

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

DATE: January 28, 2025
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 872 4610 2396

Online link to the video recording of the January 28, 2025 Commission on Water Resource Management meeting: <https://vimeo.com/1056877978>

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, Mr. Paul Meyer, Dr. Lawrence Miike, Mr. Hinano Rodrigues, Ms. Kathleen Ho

STAFF: Deputy Director Ciara Kahahane, Mr. Ryan Imata, Mrs. Katie Roth, Mr. Neal Fujii, Ms. ‘Iwalani Kaaa

COUNSEL: Ms. Miranda Steed

OTHERS: Joe Tait- Manager and Chief Engineer, Jason Kagimoto- Engineer Division Head Kaua‘i Department of Water; Amanda Waki-Fukunaga & Associates; Rear Admiral Marc Williams, Commander Ben Dunn- Navy Closure Task Force Red Hill; Eva Blumenstein-Maui Department of Water Supply; Michael Summers- Planning Consultants Hawai‘i

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

20250128 00:06:40 – Request to amend agenda according to HRS 92-7d to add C4 to include new legislative proposals: SB150, SB543, SB1461, HB1142, SB848, SB1602, HB1495, SB473, HB300

20250128 00:08:37

MOTION: (CHANG / KATAYAMA)

To amend agenda to add Item C4 – Briefing on Tracked State Legislation Related to the Commission on Water Resource Management for the 2025 Legislative Session by Commission Staff: SB150, SB543, SB1461, HB1142, SB848, SB1602, HB1495, SB473, HB300

PUBLIC COMMENTS – None

20250128 00:14:20

A. APPROVAL OF MINUTES

1. November 19, 2024

PUBLIC TESTIMONY – None

20250128 00:15:02

MOTION: (MIIKE / KATAYAMA)

To approve minutes as submitted.

UNANIMOUSLY APPROVED

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

2. December 19, 2024

PUBLIC TESTIMONY – None

20250128 00:16:02

MOTION: (MIIKE / KAGAWA-VIVIANI)

To approve minutes as submitted.

UNANIMOUSLY APPROVED

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

20250128 00:16:22

B. ACTION ITEM

1. Adoption of the Kaua‘i Water Use and Development Plan Update (KWUDP) for Incorporation into the Hawai‘i Water Plan

PRESENTATION OF SUBMITTAL: Katie Roth- Planning Branch Chief; Joe Tait- Manager and Chief Engineer, Jason Kagimoto- Engineer Division Head Kaua‘i Department of Water; Amanda Waki- Fukunaga & Associates

QUESTIONS / COMMENTS

CHAIR CHANG: We appreciate your acknowledging the coordinated work with CWRM. Too often we in government don't get acknowledged for the good works. Sometimes we just dismiss it, that's their job, but it does make a difference when there's coordination and collaboration. So, we appreciate that acknowledgement.

COMMISSIONER KATAYAMA: Hi Joe and thank you very much for updating the plan and very professionally done. The conditions that Katie mentioned, there was language requesting funding in your next budgeting cycle. If the funding is not met, how does that impact fulfilling the obligations listed under the conditions?

JOE TAIT: Good question, Wayne, thank you. The funding will be met. If we have to sacrifice less important projects, we will do that.

COMMISSIONER KATAYAMA: Good and can I ask another question, Chair? Katie, you mentioned that the update for the Ag(ricultural) Water Use and Development Plan, what is the timeline for that?

KATIE ROTH: I'm actually working on the submittal now and we hope to bring that to you next month. That plan will also have a range of conditions and I'm in the process of working with Department of Ag to review those and have conversations.

COMMISSIONER KATAYAMA: So once that updated plan is unfolded and presented, Joe, what is the process of taking that information and updating the Kaua‘i Water Use and Development Plan?

JOE TAIT: Yes, so we will have two plans in our hands which we didn't have a couple of years ago. One is our water system investment plan which again, Wayne, as you've asked, ties back to money. We've already made the commitment. That plan is going to be implemented and funding will be prioritized for that plan. Now we have a plan that says, okay if we have the infrastructure plan, here's the water that needs to be delivered

through that infrastructure plan. They cannot be separated. We were thinking about piecemealing each one of these items and there's just no way to do it.

COMMISSIONER KATAYAMA: That's correct.

JOE TAIT: We've gone tip-to-tip on the island with what infrastructure improvements we need to make in our nine water systems. We basically, in a nutshell, need to connect them so we don't have pockets and gaps, not just for water supply/domestic service, but even more importantly for fire protection. That was the whole driver of the water system investment plan. The Water Use and Development Plan is a commitment rather than a process. It's a commitment that we will abide by those stipulations in that plan but is also supported to delivery through that infrastructure plan. In philosophical, we're marrying these two plans into one action, I just don't see any other way of doing it separately.

COMMISSIONER KATAYAMA: Thank you, Joe, a very healthy outlook, and I guess I'm looking forward to the Agricultural Water Use and Development Plan because I think that would take a deeper dive into what the actual water requirements are to maintain a sustainable agricultural community and what the water distribution looks like. Fortunately for us in Kaua'i, we have water, not in the right place, but we have water.

JOE TAIT: It's just what do we do with it and where, right? That's what we're hoping these two plans actually accomplish is, we marry the answer to that question- what do we do with our water? As I've spoken with Katie a couple of times in the past and by the way, it's my fault we haven't advanced it fast enough, nothing to do with her, is how do we use that water other than domestic? What do we do with reuse, one water strategy? What do we do with our one volume of water?

COMMISSIONER MIIKE: Do a long pipeline to Ni'ihau.

JOE TAIT: Can somebody fund that bridge? That might be beyond our...

COMMISSIONER KATAYAMA: You're going to disturb the Kona crab population over there. Thank you for all the effort you put into it and this response to all the issues, address it well. Integration of the updated Ag Water Use and Development Plan I think will help synthesize all of this, give you a clear vision of what needs to be done.

JOE TAIT: Commissioner, if I may, I'm just the spokesperson. The people who did the work are sitting right back here.

COMMISSIONER KATAYAMA: I agree.

COMMISSIONER KAGAWA-VIVIANI: Thanks for this update. I mostly have three questions and you brought up one. Sorry, it may seem nitpicky and a conversation

between Commission staff and Department of Water, but I'm a little bit confused on how DOW (Kaua'i Department of Water) defines domestic versus municipal because I was just looking at the pie charts and then comparing to what I know from O'ahu and a large proportion of what Kaua'i calls domestic would probably be called municipal. Maybe that's lack of clarity on the Commission side or just inconsistency of definitions because from my understanding, domestic is within municipal. I just want to understand, for the record, your definition.

AMANDA WAKI: For the record, I'm Amanda Waki with Fukunaga and Associates. I'm the consultant on the Kaua'i Water Use and Development plan. We organized our data into the CWRM categories and then the way that we presented domestic versus municipal is domestic was the domestic wells- more like individual wells, private wells. Then municipal does have within it...I think we have a chart in there showing the breakdown of Department of Water's municipal demands into the other parts.

COMMISSIONER KAGAWA-VIVIANI: Maybe Katie you can help explain, is this consistent with how domestic and municipal are defined across other counties because the pie charts look inverted.

KATIE ROTH: As far as I'm aware, I believe it is. I wasn't around for a large portion of this planning process so I might defer. I don't know if Neal is on the line, he might have a bit more background on how we were engaging with the County specifically on this question, if that differs in any way.

COMMISSIONER KAGAWA-VIVIANI: This is more for the Commission because we're reviewing all these plans and if we're using different definitions for different counties, it gets quite confusing.

KATIE ROTH: I don't believe we are. There should be consistency, but I can ensure that that is consistent when the new framework is updated.

COMMISSIONER KAGAWA-VIVIANI: On O'ahu it's like over 80% municipal use.

COMMISSIONER KATAYAMA: Maybe I can help with an example. For example, the Gay and Robinson domestic water system is not part of your system, so how did you classify that community, the Kaumakani community?

AMANDA WAKI: We can classify municipal, we had the Department of Water falling under municipal and then we also have what we considered private water systems/privately owned public water systems is also classified in the tables and charts. Then Department of Water's we did break down a little bit more in the Department of Water write up of how that broke down.

COMMISSIONER KAGAWA-VIVIANI: When I looked at that table it said within municipal there was municipal but domestic, so it was very unclear and I would recommend for the next revisions...

COMMISSIONER KATAYAMA: There are probably water systems there that service community that are not part of the DOW system, so as long as they capture that, that's great.

COMMISSIONER KAGAWA-VIVIANI: I think it goes back to how we consider priority uses as domestic. If we're calling municipal, we need to be clear on the Commission side so that we're giving clear guidance to the counties. I was just sort of interested in why domestic was 84% of Hanamā'ulu when it's usually a very small percent when it's private wells.

JOE TAIT: You're not nitpicking, nationwide has the same struggle. I'll just say for California and the Western US, they use the same two terms: municipal and domestic. We've always taken it from the water side- municipal is public, domestic is private. That's kind of the way we viewed it. Now that doesn't mean domestic is not regulated because it is; it's got to meet the same qualifications as far as our water supply, just from a private owner instead of a public owner. We've just viewed it as public-private, so it's not nitpicky, it's just semantics.

COMMISSIONER KAGAWA-VIVIANI: I think it's something that we should clarify and provide to counties so they're not...

COMMISSIONER KATAYAMA: Because a lot of the old plantation camps were privately, not metered, but they ran their own water quality and everything else.

AMANDA WAKI: I can clarify on that particular chart. On that pie chart there, that is actually for the Department of Water.

COMMISSIONER KAGAWA-VIVIANI: I will clarify for the record and recording, it's Figure 20102-8.

AMANDA WAKI: I guess we're getting a little technical but we have an overall aquifer system area table and chart, not that one, that breaks it down into the CWRM categories: domestic is the small portion that you expect and then Department of Water for Hanamā'ulu, for example, is a large chunk of it. Then we went further and that pie chart is breaking down the Department of Water's municipal and categorizing it further. So, you can stop at the first level of its classification to municipal if you want to, but we just went a step further of what the Department of Water's breakdown is.

COMMISSIONER KAGAWA-VIVIANI: And that within the Department of Water, you're calling some things domestic and municipal, so what's the basis for that?

AMANDA WAKI: I would need to go back and check.

COMMISSIONER KAGAWA-VIVIANI: That has to do with your understanding of who the users are if they're irrigating X, Y or Z or household. I think that kind of information would be useful as you think about planning projections and then lining up with the numbers...

COMMISSIONER KATAYAMA: Is that based on your water rates? Because you have different water user rates, right, depending on what the meter is? Still issuing potable water at that point, right?

AMANDA WAKI: Yes.

COMMISSIONER KATAYAMA: It's not like you have an R1 system or it's all?

AMANDA WAKI: No, R1 is a separate category.

COMMISSIONER KATAYAMA: So is that what's leading to that kind of breakdown in your pie chart?

AMANDA WAKI: The Department of Water breakdown is based off of the meter classifications.

COMMISSIONER KATAYAMA: Because you have different rates- you have household, commercial and you have industrial rates, so is that what's leading to that kind of pie charting?

AMANDA WAKI: Yes.

COMMISSIONER KATAYAMA: Because in Hanamā'ulu you have commercial properties there.

COMMISSIONER KAGAWA-VIVIANI: I think if you can clarify how this was broken down in a future update that would just help because somebody like me is less confused. My next question had to do with in September, Mr. Tait, you said that Kaua'i has the ability and motivation to really organize efforts to conform to One Water policy engagement, in reach and outreach. In looking at the proposed recommendations, there was two items- one is to consult with traditional and customary practitioners for the Water Systems Infrastructure Plan or WSIP and then also consultation with 'Aha Moku. I was wondering if maybe there were potentially a future annual or semiannual collective

gathering because it takes time to build relationships. So instead of waiting for that plan to drop, are there proactive things that you could initiate now with relatively little cost just to identify and gather people?

JOE TAIT: I'm glad you brought that up because what we found out, and Jason can or Amanda can jump in because they were both there when we heard the comments. Over those 15 or 17 meetings, I can't remember, Jason, how many there were, for me that was my first experience with having the entire island attend these meetings and hear the feedback. Because it sounded like it had been some time since water, I'll just use that, water, had been out in front of the public to any depth of detail. So depending on where we were, I can tell you the comments from Kapa'a were drastically different than the comments from Kekaha. It was educational for me to learn what those different pockets felt versus Lihu'e which we communicate with all the time because we're right there in the population zone. There is an opportunity to continue to reach out to those folks and when you brought up the issue of One Water again, that's really what I would like to see, eventually- it's not going to happen tomorrow. Eventually the Water Department will have a broader outlook on this- what is that total use of water, not just being confined because we're only confined to municipal. What is that total look, as Wayne brought up, ag water, reuse water. We just haven't gone down that path historically.

COMMISSIONER KAGAWA-VIVIANI: Maybe this is for Katie, too. Could convening a or building capacity kind of in the runup and maybe it's just voluntary, but I'll put it out there since you offered it- that convening a stakeholder engagement prior to the plans could really help you when you get to those later planning meetings. I looked up and could not identify a Kaua'i representative on the 'Aha Moku Council on the website. Then when I looked further on the reps (representatives) it was very unclear who the contacts were. Do you have an identified 'Aha Moku contact for Kaua'i?

JASON KAGIMOTO: [Llewellyn "Billy" Ka'ohelauli'i] I'm pretty sure he's the island rep.

COMMISSIONER KAGAWA-VIVIANI: Are there sub-divisions because of what you said within Kekaha, too?

JOE TAIT: Are there reps in each area?

JASON KAGIMOTO: [Inaudible], but they do have the island-wide.

COMMISSIONER KAGAWA-VIVIANI: When someone like me on the outside just looks at the website, I wonder how you're going to make the contacts if it's not clear who it is? But if the Commission staff can help ensure that happens, I think that would just help.

JASON KAGIMOTO: I'll jump in for some of this. For the record, Jason Kagimoto, Acting Engineering Head for the Department. We kind of have a bunch of things going on the planning level effort. We have the Water Development Plan, we have the Water System Investment Plan, and then we have a bunch of work on our CIP program side. We have a bunch of opportunities to have more outreach, more connections. On the planning side is mentioned, there is that coordination both for our Water System Investment plan and then also for the Water Use and Development Plan, those will be upcoming in the near future. Additionally to that, we have a project on the North Shore and Hā'ena. We are looking to build a new tank there. We have another project in Kilauea which we're replacing the existing tank with a bigger tank. For both of those, we've performed the Ka Pa'akai Analysis work and so there's been at least more project specific, but there's been community engagement or getting some response back in coordinating with the Native Hawaiian community. In maybe like the holistic effort, the hope for our side is that we are going to be able to build these relationships over time, both from an island-wide planning level but also specifically for areas related directly to outreach based on specific projects.

COMMISSIONER KAGAWA-VIVIANI: It's good to hear that articulated out loud. It's sometimes hard to scrape from a submittal. There was one more, I'm forgetting...also recognizing that 'Aha Moku and traditional and customary practitioners may not always be in touch or on the same page. I think building those conversations on island is going to serve you well in the future and so recommend that that be done. Is that consistent with what the implementation plan also wants to address, Katie?

KATIE ROTH: In terms of engagement with practitioners?

COMMISSIONER KAGAWA-VIVIANI: Yes because as it's written, it really focuses on watersheds.

KATIE ROTH: The condition?

COMMISSIONER KAGAWA-VIVIANI: Yeah, the condition, "the implementation plan will identify actions and strategies related to watershed protection, conservation, water quality, and more. It's not really specifically prescribed what the implementation plan is.

KATIE ROTH: Sure. I think if you look at Condition 3, that better articulates the engagement with T&C practitioners as part of their infrastructure plan. In addition to that though, in Condition 4 there would be a separate effort to try to identify traditional and customary practices within each moku which is somewhat related but separate in some respects, which is why we identified it as a separate condition.

COMMISSIONER KAGAWA-VIVIANI: I was wondering if 3 and 4 were overlapping or could be the same and could be convened together because if you're outreaching to the same group of people twice, there's fatigue, so just proficiencies.

KATIE ROTH: Again, I think for Condition 3, part of that outreach regarding the infrastructure plan relates to Ka Pa'akai specifically since that plan identifies projects. Understanding the impact on T&C individual projects versus Condition 4 which is more of a higher level inventory of practices within regions. That could be used to inform future Ka Pa'akai at the project level, not just County projects, Department of Water projects, but ideally any project on island.

CHAIR CHANG: I saw 4 as being more proactive, is as you say, trying to do an inventory to do that. It's a broad scope of potential impacts and practices more so at least you can do the first analysis- identifying potential resources. And 3 being much more project specific related to Ka Pa'akai.

KATIE ROTH: Yeah and Condition 4 is something we are considering as part of the framework update to require of all counties who develop these plans. We're still thinking through what that might look like and we're very aware of meeting fatigue and don't want to be duplicative and have to meet with folks again and again to get this information. We're trying to think through what that actually could look like and even if the Water Use and Development Plans are the best mechanism to make that happen, like if the inventory should reside in there, because arguably an inventory of T&C is applicable outside of a Water Use and Development Plan, as well.

CHAIR CHANG: Because that really was in 1994 the whole intention. There was a past working group that was prepared to actually utilize and the creation of 'Aha Moku which was to develop this massive inventory, didn't quite happen. I think there are various attempts whether that's through SHPD, a place that we can record, whether that's through OPSD, but there really is a need to be more proactive to identify so that when even before a project is being presented, this is the appropriate place, who are the people that we need to talk to. I appreciate the actual acknowledgement of trying to do something more proactive and I'd like to see that in our broader framework, too. Thank you.

COMMISSIONER KAGAWA-VIVIANI: Sorry, one more question related to 'Aha Moku which I don't know well or very much at all, but is the Commission going to be part of that? Because if in '94 'Aha Moku was formed to do this and it didn't work, then what makes us think it's going to work this time? And why did it not work? It's possible people don't like their practices being inventoried, this is common with indigenous communities. Maybe before we send DOW to put more work on 'Aha Moku, which is understaffed, we consider what would actually work well and efficiently for their needs. I think the Commission can be part of that because that's going to be a framework we might apply in different places, so if we can be present for that.

KATIE ROTH: Definitely, we are planning to bring before you a briefing on Ka Pa‘akai more broadly and the Commission’s current process and what that looks like, but also to get input from all of you about how that may be improved upon. Again, getting at questions like the role of ‘Aha Moku, whether they should be the end all be all, if you talk to them you can check that box and you get your permit. Those are definitely things that we’re thinking about and want the Commissions input on. That briefing in March might be the opportunity to do that.

CHAIR CHANG: I don’t think it was ever intended that ‘Aha Moku would be the end all, it really was a starting point because they should know who the families are in the areas, but not intended to be the final step but at least to help people begin. I know that at DLNR, even our Land Board, too, has been having discussions. Quite frankly CWRM does a really good job on Ka Pa‘akai Analysis. Our Division of Aquatic Resources has done a really good job of developing an assessment process, but I think in my view, part of the difference with ‘Aha Moku is our leadership has really embraced ‘Aha Moku as being an integral part of DLNR’s analysis of all projects. That has helped but clearly a lot more needs to be done.

COMMISSIONER KAGAWA-VIVIANI: I’m drawing out this conversation, I think that the fact that ‘Aha Moku is within DLNR makes people distrust it. Knowing that and knowing that those face to face interactions are really important would be good to consider in your future planning update. On Kaua‘i, are there neighborhood boards or resident associations? Those are effective for also doing...in general, what’s good for community engagement with Native Hawaiian communities is also just good community engagement. Recognizing the diversity of our communities but bringing those practices together around what does One Water look like, having a meeting at a public school...the cafeteria is a really helpful place. I don’t know where you hold yours.

JOE TAIT: Most of our outreach meetings have been at either neighborhood centers that are usually near a school, if not on the same property.

COMMISSIONER KAGAWA-VIVIANI: That’s great. If there’s a meeting between now and the next updates, that would be great to hear about those things because otherwise we just see the conflicts.

JASON KAGIMOTO: Maybe it’s a little an aside type of meeting but with our construction projects, one of the things we were going to start doing as the ones starting to hit the ground, we’ve been planning to have ongoing public meetings. Historically, our practice has been to put out press releases, hey there’s going to be this type of traffic control for this duration or those kind of things, without a whole lot of putting it out there. One of the approaches we will be doing is for the bunch of ones that we have coming on board is going to be having ongoing meetings out in the public. In addition to

specifically talking about those projects, since we're there we'll definitely get a lot more feedback about water in general or just being present to give them an ear.

COMMISSIONER KAGAWA-VIVIANI: You're public facing and so people will tell you everything from streams to everything, but that's really helpful documentation in general for the kinds of things we do at Commission even though it's outside of your jurisdiction. That's the end of my comment, so thank you.

CHAIR CHANG: Joe, can I ask, I appreciate the introduction and acknowledgement, but you did talk a lot about engaging with stakeholders and trying to be really fair. I find that I, the Water Commission and even on the Land Board, struggle with finding balance, especially the Water Commission, it's our public trust to do so. How does Kaua'i Water Department integrate public trusts as part of your analysis because it's not always fair. There's always not enough to go around, so how do you address that?

JOE TAIT: I'm glad you brought that up because back to Commissioner Viviani's comments, one of the things I have not done and I guess now according to our new stipulations I'll have to do is when someone comes in to meet with me, I don't check the box. I don't say, oh yeah I met with so and so today or as Wayne has said, oh I met with Gay and Robinson today and I checked that box. I've never really done that because to me it's just feedback. I have learned because of the former plantation operations to trust the folks who have been 30, 40, 50 years in some cases on island saying, okay this is going to happen to our territory in the next two months because we're coming up on this type of season and we're going to get this and we're going to need this. I haven't really been documenting those meetings because to me I'm sponging it up. As far as I'm concerned, I don't really prioritize let's say plantation over private domestic over municipal water. It is basically to make a judgment on what is the resources available in those areas as far as needs go. The Water System Investment Plan has kind of opened our eyes because of our GIS tool that tells us what we can do in certain areas of the island and what can't we do. One of the nice things about that plan is it takes that preferential treatment out and it says here's the gaps in the entire island that should really be our priority. It shouldn't be, well we're going to favor this group over this group. There's a lot of folks who want us to focus on Līhu'e because it's a county seat and it's the population center; however, then you're prioritizing that over all of the other more or less populated areas and in fact, it hurts us twice. One is it shows us putting resources to an area that already has a lot of resources, private resources, but then two, it doesn't show us reaching out to those less populated areas who have gone decades without. Now that that Water System Investment Plan is identified, hey here's who is really without, that's where we need to focus our, not who has the most people. One of the things that has hit me square in the head when I look at it is how remote areas have suffered because they didn't have the financial resources of businesses or tourists coming to those areas to fund those improvements. If we have to change our budgeting, if we have to change our priorities to better spread it out, I'm not saying place one over the other, I'm just saying being equal

and historically, we haven't done that. Wayne brought up a couple of good points, one was back in the day it wasn't the Water Department's charge, it was the plantations', hey this is our private operation we're dealing with this and we generally stayed out. But now that we've been exposed, especially with some fires, they said, hey we'd love to have a tank here and we'd love to have this here and we don't have it. I think in the past, I'll just say five, ten years, the Water Department has had their eyes open as to, we've overlooked a lot of this outlying area because we didn't have a plan that showed what the gaps are. Now that we have that plan, now we can focus on the vulnerabilities.

20250128 00:55:26 – *Commissioner Ho leaves the meeting.*

COMMISSIONER KAGAWA-VIVIANI: I have a question that came up. Speaking of vulnerabilities and fire, how much does Department of Water talk to Division of Wastewater? Is it separate departments within the County?

JOE TAIT: Wastewater is on our board, the Water Department's board. We speak regularly with them as well as we also have Planning Department on our board. So Planning, Wastewater and Water are all represented on our board.

JASON KAGIMOTO: In addition to that, as part of our Water System Investment Plan, we've been having inter-agency meetings to basically collaborate. One of the things that's been very apparent in the recent passes is if there's water but there's no waste water or vice versa, it doesn't do a whole lot of good. I think the benefits will be seen further down the road, but right now it's just the discussion of, okay how do we work together so that if we know that the affordable housing project is going to go in this area we can start to plan and do those kinds of things so that it's coordinated ahead of time. A lot of that coordination right now is trying to work with Planning- what is the zoning, what are possible County plans. Also with Water- what are possible water needs and wastewater needs so that we can start early enough that one of us isn't holding up the project.

COMMISSIONER KAGAWA-VIVIANI: But especially in the dry areas where fire suppression is of concern and you don't necessarily want to rely on your municipal system for firefighting, especially these runaway urban fires.

JOE TAIT: We can't because in many areas we don't have a municipal system, that's why the nine are disconnected is because, as Wayne said, you had these plantation operations throughout the island and they managed, built, maintained, operated their own systems independent of us. Way back in the day, Water Department, hell we don't need to run a line to them they've already got their own system. Well that own system was for a plantation, it wasn't for fire protection. Now that we've had the growth that we've had because the plantation used to maintain all of that land and now they don't, hey where does Water step in with not only fire protection, but just route cycles. Where is there additional water supply. The other thing that Jason brought up that I failed to mention, but

also in those inter-agency meetings, we have housing which is the affordable housing piece. We can plan for that, but I'm lucky and blessed to have a deputy that spent ten years at Department of Transportation. The worst thing we can face is, hey we're tearing up a road, putting a waterline in, but we didn't do anything with sewer when we had the road torn up. Why are we going back twice? DOT folks will say, hey we just paved that, why are you tearing it up again? There's a lot more interaction now with the other agencies than I think has happened in the past.

COMMISSIONER KAGAWA-VIVIANI: I just really want to encourage again more integrative conversations, maybe they're already happening, not just for the logistics of development which there are parts of Kaua'i that are rapidly urbanizing and developing, but in the next update climate change consideration. Because it's not just drought, you got droughts on one side, you got floods on another, and then fire risk when you have a lot of fuels and then dry and high winds. That's a risk to your investment. There is a need to have these cross cutting conversations and whether irrigated green buffers are reused water which to me seems to make sense, but there are health implications. There's need to have this are we irrigating with emerging contaminants in places that people want to grow food in? It's not your jurisdiction but it is in your vested interest. Having that conversation and the surface water piece, non-potable is important for ag but also the fire suppression because that hydrant systems are going to fail. There's a need for much more holistic planning and I think it's totally doable and I think it does start with water and your idea about One Water. Kaua'i has always been an unconquered kingdom or done its own thing, so I think there's opportunity. Maybe it's good that you're nine different systems because then you can focus conversation regionally, but you guys have the range from cesspool issues with cesspools next to groundwater sources. I think putting it all on the table and thinking it out- and you don't need to report all that back to us in a year-but I want to put it out there on the record because I think that's what's needed. We can't stay siloed. Finally, this is my soap box, hire young new people, making dashboards could be part of that adaptive planning and help the public interact with this information and engage because people like clickable maps. My students, that's what they want, I can't keep up with the online mapping, but it's more and more accessible and I think it does help people feel confident that government is looking out for them, has the skills, is being transparent with data. There's many things that you guys could do, we're not mandating but I just want to suggest if you can make things climate proof-y or climate ready and all, so thanks for letting me soap box.

COMMISSIONER KATAYAMA: Can I just add a quick note, Chair? I think there is a sense of urgency. When the plantations were there managing their chunk of real estate, they had a whole fleet of D9s that could cut fire breaks. You don't have that now, but you still have the real estate Kaumakani fire, great example. They had reservoirs that you could dip into, literally, and with that stoppage and the loss of that kind of response, you still have the real estate, you have more fuel, you have more population, yet we don't have the resources to suppress any kind of outbreak and that's a challenge. I think that is

sort of the sense of urgency that the team that you have on your board, you have the Planning director there, you got DOT there, so you got the right team. The challenge is the resource and the County has gone through a whole fire prevention plan and we have been part of that as well. But again, it's the resources that are not quite available to fight any kind of quick reaction. Kaumakani, we're lucky, we're real lucky.

JOE TAIT: Commissioner, that's one of the reasons I'm pushing hard on the federal money is we don't have the resources and these two plans are, I won't say it because I'm not an elected official, required to receive that money. They're not a nice to-do anymore, show us shovel ready, show us your plan, then we'll put you on the list. Right now you don't get on the list without a [inaudible].

CHAIR CHANG: You might want to check that list again. I think they just put a pause on that Monday.

JOE TAIT: Oh no, they put a pause on that [inaudible]. That's why we need to get the plans done so we can get back on the list.

CHAIR CHANG: We all have a deadline of noon today.

PUBLIC TESTIMONY

JONATHAN SCHEUER: Aloha mai kākou, for the record my name is Jonathan Likeke Scheuer. I serve as a consultant to the Department of Hawaiian Home Lands on water policy issues and that's why I'm here today. Four brief comments for you- first, I want to acknowledge and thank the Department of Water and both their staff and their leadership. when they appeared here last December slightly over a year ago and gave a brief update on their plan, we commented on how there had been minimal outreach to Department of Hawaiian Home Lands beneficiaries on Kaua'i. They instantly responded and coordinated with us and held two additional outreach meetings where a lot of significant comments about the quality of the plan were received. I want to thank them, but I also want to point out that as a group that is one of four named public trust uses of water, I think it's really appropriate and that actually goes to my second point. I think that shouldn't be something that DHHL and beneficiaries should ask for in the development of any component of the Hawai'i Water Plan, but it should be part of the framework that's being updated, that there should be specific outreach to DHHL beneficiaries and the Department in the context of preparing those plans. I don't think I can overemphasize how important I think the preparation of a new framework is that's going to be coming before you for briefing next month. A lot of the important questions that were raised by Commissioner Kagawa-Viviani, Katayama would be addressed in those things. To highlight just one of those, because the Commission's duty is to protect the domestic needs of the general public, it would be really good to have a consistent way the data is shown on what domestic consumption is of water in each of the elements of the Hawai'i

Water Plan rather than just going based on the data that's available in the particular way that one group classifies those. I think it also points to, and with respect to Fukunaga and Associates who've been working on various versions of this plan for well over a decade, that there could be room and guidance from this Commission and adoption of the framework that because the elements of the Hawai'i Water Plan touch on so many different things, that really the work demands interdisciplinary teams rather than just teams from either planning or engineering or a cultural perspective, but really who you draft to help you develop this, it really demands interdisciplinary work. First comment was mahalo, second was on that need to update the framework. The third is regarding the condition number four which requires consultation with the 'Aha Moku and you have discussed some of this before. It has been my experience in my water practice around Hawai'i that there is both significant levels of distrust of the 'Aha Moku, consistent comment from one end of the archipelago to the other that sometimes the 'Aha Moku staff within the Department chooses preferentially which practitioners to consult with and which ones not to consider. I think it would be probably in the best interest of the Kaua'i Department of Water and this Commission, the condition, I don't think it's inappropriate to refer to the 'Aha Moku, but the language should be modified to say that there's really a duty to consult with traditional and customary practitioners as well as the 'Aha Moku because there are many practitioners who simply don't see themselves as part of the 'Aha Moku but are conducting important practices that would be relevant. My fourth and final comment is about Section 5 on the implementation plan. This is where for the development of water infrastructure that I think consultation with the Department of Hawaiian Home Lands itself and its beneficiaries is particularly critical because that's for us, as a public trust but off-stream, off-well user of water where the rubber hits the road, where we go from having just reservations to having wet water to build homesteads. I would welcome some specific reference in the implementation planning not just to the important other public trust values that are referenced in that language such as watershed protection and streamflow protection but also active work with the Department of Hawaiian Home Lands. I'd be happy to answer any questions that you may have on my testimony.

COMMISSIONER KATAYAMA: Jonathan, on table 13, does it not accurately capture DHHL? That is supposedly identifying DHHL on Kaua'i.

JONATHAN SCHEUER: In part, I think this is not a completely current or accurate list of DHHL acreage both because of ongoing acquisitions that this administration has been pursuing as well as the land use designations have been changing since, they cite to the Kaua'i island plan of May 2004. There's been area plans that have been adopted since then, but I don't know at what point, and the Fukunaga and Associates would know, at what point did they stop looking for updates to other plans as they did this. It's one of the challenges of the Hawai'i Water Plan is that things are getting updated all the time.

COMMISSIONER KATAYAMA: That should be current as well

JONATHAN SCHEUER: Thank you, Commissioner Katayama.

COMMISSIONER KATAYAMA: Again, we're trying to get a working document so we have a better understanding of what the Department of Water needs to invest in or look at water sources. What we don't want is gaps here and find out that we have to dig up the road again. Thanks, Jonathan. So this needs to be updated?

JONATHAN SCHEUER: That table I believe is [inaudible]. Thank you very much.

COMMISSIONER MIIKE: I just want to make a comment about there's a fairly long discussion about municipal and domestic and domestic being individual users. I just want to point out that even under the Code, we don't regulate individual domestic users, those who are exempt from any regulations. So there's a double problem with that- one, is that if you're not in a designated management area, we don't give permits and if you're in a designated area they're exempt from permits. My question is how are you ever going to have a good handle on domestic users collectively? We're never going to get there. That was just a comment.

COMMISSIONER KAGAWA-VIVIANI: If I can add and maybe defer to staff but we have a record from well construction permits of where and how many. We don't have a mandate to report necessarily, but people do. Correct?

COMMISSIONER MIIKE: I understand that but we've never done anything past that and it would be nice to know if they were actually using those wells and how much water they're using, but we've never really looked into that.

COMMISSIONER KAGAWA-VIVIANI: But with well construction and pump installation you know the capacity of the pump so you don't know exactly but you have a maximum estimate. From my understanding of both what Neal and Ryan have shared and Ryan is going to jump in, it's a relatively small proportion.

RYAN IMATA: Yeah we do have water use reporting, I think Bob Chenet is in the room, he is with our Survey Branch. But we do have water use reporting statewide is a requirement whether you're in a ground water management area or not a ground water management area. I don't think we have 100% compliance with reporting, but our compliance rate has gone up quite significantly in the past few years with outreach. I just wanted to add that we do have a pretty decent understanding of how much water is used for individual domestic purposes.

CHAIR CHANG: Ryan what's the percentage of that?

RYAN IMATA: Percentage of compliance or percentage of use?

CHAIR CHANG: Not compliance just of use.

RYAN IMATA: I don't have that statistic offhand but I don't believe it's more than like 10%. Individual domestic users, individual domestic wells comprise a very small proportion of number one, the drinking water systems statewide and number two, proportionate to other big water demands like agriculture or municipal uses which have domestic uses but aren't individual domestic per se. The percentage of individual domestic users is relatively small.

20250128 01:18:21

MOTION: (KAGAWA-VIVIANI / MIKE)

To accept staff recommendation with an amendment to Condition #4:

4. KDOW will consult with T&C practitioners, including but not limited to the Aha Moku island/moku representatives, to develop a general inventory of the T&C practices for each moku (district) on island. Funding for this effort will be requested by KDOW as part of the county's FY2025-2026 KDOW budgeting process. This consultation will be completed within 12-months of contract execution with the selected consultant. The findings will be incorporated into the next KWUDP update.

UNANIMOUSLY APPROVED

(MIKE/MEYER/KATAYAMA/CHANG/KAGAWA-VIVIANI/RODRIGUES)

QUESTIONS / COMMENTS

COMMISSIONER MIKE: It's unclear then to me whether that then requires consulting with all the traditional practitioners on the island and as you know, there are two issues for me from my past work. One, is that do we ever know how many of them are there and number two, I hate to bring up the issue, but are they really traditional practitioners? I have come across people that claim to be while smoking a cigarette and think like that. It gets to me then as long as we're clarifying they're not obligated to go and look for every possible practitioner in the area.

COMMISSIONER KAGAWA-VIVIANI: I don't think it's appropriate for us as a Commission to decide who is and who isn't.

COMMISSIONER MIKE: I'm not saying that. I'm just saying that the way the language is going to be is whoever has that responsibility, how are they ever going to know that they have met that charge?

COMMISSIONER KAGAWA-VIVIANI: If it's in public and I'm a scientist here, but I think if it's in public record then DOW knows that they should make a good faith effort and then the public knows that we're expecting DOW to make that effort.

COMMISSIONER MIIKE: I'm fine with that if the language also includes something like "they've made a good faith effort to identify and consult with" but if you just leave it as almost like an absolutist language, I have problems with that.

CHAIR CHANG: I saw condition three and four very different. When it related to number three traditional customary practitioners dealt with a site specific. Condition number four dealt with more generic inventory and in my experience it's not the people you include, it's the people you leave out. How do we know who we're leaving out? I'm okay with even saying "consult with Native Hawaiian organizations including but not limited to Department of Hawaiian Home Lands, Hawaiian Civic Clubs" but I think it just becomes an unreasonable burden to place upon anybody to say you got to consult with cultural practitioners for an inventory of what resources may be available or they have to at least look at the OHA's (Office of Hawaiian Affairs) database there, Kīpuka, or refer them to databases that are publicly available. But to place the burden on Kaua'i Water Department or anybody to go and lookout for culture practitioners because somebody's going to say, well nobody came to talk to me. To me, that is a very different exercise than number three which is when you get project specific, you better be contacting the traditional and customary practitioners that may be affected by that project. I see four is a little different and I'm not sure how Kaua'i Department is going to comply with that condition.

COMMISSIONER KAGAWA-VIVIANI: My understanding of the reality is the WSIP (Water Systems Investment Plan) is coming sooner, so if in ordering of time three comes becomes before four, they are going to be identifying practitioners as they do their infrastructure planning and they will be building a network of contacts perhaps that extends beyond 'Aha Moku. I just want to not limit themselves to 'Aha Moku in that scoping. That's sort of the intention. I don't think we need to list every...

COMMISSIONER MIIKE: I think what Chair had suggested, don't say be on the lookout, and I agree with Chair Chang how she had characterized three and four. Anyway that's my position. As long as it's not an absolute requirement in the broader use. When you go into a specific area I don't have a problem with a good faith effort to identify every practitioner in the area, but not island-wide.

COMMISSIONER RODRIGUES: This issue we have faced when I was at SHPD, here we're talking about water. In my role at SHPD for 18 years, we're talking about burials and who were the stakeholders with respect to a specific burial. Who has a right to express their opinion as to whether or not that burial should be preserved in place or relocated. We faced the exact same problem, are we talking to the right people, are we

including everyone, are we excluding anyone? If you ask me to come up with a solution today, I would say and this is a very simplified solution, so I apologize for that if it's just too simple. But as a part of your budget request you have a full-time position for somebody to do that, that is going to be their full-time job- to identify the practitioners. Growing up on a neighbor island, our rules as to how we live is very different from those of you who grow up on O'ahu. When you grow up on a neighbor island and especially if you're Hawaiian, the first two concepts you're taught is, don't be nīele and don't be maha'oi and the third one is you stay in your own ahupua'a. I'm going to guess that a lot of people in Kaua'i still practice that, they stay in their own ahupua'a. They don't mind other people's business and that in and of itself can be a hindrance because no one's approaching them for their opinion. I really think and at least it's my Christmas wish list for all Hawaiian rights is that that's somebody's full-time job to go out there and find all those people. I guess the word inventory was used here to do an inventory and even if you do an inventory you know that inventory is short, it's very short because there's a lot more people out there. That's just my opinion on three and four.

COMMISSIONER MIKE: I don't think any kind of language will amend my concerns, so I'm happy to vote for it.

CHAIR CHANG: I guess I'm wondering, generally what I've seen referenced is Native Hawaiian organizations versus traditional and customary practitioners...I'll share with you, I'm a little kānalua (doubtful) about number 4 with that amendment.

COMMISSIONER KAGAWA-VIVIANI: I just suggested it for alignment with number three and because I assumed that they were already going to be doing outreach so that it could be easily folded into their knowledge of places. Because if they're going to do a project in Kekaha, they talk with somebody and they're like, oh now they're aware of some issues in Kekaha and add that to the inventory. I was thinking about it from an operational sort of standpoint but I also don't know the right wording. That's the intention, open to feedback.

DEPUTY KAHAHANE: Would it be helpful for me to pull up the language on the screen so that you can look at it?

CHAIR CHANG: Is that true? Because I understood the Water System Investment Plan is going to be completed within a year because that's what this is hinged upon, that that plan is going to be completed before so that it can feed into number four. I got the impression that they were independent.

JOE TAIT: The Water System Investment Plan would be definitely completed before this.

CHAIR CHANG: When you're doing the Water Investment Plan, it's going to be site specific so you're getting input from traditional and customary practitioners?

JASON KAGIMOTO: It's still on the planning level of a project, but we have identified projects.

JOE TAIT: We're not planning on doing anything different with any of our outreach with both of these.

CHAIR CHANG: Chronologically your WSIP will be completed before, number four is related to the next KWUDP update.

JOE TAIT: That funding would be available in July 2026. [inaudible]

CHAIR CHANG: Because that's an assumption that's being made on this is that number three is going to happen before number four. If that's the case then it makes sense.

COMMISSIONER MIIKE: Can you read for me the original number four?

DEPUTY KAHAHANE: Yes, sir. I can also pull it up if that would be helpful. I will read the first sentence: "KDOW will consult with the Aha Moku island/moku representatives, to develop a general inventory of the T&C practices for each moku (district) on island."

COMMISSIONER MIIKE: Now I like the amendment. I can see what your concern was. The thing is that with your amendment there is an implication that you're looking for groups of practitioners, not trying to track down every individual one because it talks about 'Aha Moku and them. I'll take the lesser of two evils and take the amendment.

COMMISSIONER KAGAWA-VIVIANI: Okay, thanks. I guess this is how it works...Hopefully it does make things easier. That's the intention.

CHAIR CHANG: I apologize, I had an emergency. Did we settle? We've got consensus? Because this motion, Aurora, my understanding you are assuming that number three will happen before number four so they will fold in number three as well.

COMMISSIONER KAGAWA-VIVIANI: Yeah, that it would be a more efficient process.

CHAIR CHANG: The nodding of heads from Jason (Kagimoto), that sounds like that's going to happen, so my issues may be moot.

20250128 01:36:10 - Break

20250128 01:45:12

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Red Hill Update January 2025 by the Navy Closure Task Force – Red Hill

PRESENTATION GIVEN BY: Rear Admiral Marc Williams, Commander Ben Dunn

QUESTIONS / COMMENTS

CHAIR CHANG: Can I just ask, \$500 million that's been appropriated for the treatment facility. Have you considered other options for that use of those funds? Well let me ask you, the treatment facility, who is it going to benefit?

RDML WILLIAMS: I would argue it benefits two folks. Obviously the primary constituents on the Joint Base Pearl Harbor system but two, it expands and establishes the capture zone and maintains that. As we look to do potentially pilots and other avenues to attempt to speed remediation, some of which may be unproven technologies that we don't know the second order of the effects, we would do that with a safety net in place of if it has the opposite effect. Instead of removing, it pushes that contamination down into the aquifer, it would be immediately sucked up into that capture zone and then treated. It enables us to have I would argue, continued conversations on alternate ways to speed up the remediation but doing it from a position of strength because we have the safety net in place of that construction project and that treatment ability.

CHAIR CHANG: But the facility's primary beneficiaries are going to be the Navy Joint Base Pearl Harbor?

RDML WILLIAMS: Yeah, those on the Joint Base system.

COMMISSIONER KAGAWA-VIVIANI: Is there still free product dripping into Red Hill Shaft that you folks are managing? I think if you aren't getting the detections, it seems like a lot of money, but is the problem still that there is lingering stuff coming in?

CDR DUNN: I don't think we're regularly seeing it, but we do know that there is some contained in the subsurface.

COMMISSIONER KAGAWA-VIVIANI: With every rain it might...

COMMISSIONER KATAYAMA: Can I just make a general observation? I think for me it'll be helpful to have somebody like Ryan synthesize all the different positions. You have the Navy efforts, you have the Board of Water efforts, you have the UH efforts, you have the Department of Health to really sort of make an assessment of where we are in

the health of the aquifer. The Navy is going through, to me, a pretty extensive and expensive water treatment facility. Now is that realistically a plan B that we should be aware of and how does that affect the capacity and the quality of the aquifer? From a holistic point of view and we have a lot of data, it's a lot of technical data. I think as a lay person it would be very interesting to see what the prognosis is and the outlook is of this impactful system.

CHAIR CHANG: Maybe Ciara, the question is posed to CWRM, are you getting all of the information so you can make...we are assuming that CWRM is getting all the information so that they can make a comprehensive assessment, but I'm not sure that's the case. Because that's what your question is predicated upon, CWRM having access to all of the information sort of as an independent body.

COMMISSIONER KATAYAMA: I think that's our role, isn't it?

CHAIR CHANG: Right and I'm just not sure that's why I wanted to ask. Are we getting all of the information, are you getting all BWS' information, are you getting all of the other information?

COMMISSIONER KATAYAMA: I know a lot of it's going to be opinion.

CHAIR CHANG: But factually I don't know whether we even are getting all the information.

DEPUTY KAHAHANE: Sure and you don't know what you don't know sometimes.

COMMISSIONER KATAYAMA: That's dangerous.

DEPUTY KAHAHANE: I'm going to throw it over to our Ground Water Regulation branch chief, Ryan, who I think can speak on this with more intelligence.

COMMISSIONER KATAYAMA: It doesn't have to be today but again, from what we've heard today from what BWS has testified to as well as UH, and DOH.

RYAN IMATA: I can certainly appreciate the desire to look at the different agencies and what people are trying to simulate or formulate in terms of what's happening out in the area. I will say that from my branch's perspective, we don't have expertise on water quality so I think it's hard for us to assess the different disparate elements to formulate our opinion about what's happening with the particularly chemical constituents of water as they travel and the pattern and everything. I notice Commissioner Ho is not here anymore and I would almost say, defer to Department of Health to see where Department of Health ties in all of the different elements and to kind of make an assessment because they were parties to the administrative order and consent. Commission was not, we are

observers and we certainly, as you guys have mentioned, have both a stake and an interest in what's happening with the utility of the aquifer. But again not having the expertise in water quality sort of restricts us from making any kind of deeper associations between the different studies.

CHAIR CHANG: If I can add on because DLNR does participate in the Red Hill Water Alliance Initiative (WAI). It started off soon after the fuel spill. Various State agencies and the City participated in a unified statement trying to hold the Navy accountable for not only defueling but remediation. The Red Hill WAI came up with a report and it focused on and I am going from my memory, but five primary areas, we were not looking at this from a regulator standpoint. Not DOH, not EPA, not CWRM but really looking at this as an overall health of the aquifer, including the ecosystem. DLNR was concerned about what impacts does this have to streams to watershed and nearshore waters that we felt were really not being considered in the context of remediation for Red Hill. The areas that we focused on was research, actually trying to accelerate research on some of these alternative different mitigation measures. Also looking at monitoring, trying to be that independent body that because we weren't the regulator but looking at who should be housing that information to provide that independent assessment. Also then looking at research monitoring. I know community outreach was a very important component of that. The Navy is like DLNR, people don't trust us, so no matter what you do your results will just not be, whether it's credible or not. Considering perhaps having the Red Hill WAI become that independent body that does a lot of the community engagement to educate, become that vehicle to ensure that there's good information that's being disseminated, also that's being collected. I apologize, there's two other major components- research, modeling, community outreach, education was another component that the Red Hill WAI would initiate and again being that independent body that would help on the education level. There's a fourth component. The intention of Red Hill WAI is to negotiate with the Navy separate and apart from the regulators. We're not looking at a consent decree, but more of a memorandum of agreement that the Navy... we are trying to seek funds from the Navy that would be directed to Red Hill WAI to implement the recommendations under the report. We have started some initial discussions but with the change of Administration, we're not sure where that's going to go, but there's been some initial discussion. Red Hill WAI was viewed as another entity separate and apart from the existing CWRM, EPA, and DOH, but who would be that body that would try to gather a lot of this information. We are actually looking at getting several positions within DLNR to help facilitate the implementation of the recommendations by Red Hill WAI. That sort of addresses Wayne, your concern, how do we determine the health of the aquifer or ensure the health of the aquifer and the Red Hill WAI, the intention is not only for today but for future generations. Looking at this in the long term and how do we hold the Navy responsible to help finance that and that's why this question about the \$500 million under the best of scenarios, if the Navy gets \$500 million, but under the worst of scenarios with this new Administration. You may not get that. How do we ensure that some of those funds or some of the monies you received can also be used to do some of the work that

the Red Hill WAI was proposing. No answers but just that that's another platform that the State and the City have been working on to address some of the long-term remediation and issues related to the Red Hill fuel spill.

COMMISSIONER KATAYAMA: Not to get too far ahead of our skis, but the sighting of the landfill kind of gets you into the same arena and I think a lot of the things that we are learning from this exercise can surely be applied to that learning curve. My question is we've learned a lot, where is the synergy or the synthesis of that composite? Right now it seems like a lot of silos.

CHAIR CHANG: You're absolutely right and I think that's what we were recognizing is that there are silos and how do we ensure rather than having duplication of efforts, how can we ensure that the information is being used efficiently and effectively?

COMMISSIONER KATAYAMA: And predictability, I think that's the key is that you need to have some kind of predictability of outcomes.

COMMISSIONER KAGAWA-VIVIANI: If I may suggest, I think what is needed and maybe overdue is an informational briefing by the DOH subject matter experts. They have been on this from before. There's a ton of knowledge following Red Hill Water Resources Research Center that was helping organize, we had a seminar series... Board of Water Supply, though I think there's often some disagreements. If there is a housing of data, it's going to be within Department of Health and their body of experts. They work with UH and this is specifically Don Thomas's team at HIGP (Hawai'i Institute of Geophysics and Planetology), so they are the ones who have been awarded the ONR (Office of Naval Research) Grant to do the modeling work. I think they regularly update Red Hill working group, I don't remember the acronym, but there's a Red Hill convening and I think they quarterly update, so we could perhaps ask them to give us an update on the status. You guys can't talk to them, but we can and we can ask them for what they can share at this point in time because they have data, they've been collecting data and they have a lot of expertise. We could have the opportunity to ask them these questions.

DEPUTY KAHAHANE: Sure, absolutely.

CHAIR CHANG: I think from the Red Hill WAI's perspective, we wanted more than just what the law requires. This minimum standard, we wanted something that's going to exceed that and so I think that's a good starting point, DOH and EPA. There were concerns about do we just GAK everything and treat everything versus how do we ensure that the ecosystem and the watershed and aquifer are safe. It meets more than minimum standards, but I think if we can try to gather as much information as possible to raise that level of assurance. I'm hoping that we can move forward with some further discussions with the Navy on this, too.

PUBLIC TESTIMONY – None

20250128 02:44:33

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Briefing on Conditions of the Approval of the Maui Island Water Use and Development Plan by the Maui Department of Water Supply

PRESENTATION GIVEN BY: Neal Fujii- State Drought Coordinator; Eva Blumenstein- Maui Department of Water Supply; Michael Summers- Planning Consultants Hawai'i

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: It is very visually appealing. I have a question or concern, it reads like Maui Department of Water Supply's summary rather than Maui island just because of the heavy emphasis of those two chapters or two parts. Without seeing the document, I don't know if that's an unfair assessment, but where is recognition of the many other kind of important elements of the Water Use and Development Plan, including public trust? It just didn't seem like, maybe I missed it.

MICHAEL SUMMERS: Sure, this document addresses Maui island on both the island-wide scale and the regional scale. In the background section, Section 1, it basically summarizes the primary elements that create the foundation for the later work in the Water Use and Development Plan, including speaking to the public trust doctrine and the Constitution. There is a discussion of that in that first section of the report, if that makes sense. It gives it context.

COMMISSIONER KAGAWA-VIVIANI: There's just two sections of it that were only focused on MDWS systems and interests. So just making sure we let the public understand that there are private purveyors, not invisible or that it's evident in there.

MICHAEL SUMMERS: That's a very good point. Now the document does discuss private purveyors, so that is covered, as well as non-potable uses.

COMMISSIONER KAGAWA-VIVIANI: That was my other thought, like the surface water systems weren't reviewed in there, but it's an important part of the water picture on Maui.

EVA BLUMENSTEIN: Thank you, Commissioner, for that question and frankly that was one of the first comments we had on the draft plan, like this is too DWS-centric. I don't

like the size and the volume of the original plan, but it takes a lot of space to include agricultural use and non-potable use and all the private purveyors throughout Maui and the intricate issues of small rural and even the larger private purveyors. That's what the consultants really were refining now that it needs to adequately reflect the complexity of the private systems while not making it another, we don't want a 300 page synopsis, either. It's a really tricky balance, if it was one region but this is an island document so it's going to have to be a little briefer than I'm comfortable with.

MICHAEL SUMMERS: Going back to what Eva was saying as I mentioned earlier, the Water Use and Development Plan that you have, and bear in mind I've been doing planning for quite a long time and this is probably one of the most comprehensive documents I've ever reviewed. It's got a tremendous amount of information, so if you're really interested in all of the details, you're going to find it in that Water Use and Development Plan. Secondly, the executive summary in that document is actually very robust. I found it very helpful. It is technical, so if you're a lay person and you don't have a lot of experience with water resources, some of those tables can be a little bit overwhelming, but they are very helpful. This document is really intended to be much more engaging and easily understood for both you folks, policy makers, but also for the general public. We're definitely not trying to overburden this document with a lot of detail because that can just misdirect your attention to some extent and it would hinder what the document's purposes is. It is generalized, but we think it's generalized to a point of being effective for what it needs to be.

COMMISSIONER KAGAWA-VIVIANI: One suggestion is I thought there were some really nice conceptual diagrams in the summary. It seems like they're an afterthought and maybe it would be helpful to put it in the front of the document as an overarching view of the values of water flow for people- drinking but also for environment and for farming. I really like the Honolulu Board of Water Supply's master plan, sort of like a 12-page summary. It's very visual and accessible, but Maui is more complex than O'ahu in that sense, maybe you've looked at it. I think it's been helpful as an educational public tool. An overview is helpful.

MICHAEL SUMMERS: I think we're a little bit more detailed than that. It's more of a written-based plan than an infographic plan, but nonetheless it's a plan that I think is easily engaging for those that are going to be interested in Maui's water situation and engaging for those that want to understand the basis for making decisions about water planning. Again, the Water Use and Development Plan is a great document. There's a lot in there, you're not going to have to go to the library or online searching for resources, it's all right there and it's got an executive summary. I think you guys have got a pretty good bundle of documents to work from.

COMMISSIONER MIKE: In my previous life before my previous life here, I worked in DC and we used to do very technical reports for Congressional Committees. We knew

they wouldn't read them, we also knew that the Congressmen wouldn't read them, so what we did was besides a usual 500 page document, we had a 50 page summary, a one page summary, and within the one page summary we had highlighted sentences. It would be good, if this is going to be for the general public, to me, a 37 page long report is already too big. I don't know how you find the balance, but it would be nice if you could put together a one page to go along with this. Obviously the people that are really interested in this are going to read your whole report anyway, not just the summary. My point is that you should have a summary that's really a summary. It really shouldn't be a miniature version of the full report and I challenge you to write a one pager.

MICHAEL SUMMERS: That's great, it sounds like your methodology is very effective for summarizing those technical documents.

COMMISSIONER MIIKE: You can't capture it all, even the most avid reader is going to have glazed eyes when they look at 500 pages of documents. To be useful it's got to be short and concise. You're going to miss a lot of points, the main thing is that if people get the gist of it and they're interested, they go and look for the bigger documents.

MICHAEL SUMMERS: That was the idea, the people that really want to dig deep, they've got it all there. All the nuances are in that Water Use and Development Plan report and the executive summary is much more summarized than that. It uses a lot of the tables, but this document is intended to be somewhat different, easily accessible. Not quite as sexy as Honolulu's summary but the infographics on that were really amazing, honestly.

COMMISSIONER KAGAWA-VIVIANI: I think it's really helpful as a trailer or a teaser just to draw people in because 1,300 pages is intimidating, but maybe they'll start with this one and then maybe they'll go to the executive summary. If they want to learn more they can go to those sections. It's just meant to increase people's understanding and awareness and engagement, so thanks for that.

COMMISSIONER KATAYAMA: From my understanding Maui has a Water Commission. Is their governance and their impact on the Water Use and Development Plan discussed or identified?

CHAIR CHANG: Water Authority.

COMMISSIONER KATAYAMA: I don't know anything about it other than it was established recently.

CHAIR CHANG: We have the chair right here.

EVA BLUMENSTEIN: The East Maui Authority was established after the WUDP, we call it the WUDP, was reviewed by our Board and went to County Council. We had two addendum in 2020 that addressed all the evolving issues, things that changed from HC&S closing to Mahi Pono, Diversified Ag Plan, and contested case decisions, and IIFS and whatnot. But East Maui Water Authority wasn't there, yet. It was recognized and talked about later, it was never addressed in the plan. There's been other significant changes since, too, so I think that's one of those really major items that is going to have to be addressed in an update and a regional update, not a county-wide monster document like that again.

COMMISSIONER KATAYAMA: Any timing on that update?

EVA BLUMENSTEIN: We recognize West Maui is certainly most urgent, although we are overdue for a Lāna'i Water Use Plan update, that was done in 2011. We are contracting for a West Maui water plan to address post-fire demand projections and whatnot. It's not an update to the WUDP, but it will certainly inform the WUDP once the framework has been updated and adopted, I think makes sense. West Maui is first in the queue for an update in terms of regions.

COMMISSIONER KATAYAMA: We would look forward to that.

PUBLIC TESTIMONY

JONATHAN SCHEUER: For the record again, Jonathan Likeke Scheuer. I am a consultant to the Department of Hawaiian Home Lands. One of my roles has been appointed by Chairperson Kali Watson and the Hawaiian Homes Commission to represent the Department on the East Maui Regional Community Board which is the governing board for the East Maui Water Authority, a new department of the County created by a 2022 charter amendment to try and secure and manage the East Maui irrigation system, both the state rights to water that flows off of State lands, as well as to cooperatively or in some form assert control over the irrigation system, to in essence act as a non-potable water utility which is not common in Hawai'i. It is very common in lots of other areas where you will have municipal water systems, but also irrigation districts and other things. It is correct, we were created after the adoption of the Water Use and Development Plan that said our board members and our new staff work closely in a regular fashion with both the Board of Water Supply which is an Advisory Board to the Department of Water Supply on Maui as well as with the staff of the Department of Water Supply and the director of the Department of Water Supply. Currently John Stufflebean serves on the board of the East Maui Water Authority. It is a bit akin to how the County Department of Water Supply has to develop the Water Use and Development Plan, but of course doesn't have any say over private water systems, so it just requires additional outreach. The 70% of water systems in West Maui that are controlled by American Water or the Peter Martin companies or others, the county has to make extra efforts to make

sure that their water use planning complies with that. Same as future updates, the plan will have to do that. I really appreciate the question. Is that responsive to the issues that you raised, Commissioner?

COMMISSIONER KATAYAMA: Again, too far away from it, so it's a good 20 minute introduction.

JONATHAN SCHEUER: Hopefully brief enough for Commissioner Miike.

COMMISSIONER MEYER: I would recommend that the Commissioners read at least a summary and take the time. Time is precious but I think it'd be worthwhile. There's a number of things that came to light today, for example Dr. Scheuer's membership on a relatively new committee, but what a lot of people don't understand is that notwithstanding the length of the report, it is a very complicated system overall. Just on the island of Maui there are about five separate systems that are not in effect connected and can't rely on one another. You got Kula and Upcountry, Central, Kaupō, Hāna, and West Maui and those are in effect separate water utilities all run and controlled by Department of Water Supply. But you've also got the private public utility systems that are very substantial, particularly in West Maui. Again, those are not connected, if you will, and have different sources of supply, different treatment regimes, and different distribution billing, etc. It is a very complicated network of water supply and quite a bit different than O'ahu. But it does take an effort to really understand how Maui is operated, integrated, and uses its natural resources for the benefit of the community. In particular when you get into East Maui and the non-potable systems developed commencing in really the late 1800s, that's a remarkable system but it takes some effort to understand that. I would commend the reading of at least the summary and it may pique interest to look into the report in more depth.

20250128 03:27:25

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

3. Briefing on Tracked State Legislation Related to the Commission on Water Resource Management for the 2025 Legislative Session by Commission Staff: SB3, SB145, SB204, SB205, SB209, SB272, SB386, SB438, SB867, SB1210, SB1239, HB306, HB315, HB405, HB509, HB510, HB915, HB919

PRESENTATION GIVEN BY: Deputy Ciara Kahahane

QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: So I guess this is more so we can track it and know what is happening that relates and potentially have an opinion, right?

DEPUTY KAHAHANE: I should have made that clear, yes. The Department of Land and Natural Resources is going to testify or offer comments in its capacity as DLNR. I suppose the unfortunate thing about having a decision-making body subject to Sunshine Law is that the Legislative session doesn't really allow adequate time for the Commission to take a position on all of these bills. So if there are bills that any of you as Commissioners feel strongly about, to provide information that you might want to submit testimony as an individual.

CHAIR CHANG: Or even if you've got an opinion as a Commissioner, it would be helpful for staff to know as we're preparing testimony. CWRM presents their own testimony, sometimes if appropriate DLNR may submit testimony, but in areas relating to water we generally defer to CWRM to provide that testimony.

COMMISSIONER MIIKE: How is the CWRM position decided?

DEPUTY KAHAHANE: In conversation with staff.

COMMISSIONER MIIKE: But not with the Commissioners?

CHAIR CHANG: Only to this extent, right here, right now. This is your opportunity.

COMMISSIONER MIIKE: The issue about independent counsel is something that I would support. That and a clarification about how Commission can have half the responsibility of hiring and firing but not the other half. Anyway, I think we actually voted on that and if I remember, Aurora and I and Neil lost four to three or something like that. What I would like is that as soon as you find out when a bill is scheduled, could you just email all of us so that we do have enough time to testify? If we do testify I don't have a problem with letting all the other Commissioners know I intend to testify and can see my...

CHAIR CHANG: You might have a Sunshine Law violation.

COMMISSIONER MIIKE: Once they submit it then it's public.

MIRANDA STEED: If you have questions on the appropriate approaches pursuant to Sunshine for boards and commissions in regards to Legislature, I can answer those questions.

COMMISSIONER MIIKE: Anyway, I may or may not.

COMMISSIONER KATAYAMA: But if we're submitting testimonies as a private citizen...you're the spokesman for the Commission.

COMMISSIONER KAGAWA-VIVIANI: And I'm not seeing your testimony before you post it so it's not like we're having a conversation about it.

CHAIR CHANG: You just cannot confer with each other in the absence of an open meeting on a particular legislation. These are going to happen very quickly so I think staff will do the best job they can to let you know in advance of when hearings are scheduled, but sometimes we don't get a lot of notice. I think this is helpful. You now have an overview of at least the inventory of bills relating to water, so at least you have them in front of you. Check the website, the State government, capitol.hawaii.gov.

COMMISSIONER MIIKE: Because we only meet once a month and things move so fast. I don't think we'll have much chance, but I would be most interested in seeing how these things get called down and what's a realistic chance at having hearings and things.

CHAIR CHANG: We probably will have another Commission meeting while the session is still on, so when the bills, as you say, get narrowed down especially when they move over to conference, I think it would be helpful for us to hear from you. Maybe on our next Commission meeting, we should include a Legislative update that's on our agenda.

DEPUTY KAHAHANE: Absolutely.

COMMISSIONER MIIKE: Can I ask the Attorney General, there's no issue with us being told where bills are along the way, right?

MIRANDA STEED: As long as the emails are bcc'ing the Commissioners, it's fine.

COMMISSIONER MIIKE: I'm just interested in seeing where things stand. I know we can go onto the Legislative website and find out, but that's such a pain to do.

CHAIR CHANG: Sometimes it's easier than getting updates but you can do it either way. I think staff will try to update you.

DEPUTY KAHAHANE: I will do my very best to keep you updated.

COMMISSIONER MEYER: I think it'd be very helpful to know when you do take positions, what those positions are even though we may not comment as Commissioners. That'd be helpful though, thank you.

CHAIR CHANG: Paul, are you asking that when we send our testimony to the Leg(islature) you'd like to be copied as Commissioners?

COMMISSIONER MEYER: Yes, exactly and I don't know that we need to be copied, necessarily. Perhaps a summary of the positions taken on it.

CHAIR CHANG: It might be easier for staff just to copy you on testimony that gets submitted and then you can tally up and summary. I think that can be done.

COMMISSIONER MEYER: Ease in convenience is great with me, thank you.

CHAIR CHANG: It will also show you the hearing date, so if you want to provide any testimony you'll also have the hearing date and the number. That might be good protocol, Ciara, is when you guys submit you also blind copy all of the Commissioners. That would be easier.

DEPUTY KAHAHANE: Can do.

MIRANDA STEED: Chair, if it's helpful I can also inform the Commission of what the Land Use Commission decided to do with regards to testimony if you'd like any more information about that. The LUC just ran into this similar issue that you're discussing right now in terms of how do they take positions and monitor legislative process without violating sunshine and the way they decided to proceed is what CWRM is doing- have staff provide testimony and maintain bcc updates. But they are also having staff take back bills that they think are of high importance to the commission to vote on commission positions.

CHAIR CHANG: When did they do that? How did they do that?

MIRANDA STEED: On February 5th which this Commission has a little bit more of an issue because today is the 28th, the next meeting isn't until February, but considering the Legislative Session is going to go up until the beginning of May and we're looking at crossover coming up around the time that the next Commission meeting is. If the Commissioners have concerns you could have staff bring back bills that are still alive at that point and that are high profile for the Commission to discuss and take a vote on.

CHAIR CHANG: I think we agreed that we would include updates at the next Commission meeting.

DEPUTY KAHAHANE: It would be an action item.

MIRANDA STEED: Yes, you could also do an action item if you wanted. That's what the LUC has chosen to do, not for all bills, just for ones that are considered high-profile.

CHAIR CHANG: How do they know in advance of the agenda item?

MIRANDA STEED: It was mainly left to staff discretion on what staff thought were high-profile bills for the LUC to consider; however, they gave the commissioners a deadline which I believe was seven or eight days before the deadline for the agenda to contact staff only to avoid any Sunshine issues and just request that a specific bill be placed for decision making. I just offer that as just what another commission has decided to do to deal with these issues.

CHAIR CHANG: Do they meet twice a month or once a month?

MIRANDA STEED: They meet all the time.

CHAIR CHANG: I'm going to defer to our deputy to figure out the most efficient way to keep us informed and then put it on the agenda. Because at this point in time we believe this is the inventory of bills that have been submitted. When is the deadline or has the deadline for bill submission passed?

DEPUTY KAHAHANE: This is it.

CHAIR CHANG: You now see if there are critical bills in here that you want specifically tracked, please let Ciara know.

COMMISSIONER KAGAWA-VIVIANI: Is there any question or discussion before you submit positions? Because there were the items that we discussed that the Commission is putting forth as bills. Those are the penalty and that's water shortage, so I think we're all aware and in agreement about those, but then there's these other new ones such as dual line water supply systems. If we're thinking about reuse, putting in those lines is a major financial barrier. Is there any opinion that staff have at this point about HB915?

DEPUTY KAHAHANE: For HB915, this one was recently scheduled for hearing. I'm happy to send you all a copy of our testimony. It hasn't yet been quite finalized and submitted but essentially we support the intent of this bill. It would make this dual line water supply systems part of the alternatives analysis almost when we do water use permitting yeah. The specific difficulties in implementing this, some of which are more appropriately handled by Department of Health with regard to treatment and management of the resources. I'll note that I'm not sure by what mechanism should be used to...of course we want to encourage the reuse of water, but when someone is planning a new residential and mixed use development, it doesn't necessarily come in as a water use permit, especially if it's being served by Department of Water Supply, for example. We support the intent of this bill, but as far as the specific method that should be used to achieve this goal, there could be room for discussion.

COMMISSIONER KAGAWA-VIVIANI: If they're not hooking up to a municipal and they're getting their own, I don't know how common that is, then it would give us the

authority to require them to mandate or to include it in the analysis of alternatives. But then there's many cases where they are just already hooking up to a municipal system and that's not going to be part of the conversation.

DEPUTY KAHAHANE: It would be more difficult.

COMMISSIONER KAGAWA-VIVIANI: On the Hawaiian Home position, that's interesting because we run into many kind of lack of awareness and we have to rely on Dr. Scheuer to be in the room to inform us. Is there current position of staff on that one?

DEPUTY KAHAHANE: We talked with Hawaiian Homes staff about this. My inclination was to oppose this bill because the Hawaiian Homes Commission has reservations, well permits, other things that come before the Commission itself. I was a little uncomfortable having someone on the Commission who represents an agency that's regulated by the Commission, but if you folks have ideas or opinions about this bill, definitely we would be interested.

COMMISSIONER KAGAWA-VIVIANI: I don't know, that's just 10 minutes of trying to understand.

COMMISSIONER MIIKE: I share that.

COMMISSIONER MEYER: Deputy, just one question. Reaching back to the dual system, I was involved in design and building of a dual system for the Kapalua community in West Maui and that was a number of years ago, back to the late 70s early 80s. It was very successful, works very well. The capital cost was substantial at the outset, but other than that I think all the citizens and the people and the businesses served by that dual system really like it a lot. If I could share any thoughts there or you have any questions, I could highlight that for you, I'd be happy to.

COMMISSIONER MIIKE: I had a comment on the dual system. Right now we place the burden on the applicant if they're coming for a permit because they have to show they have no reasonable alternative. They'd have to take a look at dual systems. If it's the department, if it's the Board of Water Supply and we don't have a say, we could have conversations with the Board of Water Supply and say that before you provide water to them, ask the developer, whoever's asking for water to show why you can't have a dual line system. We could do it without any legislation.

COMMISSIONER MEYER: That's great, that'd be wonderful.

CHAIR CHANG: You are having regular meetings, Ciara, with the various water departments, too, right?

DEPUTY KAHAHANE: Every month.

CHAIR CHANG: I think there's an existing vehicle, something non-legislative may be more productive.

DEPUTY KAHAHANE: I can talk to them about that.

COMMISSIONER KAGAWA-VIVIANI: On SB438 with the solid waste, I was gathering from the tone of comments maybe the current position is to oppose? What's the stance currently?

DEPUTY KAHAHANE: Oppose is a bit strong. I think we're going to submit comments is the current status. We're going to defer to Department of Health on this one. Our comments might end at, all aquifers are significant to us, and I think Department of Health has more subject matter expertise and a stronger opinion on this bill.

COMMISSIONER KAGAWA-VIVIANI: I think we have a vested interest in being at the table and I don't think we're often at the table enough with DOH on it. One thing I learned from Red Hill is that it's a contamination event that is under the jurisdiction of DOH because they have the Safe Drinking Water Act handed down to them from EPA, but it sets up a permit holders conflict. To me, it sets up a water allocation conflict because of the cost of being able to then access that groundwater. There's a utility that has access to capital and a utility that does not have the access to capital to treat it to the same level. I think it then does come back and we see it coming back in front of us. I'm not saying I know exactly how to address this, but I think we should have a say or be part of the conversation. I don't want us to be involved in the permitting of landfills, but it does affect water availability, not just in volumes but in quality and access.

CHAIR CHANG: Do you have a recommendation?

COMMISSIONER MIIKE: I support that but the thing is that if this bill passed, DOH would have to consult with CWRM on that and we can always take a position that we don't want anything over the aquifer.

COMMISSIONER KAGAWA-VIVIANI: So we could take a position and at any point in time? Okay, I think we don't exercise that because I don't know about you, but I get questions about it and I'm like, that is a good question.

COMMISSIONER MIIKE: And it's not enough to say, oh we don't have jurisdiction.

COMMISSIONER KAGAWA-VIVIANI: It's very dissatisfying when you're like, well that's under DOH. People look to the Commission to think about these things holistically. So we should have space to think about it in planning for instance.

COMMISSIONER KATAYAMA: Quick question maybe on the Hawaiian Homes seat here. Can you get an Ethics opinion on that?

DEPUTY KAHAHANE: There was one, it was attached to DHHL's testimony in 2024. The Ethics Commission's opinion is that there isn't a conflict of interest. The Ethics Code relates to more so whether they have a financial interest in the matter being considered, not so much these sort of agency conflicts. But there is an Ethics opinion that has been issued regarding this or Ethics letter, I should say. I don't think it's an official opinion.

COMMISSIONER MIIKE: I'll have to say that we do have two members in the Commission right now that represent large users, right? My concern with DHHL as a possible member is that they have a public trust priority over water and to me that should be enough. It's a different thing from having private or commercial users on the board because after all, the Commission was supposed to represent broad interests. For example, I used to be the Hawaiian member one and then you had these special interests on there. I'm not sure where I stand on the DHHL representative, but my overall thing would be that I don't want it, but if they are legislatively appointed, then I would accept that.

COMMISSIONER KAGAWA-VIVIANI: SB867, the working group within the Office of the Governor. My personal stance is it's not necessary, but what's the staff take?

DEPUTY KAHAHANE: I don't think we've discussed taking a position on this one.

COMMISSIONER KAGAWA-VIVIANI: It seems duplicative. We have these plans in existence, we have these inventoried.

DEPUTY KAHAHANE: I would say for myself I don't have a strong opinion on it one way or the other because it is a working group. Ultimately, the impact of this act is going to be based on the results of what the working group finds itself, but the streamlining of well permit approvals does signify maybe a policy move or a concern that the Commission is taking too long to approve well permits, which I think is fair. But what should be done about that, I don't know if it's something that should be addressed by this Commission rather than by the working group. I'm open to discussion on this one for sure.

COMMISSIONER KAGAWA-VIVIANI: I think if we can fill our budgets and we can support our staff and maybe if those who have concerns about it came directly and talked to us, I think that would go a long way because right now it feels like people are just going right around and trying to throw CWRM under the bus when honestly, we're trying to do what's in the best interest of the public. If that's a problem, if I am an obstacle for instance, let's have it in a public forum and understand where is it getting backed up. Is it

because we don't have staff to process permits? Is it because we have a broken workflow that needs tuning? That's something you might be interested in. Is it because we're always trying to analyze everything to death? That's good to hear because we're working within the scope of the Code, but others working on housing are working within a different scope and we do need to understand how we can have the housing, but also make sure we have the water and the environment. Having multiple conversations in different places fragments and actually creates inefficiency. If we can create those forums within our public meeting system then I think that would probably get to it better. I'm not sure, this is just me having an opinion in public. I think everybody recognizes this as a problem, but we shouldn't duke it out through the media. We should work on it here and not necessarily in back rooms because then the public doesn't trust that we can have it here. Thanks for sharing this and making us aware.

PUBLIC TESTIMONY

JONATHAN SCHEUER: I wasn't preparing to remark on this bill but I have been involved with it so we'll offer a few comments and the hopes that they're useful to you in your consideration and deliberations. This is a bill that the Department of Hawaiian Home Lands has sought to have included in the legislative package and has been included, Senate Bill 205, I believe introduced by Keohokālole and Holt this year, Holt in the House and Keohokālole in the Senate. It has been introduced in one form or another for at least a dozen years and has been included by the Hawaiian Homes Commission as part of their package. It's a bill that has enjoyed incredibly widespread support from Native Hawaiian DHHL beneficiaries across the islands out of recognition that despite the highest forms of constitutional and statutory and case law protections, that Hawaiian Homes, the actual practical ability for us to secure water has been very challenging and has historically, and this is not a comment about anybody currently sitting on this Commission, challenging before this Commission. You will recall that this Commission twice was overruled in Kukui and Waiola on Moloka'i, specifically around DHHL's rights where DHHL appeared before this Commission said that the decision that you're going to make is going to harm us. The Commission disagreed and got overruled by the Hawaii Supreme Court and so there's just a longstanding belief that it's been difficult for DHHL water rights to be fully protected as intended by this body. This has continued in fact to reference something that was earlier in your discussions, the bill that and I don't have the bill number, but one of the bills would specify that you have the ability to prioritize public trust uses of water and permitting in designated Water Management Areas prior to permitting other uses. It took DHHL 30 years to get a revised permit for its Kauluwai 1 and 2 Wells on Moloka'i and in significant part because staff at the Water Commission said, oh your wells and water uses are competing with County uses and Moloka'i Ranch uses. It took us decades to successfully make the argument that says, well we're a public trust use by definition, we're not competing certainly against Moloka'i Ranch's uses and you have the right and really the duty to take up our permits first and they finally did. They finally allowed us to pump a little bit more water which

has actually finally allowed some people who've been waiting to utilize their homestead lands for decades to use those lands. There have been in the history of the Water Commission since 1987 about 50 Commissioners. It's really interesting when you look at the data and I have a spreadsheet of them, it's been very gender imbalanced, a pattern that continues. There's never been a representative from Moloka'i, there's never been a representative and yet while it's not specified in the statute and this is no comment about the really great service that two of the members currently provide, there's never been a time however where a current or former plantation executive hasn't served on the Commission and only once when a Hawaiian Homesteader has served on the Commission. It is a really strong belief that this is an appropriate role and that as a public trust use, something that all seven current members of the Commission have a duty to uphold. It would only be aided and wouldn't be harmful to your duties to have a representative of the Department of Hawaiian Home Lands sitting on your Commission as well. In addition, when the concerns have come up specifically before we sought out affirmatively and got Ethics' opinion that there was no ethics issue involved. It has been consistently the position of the Department of Land and Natural Resources to oppose this, something that we have found regrettable but as a State agency, we've respected their position yet continue to try and see this to move forward. I'm just trying to convey to you here some of the discussions that have been had well over a decade about the importance of this particular piece of legislation.

COMMISSIONER MIIKE: I understand that. I've lived through that whole period and it's clear to me but only because of all of that that reservations for Hawaiian Home Lands, actually the way it stands now if you have a reservation you have under no obligation to use it, but it takes it away from the rest of what's available. Most people don't understand that. My issue is not so much that we know that and that that is now part of what the law is, it's that what would happen if we have the DHHL director on the Commission is that I don't know to what extent he can take a balancing position or whether he would just be a complete advocate for Hawaiian Home Lands every time a decision comes up. I think that I agree with you that I wonder why there has never been anybody from Moloka'i or even Lāna'i on it. When I first started, it was sort of a balance- there was a Kaua'i, a Hawai'i, and there was an O'ahu, and a Maui rep on it, but that has slowly changed. Now we're sort of back again, we have a Kaua'i and a Maui rep but there's no Hawai'i rep. When I first came on Commission I was surprised that it actually didn't say that each county had to be represented.

JONATHAN SCHEUER: Unlike the BLNR or the Land Use Commission.

COMMISSIONER MIIKE: I'm neither here nor there as far as DHHL being represented on the Commission. Kali I can understand, I used to work with Kali. He's a very good guy and very fair, but it's a position for the director, not a particular individual, but we'll see. You people have very strong supporters in this so no matter what our position is, something's going to happen. If it happens then I welcome it.

20250128 04:36:11

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

4. Briefing on Tracked State Legislation Related to the Commission on Water Resource Management for the 2025 Legislative Session by Commission Staff: SB150, SB543, SB1461, HB1142, SB848, SB1602, HB1495, SB473, HB300

PRESENTATION GIVEN BY: Deputy Ciara Kahahane

QUESTIONS / COMMENTS – None

PUBLIC TESTIMONY - None

20250128 05:07:29

D. ANNOUNCEMENTS

Application Deadline for CWRM Commissioner – February 13, 2025
<https://files.hawaii.gov/dlnr/cwrn/notice/2024/nt20241211.pdf>

20250128 05:10:29

E. COMMISSION MEETING SCHEDULE (*Tentative*)

February 18, 2025 (Tuesday)
March 18, 2025 (Tuesday)

The meeting adjourned at 2:12 p.m.

January 28, 2025

Minutes

Respectfully submitted,



'IWALANI KAAA
Commission Secretary

APPROVED AS SUBMITTED:



CIARA KAHANE
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/>