

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

DATE: July 23, 2024  
TIME: 9:00 a.m.  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor  
Online via Zoom, Meeting ID: 823 2873 8899

Online link to the video recording of the July 23, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/995611797>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 09:01 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. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike, Ms. Kathleen Ho

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

**EXCUSED:** Dr. Aurora Kagawa-Viviani

**COUNSEL:** Ms. Julie China

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

**20240723 00:09:30**

**A. APPROVAL OF MINUTES**

1. June 18, 2024

2. June 27, 2024

Video recording of the Limited Meeting of the Commission on Water Resource Management to Various Sites along Lower Reach of Punalu‘u Stream is available for viewing at: <https://vimeo.com/970953062>

PUBLIC TESTIMONY – None

**20240723 00:09:52**

**MOTION: (MIIKE / KATAYAMA)**

To approve minutes as submitted.

**UNANIMOUSLY APPROVED**

**(MIIKE/MEYER/KATAYAMA/CHANG/HO)**

**20240723 00:11:30**

**B. ACTION ITEM**

- 1. Approval of the Stream Diversion Works Permit (SDWP.6007.6) Application, Installation of a Portable Submersible Pump; and Find that a Petition to Amend the Interim Instream Flow Standard is Not Required; and Approval of Surface Water Use Permit (SWUP.6006.6) Application for New Use, With Special Conditions, Bob Flint and Sunny Jordan, 4,975 gpd for Diversified Agriculture, Irrigation and Domestic Use; Wailuku River, ‘Īao Surface Water Management Area, Maui, TMK: (2) 3-3-018:005**

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

Staff stated the summary of request to approve the Stream Diversion Works Permit based on domestic and agricultural use.

QUESTIONS / COMMENTS

COMMISSIONER MIIKE: You said Priority 1, what's the basis for that?

DEPUTY UYENO: Priority 1?

CHAIR CHANG: 3C.

COMMISSIONER MIIKE: Let me tell you. Based upon the definition of traditional and customary rights?

DR. STRAUCH: I apologize, I did not write...

DEPUTY UYENO: For the domestic use component of the 600 gpd (gallons per day).

COMMISSIONER MIIKE: Is that the traditional and customary?

DEPUTY UYENO: No, it was for the domestic use component, the Priority 1.

COMMISSIONER MIIKE: What about the agriculture?

DEPUTY UYENO: The diversified agricultural part, the domestic use component of 2,500 gpd for diversified ag and the 600...

COMMISSIONER MIIKE: So, it's not based on traditional and customary?

DEPUTY UYENO: No.

COMMISSIONER MIIKE: Then why is it in the submittal? It says that they have traditional and customary rights on the basis of the Commission in its past decision - said all of the Nā Wai 'Ehā area was traditional and that any Native Hawaiian qualifies which is a deviation from what the current law is. If you guys don't know?

DR. STRAUCH: I did not prepare this submittal, I apologize.

DEPUTY UYENO: They're not claiming traditional and customary rights.

COMMISSIONER MIIKE: Why did you guys state that then? What was the purpose of saying they had traditional and customary rights?

DEPUTY UYENO: No, they did not have traditional and customary rights. They claimed appurtenant rights, but those rights were extinguished.

COMMISSIONER MIIKE: That's another issue. I understand, well anyway, I saw in here somewhere that they were recognized on the basis that one of them was a Hawaiian and that the entire Nā Wai 'Ehā area was traditional and customary practices. My objection is that if that's the basis for giving this permit, I can't support that because what it's saying is that the entire Nā Wai 'Ehā area is traditional and customary practice, regardless of whether I had ever been there prior to 1892 -meaning my ancestors. As long as I'm native Hawaiian, I have traditional and customary rights. That is totally wrong. The other issue is that on the appurtenant rights, I continue to say that you can no longer extinguish it from 1978 and certainly from 1987. The Commission's decision back then says and I will quote, "The Commission has the duty to adhere to Reppun - the Reppun case - until the decision has been reversed or overruled by the court of last resort or altered by legislative enactment." When I as the hearings officer dealt with this issue, I focused on the "or legislative enactment." What the Commission did was simply eliminated from the decision, all of my discussion on legislative enactment and said that, oh we have to

adhere to Reppun, otherwise we could be in trouble later on. I went into detail in my proposed Decision and Order on that in that the Reppun decision dealt with circumstances from '75 to '76 even though the decision was issued in 1980. The court has been clear that when they deal with this, they only deal with the issues at hand and they're not going to speculate about future issues. Regardless of that, in the first Waiāhole case in 2000, a couple of parties that objected that the '78 Constitutional amendments were not in effect until legislation was passed and the court said, nope. Once it was ratified, it's self-executing, so '78 where it preserved the appurtenant rights was established in 1978. Whether you agreed with that or not, in 1987 the Water Code was passed, reflecting their preservation of appurtenant rights. At least from 1987 on, you can't extinguish appurtenant rights and this reservation was made in 1990. My contention is appurtenant rights no longer can be extinguished because it has a statutory basis just as riparian rights can be extinguished because they have a statutory basis. Now, what to me is really strange is that the Commission's decision said, oh we cannot until the Supreme Court tells us, we have to stick to Reppun, we have to adhere to case law. And yet, they turn around on the traditional and customary rights, they first say it was my recommendation as the hearings officer that a person had to personally trace their traditional and customary practice back before November 25, 1892 in a particular area. That wasn't my recommendation, that's the law. I was citing a case. What the Commission now says is that we deem all of Nā Wai 'Ehā as an area of traditional and customary practice and that any Hawaiian, whether or not they had ever resided in or their ancestors resided there, anybody. Urban Hawaiian living in Honolulu moves to Maui, they will have traditional and customary rights anywhere in Nā Wai 'Ehā. I can't agree with that. I can approve this permit if it's based on and with the priority of appurtenant rights, but not on traditional and customary rights. If the approval is based on neither of those and just because it's whatever the domestic use is, I'm fine with that, but I cannot go along with those two things.

COMMISSIONER HO: If you look at page 22 of the submittal because traditional and customary rights is discussed, I wonder if that alleviates your concerns, page 22.

DR. STRAUCH: The applicant did not claim traditional and customary rights.

CHAIR CHANG: On page 12.

COMMISSIONER MIIKE: I understand that.

COMMISSIONER HO: But in your discussion you qualify it by saying, "qualifying as a Native Hawaiian refers to those persons who are descendants of the Native Hawaiian who inhabited the island prior to..."

DR. STRAUCH: It's page 19.

CHAIR CHANG: And also page 12, the applicant. They're not currently...

COMMISSIONER HO: Maybe mine is different on the pdf.

CHAIR CHANG: Yeah, I don't think this is based upon traditional and customary practices, nor is it based on appurtenant rights. I think with that, Commissioner Miike...this is, and maybe I haven't been paying as close attention, first time I've notice Priority 1 and Priority 3 in your submittals. Are we now prioritizing?

DEPUTY UYENO: That was a carryover from the Nā Wai 'Ehā decision, in the original Commission decision.

COMMISSIONER MIIKE: My understanding is that all of the permits that we will be issuing will have a priority ranking. That was in my proposal and that was in the Commission. Might have changed the priority a little bit, but there are priority rankings because we know there's not enough water for everybody is the point.

DEPUTY UYENO: Whether that gets modified based upon the remand.

COMMISSIONER MIIKE: The decision for this is based on domestic use?

DEPUTY UYENO: Correct.

COMMISSIONER MIIKE: Which is Priority 1?

DEPUTY UYENO: Correct.

COMMISSIONER MIIKE: Then as long as that discussion and that conclusion about appurtenant rights being extinguished and that changed definition of judicial and customary rights have no bearing on the permit, I'm fine with that. But, I'm just warning you that these cases come up and I know there are others coming up that claims, number one - appurtenant rights are extinguished, but more importantly changes radically the definition of traditional and customary rights. I'm going to object every time.

CHAIR CHANG: Okay, that's fair. I think in this particular permit, those were not the basis upon which staff is recommending the allocation. I share with you sentiments about the interpretation of traditional and customary practices. I believe you have to have a connection.

PUBLIC TESTIMONY - None

**20240723 00:29:25**

**MOTION: (MIIKE / HO)**

To approve staff recommendation based upon domestic use.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/CHANG/MEYER/HO)**

20240723 00:30:21

**B. ACTION ITEM**

**2. Declaratory Ruling No. DEC-MA24-G7, No Water Use Permit Requirement, Pursuant to Hawai'i Revised Statutes Section 174C-48(a), For Hawaii Water Service Company, Inc. to Deliver Water to Its Customer TY Management Corporation for Kapalua Village Temporary Housing Project, TMK (2) 4-2-004:036, Honolua Ground Water Management Area, Maui**

PRESENTATION OF SUBMITTAL: Deputy Dean Uyeno; Robert Strand, Onaona Thoene – Carlsmith Ball on behalf of TY Management Corporation

Staff stated the summary of request for a declaratory ruling to clarify that the Commission will not require a water use permit to be issued for Hawaii Water Service Company, Inc.'s delivery of water to its customer TY Management Corporation for 50 temporary modular housing units until the year 2031.

QUESTIONS / COMMENTS

CHAIR CHANG: Thank you very much, Dean. I'd just like to add to that, if you recall several months ago staff did a briefing to the Water Commission on the Maui temp housing to support the displaced residents of Maui, the fire displaced residents. We did share with you that if the water was coming from the County of Maui, under the Code, we would permit that to be an existing use if Maui County Water Department was servicing the Maui temp housing. However, this is a different circumstance and this circumstance we have a private water purveyor but also providing support to Maui temp housing, specifically for their employees. Rather than seek a suspension from Executive Emergency Proclamation suspending 174C to account for these unique situations, under the Code we have the authority to request a declaratory ruling by the Commission that a permit is not required given these unique circumstances. Given this situation, we chose to come to the Water Commission to seek a declaratory ruling that it's not that we wouldn't enforce, but we would not require a permit for this Maui temp housing, given that there is sufficient water in this aquifer and it is for Maui temp housing. Anything beyond that would require a water use permit and they've completed all the processes. We are continuing to move forward on the water designation process, but given the timing, of the necessity to build that these are clearly temporary housing units and that they are being put on the Kapalua Golf Course, I think CWRM felt that this unique circumstances that the appropriate mechanism was to bring this back as a dec(laratory) action to the Water Commission. That provides some additional background. We did receive written testimony, normally we take questions by the Commissioners before we take public testimony. Commissioner Aurora Kagawa-Viviani is not here, but she did have some questions. I'm going to read them into the record and permit staff an opportunity to address them. There's no objections? The first comment relates to system source - assuming my interpretation is correct and I'm trying to read this verbatim from her email

– “please clarify what the potable Kapalua public water system managed by Hawaii Water Service formally by MLP’s Kapalua Water Company is served solely by two wells, Kapalua 1 and 2, while Kapalua area non-potable needs are supported by Honokōhau Stream and Honolua Ditch. They are different systems. Note...”

DEPUTY UYENO: Yes, that is correct. The potable system is served by the two wells. Kapalua 1 and 2, and the region's non-potable needs are serviced by the Honokōhau Stream and actually the Honokōhau Ditch. Yes, there are two - the groundwater and surface water systems are two separate systems.

CHAIR CHANG: “Two, expiration sunset. Can we be more precise about the sunset of this ruling? Does it sunset 7/23/2031 or 12/31/2031? Suggest revised recommendations to provide clarity.”

DEPUTY UYENO: As we were drafting the submittal, that did come to mind. I think I would want to put that to the Commission and that may be revised depending on comments from TY Management and Hawai‘i Water Service and others.

CHAIR CHANG: She didn't give me follow-up questions, so I'm just going to read her question. “Third, actions upon expirations seem internally inconsistent. Existing language suggests water use permit will be required to extend use past 2031; however, ambiguity is introduced in recommendation two with the indication that the ruling may be extended or modified in addition to a permit application for new use. Given the permit process will be ongoing, is it possible to provide more clarity about the steps HWS should pursue?”

DEPUTY UYENO: That's probably my fault for not catching that in recommendation one. We did say that we will not require Hawai‘i Water Service to obtain a water use permit until the year 2031 but wanting to provide some flexibility for the Commission at that time. I added in recommendation two that would give you folks options to, again, either extend this declaratory ruling, modify the ruling, or require Hawai‘i Water Service or TY Management to file for a water use permit for new use or some other action you deem appropriate, either now or at that time.

CHAIR CHANG: When we get to the point of any amendments to the modification, she did have some additional language.

COMMISSIONER MIIKE: I just have a legal question for our attorney. HAR 13-167-81, which is the basis to it, seems to apply to absolutely everything we do.

DEPUTY AG CHINA: I got to pull that up.

COMMISSIONER MIIKE: I'm sorry, what?

DEPUTY AG CHINA: I have to pull it up.

COMMISSIONER MIIKE: Okay but I was looking at the submittal where it quotes it. It applies to everything. If it applies, is there any limitation on our authority to bypass all these things? I mean if I look at that Hawaii Administrative Rule, you say we can issue a declaratory ruling on anything we do, so that seems crazy to me. Unless it's some limitation that we impose on ourselves, but I'm not comfortable with a law that lets us do that.

CHAIR CHANG: Well, as long as - and I've only sat on the Water Commission 18 months - this is the first time that we've used a dec(laratory) action. I think that we try to judiciously exercise that, that we don't use it unless sort of exhausting all other legal remedies. I suspect that that is part of the reason why the dec(laratory) action is provided. You got to exhaust everything else, but I think it does provide us great flexibility should we have no other vehicle.

DEPUTY AG CHINA: It is very broad.

COMMISSIONER MIIKE: We can bypass the entire Code. Not only that, we can bypass findings of law and I mean all of that stuff.

DEPUTY AG CHINA: Well I think you guys as the Commission wouldn't do that because...

COMMISSIONER MIIKE: I know we wouldn't do that, but it gives us the authority.

DEPUTY AG CHINA: But it's there, yeah.

COMMISSIONER MIIKE: What if we have a different Commission and they want to do anything?

DEPUTY UYENO: That's why Julie is here.

CHAIR CHANG: I think we'd get sued, but there is some additional language to this. I don't know if anybody has that because I know we've only quoted...

COMMISSIONER MIIKE: Just looking at it, I was surprised that there isn't any checks and balances or limitation on it, but anyway that was just a legal question.

CHAIR CHANG: I think that is a fair question other than...

COMMISSIONER MIIKE: I don't have any problem.

CHAIR CHANG: Okay, very good.

COMMISSIONER KATAYAMA: Dean, can you just help me with this? You're saying that if all the existing reservations were exercised, we'd still have 5.3 million gallons of



sustainable yield and you're saying that if we approve pending requests, we'll have 3.8? What is those pending 1.5 million gallons?

DEPUTY UYENO: What is it for?

COMMISSIONER KATAYAMA: Yes, there are some permits in process, isn't there?

DEPUTY UYENO: Sorry, what was that again?

COMMISSIONER KATAYAMA: Is there permits in process?

DEPUTY UYENO: Yes, we're reviewing the existing use permits now and we're going to start working on the letters for Honolulu.

COMMISSIONER KATAYAMA: Sort of as a background, what's the intent of these portable homes? Is it the intent to be removed after seven years?

DEPUTY UYENO: Correct, that's my understanding, but Hawai'i Water Service and TY Management are here for additional questions or they can provide additional insight.

COMMISSIONER KATAYAMA: Okay, I'll wait for that. Thank you.

COMMISSIONER MEYER: Just a quick question, you mentioned that the Kapalua water system is in effect a dual system for public purpose – one, for potable from the wells 1 and 2 and then it uses surface water as well and all homes served by the public utility have in effect two meters. Will these units have that second availability of non-potable water, surface water to them? Secondly, if not, does it make much sense to perhaps expand the permit from 400 to the usual 600 gallons per day because these are one, two, three, and four bedroom units. They might reach a situation in some of the larger units where they could use and should need more than 400 gallons per day. Just a question.

CHAIR CHANG: No, good enough and I think, Paul, the applicants are here who could probably answer more specifically your question.

ROBERT STRAND: Good morning, Chair and Commissioners, Commissioner Meyer, that are participating by Zoom. My name is Robert Strand, I'm an attorney representing TY Management Corporation and with me this morning is Onaona Thoene who's also representing TY Management Corporation in connection with the water in the Kapalua Village Project with the 50 homes for the displaced residents. There was one question, if I may address the first question, it is the intention of TY Management to remove the modular units after seven years. Again, if it turns out that the rebuilding of Lahaina takes longer, we would have to come back before the Commission and a lot of other both governmental and private entities and seek permission to extend that, but right now the intention is to remove them after seven years. As far as Mr. Meyer's question, there is not going to be a second meter for non-potable water. We don't anticipate there will be any

need for substantial irrigation at the site and what the project is trying to do is to use as little water as is reasonably required. Commissioner Meyer is correct, there are two bedroom, three bedroom, and four bedroom homes, but we think with the check meters and the low flow appliances or I'm sorry, I should say...

ONAONA THOENE: Showers and toilets.

ROBERT STRAND: Showers and toilets and that we will be able to manage the water and conserve it in a way that would keep it within the 20,000 gallons per day. I certainly wouldn't object to an expansion to 600 gallons which is the County standard, but that is not the pending request before the Commission. I think those were the questions that were raised, but I'm open to any other questions that the Commissioners may have.

CHAIR CHANG: What's the impact to your, is the golf course going to continue to be used? What impact does this use have on your golf course?

ROBERT STRAND: This land used to be part of what they call the Kapalua Village Course which has been out of operation for quite some time. They have the Plantation Course mauka and the Bay Course makai and in both of those courses they've implemented conservation measures for the irrigation water. At one time they used this property to grow sod and they were irrigating the sod and they would use it on the other golf courses, but obviously now that they're using it for housing there won't be any need for that irrigation water per se. They won't be growing sod on the, I think it's the first hole of the Kapalua Village Course, so there won't be any impact on the surface water that's being used for the golf courses.

CHAIR CHANG: And the 50 units are all for displaced employees?

ROBERT STRAND: Yes and the first priority would be for golf course employees. I understand and we have a bunch of folks available on Zoom if I misquote something, but at the last meeting we had, I think 25 of the units have been applied for by golf course employees. The next priority would be given to employees within the resort, could be the hotels or the other commercial properties there, and if there's still units remaining, they would be open to any displaced residents of Lahaina who needed temporary housing. They're going to fill these units with folks that need the housing.

#### PUBLIC TESTIMONY

BRYAN PIERCE: I provided written testimony, would you like me to read it?

CHAIR CHANG: No, thank you. We've received it, you can summarize if you want.

BRYAN PIERCE: I'm just one of the employees in need. I'm the golf course superintendent and my wife and I lost our home and we're just anxiously waiting to move in.

CHAIR CHANG: Thank you, I appreciate you joining us today. Sorry about your situation.

MIKE QUALL: We're in the same situation as Brian. We lost our dog, my car, everything. We can't wait to move in here, we're very fortunate.

CHAIR CHANG: I appreciate you both joining us today, thank you.

ELENA BRYANT: Aloha, for the record my name is Elena Bryant testifying on behalf of Earthjustice. We want to emphasize that we absolutely support the immediate construction of temporary emergency housing for displaced Maui Komohana community members and commend TY Management Corporation for self-funding these housing units and supporting its community members in this way. Here, it appears based on the submittal and presentation that the requested use of 20,000 gpd (gallons per day) for 50 temporary modular housing units can be accommodated under the sustainable yield in light of other requested existing and new uses with little to no impact on the aquifer. But, we have concerns about setting a precedent of exempting uses from water use permitting requirements in designated water management areas without express and explicit terms governing that exempted use and we have questions and concerns similar to what Commissioner Kagawa-Viviani has raised. We urge the Commission to add language to the ruling, making it abundantly clear that this use is being exempted from water use permitting requirements under the unique and extenuating circumstances involved here. We would urge the Commission to also include language in its ruling, making it clear that the requested use shall only be used for temporary housing of displaced Maui Komohana community members, that approval of this use will cease if and when the temporary housing units are no longer being used to support community members, and that the 20,000 gpd cannot be used for or converted to any other purpose without going through the water use permitting process and of course any other sunset provision clarifications that would aid future Commissioners and the public in understanding the terms of this use. Thank you.

CHAIR CHANG: Thank you very much.

LUCIENNE DE NAIE: I'd just like to speak to this, we're having a crisis in trying to create some units for people to go because they have to move out of hotels. I greatly respect the process that the Commission follows to make sure all the t's are crossed and i's are dotted, but in this case this is an area that is one of the few aquifers that is not being over pumped, where the wells have had very, very stable chlorides. I wrote a history of Maui's water back in 2004 and suggested in that that the County should take over these wells because they appear to be unpolluted and have low chlorides. That being said, I think it's a good idea to look for opportunities where water can be provided to affordable units that are going to be kept affordable either temporary time to cover the need or longer term. There is another project I noticed in the presentation that was made to the department in June or made by CWRM in June that there was a map showing projects that were considered ready to go. One of these is Pūlelehua which I also and many others have tracked for years. This is a promised development that's supposed to

deliver affordable housing, the housing is going to be affordable for 30 years which most housing in our County is not. Many people have been counting on this project for years and years but they too have no source of water except from Maui Land and Pine who pledged that they could use water either from Honokōhau, which now seems less probable because that water is really overcommitted or from some other Maui Land and Pine source which would be the Kapalua wells. Their need is 75,000 gallons, so I think that it is good to look at the big picture, but in Honolua aquifer if there are a few exceptions that could help get people in housing. This would help 50 people. Pūlelehua, first phase, would help I think 140 people. These are rentals so people don't have to wait in line to buy houses, they can just have a place, a roof over their head at an affordable rate. I just urge you to also be practical as well as upholding your public trust responsibilities and I am preparing a letter on behalf of Maui Tomorrow to go into more detail on this and it'll be submitted in the next few days. This is a difficult decision, but I think that we have people hurting out there in West Maui who are being forced out of the hotels and who really want a roof over their heads and they do need some water. Thank you.

CHAIR CHANG: Thank you very much, Lucienne. Anyone else? I will share with you that as Chair of the Water Commission, working with CWRM staff and the Attorney General's office, we have struggled with how do we address Maui temp housing, how do we address the Maui housing crisis, and trying to very narrowly tailor where it does not fall on the Emergency Proclamation because we did not want to seek a suspension of 174C, but utilizing the existing code. We felt comfortable under 174C-48 that the County can redistribute and not be a new use, but as we're going through the water use management process, having to be very cautious about being transparent, fair, and objective, but also recognizing the unique circumstances of the displaced Maui residence. I think based upon those circumstances, we felt that the declaratory action was an appropriate action in this case as it permitted the Commission to take action in the context of a public meeting and so that we could do this in open. Again, we are trying to very narrowly tailor it - be on a case-by-case basis. As I think both Commissioner Miike and I have said, this is the first time I've seen us use a declaratory ruling and although as broad as it is, we are trying to be very cautious about how we implement the Water Code in light of these circumstances.

COMMISSIONER MIIKE: Just dealing with the comments from the Earthjustice attorney, it seems like the submittal has everything in there except a more formal statement about the housing to be used only for displaced people from the fire. I think that it already said that, maybe we can incorporate that into the recommendation. You wouldn't have any problem with that?

ROBERT STRAND: No, that's certainly the intent and in the priorities we mentioned, we're going to fill them all with displaced West Maui residents.

CHAIR CHANG: I know Commissioner Kagawa-Viviani did provide - I don't know how different - she just says she would modify the recommendations: 1) "The Commission on Water Resource Management will not require Hawaii Water Service Company, Inc. to

obtain a water use permit under 174C-48a for the delivery of up to 20,000 gallons a day of groundwater to its customer TY Management Corporation, TMK for 50 temporary modular housing units of the Kapalua Village Temporary Housing Project for Kapalua employees who have been displaced by the Lahaina fire until the year 2031.” That's what it says. Okay, I don't...

DEPUTY UYENO: Her point is that just a little bit of inconsistency between, we're saying that if you read Recommendation 1, it appears that they would need to obtain a water use permit after 2031. Recommendation 2 gives you folks options to either extend the ruling, modify it, or require filing of water use permit application for new use.

CHAIR CHANG: She's recommending, “may include an extension of the ruling, modification...required filing of a water use permit application for new use or other action as determined by the Commission.” She was just bringing out the inconsistency? Do you have a recommendation?

DEPUTY UYENO: I agree with her recommendation of first setting an expiration or sunset date, defining that whether you want to go with seven years from today or end of 2031. That may be the first step.

CHAIR CHANG: Is there a preference?

ROBERT STRAND: Well, I suppose we'd like December 31, 2031.

COMMISSIONER HO: Thank you.

COMMISSIONER MIIKE: What's a few months?

ROBERT STRAND: There's just so much uncertainty as to how quickly Lahaina is going to rebuild and I did see in the newspaper last week that there's at least one house that had a permit. That fella is rebuilding, but it's going to be a very slow process.

COMMISSIONER MIIKE: Are we adding or keeping that about we still have the option of extending it?

CHAIR CHANG: I think that's on recommendation number two, right?

DEPUTY UYENO: Correct.

CHAIR CHANG: Are you making any changes?

COMMISSIONER KATAYAMA: I support this water use, but I guess the question in Recommendation 2, the last sentence is that is there a potential of this morphing into permanent housing? I would expect that we would have the ability if the need for temporary housing extends beyond the estimated seven years, that it'll be okay. The issue would be really is that if this morphs into permanent housing. It's like having temporary

buildings on the university campus. There's nothing more permanent than a temporary building.

CHAIR CHANG: If we need to clarify that...we should probably be having a motion then discussion. The representation has been only for temp housing.

COMMISSIONER HO: Are you ready for a motion?

CHAIR CHANG: Yeah, I think we should procedurally have a motion and then have discussion and then we can do the amendments. Go ahead.

**20240723 01:07:28**

**MOTION: (HO / KATAYAMA)**

To approve staff recommendation with amendments.

COMMISSIONER HO: I make a motion to take the staff's recommendation 1 with the amendment that the temporary modular housing for the Kapalua Village Temporary Housing Project not be limited to the golf course employees, but to the displaced residents of Lahaina as a result of the Lahaina fires and this temporary modular housing will cease on December 31, 2031.

QUESTIONS / COMMENTS

CHAIR CHANG: And then Condition 2, are you making any changes?

COMMISSIONER HO: Nope.

COMMISSIONER KATAYAMA: Chair, can we be more specific on the last sentence on the options for continued use of water where it says that "for new uses".

CHAIR CHANG: Okay, how would you like to?

COMMISSIONER KATAYAMA: I'm not sure on what pathways forward that if the applicant applies for a new water permit, would that now become permanent zoning or permanent housing? My understanding is any permanent use is going to require new water use permit.

DEPUTY UYENO: Correct.

CHAIR CHANG: I mean this is only because it's temporary and that the intention is that they will get offline.

COMMISSIONER KATAYAMA: Should that action be independent of this approval? In other words, do we need to narrow this extended use only for emergency use for temporary housing? That could go on for years beyond the seven years.

DEPUTY UYENO: I think that goes to Elena's comment about making it a little more clear that...

COMMISSIONER KATAYAMA: I agree with that. I would support that, Elena's comment.

COMMISSIONER MIIKE: Can I have a comment on Kathy's motion? It sort of leaves it open that anybody could apply for displaced and their priority is their employees. Then if there's extra...

COMMISSIONER HO: I guess we should prioritize it with golf course employees, then hotel employees...

ROBERT STRAND: Other resort employees, it could be commercial properties and then if there's still units left over, they will provide them to other displaced residents in West Maui. That would be the three levels of priority.

COMMISSIONER HO: I would incorporate those three priorities.

DEPUTY UYENO: If I may, I can put up a Word document and we can edit that?

JULIE CHINA: Bigger please?

CHAIR CHANG: "Options for continued use are limited only for Maui temp housing, but may include an extension." Is that the language that we're looking at for number 2? So, there are three priorities in number 1 – 1) displaced golf course employees, 2) displaced hotel resort employees, and 3) fire displaced Maui residents.

COMMISSIONER HO: I think that language is, I don't know, the only thing I prioritized for 1) Kapalua employees, 2) other Kapalua employee residents, and 3) West Maui residents who have been displaced.

ROBERT STRAND: I think that's the intention and I think the language that Dean came up with works with those changes, works.

CHAIR CHANG: "And for fire displaced West Maui residents," because we don't have fire...

COMMISSIONER HO: It says, "who have been displaced by the Lahaina fire."

CHAIR CHANG: Sorry, you guys are one sentence ahead of me.

DEPUTY UYENO: Move the last, the date?

CHAIR CHANG: And we're going to move it to December 31, 2031. Then number 2, if we could where it says, "Options for continued use of water shall be limited to temporary housing and may include an extension of this ruling," so that we do include that limitation, "it should only be used," "but shall be limited to temporary housing for displaced Maui residents and may include..." Is that satisfactory? Applicant seems to be okay. Commissioners? Paul and Wayne?

COMMISSIONER KATAYAMA: I'm okay, thank you.

COMMISSIONER HO: Can I clarify? Sorry, it says "shall notify," so we're okay with them just writing us a letter notifying us of the change?

ROBERT STRAND: I think we would have to notify you and then get another approval.

COMMISSIONER HO: I would think that's the case, but I want to be clear that that's what we're intending.

ROBERT STRAND: And we have other approvals we need get from the County and from the Kapalua Resort Association and other entities and hopefully, we'll know well in advance if we'll be able to.

COMMISSIONER HO: It says, "may include an extension of this ruling...modification of this ruling," so it...

CHAIR CHANG: Where do you see "shall notify"?

COMMISSIONER HO: It says right there, "shall notify." They'll notify us and then further down it says, "may include an extension modification of this ruling, required filing..."

CHAIR CHANG: One requires them to notify us and then it requires a ruling by the Commission.

IWALANI KAAA: We have one more from Earthjustice.

DEPUTY AG CHINA: They already testified?

IWALANI KAAA: Just commenting on what you guys said just now.

DEPUTY AG CHINA: You guys have already received their testimony.

CHAIR CHANG: I think we've tried to incorporate her comment. Sorry, Elena, we tried to incorporate your comment as best we could.



**20240723 01:15:17**

**MOTION: (HO / KATAYAMA)**

To approve staff recommendation with amendments to Recommendations 1 and 2:

1. The Commission on Water Resource Management will not require Hawaii Water Service Company, Inc. to obtain a water use permit under Hawaii Revised Statutes section 174C-48(a) for the delivery of up to 20,000 gallons a day of ground water to its customer TY Management Corporation on TMK parcel (2) 4-2-004:036 for 50 temporary modular housing units of the Kapalua Village Temporary Housing Project, until December 31, 2031, prioritized for: 1) Kapalua Golf employees; 2) other Kapalua Resort employees; and 3) Other West Maui residents, who have been displaced by the Lahaina fire.
2. Should the use of water to the Kapalua Village Temporary Housing Project extend beyond the expiration date of this declaratory ruling or if there are changes to its water use requirements, Hawaii Water Service and/or its customer TY Management Corporation shall notify the Commission on Water Resource Management. Options for continued use of water shall be limited to temporary housing for displaced Maui residents and may include an extension of this ruling, modification of this ruling, required filing of a water use permit application for new use, or other action as determined by the Commission.

**UNANIMOUSLY APPROVED  
(MIKE/KATAYAMA/CHANG/MEYER/HO)**

**20240723 01:17:10 – Break**

**20240723 01:23:41**

**B. ACTION ITEM**

3. **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, Ground Water Regulation Branch  
Chief

Staff stated the summary of request to revise the delegations to approve well and pump permits set by the Commission on December 19, 2023, after the Commission's directive to consult with the Departments of Water Supply and the Department of Hawaiian Home Lands.

#### QUESTIONS / COMMENTS

CHAIR CHANG: Commissioner Kagawa-Viviani did include some written questions, "Clarification: I assume all well construction permits flowchart applies, regardless of water management area or non-water management areas." Ryan, you had recognized that and made the appropriate changes to the flowchart. "Number 2: the submittal presumes all Commissioners are familiar with WCPIS (Well Construction and Pump Installation Standards), I don't think they are." I don't think we do. It'd be helpful if Ryan could provide a succinct overview of the WCPIS to educate us more broadly.

*20240723 01:34:35 – Ryan Imata resumes presentation*

CHAIR CHANG: Okay. "Groundwater overdraft and increasing contamination and scarcity is a widespread and accelerating phenomena in many places beyond Hawai'i" and so it sounded like she just wanted a better education so that people understand these standards and how these standards protect, as you say, the ecosystems from contamination. I think she did feel it was important that there be some additional information provided.

*20240723 01:37:53 – Ryan Imata resumes presentation*

CHERIE KA'ANANA, DEPARTMENT OF HAWAIIAN HOME LANDS: Aloha mai kākou Commissioners and Chair Chang. For the record, my name is Cherie Ka'anana. I'm the water program specialist at the Department of Hawaiian Home Lands. This is Dr. Jonathan Likeke Scheuer, he's our consultant. First, we'd like to thank staff for meeting with us. We had a very productive conversation and are supportive of the revisions to the submittal. While we had suggested to not exempt permits that are located in aquifers where DHHL has a reservation, we recognize that specifically the Pāhoa Aquifer has a high yield of permits and we're open to exempting those in order to provide a workable solution. We also had a discussion about transparency with your staff and agreed that it can be improved and we look forward to working with staff to improve this transparency.

CHAIR CHANG: Very good, thank you very much. I appreciate it and Ryan, I appreciate reaching out to DHHL and working and sort of bridging this. They are indeed a partner with us, they are going to be by our side. Thank you, appreciate the testimony.

BARRY USAGAWA, HONOLULU BOARD OF WATER SUPPLY: Good morning Chair and Commissioners. I just wanted to stand on our supporting testimony for staff recommendations that was submitted in the last meeting and available for any questions. Thank you very much.

CHAIR CHANG: Thank you very much, Barry and we did receive testimony from Keith.

PUBLIC TESTIMONY - None

**20240723 01:41:56**

**MOTION: (MIIKE / MEYER)**

To approve staff recommendation as submitted.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/CHANG/MEYER/HO)**

**20240723 01:42:58**

**B. ACTION ITEM**

**4. Submittal of Policies on Permitting Water Use Transfers for Agricultural Use Where the Transfer Entails a Division of Parcels of End Use, and Pump Replacements for Pumps Greater Than 27 Gallons Per Minute That Have Not Been Used For The Previous Four Years**

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

Staff stated the summary of request that the Commission modify ground water permitting requirements in cases pertaining to agricultural uses.

QUESTIONS / COMMENTS

CHAIR CHANG: I have a comment from Commissioner Kagawa-Viviani. She says, one, she supports more tracking of old wells where pumps haven't been used. We need to think about culling uses as we face future water scarcity, and two, I think Ryan has already addressed the recommendation, please clarify that Recommendation #2 applies to both water management areas and non-water management areas.

RYAN IMATA: I can amend that in the actual or maybe we can amend that in the recommendation.

CHAIR CHANG: Okay.

COMMISSIONER KATAYAMA: Thank you, Chair. Ryan, how is the capacities for inactive pumps factored into the sustainable yield calculation?

RYAN IMATA: The capacity in the sustainable yield. We actually track pumpage in aquifer systems by the actual pumpage. I know that sometimes there's some correlation

between a pump capacity and pumping at 24-hours a day. We generally don't factor in the idea that somebody will pump 24-hours a day in calculating out sustainable yield, but we do regularly track how much is being withdrawn from an aquifer at any given time. I think your question is pertaining to aquifer protection as the way that we look at things. But again, it's not just pump capacities, we look at deep monitor well data, we're looking at water levels, we're looking at salinity, we're looking at profiles in terms of the groundwater levels and then the top of the transition zone from fresh / salt water midpoint. I'm sorry, going a little bit beyond your question, but looking at aquifer health from just the perspective of pumpage is just one facet of it. We're also looking at aquifer profiles, so in that sense we don't look at 24-hour pumpage of pump capacities in terms of evaluating what are going to be the impacts to sustainable yield overall. I hope that answers your question.

COMMISSIONER KATAYAMA: But how does that correlate when you issue water reservations in an aquifer because that's inactive, basically. And there's no sunset on those.

RYAN IMATA: On the reservations, yeah. I think that reservations might be looked at a little bit differently between management areas and non-management areas because in a management area, regardless of your pump capacity, you'll have an allocation and you have to limit the pumpage to that allocation. In that case, instantaneous pump capacities, what I mean by that is gallons per minute, we don't look at as much as we look at the actual allocations.

COMMISSIONER KATAYAMA: If someone were just to reactivate a pump, would that fall under this four-year sunset?

RYAN IMATA: That's a good question, I guess we should amend that. Here's one situation that I see. In Pā'ia, Mahi Pono has these 5,000, and I don't want to pick on anybody, but they have these 5,000 gallon permitted pumps that have been non-operational for a long time and they want to replace those pumps. Now, I'm looking at it from the lens of, I don't know how long they're going to pump and it's not a management area. If they put 5,000 gpm (gallons per minute) pumps and they pump them for 24 hours a day, that's going to far exceed the 8 mgd (million gallons of water) sustainable yield. That's the reason why I want to bring the replacement to the Commission, but your comment is a good one, if it's just reactivating a pump. I just don't know what regulatory mechanism we have for somebody that's reactivating a pump. Maybe that's something the Commission can discuss is if you're reactivating a pump, what permits are required. I don't know because well and pump permits, they're issued for one point in time. It doesn't imply that you can use a well or it's issued to the driller and the driller gets a permit to install a well, install a pump and then beyond that, the landowner has a correlative right to use the well and the pump the way that they see fit. I think there are opportunities for us to revisit those things. I don't want to say it's a slippery slope, but then where do you think in terms of when people have in a non-management area, have a pump capacity, and then want to ramp up pumpage to 24 hours a day versus three hours a day. It's a difficult thing to address, I'm just hoping that in this submittal I can address some of the

issues that we're facing and again this is for transparency. I don't want to delegate things to the Commission where I think that there are questions that come up. Again, with respect to the agricultural subdivision issue, I've been getting some comments from the public saying that, hey you're transferring this water use permit from one guy to another guy, but we don't think that they're good stewards of water. In the transfer I want to make sure that there's due process and that there's opportunity for a better process. Again, I will say that that's a great concern that you raised, Commissioner Katayama and we'll try to address that issue.

COMMISSIONER KATAYAMA: Okay, thank you.

COMMISSIONER MIIKE: Part of it was answered, but if you have a pump insulation permit in a water management area, you also have to get a permit for withdrawal and if it's non-use, we can say you've abandoned the use and we withdraw the permit. Now in the non-management area, don't we have authority for abandonment of wells?

RYAN IMATA: Or non-use, yeah. I think that we can require somebody to abandon a well if it's not being used.

COMMISSIONER MIIKE: We have that authority, the question is how long it has to go before there is an abandonment, but can't we just sort of notify people that if we see they haven't done anything with the well, after four years can't we just send them a notice that we're going to start processing an abandonment of well unless you come back with information?

RYAN IMATA: Yeah.

COMMISSIONER MIIKE: Then even in non-management areas, once they put in a pump, don't we follow what they pump?

RYAN IMATA: Yeah, we track. As long as they're reporting their water use, we're tracking what they're pumping. We can certainly implement a program whereby if somebody doesn't pump for a certain period of time, we can require them to abandon the well.

COMMISSIONER MIIKE: So, we have authority to do those things already, right?

RYAN IMATA: Oh, yeah. As you noted in the first or second submittal, the Commission has broad authority for a lot of things, but I think we have stronger standing to require somebody to abandon a well. We prioritize abandonment of wells where there's a potential for contamination. I think that's our first priority.

COMMISSIONER MEYER: Larry, your comments and Ryan, your comments are appropriate. I think following the situation and allowing the well owner, landowner, farmer, user of the land some flexibility to explain their actions is valid and appropriate. Farming, as you guys know, can have longer periods of pre-productivity where new

plants across hundreds or even more acreage may need to be raised in a greenhouse or developed in controlled conditions and they don't actually reach the point of being productive in terms of their full capacity and need for water until 5 years, 8 years down the road. Those are circumstances that I would think it would be in the best interest of the Commission and the public to accommodate those, provided they're explained and provided staff has a chance to understand that and make those allowances accordingly.

RYAN IMATA: That's the reason why my proposal is to take it to the Commission because there's a lot of perception that staff has too much discretion in making decisions about these things. Where there's the opportunity to explain things, I want them to explain it not to me, well they do explain it to me in my submittal, but they explain it to the full Commission and the Commission makes the decision rather than staff making the decision.

COMMISSIONER MEYER: That's certainly great, Ryan. Thank you.

CHAIR CHANG: Ryan, my question is and I'm not as familiar with the abandonment process, but is there a notice requirement and a due process? So, someone has a permit and even if they're not using it, before we decide to change the terms of that, are we required to put people on notice that if you don't use it for four years?

RYAN IMATA: A couple things, I think the first thing is if we're talking about management area versus non-management area, there's two questions right - your allocation and your requirement to abandon and seal the well. Regarding the allocation, there's clearly a process spelled out and that is in 174C-58 where it says that if you don't use water for a period of four or more years, a Commission can permanently revoke your permit, but I think it's subject to a hearing.

CHAIR CHANG: After a hearing, one, they have to be given notice and then a hearing.

RYAN IMATA: 174C-58 doesn't apply to non-management areas because these are for water use permit applications.

CHAIR CHANG: So, your recommendation that, "has not been used for four years shall require...even if the pump installation is less." I'm just wondering do you have to put everybody on notice first and give them an opportunity to? I guess I'm just wondering, are you planning to put all of these users on notice that you haven't been using it?

RYAN IMATA: No, I'm sorry, I think that there's some confusion. I wasn't clear enough, so I apologize in my submittal. When I talked about partial or total non-use, I wasn't talking about revoking anybody's use, I was using that as an example just to frame the time period with which we look at things that are not being used. My recommendation is for pump replacement. If somebody wants to replace a pump, again I'll cite the Department of Water Supply example, if they're pumping a well continuously and the pump goes down and at the Department of Water Supply on the Big Island, Keith Okamoto can speak more to this than I can, but I think pumps go down and it takes them

some time to get it back up. They might not have had continuous pumpage for six months or 12 months or whatever while they get a contractor in place and they order the pump and they do all of that stuff. Just thinking about those kinds of delays, I don't want to add the permitting as a delay in addition to that because what I think is that pumping that quantity isn't really changing the aquifer. It's not going to impact anything significantly. I was just saying that for replacements, if it's greater than 27 gallons per minute and it hasn't been used for four years, you just need to get a permit from us. I'm not going to do a wholesale evaluation of every well that has greater than 27 gpm, and I think that's a discussion for another day. Dr. Miike and Commissioner Katayama's concerns, I'll think about that and think about a subsequent action that we can propose to address those kinds of things.

CHAIR CHANG: Okay, thank you for that clarification. I misunderstood the presentation.

COMMISSIONER MIIKE: Ryan, you can look at all these pumps that have been installed and you know whether they're pumping anything at all.

RYAN IMATA: Yeah.

COMMISSIONER MIIKE: All I'm saying is that after about four years or more, you can just send them a notice saying, we're going to consider this an abandoned well unless you respond and tell us why not. What we're doing is giving them notice that they should come back and let us know.

RYAN IMATA: Yeah, I think that's a great idea.

COMMISSIONER MIIKE: I feel uncomfortable with all of these wells out there with pump permits and they're not doing anything and then at any time, they can start doing.

RYAN IMATA: I agree.

CHAIR CHANG: I agree with that, too. That does appear to be in support of what Commissioner Kagawa-Viviani said. Is that possible to add that to the recommendation, Ryan, or do you want to handle that in a different way?

RYAN IMATA: This is just related to permitting. I feel that those are very legitimate things that we need to address, but number one, I think the AGs can opine, that we didn't notice that particular discussion, so I don't feel comfortable about making a recommendation that we didn't notice to get the proper feedback. I would propose, let's look at that as something as a separate action so that we can notice that publicly and then we can get stakeholder input and do more research into it.

CHAIR CHANG: Good idea.

COMMISSIONER MIIKE: Wait, I don't see why we need to get a formal declaration about how we're going to do that. All I'm saying is that we can just say, look you haven't used your well in X number of years. Come back and tell us why, if you don't tell us we're going to consider starting a process of abandoned wells. I don't see why we need to have a formal decision on that, that's already in the code.

CHAIR CHANG: I would agree with that, Ryan. It seems an operational issue, not a policy and that one that you can implement, but I think it is appropriate to inventory and put people on notice before we take any formal action. It is a good idea to inventory and monitor these.

RYAN IMATA: If you look at my last submittal, given the amount of things that we have to do. I agree it's a great idea, implementation-wise it detracts from the other things that we need to do. I agree it's important and I think that we need to look at it and maybe another thing that we can do is we can brief the Commission on some of the things that we're looking at in terms of... We have, I don't think Katie (Roth) is here anymore, but we have a programmatic agreement with the Department of Health looking at possibly having an abandoned well program.

DEPUTY AG CHINA: She's in the room, Ryan.

RYAN IMATA: I can't see the room, so I thought she had to leave at 10. Maybe we can do a briefing to the Commission on that and look at that, but I agree, it's an important thing to implement.

COMMISSIONER MIIKE: We're not, at least I'm not asking you to do it right away. I'm just saying that we should start doing something like for example if you get a summer intern, that intern can go look at all these well permits and see what's going on in that. I'm not saying prioritize this way up, I'm just saying we should start thinking about it and start doing something about it.

CHAIR CHANG: Or you can get an AI (artificial intelligence) to go through all your files. I chuckle, but I suspect there might even be a program that could go through...that's far beyond this agenda item.

COMMISSIONER HO: Ryan, number 1 - transfer of existing groundwater permits for ag. I don't know how many transfers you have, but in certain programs within the Department of Health what we do in the permit itself, we say that the permit is only good for the permittee and that if they're going to transfer, they have 90 days to notify us. I'm just concerned that if it all requires approval of the Commission, if you don't give a time frame that we're going to have, again I don't know how many of these transfers you have, but we could have a lot that has to come to the Commission.

RYAN IMATA: Sorry, I'm trying to understand the question.



COMMISSIONER HO: In the Department of Health, we have permits that we issue and we say the permit is only good for the permittee and if they want to transfer the permit to someone who's buying the operation, they have to notify the Department within 90 days of the transfer and that gives us an opportunity to review the new application. If this transfer is going to happen and it has to come to the Commission, my concern is that if you don't give a time frame in which these transfers have to notify the Commission and that they have to come before the Commission, that we might get backed up.

RYAN IMATA: That's a good question. I will note that in 174C-59, the State Water Code, the new landowner is required to be informed of the transfer within 90 days, so I think that echoes what...

COMMISSIONER HO: It just doesn't say it in the submittal, that's all.

CHAIR CHANG: Is that a standard condition? Land Division for 171 permits, there are standard terms and conditions, any transfer, any assignment requires notification. Is there some things that you can rather than getting Commission approval that it is part of your standard terms and conditions of the permit?

RYAN IMATA: The reason why I want them to be presented to the Commission, again I will cite that situation or I'll cite situations where there's a transfer of the water use permit. Say it's to a previous big agricultural user like Del Monte or Wailua Sugar or Dole or whatever and it's being transferred to a purveyor that's then going to provide water to a use that's not necessarily the same. I'll say that in some cases there may be transfers of use from pineapple to gentleman estates and I think those are opportunities - again I'm trying to take the discretion out of staff's ability to say that if it's going to be used for a different type of use that's agriculture, but not quite agriculture that we present it to the Commission for approval. The Commission can say, well we approve this transfer or we don't approve this transfer. Then maybe the action is that the Commission says, well you got to apply for a new water use permit because the use is not the same, in other words rendering that [174]C-59 Condition 1 not applicable, that's what I'm saying.

DEPUTY UYENO: Commissioners, if I may. Ryan, correct me if I'm wrong, the transfers are typically handled ministerially, is that correct?

RYAN IMATA: Yeah, again that's why I'm trying to take it out of staff's hands.

DEPUTY UYENO: Ryan cites 174C-59 that states the Commission is informed of the transfer or should be informed of the transfer within 90 days. The recommendation only speaks to the approval of those transfer requests, that certain ones we want to bring to the Commission for approval versus the rest would be handled ministerially.

RYAN IMATA: What I can say, too, is that part of the Code says, "a permit may be transferred in whole or in part from the permittee to another." It's saying that it can be, but I'm trying to frame it under this lens that the Commission staff and the Deputy doesn't have the ultimate power to make decisions about how things happen, rather I think it goes

to the Commission so the Commission can make those decisions. It's the loophole that I'm seeing in our process that allows us to approve gentlemen estates. I'm just saying it plainly or any agricultural use where the agricultural use is different from the previous agricultural use and I don't see the same quantity of water being necessary for the new use. That's what I'm saying.

CHAIR CHANG: I know that, Ryan, you're trying to find this really nice balance between transparency, objectivity, what comes before the Commission, what's discretionary versus what's ministerial. It's always a hard balance to find.

PUBLIC TESTIMONY - None

**20240723 02:17:49**

**MOTION: (MIIKE / KATAYAMA)**

To approve staff recommendation as submitted.

QUESTIONS / COMMENTS

COMMISSIONER KATAYAMA: Ryan, has the Department of Ag(riculture) had any comments to this? Have they been aware of this?

RYAN IMATA: I don't know if they're aware of it, but I haven't received comments on it.

COMMISSIONER MIIKE: I'll make one comment. Series of Supreme Court decisions have said that when we permit agriculture uses, we have to be basically crop specific, now. You can't just sort of say "agriculture," you can't just say because sugar used to be about 7,000 gallons an acre. Pineapple is maybe 1,200 and so that's a big range. At least when we say about change in use, it should reflect what we do under the Supreme Court directive. Agriculture is not just a uniform number.

RYAN IMATA: Thank you for that, that's exactly how I feel and I think that it's the Commission's responsibility to make sure that where these transfers are happening that again, we apply our evaluation specific to what kind of agricultural use it is. As an example, I'll cite Kunia where they converted from pineapple. I was out there looking at the pineapple fields in the very beginning and then now it's all seed corn and it's all different types of crops. I think it's important for us to have the ability to look at what you said in terms of the Supreme Court mandate, for us to look more specifically at crop specific water requirements where these transfers are happening.

CHAIR CHANG: Ryan, does the Department of Ag(riculture) have a criteria for water use of different crops? Do they have a standard?

RYAN IMATA: I believe they do, but I think that in establishing what water duties are and maybe Neal is on the call, maybe he can answer this more. He has more knowledge about this, but I think that they use a certain set of calculations to determine what they

need in terms of long-term use of water. We're looking more in terms of allocating water for a very specific period so that we can have equity across all the water use permits that we issue and it's basically looking at a one and five-year drought period and it's using our IWREDSS program to look specifically at root depths. We look at isohyets to determine rainfall, we look at rain gages to determine evaporation and we have a specific set of circumstances that looks at calculating water uses. DOA (Department of Agriculture) uses more long-term projection for what kind of water uses are necessary.

COMMISSIONER MIIKE: I think the Supreme Court decisions, especially when we were looking at the Waiāhole and the use of Larry Jefts and those farmers, said you had to be specific for a crop in a particular area because they change so much. The DOA budgets for crops are basically generic, they got corn, whatever else, and it don't consider where they're growing that stuff, whereas ours do.

RYAN IMATA: Yeah, ours does.

COMMISSIONER KATAYAMA: Also Ryan, it's seasonal because in the summer where you can, rates are higher, you need more water. If you take an average of, let's say 1,000 gallons per acre, you may use none of it in the winter. It may use double of that during the summer, that's the way it goes. The other issue is the efficiency of your system, we always talk about where is the water being measured at? Is it top of field or is it at top of delivery system, diversion? Then you have to comprehend the efficiency of the system.

RYAN IMATA: Definitely, I think that brings into consideration two things, maybe we need to think about doing a briefing to you guys regarding how we use the IWREDSS program - that's the program that was developed in conjunction with the University of Hawai'i to help us assess if somebody's application for water use for agricultural uses is appropriate.

COMMISSIONER KATAYAMA: It's a good program.

RYAN IMATA: Maybe I need to or staff needs to brief you...our surface water guys use it, too, and I think it'll illustrate to you guys that we do accommodate the seasonal variability, we accommodate different irrigation types, and as Dr. Miike said, it's very place specific. We're looking at rainfall isohyets, we're looking at pan evaporation, we're looking at all of that data in order to come up with that calculation and also projecting it out long-term to account for a one in five-year drought scenario, to accommodate for the rainfall. It might be a good opportunity for us to reinforce some of the things that we do in terms of how we arrive at the calculation. I will tell you that regarding system efficiencies and system loss, we do account for that in terms of the actual irrigation. If you're using overhead sprinklers versus drip irrigation, it requires a different quantity of water. But we're not looking at system losses in terms of what you said, assessing at the source or assessing at the end-use. I know Neal doesn't like to use percentages as system losses, but what if you have 20% system loss or 50%? It was accommodated and Dr. Miike knows that system losses were accommodated in Waiāhole in terms of the Commission issuing an allocation for system losses. I can't speak for the surface water

side of it, but I do know that that's the only groundwater situation in which we did incorporate system loss into the equation and maybe that's something that we need to look at further. Your comments are well taken.

**20240723 02:24:45**

**MOTION: (MIIKE / KATAYAMA)**

To approve staff recommendation as submitted.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/CHANG/MEYER/HO)**

**20240723 02:25:10**

**C. COMMISSION MEETING SCHEDULE (*tentative*)**

August 20, 2024 (Tuesday)

September 17, 2024 (Tuesday)

**QUESTIONS / COMMENTS**

COMMISSIONER MIIKE: May I ask, have you started thinking about a timetable about us dealing with the remand from the Supreme Court?

CHAIR CHANG: We are in discussions with the Attorney General's office to do a briefing and then identifying some steps. Hopefully, within the next month we'll come back.

COMMISSIONER MIIKE: That would be an Executive Session?

CHAIR CHANG: Yes, that would be an Executive Session. And actually, I did do a site visit last week to Nā Wai 'Ehā. I found that to be extremely helpful. We recognize we need to get on that as soon as possible.

COMMISSIONER MIIKE: And we'll have things to decide.

The meeting adjourned at 11:22 a.m.

July 23, 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/>