



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

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December 18, 2023

TESTIMONY OF DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII  
HEARING BEFORE THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: December 19, 2023  
TIME: 9:00 AM  
PLACE: DLNR Boardroom, Kalanimoku Bldg.  
1151 Punchbowl Street, 1<sup>st</sup> Floor/ & Online via Zoom  
Meeting ID: 821 5733 8127 / passcode: 419563

**RE: AGENDA ITEM B. 4. MODIFICATION OF EXISTING DELEGATION TO THE  
CHAIRPERSON TO APPROVE WELL CONSTRUCTION AND PUMP  
INSTALLATION PERMITS AND OTHER GROUNDWATER PROGRAM RELATED  
APPROVALS BY LIMITING THE DELEGATION TO CERTAIN CIRCUMSTANCES**

The Department of Water Supply, County of Hawaii (DWS) **has concerns** regarding the proposed modifications.

DWS feels that there is not enough time to review the potential impacts to the process and feels that there needs to be input from all stakeholders prior to any modifications. DWS is concerned whether the recommended modifications are in the best interest of the Commission as well as the public.

For example, the modifications must be clear that it will continue to include the March 16, 1994, decision to delegate the authority to the Chairperson to approve permit applications for the replacement pumps of less than or equal pump capacity. Under the 1997 and subsequent 2004 Well Construction and Pump Installation Standards, unless deemed otherwise by the Chairperson, a new or additional permit application is not required, and if this is intended to continue, then it should be clearly stated that the modifications will not change this condition.

DWS also wants to point out that within the Staff Submittal, BACKGROUND AND CURRENT DELEGATION, page 2, item 2, which states in part, "Also in practice, there are certain instances when well construction and pump installation permits have been presented to the Commission for approval, including: 2. Wells in the Keauhou Aquifer System Area..." This prior action was also questionable as one of the conditions in the decision to not designate the Keauhou Aquifer System Area was, "The Commission will refer all well permit applications to the Aha Moku Advisory Committee (AMAC) and the Department of Hawaiian Home Lands (DHHL) for review for recommendations to protect traditional and customary practices that are exercised and may be affected by the proposed application. If traditional and customary practices are found in the proposed permit area that may be affected by the proposed action, special conditions will be suggested to mitigate impacts of the proposed well. If the well operator and landowner do not agree to the special conditions, then staff will present the

applications to the Commission for decision making pursuant to Hawaii Revised Statutes (HRS) §174C-84 (f) and Hawaii Administrative Rules (HAR) §13-168-12(h).that well permits do not require decision making by the Commission unless the well permittee and land owner (via the Aha Moku system) do not agree to the special conditions suggested to mitigate impacts of the proposed well.” It appears that an arbitrary decision was made to bring well permits to the Commission even though the above condition was not met.

In the KA PA‘AKAI ANALYSIS section of the Staff Submittal, DWS would like clarification of the following statement, “In non-management areas, where the proposed pump capacities are substantial and there are known cultural practices, staff requires a Ka Pa‘akai analysis.” What is considered substantial? When did this become standard practice and is it being consistently applied? It is also unclear what staff is referring to in the last paragraph regarding “staff will continue to process those currently pending applications as before.” The process has not been clear in the past and it has been difficult to determine the specific requirements to obtain a Well Construction Pump Installation (WCPI) permit.

The proposed RECOMMENDATION states, “All other permits and program approvals not explicitly delegated to the Chairperson to approve in this action will be brought to the Commission for final decision making.” We are concerned that this may overburden the Commission, leading to unnecessary delays in WCPI processing.

Finally, DWS recommends that this proposed action be denied or deferred and that any modifications to the process be brought to stakeholders for review and input as required for rule-making decisions.

Thank you for your time and consideration of DWS’s testimony.

Mitchell D. Roth  
Mayor



Lee E. Lord  
Managing Director

Robert H. Command  
Deputy Managing Director

County of Hawai'i  
Office of the Mayor

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December 19, 2023

Ms. Dawn Chang, Chair  
Commission on Water Resources Management  
DLNR Boardroom, Kalanimoku Building  
1151 Punchbowl Street  
Honolulu, HI 96813

**RE: AGENDA ITEM 4B. MODIFICATION OF EXISTING DELEGATION TO THE  
CHAIRPERSON TO APPROVE WELL CONSTRUCTION AND PUMP INSTALLATION  
PERMITS AND OTHER PROGRAM RELATED APPROVALS LIMITING THE  
DELEGATION TO CERTAIN CIRCUMSTANCES**

Aloha Chair Chang and CWRM members,

The County of Hawai'i humbly takes this opportunity to support the testimony of the Department of Water Supply (DWS) regarding proposed modifications to limit the authority of the Chair and direct permits and other matters previously delegated to the Chair to be determined by the Commission on Water Resources Management.

The proposed recommendation requires all other permits and program approvals not explicitly delegated to the Chair to be brought to the Commission for final decision making. The County of Hawai'i feels this change is superfluous as the Chair, under the previously granted delegation of authority, already has the authority to determine whether an action should be decided by the Commission.

The County agrees with DWS that there has not been sufficient time to review the potential impacts of this proposal. We feel there should be more input to completely understand how this proposed modification will impact stakeholders, especially as it relates to the development of affordable housing in West Hawaii, where potable water is the only major obstacle to the creation of thousands of much-needed affordable units.

Thank you for the opportunity to provide testimony on this subject. Please call my office if you have any questions.

Mahalo

Bobby Command  
Deputy Managing Director  
County of Hawai'i

**BOARD OF WATER SUPPLY  
KA 'OIHANA WAI  
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GENE C. ALBANO, P.E., Ex-Officio

December 19, 2023

Dawn N. S. Chang, Chairperson  
and Members  
State Department of Land and Natural Resources  
Commission on Water Resource Management  
1151 Punchbowl Street, Room 132  
Honolulu, Hawaii 96813

Dear Chairperson Chang and Members:

Subject:      Action Item B-4 – Modification of Existing Delegation to the Chairperson to  
                 Approve Well Construction and Pump Installation Permits and Other  
                 Groundwater Program Related Approvals by Limiting the Delegation to  
                 Certain Circumstances

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The Honolulu Board of Water Supply (BWS) appreciates the opportunity to provide testimony on Item B-4.

1. Regarding the delegation to the Chairperson to only approve, in Item 3, "Well construction permits for monitor, sampling, and observation wells and test holes and for the sealing of unused and abandoned wells...":

We recommend clarification be provided that distinguishes between wells for the extraction of water and injection wells. Under Ch. 11-20, HAR, the State Department of Health has authority over the permitting, siting, design and construction and use of injection wells. In addition, we recommend clarification of the definition of "test holes", which should exclude soil borings for geologic investigation for structural foundation design and larger borings for injection well design.

2. We recommend that the commission consider the delegation to the Chairperson of Well Construction Permits unless the Chairperson determines that the matter

should be decided by the Commission, because Pump Installation Permits will be brought to the Commission for final decision making. We provide the following reasons:

- a. Until the well is constructed and the well is test pumped, the developer will not know if there is sufficient developable water. The well may be a dry hole or have very low yield such that development is not feasible.
  - b. Until the well is test pumped, the pump size will be unknown and impacts to surface water and Ka Pa`akai resources will also be unknown.
  - c. The well permitting process should be streamlined as practicable for administrative expedience due to limited Commission time and CWRM staffing resources.
    - i. For example, under the proposed recommendations, the Commission will potentially review a well project three (3) times, for the Well Construction Permit, Pump Installation Permit and Water Use Permit, in a designated water management area. In our experience, we cannot combine the well construction and pump installation permit applications because the water source and yield have not been verified until test pumped.
    - ii. CWRM staff is knowledgeable and experienced to determine the applicable conditions of a well construction permit application, unless the Chairperson determines that the matter should be decided by the Commission for final decision making. We reiterate that the Commission will have the opportunity to review and impose conditions on the Pump Installation Permit, when pertinent information is known.
    - iii. Developers are aware that the risk of an exploratory well project is born by the developers and that the Commission may place additional conditions to the approval of the Pump Installation Permit and Water Use Permit. However, placing an inordinate amount of conditions on the Well Construction Permit when the source is not verified would be overburdensome, and the delays could affect the availability of water for agriculture and urban developments, including affordable housing.
3. It is unclear whether the pending well construction permit applications deemed complete, but not acted upon, will be subject to the modification of existing delegation action or not.

Ms. Dawn Chang, Chairperson  
December 19, 2023  
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4. We agree with the Hawaii Department of Water testimony that the subject modification of delegation be brought to stakeholders for review and comments before rule-making decisions.

Thank you for the opportunity to provide testimony on Item B-4.

Very truly yours,



ERNEST Y.W. LAU, P.E.  
Manager and Chief Engineer