

MINUTES  
FOR THE MEETING OF  
THE COMMISSION ON WATER RESOURCE MANAGEMENT

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

Online link to the video recording of the December 19, 2023 Commission on Water Resource Management meeting: <https://vimeo.com/900217055>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 9:00 a.m. and stated it is a hybrid meeting being held in the Kalanimoku Building boardroom, remotely via Zoom and live streamed via YouTube. It was noted that people may testify via the information provided online. Chairperson Chang reminded the public not to use the chat feature for any comments, as it presents a Sunshine Law issue. Chairperson Chang read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

**MEMBERS:** Chairperson Dawn Chang, Mr. Neil Hannahs, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike, Ms. Kathleen Ho

**STAFF:** Deputy Director Kaleo Manuel, Mr. Neal Fujii, Mr. Ryan Imata, Dr. Ayrton Strauch, Ms. ‘Iwalani Kaaa

**COUNSEL:** Ms. Cindy Young

**OTHERS:** Ms. Amanda Waki (Fukunaga & Associates), Mr. Jason Kagimoto (Kaua‘i Department of Water Supply), Mr. Chris Cramer (Maunaloa Fishpond Heritage Center)

*All written testimonies submitted are available for review by interested parties and are posted online on the Commission on Water Resource Management website.*

<https://dlnr.hawaii.gov/cwrm/newsevents/meetings/>

**20231219 00:14:45**

**A. APPROVAL OF MINUTES**

October 24, 2023 and 'Ōlelo Hawai'i Supplement

**20231219 00:15:34**

**MOTION: (HANNAHS / KAGAWA-VIVIANI)**

To approve October 24, 2023 minutes and 'ōlelo Hawai'i supplement.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI/HO)**

**20231219 00:16:20**

November 21, 2023

**20231219 00:16:36**

**MOTION: (MIIKE / HANNAHS)**

To approve November 21, 2023 minutes.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI/HO)**

**20231219 00:17:25**

**C. NON-ACTION ITEM / INFORMATIONAL BRIEFING**

**1. Briefing on the Adoption of the Kaua'i Water Use and Development Plan Update**

PRESENTATION GIVEN BY: Neal Fujii (CWRM State Drought & Water Conservation Coordinator), Amanda Waki (Fukunaga & Associates)

Staff presented background information on the Kaua'i Water Use and Development Plan. The consultant then shared key tasks, finds, recommendations, and next steps in the plan.

**QUESTIONS / COMMENTS**

**COMMISSIONER MIIKE:** Your last column, percent of land, is that the percent of land that's irrigable and that's the limit by amount of water you have or is that?

**AMANDA WAKI:** For the Kīlauea aquifer system area, if there's only 0.3 million gallons of supply and you wanted to irrigate at 3,400 gallons per acre per day, you could only irrigate 5% of the 1,700. Again, the 0.32 is the best available published number that there is.

COMMISSIONER MIIKE: Seems high. Okay, I just wanted clarification about that percentage.

*Amanda Waki resumes presentation.*

COMMISSIONER KAGAWA-VIVIANI: Department of Water Supply and Kaua'i supports about what percentage of the population or the island? Because you named different purveyors but just for me to get a sense of who are the players there for drinking, for portable water.

JASON KAGIMOTO: I don't know about an exact percentage but it is the vast majority of the island. There are, as Amanda mentioned, Princeville, Gay & Robinson a couple of the small State sites, but if I were to guess would be in the 99% area.

COMMISSIONER HANNAHS: Thank you for your presentation. Lucky you live Kaua'i. The gap between use and sustainable yield, Kaua'i truly exemplifies waiwai. The literal meaning of that word, you're blessed with a rich resource. Neal, this is in part for C1 as well. When I look at slide 3 and see what is characterized as being protective, that our role is to be protective of a resource, I don't think that really speaks as well as it could to what this body does. You shared with us I believe at our last meeting the constitutional preamble that recognizes Hawai'i's desire to really celebrate the uniqueness of our islands and expresses the state motto, ua mau ke 'ea o ka 'āina i ka pono, and that we wish to preserve this. I think we have a more active role, not just a protective, security guard role but to balance the interests of the life of the land with the needs of the people, not only in this generation but in future generations. Let's be real clear that we're not just trying to hold back stuff from people who want stuff now, we're trying to balance the needs and interests of what the land needs and the 'āina needs, what the Lāhui needs, and what future generations need. I would hope that we really express that a little bit more clearly. These are just shorthand labels of course, I'm not trying to wordsmith, but I really want to make sure we get what we do correctly.

In your district-by-district models, you have sustainable yield as a static assumption and you had growth demand as a dynamic assumption. Do you have access to data? Because I don't think sustainable yield is going to be static and it'd be fairer and more accurate if we had access, whether from our team or USGS or whoever to really reflect what we've heard. It's way more impactful on an island like Maui or some of the other islands that aren't blessed with your resources to understand that sustainable yield may be here now but it may go down in the future because of the climatic change. I think it would build up the presentation if we had dynamic assumptions about where sustainable yield is going to be in the future. You're at such a big gap I don't think it's going to matter, but I think it's the discipline of looking at things in that matter.

The final comment I have is how long are we going to keep clinging to plantation era assumptions about agricultural land? Plantations are gone, they're not coming back. We're in a new era and I don't put this all on the county or the consultants and so forth, but as a

community we need to really rethink those assumptions to what the need is now and what the need will be in the future as we develop sustainable food systems and so forth. We're not developing new plantations, it's going to be something different. If you have comments or questions or comments on the comments but I guess there's more comments than questions.

NEAL FUJII: I'll just say thank you for those comments and with respect to future sustainable yields and climate change, we spoke with the Water Department and the consultant about that and the approach right now is these are actually established by the Commission. But we will be looking at possible future adjustments to sustainable yield based on future rainfall estimates, future recharge estimates, so that's something that if we do adjust these plans, we'll adjust accordingly as Amanda was talking about a living document. That's a good point.

COMMISSIONER KAGAWA-VIVIANI: Can I add on? Just because the climate change conversation came up. Are you aware you can now access models of future rainfall projections for the island and is that incorporated? I know usually you look to Water Resource Protection Plan for this information but really starting the conversation right now while you're in these public interfaces about how to think proactively about the future declines in rainfall which are looking like they're over the center of the island. That's going to affect your base flow or your groundwater perhaps, even in wet season.

AMANADA WAKI: In the part we just have a general description of the potential impact of climate change. We do have the old rainfall atlas in there, we can maybe look at if a graph could be added.

COMMISSIONER KAGAWA-VIVIANI: Right now the Hawaii Climate Data Portal builds off of the atlas and you can look at future projections. There are different scenarios, there are some models that are a little bit more conservative, but you could see the range of projections and I think that's the best available science right now. Anybody can access it, just look up Hawaii Climate Data Portal. As you're talking, I'm looking up this data and going, okay. I think it would strengthen the Water Use Development Plan and really start the conversations at the community when you guys are having these where it needs to be at, like what does this mean for agriculture and the water quality in wells whatnot. I just wanted to point that out because sometimes the connection between the science and the decision-making is a little bit far.

JASON KAGIMOTO: Can I ask a question on that? I like that idea as far as incorporating it. Would it be directly impacting the sustainable yield because we just pulled that from the Water Resource Protection Plan or would it be a chapter that describes how it might impact the sustainable yield?

COMMISSIONER KAGAWA-VIVIANI: The hard thing is people can predict rainfall but translating that into recharge, that's really tricky and takes time so I don't know if you want to wait on that, but this is already available on rainfall. You can say, well this is how we think it might affect dry season flows, wet season flows like irrigation demand

because temperatures are increasing. There's going to be more evaporative demand and it might be a little bit more qualitative, but I think it's good because people are already thinking about this on Kaua'i with flooding. If things are going to be a little bit more extreme, how do you have to manage for a less certain future? Even if you don't know you still have to prepare, so I think it would be really helpful to have that conversation in this.

COMMISSIONER KATAYAMA: Amanda, thank you for your presentation. You're using 2015 as your starting point. There have been quite a few, to me, cosmic events between now and 2015. Does that impact your analysis or how is that being comprehended in your analysis with the Kaua'i General Plan? Secondly, at least on the non-potable existing water uses there's quite a few TBDs. Will you be looking to somehow capture that by the time the final plan is submitted for acceptance?

AMANDA WAKI: To start off with the first question, we started in 2015 back when the description was approved. We did pause for a bit because we were waiting to see what the sustainable yield number came out to. It took a little bit of time to develop the full report. During that time, the 2018 General Plan was developed and before the 2018 General Plan was developed around the same time that we were working on the analysis, they had done a technical memorandum to look at these projections, so we are in line with their projected amounts. And yes, as you mentioned it was prior to some of these events happening, so we can take a look back and see if there's any adjustment. Overall, I think the bottom line is that the 20-year projections as you could see in the graphs were down at the bottom. Even if they did slow down during certain years or if there are slight adjustments, it's in the overall magnitude compared to sustainable yield, compared to full buildout, they would be somewhat insignificant.

JASON KAGIMOTO: Another thing to add, in that 2020 period of COVID the water demands and all of those things were not normal within that period. It seems maybe more within that 2015 or 2020 period might have been a possible look, but it seems like in the most recent years if we were to pull that data, it's still on the lower side of what it was historically around that 2015, 2014 time.

AMANDA WAKI: Second question about the lack of information on surface water, we'll touch base with Ayron and CWRM on if there's anything more recent, but generally the Agricultural Water Development Plan hasn't provided that and that's where we would otherwise get that information. It's kind of beyond what the Department of Water is able to do to gather that data.

COMMISSIONER KATAYAMA: There was a question asked earlier about the number of the amount of users that the Department of Water captures. How many private water purveyors are there on the island?

JASON KAGIMOTO: Four? I think it's again Robinson, Princeville, the State Parks, and then DHHL.

COMMISSIONER KATAYAMA: And they provide metered water to their PUC-regulated companies?

JASON KAGIMOTO: Yes, I'm not exactly sure about the State, those are in the State parks like Polihale and Kōke'e. There are maybe much smaller service areas, I'm not exactly sure how...are they regulated as a public? I'm not really sure about those.

COMMISSIONER KATAYAMA: My question is, you're capturing domestic water use for a certain population of the island, how are the private water users being integrated into the Water Use Plan? I see the municipal, I see the private water systems.

AMANDA WAKI: The private water systems are reflected in there because most of them do report. What you might have noticed or maybe what you're referring to is that in some areas domestic well usage wasn't. There's poor reportage in some cases so those might not have been reflected in the 20-year projections.

JASON KAGIMOTO: Essentially, whatever we were able to obtain and collect is what is included in the report.

COMMISSIONER KATAYAMA: I guess is there a sense of what is missing? Is it material to your analysis?

AMANDA WAKI: It would just be the domestic wells, so we can take a look back. The most significant would be Kīlauea that there were a handful of domestic wells and very little reportage but some of the domestic wells even though there are plenty, the amount of usage there versus a Department of Water system is different, the scope or the amount.

JASON KAGIMOTO: Those were concerns brought up by the community as far as the request to make sure that the reporting is better or the data that we're able to pull into our report is collected so that we can include it in our report.

COMMISSIONER KATAYAMA: One last question and personally related to this is that in your projected water use slide for the Hanapēpē aquifer you have listed 904 acres at 3 million gallons a day. Is the coffee farm, the 2,700 acres part of the Makaweli or the Hanapēpē projected agricultural water use?

AMANDA WAKI: I need to double check on that. I can get back to you on that.

COMMISSIONER KATAYAMA: I believe the 2,600 acres is just the Makaweli side of the ag portion. My last question is, how do you account for water that's being diverted from one aquifer to the next? Plantations used to do a lot of that and there's still some of that going on currently, surface water.

AMANDA WAKI: In the surface water tables that were shown where we tied the diversion to an irrigation system and we didn't know if the service area was in a different

aquifer system area. Say, well kind of a moot point now, but say Kekaha and Kōke'e Ditch. One of them was actually associated with a gaging station that was in Nāpali but we knew that the service area was down in Kekaha so we did move that over to the service area location.

COMMISSIONER KATAYAMA: In your projected water use, on your percent of land that can be irrigated it's comprehended that number?

AMANDA WAKI: Yes.

COMMISSIONER KATAYAMA: Okay, good.

CHAIR CHANG: I know that there's been a community desire for greater housing development, so when we talk about full buildout, does that include any of the future housing development plans?

JASON KAGIMOTO: Within the State Plan there includes those projects. As far as other ones it's just based on if it was built on the current zoning.

AMANDA WAKI: The recent community plans, the Līhu'e and South Kaua'i community plans were also assessed.

CHAIR CHANG: I know you did a recent update on all of your development plans, right? Kaua'i just recently passed a couple years ago?

JASON KAGIMOTO: I think there was the Līhu'e, South Kaua'i, and West Kaua'i.

CHAIR CHANG: As Neil said, you are in a very fortunate situation. If we could only...yes.

COMMISSIONER MIIKE: Maybe we can ship some over.

CHAIR CHANG: I was very careful about saying, we're not going to pump anything from one island to the next. We would have had 500 people coming to our doors. You are extremely blessed so take care of what you've got.

COMMISSIONER KAGAWA-VIVIANI: It has to do with surface water, Kaua'i is a little bit different. Hanalei is a major poi producing area so how are irrigated kalo lands considered in agricultural water demand or are you only looking at the plantation infrastructure? From an agricultural side it's still an important agricultural production, but in other settings it's sort of a competing interest and on Kaua'i it's part of the agricultural picture.

AMANDA WAKI: The agricultural analysis, what we showed very overall broad brush, looked at the important agricultural land study. We do know that kalo can use a lot of water but we also know that it is flow through. We can take another look at that and how

it's incorporated. We also do know of DHHL's demands that were put into the State Water Projects Plan.

JASON KAGIMOTO: Was your question related to how is it accounted for in the report or how is it managed as a resource?

COMMISSIONER KAGAWA-VIVIANI: When you were looking at like agricultural water use you used that 3,400 number and then you constrained it by available surface water based on diversions. Those would be plantation diversions, 'auwai are not metered so I understand that. It's interesting because Kaua'i challenges us to think about what we call agriculture is often not inclusive of traditional agriculture. Maybe there's a different way to think about it that makes sense for the island of Kaua'i which is dependent or in this particular area. Water flows through it, irrigation for kalo is not a competing issue it's actually the main focus for Hanalei and maybe Makaweli. This is the intellectual in me thinking, huh Kaua'i can make us think differently about water and irrigation and agriculture, given its diverse landscapes. Maybe I need to follow up with you on this but how we account for what's available surface water and what's agricultural production and how to make sure we have water for agricultural production should incorporate the diversity of things that are being grown. I don't know if that makes sense, maybe somebody can encapsulate it better, but it occurred to me that it's not only the plantation diversions that are important ag waters. If that can be addressed somehow or identified how you think about that.

The last thing I had was you gave a lot of graphs but do you have these in map form about existing demand and projected growth like heat maps? The public and decision makers think in maps, not graphs often. Do you have those?

AMANDA WAKI: These are our main graphs, we'll need to talk to the Department of Water on if there's another graphic that would be helpful.

COMMISSIONER KAGAWA-VIVIANI: So it's mostly graphs?

AMANDA WAKI: It's mostly graphs like that.

JASON KAGIMOTO: It's basically summarized that there's the initial island where it has all the aquifer systems and then it shows the breakdown of the hydrologic unit areas. As far as the translation of the information back to those, you'd have to kind of go back and forth between this is the visual area on the island and then this is the graph of that area.

COMMISSIONER KAGAWA-VIVIANI: I'm saying this because there are metrics that are water stress indicators. They're used in global development but they can kind of help you identify it might be a ratio of supply to demand to highlight graphically some of the hot spots because the human brain doesn't generally look at a graph and go, ah ha! It might be useful for, well I know you guys are at the end of this process but helping explain and have good conversations in specific places. Just want to suggest.



CHAIR CHANG: 3,400 gallons per day, is that a standard number that's being accepted by the agricultural community for how much you need per acre?

JASON KAGIMOTO: It was just pulled from that report. That's why, right?

COMMISSIONER HANNAHS: We use 2,500?

CHAIR CHANG: Because that's a big difference.

NEAL FUJII: The 2,500 was used in Waiāhole and then 3,400 is out of the Ag Water Use and Development Plan which they only looked at a specific area and with a specific climate. Like Amanda mentioned in her presentation, that may vary but it's a planning number. It might be a little on the higher side, a little conservative in that sense I suppose, but people use it.

CHAIR CHANG: Versus a 2,500? Is that becoming a more acceptable number, the 34 versus the 25?

NEAL FUJII: I see people using the 3,400 referencing the 2004 Agricultural Water Use and Development Plan.

CHAIR CHANG: It makes a big difference when you're calculating several thousand acres.

NEAL FUJII: It does for sure but it's adopted plan, as well.

COMMISSIONER MIIKE: Just anecdotally, it seems to me Kauaʻi has a lot more rainfall than the other islands. I don't know how you would factor that in, but when you talk about averages it's going to differ not just by crop but by where you are.

NEAL FUJII: Sure and when it comes down to actual evaluation in water management areas, staff does use the IWREDSS (Irrigation Water Requirement Estimation Decision Support System) which is a demand model looking at climate, soil type, cropping, cropping practices and things like that to get a more accurate estimate. But for planning purposes it could be on the high side given Kauaʻi is probably the wettest island, but there are some dry sides as you know.

COMMISSIONER MIIKE: Let me let me ask another question then. How significant are reservoirs on Kauaʻi in terms of agricultural irrigation? All I know about reservoirs on Kauaʻi are the ones that busted but it seems to me that if we're talking about reservoirs, are they just an insignificant amount of water over there for agriculture or are they a significant source?

AMANDA WAKI: There are several significant reservoirs remaining.

COMMISSIONER MIIKE: It seems to me that with climate change people start worrying about whether they should start storing more water in the future.

JASON KAGIMOTO: There's definitely a lot of feedback as far as discussions about land owners or reservoir owners looking to decommission them for liability and all that maintenance related activities and cost. Then there's definitely a lot of feedback from some of the communities as far as expressing the interest to keep them for the purpose of ag and promoting all of these kind of things. I don't know how to truly respond since it's not really part of the Water Departments but we do acknowledge and I wanted to relay that that is a concern.

COMMISSIONER MIIKE: It was just a curiosity question, that's all.

CHAIR CHANG: I will say that our engineering department as a result of Kaloko, legislation was passed where we are doing dam safety. There's been a major push by our engineering department, they've done an assessment of all the dams and reservoirs and they've issued notices of violations. People are having a choice, you either upgrade or you decommission but there's a tension now between fire suppression that these reservoirs should be made available. Last week Friday at the Land Board meeting, I think it was in Kalihiwai or maybe it was Wailua the original landowner had proposed to decommission, that new land owners, a hui, have now reconsidered and it's quite a large reservoir. People are paying a lot more attention. There is a \$10 million grant program, that's monies that will be available to private land owners to upgrade or even decommission their reservoirs but again I think with fire suppression becoming a real concern there is a reconsideration by some including government on whether we should be taking over some of those reservoirs to ensure an adequate amount of water is available for fire suppression.

JASON KAGIMOTO: The Kīlauea public meeting, which is the nearest to Kalihiwai, that was one of the big items.

CHAIR CHANG: That was a positive movement by those land owners.

COMMISSIONER HANNAHS: Chair, I want to go back to your point about the average requirement to support agriculture. That's the danger of averages because if people come to expect that you can supply it in a wet area like Kaua'i, in an arid area that's an unrealistic number. We have to start to adjust our expectation, we can't apply the average across the board, it has to be contextual to the supply that we have and then your choice of agricultural production is going to have to relate to what's available. It's not like the plantation days where you could move water from here to there, that's why all that plantation criteria is so anachronistic and dangerous because it still assumes that, but the only way that was possible was because of things we can't do now or don't do now.

I appreciate the point about reservoirs, that's why if you want more water in an area you have to invest in infrastructure and that investment is generational and it's large. There's some public purpose served to it for fire suppression so we have to think about how we're

going to invest in that. Really, if you wait for the landowner to do it who's got an agricultural crop, they're going to decommission every time. Our government has to work in partnership with private sector to really say, okay we're going to contribute a certain amount of this because it serves a public purpose. You get a real return for your investment and they're going to balance.

COMMISSIONER KATAYAMA: I just wanted to add my two and a half cents here in this discussion. West Kaua'i is deemed as the agricultural area of the island that the development plan focuses on and to have sustainable ag you need three things. You need soil, you need sunlight, and you need water, so generally you don't want it in a very rainy area and the use of 3,400 gallons per day per acre is really a function of where you're taking it, how you're using it, and how you're storing it. Reservoirs, at least for the 3,700 acres of coffee are key because we can take water, during the last several weeks we had a lot of rain coming through. We can store that water and save it for when there is no rain and if we can't do that or ag can't do that they'll have to start drilling water like in the Central Valley of California and we want to avoid that competing with potable water sources using it for ag. I think the balance here is that we need to have storage capacity, we need to be able to balance the high flows with the low flows. We just had a meeting of fire suppression with the county with the PMRF and with private landholders and what assets were available to help fight wildfires and water supply for. Reservoirs is one of the key factors there. I think all of this in your Water Use and Development Plan is key. One last comment, you made a reference to that the part of this plan is in the Water System Improvement Plan, I think the integration between surface water use, groundwater use would really help identify where you, the Department of Water would be doing its capital investing. That's my comments and I look forward to the plan when it's submitted to us for approval.

CHAIR CHANG: I am going to, Kaleo, challenge CWRM. This daily average 3,500, 2,500, it's going to be a lot. It's going to be very critical that if we're going to tailor something based upon location or types of crops that we have some kind of form because this has already come up and it will continue to come up. As we look at water allocation I think we need to have some kind of a mechanism to appropriately consider all of these factors in coming up with that formula because it does concern. There's a very big difference between 2,500 and 3,500 and I've got DOA saying 3,400.

DEPUTY MANUEL: The update that was a couple years ago that Department of Ag presented, they actually increased that number to like 5,600 gallons per acre per day, but what we've been working on and pushing back on and challenging our agencies to think about is critiquing that number and evaluating how we came up with that data. As Neal said, our IWREDSS model is a really useful tool and what we've been trying to do is make that front-facing so community applicants or agricultural practitioners can access that and play around with scenarios when they're doing their conservation planning. They're like, okay we're going to do drip irrigation or in certain areas going to do spray, we can get to a decent quantity sometimes beyond the 3,400 gallons per day based on crop type. We can present this back Commission on IWREDSS, it would be very

enlightening for not only the public but this Commission to see what tools we do use and currently have available to us.

### PUBLIC TESTIMONY

FELICIA COWDEN: First of all, I want to thank everybody for the work that's gone into what's happened here and the discussion underway. I appreciate that Commissioner Katayama mentioned that this probably should be 2025 to 2045 as opposed to having the data start in 2015. Also want to appreciate Commissioner Hannah's, his input on the reservoirs are significant and wanted for future use even if they aren't being used right now a lot. We are very conscious of the future, we could have changes. I will be meeting with the Department of Water next month to really drill down on some of the specifics that are of concern, but I want to comment that Moloa'a, the information here is insufficient. There's a concentration of wells, I know even in one square mile area we have about 65 wells, many of which are being... Moloa'a is a problematic area because we don't have county water really running through there and those wells are having a problem staying filled with water. The Kīlauea yield does not meet the demand. I want to highlight that the county has gone through great lengths to purchase 50 acres to put in some affordable housing program and we also did just get a special permit issued for a 7th through 12th high school, middle school right there across from the county housing in Kīlauea and both we don't see where we're going to have the water for it. We have a 1-million-gallon tank that we're hoping to put up in Kīlauea and I think if we have that it should help. I also want to just acknowledge the striking lack of reference to the Waiahi surface water treatment plant that feeds basically Līhu'e, Puhi, Hanamā'ulu and that can range much further than that. My understanding it has the potential to reach all the way to Kalaheo to Keālia. These are the type of questions I want to figure out, how we get the Waiahi surface water treatment plant on there and then also I want to just ask I didn't see water reservations in there for the DHHL development plans that are underway. I might have missed it, I didn't see like in January we're going to be breaking ground in Hanapēpē and our service to our Hawaiian beneficiaries has been long overdue, so thank you so much. Those are my key points and I'm looking forward to working with the Department of Water coming up soon next month.

MELANIA KEKAULA: My name is Melania Kekaula and in reference to this, of course, I have a question, I have two actually. The first one is do we know whether the aquifer like the one on both sides of the island, in recent years have they remained the same as say maybe 40 years or what is the trend? Are they the same or have they decreased in amount of water because that's important to whatever we plan right now and going forward. The second question is I just love the presentation and the breakdown of water use, that was amazing, thank you. But I noticed that the agriculture was not included and I just wondered why? Thank you.

CHAIR CHANG: Normally we don't take questions, but if you'd like to answer them and if you can, would you like to answer that?

AMANDA WAKI: So far as the agricultural, we did that separately because we do have a lot more information on groundwater and the land use plans and policies, surface water, as we've gone over extensively here. There's a lack of available information on that. I'm sorry if that doesn't answer your question, but we did do that separately with just that chart.

CHAIR CHANG: Okay, I hope that answers your question.

MELANIA KEKAULA: And then the second question was agriculture, did you?

CHAIR CHANG: Yeah.

JONATHAN SCHEUER: Aloha mai kākou, Commissioners. For the record, my name is Jonathan Likeke Scheuer on this item, I'm here as a water consultant to the Department of Hawaiian Home Lands. A few observations from and reactions to the presentation. It was good that the consultants mentioned one well known and significant limitation to sustainable yield which is there's a gulf between sustainable yield and developable yield. If you're not aware, it didn't seem to be in the presentation. That's a very significant issue on Kaua'i in particular where lots of wells are drilled and you just can't extract much water because of the density of the rock. I don't know what the gulf is between that but having that on the charts would probably be meaningful. I'll just highlight for you, the 2019 Water Use and Development Plan which updated sustainable yields for the state which is the numbers that are being used in this plan, this is reflective of Commissioner Hannah's comment, has an extensive discussion of we know that climate change is real, we know that rainfall is decreasing, and we're not taking into account new data in setting the sustainable yields. The sustainable yields that are reflected in this update aren't actually likely accurate whatsoever so should be aware of that. Adding another line of projected sustainable yields, the same kind of analysis you went through for Maui designation might be meaningful. Just in case it's not top of your mind, other limitations to sustainable yield include the assumption that wells are equally placed across the landscape, are all at the same depth, are pumping at the same rate, that geology is uniform throughout the aquifer, that there's laminar flow, that precipitation and recharge across the aquifer is the same which is of course not true anywhere in Hawai'i. There's a whole host of things but most importantly for groundwater dependent ecosystems where groundwater is flowing into the coast, there's no explicit accounting for that in the setting of sustainable yields. I think the biggest thing and this is the exact same methodology that was used for the Hawaii County Water Use and Development Plan sustainable yield, just because you're below sustainable yield does not equal you are sustainable. It is maybe a first run step of, okay we have a bunch of water here, maybe we're okay at providing for some future extractive uses but the analysis is not there to determine whether or not public trust uses including DHHL's uses. I want to acknowledge the department did reach out, asked for a meeting with one staff member at the department. We did not know, however about the 2023 meetings and I'm aware that many of our beneficiaries did not know about the 2023 meetings. Looking on the website, there are meeting notes from those meetings but there's no attendance numbers so I just have no sense of how many people came. My concern and it's a concern for the success of this plan is that if this now

goes to public hearing, there were five meetings in 2015 and five meetings in 2023 which may have not been well attended, if this now goes to public hearing for approval, the level of engagement and dialogue and improvement might be more frustrating than productive, absent additional public outreach. I only just saw that on November the draft plan was posted to the website at the end of November. We haven't reviewed it so don't have any specific comments.

COMMISSIONER HANNAHS: Let me follow up with Amanda since you acknowledge the delta between sustainable yield and developable yield, is that a data point that you could put on to the maps?

AMANDA WAKI: No, I'm not sure how we'd um come up with that line.

COMMISSIONER HANNAHS: Maybe some theoretical discussion of it and how it could play a big role in how you think about utilization of resource. Use a case study, use an example here since you don't have data to apply it across the board. At least where you do have some knowledge, use that as an indicator of what the impact could be.

AMANDA WAKI: We can take a look at that or see if there's any way to indicate even though these lines show full buildout is below it, that this these areas are getting close. Maybe those warrant a closer look and more in-depth analysis on a future update.

COMMISSIONER HANNAHS: Raise the issue, don't be silent on the issue. Raise it so people can know it's there.

CHAIR CHANG: CWRM is to hold public hearings, Kaleo. I know there are three hydrologic units, do you have a strategy on how you're going to hold these public meetings?

DEPUTY MANUEL: This is specific for the Kaua'i Water Use and Development Plan, so usually we just conduct one public hearing related to this and during COVID we've done most of them via Zoom. We can do it on island we'll coordinate to see what works best for Kaua'i DWS and the community. We could hold more than one to provide opportunities, it just becomes a cost and resourcing issue but that is the next step in this process is to take this out for even more public information and receive comments on the draft plan.

CHAIR CHANG: I do want to take Jonathan's comment, I don't want to take that lightly. I would rather have the community talk about this than when the matter comes back to CWRM for decision making, the community saying we never heard about this. Maybe there's a possibility of coordinating with some of the homestead associations to have meetings in some of these communities there that are being impacted or even just calling a meeting with all the homestead associations on Kaua'i. That might be a really good opportunity to get good input. We have our own kuleana, we have to do a public meeting but that is not to preclude the Water Department from convening more public meetings. It is in your best interest to meet with as many people before it comes back to us where I

think we prefer not to have, legitimate controversy yes, but if it's people that haven't heard, it's better that and I think we've already heard from some people that there's not enough...

COMMISSIONER MIIKE: Getting back to developable yield since you can't get that number, you might use some of the numbers that we use which is 70%, 80%, 90% where you start to worry about reaching the developable yield even though the sustainable yield side I think what you said right now. Even though you can't call it the developable yield, you can see a warning sign something like that on the graph.

*20231219 01:43:08- Break*

*20231219 01:51:32*

## **B. ACTION ITEM**

### **1. Request for Approval of the Memorandum of Agreement between the State of Hawai'i, Department of Land and Natural Resources, Division of State Parks and the Commission on Water Resource Management Regarding Installation and Maintenance of a Deep Monitoring Well and Related Features at Hāpuna Beach State Recreation Area, South Kohala, Hawai'i Island**

PRESENTATION OF SUBMITTAL: Neal Fujii, CWRM State Drought & Water Conservation Coordinator

Staff stated the summary of request to authorize the Deputy Director to enter into a MOA with the Division of State Parks to allow a deep monitor well into the Waimea Aquifer System Area within the Hāpuna Beach Recreation Area.

### QUESTIONS / COMMENTS

COMMISSIONER HANNAHS: Do we typically enter into MOAs with ourselves because it's the State with the State. Is that a regular practice?

NEAL FUJII: This is the first one I can think of but I think it was because the Hāpuna Park is also under management by the National Park Service.

DEPUTY MANUEL: Real quick, it's a requirement. There's, I forget the acronym, but basically there's a conservation easement over this area that National Park Service regulates and so State Parks is the implementor of that conservation easement. Any type of land uses that could impact the recreation of that area have to get approval through National Park Service and also State Parks so this was a formal agreement in consultation with National Park Service that they required in order for them to be very clear on what

the extent of this project is within the context of the larger Hāpuna Recreational Area. It's specific to that land use control ultimately that requires this type of MOU and Agreement.

CHAIR CHANG: We normally don't do MOAs.

COMMISSIONER HANNAHS: Right, but was that in the report? I think it's germane to have in the record and the minutes are okay just so that we don't set a precedent in here where every time we deal with another State agency we're doing an MOA.

DEPUTY MANUEL: Thank you for that.

#### PUBLIC TESTIMONY

JONATHAN SCHEUER: Aloha mai kākou, Commissioners. Jonathan Likeke Scheuer. On this particular matter I testified at the September meeting as an individual. I am also here again as an individual. There was a meeting after the September meeting where staff reached out. We discussed some of the issues, I followed up with a long email with nine suggested things that I thought would address the concerns that I had raised. The commitment that this is not trying to discover deep confined groundwater addresses nearly all of the concerns that I have so I'm very appreciative of the changes to the submittal. To be super clear I'm not opposed in theory to trying to discover whether or not there's deep confined groundwater in different places but it should be done in a particular, methodical way as well as towards management of that resource. My largest concern slash question is in the chart that's included in the submittal. A typical deep monitor well plan it says depth shall be as directed by the engineer based on the conditions encountered in the field. I'm just wondering what kind of particular direction and restriction is being given in this authority. Related to that I'll just note that the decision made here is in some ways related to what will come up on item B4, the delegation of authority because if I read before correctly this kind of exploratory well would remain as a delegated authority to the chair, not something that would appear in front of the Commissioners. The chance for the public or practitioners or other people to comment on this in conjunction with the proposal in B4 doesn't exist. I realize this is just an MOA but the way before is written is that there's not allowing for this kind of thing to appear in front of the Commission if there are other concerns associated with the development.

CHAIR CHANG: And we'll get into a lot more of the B4 discussion but thank you.

JONATHAN SCHEUER: Just noting that those two are related. I'm very appreciative of the staff's work on this.

CHAIR CHANG: Let's take a hard look again. In line with Commissioner Hannahs, let's make sure that the MOA reflects that NPS requirement because it does not.



DEPUTY MANUEL: We will work with finalizing, there's a draft MOA language that we worked on already with National Park Service and State Parks but to make it very clear what that trigger is and why we're executing the MOA, we'll put that in the intent purpose of the MOA or MOU.

**20231219 02:02:35**

**MOTION: (MIIKE / KATAYAMA / KAGAWA-VIVIANI)**

To approve staff submittal.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI/HO)**

**20231219 02:03:48**

**B. ACTION ITEM**

- 2. Approval of State of Hawai'i, Department of Land and Natural Resources, Division of Aquatic Resources Application for a Well Construction Permit for Kalauha'ihai Restoration Well (Well No. 3-1643-002), TMK (1) 3-7-011:003 for Fishpond Restoration Use, Wai'alae-East Ground Water Management Area, O'ahu**

*Disclosure by Commissioner Kagawa-Viviani.*

COMMISSIONER KAGAWA-VIVIANI: I'd like to disclose that I and my grad student are working with Maunalua Fishpond Heritage Association and other UH and Chaminade faculty on the springs they're stewarding. After reviewing the submittal I don't believe that my or my student's relationships impact my ability to render an impartial decision on this application but I do want to be transparent in my relationship with MFHA, Chris, and some board members.

CHAIR CHANG: Thank you for that disclosure. We rarely ever have commission disclosure. With that being said, is there any objection to Commissioner Aurora for the participation in this agenda item?

DEPUTY MANUEL: The applicant right now is DAR so it's David Sakoda.

CHAIR CHANG: David, do you have any objections to Commissioner Kagawa-Viviani?

DAVID SAKODA: No objections.

CHAIR CHANG: Chris Cramer, do you and your group have any objections?

CHRIS CRAMER: No, we don't.

CHAIR CHANG: With the full disclosure, Commissioner will continue to participate in this agenda item, but thank you for the disclosure.

PRESENTATION OF SUBMITTAL: Ryan Imata (CWRM Hydrologic Program Manager), Chris Cramer (President, Maunalua Fishpond Heritage Center)

Staff stated the summary of request for Commission approval of a well construction permit to construct a well to restore water to the Kalauha‘iha‘i Fishpond.

#### QUESTIONS / COMMENTS

ANGELA CORREA-PEI: Aloha Chair Chang and Deputy Manuel and fellow Commissioners. On behalf of our board we just wanted to mahalo DLNR for their partnership in this project. This project is not just about the fishpond, it's about all of Maunalua Bay. We strongly believe that the return of the wai will help to bring back the health along with other community projects throughout Maunalua that'll bring back the health of the bay so that it'll bring back our natural resources and bring back our cultural practices. The practices of Auntie Laura and my tutu and all my aunties picking limu, my uncles fishing. Fortunately, I have cousins that still fish but we don't have the resources that we used to have but we hope that with projects like these our resources will become more plentiful and more of our current generation and our keiki will be able to practice richer experiences in our cultural practices in the future. That's what this project is about along with many other projects throughout our pae‘āina. We're very grateful for the support and we're very excited about what the future holds with a project like this and other projects throughout our pae‘āina. I know Jeannine is here if she'd like to say a few words as well.

JEANNINE JOHNSON: Aloha kākou. I would just like to say that my father was a lawai‘a from Miloli‘i and when he got married and settled down and raised a family in Niu, we had so much fish every day practically. We were Catholics so we always had fish, but I clearly remember going with him and swimming in the bay and I always told people the ‘ele‘ele limu, the ‘ele‘ele would tickle my stomach when I'd be swimming because if you know our bay, the water there is very shallow. As a little girl I never wanted to step in it, I always wanted to swim above it and it was so plentiful. It was everywhere and it is not like that now. As you saw the pictures we only have the ogo and it's not good and when I think of returning the water to the bay, I think it would make my father very happy. Thank you so much for all the work that you do and we're so hopeful that this will do it.

CHAIR CHANG: Thank you, Jeannine and I'm sure Auntie Laura is grateful for your perseverance.

KIMI MAKAI AU: Aloha Chair Chang, aloha Commissioners, my name is Kimi Makaiau. I'm a newer resident to East Honolulu, moved into the area about 10 years ago and my family home is now in Niu Valley a couple hundred yards above Kalauha'iha'i. I grew up on the North Shore and Jeannine just triggered a memory of when we used to go down to the beaches in Hau'ula and gather limu manaua, limu 'ele'ele, wawae'iole and it was my job to come home and help clean the limu because it was mixed in with limu kala and all kinds of other things. When we moved into Niu Valley it was important for me, I come from a fishing family and to have my son raised and understand our resources, particularly of our marine resources. One of the blessings for us through the pandemic was that we spent a lot of time as a family across the street right in front of Kalauha'iha'i so my son at the age of five got his first he'e in that water, but unfortunately the limu is not present. It's my hope that this water is restored is that in the area that my son is being raised that he might one day be able to share in those same practices that I grew up with. We appreciate all the work that everyone has been doing, this really is a community-driven effort with the support and perseverance of the State. I really hope that this project can serve as a model for other communities to really get their resources back. It's a start for us, mahalo.

CHAIR CHANG: I do want to provide context. Last week Friday the Land Board as the submittal said did approve DAR's application to enter into a use and occupancy agreement with Department of Transportation so that the pipe can go underneath Kalaniana'ole Highway. When they were doing their highway widening they also condemned this parcel so the parcel was conveyed over to DLNR. DLNR does intend to enter into a longer-term lease with Maunalua Bay, the community organization to mālama this property. With Laura, Kaleo, myself and just our team really is looking to co-management to steward these resources. We could not have found better stewards than the ones that have been doing this for decades and who come from this area so that is our long-term goal here, but this is also a unique opportunity to try to restore this natural flow. We may have a similar situation in Lahaina, the restoration of Mokuhinia through a similar process as we're doing here, channeling that fresh water back into the areas that it used to flow in to restore that. We've got DAR, DAR is taking the lead because it is the restoration of a marine resource. Laura, first deputy's been helping to coordinate much of this but it is all of our different divisions working together, Engineering, CWRM, DAR, even OCCL and SHPD have played a role, but really the culmination of all of our divisions coming together with a community to steward this resource. It is something that I think all of us are extremely proud to be part of.

COMMISSIONER HANNAHS: Chair, I just join you and I thank you for your statement and really commend the community for their leadership and their really hard efforts to do this. It's not just a matter of, oh it's a cool thing to support. You're really helping us do our job as I mentioned in the earlier item before the Commission. We have a job to really preserve the life of the land and the culture of our people and we can't do it here in an office, it has to be done out on the land by a community who associate and have pilina to

that land. That's who we're seeing before us today and it's a privilege to be in partnership with you and we're very grateful for all that you're doing to help us fulfill this constitutional obligation.

COMMISSIONER KAGAWA-VIVIANI: I do have a question, I was wondering for staff, if we have the capacity or if the community groups or DAR has the capacity to track the progress of this effort. I don't know the time frame of it but to really be able to capture the before and after.

CHAIR CHANG: David, I mean that's one of the reasons why DAR is involved in this. Maybe you can explain the role of DAR?

DAVID SAKODA: Thank you, David Sakoda, DAR Fisheries program manager. DAR does have a number of estuary monitoring sites in Maunalua Bay and near Lucas Pond, Kalauha'īha'ī is one of them. We have baseline surveys and we plan to continue to monitor. We have cast net monitoring to look at the species assemblage and then we also have monitoring sites further out in the bay to track benthic cover and fish species and biomass. We will be monitoring and producing reports to understand how the bay is changing and I think this project will be a major part of whatever changes we might see.

CHAIR CHANG: Kaleo, CWRM is also going to be doing some monitoring on the well?

DEPUTY MANUEL: Usually there are meters put on wells when there's a pump in place but in this case there's no pump, we're looking at natural design. The design of this well is to recreate that horizontal flow so we're working with Engineering to figure out how to quantify, that's to be determined. Once it gets put in we'll better understand if this actually works or not. Right now it's hypothetical, it's designed to work. We're hoping that it does but in the implementation we'll evaluate how to monitor that water use over time or what is flowing into the pond whether it's levels within the pond that we monitor at the end or within the actual well itself. If there's a way that we can install some monitoring equipment, working with Engineering so we're coordinating with them on the final design for monitoring. It's something we do want to figure out and track over time.

CHAIR CHANG: With BWS and Waste Management because they're showing us that water is still going into the sewer. With this pipe is there any change in that?

RYAN IMATA: I just wanted to add to that conversation. I think the total flow is going to be dependent on the outflow into the ocean. Similar to the way that our Stream Protection and Management Branch looks at total flow, we could probably get gage heights or something in that outflow ditch to assess how much water is actually flowing because if it doesn't flow into the outflow ditch I don't think that there's going to be a consumptive use of water from the mauka to the makai side except for maybe a little bit of evaporation. It's going to be a significant quantity once we determine if it flows into the ocean via the outflow ditch from the fishpond so that's an area that I think we'd look at gauging the quantity of flow, thanks.

PUBLIC TESTIMONY- None

**20231219 02:39:59**

**MOTION: (HANNAHS / MIIKE)**

To approve staff submittal.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI/HO)**

**20231219 02:40:48**

**B. ACTION ITEM**

**3. Modification of the Boundaries to the Surface Water Hydrologic Units of Hulē‘ia (2046), Māhā‘ulepū (2048), Waikomo (2049), Aepo (2050), To More Closely Align with Topographic Characteristics of the Watersheds, Kōloa, Kaua‘i**

PRESENTATION OF SUBMITTAL: Dr. Ayron Strauch, CWRM Hydrologist

Staff stated the summary request for the Commission to approve the proposed modification to the boundary of the Waikomo Surface Water Hydrologic Unit on Kaua‘i so that it more closely aligns with watershed delineations utilized by USGS and DAR.

PUBLIC TESTIMONY

MELANIA KEKAULA: I was just wondering in regards to the Kaua‘i production of what you're doing. Is it the original expansion area that you want replenished or it's been reduced right? The area for the fishing? Am I on the right page? I'm looking at number three, the Kaua‘i one.

DR. AYRON STRAUCH: I don't understand the question.

MELANIA KEKAULA: The boundaries, have they been somehow stricken, decreased for the area that you're particularly looking at?

CHAIR CHANG: Have you seen the map?

MELANIA KEKAULA: I'm looking at for the surface water hydrologic limits to these areas on Kaua‘i like Waikomo and I'm wondering have you been given a limit and now you want an expansion of the limit to the hydrologic area?

DEPUTY MANUEL: I'll try to frame it. Throughout the State, Dr. Ayron Strauch works with all of our streams and so throughout the State and what the Water Code talks about

is us establishing and these hydrologic units, fancy term of what we consider the watershed or the catchment basin for all of our streams. That's an administrative boundary, it's lines drawn on a map of what we consider a hydrologic unit that we manage. The current Waikomo hydrologic unit actually on paper took away some of the streams so there were natural streams that flowed but on paper the line was cut.

MELANIA KEKAULA: So it has been decreased?

DEPUTY MANUEL: I wouldn't say it's been decreased it's just the line that was drawn on paper doesn't actually match what's actually happening on the ground, on the land. What we're trying to do is say in this area use Mānoa as an example. It's like drawing a line through the middle of the valley and saying we're going to split that stream in half. What we're saying is we need to make sure that we manage the stream from its headwaters all the way out to the ocean. Right now as drawn on the map in Kaua'i it cuts off certain streams on paper and so we're just trying to correct an administrative line that was drawn from the Commission in order to clearly reflect what's happening on the land there in that hydrologic unit. That's all we're doing.

CHAIR CHANG: There's no change of water allocation, it's really just the boundaries, making it more consistent with like Kaleo said on paper.

DEPUTY MANUEL: Yes, to match what's happening on the ground.

MELANIA KEKAULA: Does that affect obviously the farmers and the irrigation, what they're growing?

DEPUTY MANUEL: No, this is an administrative management tool that gives us kind of a weight of water budget. How much people use, where their diversions are on the stream, those are built infrastructure and those go through separate permitting and regulatory processes. If you wanted to actually take water out of a stream that you don't have access to, you come to the Commission for a water use stream diversion permit. This action today is purely administrative, it's not actually taking water away, reducing water in any way shape or form. What it's doing is on paper correcting what's actually happening on land.

MELANIA KEKAULA: I was just concerned if it would take away from communities and cut down on their availability.

DEPUTY MANUEL: No, that's not the action proposed today.

CHAIR CHANG: Thanks for the question, are you a resident of Kaua'i?

MELANIA KEKAULA: No, I'm not.

CHAIR CHANG: Oh okay, you seem very interested in Kaua'i.

MELANIA KEKAULA: I'm interested in the water everywhere.

#### QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: It's just a comment for Deputy, given we heard about the Kaua'i Water Use and Development Plan. Can we make sure that this change is communicated?

DR. AYRON STRAUCH: I will comment that the Water Use and Development Plan is very much focused on the water use side and that the majority of the data and the focus is on potable water. As you can see there was very little attention to surface water or non-potable sources and they were defining everything by groundwater hydrologic unit which is a different administrative boundary.

DEPUTY MANUEL: Getting to what you're saying we will incorporate and obviously communicate with the County in making sure that actions taken by this board are consistent with their water use development plans, that's a given. One of the things that we're trying to continuously work on is the connection between surface water and groundwater and how those are regulated and managed by our agency as well as how that's implemented on the ground by various purveyors. You have in the Hawaii Water Plan context that you presented the Department of Water Supply is developing this water use and development plan but they are one of many purveyors of water. That's where people get confused or oftentimes have issues because a lot of what's presented is focused on their specific systems, not the overall water needs. What you hear is that they struggle getting access to some of that other data whether it's private water systems, irrigation systems, non-potable demands because they are one purveyor of many and they're focused specifically on potable water versus for example the planning department or some other county entity that could access higher level policy data that integrates planning and water resource management. Those are things that we're working on and I think are going to become more important as we look at management throughout the State moving forward. The integration of how do we coordinate surface water IFS establishment which then allows for water to be used for off stream needs that then can sometimes also augment and support groundwater development and groundwater potable source development strategies.

CHAIR CHANG: I just noticed that Grow Farm submitted a letter.

DR. AYRON STRAUCH: There are over a thousand land owners in the area and we did not reach out to a thousand people to get their input. This is really an administrative issue that we needed to address as we came across it doing data gathering. It wasn't a full-on community engagement needed for this administrative thing. Obviously when we go to addressing actual water sources and water uses and various owners of stream diversion works and reservoirs and irrigation systems we will engage with them and we actually do engage with them pretty much quarterly in the field. We are working hand-in-hand and with them.

CHAIR CHANG: I think this is a unique action that people misunderstood what we're doing here.

COMMISSIONER MIIKE: I think the people that drew the original lines also divided India and Pakistan.

**20231219 02:52:58**

**MOTION: (KAGAWA-VIVIANI / HANNAHS)**

To approve staff submittal.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI/HO)**

**20231219 02:53:22- Break**

**20231219 03:02:57**

## **B. ACTION ITEM**

### **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**

PRESENTATION OF SUBMITTAL: Ryan Imata, CWRM Hydrologic Program Manager

Staff stated the summary request for the Commission to modify the existing authorization to the Chairperson to approve Well Construction and Pump Installation Permits and to continue pending application review and program-related approvals, statewide during the interim until a decision is made on Ka Pa'akai analysis requirements.

### QUESTIONS / COMMENTS

CHAIR CHANG: I do want to add some additional context to why this is coming before the Commission. Some of you have noticed I have a different style. I also have the unique opportunity to sit as a chair of the Board of Land and Natural Resources. Nothing is delegated to the division heads, everything is delegated to the chairperson if any at all, but in reading through I think all of us chairpersons bring different styles to the positions that we sit in. I come from a background of transparency, inclusivity. I think this body is a policy makers and I just want to make sure that this body provides us the guidance on what is delegated to the chairperson versus what needs to come back to the Commission. When I read through the previous delegation especially the 1997 delegation, that is over



15 years ago. Laws have changed, case laws, there have been numerous case laws and Ka Pa‘akai is a relevant part in many cases, our analysis. When I look at the statute it also requires findings of facts and so I think that there are opportunities within the pump installation and construction where we can delegate but again I did not feel it appropriate for just me or Kaleo or CWRM to decide that. I really wanted guidance from the Water Commission as a matter of policy because as Ryan said majority of these are Hawaiian Paradise domestic single wells. I think that is appropriate for delegation, we don't want to hold anybody up but there are other... As resources become more limited there are matters that should be brought to the Commission. This really is the reason why it's coming is to get guidance from the Commission. I also have an issue with relying upon delegations that were made 25 years ago. I think that we should review these delegations on a regular basis. If things have changed then we should adjust, but that is the context upon which I had asked staff to review this. Commissioner Katayama at a previous meeting had also asked what's the criteria to determining what's delegated and not. Again that is the context, we're not trying to make more work for the water departments, we're not trying to create greater uncertainties but this is really an open forum to get guidance from the Water Commission helping us develop some criteria what is delegated to the chairperson versus what kinds of applications need to be reviewed by the Commission. That just provides some context.

#### PUBLIC TESTIMONY

MARC CHUN: Good afternoon Chair, Commissioners, and Deputy Director Manuel. My name is Marc Chun, I'm with the Board of Water Supply, Water Resources division. I'm here to represent the Board of Water Supply. First of all, thank you Chair as well as Ryan Imata for at least starting to address some of the things we have in here. That being said, I realize our testimony was just submitted, you guys got it this morning. So if you permit I'll just go ahead and read through the testimony.

*Reading of written testimony; can be found on CWRM website.*

Thank you everybody for the opportunity to provide testimony on B4. If there are any questions we'll try to answer them.

BOBBY COMMAND: Since I submitted at 11 o'clock last night I'd just like to read it into the record. It's very short, with your indulgence.

*Reading of written testimony; can be found on CWRM website.*

CHAIR CHANG: We did receive written testimony from Department of Water Supply County of Hawaii.

JONATHAN SCHEUER: Aloha Commissioners, Jonathan Likeke Scheuer for the Department of Hawaiian Home Lands. The chair of the Hawaiian Homes Commission, director of the department submitted written testimony last month on the briefing on this matter. We noted there that the only notice in non-designated areas as a result of this

1997 designation is through the Water Resources bulletin published monthly. There's significant lacking information in the bulletin and what appears, what doesn't appear, how we have notice, and even if we receive effective notice, whether any comment have any ability to be considered. The functional result is that for DHHL one of the four protected public trust uses of water in our State, that this has denied DHHL practical due process. Orally I gave you some examples of the deficiencies in the bulletin from the November bulletin. These are repeated in the December bulletin so I'd just like highlight a couple for you. The Kula 1800 #1 well, a 450,000 gallon a day well for municipal use was approved on the day it was submitted. The Pu'unēnē First Assembly of God irrigation well was approved on February 13, 1990 and the application was accepted as complete on January 10<sup>th</sup>, 1990. For municipal scale wells in areas where DHHL has proposed development but not sufficient water, there's an obvious nexus between the impact on our ability to deliver homesteads. I want to expand a little bit or maybe reflect on some of the things the chair just touched on. Since 1997 when the last time the Commission chose to consider the delegation of authority we've had the Waiāhole 1 case, the Waiāhole 2 case, the Waiāhole 3 case, the Waiola case, the Kukui case, the Nā Wai 'Ehā case, the Kaua'i Springs case, Ka Pa'akai o Ka 'Āina, all of which have contained very specific guidance to State agencies particularly but not only the Water Commission on your duties under the public trust, what public trust resources should be protected. As said on the first of those cases Waiāhole, in all areas without exception or distinction so they didn't say, oh you've got to protect it more in designated areas versus undesignated areas. The consequences of this delegation since 1997 has been there's been no meaningful opportunity for public trust interests or other members of the public to comment, no ability for competing rights holders to even have a hearing on matters, no ability to have a contested case, no analysis on impacts to public trust uses by the applicant or the agency. Just to be really clear a five-day pump test might be able to capture your impact on the nearby well, it's not going to capture any impacts on far away public trust resources and even when you do, within your records for a permit under a delegated authority when a pump was switched in the night Waie'e A skimming well which is directly mauka of Moku'ula, a five-day pump test was done, water levels immediately dropped next door to where Mokuhinia was and yet the consultant said, oh well I think there's other reasons why these are dropped. Even with the five-day pump test being long enough, the data was sort of portrayed in a particular way and of course because this was done administratively there's no opportunity for anybody who might be concerned about the restoration of Mokuhinia to have any role, any ability to comment on it. The short hand that I explained to folks around Hawai'i is that functionally because of the delegation policy it's as if the water code exists only in delegated areas. For the most part surface water a little bit more but for groundwater it's like we're still in the plantation era if you are not lucky enough to live in a designated Water Management Area. If you to try and defend or comment on a public trust use that might be impacted by groundwater development just does not exist so recognize having heard the comments from particularly Honolulu Board of Water Supply, there are some concerns about duplicability of having a well construction permit before pump installation permit. Those

comments are well taken. Mainly what DHHL would look for is that we have these rights. A difficulty getting water to our lands, this process harms us and our beneficiaries. So to the degree people are asking for deferral or denial of what you're proposing, let's make sure we work together on how the opposition actually addresses these fundamental constitutional issues which thankfully the chair's proposed action is addressing.

COMMISSIONER HANNAHS: Let me get this straight, you're supporting the...

JONATHAN SCHEUER: The department is on record supporting moving forward with some version of the recommendation. If you defer, we would consider ourselves to be an essential stakeholder in the discussions.

CHAIR CHANG: You're not saying that this is rule making.

JONATHAN SCHEUER: I am not saying that this is rule making. If the contention that this is a rule making procedure is true then one could fairly ask under what authority this has been done for the last quarter century which would expose a whole bunch of other things including existing people with well construction pump installation permits to questions on whether or not their permits were lawfully approved.

MELANIA KEKAULA: I've got a question for Ryan and I agree that there should be a committee from this group. I think the more robust informative questions that you can ask those people who are applying, the applicants for these permits the better. In fact you have a more varied committee to actually decide whether to begin with the get-go whether these people, these applicants are actually who they say they are or if they're just coming in from another state or a foreign country under an assumed name. Whether they're here just to take the resources from our children and grandchildren because the Lord gave us this land for our children and grandchildren. That's basically what it is, not to be ripped off and taken by other people and at the moment that's what we see as a community in Kahuku and we're very concerned about it. Therefore your idea of the modification in the process really of giving out these applications of permits I think is a good one and it should be decided positively upon by another committee that you want to install. Thank you.

#### QUESTIONS / COMMENTS

COMMISSIONER KAGAWA-VIVIANI: This is a question for Ryan. I came in on the tail-end of Ota Well discussions but I what do recall hearing was that in non-designated areas part of the issue is that the cost of maybe utilities or the cost of drilling a well is very high so that waiting until the discussion of pump installation comes up sort of tilts the decision-making space in ways that can make it hard for the Commission to manage water in non-designated areas or deny a permit for instance, to deny a pump installation permit after a well has been constructed. Did I get that superficially correct? That was one of the arguments I recall hearing.

RYAN IMATA: I will tell you that in 1997 we bifurcated well construction and pump installation permits and for that very reason that waiting for the pump installation permits was problematic. It was a consultant named Steve Bowles who's not with us anymore but he was advocating for the Commission to issue concurrent well construction and pump installation permits. One thing that maybe isn't obvious and I should have done better in making clear to the Commission is that when we issue a pump installation permit, it might be for a certain capacity pump but that doesn't mean that staff or the Commission or the chair or whoever has the authority is initially sanctioning that pump capacity. In fact in the delegation of authority to the chair to approve both the well completion report acknowledgement and the certificate of pump installation completion, that's dependent on a couple of things. First of all, compliance with our pump test requirements and then second, our assessment that that pump test analysis shows no adverse impacts to the environment. One thing, that I wanted to address something that Jonathan said about duration of pump tests. That definitely is a concern of ours and oftentimes what we do is if we do think that a longer study period is needed, one example is in Kohanaiki is that we require a long-term monitoring plan to look at water levels adjacent to the pumping station to see what long-term trends look like. The Commission does reserve the right to reduce the pumping at that pumping station over the long-term. We always have that ability so I think that we've developed a process that has been pretty efficient in terms of initially allowing somebody to put a pump in. We tell them you can put the pump in but if we don't sanction that pump size they have to take it out and put in a pump that doesn't have adverse environmental impacts during the permit approval process. We also reserve that right in the long-term. I think we have the authority to tell anybody that they can or they have to remove a pump and put in a smaller capacity if we start to see impacts to the environment at a later date. I know it's harder, there's some reliance on what pump is in the well but the Commission's authority is to protect groundwater resources. I hope that answers your question.

COMMISSIONER KAGAWA-VIVIANI: When you say "we," in the past has that been in front of the full Commission or has that been discretionary within staff?

RYAN IMATA: Again, the delegation to the chair was to approve well and pump permits and to also approve the well completion report and the certificates of completion. It falls within staff's purview. What would happen is if the Commission was recommending that somebody have to downsize their pump and they object to it, we'd bring it to the Commission for full approval. I think the things that we are proposing and in the past have been approving ministerially have been things where we see no environmental impacts and there are no objections from the applicant but where we see that there are those kinds of almost discretionary issues that we need to be resolved, staff doesn't want to have that discretionary ability and we present it to the Commission for approval.

COMMISSIONER HANNAHS: For Department of Water Supply both Hawaii Island and Honolulu, you speak to the large issue but I'm trying to reconcile, calibrate your testimony with specific recommendations. With respect to each of these recommendations the individual domestic well construction, a lot of which are in Pāhoa,

you oppose that or you're in favor of that? (BWS responds in the affirmative) Okay, you're okay with that. With number two, the individual domestic pump installation [inaudible] that are not designated, do you have a position on that?

CHAIR CHANG: Why don't you come up to the table.

COMMISSIONER HANNAHS: Because it seemed like there's a lot more work to be done and the reason to have meetings but I couldn't discern whether you're okay with what's going on here, specifically what we're recommending.

NANCY MATSUMOTO: I'm Nancy Matsumoto. I'm chief hydrologist-geologist at Board of Water Supply, Honolulu Board of Water Supply and I work for Marc in the Water Resources Division.

COMMISSIONER HANNAHS: For instance with recommendation one, you're okay with that? Individual domestic well construction, well modification permits for wells for systems that are not in designated management areas.

COMMISSIONER MIIKE: Speak up a bit, I don't think Ryan can hear you.

COMMISSIONER HANNAHS: Where estimated water usage as the date of the application is less than 70% sustainable yield, etc.

NANCY MATSUMOTO: Our comments are just limited to the potable system that we operate so we're not really commenting one way or another on 1 or 2.

COMMISSIONER HANNAHS: On 1 or 2 and 3.

MARC CHUN: 3 is where we asked the question of the clarification of the definitions.

COMMISSIONER HANNAHS: How about 4?

MARC CHUN: We didn't have a comment on that one.

COMMISSIONER HANNAHS: If we supply the clarification on item 3 then you're okay with the submittal? With the caveat you think the discussion needs to happen regarding the issue.

MARC CHUN: Our fourth comment yes, but also within our second comment we talked about that we didn't really have the comment on coming before the Commission for the pump installation permits but our comment was we think that the delegation to the chair could still exist for the well construction permit. That was the difference there.

NANCY MATSUMOTO: It's not specifically tied to these recommendations, sort of a side comment.

COMMISSIONER HANNAHS: Which is my problem. This is what we have before us so you raised issues that are interesting but we're trying to deal with what we have before us. What I'm hearing, there's no real fundamental issue with what we have before us.

DEPUTY MANUEL: I'll try to help you guys and I'll try also to help ourselves here through this process. The Board has its own process in which it develops its own sources on O'ahu and is unique. They operate within a water management area so they know that a water use permit is something that has to come before this body. What I'm hearing is that there's no opposition of coming before the Commission, there's going to be multiple bites of the apple including the pump installation permit and the water use permit; however, the way that the Board applies for permits is really unique and different than other applicants throughout the State. The board applies for a well construction permit in order to construct the well, test it, and determine its productivity. Based on that productivity they apply for a pump installation permit, water use permit at a later phase. There's no problem what I'm hearing from the Board to come back to this Commission. What they want to expedite and tighten the time process for them is to be able to develop the well, that that continue to remain administratively delegated to the chair to approve while the pump and the water use permit still come back to the Commission. Is that accurate?

COMMISSIONER HANNAHS: That position is not in..

DEPUTY MANUEL: It's not. Right now, the well construction permit would come to you folks for approval. this is how the Board uniquely applies for water use permits within this Commission. The context that Commissioner Kagawa-Viviani brought up for the Ota Well, they tried to do something similar and bifurcate. In that conversation because it came before the Commission, there was this detrimental reliance conversation that if somebody sinks a well for example, even the Board in this case that they've invested \$1 million or \$2 million into a hole and then if a permit comes before this body for a pump or water use permit and we deny it, it's like, shouldn't we have approved it holistically from well through pump through allocation? You're investing a lot of money at the front end and it puts this body in an awkward position to say, okay we did we invest \$5 million or whatever you invest in the hole but we're not going to issue the pump permit. This is the dynamic that's at play right now within this submittal. Ryan is raising his hand. We could entertain amendments to this recommended decision, it could be specific to the Board's concerns in order to help support the Board in looking at source development. It could be specific for the well construction permit. I'd also highlight that where wells are developed also has potential impacts on Ka Pa'akai. Ka Pa'akai is not only pump related, it's actually the site of the well, the well source itself. It's a complexity and layers of decision- making and review. I think aligning with Chair's recommendation is to have this conversation in public formats and sessions and not purely between staff and the Deputy. At this point in time that's what we're talking about today. I just trying to get you guys in alignment with what I think we're recommending. I'm hearing that you guys aren't represented within the recommended actions right now but this is part of the conversation if there's some something that needs to be discussed.

CHAIR CHANG: BWS' unique situation, is that provided for in our Administrative Rules?

DEPUTY MANUEL: No, Administrative Rules, they're supposed to be applicable across the board no matter what, it's not specific carve outs unless we make it explicit in that rule making process but I don't think that's the intent of Administrative Rules.

COMMISSIONER HANNAHS: The question is, the complexities of this issue, can they be handled with a forum we're in right now to add address their issue or do you need more time to really think about this and bring it forward?

COMMISSIONER HO: I agree with you and I'm going to have to leave, sorry, but I'd like the Commission to think about whether we want to defer this matter in light of the late testimony and this discussion, whether we have enough information to make an informed decision. The second thing I wanted to ask is if we delegate and this is maybe a legal question, if we delegate to the chair is the chair able then to delegate to the deputy without a rule amendment? Is it the chair and her designee or his designee to make decisions? I don't know, I haven't looked at the rules. I don't know if that's an issue but that came to mind as I was listening to this discussion.

CHAIR CHANG: That's part of the reason I raised that.

COMMISSIONER HANNAHS: Kathy, you're of the opinion we shouldn't move on the four? There seems to be no dissent about this, it's just do we want to take up a fifth thing or do we want to bring that back in a separate context?

COMMISSIONER HO: I leave it to you guys, there's a lot of discussion and I'm just not sure. I read through the submittal and then I got the late thing and I was a little confused about how it, but we have a quorum so you guys may be able to make a decision.

CHAIR CHANG: I'm sure there'll be more discussion.

COMMISSIONER MIIKE: I'm a little confused about the differences between '97 and now. We've gotten through so much detail, it's been delegated to you before and this thing says we're going to delegate to you again, right?

CHAIR CHANG: I think it's different but I wanted to bring this delegation authority back to the Commission. The times have changed, we've got new case law, we've got a new Ka Pa'akai Analysis that to utilize the same delegation that we did in 1997 without really... Those don't come to me for approval, those are approved by the deputy director not by the chairperson.

COMMISSIONER MIIKE: From what I understand, the '97 was a delegation to you. It just happened that it got then delegated to him, right? I don't understand. I don't really see a big difference between '97 delegation and now. I think more or less now you want clarification not really a fundamental change in how things are.

CHAIR CHANG: I'm not sure, that's why I'm asking the Commission because I think there are questions related. Jonathan raises the questions about due process, most of the delegation is not conducted in open Commission meetings, that's handled by the staff. Many of these permits that are delegated don't come before an open forum for public participation. That's the way the delegation has functioned and I would tell you I do have some concerns about that under Ka Pa'akai, under the new case law, under the Supreme Court's direction to us. We have to make findings of facts and in a delegation there is none of that.

COMMISSIONER MIIKE: As I said I disagree on whether we need a full Ka Pa'akai Analysis on each and every decision we make and I don't think that Supreme Court decision requires that but that's a discussion for another time. From what I understand, I think you've addressed the concern about Honolulu Board of Water Supply, but now I'm totally confused about...

*Commissioner Ho leaves the meeting.*

RYAN IMATA: I can address Dr. Miike's question about the difference between the initial delegation and what we're recommending today. I guess it's not really obvious and maybe that's my fault for not being super clear about the significant change in this. If you look at recommendations 1 and 2, those are for individual domestic wells and pumps and again this is in an effort to make sure that staff is not having discretion about things where there may be potential objections to. I'm not sure that the public has objections necessarily to individual domestic wells where the pump capacity is relatively small, rather we have applications in Hawaiian Paradise Park for water bottling or we have applications for uses that I'm not sure that we can apply reasonable and beneficial analyses to assess. I think that's the most significant difference between the previous delegation and today is individual domestic delegation whereas we take agricultural stuff and industrial stuff and everything else that's not individual domestic to the Commission. To address the Board's concerns, most of the Board's applications come to the Commission anyway because they are associated with water use permits. What they are asking is to look at just delegating approval for well construction because again the Commission is going to have that second bite at the apple regarding the pump installation and water use permit. I understand where that's coming from, at the same time I know that Jonathan has raised concerns about Hāpuna and that's just a monitor well. There's no pump being put into there but Jonathan did raise concerns at the first MOA presentation regarding breaching into a deep confined lens. I can see his point about wanting to have the ability to comment on even wells that aren't for production purposes. There's a lot of useful discussion here and a lot of, I don't want to say competing interest but a lot of different viewpoints that we need to take into perspective and understand. I'm certainly listening to the discussion and trying to see how best we can fold it into our recommendation at this time. I would say that to address the Board's concerns, maybe in item #3, we talk about well construction permits for exploratory purposes and amend the recommendation to say that.



CHAIR CHANG: Since Jonathan represents a department, another state agent, I'm going to let him come up but go-ahead Marc.

MARC CHUN: I just wanted to clarify, Commissioner Hannahs. I apologize, I misunderstood the question. As we looked back through it, item 1 and 2, overall it says get rid of the delegation except for a few cases. Our comment is because we would fall into the other ones.

NANCY MATSUMOTO: It's that last statement, all other permits and program approval is not explicitly delegated. That's where we...

COMMISSIONER HANNAHS: That's your concern, right?

CHAIR CHANG: That's a big one.

COMMISSIONER HANNAHS: It's in bold, even.

MARC CHUN: So that's actually and I apologize.

NANCY MATSUMOTO: 1-4 we don't, but it's that last.

COMMISSIONER KAGAWA-VIVIANI: It's the limitation of the delegation which used to be blanket. Now, it's constrained and I can see Hawai'i Department of Water Supply and the bigger utilities who would be subject to that change are the ones who are raising concerns.

JONATHAN SCHEUER: Three things in response to the conversation. In response to Commissioner Miike's questions, the actual practice has been that everything if it's not in a water management area, everything's been designated: small domestic wells, large municipal wells.

COMMISSIONER HANNAHS: Designated or delegated?

JONATHAN SCHEUER: Delegated, thank you. It sometimes appears in the bulletin, occasionally they don't appear in the bulletin. There's been no public process, it's all happening at the staff level so the difference in what's proposed here versus the practice is that it's saying we're going to still delegate a whole bunch, a vast majority of permits which are small domestic wells but there are certain things we're not automatically delegating. That's the difference, that's what the proposal is. I think that the concerns from the Honolulu Board of Water Supply could possibly be addressed by an addition. The way the proposed action reads is everything is not delegated except for these four things and so five, municipal well construction permits in designated water management areas, that would be a fifth thing that is delegated to the chair for approval.

CHAIR CHANG: Is that acceptable to BWS?

MARC CHUN: I can't speak for the Board of Water Supply, but I follow the logic and I'll take it back to our boss.

JONATHAN SCHEUER: The last thing and this gets to the point Ryan said. I will note that the recommendation does not specifically address wells that seek to explore or develop deep confined groundwater which I think do give rise to some fairly significant concerns and might deserve a specific call out that those are not delegated for approval. Right the problems that have been had at the Keōpū well and the Kaloko deep monitor well where they have breached the deep confined groundwater and in Keōpū. I think it took 17 years to seal it, Kaloko, it's still not sealed. Under the submittal, the staff is still delegated authority.

COMMISSIONER HANNAHS: If we add your point 5 which Board says it addresses their and leave the, all other permits and program approvals, then we're okay on that issue.

JONATHAN SCHEUER: I actually read it slightly differently. I read that this would delegate authority for an exploratory well into the deep confined groundwater under item 3.

COMMISSIONER HANNAHS: You would want that withdrawn?

JONATHAN SCHEUER: It would be something like, item 3 as worded comma after test holes except for Wells into deep confined groundwater comma and for the sealing of unused and abandoned wells.

DEPUTY MANUEL: I have language if you guys are open to suggested proposals, but before we get into...

COMMISSIONER HANNAHS: Can we just go back to Bobby Command and Hawai'i Island.

DEPUTY MANUEL: If I may, again to frame, chair has given me direction, I've been working with staff to get direction, we have permits coming in the door every day, every week. What we're trying to do is find a good balance between Chair's desire to be transparent and provide a space for this body to give us more guidance on policy as well as keep the engine running and operating. What I will advocate for is that this body act on the four items presented. Related to the Board and Departments of Water Supply maybe additional delegations that we have follow-up conversations with them about their specific situations and come back to this Commission with a more thought-out process and refined delegation. If that is something we want to recommend for consideration at a later time but I think what we as staff are advocating for is some kind of approval from this Commission or amended delegation so that Chair also feels comfortable signing because it is her decision to make. There's a lot of caveats here that she can always bring it back to the Commission as recommended in this space. My first recommendation is that this body take action on the four and we come back. We'll work on language. I'll

present some recommended language to address the testimony received today and then specific to the department and Board's unique, County municipal water system processes, we can work on maybe recommending a separate delegation that's more thought out.

CHAIR CHANG: Including the County of Hawai'i?

COMMISSIONER KAGAWA-VIVIANI: May I ask a question to the staff and Chair? We vote on issues to delegate authority on many issues. Would it be too onerous to say we have a stack of permit applications and just go through so it's not guesswork, what is and what isn't delegated. Could that decision of what gets delegated come before the Commission in a shorter?

DEPUTY MANUEL: On specific permit by permit?

COMMISSIONER KAGAWA-VIVIANI: Is that a submittal? I guess that's a lot of work, right?

DEPUTY MANUEL: What we're asking for as this policymaking body are your heartburn issues. Areas that you want and believe community or the public should get to weigh in on where rights are impacted. You are the discretionary decision-making body, you get to guide us in what we can and cannot or what we should be bringing back to this body for decision making. I think what we're recommending is right here before you based on the dialogue to date and Chair's direction. We can come back in 60 to 90 days, maybe right after legislature because we're going to be busy come January through April. Right after legislature it'll give us time to work with the Counties on their unique situations on what permits and also with Chair, what she feels comfortable because it is a delegation to the chair at the end of the day. She could bring everything back to this body but what this group between the Department of Water Supply and the chair as well as staff feel comfortable recommending to this body. If it is no further action and this is the limit of the delegation then so be it, but we can have those conversations between now and let's say April or May for a time frame and then be specific to the recommended modifications, item 3, and Jonathan's testimony and so forth. If I can I'll just share screen of a potential modification to item 3 or if you want to take Commissioner Katayama first.

COMMISSIONER KATAYAMA: Ryan, based on the four recommendations before us, how does it affect the permit processing handling time? Does it make it shorter, longer or is it no change?

RYAN IMATA: Based on the four recommendations we're essentially keeping things the way that they are but are going to present non-individual domestic applications to the Commission. That's really hard to say. I would say that it does increase staff's workload fairly significantly to have to write submittals for those applications that don't comply with these conditions which would slow down the overall process for all applications.

COMMISSIONER KATAYAMA: For the record going back to Dr. Miike's question, can you summarize the differences between 1997 and the four recommendations you're making before us today? What are the differences?

RYAN IMATA: I think the primary difference is that number 1 and 2 are really constraining the delegation to individual domestic wells so you may have some wells that are not individual domestic. Say for example as we've been discussing municipal wells and those would all come to the Commission until such time as we work out some kind of language and present it to the Commission to make some of those delegated. That's in essence the biggest difference. Again, maybe the bigger difference is going to come when we have an assessment of Ka Pa'akai and the applicability of Ka Pa'akai. That's where we're going to see differences in our ability to process things. One thing that I also haven't articulated in this entire thing is that most of the wells that are not within these delegations are actually still coming to you guys for approvals. I don't present a lot to you but where in water management areas unless there are these exploratory wells by the Board, I am bringing the applications to the Commission for approval and then there have been applications in other instances where we do bring it to you guys for approval. There's not a super significant change in the amount of work and the way that things are being processed but I think that this does two things. It specifically talks about individual domestic wells and really defining that as the delegation and then as a result it's just going to bring these water bottling wells or agricultural wells in non-management areas to you. I'm not going to say you're going to get ten a month but I think this delegation strikes a really good balance in allowing the Commission to have the ability to comment on things where there are issues related to reasonable and beneficial uses but not overburden the Commission with looking at every individual well in Hawaiian Paradise Park. That's why I cited those statistics because I don't think you guys want to see 15-gallon per minute pump permits where the sustainable yield is 350 MGD and they're not even pumping 1 MGD. This strikes a pretty good balance and I think that we do need to have discussion with the stakeholders as has been pointed out today about further enhancing which permits we want delegated and which permits we still wanted to take to the Commission. I hope that answers your question.

CHAIR CHANG: Wayne, I'm reading the 1997 delegation, the commission delegate the following Authority. The chair is authorized to approve well construction and well modification permit applications Statewide unless the chairperson determines the matter should be decided by the Commission. To me that's a blanket delegation and that's what I'm uncomfortable with. I agree with what Ryan is saying that these recommendations are designed to address the overwhelming domestic wells. We're not trying to slow those down and we're not trying to bog down staff on that but it really clarifies what has minimal impact. Unless a domestic well is right in the middle of a trail or the water is running into the ocean those really don't have any impact even on Ka Pa'akai. In my mind these recommendations are more tailored to our current situation and reflects the case load so I feel more comfortable with this than what we were relying on the 1997.

COMMISSIONER MEYER: Frankly, Ryan I think you've done a good job on this everybody's had a lot of very constructive comments. There has been lots of good discussion on this issue. I feel personally this is reasonably and a relatively efficient approach or system for reviewing and processing these permits and I think there are adequate protections in place to prevent any wrongful or inappropriate approvals. One approach which I'd like to see this approved...

COMMISSIONER KATAYAMA: I just want to get a better comfort level on that this is not impacting adversely the municipal water development efforts because they impact the larger community. If I understand that you know the larger wells or municipal wells have a greater impact on our water resources; however, do we want to impede or make their processes longer and more expensive and I think after hearing today's testimony I would feel much better if we could strike a better balance and comprehend some of their concerns.

COMMISSIONER MEYER: I think this is a reasonable approach and it's relatively efficient and it's a pretty good system for reviewing and processing these permits. There are adequate protections in place. If I could suggest that we approve this today and ask Ryan to come back to us in a year to report on what problems have become evident and at that time folks can provide additional testimony for mistakes or inappropriate things happening and at that point the approval process could be modified. In other words, move ahead at this point with the well-considered system that has largely been in place with some additional protections going forward and then review it in a year, I think is a reasonable approach.

COMMISSIONER HANNAHS: I feel like we're ready to look at the language now if you're going to insert any additional language in the recommendation.

COMMISSIONER KAGAWA-VIVIANI: Can I ask for some better articulation around that bifurcation of process with designated and non-designated areas. It's in text but it's not clear to me and maybe it's also not clear to others how that process differs and at what point Ka Pa'akai becomes part of the conversation. For designated areas it's in the water use permit process so it's already addressed. Where it isn't addressed is in undesignated areas. Not to lengthen things but to frontend potential conflict it might be good for the Commission to clarify and work out for ourselves when and where that happens. That's my sense right now.

RYAN IMATA: I'm just trying to understand the question. I think you're talking about the bifurcation or the difference between designated and non-designated areas in where Ka Pa'akai applies, right? On the issue of Ka Pa'akai, I don't think we've made any kind of conclusive decision about Ka Pa'akai analyses as they apply to individual well construction and pump installation permits. Right or wrong this is my assessment is it is important to understand that back in '97 when we adopted the standards they were really designed to show de minimis impact. I'm not going to say what my opinions are but they were really designed to make sure that there are protections in place. I think Ka Pa'akai

issues are minimalized or impacts to the environment are minimalized when someone complies with the well standards.

COMMISSIONER KAGAWA-VIVIANI: Let me back up, what I meant is there is a different workflow if you are in a designated or non-designated area and maybe the applicants know that but I'm looking at the permit application and it doesn't necessarily show that workflow. What you articulated verbally today I did not capture on the submittal.

DEPUTY MANUEL: Yeah because that's not what we're asking for. Yes, I hear what you're saying, to contextualize within the larger code and that process, we didn't talk about designation process, we didn't talk about water use permits. This is purely with relation to the delegation to the chairperson for well construction, pump installation permits and all of the other well certificates and other approvals that have been delegated in a management area. The only additional thing required is a water use permit, that has its own body, breath, process, all of that analysis outside of a management area. If you want to dig a well you get a well construction and pump installation permit. Right now that's completely delegated to the chair to approve and via practice the deputy has been approving that with staff. This basically dusts off that delegation and says, renewed in 2023 this is the limit of the delegation: individual domestic wells which make up over half of our permit applications, everything else is coming back to this Commission and this body. To make it very simple, individual domestic wells are delegated to the chair to sign, chair will sign that, everything else comes back to this body.

CHAIR CHANG: But that's really only 1 and 2 referenced.

DEPUTY MANUEL: 1 and 2, #3 is a regurgitation of the existing delegation with the first delegation back in, monitoring wells, abandonments, basically things to protect the aquifer is delegated to the chairperson to review and we want to continue that but with recommended language and modifications. If I can share my screen specific to that?

RYAN IMATA: Before you do that can I add one thing? Aurora, I don't think you'll see a lot of differences in the process with respect to designated and non-designated areas. One of the biggest differences you're going to see is in the way that the Departments of Water Supply apply for permits versus the way that private users apply for permits because Board of Water Supply can invest the capital in drilling an exploratory well and then not develop it. I'm sure they want some assurances that they'd be able to develop that and get a water use permit but private land owners always apply, especially out in Wailua, Mokule'ia where we are bringing the applications to you, Kahuku, we're bringing the applications to you guys for approval. You'll see the well pump and water use permits all come to you at the same time. The difference is not so much in management areas, non-management areas, it's in the big municipalities versus the private systems. That's where you're going to see the biggest difference in the process.

DEPUTY MANUEL: I agree that based on the applications that come before this.

CHAIR CHANG: Ryan, with respect to workload as I understand it why this became such an issue with staff is the submittals that you guys prepare you would have to do one of those for every single one of these Hawaiian Paradise applications, right? This delegation says those are continued to be delegated because those have de minimis impact. They are for domestic use and the water that they're using is so minuscule in comparison to some of the other well construction permits that we're doing. That's really what this is addressing because otherwise in the absence of that delegation you will have to prepare a staff submittal for every single one of those and that could delay that domestic user from installing and may even increase their costs.

RYAN IMATA: Cindy, we've discussed this in the past or we've discussed this with the AG's office in the past is the applicability of Chapter 343 I thought was applicable towards discretionary permits and not ministerial permits. That's a whole other ball of wax if things become discretionary then there may be applicability of 343 and 343 might need to be done for all well permits, too.

CHAIR CHANG: I think there's still exemptions, but Kaleo did you want to show us?

DEPUTY MANUEL: To get us closer towards some action within the early afternoon hours if possible. The only thing I'm recommending to amend, everything remains the same except for 3. We're just going to be a little bit more specific. This is getting to the Board's testimony to be very explicit so it's well construction permits for monitoring, sampling, and observation wells and test holes not including any injection wells under the authority of the Department of Health, soil borings for geological investigation for structural foundation design, and monitoring wells into deep confined aquifer...something like that is addressing all of the testimony specific to the delegation. Those would come back to the Commission or are not applicable is what the Board is wanting clarification on.

CHAIR CHANG: Deep injection wells that BWS talked about where this clarified, that's a DOH, that doesn't come to us. Then Jonathan's concerns, deep confined aquifer does that address your concern?

JONATHAN SCHEUER: I would not include the word 'monitoring,' I would just say 'and wells' into the deep confined aquifer which again wouldn't mean that people can't go into it but it comes before this board.

CHAIR CHANG: The default is everything comes before this board unless the chairperson chooses delegation.

COMMISSIONER KAGAWA-VIVIANI: Wording thing, do you want to clarify that these things don't even fall, two of them don't fall within the purview?

DEPUTY MANUEL: I was trying to figure it out but I think within the record of this conversation it would be sufficient unless you want to clarify that it's not applicable?

COMMISSIONER KAGAWA-VIVIANI: No, I trust you folks.

CHAIR CHANG: Marc did you want to add anything to that?

MARC CHUN: If I heard correctly, first appreciate Deputy Manuel for his offer to continue to discuss this in condition of a #5. If you approve it as is right now then the Board of Water, other municipal wells would still fall under the, have to come to the Commission for well construction permits. We're still actually in the same spot, with that regard our testimony still stands. We don't agree with that part. There's an undefined amount of time as much as we will try to work together that we will be caught in that situation.

CHAIR CHANG: I don't know how to address that because on one hand the balance is I don't think our intention is to create a longer delay or more work, member Katayama's concerns about not wanting to cause delays for municipal providers. Kaleo, can you think of anything to address that?

DEPUTY MANUEL: If there's a time commitment we could move to approve as amended with an additional requirement to come back to this body in 60 days or 90 days. I'm just trying to manage expectations once the legislature starts it's an all hands on deck issue and then consulting beyond just the Board and Hawaii County then we'd want to work through that. I also don't know if there's any specific permits, I'd have to check with Ryan what we've already received or if there's going to be submissions coming from the Board for any specific wells.

CHAIR CHANG: Does that satisfy?

MARC CHUN: I'll go by the first statement that I'm not manager in chief of the Board of Water Supply [inaudible].

COMMISSIONER MIIKE: Well now that it's absolutely clear, can I recommend they accept the staff recommendation with amendments?

COMMISSIONER HANNAHS: Second. You're going to go back and work with them on their issues?

DEPUTY MANUEL: Yeah and we can work through it. I don't think it's addressing their concern and this is where I need to check on what's in the pipe or what permits do we have like what construction permits do we have to act on or process that would fall in this category? I don't know if that's one or two or 20. If we can get clarity on that and what we could do is also just expedite it and bring it to this Commission to approve within that time frame. We don't even have to wait, we could just bring it to Commission as a submittal and again it's Chair, everything is delegated to you right now. It's really what the Chair feels comfortable signing or bringing to this Commission. This is the guidance that has been given.



COMMISSIONER HANNAHS: Your interest is time, not process? If the process is it comes to us you just want to make sure it happens in a timely way.

CHAIR CHANG: You don't have any objections to 1 and 2?

COMMISSIONER HANNAHS: Or 3 and 4.

CHAIR CHANG: Because 1 and 2 only applies to individual domestic pumps.

MARC CHUN: In that case it's the overall delegation removed, that's where we're impacted, that's where our comments are coming from. 1 and 2 is just allowing Chair to go ahead and have [inaudible] so it's not quite the same question [inaudible].

COMMISSIONER HANNAHS: 1-4 is okay, it's when we say all other we capture them and we put them into something that needs to come to us.

DEPUTY MANUEL: Even if you take that out they still are captured. The reason we put that there was just to make it very clear that this is the limit of what the Commission is approving. We try to think through all of the things that currently come before me or Chair to sign, but if for whatever reason we didn't catch something in this submittal which I'm pretty sure we got everything, that is just a catch-all. This body is the final decision maker, not staff which is what we heard is a concern. That's the point of that bold statement at the end whether that statement's there or not... If it's not there then one could assume that the 1997 delegation stays intact and it adds these additional delegations which would make this decision pointless.

COMMISSIONER HANNAHS: But your commitment is to work with them.

DEPUTY MANUEL: And Ryan as well, not just me but we're trying to work through these processes also with Chair. As Chair mentioned the impetus and refocus of this is to dust off delegations to make it clear and have her as the leader of our agency feel comfortable with guidance from this body.

CHAIR CHANG: I'd just like the sunshine to come in but I also don't want to be the basis upon which we're holding up the process either so there's got to be some nice compromise here. People have an opportunity to comment, at the same time we're facilitating the process. Bobby Command, you're still on board Hawai'i County and their Department of Water Supply, have we addressed their concerns?

BOBBY COMMAND: I am not an employee of the Department of Water Supply so I can't make any statements for them, the only thing I would say is that this is a very spirited and interesting discussion. I don't claim to be a water expert by any means but Water Supply is not here and I think they deserve to have a little bit of say in that or at least get their comments in. I know they provided testimony but it wouldn't hurt to defer and speak to them first.

COMMISSIONER HANNAHS: I'll say having read their testimony they didn't speak against any of these issues, any of the four things we're approving. They just had other issues.

CHAIR CHANG: I think they were concerned with Ka Pa'akai.

DEPUTY MANUEL: Ka Pa'akai.

COMMISSIONER HANNAHS: Again, we agreed we need to resolve.

CHAIR CHANG: That is still being addressed by staff and the AG's office.

DEPUTY MANUEL: The Ka Pa'akai in this context we're not addressing that. That issue at this point in time we need more time with counsel to determine whether it's on every single application, when it comes in, when is it applicable. We're just talking about the delegation to Chair to approve permits and that process is now being modified to be more explicit, That's the extent of it.

COMMISSIONER HANNAHS: Which helps a lot of Hawai'i Island constituents.

DEPUTY MANUEL: The Puna side, definitely. Hearing the conversation a lot of the concerns are tied to our municipal water systems and hearing the testimony from Department and Board similar to what Ryan was saying, there are a lot of private developers that develop wells and then dedicate them on Big Island, for example or Maui to the Boards or Departments of Water. That could come before this body for decision making.

CHAIR CHANG: Maybe having an opportunity Kaleo, you and your staff convening a meeting with all of the Board of Water Supplies to address this. I think that would be helpful before we come back, before you guys come back. Between now and throughout leg. we can work through that process and if there are any specific permits that are ready for approval, we can bring those. Chair, if you don't want to sign we can bring this to the body in February, March, April, whenever.

CHAIR CHANG: Bobby, did you hear that? You tell Keith Okamoto if he's got any permits that he wants to have heard before us, bring it to us.

BOBBY COMMAND: I will do that, thank you.

CHAIR CHANG: We are open to having those processed in a timely fashion.

**20231219 04:36:36**

**MOTION: (MIIKE / HANNAHS)**

To approve staff submittal with the amendment proposed by Deputy Director and a commitment to coordinate and consult with B/DWS throughout legislative session to

determine if there's any need to modify the delegation of authority and return to the Commission in April/May 2024.

Amendment:

3. Well construction permits for monitor, sampling, and observation wells and test holes, not including any injection wells under the authority of the Department of Health, soil borings for geologic investigation for structural foundation design and wells into the deep confined aquifer, and for the sealing of unused and abandoned wells, provided that they comply with the Hawaii Well Construction and Pump Installation Standards and have no other regulatory issues.

**UNANIMOUSLY APPROVED**

**(MIIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI)**

#### QUESTIONS / COMMENTS

CHAIR CHANG: Marc, don't you worry we're going to tell Ernie Lau your staff defended you guys and set all these caveats. It's always subject, we're not the chief engineer so don't worry. We will publicly tell Ernie you guys did a good job. We took your information into consideration. I could just see, oh no we're going to go back and Ernie is watching this, he's going to have several of us hanging. Rest assured we will defend you.

COMMISSIONER MIIKE: And tell Ernie Merry Christmas.

**20231219 04:38:34**

#### **D. ANNOUNCEMENTS**

1. Jeju Presentation – December 21, 2023
2. Application Deadline for CWRM Member – January 12, 2024
3. Waikoloa – Kohākōhau IIFS Public Fact Finding Meeting – January 25, 2024

**20231219 04:39:51**

#### **E. COMMISSION MEETING SCHEDULE (TENTATIVE)**

January 30, 2024 (Tuesday)  
February 20, 2024 (Tuesday)

The meeting adjourned at 01:30 p.m.

December 19, 2023

Minutes

Respectfully submitted,

‘IWALANI KAAA  
Commission Secretary

APPROVED AS SUBMITTED:

DEAN UYENO  
Acting Deputy Director

**WRITTEN TESTIMONIES RECEIVED:**

Please refer to the Commission website to read and view written testimonies received:

<https://dlnr.hawaii.gov/cwrn/newsevents/meetings/>