

BOARD OF WATER SUPPLY
COUNTY OF MAUI

REGULAR BOARD MEETING
MINUTES OF JANUARY 20, 2022

The regular meeting of the Maui County Board of Water Supply was held online via BlueJeans, on Thursday, January 20, 2022. Recordings of the meetings are viewable at <https://www.akaku.org/boards-commissions/>.

I. CALL TO ORDER

The meeting was called to order by Chair Dean Frampton at 1:31 p.m.

II. ROLL CALL

Members present: Dean Frampton, Chair
Nalani Kaninau, Vice Chair
Antonette Eaton
Jason Hew
Juanita Reyher-Colon

Members excused: Norman Franco
Buddy James Nobriga

Staff present: Helene Kau, Deputy Director
Keola Whittaker, Deputy Corporation Counsel
Sherilyn Otsubo, Secretary to Boards/Commissions

III. APPROVAL OF MINUTES

Vice Chair Kaninau moved to approve the minutes of December 16, 2021. Member Hew seconded the motion. The motion passed with 5 ayes.

IV. TESTIMONY FROM THE PUBLIC

Dr. Jonathan Scheuer stated that Chairperson William Ailā testified in support of the designation of the entire Lahaina Aquifer Sector as both a surface water and groundwater management area. It provides a tool for the water commission and the County to fulfill its duties to provide for public trust use of water. This board may hear that this move is premature, but the obligation of the State is to try to prevent crisis by putting in active management long before it happens. Even if this board serves as an advisory board to the department under the County Charter, in the Water Code, under the section on designation, the County Board of Water Supply is one of the consulted parties.

Member Eaton asked, even though we are an advisory board, can we write a letter of support without the Director's approval.

Dr. Sheuer said that the Water Code says that the Chairperson can initiate the designation proceedings and has an obligation to consult with the Board of Water Supply. As a body, independent of the Department, you are a consulted party regardless of what your role is in the Charter.

Chair Frampton asked if he has a timeline for developing housing on the West Side for Hawaiian Homes.

Dr. Sheuer said that the most recent action was the approval of the final environmental assessment of Honokowai. He would like to come back when he's more prepared to respond.

Vice Chair Kaninau asked how the designation would impact Hawaiian Homelands.

Dr. Sheuer stated that for anywhere in the state, you need certain permits for ground water and surface water. For designated areas you also need a water use permit which means your permitted rights are subject to the rights of DHHL.

Jill Nunokawa said that she had a difficult time logging on to the meeting, but that she supports the designation. As board members who represent the best interest of the public, it would be the board's kuleana to ensure the preservation and protection of fresh water. That would be through designation, which is the water commission's recommendation. Leadership has failed to recognize the importance of natural resources and the degradation of sacred lands and water until after the fact when we have to do the clean-up and mandated restoration. In this situation, we are trying to be progressive and act before further harm. At the last meeting, there were 16 community members in support of the designation. The only one not in support was the Director of the Department of Water Supply. It looks like the county is on the wrong side of the water issue, yet again. There is no downside to designation. It would only ensure closer monitoring and protection of the water resources in this area.

Keeaumoku Kapu testified that he is in strong support of the water management designation. This watershed should not only be designated to help with the IFS, but also set up as a dual management system for kuleana to manage their own to foresee that their water uses are not being hindered by future developments which has been the ongoing problem by a water company that does not have the capability or expertise to manage a pristine resource such as water for the benefit of all and not just for rate payers.

Kanoelani Steward supports the designation and it would add another protective layer of support and regulation for the many water issues that our community faces. Our community is anticipating a growing population and development and this designation could help manage and regulate this.

H. Kalama`ehu Takahashi is in support of the designation. This is a long-standing issue of the mismanagement of water which goes back about 100 years. Any proactive measure we can take to ensure this resource for our community is very

important. In a staff submittal, some of the aquifers are going to be over the sustainable yield between 115 and 117%. This is a means for us to protect the water and to hold those who may not have been held accountable in the past. It will also give us a chance to be able to return to aina and reinstall our traditional customary practices as instream users and community members.

Member Hew asked where he got his figures about the sustainability yields being overdrawn in those watersheds.

Mr. Takahashi said it was from a staff submittal put out by Deputy Director Manuel.

Bernice Lu said that recently they completed over a million dollars worth of improvements to two water meters for their family subdivision. They are grateful for what the department is doing with trying to get water back to Waipoli Road, but water should be clean and safe. Since December 5th, when the rain caused so much damage, water has been uncertain. The variation in pressure has caused numerous blowouts and leaks in the water line. She is asking the board to ask the department to credit the affected water users for the flushing of the lines and to communicate with the users directly instead of them having look for information online.

Kekai Keahi said that it's important to have this designation to help to protect our water resources for the future of our community. The county has been diverting in Kanaha Stream to provide water to the public because they overdrew the wells and the salinity level was high, so they took water out of the stream in order to dilute the water.

Doug Sheehan, secretary of the Kula Community Association, read his testimony which is attached and submitted a copy to the board.

Member Hew said that he is on the same system and is currently affected as well. He asked the testifier if he had any suggestions, besides press releases, as a better way to communicate the daily updates.

Mr. Sheehan said that there are different community associations on the island and they have a very involved database, so if they were notified they could email their members and put it on their website.

Karyn Kanekoa supports the designation and has noticed a drastic change in the available resources in Lahaina due to development and population growth. It's our kuleana to protect our resources and if a designation will do that, then I don't see why we wouldn't do that.

Chair Frampton closed public testimony at 2:11 p.m.

V. UNFINISHED BUSINESS

- A. Presentation by Commission on Water Resource Management representative on the recommendation to initiate the designation process for the entire Lahaina Aquifer Sector on Maui.

Commission on Water Resource Management (CWRM) Deputy Director Kaleo Manuel did a power point presentation. Staff members, Dr. Ayron Strauch, Neal Fujii and Ryan Imata were also present. State Water Code Chapter 174C Section 41, designation of water management area, is about balancing the protection and management of the resource with the use of that resource. It talks about how the recommendation can be initiated by the chairperson or by written petition. In this case, it is being recommended by the chairperson and based on factual data and after consultation with the Maui County Council, the mayor as well as the Board of Water Supply. From the commission's point of view and from the data, they're seeing harm to groundwater quantity and quality by saltwater intrusion. There's been serious historic and ongoing disputes over current and planned uses of water. There is climate uncertainty with drought and decline in rainfall.

Dr. Ayron Strauch talked about the geologic features in West Maui. Based on all of the well data, hydrologic conductivity is pretty high, which means that there's the Wailuku basalt, very permeable, and therefore, in the basal aquifer, we have high horizontal conductivity and the vertical gradient is pretty low. There's a direct relationship between the high elevation water and surface flow and the lack of dikes and recharge within the stream boundaries. They have implemented instream flow standards for the majority of West Maui streams. Due to the lack of rainfall, it's been challenging to meet the interim instream flow standards. From a management perspective, the off-stream uses are difficult to balance for the operators of the systems when they have both public trust and non-public trust needs that need to be met with the same source of water.

Deputy Director Manuel talked about the groundwater in the area. There are six hydrologic ground water units, each with its own sustainable yield that they manage. The overall aggregate is 35 MGD. When you add up the amount that's currently withdrawn, the amount that's proposed to be withdrawn, wells that are coming on line against what the sustainable yield is, you'll see that in Launiupoko and Honokowai, we're exceeding the sustainable yield that the commission regulates for. This is alarming and we're being preventative of over allocating these water resources. Although the other aquifers may not be pumping as much, burdens will be put on them in order to meet overall water demands in the area.

Data came from the water reporting that they get from the wells that they manage and permit. The total number of wells in this region is 103 wells, which includes observation wells and unused wells. They have a good understanding of what wells are being used, how much pumping is happening, and they are getting reporting especially from large users. There is one deep monitoring well located below the Mahinahina Water Treatment facility and water data has been collected since 2001.

They also did an analysis of salinity in some of the wells in the area and this is based on wells reporting chloride. Only 19 of the 103 wells report chloride to them and they are seeing an increase in chlorides or management of pumping to ensure that chlorides don't go beyond the thresholds which makes the well not usable.

Dr. Strauch added that chloride is a secondary contaminant. It is recommended that all drinking water should remain below 250 parts per million.

Deputy Director Manuel said that under the code, there are three criteria for surface water designation. One is whether the regulation is necessary to preserve the diminishing surface water supply for future needs, as evidenced by excessively declining surface water levels, not related to rainfall variations, or increasing or proposed diversions of surface waters to levels which may detrimentally affect existing instream uses or prior existing off stream uses. Two is whether the diversions of stream waters are reducing the capacity of the stream to assimilate pollutants to an extent which adversely affects public health or existing instream uses. Third is serious disputes respecting the use of surface water resources are occurring.

To summarize the staff findings: 1. There's a direct tradeoff between how they regulate diversion and restoration of instream flows and the availability of water to support the off-stream needs of the general public through public and private municipal water systems. 2. The non-potable water needs of two mgd for current and foreseeable development and use of Hawaiian Home Lands as set forth in Section 221 of the Commission Act may be impacted by other off-stream non-potable uses in Kapalua and Kaanapali. 3. While the priority is always given to protecting the four public trust uses of water, without the designation of a water management area and issuance of water use permits, there are few methods for regulating non-instream uses. 4. Designation of a water management area will require analysis and use of alternative water sources for non-potable uses. 5. There continues to be serious disputes between instream uses of water and operators of former plantation irrigation systems.

There are eight criteria for groundwater designation. 1. Whether an increase in water use or authorized planned use may cause the maximum rate of withdrawal from the groundwater source to reach 90% of the sustainable yield. 2. There is an actual or threatened water quality degradation as determined by the DOH. 3. Whether regulation is necessary to preserve the diminishing groundwater supply for future needs. 4. Whether the rates, times, spatial patterns, or depths of existing withdrawals of groundwater are endangering the stability or optimum development of the groundwater body due to upconing or encroachment of saltwater. 5. Whether the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses. 6. Whether excessive preventable waste of groundwater is occurring. 7. Serious disputes respecting the use of groundwater resources are occurring. 8. Whether water development projects that have received any federal, state or county approval may result in one of the above conditions.

CWRM staff went over their responses to the department's letter. How is tunnel discharge accounted for in relation to sustainable yield? Tunnel sources are pulling water from the ground, so that's how it's been accounted for and it has also been managed as groundwater resources. The next question is that the department doesn't support designation for the entire area because some aquifer systems included in the initiative don't have a basis for designation, as set forth in the code. Only Honokowai seems like it may exceed sustainable yield and there are supportive investigations to consider designation only. Surface water and groundwater are connected and out of precaution, knowing climate uncertainties and on the trends that CWRM is seeing, if they designate just one, there's going to be larger impacts and shifts of pressures into the adjoining areas. It's better and within the commission's authority to regulate it as a whole. The commission can choose how and what scale it wants to manage and regulate those water resources, despite whether or not the criteria are only met for two of the aquifer or hydrologic units. Another point from the county is that this process of designation undermines the current efforts by the Maui Water Use and Development Plan and the West Maui Community Plan to engage public private purveyors and county agencies in land use and water planning integration. CWRM's response is that they thank the counties for meeting that mandate and they are supportive of the planning process. This designation only supports the strategies and the approaches to integrate land use and water planning at the county level. The next comment was that based on the cooperative studies with USGS that Maui has developed to address threats of saltwater intrusion and climate change impacts, Maui plans to distribute their pumping throughout the Launiupoko aquifer in order to meet the demands and needs of that region. CWRM's response is that it's great to space pumping and they want to see equally spaced well developments so that we're not having up-coning or over withdrawing of resources in a certain area. However, the only way for the commission to regulate well locations is in a management area of private entities.

Vice Chair Kaninau asked about the wells in Launiupoko and Honokowai being only between 67 and 71% compliant in reporting.

Deputy Director Manuel responded that they have confidence in the reporting data. There are about five to ten wells that are using water and aren't reporting. They are trying to get to those wells owners to report or they need to go out and inspect the wells to determine how much water they're actually using. It is a requirement of the code to report, but the commission has not taken a firm stance in the enforcement of the lack of reporting. They have been pushing to hold people accountable, but they haven't been fining them.

Ryan Imata added that they have been reaching out to all of the well owners to help them to report their water uses on their online system and also to train them on how to read chlorides. They are trying to get 100% reporting compliance.

Chair Frampton asked Eva Blumenstein what consequences she sees the designation might have on county wells.

Ms. Blumenstein said that her main concern is related to groundwater and for Launiupoko aquifer. The department has been developing and diversifying supply for the Lahaina region between wells in Launiupoko and Honolulu aquifers. With the existing source in Lahaina, they can't meet planned growth for affordable housing and they can't offset surface water that they're still diverting from Kanaha Stream. Water use permits are issued for existing uses and existing wells. Those are prioritized and processed first. Then water use permit applications for new sources can apply. The department will be last in line even though these are some protected public trust uses and other priorities like affordable housing. It's concerning that there would be further delay in potential building moratorium for that region that would impact affordable housing.

Member Eaton is concerned that the county is giving CWRM such a hard time when CWRM is the expert in this area. Climate change is affecting the whole world and Lahaina is the hottest area on this island, so the Lahaina aquifer sector will be impacted by climate change alone. If CWRM wants to take control of this area, the county should let them.

Vice Chair Kaninau asked if designating the water management area is the only way for CWRM to be able to regulate and have the authority to enforce the mandates.

Deputy Director Manuel replied that in a water management area, it requires an additional permit, a water use permit, which as a user of water you have to determine whether that use is reasonable and beneficial. Outside of a water management area common law prevails.

Member Hew said that it's important to consider the effects of this, especially regarding affordable housing projects and being able to allocate water for that and other water use permits.

Member Reyer-Colon believes it is the kuleana of the commission to properly manage our resources statewide and in doing so, protect our resources now and for future generations. It's sad that our own department is pushing back on it because it's only going to strengthen the water use and development plan that they put in place.

Chair Frampton asked CWRM to explain groundwater reuse and trying to get communities to use their recycled water more.

Deputy Director Manuel replied that in a water management area, all users need to do an alternative analysis, and there is a list of some of those alternatives. Reuse for non-potable use is one, desalinization is another. Reuse is a really big untapped resource throughout the state and it's been part of their protection policies to use the highest and best quality of resources for the highest and best use.

Mr. Imata added that designation has them look at a finer level of detail in terms of management, because designation is always tied to a competition of resources.

Dual lines can put into supply, reuse water or surface water for things that don't require potable water.

Chair Frampton said that he hopes the State Department of Health can help with using treated recycled water because currently you can only use it in common areas and in multi-families. We've pushed our wastewater department to look at wastewater as a source from the department side. Does the regulation of the IFS standards come under CWRM?

Deputy Director Manuel replied yes, it rests with the commission to regulate and enforce the in-stream flow standards.

Member Eaton made a motion that the Board of Water Supply send a letter in support of designating the Lahaina Aquifer Sector as a water management area.

Member Reyer-Colon seconded the motion.

Deputy Corporation Counsel Whittaker clarified that it's for both a surface water and ground water management area.

Chair Frampton stated that he is not in favor of the motion, however, he believes the chairman serves at the will of the body. If there's four votes in favor, he will not hold this process up. He applauds the efforts of CWRM for conservation, for efficient use of water, for ensuring that Hawaiian Homelands gets the water they need and for treating our resource with the utmost respect. The fact that we can't enforce IFS standards and we can't enforce well reporting, which points to the challenges that government has. He's also concerned with other designations that have occurred and the backlog of permits. A lot of the comments are echoed and reflected in the water use and development plan. He's in favor of home rule and has seen the devastating effects in Upcountry of what happens to local families when water becomes an issue. We agree on the big, solid principles, but he disagrees on the implication.

The motion passed with 5 ayes.

VI. OTHER BUSINESS

A. Update by Corporation Counsel on the Charter Commission's proposed Charter Amendments as it relates to the Board of Water Supply.

Deputy Corporation Counsel Whittaker said that there are two key proposals that will affect the board. The Charter Commission released their draft report which consists of 40 proposed ballot questions. They are taking public testimony on January 26 and 27 from 5:00-9:00 p.m. The county hearings officers proposal would create a new department of hearings officers consisting of attorneys hired by the county. Whenever a contested case proceeding or hearing determining the rights of private individuals, employees or officers before any county officer, board or commission, pursuant to any law, the hearings officers shall hear and recommend final decision and shall have jurisdiction of all matters. This means

that for every case that comes before this board, it would first be heard by the hearings officers and then would come to the board with the recommendation. The board could reopen the hearings and decide it all over again.

The second proposal changes the board to a semi-autonomous department and the key changes are that the board would be responsible for hiring the director and deputy director of Water Supply. New duties would be: responsible for managing and controlling the department, adopting rules which have the effect of law regarding the water works of the county, adopt an annual operating and capital budget for the department, establish and adjust rates for furnishing water, have the power to acquire property by eminent domain, have the authority to issue revenue bonds.

Member Eaton asked about the requirements of the hearings officer.

Deputy Corporation Counsel Whittaker said that they would be a lawyer with a certain number of years of experience and they would be a county employee working in a different department. They would be appointed by the mayor and confirmed by council.

Member Hew asked if there was a need for this or has there been situations where it hasn't worked in the past?

Deputy Corporation Counsel Whittaker didn't know.

Chair Frampton noted that the board was in opposition to this and wrote a letter. He also testified on behalf of the board and felt very unwelcomed, not by the whole board, but by the chairperson, and didn't feel that his comments were taken into consideration.

Member Reyer-Colon reaffirmed her position from when this first came up. It is our obligation to serve our community and one of those obligations is to be their hearings officer.

Chair Frampton stated that if the appellant or the county doesn't agree to the decision from the board, they have the right to take it to the next level.

Member Hew left the meeting at 4:00 p.m.

VII. DIVISION REPORTS

Chair Frampton deferred this item.

IX. NEXT MEETING DATE AND TIME

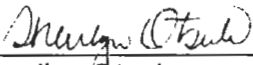
Contested Case Hearing: February 17, 2022 at 9:00 a.m.

Board Meeting: February 17, 2022 at 1:30 p.m.

IX. ADJOURNMENT

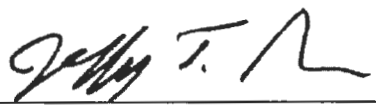
There being no further business, the regular meeting was adjourned at 4:01 p.m.

Prepared by:



Sherilyn Otsubo
Commission Support Clerk

Approved for distribution:



Jeffrey T. Pearson, P.E.
Director

To: Mayor Michael Victorino

Copies to: Jeff Pearson, Sandy Baz, Ipo Mossman, Herman Andaya, Lynn DeCoite, Kyle Yamashita, Alice Lee, Keani Rawlins, Tasha Kama, Gabe Johnson, Kelly King, Mike Molina, Tamara Paltin, Shane Sinenci, Yuki Lei Sugimura

From: Kula Community Association Board

The Kula Community continues to experience unacceptable water quality due to the Kona Low Storms in the beginning of December. Undrinkable water is a serious public health concern. While some service interruption is understandable from a storm situation, this lack of safe water has been going on for over a month now, with erratic and confusing communication from the Department of Water Supply (DWS). Our community needs more detailed information on what is being done to speedily remedy the situation and what is being done to prevent a similar outage in the future. Is there a communication procedure in place that could be followed for all emergencies and how can the Kula Community Association help disperse information?

Specific areas of concern include:

- 1) In this emergency situation the initial communication via a press release from the DWS regarding the loss of water and the need to boil water did not reach most of those affected. Consequently, many were drinking water that was below EPA standards. Then we were informed the water was okay. Then the press release reversed that saying to continue to boil water but further down in the same press release stated that if service was not lost the water was okay. Then that changed and some additional residents learned they did need to boil water. Calls to the number in the press release and emails have gone unanswered or when answered just repeated what was in the press release. It was impossible to get clear information. Our Department of Health did not know what to tell us. In an emergency situation, the community requires timely, frequent, comprehensive and accurate information that is not transmitted only by press releases. If it is not safe to drink the water, we cannot rely on people reading a limited circulation paper to find this out. This is especially true when dealing with such lethal organisms as E. Coli.
- 2) Status of our Upper Kula system: We have seen photos of damaged pipes which reach across gulches being repaired with pipes again going across gulches and inadequately supported for the new sections. We do not know what condition our system is in, or how likely another storm will again cause unacceptable water outages. We need to know more so we can understand our situation and what it will take to improve the system.
- 3) In the most recent (1/11/2022) information on the DWS website, it is stated that starting 1/10/2022, chlorine will be used to try to decontaminate a number of areas that are under a boil water advisory instead of chloramine. Why did it take two weeks to make the switch?

The Kula Community Association would like to work with the County to get a better understanding of what is happening and how to prevent a similar situation in the future. Given the increasing severity of adverse weather events from global warming, our next storm may be even worse. We would like to work with you to address the serious concerns we have regarding how such an emergency is handled in the future, and how our communication needs will be met. More urgently, we need to know the facts about the inability of the Department of Water Supply to deliver safe drinking water to all families in Kula.

Please contact Heather Mueller, President of the Kula Community Association, to arrange a discussion with the Kula Association Board at your earliest convenience. Email: heathermaymueller@yahoo.com. Phone: 808-446-3545 or 808-430-0120

Respectively submitted by:
Douglas Sheehan, Secretary
Kula Community Association Board

Kula Community Association Board

India Brassingram, James Caldwell, Charles Carletta, Karsten Dueck, Barbara Fernandez, Andrew Ho, Dick Mayer, Heather Mueller, Bobbie Patnode, Doug Sheehan, Michael Tengan, Michael Williams, John J. Wilson, Sean Wilson