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HAWAIIAN HOMES COMMISSION

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DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P O BOX 1879
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**TESTIMONY OF WILLIAM J. AILA, JR., CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE COMMISSION ON WATER RESOURCES MANAGEMENT (CWRM)
JANUARY 18, 2022 AT 9:00 AM**

ITEM A.1. Lahaina Aquifer Sector Designation

Aloha Chair Case and Members:

The Department of Hawaiian Home Lands (DHHL) submits testimony **in support** of designation of the of the Lahaina Aquifer Sector; Maui as a Surface Water and Ground Water Management Area (or “WMA”). DHHL has extensive and important land holdings in this area at Leali`i and Honokowai.

The availability of water is one of the key barriers DHHL faces in the development and delivery of homesteads across Hawai`i. Designation of a WMA is a substantive way in which you help fulfill the obligation of the state of Hawai`i to successfully implement the Hawaiian Homes Commission Act (HHCA). This obligation is both a Constitutional mandate and a condition of statehood.

There are at least two distinct ways in which WMA designation helps to fulfill the purposes of the HHCA. Both relate to the fact that the Hawai`i Supreme Court has repeatedly and explicitly stated that reservations of water for, and uses of water by, the DHHL for homesteading purposes are one of the four “public trust” uses of water that are to be provided for and protected above all other purposes.¹ While CWRM has an obligation to protect and manage water in the interest of these public trust uses of water, it lacks many of the tools and powers to do so outside of WMAs.

One of these tools and powers relates to CWRM reservations of water for the future use of DHHL and its beneficiaries. CWRM has the power to and has issued reservations of water for DHHL from surface and ground water sources across Hawai`i, inside and outside WMAs. However, only in WMAs has CWRM done so by rule. This provides a layer of certainty and protection of the reservation which is lacking outside WMAs.

¹ This status is described in, among other cases in re Water Use Permit Applications.⁹⁴ Hawaii 97 (2000), and Kauai Springs, Inc. v. Planning Commission of County of Kauai, 133 Hawaii 141(2014)). The former dealt with CWRM's decisions to allocate water in WMAs, and the latter in part with the consequences of your staff's decision to not assert a duty to protect public trust interests in water outside of WMAs. In both instances expansive and significant case law has been developed exactly when CWRM has declined to take a proactive and affirmative stance to protect public trust uses of water. The proposed designation here is another such instance.

A second distinct way in which designation meaningfully provides you the powers and tools you need is that only in WMAs are water use permits issued. Notably by Code provision all water use permits “issued by the commission shall be subject to the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act, whether or not the condition is explicitly stated in the permit.” (HRS 174C-49(e)). Currently obligations to DHHL are not enumerated in any other permits, including the well construction permits issued across the state.

Finally, we would encourage you, as you hear from other public and private stakeholders, not to be confused as to when designation is required. Some may suggest that designation is not warranted or perhaps “premature” because efforts to manage pumping and distribution of water better are ongoing. They may even suggest that planning documents like water use and development plans are substitutes for regulation. Such arguments represent fatal misreadings of the code and State constitution. When the 1978 Constitutional Convention committee reported on the reason why they used the language they did to unambiguously clarify that water is a public trust resource, they said the following to Convention President Paty (who later went on to be the first Chair of this Commission) (emphasis added):²

Accordingly, your Committee concluded that the Constitution should specify that the State holds the water resources in trust, with the responsibilities of a trustee to actively protect, control and regulate the development of water resources in the State. **This concept implies not only the power to protect the resources but the responsibility to do so long before any crisis develops.**

As is clear, even considering only climate change, a water resources crisis is foreseeable in this area. We would be happy to answer any questions. Thank you for your consideration of our testimony.

Me Ke aloha,



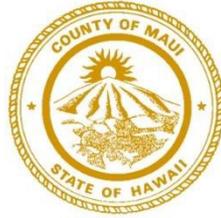
William J. Ailā, Jr., Chairman
Hawaiian Homes Commission

² Standing Committee Report 77, Pages 688-689, Proceedings of the Constitutional Convention of Hawai'i of 1978

MICHAEL P. VICTORINO
Mayor

JEFFREY T. PEARSON, P.E.
Director

HELENE KAU
Deputy Director



DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAI'I 96793
www.mauicounty.gov/water

January 13, 2022

Ms. Suzanne D. Case, Chairperson and Members
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
1151 Punchbowl Street, Board Room 132
Honolulu, Hawaii 96809

SUBJECT: Testimony on January 18, 2022 Agenda Item A.2: Designation of the Lahaina Aquifer Sector, Maui as Surface Water and Ground Water Management Area

Dear Ms. Case and Members,

The Maui County Department of Water Supply (MDWS) offers the following comments on this Commission on Water Resource Management (CWRM) initiative. In the absence of any briefing materials ahead of the January 18, 2022 meeting, at this point MDWS does not understand the rationale and methodology CWRM employed to initiate designation of the entire Lahaina Aquifer Sector on Maui.

Threats to water resources by existing and proposed withdrawals:

Reported pumpage on a 12-month moving average basis, as provided by CWRM, in relation to sustainable yield (SY) is approximately as follows:

| | Ukumehame | Olowalu | Launiupoko | Honokōwai | Honolua | Honokōhau |
|------------------------------|-----------|---------|------------|-----------|---------|-----------|
| SY (mgd) | 2 | 2 | 7 | 6 | 8 | 9 |
| 2021 12 Mo MAV Pumpage (mgd) | 0.049 | 0.074 | 1.434 | 3.777 | 2.450 | 0.000 |
| Pumpage/SY | 2.45% | 3.70% | 20.49% | 62.95% | 30.63% | 0.00% |

It's unclear how tunnel discharge in Launiupoko and Honokōwai aquifers can be counted both against basal sustainable yield, as calculated in the 2019 Water Resources Protection Plan, and as dike source to basal recharge, and how calculations of high level tunnel discharge is consistent with how high-

"By Water All Things Find Life"

level tunnel sources were qualified in the Iao Groundwater Management Area designation and in the Na Wai Eha contested case.

Reported pumpage of Honokōwai aquifer, potentially unreported and varying pumpage, projected future groundwater needs to offset non-potable uses of Honokōwai Stream along with issued groundwater reservation for the Department of Hawaiian Homelands **may** exceed established sustainable yield of this aquifer system only. Factors that influence projections include assumptions about Interim Instream Flow Standards, yet to be established for Honokōwai Stream, water duty for agricultural irrigation needs, expansion of recycled water availability, conservation measures implemented by private water purveyors and implementation of the policies and strategies proposed in the Draft Maui Island Water Use and Development Plan (WUDP), as well as the West Maui Community Plan update.

CWRM has consulted with the MDWS and the Maui County Planning Department on interpreting demand projections and Authorized Planned Use (APU), as defined in the State Water Code. We find that current groundwater use and APU does not reach 90% of sustainable yield for any other aquifer system than Honokowai. Tentatively, MDWS supports investigations to consider designation of **Honokowai Aquifer System** only.

Serious disputes over current and planned water uses:

The Draft WUDP is the culmination of a 3 year long public process, followed by public hearings conducted by the Board of Water Supply, and deliberations over 2 ½ years in council committees. In 2021, council committee chair Sinenci conducted additional consultations with the `Aha Moku Councils to ensure culturally generational Kanaka Maoli perspectives were incorporated. The plan's strategies offer compromises to address community concerns and disputes, align with the General Plan and Community Plan for the Lahaina region to allocate water to planned land use. In their review of WUDP strategies, CWRM staff noted the benefit of strategies to meet future needs, including transfers from adjacent aquifers, to help guide CWRM in future decision-making on water management area designation.

The WUDP is the tool to allocate water to land use in consistency with the water resource protection policies set forth under the overall Hawaii Water Plan Framework. The Maui County Planning Department worked closely with MDWS in their update of the West Maui Community Plan and incorporated proposed WUDP strategies into the community plan. CWRM was consulted with regards to water policies and implementing actions. Both planning documents have included rigorous community scrutiny and CWRM had ample opportunity to provide guidance in the planning process and address any serious disputes over current and planned water uses. The current initiative to designate the entire aquifer sector seriously undermines the enormous effort to engage the community, private purveyors and sister county agencies and the progress in land use and water planning integration the county agencies have achieved to date.

Harm to groundwater quantity and quality by saltwater intrusion and climate uncertainty:

MDWS has funded multiple cooperative studies with the U.S Geological Survey (USGS) to guide resource management for Central Maui and Lahaina regions that specifically address threats to water quantity and quality and climate change impacts. These tools underpin the proposed WUDP strategies to allocate water to land use, guide sustainable groundwater pumpage, address declining rainfall and climate uncertainty. Specifically, distribute pumpage throughout Launiupoko aquifer where increased pumpage in MDWS wells result in high chloride levels. Current well exploration in Launiupoko aquifer is guided by the 2012 USGS study on groundwater availability in the Lahaina district. MDWS is actively preparing to shift to groundwater to reduce reliance on surface water long term and to provide for planned growth of the Lahaina community. Sustainable well development should consider optimal withdrawals of a groundwater unit and the interaction with surface water.

We believe that proactive guidance by CWRM to interpret and utilize available groundwater models and monitoring data to ensure adequate pump distributions are arguably better tools to enhanced and integrated management, than designation.

There are clearly aquifer systems included in this initiative with no basis for designation as set forth in the State Water Code. MDWS does **not** support designation of the entire aquifer sector. We believe a better approach is proactive collaboration between CWRM, public and private purveyors and community representatives to ensure implementation of WUDP strategies as well as resource management policies established in the WRPP. The WUDP has passed unanimously out of Council Committee and we expect the adopted WUDP to be before CWRM in the first quarter of 2022. At a minimum, commissioners should have the opportunity to review the WUDP in lieu of the designation process.

Designation of a Surface Water Management Area (SWMA) is premature and also inconsistent with the WUDP. We believe CWRM's ability to enforce IIFS is at the heart of the problem, a concern that is echoed by the community. At the same time, IIFS decisions must be flexible enough to adapt to the obstacles and time it takes water supply purveyors to transition to practicable alternatives. MDWS respectfully requests CWRM to **defer** SWMA proceedings until IIFS can be adopted for other priority streams, including all diverted streams in East Maui and until CWRM can secure adequate staffing to monitor and enforce decisions.

Sincerely,



Jeffrey T. Pearson, P.E.
Director of Water Supply

From: [REDACTED]
To: [DLNR.CW.DLNRCWRM](#)
Cc: [Hyatt, RaeAnn P](#)
Subject: [EXTERNAL] 1/18/2022 Agenda Item A2 Designation of the Lahaina Aquifer Sector, Maui as a Surface Water and Ground Water Management Area
Date: Friday, January 14, 2022 1:52:33 PM

Commission on Water Resource Management
State of Hawai'i Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813

January 14, 2022

Aloha Chair Case and Members of the Commission on Water Resource Management:

As a resident of Lahaina, mahalo for this opportunity to testify in support of the recommendation to designate the Lahaina Aquifer Sector as a surface water and ground water management area ("WMA").

Designation of our streams and aquifers is an important first step toward securing the stability and viability of our precious fresh water resources. Lahaina's limited ground and surface water supplies highlight the importance of ensuring a lasting source of wai for present and future generations. Moreover, shifts in global climate patterns demand heightened vigilance as we consider humans' long-term effects on our resources. The Lahaina region has experienced steadily decreasing rainfall and drought in recent years. Designation, and the permitting requirements that accompany it, are critical to address these and other issues now.

Hawai'i's Water Code requires designation of water management areas when those resources "may be threatened by existing or proposed withdrawals" of water. HAW. REV. STAT. § 174C-41(a). As a resident of Lahaina, I believe that "regulation is necessary to preserve [my] diminishing ground water supply for future needs[.]" HAW. REV. STAT. § 174C-44(3).

We have major conflicts over water use in our community, and we support designation because it is necessary for pono management of our water resources. For example, kuleana use of water for kalo is a protected public trust use, which is supposed to have the highest level of protection under the law. Despite this, mahi'ai often do not have enough water in the stream to irrigate lo'i. Designation would help the Commission balance requests for water and ensure public trust uses of water are protected. Without adequate water, Kanaka Maoli are unable to continue these Native Hawaiian practices and cultural traditions. Moreover, projections estimate even more population growth and development in our small town. It is important to secure our water future now for generations to come. We believe that WMA designation is the best tool to address these and other issues our community faces.

Mahalo for the opportunity to testify in support of designation, for considering my concerns, and for fulfilling your kuleana as a steward of our public trust by proactively protecting our resources.

Mahalo nui loa,
Fay McFarlane

Fay McFarlane
[REDACTED]
Lahaina, HI 96761
[REDACTED]

From: [Ryan Cabrera](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Agenda item A2
Date: Friday, January 14, 2022 3:09:59 PM

I support the designation because water is a serious dispute in our community. Mahalo

From: [George Chihara](#)
To: [DLNR.CW.DLNRWORM](#)
Subject: [EXTERNAL] Agenda Item A2
Date: Friday, January 14, 2022 4:41:17 PM

Aloha,

I support the designation because water is a serious dispute in our community.

- George Chihara

From: [Kazia Chihara](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Agenda Item A2
Date: Friday, January 14, 2022 4:48:25 PM

Aloha,

I support the designation because water is a serious dispute in our community.

-Kazia Chihara

From: [Curen Ohama](#)
To: [DLNR.CW.DLNRWWM](#)
Subject: [EXTERNAL] Agenda item A2
Date: Friday, January 14, 2022 7:45:22 PM

I totally support the designation because water is a serious dispute in our community.

From: [Carson](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Agenda item A2
Date: Friday, January 14, 2022 7:59:57 PM

I support the designation because water is a serious dispute in our community.

From: [Nicole De La Torre](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] In Support of Agenda Item 2
Date: Saturday, January 15, 2022 11:42:37 AM

To Whom It May Concern,

This is in reference of the meeting for the Commission on Water Resource Management which will take place on January 18th 2022.

I am for the support Agenda Item 2, the designation of the Lahaina Aquifer Section as a surface water and ground water management area, simply put because water is a serious dispute for the Maui Community. Water is essential and infinite; it should be protected for responsible use.

I hope this email serves as a placeholder and indication of a concerned citizen's opinion who is unable to attend the zoom meeting.

Thank you for your time and consideration.

From: [Lucy Reardon](#)
To: [DLNR.CW.DLNRWWM](#)
Subject: [EXTERNAL] Commission on water recourse management
Date: Sunday, January 16, 2022 8:41:45 AM

Aloha,

My name is Lucy Reardon and I support the designation because water is a serious dispute in our community and water is an important natural recourse that should always be used smartly and managed as a public trust.

I am emailing on behalf of my Lahaina Community, a community I care deeply for.

Mahalo for your time.

Lucy Aloha Reardon

Leilani Carrero

[REDACTED]
Lahaina, Hawai'i 96761

E: [REDACTED]

Tel: [REDACTED]

January 16, 2022

VIA EMAIL TRANSMITTAL

Commission on Water Resource Management
State of Hawai'i Department of Land and Natural Resources
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813
Email: dlnr.cwrn@hawaii.gov
Fax: (808) 587-0219

**RE: Agenda Item #A2, Designation of the Lahaina Aquifer Sector, Maui
as a Surface Water and Ground Water Management Area**

Aloha Chair Case and Members of the Commission on Water Resource Management:

My name is Leilani Carrero and I am a third year student at the William S. Richardson School of Law. I have had the great privilege of working with community members from Lahaina. In my experience, significant conflicts over water use exist and affect these residents daily lives in varying degrees.

The main justifications for designation, laid out on pages 1-2 of your Staff Submittal, explain why designation is critically important to the future of water use in Lahaina. Projections estimate even more population growth and development. It is critical to secure their water future now and for generations to come. Due to delayed action and ineffective management by the Maui Department of Water Supply, these residents need the Water Commission to act and designate immediately.

I had the honor of working with a Native Hawaiian family from Kahoma who has been intimately affected by the drought and decline in rainfall, which has negatively impacted their access to fresh water. Although this family has existing water rights, the amount of water they receive from the stream is not enough to sustain their crops long term in the face of environmental changes beyond their control. They pay out-of-pocket to pump what water is manageable using store bought pumps and a generator in carefully timed allotments. This waters their lo'i kalo – the highest protected public trust use of water under our law. When the water cannot be pumped due to low water levels, the family then carries the water in buckets to mālama their kalo. No water is wasted on their property where water is also used for domestic purposes such as bathing and to cultivate diversified agricultural crops such as ti leaf, banana trees, and Hawaiian ginger to name a few.

It should be noted that this resilient family does all of this, giving their time and resources to tending to these responsibilities, in addition to maintaining full-time employment. This shows a remarkable commitment to their Native Hawaiian cultural and bioethical responsibility to the water, the land, and its well being. This commitment should be reciprocated by the Water Commission through immediate designation.

It is clear that designation would significantly benefit affected community members such as these and increase this Commission's ability to effectively manage water resources.

Thank you for your time and for the opportunity to speak on behalf of those most affected by these decisions.

Mahalo nui loa,
Leilani Carrero

January 16, 2022

WRITTEN TESTIMONY (via e-mail)
Commission on Water Resources Management
State of Hawai'i
Kalanimoku Building
P.O. Box 621
Honolulu, Hawai'i 96809
dlr.cwrmm@hawaii.gov
raeann.p.hyatt@hawaii.gov

Re: Testimony of Nā Papa'i Wawae 'Ula'ula on Commission Agenda Item A-2: Designation of the Lahaina Aquifer Sector; Maui as a Surface Water and Ground Water Management Area, of the January 18, 2022 meeting.

Dear Commissioners,

Please accept this testimony on behalf of the Nā Papa'i Wawae 'Ula'ula (Nā Papa'i), a community association based in Lahaina, Maui, in support of the designation of the Lahaina aquifer sector as ground- and surface water management areas described under agenda item A-2.

Nā Papa'i is an unincorporated association of West Maui residents and other beach users who are concerned about protecting and preserving the quality of life and environment for West Maui communities particularly as it relates to the public's use and access of our coastlines. Nā Papa'i holds in-person community meetings with West Maui communities and administers a social media page on facebook.com called, "Access Denied!" which group has over 4,700 members.

Nā Papa'i has been working to address adverse impacts of climate change on Hawai'i and Lahaina. In recent decades, West Maui has struggled against drought, wildfire, sea level rise, coastal erosion, and a host of other anthropogenic environmental changes. These changes impact our water resources and communities' resiliency against further impacts.

Recharge to the Lahaina aquifer sector has "decreased dramatically in the 21st century especially in the lower elevations." USGS, *Groundwater Availability in the Lahaina District, West Maui, Hawai'i* (2012); Maui draft Water Use Development Plan (WUDP), PDF 905 (Mar. 2019). Estimated recharge declined 43 percent between the periods 1926–79 and 2000–04 due to decreases in irrigation and its return flows and low rainfall. U.S. Geological Services researchers are predicting that climate change impacts will cause dry areas of Maui to become drier, with the greatest effects seen in the West Maui mountains (Mauna Kahālāwai).

Existing and proposed water withdrawals from our streams and aquifers are already causing harm as is evident in the increasing chloride concentrations in wells and the persistence of diversions that prevent mauka to makai flow. Global warming, drought, and reduced rainfall will only exacerbate these harms and require closer management of West Maui water resources to prevent waste and to prioritize public trust uses.

Mahalo for considering our testimony. Please contact me with any questions.

Kai Nishiki, on behalf of Nā Papai Wawae 'Ula'ula
(808) 283-0566



January 16, 2022

WRITTEN TESTIMONY (via e-mail)
Commission on Water Resources Management
dlr.cwrn@hawaii.gov
racann.p.hyatt@hawaii.gov

Testimony of West Maui Preservation Association on Commission Agenda Item A-2:
Designation of the Lahaina Aquifer Sector; Maui as a Surface Water and Ground Water
Management Area, of the January 18, 2022 meeting.

Please accept this testimony on behalf of the West Maui Preservation Association (WMPA), a nonprofit organization based in Lahaina, Maui, in support of the designation of the Lahaina aquifer sector as ground- and surface water management areas described under agenda item A-2.

WMPA is organized for the purposes of preserving, protecting and restoring the natural and cultural environment of West Maui, including land conservation and educational activities related thereto. For nearly two decades, WMPA has advocated for community interests in West Maui's natural resources. Water management area designation is sorely needed in Lahaina to address the inertia preventing implementation of more equitable and sustainable solutions to protect water resources and public trust uses thereof.

1. Existing and proposed withdrawals threaten our streams and aquifers.

The Commission is required to conduct surveys, research, and investigation “into all aspects of water use and water quality[.]” HRS §174C-5. After doing so, it is further required to designate water management areas where it “finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water.” Especially in view of the existing and coming challenges caused by global warming, existing and proposed water withdrawals threaten our streams and aquifers.

Wells in Kauaula and Honokōwai are salting up. Kauaula stream, even despite this Commission's amended instream flow standards, struggles to establish mauka to makai flow. Despite this, developers continue to subdivide and sell residential lots in these areas and press for more permissive land use designations to allow more home construction - all of which is premised on plans to increase pumping in the aquifers. As they do so, the historic waters - springs and seeps - of Moku'ula are depleted.

In Kauaula, the Launiupoko Irrigation Company is proposing to increase pumpage from the Lahaina Skimming Wells A/B, which are makai of a Launiupoko Water Company Well No. 3 that demonstrated increasing chloride concentrations. Maui DWS also reported some of its wells have exceeded the EPA secondary maximum contaminant level of 250 mg/L at increased pumping rates. 2019 draft WUDP at PDF 942. Some of these Maui DWS wells are apparently in the Launiupoko aquifer. Item A-2 Submittal, exh. 4 at 3 (Pearson letter, proposing to “distribute pumpage throughout Launiupoko aquifer where increased pumpage in MDWS wells result in high chloride levels.”).

Further, Commission surveys disclose significant percentages of well owner are not reporting their water uses across Lahaina. These non-disclosures provide further support for WMA designation.

2. *Serious disputes over water use have been occurring across West Maui.*

In determining whether to designate, the Commission considers whether “[s]erious disputes” respecting the use of ground water and surface water resources are occurring. HRS §§174C-44(7), -45(3). The plain meaning of “serious disputes” includes the historical and ongoing struggles between Kānaka Maoli communities and developers across Lahaina.

One reason that “serious disputes” over water is a criterion for designation is that these necessitate intervention and determinations by the Commission in order to protect public trust uses and to ensure non-protected uses are reasonable and beneficial. The Commission’s process for initiating designation takes months to years to occur. Serious disputes arise on the much truncated timeline of diverter violations or land use permit proposals. Thus, the Commission should also consider serious disputes that have previously arisen or have a high potential to occur due to ongoing conditions.

Kauaula and Launiupoko

In the late 1800s, Pioneer Mill owner C.F. Horner and Kauaula Valley taro farmers disputed use of Kauaula stream water, resulting in the Hawai‘i Supreme Court decision, *Horner v. Kumumili*, 10 Haw. 174 (1895). Kauaula valley, extending through Ku‘ia, held numerous lo‘i kalo - though less than in traditional times - governed by a traditional system of rotating waters. *Horner* upheld this “ingenious ‘eleven day’ system . . . elaborated from long experience by men whose aim was to secure equal rights to all and to avoid quarrels[.]” Pioneer Mill, however, began tapping high level water in the mountains through tunnels, digging wells, and monopolizing streams despite the *Kummuliili* holding. The plantation and the county collaborated in these systems.

By the late 20th century, many kuleana tenant families had been driven away by the lack of water and many could not return for lack of water. Those that stayed, and some that returned, petitioned the state Land Use Commission to address violation of their rights, including their water rights in 2002. They settled some of the water rights issues with Makila Land Co., Kauaula Land Co., and Launiupoko Associates under an agreement. However, today, disputes with Launiupoko Irrigation Company’s (LIC) use of surface *and ground water* continue today in proceedings before the Public Utilities Commission (PUC).

LIC proposes to pump near sea-level wells to their high-altitude agricultural subdivisions. Kānaka maoli organizations and kuleana tenants dispute this proposal for reasons including that it will entail high levels of greenhouse gas emissions and their consequent adverse impacts.

LIC has determined *not to comply* with this Commission’s amended interim instream flow standards (IIFSs), which were set in March 2018. LIC has stated its position that it will not comply with this Commission’s IIFSs to the Commission and the PUC. This is a serious dispute.

Honokōhau

Over 4,000 loʻi once covered approximately 56 acres of the floodplain of Honokōhau stream. Increasingly larger diversion structures installed by Maui Land and Pine and its predecessors throttled water flows needed to sustain the community of kalo farmers that thrived in the valley. New generations moved away. Honokōhau communities have been organizing for decades to fight these diversions, which take even more water from the stream than is used and dumped it into fallow fields in Honokōwai. In 2019, Nā Mamo Aloha ʻĀina o Honokōhau members teamed up with water protectors from Kahoma, called Ka Malu o Kahālāwai, to file a water wasting complaint. Today, MLP has yet to complete required diversion modifications to prevent excessive diversion of Honokōhau and therefore serious disputes with MLP are occurring.

Kahoma

In Kahoma, kuleana families celebrated the first planting of kalo with Kahoma stream waters in over 130 years in 2017. However, the continued stream flow is threatened by ongoing land tenancy disputes, potential expansions of Kahoma Ranch activities, and drought, amongst other factors.

Kanahā

Nearby in Kanahā, the Maui Department of Water Supply (DWS) accesses its diversion across Kānaka Maoli kuleana lands. Though this Commission has amended IIFSs for Kanahā stream, Kānaka Maoli kuleana owners understand DWS has not committed to comply with stream restoration requirements. Kānaka maoli traditional and customary practitioners have raised their concerns to the County Council and to Commission staff. *See* 2019 draft Maui WUDP at 919.

Olowalu

Community members have disputed Olowalu Water Co. and Olowalu Elua Associates' water uses including their "after the fact" Stream Diversion Works Permit for reconstruction of a Lower Intake Diversion on Olowalu stream that will divert about 648,000 gallons per day (gpd). *See* Item B-3, CWRM Regular Meeting on March 20, 2018. The Olowalu Companies have a questionable history of water resource stewardship over Olowalu stream. The upper diversion was breached decades ago. They diverted water without permits for about as long as they have existed. Only through many years of consistent advocacy have communities been able to forestall unwise development in Olowalu - including a proposed Olowalu Town (a 1,500 unit project sprawling across 613 acres) and more recently the Lihauʻula subdivision project for part of this region - and the water uses they would entail.

Ukumehame

Descendants of Ukumehame lands continue traditional loʻi kalo cultivation using Ukumehame stream waters. The exercise their rights in view of adjacent landowners - the Beverly Hills-based West Maui Investors, LLC's plans for reservoirs and dams to expand development of the area. Surface water permitting could help secure traditional and customary practices in Ukumehame against encroachment by incompatible water uses.

3. Water management is needed to gird West Maui against impacts of global warming

WMPA is concerned about the harmful impacts of greenhouse gas emissions on the earth's climate, and more specifically, the impacts of climate change on Hawai'i and Lahaina. In recent decades, West Maui has struggled against drought, wildfire, sea level rise, coastal erosion, and a host

of other anthropogenic environmental changes. These changes impact our water resources and communities' resiliency against further impacts.

Recharge to the Lahaina aquifer sector has "decreased dramatically in the 21st century especially in the lower elevations." USGS, *Groundwater Availability in the Lahaina District, West Maui, Hawai'i* (2012); Maui draft Water Use Development Plan (WUDP), PDF 905 (Mar. 2019). Estimated recharge declined 43 percent between the periods 1926–79 and 2000–04 due to decreases in irrigation and its return flows and low rainfall. U.S. Geological Services researchers are predicting that climate change impacts will cause dry areas of Maui to become drier, with the greatest effects seen in the West Maui mountains (Mauna Kahālawai).

Already we have seen in the Commission's interim instream flow standard (IIFS) amendment process that present flows are much reduced as compared with historical ones. Although the Commission set amended IIFSs for Kauaula stream in 2018, the stream has yet to flow from mauka to makai. LIC and West Maui Land representatives, as well as Kānaka maoli families living alongside Kauaula stream attest that flow may be even lower than when the amended IIFSs were adopted due to drought conditions. Designation would assist in requiring water users to disclose the purposes and amounts of their uses, which should then be subject to the Commission's determination as to how to protect public trust uses affected by, for instance, agricultural subdivision diversions.

4. *Maui DWS lacks authority to manage Lahaina water resources.*

Maui DWS opposes the designation of the entire Lahaina aquifer sector on the basis that its draft water use development plan (WUDP) will forestall the need for management. Item A-2 Submittal, exh. 4. First, the DWS WUDP is a *plan* and not an enforceable permitting program with safeguards for due process protections for rights and interests in water uses. As Maui DWS acknowledges, there are at least four private water systems operating in Lahaina.¹ 2019 draft WUDP at PDF 932. Any of these could systems, and indeed any private landowner, could determine to drill their own wells and the Maui DWS lacks authority to control these determinations. The DWS draft plan does not drill down to the impacts of individual uses, nor could it enforce, for instance, better spatial location of *non-DWS* wells across Launiupoko aquifer system.

Designating only the Honokōwai aquifer as suggested by Maui DWS, is a shortsighted proposal. Meeting Lahaina's reasonable and beneficial water use needs will require a coordinated effort across aquifer system lines. Honokōwai already utilizes Honokōhau surface water. Launiupoko aquifer users may need to obtain water from other areas in Lahaina.

Mahalo for considering our testimony. Please contact us with any questions.

West Maui Preservation Association
Post Office Box 11150, Lahaina, Hawai'i 96761
info@savewestmaui.com

¹ The draft Maui WUDP refers to Launiupoko Irrigation Company's use of 0.24 mgd in an addendum but does not include LIC's updated use of 2.672 mgd. Item A-2 submittal at PDF25.

MJ Palau McDonald

[REDACTED]
Honolulu, Hawai'i 96817

email: [REDACTED]

January 17, 2022

VIA EMAIL TRANSMITTAL

Commission on Water Resource Management
State of Hawai'i Department of Land and Natural Resources
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Fax: (808)587-0219

Re: Agenda Item #A2, Designation of the Lahaina Aquifer Sector, Maui as a Surface Water and Ground Water Management Area

Aloha Chair Case and Members of the Commission on Water Resource Management,

Mahalo nui for the opportunity to testify in strong support of designation of the Lahaina Aquifer as a Surface Water and Ground Water Management Area. My name is MJ Palau McDonald, and I have had the great privilege of working with community members from Lahaina.

Designation is an important first step towards safeguarding our Public Trust resources that are threatened by the global climate crisis, growing communities, and corporate diverters. Designation would help ensure that constitutionally protected traditional and customary Native Hawaiian practices can continue in Lahaina for generations to come. Traditional and customary Native Hawaiian practices are a Public Trust use that is afforded the highest priority under the Water Code. Given the ongoing disputes over water use, however, many families are unable to continue their traditional and customary practices, like lo'i kalo cultivation, and some even struggle to get water for day-to-day domestic uses. Designation would enable the Commission to balance water requests and ensure that Public Trust resources are adequately safeguarded.

Please take this important first step towards protecting our freshwater streams and aquifers and pursue designation now.

Mahalo,

MJ Palau McDonald

From: [Gretchen Losano](#)
To: [DLNR.CW.DLNRWORM](#)
Subject: [EXTERNAL] In support of agenda item A2
Date: Monday, January 17, 2022 12:44:22 AM

Aloha,

I am writing in support of the designation of the Lahaina Aquifer Sector as a surface water and ground water management area. Water is crucial to our agricultural needs in west Maui and is a highly contentious issue currently. I am hopeful that, moving forward, the designation will prioritize agriculture and permanent residents over hotels, vacation homes, and gentleman's estates.

Mahalo,
Gretchen Losano

Sent from my iPhone

Jade Chihara
[REDACTED]
Lahaina, HI 96761
[REDACTED]

Commission on Water Resource Management
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**RE: Agenda Item #A2, Designation of the Lahaina Aquifer Sector, Maui
as a Surface Water and Ground Water Management Area**

Aloha Chair Case and Members of the Commission on Water Resource Management:

My name is Jade Chihara and I am in support of Agenda Item A2, designating the Lahaina Aquifer Sector as a Surface and Ground Water Management Area. I am testifying as a resident of Lahaina firstly concerned for the rights of kuleana kalo farmers in the valleys of Ukumehame, Olowalu, Launiupoko, Kaua'ula, Kanahā, Kahoma, Honokōwai, Honolua, and Honokohau as well as the work in regenerative agriculture in the ahupua'a of Ku'ia just north of Kaua'ula stream. As a resident and steward in this area I am extremely concerned that the mismanagement of other current offstream users has turned into abuse of privilege and it is urgent to establish an organized system of checks and balances over ground and surface water use in this area. The conflicts and implications at the community level between workers of the companies in charge of managing the plantation water system in Launiupoko and subsistence farmers whose food sources are being affected will continue to intensify and I believe designation is a clear and fair solution that sits in your decision at the state level. I am concerned that private well users are not appropriately reporting usage and not compliant to current standards to monitor their ground water use, again abusing and taking advantage of their privilege to pump groundwater. This is extremely upsetting because current irrigation and water companies could care less about the public trust or why it was established, or about the populations of oopu or supporting kuleana kalo farmers or even their roles in recharge levels to the aquifer, and instead have used water resources with avarice for golf courses and swimming pools and recklessly enforce curtailment policies. Just this past November 2021 the illinformed curtailment policy resulted in premature fruiting in numerous 'ulu trees grown in Ku'ia shown in the photos below.

Please move forward with the designation process for both surface and groundwater designation. It is an urgent and dire decision that needs to be made to prevent further overuse of the Lahaina aquifer. Mahalo for the opportunity to speak and for the time and commitment you make to protect and manage these water resources.

All the best,
Jade Chihara

Jade Chihara

Lahaina, HI 96761

November 08, 2021 Impacts on 'ulu trees in Ku'ia from curtailment policies and mismanagement of former plantation irrigation systems



From: [Sesame Shim](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Testimony
Date: Monday, January 17, 2022 8:15:53 AM

Aloha kākou,

I am writing in support of the Designation of the Lahaina Aquifer Sector; Maui as a Surface Water and Ground Water Management Area.

As a teacher in the Lahaina district, I have students who are dependent on the proper management of water. When entities are allowed to over consume water without regulation, our water resource will inevitably be depleted.

With the influx of tourists and their consumption of water, water regulation is absolutely needed. It will and should dictate how our tourist industry functions so that our local community is not impacted as we are and have been.

Mahalo,

Sesame Shim

Sent from my iPhone

From: [Carson](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] Agenda item A2
Date: Monday, January 17, 2022 8:41:33 AM

I support the designation because water is a serious dispute in our community.

Carson Chihara

VIA EMAIL TRANSMITTAL

Mich [REDACTED]
Wai‘anae, Ha

Commission on Water Resource Management
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**RE: Agenda Item #A2, Designation of the Lahaina Aquifer Sector, Maui
as a Surface Water and Ground Water Management Area**

Aloha Chair Case and Members of the Commission on Water Resource Management:

As a third-year law student at the William S. Richardson School of Law at the University of Hawai‘i at Mānoa, mahalo for this opportunity to testify in support of your staff’s recommendation to designate the Lahaina Aquifer Sector as a surface water and ground water management area.

Designating a Water Management Area (“WMA”) is the most equitable and diplomatic means to manage fresh water as a resource and to mitigate overuse, quash water disputes within the community, and provide comprehensive oversight of water distribution. Most importantly, WMA designation is a vital step in ensuring the stability and availability of our fresh water into the future.

I have had the pleasure of working with several Maui residents through my Fall Semester 2021 Law Clinic. The residents taught me how crucial water has always been to their ancestral lands, to perpetuate cultural rights and practices, and enable agricultural and familial sustainability. I was also made aware of the ongoing community disputes regarding past, present, and future water uses. The residents expressed how taxing and harmful it is to these families and communities to not have access to sufficient ground and surface water resources, which was historically enjoyed and managed by their ancestors as both a privilege and a right.

Designation is necessary to provide pono oversight and management. I am concerned that leaving this task to Maui Department of Water Supply will mean that the status quo continues, which has allowed ongoing conflicts over water use in Lahaina to fester. Your Commission is the more appropriate entity to proactively manage the Lahaina Aquifer because you have the experience, means, and a direct charge to be righteous stewards of our water resources under the public trust. I believe that your Commission is equipped and competent, and should not only designate this area as a WMA, but also ensure that this community isn’t left with further disputes as has been experienced in other designated areas.

Hawai'i's Water Code mandates designation of WMAs when current resources "may be threatened by existing or proposed withdrawals" of water. HAW. REV. STAT. § 174C-41(a). Given my work with community members in Lahaina, I believe that "regulation is necessary to preserve [their] diminishing ground water supply for future needs[.]" HAW. REV. STAT. § 174C-44(3). Now is the time to seriously focus on Maui's natural and cultural resources. Delay could result in devastating circumstances for all. This includes the further diminishment of the natural fauna and flora and the cultural practices reliant upon them. In addition, given drought and other climate-induced impacts, it's imperative that your Commission act now to protect all public trust resources. Most importantly, WMA designation is a vital step towards restorative justice for Indigenous Hawaiians and their descendants (and kuleana users in particular), who had their lands and resources acquired and commodified during the transition from the Sovereign Kingdom of Hawai'i to the state. Steps must be taken to correct the injustices of the past and perpetuate pono. The restoration and management of fresh water is pivotal for users that have been harmed by the law-making and commercial enterprising of the past, and WMA designation is one helpful step on that journey.

Please designate the Lahaina Aquifer Sector as a Surface and Ground Water Management Area. Mahalo for this opportunity to support your effort to proactively protect our water resources.

Mahalo nui loa,

Shelli McDow, M.Ed.
J.D. Candidate 2024
William S. Richardson School of Law

From: [Kapali Keahi](#)
To: [Hyatt, RaeAnn P;](#) [DLNR.CW.DLNR.CWRM](#)
Subject: [EXTERNAL] Groundwater Designation
Date: Monday, January 17, 2022 9:00:27 AM

Welina a ke aloha Commission Members,

My name is Kapali Keahi and I SUPPORT THE GROUND WATER DESIGNATION for the Lahaina or West Maui Aquifer. It is incumbent upon this commission to protect our water resources for future generations. However, the future of our resources are not necessarily on stable grounds.

The extraction of the water resources in all significant hydrologic areas across the island are relatively in full force, leaving much to be desired in terms of the efficacy of the IIFSs already set by the commission. The reduction of rainfall over the years and climate change should signal the appropriate measures to be taken at this time.

We are also up against the very stubborn visitor industrial complex, replete with a developers market. These are only corporate proxy for the plantation system- the continuation. MĀLAMA 'ĀINA and ALOHA 'ĀINA were never the forefront and after thought of this legacy.

But the land deserves MĀLAMA 'ĀINA. DON'T HESITATE- DESIGNATE.

Me ka mahalo,

Kapali Keahi

From: [Michiko Smith](#)
To: [DLNR.CW.DLNRCWRM](#)
Subject: [EXTERNAL] West Maui aquifers
Date: Monday, January 17, 2022 9:00:27 AM

Aloha I'm Michiko Smith and I'm not in support of current amount of water taken from West Maui aquifers. I've worked in the field where I've seen every valley and ridge so I know what kind of water pipes, walls, and holes are in the mountain. The amount of diversion on West Maui saddens me knowing the water is getting pumped so much that none of it reaches the ocean or a small percentage. I know the need for the urban community to have water but realize that naturally this has disrupted our valleys way to protect our waters. The water flow has changed to be lower and lower and the pumping needs to be reevaluated to make sure a balance between the urban community, the mountains needs, the ocean needs, and the cultural needs. By taking the water you can't just consider one need you must consider all needs to be sustainable. And sustainable is not pumping over 100% out of aquifers.

Mahalo,

Michiko Smith

Troy Ballard

[REDACTED]
Honolulu, Hawai'i 96822
[REDACTED]

VIA EMAIL TRANSMITTAL

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RE: Agenda Item #A2 - Designation of the Lahaina Aquifer Sector, Maui as a Surface and Ground Water Management Area

Aloha Chair Case and Members of the Commission on Water Resource Management:

As a graduate of the William S. Richardson School of Law and an individual who has worked extensively with community members within West Maui on issues of water rights and access, I write this letter with my strongest endorsement and support of the recommendation to designate the Lahaina Aquifer Sector as a surface and ground water management area ("W.M.A.").

Designation of the Lahaina Aquifer Sector as a W.M.A. is among the most important steps to ensuring long-term sustainability and viability of freshwater on Maui. Given the limited amount of water found specifically within West Maui, it is critical that the Commission acts to ensure that there are sources of viable freshwater into perpetuity and for future generations. This is especially true given recent decreases in annual rainfall combined with more frequent droughts that have been spurred by climate change and the continued long-term effects of overuse of water by residents and businesses throughout West Maui. It is of the utmost importance that the Commission take affirmative action to begin the W.M.A. designation process, and related permitting requirements, to address long-term water viability in West Maui effectively and with purpose.

Hawai'i's water code specifically requires the designation of W.M.A.s when those resources "may be threatened by existing or proposed withdrawals of water." Haw. Rev. Stat. § 174C-41(a). It cannot be said reasonably that freshwater within West Maui "may be threatened," but instead it is clear that freshwater in West Maui is instead under an active threat and the suffering of irreparable harm is imminent. This is especially true for those water users who wish to exercise traditional & customary Native Hawaiian rights, who have been amongst the most disenfranchised in terms of water access and equity in West Maui and throughout Hawai'i. Simply put, we have moved past the period of statutorily defined "threats" to water in the Lahaina Aquifer Sector, and we are entering the realm of irreparable harm and imminent crisis. Designation of this area as a W.M.A. will be the first step to enjoining further damage while ensuring equitable and *pono* water management in West Maui for the immediate and foreseeable future.

I believe that the Commission has an affirmative obligation to designate the Lahaina Aquifer Sector as a W.M.A., and to do otherwise would be an abdication of statutory, moral, and ethical responsibility. Water is among the most precious resources we have in Hawai'i and is something that should be strongly and deeply protected, something that the Commission has the authority and ability to do. I leave the Commission with one resonate phrase that, I believe, accurately summarizes the importance of designating the Lahaina Aquifer Sector as a W.M.A., *ola i ka wai*, or water is life.

With gratitude,

Troy Wallace Ballard

Troy Wallace Ballard

WAINEE LAND & HOMES LLC

305 E Wakea Ave, Suite 100 Kahului HI 96732
808-877-4202

January 18, 2022

VIA EMAIL

kaleo.l.manuel@hawaii.gov

M. Kaleo Manuel
Deputy Director
Commission on Water Resource Management
1151 Punchbowl Street #227
Honolulu, Hawai'i 96813

Re: Concerns Regarding Designation of Lahaina Aquifer Sector, Maui as a Surface Water and Ground Water Management Area

Dear Deputy Director Manuel,

My name is Peter Martin and I write on behalf of Wainee Land & Homes LLC (“Wainee”). Wainee opposes the designation of the Lahaina Aquifer Sector as a Water Management Area because the proposed designation is not based on “scientifically proven fact” or in compliance with the State Water Code.

With regard to the facts, for example, Table 2 of the Staff Submittal summarizes the Commission’s findings regarding sustainable yield, 12-month average ground water withdrawals in the years 2020 and 2021, development tunnel discharge, entitled/authorized planned use, other permitted well capacity, total existing and authorized planned use and percentage of sustainable yield for each System located within the Lahaina Aquifer Sector:

| System | SY (mgd) | 2020 12-month average (mgd) | 2021 12-month average (mgd) | development tunnel discharge (mgd) | entitled/ auth. planned use* (mgd) | other permitted well capacity (mgd) | total existing and auth. planned use (mgd) | % of SY |
|-------------------|------------|-----------------------------|-----------------------------|------------------------------------|------------------------------------|-------------------------------------|--|-------------|
| Ukumehame | 2.0 | 0.042 | 0.030 | 0.00 | 1.080 | 0.000 | 1.11 | 56% |
| Olowalu | 2.0 | 0.082 | 0.064 | 0.10 | 0.003 | 0.000 | 0.167 | 8% |
| Launiupoko | 7.0 | 1.637 | 1.305 | 3.91 | 1.036 | 1.777 | 8.028 | 115% |
| Honokōwai | 6.0 | 3.480 | 3.998 | 2.50 | 2.533 | 1.150 | 10.181 | 170% |
| Honolua | 8.0 | 2.131 | 2.554 | 0.00 | 1.969 | 1.150 | 5.673 | 71% |
| Honokōhau | 9.0 | 0.000 | 0.000 | 3.75 | 0.001 | 0.000 | 3.751 | 42% |

*based on email and excel table from County of Maui DWS September 3, 2020

However, the data points and assumptions that the Commission used to arrive at these findings are not identified. For example, it is unclear how sustainable yield was determined, including whether a rate of recharge was included in the calculation and the basis for the rate of recharge. As another example, it is unclear whether all tunnels in Olowalu, Launiupoko, Honokowai and Honokohau are “developed sources of ground water,” Staff Report at 18, and thus should be

counted against sustainable yield. Other factors that may have or should influence the Commission's findings include assumptions regarding interim instream flow standards, water duty for agricultural irrigation needs, expansion of recycled water availability, conservation measures implemented by private water purveyors and implementation of the Maui Island Water Use and Development Plan ("WUDP"). Lacking the data points and assumptions used to calculate Table 2's critical figures, the figures are not based on scientifically proven fact, which is required by law to support designation. *In re Water Use Permit Applications*, 94 Hawai'i 97, 155, 9 P.3d 409, 467 (2000) ("[T]he Code contemplates the designation of the standards based . . . on scientifically proven facts[.]").

With regard to the law, the proposed designation is not supported by statute. The State Water Code sets forth specific criteria that must be met before an area is designated as a surface water or ground water management area. *See* HRS § 174C-44 (criteria for ground water designation); HRS § 174C-45 (criteria for surface water designation). The Commission's conclusory allegation that "[t]here are various criteria that are met for designation of both surface and groundwater aquifers" is belied by its own (unsupported) findings.

For example, the Commission's finding that "there has been an increase in water use or authorized planned use which has caused the maximum rate of withdrawal from the ground water to reach ninety percent of the sustainable yield in the **Honokowai Aquifer System**," Staff Report at 17, fails to support the designation of the **entire** Lahaina Aquifer Sector (Ukumehame, Olowalu, Launiupoko, Honolu and Honokohau Systems) as a water management area. Indeed, the designation of the entire Sector based on this finding is contrary to the State Water Code, which plainly identifies as a criterion: "Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the ground water source to reach ninety percent **of the proposed ground water management area**," or as applied here, the entire Lahaina Aquifer Sector. HRS § 174C-44(1) (emphasis added). As the County of Maui Department of Water Supply's ("MDWS") testified,

We find that current groundwater use and [Authorized Planned Use] **does not reach 90% of sustainable yield for any other aquifer system than Honokowai**. Tentatively, DWS supports investigations to consider designation of **Honokowai Aquifer System only**.

1/13/22 Testimony of MDWS at 2 (emphasis added).

The Commission's reliance on "the uncertainty of rainfall discharge due to the climate crisis," Staff Report at 18, is also not a criterion for designation of the entire Lahaina Aquifer Sector. *See* HRS § 174C-45 ("Whether regulation is necessary to preserve the diminishing surface water supply for future needs, as evidenced by excessively declining surface water levels, **not related to rainfall variations** . . ."); HRS § 174C-44 (uncertainty of rainfall discharge due to climate crisis not identified as a criterion for ground water designation). Nor does the Commission's reliance on a purported "climate crisis" and the "Precautionary Principle" overcome its duty to designate an area based "on scientifically proven facts." *In re Water Use Permit Applications*, 94 Hawai'i at 155, 9 P.3d at 467 (2000) ("[T]he Code contemplates the designation of the standards based . . . on scientifically proven facts[.]").

The designation of an area as a Water Management Area hands administrative control over all water use within the Area to the State and requires, among other things, that **each** water user within the Area (including public utilities that service hundreds or thousands of families who use water for domestic or household purposes) apply for and obtain a water use permit from the Commission. The consequences, as experienced by users located in presently designated Areas, mean years of waiting for the approval of a permit that may never be approved, lost opportunities to address the housing crisis that undisputedly exists now for Maui Island families and the infringement on constitutionally protected rights in property.

The Commission is bound by county plans. Lacking any statutory authority to wrest control from the County of Maui, the County of Maui is the proper regulating authority for waters located within the Lahaina Aquifer Sector.

For all the above reasons, we agree with the MDWS that the designation is premature and should not be considered until, at minimum, the WUDP is implemented, interim instream flow standards are adopted for priority streams and subsequently enforced by the Commission and scientific investigation completed to evaluate the changed circumstances. Until that time, regulating powers should remain with the County of Maui.

Wainee appreciates the opportunity to provide testimony.

Respectfully,



Peter Martin
Wainee Land & Homes LLC