

GET Committee

From: Tamara A. Paltin
Sent: Tuesday, January 29, 2019 4:51 AM
To: GET Committee
Subject: Fwd: Jeff Pearson Appointment as Director of DWS
Attachments: Hui Testomony Re Pearson Appointment to Director of DWS (1-28-2019).pdf

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From: Hui o Nā Wai 'Ehā <huionawai4@gmail.com>
Sent: Monday, January 28, 2019 11:32:33 PM
Subject: Re: Jeff Pearson Appointment as Director of DWS

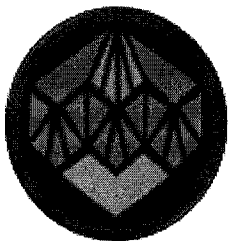
Aloha County Council Members,

we hope that this email finds all of you settling in nicely into your new and/or reelected positions. We look forward to working closely with all of you especially as it relates to the protection and stewardship of Maui's water resources. Please see Hui o Nā Wai 'Ehā's attached formal testimony in regards to Mr. Pearson's appointment as Director of DWS. We have very strong reservations regarding his appointment and hope that you will have the chance to review our testimony and associated documents, some of which will be provided tomorrow. If he is not confirmed, we have other recommendations, one, in particular, is Eva Blumenstein from DWS whom we have worked closely with throughout the entire duration of the WUDP. There will be a number of our board members there tomorrow to provide testimony. Mahalo nui and we look forward to seeing all of you tomorrow at Council Chambers.

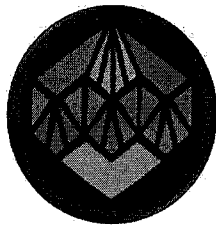
me ke aloha,

Hökūao Pellegrino (Board President)

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Hui o Nā Wai 'Ehā

Ola i ka wai WWW.HUIONAWAIEHA.ORG

January 29, 2019

Approved Hui Testimony Re: APPOINTMENT AND REMOVAL OF ADMINISTRATIVE HEADS OF DEPARTMENTS (DIRECTOR OF WATER SUPPLY) (GOVERNANCE, ETHICS, AND TRANSPARANCY COMMITTEE GET-1(4))

Aloha kakahiaka (Good Morning) e County Council Members and Committee Chair Mike Molina, My name is Lani Eckart-Dodd. I am the current board treasurer of Hui o Nā Wai 'Ehā and today I will be providing testimony on behalf of our organization as it relates to the appointment of Mr. Jeff Pearson as Director of the Maui County Department of Water Supply.

Hui o Nā Wai 'Ehā was established in 2003 and our mission is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe'e Streams, to protect cultural and natural resources related to traditional and customary practices of Native Hawaiian kuleana kalo farmers and to engage the Maui community through water resources management education outreach programs and initiatives. Our organization's core value is centered around "Ola i ka wai", which speaks to the importance of protecting one of our most important natural resources, the life giving waters of Kāne.

Hui o Nā Wai 'Ehā's goals and objectives are to (1) Facilitate upstream and downstream passage for native aquatic stream species ('o'opu, hīhīwai, 'ōpae). (2) Safeguard groundwater and aquifer recharge. (3) Revive native ecosystems such as upland watersheds, estuaries, wetlands, riparian native vegetation and nearshore fisheries. (4) Advocate for traditional and customary practices of Native Hawaiians such as lo'i kalo cultivation, nearshore fishing and gathering. (5) Support aesthetic values and outdoor community recreational activities along streams. (6) Promote education and research.

Hui o Nā Wai 'Ehā strongly believes that the Director of the Maui County DWS has an extremely important kuleana or purposeful role, which is to promote and lead in the responsible stewardship of our precious water resources, in addition to the DWS mission of "providing clean water efficiently." Hui o Nā Wai 'Ehā expects that responsible stewardship of our water resources includes managing all regions within our diverse watersheds. Furthermore, we expect that the person to lead this department, should have the ability to ensure that our potable water sources which derive from both surface and ground water via wellheads and plantation era water delivery infrastructure, are managed sustainably, knowing that it is a finite resource and that global climate change directly impacts our island chain. The director leading this department is also expected to adhere to Maui County policies, procedures and codes, to follow the Water Use and Development Plan and laws set forth by the State Commission of Water Resource Management. Lastly, in stewarding our water resources, the Hui expects that the director have vast knowledge of the Maui community and ability to engage and collaborate with all community stakeholders in a transparent and respectful way.

The organization's board of directors and legal team know Mr. Pearson quite well as it relates to his duration as former Deputy Director of the State Commission on Water Resource Management. We are here to share with you some of our direct experiences in working with Mr. Pearson, which includes detailed examples and background as to our reasoning why Hui o Nā Wai 'Ehā has VERY STRONG RESERVATIONS about his appointment to be the next director of the Maui County Department of Water Supply.

**Hui o Nā Wai 'Ehā
(Board Members)**

Hōkūao Pellegrino
(President)

Koa Hewahewa
(Vice President)

Lani Eckart-Dodd
(Treasurer)

Lucienne de Naie
(Secretary)

Duke Sevila
(Board Member)

Miki'ala Pua'a-
Freitas
(Board Member)

Ikaika Nakahashi
(Board Member)

Kōnane Awo
DelaNux
(Board Member)

Mariana Löwy-
Gerstmar
(Board Member)

Ka'apuni Aiwohi
(Board Member)

Maui Tomorrow
(Collaborator)

Albert Perez
(Executive Director)

University of
Hawai'i
Richardson School
of Law
(Collaborator)



Kapua Sproat
(Director of Ka Huli
Ao: Native Hawaiian
Law Center)

Legal Counsel

Isaac Moriwake
(Earthjustice)

Pam Bunn
(Alston Hunt Floyd
& Ing)

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The Mission of Hui o Nā Wai 'Ehā is to advocate for the restoration and stewardship of mauka to makai streamflow in Waikapū, Wailuku, Waiehu, Waihe'e Streams (Nā Wai 'Ehā), to protect cultural and natural resources related to traditional and customary practices of Native Hawaiians and to engage the Maui community through water resources management education outreach programs and initiatives.

Hui o Nā Wai 'Ehā believes the former leader of CWRM, Mr. Pearson struggled and in many instances failed in upholding the public trust doctrine and water code. We found that he consistently sided with the interests of corporations that sell water for profit like that of Wailuku Water Company. The Hui consistently noted a pattern in which Mr. Pearson failed to enforce legally binding Interim Instream Flow Standards (IIFS) and stream work authorizations / permits, while specifically targeting Native Hawaiian kuleana kalo farmers and attempting to impose fines against exercising their traditional and customary practices.

In addition to this testimony, there are supplemental documents that we have attached for you to read more in-depth about, as it relates to the extensive challenges we had in working with Mr. Pearson. It is our hope that you can take into serious consideration our testimony prior to making this important decision.

August 2016: Mr. Pearson and CWRM staff were responsible for targeting well respected Native Hawaiian kuleana kalo farmers in 'Āao Valley and former president and Hui founding members, John and Rose Duey, and issuing a fine of \$4,500 for failing to secure a permit for their 'auwai system for kalo cultivation in a timely manner. When the Water Commissioners took this issue up at a formal hearing, there was strong opposition and community outrage and it went so far as to having Water Commissioners issuing a formal apology to the Duey Family and reversing their decision fine them. Hui o Nā Wai 'Ehā expressed how deeply disturbing it was for Mr. Pearson and staff to target the Duey's while allowing plantations relics like Wailuku Water Co. and A&B time and time again violate the law binding Interim Instream Flow Standards set forth in 2010 and 2014. Following the hearing, Mr. Pearson backtracked and apologized to members of the Water Commission for having them spend so much time on something that maybe shouldn't have come before them in the first place. Please review the following articles related to this issue via the links below.

<http://www.environment-hawaii.org/?p=9233>



<http://www.environment-hawaii.org/?p=9235>

August 2016: Immediately following CWRM targeting the Duey Family, Hui o Nā Wai 'Ehā filed formal complaints with Mr. Pearson regarding the non-compliance of the IIFS in Waikapū, Wailuku and Waihe'e Streams by Wailuku Water Company. The data that was used specifically in the complaints was data that CWRM Staff collected, analyzed and uploaded onto the public CWRM Stream Management website. The purpose of the complaints was not only to show the non-compliance by WWC but state facts about how Mr. Pearson did not act and enforce their own data for almost 1 year which clearly demonstrated violations. Yet Mr. Pearson was quick to target the Duey Family in 'Āao. The 3 complaints were filed on August 25th, 2016. There were consistent one-way correspondences from Hui o Nā Wai 'Ehā to Mr. Pearson for almost an entire year with him providing little to no responses. During an in-person site visit with Mr. Pearson following the September 2016 100 year Wailuku flood, he stated that he had not had the chance to review the complaints but that he would respond shortly. Hui o Nā Wai 'Ehā didn't receive a formal response from the August 25th, 2016 filed complaints until 1 year later, on August 31, 2017. The responses by Mr. Pearson provided no explanation on their role of enforcement, let alone imposing any fines against Wailuku Water Co. for illegally failing to comply with the law and IIFS with all the evidence collected by the State. Please see Exhibit A, that was provided in one of the three complaints filed with CWRM in 2016, which clearly shows WWC's failure to comply to the law.

<http://www.environment-hawaii.org/?p=9233>

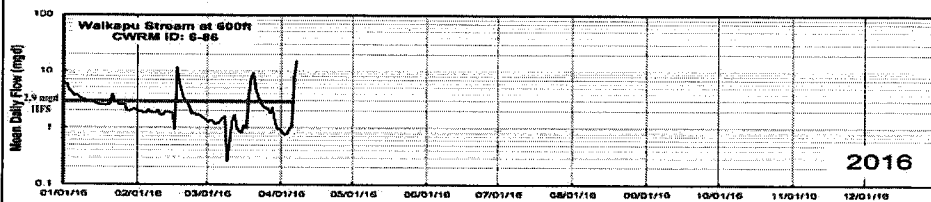
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Exhibit A:
CWRM Waikapū Stream IIFS Monitoring Report
(January – April 2016)



Issue: Wailuku Water Company failed to comply with the Waikapū Stream IIFS of 2.9mgd (Between mid-January through beginning of April 2016). Clear violation of IIFS in Waikapū Stream.



Source: <http://dlmr.hawaii.gov/cwrn/surfacewater/monitoring/>

September-October 2016: Following the 100 year Wailuku river flood that devastated ‘Īao Valley, unauthorized work took place in the Wailuku River by Wailuku Water Company prior to permitting and oversight by State and Federal Agencies. Following the issuance of permits by both Army Corps of Engineers and CWRM, Wailuku Water Company continued to deviate from what they were permitted to do. Wailuku River completely shifted south of the Wailuku Water Company intake while the intake itself was completely covered by stones. Rather than doing the work of maintenance as the permit stated, Wailuku Water Co. completely realigned the Wailuku River back towards their diversion. In addition, they built 6-8’ mounds of dirt strewn over a length of 200 feet in the middle of Wailuku River sending brown water and loose sedimentation down the river, something the permits again did not authorize. In a site visit with Mr. Pearson, he could clearly see the violations to the permits that took place and he eventually publically acknowledged that the permitted work by WWC was not to realign the stream and that there should have been oversight by a State regulatory agency, yet he did nothing to address the matter further than the aforementioned statement. In the end, WWC was allowed to skirt around the law due to Mr. Pearson’s unwillingness and inability to enforce them.

<http://www.mauinews.com/news/local-news/2016/10/protesters-stop-work-on-wailuku-river/>

October 2017: Wailuku Water Co. again failed to meet the IIFS for Waikapū Stream which was well documented by Mr. Pearson’s staff and his own oversight. In this instance, WWC went as far as to locking the sluice gate where the water returns to the stream at the IIFS point. Hui o Nā Wai ‘Ehā immediately filed a formal complaint to Mr. Pearson. Mr. Pearson took over 1 week to respond and when he did, he had no interest in investigating. When our Hui executive committee and legal counsel met with him, he said that Wailuku Water Co. seemed to be complying **“based on figures WWC emailed to him”** and that he decided to side with WWC President Mr. Chumbley who said **“we were liars”**. A CWRM water hearing was set to discuss this particular matter in November of 2017, at which time Mr. Pearson stopped short of calling it a violation. Instead, he simply **“reminded Mr. Chumbley that the 2014 agreement and order requires WWC to release water at the South Waikapū ditch sluice gate when flows in Waikapū Stream fall below 2.9 mgd which was the required IIFS amount”**. State Water Commissioner Bill Balfour who was involved in sugar plantations for over 40 years stated that **“a wrong is wrong”** and that **“they (WWC) are getting away with murder”**. The only thing Mr. Pearson did in regards to this issue along with years of blatant violations on behalf by WWC, was to turn his head the other way, giving them the benefit of the doubt and no imposed fines. <http://www.environment-hawaii.org/?p=10150>

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While these are rather lengthy complex issues that are dealt with at the State level, it was important for you to understand and contextualize as it relates to complicated issues that occur on the County level. The challenges we endured with Mr. Pearson as it related to Nā Wai 'Ehā were painful and took a great deal of time and resources on our behalf to ensure there was accountability and that the laws were being followed. While history shows us time after time that corporations like Wailuku Water Company try to skirt around the laws, it was even more unnerving to see that a State agency with enforcement capability under the leadership of Mr. Pearson, would turn a blind eye to very laws they are bound to uphold. It was made clear via the aforementioned details that Mr. Pearson was a leader whose first instinct was to wonder how the private sector would react and even prevail over the law, and frankly, his worst failings are symptoms of this deeper instinctual pattern.

This pattern also played out visibly in many areas around the State. For example, Mr. Pearson made it known that he would take the word of private consultants to developers over the advice of federal scientists in debates over the designation of the Keauhou Aquifer in Kona, Hawai'i Island. He was known to hire consultants and subcontractors who are also consultants in that very industry. Mr. Pearson dismissed community members on Kaua'i as people who **"just want to hate Kaua'i Island Utility Cooperative"** as a reason for letting matters lapse into a contested case hearing. Mr. Pearson accepted a horrible permit for Well 17 as **"complete"** to the advantage of Moloka'i Ranch. Lastly, Mr. Pearson encouraged the appointment of nominating committee members and CWRM members (Paul Meyer) whose ties are to plantation agriculture and development here on Maui. Mr. Meyer is now a Water Commissioner. Hui o Nā Wai 'Ehā has much higher moral and ethical standards for a leader in this type of position, one who sees it as his or her job to responsibly steward our State water resources in a way that reverses 200 years of community and 'āina suffering.

We stand here before you today and ask that you as Maui County Council members, reflect on what we have shared while pondering on the decision before you in appointing Mr. Pearson. Given his history and possible appointment, are you confident in your ability to hold him accountable in all areas of this leadership position? Can Mr. Pearson find balance in his decisions and weigh all sides of an issue equally rather than siding with corporations and developers which was unable to do in his State position? Is Mr. Pearson the strong leader that this community needs, and will he engage the Maui County and have the ability in addressing very serious water related challenges that are currently before us? If so, will he address them in a timely manner and one that follows proper protocol and procedures? Have you looked into other possible alternatives for this leadership position throughout the Maui community and/or even within the current department? We hope that you are asking yourselves these questions and more today.

Hui o Nā Wai 'Ehā has an active community membership base of over 600 members and a following of over 5,000 online, many who are kuleana kalo and diversified farmers, educators, scientists, environmentalists and concerned Maui residents at it relates to water resource management. We are an organization that has a watchful eye over all water issues in Nā Wai 'Ehā and across Maui, while engaging and educating members on how they can play a role in community-based water resource management. The decisions you make, especially that of a leadership position such as the Director of Maui County Water Supply, affects not only all of us but the many generations to come who will call Maui home and drink the life giving waters of Kāne. We want you to be extremely confident that this next director has the ability to execute on the hard tasks before him or her and to continue to work closely with us, knowing that Hui o Nā Wai 'Ehā exists to make their job easier and their efforts to responsibly steward the water resources of Maui.

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Mahalo for your time and serious consideration of our testimony today. Please let us know if you have any questions.

Me ke aloha,

Hōkūao Pellegrino (Board President)

Koa Hewahewa (Board Vice President)

Lani Eckart-Dodd (Board Treasurer)



Lucienne de Naie (Board Secretary)

Ka‘apuni Aiwohhi (Board Member)

Kōnane Awo-DelaNux (Board Member)

Ikaika Nakahashi (Board Member)

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