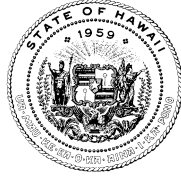


JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ke Kia'āina o ka Moku'āina 'o
Hawai'i*

SYLVIA J. LUKE
LT. GOVERNOR
STATE OF HAWAII
*Ka Hope Kia'āina o ka Moku'āina
'o Hawai'i*



KALI WATSON
CHAIRMAN, HHC
Ka Luna Ho'okele

KATIE L. DUCATT
DEPUTY TO THE CHAIRMAN
Ka Hope Luna Ho'okele

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

Ka 'Oihana 'Āina Ho'opulapula Hawai'i

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF KALI WATSON, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT
NOVEMBER 16, 2023**

ITEM C.4. Informational Briefing on Well Construction and Pump Installation Permits

Aloha Chair Chang and Members:

The Department of Hawaiian Home Lands (DHHL) has significant rights to water that can be enhanced or harmed when the Commission on Water Resource Management (CWRM) issues Well Construction / Pump Installation Permits (WCPIP) in hydrologic units that have been not designated as "Water Management Areas". DHHL rights to water including our status as a Public Trust use of water are based in provisions of the Hawaiian Homes Commission Act (HHCA), the state Constitution (Article XII Sections 1 - 3), the state Water Code (HRS 174 C, especially section 101), and case law (especially in In the Matter of the Contested Case Hearing on Water Use, Well Construction, and Pump Installation Permit Applications, Filed By WAIOLA O MOLOKAI, INC. and MOLOKAI RANCH, LIMITED, 103 Haw. 401 (2004) and In re Contested Case Hearing on Water Use Permit Application Filed by Kukui (Molokai), Inc., 116 Hawai'i 481 (2007).

Based on a previous action of CWRM many years ago which is not readily available on the CWRM website, authority was delegated to the Deputy Director of the Commission to sign off on WCPIP without those permits being considered by the full CWRM. The only notice given in nearly every case to DHHL is the publication in the Water Resources Bulletin. Frequently it has been our observation that notices in the bulletin are delayed, giving no effective notice to DHHL of proposed permits that may adversely impact the rights of the Department, its beneficiaries, or the Hawaiian Homes Commission. In addition, this delegation of authority means that even with potential harm, DHHL has no opportunity to seek a contested case on permits that do not appear before CWRM. This has had the practical effect of denying DHHL due process in the allocation of water.

We understand this is an informational briefing. If any subsequent action is proposed to rescind, modify, expand, or otherwise address this long-standing problem, we request that you work with DHHL to ensure that a new procedure is adopted that complies with Constitutional and Statutory requirements as they pertain to the rights of DHHL, its beneficiaries, or the Hawaiian Homes Commission.

Chairperson Chang
November 16, 2023
Page 2

We appreciate the opportunity to provide testimony on this item.

Mahalo nui loa,

A handwritten signature in black ink that reads "Kali Watson". The signature is written in a cursive, flowing style.

Kali Watson, Chairman
Hawaiian Homes Commission

Commission on Water Resource Management (CWRM)
State of Hawai'i Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu, Hawai'i 96813
Via Email: iwalani.hr.kaaa@hawaii.gov
dlnr.cwrn@hawaii.gov

RE: Written Testimony Related to Items C-3 and C-4 / Request for Certification of the Ku'ia Estate Well (Well Number 6-5239-001)

Aloha Chair Chang and Members:

My name is Gunars Valkirs and I am the CEO of Maui Ku'ia Estate Chocolate, Inc. (MKEC), a vertically integrated chocolate company that operates a cacao farm on 54 acres leased from Kamehameha Schools (KS) and processes that chocolate for sale at a factory in Lahaina. It is the publicly stated mission of MKEC to return 100% of our net profits back to Maui charities and non-profit organizations.

MKEC has been a continuous user of water diverted from Kaua'ula Stream and delivered to us by the Launiupoko Irrigation Company (LIC) from late 2013 to the present, with exceptions of certain periods where LIC ceased delivery and that stoppage was outside of our control. We have also developed and completed the Ku'ia Estate Well (Well Number 6-5239-001) in order to have an assured supply of water and reduce our demand on surface water. The purpose of this testimony, submitted in relationship to agenda items C-3 (Informational Briefing to the Commission on Statewide Drought Conditions) and C-4 (Informational Briefing on Well Construction and Pump Installation Permits) is to highlight for you the particular predicament MKEC is facing in relationship to the ongoing drought, our reliance on surface water, our efforts to have an alternate ground water source, and our need for CWRM to take action to address our unique circumstances.

Below I will review the history of our efforts to secure a groundwater source to serve as an alternative to our existing surface water uses in face of CWRM actions and ongoing drought. This will serve as a background to our request.

MKEC efforts to secure a groundwater source to serve as an alternative to our existing surface water uses

Prior to the designation of the Lahaina Aquifer Sector as a Surface and Ground Water Management Area, there were periods when surface water was not available to Ku'ia. Those incidents resulted in part from the Interim Instream Flow Standard (IIFS) established for Kaua'ula Stream in March of 2018 as well as the drought year we had in 2022. In April of 2022, the Commission approved a temporary suspension of the IIFS because there had not been enough water in the stream to meet the IIFS and supply the kuleana families living in Kaua'ula

Valley and water to KS lands as intended by CWRM when the IIFS was set. That temporary suspension was extended in July of 2022 and has been extended by the Chair through December 31, 2023.

MKEC pursued construction of a groundwater well to relieve the dependence of our cacao farm on diverted stream water. We have successfully completed construction of the well and appurtenances at a cost of approximately \$800,000. The Ku'ia Estate well (Well Number 6-5239-001) has been constructed on KS land. It is fully capable of pumping water as specified and tested Parts 1 (July 19, 2022) and 2 (August 15, 2022) in the Well Completion Report submitted to CWRM, and as attested to us by our contractor Alpha, Inc. The action of the Commission to suspend the IIFS in April of 2022 was amended to extend the suspension to July 2022 to provide time to complete the well.

In addition to our Well Construction and Pump Installation Permit Applications, a Ground Water Use Permit Application (GWUPA) was submitted by MKEC before the August 5, 2023, deadline for existing uses requesting an allocation based on historical usage of surface water for irrigation of the cacao farm. Kamehameha Schools (KS) submitted a Surface Water Use Permit Application (SWUPA) at the same time. The intent of the two submissions is to provide two independent water sources to the KS lands in Ku'ia with the surface water being the primary source. In the event of a disruption of the surface water supply, the well can be used to provide water to the two current agricultural tenants in Ku'ia, the Maui Ku'ia Estate cacao farm and the Ku'ia Agricultural Education Center. ***Without a second source of water, disruption of the surface water supply will result in irreparable damage to the cacao farm in a matter of weeks. That threat was the motivation for applying for well construction and pump permits in 2018, receiving the permits in 2020, and completing the well in July of 2022.***

I understand there is a revised IIFS that has been prepared and will likely be acted upon soon. However, given the significant drought conditions we are experiencing, that would not ensure that surface water would always be available to KS lands. The well is still necessary to secure water if the stream water supply is interrupted.

The Public Notice declaring the Lahaina Aquifer Sector a Surface and Ground Water Management Area stated in part (emphasis added):

Applications for water use permits to continue an existing use of surface or ground water must be made within a period of one year from the effective date of designation, that is between August 6, 2022 (the date this Public Notice is published) and no later than August 5, 2023. The Commission shall send notices to existing users who declared their uses, registered stream diversions or wells, and to persons who have obtained stream diversion works permits or well construction and pump installation permits from the Commission to file for applications for water use permits to continue their existing uses.

The last sentence of this paragraph places the Ku'ia Estate well squarely in the category of users eligible to apply for an existing water use permit in the first year following designation. Not only did we have the necessary permits indicated but the Well Completion Report Part 1

was filed on July 19, 2022, before the date of designation. The report requires a full day pump test and effectively is a demonstration that the well is fully operational and constitutes a declaration of use for the Ku'ia Estate well.

Request for Issuance of a Certificate of Completion for the Ku'ia Estate Well

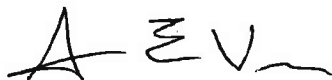
MKEC has submitted a GWUPA as an existing user, but I understand the review process may be long and last into 2024 and beyond. What we lack and what we require is a Certificate of Completion for the Ku'ia Estate Well so that we are able to continue our existing uses of water if surface water is unavailable, either due to the enforcement of the existing IIFS, an alteration to the IIFS by CWRM, ongoing drought, unforeseen factors that prevent surface water from being delivered to our farm, or some combination of these factors.

The Certificate of Completion for the Ku'ia Estate Well should be issued before the GWUPA is reviewed so that we have an alternate water source should stream water be unavailable. CWRM staff indicated in July 2022 that the Certificate of Completion would be issued "soon". A request to re-measure the water level to two significant figures was made in September by CWRM staff. Alpha, Inc. quickly made the measurement and filed the revised information with CWRM. The Certificate of Completion was resubmitted for internal review on October 2, 2023. Since the completion of the pump test in July of 2022, we have not pumped water from the well, but we would need to do so if the stream water supply is interrupted. We respectfully request that the Certificate of Completion be issued with the approval to pump. As an existing user, we are supposed to be allowed to continue our uses but the absence of a Certificate of Completion is preventing us from doing so.

Conclusion

We understand that we are submitting this testimony on two significant but informational briefing items. We are not clear whether or not the chair person is empowered to issue us our certificate of completion, or if it will require action by this commission. Regardless of the method we ask that you address this matter as quickly as possible.

We deeply appreciate the challenges that managing surface and groundwater present in Lahaina, and the many complexities that are involved. We trust that this testimony is of service to you in that work and we eagerly await the assurances which will allow our business to continue to grow and thrive, as we remain an existing reasonable and beneficial user of water in this area. Mahalo for your continued service to Hawai'i and thank you for consideration of this testimony.



Gunars Valkirs

CEO, Maui Ku'ia Estate Chocolate