

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

DATE: September 17, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 853 6488 0484

Online link to the video recording of the September 17, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/1024207616>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 9:02 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, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Dr. Lawrence Miike, Ms. Kathleen Ho

STAFF: Ms. Katie Roth, Dr. Ayron Strauch, Mr. Ryan Imata, Ms. Lyss Rousseve, Mr. Nick Ing, Mr. Neal Fujii, Ms. ‘Iwalani Kaaa

EXCUSED: Mr. Paul Meyer

COUNSEL: Ms. Cindy Young

OTHERS: Ms. Amanda Waki- Fukunaga & Associates, Inc., Mr. Jason Kagimoto- Kaaui Department of Water; RDML Mark Williams, CDR Ben Dunn- Navy Closure Task Force

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

20240917 00:07:55

A. APPROVAL OF MINUTES

August 20, 2024

PUBLIC TESTIMONY – None

20240917 00:08:30

MOTION: (MIKE / HO)

To approve minutes with non-substantive edits.

UNANIMOUSLY APPROVED

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

20240917 00:09:10

B. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Briefing on the Adoption of the Kaua‘i Water Use and Development Plan Update by Commission Staff, Kaua‘i Department of Water, and Fukunaga & Associates, Inc.

PRESENTATION GIVEN BY: Amanda Waki- Fukunaga & Associates, Inc., Jason Kagimoto- Kaua‘i Department of Water (KDW), Katie Roth- Planning Branch Manager

An updated draft of the Kaua‘i Water Use and Development Plan was shared which implemented Commission feedback from the December 19, 2023 meeting.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: Thanks for this and for the follow up. What's the status of water reuse on Kaua‘i? Just because that's not addressed here, but it is something that is of interest.

JASON KAGIMOTO: Recycled water? There are four County wastewater treatment plants. Three of the four do recycled water, two of the three are to golf courses, and then one of the last other ones does actually a lot of reuse towards a county park. That is their primary customer. One of the great things is that that's been a big offset of demand for our water. Prior to that, it was using County water to irrigate that. There are three other privately owned wastewater treatment plants and those three also do recycled water to golf courses.

COMMISSIONER KAGAWA-VIVIANI: I have one quick question and then Commissioner Katayama definitely has some. So, this really doesn't consider agricultural water use because of lack of data or you guys were just using the important agricultural lands like sort of zoning information and then making inferences. I guess it feels like when you're looking at full buildout less than sustainable yield, you're not looking at the full picture. If you folks have recommendations on how to make sure we're actually sustainable in that sense, would be very helpful. You guys know the island best, but maybe that's what Commissioner Katayama will speak a little bit on.

AMANDA WAKI: I just want to note that we're comparing to surface water, also versus groundwater and domestic uses. Unfortunately, surface water, we also don't have a lot of information on.

COMMISSIONER KAGAWA-VIVIANI: But you have pumping data for those withdrawing groundwater for municipal, industrial, domestic.

AMANDA WAKI: We have a lot more information on the groundwater side. Unfortunately, surface water both on the demand and supply, it was difficult and we hope that the Agricultural Water Use and Development Plan includes more information on that.

COMMISSIONER KATAYAMA: Thank you, Chair. Amanda and Jason, thank you for your hard work and I guess in our conversations, I comprehend all the complexities of putting this together. One thing that I was hoping that this plan, although the Department of Water is primarily focused on domestic water use, that we need an inventory of all the water uses for the island. I was hoping that by reaching out to the different communities and different sources that you could do that and justify that and you're in the process of doing that. What would be interesting for me is that we often hear the term "a living document" and given the time frames of when these documents are officially updated and accepted. What is a form of a living document that you see moving forward as you start getting more information?

JASON KAGIMOTO: I'll speak to that. I'm still pretty new to this, like I mentioned it's been three years and there is some understanding it's taken us 10 years. Some of the data is old or within that 10 years when we initially had our scope of work processes. What's maybe in the scope of work versus maybe what is a preference nowadays has evolved. I think for myself, and our manager Joe is here, we're committed to being able to basically keep this document updated. It does seem like there are for instance on the planning side, they are currently doing their East Kaua'i Community Plan, so there are things that we're aware of that are looking to be updated. As far as you mentioned with the ag(ricultural) water surface water kind of demands, there are things that could definitely improve the Water Use and Development Plan. We are committed to basically evaluate these plans when they get adopted. I'll say at least my understanding is for the Agricultural Water Use and Development Plan, it's been accepted by Department of Ag(riculture), but not adopted by Commission on Water Resource Management. I just want to clarify that when

we say an updated plan, for us my understanding is that we're looking at ones that have been adopted by the Commission and then we will then go ahead and evaluate those and looking at ways to approve it. That is the overall, Commissioner Katayama, the bigger discussion is that we are committed to being able or committed to adopting it or updating our plan and keeping it useful. Trying to balance with the way things are updated sort of like, it's not like all of the plans get updated at the same time or within a reason. We'll sort of have to kind of take them as they come as far as what gets done and when.

COMMISSIONER KATAYAMA: If you're looking at your heat map of the island where you compare zoning buildout versus sustainable yield, what would you consider significant changes to that that you would update your plan or at least put a footnote to your plan that this has changed?

JASON KAGIMOTO: All of the big things that play a big role in the Water Use and Development Plan. For instance, Katie mentioned that the sustainable yields are going to be re-evaluated, things like if we get more information on surface water data. Basically, all of the inputs, if the State updates their water project plan to identify different demands for the State. Essentially to keep it simple is that basically at the very least when all of these bigger plans, one of the four bigger plans get updated, that would be an obvious trigger for us to reevaluate and look at it. We'd consider based on other things if the community plans get updated that are drastically different from the general plan or other things like that. I think just whatever, I would like to believe internally, is common sense as far as, hey there's a lot of different information based on what you considered when you did this, you need to consider evaluating that.

COMMISSIONER KATAYAMA: Have you reached out to the big ag users on the West side, what their water usage is?

JASON KAGIMOTO: I don't think specifically we had.

AMANDA WAKI: We had a stakeholder, but unfortunately he passed away. He was part of our group initially.

CHAIR CHANG: Part of your advisory group?

AMANDA WAKI: Yes.

COMMISSIONER KATAYAMA: Is that why that water usage has not been incorporated in your plans?

JASON KAGIMOTO: For the water use, as we mentioned, basically our approach was to be pulling in information that we had that was submitted and adopted I think just understanding that that was the guidance or the agreement. I think the hard part is, yes-for instance the Ag Water Use and Development Plan, 2004. Yes, we're not saying that that is the most current information available, but I think what we need to do is balance that as far as what has been adopted by the Commission because within 20 years things

can be changing one way or the other and if we don't have a sort of policy or procedure that says, this is why we're using this data. It's in a way where we could possibly be chasing that the whole time because on a month-to-month basis, there could be developments that might change some of that information.

AMANDA WAKI: Sorry, as far as water, I don't know if this is what Katie was going to mention, but as far as water usage data, that's collected by CWRM and they do the database for groundwater, which fortunately there is generally better compliance with that. Then surface water, that water usage data should be collected by CWRM and I know they're trying their best and it's difficult on both ends.

CHAIR CHANG: Katie, were you going to add anything to that conversation?

KATIE ROTH: I was, if it's okay. Again, Katie Roth, Planning Program Manager with the Commission. Two comments regarding Commissioner Katayama's questions. The Ag Use and Development Plan, obviously that's been an issue that has come up from a variety of stakeholder groups. The 2004 plan is what was officially incorporated because it was the plan that was officially adopted by the Commission. For a variety of reasons, the Commission never adopted their 2021 version which is now posted on their website. We were only aware up until a few months ago that the 2019 version was live and official. We just found out recently that the 2021 version is now the most recent and we do plan to take that before you for official adoption in the next few months. When that happens, I think that would definitely be one of the triggers that Jason mentioned for us to relook at the data in that plan and how it could be incorporated into this Water Use and Development Plan. To provide a bit more context to the question about living documents and how we hope to actually make these plans living, we have the ability to update plans kind of piecemeal. We don't have to do a full-blown plan update, even though these plans should be updated every five years. We can update them piecemeal if new data or significant changes are released and come out. I think the Ag Use and Development Plan would be one significant trigger. I think the update of sustainable yields which was mentioned we're in the process of updating through our Water Resource Protection Plan. When those numbers do come out and are official, we would be looking at all plans, Water Use and Development Plans to see if an update is warranted and most likely it will be because we're probably going to see a decline in sustainable yield in most aquifers statewide and that includes Kaua'i.

COMMISSIONER MIIKE: I must say that I don't have much confidence in this. You guys focus on domestic use and yet you are responsible for all the water use on the island, so I can see a beautiful plan but I'm not very confident that it's going to go forward as planned. What's your answer?

JASON KAGIMOTO: As far as decision making going forward for things like the density or development kind of stuff, that is basically coordinated between us and planning. All of that stuff is based on our water infrastructure and based on the zoning. As far as moving forward on things that are incorporated into our plan that's not part of our oversight- things like surface water and those kind of things, we're trying to provide

the information that we have available. At the end of the day, we don't approve as far as people doing ag or people doing those kind of things, that's all kind of done outside of our purview. On our side, it's basically knowing that decision making related to groundwater, which is part of our infrastructure, this plan has the information available for that. But, stuff like surface water for ag, it doesn't necessarily have all of the information based on what we could pull in. We also aren't making decisions based on this plan.

COMMISSIONER MIIKE: That's my problem. If you have a wonderful plan but you don't have any clout in certain areas, then I don't know who does. I'd like to see some of those things addressed in the future. I know you guys are doing the best you can, but it's just sort of a mismatch about what you can do and what's outside your purview and I think that's why you don't know much about what's outside your purview. If you don't know that, I don't see how you can manage it.

JASON KAGIMOTO: The hope is that when we get the updated plans, they'll have that information that we can pull it in. I think a bunch of it is reporting stuff, so when we pull in the information we basically have what's available to us. Hopefully for some of these other plans, there's more information that we do have available to pull in.

COMMISSIONER MIIKE: In terms of Ka Pa'akai, if you look at the maximum buildout which will never happen, you still have enough water, so I'm fine with that. But, when you get down to the specifics about who's using water and how it's being used and whether they're using it wisely, it's fine in the overall picture, but there may be a lot of waste and just no coordination in individual projects small and large. I guess the only thing that I can ask is that you keep that in mind when you guys are going forward.

CHAIR CHANG: I realize you have to go with whatever available data you have at this time. Clearly Larry, I understand your question and the frustration. Obviously, communities have raised similar kinds of questions. I was surprised the 2021 DOA's (Department of Agriculture), we didn't even know about it even within our own internal agencies. To the extent that we can help coordinate some of those missing pieces, I think CWRM will try to play a much bigger role in that. This issue [inaudible], almost everything about water because we don't control everything whether it's private purveyors and then public, versus what happens on ag and what doesn't. I recognize you have to move forward with what you've got, at some point in time you just have to decide to move forward. You appear to have taken seriously the public comments. I would hope that there's an opportunity that this PowerPoint gets posted on your website. I think it's important that the community see that their comments matter and how you're addressing them because I think too often we do community outreach but we never get back to people until we finalize the document and they're wondering how are you guys addressing these things. The other point that I wanted to make was I didn't see a lot of drought consideration here. Even on Kaua'i you've had several fires like everybody else and I don't see in the plan the considerations of drought. With climate change we'll look at some of that, but I do think that that's how we address both island-wide. Kaua'i you're in a much better position than most, but even you are vulnerable. It is regional, some

places are much more vulnerable than others. I appreciated the update, I think it was a comprehensive review. I'd like to introduce Joe, Joe Tait - he is the Kaua'i Water Department's manager and chief engineer. Why don't you come on up.

JOE TAIT, KDW: I appreciate the opportunity to be here and speak with the Commissioners. We appreciate and are honored by your public service. Chair Chang and I and Katie have had discussions recently which will be slow and advancing but as quick as we can get there and those discussions revolve around things I've heard from Commissioner Viviani, from Larry, from Commissioner remote and that is, where is it going, where are we going? We're just getting started. As you can see this is a 30-year update. When I came to the Water Department shortly after Jason came, so I've been here about two and a half years, there were a lot of missing pieces. It's not the fault of the Water Department, it was the fault of several combining things. One was, I'm the seventh manager in 10 years, so there was no consistency from manager to manager to even take on a plan, let alone update it. As our good Commissioner here mentioned a second ago, that was now how do you extend it to the community? One of the things that we're confined by is what we have in front of us today which is the traditional Water Use and Development Plan. If I'm going to adopt what I've done in other places, it shouldn't just be the Department of Water, there's a whole group, a whole host of other agencies that need to be part of our plan. When Jason talked a minute ago about we're doing our update, but it's this much of this. As Chair said a second ago, we don't have a drought piece in there, we don't have an ag piece in there, we don't have a pilot project which I'm proposing to conform with what I think is a one water philosophy- how are we managing all of the water on the entire island? To do that you have to have data and involvement from other groups. The Native Hawaiian community, who I've long had a partnership with on O'ahu, I've started that process and they have started it with me. I'm very blessed that they've come in to the Water Department. As Chair you've mentioned in the past, outreach to the community I'm looking at it not only as outreach but in-reach into the Department of Water. We want and we have invited the DHHL (Department of Hawaiian Home Lands) folks, the DHHL beneficiaries who may sometimes feel slightly different or slightly aligned with us or their own department, bring all of the voices in so that we can all be heard and then we can come out with a plan that says here's how we manage all of the water on the island. Unfortunately as Jason said, it's not all in our kuleana right now. It would be nice if it was because then we could say, okay it's one plan. But, we're actually confined by our Department of Water- Water Use and Development Plan. We know we're only going partway, our intention is to go all the way, but the authority doesn't exist with us to do that and that's why we enjoy our partnership with you folks because you folks do have the authority for the rest of the water family. We will get there, we will get there. We're just starting.

CHAIR CHANG: Even our authority is a little limited, too, but fair enough. Thank you, Joe and I do know that Joe has expressed this desire to be much more collaborative and the pilot project. I'm looking forward to see that opportunity. Kaua'i, you have got the ability given the current water resources that you have, but that there is a community at least that may be motivated to come together.

JOE TAIT: They are. The council, the mayor, the department heads who affect what Jason does- the planning, housing, public works, wastewater- they're all supportive and all conducive to joining this. The vibes are very positive on Kaua'i. The other advantage we have is Chair, we're a smaller island and community so it's a perfect place to wrap our arms around all of it.

CHAIR CHANG: That also means you cannot leave. They need some stability there for a while, but you seem to have a good team.

JOE TAIT: We have a great team.

COMMISSIONER KAGAWA-VIVIANI: You mentioned that public comments were that you weren't addressing Ka Pa'akai and you would be doing those based on well construction permits or water system infrastructure. But I was wondering as part of your document, I think what's valuable is just as you have regionally had these meetings, identify what those regional priorities are because somebody then putting together a permit application will have a little bit more understanding of what in their area they need to ask around about. I think that's where you can support Ka Pa'akai analysis without having to do it. Similarly, Ka Pa'akai focuses on traditional and customary practices, but there are strong ecosystem priorities for a place like Kaua'i and so as those have come up, just having this as a document that informs the next steps is valuable, even though you can't do it all. Documenting that would be really helpful and it's helpful for us, too, because we don't know Kaua'i like you folks do. I just want to request that that be in there, that's all I have.

CHAIR CHANG: That's a really good point.

KATIE ROTH: Chair, if I may I just wanted to add one more thing before you go to public testimony. As part of the submittal that we're going to bring next month, we will incorporate all these comments, our responses to those comments, how they were addressed in the current plan, how we hope to address them in a future update, and potentially some conditions of plan adoption. That's being worked out now and that'll all be part of the submittal, so there'll be a more detailed analysis that you can read through as part of that.

CHAIR CHANG: Very good, thank you. That's helpful to know.

PUBLIC TESTIMONY

MARIE WILLIAMS: Hello Chair Chang and members of the board. I'm Marie Williams with the County of Kaua'i Planning Department. I work in our long-range planning program and we submitted testimony for which I believe you have. Apologies, I do realize now that you're not taking action right now, it's just a briefing but our testimony just supports adoption of the County's 2024 Water Use and Development Plan. A lot of work and time went into this project and it's great to see that we will have an updated plan to replace the 1990 plan which is over 30 years old at this point. Since 2015, we've

been working with the Water Department and their consultant sharing data on our policy, on our zoning districts to make sure that the water demand projections can align with what our updated general plan and community plans call for. As time laps, there were a couple updates to these plans and it was great to see that the consultants did the work of updating the plan to incorporate what these changes are. I'll also just say that the Water Use and Development Plan is important to us in planning because it helps us plan for the future. It's just one tool of a bunch of tools that we use, but we need to know how much water we might consume as our communities grow, especially in shaping our general plan and community development plan updates. The good news is that even in the scenario where all land is developed to what is the fullest potential envisioned in our plans, which will not occur- it's something that is for a bunch of reasons there are a lot of constraints on what full buildout is- but even looking at that, we're seeing within what's sustainable and that's good to know. Just looking forward, we want to continue working with the Water Department on their water systems investment plan, their long range plans and this will help us plan for our long-term infrastructure needs and making sure we're ready to support future growth, protect our water resources, and handle climate change impacts in the years to come, as well. I think that concludes my testimony and for the rest of it, you can refer to what we submitted to you. Thank you.

CHAIR CHANG: We did get a written testimony from Ka'āina, their planning director, so thank you very much.

SHERRI CUMMINGS: Aloha, Sherri Cummings for the record from the island of Kaua'i, DHHL beneficiary, born and raised in Anahola.

CHAIR CHANG: That's the community listening session, nice to see you.

SHERRI CUMMINGS: First of all, I just want to say thank you so much to Joe Tait. I want to give credit where credit was due and credit was because it was us kanakas that were ringing the bell on the missed opportunities as beneficiaries being placed on our lands. I was someone who was living here and then I moved back home to Kaua'i and six months prior to meeting Mr. Tait, I hijacked the platform from the County because the County was actually putting somebody on by the mayor's endorsement to sit on the Board of Water. As an advocate for many years for beneficiaries of the trust, I just took it upon myself to see who was sitting on the Board and to see to take the time to know who they were endorsing and everyone who sat on that Board. Not one, I believed, knew trust responsibilities, knew how to advocate for beneficiaries to have what we know is sufficient sums of water for a foreseeable future. I spoke to someone within the Council and I said, please give me an opportunity to present to you because you folks are in violation of law and I did have that opportunity and it was for deferral because I did not say for them not to put the woman through because she was amazing. I had the opportunity with Alan Murakami, the ex-lawyer from Native Hawaiian Legal Corporation to put together a PowerPoint presentation and my only ask to Alan was nothing was subjective, nothing was case, everything was citing law. It was Constitutional law, Hawaii Statehood Act, Department of Hawaiian Home Land under the Rehabilitation Act, Water Code, CWRM laws, and the policy for the Department of

Hawaiian Home Lands. Almost every council person panicked because it was true- that was an egregious act on beneficiaries. So let's not believe that it was just something that oh we mysteriously just never do. I went to this man and I told him because he was our director and he opened up his doors and he knew exactly what we were talking about and it has been such a beautiful combative, but beautiful relationship because they do understand. I'm sorry, but I wanted to say that in the current proposal, we're not accepting it because you're right- there are many different type of uses that are affecting our ability to be on our lands. We hold the highest, regarding hierarchy, is kalo first then DHHL beneficiaries. Our leadership is not doing his job, our Chairman of the Department of Hawaiian Home Lands is not doing his job. If you look in the Water Use and Development Plan, he is not asking for appropriate waters for placing us on our lands. I'll leave you with that. I mean there's so much more to say and I hope that there is more consideration, but it is true. To me, the Agricultural Water Use and Development Plan has to be because that's going to display where our water is going. East Kaua'i cannot be controlled by West Kaua'i because we all know the West is being built up and they're usurping our water. Mahalo.

CHAIR CHANG: Thank you very much Sherri. This isn't an action item, but we're going to meet again October 31st, so it would be helpful if you provide testimony at that time.

SHERRI CUMMINGS: Absolutely, mahalo.

FELICIA COWDEN: Thank you, I am Felicia Cowden, Councilmember, Committee Chair for Public Safety and Vice Chair for Public Works. I want to begin by saying how pleased I am with our Department of Water. What honorable jobs they do. None of the challenges is their fault, it's just their responsibility. Also framing the positive with them, I am inspired by our water system investment plan which I think is where the rubber hits the road in terms of the policy that the Council makes. They're doing a good job. I appreciate how it's been pointed out, the Agricultural Water Use and Development Plan didn't somehow make it into this. I was surprised on that. I have been involved since about maybe 2010 watching the changes and not much has really changed. This isn't that big of a step beyond 1990, not that big of a step beyond 2004. We have some crises going on that it doesn't really flag in the Wailua area in terms of storm water management and then in the Moloa'a area in terms of a well coming down that services several hundred people. Those things are important. What makes me uncomfortable with how the Water Use and Development Plan is written is it doesn't seem to note that much of our potable water is surface water and a lot of our ag water, at least in the northeast side, is actually treated groundwater. There are significant challenges. I'm not blaming our Water Department, but when I look at this tapestry of reports that come together- like we don't have watershed management plans, we don't have storm water protection plans very well in place. There's so much that we don't have. So, my understanding is the inadequacies of the Kaua'i Water Use and Development Plan is somehow related to the inadequacies of four other existing state plans, but we just keep pushing the inadequacies moving forward. I don't know how critical it is that this is finished right away rather than finished at a minimum of putting the 2021 Ag Water Use and Development numbers in because we've moved away from sugar more to diversified ag, more to ranching. A lot of changes

have happened and when we're looking at our potential for sea level rise really impacting our aquifers and as we're trying to decommission our reservoirs, it makes me very concerned because we have a different geologic structure than does O'ahu. We may very well need to do more surface water than we are doing at present and I think if we don't honor some of those challenges in our Water Use and Development Plan, we might really miss the mark. This has been needed for, I mean the last one really was in 1990, so we don't know how long it'll be before we have another one. I appreciate everybody and I understand that it's difficult and I'm not complaining, but I don't think it's finished. Thank you.

CHAIR CHANG: I appreciate the comments.

KANANI KAGAWA: Aloha, Kanani Kagawa. For context, I'm speaking as the Executive Director in my capacity on-site, I also oversee Anahola Ancient Culture Exchange which is the caregivers for the Anahola taro patch and then I also live in Hanamā'ulu which abuts the Hanamā'ulu Stream. Sometime last year I took my kids fishing down in the stream- in the context of growing up was five o'opu. In my backyard, it was sad. The river had shrunk over time. I had lived there since 2010, so over time Hanamā'ulu Stream you could see it getting smaller and smaller. When I took my kids fishing, the o'opu were gone, the water was murky- this is kind of what the stream looked like in my yard, you can go to those three. It was just dirty, brown, no o'opu. To me, thriving water has to do with o'opu in the stream. That's just the area where I reside and then I go to Anahola to work in the lo'i- same issues and I'll show you pictures of the water. 20 years, I started at 16, I'm 43, observation. Then if I went over to my taro patch in Anahola where I'm the Executive Director since I was 16, you can just see water lines, low. Granted, I know we've been under somewhat, everyone says drought conditions, but still yet this is Anahola Stream flowing. So observations through this 20 historic traditional and customary practices, hey what's going on with the water? I started researching and then found this plan was in progress. As is, I recognize that this was my way to bring awareness to traditional and customary practices taking place that might not have been addressed, so here we go. As is, the plan is inadequate. It fails to meet and address basic things the State recognizes for public trust purposes, maintenance of water in their natural state, domestic water used for general public- particularly drinking water, the exercise of native traditional and customary rights, and reservation of water for Hawaiian Home Lands. The plan is inadequate because frankly it would only hit one criteria. It hadn't even addressed maintenance of water in their natural state, it hasn't addressed the exercise of Native Hawaiian traditional and customary practices, and it hasn't addressed the reservations of the water for Hawaiian Home Lands. To even say, hey we're going to bring a plan to you guys in October to adopt is very inadequate from a standpoint. I wanted to just make this known that one of my biggest career shifts was coming to a hearing. I spent years putting a plan through Ka Lima Ola. We did a lot of entitlements and I was sitting at a LUC commission and the lesson, I learned this from Chair Chang, is no matter what Kanani, you've got to talk to the Hawaiians and sending out a notice and expecting them to come is where we faulted as leaders. We have to do better and the analysis was brought to my attention, Ka Pa'akai, this is 2018. Ever since that lesson, I've made it somewhat of a mission to not just put a public notice out and

expect us to come, it is us as leaders and consultants going into the community and getting those testimonies. If you recall you said, Kanani go do better. We did, we had to pause the hearing, we had to pause adopting land entitlements for 75 acres- the biggest, largest, most important project and we had to go out and do better. We had to verbally go and meet consultants, get to the land, get to the streams. Though I admire the Department's efforts, I asked them, hey consultants did you guys even walk the streams? Did you guys look up along the streams, kuleana landholders, taro farmers? They're all missing in this analysis.

My biggest concern and I wanted to say why it's inadequate and real quickly, I know I've run out of time that we should be addressing. Before we even bring this for adoption you don't even have enough information to even say that this is an adequate plan. Would you guys do that buying a house? You would never do that. You get an inspector to inspect everything, right? My biggest concern, and this is because of my taro farm, is that there's a 2021 Agriculture Water Use and Development Plan. I recognize it hasn't been adopted, but it's been in practice and those standards in there allocate 3,900 gallons per acre for diversified ag. They have standards in there and we also have what the farms are. So for our consultants, engineers, go get planners that can really extrapolate data because though our sustainable yield says we have enough, none of that sustainable yield takes into account agricultural development. It doesn't take into account DHHL's plan with the Anahola Kuleana Homesteads Initiative which brings 1,400 acres, which puts 432 lots for ag development, 132 homestead homes. That's just missing and if Anahola right now is in light green, gosh I can only imagine if we actually got the real data.

Hanamā'ulu, it's in yellow, it hasn't even brought into contention all the development that's about to take place in the Līhu'e Plantation who has zone land- a thousand homes are coming in. Here's something that really when we get to the planning side, the Kaua'i County's planning has passed since the inception of the general plan, ARUs (additional rental unit) are now allowed and ADUs (additional dwelling unit) are now allowed or they're going through a process of passing ADUs and ARUs, so that could potentially add another thousand units. Has that been considered in this plan? No. Secondly, the climate plan change with the County has been adopted so you can really theoretically look at that and incorporate it into this plan. There's a lot of available data that took place over the last three years that is not being looked at. The fact that we're honing in on, I mean you guys said 2015- we had six years to get it together. I'm not in the boat where you guys think that this is a living document and next week we're going to go consult the Native Hawaiians and then we're going to add their testimony. No, that's going to be five years from now. All I've heard from this staff is we don't have the capacity, we don't have the funding, we don't have the people. If we know that, we're not going to get that in 5 years to go back and update this plan. I don't have that confidence in the Water Department, I don't have that confidence in the Commission that this is a living document, that when new information comes tomorrow, we're going to update it. I'd rather us defer, pause, and lay out a plan. The biggest thing that we could have done better is every ahupua'a you can do a Ka Pa'akai Analysis. The developers do it all the time. It takes 60 days to do an analysis on every ahupua'a.

We have experienced that, we have experienced consultants, we have experienced practitioners that should we go out to do that kind of consulting, I think you would really get a picture of the water usage. My last point is that I am against this plan mostly because the instream flow standards are so outdated. It's 1986 we're drawing data from. There has been no effort or if there is an effort to update it I know that's something that the Commission is going to potentially propose in adoption of the plan, but we need to address those updated figures and then go back to the plan. As is, I just think the water use plan fails to reserve adequate water for agricultural requirements and it really fails to address the customary and traditional practices of Native Hawaiians, especially those with kuleana lands that are kalo farming. None of that has been captured in this plan, you don't even talk about kalo farming in it. As context, there's other counties- O'ahu County, Maui County- if we look at their plans we could just go from there, model what they've done. They had to pause from adoption and they went back out and they went through the community again.

I think that's what I implore this Commission today to really recommend and before even bringing it for an agenda to adopt, we have to come back and tell you that we don't like it. We're going to come back in October and what stops it, it's hey we're going to contest that adoption when we already know it's inadequate. Why bring it back in October until these things are satisfied if you guys do feel that the maintenance of waters in their natural state has been addressed, domestic water use of the general public, the exercise of Native Hawaiian traditional and customary rights, and the reservation of water for Hawaiian Home Lands. If that has been addressed adequately in this plan, let's proceed, but from what I've read and what I've tried to really educate myself- 638 pages this document- it's not there. Thank you for your time and consideration of that and I appreciate you guys being here today.

CHAIR CHANG: Thank you, Kanani, I appreciate you coming. I'm assuming you came from Kaua'i.

KANANI KAGAWA: Yes.

CHAIR CHANG: Can I just ask you? So reading through the presentation, the plan is just a plan, it doesn't authorize any use. What I understand with respect to Ka Pa'akai and at some point in time I have this pet peeve with we're calling this Ka Pa'akai. It is a Ka Pa'akai three-step analysis but it dates back to article 12 section- I mean it has a longer history than the case law. Nonetheless, my understanding is that when a proposed use is actually- whether it's a CIP (capital improvements project) project or some other- that a Ka Pa'akai analysis will be done at that time.

KANANI KAGAWA: But there's no administrative process that you got an application that has a checkbox "has it been done."

CHAIR CHANG: There's a constitutional obligation before the counties can...

KANANI KAGAWA: Which we all have to do and ministerial permits of wells and stuff goes over the counter, so it's not on your application. Though we have an obligation, are we living up to the obligation? No, we're not.

CHAIR CHANG: We're trying very hard, I will tell you.

KANANI KAGAWA: County level, what do they do? They pick and choose what permits they're going to obligate to do an analysis. You could crack it all out in one hit and just go ahupua'a by ahupua'a for this plan. That's kind of what we're now trusting the Commission and the Water Department to implement analysis. Here's another thing, you implement the analysis, you do it but who at the Water Department reads those recommendations and understands how to implement them and does the Water Department even have the legal framework to implement such recommendations on a well permit, on a drill permit? My concern is a lot of this is ministerial actions that will never get to a public hearing. It's OTC stuff, over the counter stuff that you come to CWRM. Is our clerk at CWRM trained to understand, hey this well is located in the ahupua'a of Anahola with 1,000 taro acres farm and it could adversely impact? No because Moloa'a, go look Moloa'a.

CHAIR CHANG: You raise a good comment.

KANANI KAGAWA: It's kind of what I'm experiencing in my work as a taro farmer and going back to Anahola. I am watching this water go down and we do have an instream flow permit and all of that for us, so if other farmers who are not represented in this discussion right now, they're not represented in the discussion. Thank you.

DR. JONATHAN SCHEUER: Aloha Chair and members. For the record, Jonathan Likeke Scheuer, I represent the Department of Hawaiian Home Lands. I want to start my remarks by echoing the comments from Sherri Cummings to the thanks to Joe Taitand Jason Kagimoto. When they did a briefing on this plan here in December of last year we commented that the outreach had been more on the light side and there had been poor advertising of it. Very few homesteaders heard about it. They proactively worked with us to do additional outreach- one evening meeting on the east side, one on the west side. Folks came out and were able to engage in the process, so that was very useful. One of the written comments that we gave to them earlier too was the difference between sustainable yield- is calculated by the Water Commission in the Water Resource and Protection Plan and developable yield- the actually practicable achievable amount of water that can be withdrawn. They did acknowledge that there is this difference. I don't know that they carried that acknowledgement through to the analysis, so you only have that sustainable yield line and the buildout line. You don't have the developable yield line and the buildout line. That might be a concern in areas like Hanamā'ulu where things are looking a little more concerning. I also just want to thank Kanani and Sherri who've actually really stepped forward as community members and as beneficiaries to really try to be leaders on water issues for the beneficiary community. The remainder of my remarks with a few years of perspective before this body that I share with Dr. Miike, but perhaps not many other people in this room. If you come forward in October which has

been the announced plan, though you just had testimony asking that you don't do that, and there's a desire to place conditions on the adoption of the plan. I just wanted to reflect on what the Commission's past experience has been in doing that and the closest example is the adoption of the Hawai'i County Water Use and Development Plan which was actually prepared by the same consultants and had this exact same methodology as we're just going to take this high level overview by aquifer sector. As long as sustainable yield is higher than full buildout, that will be the end of our analysis. On that and analysis, that plan was developed in the 2000s, finalized in 2010, adopted by this Commission in 2011. It identified two aquifer sectors, Waimea and Keauhou, as being potentially problematic. There was a commitment at that time, we're going to follow through with our analysis and we're going to do more detailed examinations and water use and development plans for those two aquifer sectors.

It was only in 2015 that the Water Commission adopted the scopes for those two plans as part of the adoption process for the Water Use and Development Plan. The Keauhou plan was started by the County Board of Water Supply, Department of Water Supply. It was preliminarily adopted as final by this Commission but rejected at the County Council level. So, it doesn't actually exist as a finalized document because the County Council level, a little more sensitive to community concerns says this doesn't address the key concerns in our community that we wanted to. The Waimea plan has never even been started and so we're now like nine years past that. I understand the logic and importance of moving forward with things, especially since this plan was really due in 1995 and it's now 2024. But if you're going to put conditions, you might want to think about, okay how do we actually make sure, to Kanani's last point, how those conditions are met. I just wanted a very short note about Kanani's comment. I saw in the presentation from Jason it says, well Ka Pa'akai analysis is done on well construction and pump installation permits. I don't know that that's the case in non-designated water management areas which includes all of Kaua'i, so I'm not sure that you can rely on that analysis as going to be done. Finally I think all of this also points to the very significance of it's not part of the Hawai'i Water Plan, but guides the development of the Hawai'i Water Plan, the framework. There's a framework document for adopting and updating the Hawai'i Water Plan. It was last adopted by this body in 2000 and it gives a huge amount of deference to each of the counties which is why you have such radical differences in the content of the plan and the engagement with a variety of issues between Hawai'i County, Kaua'i County, Maui and O'ahu. Updating that framework document ultimately can lead to better water use and development plans by better scopes of work when you start this. Last comment that I'll just make is that what's the consequence if you move forward? Because I review professionally water use and environmental review documents, I notice though consistently in Keauhou, land use planners who are preparing 343 documents who don't know how to dig into the details say, oh well there's a Keauhou Water Use and Development Plan and that says everything is fine. There's a Hawai'i County Water Use and Development Plan and says that everything is fine. Therein ends the level of analysis on water issues when it actually gets down to considering whether or not a project has significant impacts or not. These plans, while they're not directly authorizing uses, get very much relied on in the entitlement and development process and so having a good plan in place or not adequate plan in place really does end up having consequences. Once

again, I really appreciate the responsiveness of the Kaua‘i Department of Water Supply to DHHL beneficiaries and concerns, it's been exemplary.

CHAIR CHANG: That's good to know. Thank you very much, Jonathan.

20240917 1:44:08 – Break

20240917 01:56:04

B. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Navy Closure Task Force – Red Hill Update September 2024

PRESENTATION GIVEN BY: RDML Mark Williams, CDR Ben Dunn

The Navy Closure Task Force shared updates on groundwater monitoring data and their Safe Waters app.

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: What is the lab method reporting limit? There's a lot of non-detects here.

RDML WILLIAMS: For TPH (total petroleum hydrocarbon) it's going to be I think at the new one it's 48 parts per billion is the method detection limit. The reporting limit is 91, 80?

COMMISSIONER KAGAWA-VIVIANI: That's kind of when it's a non-detect, it's below that threshold?

RDML WILLIAMS: Correct, it's below that threshold.

CDR DUNN: The frequency of monitoring as we highlighted on the bi-weekly basis, we specifically monitor each well and collectively with relative levels over the past six months. We'll have what's called a trigger where we'll see an elevated or kind of a slight surge in a TPH detection level or one of these other fuel indicator compounds that we use to monitor and track, but they're typically isolated events. It's a single well, it pluses up maybe 10-20% in intensity and then over the next two samples it goes away. We're not seeing movement or similar detections to adjacent wells.

RDML WILLIAMS: This is just the TPH-D, we've had similar heat maps for the other analytes and the other compounds that would be indicators, but this view is just the TPH-D.

COMMISSIONER KAGAWA-VIVIANI: I'm sorry as a geographer, I'm wondering what geostatistical method you used to create these maps? Just because MW01 has 250 ppb, but there's these lines drawn around RHMW.

CDR DUNN: It's somewhat extrapolated between the...

COMMISSIONER KAGAWA-VIVIANI: Was it Kriging or inverse distance weighted? There's data on the map under the names of the wells, but the delineation, that kind of blob around RHMW2, I don't have an understanding of your color scale. What I'm saying is just because you drew a line around it, you might state that there's no movement but the data, the numbers under there don't necessarily reflect that. I just wanted to understand what method are you using to map? Do you know this?

CDR DUNN: I'll have to talk with my team. I'll provide a follow-up here as far as some of the specific software or the details and how we generated the graphic.

COMMISSIONER KAGAWA-VIVIANI: Ok, just the basic geostatistical approach if it's Kriging or inverse distance weighting because there's ways to sort of construe data and I just want to understand that you're not misconstruing data.

RDML WILLIAMS: That there's not an inappropriate bias there based on the method that was used?

COMMISSIONER KAGAWA-VIVIANI: Sorry, most people would not care about that but I do. You can proceed.

20240917 02:11:31 – CDR Dunn resumes presentation

COMMISSIONER MIIKE: I have a question that's really not related to the direct contaminant possibility. I remember the last meeting that in one of your monitoring wells, you found a chemical in there that seemed to come from a roadways, from macadam. I've always wondered about that because if you look at our aquifers, we built everything on top of it- subdivision, roads, everything. So, it's not surprising. Have you found anything else along that line?

RDML WILLIAMS: PAH (polycyclic aromatic hydrocarbon) detections are common from asphalt runoff. We have seen some PAH detections inside of our facility boundaries. As you look here...

COMMISSIONER MIIKE: What I'm more interested in is that just as a byproduct, we're monitoring way away from the facility. If we keep finding those things, I'm just really concerned about those things not related to Red Hill but contaminating our water supply.

RDML WILLIAMS: Yes, sir and that's my comment about shared understanding is as we expand our sentinel network, you're going to find stuff because of asphalt runoff,

development elsewhere, pesticides from sugarcane plantations, pineapple fields, and so forth. It's okay, hey what's the source and then what are we going to do about it collectively?

COMMISSIONER HO: Larry, every year the Board of Water Supply sends us our consumer confidence report. In it, you can see that there are chemicals within our drinking water as well that we're consuming.

COMMISSIONER MIIKE: And is it increasing?

COMMISSIONER HO: Well it depends on where you live, but it's from historical uses- pesticides like Mililani other parts is using treatment for their water. It's present from historic uses. There are contaminants.

COMMISSIONER MIIKE: I've known that, it just concerned me if it keeps increasing and then if we come across some that we cannot remove from our drinking water, then what do we do? But we've never thought about not building over our aquifers, just happens to be where we build.

COMMISSIONER HO: Now, there's a statute that you can no longer build large underground storage tanks or you can no longer build landfills over above. Now there are restrictions what can be built above the UIC (Underground Injection Control).

COMMISSIONER MIIKE: It was just a question not related.

RDML WILLIAMS: It's a concern, I mean it's the old adage- if we knew then what we know now- different decisions would have been made.

CHAIR CHANG: I'm not in any way trying to diminish the responsibility of the Navy for Red Hill, but sort of falling in line of Commissioner Miike's, do we know what all the BWS', do they monitor all their wells, Kathy?

RDML WILLIAMS: They do on their website and their production wells we have an idea. We don't know where all their groundwater monitoring wells are and I believe they're testing weekly and I think they're using some standard EPA (Environmental Protection Agency) methods and then there are also some non-standard EPA methods as well.

CHAIR CHANG: Did those get submitted to us, Katie? All of the monitoring wells from whoever to CWRM, whether it's BWS, Navy?

KATIE ROTH: If Ryan's still on, I'd probably defer to Ryan.

RYAN IMATA: I'm here. They don't submit water quality data to us, it's more water levels and chlorides. For their production wells and their monitor wells, I think those all go to Department of Health.

CHAIR CHANG: Department of Health, so do you get those?

COMMISSIONER HO: They're obligated to give us results for the contaminants that is being regulated. PAH, TPH, those things does not have an MCL (maximum contaminant level) so they are not obligated to give us that information, although the Board of Water Supply has said that all of its data is on its website.

COMMISSIONER KAGAWA-VIVIANI: If I may offer, I just publicly posted my curriculum module for students and educators to analyze comparative CCRs (consumer confidence report). If I can share that maybe in the minutes or something, I'll post the link <https://serc.carleton.edu/teachearth/activities/284896.html>. Same questions keep coming up and so I have developed curriculum and we break down regulated / unregulated contaminants, disinfection byproducts. May I ask a question? I have two questions, one of them is the events that are coming up. Do we have to download the app to access the schedule and information or is it available easily on your website?

RDML WILLIAMS: You can get it through the website, as well. Let me get you the link to it. There's a lot of things on the app that you'll click and that will take you to the website so we'll get you online and make sure you have the right location.

COMMISSIONER KAGAWA-VIVIANI: Thanks, just too many apps. The other question I have was going back to slide 12 and I'll just admit I like looking at data. I was zooming into Summer 2024 and I was curious to see that RHMW2 has elevated, pretty high TPH-D compared to 2023 which I didn't expect or I don't know if that's within the natural range. Can you explain what's happening there, and then RHMW3 also has elevated compared to 2023 and so these are in the tank farm. I don't know if you have an explanation of what's happening.

CDR DUNN: As I was mentioning earlier about the individual monitoring well triggers that we have to deliberately pay attention to the results and track and trend, those triggers are all typically within the monitoring well or within the tank gallery tunnel. Not exactly sure what's going on down below subsurface as to why there's this kind of throb of intensity for TPH at about three of these wells. But we've seen it just in the most recent well that we completed with 21 which is the one at the far end of the tank gallery to the northeast up by Tank 18 and 20.

RDML WILLIAMS: And that's in the vicinity, that one is intentionally sited so that's just up from the AFFF Sump System (aqueous film forming foam) when the event happened in '21 in May, the fuel was sucked up and pushed into the AFFF retention line that then sat. That's the area where that would have pulled and soaked in, so we intentionally sited that well there and that's where we've seen the triggers.

COMMISSIONER KAGAWA-VIVIANI: Are you monitoring these also for PFAS (per- and polyfluoroalkyl substances)? I can't remember.

RDML WILLIAMS: We have about 30 or so of them that every other month are tested for PFAS.

COMMISSIONER KAGAWA-VIVIANI: Someone also asked me are these, in general or in the past, have been monitored for lead because historically aviation gas that...

RDML WILLIAMS: Lead scavengers, I believe that is on our list of analytes that are normally tested.

COMMISSIONER KAGAWA-VIVIANI: This data is online at DOH?

RDML WILLIAMS: Yeah, our Safe Waters website has, as the laboratory data comes in Department of Health, EPA, and the Navy- the Navy's \$15 million built this EDMS, it's a database that all of us have access to the data immediately at the same time. Then once it's validated data, that's what gets posted to the Safe-waters site, so everybody has access to it. Maybe not in a format that folks like to work with, but everybody has access so there's no issues of transparency or we're hiding data and so forth. It is all out there.

CDR DUNN: We also have on that Safe-waters page, there's a dashboard that you can filter so you can click on the well and the analytes and you can track any given well or analyte over that period, over any period of time since a well has been there. Sorry, you were asking about the lead.

COMMISSIONER KAGAWA-VIVIANI: I know lead is being monitored in the drinking water system.

RDML WILLIAMS: It is part of long-term monitoring as well as our compliance monitoring and then our extended drinking water monitoring plan. Lead is monitored.

CDR DUNN: Yeah, more so on the drinking water side.

RDML WILLIAMS: We've got the lead scavengers that are looked at.

CDR DUNN: Dibromoethane and Dichloromethane but not specifically lead.

COMMISSIONER KAGAWA-VIVIANI: Thank you...I'll just say I for one appreciate the update on the groundwater side. I think we have gotten updates on people cleaning out the tanks, but we think about water. I look forward to maybe if we can get that information on the upcoming meetings and include it in our notes? That would help.

CHAIR CHANG: Sure and even the website, how to link up.

RDML WILLIAMS: Link up. If you don't want to use the app, we'll get you the link directly to the website, all the information.

COMMISSIONER HO: One other thing, sorry, we by way of public engagement, the Department of Health is going to be having an open house for Red Hill on October 8th from 5-7pm at Aliamanu Middle School. Department of Health is sponsoring an open house.

CHAIR CHANG: You are including the Navy?

COMMISSIONER HO: Not sure if the Navy is going to be invited, but definitely EPA.

COMMISSIONER MIIKE: I have one last comment. This has been the most non-confrontational.

RDML WILLIAMS: Don't jinx us! We understand it's an emotional topic, but I think folks realize we're trying to do the right thing and we're trying to move forward, so appreciate that.

COMMISSIONER MIIKE: You see from our previous topic, we have a lot of emotional issues.

CHAIR CHANG: But it's also good posting it on our website. You may also get comments or participation at your meeting, so thank you very much. And we do appreciate the regular updates, quarterly updates so I think you'll be back here January.

RDML WILLIAMS: I think Admiral Barnett will be back. He's off island right now.

PUBLIC TESTIMONY - None

20240917 02:31:25

C. ANNOUNCEMENTS

- 1. Public Hearing Notice: East Honolulu Watershed Management Update September 18, 2024; Koko Head Elementary School Cafeteria at 5:30 p.m.**
<https://files.hawaii.gov/dlnr/cwrn/notice/2024/nt20240618.pdf>

PUBLIC TESTIMONY - None

20240917 02:32:17

C. ANNOUNCEMENTS

- 2. Application Deadline for CWRM Commissioner – October 11, 2024**
<https://files.hawaii.gov/dlnr/cwrn/notice/2024/nt20240822.pdf>

PUBLIC TESTIMONY

LEINĀ‘ALA LEY: Good morning Chair Chang, Commissioners. Thank you for the opportunity to provide testimony. My name is Leinā‘ala, I’m an Earthjustice attorney and we have submitted comments raising concerns with reopening the nomination process for the Native Hawaiian practitioner seat that was vacated by Commissioner Hannahs in June. Our understanding of what has gone on was the full process took place with a duly appointed nominating committee well in advance of June. The list was transmitted in March and now the whole nomination process is being reopened and as you all well know the purpose of this particular commissioner seat is not only to provide expertise in Native Hawaiian uses and management practices, but also to foster better relationships with Native Hawaiian communities. The lack of transparency around what has transpired in the past few months is having the opposite effect. There were a number of nominees that received a lot of support both in Star Advertiser editorials, at the conservation conference meeting, and there's been a lot of questions about why this long amount of time has elapsed and the position has not been filled. I'm hearing now that there's a statement that there's been attrition in the list, but at the time it was transmitted to the Governor in February or March, it had more than the statutorily required three. I understand there were four candidates, highly qualified, again went through the entire vetting process and now these individuals are no longer being considered essentially because of inaction on the part of the administration. We would urge, first that our position is really legally the Governor should make an appointment from the remaining candidates from the March list that are still on the list, ready to serve, have been appointed by the nominating committee. Second at minimum, some greater transparency for the public so in the future others are not discouraged from putting their time and effort into going through this process, being committed to the position, and then suddenly having their nomination pulled for circumstances that are really outside the procedures that are laid out in the statute. Again we would ask that the Governor nominate from the existing list and at minimum provide some more transparency about why that is not happening. Thank you.

CHAIR CHANG: Thank you Leinā‘ala. Based upon Katie Roth’s recent explanation, one I believe the rules or the statute requires three names and I believe two of the nominees withdrew their name, so it had an inadequate amount of names that remained with the Governor. As you say in the interest of transparency, CWRM has started the nominating process again. Those applicants, if they are still interested, my understanding is hopefully they will either reapply or their nominations will be considered. I think that's up to the nominating committee, we have no role, I know I have no role in that, so I believe that's up to the nominating committee. But I think we are trying to be transparent. We understand it's lag time, but that is currently where we're at. The Governor doesn't have, he had two names so we had to start the process all over again. My understanding too with the nominating committee, several of the one or two of the nominating committee members could no longer sit on the committee, so they had to appoint two new committee members. For different reasons not to make an excuse, but that's been the

reality so now based upon this notice the nominating committee I guess will proceed in timely proceeding on getting at least three names up to the Governor in October.

COMMISSIONER MIIKE: Since it has to be confirmed by the Senate, once the Governor appoints, that person can start serving?

CHAIR CHANG: Yes, that person subject to confirmation of the Senate.

GILBERT FALLAU: My name is Gilbert Fallau. I'm from Kailapa, Kawaihae on the Big Island which is the hottest spot in the state of Hawai'i and I am testifying to express the importance of the vacant practitioner seat which should be supported by the committee's knowledge of Hawaiian laws. These two laws specifically are HRS section 174c-7b and the second being HRS section 174c-101. Let me read some facts, some yet to be proven. As we reconcile communities typically organized by watershed and subsistence agriculture dependent on diversions and ditches, meaning the use of Hawaiian laws and the example would be the lo'i and the Western concept of commodity agriculture, sugar cane. Now I'm not sure what the law is, I'm not mocking it but I call it the law of deep pockets- you know gobble, gobble. I demand that the members of the nominating committee possess sufficient knowledge of the Native Hawaiian water rights and practices which too I feel that I mentioned played a very important role so you may adequately select an actual loa or sitting practitioner. Filling this vacancy is more important than ever as the Water Commission will be making important decisions on the fate of wai or water across the pae'āina and specifically in places like Maui Komohana. Mr. Green, remember the big fish gobbling the little fish, thank you.

COMMISSIONER KAGAWA-VIVIANI: How was the nominating committee selected?

CHAIR CHANG: By statute or rule? I think the Senate, and then the House, and the Governor. The House Speaker, the Senate President select one member each and then the Governor selects two members.

COMMISSIONER MIIKE: Is it two?

CHAIR CHANG: I think it's two, I think there's a total of four. I think there are four members who sit on the nominating committee, I think that's how they are selected by HRS? HAR?

KATIE ROTH: 'Iwalani, do you know if that's in statute or admin rules?

DR. JONATHAN SCHEUER: Statute.

KATIE ROTH: Thank you, Jonathan.

COMMISSIONER KAGAWA-VIVIANI: Are those names public?

‘IWALANI KAAA: If I may because I'm the secretary to the nominating committee as well, from what I've seen this last time around is we publish it when we publish the agenda.

COMMISSIONER KAGAWA-VIVIANI: For the meeting.

‘IWALANI KAAA: Correct. It's not secret, it's just we publish it when the agenda goes out.

CHAIR CHANG: The agenda is before the nominating committee, not before this body?

‘IWALANI KAAA: Correct, its own meeting.

COMMISSIONER KAGAWA-VIVIANI: In that case, Mr. Fallau's concerns could be addressed by being in touch with such leaders who do make those decisions about the nominating committee?

CHAIR CHANG: But I believe the members have been selected.

COMMISSIONER MIIKE: I think it's also important that people apply. The nominating committee doesn't call out to people.

CHAIR CHANG: Yes, in fact the nominating committee should have nothing to do with calling out the applicants. The public announcement was made hopefully through the coconut wireless, people are notified and we'll get a robust list of applicants.

KATIE ROTH: Again, the link to the application and the notice is posted on our website and part of the agenda today.

CHAIR CHANG: When does that close?

KATIE ROTH: October 11th.

CHAIR CHANG: So, everybody still has time. Mr. Fallau, please tell people you know, submit their applications.

20240917 02:46:39

D. COMMISSION MEETING SCHEDULE (*Tentative*)

October 31, 2024 (Thursday)

November 19, 2024 (Tuesday)

The meeting adjourned at 11:49 a.m.

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/>