

HAWAII LEEWARD PLANNING CONFERENCE
P.O. BOX 2159 • KAMUELA, HAWAII 96743-2159

14 April 2024

The Honorable Dawn Chang, Chairperson
Board of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621,
Honolulu, HI 96809

Via Email: iwalani.hr.kaa@hawaii.gov
dlr.cwr@hawaii.gov

Subject: Commission on Water Resource Management Meeting on April 16th 2024
Agenda Item B-2 Request for Modification of Conditions 1a and 1d
Ref: Well Construction Permit approved at the April 16th 2022 Commission Meeting

Aloha Chairperson Chang and Commissioners,

This letter of support of the request by the Natural Energy Laboratory of Hawaii Authority (NELHA) and Hawaii Finance and Development Corporation (HFDC) for modifications of Conditions 1a and 1d attached to the commission's August 16th 2022 approval of well construction and pump installation permits for the Ota well in North Kona, is submitted on behalf of Hawai'i Leeward Planning Conference (HLPC).

HLPC, a private, member-based 501(c)3 was incorporated in 1974 when forward looking business and community leaders saw the need for an organization to work with government to promote sound planning decisions for West Hawai'i Island. In the intervening years, in recognition of changes to socioeconomics, communities, communications, technology, and policy making, HLPC has maintained its original name while broadening its scope to all of Hawai'i Island. HLPC understands the critical nature of protecting our resources including and not limited to, water while simultaneously meeting the needs of the community in a balanced and sustainable manner.

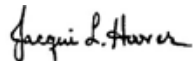
As funding is another resource that must be carefully considered and balanced, we seek clarification regarding Special Condition 1a which relates to a mitigation measure for upland watershed forest lands with the well developer contributing funds to the Department of Forestry and Wildlife (DOFAW) for restoration and maintenance of upland forests. It is important that this condition provides specifications as to how the contributed funds are to be expended and the specific duration of time that such contributions are to be made.

HLPC which is comprised of and representing a broad community, resident, and business stakeholder base, including members with experience in coastal ecosystems supports a mitigation plan to document impacts that freshwater withdrawal and use may have on the biotic and abiotic components of the subject ecosystem. Specific to Special Condition 1b, HLPC supports shifting focus from duplicative biota surveys to a coastal groundwater monitoring program which will help develop baselines and a more comprehensive understanding of impacts.

Mahalo for the opportunity to submit these remarks which are in alignment with HLPC's objectives to advocate for sound planning decisions in support of long-term benefits to Hawai'i Island communities and the preservation, maintenance, and enhancement of significant aspects of Hawaiian history, culture, and resources.

Please do not hesitate to contact me if additional information and/or clarification is desired.

Sincerely,

A handwritten signature in black ink that reads "Jacquie L. Hoover". The signature is written in a cursive, flowing style.

Jacquie L. Hoover, President & COO

Email: jacqui_hlpc@yahoo.com

Direct: (808) 960-7503

Lanihau Properties, LLC

P.O. Box 9032

Kailua-Kona, HI 96745

Phone: (808) 936-7129 • Fax: (808) 329-8044

Email: rsmith@lanihau.net

April 15, 2024

Dawn Chang, Chair
Commission on Water Resource Management
Department of Land and Natural Resources
1151 Punchbowl Street, #130
Honolulu, Hawaii 96813

Via email: iwalani.hr.kaaa@hawaii.gov
DIr.cwrn@hawaii.gov
Dawn.chang@hawaii.gov

**Re: Letter of Support; B.2 – Modification of Conditions for Ota Well
NELHA/HHFDC – Application for Well Construction Permit
(Well No. 8-3957-006; tmk (3) 7-5-1: 165)**

Aloha Chair Chang, members of the Commission on Water Resource Management:

My name is Riley Smith. I am the President/Chief Executive Officer of Lanihau Properties. We own and steward most of the lands located within the ahupuaa of Honokohau 1 and 2, North Kona, Hawaii. Our lands are also within the Keauhou Aquifer and are in close proximity to the Ota Well site. Our properties are owned by the heirs of Frank “Palani” Greenwell, we have had continual ownership of lands and trace our roots back to the 1850’s. As an aside, the Honokohau portion of the Kaloko Honokohau National Park are lands that were previously owned by the family and sold to the federal government (in the 1980s), so that the national park could be improved. We also own and operate Palani Ranch, within our more mauka lands.

We support the efforts of the Hawaii Housing and Finance Development Corporation to provide opportunities for affording housing in this district, as well as the work that the Natural Energy Laboratory of Hawaii Authority is undertaking to utilize our natural resources, in order to provide economic opportunities for our residents. As noted within the staff submittal, if approved, this project will also provide much needed potable water for the Department of Hawaiian Home Lands, within their nearby Laiopua Tract. The approval of this well resource will enable the trust to also provide housing to those on their waiting list, all who are native Hawaiian and have patiently waited for the opportunity of owning their own homes, as envisioned by Prince Kuhio.

This process towards approval has been long and contentious. The applicants and the stakeholders within the community, have collaborated on mutually agreeable revisions to conditions 1.a and 1.d, in order to obtain broad based support, so that this well can proceed and provide this natural resource to our community.

I humbly ask that the Chair and the Commission vote in favor of this item, which is long overdue and will provide many benefits to those residing in North Kona.

Very truly yours,

A handwritten signature in black ink, reading "Riley W. Smith". The signature is written in a cursive style with a large, stylized initial "R".

Riley W. Smith, P.E.
President/Chief Executive Officer



Native Hawaiian LEGAL CORPORATION

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COMMISSION ON WATER RESOURCE MANAGEMENT MEETING Relating to Agenda Item B2

Request for Modification of Conditions 1a. and 1d. of Well Construction Permit approved at the August 16, 2022 Commission meeting – Approve with Special Conditions the Natural Energy Laboratory of Hawai'i Authority and Hawai'i Housing Finance and Development Corporation, APPLICATION FOR WELL CONSTRUCTION PERMIT, Ota Well (Well No. 8-3957-006), TMK (3) 7-5- 001:165, Lanihau 1-2, Moeauo Ahupua'a, Keauhou, Hawai'i

April 16, 2024

9:00 a.m.

DLNR Boardroom

Aloha e Chair Chang and Commissioners,

On behalf of Hui Ola Ka Wai, the Native Hawaiian Legal Corporation provides the following testimony in opposition to Agenda Item B2. The revisiting of the special conditions shed light on and reveal problems with the process and legal obligations related to Ota well as well as groundwater management in Kona in general.

Hui Ola Ka Wai objects to any water development projects in Kona without adherence to proper process – including evaluation of impacts and meaningful consultation with the community.¹ See, e.g., *Ka Pa'akai O Ka 'Āina v. Land Use Comm'n*, 94 Hawai'i 31, 7 P.3d 1068 (2000). Ota well, as the first major well project since the petition to designate the Keauhou Aquifer System a water management area was denied and the condition requiring review of impacts of all future wells on traditional and customary practices was imposed, paves the way for well proposals currently in the pipeline – wells that would authorize the commercialization of Kona's deep confined water source without a clear picture of the environmental and cultural effects.

As shared previously with the Commission, Hui Ola Ka Wai has questions and concerns about Ota well and the proposed modified conditions that have never been addressed:

- (1) The *Ka Pa'akai* analysis is incomplete. *Ka Pa'akai* puts the burden on the Natural Energy Laboratory of Hawai'i Authority ("NELHA") and Hawai'i Housing Finance and Development Corporation ("HHFDC") to establish: (1) the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources – including traditional and customary native Hawaiian rights –

¹ Hui Ola Ka Wai incorporates by reference all the testimony it provided to CWRM at its April 20, 2021, August 16, 2022, and March 19, 2024 meetings.

will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the state to reasonably protect native Hawaiian rights if they are found to exist. NELHA and HHFDC have failed to meet their burden, thereby violating their obligation and preventing the Commission from fulfilling its own kuleana to protect and preserve Native Hawaiian traditional and customary practices.²

The *Ka Pa'akai* section in the August 16, 2022 staff submittal identifies in a few sentences traditional and customary practices in the area; however, the analysis omits reference to a May 29, 2015 report in the Commission's own records—prepared in response to a request by the Commission itself—detailing past and present traditional and customary practices that are reliant upon the continued flow of water into Kaloko-Honokōhau National Historic Park.³ The analysis also lacks **any** findings as to the extent to which the practices and resources will be affected or impaired by the proposed action. Instead, it recognizes generally that “because of change in land uses and the urbanization of the kula and coastal lands of this region, there has been a negative impact and a diminishing of resources, and therefore a displacement of cultural practices.” Without fully addressing the second part of the *Ka Pa'akai* framework, the Commission cannot develop any “feasible action” that the state could take to protect the rights because the impacts to be mitigated are yet unknown.

Additionally, nearly two years later, no updates have been made to the initial *Ka Pa'akai* analysis despite NELHA's purported consultation with community in 2023-2024 and additional time to gather more information and data.

- (2) Without a clear picture of the impacts of this or any future withdrawal of North Kona's water and/or proper metrics to measure them, the Commission cannot uphold its duties under the public trust. *See Kaua'i Springs, Inc. v. Planning Comm'n of Kaua'i*, 133 Hawai'i 141, 172, 324 P.3d 951, 982 (2014) (“The public trust creates an ‘affirmative duty’ of the State and its political subdivisions ‘to take the public trust into account in

² See also *In re Water Use Permit Applications*, 94 Hawai'i 97, 9 P.3d 409 (2000) (*Waiāhole I*); *In re Wai'ola o Moloka'i, Inc.*, 103 Hawai'i 401, 409, 83 P.3d 664, 672 (2004) (“*Waiola*”) (holding that the Commission on Water Resource Management (“Commission”) failed to adequately discharge its public trust obligation to protect Native Hawaiians' traditional and customary gathering rights, as guaranteed by article XII, [§] 7 of the Hawaii Constitution” and that the permit applicant bears the burden to “demonstrate affirmatively” that the proposed project would not affect Native Hawaiians' rights); *In re Kukui (Moloka'i), Inc.*, 116 Hawai'i 481, 486, 174 P.3d 320, 325 (2007) (“*Kukui*”) (holding that that the Commission “impermissibly shifted the burden of proving harm” to individuals claiming traditional gathering rights); *In re 'Īao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications (“Nā Wai 'Ehā”)*, 128 Hawai'i 228, 248-49, 287 P.3d 129, 149-50 (2012) (holding that the Commission “did not discharge its duty with regard to the feasibility of protecting native Hawaiian rights” and remanding to the Commission for further consideration of the effect that interim instream flow standards will have on Native Hawaiian practices).

³ See Scheuer & Isaki, Commission on Water Resource Management Request for Information on Traditional and Customary Practices, A report Prepared for the U.S. National Park Service (May 29, 2015).

the planning and allocation of water resources, and to protect public trust uses whenever feasible.”).⁴ Sustainable yield as a metric fails to consider the impacts of groundwater withdrawal on groundwater-dependent species and ecosystems. This, compounded by the impacts of climate change, including the decrease in groundwater recharge, requires the Commission to establish water use that considers these reductions – especially where, as here, the Commission acknowledges some degree of connectivity between the high-level water and the basal and/or deep confined lens. Similarly, without an updated and approved water use and development plan (“WUDP”), guided by an updated water resource protection plan that sets a more accurate sustainable yield for each of the three distinct sources, there should be no well approvals. To continue to approve future withdrawals without these updated plans in place ultimately renders the plans meaningless, which contradicts HRS § 174C-31.

(3) Agreeing to any conditions as mitigation is premature without first understanding the impacts that the state intends to mitigate for. However, even assuming these conditions are appropriate at this juncture, the Modified Special Conditions 1a. and 1d. are insufficient as currently drafted.

- Modified Special Condition 1a. absolves NELHA/HHFDC of any kuleana related to those conditions after the well is dedicated to the County, even though they will be taking the bulk of water from that well. It also reiterates the need for an updated and approved WUDP prior to approval of the well/this condition so CWRM, NELHA/HHFDC, and the public do not have to keep coming back to the table to dispute potential changes in the rate contribution to the watershed.
- Modified Special Condition 1d. lacks specific details about a plan that would only go the Chairperson for approval and, therefore, would not allow for community input. Specifically, there is no information as to:
 - Who is responsible for implementing the monitoring program after it is initiated;
 - The term of the program;
 - How monitoring reports will be shared with the community and with whom specifically;

⁴ See also *Waiāhole I*, 94 Hawai‘i at 143, 9 P.3d at 455. (“An agency must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decision-making process.”); *id.* at 142, 154 n.59, 9 P.3d at 454, 466 n.59 (noting that the agency measures the proposed use under a “reasonable and beneficial use” standard, which requires examination of the proposed use in relation to other public and private uses); *Waiola*, 103 Hawai‘i at 442, 83 P.3d at 705 (noting that the applicant is “obligated to demonstrate affirmatively that the proposed [use will] not affect [a protected use], in other words, the absence of evidence that the proposed use would affect [a protected use] [is] insufficient[.]”); *Kukui (Molokai), Inc.*, 116 Hawai‘i at 509, 174 P.3d at 348 (“[T]he [Commission’s] conclusion that ‘no evidence was presented’ . . . that the [protected use] would be adversely affected erroneously shifted the burden of proof[.]”).

- How the Commission will use the data from the baseline study a year prior to operation of the well;
- Definition of “cause for concern”;
- What kind of ecosystem or other triggers would require CWRM to take action to ensure protection of the public trust, including:
 - What metrics will be used; and
 - The specific actions CWRM can take to mitigate any impacts discovered.

“Reopening” these conditions raises a host of concerns that have been exacerbated by the fact that key stakeholders have been cut out of the process.

Unfortunately, the Commission opted years ago not to move forward with the one clear management tool at its disposal – *i.e.*, designation. And what we have learned from this experience is that piecemeal water management decisions are ineffective and ultimately contradicts the state’s duties associated with the public trust. Therefore, to navigate these issues outside of a designated water management area requires putting in place an effective process, one that requires applicants to paint the full picture, not just the one that supports their project, and ensures that all other available tools at the Commission’s disposal, including necessary metrics and plans, are in place before decisions are made.

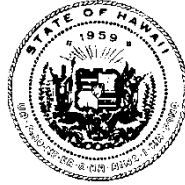
There is more work to be done here. The Commission should defer decisionmaking on this item.



Ashley K. Obrey
Attorney for Hui Ola Ka Wai

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



DEAN MINAKAMI
EXECUTIVE DIRECTOR

STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813
FAX: (808) 587-0600

Statement of **DEAN MINAKAMI**

Hawaii Housing Finance and Development Corporation
Before the

COMMISSION ON WATER RESOURCE MANAGEMENT

April 16, 2024

In consideration of
Request for Modification of Conditions 1a. and 1d. of Well Construction Permit approved at the August 16, 2022 Commission meeting – Approve with Special Conditions the Natural Energy Laboratory of Hawai'i Authority and Hawai'i Housing Finance and Development Corporation, APPLICATION FOR WELL CONSTRUCTION PERMIT, Ota Well (Well No. 8-3957-006), TMK (3) 7-5- 001:165, Lanihau 1-2, Moeauo Ahupua'a, Keauhou, Hawai'i

Chair Chang and members of the Commission on Water Resource Management:

The Hawaii Housing Finance and Development Corporation respectfully requests your support of the modification of conditions 1a and 1d of the Well Construction Permit for Ota Well. While we continue to have concerns about the propriety of the conditions, we feel that the revised conditions strike a reasonable balance of addressing stakeholder concerns while enabling the development of much needed affordable housing to proceed.

Ota Well will provide water to Kamakana Villages, HHFDC's master-planned affordable housing community which is stalled due to the unavailability of potable water. Kamakana Villages is planned to provide about 1,600 homes, an elementary school, parks, and commercial uses. The project is fully entitled and a development agreement to construct the project has been executed. Only the lack of potable water is restricting the project from moving forward.

Our State is facing an affordable housing crisis. On the island of Hawaii, the 2019 Hawaii Housing Study estimates the shortfall of homes to be about 13,300 units. Kamakana Villages will help to address this shortfall. A range of homes from affordable rental units to market-rate single family homes will be developed within a cohesive community.

Thank you for the opportunity to testify on this matter.

April 12, 2024

State of Hawai'i Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, HI 96809

Dear Chair Chang and the Commission on Water Resource Management (CWRM),

Since our establishment in 1968, the Kona-Kohala Chamber of Commerce has worked to enhance the quality of life for our community through a strong, sustainable economy on Hawai'i Island. With over 460 member businesses and organizations, our mission is to provide leadership and advocacy for a successful business environment in West Hawai'i.

Water development and housing are top priorities for the Kona-Kohala Chamber. We strongly support freshwater resource development, maintenance, and protection in West Hawai'i. We encourage streamlining government regulation to provide predictability for development. Furthermore, we support housing projects at all inventory levels and the necessary infrastructure to develop more housing.

The development of the Ota Well in West Hawai'i aligns with our priorities, and we strongly support this project. We urge the Commission to approve the recommendations provided by the CWRM staff and work with the permit applicants, the Natural Energy Laboratory of Hawai'i Authority (NELHA) and the Hawai'i Housing Finance and Development Corporation (HHFDC), to move forward. Upon completion, this well will supply water to HHFDC's Kamakana Villages at Keahuolu, a 2,330-unit master-planned community that will provide desperately needed housing in our area. NELHA will also receive water credits to complete the build-out of the Hawai'i Ocean Science and Technology Park, where research, education, and innovative commercial activities provide economic diversity to our region.

We are confident that the benefits of this new water source will significantly contribute to the well-being of our community. We appreciate the Commission's attention to this important West Hawai'i water resource and look forward to a positive outcome.

Sincerely,



Wendy J. Laros, President and CEO
Kona-Kohala Chamber of Commerce



NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY

An Authority of the State of Hawaii attached to the Department of Business, Economic Development & Tourism



Written Statement of
Gregory P. Barbour – Executive Director
Natural Energy Laboratory of Hawaii Authority
before the

COMMISSION ON WATER RESOURCE MANAGEMENT

Tuesday April 16, 2024
9:00 am.
online via Zoom Meeting ID: 865 9665 4551

in consideration of

Action Item B.2 – Request for Modification of Conditions 1a. and 1d. of Well Construction Permit approved at the August 16, 2022 Commission meeting – Approve with Special Conditions the Natural Energy Laboratory Of Hawai'i Authority and Hawai'i Housing Finance and Development Corporation APPLICATION FOR WELL CONSTRUCTION PERMIT Ota Well (Well No. 8-3957-006), TMK (3) 7-5-001:165 Lanihau 1-2, Moeauo Ahupua'a, Keauhou, Hawai'i.

The Natural Energy Laboratory of Hawaii Authority (NELHA) strongly supports the recommendation in the Staff Submittal to modify conditions 1a and 1d for the well construction permit for the Ota well. This well will provide freshwater for HHFDC's affordable housing projects, DHHL's initiatives to support the native Hawaiian community and NELHA's efforts to develop clean and quality green jobs at the Hawaii Ocean and Science Technology Park for the residents of West Hawaii.

Our proposed modification to special condition 1a involves changes to the language to enhance clarity. As for special condition 1d, it currently mandates an annual inventory of resources along the shoreline and nearshore waters of Lanihau 1-2, Moeauo ahupua'a. Discussions with other agencies and subject-matter experts have revealed an important gap: the absence of ongoing time-series data on the quantity, origin, and chemical composition of groundwater flowing out of Kona's basal lens into the ocean. Currently, there are no groundwater monitoring wells onshore near the shoreline in Kona-town, and no entity tasked with monitoring that groundwater.

This shift, from nearshore to onshore, documented in the attached rationale, would address a central gap in the data available to inform resource management decisions while aligning with the community's intent that mitigation efforts document degradation of resources in the nearshore areas due to the withdrawal and use of freshwater. In developing this revised special condition 1d, NELHA consulted with over 80 individuals associated with over 30 organizations or entities over a period of 6 months. Consultations took place through group meetings, teleconferences, and individual conversations.

Thank you for the opportunity to offer these comments.

Attachment (1)

Lanikai Groundwater Monitoring Program

Introduction:

In their August 16, 2022 consideration of a construction permit application for a potable water well being developed jointly by NELHA/HHFDC (the “Ota Well”), CWRM accepted recommendations from Commission staff that conditions be placed on the well development as mitigation for that well’s eventual withdrawal of freshwater from the Keauhou aquifer. These recommendations are based largely upon topics and concerns raised during consultation with `ohana and cultural practitioners from the Lanikai ahupua`a, and from the broader Kona region, and center on degradation of resources in the nearshore areas due to the impact of a growing human population, and the freshwater demands and anthropogenic inputs that have come with it: wastewater from cesspools, septic systems and treatment plants, chemical pollutants, and runoff.

Among the “Makai Mitigation” measures suggested by the community and included in CWRM’s permit determination, is establishment of an ongoing annual inventory survey of biological resources along the shoreline and in the nearshore waters of the Lanikai 1-2, Moeauoa ahupua`a. It is NELHA’s understanding that this biota survey is intended to document depletion of key resource species and environmental degradation resulting from reduced groundwater flow and increased chemical burden, and thereby inform long-term resource management decisions.

Following discussions with subject-matter experts and state agencies, NELHA finds that the Division of Aquatic Resources (DAR), as part of their mission, already have in place long-term monitoring programs in West-Hawaii that largely meet the needs and objectives of the biota survey sought by the community – particularly as DAR starts to implement new sampling methodologies recently developed in consultation with the University of Hawaii Hilo and NOAA. NELHA concurs with the directive stated by the community that any new survey program should not duplicate existing efforts – e.g. by other agencies. NELHA further believes that State monies could be better spent on activities that would instead supplement DAR’s work.

The missing link:

Concern about the impacts of pollutants on the health of nearshore coral reef ecosystems is not new to Kona, having been the topic of vibrant, at times contentious discussion for decades. More recently however, there is increasing focus on the potential and real impacts of freshwater depletion and pollution on shoreline Groundwater Dependent Ecosystems (GDEs), such as anchialine ponds, nearshore embayment’s, brackish tidepools and loko `ia (traditional fishponds).

NELHA asserts however, that in all of the discussion relating to environmental degradation along the Kona coastline, there has been and continues to be a missing link – one which is assumed in the stated need for the biota survey discussed above, but which has not, in our opinion been adequately documented: that groundwater flow into the nearshore environment is in fact decreasing over time, and that it contributes to pollution in the ocean.

Of course, common sense tells us that such linkage must exist, however in the specific case of the Lanikai ahupua`a, there are remarkably, no quantitative data on the degree of that linkage that would enable monitoring its progression – let alone to evaluate the efficacy of management actions aimed at

remediation. What is missing are ongoing timeseries data on the quantity, origin and chemical composition of the groundwater flowing through Kona's basal lens.

As part of its 40-years-long Comprehensive Environmental Monitoring Program, NELHA has documented groundwater and seawater chemistry of Keahole Point using samples taken from bored test wells on land, brackish ponds and the from the ocean (shoreline and further out to sea). In that time, we have concluded that to chemically characterize and monitor groundwater requires it be sampled in the ground. Except in rare cases of certain tidepools at certain times in the tidal cycle, sampling from the ocean is not an effective means by which to study groundwater inputs into the ocean: the dilution factors and background variability are simply too great, and effectively swamp out any chemical signal that might be there. Even massive influences, such as the chemical signature of Hualalai volcano's active rift zone quickly become unrecognizable when mixed into ocean waters.

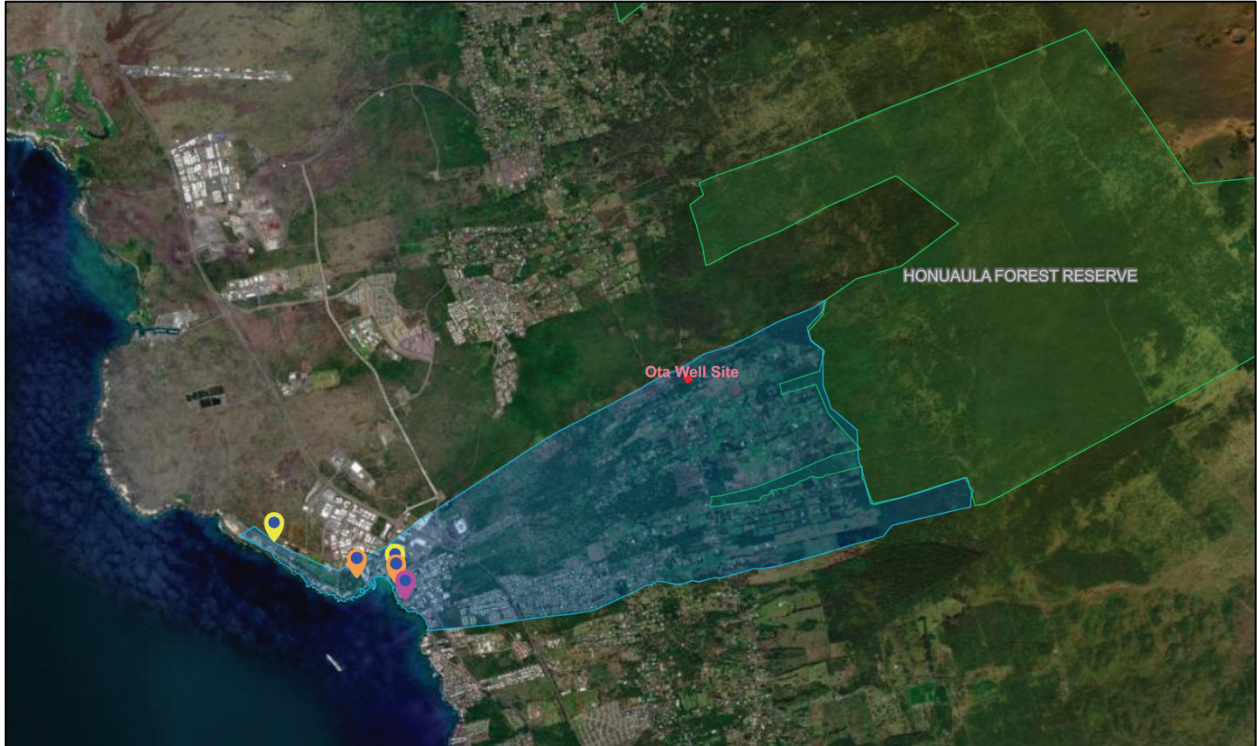
There are several groundwater monitoring programs currently active in North-Kona - sampling via anchialine ponds and/or drilled wells: at Liliuokalani Trust's Keahuolū shoreline preserve, Kaloko-Honokohau National Historical Park, Kohanaiki, NELHA's Hawaii Ocean Science and Technology Park and at the Ellison Onizuka Kona International Airport at Keāhole. It may come as a surprise however that there are no groundwater monitoring wells near the shoreline in Kona-town itself - until one realizes that there is no entity tasked with monitoring that groundwater. State DOH Clean Water Branch has purview along the shoreline (along with surface-water streams and estuaries), and hence maintain an ongoing monitoring program at the most frequented beaches. It seems however, no one is directly sampling the groundwater beneath the most densely populated area in West-Hawaii.

Proposed action:

Establish an ongoing monitoring program to provide for sampling, data collection and analysis to characterize the groundwater flowing out of the basal lens and into the nearshore marine environments of Ōneo and Maka'eō bays. Where possible, after consultation with landowners, the program will sample two existing anchialine ponds, and will also develop at least two or more permanent monitoring wells close to the shoreline in Lanihau on State lands. See attached map.

Objective:

Through long term trend assessment of water quality parameters, document and report environmental change where it occurs. The intent is to 1) allow for assessment of potential anthropogenic influences on the health and productivity of the GDEs, shoreline and nearshore environments of the Lanihau ahupua'a; 2) study the degree of linkage between the high-level ("perched") water and the basal lens in the aquifer; and 3) observe the effects of sea-level rise on the nearshore basal lens. These three together will inform shoreline management plans in aid of climate-change resilience, as well as actions to protect and preserve Kona's groundwater and nearshore marine waters.



Ahupua'a in blue

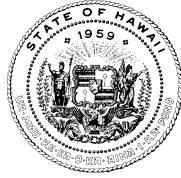
Proposed monitoring wells in yellow

Alternative monitoring well in magenta

Anchialine ponds in orange

JOSH GREEN, M.D.
GOVERNOR
STATE OF HAWAII
*Ka 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 Luma Ho'okele

KATIE L. DUCATT
DEPUTY TO THE CHAIRMAN
Ka Hope Luma 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

Commission on Water Resource Management
Submittal Item B-2: Modification of Conditions 1a. and 1d. of Well Construction Permit
approved at the August 16, 2022 Commission meeting – Approve with Special Conditions
the Natural Energy Laboratory of Hawai'i Authority and Hawai'i Housing Finance and
Development Corporation, APPLICATION FOR WELL CONSTRUCTION PERMIT,
Ota Well (Well No. 8-3957-006), TMK (3) 7-5-001:165, Lanihau 1-2, Moeauo Ahupua'a,
Keauhou, Hawai'i

April 12, 2024

Aloha Chair Chang and Commissioners,

Mahalo for the opportunity to comment on the Ota well permit conditions proposed by the Natural Energy Laboratory of Hawai'i Authority (NELHA) and Hawai'i Housing Finance and Development Corporation (HHFDC). The Department of Hawaiian Home Lands (DHHL) offers the following comments on this proposal.

DHHL and its beneficiaries have two primary water interests related to the Ota well permit:

1. *Water for homesteading.* DHHL has rights to water for homesteading purposes under the Hawaiian Homes Commission Act, the State Constitution, as well as statutory and case law. This has been recognized as a public trust use of water.
2. *Water used in the exercise of traditional and customary Native Hawaiian practices.* Our beneficiaries may conduct traditional and customary practices in the areas, another recognized public trust use of water. Hawai'i Courts have not established priorities among the recognized public trust uses of water. Because of that, DHHL has an obligation to seek that other public trust uses of water are not harmed in the course of DHHL public trust uses of water being supported.

Water for DHHL Use

We understand that if this permit is approved and the well is successfully placed into production, DHHL will receive 18,000 gallons per day (2.6 percent of projected water production) from the Ota Well for DHHL lands, per the Memorandum of Understanding

Testimony of Kali Watson, HHC Chairman
April 12, 2024
Page 2

executed among NELHA, HHFDC, and DHHL. We acknowledge and thank NELHA and HHFDC for their consideration of DHHL water needs in this area and our legal rights to water. We believe that the agreement should set a precedent for all other non-public trust uses of water in Keauhou, and note we have previously asked the Commission to make that agreement a condition of this permit by reference.

Water for Traditional and Customary Practices

DHHL acknowledges the public comments made by the Native Hawaiian Legal Corporation (NHLC) and its clients at the March 2024 Commission on Water Resource Management (CWRM) meeting and the potential impacts on traditional and customary practices of Native Hawaiians. DHHL has not seen a written report on NELHA and HHFDC's consultation process and so cannot offer comments as to its adequacy to meet the requirements on the applicant and the CWRM under Ka Pa'a Kai (*Ka Pa'akai O Ka'Aina v. Land Use Commission, State of Hawai'i*, 94 Hawai'i 31 (2000)).

We acknowledge the time and effort put in by current and former CWRM staff, NELHA, and HHFDC to offer reasonable solutions throughout this permitting process to address different viewpoints on the use of this public trust resource. However, DHHL believes that the concerns over transparency and inclusivity that were raised by NHLC and its clients needs to be adequately addressed so to avoid potential future conflicts on this matter.

Mahalo for the opportunity to respond to this permit application.

Mahalo nui loa,



Kali Watson
Chairman
Hawaiian Homes Commission