

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

DATE: April 1, 2025  
TIME: 9:00 a.m.  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor  
Online via Zoom, Meeting ID: 854 9649 3413

Online link to the video recording of the April 1, 2025 Commission on Water Resource Management meeting: <https://vimeo.com/1075899654>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 9:00 a.m. and stated it is a hybrid meeting being held in the Kalanimoku Building boardroom, remotely via Zoom and live streamed via YouTube. It was noted that people may testify via the information provided online. Chairperson Chang reminded the public not to use the chat feature for any comments, as it presents a Sunshine Law issue. She also read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

**MEMBERS:** Chairperson Dawn Chang, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike, Ms. Kathleen Ho

**STAFF:** Deputy Director Ciara Kahahane, Mr. Ryan Imata, Ms. ‘Iwalani Kaaa

**EXCUSED:** Mrs. Hannah Springer

**COUNSEL:** Ms. Cindy Young

**OTHERS:** Mr. Peter Adler – Guild Consulting

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

20250401 00:06:27

**B. NON-ACTION ITEM / INFORMATIONAL BRIEFING**

**1. Briefing by Commission Staff, Ground Water Regulation Branch and Peter Adler, Guild Consulting – Adaptive Management Plan for Ground Water Resources in the Keauhou Aquifer Sector**

PRESENTATION GIVEN BY: Deputy Ciara Kahahane

QUESTIONS / COMMENTS

COMMISSIONER MIIKE: Can I ask a question? The 38 million applies to the basal?

DEPUTY KAHAHANE: It currently applies if they're not broken out.

COMMISSIONER MIIKE: So, it's across all three? But we don't know what the deep confined is.

DEPUTY KAHAHANE: Yes and we are looking into further study of this for sure, but it's going to take at least two or three years.

COMMISSIONER MIIKE: Do you know historically how we arrived at the 38 million?

DEPUTY KAHAHANE: I think staff would better be able to speak to that. I can definitely request that staff give a presentation on how we arrived at that figure.

COMMISSIONER KAGAWA-VIVIANI: If I can add that number sort of makes assumptions about the geology that may or may not be applicable on different islands. Anyways, I just wanted to add that.

DEPUTY KAHAHANE: Yes, it does.

COMMISSIONER MIIKE: I guess that's the question because there are three aquifers there and we don't know if they're connected or not and all that, so I was wondering how 38 million...it came from outdated methodology when I used to be on the Commission.

COMMISSIONER MEYER: When you say the dike-confined high-level, to my understanding there may be separate pieces there, but what elevation are those?

RYAN IMATA: Good question, do you have the map? Do the 8.5 x 11. Do you see the dashed line, the vertical line? That's what we could estimate to be the area that impounds water at a higher level. I don't know what the ground elevation is.

COMMISSIONER MEYER: I always wish for a big MRI machine or something.

RYAN IMATA: Yeah, wouldn't that be great?

DEPUTY KAHAHANE: We're interested in developing a more complex model to tease out some of these interactions.

**20250401 00:13:35** – *Deputy Kahahane resumes presentation*

COMMISSIONER MIIKE: Several comments, one is that way back in about 2013 I suggested to the National Park Service that they seek designation of a water management area and just to push the Commission to claim that their springs on their property was an existing use. Now the Commission turned down the designation and I think that's a mistake because right now we're in a muddled state. What authority does the Commission have in a common law area? I mean the common law is mostly about overlying land owners and their competing interests and they can challenge each other.

The way that this thing is going, I think one of the submittals was that we're behaving as though this is a water management area. One of the things we need clarification on is exactly that. Second is that in the Ka Pa'akai Analysis, I think in Kaua'i Springs it said that we can't say, "oh we don't know." We have to affirmatively develop some information, but we can't develop information in this Ota Well thing until we do some testing. I know there are objections on even going forward with the well construction permit, but how can we meet the Ka Pa'akai Analysis if we don't have any information beyond what the current hypothetical situation is? I have a lot more stuff to talk about, but I'll shut up.

DEPUTY KAHAHANE: I'll answer the first question. I take your point, I do. The Hawaii Supreme Court has recognized that even outside of water management areas, there is an overlying public trust obligation and there are no vested rights in the public trust resource to the detriment of the resource.

COMMISSIONER MIIKE: I need to also say that in the Waiāhole case, we said that there was a categorical imperative to protect the resource and the Supreme Court said no. They said that there are no absolute priorities even among public trust purposes and then they sort of punted it and said that we had to do it on a case by case basis, including other uses other than public trust resources, but they're going to have the last word. Every time we tried to do something, they said you got it wrong. We're stuck in that, but the main point is that it is not correct to say that we protect public trust purposes no matter what. We've got to decide what's the relative importance of things.

DEPUTY KAHAHANE: Absolutely, it is a balancing act for sure. Regarding your second question about the need for testing before we can make a decision about Ka Pa‘akai, absolutely. That’s sort of what we’re trying to do here with the adaptive management planning process. We need to make decisions based on the data that we have now, but we also need more data to inform better decision making and so that’s why I’m proposing to turn this from a line into a circle so that we’re continually learning more about the resource. It’s also why we have structured this the way that we have with the construction permit being sort of the bread in the sandwich here with the adaptive management plan being in the middle before we bridge to the pump installation permit. I know that there are objections to how that’s being proposed, but we recognize that there is the need for testing and if this well is eventually going to withdraw water maybe one day, we need to be able to test its actual impacts. Numerical modeling is useful, but we would like some practical information about the impacts of the well.

COMMISSIONER KAGAWA-VIVIANI: I also want to add, it’s not that there’s no data or no information, and I’m going to preface my comments with, and I know this is about the AMP and not Ota Well, but one of the things that came up in April 2024 is that I didn’t think we as a Commission had done a good job of including in the record what knowledge there was existing, even if it wasn’t collected directly by Commission staff. So, we sort of had to buy some time to do that homework. I’m kind of appreciative, it’s a little bit better articulated here rather than just like a lit review, a more sort of deliberate process on how to take the existing information, gather new information, and then translate that into actionable steps. Because I’m an academic, you can study anything to death, right? You don’t need paralysis by analysis, but we do need to have a process for incorporating that.

The challenge here is that the kind of information that we need to make an informed decision is different. It’s not what we’re used to, it’s a groundwater system and we don’t measure it well. There’s newer ways to do so- I think there’s easier ways and harder ways, there’s cheaper ways and more expensive ways, and if we can be really strategic in how to stretch the resources we have to get that, I think overall it’ll be helpful. But I had to go back and look at those eight conditions. One of the things we fall short on is that very first condition with consultation and understanding. With that consultation, it was sort of, it was lacking in April 2024 with input from ‘Aha Moku and DHHL. I think this could help us as there are more permits coming in for Keauhou to have a structured process for that so we don’t have to be reinventing every single time. That was my comments. I appreciate the presentation and being walked through why and what.

DEPUTY KAHAHANE: Any questions for Peter?

CHAIR CHANG: Maybe some background, Peter, because I know you also worked on the previous projects. If you can provide us some...

PETER ADLER: Aloha, Commissioners. Yeah, this, for me, this current work with Ciara and Ryan and Katie and Neal, it grows out of the 2017 symposium, which had a quite an

extensive record. Not everything was correct. We've had some corrections, but it's a pretty good example of several days of intensive discussions that went on, including site visits. The pertinent piece at this moment is really looking at what the Native Hawaiians said at the start, but also at the indicators that were developed at the very last session. And this is a sort of a jump off from that portion for me. I'm looking forward to diving into this. We're in the deep end of the pool. We'll get in there as fast as we can. We actually haven't even started officially and, it's constrained by budget and timeframe. But my colleague, Stephanie Tsang, who's a project assistant on this, we're going to work pretty fast and pretty hard to get it all done. I'm happy to answer questions unless they're too hard.

COMMISSIONER KAGAWA-VIVIANI: There's a gap between that symposium and where we are now. And I have passed you what information I have. There's literature that has been published and literature that remains as student theses that are not as visible. There's also testimony from every single, I think, meeting that has been, for me, very informative because a lot of these, especially with regards to traditional and customary practices, they're not documented in really public ways, right? For good reason- who shares their fishing spots? I hope you sort of fold that in. And that testimony for me was very important.

PETER ADLER: I'm really looking forward to your help on that. And what we're going to have to do, I know there's a lot of good material and new research that's been done. And what we would want to do is figure out what is most salient to this effort, because lots of stuff, and we're looking at that. We're going to look at as much of that as we can. what rises up to the top? Data-wise.

COMMISSIONER KAGAWA-VIVIANI: And data being qualitative information as well as quantitative, yeah.

CHAIR CHANG: I think my comment is more like a process on Ka Pa'akai. In my view, the obligation to do Ka Pa'akai is the applicant. But what I see with the AMP is this is being initiated by CWRM. This is, we're looking at a much broader regional approach and we're looking at trying to take in more information, more data collection. I'm really comfortable. I do think that there is a need to be more inclusive and I'm hoping we build upon some of the information that Aurora talked about. Sometimes we get consultation fatigue. We go to the same people over and over again and they get kind of tired. Like, I already told you, I mean, we have to find a better way of documenting and memorializing that we're not having to go back and revisit. But I'm of the view that in my view, under the court cases regarding Ka Pa'akai, traditional and customary practices, once we get into a permit, that obligation is shifted to the applicant to provide us specific information on that specific application. Because in my view traditional and customary practices are specific to the place.

You have to have a connection to the place and I do expect that that is the applicant's burden. What I'd like to see in the submittals is, because sometimes we all don't have the benefit of what that engagement process is. that when we do have an application that

comes before us, that analysis does include the consultation process we can feel some level of comfort that there's been a genuine engagement process. I think we can no longer just talk about checking off the boxes. I see the AMP as being sort of this much broader umbrella that will apply again on a regional basis, good data collection, good collection of information, even cultural information that, because again, an application is very site specific, but generally when we look at Ka Pa'akai, it's what happened in that ahupua'a. In my view, I think some of the historic, cause we don't know enough about what's happening subsurface, but if the practices confirm that people crossed over ahupua'a, that probably signals that there's some interconnection between the resources.

And I think that that's going to come out in some of the consultation process, but I do think we rely too much, I think on Western methodology. But if we look back at the indigenous knowledge from that place, it can help us inform what were the dynamics of the cultural practices that they relied upon the resources. If the resources, if in one ahupua'a you didn't have something, but yet we know that there's, perhaps water that flowed someplace else. I do think that that historical information will be very helpful when we look at applying the scientific information about either reaffirming what we may scientifically know, confirmed by some of that historical documentation. I think this regional approach is very helpful when we move into the specific permit applications because that can help us inform what does the regional information provide us when we look at a specific application?

PETER ADLER: Chair, given the constraints that we're working under for this of timing and deadline and funding, the approach we're thinking about in discussion with Ciara and others on our staff is thinking of this as a very first generation plan that can be grown in second and third generations with more data, more consultation. We may not be able to get everything done in this. I just encourage reasonable expectations of what could be done.

CHAIR CHANG: And you and I always know about managing expectations, I do appreciate that. But I think what I saw, it is circular. We generally have been looking at Ka Pa'akai as being sort of this horizontal, there's a beginning and an end, but clearly it feeds into the more information we know, the better assessment, the better mitigation we can come up with. While I totally recognize this is the first generation, this is going to be, as Ciara indicated, an iterative process that as we get more information, I am anticipating that once we get to that last, because this is just the beginning of development.

I know everybody is biting at the bit to develop Kona, Keauhou. And unless we get this first one right, I'm hoping that what you can come up in this process are a lot of tools that will help us replicate as we move forward, both consultation tools, but scientific tools, but it will help us identify where are the gaps, what don't we know? One, there's assumptions that we're going to start off with. And as you move forward, there's going to be recommendations about, okay, these are the gap areas that we're going to have to be cognizant of as we start looking at different, decision makings on various permits, or whether, I mean, in my view, we may end up at the end of this, even after the AMP, deciding we should designate Keauhou.

That may be the outcome of all of this, is that, it does appear that at different stages, there's been recommendations to designate Keauhou as a water management area. Maybe that becomes one of the consequences of this AMP. It either supports or it becomes a rationale. We'll see.

PETER ADLER: We've got a lot of issues, Dawn.

CHAIR CHANG: I know, it's an ambitious schedule you've got.

COMMISSIONER MIIKE: My understanding of Ka Pa'akai is that it's our responsibility, not the applicant's.

CHAIR CHANG: I apologize, you are right. But the applicant has a responsibility to provide us the information for us to...the applicant better come in with some good facts. I mean, otherwise, in my view, we cannot fulfill our constitutional obligation.

COMMISSIONER MIIKE: Well, all I'm saying is that, I think they have the obligation to say what public trust purposes are out there. But then it's up to us to decide what can be done about it and what's feasible. Feasible means, as the Supreme Court has defined, a cost and benefit analysis, not just because it can be done, it has to be done.

CHAIR CHANG: It is a balance, you're right. I do stand corrected. Well, I believe the applicant's obligation is to provide us information upon which the Commission then fulfills its constitutional obligation.

COMMISSIONER MIIKE: One last comment is that I brought up the issue about common law over-ruling in this area versus the Code on the water management. However, from what I understand about the public trust duties of us, it overrides any particular legislation or law. But I still am unclear about how much of that we can impose on a common law area, just in terms of the remedies that we put on it. We're probably going to go to a contested case on these things. But by the way, I just want to remind the Commission that however we set the sustainable yield, it's not an appealable decision, right? The interim instream standards are because we're balancing interests, but it's already been decided that for sustainable yield, it's whatever we decide it is.

COMMISSIONER KAGAWA-VIVIANI: A couple of thoughts, just having served. One thing I noticed, with the Ka Pa'akai, there's this debate on whose job it is, and also repeatedly I've seen-and I almost went into environmental engineering industry-the way it works is like the person who pays for the work actually gets a lot of control over what gets put into that final report. When I'm on the Commission, kind of reading the application, I'm thinking, wow, sometimes the permit applicant has a vested interest in not including some information, and we need to have enough knowledge to correct that and oftentimes I think we don't. I don't know this area that well so I appreciate the idea of this AMP as giving us the tools to evaluate these statements versus saying the

applicant said this, thus there's no effect. And I'm thinking, well, that doesn't really follow. I'm excited to see how this works.

The other thing, I have a question for you Ciara, when I was reading about the whole aspect of triggers, it reminds me of water shortage planning. How do you see this informing regional water shortage planning, which we've actually done really poorly with on the Commission as identifying those triggers. It's not a water shortage plan, but have you thought about how it could help shape people's regional planning efforts?

DEPUTY KAHAHANE: I'll confess I have not really thought about how it could inform water shortage planning. I mean, most of our water shortage planning criteria currently are directed towards groundwater, but they are broad, shall we say. And I think they're in need of some updating. This exercise may give us some more information about groundwater, its interaction with pumping, its interaction with rainfall that we're then able to use to better define our criteria for water shortage and how we plan to address water shortages.

COMMISSIONER KAGAWA-VIVIANI: I know it's out of scope, but I'll just say from Red Hill and thinking about Pearl Harbor water shortage plan and what it did and didn't incorporate. I think there's a lot to be thought about and learned in terms of, the wells look okay in Pearl Harbor, but spring flow has been declining for a long time. Different metrics sort of have different sensitivities and then we had absolutely no consideration of how to do contamination metrics. Maybe AMP is a way to sort of run those scenarios. If in the scoping efforts, if there are concerns that arise at some point in stakeholder engagement, putting a pin in those and being like, okay, those are things people care about and those are the things we should have some framework for considering and a workflow. Because the Commission doesn't look at water quality, but DOH does. And I have no idea if it's a concern in the area, but if it is, note it somewhere and have it as something that future Commissioners and staff who may not be, who likely won't be the same people, can take into account.

COMMISSIONER HO: Yeah, I agree with you. I like the concept of the regional AMP and it could be used as a tool to identify potential issues as a footnote or something that we can look through, look at it when we're reviewing permit applications and other things. Or even the Department of Health can look at this document and assist in determination of water shortage and things like that. It is really the whole concept of One Water, right?

CHAIR CHANG: Maybe this is a question for Aurora, but I'm wondering how can we be efficient with different modeling techniques that may be existing or in process? I think of the Red Hill and we have the University of Hawaii doing a modeling of the groundwater. Is it of some mature development that it can be used for us to have a good understanding, and I know that geology is different. I'm not assuming that all geology is the same, but are there sufficient modeling methodologies that they're using at UH for Red Hill that can be otherwise instructive to modeling?



COMMISSIONER KAGAWA-VIVIANI: I've been telling Ciara, sometimes there's that parable of the blind monks and the elephant, and everybody knows sort of what they know, or if all you have is a hammer, everything looks like a nail. If you're a modeler, you think that you need to model it, but honestly, what I think is important, the geologists will call it is a conceptual site model. You have a conceptual understanding of how the system works, but I am personally, I'm a field empiricist. I take data in the field. I measure things with sensors, that's my bias, and you can take forever to get a model right, and even modelers will say all models are wrong, but some are useful. You want useful. I think fundamentally the big challenge is RAM is based on an assumption that the geology is like O'ahu, but Hawai'i Island geology is different. We have to have a conceptual model - and it's not going to be perfect because you don't have that MRI, but you have a conceptual understanding and it's backed up by some data of sampling. There's this connectivity between high level and the deep confined, but the basal is maybe smaller.

In an exchange with a geologist, he thought it would mean a decrease in the sustainable yield for the basal, but what that means for the others, I don't know. That needs to be thought about carefully because in my mind, I'm like, well, is that water feeding springs or is it completely bypassing? Is that water feeding the deep water fisheries off Kona? You're going to take forever to figure that out, but as long as you have a system- we'll call it monitoring practitioners, we'll call it kilo-of close observation and then be like, hey, something's weird, I think it might be connected. You have a mental model of what you think is happening. You can then say, okay, what if we change this activity? You can watch what happens and be like, okay, maybe my assumptions about the connectivity are wrong or maybe they're right. And that's where the adaptive part comes in, but you have to know where to watch, right? And what to look for and where, and that means you have to have a better conceptual understanding of the aquifer. I don't know if that answers your question, but I think you could spend a lot of money and time on modeling.

CHAIR CHANG: For me, that's sort of the concern. We don't have a lot of money. We don't have a lot of time. Can we build upon whether it's modeling techniques? But I also know that Don Thomas, I think they did, they've been looking at, I remember sitting in a presentation that his team put together. I'm hoping that part of this exercise is building a bibliography or inventory of all available resources and information, and then sort of identifying what are the gaps and then how do we fill those pukas. But I don't want to reinvent the wheel or I want to maybe refine the wheel depending upon what we do know about the geology. Again, I am not a scientist. I'm just a process person and I'm an administrator that we don't have enough money. We don't have enough time. how do we do this more efficiently if we can build upon some existing information?

COMMISSIONER KAGAWA-VIVIANI: I think that's a good question. One thing, I'm trained as a hydrologist and ecologist, and there's oftentimes an obsession with the hydrology that doesn't connect to the ecology and then the users, the people who rely on that ecosystem. I think the challenge with the AMP is really in that, the water to the ecosystem, to people who rely on it.

CHAIR CHANG: And you're going to have an advisory board that kind of helps you with some of that. I think it's helpful to understand that that's how that feeds into your process here.

PETER ADLER: We'll develop a preliminary outline, which we'll come back with that. And that will also give you a chance to say, wait a minute, here's an uncertainty, here's a risk, here's a caveat, here's what we're planning to do, here's what's missing from this timeline and funding effort.

CHAIR CHANG: That's what I heard Ciara say, which I think would be really helpful rather than going for several months down the road, feeding in both the public as well as the Commission. My understanding, you were going to come back in May maybe, and then getting some feedback from, again, the public and the Commission on this looks good, and then you move forward. I think that's really helpful to sort of a more regular accountability process that neither of us are going too long, we didn't think you were doing this, or we thought you were doing this.

PETER ADLER: It's usually the case, yes.

COMMISSIONER KATAYAMA: I have a 9,000 foot question. I like the AMP, I think that's a great process to go in. You have Wai'anāe coming up as a water management, how much of this process would you apply to that analysis?

DEPUTY KAHAHANE: I mean, we could take this whole...do you mean the analysis for Keauhou analogized to Wai'anāe?

COMMISSIONER KATAYAMA: Well, the whole process of AMP. I mean, Keauhou is unique, and I think it's been well-described and well-debated. But as you get other regional, like Wai'anāe, West Maui. Do you have the resources, the time, and is it, could you apply the AMP process to those areas? To me, that's just as critical.

DEPUTY KAHAHANE: Yeah, I agree. Of course, the resources and the time are always the difficult part. We have discussed this in the context of West Maui already. And I think it's timely to implement something like this there given the relatively recent designation and given the...

COMMISSIONER KATAYAMA: Relative pressures.

DEPUTY KAHAHANE: Relative pressures, yes. For Wai'anāe, I would like to apply this everywhere. I think we do need to be judicious in determining which places is most appropriate to apply them. And it is going to be a stretch with our current staffing and our current funding.

COMMISSIONER KATAYAMA: What are the triggers to apply AMPs or sort of remain the traditional approach? You went through a whole need for the Keauhou Aquifer. What

are your triggers that will say, we need to focus an AMP project on this upcoming analysis?

DEPUTY KAHAHANE: I think the degree of conflict, the degree of complexity of the hydrogeology, how close we are to sustainable yield, whether we're seeing impacts on cultural resources or ecology in the area. Kind of similar stuff to what we look at when we decide if we need a deep monitor well somewhere is very similar to what we would look at for determining where adaptive management is most critically needed.

COMMISSIONER KATAYAMA: But that sounds like Wai'anae and West Maui.

DEPUTY KAHAHANE: Yeah, I agree.

CHAIR CHANG: What I have appreciated in this process is because you don't have the capacity to do it on your own, is the ability to bring on board a consultant. I think it is helpful, it needs to be done. To be honest, you have West Maui designation and you have Wai'anae. Those are huge tasks on staff. I do want to give everybody a heads up. All of you who have permits or applying for permits, we need to amend our rules to permit us to start charging regular annual fees so we can do regular monitoring and accomplish a lot of these tasks. But we need to find a regular source of revenue to support, whether it's to consultants or whether it's just technology. I think we do need to likewise move in that direction that you can do this, meet the needs.

COMMISSIONER KAGAWA-VIVIANI: One more question. Ciara, I know offline you mentioned the possibility of a permitted interaction group to support that. Is that still being contemplated?

DEPUTY KAHAHANE: It is being contemplated. And perhaps when we come back in May, we can have a decision item on that. I think there is a need or at least an interest for the Commission to have more touch points on this process. I think it would be useful to have that outside the monthly cadence of a Commission meeting. I would be interested in creating a permitted interaction group, perhaps to allow a select number of Commissioners, maybe a cross section of expertise to weigh in more regularly and be more involved with the process.

## PUBLIC TESTIMONY

ASHLEY OBREY: Aloha Chair and Commissioners, Ashley Obrey on behalf of Hui Ola Ka Wai. I do want to thank deputy and staff for working on this concept. I think it's nice to see this proactive approach moving forward. Obviously you've seen our testimony on the other agenda items. Taking this separate, just really wanting to emphasize making comments that I think between today and this coming back to the Commission, really involving community in the development of what this project description could look like. I think that would go really far. Also, just transparency and process from contracting to selection of experts, selection of all the people on the panel and that kind of thing. I think

that would just really go far in public's trust in this process going forward. That's really all I had on that item.

CHAIR CHANG: I appreciate the comment about a proactive approach. Your comment is involving the public in the process. What you heard today, presentation on the process, why we're doing it, Peter Adler is being the consultant. What kinds of recommendations are you making to us about process?

ASHLEY OBREY: I think in our testimony, we had like a number of things that were still questions in terms of what the project description look like now, but I recognize that that could change between now and it coming to the Commission for some kind of decision. Just between now and then engaging, whether it's us, other members of the community, I don't exactly know what the best route is to bring other folks in, but I think there should be an opportunity. I don't know if that means taking extra time to come back so that there is room for people to weigh in. Cause I mean, you wouldn't want to come back to the Commission and then there's still problems. We may as well get rid of those problems.

CHAIR CHANG: Do you have a recommendation?

COMMISSIONER KAGAWA-VIVIANI: Can I add something? Just because I raised those questions with Ciara when she brought this to me for suggestions last week. I did ask why the compressed timeline and it is because of the funding, that's understandable. But I did yesterday ask about what's the options for extending that timeline. Are there other sources of funds to allow it to, not to be drawn out, but understanding that there's a lot of trust issues to work on. That has been raised, at least from my position as a Commissioner. But if there are concrete, and that's what Dawn's asking, if there are concrete suggestions on what that looks like from your end, being a little bit closer to folks on the ground, please, assuming we're not in a contested case, please do communicate.

ASHLEY OBREY: I would very much like to be able to relay our suggestions for our Hui. There might be others in the community who have thoughts as well. I'd be open to that.

CHAIR CHANG: No, I take your testimony very seriously. You come to the meetings and we've read your testimony and you are on the next item requesting a contested case hearing, but I would rather us be, to the extent that we can incorporate some of your recommendations, or at least consider your recommendations, that to me is really important. And I don't want to wait until we come for decision-making and then there's these recommendations. However, you feel most comfortable, whether you want to convey those directly to Ciara in a constructive way, because like I said, if we consider using this regional AMP approach in the future, I'd rather get it as close to being right. Taking into consideration you and your clients' concerns are really important. I would rather deal with you in the boardroom than deal with you in court. Let me put it that way. It's generally more effective, it's cheaper. However, you feel most comfortable, either

relaying directly to Ciara or putting it to the Commission, but if you could communicate, and again, we will all look through your testimony again, but your specific recommendations on community engagement, for me in particular, that's really important. I'd like to hear how you and your clients would like to be engaged.

COMMISSIONER HO: Can I, for clarification, you're talking specifically about the plan?

CHAIR CHANG: The AMP. Yes, because if this becomes a model for how we look at whether it's Waianae, Maui- community engagement is a critical component to that. And if there's something we can do better from the community, and you represent in many instances, stakeholders who have not been engaged, who have felt that they don't trust us. The more I can get a better understanding of what is a better engagement process from you guys, that would be really helpful.

COMMISSIONER MIIKE: What is the deadline for this to be completed again? Was it September?

CHAIR CHANG: September, but Ciara was saying she may be able to find money that we can potentially extend.

COMMISSIONER MIIKE: What I'm concerned about is that this is now becoming the big, broad blueprint for everything. And we need a deadline for this specific project. Let's keep that in mind. I mean, I'm all for having a great process that never has to be changed, but that's never going to happen.

CHAIR CHANG: I'm hoping that by the time Ciara comes back to us in May, there's a maybe refined timeline too. Either we've either found additional funds or there's something else, but it is a much more detailed timeline that we can look at. But I'm with you. I'm not at the point of fish or cut bait. We got to move forward some way or the other. We'll never get it totally correct but recognizing that we do have a timeline. What are some of your recommendations?

ASHLEY OBREY: I have been in touch with Ciara a little, there's that aspect. I do know that the community appreciates you folks or people being in the community, meeting with them in person. As much as I can relay information between us and the clients, there's a lot of people I don't speak for who may want to show up and give comments. If there's room for that, but I don't know how we do that in a month.

COMMISSIONER KAGAWA-VIVIANI: Can I ask? What I learned, not having been around in 2017 for designation is that with former Deputy Kaleo Manuel there was the symposium, but there was a reason why symposium two didn't happen and that was because in consultation with Charlie Young of 'Aha Moku, that they preferred a smaller group. What size of a group does it...if there are best principles, because I'll just say from the administrative side, that's not how state government usually works. Concrete

details, even where sometimes those meetings are, can matter. Please put forth those specific kind of suggestions, or if others have them, it's easier to incorporate now.

COMMISSIONER HO: One thing I learned from Red Hill is community engagement is important. We have had many meetings with the community, but not often, sometimes in person, but sometimes over the internet, sometimes we have those kinds of meetings. If those are the kinds of things for the community to feel more involved, we've certainly learned from community engagement and I can share that with Ciara.

CHAIR CHANG: It's just been my own experience. Talk story is better in person and it's better in a safe space. And sometimes the boardroom isn't always a safe space as well as it's travel. I know that Ciara them and her staff as part of the Maui water designation process, they have been going out. I'm going to defer to Ciara and her team on how best to do that. And to me, we do have an obligation to the extent that we can go out to the community that's being affected. It may not be the board, it may not be the Commission, it may be staff. Again, please feel free, give us your best recommendations, both on methodology, process, place, time, manner, for our consideration. Not that we can do everything because we talked about trust. And a lot of times trust comes with the good faith effort. Please know we got a lot on the agenda on just our own plates, but to the extent, this is an important item. This sets the tone for how everything else is going to be done in Kona. To the extent that we can try to get it as close to being right as possible, I'd appreciate any guidance you can provide us.

CHERIE KA'ANANA: Hi Chair Chang, Commissioners. I am Cherie Ka'anana from the Department of Hawaiian Home Lands. I'm the Water Program Specialist. Thank you for your presentation. That was super helpful. I just wanted to emphasize that the department stands on our written testimony and that we appreciate the opportunity to provide our comments.

CHAIR CHANG: Like the same question I was asking Ashley, does DHHL have any recommendations on specifics, in particular, community engagement?

CHERIE KA'ANANA: We recently completed a final environmental assessment for a well that we're pursuing in North Kona, and included in that is a Ka Pa'akai and mitigation measures. And we just recommend that if the staff is able to, to take a look at those mitigation measures and potentially include those in the AMP.

CHAIR CHANG: Did you provide those to Ciara?

CHERIE KA'ANANA: The link is included in our testimony. It's a little long to include.

CHAIR CHANG: No, that's okay, that's helpful. I'm sure Ciara, her staff will take a look. Thank you very much.

DEPUTY KAHAHANE: It's a really good Ka Pa'akai analysis.

JONATHAN SCHEUER: Aloha mai kākou, Commissioners. For the record, Jonathan Likeke Scheuer testifying today in front of you as an individual to somebody who's been involved in Keauhou designation matters and other discussions for quite a while. I guess I want to start with I think we've come so far and I really want to thank you and Ciara to actually have the Commission affirmatively bring up things like the existence of groundwater dependent ecosystems, which was a struggle to get those words stated at the start of these discussions. The fact that there's limits to the sustainable yield process, the fact that as Dr. Miike described, your public trust duties exist everywhere. Starting from that point is like, okay, the conversation has advanced, even if it seems like it's going really slow. But I want to sort of go on to a remark that you made Chair a little while ago, is that you don't want to reinvent the wheel in this process.

I think I want to be clear. That is exactly what the Commission is trying to do here. And I think when Dr. Miike started off the discussion and said that like there were these consequences of denial of designation. You said, hey, we think we can invent a better wheel, right? Like, what's the wheel that you have in front of you, just in general, right? I would start with like a spokes of the wheel, the presumption like you have these public trust duties everywhere. Designated or not, you still have these duties to protect public trust resources. You have a water resources protection plan that sets forth groundwater sustainable yields. You have water use and development plans for islands and in many cases, subsets of islands that help them take those principles and put them onto the ground. You have case law that guides you. And then when it's needed and you need more administrative tools, you have designation in the water use permitting process.

When the Commission chose to not do designation, instead trying to figure out what to do differently, you grabbed a couple spokes out of the wheel. And you said like, okay, but we think we can ride on this, right? And now the AMP is like, okay, maybe we can sort of put this into the wheel and we'll still be able to roll forward. We already know that as good as the wheel is, there's a couple of limits to the wheel. And the one polite disagreement I will have with the deputy's presentation when she said that the setting of interim instream flow standards is analogous to the setting of sustainable yield, is that it's actually flipped on its head because you fulfill your public trust duties when you set in-stream flow standards because you begin with your duty to protect public trust resources first. And then say, okay, when we've done those, how much might be available off stream for other uses? The method by which the Commission has set sustainable yields to this point has been saying we want to determine the maximum amount we can extract first. And that's actually really what has led to some of the problem here because you can have an impact on a groundwater dependent ecosystem with pumping well below sustainable yield if the well is close to that ecosystem and pumping hard.

You could theoretically be pumping an aquifer well above sustainable yield and not actually impacting groundwater dependent ecosystems for a long time because the pumping is far away and impacting some other areas. Regarding the AMP, I'm encouraged by the effort to do this, I'm concerned with the quick timeline. But I think the critical things you need to do to see if there's a lot of hope on this, like, oh, yeah, this is all jammed up and we've been riding in this car with this wheel. It's like we're going like

this, right, because we keep hitting the ground every time it spins. If you want this, let's jam this spoke. And I think you have to ask, okay, how are the other spokes and how does it relate to these other spokes? And a metaphor to help you understand some of the comments that were made earlier. Dr. Miike asked directly, in a non-designated area, can you put conditions on other permits?

That's sort of what this depends on, right? If it's going to work, you kind of have to do that. But one thing that you get in designated areas that you don't necessarily seem to get on this is that the impacts on groundwater-dependent ecosystems are cumulative. You can't address reducing pumping from a new well and expect to solve the existing impacts from existing pumping. You actually have to apply conditions on all pumping in an area. And one important distinction between the draft adaptive management plan that was developed by the National Park Service at the request of the Commission and what's being proposed here, was that it started with a presumption that said, okay, we want to maintain pumping at no greater than what's happening in these four ahupua'a. And the adaptive management will be, if we're seeing changes, we will reduce pumping. To the degree I understand what is being proposed here, it's, "here's how we're going to allow additional pumping," which is a really different sort of approach and doesn't necessarily get you to what your duties are to protect public trust resources. It doesn't deal with you still have a couple tools, right? It's like a couple spokes in the wheel. You have the water resources protection plan, but it treats the whole aquifer as a single undifferentiated basal lens, which we know is not the case, right?

On a very practical level, somebody comes in for a well that they want to put in the high level or a well that they want to put in the deep confined. I don't know how an adaptive management plan is going to be able to determine what conditions you would place on it. And there's still no, despite it being committed to in 2015, updated water use and development plan for Keauhou, which would guide how the county expands its system. I think there could be great value in the production of an adaptive management plan, but I think there needs to be a lot of clarity and ultimately a policy decision from this body on what it is that's specifically trying to be accomplished, knowing that you have some spokes that are a little bit jammed up, some spokes that are missing if you're going to do it. I just offer these comments and hope that it helps you. This is a confusing and complex issue with a long history. And hopefully my comments are just designed to help your deliberation.

CHAIR CHANG: You want the bike that has the water management designation. That's what you want.

JONATHAN SCHEUER: I tend to agree with a statement Dr. Miike has made in the last two sessions, which is the entire state should be designated, which is something that the Review Commission on the State Water Code said five years after. I think you guys are in an impossible situation when you have public trust duties everywhere and only the real tools to administer the code in designated areas. That said, if you're committed to spending the resources to go down this way, do it in a way that's more likely to sort of result at least in some forward progress and success.



CHAIR CHANG: I think for me, that may be the result of the AMP process is that the outcome is we should designate this as a water management area.

JONATHAN SCHEUER: I want to be clear. I'm not here arguing for designation. I'm here arguing for, here's how you should think about the challenges that you're facing given the past decisions of previous Water Commissions.

COMMISSIONER KAGAWA-VIVIANI: Thanks for this. A major point that I take away is really thinking about how the AMP fits within our existing right- connecting it to the other spokes. How does it connect? One question I have and one thought I have is we already don't do adaptive management for climate change well. It's sort of mentioned in the Water Resource Protection Plan, but there's no thought given to how. We've had previous conversations about the fact that we chart sustainable yield as a line like that, but we know recharge is changing. Maybe it should be like that. But the bottom line is we could spend-and I see this coming from climate science circles where we just talk in circles about whose model is right and then don't do anything because we're frozen by uncertainty. I see adaptive management requiring us to do more sort of strategic monitoring, although it doesn't necessarily have a place in the administrative law, regardless of whether that monitoring is for the effects of pumping or climate change.

Could that be useful and where would you see that potentially fitting with your knowledge of these different spokes? I don't know if I'm being clear, but regardless of the cause. I just say this with climate change and water resources in Hawai'i – that could be declining with rainfall decline or because of paving and changing forests- water is decreasing and we do need to a way to respond to it, regardless of the cause. Is that something that we that you see the AMP could spark, but then I don't necessarily know which documents it really lives in.

JONATHAN SCHEUER: I don't understand administratively in terms of law, whether it is attached as official document as an amendment to the Water Resource and Protection Plan or I don't understand. Actually, it's sort of unique authority that you're trying to exert here. I will say your comment did raise for me and from the representative from the Department of Health, your ability, even in a designated water management areas is crude. It's to reduce pumping, right? But there's things that can help with adaptive management of water in the area, which includes reuse and efficiency measures and other things that are outside of your control, too. I mean to get to whether it's North Kona, Keauhou or anywhere that we care about, we want thriving communities. We want water for new housing. We want these things to be produced. Getting to those solutions. You're part of the solution by protecting these public trust interests versus extraction. But you're going to be greatly aided if the other parts of the equation do their work, whether it's investing in recycling, whether it's investing in efficiency measures, some of which you have some authority over, I would argue, and Water Resource and Protection Plan and particularly the approval of the county water use and development plans. That's why it's important to consider this in light of the whole wheel, not a perfect metaphor, but maybe

useful. We've all driven in those bumpy broken down trucks on field trips right where we're like banging our head on the roof.

RANDY CHU: Madam Chair, persons in the Commission. I'm Randy Chu. I'm the development branch chief at HHFDC. I'd like to submit testimony in support with the staff's proposal for an adaptive management plan. We believe that it's a holistic approach process to address the cultural, scientific, and public trust requirements for the State and the AMP is really needed in order for our community and State to move forward, imua. Thank you.

CHAIR CHANG: I appreciate the succinct testimony. Thank you so much.

**20250401 01:29:48 - Break**

**20250401 01:40:34**

#### **A. ACTION ITEM**

- 1. Approval of Well Construction Permit Ota Well (Well No. 8-3957-006), TMK (3) 7-5-001:165, Lanihau 1-2, Moeauo Ahupua'a, Keauhou, Hawai'i – Item Withdrawn**

PRESENTATION OF SUBMITTAL: Deputy Ciara Kahahane

#### QUESTIONS / COMMENTS

COMMISSIONER MIIKE: I was going to say that there is no well driller, right? The Code requires the well driller to be the applicant, so that was a hurdle to be overcome anyway.

CHAIR CHANG: I do appreciate the withdrawal or the deferral. I think it is important that Commissioner Springer participate in the discussion and the decision. I suspect that there will be some who will be very disappointed that we're not pursuing this. I also think it is an important matter before this Commission and I think it is important that she participate in that. I appreciate everybody's sort of patience with us on that matter. But I support the deferral. But we do have a lot of people here who want to provide comments. I'm going to still permit comments to be submitted. We're going to stand by the three minutes so that we keep this going because I think it still is important that your comments will be part of the record and Commissioner Springer, I think it would be very important for her to hear these comments as she gets brought up to speed when we do hear the matter. Again, I don't think we need to have a presentation on the item. It's been agendaized and it's available, but I am going to take public comments on this. It doesn't

preclude you from when we do take the item up that we hear the comments again. But again, please know, there's no decision making on this item, okay?

LINDA CHOW: Can I ask a clarification on this? This is a withdrawal and not a deferral, right?

CHAIR CHANG: Correct.

LINDA CHOW: I will introduce myself. I'm Deputy Attorney General Linda Chow and I formally am here representing HHFDC. However, I'm asking for clarification because as you know, under the Commission's rule §13-167-52, under your process and procedural rules, that if a contested case is to be requested, it must be requested prior to the end of the public hearing. If one is required or public to the end of a meeting and which is on the agenda for decision-making. And if it's a withdrawal, then the time to request a contested case has not been triggered. If it's a deferral, then it may still be triggered and a contested case request would have to be made by the end of this meeting.

CHAIR CHANG: Okay, thank you for that clarification. I believe that First Deputy intended to say withdrawal of this agenda item.

LINDA CHOW: She did.

CHAIR CHANG: Okay, my mistake. Always go back to the First Deputy but thank you for that clarification. For the record, this is a withdrawal of item A1 until such time as Commissioner Springer can participate in the discussion and decision-making. Your client will be very pleased that you clarified that.

COMMISSIONER MIIKE: I just want clarification. It's a withdrawal by the Commission, it's not a withdrawal by the applicant?

CHAIR CHANG: That's correct. A withdrawal by the Commission. I should just let the presenter present and not make any additional comments. I only cause confusion, but yes, thank you very much.

#### PUBLIC TESTIMONY

CHAIR CHANG: I will still take comments because it's on the agenda, no decision. With that being said, I do have for item A1, I have Ashley, and this is who has signed up and then I've got others. Ashley, Charles Young, Keith Okamoto, Wendy Laros, Elena Bryant. I'll take those first and then I will take the additional list. Ashley, do you have anything else you want to add?

ASHLEY OBREY: Pending the withdrawal, I'll just stand on our testimony.

CHARLES YOUNG: Thank you for this opportunity to provide some testimony on A1. And pardon my confusion for the state of where we are now in terms of decision-making,

but I did want to just put on the record. I participated in the ‘Aha Moku facilitation in the original application for the permit and the conditions that were put on there. I want the Commissioners to appreciate that. I was part of the litigation with Ka Pa‘akai o ka ‘Āina in 2000 on the Ka Pa‘akai analysis decision and I am pleased about the robust discussion that went on in the previous item. To this item, if you notice in some of the, and to reference Mr. Scheuer’s comments about some of the decision-making and uses that lie outside the Commission, we look to you, we look to the Commission as sort of like the first clearinghouse and one that has probably the most authority in terms of determining our water usage, the use of the public trust. But there’s a lot of things going on downstream.

If you look at some of the conditions in the first application, the April 22nd, I think it’s 2022, we ask that water not be wasted and is used efficiently as possible. These are county jurisdictional areas and we’ve worked with the county. ‘Aha Moku has been working with the county to address some of those. I’m on the County Action Committee. I’m not speaking on their behalf, but this is for the Kona Development Plan. There have been numerous meetings where water comes up in our discussions. And there are many residents who are concerned that additional drawdown on the water is not just a sustainable yield issue, it’s a usage issue because we do not do a good job of conservation, we do not do a good job of remediating the water. In our suggestion, we suggested that the county upgrade its wastewater treatment from RS2 to RS1 because the water’s being returned and it’s been found in the nearshore waters, it’s been detected and untreated. It’s a concern that if more permits for drilling and for water consumption and for use, if it’s not, the usage is not mitigated either through conservation or through better wastewater treatment plans, then the community is really concerned about that additional drawdown. I thought that would be something relevant, although it’s outside of perhaps your jurisdiction. One of the things that you might consider in conditions going forward is that the county commit to Ka Pa‘akai analysis in its decision-making downstream. I see my time’s up.

CHAIR CHANG: Thank you very much, Charlie, appreciate that. The matter has been withdrawn. There’ll be an opportunity for you guys to provide specific comments at that time. But thank you.

WENDY LAROS: Aloha, Chair Chang, and the Commission on Water Resource Management. My name is Wendy Laros, I’m the president and CEO of the Kona-Kohala Chamber of Commerce. Since our establishment in 1968, our chamber has worked to enhance the quality of life for our community through a strong sustainable economy on Hawai‘i Island. With over 460 member businesses and organizations, our mission is to provide leadership and advocacy for a successful business environment in West Hawai‘i. Water development and housing are top priorities for the Kona-Kohala Chamber. We strongly support freshwater resource development, maintenance, and protection in West Hawai‘i, and we encourage streamlining government regulation to provide predictability for development. Furthermore, we support housing projects at all inventory levels and the necessary infrastructure to develop more housing.

We strongly support the development of the Ota Well in West Hawai‘i as it aligns with our priorities. This well will supply water to the Hawai‘i Housing Finance and Development Corporation’s Kamakana Villages. Upon completion, the plan is that there will be 1,600 affordable housing units. This is desperately needed in our community. The Natural Energy Lab of Hawai‘i Authority will receive water credits to complete the build-out of the Hawai‘i Ocean Science and Technology Park and this is where research, education and innovation come together and provides economic diversity to our region. We are confident this new water source will significantly improve our community’s wellbeing. We appreciate the commission’s attention to this important West Hawai‘i water resource and look forward to a positive outcome.

ELENA BRYANT: Aloha, for the record, I’m Elena Bryant here on behalf of Earthjustice. I was intending to testify in opposition to item A1, but at this time, I want to thank Deputy Kahahane and the Commission for withdrawing this matter until Commissioner Springer is available. I’ll just briefly state some of the concerns that we have about the recommendation to approve a well construction permit prior to assessing and understanding impacts on groundwater-dependent ecosystems and therefore on cultural practices, which we believe would be a blatant violation of this Commission’s constitutional duties. We have concerns about replacing permit conditions that were previously put in place to mitigate impacts on trust purposes as this would be bad precedent and would seriously erode public trust and confidence in the process. Lastly, without an updated water use and development plan and water resource protection plan that considers updated recharge rates, we feel that this would be poor planning. Under the Water Code, we need this critical information in order for the Commission to be able to adequately address future water development and resource protection issues. Otherwise, we’ll reserve our comments and testimony until this matter is brought back to the Commission for decision-making.

CHERIE KA‘ANANA: Cherie Ka‘anana of the Department of Hawaiian Home Lands. We stand on our written testimony and we look forward to participating in any productive discussion that can occur before it comes back.

**20250401 01:57:29**

## **C. ANNOUNCEMENTS**

1. Lahaina Community Meeting – April 7, 2025 at Lahainaluna High School Cafeteria  
<https://files.hawaii.gov/dlnr/cwrm/notice/2025/nt20250407.pdf>

***20250401 01:58:34***

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

April 28, 2025 (Monday)

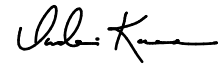
May 20, 2025 (Tuesday)

The meeting adjourned at 11:01 a.m.

April 1, 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/cwrn/newsevents/meetings/>