

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

DATE: October 31, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 841 4155 1891

Online link to the video recording of the October 31, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/1029765523>

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. Chair 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, Mr. Hinano Rodrigues, Ms. Kathleen Ho

STAFF: Deputy Ciara Kahahane, Mr. Dean Uyeno, Mr. Ryan Imata, Ms. Queenie Komori, Ms. ‘Iwalani Kaaa

EXCUSED: Mr. Paul Meyer

COUNSEL: Mr. Colin Lau

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

20241031 00:05:26

A. APPROVAL OF MINUTES

September 16, 2024

PUBLIC TESTIMONY – None

20241031 00:06:20

MOTION: (KATAYAMA / KAGAWA-VIVIANI)

To approve minutes with non-substantive edits.

UNANIMOUSLY APPROVED

(MIIKE/KATAYAMA/CHANG/KAGAWA-VIVIANI/HO/RODRIGUES)

20241031 00:07:01

B. ACTION ITEM

1. Approval of Chairperson’s Appointment of Ciara W. K. Kahahane, as First Deputy to the Chairperson of the Commission on Water Resource Management

PRESENTATION OF SUBMITTAL: Chair Chang

PUBLIC TESTIMONY

DEREK ALKONIS: My name is Derek Alkonis. I’m with Underwriters Laboratory, Fire Safety Research Institute and we are the organization that was hired by the State to conduct the comprehensive and independent analysis of the Maui wildfires. As I sit here, I wanted to make sure that I provided my experience with Ciara since she worked very closely with us in securing the information from Maui and from the State and her ability to process complex information. Not only making the request for the information which was challenging at times, and she understood the legal issues surrounding the information, but also as we received it and began to analyze it. She was very interested in understanding all the details of that. I found that interesting that she was so engaged in understanding even the engineering. When we got down to the water section, she wanted to know the details, the facts, what our engineers analyzed and what they reported. We discussed that at length for many hours for the past year, not only with respect to water but also with respect to other technical areas of the analysis. Her abilities to process information that are complex and even out of her wheelhouse are unmatched and her genuine interest in wanting to get to a solution for the complex problem needs to be recognized. I just wanted to share my experience with her. This was obviously one of the most significant events in the last 100 years in the United States. We’re reviewing

terabytes of data and she was right there with us. I say thank you to Kira and [she] definitely has our support.

CHAIR CHANG: Thank you very much. I appreciate you being here. David Day?

DAVID DAY: Good morning, Commissioners. Dave Day, I'm the Special Assistant to the attorney general previously in 2021 I was the hearings officer in the Red Hill emergency Contested Case Hearing regarding the discharge of fuel at Red Hill on November 2021 and I have worked closely with Ciara for my entire time as Special Assistant for the past two years. I'm here testifying in my personal capacity, but I am also speaking on behalf of the Department and Attorney General Lopez and First Deputy Attorney Matt Dvonch. I'd like to speak to three things which is 1) her intelligence, 2) her reputation in the department, and 3) her character. When it comes to intelligence, Ciara is unbelievable. She is clearly one of the top deputies that I've ever seen, particularly at her age, in terms of her intelligence, her articulateness, her ability to write, her ability to strategize and to think about the way to approach complex problems. That's why at the Complex Litigation Division she was able to handle these cases with tremendous volume of documents of all different types- if it had financial matters, if it had environmental matters, involved the public trust, if it involved the Maui wildfire. The way to go about that, keeping documents and in order to sort of process it requires a tremendous amount of organization and a meticulousness, but Ciara had that and she was tremendously organized.

She could then immediately distill that into points that could be processed and then used in our work. In that respect Ciara is really unmatched, particularly for someone who had been at the department only for a short while. I'd like to talk about her reputation. Her reputation among the department is unblemished. She has a perfect reputation in that I have never heard a single person say a single word that was even remotely unkind or negative. Everybody who has met Ciara speaks of her only in glowing, positive terms because they know that if you give her a task it will be not only completed on time, but it'll probably be completed before time, but then also that the work product will be excellent and that we know that we can trust Ciara. Then I'd like to talk about her character. Ciara is tremendously kind, she's compassionate, she believes in the motto of our state that the life of the land is perpetuated in righteousness. I believe that she has a deep, deep love for Hawai'i, for Maui, for Hawaiian traditional and customary rights, and that she would be an unbelievable asset for this Commission. We miss her deeply at the department, deeply, but we are happy for your gain. Thank you.

RYAN KANAKA'OLE: Hello Chair, members of the Commission. My name is Ryan Kanaka'ole. I am testifying in my personal capacity this morning in support of the appointment of Ciara Kahahane as Deputy to the Water Commission. Prior to my work here at DLNR, I was a Deputy Attorney General in the Public Safety Hawaiian Home Lands and Housing Division. In fact, I was on the interview panel for Ciara when she was coming on board to the Department of the Attorney General and very shortly after that or even probably during the interview I thought, oh my goodness we need to bring her in, she's going to be an asset. In a short time after when she onboarded and she started, I was

right. So right that it was almost too easy to supervise her and I speak for Craig our supervising Attorney General. It was legal research- excellent, writing- excellent, negotiation ability- excellent. It was so easy and the talent was just hard to hide. Her ability to take on these complex issues, difficult situations and just handle them with ease, it was hard to hide. The talent was just showing and overflowing and to the point where Complex Litigation Division stole her away from us and that just reflects her ability to quickly become an asset in the Department of the Attorney General and to be an asset to the State. I am fully confident that she will be an asset to the Water Commission. I am fully confident that her abilities will translate well here and she will be able to effectively and efficiently do her job. She has my full support.

TONI SCHWARTZ: Good morning, Chair, members of the Commission. My name is Toni Schwarz, I work for the Attorney General's office and I'm here to support Ciara's appointment to the position of First Deputy to the Chairperson for the Commission on Water Resource Management. I came on to the Department of the Attorney General less than a year ago, it was December and Ciara was one of the first people I met when I started working there. I quickly noticed her passion and heart for the people of Hawai'i, that's the one thing I really want to focus on because she does have a heart for the people of Hawai'i. The cases assigned to her were some of the most challenging. I know she went through a lot of stress and just had a huge case load, but she always put the people first, her clients first, their well-being first and she was able to close cases with stunning results. She's earned the respect of everyone who's ever had the opportunity and privilege to work for her or work with her. Her Hawaiian roots run deep on Maui. She is a daughter of Lahaina and she has earned the respect of her colleagues and community. She's a natural born leader and I'm confident she is the perfect person to bring about collaboration and unity in her new role with the Commission. I'm going to miss her a lot, but I am very happy to see that she's with you guys and in good hands. You are in good hands, so thank you.

WAYNE TANAKA: Good morning, Chair, members of Commission. In addition to what other folks have shared and we are hopeful that Deputy Kahahane's community and cultural and legal background will serve her well as you apply those things to implementing the work of the Water Commission. In recognition of the unprecedented times you are in with the existential emergencies facing our islands and facing our planet and also in recognition of the long history of neglect of the rights of kanaka maoli to water and hopefully find a better way forward which we desperately need in light of the situation we're in. I do hope that the folks that are supporting her today will also support her as she endeavors to navigate a better way forward in terms of how we manage our water and how we prioritize what our most precious resources are used for. To that end, I did want to highlight one challenge and that she may want to think about and did want to also address Mr. Rodrigues. I don't think we've met before. I think it's unfortunate that your tenure has already kind of been a little tarnished given the Governor's refusal to meaningfully recognize the requests of about seventy-four organizations and community leaders asking that he appoint a member to the Commission from the February list, from the Nominating Committee as is also consistent with the same language of the statute.

CHAIR CHANG: Wayne, I'm going to let you continue but that's really not on the agenda.

WAYNE TANAKA: I'm just identifying some of the challenges I think she'll be facing given the issues that may arise with the reputation of the Commission. Maybe something you reflect upon in terms of the honorable thing to do or to honor the wishes of the community might be to decline the nomination and let the Governor pick from the remaining two candidates that were sent up a couple weeks ago, who I believe were also the two candidates on the list that were submitted in February. This might also avoid some of the concerns that may be associated with for example, Maui Komohana, the applications...

CHAIR CHANG: Wayne, that is far beyond the relevancy to Ciara's nomination.

WAYNE TANAKA: It's a challenge that I think she'll have to navigate.

CHAIR CHANG: But you seem to be addressing Mr. Rodrigues.

WAYNE TANAKA: It feels weird talking about it without talking to him, but I think it would avoid some of the concerns that might arise as to whether and how as a loa you will be able to adjudicate the water use permit applications for Maui Komohana given that a landlord of Kīpuka Kuleana has also submitted applications that are potentially in competition with the Native Hawaiian practitioners and farmers and so forth that the loa seat is envisioned to look out for and advocate for. Just something to reflect on and I think short of that, if you do choose to remain in this seat, I really hope that you understand because of the way this all started, how incredibly important it is to hold yourself to the highest standards of care, of transparency, of zealous advocacy for the purpose that this position has been established and for ethics. We'll also be expecting that highest standard of care. Just as a final note...

CHAIR CHANG: I know really inappropriate, but final note and it should be back in regards to the agenda item being Ciara's nomination.

WAYNE TANAKA: As a final note, I think that there will be a lot of scrutiny applied both to past actions and connections as well as decisions going forward. In any case, I do want to wish Ciara the best, wish the Commission the best. We are all in this together in terms of creating a bright and hopeful future for our islands and hopefully model the way that the world needs to begin operating given the situation but thank you very much.

20241031 00:28:16 – *Commissioner Miike joins the meeting.*

DEPUTY KAHAHANE: You've heard about me from some of the people here, some of the people who've already left, so I want to start by thanking everyone who's come out today for your testimony and for your support. I want to start from the beginning and tell you about myself in my own words. I've been serving contingent on approval of my appointment going on three weeks now. During that time, I've jumped in with both feet,

literally, as some of my staff can attest. I'm very proud to be from Lahaina, Maui. My grandparents and my great-grandparents worked for Pioneer Mill. On my grandfather's side, the Kahahanes, are really a fishing family. Both of my dad's parents had lineal connections to Lahaina, including Olowalu, Kā'anapali and Māla, so I love that place and that community is very important to me. I felt that it was the right time for me to take this job given the designation of Lahaina as a water management area and the impact of the Lahaina fire. Not only did the fire signal a need to better manage our water resources, it has provided us with some opportunities to reconsider how we do that. I'm eager to take those opportunities and to make the most of them given what has happened in Lahaina and the trauma that the community is still dealing with. I grew up dancing hula and learning oli. I really respect, because of that experience, Hawaiian mo'olelo and oli as a repository for information, including about water resources. Just sitting here, I can rattle off a few oli that I think have a significant connection to the work that we do here. When I was reading the Nā Wai 'Ehā decisions, I remembered an oli that I learned when I was younger, I Waikapū Ke Aloha, which describes all of the four waters and their significant historical and cultural qualities. I hope to bring that 'ike Hawai'i with me in performing the responsibilities of the job because I think that that is a layer that should be interposed over everything that we do with the Water Commission because part of our highest duty is to protect traditional and customary Hawaiian practices and to have a deep respect for the Hawaiian culture.

I went to Mānoa, I got my degree in Hawaiian Studies and it was there that I really began my education on the Māhele and its effects on traditional Hawaiian land tenure, on the public trust and on traditional and customary Hawaiian rights and the protections that they're afforded under the laws of our State. I continued to learn about Native Hawaiian law in law school, I took the Native Hawaiian Law Clinic and during one of my summers, I worked at the Native Hawaiian Legal Corporation with Sharla Manley was my direct supervisor. I've been learning and working in this space for a while and I have the utmost respect for the body of case law that has been built up over the past few decades. In my transition between law school and the working world, I also worked to catalog fishing practices in West Maui and researched some of the locations of loko i'a within West Maui and the history of how those loko i'a were primarily filled and built over. That has become significant as there is a request for water resources to be returned to Lahaina and I hope to build on the knowledge that I have about this historical, cultural significance of these places and of these loko i'a to the effort to revitalize Lahaina, Maui. I spent two years clerking at the bankruptcy court, learned a lot. I walked past Jon Chinen's portrait every day who wrote some very seminal works on the Great Māhele and it was a reminder to me that maybe my true calling is in Hawaiian law, as much as I love commercial law. I always have been a bit of a nerd about the Constitution and I love to dive into the public trust doctrine. When I came onto the Department of the Attorney General, I started as a deputy with the Hawaii Housing Finance and Development Corporation and while I was there, I worked on everything that touched Waiāhole which includes the Waiāhole Valley water system that is maintained by HHFDC as well as the McCandless Ditch system that still provides non-potable water to some ag users and others out there in that community. I like to think that I contributed quite a bit to the administrative rules that they promulgated to govern their service of water to customers

in the community, specifically Waiāhole Valley. While I was there, worked on the Ota Well matter, which of course involved NELHA and HHFDC's application for a well permit. I do have those experiences in water resources to build on and that introduction to the Water Code which I have tried to maximize my learning of in the subsequent years. I've become familiar with public trust in water cases all the way from Kingdom era to today and I'm a student of all of those cases going from most prominently from Waiāhole I all the way to the most recent Supreme Court decision in Nā Wai 'Ehā.

While I don't claim to be a taro farmer, I've worked in lo'i kalo around Maui including in Kahakuloa, Honokōhau and Kauaula Valley. I do bring some practical understanding and experience. Those experiences gave me a deep respect and appreciation for the amount of work that goes into preserving those cultural practices and an understanding of generally how the system works and what practitioners need to have healthy kalo and healthy lo'i and to have success in what they're doing with their practices. At the Complex Litigation Division, I handled cases with high stakes or particularly challenging legal issues, so I'm no stranger to complex issues or challenging areas of law. I have certainly had cases that arrived one day and this is an inverse condemnation case, you'd better learn everything you can about inverse condemnation law and things like that. I had the opportunity to learn many different subject areas and I am confident that I will become an expert in water law and on the technical side as well. In that capacity, I've worked with many experts including engineers who had much more sophisticated technical knowledge than I did. Despite the fact that I am not an engineer myself, I don't have the science background that some of my staff have, I have to ensure that we're presenting submittals that have all of the relevant background information and everything that you need to make an informed decision. In my function as an attorney, similarly, I had to ensure that we were presenting expert reports where the basis for every opinion was clearly laid out for the decision maker, that provided enough background that the judge could follow along and understand what the history of the matter was and what the issues were going forward. That has given me plenty of experience in identifying gaps in information and areas where there's insufficient justification for an opinion or where we just need to flesh out the reasoning a little bit more, flesh out the background more. It won't take me long to gain a deeper understanding of the subject matter.

While I was at the Complex Litigation Division, two matters that stand out the most are of course the investigation into the Lahaina wildfires and Navahine v. State of Hawai'i Department of Transportation. In Navahine, as many people here I think already know, 14 youth plaintiffs sued the Department of Transportation, the Governor of the State of Hawai'i, the Director of Transportation with claims under the Constitution of the State of Hawai'i, specifically the Public Trust Doctrine and the right to a clean and healthful environment. Those claims stemmed from DOT's operation of the transportation system which of course creates greenhouse gas emissions that contribute to climate change. That was a very difficult case. I think we all wanted to get to the same place and we did successfully, but there were many hurdles that we had to overcome to arrive at a solution that was mutually agreeable to everyone and that served the plaintiff's needs and gave, especially the youth plaintiffs, assurance that the State of Hawai'i had heard them, that we were going to heed what they were saying. I spent hours with staff trying to flush out

our agreement, trying to put things in there that I knew the plaintiffs would want in trying to bridge the gap between the parties. I'm very happy to say that it was successful, but I did the work. I put a lot of work into that settlement agreement and that's why I'm so pleased that it was a success. Of course, I want to acknowledge that I was not the only person doing that work, that we had a great client, the Director of Transportation, and we had a very collaborative relationship with Earthjustice and Our Children's Trust. My respect for Hawai'i and for the Hawaiian culture and language informed my approach to that case and I believe that they were vital to finally reaching our settlement. One of the most important roles that an attorney plays is as a problem solver who can find creative solutions. I have experience doing that, I'm very proud of my ability to bring people to a consensus and I intend to bring that experience with me in serving as Deputy Director of the Commission.

In closing and before I answer your questions, I just want to talk about my motivation a little bit more. I care. I made a commitment to stay in Hawai'i to try to better my community. I believe in public service, I believe in having Hawaiian voices in state government. I'm here not because I want to be in the public eye, not because I want to be in a position of power, but because I believe that serving in this position presents me with an opportunity to fulfill my responsibility to my community. I really do use the word "serve" with intention. With that, I'm happy to answer any questions you may have for me, thank you.

QUESTIONS / COMMENTS

CHAIR CHANG: I very much appreciate hearing in your own words the journey that you've gone through and what presents you here today, so thank you so much for that.

COMMISSIONER KAGAWA-VIVIANI: I think in reviewing the Code and seeing your experience, it strikes me, the very first line is, "the Deputy shall have experience in the area of water resources." I think you spoke to this in terms of Waiāhole, but how do you think you really meet that? Or where are your gaps and where do you want to start first? Because there is a lot to learn-I am still a student of water resources.-So do you have a map for that yet? You're working with staff who've got decades of experience and how are you going to address that main one? Because it doesn't say you need a law background, but I think your background in complex litigation is really important and helpful. How are you going to fill the water resources experience gap?

DEPUTY KAHAHANE: Thank you. I identified really three areas, there are perhaps more, that come together to fulfill the responsibilities of this job and it's the technical understanding of water resources from a hydrology and engineering perspective, the hard science approach to it, the Water Code and the Constitution including Public Trust Doctrine, traditional and customary rights. Clearly the area where I'm the most comfortable, where I'm the strongest is Constitutional Law. I have for years been a student of the Constitution. I have already begun my education in the Water Code and that is the area where I'm going to concentrate the most going forward especially digging into things beyond statute, Administrative Rules, our various plans, all of the things that

spring from the Water Code itself. As far as the technical knowledge, that is something that I am also getting up to speed on and I will be learning for years to come regarding the science side of it. I'm confident that I have enough of a foundation in geography, botany, marine biology to at least provide me with a framework to begin to understand the science portions of it and I have a great staff who are able to help get me up to speed on that portion.

COMMISSIONER KAGAWA-VIVIANI: It is vast. There's strong emphasis in your appointment- and the appointment of Commissioner Hinano- on Maui, but really the job is broad. Sorry, Commissioner Miike, you have a related question first.

COMMISSIONER MIIKE: This testimony has been heavily on Hawaiian rights. In the Water Code, Hawaiian rights are included as one of about five public trust purposes. How would you characterize Hawaiian rights within those five because none of them are absolute.

DEPUTY KAHAHANE: That's exactly right, there are no absolute priorities. It's all going to depend on the context and I don't think that Hawaiian rights are a trump card, but they are something that we can consider in making decisions. Of course, how to allocate resources among all of the priorities is a decision really for the Commissioners, so my approach is going to be to explore every one of those public trust uses and to develop a full and complete record on which you can make a decision and Native Hawaiian rights is part of that. Of course, there are other priorities under the Water Code and really I see my function as putting forward enough information for all of you to make an informed decision in how you want to prioritize those trust uses on a case-by-case basis.

COMMISSIONER MIIKE: And just a follow up, who has Hawaiian rights?

CHAIR CHANG: What was that Larry?

COMMISSIONER MIIKE: Who has Hawaiian rights?

DEPUTY KAHAHANE: Well, under the case law I think it's become a little contentious as to who has these Hawaiian rights and most importantly when they're practiced and who has the authority to claim traditional and customary rights under for example, PASH. Traditionally, I think it's been thought of as limited to ahupua'a tenants. There are, of course, cases like Pele Defense Fund that expand that right to people who have historically used their resources from another ahupua'a. I think this is an area of law where there is the potential for change and for growth, but whether that's extended to non-Hawaiians who may be part of a Hawaiian family or whether it's extended to people who are not lineal descendants from a particular ahupua'a, is really not a decision that that I can make, it's a decision that you all will have to make and the Hawai'i Supreme Court will say whether you made the right call or not.

COMMISSIONER MIIKE: I think that was a proper answer because the answer has to be [inaudible] and Chair Chang and I have already talked about that going to be one of the issues when we have specific cases coming up before this Commission.

CHAIR CHANG: Well said.

COMMISSIONER KATAYAMA: Can I take it in a little different direction? I view this as an introduction to the Commissioners because very rarely would you have the opportunity to address all of us at once. I like to keep it sort of light and informal, but I'm interested in three aspects of your personality- one, is your management style, if you can talk about that a little bit because that impacts how you manage your resources. It's a very small department but with tremendous impact and tremendous responsibilities. Secondly, address your leadership style in doing that. Management first and then leadership and lastly balancing. As Commissioner Miike sort of touched upon it, you have these public trust uses that sometimes are in direct conflict or sometimes you just don't have enough and you must allocate. I think it would be helpful for us to see your temperament in these areas and I'm sure your staff would welcome that North Star, if you will, on how you'll be putting your imprint or your thumb print on the Commission.

DEPUTY KAHAHANE: Absolutely. My approach to management is really to follow the org chart, to trust the people who I have on my staff and I do have a trust for them already after these three weeks. Also, to verify, to ask insights and questions to make sure that I understand the issues and not to shy away from gaps that might be there in information. I've already sent a few things back, so I try to balance in management, as well. I don't think that staff functions well when they have a micromanager, but they also need guidance, they need leadership and so I try to and I will continue to try to provide guidance and direction and assistance and to step in where it's needed, but also importantly to know when not to step in. That is a careful path to walk. There will be times where I need to take a more active role in management and I'm prepared to do that and to work with particularly my Branch Chiefs to make sure that they have enough autonomy over their branch, but that we are all moving in the same direction, that there aren't outliers that are not accounted for and to ensure that the entire organization is functioning as a whole, not as parts.

COMMISSIONER KATAYAMA: Can you give examples of that in your past management roles?

DEPUTY KAHAHANE: Yes, when I was with the Complex Litigation Division, I was lead counsel in a few matters where I had to lead a team of experts and attorneys which honestly was like herding cattle as you've got a group of engineers and a group of lawyers and they're all subject matter experts. In cases, for example Navahine, I was responsible for really setting the tone of what our approach was going to be. People went to me to ask me to make decisions, to make calls on things like should we do the depositions here, should we do them this way, should we put this argument in this motion, should we respond to this, should we write a letter? There were so many decision points in that case where I was responsible and helping to lead the team towards a

common goal. There were plenty of times where people had a different recommended approach than me and they were people who had deep subject matter knowledge, who had years of experience in the area. I had to listen to all of the viewpoints, consider what was in my own mind and my initial reaction and make a decision among all of those things for what we should actually do, our path forward. That was how I managed our resources in that case and that's sort of how I would like to pattern my management style moving into the new role with the Water Commission.

COMMISSIONER KATAYAMA: What is your leadership style?

DEPUTY KAHAHANE: My leadership style is, there's a Taoist saying, "water is able to rule over all things because it puts itself below them." I always try to approach leadership with humility, I try to make people feel like they are heard even if I make a decision that goes against what they would like. I feel that I have the responsibility to show respect for every single member of my staff. I think that leaders function best when they are open to listening, but when they're willing to make to make decisions to guide, to say we are all going in this direction. As a leader on the Water Commission leading my staff, I will be setting the goal posts and we'll be encouraging people to move towards them together. It's again, balancing the need to respect everyone with the need for the staff will not function properly if there is not leadership and direction. Just humbly and sometimes firmly, but always respectfully moving people towards my goals and my vision for the organization.

COMMISSIONER KATAYAMA: Thank you. I take that and I'm sure your staff will take that with a lot of comfort hearing it from you. Again, just sort of a conversation with the gang.

COMMISSIONER RODRIGUES: I just have one comment and that is that as I listen to Ciara speak, I thought of myself 40 years ago. I had really wanted to attend the Richardson Law School, but they denied me acceptance, but on the other hand I did get into Hastings Law School. I can't complain, but everything that she wants to do are things that I wanted to do back then. It's making a full circle today and that's just my comment, thank you.

COMMISSIONER KAGAWA-VIVIANI: Speaking of leadership style, I was interested in how there's a lot of things you do really well and we've heard a lot about, but if you can share with me- nobody's perfect- and there will be times where missteps or mistakes are made. Can you tell me about an experience where you course-corrected? I think the test of leadership is recognizing that there will be missteps and oftentimes people just double down.

DEPUTY KAHAHANE: Give me a moment. One example I would say is I did have some challenges in the wildfire investigation. I did. It was high pressure, it was tense, it was a subject matter that affected me emotionally. At times, I did find myself not giving the benefit of the doubt perhaps to the County of Maui in some circumstances. I think that manifested in our relationship between the State and the County. Of course there

were other factors at play, but I think there was more that I could have done to reach out, to get on the phone, to humanize who was on the other side. I did realize that it had become more contentious than I wanted it to be and try to reset by calling more, by bringing people on who were also level-headed, who didn't have as much history with the matter, who could kind of advise me and help me think about my approach. That was very valuable to me to have a check on myself- am I falling into my old patterns of thinking, am I making logical leaps that are not justified? I asked for the Attorney General to help by assigning someone else to that matter who could kind of provide a little bit of balance, a little bit of level-headedness and I myself made the effort to reach out more to talk on the phone, to kind of discuss things and not just conduct that investigation by firing off emails. That, I think, was really beneficial. I'm not sure that we were 100% successful in resetting and in correcting course on that, but I think it was the right thing to do and I did see the results in course correcting on that.

COMMISSIONER KAGAWA-VIVIANI: I think that's helpful to hear. Given that this is a four, maybe eight-year term and staff have been here through many turnovers and every Deputy has a vision for what they want to accomplish in four years, do you have one articulated? If so, what are you trying to get done should you be confirmed? Where do you want to see the Commission in four years hopefully?

DEPUTY KAHAHANE: We have a lot of work to do right now, actually. There are a lot of things that I would like to get done starting from the organizational standpoint. We need to up staffing and I'm going to be looking at creative ways to do that, to get more people on and to build out our organization. Areas that I want to concentrate are, there are many things, updating our plans, updating our Administrative Rules, streamlining our processes, revising any processes that aren't working for us. For example, are we doing permit review and submittals in the best way? Perhaps even little things like that I think will contribute to a better work product that we're putting before you and better decision making. I want to make sure that...we certainly are considering Ka Pa'akai Analysis and things like that, that we are thinking of ways to streamline that process, as well, to make it easier for applicants to comply. That is something that I would like to work with 'Aha Moku on. We've discussed doing a limited Ka Pa'akai Analysis in some of our plans and I think that is good and following up when we do a permit. A unified approach to Ka Pa'akai that provides people with resources, even just a list of here are the cultural practices and resources in this area, here are a list of good people who have been experts before who have provided input previously so that we don't have applicants who are coming to us and are just sort of befuddled by the need to perform a Ka Pa'akai and don't know where to start. Things like that. Anything that we can do to just improve from an organization standpoint. As far as my vision for water resources, I think just knowledge is power. The more information that we have, I want to look at our water resources more closely with things like monitoring including monitor wells and stream monitoring. It is a challenge to get sufficient funding for that, but it's something that I'm willing to put my weight behind and push on because it is so vital to fulfilling our responsibility.

COMMISSIONER KAGAWA-VIVIANI: I figured now's the chance, right? It's a good place to have everything on the table. What do you view as the biggest- and there are many- challenges for water in Hawai'i? What are your top three?

DEPUTY KAHAHANE: I would say declining availability of resources. This is probably my number one. As we look at the impacts of climate change, we don't know yet fully how they'll impact us, when they'll begin to impact us, but we are seeing droughts, we are seeing more frequent extreme weather events and we are seeing a general decline, not everywhere but a general decline in rainfall. That to me stands out as the number one issue that we're going to have to contend with and we need to really think about how we're going to plan for water shortages because I think they are coming. They're in many places, they're here already. Numbers two and three I would say all of the history that goes along with water and it is a long history and building trust within the community. My approach to that is really, you can't go to someone and just say trust me. That doesn't work. You have to earn trust by action, you have to earn trust by listening and so the need to earn trust is something that I would identify as both a challenge and an opportunity for us. Third, I would say the need to balance the utilization of water resources with the desire to build more housing. Housing is a hot, hot topic for a long time now because we have people moving away. It's not my responsibility on the Water Commission to necessarily encourage the construction of more housing, but I think it is my responsibility to be thoughtful about how this resource is utilized, to be thoughtful about the fact that there is a demand from our local population on these resources so that they can afford to continue living in Hawai'i. That's something that I don't want to lose sight of. It is going to be a challenge and at times there is going to be a conflict between protecting water resources and encouraging development, essentially, and the construction of housing for Hawai'i residents. That is something that really the Water Commission again is going to have to make the final decision on, but I will be thoughtful in my approach to those issues and I will use what I know both from the HHFDC side and from the 'ike Hawai'i side and from just being someone who lives here, understands the issues, knows people who are moving away, to give you the information that I think that you need to make an informed decision.

COMMISSIONER KAGAWA-VIVIANI: I appreciate that you're a systems thinker. One thing I see perpetuated over and over in increasingly troubling ways is this framing of housing versus water as a zero sum game. I think when we begin to understand housing economics, even though it's not our purview as a Water Commission, but you work in complex litigation you can take in a lot of information and synthesize and see the system. We are a part of a system including real estate economics that drive up prices and so there's challenges with water. I don't mean to expound, but someone told me too much flooding, too little- dry like the side of Kaua'i, and too dirty. These are all challenges I think that align with those, but I'm looking forward to future conversations on how we think about the system and then identify what is the appropriate thing for the water - how do we connect with these other pieces that are also equally important. My last question has to do with some of your history. You've worked in the AG's office and they have glowing recommendations for you and you've also worked with HHFDC and you have strong support, but there are some issues that are coming before the Commission such as

Ota Well. Knowing that you were an important part of their filing the contested case, your work for the AG and work for HHFDC, how are you going to navigate the potential conflict of interest and then also the maybe historic contentions between the Commission and the AG? I'm not a law person, I don't know all that history, but I pick it up. There's this concern, are you just working for the AG within the Commission or are you a Deputy of the Commission? That was part of your training. I don't want to put words in your mouth, but I want to understand the potential conflict of interest and how you're going to deal with that in ways that help the public trust you.

DEPUTY KAHAHANE: I'll start with HHFDC. It was flattering to receive their support even years after being their attorney, but I will say first of all I'm embracing my new role. I'm not HHFDC's attorney anymore so at one point, I did my job. I advocated for them as an attorney and I still hold the staff there in very high regard, but as they would probably attest to, I pushed back on them a fair amount while I was an attorney for HHFDC. I knew that my role was the law and not policy, but I don't think that it held me back even then when I was their attorney and certainly now in this new role. I understand that I don't represent HHFDC's interests, I represent the State which is a trustee of this public trust resource. That is my responsibility now and so just in the way that I advised and advocated for HHFDC when that was my role, in this new role I will advocate for the protection of the public trust and all of the various uses. I am aware of this issue and because of that, I will do my utmost to ensure that not only is HHFDC held to the same standards that any other applicant would be, but that it's clear, it's public. The appearance of impropriety is just as bad as impropriety. All of these decisions are going to be public and so holding my own ethics and integrity, holding myself to that standard is going to be very important for me. I am going to ensure that it's documented that it's demonstrated, that we are inquiring into HHFDC as an applicant, just as we would anyone else. As far as my relationship with the AG's office, yes, I'm very grateful for my time there and that is really where I got my start as an attorney. I'm always going to have a warm spot in my heart for the Department of the Attorney General and the opportunities they gave me to grow, but at the same time I think many of the most incisive of questions and maybe even some of the greatest disagreements with the AG's office come from other attorneys.

As an attorney myself, I'm prepared to ask questions, I'm prepared to challenge assumptions, I'm prepared to ensure that we obtain clear and sound legal advice from the AG's office. I've already identified a couple of places where I think we need more work to come to an understanding on things and to really...so much is unclear and so where there are differences of opinion, they might not be able to be resolved by simply looking at the letter of the law itself. That's where I can contribute by sort of trying to understand not just the answer, but the reasoning for the answer, the analysis that went behind it and I think that that will help you folks. I'm optimistic that it will help you folks because if you understand the reasoning for a decision or for advice then you can better understand if perhaps you want to make the decision to deviate from it or to take another approach that is maybe equally justified by the law, given the uncertainty surrounding some issues.

COMMISSIONER MIIKE: A couple things first. I want to thank Commissioner Aurora for asking questions which are very important to me. On that point, my at least personal

disagreement with the AG has not been mostly about fuzzy areas of the law, it's about clear areas of law. The frustration is that when our cases go to the Supreme Court, we as Commissioners have no role in it. As a matter of fact, the Supreme Court expressly prohibits us from going and arguing in front and so the Attorney General is the one that always represents us. That's part of the reason why I think we have been in conflict on several issues with the Attorney General. My last comment is more about something that is both beyond your reach and the Commission's reach. We as a Commission look at what the water resource is and see how much we can take out and how we distribute it, but you and I and everybody here knows that one of the biggest issues facing us is what happens about the water going in. As we're slowly getting it less and less, storms and regular rainfall and those are basically issues of watershed management and building of reservoirs to catch rainwater. Both of those are directly outside of our purview, but I would implore you as our new executive director is to make a real effort to reach out to other agencies that have some control over those and see whether that in the long term, way beyond my lifetime and probably way beyond our working lifetime for the rest of you, that's when we're going to see the results of whether anything was done about that and whether that was sufficient.

DEPUTY KAHAHANE: Yes, absolutely, I will.

CHAIR CHANG: Ciara has been here for three weeks, but within those three weeks and I too, am a process person, she has already started having regular meetings with the county water departments. I think that is a really important approach that we need. The more information we can share with each other, the more we know what each other is doing, so she initiated that and she's already had meetings with the water departments. They will be monthly meetings, they're talking about exchanging information. CWRM is such a critical component of DLNR and water to land. Our Engineering Division, as you know Larry, you mentioned reservoirs and dams, our Engineering Division we enforce the standards, but it will be very helpful to have CWRM's input when people are requesting the decommissioning of a reservoir or dam so that there's greater internal collaboration between DLNR. Ciara has been part of discussions whether they are related to EMI, that has historically not happened, we've brought her in those discussions. She's been part of other discussions internally with the other divisions, so I do think that her knowledge and physically being part of an organization structurally, being part of the Department does help to facilitate that kind of coordination so there is better sharing of information and more informed decision-making when it comes either to the Water Commission or to the Board of Land and Natural Resources. That integration of water and land watershed management, again dams and reservoirs, impacts on nearshore waters, having those kinds of internal discussions is critical to informed decision making.

COMMISSIONER KAGAWA-VIVIANI: I want to add to Commissioner Miike's list of forest and reservoirs, but water reuse is something very much on the horizon and closing the urban water cycle is something I think is within reach. It helps get us out of some of these challenging allocations if we put effort towards it. The other thing that comes to mind is, when we talked one-on-one, I asked about the term regulatory capture? That is something that is a constant concern for me with the Commission- that we become more

accountable or more responsive to those who we regulate than maybe the public at large. I would like to just request like we all keep that in mind as we think about the broad view of things- if we have utilities on speed dial, well on O‘ahu we have the Board that serves 90% of the population, but that’s not the case on Maui, for instance. How do we make sure that we’re addressing the island-specific needs and also the diverse range of voices in ways that meet our public trust responsibilities? Because if we’re talking to some people at high frequency, we can’t help but be more attentive to those needs. How do we remember that we have to think about everybody in the room. That’s more of a comment, but something I think that’s an ongoing challenge with this position and the Commission.

DEPUTY KAHAHANE: I thank you for pointing that out. I will approach that issue thoughtfully going forward. It is a good reminder, especially in counties like Hawai‘i County where there are a great many people who are not served by the main water purveyor. I intend to go to the Rural Water Association conference so that I can make connections with some of those who are operating on a smaller scale.

COMMISSIONER KAGAWA-VIVIANI: And also, the Kaua‘i thing reminds me, agricultural and surface water.

COMMISSIONER KATAYAMA: I also have a footnote to the Chair, Department of Agriculture, please. Dams and reservoirs are very close to my heart.

CHAIR CHANG: Ciara as being part, she will be the Department’s representative on several of these boards and commissions, as well. Yesterday we had a Drought Council meeting which is really helpful so I think that there’s been more convening. To permit, I think we are all stressed with recognizing our resources are limited and unless we are collectively doing something together, informing, educating, and making better decisions, that it’s challenging as it is. I think these being part of these convenings is also really important to have that voice there. Ciara will be participating in many of these different boards and commissions and other organizations that we get a chance to sit on. She has attended...you were on Kaua‘i and Hawai‘i Island and she’s done site visits. She done quite a bit over the last three weeks, so I’m very confident that she’s going to immerse herself and she said she’s embraced her role, literally. Final round if anybody’s got any other questions, board members? Do you have anything final you want to say to us before we call for the vote?

DEPUTY KAHAHANE: No, thank you very much for your questions and for your perspectives.

CHAIR CHANG: I thank you for both the thoughtful questions as well as the responses. Again, this is a public meeting so those who are here and those who are on Zoom have an opportunity to hear firsthand who you are, what you bring and what’s your vision. Thank you very much.

20241031 01:023:06

MOTION: (HO / KATAYAMA)

To approve staff recommendation as submitted.

UNANIMOUSLY APPROVED

(MIIKE/KATAYAMA/CHANG/KAGAWA-VIVIANI/HO/RODRIGUES)

20241031 01:24:52 - Break

20241031 01:44:46

B. ACTION ITEM

- 2. Approval of the Stipulation and Agreement Between the Parties to the April 18, 2017 Waimea Watershed Agreement; Approval of Stream Diversion Works Permit Application (SDWP.6001.2) and Special Conditions Kekaha Agriculture Association Kōke‘e Ditch Diversion Modifications at Waiakōali (Div. 620), Kawaikōi (Div. 616), and Kōke‘e (Div. 622) Streams, in Accordance with the Mediation Agreement for the Waimea Watershed Area dated April 18, 2017 Waiakōali, Kawaikōi, Kōke‘e Streams, Waimea, Kaua‘i, TMK: (4) 1-4-001:003 and 013; and Transfer of Stream Channel Alteration Permit (SCAP.6002.2) and Special Conditions From Kaua‘i Island Utility Cooperative to Kekaha Agriculture Association**

PRESENTATION OF SUBMITTAL: Dean Uyeno, Stream Protection and Management Branch Chief

QUESTIONS / COMMENTS

CHAIR CHANG: I just had one, so there was an agreement KIUC agreed to the final offer of \$775,000 - is that part of the stipulation? I didn't see it.

DEAN UYENO: Yes, so looking at...Exhibit 2, page 1 of the exhibit.

DEPUTY KAHAHANE: If you go to page 33 and then turn the page, you'll be on the right page.

CHAIR CHANG: I see it, sorry. I was hoping to see it actually in the staff submittal, but okay it's in there. All right, very good.

JORDAN INAFUKU: Hi Chair, I had a quick aside but otherwise just thank you to all the parties and to Dean for working through this process and for getting us over the line and so just grateful for everyone's efforts. If you would also, I tried to comment earlier but I was too late for testimony. I am representing the County of Maui in the fires that Deputy Kahahane was involved in, so a little bit of a different perspective. I'm not her

peer or co-worker, but I echo everything that everybody said today both as an opponent of hers, seeing her work through a complex situation. It's very emotional and there's a lot of different legal and practical issues involved and yes, it gets intense at times. She's always level-headed and calm and I find that her curiosity for figuring out where the disputes are and her humility helps us get places even when a person of a different constitution and character would make it even more difficult to get to a resolution. It has been a difficult and long road, but working on the other side of her, you've made such a great decision.

JONATHAN SCHEUER: Aloha mai kākou, for the record my name is Jonathan Likeke Scheuer. I'm here on this matter for the Department of Hawaiian Home Lands, one of the parties to the stipulation agreement. I will just share the thanks that Jordan just shared for all the parties working together. The only thing I just want to raise at this time that while this is an important milestone with the unraveling of the West Kaua'i Energy Project, we're going to have to continue to work together with the parties and this Commission to make sure that the deliveries on the water system continue to operate well before the period of these changes being implemented and afterwards. DHHL owns approximately 16,000 acres of land in West Kaua'i, including land around Pu'u'ōpae and depends on diversions from the Kōke'e Ditch through the Pu'umoe divide to both pastoral lessees as well as a homestead organization with land around Pu'u'ōpae. We did unfortunately hear last Friday that they have been experiencing a loss of delivery and actually just late last night at around 9:00, a staff member talking with a beneficiary who's cattle are threatened. We've been unable to determine whether it is a lack of water in the streams or some blockage in the system. But one of DHHL's requests during the stipulation was that while we weren't going to ask to be included in the stipulation as a proper point, we really think that there needs to be better clarity about reporting and operation and what to do in times of crisis when water deliveries cease. We're just going to highlight that and reiterate that hopefully as you adopt this stipulation and take this important step, that we don't lose track and we move forward expeditiously to address the operational skills to make sure that KAA as the ongoing operator both fulfills instream flow standards and makes the deliveries to public trust users like our beneficiaries as required. I'd be happy to answer any questions, mahalo.

PUBLIC TESTIMONY

CLAYTON KUBO: I get something to say most definitely. Clayton Kubo, Waimea, Kaua'i. There is a breach mauka of Kōke'e Stream, that is why the water is not getting down to Pu'uloa Reservoir and also to the beneficiaries Kevin Manini and Bonnie Jean Manini. Whoever is maintaining that system right now is not doing such a great job because the water levels in Pu'uloa are getting low for quite some time now. Dawn, as you can see I sent an email to you with pictures, but we also got to remember that the environment is the one, too. Mahalo nui, aloha.

CHAIR CHANG: Thank you, Clayton, and I'm sorry, I don't believe I got the email.

CLAYTON KUBO: I sent them out to the Fishers Working Group on Pu‘uloa Reservoir and singling toward you too, the broken system that was dumping water massively.

CHAIR CHANG: Is that KIUC? Jordan, is that your clients that are currently operating the system?

DEAN UYENO: If you could notify KAA.

QUESTIONS / COMMENTS

COMMISSIONER KATAYAMA: Dean, post-agreement, of each of these parties what would their role be?

DEAN UYENO: Post-agreement...

COMMISSIONER KATAYAMA: I mean assume that we adopt the stipulated agreement as presented, so what would be the role of each of the parties?

DEAN UYENO: KIUC is out.

COMMISSIONER KATAYAMA: Totally?

DEAN UYENO: Totally. Pō‘ai Wai Ola is the community group represented by Earthjustice. They’ve been advocating for restoration and efficient management of the system. Agribusiness Development Corporation is the owner of the ditch system which there’s a DO from DLNR to ADC. That’s the reason for the third attachment or Exhibit Four which is the agreement between ADC and KAA for management of the system.

COMMISSIONER KATAYAMA: KAA becomes then the sole operator of the entire system?

DEAN UYENO: Correct, basically.

COMMISSIONER KATAYAMA: KIUC in the pump storage?

DEAN UYENO: Yes, so back in December 2023 KIUC announced that they were not going to move forward with the West Kaua‘i Energy Project at all. I don’t know if that was complete or if they’re still looking at components of the project or...

COMMISSIONER KATAYAMA: That’s why I want clarity on moving forward.

CHAIR CHANG: We can ask Jordan. Jordan, Commissioner Katayama asked if KIUC has any other plans.

JORDAN INAFUKU: There are no current plans to develop a renewable energy project in that area.

COMMISSIONER KATAYAMA: Okay, so the settlement agreement is to complete the works stipulated in the permit pump, the phase one?

DEAN UYENO: The Phase One components. One thing I forgot to mention is there was some urgency to getting this approved because the timing of it may impact the overall cost of the Phase One modifications because of price costs. KAA wants to get an order in before the prices go to 2025 costs, particularly for the things that they need to have produced- the control gates and the sluice gates and such.

COMMISSIONER KATAYAMA: So, in the stipulated agreement which I could not find, is there any cost protection for KAA like KIUC?

DEAN UYENO: Cost protection of the?

COMMISSIONER KATAYAMA: In the event that the \$750,000 is inadequate to cover.

CHAIR CHANG: I was going to ask that question to Joshua, KAA. Josh, your estimate was \$1 million and the settlement agreement is \$775,000. Are you going to be able to do whatever you need to do to upgrade the system consistent with the Phase One?

JOSHUA UYEHARA: Good morning Chair, members of the Commission, Josh Uyehara here for the Kekaha Ag. Association. To answer that question, at a very high level the agreement is that we have identified the items that need to be completed and we've agreed on prioritizing some of those items and we are going to do as much work as we can get accomplished, hence the urgency as Dean mentioned. We're trying to stretch the dollars as far as they will go and we've committed that whatever we're unable to complete within that sum, we're going to continue to pursue funding from the State Legislature and other sources to complete that work. I should note, consistent with some of the comments made by Jonathan earlier, there is a lot of work that needs to be done on the system including parts of the infrastructure that are not actually under ADC's jurisdiction or KAA's. One critical component being how to figure out the future of Pu'u Lua Reservoir. That entire system was built largely around storage capacity on the three major reservoirs on the system- Pu'u Lua, Pu'u'ōpae, the DHHL branch of the Pu'u Moe Divide, and Kitano on the ADC branch. Now, we previously decommissioned Kitano because of the concerns raised by Dam Safety, but we really have to take a look at the long-term future of that system and the stability and consistency of the water supply really was contingent on the operation of those reservoirs. A lot of the complications we've seen recently with low flows have a significant interplay with the state of the reservoirs on the system and addressing that is going to be something that's beyond the scope of even the Phase One. We definitely do have the immediate priorities before us and how we're going to spend the money in the settlement agreement, but then we know that's just the start. This is just the beginning and we're committed to seeing it through.

COMMISSIONER KAGAWA-VIVIANI: A question while you're on Josh. Sorry, this gets away from this particular item but speaking to the operations and transition, is KAA

already very familiar or working with KIUC in managing? Or how is that going to work? Kind of speaking to the current concerns around maintenance because when things change hands, there's always some transition.

JOSHUA UYEHARA: To clarify, we have been operating it sort of as a placeholder this entire time but we've.

COMMISSIONER KATAYAMA: Has KIUC been active?

JOSHUA UYEHARA: Not as an operator. KIUC has done some work to install sensors and complete some surveys and engineering work in relation to the planned energy project, but as far as operation of the system, that's been KAA through this window. The challenge has been that we've been significantly constrained as to what we could plan to do and what we could ask the State to invest in the system given the uncertainty of its future. Now, hopefully we have clarity with this agreement if it's approved today and that allows us to proceed. I guess to answer the question more directly, there's not going to be a handover where we have to learn the system, we're very familiar with it today.

COMMISSIONER KAGAWA-VIVIANI: That's good. Are there lines of communication? Say two testifiers express observations on their user end. What's the mechanism for getting word back to the operators? Is there a workflow?

JOSHUA UYEHARA: Yes, definitely. We text each other, call each other, email, talk, run into each other in town and things escalate up the chain as the situation becomes more serious, in which case as we've seen it's been very serious for the past few weeks. Otherwise, we're in very regular communication.

COMMISSIONER KAGAWA-VIVIANI: My main question around this item was just how is whoever is operating and implementing changes going to be in good communication with those on the stream side where flow might be affected and on the diversion side where flow might be affected and just ensuring transparency or awareness? Because I've realized sometimes kids are playing in the stream, and if it goes up when the weather's fine and the flow changes, there are safety issues that I would worry about. On the Commission side if we authorize and I just want to make sure these issues are raised and there's awareness and attention to them. That would be on KAA as the operator to make sure notice is put out when there are changes to these diversions, is that correct?

JOSHUA UYEHARA: I think we have broad operational responsibility for the system, but given the nature of the system, there hasn't historically been a mechanism for us to announce when we change gate settings or anything like that and I don't think that's typical for a system like this. But I understand what you're saying is that certainly if there's anything that has a public safety implication or anything of that nature, we do communicate that as best we can in advance. If you have a situation where there's a flash flood and things are happening in real time, a lot of the system is also in a remote area so it can take a while for us to even become aware of issues, as well. I just want to

acknowledge that yes, we do have broad responsibilities as the operator of the system, but there are significant limitations based on the nature of the system as well.

DEAN UYENO: If I can add to that. This is a very large watershed, I think one of the largest if not the largest, so changes to the gates you won't necessarily see any real impacts down at the mouth because it's such a large wide stream. But the communication issue between, that's something I think we should certainly take a look at moving forward across the State- how can we work to improve those communications between whether kuleana residents receiving water from a system or bigger companies that may get water from the system but as well as the community that lives around the stream. How can we improve those communications. I know we've talked about this before.

COMMISSIONER KAGAWA-VIVIANI: Otherwise it comes to us and it would be good if it was direct, that's all.

DEAN UYENO: Agreed.

COMMISSIONER KATAYAMA: Dean, could you sort of reconcile the differences physically in the permit between what was originally applied for because that was catered to a pump storage system. Now, they're not going to do that and has the permit been modified to reflect those changes?

DEAN UYENO: The permit once we issue, the permit itself won't be modified, the details will rest in the submittal, but if you look under Exhibit One, it starts on page 24 and that is the proposed modifications to the Kōke'e Ditch divergence. KAA prepared this, they did a side-by-side comparison for each of the streams for this specific stream diversion works permit. Starting on page 27 you can see the comparison between what KIUC was proposing and what KAA is currently proposing.

COMMISSIONER KATAYAMA: Based on when the original permit application was made, there was a cost estimate to do this work. What was that?

DEAN UYENO: There was no detailed cost estimate provided to us. I would have to go back and look through the records, but that cost estimate was really only provided once the discussions started taking place and it was recommended that they...

COMMISSIONER KATAYAMA: What was that cost estimate for the original permit? I guess I just want to sort of

DEAN UYENO: Based on what they were...?

COMMISSIONER KATAYAMA: Yeah, the \$750,000 is now the estimated amount.

DEAN UYENO: Initially they had proposed \$500,000, half a million dollars. That was on May 1st.

COMMISSIONER KATAYAMA: That's more of a settlement agreement as opposed to their avoided cost in walking away from their...

DEAN UYENO: To the May Commission meeting and further discussions, in August they submitted a second proposal. That estimated total came out to \$640,904 and then they did provide a breakdown for each of the diversions, what would the specific cost for...

COMMISSIONER KATAYAMA: This is the post abandonment of the pump storage system, the \$640,000?

DEAN UYENO: Correct, and that was through the discussions that we had.

COMMISSIONER KATAYAMA: And now that is that \$750,000 or whatever it is.

DEAN UYENO: Correct, and that was revised once they did that comparison between what KIUC submitted and KAA submitted.

CHAIR CHANG: We encouraged them to compare apples and apples versus...I see Jordan's hand is up. Jordan, did you want to add to that?

JORDAN INAFUKU: Yes, just a few clarifications. The original plans and modification plans that KIUC had submitted, they're unrelated to the pump storage system. They were the initial modification plans for different agreements in the first phase of this mediation agreement and then the second phase KIUC would have had additional modification monitoring system obligations once the pump storage system was approved and built. This one, the first part, the plans that are at issue right now are less tied to the pump storage. The \$500,000 and \$600,000 numbers that KIUC gave previously, it's a little complicated because much of that are costs that would be internal to KIUC in our own labor and our own materials and things that we already have on hand. We testified to this earlier in previous meetings, but it's also difficult for both sides to get a true cost estimate on this because putting it out for bid for work that wouldn't actually be contracted is expensive and time consuming for someone to give. Both sides had that challenge throughout this mediation process to try to accurately determine cost numbers for us to negotiate on. That was part of the help that this Commission gave us in previous meetings for us to move forward with our discussions.

CHAIR CHANG: I just have a comment, Josh, regarding the Pu'u Loa Reservoir. Our Land Engineering Division is going to go to the Legislature and there was a special fund program established last year to provide funds for reservoirs and dam upgrades, even including decommissioning. There'll be \$5 million in that grant, so when it does come up for hearing, I think it would be helpful to have ADC, KAA supporting and providing specific examples of how those funds could be used and why that's really important. We had a \$10 million grant, a \$10 million appropriation and then it was cut down, but what we're finding is that in light of climate change, fire suppression, these reservoirs are really a necessary component infrastructure. Hopefully these funds will help to encourage

people to rather than decommissioning them, to upgrade them and meet the dam safety standards.

COMMISSIONER KAGAWA-VIVIANI: I appreciate the work that’s been done so to get to this point.

20241031 02:17:49

MOTION: (KAGAWA-VIVIANI / KATAYAMA)

To approve staff recommendation as submitted.

UNANIMOUSLY APPROVED

(MIIKE/KATAYAMA/CHANG/KAGAWA-VIVIANI/HO/RODRIGUES)

DEAN UYENO: If I can real quickly, for the record I just want to say congratulations to Ciara. I for one am grateful to have her here, but I truly believe that we get deputies when we need them at the right time. We have a challenging road ahead of us with West Maui and so I truly believe she’s here for the right reason.

JONATHAN SCHEUER: Improperly, Chair, can we collectively thank Dean for his work during this time?

CHAIR CHANG: Yes, I am personally grateful that Dean was willing to, but thank you, Jonathan, for reminding. Dean stepped in at a difficult time and continued to keep CWRM moving, so thank you very much, Dean.

20241031 02:19:06

B. ACTION ITEM

3. Approval of Well Construction and Pump Installation Permits, HHL Irrigation Well (State Well No. 8-6527-001), TMK (3) 4-5-002:016 Irrigation Use for 0.003 mgd, Honokaa Aquifer System Area, Hawaii

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

QUESTIONS / COMMENTS

CHAIR CHANG: What is the zoning on this? Is it ag, is it conservation?

RYAN IMATA: I don’t know. Queenie, do you? It’s in an SMA (special management area), but maybe it’s on page...

CHAIR CHANG: I see the applicant here. I'd like to know what ag activity he's proposing on this property.

COMMISSIONER KAGAWA-VIVIANI: I have a question for Ryan, two things actually. On location map page 2, we have the well location but I have a hard time lining it up with the other information. Is the TMK indicated on that, the boundaries?

RYAN IMATA: No.

COMMISSIONER KAGAWA-VIVIANI: Okay, because there are features or documented historical features. Maybe in the future, please overlay.

RYAN IMATA: Overlay, sure.

COMMISSIONER KAGAWA-VIVIANI: Because it's really hard to understand in the old maps and the EIS (environmental impact statement), there's an old heiau, so don't want to be necessarily in that proximity. I know there was work done, so maybe the applicant can explain, but it's just hard for me to understand when I don't have the map in a way that helps me put that together. The other question I have is on this supplemental information, you said the reported usage is 0.882 MGD, but for this area what's the percentage of people actually reporting? How much is this an underestimate? I know it looks like there's ample water. Are we at 80% of reporting? Maybe what would be useful is since you have the Well Construction and Installation Permits and Pump Installation Permits, we have usage and then we have total capacity and to see those different lines in relation to sustainable yield, would be informative.

RYAN IMATA: To partially answer your question, there are seven production wells out of nine reporting water use. We estimated that adding the maximum quantity of the non-reporting wells to the existing reporting wells, we get like roughly 0.932 MGD, 0.932 total pumpage.

COMMISSIONER KAGAWA-VIVIANI: I think it just helps contextualize.

COMMISSIONER KATAYAMA: Can I ask a more fundamental question? Given this application, why is it before the Commission and not handled over the counter? What criteria?

RYAN IMATA: If you recall back in December...

COMMISSIONER KATAYAMA: I know you did a presentation.

RYAN IMATA: The threshold that the Commission established was 27 GPM for pumps that would be ministerially approved. Above that would come to the Commission. I think the pump capacity is 40 GPM, so above the 27, but quantity-wise it's relatively small. I understand your question.

COMMISSIONER HO: This is a comment from the County, I believe, where it says this area is within the State Land Use Conservation District. Would that require a CDUP (conservation district use permit)?

QUEENIE KOMORI: [inaudible]

COMMISSIONER KAGAWA-VIVIANI: Because of the location of it within the parcel.

CHAIR CHANG: Is the house located in the Conservation District? I know we have the applicant here, too. We should ask the applicant. Why don't you come on up and you can introduce yourself because I have some questions.

STEPHEN WINTER: To answer your question, Madam Chair, at this point there is no house there, but the plan for the house has it outside the Conservation District.

CHAIR CHANG: Is it zoned ag?

STEPHEN WINTER: It is. The property is, I think, 40 ag.

CHAIR CHANG: What are you proposing as ag use?

STEPHEN WINTER: A combination of animal and plant husbandry, primarily a cow-calf operation with some sheep principally on some steep areas of the property and some field crops. Majority of the use is going to be for pasture for the animals.

COMMISSIONER HO: Maybe this is for Ryan. When you seek agency comments, for example SHPD (State Historical Preservation Division), is it only on the well or area or is it on the whole parcel where the construction is going to be the proposed home?

RYAN IMATA: The comments we solicit are specific to the well itself, but with respect to SHPD, they also want to know what's the access road to the well for the drill rig to drive over because SHPD wants to make sure that when they drive the drill rig over, they're not running over heiau or disturbing any sensitive sites. SHPD comments are not only specific to the well, but to the construction part of it, too. The Department of Health comments are pertaining to, if for Wastewater Branch they're trying to identify sources of contamination that might be upgradient, they're outside of the parcel. Safe Drinking Water branch is specific to the well, so it kind of depends on the agency we're soliciting comments from.

CHAIR CHANG: I suspect it's not the house.

COMMISSIONER HO: It's not the house.

RYAN IMATA: If the house is in the SMA, we don't solicit comments from the county regarding whether the house is in compliance with the SMA. I will say that even if the house is outside of the SMA, sometimes the county says that the well is appurtenant to

the house and therefore doesn't require an SMA permit. So, they do look at it from that lens.

CHAIR CHANG: But does SHPD look at, so the county may, but does SHPD look at the entire parcel or they're just looking at the project being defined as just the well and the access to the well?

RYAN IMATA: That's why in the application form they ask for photos of the wellsite and they want to know where the access point is, but they don't comment on the house itself. The Commission doesn't approve the house per se, we approve the wells.

CHAIR CHANG: Mr. Winter, did you want to add anything?

STEPHEN WINTER: Not really, I'm essentially here to answer questions. I would like to express my thanks to Queenie, in particular, for shepherding us through this process and the staff for making a thorough review.

CHAIR CHANG: I am going to apologize in advance as I'm probably getting outside of my lane here, but I was a former Land Use Commissioner and in particular on Hawai'i Island, there's been a recent decision by the Hawai'i Supreme Court that on ag land, that the dwellings have to be accessory to the ag production. Now, the house is not before us and like I said, that's probably way outside of the matter, the well permit, but just a point of caution that your house, whatever dwelling you're proposing, this is ag land. Many times, the ag production doesn't necessarily go in prior to the house and all that is remaining is a house. I would urge you to be compliant with that regulation, that your dwelling is not a gentleman estate, but it is accessory to the ag production. You've described it as pasture, so again I do think that we just need to be cognizant that while our well may be just one component, but a point of caution that your dwelling needs to be accessory to the ag use and it should be ag production first before the dwelling comes.

COMMISSIONER MIIKE: As far as coming before the Commission that this would end this well because it's not a Water Management Area. Correct, Ryan?

RYAN IMATA: Yes.

COMMISSIONER MIIKE: Do they still report usage to the Commission or is that voluntary? What happens if they don't report usage?

RYAN IMATA: Yes, they're required to report monthly and we have an online portal for them to start reporting once the well is constructed.

COMMISSIONER MIIKE: And that's why you know that of the nine current ones, seven are working?

RYAN IMATA: Yes.

COMMISSIONER MIIKE: My last comment was that if they're asking for 3,000 then obviously that shouldn't be for a house. A house would be 1,000 or less, I'll just take your word for it. I have a house in Kona. There is a proposal in front of the County to limit the amount of land that goes as agriculture as opposed to the house. I don't know what's going to happen to that, but currently if you have a house then the rest of it is basically agriculture. I think what they're pushing through is that you have to sort of show that your house, in terms of tax purposes, that there is a certain amount of the land that goes with the house and you don't automatically get an agricultural determination for it. That was just a comment.

CHAIR CHANG: Mr. Winters, is the house going to be built on conservation land?

STEPHEN WINTER: No.

CHAIR CHANG: So it's just ag. Where is the conservation?

STEPHEN WINTER: Conservation District? I'm not sure. It's delineated there, but I think we supplied information to you. We measured, it was approximately 500 feet makai of the well location. It's the area along the coast, basically.

CHAIR CHANG: I see.

COMMISSIONER KAGAWA-VIVIANI: Because I don't know the area well, what's that proximity or not to the Hāmākua Ditch or some of the existing ditch systems as possible water uses?

STEPHEN WINTER: We're makai of the Hāmākua Ditch, about a mile and a half, I guess approximately and we don't have an easement to it. I wish we did.

COMMISSIONER KAGAWA-VIVIANI: As these things come up, for us it's piecemeal, but there are also existing agricultural infrastructures that will not be maintained if they're not users. I don't know how to square that because usually with a Water Use Permit in a designated area, we'd ask about alternative practical uses. That doesn't come up here and I don't know what hooks you have to know about other potential uses.

STEPHEN WINTER: We've inquired about the ditch. Our problem with accessing the ditch is primarily that we don't have a corridor of easement to it and buying that.

COMMISSIONER KAGAWA-VIVIANI: Is how many miles away?

STEPHEN WINTER: Then putting in, I think somebody calculated 8,000 feet of pipe and pressure reducing valves and maintaining all of that, etc. and it just didn't look like an affordable option relative to the cost of a well which will be solar powered.

RYAN IMATA: Can I clarify something? Dr. Miike mentioned the 3,000 GPD and I know we did put that in the title. I just want the Commission to be aware that the

Commission is not approving a quantity of water, the Commission is approving a Well and Pump Permit that can potentially pump 3,000 GPD, but it was provided more as information.

COMMISSIONER MIIKE: I understand that, Ryan, but I'm always just commenting if they're going to be drilling a well for 3,000, then obviously it wasn't for a house. It was for some kind of agricultural operation.

COMMISSIONER KATAYAMA: Ryan, is there a condition where once the pump becomes active that they need to report? Where was that?

RYAN IMATA: Yes, it may be in the Pump Installation Permit Standard Conditions, but it definitely is in our Well Completion Report Acknowledgement and Certificate of Completion. I'll step back a little bit. Our well standards and pump standards identify that you have to put a working flow meter onto the well prior to us accepting it as complete. Once we accept it as complete, Bob is our geologist who is in charge of the reporting compliance, and so through that certificate process, Bob actually reaches out and gets an email from them and makes contact and has them fill out the online form so that they can start reporting their water use. It's built into the completion process.

COMMISSIONER KATAYAMA: What are the hooks if we don't report on a timely basis?

RYAN IMATA: I think that we can fine people up to \$5,000 per day for violations.

COMMISSIONER KATAYAMA: That's statute?

RYAN IMATA: Statute, yeah.

CHAIR CHANG: Mr. Winters is this your proposed, I'm looking at exhibit, I guess it would be Exhibit Four, Hāmākua house. Is this your proposed layout or your pasture and housing activity?

STEPHEN WINTER: It's been modified since then because we had to change the route in, but that's generally accurate.

CHAIR CHANG: It's a pretty large house.

STEPHEN WINTER: It looks larger than it is because there's a roof overhanging the lanai around it.

CHAIR CHANG: Hopefully the County will closely, you'll have to go to the County for your permit, right?

STEPHEN WINTER: Sure, we've already obtained an SMA major for the project.

CHAIR CHANG: Is the Papua, the stream, it says the proposed well is located near the stream. Is this under the background which is approximately half a mile away?

RYAN IMATA: What we typically look at with respective streams is first of all looking at the horizontal proximity and then we try to see if the depth of the intake of the well is somewhere close to where the stream invert is. There's that potential for withdrawal of water to impact the stream. If it's way below the stream, we don't exercise too much concerns in the beginning. At 40 gallons per minute, we're not going to require a pump test, but at quantities higher to that, we analyze a pump test even when there's that differential to see if there's impacts to adjacent streams.

CHAIR CHANG: My question is more in line with traditional and customary practices. If you find a stream, in many instances there may be historic uses of the stream and traditional and customary practices. I noticed that on the Ka Pa'akai Analysis, the conclusion is there's no impact, but nor is there an identification of the stream.

STEPHEN WINTER: Madam Chair, may I just speak to the stream a little bit? I'm familiar with the area. I've been to the site of that. Frankly, I was surprised to see reference to a stream. It's a dry bed, it's on solid rock. It's a very arid area which is a big reason why I'm here, but it did rain Sunday about a quarter of an inch and again Monday morning maybe an eighth of an inch. I went to the site, I took photos if you would like to see them, but it's a solid rock. It's basically a channel for storm water and when there's a severe storm. Other than that, I've never seen water in that channel at all.

CHAIR CHANG: And how long have you owned the property?

STEPHEN WINTER: We've owned the property, well the property was acquired in a couple of purchases, but on average about five years.

COMMISSIONER KAGAWA-VIVIANI: I had a question for Ayron because I don't know much about Hāmākua. I know he's done work in the stream systems there. Do we monitor anything, Dean? Do we monitor in that region?

DEAN UYENO: We monitor sections of the Upper Hāmākua Ditch, but nothing on the stream. There is a USGS station in the area.

COMMISSIONER KAGAWA-VIVIANI: Okay, that was just for interest.

CHAIR CHANG: I will just share my discomfort and I have to be very cognizant what's before us, it's the well permit, not the development of your entire parcel. I am concerned that this issue related to the uses that it will be used for ag purposes, that it's not going to be essentially just a large residential parcel and vast open land. That's my reservation. I think when I look at the archaeological report, it does indicate to me that there are habitation sites, that there are potential cultural sites in the area, there may not be any existing practices right now, but it alerts me that maybe there's something else that's missing here, but okay.

COMMISSIONER KAGAWA-VIVIANI: I just want to echo your concerns but we have this...

COMMISSIONER MIIKE: Can I comment on that? I don't understand your concern. Anybody can build the house as long as they have the county permits. As far as tax purposes, they get taxed as a house with a little bit of land around it that would be exempt from the agricultural determination. If you have like 30 acres and you build a house, you can't say that I have one acre with a house, you have to sort of justify the amount of land around there that would be taxed as an urban development or a house, then the rest of it agriculture. I don't see why we should be concerned about what he's actually going to be doing with the land as long as the amount that he's asking for is for a particular purpose. Since we don't have authority to require a use permit and we're only talking about a well permit and he is only asking for a capacity of 3,000 not 50,000, it seems to me that it's a pretty cut and dried case for me.

CHAIR CHANG: I appreciate that Commissioner Miike. My only concern is that this area, looking at the plans...I recognize my questions are way outside of the role, looking at this from CWRM's perspective, but I am concerned that this is potentially a gentleman estate, that this is not going to be a legitimate agricultural use, that the house seems to be extraordinarily large for the area and that this is agriculturally zoned. The Supreme Court has been very clear, if you're going to have an Agricultural Zone, you should be using it for agricultural purposes and your dwelling should be accessory to the ag use. I've not seen a real ag plan and again, that should be the questions that the County ask. I'm not as confident that the County is going to ask those questions, so I am just uncomfortable given the permit application. I also recognize that I need to look at this in the lens of the request before us, which is a well permit, it's not to develop the whole parcel. I just want to put it on the record what my concern...so that Mr. Winter, you're well aware of what my concerns are and again, it is beyond the scope of the matter before us which is the well permit.

RYAN IMATA: If I can offer one thing, I think in support of what you're saying, the Standard Condition #9 says, "the permit shall comply with all applicable laws, rules, and ordinances. Non-compliance may be grounds for revocation of the permit." What you're saying does have some weight in terms of the compliance issue.

CHAIR CHANG: He may totally be in compliance when he goes to the County, I'm just not as confident that the County will see it in the same lens that I do.

COMMISSIONER KAGAWA-VIVIANI: I think this is sort of a reminder of the way our agricultural lenses are changing in the State and how agriculture looks different now than it did a couple years ago. It makes me aware of how much water is part of that picture, of how agricultural lands are changing, and the importance of thinking about how those all connect. Our job is to think about the well or the request for water, but there are bigger questions that are beyond, outside of us.

COMMISSIONER MIIKE: I hate to be a contrarian here, but actually I love being a contrarian. He's asking for 3,000 gallons. Basically, what he is saying is an agricultural operation, that should be the end of it. As far as whether he puts a house and it's not in compliance, that's the County, but here we're saying it's mostly an agricultural operation and he wants to put a house on it. As far as I'm concerned, he's applied for a permit for basically an agricultural use in an Agricultural Zone and that's it.

CHAIR CHANG: I recognize that and thank you.

PUBLIC TESTIMONY - None

20241031 02:50:18

MOTION: (MIIKE / HO)

To approve staff recommendation as submitted.

UNANIMOUSLY APPROVED

(MIIKE/KATAYAMA/CHANG/KAGAWA-VIVIANI/HO/RODRIGUES)

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: "Aye" with poorly articulated reservations.

CHAIR CHANG: I am saying "Aye" because of what's before us and what is my role as CWRM. I am cautioning you, Mr. Winter, that your other permits will go before the County which is a much more appropriate agency than we are, but just be cautious.

20241031 02:51:21

C. NEXT COMMISSION MEETINGS (TENTATIVE)

November 19, 2024 (Tuesday)

December 17, 2024 (Tuesday)

The meeting adjourned at 11:50 a.m.

October 31, 2024

Minutes

Respectfully submitted,

Awalani Kaaa

‘IWALANI KAAA
Commission Secretary

APPROVED AS SUBMITTED:



CIARA KAHAHANE
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/>