

Agriculture and Public Trust Committee on 2021-11-16 1:30 PM

Meeting Time: 11-16-21 13:30

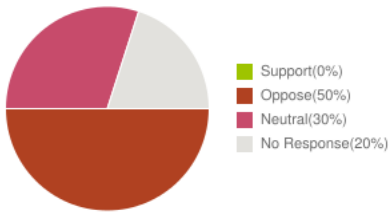
eComments Report

Meetings	Meeting Time	Agenda Items	Comments	Support	Oppose	Neutral
Agriculture and Public Trust Committee on 2021-11-16 1:30 PM	11-16-21 13:30	3	10	0	5	3

Sentiments for All Meetings

The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment



Agriculture and Public Trust Committee on 2021-11-16 1:30 PM

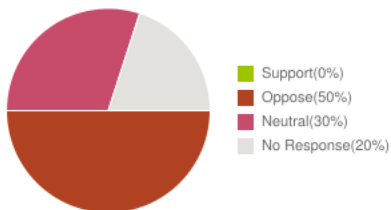
11-16-21 13:30

Agenda Name	Comments	Support	Oppose	Neutral
A G E N D A	3	0	0	2
APT-57 CC 19-162 WATER USE AND DEVELOPMENT PLAN FOR MAUI (APT-57)	7	0	5	1

Sentiments for All Agenda Items

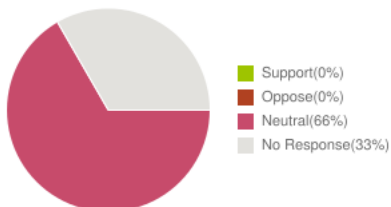
The following graphs display sentiments for comments that have location data. Only locations of users who have commented will be shown.

Overall Sentiment



Agenda Item: eComments for A G E N D A

Overall Sentiment



Kahala Johnson

Location:

Submitted At: 3:38pm 11-16-21

(Submitting testimony with permission from Terrill James Kanealii Williams who is having interface issues uploading attachments) "Tiare Lawrence, Mahi Pono's Community Relations Director, has shown her support for the protection of the watersheds, inclusive of east Maui streams at Mahi Pono's planting event on Nov. 9, 2021, which Council Member Tamara Paltin was in attendance at. This needs to be taken into consideration in regards to restoration of all east Maui stream which East Maui Irrigation and Mahi Pono have been involved with in their operations"

Gina Young

Location:

Submitted At: 8:24pm 11-15-21

Please see attached information on water lease appraisal process.

Dick Mayer

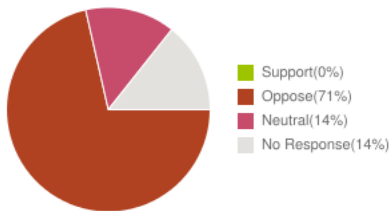
Location:

Submitted At: 2:19pm 11-15-21

Aloha, I request that the committee's Councilmembers ask DLNR representative Mr. Ian Hirokawa about the concerns and questions that are raised in the attached files (PDF +MSWord versions of the same file)..

Agenda Item: eComments for APT-57 CC 19-162 WATER USE AND DEVELOPMENT PLAN FOR MAUI (APT-57)

Overall Sentiment



Guest User

Location:

Submitted At: 3:23pm 11-16-21

WDUP needs more work before adopting a final amended version

Water is life. As it stands, the Draft WDP still does not provide adequate data or clarity to move forward as a an operational plan. Therefore, the Plan is not yet providing a sustainable, balanced solution to the uses of these waters. In fact, it seems to be protecting certain interests. which is easier to do without the right kind of data. The reality of climate change, growing populations are changing the world. Maui can be in leadership by taking the time/effort to Draft a Plan that will actually be of use in the future.

Groundwater is an interconnected system, not a static pool. That water moves; it affects and is affected by uses and changes elsewhere in the system. I live on Baldwin Ave., near it's intersection with Hali'imaile. The area is developing very rapidly with Mahi Pono and housing developments. Wells are being dug and Maui Pono is creating massive irrigation systems (as Dust storms thicker than cane smoke block visibility, I'm reminded of the Oglala Aquifer and the "Okies.").

I worked assessing outcomes of water development overseas and can report first-hand the stark, sterile land that resulted after 10 years or so of projects/plans that were hastily produced and implemented. For a while, big agricultural users (also industrial users) did produce impressive yields. But gradually water quality and quantity degraded beyond repair.

Please do the work required, or risk ruining Maui's vital resource of water in all it's uses (to name a few: clean drinking water, cultural uses, agriculture, beer-brewing, conservation and wetlands uses ...). There are other good points that residents make when saying the Plan is not ready, with however I am not experienced in those area.

Instead of passing amended final, could folks come together to make an action plan and schedule for completing the work necessary for a sustainable Plan?

Many thanks,
Diane Minogue, Ph.D.
Makawao HI

APT Committee

Location:

Submitted At: 9:10am 11-16-21

Testimonies received from APT Committee.

Guest User

Location:

Submitted At: 9:00am 11-16-21

Mahalo, but Ha'iku residents still feel left out.

1. Who knows what changes were made?

No one understands or can find what amendments were proposed. A summary of changes in layman style language should be created and sent to newspapers etc. The Plan should not pass out of Committee until that happens

2. Haiku wells still assumed to have no impacts, BEFORE any studies done.

The language in the plan STILL assumes that the Ha'iku aquifer can supply the rest of Central Maui with nine million gallons of wells water day with no impacts to Haiku streams, no impacts to existing family wells and springs in Haiku; no impacts to cultural users and no impacts to the nearshore marine environment and limu and fishes. The Plan language needs to truthfully say that there are uncertainties. Haiku Community Association asked for these changes and were rejected.

3. Clear input from Aha Moku Councils not seen in Plan:

Cultural users did not agree that there are no impacts from large wells. Aha Moku reps told committee staff: there is "no mitigation" for the natural underground water flows lost to the limu and the fishes from large wells pumping. Studies of shoreline resources not mentioned in WUDP as needed for Ha'iku wells.

4. Need clear language about Ha'iku streams being restored.

People want to know: Where in the water plan does it specifically say that Haiku streams should be studied and new stream flows set? The Hana aquifer section (Table 17-38) has specific wording: "The Commission on Water Resource Management to establish Instream Flow Standards on a stream-by-stream basis to protect the public interests of the Ha_na aquifer sector."

5. Haiku stream water is assumed in Plan to all "belong" to EMI/Mahi Pono

The Ko'olau Sector of the plan ("Haiku to Nahiku") never mentions restoring Haiku streams. In fact, there's a chart in the Water Plan (Table 15-35) that says all 8 mgd of flow from Ha'iku streams goes to EMI/Mahi Pono. Update that table! Let Ha'iku farmers have water to grow food.

Thank you,

Jennifer Valentine

Guest User

Location:

Submitted At: 12:15am 11-16-21

Aloha Chair and Committee members,

Here we are again, asking for a user friendly summary of the updates that have been asked for and not yet received. Important questions have been raised by many community members who will be most affected by the 30 year water lease that Mahi Pono is asking for. There are streams that have gone dry in the last several months by E. Kuiaha and W. Kuiaha that were perennial streams. Even in drought years. Maliko stream has been dry as well except in extreme rain events. Where is the information regarding if these streams have had in flow standards set?

These streams run through farms and they replenish aquifers and support all kinds of stream and coastal tide pool life. When the water stops flowing the stream beds become choked with invasive species and garbage that'll block the streams in extreme rain events like we had last March. I have contacted Mahi Pono and the Water Dept via email asking about the stream in the Huluhulu gulch behind my home and have not had the courtesy of a response. This stream has flowed the last 8 years, year round and now it is bone dry.

I'm concerned that no one is monitoring these streams in Ha'ik_? Does Mahi Pono get to divert any stream they

chose with out consequences to the health of the the ecology and farmers that depends on that source of water without discussion?

I'm very concerned that Mahi Pono may be restoring minimal water flow in the identified streams in E. Maui but help themselves to water from streams in Huleo and Ha'ik_.

Besides this serious issue, there are other issues like consulting with the Kanaka that depend on these streams for farming and cultural practices, supporting upcountry water meter wait lists and outdated information. Where does it address Climate Change, water shortages and the aquifer recharge?

It has failed to follow the requirements of the Consent Decree from 2003 like conducting a rigorous Cost/Benefit analysis, a test well dug in E. Maui region to determine whether developing additional wells in the region might adversely impact stream flows.

The conditions outlines in the Consent decree must be fulfilled before WUDP is approved. This needs to be in a reader friendly format with current data, not outdated info pulled from the original E. Maui Plan.

Please do not approve this without the information addressing all the streams in Huleo and Ha'ik_, including in stream flow standards and all the other concerns brought to you today.

It is not ready

Mahalo,
Barbara Barry
W. Kuiaha Rd
Ha'ik_

Photos available of dry stream bed from Ha'ik_ bridge.

Guest User

Location:

Submitted At: 8:51pm 11-15-21

Aloha kakou members of the Ag and Public Trust (APT) committee,

I, Dana Keawe, a resident of Hawai'i island am asking that you DO NOT adopt or finalize the amended WUDP and am strongly opposed to finalizing the amended WUDP until the follow points are addresses and resolved first.

1. No one understands or can find what amendments were proposed. A summary of changes in layman style language should be created and sent to newspapers etc. The Plan should not pass out of Committee until that happens

2. Haiku wells still assumed to have no impacts, BEFORE any studies done.

The language in the plan STILL assumes that the Ha'iku aquifer can supply the rest of Central Maui with nine million gallons of wells water day with no impacts to Haiku streams, no impacts to existing family wells and springs in Haiku; no impacts to cultural users and no impacts to the nearshore marine environment and limu and fishes. The Plan language needs to truthfully say that there are uncertainties. Haiku Community Association asked for these changes and were rejected.

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5. Haiku stream water is assumed in Plan to all "belong" to EMI/Mahi Pono

The Ko'olau Sector of the plan ("Haiku to Nahiku") never mentions restoring Haiku streams. In fact, there's a chart

in the Water Plan (Table 15-35) that says all 8 mgd of flow from Ha'iku streams goes to EMI/Mahi Pono. Please update that table ASAP! Let Ha'iku farmers have water to grow food.

Committee members, until ALL of these 5 extremely important points and concerns are addressed and resolved, PLEASE DO NOT FINALIZE the amended WUDP. I am in opposition to the amended WUDP be finalized on 11/16/2021. Please do the right thing and postpone finalizing the amended WUDP until all these important points and concerns are addressed.

Sincerely,

Dana Keawe

Shay Chan Hodges

Location:

Submitted At: 1:17pm 11-15-21

Aloha Chair Sinenci and Members of the Agriculture and Public Trust Committee:

My name is Shay Chan Hodges and I am respectfully requesting that you delay a vote on the revised Maui Island Water Use and Development Plan until a summary is available to the public that makes it clear what items have been changed in the draft WUDP and in what way.

As you may remember, almost exactly a year ago today, I and many other members of the public testified before the joint WIT and EACP committees, asking for an extension on approval of the WUDP to ensure that the plan that is ultimately approved is accurate and comprehensible by the general public.

What I specifically said then was:

Understanding the complexity of our aquifers, our water systems, the ownership structures, the variety of uses, the history, and more is not easy. But it is crucial. While most residents will never become experts on Maui's water – I don't think I ever will – in order to be able to weigh in and safeguard their interests, they need to understand the basics and they need to have access to reliable and accurate data.

That's why it is so important that any Water Use and Development Plan that is approved by the Council be usable by the general public – and by that I mean that it 1) includes accurate data, 2) reflects the issues that are of concern to the community, and 3) be easily understandable.

We need to take the time to make sure this happens.

The deadline to complete revisions to the WUDP was extended at that November 16, 2020 meeting – and I believe it's been extended again since.

I so appreciate this committee's work to improve the WUDP, and in particular, for taking so much time to listen to the public's concerns. I also appreciate the hard-working community members who have testified at multiple meetings to explain the problems in the draft WUDP. And I want to thank the staff and members of the administration who have put in the work to address the issues raised.

Unfortunately, it is currently unclear what the final changes look like and how issues have been addressed. As an example, I testified on inclusion of the County's interest in purchasing Wailuku Water Company and the Board of Water Supply's recommendations thereof. I also testified about including the BWS' Temporary Investigative Group report regarding a county purchase of the East Maui Irrigation system in the WUDP. I am not clear whether anything about the potential Wailuku Water Company purchase has been included in the final version and I believe the summary approved by the BWS has been included, but I can't tell where or how it's been included.

There are many other concerns raised by community members, but until we see a final summary of changes, residents cannot provide their input in an effective manner.

I therefore ask you to delay a vote on approval by at least two weeks so that the community has time to thoroughly review the revisions that this committee has worked so hard on.

Mahalo.

--Shay Chan Hodges, Haiku, Maui

Guest User

Location:

Submitted At: 1:02pm 11-15-21

Aloha to the Council's Ag and Public Trust Committee,

Thank you all for your hard work done on the WUDP so far. However, there are still some issues that need to be addressed and/or corrected before it is adopted.

Table 15-35 states that all water from Ha`iku streams belongs to EMI/Mahi Pono, in direct contradiction to the Hana aquifer section (Table 17-38) with this specific wording: "The Commission on Water Resource Management to establish Instream Flow Standards on a stream-by-stream basis to protect the public interests of the Ha`iku aquifer sector." I live in Ha`iku and I want to know that Ha`iku streams will be studied and new stream flows set, so that Ha`iku farmers will have water for their crops.

The plan assumes that there will be no adverse results from Ha`iku wells, when there have been no studies to determine this assumption. The plan needs to clearly state that there may in fact be issues with wells in Ha`iku adversely affecting family wells and spring water, stream flow, and the nearshore marine environment, specifically limu and fishes.

In addition, no one understands or can find what amendments were proposed in this plan. A summary of the changes in layman style language should be created and sent to newspapers etc. The plan should not pass out of Committee until that happens.

Mahalo,

Jennifer Owen

1051 Kokomo Rd

Ha`iku, HI 96708

808-575-2523

TO: Chair Shane Sinenci and Committee Members, Agriculture and public trust committee

From: Dick Mayer dickmayer@earthlink.net

RE: 1:30pm November 16, 2021 meeting on the East Maui Water Auction, and specifically:

A&B'S PROPOSED WATER LEASE FOR THE NAHIKU, KEANAE, HONOMANU, AND HUELO LICENSE AREAS (APT-35)

One month ago I sent the following letter to your DLNR resource person Mr. Ian Hirokawa, and I hope that you will question him on these issues.

Mr. Ian Hirokawa, Special Projects Coordinator, Land Division
ian.c.hirokawa@hawaii.gov
Hawai'i Department of Land and Natural Resources (808) 587-0400
1151 Punchbowl Street, Room 130
Honolulu, Hawai'i 96813

Dick Mayer
1111 Lower Kimo Drive
Kula, Maui, HI 96790
dickmayer@earthlink.net

October 7, 2021

Aloha Mr. Hirokawa,

I first would like to thank you for DLNR's comments on the 9,000 page A&B Final EIS. Although in the end you recommended approval of the EIS, I very much appreciated your pointing out a number of significant deficiencies in the Final EIS document.

I'm emailing you regarding the East Maui water licenses that are expected to be put up at auction. I realize that you are now awaiting to see whether there is a challenge to the BLNR approval of the Final EIS. However, I am more interested in determining the "conditions" that will be included within the auctioned license documents.

The following are some of my concerns and questions regarding the licenses:

CONCERNS

1. Not a subject in the Final EIS document, but a very important consideration, are the conditions contained within the December-2018 sales agreement between A&B and Mahi Pono, owned by the Canadian pension fund PSP. If the license is obtained by A&B/EMI, it will require an immediate \$2.7 million payment by Mahi Pono, and then all of EMI's interests (lands, licenses, and assets) will be transferred to Mahi Pono/PSP.
2. Traditionally, the HC&S sugar plantation did not have to pay any additional fee for the water above the very low cost that the State charged EMI for a license or permit. All of that water went to grow sugarcane, a product that did not compete with any other Maui farm operation or product. At the same time EMI charged Maui County DWS six cents per thousand and the County in turn charged farmers \$1.05/1,000 gallons for the water, and considerably more (\$3.00+) to families and businesses in the upcountry area.

Now since sugar is no longer being grown those same HC&S lands are being utilized for diversified agriculture by a foreign entity which will be competing directly against the existing local farmers both in central and upcountry Maui.

3. A very real concern regards the financial viability of Mahi Pono's farming plan. The final A&B EIS states that they are operating on agricultural land that is rated IAL, and therefore even if Mahi Pono is not farming the land someone else will. This is hardly reassuring since we know of the high cost of conducting farming operations in Hawai'i in comparison to agricultural crops grown elsewhere. There may be no long-term, viable farm plan and there is a concern as to what will happen or be required if, perhaps after 10 years, Mahi Pono decides not to farm.

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QUESTIONS

AUCTION

4. Who will be allowed to bid at the auction? What requirements must any bidder have to be able to bid and to win the auction?
5. In the event that Maui County wishes to bid at the auction, or exercise a right of *eminent domain* over the East Maui Aqueduct System, what provision can be made to facilitate its assumption of the lease(s)?

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LICENSE(S)

6. Will there be one auctioned master license, or four licenses?
7. How often will there be reviews of the lease, its operations and its conditions during the long lease period? Every 5 years? 10 years? Is the DLNR considering to recommend modifying the term of the lease(s) to less than 30 years to allow for a periodic "check-in"?
8. Who will have responsibility and are they staffed adequately to enforce lease conditions? DLNR? Someone on Maui? Maui Department of Water Supply? CWRM?
9. In the license what are the penalties for non-compliance with the conditions? For example: If too much water is taken from a stream? Or if some of the water is sold for non-agricultural uses? Or the watershed is not being properly maintained?
10. What will be the relationship between the auction winner and the Maui County Department of Water Supply?
11. Will the auction winner be required to supply adequate water to UpCountry residents and farmers, even in times of drought? Especially in times of draught?
12. Will the water that is sold be allowed to be used for any other uses besides:
a) agriculture; b) Hawaiian Homelands; c) the Maui County Department of Water Supply for UpCountry residents and farmers, as well as the Kula Agriculture Park?
13. Will the lessee be required to receive approval of a plan for restoration of each watershed, before the full lease is in effect?

14. Will the lessee be required to install gages in the streams above and below all diversions, and in the aqueducts at the boundaries of each watershed?
15. Will the lessee be required to modernize the diversion works so that they do not impede the IIFS flows, and take only water in excess of that amount?
16. Will the lessee be required to replace the open ditches and tunnels in the aqueduct system with pipes, to prevent transfer of plant and animal species from one watershed to another, and to minimize leakage and seepage?
17. Will the winner of the auction be required to improve and line the many reservoirs on the Mahi Pono owned land? Bring the water wastage rate down from 22% to some predetermined reduced amount?
18. Will the lessee be required to justify annually or periodically how much water it will need for the next year(s)?
19. Is DLNR considering recommending that the area to be leased be reduced, as has been suggested by DOFAW and other State agencies?

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WATER PRICES

20. When some entity gains the licenses, what will be the limitations and latitude on the price that they will be able to sell the water that the license will allow them to accumulate from the State watershed? For example, at present there are different rates being assessed to different consumers?
21. What rates will be charged Mahi Pono's large plantation-scale operation and to the many small farmers who are competing against it? The same or a different rate?
22. What rates will the County need to pay to get the water for the upcountry families and businesses and the Kula Agricultural Park? And who will set those rates? Will it be a neutral party such as the PUC, or will the County need to enter into tough negotiations with the license owner? How much will HHL need to pay the license holder for its present and future water needs?
23. What prices will the licensee be allowed to charge for the water? Who will regulate the rates over the lease's long-term period? PUC? DLNR? BLNR? Perhaps, a lease condition needs to require the PUC to monitor and regulate water rates, as they already do for many existing private water purveyors. Will the license establish this requirement?

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MAHI PONO

- 24. Will the license agreement allow for its transfer to an entity that did not win the bid?
 - a) Will the license agreement allow for a transfer to an entity that did not win the bid?
 - b) Since A&B may prevail at the auction, will PSP/Mahi Pono be required to be certified as a legitimate holder of a license?
 - c) Will PSP/Mahi Pono be able to further transfer the license(s), and with what conditions and obligations?
 - d) If PSP “flips” *Mahi Pono Holdings LLC* by selling its majority interest in Mahi Pono to another party, will the license transfer to this new licensee without any further action needed from BLNR?

- 25. What conditions, restrictions and limits are in place regarding a sub-lease of part of East Maui leased area to a third party?

TIMELINE

- 27. Please clarify as to when the next steps will be taken. **What is the timeline?**
 - Certifying those who can bid.
 - Setting the auction date.
 - Announcing exactly what will be auctioned.
 - Listing the license conditions.
 - At what stages will the general public be able participate/testify?

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- CC: Maui Mayor Michael Victorino
- Mr. Jeffery Pearson, Director, Maui Dept. of Water Supply
- Ms. Alice Lee, Chair, Maui County Council
- Ms. Keani Rawlings-Fernandez, Vice-Chair, Maui County Council
- Mr. Shane Sinenci, Maui Councilmember
- Mr. Michael Molina, Councilmember
- Ms. Kelly King, Maui Councilmember
- Ms. Tamara Paltin, Maui Councilmember
- Ms. Yuki Lei Sugimura, Maui Councilmember
- Mr. Gabe Johnson, Maui Councilmember
- Ms. Tasha Kama, Maui Councilmember
- Senator Lynn DeCoite
- Representative Kyle Yamashita
- Representative Linda Clark
- Director Suzanne Case, Department of Land and Natural Resources



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BOARD TALK: Guidance for Water Leases May Face Legal Challenges, Legislative Tweaks

1 NOV 2021

posted in: Board Talk, November 2021, Water | 0

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“We have to find a way forward somehow. Sometimes that way forward is very messy,” said state Board of Land and Natural Resources chair Suzanne Case as the board met on October 22.

At that meeting, the board narrowly rejected a contested case hearing request from Department of Hawaiian Home Lands director William Aila — himself a former Department of Land and Natural Resources director and Land Board chair — on a proposal from the DLNR’s Land Division on how appraisers should determine the value of water leases.

A number of individuals and entities that have been diverting water under revocable permits for years, or even decades, have fulfilled their environmental review requirements and are ready to secure long-term water leases.

In September, the Land Board approved the final environmental impact statement Alexander & Baldwin and East Maui Irrigation Company had prepared for the long-term water license they have been seeking for two decades. Other water permittees seeking long-term leases include the Kaua’i Island Utility Cooperative, the Hawai’i Electric Light Co., Kaua’i resident Jeffrey Linder, and farmers and ranchers in the Ka’u district of Hawai’i island.

While the Legislature expected their leases to be issued years ago, the DLNR has never before issued such a lease and is struggling to meet the requirements of the current legal framework.

For some of the old water leases for sugarcane production, issued before statehood, rent was tied to the price of sugarcane. Today, state law requires water leases to be disposed of via a public auction, with the upset rent determined by an appraisal.

Given that many of these permittees will likely be the only bidders for their respective water leases, the DLNR tried this year and last year to get the law changed to allow the Land Board to issue leases through direct negotiation. In the same bills, the department also tried to establish a list of several factors that must be considered by appraisers when determining fair market rent.

“[T]he most significant challenge encountered by staff has been the valuation of the upset rent for the use of water,” a Land Division report to the board states.

In This Issue



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BOARD TALK: Guidance for Water Leases May Face Legal Challenges, Legislative Tweaks
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FWS Proposes Downlisting Bat From Endangered to Threatened
November 1, 2021



County, Aina Le’a Sign MOA While Court Cases Drag On, Taxes Go Unpaid
November 1, 2021

The requirement to charge fair market rent, it continues, “has created an incongruity when considering the nature of water in Hawai‘i, which is a public trust resource. Unlike other markets in the country where water can be held and disposed as other private property interests, water rights in Hawai‘i are held by the state for the benefit of the public. This has posed a challenge for appraisers to determine a market value of an interest for which there is no market.”

All of the bills that would have allowed for direct negotiation and established some guidance to appraisers failed. Hence, the Land Division’s proposal to the Land Board.

“We have a number of water lease applicants that are quite anxious to proceed with their leases. We did not want to put them off for another legislative session ... in case that route turns out not to be the way to go,” Land Division administrator Russell Tsuji told the board.

He added that the appraisers his staff have talked to say they simply would not take on the job of determining market rent for these leases, at least not without further direction from the state.

And so on October 22, the division sought board approval of guidance to appraisers of water leases. It included the same seven factors for consideration that were included in the failed bills before the Legislature:

1. The amount of water diverted and its proposed use;
2. The amount of water diverted in proportion to what’s available from the diversion source;
3. Water delivery costs, including maintenance and upgrades to prevent system losses;
4. The avoided cost of getting the water from practicable alternative sources;
5. The net economic benefit to the licensee;
6. The value contributed by the licensee for watershed management; and
7. The public benefit provided from the use of water, such as “domestic uses, traditional and customary practices such as taro cultivation, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses.”

The division proposed that appraisers use the current revocable permit rent as a starting point, and adjust the lease value up or down depending on the seven factors.

Opposition

The Office of Hawaiian Affairs, the Sierra Club of Hawai‘i, the Native Hawaiian Legal Corporation, Earthjustice, and the DHHL testified against both procedural and substantial aspects of the Land Divisions proposal.

They all scorned the use of the current revocable permit rent as a valuation starting point and argued in favor of using the avoided cost of obtaining water from another source as an equal or more logical starting value for applying the adjustment factors proposed by staff.

“I’m not sure permit rent should have *anything* to do with these appraisals,” Sierra Club executive director Wayne Tanaka said. He added that, in many cases, the permit rents are based on historical agreements that were directly negotiated, which the Land Division acknowledges “were not necessarily consistent with the law or public trust. So starting with permit rent is like building your house on sand.”

In response to the arguments against using the permit rents as a starting point, the Land Division’s Ian Hirokawa explained to the board, “You need a number to work upward or downward. The RP was the best we had for now. I don’t know if we want to start at zero.”

With regard to the factors appraisers would have to consider, Tanaka said it makes no sense to allow deductions for maintenance costs “when the board had years and years to hold these water permit holders accountable for the water waste that was going on in their systems.”

“When these permit holders and potential lessees had decades to prevent the waste of millions of gallons of water a day, to appraise lower based on the cost of maintenance, you’re basically rewarding neglect,” he added.

In written testimony, NHLC attorney Ashley Obrey echoed Tanaka's sentiments about discounts for system maintenance. She also objected to allowing "public benefit" discounts, arguing that it "invites arbitrary and highly subjective adjustments in appraisal value that may in fact conflict with public's actual interest as well as the board's trust duties to Native Hawaiians, public lands trust, and the Hawaiian home lands trust, especially when certain lessees carry political favor."

Tanaka, OHA, the NHLC, and Earthjustice also argued that the overall proposal meets the definition of a rule and cannot not simply be adopted by the board without going through the rule-making process.

"This matter does require rule-making by law. It's not a choice if you want to follow the law," said Tanaka, an attorney and former legal fellow for the DLNR. The Sierra Club also submitted a petition for rule-making that included some draft language.

Earthjustice attorneys Leinā'ala Ley and Isaac Moriwake argued in written testimony that rule-making, which requires public hearings, would allow the DLNR to "consider these issues through a more comprehensive, deliberate, and transparent process that provides the opportunity for public comment and input than can inform the valuation methodology adopted by this board. Absent the opportunity for public notice and comment, individual leases are vulnerable to legal challenge for failure to comply with [Hawai'i Revised Statutes] Chapter 91 with regard to the lease value."

Hirokawa countered that what his division was proposing was merely "conceptual guidance for the appraiser to start their work."

He said rule-making would be inappropriate right now because the DLNR wants to try again to get the Legislature to adopt this guidance into statute. "Rule-making at this point is premature until we get an answer from the Legislature," he said.

"Given that this is fairly new and we're kind of heading into uncharted territory, we need to test this out," he continued. "We need to really work with some appraiser and test this out ... before even considering putting it into a rule."

DHHL director Aila said his department agreed with the DLNR that the valuation and public auction process needs improving. However, he added, "What's before the board gives a little too much discretion and not enough guide posts, in our opinion."

He expressed his concern that this discretion could lead to the leases being under-valued, which would have a direct impact on his department. His department, which also testified against the DLNR's bills and even offered a competing bill, favors tying the value of the lease to the avoided cost of developing alternatives.

He recounted how a condition of statehood was accepting the kuleana of the Hawaiian Homes trust. Under the Hawaiian Homes Commission Act, 30 percent of all water licenses must be transferred into the native Hawaiian rehabilitation fund.

He said the Land Division's proposal "continues to ignore and forget the commitment made as a condition of statehood. ... This will likely result in a breach of trust action. We will be speaking with the Department of the Interior. This action clearly reduces benefits to beneficiaries, which is a breach of that trust that was agreed to by becoming a state."

After Aila requested a contested case hearing, the board met in executive session to discuss the matter. Upon returning to the regular meeting, the board voted to deny, with board members Sam Gon, Kaiwi Yoon, and Doreen Canto abstaining.

"We will consider our options at this point," Aila said after the board's denial.

Board Discussion

“Here we are trying to give guidance and we’re being challenged with one lawsuit over guidance. Who knows what else is coming down the pike? We’re doing this to help the appraiser come up with a value. I’m just not sure how much we’re helping with these factors,” board member Chris Yuen said after hearing the public’s testimony and the DLNR’s responses.

He shared the NHLC’s concerns about “public benefit” discounts. “Don’t get me wrong, public benefit has to be part of our decision to do these leases in the first place ... but I’m concerned about telling an appraiser to factor in public benefit when their role is to come up with fair market value. Is the appraiser supposed to say, ‘We like diversified ag so we’re going to cut the appraisal amount,’ versus, I don’t know, a residential development? ... I’m not sure we should give them the task of determining what is public benefit and discounting an appraisal based on their ideas of public benefit,” he said.

He floated the idea of a deferral.

“I’m just wondering if we’re causing a problem, and I’m wondering if we have an appraiser that thinks they can appraise this without any guidelines.”

“I’m not sure we do,” Case replied.

“But I’m not sure we don’t,” Yuen said.

Tsuji chimed in that the appraisers have asked for even stronger guidance than what was being proposed.

“If we defer it, then we’re not going to try anything out. We could defer it and not give any guidance and see if we can get an appraiser to try this.... We’ve been working on this for several years already and we’re stuck,” Case said.

Case noted that the board’s approval would not prejudice the Sierra Club’s petition for rule-making, and that the Legislature may decide to adopt something else. In any case, the guidance, is “not set in stone,” she said.

“I’m more likely to move forward today knowing we’re trying to forge guidance ... eventually through rules or laws,” board member Sam Gon said.

“I guess I wouldn’t say it eventually will. I would say there are procedures in the future that may alter this path,” Case replied.

When Case ultimately called for board members to make a motion, she was initially met with silence. Board member Vernon Char eventually made a motion to approve, and with amendments proposed by Yuen, board member Doreen Canto provided a second.

Yuen proposed nixing the use of the revocable permit rent as the starting point for valuation, and instead making it one of the factors to consider. He also said the factor regarding public benefit discounts should be deleted.

Char’s motion passed, with members Yoon and Tommy Oi voting in opposition.

Hirokawa said that with the board’s approval, his division would likely hire an appraiser to evaluate a potential lease for one of the existing permittees.

“I don’t necessarily mean Mahi Pono,” — who co-owns EMI with A&B and would be the largest water user, by far — “maybe a smaller one, run this around the block and see how this works,” he said. His division would then come to the board with something short of a full appraisal report that includes a discussion of the proposed upset rent, “so the public is well aware of how we got to this number,” he said.

— **Teresa Dawson**

For Further Reading

- [“Board Talk: Water Permits For A&B, KIUC, and Others,”](#) November 2019;

- [“Land Board Delays Action on Plan To Move Forward with Water Permits,”](#) May 2019;
- [“Board Directs Land Division To Help Permittees, DHHL Meet Water Needs,”](#) April 2018;
- [“Board Talk: Wind Farm, Water Holdovers,”](#) December 2016.

♥ Teresa Dawson

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Contact Us

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📍 421 Kaanini St.

Hilo HI 96720

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✉ mail@environment-hawaii.org

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Tiare Lawrence Yesterday at 12:26 PM · 🌐

Planting the one millionth tree on former sugar cane lands. Today invitees and employees planted over 300 ulu, mango, avocado, and milo trees.

2d Like Reply

[REDACTED]

Hope they thinking bout native areas too. Without our kupuna trees we have no future on Maui. We need rain 20 or 100 years from now too.

2d Like Reply

2  



Tiare Lawrence

[REDACTED] are you referring to watershed areas? If so I absolutely agree.

2d Like Reply

[REDACTED]

Tiare Lawrence wherever we can afford it really. Not only mahi pono, but all these private land owners. We drinking the waters that our islands made 100 years ago. What will be left 100 years from now. If we talking about sustainability, we need to think generationally, but not just for our kids.

APT Committee

From: John and Christel Blumer-Buell <blubu@hawaii.rr.com>
Sent: Monday, November 15, 2021 4:21 PM
To: APT Committee; Maui_County Council_mailbox; Shane Sinenci
Cc: John Blumer-Buell
Subject: Testimony for November 16, 2021, APT Public Hearing. Please confirm receipt. Mahalo!
Attachments: APT COMMITTE 11-16-2021.pdf

*JOHN BLUMER-BUELL
P.O. Box 787, Hana, Hawaii, 96713
blubu@hawaii.rr.com*

November 15, 2021. Testimony for November 16, 2021, Public Hearing.

Maui County Council Agriculture and Public Trust Committee, Shane Sinenci, Chair. Sent via email to APT.committee@mauicounty.us
county.council@mauicounty.us

Subjects:

- I. Agenda Item APT-35.** A&B's Proposed Water Lease for the Nahiku, Keanae, Honomanu and Huelo License Areas.
- II. Agenda Item APT-57.** Water Use and Development Plan for Maui.

Aloha Chair Sinenci and Committee Members,

I. Regarding Agena Item APT-35.

The 1994 Hana Community Plan states in part on page 11,

“C. Interregional Issues

“Several issues impact the Hana Community Plan region which need interregional, island-wide or County-wide comprehensive policy analyses and formulation.”

“ 1. Exportation of resources found within the Hana Community Plan Region. The impacts and implications of exporting resources, particularly the diversion of surface water from the region, are of key concern to Hana residents. The exportation of

these resources will not only affect resource availability and environmental integrity within the region, but also affect the balance of resource supply in other community plan regions.”

I am concerned that:

1. A&B and EMI have not met their obligations regarding the recent “27 Streams” Case.
2. The concerns of the Haiku Community Association and others stated concerns have not been adequately addressed.
3. There is no long term plan for “phasing out” the use of Hanawi Stream in Nahiku. Hanawi Stream is recognized as one of the most unique and important streams in the state.

Since no action is planned today for APT-35, I look forward to hearing from the Haiku Community Association and others and your consideration of my concerns.

II. Regarding Agena Item APT-57.

The 1994 Hana Community Plan Ordinance States in part,

“9. (Page 25) Prepare a domestic water system master plan and a wastewater system master plan for the Hana region.”

This critical part of the Draft Maui Use and Development Plan has not been done. A “domestic water system master plan and a wastewater system master plan for the Hana region” are an **essential** part of the current Draft Maui Water Use and Development Plan.

The Hana Community has requested the “domestic water system master plan and a wastewater system master plan for the Hana region” be included in county budgets even before the 1994 Hana Community Plan Ordinance became a law.

The 1994 Hana Community Plan Ordinance States in part,

“8. (page 23) Identify water service area expansion needs in the Hana region.”

This has not been done.

The 1994 Hana Community Plan Ordinance States in part,

“1. (Page 16) In coordination with native Hawaiian residents and community representatives, prepare watershed management plans and a groundwater and surface water resources monitoring program to protect the district's surface and ground waters, and monitor water levels to meet current and future demands.”

This has not been done.

The 1994 Hana Community Plan Ordinance States in part,

“1. Page 23) Ensure community participation, including resident Hawaiian, in all long-term infrastructure planning.”

This has not been done.

The 1994 Hana Community Plan Ordinance States in part,

“8. (Page 24) Provide municipal water service to Kipahulu and Upper Nahiku.”

This has not been done and needs to be revisited by the County of Maui and the community.

The 1994 Hana Community Plan Ordinance States in part,

“8. (Page 23) Provide municipal water service to Kipahulu and Upper Nahiku.”

This has not been done and needs to be revisited by the County of Maui and the community.

The 1994 Hana Community Plan Ordinance States in part,

“13. (Page 14) Encourage community-based dialogue regarding proposed land use changes in order to avoid unwarranted conflict.”

This has not been done. Unwarranted conflicts remain.

There are many conflicts between the substance, implementation procedures and sequences as documented in the integral and applicable Maui County Code 2.80B-General Plan and Community Plans (Ordinance 3166, 2004), The 1990 Maui Water Use and Development Plan (Adopted by Maui County Ordinance in 1990 and accepted as part of the Hawai'i State Water Plan by the State Commission on Water Resource Management in 1990), The 1994 Hana Community Plan (Ordinance No. 2347, 1994), The County of Maui 2030 General Plan Countywide Policy Plan (Ordinance No. 3732 (2010) and The Maui Island Plan General Plan 2030 (Ordinance No. 4004 (2012)).

The Draft Maui Water Use and Development Plan needs to legally align with and be in harmony with these documents, NOT be in conflict with them.

Mahalo,

John Blumer-Buell, Mu'olea

APT Committee

From: Barbara Barry <haikupointofview@icloud.com>
Sent: Monday, November 15, 2021 9:40 PM
To: APT Committee
Subject: Do not pass WUDP today please.

You don't often get email from haikupointofview@icloud.com. [Learn why this is important](#)

Aloha Chair and Committee members,

Here we are again, asking for a user friendly summary of the updates that have been asked for and not yet received. Important questions have been raised by many community members who will be most affected by the 30 year water lease that Mahi Pono is asking for. There are streams that have gone dry off E. Kuiaha and W. Kuiaha that were perennial streams. Even in drought years. Maliko stream has been dry as well. Where is the information regarding if these streams have had standards set?

These streams run through farms and they replenish aquifers and support all kinds of stream and coastal tide pool life. When the water stops flowing the stream beds become choked with invasive species and garbage that'll block the streams in extreme rain events like we had last March. I have contacted Mahi Pono and the Water Dept via email asking about the stream in the Huluhulu gulch behind my home and have not had the courtesy of a response. This stream has flowed the last 8 years, year round and now it is bone dry.

I'm concerned that no one is monitoring these streams in Ha'ikū? Does Mahi Pono get to divert any stream they chose with out consequences to the health of the the ecology and farmers that depends on that source of water without discussion?

I'm very concerned that Mahi Pono may be restoring minimal water flow in the identified streams in E. Maui but help themselves to water from streams in Huleo and Ha'ikū.

Besides this serious issue, there are other issues like consulting with the Kanaka that depend on these streams for farming and cultural practices, supporting upcountry water meter wait lists and outdated information. Where does it address Climate Change, water shortages and the aquifer recharge?

It has failed to follow the requirements of the Consent Decree from 2003 like conducting a rigorous Cost/Benefit analysis, a test well dug in E. Maui region to determine whether developing additional wells in the region might adversely impact stream flows.

The conditions outlines in the Consent decree must be fulfilled before WUDP is approved. This needs to be in a reader friendly format with current data, not outdated info pulled from the original E. Maui Plan.

Please do not approve this without the information addressing all the streams in Huleo and Ha'ikū, including in stream flow standards.

Where are the updates from the last meeting?

Mahalo,
Barbara Barry
W. Kuiaha Rd
Ha'ikū
Photos taken from Ha'ikū Road bridge



W





Ha'ikū