APPROVAL OF MINUTES

May 21, 2024

PUBLIC TESTIMONY – None

20240618 00:08:04

MOTION: (MEYER / KATAYAMA)

To approve minutes with non-substantive edits.

UNANIMOUSLY APPROVED

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

20240618 00:09:22

B. ACTION ITEM

- 1. Determination and Approval of Draft Agenda by the Commission on Water Resource Management Under Section 92-3.1, HRS, for the Commission to Conduct a Site Visit to Privately-owned Lands to View the Punalu‘u Stream Restoration Project Kamehameha Schools, Punalu‘u Stream, Punalu‘u, O‘ahu, Hawai‘i on June 27, 2024, as a Limited Meeting, due to the Impracticability of Public Attendance for Reasons of Danger to Health or Safety, or in the Alternative, that On-Site Inspection is Necessary for Future Stream Management Purposes**

PRESENTATION OF SUBMITTAL: Deputy Dean Uyeno

Before it may conduct a site visit as a Sunshine Law limited meeting, the Commission must determine by 2/3 vote that the site inspection is necessary to Commission business, and that public attendance is not practicable. The proposed site visit is for the Punalu‘u Stream Restoration Project currently being undertaken by Kamehameha Schools on Punalu‘u Stream in Punalu‘u, O‘ahu, Hawai‘i.

QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Thank you for the accommodation and the long memory. This goes way back. Please don’t just do this for me. I think this is a really amazing project and Kamehameha stepped up in a big way. We created the plans, but the heavy lifting was done after I retired and to the credit of the team there and their trustees who made that investment to restore a system to what it should be. The abuses of the past

in terms of really optimizing certain other values other than the value of the ecosystem there and the stream functions there itself, came at a high cost. That created great risk to the environment as well as to financial interests there, the homes that constantly got flooded and so forth. We've done that elsewhere, that's happened elsewhere and so we thought this would be a model or example to, what can you do? Can you go back and can you restore? I just thought it would be a worthy example for the Commission to review. Thank you.

COMMISSIONER KAGAWA-VIVIANI: I'll just say I remember before the restoration project, I was working part-time with SWCA with John Ford and Bob Kinzie, who has recently passed. Walking the stream - was like a highway - discussing the flooding issues. I've been out there and I think it's a really good opportunity to be on site.

PUBLIC TESTIMONY – None

DEPUTY AG LAU: Chair, can I add that because the title is determination of approval for the limited meeting, may we ask that the approval include approval of the proposed agenda?

CHAIR CHANG: Ok.

20240618 00:14:04

MOTION: (KATAYAMA / HO)

To approve staff recommendation and proposed agenda

UNANIMOUSLY APPROVED

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

20240618 00:14:35

B. ACTION ITEM

- 2. Modification of Existing Delegation to the Chairperson, Dated December 19, 2023, to Approve Certain Well Construction and Pump Installation Permits by Limiting the Delegation to Certain Circumstances When the Well is in Compliance with the Hawai'i Well Construction and Pump Installation Standards and for Pumps Less than 27 Gallons Per Minute and Delegation to the Deputy Director for Other Groundwater Permit-Related Approvals Including Acceptance of Applications for Initial Review, Permit Extensions, and Well Completion Reports and Certificates.**

PRESENTATION OF SUBMITTAL: Ryan Imata, Groundwater Regulation Branch

Chief

Staff recommended revisions to the delegations to approve well and pump permits, set by the Commission at its December 19, 2023 meeting, after the Commission's directive to consult with the Departments of Water Supply.

QUESTIONS / COMMENTS

COMMISSIONER MIIKE: Just to summarize then, basically any household domestic wells are below the line. That's why you picked the 27 (gallons per minute), right?

RYAN IMATA: Yeah.

COMMISSIONER MIIKE: And second, even if the delegation is given, in individual cases, that still comes to the Commission. When for example, what you're talking about, there's a cross between aquifers and surface water, etc. It's not an absolute delegation, it's sort of a routine delegation with exceptions, which when things arise on a particular application.

RYAN IMATA: Yeah, I was trying to identify any permits in the 27 years that I've been here, looking at where I think that there are going to be concerns. I would love to focus more of our effort on where I think that there are potentials for impacts to other resources or other users or traditional and customary practices or whatever. I think this is a good balance between filtering out things like individual domestic uses where the use is so small, relative to sustainable yield, but bringing to you the issues that are much bigger.

COMMISSIONER KAGAWA-VIVIANI: Thanks, Ryan, for this. I'm trying to read the esoteric document that is the Hawai'i Well Construction and Pump Installation Standards. I notice it was revised in 2004, but that's not referenced. You told us about the establishment in 1997, is there anything to note about that 2004 revision? I'm just going to say approval by the chairperson was noted about 40 times, so there was a lot of delegation already in that document. Can you kind of explain?

RYAN IMATA: I can't speak to the specifics of the differences between the 1997 and 2004 standards, but I know at the time that we first implemented the standards, we were having a lot of comments from drillers and developers and I think just the general public about things that needed clarification. I don't think the 2004 standards necessarily revised anything from a policy procedural standpoint, I think it was more details about construction, construction details that were amended. The delegations in and of themselves were kind of a clarification of the more routine things that we do, and not specifically permit delegations. I hope that answers your question.

COMMISSIONER KAGAWA-VIVIANI: Not quite how I read it, but I'm not a lawyer. The second question I had was around recommendation one. Ota Well was just on our radar, so I was going back and recalling that there were eight alternative actions for Keauhou non-designation and the first of those was, "the Commission will refer all well permit applications to 'Aha Moku.'" There's a clearly delineated process and so how would this proposed recommendation - I mean it doesn't seem to address that there are specific, close-to-designation areas that may be important for us to consider or for there to be a public process on. One, because it's already established that for Keauhou, there is a need to address the well construction or it says, "all permits." How are we folding that in? I was going to suggest an amendment there, but how are you considering the regional specifics?

RYAN IMATA: That's a good question. Here is the thing about Keauhou, and I can't tell you the answer to this, but I think there have been some statements, specific to Ota Well, that there was nothing in the eight requirements that required us to bring it to the Commission. But in my recommendation, I think where the Chair feels that there are things that the Chair wants to make sure that there's public disclosure on and the opportunity for public input on, we can take it to the Commission. Basically, what I'm proposing is not saying that everything blanket, gets delegated to the Chair. There are opportunities and I think Keauhou is one of them where the Chair can take the approval of the well permit and/or the pump permit to the Commission. Again, it's just very specific to the area, but like I said, I think most of the concerns related to the quantity of water and the potential for threats are first covered by the fact that most of those areas are designated Water Management Areas, so all of those are going to come to the Commission anyway.

COMMISSIONER KAGAWA-VIVIANI: Sorry, what I was referring to was places that are maybe near to designation or not designated. Just for the record I'll refer to February 14, 2017 - eight criteria were proposed as following actions as alternatives to designation. "The Commission will refer all well permit applications to the 'Aha Moku system for review and recommendations to protect traditional and customary practices that are exercised and may be affected by the proposed application. If traditional and customary practices are found in the proposed permit area that may be affected by the proposed action, special conditions will be suggested to mitigate the impact of proposal. If the well operator and land owner do not agree, then the staff will present applications to the Commission for decision making pursuant to HRS 174C-84(f) and HAR §13-168-12(h)."

I guess I just want to understand if we decide this, how do these two sort of decisions - just put like some address that there are certain areas that we will need to have more discretion on and not leave it up to the Chair who comes and goes and may or may not know about certain hotpots.

RYAN IMATA: I do see what you're saying in terms of, does this delegation supersede that. We can maybe add in some language in there to say that this doesn't supersede areas

where there are the Commission imposed requirements for things to come to the Commission. I agree.

COMMISSIONER HO: I have a question about the delegation. I understand that the proposal is to delegate to the Chair, I understand that. My question is, is this ministerial versus rulemaking? So it's a legal question. The other question I have, along the lines of what Aurora was mentioning which is, is there a certain criteria that is part of the recommendation for the Chair to make that determination as to what comes to the Commission? For the Department of Health, we have a statute that says if it is in the public interest to bring something to require a public hearing, the director may require a public hearing on a permit issue and in the statute itself it sets forth some criteria. It's a legal issue, I think, but I'm wondering how we would address that?

CHAIR CHANG: Good question.

RYAN IMATA: No, go ahead. I'm not the attorney here.

COMMISSIONER HO: In this case, I'm not either.

CHAIR CHANG: And I'm not rendering a legal opinion either, but quite frankly that's why I brought this to the Commission in December 2023 because I just felt that in light of the comments that we were receiving- and this came up in Hāpuna about traditional and customary practices, 343, that there seemed to be a question as to, shouldn't this be a matter that's really brought before the Water Commission? Not just delegated to the Chairperson. I think staff has tried to attempt to craft exceptions. I don't know if I would necessarily say it's ministerial because there are discretionary provisions that may be triggered. I think Aurora's comment is a really good one that there should be maybe a 1C that says something recognizing that where there are Commission decisions or determinations, that does not waive the Commission's right to oversee this. So something to that effect because I too, I felt really uncomfortable with this sort of unlimited delegation and that was more because I wasn't as familiar. I also thought that there are some things that should be brought out to the larger public. I think Ryan is talking also about the Ka Pa'akai Analysis, having greater guidance that can provide staff the opportunity. Also the public website - creating an opportunity where everybody can see all applications. Now whether that at least provides another opportunity for the public to know what permits the Commission may be looking at or the staff may be looking at. Balancing that against looking at all of the testimony that came primarily from the water departments, recognizing we've got to find a balance between how do we facilitate some of these smaller requests versus how do we differentiate those that do require greater review in a public forum by the Water Commission.

COMMISSIONER KATAYAMA: I was just going to ask, historically, how have we handled all of these delegations? Has it been rulemaking or has it been ministerial?

CHAIR CHANG: It's been through board action. The board has authorized...

COMMISSIONER KATAYAMA: So we are consistent with this action today?

CHAIR CHANG: Yes, I'm assuming that previously they were consulting with the Attorney General's office and the delegation was not rulemaking. I will say for the Land Board as well, there's a lot of just delegating to the Chairperson to negotiate a contract or 343. I don't believe this is rulemaking.

COMMISSIONER HO: I think the delegation itself is one action and I don't think that is rulemaking. I think we have the authority to delegate to you and that's not rulemaking. It's maybe some other aspects of it which is what criteria, and there's a body of cases which is why I thought it is a legal call, but there are a body of cases where internally the police department or an agency can set forth different criteria and that is not considered rulemaking. I just didn't know where we sit. The delegation I'm clear about, but where we sit on some other aspects of this request like 27 gallons per minute, like when the Chair is able to decide what should go to the greater Commission, those kinds of things. There are cases that address this which I'm just not familiar with.

CHAIR CHANG: Are you suggesting that we also seek Deputy Attorney General counsel on this before we take an action? Or Colin?

COMMISSIONER HANNAHS: Let me ask the question another way. Are you okay with the recommendations that are explicitly stated here that there are delegations subject to certain exceptions?

COMMISSIONER HO: I'm okay with the delegation itself. I think we can delegate to the Chair, I'm okay with that. It's the exceptions that I'm on the fence on whether we have the authority on the exceptions or do we have to do something more. In my former life, I remember that body of cases, I'm just not as familiar with that line of cases at this point and what I don't want us to do is to act on something and then get...

COMMISSIONER HANNAHS: So it's not the fact that we're making these exceptions, it's the fact how we do it, how we implement that.

COMMISSIONER HO: And whether we have the authority versus rulemaking. I'm just interested if to see if the staff has researched this, if our attorney general has some thought on this.

CHAIR CHANG: I think that's a valid question regarding whether the Chairperson, in its discretion to say, oh no I don't think this is of public interest, I'm not going to you know. I understand.

COMMISSIONER MIIKE: I really don't like what's happening here which is we're starting to get into such details of a delegation that it's going to be meaningless. The other thing is that I don't know of any bar that says we have to, if we're going to delegate, we have to delegate absolutely. We're only talking about delegating part of a decision making or a way of looking at things. I think it's irrelevant that we have to carve out exceptions and then we have to maybe look at rulemaking when we talk about delegation. When we want to delegate, we're going to delegate and I don't see any problems with delegating authority. Again, as I say, I'm concerned if we get into too much detail about what we're delegating, I'm fine with the language here and from the presentation that was given, the explanation is satisfactory to me.

CHAIR CHANG: Let me ask you, Ryan, did you consult with the Attorney General's office on this matter?

RYAN IMATA: No, but, Colin, I think you guys did review the submittal and I was trying to make sure that anything that was delegated wasn't - how do I say this? The delegation is for approval, so there's some discretion in what's delegated, but I was trying to take out the discretion so that I was being very specific about which things get delegated. Again, I can't comment on the legality of that, but I think if the Commission approved the specificity with which things have to go back to the Commission...I wasn't aware that that was a legal issue.

PUBLIC TESTIMONY

ROY HARDY: I'm here, thank you. Good morning Chair, aloha Commissioners. For the record my name is Roy Hardy, formerly Groundwater Protection manager for the Water Commission. I didn't really want to get into too much detail. I know I only got three minutes, but I was very happy to hear the discussion that the Commission was going through primarily about the issue of is this rulemaking or not. Just a little bit of background of some of the statements that were made and questions that were asked. Kagawa-Viviani brought up, I didn't even know, 40 times that delegation was mentioned in the 2004 Hawai'i Construction Standards. The 1997 and 2004 updates, there was a lot of public information meetings, meetings with the public, meetings with all the drillers. There were presentations at conferences all about these things and there was a lot of input. These took years to arrive at, these details, there are a lot of them, very complex. Some of the examples I was reading through in the submittal about this cross connection issue, it sounds like it's something new, it isn't. It's addressed already in the construction standards. Saltwater wells need to be solid casing all the way down to saltwater and grouted all the way through the freshwater to protect the basal aquifer. Similarly, if there's cross connections with perched aquifers while you're going down the fine basal aquifers, that needs to be closed off and those are in the sections of casing and grouting, as well. I was a little bit scratching my head on that, but all these details aside, it seems like and I

was happy to hear this thing - is this rulemaking- because this is going to affect everyone, especially when you're delegating with these exceptions. The first exception I can tell you - 1A, wells that penetrate to discrete water bodies. That happens a lot everywhere, almost. Almost all the wells on Kaua'i that happens, it's an old island so there's a lot of layers of low permeability where you run through and there are a lot of perched aquifers, confined aquifers. In East Maui, there's lots of perched aquifers. On the Big Island, Keauhou, there's lots as well. Overall, this seems like if you're going to make these kind of distinctions and exceptions, it really sounds more like an update to the Construction Standards themselves. If that's what's being sought here, if there's special cases so kind of a rulemaking thing. I would agree with what was discussed that maybe the AG should weigh in, sorry Colin, about whether this approach really is rulemaking.

Commissioner Kagawa-Viviani brought up Keauhou and all these conditions. Well, that's a special case because of the non-designation, so that's not really rulemaking. I think the first condition she read out was this collaborating, talking with 'Aha Moku and bringing construction permits and pump installation permits in the non-designated area if conditions that were discussed were not agreeable to the applicant. You actually had an example of that and that's why that special condition was put into the non-designation proceedings and accepted by the Commission of the Kohanaiki project which is right next door to the national park. Just through the regular process, the delegated process and discussing the applications, what came to be agreed upon by all the parties was, hey, put in these monitor wells, three monitor wells. They were put in and they're there and I think they've provided very good information which actually helped with the designation proceedings, as well. That was just codifying that special situation in Keauhou and especially with the interest in designation. I don't think that's a rule, it's just, here's this special place that there's a lot of concern and able to arrive at reasonable accommodations and conditions with the applicants and the people of that place. Again, I think my time is used up here but I do like the question - is this overall approach rulemaking or not? That's kind of my question, thank you.

ANDREW CHOY, DHHL: Aloha Commissioners, Andrew Choy with the Department of Hawaiian Home Lands (DHHL). The Department appreciates the opportunity to provide testimony on these items or this particular agenda item. First off, the Department was not consulted on this matter. We appreciate the importance the role that the Department of Water Supply's have in water development and delivery in Hawai'i and are glad that they were considered. The Department is both a water purveyor and public trust use of water, we however, were not consulted. We were aware of the agenda item when the agenda was posted and had access to the submittal on Monday which was also our Commission meeting. As Ryan acknowledged in his presentation, he did reach out to Dr. Scheuer over the weekend, but it wasn't really sufficient time for us to really digest this submittal and process its implications on the Department's ability to provide water to its beneficiaries. CWRM staff conversely worked hand-in-hand with us well over a month on another agenda item on your agenda today, so it can be done to reach out to the Department in advance, well in advance of this presentation. Also, secondly on transparency for DHHL

and other public trust users and the general public is still an issue. We appreciate that the submittal raises the importance of public information and transparency, however the recommended action especially to the extent that expanded areas of delegation to the chair depend on notice in the water resource bulletin, I think Ryan also acknowledged maybe posting these applications online. That is a good solution, but I think other solutions for transparency can also be explored, as well. Delegation removes due process for the expanded areas for delegation, well construction permits, certain pump installation permits. This will remove due process for the Department and its beneficiaries in all instances except when we are the applicant. Cumulative impacts are not addressed. While exempting some small domestic wells can make sense, even in those cases the cumulative impacts of multiple wells should somehow be addressed. This could be significant adverse impact to the Department and other public trust uses of water. Efficiency is a worthy goal, but the submittal lacks some quantification of the problem and proposed solution. For instance, it could talk about how many of these permits come before staff each year over maybe the last 5 years and if this action were to be approved by the Commission, what the expectation on the time to process the permits. What is the difference in time, how much time do we hope to save by this. I don't think that was clearly communicated so I don't know the extent of the issue based on what was presented and whether or not this is an adequate solution to address the issue. The Department does suggest deferral of this matter until these issues would allow for further review and analysis by the Commission and its staff, however we understand that there are other differences of perspective and discussion among Commission as well as other public testimony. In the absence of a deferral, some of the Department's concerns could be addressed by modifying proposed action to add an 'F' to the A - E list of pump installation permits that are not delegated as follows. By adding an item F, pumps in aquifers where the Department of Hawaiian Home Lands has a water reservation, we would like to see added as one of the exceptions, should a deferral not happen today. Thank you again for the time to testify and if you have any questions, I'll be happy to answer.

CHAIR CHANG: Thank you, Andrew. I appreciate your recommendation. You indicated that there may be other methods of notice. Did you have another suggestion?

ANDREW CHOY: I think posting it online, posting it in the water bulletin, those are good first steps. I think other methods could be the environmental notice. I think that receives a greater deal of circulation availability. Posting it in the newspaper, public notice, taking out an ad in the Ka Wai Ola newsletter that OHA (Office of Hawaiian Affairs) produces, another form. I do think there are other ways to get the word out and be more transparent, but those are just some recommendations off the top of my head.

CHAIR CHANG: Thank you very much for that.

COMMISSIONER HANNAHS: Thank you. You make a good point that presumably, we're doing this to make the process more efficient, but that really hasn't been explained and addressed in the report. For Ryan, perhaps, to respond. If something has to come to the Commission, what's the typical time frame for approval versus if we delegate this? How efficient would the system be? Can you help us understand the benefit as to what we gain from delegation?

RYAN IMATA: I can tell you that our statutory deadline for approval of permits is 90 days, regardless of whether it comes to the Commission or whether it's delegated approval to the Chair. The problem with bringing all applications to the Commission is we have to take the time to draft the submittal and prepare all of the documentation for wells that comply with the well standards. I think that that would increase our processing time and it has increased our processing time quite significantly. I'm going to add to and I don't know that this is necessarily pertaining to the delegation in and of itself, but groundwater regulation branch is severely understaffed at this point. For the amount of things that we are tasked with right now, which includes the newly designated Lahaina and potentially Wai'anae designation, in addition to now having to bring all well permits to the Commission. It not only adds a time component to our ability to process, it takes away our ability to really focus our efforts on areas where I think that there are significant concerns and significant potential impacts to resources including traditional and customary practices. I'll identify two of them. One of them is in the north sector of O'ahu where there are really a lot of concerns about these large residential units on agricultural land coming up. I think that's something that we need to focus our efforts on to bring to you guys so that decisions can be made in a more open and meaningful way. The other one is out in Kūki'ō on the Big Island where we have a brackish lens that we do have concerns about the lens potentially becoming saltier. Those are areas that I want to focus our efforts on to make sure that we're providing the adequate protection. Every time I bring a Hawaiian Paradise Park well to you for approval that is like 0.005% of sustainable yield, takes away the ability for Groundwater Regulation Branch to focus on things that are more important. So there's not only the time commitment, there's also the ability for us to focus our efforts where I think that there are concerns.

COMMISSIONER HANNAHS: Point taken. Thank you, Ryan.

COMMISSIONER MIIKE: If I remember correctly this issue came up because Chair was concerned about an open-ended delegation and this is an attempt to restrict the delegation. What's happened in the past? I don't know of anything that's happened in the past that the old system of delegation was leading to some problems. All I hear now is people are concerned about because it's been brought out in the open that we want to sort of restrict the delegation. It seems backwards that here we are trying to restrict the delegation and people are concerned about how we're restricting the delegation where in the past it's been an open-ended delegation.

COMMISSIONER HO: Another question. Along those lines, Ryan, you mentioned that we have 90 or that you have 90 days to issue a permit. Is the consequence if you don't issue the permit within 90 days, it will be deemed approved or what is it? I know there's a statute.

RYAN IMATA: I've been reading a lot of your guys' rules, the Department of Health rules lately and I noticed that there is an automatic approval if something isn't reviewed and approved within a statutory deadline. We don't have any of that in the HRS or the HAR so the read from our AG's office, and again I don't know if... The answer from our Deputy AGs has been that automatic approval isn't done because of lack of adherence to that 90-day statutory deadline.

CHAIR CHANG: So what's the consequence, Ryan, if you don't approve it in 90 days?

RYAN IMATA: There is no consequence.

COMMISSIONER HO: I just wondered why, I wondered why you said you had to approve it within 90 days. I thought there was a consequence.

RYAN IMATA: As much as possible, we try to follow the law. I mean that's our job is to make sure that we follow the law. Unfortunately, again with the change in delegation and a lot of the changes that are happening, I don't think it's stated enough to the Commission that Groundwater Branch has extreme challenges with getting things done. I'm looking at who is here to testify, I see Barry is here. I know that there's been a lot of push back, there have been a lot of people that call me that you guys aren't aware about that are pretty upset about the process taking so long and how this delegation adds to that concern for time. On the one hand, I do understand the ability to provide an opportunity for public input, I respect the fact that there are changes that have happened since 1997, but I'm looking at it from the perspective of trying to make sure that I focus the things that you guys need to see and the important issues and taking away the things that I think are much more routine and ministerial in terms of people complying with those and not needing to go to you guys for approval. That's all my concern is.

CHAIR CHANG: Ryan, I believe at one time you did some statistics. What is a total number of Well Construction and Pump Installation permits and because I think hearing Andrew's comments about...so what's the issue you have? You're saying that there's so many permits and that you're not able to dedicate the time to the harder issues. So out of the total permits, how many permits would fall under this number one where it meets the standards? Because you had given to me some statistics on Hawaiian Paradise that you said something like over 50% of all the well permits come from Hawaii Paradise. Am I making that up or is that true?

RYAN IMATA: No, that's very true and in fact, 'Iwalani or Dean, can you allow me to share screen because I can't share screen right now. Still can't. Okay, here we go. While the discussion was going on, I just did a super quick report from our database about well applications that we've gotten I think since 2019. From 2019 to today, we had, I don't have a summary number, but it looks like we got about 700 applications which amounts to about a 100 per year. If you look at the aquifer codes, a lot of these are for domestic wells in Hawaiian Paradise Park. Look at the aquifer code 80801, I think 80801 is Pāhoā, Hawaiian Paradise Park, most of them. If you look at all of the pages, I have like 18 pages. I think over half of them are in Hawaiian Paradise Park, so you're right and here you didn't make that up, 50% is about right. Some of them are in Maui, this is aquifer code 6. These are on O'ahu, 3. And again, these O'ahu applications some of them are individual domestic, but some of them require water use permits. These are Navy monitor wells which they're constantly pushing us on and we try to address those because we know that those are necessary to really address the needs of analyzing data around the Red Hill spill. Then there's a lot of Board of Water Supply wells and Barry Usagawa is here from the Board to kind of talk about the time frame that we've been faced with trying to get these approved for them, too. Again, these are sorted by aquifer codes. Freeing up our ability by delegating all of the Hawaiian Paradise Park wells will really significantly impact our time. Again, we have other challenges, we have staffing issues, we have designation issues, we have a lot of other issues so I'm not saying that this is a blanket fix all that's going to allow us to get permits out way, way faster, but it's another layer that impacts our ability to get work done. I hope that answered your question.

BARRY USAGAWA, HONOLULU BOARD OF WATER SUPPLY: Good morning, Chair and Commissioners, I guess I'll go first. We submitted testimony in support of the staff recommendations primarily because of the streamlining, just the well construction permit and administrative tax that are related as practical for administrative expedience. We make four points, one is that the staff is very knowledgeable and experienced and capable and under the direction of the director and the deputy working as a team, they determine all the conditions. Certainly the delays have been affecting our projects. It's been at least a year on a couple of them. Even delegated, I might point out that the staff still have to send the permit applications around for agency review and comment and that does take a while, in particular the State Historic Preservation Division. And while those delays are affecting us and it does affect the availability of water for affordable housing and it just exacerbates our water shortage potential from contamination, climate change, induced drought, and wildfires. The third point is that we are aware and bear the risk of the drilling of the exploratory well whether we can find a competent source of water, so we aware of those risks and also that conditions will be placed on these permits. Primarily in O'ahu, you have like three bites of the apple actually because it's designated except for Wai'anae, and we're working on a petition to designate Wai'anae. But delegating the well construction permit allows us to find a competent source to the well testing, developing the information that could be then used to determine the pump installation permit, the sizing, and of course the water use permit. Those two other

permits go before the Commission, so in terms of transparency in public notice, there are two other layers or two other types of processes that will do that. In particular for us to drill an exploratory well, Chapter 343, Section 5, when you use State or County funds or lands, we are required to do an environmental assessment prior to the well construction and that would disclose the environmental impacts as well as including archaeological, cultural, and Ka Pa‘akai analysis. I appreciate the fact that guidelines will be worked on for Ka Pa‘akai because they're really needed, I think they're a bit loose. Then you mentioned the bulletin, so there are probably other ways to notify the public and allow comment, but that's our testimony and thank you for the opportunity to provide supporting testimony and I'm available for any questions.

KAWIKA UYEHARA, HAWAI‘I DEPARTMENT OF WATER SUPPLY: Good morning Commissioners, Chair Chang - Kawika Uyehara, Deputy Department of Water Supply, County of Hawai‘i. Yes, we did submit testimony and submitted testimony in support of the staff's original submittal, but hearing some of the comments and discussion made today which is very informative, I just wanted to add a couple new comments for consideration. I guess first, if there is a revised submittal from staff then what we hope to be able to comment officially on that via the testimony process in regards to the item 1A, I believe, we recognize and acknowledge if it is a rulemaking decision or discussion that needs to occur between CWRM and the AG, we respect that. We'll let that go through that process. In regards to Keauhou, we do also recognize and acknowledge the 2017 Non-designation decision, so we fully are in agreement with following those conditions, recommendations that came out of that decision and we will abide by that. Just to put in, to add to the Keauhou conversation and we do have at least one, I think, well construction permit or application in process right now with CWRM staff and it's kind of been in the process for a couple years from what I remember. Basically, it's helping us to develop another source to reduce or to actually allow us to get off of using the basal lens sources such as Kahalu‘u shaft and some of the other basal wells that we have in the aquifer. Again, we know there's a process, we just want to make sure that everyone understands. On our side, we're trying to develop some sources just to replace some of the older basal sources so we can reduce our reliance on basal. In addition, some of you folks may know that we're trying to downsize some of our wells just so we have better operations, we can operate a little bit better with reliability. By that, we lose capacity in some of our wells. One of the well construction applications we have in now is to kind of help us restore some of that capacity that we've lost but thank you for the time and the time to provide comments, thank you.

COMMISSIONER KAGAWA-VIVIANI: After listening to this, I have a question for Ryan. I'm trying to remember if it came up in December, but how are we addressing that bifurcation of what happens in the designated versus non-designated? Honolulu BWS' testimony reminded me what they confront procedurally is a little bit different. I know there's a flowchart, but does that change with this decision?

RYAN IMATA: No, again I don't think anything pertaining to permit approvals changes, the only thing that changes is the delegation. I think I mentioned in this submittal that there's two sides of it, there's a side that wants the bifurcation because they want to be able to drill a well and to better assess what are going to be the hydrologic impacts of pumping the well. Because you can do a Chapter 343, you can predict a Ka Pa'akai Analysis, you can say that but until you pump a well you're not going to be able to collect data that addresses those kinds of issues. Some agencies want to have the permit bifurcated so that they can drill the well first and assess, other agencies may want to make sure that they have the well and the pump permits in hand so that they don't invest like \$2 million dollars in a well and then they can't get the pump installation permit. What I'm proposing is flexible and allowing both of those to happen. In a Water Management Area, clearly to get a pump installation permit, you need a water use permit. Those things will come to the Commission anyway, so I think that addresses the bifurcation in terms of like in management areas and non-management areas and our flexibility in allowing what I think people are looking for. I hope that answers your question.

COMMISSIONER KAGAWA-VIVIANI: Sorry, when I said bifurcated, I kind of meant like designated and non-designated. Say I'm an applicant, my pump is less than 27 gpm (gallons per minute). Is there a clear way that we can understand what you're proposing? Like okay, so it's less than 27 and you're located in Wai'anae - okay, well it's going to be maybe posted on the bulletin but it's not going to have to come before the Commission. Correct?

RYAN IMATA: So, Wai'anae is not a management area, right? That's what you're saying, so non-management areas.

COMMISSIONER KAGAWA-VIVIANI: I'm thinking about it, making it easier to understand from the permit applicant side, what that routing is.

RYAN IMATA: I get that you want to make it easier, but it is a complex issue because is it a non-management area, management area? Is it a domestic use, is it a non-domestic use? Is it below 27 or is it under 27? If it's below 27 and it's for individual domestic use in a non-management area, then it's delegated approval to the Chair. If it's below 27 in a non-management area and it's used for industrial water bottling then it does come to the Commission.

COMMISSIONER KAGAWA-VIVIANI: I think what could be made clear is just "how this is the existing workflow" and "this is how the workflow will change" and "this is how it will improve permit processing time." Sorry, maybe you're thinking about it in terms of your workload, but I'm thinking about it in terms of like there's a lot of text and if there is a clear diagram of the changes being suggested, I think it would be helpful. I'm not asking for it now, but if that could be as part of the staff's four tasks like clarifying what that workflow, that modified workflow is, I think that would help in making

transparent what this delegation involves. I think it's just more for like public understanding and I know you have a lot on your time, but I think it would sort of front end some of the concerns and questions, as well.

RYAN IMATA: We can do that, yeah we can do that.

COMMISSIONER KAGAWA-VIVIANI: It would certainly help my brain, so thanks.

CHAIR CHANG: I would just say for the record, in December when Hāpuna came out, I would tell you I was very concerned about everything being delegated. It wasn't delegated to the Chair, it was delegated to the First Deputy. When I came on board and then hearing the concerns by Jonathan Scheuer, Kapua Sproat, and it was more process than it was substance. For me I distinguish two things - procedurally it is wanting to have transparency, wanting to make sure that our process is fair and objective. Since December to now, we've taken away the delegation to the Chair and we've given it back to the Board. I think Ryan has had comments, he's consulted apparently with like the water departments, not fully with DHHL, but you did have a conversation with Jonathan that there seems to be good recommendations that have come forward. I mean for me some of the substantive issues are being addressed in the Ka Pa'akai guidelines because there may be a difference of opinion with some of us on the Commission. I do believe that there is a requirement for Ka Pa'akai Analysis in everything we do. The scope of that analysis to me is determined based upon the action that's being proposed. There may be a big difference between an individual domestic well, less than 27 versus a water bottling use. I do think Ka Pa'akai, the issues may be different, like the 343. To a certain extent I sort of saw this as an SMA minor-major. SMA minor- there is delegation to the planning director, but it fits certain categories. I think that's what this was an attempt to do - was saying we're going to follow the Ka Pa'akai guidelines, if it follows the pump installation standards that can be delegated, I think, if the two different criteria that you put under here. I also like the one that Aurora brought up that there should be another section that says, "it shall not supersede any Commission actions including for example the Keauhou designation, eight conditions that were put on there that that should apply. In any cases where the Board has taken action, that this delegation should not supersede that, that those other conditions should be included or brought back to the Board. I also like the comment by Andrew Choy about additional forms of notice. I think even publishing an OEQC [former Office of Environmental Quality Control] bulletin, that's probably much more widely read than perhaps our own website. I'd also like us to consider, Andrew made a recommendation to amend two and adding F - pumps and aquifers where DHHL has a reservation. That seemed to be reasonable. In my mind, procedurally we've begun to address that. My concern was transparency, due process, if we're addressing notice. Substantively, it looks like the staff has come down with some criteria, whether that's rulemaking, that's another question. Obviously we're not going to be here to answer that, so Commission, your thoughts.

COMMISSIONER HANNAHS: I'd hate for the last action I take is deferral because it feels like it's kicking a can down the road, but I wonder if you're thinking - it's the right thing to do, we need to do it right. If we deferred floating the idea of should we defer so that number one, Ryan has an opportunity to consult with DHHL. They are a public trust use, beneficial use, they should have an opportunity for meaningful consultation. Secondly, to consider the other ideas and recommendations that were made here today and other feedback that you received that you can add to the recommendations. Third, to really develop a workflow diagram that takes your 700 or 800 applications and kind of runs them through a chart that then shows how many drop off and how much more efficient you get and what you're going to focus on so that the Commission can see it, as Aurora has recommended. And fourth, consult with the AG on the correct legal process for achieving these desired.

CHAIR CHANG: Is that a motion?

COMMISSIONER KATAYAMA: Can we have comments on this?

COMMISSIONER HANNAHS: Yeah, let's comment.

COMMISSIONER KATAYAMA: I guess I'm on the other side of the fence and that issue of whether it's rulemaking, administrative is here, but for me the issue is do we want to impede the process if we pass and adopt what's here today as amended. We can go down the road and fix it and address it as the issues arise and it gives time for further review, but it gives at least an authority to move and address these issues as presented and as discussed in a lot of detail. When I first read this document, that's where it sort of came out - is it right for adoption? But again the alternative is to do nothing and again have this issue keep rolling down the road. I guess I'm in the camp right now is that approve it with this issue. We can address it at subsequent meetings to correct it.

COMMISSIONER HO: I have a comment about that. I'm sort of on the other side of that, I'd like to get the legal question addressed first because if we're doing something that is illegal rulemaking or whatever, that our actions that we take is subject for dissolution and so I'd rather defer and seek the counsel of our...

COMMISSIONER KATAYAMA: Is there sort of clear areas or gray areas where we are looking at in the recommendations where it is rulemaking?

COMMISSIONER MIIKE: Can I can get in on this? That was a question for me too which is, what are we talking about possible rulemaking? Is it the delegation for the individual...

COMMISSIONER HO: For me it was the exceptions.

COMMISSIONER MIIKE: It's the exceptions? I don't understand that at all. Here we are, we have had the delegation for what, 27 years? Nothing has come up about that. There was always the flexibility of the Chair when he or she and most of the time it's been a she, have had concerns about that that was brought to the Commission for us to decide. I guess because the issue has been raised, we got to find out whether it is rulemaking or not, but from my point of view it doesn't make any sense that this is now all of a sudden the rulemaking issue has raised its head.

COMMISSIONER HO: I totally agree with that, but for me it's the public has raised this issue as well as some of the Commission members and so it is an easy fix for us to just seek the counsel of the Attorney General's office and then we could put a period on it. Because of these cases, these lines of cases, it is not rulemaking and therefore you could go forward on your action. If we don't get that response, the opinion from the Attorney General's office, it will always be a question out there whether it is or it isn't. For me, it would be a simple question to the AG's office that they can just answer quickly, do the analysis of those cases, and say what we're doing is not illegal rulemaking.

CHAIR CHANG: Because Kathy, in your view, if it was just a pure delegation to the Chairperson, there would be no issues. It's the rulemaking is these conditions, these exceptions. I think in the past, Larry, the delegation has just been a blanket delegation so that's why I don't think the rulemaking issue has come up in the past because it's been total discretion to the First Deputy and the Chairperson.

COMMISSIONER MIIKE: The issue of rulemaking will be germane only if someone challenges it. If nobody says anything about it being a rulemaking, the only way that the issue would come up is if someone sues the Commission to say you're doing illegal rulemaking.

CHAIR CHANG: But then it could potentially make us vulnerable in all of the actions that we've taken.

COMMISSIONER MIIKE: Wait a second, on what actions? Is it the ones that we just routinely had delegated or the ones that the exceptions were made because if it's only the exceptions that are rulemaking, it's only the exceptional cases that would be subject if the suit was successful that said you were doing illegal rulemaking. All the others, from what I understand the issue is, would be okay, right? All the ones that would be routinely approved would be okay because that's not rulemaking. Anyway, since now it's been so befuddled, how quickly can we get an answer from the Attorney General's office? Tomorrow will it come?

CHAIR CHANG: Can you do a subject to? Is there an option to approve this, subject to review by the Attorney General?

DEPUTY AG LAU: Then that becomes a non-action because it's conditional. What does that mean then?

COMMISSIONER HO: The other alternative is, we could go into executive section and seek the legal advice of our attorney now.

COMMISSIONER MIIKE: But we're still not done, it seems to me that there's enough hesitance that we're not going to make a decision today.

CHAIR CHANG: I'm off the hook.

COMMISSIONER MIIKE: I'd rather wait till the next meeting to make a decision even though Neil will be gone. You can have my proxy vote.

CHAIR CHANG: Are you going to be gone?

COMMISSIONER MIIKE: No, no.

CHAIR CHANG: Okay, you're going to be here.

COMMISSIONER MIIKE: Anyway if we can make a decision the next time around, then I'm okay waiting one month but boy these things are so dragging. Everything we're doing now gets dragged out. I thought we were a decisive Commission.

COMMISSIONER HANNAHS: The risk of somebody suing us because you're allowing more public process seems remote, but the real risk is if somehow the actions that we take to issue permits are then tainted by this confusion, then that affects some driller, some entity that's out there doing something that they think they have the authority to do, but then somebody questions whether that authority was correct. It's fruit of the tainted tree.

COMMISSIONER MIIKE: It just seems to me what would logically follow if this is found to be rulemaking is that all the ones that were routinely approved would be denied because the Board didn't act on it. I don't know, is the legal default position that everything that comes to the Commission has to be individually approved by the Commission? That sounds nuts that we had to actually vote on each and every one of them. That's no way to run a Commission.

CHAIR CHANG: No, you're right and I do think that there are frameworks upon which we can work the parameters and maybe that's what the AG's office can provide us guidance on, but I think in the past there has been no parameters. It has been a blanket delegation and that doesn't trigger rulemaking, but it triggers in my mind a tremendous

amount of discretion that the Chairperson has or the First Deputy has. I wasn't comfortable with that either. Ryan, did you want to make a comment?

RYAN IMATA: Just a comment that if rulemaking affects this decision or maybe there's a question- should rulemaking affect the decision that was made in December of last year, too? Because I think it's the same thing and I think that maybe if rulemaking was an issue, that should have been an issue in December, too. I just wanted to bring that up.

CHAIR CHANG: No, but the December decision was not to delegate, it was to bring everything back to the Commission, right?

RYAN IMATA: But there were exceptions and I think that's where rulemaking is looking at the exceptions, right? I think December also had exceptions to it.

COMMISSIONER MIIKE: I have one last question. It's not about this, it's about - where's DHHL? We've been talking with Jonathan Scheuer just about every time we have a meeting. Is he not representing your agency?

ANDREW CHOY: Jonathan does represent our agency, he is human and needs a vacation so that's why staff is here.

COMMISSIONER MIIKE: That's why you're here now, but you were basically complaining that we had not consulted with DHHL and all along we've been talking to Jonathan. As a matter of fact, Jonathan has been very assertive about appearing before the Commission. So what is your position about when DHHL gets consulted?

ANDREW CHOY: I think if you look at the submittal, you can see very clearly that the Boards of Water Supply, Departments of Water Supply were clearly consulted well before this action was taken and it's documented in the submittal. We were just notified about it over the weekend over a phone call.

COMMISSIONER MIIKE: That's not my question. My question is that we have to formally ask every time and whenever Jonathan shows up that he's showing up as an individual person and not with DHHL? The reason I ask is that I thought we've been talking with DHHL just about at every meeting.

ANDREW CHOY: When Jonathan appears before the Commission, he will either announce that he's talking on behalf of the Department or not.

COMMISSIONER MIIKE: Yeah, as a matter fact he has done that. Okay, so what you're wanting is more inclusion in the formal process? Okay, all right, thank you.

CHAIR CHANG: As I understand, it's this particular item, it's this agenda.

ANDREW CHOY: Correct, I think there are good examples of other collaboration between Commission staff and the Department in other arenas.

RYAN IMATA: Sorry, can I add in that the December, this Commission decision specifically identified that we talk to Departments of Water Supply and come back with a decision. You guys identified that we needed to talk with Department of Water Supplies which I was trying to comply with. I also recognized that I think it would have been a good idea to reach out to Jonathan. Should I have reached out to him earlier? I mean maybe, but I did reach out to him to see if he had comments on it and I alerted him to the submittal and wanted him to be able to provide feedback today.

DEPUTY UYENO: Chair, Keola Talaroc is also on. He had wanted to testify earlier, was having issues, but he's available now if you want.

CHAIR CHANG: I did close public comments, but Keola, go ahead if you wanted to provide comments.

KEOLA TALAROC, ALPHA INC.: Aloha Chair and Commissioners, my name is Keola Talaroc. I'm the drillings operation manager for Alpha Inc. I just wanted to give a perspective from the drilling contractor side because that hasn't been presented. For your guys' meetings, you guys hold them once a month. If we can achieve two permits per meeting, that would only be 24 a year. To say that that wouldn't slow down the permitting process or affect things other than just time is...what I'm trying to say, sorry...we're affecting more things by putting a lot of red tape for small wells that don't have as large of an effect. In quantity, if we have a bunch of small wells, it might have a big effect, but for how much resources we're spending to look at a well that's less than 27 gallons a minute, we could be spending that same time looking at larger wells that present possibly bigger issues. On the second hand, I also want to talk about the Ka Pa'akai Analysis and developing a framework for what we need to answer. There's a bunch of questions and it leads to things that we can't answer 100% correctly without having data. We want to be able to correctly answer these questions, but there's questions like what kind of impact do the wells have on the environment, what kind of impact do they have on near and offshore fisheries? These are things that without data, applicants, not only drilling companies but people going in for groundwater use permits, they'll have a really difficult time answering. That's all I wanted to say, thank you for letting me speak.

CHAIR CHANG: I appreciate you being here. Keola, can I ask you what's been the difference in the permitting time from last year December to today? Since everything has had to come before the Commission, what kind of impact has that had on your business from December 2023 to today?

KEOLA TALAROC: I think it was leading up to December, there started to be a lot more regulation and discussion of what needs to be submitted with the permit applications. Prior to that, we did see closer to a 90 day turnaround once we got a confirmation that everything we have submitted has been reviewed and approved. It was closer than 90 days. For people to comment like ‘Aha Moku and Department of Water Supply, we would see an approval or denial of a permit application. Now, it's been over a year for some of our permits that are really only asking for 25 gallons a minute. Some of them are asking for water for their livestock. Things like that, I don't necessarily feel should be given to you guys [inaudible]. Wells that only do 25 gallons a minute for small stuff is taking up a lot of your guys valuable time where we could be talking about wells that are going to help solve greater issues like affordable and low-income housing. Those are bigger wells that are going to have a lot more usage coming out of them and that's items that you guys should really be discussing and what impacts that might have versus a guy that wants water for his horses. You guys dissect things which is very good, but I feel like we need to aim what we're dissecting because right now when customers ask when will their permit be approved, I can't give them an answer. I say it has to be presented in front of the Board and then they say, okay well what's that schedule look like? And then I have to tell them, well they meet once a month and we only get the agenda six days before the meeting. It's very difficult for people to even have an idea of a timeline and we've also been asked the question, can we do this without a permit? We're not going to do that, but that's not saying someone else won't do it and if we have people doing illegal wells, then we have no way of tracking the impacts that is happening on our aquifer. It's just for the need of water, so that's all I have.

CHAIR CHANG: Thank you very much, Keola. Your testimony has been very enlightening, to have real ground truthing on the impacts of our different processes. With the delegation was 90 days. Without the delegation, coming to the Commission, you're waiting for like about a year. Thank you, Keola.

20240618 01:47:52

MOTION: (HANNAHS / MIIKE)

To defer staff submittal in order to:

1. Allow staff time to consult with DHHL on impacts and merits of the recommendations,
2. Consider other testimony offered today,
3. Create and present a workflow chart in the submittal that will assist in understanding the flow of applications, and
4. Consult with the Attorney General's office on the legal process for achieving the desired results

UNANIMOUSLY APPROVED

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

20240618 01:59:01

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. General Informational Briefing on Water Reservations for the Department of Hawaiian Home Lands by Commission Staff

PRESENTATION GIVEN BY: Katie Roth, Planning Branch Chief; Dr. Ayrton Strauch, Acting Stream Protection and Management Branch Chief

Staff presented the process of reserving water, existing and pending Department of Hawaiian Home Lands (DHHL) water reservations, and future DHHL water demands.

QUESTIONS / COMMENTS

COMMISSIONER MIIKE: Can I interrupt you for a second? That last point- may have to adjust the IIFS (interim instream flow standard)- stream water is a resource and that's a public trust purpose, so are you saying from your standpoint that DHHL has superior rights than the stream itself?

KATIE ROTH: Maybe I'll defer that to Ayrton if he wants to comment a little bit more about his process when establishing.

COMMISSIONER MIIKE: You can answer that later, I just wanted to interrupt you.

KATIE ROTH: Okay, do you want to answer it now or later?

COMMISSIONER MIIKE: When we get into the discussion.

KATIE ROTH: Okay.

20240618 02:06:39 – Katie Roth resumes presentation

COMMISSIONER MIIKE: Can they answer my question?

DR. STRAUCH: Aloha Commissioners, Ayrton Strauch of the Stream Protection and Management Branch. The modification of an IIFS in the balancing of non-instream uses might be needed to accommodate a reservation or use for DHHL as a public trust use. One example would be the 2018 decision and order in Nā Wai 'Ehā that sets an IIFS on North Wai'ehu as natural flow. At the time, DHHL was not a party to the Nā Wai 'Ehā contested case and their potential non-instream usage was not considered in the decision,

but they have lands in Wai‘ehu that could potentially utilize non-potable water. So, we might need to modify the North Wai‘ehu IIFS to accommodate those uses.

COMMISSIONER MIIKE: But I'm talking about cases where usually when we set an IIFS, it's been my experience that we basically set it at the minimum that allows viable stream life, not way above it. In a case where the IIFS is at a level that any lowering of it all would harm the stream, are you saying that from your standpoint we have to do that?

DR. STRAUCH: I'm not making a blanket statement across all IIFS and in actuality I don't think most IIFS have been minimum, they've been above the minimum.

COMMISSIONER MIIKE: So what would happen then if you have a DHHL reservation request which is reasonable, but it takes off more from the stream than what would be the minimal viability?

DR. STRAUCH: That would be a balancing that the Commission would need to make. The stream is not more important as compared to DHHL, it's equally important as DHHL.

COMMISSIONER MIIKE: Okay, so what is the compromise? The reason I ask is that there have been some dicta by the Supreme Court that said there may be instances where you have to destroy the resource to accommodate uses, never went beyond that to say how do you decide that. Okay, but in this case there will come a time because DHHL is finally getting enough lands to be used, especially in rural areas where they don't have access to a public water supply system, they have to put in their own. There's going to be a time that we have to decide, but from my standpoint, if you take a stream below viability, that's destroying the stream. It seems to me from my standpoint you can only draw enough water for off-stream uses, including DHHL where it does not affect the stream viability. Now the obvious answer is that other users get their water taken away for DHHL because DHHL is a public trust purpose. I think that also when in the current Water Management Areas, if you have unused or unpermitted excess in a particular aquifer or in a stream area and DHHL gets a reservation, that amount of water gets taken off about what is available for other permits, right? That's what happens?

DR. STRAUCH: If you may allow me to comment, the history behind stream diversions and IIFS has been that the construction of the dam essentially took all but the high flows. I would assume, and we would probably make the recommendation that, to meet, say a DHHL need or any other need, we should not be so destructive to the stream as to completely drain it or completely remove all but the high flows, such that even if we lowered an IIFS to say the 64% of medium base flow, which has kind of been accepted as that minimum that you're talking about, there is still opportunity to provide for the flushing of larvae or nutrients or sediment or coarse woody debris to provide for the habitat, to keep the riffles and runs flowing, so that we have migratory pathways

maintained. So that we have other instream values not just 'o'opu and 'ōpae, but the recreational needs are met. The downstream uses are maintained, the nearshore impacts are preserved, so that I think we can find a balance where the stream is protected and the DHHL needs are met.

COMMISSIONER MIIKE: Wait a second though, you cannot meet all of DHHL needs if you have those minimal requirements for continued stream flow, so something has to give. DHHL cannot get everything that they want in a particular...except at the cost of other off-stream users.

DR. STRAUCH: On a case by case basis with sufficient storage, I mean DHHL is not going to start a sugar plantation. I think there is some way forward that meets all needs in some...

COMMISSIONER MIIKE: I absolutely disagree with that, you can't have everything for everybody.

DR. STRAUCH: Not everybody, just...

COMMISSIONER MIIKE: I understand that, what I'm saying is that we're not dealing with really huge rivers in Hawai'i, we're dealing with fairly small streams. Say you're having an off-stream use, even those in non-management areas that have riparian or appurtenant rights, appurtenant rights is a little different because they're also sort of a public trust purpose. You're going to have to come to a time where you cannot say that one public trust purpose has absolute priority or the other. I don't think that you can get to a case, my preference, I don't know if it's a legal preference, would we still have to maintain minimal viable stream flows at the cost of DHHL getting all the water that they want, but we're going to get a case like that eventually.

DR. STRAUCH: It will come to things like climate change and the severity of say drought conditions and the length of those drought conditions. Everything's going to be affected.

COMMISSIONER MIIKE: Even without those changes, as DHHL is able to provide their beneficiaries homesteads and increase water, you'll get to a point where the amount of water available is not going to be enough even in aquifers.

COMMISSIONER MEYER: Asking another way if I might, you said that CWRM has never approved reservations for other than DHHL and that may be the case. Can we make reservations for other public trust uses?

KATIE ROTH: My understanding is yes.

COMMISSIONER MEYER: Okay, it just hasn't been done yet.

COMMISSIONER MIKE: Can I interrupt on there because let me see if Barry is still around. I think long time ago I told Barry, why don't you guys ask for reservations for the public water systems so that you don't have to be competing with private people all the time? So it is a possibility.

COMMISSIONER MEYER: Exactly, that's correct for household use, for the rest of the public if you will. That's exactly right.

COMMISSIONER HANNAHS: Back to your earlier point, Larry, in my years on the Commission, we never tried to give every everything they wanted. We tried to balance as best we could and would you agree that the East Maui contested case discussion might be relevant here where every stream was different. Some streams were highly compromised and so forth and those we put a minimal wetted pathway, other streams were really heavy kalo users and so forth. We treated those, made sure they had enough for their public trust uses and then we withdrew what we could to get to DHHL lands and so forth, but it was very much a balancing act. We don't, especially now with DHHL's additional infusion, much needed infusion of cash that'll allow more development, I'm really keen to hear how that's going to change their reservation needs in the future because we got to rejigger, we got to rebalance again. Now this is just stream, now ground is a whole different issue and much of their needs will be supplied by groundwater, I assume, but when it comes to streams it really is a challenging balancing.

COMMISSIONER KAGAWA-VIVIANI: Paul, if you have a comment on that, go ahead.

COMMISSIONER MEYER: This was a follow-up question, we asked whether we can make reservations. Do you think we have a duty to make reservations for other people for future needs or public trust users?

KATIE ROTH: I don't know if I would comment on without and that's maybe a legal...

COMMISSIONER MEYER: You said we have a duty to DHHL.

COMMISSIONER KAGAWA-VIVIANI: My question relates to this.

COMMISSIONER MEYER: Do we have a duty to take into account the needs of other public trust users? That's the question, maybe that's a question for the AG.

COMMISSIONER KAGAWA-VIVIANI: I think my question relates to this and I'll just say it's a bit of a red herring to frame other [inaudible], but DHHL has a particular status, correct? Katie can you run down the history of that ruling? My understanding is DHHL has this level of priority because of conditions of Statehood and this is somewhat

analogous to the Winters Doctrine in the US where Navajo have rights of prior appropriation. Do you have that background Katie?

KATIE ROTH: Maybe I would defer to Andrew and DHHL staff to come up and comment on that.

ANDREW CHOY, DHHL: Aloha Andrew Choy, representing the Department of Hawaiian Homelands, thank you for the question Commissioner Kagawa. The Department has a unique history. As you folks know it was established by Congress in 1921, adopted by the full Congress back then. It was administered by the Territory of Hawai'i up until Statehood. Now when Hawai'i was admitted to the US through the Admissions Act, one of the conditions of the Admissions Act was that the State would take on the responsibility of carrying out the Hawaiian Homes Commission Act as a condition of Statehood. That is one statutory authority. The Hawaiian Homes Commission Act was thus incorporated into State of Hawai'i's Constitution. Its water rights are articulated as part of the State's Constitution, it's also identified specifically in the Water Code as and also further validated by Supreme Court rulings as a public trust purpose use of water. I don't know if that answered your question, Commissioner?

COMMISSIONER KAGAWA-VIVIANI: I think it does because I think without understanding some of that legal context, I guess it gets uncomfortably misfocused and I think what we want to do is stay on what the Commission's responsibility to the statutes is. I wanted to get back to Katie's presentation and understand, so DHHL has this privilege in designated and non-designated areas, some of it is unexercised, much of it is paper water. What are the implications for the matters coming before us? I know we've had the Waimea Watershed matter which is going to be the next action item. There are these proposals for Maui and Moloka'i, everyone's going to have their claim and DHHL being one of them, that need to be balanced a little bit differently than multiple permittees. Am I understanding that correctly? Is that the way we should be thinking about it from your perspective?

KATIE ROTH: Can you just articulate the specific question you have?

COMMISSIONER KAGAWA-VIVIANI: Mostly I'm trying to mirror back that I'm understanding kind of what we need to take away from this presentation, that we need to understand that DHHL has this particular ability to make reservations in both designated and undesignated areas, and that we need to factor it in. But DHHL is not just another permit applicant, right? So, how do we as Commissioners need to be weighting things? I think that's some of what the other Commissioners have been trying to get at.

KATIE ROTH: I think you're absolutely correct. One of the major takeaways from this presentation, like you said, DHHL as one public trust use of water does have priority. How we figure out a way to balance that with other both public trust uses of water and

other reasonable and beneficial uses of water is something that needs to be discussed and will come up more as we see less water availability in certain areas, impacts of climate change, what have you. The presentation also mentions that DHHL has approximately 15% of paper water, but there's more needed, so you're right. There is going to need to be more conversations about what those needs look like and ways that we can better collaborate not only with DHHL but with the counties to better understand how we can, if maybe the county has the ability to provide water to DHHL, how we spread out that duty of not just the infrastructure to make sure that DHHL uses have adequate supplies. Does that kind of answer your question or get at kind of the context of the presentation?

COMMISSIONER KAGAWA-VIVIANI: I think so and I want to have a little bit [inaudible] since it's an informational briefing, not an action item. Let me back up, when I started on the Commission in 2021 we were talking about Moloka'i and Maui and there were some interesting proposals that I remember DHHL bringing up that were a bit more holistic than the normal permit applicant, about their investment, the recognition of scarce water, their interest in investing also in watershed protection. Maybe this is for Ayrton, personally I don't view things as just a zero-sum game, some things are maxed out, but there's also room for innovation and I think some of that conversation had come up on Maui. I remember Commissioner Meyer brought up R1 and R1 use is coming up again. How do we slice the pie in equitable ways, but also try and innovate and expand or conserve? Sure, we deal with permits and allocation but what are the things we can also be supporting as a Commission as we think about the needs that are outstripping supply? Ayrton, can you remind us again where are the spaces, where we need to focus some energy and attention on?

DR. STRAUCH: I will just comment about, DHHL has a reservation on the Big Island in the Māhukona aquifer system, but they have broader regional needs that can't just be met from the one aquifer. In developing an interim instream flow standard for Waikoloa Stream, for example, the South Kohala drinking water system, which diverts almost the entirety of Kohākōhau and Waikoloa Streams to provide for drinking water supply, the County's water system could be used to meet portable needs that may have originally been met with a reservation from groundwater. This is where we are considering establishing an instream flow standard to protect instream values, but then there are also other public trust uses that could be met or should be met with the same water essentially or from the same source, especially since the stream diversions that feed the system are on DHHL land. It's kind of a little bit full circle in that the resources that could be used to meet DHHL's needs should be in the consideration of the establishment of an action to protect the resource. I don't know if that answers your question or not.

COMMISSIONER MIIKE: I want to remind Commission members that another public trust purpose is domestic uses of the general public. That's never been tested. I assume that means public water supply systems, but public water supply systems also provide

agriculture and industrial use uses. That's going to be a really thorny question about what part of that is a part of this.

COMMISSIONER MEYER: Water to Hawaiian Homes, as well. Water to Hawaiian Homes beneficiaries, as well.

COMMISSIONER MIIKE: Sure, all I'm saying is that aside from the DHHL reservations, domestic uses of the general public is an equal [inaudible] as is the resource itself. Down the road, none of us will be around, but that's going to bump heads and you're going to have to come to some kind of compromise about not everybody can get all the water they want and particularly on the stream. Not all streams are going to have to be [inaudible]. Now, aquifers are a different question. You get beyond the sustainable yield and you start to permanently destroy the aquifer, so that's going to be a different issue.

COMMISSIONER MEYER: I'd like to ask again, do we have a duty to make reservations for other public trust users and you said you didn't know? Could you find an answer to that question, could you research that? I mean I'm not sure the Commissioners have time to do that and the resource of the...

KATIE ROTH: I can reframe my response. I don't think it's accurate to say I don't know, I think that there is a duty definitely to public trust uses of water and to find a reasonable, when we have to balance reasonable and beneficial use as well. I think that there's a lot more to say on that topic and that's definitely something that if you want us to investigate, we can definitely do that, to come up with a more formal opinion if that's something that the Commission is interested in.

COMMISSIONER MEYER: I think it'd be very helpful if you could characterize that for us and get a comprehensive opinion in that respect because as Larry said, it's going to come up and it's going to come at us four square at some point with respect to surface water and groundwater, as well. Further, you mentioned that 15% of DHHL needs are being met by current reservations, if I have that correct. Where does that number come from?

KATIE ROTH: That 15% is reflected in what we would consider paper water, not all of that is what we would call wet water and I could maybe defer to Andrew again to provide more details.

COMMISSIONER MEYER: You don't know where the numbers come from, you didn't prepare that number yourself?

KATIE ROTH: That is the number provided by DHHL.

COMMISSIONER MEYER: I see, okay it's from DHHL. You answered that question for me, thank you.

ANDREW CHOY: When we calculate our reservation requests to the Water Commission, it's really based off of our Island Plans. As you folks know, the Hawaiian Homes Commission has exclusive land use authority over Hawaiian Homelands. Our Island Plans articulate our Commission's land use policy for our land, so are we going to use it for residential, are we going to use it for ag, are we going to use it for commercial? Our water reservations are based in large part on our Island Plans. We've made reservations for portions of our lands, but not all of our lands so that's where that number came from.

COMMISSIONER MEYER: In calculating that number, it's interesting, it's kind of a gross number and were other sources considered in looking at that only 15% being available in terms of the public water systems that are available? Public utilities and that sort of thing which is where the majority of Hawaiian Homes beneficiaries get their water today? Or was that ignored and just saying, okay we need that reservation just as an estimate of the total quantity of water that DHHL beneficiaries will need going forward, do you know?

ANDREW CHOY: If I understand your question correctly, I believe the Water Code says that our reservations are for both current and future needs of water. When we designate our lands for residential, it's normally based off of the usual county municipal standards of 600 gallons per lot per day, so we will designate say 10 acres for residential and we'll do a back of the order envelope calculation of how many lots at say 5,000 square feet or 75,000 square feet that we can get from that area and that's what we base our estimate.

COMMISSIONER MEYER: I understand, but I'm talking about where is it coming from. What's the source? Did you assume that any of that would come from the public utility or county sources?

ANDREW CHOY: I think in certain locations where the county system is within close proximity to our lands then the assumption is we will try to work with the municipality.

COMMISSIONER MEYER: Do you know for sure? Is that taken into account in the 15% or not?

ANDREW CHOY: Do we know for sure if the county has...

COMMISSIONER MEYER: In other words, does the 15% assume that other public sources would be providing water to DHHL properties?

ANDREW CHOY: When we calculate our reservations, it's based on what is needed for homesteading.

COMMISSIONER MEYER: I understand, what you're saying is it doesn't.

ANDREW CHOY: Yeah, that's your responsibility as the Water Commission.

COMMISSIONER MEYER: I hear you, okay thanks.

CHAIR CHANG: Andrew, when you say it's based upon the Island Plans, what's the time frame? Is that when you're ready to build? Because we say Water Code is past, present, and future, so what is your time frame?

ANDREW CHOY: That's an excellent question. Our Island Plans for our administrative rule is a 20-year outlook on what we can or hopefully can develop assuming that we receive sufficient funding for developments.

CHAIR CHANG: Are the reservations based upon a future estimate up to 20 years?

ANDREW CHOY: Yes, because it's based on our Island Plans and our Island Plans have a 20-year outlook.

CHAIR CHANG: I guess this is water staff, so when we have to have make the hard questions about water allocations, we take their reservations as is whether they are ready to build or not. Do we distinguish between whether it's a DHHL residential use or DHHL industrial commercial use? Is there a distinction? Is it just if DHHL's reservations we take them as a whole or do we distinguish the types of use as we would for example public trust?

DR. STRAUCH: Their calculation is dependent on their land use plans and then just comes up with that number, we don't make that...

CHAIR CHANG: Okay, so we take it as DHHL reservations, but Andrew do you guys distinguish when you submit to us? Is there a difference between domestic and commercial?

ANDREW CHOY: We do try to identify for the Commission staff what our reservation amount is based off of and again that's per our land uses. We do distinguish our residential demand, our agricultural demand, our commercial demand. The reservations that we have submitted to the Water Commission to date have been primarily for our homesteading purposes, either residential, agriculture or pastoral.

CHAIR CHANG: There's a comment that you made that, well maybe I should ask the question. Who pays for the water infrastructure, who pays for the delivery of water?

ANDREW CHOY: I think that is a question that we would like to know the answer, as well. Anecdotally, we've had some good working relationships with various counties of water supply. We continue to have dynamic conversations with them on how to fulfill the obligation of the Hawaiian Homes Commission Act as a responsibility of the entire State, not just the Hawaiian Home Lands Department. We do feel that there is some level of collaboration and contribution needed from all parties. What that looks like is on a case-by-case basis.

CHAIR CHANG: Because do you include the cost of infrastructure when you're doing your development plans? Is the cost of developing a water infrastructure system part of your cost estimate?

ANDREW CHOY: Yes, when we develop our cost estimates it's both for on-site and off-site infrastructure.

CHAIR CHANG: That's great.

COMMISSIONER MEYER: That's a really good point, this is all about collaboration, working together, and sharing. Absolutely.

COMMISSIONER KATAYAMA: Hi Andrew, I guess to help sharpen Commissioner Meyer's question is that if the water supply for your development is coming from a public water utility, are you then sort of double dipping or double accounting for that water? Because the public Department of Water has a supply plan, a demand plan. You are submitting a water demand plan, as well. You don't need to answer that right away, but as you start getting into your development to again identify that to help us help planning, not to double account for the water.

ANDREW CHOY: Thanks for that question, Commissioner Katayama. We have been a lot more progressive and proactive in trying to reach out to the county Department of Water Supplies to make sure that their Water Use and Development Plan is inclusive of our water developments. A great example is actually on the Kaua'i County Department of Water Supply, they've worked really well with us in trying to outreach to our beneficiaries. They sat down with us, they went through the effort of planning meetings specifically for our beneficiaries to make sure that their input is included in their Water Use and Development Plan.

COMMISSIONER KATAYAMA: That's great and I think we'll get smarter and sharpen our focus on these things and Katie, thank you very much for your presentation. It really helped me zero in on specific statutes on how water reservations are made. One sort of comment is that you've identified several different water plans from resources, projects and if you were to look at the dates of when those plans were adopted, you find a sort of a long period. I guess my question is, is there a way to better synchronize the plans because

it seems that we're dependent on a lot of these plans from the county, Water Use and Development Plan to the Water Protection Plan. I mean all of these should be used and living plans and some of these things are like 10 years old.

COMMISSIONER MEYER: That is a requirement, it just doesn't get done on a timely basis.

COMMISSIONER KATAYAMA: Is there a process to do a better synchronization of these plans?

KATIE ROTH: It's definitely a comment we've heard before in terms of the updates to these various components of the Hawai'i Water Plan and how to get them more in sync because as you mentioned, they should be communicating with one another and they're being referenced by each other. If you have one that's outdated...

COMMISSIONER KATAYAMA: That's how decisions are being made by each of them.

KATIE ROTH: Exactly. As part of our update to the Hawaii Water Plan framework which I know we are a little delinquent in getting before you, that is something that we hope to address in that framework document to provide better guidance on how we do that.

COMMISSIONER MEYER: You're the conductor.

COMMISSIONER HANNAHS: I think I remember that cascade of planning that gets done is like painting the Golden Gate Bridge. By the time you get to the end of it, you got to go back because the first part of it all changed.

COMMISSIONER MEYER: The last piece is always the timing piece.

COMMISSIONER HANNAHS: It falls off. It's a challenge, but I know you folks do your best and what I'm hearing though is that you do your plans for 20-year horizon and so the new infusion which is a sentinel event of 600 billion and so forth that your chair was trying to leverage like crazy is not changing. I think you guys came in 2018 and we did your reservations on the basis of your current and foreseeable needs at 2018. That is fairly unchanged by the new event of having more money? Or now that you just have some money to implement more of the plans that you had or are you accelerating your plan?

ANDREW CHOY: Thank you for the question. I think it's a combination of both. It's accelerating the lands that we already have. To your point, our chairman has been very adamant about looking at adding new lands to our inventory, lands that are not far and remote like the original lands that we did receive. He's been looking at lands closer to infrastructure so that we can connect to the counties. To your point, like my colleagues in

planning, we do update our plans on a regular basis, as well. We do have our own cascading diagram of our planning system but our Island Plans are due for an update. Our Hawai'i Island Plan was adopted by our Commission in 2002 and we're currently going through that planning process to update it, including the new acquisitions that the Department is acquiring on that particular island. We'll go through a similar process for all of our islands, including the new acquisitions that the recent \$600 million gift from the Legislature has allowed us to acquire new lands across the State.

COMMISSIONER HANNAHS: I would avoid using the word "gift" because it goes back to...

ANDREW CHOY: Obligation.

COMMISSIONER HANNAHS: ...Commissioner Kagawa-Viviani's point and I think it would serve this Commission well to have a discussion of where that trust relationship comes from. I think we all have certain assumptions and certain knowledge, but there's a history here of obligation, not just it's nice or it's a concession to the host culture and so forth. There are obligations made. I appreciate, going back to the question of double dipping and so forth, the chair now has been really thoughtful by getting infill parcels like the one in Kailua that was just acquired and Waipoli on Kaua'i and so forth near existing infrastructure. In that case, you don't double dip and have a reservation for that and then draw your resource from the county system, it's drawn from the county system and is not included in the reservation?

ANDREW CHOY: I think I'm going back to the point in Katie's presentation about what a reservation is. It's simply an acknowledgement that in certain aquifers or in certain surface water management areas, that the Department will require a certain amount of water. How that water gets conveyed to the DHHL lands, the reservation doesn't touch that. It just simply says that Water Commission acknowledges and reserves this water for the use of Hawaiian Home Lands. We still have to have conversations about how we get wet water to Hawaiian Home Lands, so that's often times in current practice done through conversations with Department of Water Supplies, through water development agreements in other far remote areas with private water system owners. It also should be noted we do own and operate four water systems, ours just being on Moloka'i where we service about 400 customers and we also service customers off of Hawaiian Home Lands like the airport, the high school. We much rather prefer to work with county Department of Water Supplies to provide service to our areas. As through our own experience, owning and operating a water system is a very challenging task.

COMMISSIONER HANNAHS: Not your core business.

ANDREW CHOY: Correct.

COMMISSIONER HANNAHS: But of the reservations we have in place, how much of that is paper water did you say?

ANDREW CHOY: That's a good question, we'll have to look at in how many places where our reservations have been converted to wet water.

COMMISSIONER HANNAHS: I think it would be good information to have and just speaks to the challenge of fulfilling the mission of the Hawaiian Homes trust, that the land set aside to fulfill that were generally remote and without infrastructure. We're supposed to put Hawaiians on homes, but then we have to pay all the cost of developing the infrastructure, except we're calling new strategies of, let's go where the infrastructure is and acquire land that may not have come to us in the original trust. That's why it's so long delayed that it takes forever to utilize the reservations we put aside from you because you're out in Ka'ū or you're out in some remote area.

KATIE ROTH: Maybe that does need to be part of the conversation earlier on when we make these reservation requests come before us, is to think more holistically about where the water actually will be coming from.

COMMISSIONER KATAYAMA: Good point.

COMMISSIONER MIIKE: There is a mechanism for addressing the double dipping, say that DHHL has a reservation for X amount of water and then over the years, part of that is being satisfied by public water systems. When you get to a point where you've maxed out the use at least on paper, the Commission will be starting to look at the actual allocation and uses of the permits in a particular area and we have the authority to reduce and reallocate. At that point in time, DHHL will say, well 30% of our reservation is being met by public water systems, so why don't you just reduce our reservation by that amount or at least if you resist, we can do it. But it harms nobody to keep that reservation when part of it is being met by public water systems and the issue only comes up when we're bumped up against the limit. I don't see a problem with a potential double dipping. One last comment is that your current head, Kali Watson has come full circle. He was in the cabinet when I was in the cabinet.

COMMISSIONER HANNAHS: I asked him the other day, were you on board? He said he was in high school.

COMMISSIONER MIIKE: 26 years ago and he's still going. He must have been a very young man when he was with me.

PUBLIC TESTIMONY - None

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C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Update on Implementation of Waimea Watershed Agreement, Waimea, Kaua‘i, Regarding Kōke‘e Ditch Diversion Modifications and Cost Estimates by Kaua‘i Island Utility Cooperative and Kekaha Agriculture Association to be Performed Under a Pending Stream Diversion Works Permit by Commission Staff

PRESENTATION GIVEN BY: Deputy Dean Uyeno

Staff shared progress on the Waimea Watershed Agreement between the relevant parties.

QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: The first step in that, I think we identified three steps to this that number one, let's agree on the scope. Before we go out in cost, it seemed like there were a little different ideas on what the scope of the project would be. Have we got that nailed down?

DEPUTY UYENO: No, not at this point. I think part of it was getting the cost and figure out...

COMMISSIONER HANNAHS: Don't you want to do the scope before the cost?

DEPUTY UYENO: I think to be able to pick and choose, I can't recall the discussion that we had but in order to...

COMMISSIONER HANNAHS: The scope of what's required to fulfill the obligations of the mediation agreement, then secondly the cost of that, then third since we were considering an in lieu payment by KIUC, then a determination of how you best use the monies that you have from KIUC and any other sources. I thought the first thing was the scope of work required to fulfill the terms of the agreement that they all have together.

DEPUTY UYENO: Sorry, I can't recall that discussion. Maybe if any of the parties want to jump in.

CHAIR CHANG: My understanding was, you're right, it was identifying the scope, but it sounded almost like KIUC might have been willing to do more or I think they wanted to see the Cadillac version versus the minimum. Maybe if the Cadillac version was something that they could afford then they wanted to know the cost of that to determine what would be the section. I may be wrong.

COMMISSIONER HANNAHS: Originally, there was contemplation on a phase one and a phase two and the phase one was really done in anticipation that there would be a phase two. But now there's not going to be a phase two so we said okay, we got to go back and figure out what is essential. What was planned here that was agreed upon because that then can be costed so that you can develop a dollar number that then KIUC is considering to contribute to then a whole new capital improvement plan because we've agreed that just doing a phase one as originally contemplated, it may not be optimal. The phase one made sense in the context of being a follow on phase two, but if you're not going to have a phase two, then you might use the money differently, but you got to figure out how much money and the money goes back to the agreement which was the phase one. You got to get that before you can get the money, then you can redesign with that money the best system for now.

DAWN HUFF: Aloha Chair, thank you. I just wanted to clarify we understood the three steps as you described them with the scope being the first step. From our perspective, the scope is the 2018 plan that everyone reviewed and approved, that is the scope for KIUC's commitment here, from our perspective. I won't speak for anybody else, any of the other parties on that, but that is what we are working on getting a cost estimate for, a current cost estimate for. Once we have that, then we can follow up with the other working parties and the Commission, but I do also want to clarify for the record we are not open to expanding our scope beyond what was reviewed and approved. That is the limit of what we are willing to do, that was our commitment.

CHAIR CHANG: That's clear, that's helpful, Dawn. So, we're looking now at the July meeting.

DEPUTY UYENO: Correct.

COMMISSIONER HANNAHS: Make it happen, in spite of all the vacations.

CHAIR CHANG: And Dawn, there's a commitment by KIUC to complete the scope and the cost estimate, Dawn?

DAWN HUFF: We are working on it, we do have conflicts with the currently scheduled working group meeting in July, as well as the Commission meeting in July. I will have to work with Dean on some dates on when we can get back to you. Once we have the cost estimates, then we can follow up on the timing piece, but in the interim I will check with Dean on some other options for dates to meet with the working group parties at least.

COMMISSIONER HANNAHS: This will be my last time I see the West Kaua'i folks. Aloha, I wish you well, hope this gets resolved.

PUBLIC TESTIMONY- None

20240618 03:05:37

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

3. Briefing on the Status of West Maui Water Use Permit Applications Regarding Honokōwai Aquifer System by Commission Staff

PRESENTATION GIVEN BY: Deputy Dean Uyeno

Staff provided an update on the process for groundwater and surface water permits in Honokōwai, Honolua, and Honokōhau Hydrologic Units.

QUESTIONS / COMMENTS

CHAIR CHANG: Where is Pu'ukoli'i?

DEPUTY UYENO: Pu'ukoli'i, so in the next map this is kind of all the developments that either have been completed, are on the books or are being proposed or in the process.

COMMISSIONER HANNAHS: Your prior slides were existing users?

DEPUTY UYENO: What was that again?

COMMISSIONER HANNAHS: Existing users, the prior slide.

DEPUTY UYENO: The prior slide, yes, these are all the existing applications that came.

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CHAIR CHANG: Did you clarify that with the Land Use Commission? They had not submitted an application.

DEPUTY UYENO: I believe she was going to, I can't recall exactly our email communication but she said, got it.

COMMISSIONER MEYER: We're being blamed for a non-existent application?

DEPUTY UYENO: Yeah.

COMMISSIONER HANNAHS: That satisfies the immediate issue before us, but the larger issue is that's a lot of uses for a small amount of water. Where will the Commission be going with that, balancing there?

DEPUTY UYENO: That's why we're focusing our efforts on Honokōwai first, especially since it's all ground water. We don't really have the complexities of dealing with the ground and surface water interactions and then when once we get there, then we'll move back up north towards Honokōhau, Honolulu, and then start making our way south. After Honokōwai, we will start getting to the complexities of ground and surface water. There's the major diversion from Honokōhau is there which feeds municipal uses for both private and public developments.

COMMISSIONER HANNAHS: Any progress on the county side with the treatment of the wastewater?

DEPUTY UYENO: I'm not sure where we last left it, but I think they are more serious about it, but nothing that we've been apprised to.

CHAIR CHANG: They've got other things on their plate. How does our Maui temp housing, the water that's being used for Maui temp housing fold into...because we've been saying if it's an existing use, we've been permitting it. If it's a new use, you've got to wait for our water management process.

DEPUTY UYENO: Correct, as of now close to all of the developments are being fed by the County. Those that may be fed by private are currently on hold and so until we get more information, we are moving forward with that. The only one is a small project which Hawai'i Water Service, I think it's only 50 homes on the golf course where they're building the temp housing for the workers. That's the only thing we need to assess.

CHAIR CHANG: I think Commissioner Miike's concern about, we're going to have a lot more challenges in this designation. We're just not going to have enough and I'm really worried about where we're going to... You've got so many different moving parts with the EP, the Maui temp housing, and the restoration of Lahaina.

COMMISSIONER MEYER: When is your vacation planned? Pardon me, that was really unfair. You're doing great, you really are.

DEPUTY UYENO: To Alexa's credit, when the whole admin bill thing came up, she was looking at the State Water Code review and I think was that the '86? Back then they did recognize that the water shortage issues in West Maui and so back then they were already contemplating designation and we're in this situation now.

CHAIR CHANG: That doesn't make me feel any better.

COMMISSIONER KATAYAMA: Dean, from what you know about this project in the back of the envelope, what do you think the water requirement is going to be?

DEPUTY UYENO: At Pu'ukoli'i?

COMMISSIONER KATAYAMA: Yes.

DEPUTY UYENO: I have no idea, I can't recall what the...

CHAIR CHANG: That's a new use, too, right?

DEPUTY UYENO: They have a master plan for the development, so I'm sure it's on the book somewhere. I just haven't looked at it closely.

COMMISSIONER KATAYAMA: That would give you sort of an idea of what the pressure is going to look like literally.

DEPUTY UYENO: I think that's where the reuse is going to be very important because that may free up a lot of water that would otherwise be used for irrigation.

COMMISSIONER MEYER: I'm out of touch a bit but with respect, you asked the question about the water reuse plan from the Lahaina treatment plant and my understanding is R1's been available for quite a while, like three years now. It's been used primarily along the coast for irrigation, production of the treatment plant. Negotiations are continuing for acquisition of a larger reservoir further up the hill that will provide distribution of the R1 water, wider spectrum. Of course it would have to be pumped up to Pu'ukoli'i to be used up there, but that's project cost. It's my understanding that negotiations are continuing and they're headed in the right direction with respect to acquisition of an old ag reservoir. It's still in use, in pretty good shape and that would solve a lot of the distribution and reuse questions.

DEPUTY UYENO: There's a map on the County website that does show their plans going up to that higher reservoir.

COMMISSIONER KAGAWA-VIVIANI: My connection might be a little unstable. I just wanted to offer a little bright spot at least for me is that the Water Resources Research Center, we've got a lot of new faculty coming in including a drinking water specialist. We have wastewater - very energetic and in a second year wastewater specialist. I hope we can really build some stronger bridges with the agencies and take advantage of that. I don't want to throw Emily under the bus, but she's done potable reuse in different places on the continent. I hope just knowing that there are specialists at UH, I hope they can inform that really important work.

PUBLIC TESTIMONY

CAROLYN AUWELOA: I really have a lot of catching up to do with regards to the situation in West Maui and in particular my interest is the R1 use. I'm sorry, Fred, is that your name tag? It's very hard to read on Zoom. It was very educational for me, I'm making some contacts there in Maui. I come from agriculture and I'm working with my brother in the Ku'ia area and the lack of water for agriculture is such an issue and so I'm just moving home and I'm trying to get caught up on where things are at, where the process is for bringing the R1 water farther south, hopefully. I'm trying to just get in the rooms where sometimes this is being talked about and explore who's been working on this, who's trying to help make this happen or what are the obstacles and if there are ways that I can kōkua to try to have it move forward. Not that I swing any big sticks, but I've got a lot of energy and I'm very passionate about this subject and agriculture and the community in Lahaina and West Maui and the environment. You'll probably see me more and I think it'll always be friendly, so don't worry. I just know the water wars have been going on in West Maui for a very long time. The fact that we haven't figured it out, how to utilize more of this R1 water that's been such a wasted resource, in my opinion, for so long is too bad and we can't let it continue. I think this is a great turning point and opportunity to especially with all of the interest for how can we improve things in Lahaina for climate resilience, for fuel load, for wildfire mitigation, for climate change resilience, all of the above reasons- the R1 kind of seems like a natural good candidate. That's where my interest is and I'm just trying to learn and trying to understand the history and the current status of things and looking for opportunities to maybe have conversations and try to move it forward or see if there's ways that we can help whoever's been trying to move it forward, to overcome whatever obstacles might be in the way.

CHAIR CHANG: We thank you for joining us today, thank you very much.

JOHN HELLY: I'm here, I'm John Helly. My background is as a scientist in oceanography, Earth sciences and geophysics, sort of topics. I've been a resident of Maui for 23 years plus and currently a member of the Board of Water Supply. I'm not speaking for the Board of Water Supply, I'm not representing any points of view in that regard. I was here to understand the timing of the review process for the permits because despite what I just said, I'm a chair of a temporary investigative group for the Board of Water Supply and it's important to our planning as to when we expect to see these somewhere between 100 and 200 permit applications in order to review them effectively. However, I think the presentation by Dean addressed my main concern which is trying to get a status of the timing of all that and I'll just leave you with a comment that we have a meeting on Thursday that's going to be at least partially addressing some of the issues that were just under discussion and I'd encourage anyone interested to pay attention to that meeting, thank you.

CHAIR CHANG: Thank you very much, John. Dean, what is your schedule for this?

DEPUTY UYENO: We were hoping to start bringing at least these applications to you for Honokōwai later this year, the end of this year. That's the hope. We're starting to get the letters out now, most if not all of them should go out this week and again this is just for Honokōwai Aquifer. 30 days for them to get the information back to us at which point we can initiate the public review and public notice process.

CHAIR CHANG: There's also an opportunity for filing a contested case?

DEPUTY UYENO: Well, the public notice will go out. If there are objections, we'll have to hold a public hearing. I believe at that point during the public hearing process, people could request a contested case hearing or when it gets brought before the Commission, there's another opportunity.

COMMISSIONER MEYER: Dean, if you think of it, reach out and let me know when those public hearings are and what the site are? I'd like to follow that along. Thanks very much.

CHAIR CHANG: That probably would be a good idea to have a Commission presence, too, since this is one of the first.

COMMISSIONER KAGAWA-VIVIANI: I was just going to ask Mr. Helly, he mentioned the meeting that was upcoming, if he can share those details verbally with us.

JOHN HELLY: Just a moment, details of the schedule for the meeting?

COMMISSIONER KAGAWA-VIVIANI: Yeah, you said there was a meeting this week.

JOHN HELLY: Yes, there's a meeting on Thursday, our monthly board meeting at 1:30 in the afternoon and there's an agenda published and it's on the County website. You can look for the Board of Water Supply and that'll lead you hopefully to the agenda. If you require more, I'd be happy to send the link.

20240618 03:27:55 – Commissioner Hannahs shares his closing remarks; he will be completing his tenure as Commissioner on June 30, 2024.

COMMISSIONER HANNAHS: Chair Chang, mahalo for affording me this opportunity to share some parting thoughts as I approach the conclusion of two terms of service on this Commission. After reading transcripts of the minutes of our meetings over the past eight years and finding the record of my remarks to be far more disjointed than what I had in mind, I am submitting this written version of my mana'o to supplement my oral comments.

The opportunity to assume a role in assuring the stewardship and availability of a life-enabling resource is a profound honor. I am grateful to Governor Ige for nominating me and to our State Senators for confirming my appointment. Thanks, as well, to Chairs Case and Chang, for guiding our work and to my fellow Commissioners who have been patient with my questions, respectful of my worldview and considerate of my positions. We have had a lot to do and owing to yeomen's efforts of our dedicated staff, we have had full agendas. I observed this tone being set at the top when I visited Deputy Director Manuel one day. Kaleo had a white board on his wall that counted down the number of meetings that would occur under his watch because he believed that each meeting represented an opportunity to address the myriad issues before us. I took inspiration from his mission-driven mindset, and I am proud of what we have accomplished by working together with a sense of urgency.

Our business has covered a wide range of issues and I found it beneficial to be collaborating with colleagues who bring diverse skills and experiences to each topic.

- Impacts of climate change on rainfall, water recharge and sustainable yield.
- Domestic requirements, well development, conservation and drought planning.
- Pollution risks and the Red Hill crisis.
- Wastewater treatment and dual system benefits.
- Water Management Area designation.
- Stream and marine biology, watersheds, biodiversity.
- Cultural practices, kuleana rights and Ka Pa'akai analysis.
- Sustainable food system goals, transmission efficiencies and reservoir storage.
- Instream flow standards and riparian ecosystem services.
- Permit streamlining and enforcement challenges.
- Sunshine requirements, civic engagement and integration of stakeholder views.

Some of the achievements that I found particularly gratifying include:

- Resolving contested case disputes in East Maui, Nā Wai 'Ehā and Waimea, Kaua'i that set instream flow standards and provided resources for off-stream use.
- Gaining the Navy's acceptance of responsibility for draining and repurposing Red Hill fuel tanks and remediating our ground water resources.
- Designating Maui Komohana as a Water Management Area.
- Returning water to Moloka'i's Kawela Stream.
- Creating protocols that intensify our commitment to Ka Pa'akai analysis.

In my humble opinion, our efforts to accomplish these and other successful outcomes were benefited by four factors.

- A community that rises to the duty of civic engagement in a democratic system and shows up with knowledge of the topic, respect for the process and aloha 'āina motivating their resolve.

- The work of staff who have diligently researched issues, consulted stakeholders and crafted policy-aligned recommendations for our consideration.
- Commissioners who draw upon their knowledge, experience and problem-solving tools to resolve disputes, balance beneficial interests and fulfill our duties.
- A humble perspective that elevates public trust considerations over our self-interests or the concerns of specific constituencies.

My reflections on our efforts to manage Hawai‘i’s cherished wai resources are in stark contrast to the adage that “whiskey is for drinking and water is for fighting.” That might be what they do elsewhere, but I do not think that characterizes our philosophy over the past eight years. Nor do I believe it will help you as you tackle the work that lies ahead. By now, we should all have learned that conflict divides communities, impedes action, depletes natural resources and confounds financial viability. Our ancestral wisdom of *ola i ka wai* enlightens a more prudent path. Water is not something we should fight to own and control for our singular use. It is what we must sustainably manage to create the conditions we need to survive today and for generations to come.

I will miss the work of the Commission and I will miss all of you. Part of me would like to continue, but I also realize that our community is blessed with a deep bench of Hawaiian cultural practitioners who can bring insights and values that are essential to your future deliberations and efforts to uphold the principles of Hawai‘i’s Water Code. I hope the Governor expeditiously appoints a worthy successor with these qualities so that the Commission can “*e pūpūkahi i holomua kākou!*” Mahalo nui and aloha nō!

20240618 03:40:21

D. COMMISSION MEETING SCHEDULE (TENTATIVE)

July 16, 2024 (Tuesday)

August 20, 2024 (Tuesday)

The meeting adjourned at 12:40 p.m.

June 18, 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/>