

**From:** [Edwina Walker](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Agenda C1 testimony  
**Date:** Wednesday, February 9, 2022 7:31:53 PM

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Aloha, My name is Edwina Joao, I'm born and raised on Molokai. My children are born and raised on Molokai and I hope my grandchildren will be also. Molokai is our life line. We gather food from all over. Kawela is an important place for fish and limu. Water flow into Kawela stream will increase the life of the ahupuaa that is a necessity for us molokai people to thrive and survive! We need water back to Kawela stream. I support Agenda C1 water flow return. Mahalo, Edwina Joao

[Sent from Yahoo Mail for iPhone](#)

February 12, 2022  
Via email to: RAEANN.P.HYATT@HAWAII.GOV

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

Subject: **Written Testimony in Support of Kawela Stream Restoration**  
Island of Molokai  
**For February 15, 2022 DLNR-CWRM Hearing**

This letter is submitted in support of Molokai No Ka Heke's request to restore substantial excess fresh water currently diverted from its natural path down Kawela Stream, Island of Molokai.

Documented mauka fresh-water fishponds historically fed by Kawela Stream are now arid. Molokai with nearly 40 miles of fishponds along its south shore relies on Kawela Stream, in addition to other streams, as a source of daily nutrition. Kawela Stream reaches the south shore approximately in the middle of Molokai's traditional ocean farming ponds. These ponds are fished daily by Molokai residents, more so now in light of decreased and expensive supplies.

In addition to limiting diversion to proven, necessitated requirements, the uphill properties should be cleared of abandoned debris and piping. If the responsible parties cannot perform this task within a reasonable amount of time, fines should be assessed to the extent of the cost of an independent clean up on their behalf.

I am a long-time resident of Molokai, living a half mile West of Kawela Stream.

Thank you for your time and consideration.

Sincerely,

Rosalind (Roz) Casad  
Physical: [REDACTED]  
[REDACTED]  
Kaunakakai, Hi. 96748  
808-[REDACTED] (LL)  
[REDACTED]

February 12, 2022

Aloha Commissioners,

My name is Teave Ho'omoe Heen, I am a lifelong resident of Kawela, Moloka'i. I am submitting this testimony in full support of item C1, CDR.5310.4, Combined Petition to Amend the Interim Instream Flow Standards and Allegation of Waste By Moloka'i Nō Ka Heke for streams in the Surface Water Hydrologic Units of Waikolu (4003), Kawela (4037), Kaunakakai (4039), and Manawainui (4041), and Reservation of non-potable water for the Department of Hawaiian Home Lands, Moloka'i.

First off; a deep mahalo to the commissioners for your support and complete understanding of the critical needs of our 'āina (land and sea).

I support the Department of Hawaiian Home Lands reservation of non-potable water from the Mountain Water System (MWS) as long as reasonable Interim Instream Flow Standards (IIFS) can be delivered.

I'd like to stress the importance of the waste complaint and investigation request into Molokai Property Ltd. (MPL) water use history and urge you to pursue the request as filed by Earthjustice on behalf of Molokai Nō ka Heke. Investigating MPL's historical water management practices will uncover their long standing negligence. Their reservoirs and outdated water systems must be utilized more efficiently so that less water is diverted and wasted. This will, in turn, leave more water in our MWS that will flow freely through our rivers and streams, allowing Molokai's environmental and economical water demands to be met effectively and efficiently. I'd ask that the Formal Abandonment guidelines of unused diversion structures be upheld in its entirety until properly rectified. This includes proper cleanup of all foreign materials and any damages done to the areas in question. I urge you commissioners to consider the life of our land as you have the ability to rectify historical wrongs by holding MPL accountable for destructive damages done to our 'āina.

As you determine the Interim Instream Flow Standard (IIFS) for Kawela stream, please be mindful of the devastating historical impact years of water deprivation has done to the stream and its surrounding habitat. A once "fruitful ahupua'a" is now dry and desolate for no other reason than the extensive damages caused by an absence of water. A once perineal stream now only makes its way to the ocean less than a quarter of the year. No life will survive if given water only 20% of the time.

As a child growing up in Kawela we'd spend endless afternoons in the river and hills behind our home. We'd spend days upstream exploring and building swimming ponds. Downstream we'd catch 'ōpae (shrimp) and o'opu (goby). Near the muliwai (estuary) we'd build rafts from large pieces of driftwood and practice throwing our net on 'oama (young goatfish) and 'anae (mullet). Near the shores of Kakaha'ia now commonly referred to as Rice Patch, we'd gather 'a'ama (black crab) and often pick mango in the large mango patch that once thrived below Kawela Plantation 1. The black crab didn't make it off the dinner table but the mango made it to the side of the road where we sold mango seed and pickle mango along with fish and dry squid that my father caught off the shores of Kawela as part of our subsistence living.

Although the Kawela I saw as a child was the aftermath of decades of deforestation, overgrazing, and water mismanagement, we obviously made the best of what we had. Water was still flowing downstream and life was still present. But it was nothing compared to the Kawela our Kupuna describe as a "beautiful spot with lush green gardens and fruitful farms." If we have any chance of giving life back to Kawela, her stream, her abundant springs, productive fish ponds and rich near shore reefs; We need to play catch up and the only way to do so is to be generous and mindful when setting the IIFS. Most water released will be absorbed into the ground like a sponge, recharging our aquifer before reaching the lower stream extremities. This will assist in reversing rising salinity levels which is vital and doesn't need much advocacy. However, we must restore LIFE back to Kawela stream and her surrounding habitat. Ample amounts of water needs to flow downstream in order to rehabilitate the stream's habitat, replenish the nearby basal springs and various fishponds including Kanoa, Kakaha'ia, and Uluanui. Adequate stream flow will open up the muliwai (estuary) and provide the necessary circulation to our south shore reef which currently lay under feet of sediment predominantly due to inconsistent stream flow. Our south shore reef is part of Molokai's fringing reef that our community relies heavily on for sustenance. As everything is connected Mauka to Makai (Mountain to Sea) - We need our rivers to FLOW!

Our 'āina shouldn't be put second to future developmental plans, increasing economic demands, or straight neglect. You, Commissioners, have an opportunity to put the needs of our 'āina first by correcting wrongs and setting IIFS that will satisfy the environmental needs and revitalize Molokai's future.

Mahalo nui me ka ha'ah'a a ka 'oia'i'o,  
Teave H. Heen

February 12, 2022

Aloha Commissioners,

My name is Thomas Heen, I am a fisherman and resident of Kawela, Moloka'i. I am submitting this testimony in full support of item C1, CDR.5310.4, Combined Petition to Amend the Interim Instream Flow Standards and Allegation of Waste By Moloka'i Nō Ka Heke for streams in the Surface Water Hydrologic Units of Waikolu (4003), Kawela (4037), Kaunakakai (4039), and Manawainui (4041), and Reservation of non-potable water for the Department of Hawaiian Home Lands, Moloka'i.

When the fresh water flows from the mountain to the ocean the Limu grows. The best Limu is always next to a stream. The little fish eat the Limu and the big fish eat the little fish. Everything grows with fresh water.

Now that the top side of kawela is so messed up, it changes everything. When it rains, the dirty mud water runs into the ocean and smothers everything. The mud kills the coral. Many fish depend on coral for their food supply.

It used to be when the river flowed constantly that the extra rainwater would help the coral but now due to the dried up stream bed the dirty water smothers everything. Fresh water makes everything flourish; everybody should know that not just fishermen.

Mahalo,  
Thomas Heen

TESTIMONY TO  
COMMISSION ON WATER RESOURCE MANGEMENT  
INFORMATIONAL HEARING  
February 15, 2022

My name is Claire Iveson, a resident of [REDACTED] on the island of Molokai. My mailing address is [REDACTED] Kaunakakai, HI 96748; my email address is [REDACTED]; my home phone number is 808-[REDACTED]. I wish to provide the following written testimony relevant to Agenda item C1.

When I arrived on Molokai in February 1978, I initially lived on the mauka side of Kamehameha V Hwy. near the 4-mile marker, and then moved to Rice Patch, behind Kakahaia Fish Pond (now a US Wildlife Preserve). Following eviction from Rice Patch, due to our “activist” participation described below, our family returned to Kawela in 1990, living west of Kawela Stream.

In 1979, when plans were announced for Kawela Plantation, my husband and I became active in Malama Molokai and Kakoo Kawela, organizations committed to preserving wildlife, historic sites, and water resources that were threatened by development of Kawela Plantation.

In the following two years, these organizations worked extensively with the County of Maui, the U.S. Department of the Interior, the Hawaii State Department of Transportation, elected representatives, and the developer, Wadsworth Yee, to attempt to resolve a wide range of problems. Soon water became the major focus.

In Rice Patch, part of the five-mile stretch of Molokai without access to County water, we were able to pump slightly brackish water from a neighbor’s well, while needing to haul in drinking water. Senator Yee showed our organizations documents that stated he had located sweet water in this area, though other reports noted that all water samples were slightly brackish.

Around the state, water issues weren’t thought to be a problem. My husband had been assured by UH Geology Professor George Woollard that Oahu would “never run out of water.” It was frustrating to the Molokai residents in the forefront that we were often labelled by developers as “radicals” or “hotheads” or as being “anti-development.” To want to protect one’s blessed island was and IS neither radical nor negative.

Even more frustrating was hearing developers' charges (often repeated by media and residents of the other Hawaiian islands) that Kako'o Kawela leaders represented "special interests" or "a small minority of the people." Yet in March 1980, one percent of Molokai's residents (equivalent to 7,500 Oahu residents) spoke against the Puko'o development; in August, two percent turned out to question developer Wadsworth Yee on his Kawela Plantation; in one week's time, ten percent signed a petition requesting Yee to conduct a belated environmental impact statement on his project, which he reluctantly agreed to do.

With the assistance of attorneys from Life of the Land and the Legal Aide Society of Hawaii, geologists, hydrologists, archeologists, and residents of Molokai, issues of water use were raised and slowly accepted Statewide, as drought conditions became regular occurrences on the other islands.

It is encouraging that knowledge of hydrology has developed significantly over these four decades. It is reassuring that there now is an active, attentive Water Commission that holds public informational hearings. And it is heartening that some of the Molokai "radicals," along with educated, enthusiastic younger folks, are still fighting water challenges on Molokai.

As long overdue as it may be, now is definitely the time to start by setting meaningful interim in-stream flow standards, to begin cleaning up diversion works and pipes, and to protect the life of Kawela Stream. And, imagine, that the aquifer might actually be slowly recharged.

This is a perfect opportunity for decisive action. Mahalo for your positive votes.

**From:** [Hatea Paoa](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Testimony agenda item C1  
**Date:** Sunday, February 13, 2022 8:32:12 AM

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Aloha, my name is Hatea, I am testifying on agenda item C1. I want to thank the Commission of Water Resource Management for their efforts in restoring water to Kawela stream. I support the staffs recommendations, but humbly request for more than what is recommended. 120,000gpd is not nearly enough. Please reconsider the IIFS to be set at Q40 flow. Give back what was taken for so long.

Mahalo



**From:** [Donna Haytko-Paoa](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Testimony on Agenda Item C1  
**Date:** Sunday, February 13, 2022 8:41:35 AM

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Aloha. My name is Donna Haytko-Paoa. I am a 48-year resident of Kawela, Molokai on the island of Molokai. I am testifying on agenda item C1.

I want to thank the Commission on Water Resource Management for their efforts to restore water to the Kawela stream to protect the life of the stream and recharge the aquifer. I support the staff's recommendations because they are at least something, but do not believe that 120,000 GPD is nearly enough to make a difference in making the stream and aquifer healthy. Please reconsider that the Interim In-Stream Flow Standard (IIFS) be set at the Q40 flow. This is the optimum amount to begin replacing what has been diverted and taken for such a long time. Mahalo.

**From:** [Te Iwi Paoa](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Testimony on Agenda item C1  
**Date:** Sunday, February 13, 2022 8:43:33 AM

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Aloha,

My name is Te Iwi Paoa and I am testifying on agenda item C1. I want to thank the Commission of Water Resource Management for their efforts in restoring water to Kawela stream. I support the staffs recommendations, and humbly request for more than what is recommended. 120,000gpd is not nearly enough. Please reconsider the IIFS to be set at Q40 flow.

As someone who has grown up in these waters, all of my childhood memories involve this stream both recreational and culturally. My hope is to continue this tradition of enjoying and respecting the land with my keiki and future generations to come. There are too many reasons to list why restoring the water flow back to its natural state is the Pono thing to do. Water is life.

Mahalo nui.

Te Iwi

**From:** [Lohiao Paoa](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Testimony of Agenda Item C1  
**Date:** Sunday, February 13, 2022 8:44:10 AM

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Aloha,

My name is Lohiao Paoa. I am providing testimony on agenda item C1.

I first want to thank the Commission of Water Resource Management for taking on this petition with full transparency. In 2019, when our petition was submitted, there was a small belief that this petition would not change anything. But after nearly three years of hard work by the CRWM and the Molokai community, it is evident that the island of Molokai is a vital example of true sustainability and in fact, change is coming.

I am from Kawela. My Kamakana lineage has been rooted in Kawela for over 8 generations. It is my responsibility to protect the critical resources in this ahupua'a. I grew up fishing, swimming, diving, and hunting around the Kawela stream. My kids play along the river mouth and pick wiliwili seeds along the beach. My wahine gathers laau lapaau plants from alongside the stream. I care about the Kawela stream because it provides life for the land, sea, and its people. Kakaha'ia still has fresh water springs. Throughout my life, the Kakaha'ia wetlands have gotten drier and drier. I want to be able to cultivate on these lands the same way my family has for generations. Without water in the Kawela stream, it is impossible to keep the springs running for generations to come. These cultural, religious, and recreational uses are just a snippet of the importance the Kawela stream has in our lives. For these reasons, I am in support of the staff's efforts to restore water to Kawela in terms of setting interim instream flow standards, addressing the abandonment of diversions, and mitigating waste inflicted by the diverters.

That being said, I humbly request that the recommendations of Q80 flow be changed to a Q40 flow. 120,000 gpd is NOT enough. When the river flows at say 500,000gpd for example, it is crazy to think that the diverters could possibly get 220,000 gpd, DLNR get 150,000, and Kawela get only 130,000. It is very difficult for me to even allow any amount of water to be taken from the stream. In all honesty, I want all diversions abandoned and not one drop of water taken out of the stream. Taking water from one side of the island to the other is just pilau in general. But because we already have and although it would be nice to abandon all diversions, we must at least try our best to reverse the effects of this wrongdoing without the westside dying. It would be smart to set the IIFS as high as possible, then figure out how we will provide for the inevitable increase in water needs when it comes. Right now, the diverters don't need one drop of Kawela's water to sustain themselves. Start over with a clean slate by giving Kawela stream a generous amount of water, if not all. Get more information on what the diverters really are really doing with the water and if it is worth diverting. Please make a change.

Mahalo

Lohiao Paoa

You can reach me at 

**From:** [Taylor Drake](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Testimony on Agenda item C1  
**Date:** Sunday, February 13, 2022 8:45:01 AM

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My name is Taylor Drake and I am testifying on agenda item C1.

I want to thank the Commission of Water Resource Management for their efforts in restoring water to Kawela stream.

I support the staffs recommendations, and humbly request for more than what is recommended. 120,000gpd is not nearly enough.

Please reconsider the IIFS to be set at Q40 flow. Give back what was taken for so long.

Mahalo  
Taylor Drake

**From:** [Eden Carney](#)  
**To:** [Hyatt, RaeAnn P](#); [DLNR.CW.DLNR.CWRM](#)  
**Subject:** [EXTERNAL] Kawela stream Testimony  
**Date:** Sunday, February 13, 2022 8:46:53 AM

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To: Rae Ann Hyatt [raeann.p.hyatt@hawaii.gov](mailto:raeann.p.hyatt@hawaii.gov)  
Testimony for the Commission of Water Resource management Feb. 15, 2021

Aloha mai kākou e Commission of Water Resource management,

I am Eden Ka'iulani Carney, my husband Michael and our 3 sons Dane (12), Duke (9) and Dorian (6) reside in Kawela. Both Mike and I were raised on the island of O'ahu and have called Molokai home for the past 16 years, Kawela is our sons 'one hānau or thier birth sands. We work and live on our 2 acre parcel in Kawela Plantation just to the East of the Kawela Stream. We have taken on the kuleana of homeschooling our sons on this 'aina, so that they can learn intricately about themselves and this place. A great part of our learning involves food security and sustainability. As a family we grow much of our produce, raise livestock for food and gather resources in our near shore area. I share these details with you because if we lose access to water we lose access to our way of life. Kawela Plantation currently has 2 ground water wells that it has access to, however, if the acquifer is not allowed to recharge the levels of salinity will rise in our water system and we will not have water necessary to live.

Our family is familiar with the lower stream area of Kawela as well and request that water be released to flow so that there can be freshwater flow into our near shore area. Being raised in Maunaloa, Oahu I was familiar with fresh water springs along the coast line that drew in fish species that were able to feed on limu and spawn in the protected shallow regions that were formerly fishpond. Having these near shore resources is essential to our food system as well as a cultural practice for us to be able to gather traditional foods. On one of our latest near shore fishing walkouts, we noticed springs that were flowing more than we have ever seen before. As a family we discussed possibilities of how this was occurring and we concluded it could have been due to the heavy rains we had in early December. We can not be left with only the heavy rains to nourish our stream and springs, especially when we look up Mauka and see that there is rainfall at the peak of our Ahupua'a daily.

We respectfully ask you as the commission to take the steps necessary to restore our water resources and let the water flow where it should have been flowing for over 100 years. We are testifying support of the Petition to Amend the Interim Instream Flow Standards and Allegation of Waste By Moloka'i No Ka Heke for Streams in the Surface Water Hydrologic Units of Waikolu (4003), Kawela (4037), Kaunakakai (4039), and Manawainui (4041), and Reservation of non-potable water for the Department of Hawaiian Home Lands, Moloka'i.

Mahalo for your time,  
Me ka ha'aha'a,

Eden Ka'iulani Carney  
Michael Carney  
Dane Michael Hihi'okahakuhemolele Carney  
Duke Thomas Haiakaha'aha'a Carney

Dorian Eugene Ho'ōlaokeawe'ehu Carney



Kaunakakai, Hi 96748

**From:** [pualei lima](#)  
**To:** [Hyatt, RaeAnn P](#)  
**Subject:** [EXTERNAL] Testimony on Agenda Item C1  
**Date:** Sunday, February 13, 2022 8:54:04 AM

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Aloha mai kākou,

My name is Pualei Lima from the island of Molokai. I am testifying on Agenda item C1. Alongside my kane, we are raising our keiki in Kawela. My children often play along the beach and we gather resources from the ocean to help feed our family. The amount of silt and mud that are displaced along Kawela is beyond measure. It is especially devastating after heavy rainfall and storms.

I mahalo the Commission of Water Resource Management for the recommended IIFS, however, I believe the Kawela Stream deserves more water flowing throughout daily. As a kanaka Hawai'i, I know that whatever happens in the uplands directly affects the lowlands, therefore, I strongly believe that a continuous flow throughout Kawela stream will allow for healthier coral reef and ocean ecosystems. Additionally, continuous water flow will recharge the aquifer, sustaining freshwater springs and providing drinking water within wells.

I humbly ask the Board for more water and to reconsider the IIFS to be set at Q40. Ola i ka wai!

Mahalo,

Pualei Lima





February 13, 2022

Via Electronic Mail

Commission on Water Resource Management  
Kalanimoku Building  
1151 Punchbowl Street, Room 227  
Honolulu, Hawai'i 96813  
dlnr.cwrn@hawaii.gov

Re: Agenda Item C.1, Status of CDR.5310.4 Combined Petition to Amend Interim Instream Flow Standards and Allegation of Waste By Moloka'i Nō Ka Heke for Streams in the Surface Water Hydrologic Units of Waikolu (4003), Kawela (4037), Kaunakakai (4039), and Manawainui (4041), and Reservation of non-potable water for the Department of Hawaiian Home Lands, Moloka'i

Dear Chair Case and Commissioners:

On behalf of Moloka'i Nō Ka Heke, Earthjustice submits the following comments on Commission staff's recommendations to: (1) establish numerical interim instream flow standards ("IIFSs") for Kawela, Kaunakakai, Manawainui, and Waikolu Streams; (2) require formal abandonment of unused diversion works; and (3) implement a surface water reservation for the Department of Hawaiian Home Lands ("DHHL") out of waters diverted from the four streams that supply Moloka'i Properties, Ltd.'s ("MPL's") Mountain Water System ("MWS").

Moloka'i Nō Ka Heke's members use or wish to use these mountain streams for a variety of cultural, subsistence, educational, recreational, and aesthetic purposes. Members include Hawaiian Homesteaders, residents and lineal descendants of Kawela, and residents of neighboring areas along Moloka'i's southern coast, where nearshore freshwater discharge plays a fundamental role in the vitality of the island's famously fertile and abundant reefs, estuaries, wetlands, and fishponds. After over a century of wasteful diversion practices that have frequently and unnecessarily taken every drop of water out of the mountain streams for days or weeks at a time, Commission action to protect these streams and the ecosystems and communities they support is long overdue.

On July 1, 2019, Moloka'i Nō Ka Heke filed their Combined (1) Petition to Amend the Interim Instream Flow Standards for Waikolu, Kawela, Manawainui, Kaunakakai Streams, and

Their Tributaries, and (2) Complaint Against Waste, and (3) Petition for Declaratory Order (CDR.5310.4) (“Petition”).<sup>1</sup> The Petition requests that this Commission:

- (1) establish numerical IIFs for the four streams diverted to supply the MWS, of which Kawela comprises the largest share of the diversions;
- (2) issue an order to show cause and compel any and all necessary action by MPL to cease and prevent waste of water resources; and
- (3) issue a declaratory order requiring MPL to formally abandon and remove its five inactive diversion works in the central Moloka‘i mountains.

In principle, Moloka‘i Nō Ka Heke supports much of the staff’s recommendations, which include long overdue numerical IIFs for several Moloka‘i streams. However, the information summarized in the draft staff submittal (“Submittal”) demonstrates that much higher IIFs should be set for these streams. Restoring higher flows is practicable particularly given MPL’s ongoing waste—including its diverting six times as much water as is needed for its current operations on a daily basis—and its failure to maximize efficiencies from its reservoir system, which can collect huge water volumes during high-flow events. Moloka‘i’s water resources are limited and precious and grow more so with each passing year under current and modeled climate change conditions. This Commission should take proactive and precautionary action to restore, conserve, and protect these resources to help these watersheds begin to recover from over a century of neglect, and should commit to further action to prevent the waste of these waters, before accommodating any future speculative off-stream uses.

#### A. Interim Instream Flow Standards

Staff recommends establishment of numerical IIFs below intakes on three MWS streams: Kawela (at the “East Kawela” intake), Kaunakakai (at the “Kamoku” tributary intake), and Manawainui (at the “Lualohe” intake).<sup>2</sup> Moloka‘i Nō Ka Heke appreciates staff’s efforts to ensure some consistent stream flow for these three streams; however, based on the data

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<sup>1</sup> Moloka‘i Nō Ka Heke notes that the Commission action proposed here references but does not purport to (nor does it) fully resolve CDR.5310.4, the “complaint dispute resolution” proceeding Commission staff initiated in response to Moloka‘i Nō Ka Heke’s combined Petition. Thus, even if the Commission approves staff’s current recommendations regarding certain IIFs and formal abandonment requests, many issues raised in the Petition will remain pending before this Commission, which Moloka‘i Nō Ka Heke respectfully request the Commission expressly commit to resolving expeditiously.

<sup>2</sup> Staff does *not* recommend establishing an IIFs for Waikolu Stream at the Hanalilolilo intake that supplies the MWS, as Moloka‘i Nō Ka Heke requested in their Petition. Staff’s recommendations to implement management of Waikolu water resources at lower elevations are discussed below in section “D.”

presented in staff's Submittal and in staff's November 2021 Instream Flow Standards Assessment Report ("IFSAR"), stream flow can and should be restored at much higher levels. Thus, Moloka'i Nō Ka Heke respectfully requests that the Commission increase staff's proposed numerical IIFs for the three mountain streams that the current Submittal addresses.

### 1. Kawela Stream

The Submittal and IFSAR provide important insight into the importance of mauka flow in restoring and maintaining the overall health of the Kawela ahupua'a and surrounding areas. As water flows down from the saturated mountaintop, it moves from a denser "upper member" layer of volcanic rock to less dense and more easily eroded "lower member" volcanics, which were formed by lava flows in two distinct eruption phases and are laced with impermeable dikes and separated by a layer of ash.<sup>3</sup> In its upper reaches, Kawela is a "gaining" stream, meaning that groundwater discharge contributes to surface flow.<sup>4</sup> As the stream cuts into lower member volcanics, however, Kawela becomes a "losing" stream, where surface water is absorbed below ground to continue flowing through the less dense rock.<sup>5</sup> This ground water recharge from Kawela Stream contributes to the fresh water aquifer underlying the area<sup>6</sup> and emerges eventually at or near the shoreline via springs, seeps, and palustrine (inland, non-tidal, and typically lower salinity) wetlands. Such wetlands are a predominant feature immediately to the east of the Kawela river mouth.<sup>7</sup>

Kawela's hydrology helps to explain the abundance for which Kawela and nearby coastal areas were famous in pre-contact and early historical times. Surface-augmented ground water flow supported several more conventional shoreline loko i'a (fishponds) in the area, but also supported two inland loko i'a at the foot of the mountain, one called Uluanui near the eastern boundary of Kawela Ahupua'a, and a much larger one called Kakaha'ia in the palustrine wetland area just east of the Kawela delta. Kawela was also known for its 'uala cultivation, using stream-fed irrigation 'auwai, and records also show the presence of limited irrigated kalo production, among other crops, suggesting much more consistent surface flow at Kawela's lower reaches than is seen today.

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<sup>3</sup> IFSAR at 11.

<sup>4</sup> IFSAR, Figure 3-8 at 40.

<sup>5</sup> IFSAR, Figure 2-1 at 12; *id.*, Figure 3-8 at 40.

<sup>6</sup> IFSAR at 103 ("restoring streamflow in Kawela Stream will improve groundwater recharge as the stream loses flow in the lower member [volcanics], recharging the Kawela Aquifer System").

<sup>7</sup> IFSAR, Figure 2-8 at 25.

Within living memory, Kakaha'ia was a functioning wetland (the area is also known as "Rice Patch"). But although Kakaha'ia is now designated as a wetland bird sanctuary, it rarely if ever shows water above ground, other than as indicated by the presence of bull rushes near the edges of the former pond. Uluanui, formerly located below where Onioni Drive crosses the face of the hill heading east, is long gone. The alluvial areas near the bottom of the stream, formerly the location of intensive traditional agriculture, is largely covered by invasive plants and evergreen trees, and the lower reaches of the stream itself now flow only after heavy rains.

Staff recommends an IIFS of 120,000 gallons per day ("gpd") for Kawela Stream, measured below East Kawela dam, which has been the primary source of water for the MWS.<sup>8</sup> This level of flow "approximately represents the Q<sub>80</sub> flow at USGS [flow gage] 16415000 above the intake."<sup>9</sup> In other words, staff's recommended IIFS would preclude diversion of Kawela water to the MWS only about 20% of the time, during the lowest flow conditions. Staff's analysis of the Kawela IIFS, however, notes rates of diversion that are absurdly out of proportion to MPL's reported non-potable uses, stating that "[t]he current daily rate of water diverted (mean of 370,000 gpd) is approximately 6x the amount used (62,000 gpd) and approximately 4x the amount (95,000) needed to meet these uses (assuming 33,000 gpd of evaporative loss)."<sup>10</sup>

First, this Commission should not "assume" that 33,000 gpd is an acceptable level of system losses relative to 62,000 gpd of use; such severe evaporative losses are unreasonable, wasteful, and must be mitigated. Second, and most importantly, with responsible use of existing reservoirs and tanks, the MWS is entirely capable of capturing and storing high flows such that Kawela Stream need not be diverted *at all* for several months out of the year, while still accommodating and meeting MPL's off-stream uses (which appears to be a primary consideration and objective in the current staff proposal). Staff's Submittal shows that, with MWS reservoirs at just 50% capacity, current off-stream uses (62,000 gpd) can be met *for 260 days with no additional input* of stream water.<sup>11</sup> Even factoring in purported planned increases in off-stream use (totaling 138,000 gpd), the reservoirs can meet 100% of those needs for 134 days, again at just 50% storage capacity.<sup>12</sup> One hundred thirty-four days is close to 40% of the year; thus, at *just 50% of reservoir capacity*, the MWS could support current and future needs while setting an IIFS for Kawela more closely approximating Q<sub>60</sub>, rather than Q<sub>80</sub>, flow.<sup>13</sup> At 80%

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<sup>8</sup> Submittal at 55.

<sup>9</sup> *Id.*

<sup>10</sup> Submittal at 58 (emphases added).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Given the much greater amounts of water during high flows, Submittal at 21, East Kawela intake's 500,000 gpd divertible capacity, *id.* at 28, and the nearly 50 million gallons of

reservoir capacity, the MWS could meet current and planned uses 100% of the time with no additional input of stream water for 213 days out of the year, which in theory should support an IIFS approximating  $Q_{40}$  flow.<sup>14</sup>

Even if DHHL fully builds out its use of the proposed 150,000 gpd reservation, and allowing for the 138,000 gpd of other planned off-stream uses, an IIFS approximating  $Q_{60}$  flow would easily allow for all off-stream uses to be met 100% of the time, with responsible management of reservoirs, tanks, and other MWS infrastructure. Instead of forcing the Kawela ahupua'a and community to continue shouldering the burden by establishing an IIFS which is modest at best and more protective of off-stream diversions than instream flow, this Commission should more meaningfully restore and protect the resource and insist that the diverter manage its diversions and reservoirs to provide the maximum practicable level of protection for the stream.

Thus, Moloka'i Nō Ka Heke respectfully requests this Commission to increase the staff proposal and establish an IIFS for Kawela Stream of 240,000 gpd, which more closely approximates the  $Q_{60}$  flow. Such a level of flow restoration would have no effect whatsoever on current uses, and MPL's proposed future increases in off-stream use can be readily met by more efficiently utilizing the storage capacity that already exists to capture storm flows.

This Commission's baseline restoration goal when setting IIFSs should be  $Q_{70}$ ,<sup>15</sup> with adjustments up or down based on the required balancing of instream public trust uses and reasonable-beneficial off-stream uses. An assessment of reasonable-beneficial off-stream uses must necessarily take into account mitigation and alternatives, including other available water sources, the efficiency of the diversion system including minimization of evaporation and other system losses, and whether the off-stream storage system can be used or upgraded to maximize diversions during the high-flow periods.<sup>16</sup> Such a whole-system framework enables the Commission to meet its public trust obligations when setting IIFSs.

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storage capacity available, *id.*, sufficient water to meet 100% of off-stream uses could be collected in even less time than a  $Q_{60}$ -based IIFS would provide for.

<sup>14</sup> *See id.*

<sup>15</sup> USGS has reported that the "natural, undiverted  $Q_{70}$  discharge . . . is an indicator of median base-flow conditions." D. Oki et al., Effects of surface-water diversion on streamflow, recharge, physical habitat, and temperature, Nā Wai 'Ehā, Maui, Hawai'i: U.S. Geological Survey Scientific Investigations Report 2010–5011, at v-vi, 131.

<sup>16</sup> This Commission took such an approach in establishing the numerical IIFS for Lawa'i Stream on Kaua'i in March, 2021. Because ample storage was available to capture high flows, staff recommended, and the Commission approved, an IIFS representing the estimated  $Q_{65}$  flow.

2. Kaunakakai Stream (Kamoku Intake) and Manawainui Stream (Lualohe Intake)

For many of the same reasons, Moloka'i Nō Ka Heke likewise requests increasing the IIFS proposals for the Kamoku and Lualohe intakes. Different from East Kawela, however, the Kamoku and Lualohe intakes are inactive and have not been used for years, and accordingly were among the diversion structures for which Moloka'i Nō Ka Heke requested formal abandonment.<sup>17</sup> Staff's Submittal suggests that Kamoku and Lualohe intakes are to be held in reserve to provide for off-stream uses if the East Kawela and Hanalilolilo diversions cannot meet MWS needs.<sup>18</sup>

Moloka'i Nō Ka Heke objects to leaving any unused infrastructure unnecessarily impounding and obstructing stream flow. If, however, the Commission intends to hold these intakes in reserve, Moloka'i Nō Ka Heke requests the Commission to establish IIFSs for Kamoku and Lualohe representing the Q<sub>50</sub> median flow (33,000 gpd and 42,000 gpd, respectively<sup>19</sup>), which can be amended if necessary in the event either or both diversions are sought to be reactivated. Like the IIFS Moloka'i Nō Ka Heke requests for Kawela, these IIFSs for Kamoku and Lualohe will have absolutely no effect on MWS uses—all the more so because they are not connected and contribute nothing to the system.

3. Waikolu (Hanalilolilo Intake)

Although item number "3" on page 1 of the Submittal suggests otherwise, staff does not recommend any IIFS be set on Waikolu Stream at the MWS Hanalilolilo intake. Instead, staff proposes a pair of IIFSs below in Waikolu Valley.<sup>20</sup> Moloka'i Nō Ka Heke's position on the staff proposals related to Waikolu Stream and the Moloka'i Irrigation System ("MIS") is discussed below in section "D." Staff's proposed IIFSs for Waikolu, however, do not respond to Moloka'i Nō Ka Heke's Petition or help to manage *the MWS's diversion* of Waikolu waters. Thus, the Hanalilolilo IIFS is one of the requests in Moloka'i Nō Ka Heke's Petition that will remain pending if not resolved here.

Hanalilolilo's divertable capacity is reportedly 150,000 gpd.<sup>21</sup> However, available records indicate that up to 433,000 gpd have been diverted from Hanalilolilo as recently as

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<sup>17</sup> See Part B, *infra*.

<sup>18</sup> Submittal at 15.

<sup>19</sup> See *id.* at 20.

<sup>20</sup> Submittal at 54.

<sup>21</sup> Submittal, Table 3 at 15.

August, 2020, with a 12-month moving average of 202,000 gpd reported in October, 2021.<sup>22</sup> Such diversions should not be left unchecked, but should be controlled by an IIFS to prevent undue diversion or waste and ensure consistent downstream flow. When DHHL's reservation of 150,000 gpd is fully implemented, the burden on the mountain streams will be more than double the purported planned off-stream uses (138,000 gpd), increasing the probability that Hanalilolilo will be subjected to higher diversion rates. Moloka'i Nō Ka Heke thus respectfully requests this Commission include language in staff's submittal requiring establishment of a numerical IIFS at Hanalilolilo—if not now, then prior to implementation of DHHL's surface water reservation.

#### B. Formal Abandonment of Unused Diversion Works

Moloka'i Nō Ka Heke requested formal abandonment for five unused MWS diversion intakes at West Kawela, East Kawela Tributary, Kamoku (Kaunakakai), Lualohe (Manawainui), and Kalihi (Manawainui).<sup>23</sup> None of the five have been active since at least 2015,<sup>24</sup> and some appear to have been inactive for much longer. Some are in serious disrepair and pose public nuisances. At the West Kawela intake in the Kamoku Preserve, for example, multiple discarded broken pipes and at least one large lead-acid battery lie along a public trail.<sup>25</sup> In addition to being idle and hazardous, these diversions are also entirely unnecessary given that, as stated above, Kawela and Hanalilolilo will provide sufficient water to meet 100% of MWS off-stream uses 100% of the time, even with diversion rates reduced significantly from the historic norm.<sup>26</sup>

Staff nevertheless recommends requiring abandonment of only three unused intakes: West Kawela, East Kawela Tributary, and Kalihi.<sup>27</sup> As discussed above in Part A.2, Moloka'i Nō Ka Heke may be willing to support retaining the two unused intakes, Kamoku and Lualohe, so long as the Commission establishes robust IIFSs to protect the streams. In addition, Moloka'i Nō Ka Heke requests that the Commission include the following conditions in staff's upcoming action submittal to ensure the protection of these resources:

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<sup>22</sup> See Appendix A: 2019-2021 diversion reporting from Hanalilolilo and Kawela, rendered in portable document format (PDF) from data spreadsheets CWRM staff provided to Earthjustice via electronic mail on November 1, 2021.

<sup>23</sup> Petition at 50.

<sup>24</sup> Submittal at 28.

<sup>25</sup> Petition at 43.

<sup>26</sup> See Part A.2, *supra*; see also Submittal at 58.

<sup>27</sup> Submittal at 57.

- (1) require MPL to submit a clean-up plan (in addition to a formal abandonment request<sup>28</sup>) for the abandoned diversions within 90 days of the Commission's decision, consistent with the timeline for submitting a proposal on how to alter diversions to meet the proposed IIFSs; and
- (2) require that any MWS owner seeking to reactivate Kamoku or Lualohe obtain a new Stream Diversion Works Permit (and if necessary, petition to amend the IIFS) prior to taking any action to resume diversion of streamwater.

C. Reservation of MWS Surface Water for DHHL

Although staff's proposed reservation of 150,000 gpd of MWS surface water resources for use on Hawaiian Home Lands is not among the requests in Moloka'i Nō Ka Heke's July 1, 2019 Petition, Moloka'i Nō Ka Heke supports the staff's recommendation.

Reservations of water for current and foreseeable future use on DHHL lands "constitutes a public trust purpose," *In re Waiola O Moloka'i*, 103 Hawai'i 401, 431, 83 P.3d 664, 694 (2004), and "is an essential mechanism by which to effectuate the State's public trust duty" to protect water sources for present and future generations. *Id.* Thus, DHHL reservations of water are entitled to the "full panoply of constitutional protections" afforded public trust purposes and take precedence over non-public trust groundwater uses. *Id.* Non-public trust uses and purposes, conversely, do not enjoy these constitutional protections; thus, DHHL's needs should be prioritized in allocating surface waters for off-stream use.

As discussed above in Part A.3, Moloka'i Nō Ka Heke requests that this Commission commit to establish a numerical IIFS for Waikolu at the Hanalilolilo diversion prior to implementation of DHHL's reservation out of the MWS, and requests language to that effect be included in staff's submittal.

D. Waikolu Stream and the Moloka'i Irrigation System

Moloka'i Nō Ka Heke takes no position on Staff's recommendations to establish numerical IIFSs for Waikolu Stream at the 250' and 900' elevations, require modifications to Waikolu Dam #4, and modify the Department of Agriculture's water use permit, other than to note that, while these actions provide benefits to Waikolu Stream's ecosystem at lower elevations, they are not responsive to Moloka'i Nō Ka Heke's Petition, and do not resolve Moloka'i Nō Ka Heke's request to establish an IIFS for Waikolu Stream at the Hanalilolilo intake. *See* Part A.3 above.

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<sup>28</sup> Submittal at 57.



E. Moloka'i Nō Ka Heke's Formal Complaint Against Waste

Staff's Submittal, while proposing resource protection measures that should place some outer limits on MPL's ongoing waste of stream water, does not address or resolve Moloka'i Nō Ka Heke's formal waste complaint. Protection of the resources, and the communities dependent upon and connected to them, should be the Commission's priority, thus Moloka'i Nō Ka Heke supports staff's recommended approach of putting resource protections into place by setting IIFSs before addressing abuses of that resource. Nevertheless, action to address waste should not be delayed indefinitely; therefore, Moloka'i Nō Ka Heke requests the Commission expressly commit to resolving the formal complaint by the end of calendar year 2022, by including language to that effect in staff's final submittal.<sup>29</sup>

Mahalo for taking positive steps to protect Central Moloka'i's surface waters, and for this opportunity to comment on staff's recommendations.

He ali'i ka 'Āina,

/s/ Mahesh Cleveland

Mahesh Cleveland

Leinā'ala L. Ley

Isaac Moriwake

EARTHJUSTICE,

Attorneys for

MOLOKA'I NŌ KA HEKE

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<sup>29</sup> The formal waste complaint includes Moloka'i Nō Ka Heke's request that administrative fines be levied for MPL's failure to meet prior reporting obligations pursuant to Hawai'i Administrative Rules section 13-168-3 and prior representations and agreements made with this Commission. *See* Petition at 3, 33-34, 51.

# HANALILOLO

Month	mg	mgd	12-MAV
2/1/2019			
3/1/2019			
4/1/2019			
5/1/2019			
6/1/2019			
7/1/2019			
8/1/2019	0.040646167	0.001	
9/1/2019	0.020011	0.001	
10/1/2019	0.014704	0	
11/1/2019	0.04847	0.002	
12/1/2019	0.04135645	0.001	
1/1/2020	0.08431555	0.003	
2/1/2020	0.114856571	0.004	
3/1/2020	0.86340182	0.028	
4/1/2020	5.88152118	0.196	
5/1/2020	6.113143345	0.197	
6/1/2020	0.54431906	0.018	
7/1/2020	1.28037394	0.041	0.041
8/1/2020	13.40837882	0.433	0.077
9/1/2020	6.34886818	0.212	0.095
10/1/2020	1.65071839	0.053	0.099
11/1/2020	7.17715182	0.239	0.119
12/1/2020	5.72203779	0.185	0.134
1/1/2021	4.400171	0.142	0.146
2/1/2021	2.46384252	0.088	0.153
3/1/2021	2.33091348	0.075	0.157
4/1/2021	1.915795	0.064	0.146
5/1/2021	8.56753684	0.276	0.152
6/1/2021	7.54748416	0.252	0.172
7/1/2021	10.89047271	0.351	0.197
8/1/2021	11.05022457	0.356	0.191
9/1/2021	6.05528199	0.202	0.19
10/1/2021	5.91476032	0.191	0.202
11/1/2021			

# EAST KAWELA

Month	mg	mgd	12-MAV
2/1/2019	22.41135556	0.8	
3/1/2019	3.850972028	0.124	
4/1/2019	0.4172	0.014	
5/1/2019	5.4011	0.174	
6/1/2019	7.885988	0.263	
7/1/2019	7.667242	0.247	
8/1/2019	0.371137167	0.012	
9/1/2019	0.69748	0.023	
10/1/2019	0.642947	0.021	
11/1/2019	0.524876	0.017	
12/1/2019	1.66973016	0.054	
1/1/2020	1.99624084	0.064	0.151
2/1/2020	9.61737875	0.332	0.112
3/1/2020	13.39168088	0.432	0.138
4/1/2020	11.46439412	0.382	0.168
5/1/2020	9.783768897	0.316	0.18
6/1/2020	10.05831187	0.335	0.186
7/1/2020	9.13671813	0.295	0.19
8/1/2020	7.72639345	0.249	0.21
9/1/2020	6.20122455	0.207	0.225
10/1/2020	3.787144	0.122	0.234
11/1/2020	9.50265	0.317	0.259
12/1/2020	4.54981294	0.147	0.266
1/1/2021	5.17634712	0.167	0.275
2/1/2021	11.02465376	0.394	0.28
3/1/2021	11.33533318	0.366	0.275
4/1/2021	8.564541	0.285	0.267
5/1/2021	10.97943372	0.354	0.27
6/1/2021	11.43118741	0.381	0.274
7/1/2021	6.3567329	0.205	0.266
8/1/2021	8.51549894	0.275	0.268
9/1/2021	10.09596096	0.337	0.279
10/1/2021	10.56942117	0.341	0.297
11/1/2021			

February 13, 2022

Aloha Commissioners,

My name is Jeri Lu Heen, I am a Grandmother and resident of Kawela, Molokai. I am submitting this testimony in full support of item C1, CDR.5310.4, combined Petition to Amend the Interim Instream Flow Standards and Allegation of waste By Moloka'i No Ka Heke for streams in the Surface Water Hydrologic Units of waikolu (4003), Kawela (4037), Kaunakakai (4039), and Manawainui (4041), and Reservation of non-potable water for the Department of Hawaiian Home Lands, Moloka'i.

My husband was a fisherman and would often tell our family stories of his diving days among beautiful reefs and abundant fish. He also had his share of stories about places on O'ahu where there was no fish because reefs had died, due to chemicals washing into the ocean, so when we first moved to Molokai from O'ahu in 1980, my husband was in heaven providing our family and others with fish by free diving in the ocean. When he would swim out in kawela there were no fish. He observed (in his own words); "kawela going from junk to junker, because they stopped the stream!!"

Everything thrives when there is Fresh Water.

My own testimony is from a maternal view of Kawela stream. As a young Makua I would take my children and their close friends to the stream as much as possible to refresh ourselves from the long hot Kawela days. It was always a reward for everyone to play in the water and enjoy the shaded area. You can imagine the feelings shared the days that we had walked so far only to find the streambed dried up. As the years passed this sadly became the norm, (no water in the stream), and our motivation to make the journey, with no living water (no relief or respite in sight) dwindled.

There is an emotional, spiritual healing connected to flowing water. For me Kawela stream was the place I always went to restore my energy and strength.

During the days when the stream possessed water, the tree's stood tall and their branches flourished, creating shade, for the younger saplings.

Today more and more trees are starting to die and fall over because there is no nourishment for their roots. All this sickens me and makes me want to cry, and I wonder about the word GREED.

Sharing is one thing, and making sure everyone has a right to water is crucial, but to TAKE ALL and hurt the surrounding environment is wrong and affects everything from the mountain to the sea. Seems to me that the surrounding lands in which the streams and rivers have been placed should have precedence.

Mahalo for a chance to share my feelings

Sincerely,

Jeri Lu Heen

Department of Land and Natural Resources  
Commission on Water Resource Management  
P.O. Box 621  
Honolulu, Hawaii 96809

February 15, 2021

Aloha Chair Case and Commission members,

I am in support of the community request to restore stream flows located in Kawela, Kaunakakai, Manawainui, and Waikolu on Moloka'i. I am a life long resident of the island, born and raised in the Hoolehua homestead area. I and my 'ohana, like many of the kama'aina of this island, have always been able to supplement our needs through fishing, subsistence farming, and gathering from mauka and makai. As a child, our meals often included or were supplemented by fish, opihi, limu, he'e, prawns, o'opu, hōi'o and/or venison, and for snacks we gathered guava, plums, mulberries, mango, and wild strawberries in the lowlands and forest. We carry on the traditions of gathering from mauka and makai in my own 'ohana as my husband grew up in Mana'e fishing and hunting and passed some of that knowledge on to our kamali'i who are now adults. My son farms the homestead commercially with kalo and avocado primarily, and like many others, we also have a variety of fruit trees for home use.

I share this personal background because I believe our 'ohana is representative of 'ohana across the island who have been raised with a subsistence lifestyle. Besides providing food, gathering from mauka to makai is also beneficial for our physical and emotional wellbeing. Restoring the stream flows will hopefully 1) restore and sustain some of the aquatic resources existing in our streams 2) recharge the ground water that feeds our shorelines so our makai ecosystem in that area is restored and maintained and 3) help to restore the integrity of our mauka ecosystem.

I understand that Molokai Properties, Ltd. has drawn far more water from the streams over the recent years than is actually needed now and for their future needs. I support the abandonment of diversions not needed and that they be required to clean up all associated and abandoned pipes at those diversions.

I am impressed with detailed and well-documented staff report prepared for the Commission. I believe their report supports my comments.

Mahalo nui,  
Barbara Kalipi  
Molokai resident

From: Cal Chipchase  
Sent: Tuesday, February 15, 2022 12:04 AM  
To: Strauch, Ayron M  
Cc: Manuel, Kaleo L; Uyeno, Dean D; Hyatt, RaeAnn P; Darene Matsuoka; Chow, Linda L  
Subject: [EXTERNAL] Re: Informational briefing with draft recommendations for the Water Commission

Hi Ayron -

I read as much of the draft report in the time I could. I'll be in a mediation tomorrow. In the event that the informational briefing is held over MPL's objection, MPL submits the following preliminary objections to the Staff Report:

- As stated in my email below, the Commission did not provide MPL with sufficient notice to ensure that we could review and evaluate the report prior to the hearing and attend the hearing. The public notice states that the matter discussed is the "status of the combined petition" and not staff's draft recommendation regarding the petition's request to establish new IIFSs. Given the lack of notice of both the hearing and the report, the fact that the agenda does not disclose that the draft report will be discussed at the hearing and the fact that no one with MPL is available fully to review the report prior to the hearing or have the appropriate representative attend the hearing, the hearing should not include the presentation of the draft report.
- The report contains factual inaccuracies. For example, the report states that "at the end of 2017, a new pipeline was installed to directly deliver potable water from Well 17 to west Molokai, and the [MWS] was discontinued." MPL continues to use the MWS to service customers in Kualapuu and Manawainui, as well as for livestock and agricultural uses.
- The report's recommendations do not weigh "the importance of the present and potential uses of water for noninstream purposes, including the economic impact of restricting such uses" as required by the Water Code. HRS 174C-71(2)(D).
- The report's recommendations improperly prioritize public trust uses, such as water reservations for DHHL. As the Hawaii Supreme Court in Waihole I explained, "we consider it neither feasible nor prudent to designate absolute priorities between broad categories of uses under the water resources trust. Contrary to the Commission's conclusion that the trust establishes resource protection as a categorical imperative and the precondition to all subsequent considerations, we hold that the Commission inevitably must weigh competing public and private water uses on a case-by-case basis, according to any appropriate standards provided by law." In re Water Use Permit Applications, 94 Hawaii 47, 142, 9 P.3d 409, 454 (2000).
- Although the Commission must consider public trust uses, such as water reservations for DHHL, it is without authority to set a massive water reservation for DHHL as a part of a petition to amend IIFSs.
- The report does not support the recommended reservation of surface water for DHHL in the amount of 6.0914 mgd from the Waikolu surface water hydrologic unit, particularly in light of DHHL's existing (substantial) reservation.
- The report improperly seeks to impose affirmative obligations on MPL, including by compelling MPL to provide water to DHHL through MPL infrastructure.

- The report's recommended mean daily flows for East Kawela, Kamoku and Lualohei Streams and establishment of IIFSs for Waikolu Stream is premature. No studies have been completed to establish these standards.
- The report's recommendation that the diversions at East Kawela Tributary and West Kawela Stream be abandoned is also premature. The recommendation ignores the information submitted by MPL to the Commission. No separate studies have been completed to support abandonment.

We remain open to discussing the above-concerns and other issues regarding the combined petition with the Commission.

Best,

Cal