

# **AGRICULTURE AND PUBLIC TRUST COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**July 20, 2021**

**Online Only via BlueJeans**

**CONVENE:** 1:32 p.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Shane M. Sinenci, Chair  
Councilmember Gabe Johnson, Vice-Chair  
Councilmember Kelly Takaya King, Member  
Councilmember Alice L. Lee, Member  
Councilmember Michael J. Molina, Member  
Councilmember Tamara Paltin, Member  
Councilmember Keani N.W. Rawlins-Fernandez, Member

**STAFF:**

Kasie Apo Takayama, Legislative Analyst  
Nicole Siegel, Legislative Analyst  
Keoni Shirota, Committee Secretary  
Shelly Espeleta, Supervising Legislative Analyst  
David Raatz, Deputy Director of Council Services  
Lenora Dineen, Council Services Assistant Clerk  
Kristeena Locke, Council Services Assistant Clerk

Gina Young, Executive Assistant to Councilmember Shane M. Sinenci  
Carol Lee Kamekona, Executive Assistant to Councilmember Shane M. Sinenci  
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King  
Sarah Freistat Pajimola, Executive Assistant to Councilmember Keani Rawlins-Fernandez  
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama  
Lois Whitney, Executive Assistant to Councilmember Tasha Kama  
Evan Dust, Executive Assistant to Councilmember Tasha Kama

Zhantell Lindo, Council Aide, Moloka'i Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lāna`i Council Office (via telephone conference bridge)  
Mavis Oliveira-Medeiros, Council Aide, Hāna Council Office (via telephone conference bridge)  
Michele Blair, Council Aide, West Maui Office (via telephone conference bridge)

**ADMIN.:**

Sananda Baz, Managing Director, Department of the Mayor (Item APT-1(2))  
Eva Blumenstein, Planning Program Manager, Department of Water Supply (Items APT-1(2), APT-57)  
Caleb P. Rowe, Deputy Corporation Counsel  
Jennifer Oana, Deputy Corporation Counsel  
Stephanie Chen, Deputy Corporation Counsel

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**OTHERS:** Isaac Moriwake, Managing Attorney, Earthjustice (Item APT-1(3))  
Shay Chan Hodges (Item APT-57)  
Lucienne de Naie, Maui Tomorrow Foundation (Items APT-1(3), APT-57)  
Kaniloa Kamaunu, Aha Moku O Wailuku (Items APT-1(2), APT-1(3), APT-57)  
Clare Apana, (Items APT-1(2), APT-1(3))  
Jocelyn Costa, Aha Moku O Hamakualoa (Items APT-1(2), APT-1(3))  
Hōkūao Pellegrino, Hui o Nā Wai 'Ehā (Item APT-1(2))  
Others (3)

**PRESS:** *Akakū: Maui Community Television, Inc.*

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CHAIR SINENCI: . . . *(gavel)* . . . Aloha 'auinalā kākou, and welcome to the Agriculture and Public Trust Committee meeting of Tuesday, July 20, 2021. Are we up on Akakū? Okay. Bonjour and como tale vu? It is 1:32 p.m. this Tuesday, July 20, 2021. I'm Shane Sinenci, the Chair of the Committee. Today, with me today, I have Committee Vice-Chair Mr. Gabe Johnson. Bonjour and alofa.

VICE-CHAIR JOHNSON: Bonjour. Alofa. Ohayo gozaimasu. We do it all, right? That's what I heard earlier.

CHAIR SINENCI: Yeah. Mahalo for being here. Councilmember Kelly Takaya King.

COUNCILMEMBER KING: Talofa from South Maui.

CHAIR SINENCI: Talofa. Aloha 'auinalā. Next, we have Council Chair Alice Lee. Talofa lava.

COUNCILMEMBER LEE: Mr. Chair, talofa, and hope everybody's having a great afternoon.

CHAIR SINENCI: Mahalo for joining us, Chair. Next, we have Councilmember Michael Molina. Aloha 'auinalā.

COUNCILMEMBER MOLINA: Hey, talofa and bonjour to you, Chair, and my colleagues, and looking forward to another exciting APT meeting today. Aloha.

CHAIR SINENCI: Okay, veni, veni. Next, we have Councilmember Tamara Paltin. Aloha 'auinalā.

COUNCILMEMBER PALTIN: Bonjour. Como tale vu. Talofa lava. Aloha 'auinalā kākou. Welcome to the show.

CHAIR SINENCI: Aloha. Mahalo for joining us. Next, we have Council Vice-Chair Ms. Keani Rawlins-Fernandez. Aloha 'auinalā.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha 'auinalā, Chair, mai Moloka'i nui ahina. Talofa lava. Bonjour kākou. He lā maika'i.

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CHAIR SINENCI: Ae. Mahalo, mahalo, and mahalo for joining us. And, Members, as usual, our non-voting Committee Members is Pro Tempore Tasha Kama, and Councilmember Yuki-Lei Sugimura. They're always welcome to join us. I don't know if we received any confirmation from Ms. Kama. But, anyways, today, Members, from . . . mai ka Administration, we have Ms. Eva Blumenstein, the Water Resources and Planning Manager. Bonjour.

MS. BLUMENSTEIN: Aloha, Chair. Bonjour.

CHAIR SINENCI: Bonjour. Next, we have Director Jeff Pearson. Aloha and bonjour. He'll be joining us soon. I'm not sure if Managing Director is with us just yet. He's on the last item, but he's going to be joining us. Also, Deputy Corporation Counsel Ms. Stephanie Chen. Aloha and bonjour.

MS. CHEN: Aloha.

CHAIR SINENCI: Aloha. Our resource person today is Mr. Moriwake from Earthjustice. He is the Managing Attorney. Bonjour, Moriwake.

MR. MORIWAKE: Bonjour, everybody. Aloha. Thank you for inviting me.

CHAIR SINENCI: Yeah, thanks for being here. From our Staff today, we have Ms. Kasie Apo Takayama, Mr. Keoni Shirota, Mr. David Raatz, our Council Service Deputy Director, Ms. Nicole Siegel, and Ms. Kristeena Locke. Bonjour kākou.

MS. APO TAKAYAMA: Aloha, Chair.

CHAIR SINENCI: On to the disclaimer. Bonjour. This online meeting is being conducted in accordance with the Governor's most recent emergency proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. We have three items today, Members. APT-1(3) Nā Wai 'Ehā Streams, APT-57 The Water Use and Development Plan for Maui, and APT-1(2) Acquisition of the Wailuku Water Company's System. Let's begin with public testimony. Oral testimony via phone or teleconference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link <https://bluejeans.com/411641115> as noted on today's agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290, and entering meeting code 411641115, also noted on today's agenda. Written testimony is highly encouraged. Instructions on how to submit testimony can also be found at MauiCounty.us/testify. Moving on to oral testimony. Oral testimony is limited to three minutes per item. If you're still testifying beyond that time, I'll kindly ask you to complete your testimony. When testifying, please state your name and if you are testifying on behalf of an organization or if you're a paid lobbyist, please inform the Committee. Please be mindful of the use of chat during the meeting. Chat should not be used to provide testimony or chat with the other testifiers. If you're here to provide testimony, please be courteous to others by turning off your video and muting your microphone while waiting for your turn to testify. Once you're done testifying, you'll be asked to disconnect from the call,

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however, you're welcome to continue to view the remainder of the meeting on Akakū Channel 53, Facebook Live, or on MauiCounty.us. Participants who wish to view the meeting only without providing testimony, please also disconnect at this time and instead view the meeting on Akakū Channel 53, Facebook Live, or visit MauiCounty.us/agendas. As a reminder, only Councilmembers, Staff, and designated resource personnel will be connected to the video conference meeting once testimony concludes. A friendly reminder, Committee Members, Administration, the public, to please be patient if we run into any technological issues. With that, Members, I'd like to proceed with oral testimony. Staff has been monitoring people joining today's meeting by phone and by video and we'll do our very best to take each person up in an orderly fashion. Ms. Apo Takayama, can you call up the first testifier please.

**. . . BEGIN PUBLIC TESTIMONY . . .**

MS. APO TAKAYAMA: Thank you, Chair. The first individual signed up to testify is Shay Chan Hodges, to be testifying on APT-57, and she'll be followed by the testifier logged in as "A".

MS. CHAN HODGES: Aloha.

CHAIR SINENCI: Aloha, Shay.

MS. CHAN HODGES: Aloha. Aloha, APT Committee Chair Sinenci, and Committee Members. I'm testifying on item APT-57 of The Water Use and Development Plan for Maui. I'm here today to present recommendations for additions to Table 14-41 on page 122 under Summary of Recommended Strategies Wailuku ASEA specifically adding the potential County Wailuku Water Company purchase or at least referring to the fact that the WWC is for sale to this document since the change in ownership would have various potential impacts on water resources. As you probably know in 2020 when I was Chair of the Maui County Board of Water Supply, members received a number of presentations about the Wailuku Water Company purchase from representatives of Wailuku Water Company, the County, and community members, and issued recommendations in February 2021. On February 18, 2021, the Board unanimously approved authorizing the purchase of the Wailuku Water Company under the following conditions: One, that an MAI appraisal and engineering study of the water delivery system that provides estimates of the cost of repair and maintenance of the system be completed, that a revenue model or user fees are developed that take into consideration community needs and desires for the system as determined through a community engagement process and which is equal to or an excess to the cost of repair and maintenance, that there is a plan for operations and stewardship of the system including any additional cost such as modernization of the diversion works and aqueducts, and that has been . . . and that plan has been presented to the community, and finally, that an offer for purchase is based on the foregoing information as well as any other issues such as title easements or permits that could affect the value of the asset. And I submitted via eComments, and also through the APT Committee e-mail a revised Table 14-4 that incorporates these recommendations along with an additional strategy for ensuring that community members, kalo farmers, and others affected by this system including instream and off

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stream users are actively engaged in plans for operations in stewardship of this system with regard to any future operation of this system. While that last statement was not a specific recommendation of the Board, in the Executive Summary, the Board of Water Supply states that there is no confirmed role for those affected by the system in the current negotiations or future operation of the system. So, that was one of the issues raised by the Board. So, I . . . in addition to that new sort of grid, I've also submitted the DWS Executive Summary that you can review and whether or not you choose to integrate the entirety of the Board of Water Supply's recommendations, I just want to reiterate the importance of including the expected sale of the Wailuku Water Company in the current Water Use Development Plan so that all information is considered. Mahalo.

CHAIR SINENCI: Mahalo, Shay. And I know the Members are just coming off of lunch. So, I . . . and, and Shay has some extensive knowledge being the past Board of Water Supply Chair. So, I was going to, if there are no objections that we could keep her on as a resource when we get to that item, if there are no objections?

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay.

COUNCILMEMBER KING: Chair, can I ask a question, right now? Just before I forget.

CHAIR SINENCI: Yeah, go ahead, Member King.

COUNCILMEMBER KING: Thank you. I know she's going to be on later but I just wanted to ask . . . thanks for being here, Shay, and for all your involvement in our water issues, but, you know, you mentioned that, I think you said MAI assessment of the maintenance issues and other things, was there any . . . were there, in your discussion with the Water Board, was there any talk about how much this would cost, and who should bear that cost? If it should be the seller or the County, as the buyer?

MS. CHAN HODGES: No, partially because we could not get any information about what the cost would be, so we couldn't really get to that point. So, since there hadn't been any kind of engineering or . . . the only appraisal was the appraisal of the value of the land, but not of the system itself.

COUNCILMEMBER KING: Okay, and you . . . did you ever have Wailuku Water Company come before you?

MS. CHAN HODGES: Yes.

COUNCILMEMBER KING: And they weren't able to answer that?

MS. CHAN HODGES: No.

COUNCILMEMBER KING: Whether they would be. . . *(inaudible)*. . .

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MS. CHAN HODGES: The basic answer was that the system does what it was designed to do which was . . . is . . . was to move as much water to the sugar cane fields as possible. That was kind of the answer.

COUNCILMEMBER KING: All right. Thank you.

MS. CHAN HODGES: Thanks.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR SINENCI: Okay. Mahalo, Member King. And mahalo, Shay, for agreeing to hang on with us. Thank you for your testimony.

MS. CHAN HODGES: No worries.

CHAIR SINENCI: Okay, next testifier signed up as "A".

MS. APO TAKAYAMA: Chair, I believe "A" disconnected from the call, so our next testifier is Lucienne de Naie.

CHAIR SINENCI: Ms. de Naie, aloha.

MS. dE NAIE: Aloha. I'm unmuting. Nice to. . . *(audio interference)* . . . And, Maui Tomorrow Foundation is, as some of you may know, was involved with Hui O Nā Wai 'Ehā, and OHA in the long process at the Water Commission. And as a result of that, there's a decision that happened recently. And also, before that decision, there was a settlement agreement that was reached among Mahi Pono, and Maui Tomorrow, the Hui, and OHA. And I'm here today just to ask a couple of things. One, on item 13 - the WUDP has a couple of tables that refer to things that would be covered in this final Water Commission decision on who gets what stream water and what stays in the stream in Nā Wai 'Ehā, and that would be Table 14-34, and Table 14-35. And, these tables talk about things like irrigation demands, and ag demands, and instream flow standards set for the whole of Nā Wai 'Ehā, the four streams, and so, we just are . . . would ask, respectfully, as a party to the long case that resulted in this information, that staff take a look at, you know, the final figures where the smoke clears, and see if they match what's in the plan. And I'll just do the brief for instance, there's an irrigation demand which covers golf courses, doesn't cover ag irrigation, it's like golf courses, parks, things like that. So, a part of that COWRM case was how much water the Waikapu golf courses get. If the figures that this plan use remain the same, then there's nothing to change. But, if the decision from the Water Commission change those figures, then change those figures a little bit, you know, it's that easy, it's just like look at what was granted, if it was different then just reflect that change. And then, in the grand total reflect that change. So, that's my input on Item-13, and I would like to move over to Item-57, if I might 'cause I signed up to testify to both. Hope I'm not boring everybody here.

CHAIR SINENCI: . . . *(inaudible)* . . .

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MS. dE NAIE: So, on Item-57--

CHAIR SINENCI: Okay, go ahead.

MS. dE NAIE: Oh, oh, do you want to ask if anyone has any questions on the item, or you want to wait till the end?

CHAIR SINENCI: 1(3), I don't see any, so Lucienne, go ahead, and Item-57.

MS. dE NAIE: You know, is the whole Water Use and Development process, and so, Maui Tomorrow definitely supports very strongly that there be a discussion of the Wailuku Water Systems current status in this update of the plan. So, right now, there's some very simple language that says some sort of committee will be formed and it will talk about if there's opportunities for improving the system, but that's not really what's going on and we all know that. There's money in the budget to actually try to purchase the system. The State has secured several chunks of money to purchase the watershed lands. And so, Table 14-41, as Ms. Chan Hodges referred to, does need to reflect the truth that the system is for sale, the County and State are pursuing due diligence to acquire the lands, that's the State, and the ditch diversion system, that's the County, and we do agree, very strongly, that the roles of the water users' in the area, the kuleana users', and the cultural groups like the Aha Moku and the Hui O Nā Wai 'Ehā, and all the other cultural groups that want to come forward, should be included in the discussions of the future of the project. And then, the second thing we'd like to address in the WUDP is the general section of Section 14, the general part, talks about water duty of the HC&S for its lands in the sector. Now, the Nā Wai 'Ehā lands which are about 3,700 acres, they actually subject to this settlement that I referred to. And the figure being used right now is the 3,400 gallons per day per acre that our settlement set that at 2,500 gallons per day per acre. And so, that should just be clearly reflected. The plan does refer in other sections to those, kind of a sliding scale between those two numbers, but that's an actual settlement that's an actual amount, and it should be reflected in that section. And there's also a discussion in there of the waste, anticipated waste of the Wailuku Water Company System. And once again, it would be hoped that if there's public acquisition of the system, that that waste will be reduced and there would be some, you know, tracking down, and spending some money. HC&S's successor, Mahi Pono, who have agreed to the 2,500 acre a day for their Wailuku based water, also agreed to try to work to zero waste over the years as part of the settlement. So, the County if it acquires the system, could be partnering with Mahi Pono to figure out all the places where waste could be improved. So, we just like to see that section reflect the fact that those processes are likely to happen in the future. Thank you.

CHAIR SINENCI: Mahalo, Lucienne. Members, any questions for the testifier? Again, mahalo for those figures and we can ask those important questions as well. Mahalo for your testimony today.

MS. dE NAIE: Thank you guys.

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CHAIR SINENCI: Ms. Apo Takayama.

MS. APO TAKAYAMA: Chair, the next individual signed up to testify is Kaniloa Kamaunu, on behalf of Kuleana and Aha Moku O Wailuku, to be followed by Clare Apana.

MR. KAMAUNU: Aloha mai.

CHAIR SINENCI: Aloha.

MR. KAMAUNU: So, okay, for me, this is getting irritating. You know, going through your AP-1(3), you know, they failed to discuss this, you know, you talk about all these different entities that got involved with this, of course, decision, where am I in here? Because, if you go back, and Mr. Molina knows, that when this stuff all came down, I was the one that was referenced as to kuleana. The attorney's for Earthjustice and Hui Nā Wai 'Ehā did not want to support kuleana. Okay, and that's why I left them. And I getting tired of seeing the only people that they talking to is Nā Wai 'Ehā. I spoke for Waihe'e. I am the kuleana that went to stand up for Waihe'e. I was the one that was in front of the Water Commission and telling them I wanted them to prove where their authority and where the rights come from that they receive for water. All this false pretenses that water is a public trust. There is no proof of water being given, yeah, during the annexation. If you go back to your Annexation Bill, it's not on there, the Newlands resolution. I've been asking for years for the State to prove that they have water rights. The only answer I got was from Hearing Officer Meiki when he stated to me when I asked him where is your palapala. He stated to me, the State would never do that, they'll never show that, because they don't. Kuleana came into perspective because that's what myself and my wife, we presented. Hui Nā Wai 'Ehā wasn't standing for kuleana. We stood for kuleana, yeah. I'm recognized as kuleana by the State Water Commission. I am the one who stood for kuleana, yeah. So the thing is for these guys to have . . . this is pissing me off because these people are making decision. OHA. Where was OHA? OHA wasn't around. They never support me. I had to go to all these meetings myself. Where were they? They were never there. The Hui wasn't even working with me because I didn't want to work with them 'cause they didn't want to support kuleana. So, but, and then you look at Waihe'e, Waihe'e get settled. How many is before Wailuku? The thing is I recognize, even by this County Council, and Councilmember Molina remembers me coming there, even when Sol Kohalahala [sic] wanted for make one resolution for kuleana, we was there. I fought for kuleana. Me, my family. We stood there by ourselves. It all went all this adverse, and then the only guys they going to is the Hui. I said a'ole. This is all lies. There was no settlement with everyone. The Hui does not speak for all kuleana. I never gave 'em that responsibility. I am kuleana. I was recognized by Commission. I was recognized by this County Council. So, they got to adjust this. This is . . . there's no settlement with everybody, especially for Waihe'e, and I speaking for Waihe'e. On your Water Use Development Plan, again, where's the public trust. If the County and the State cannot prove their direct connection to the resource, how can you call it a public trust. According to the legal definition, a public trust is owned by the government of their citizens. Where is it? I want to see the palapala. To assume that you have such thing, because you're a governing body, doesn't make it so. I as kuleana get. I get palapala. My land titles. My



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connection to this property. To my kupuna. To my wahipana. Yeah. To my mauna. My connection, my physical connection. My wife is also kuleana from Waiehu. So, we get connections in these areas. And I already went through all your guys meetings, and I keep telling the same thing, but they never, ever come to talk to us on the level that is proper. We is kuleana. Our rights supersede anybody else's rights, yeah, that's one vested right, and yet, we on Appendix 10? How the heck do we belong in 10? Somewhere mist . . . in the middle of all of that. How do we stay in there? We should be the first one. I asked Eva when they came to talk to the Aha Moku, because Kyle brought us there, and I asked him the simple question, what's a stakeholder? What's the definition of a stakeholder? 'Cause they called a stakeholder's meeting prior to the Aha Moku being invited, and I asked her that question, and she said, oh no, we do not have stakeholders, and I told 'em, Kyle said he was called 'cause, Kyle Nakanelua, who is actually our island rep for the Aha Moku, stated he was called to that stakeholder's meeting, but she couldn't give me one definition. How come kuleana, all the kuleanas [sic], all the kuleana, whether the thing running to their home or not, kuleana is kuleana. All the kuleanas [sic] supposed to be called, okay, all of 'em, all the people supposed to be called. Not just one, and they speaking. So, the Hui doesn't speak for me on that either, but on this Water Use, I been against it because they don't talk to us, they talk at us. And they suppose things that they shouldn't do because they think they can, because they the County. I find up here Wailuku Water Company all the time. One year they went shut my water off. I not one kuleana user, I'm a possessor, because this water is the only water get to my house. So when they went shut 'em off, they went shut my house down. I called them, I complained. They came here. They went service me with two brand new tanks and the piping, because they know they obligated to me. So, the County is obligated also to my concerns for what's happening to us. I'm not a user, I'm a stake . . . want to call it stakeholder . . . kuleana. I am kuleana. Vested. And then I guess for the purchase, for your AP-1(2), a'ole. That land that these guys claiming to use as their transference, where the records of this land? You get Claus Spreckels, I mean, yeah, Spreckels Ditch, how did Wailuku Water Company come into possession of that? According to the history, A&B threatened Claus Spreckels, and he left for his life. According to law, all those lands, because there was no heir, nobody here, and no transferring, go back to the kingdom. So, how is Wailuku Water Company claiming that? See all the research not being done on these type of things. The research on the history. How did kuleana lands involve? I know we get one agreement, 'cause my mother told me about the agreement over here with Wailuku Water Company, ah Wailuku Plantation I should say, yeah, so we . . . I know the situation that belongs over here. And then, I going have one foreign entity coming in here, and then trying to change and tell me what I can have. Even on top the State's Water Permit, it states, me not signing that permit doesn't interfere with any of my rights because, again, it's a vested right, it's a kuleana right, and I am that kuleana and I am recognized as kuleana by the State for water. And the other thing, they took over supposedly to protect this area. Any of you know that Wailuku Water Company went up there and redirected the stream? They took their machines in there, the area, if you know, where the swinging bridges are, that meet. They took their machine and they dug into that bank to redirect the water from its original pact. They . . . and when they did that, they took out two of my burials, where those landing stay. I get burials that was on top of that bank, but nobody was there. They went lock everybody out. They went up there within the last four years

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and they went dredge that and they went . . . they channeled it, change the channel. And they also using herbicides to control the weeds along the auwai. I get pictures. I get pictures of the diversion and the destruction of where those two bridges. 'Cause those bridges are gone, you cannot get up to the upper section. So, there's a lot of things that I'm supposed to trust the County and State to take care of, and these guys do this kind of stuff. Mahalo.

CHAIR SINENCI: Ae, pololei, mahalo, Mr. Kamaunu. Members, any questions for the testifier? We have a question from Mr. Molina.

COUNCILMEMBER MOLINA: Yeah, thank you very much, Mr. Chair. Aloha, Mr. Kamaunu, and sorry to hear about this unfortunate set of circumstances. How long has it been? We had, you know, the discussion way back when . . . you've had no direct involvement or you haven't been invited to share your mana'o this whole matter of kuleana?

MR. KAMAUNU: The County meetings that the public meetings we had in our area, I participated in all of those. I participated in the permit for . . . with the State Commission on Water Resource. I went to all their meetings until the end of when the permitting . . . so, I've been involved, and it . . . that's why it's very upsetting that I go to all these meetings and I'm recognized, but yet there is a decision on my behalf when I wasn't even involved with these groups and I stood up for myself, and you can see me in all the meetings 'cause I was sent letters from the State to attend those meetings, which I did, and the County when they send out the notices, Eva knows, I went to all of them. And yet to not be involved in such a decision-making, and then now it's taken away from me, I don't know how the rest of the kuleanas [sic] feel, but especially for me, 'cause it's life sustaining. Not only for the kalo, but for me. So, you know, I don't know why I'm not in this discussion or wasn't in the settlement.

COUNCILMEMBER MOLINA: Okay. Thank you for sharing, and we'll certainly ask that question as we move along in our meeting today, but thank you for your mana'o.

MR. KAMAUNU: Mahalo.

CHAIR SINENCI: Mahalo, Member Molina. Next we have a question from Member Johnson.

VICE-CHAIR JOHNSON: Aloha, Mr. Kamaunu, thank you for your testimony. I have a question for you, a clarifying question in your testimony about what former Councilmember Sol Kohalahala [sic] and you say he mentioned . . . or you said that he wrote a resolution, can you clarify on that, what was that resolution?

MR. KAMAUNU: So, we went into, I cannot remember the meeting, I believe it was a presentation that a group of mine did, and that . . . and so the resolution was talking about kuleana rights as well as the water, you know, I never know if that thing ever worked itself through, I'm not sure, but I know, participating and sitting in that meeting when he was trying to come up with some kind of resolution, whether that transpired after that, I'm not really sure.

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VICE-CHAIR JOHNSON: Okay, thank you. I'll have . . . I'll look into it, I'll have my office look into it. If you have any documents, send them my way, I'd like to learn more about it.

MR. KAMAUNU: All right.

VICE-CHAIR JOHNSON: Thank you, Chair, I have no further questions.

CHAIR SINENCI: Mahalo, Councilmember Johnson, and seeing no other questions. Mahalo, Mr. Kamaunu for your testimony this afternoon. Thank you.

MR. KAMAUNU: Aloha.

CHAIR SINENCI: Aloha. Ms. Apo Takayama.

MS. APO TAKAYAMA: Chair, the next individual signed up to testify is Clare Apana, to be followed by the individual logged in as Goodyear.

CHAIR SINENCI: Aloha, Ms. Apana.

MS. APANA: Aloha. Thank you very much for letting me testify today. I have to wholeheartedly support Mr. Kamaunu's frustration, and commend him on his perseverance. I think Nā Wai 'Ehā owes a lot to his perseverance in determining many of the kuleana rights to water, and I would hope that this Committee would be the one to clarify those rights, to clarify the relationship of the County, to clarify the relationship of kuleana owners of kuleana descendants, and of other owners who use water on the Nā Wai 'Ehā as well as . . . when they did the Nā Wai 'Ehā recently in the CWRM, I mean I was there, I didn't hear South Maui come in to ask for water, but I think they still get water and I don't know why they weren't given a restriction like the different private entities, the farmers. There seems to be no restriction on the taking of Nā Wai 'Ehā water to South Maui, and I'm asking this question, why is that? Why did they not have to come in as a specific water user because the limitless taking the water and Nā Wai 'Ehā is the first line is Ludacris, and I think everybody knows that, and I as a person who lives in Wailuku say you can take my water for any kinds of projects that you want to do in South Maui, you have to have some kind of system to determine who really needs water and what kind of development is going to be able to have that water, right, you know, when we get water restrictions, they do not in South Maui. I hope that you will at least be able to get that correctly where . . . and then as you talk about the distribution of water, ask again, where is the plan for South Maui to conserve water? In residences, in commercial areas, agricultural areas, and hotels. Where is the plan? Ceaseless taking of water without a plan to save, without a plan to limit how much is taken, is really not good. So, now I'm . . . I guess I talk on the next one, the procurement. So, I also agree with Mr. Kamaunu about the procurement. I think that there are issues that need to be clarified there and that is primarily in the ownership of land. They're very noteworthy, and well-known cases how that land, a lot of it was part of Lunalilo's estate, and that land, when his . . . was given in his will to his father for use for his lifetime when the father died, there's a famous case with Wailuku Water where their trying to take the land, and that they had an agreement with Lunalilo's father, and they, Wailuku Water,

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lost that case because they had no more right. I don't believe any of those lands are different. But that also should be cleared up and I think that you, APT Committee, that can do that. You should clear up that question of ownership especially with the Lunalilo lands. And I believe that there are some native tenant rights that should be addressed and made clear also because I may not be the same as my neighbor who's moved here two years ago. I may have more distinct rights to saying no, you can't take my water to build second and third luxury homes for people who do not live on Maui. So, thank you, that is all I want to share for today.

CHAIR SINENCI: Mahalo, Ms. Apana. Members, any questions for the testifier this afternoon. Just as a reminder, we will have a discussion on South Maui, I believe, on our August 3<sup>rd</sup> meeting. Mahalo for your testimony this afternoon. Ms. Apo Takayama, can you call the next testifier please.

MS. APO TAKAYAMA: Thank you, Chair. The next testifier is logged in as Goodyear, to be followed by the individual calling in from the number the last four digits 9596.

CHAIR SINENCI: Aloha, can you go ahead and provide your name for the record.

MS. COSTA: Can you hear me?

CHAIR SINENCI: Yes, we can hear you.

MS. COSTA: Thank you. My name is Jocelyn Costa. I'm representing myself, but I am also a representative of Hamakualoa in North Shore of Maui Aha Moku. And I wanted to testify on both the water rights as well as the acquisition or the consideration of purchase. The first thing I want to do is support Mr. Kamaunu because that is where he is from, and I was also in conversation and meetings with the Water Commissioner, and the question was asked on how they make their decisions, where does that authority come from, and he did state that they make their decisions based on Kingdom Law, the kuleana rights. And I asked him about how Mr. Kamaunu's standing is, and he said kuleana has superior rights, and I'd like to make sure we put that out there. He has a superior right. Purchasers have privileges. Purchasers have the ability to prove if they have anything, and therefore Mr. Kamaunu is not considered a user. It's a noun. He is a kuleana. And I hope that the Council will take the time to research what that means because whether or not you move forward, no matter what testimony happens, it still does not move the fact that Mr. Kamaunu is a superior right holder. I'm also attached to the United Church of Christ Hawai'i Conference, and we are going through an interesting litigation right now in the Hawai'i Island, and I just wanted to share that with you because we are entrusted with the. . .*(inaudible)*. . .water ditch. And so, we were providing residual water for the County of Hawai'i in case of drought, but they had been reserving that water, not using it, so they said that because they didn't use, you know. . .*(inaudible)*. . .didn't have to come forward. Well, litigation is going through, and now the interesting this is, the question is, are you the source of the water? And so, I put that out there to the County to think about also. I don't know how you can purchase the water because the water moves. So, you have a water here, once it leaves you, there's another water--if you can follow me--what you're purchasing is a ditch and the

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use of communal [sic] water in the ditch, but the water itself and the source of the water has to be separated from that thought. Now, as for the purchase of or the thinking of having some kind of contract or business deal with Wailuku Water Company as Ms. Apana had explained. Since 2005, through, whether you believe or not, through spirit, these things came to me. So, Wailuku, if you look at the holdings that Wailuku Water Company, which is Wailuku Agri, Wailuku Sugar, all one in the same, that's the genealogy of the holdings; whether he has more or not, I cannot say. But, what I do know is any holdings in that genealogy to Wailuku Sugar was had through Charles Kana'ina. Charles Kana'ina was Lunalilo's father. Charles Kana'ina inherited a life estate from his son, King Lunalilo. Upon his death, Wailuku Sugar took the trustees . . . well, actually took the trustees of Kana'ina to court because they were about to lose their holdings that they had purchased for \$1,500 from Kana'ina. And the court had decided to look at it because they had something tangible to look at. They found that because Kana'ina let them enjoy that holdings until his death, he had fulfilled his obligation of a life estate. And therefore, the property goes back to the trust, and that if Wailuku Sugar felt that they were cheated, then they would have to go to the Court of equity to get their money back which the court didn't feel that they would have any success. I have the certified document of the transcribed will for Lunalilo, the handwritten will for Lunalilo, the final probate for Lunalilo, the case that shows that Wailuku Sugar lost the land from Lunalilo, from his father, and I also show a case that the will was . . . had given instructions that they could sell up to \$25,000 worth of land and that was already exhausted back in 1880. So, any other purchases of Lunalilo land needed to go through the Supreme Court of the Kingdom of Hawai'i, and I have a case for that as well. There's also cases of how the plantation was to utilize the movement of water. Certain days of the week, they could use the water for their sugar cane only in the evening. Water is to be run constant during the hot days for the kuleanas [sic]. And then, at 4:00 in the afternoon, they could then put their gates down to water their sugar cane but come 4:00 in the morning, they had to let that water flow again. And it wasn't a daily thing, it was certain days. And I have cases for that as well. So, if the County would be interested, I would be more than happy to share it. Thank you.

CHAIR SINENCI: Mahalo, Ms. Costa, for your testimony this afternoon. Members, any questions for the testifier? Oh, we have a question from Chair Lee.

COUNCILMEMBER LEE: Hello. Thank you for the historical background. How did Wailuku Water Company or Wailuku Sugar Company end up in position of all the lands?

MS. COSTA: I can only speak to the lands that they purchased from Charles Kana'ina. They didn't get it directly from Lunalilo. They got it through the will of Lunalilo to his father, Charles Kana'ina. So, he sold them Wailuku Sugar property, but upon his death because it was a life estate and it stated in his will, then the land comes back to the trust of Lunalilo.

COUNCILMEMBER LEE: Right. Okay, but then how did Wailuku Sugar Company continue to occupy or use the lands?

MS. COSTA: Like everybody else who's been occupying the lands, illegally.

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COUNCILMEMBER LEE: So, even after that court case, Wailuku Sugar Company was able somehow to continue using the property, the same property?

MS. COSTA: Well, the history shows that's what has happened, but the documentation shows what was supposed to happen. We all know the history of Hawai'i. We all know how things got shifted and therefore kuleanas [sic] get deprived, kanaka get deprived of their land holdings, so, you know, that is a really good question, Councilmember . . . Chair, and I think it would behoove the County not to spend money in the direction of purchase until they spend money in the direction of research.

COUNCILMEMBER LEE: Thank you very much.

MS. COSTA: Thank you.

CHAIR SINENCI: Seeing no other questions. Mahalo, Ms. Costa, for your testimony, for joining us this afternoon. Next, testifier please.

MS. APO TAKAYAMA: Chair, the next individual is logged in with the last four digits 9596, to be followed by Hōkūao Pellegrino.

CHAIR SINENCI: 9596, go ahead and unmute yourself. Come back to 9596, and move ahead with Mr. Pellegrino.

MR. PELLEGRINO: Aloha mai kākou, Chair, County Councilmembers. O wau o Hōkūao Pellegrino. I'm the current President of Hui O Nā Wai 'Ehā. And, just again, would like to express my gratitude to all of you for just having an open and transparent discussion about a very . . . I don't know what the word, best word to describe this, you know, two decade long process . . . it could be complex, it could be convoluted, it could be a lot of different things. As you can see here, there's a lot of mana'o. And there's a lot of perspectives shared amongst kanaka, and non-kanaka, you know, all across the board whether it's in Nā Wai 'Ehā, or in other moku o Maui, and the kanaka voice is critical. It's important. And, I appreciate you folks and your willingness to listen. The process for acquisition of Nā Wai 'Ehā lands and ditch system, you know, in partnership with the County and the State, in partnership, it's complicated, and I understand, you know, working with the current land owner can make things even more complicated. And I will say, you know, as there were discussions about, you know, the voice of kuleana, I myself am a kuleana land owner, and mahi'ai, and my kupuna have been here for generations, and there are dozens and dozens of kuleana. And so, there's no one singular voice, and Hui O Nā Wai 'Ehā has made it very clear that we don't represent kuleana, but there's a lot of people that are not comfortable with this process and want to share. And I will say, though, Hui O Nā Wai 'Ehā helps advocate for those that don't know, don't understand, are uncomfortable with how to share their mana'o about this process because it changes from administration to administration, it changes from council to council, but we . . . the Hui remains committed to finding these lands to move into a public trust. And, there's a reason for that, you know, when I look back at the origins of those lands at the time of the Mahele, it wasn't just Lunalilo. Lunalilo received

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only a small portion of Nā Wai 'Ehā. Victoria Kamamalu, out in Waihe'e and Waiehu, received some of the largest portions, and you can imagine, you know, who Victoria Kamamalu was connected to and if those lands weren't acquired by Wailuku Sugar Company at one point, those lands might be owned by a Native Hawaiian organization. But, it's not. Henry Cornwell owned 20 thousand plus acres in Waikapu and received that at the time of the Mahele, and those watershed lands were at one time Wailuku Sugar, Wailuku Agribusiness, Wailuku Water Company, and now it is in private hands. And, Wailuku was Spreckels, you know, Waiehu was Lunalilo, parts of Waiehu was Alexander Burch, I mean, there was a multitude of people that received these lands at the time of the Mahele and while I don't, as a kanaka, we don't forget who were, you know, the origins of those landholder. But, here we are in 2021, and we need to make a critical decision. Do we want these lands to retain . . . be retained by Wailuku Water Company, do we want them to be acquired by another private entity that could do even worst, or do we want to take the gamble? And I will say gamble, and I . . . and you know that the Hui is, while we support this process, we are equally critical because we too are concerned and so are the constituents who are predominately kuleana in Nā Wai 'Ehā, are concerned about is the County and/or the State, the right entity to hold this land and trust. I don't know. But I will say that we support this process because it is much better than what we have seen in our 20 years of involvement and the history of what has occurred in Nā Wai 'Ehā. And so, I implore you, I encourage you to continue down this path. It's not a easy path, and as leaders, you have to make those tough decisions, but as kuleana of, you know, of Waikapu, and just speaking for myself now, know that you can lean on all of us, and while we may share different perspectives on it, I truly believe that in the end, we're all fighting for what is right and we're all fighting to protect, preserve, steward, our mauka to makai resources, and whatever role that you are in. And so, I appreciate others that have shared their mana'o, and support their mana'o, and know that there's a multitude of stakeholders that should all equally be engaged. Mahalo.

CHAIR SINENCI: Mahalo nui, Mr. Pellegrino. Members, any questions for the testifier this afternoon? Seeing none. Again, mahalo for joining us, sharing your mana'o.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, you're muted.

CHAIR SINENCI: Can we return back to number 9596. Mahalo, Mr. Pellegrino, for your testimony. Any . . . is there anyone else wishing to testify? I believe Mr. Pellegrino was the last one on the list. Okay, anybody else? Seeing none. All right, Members, seeing as there no more testifiers, without objection, I'll now close oral testimony, and accept any written testimony.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay, mahalo nui. Thank you.

**. . . END PUBLIC TESTIMONY . . .**

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**ITEM 1(3):        NĀ WAI ‘EHĀ STREAMS**

CHAIR SINENCI: Okay, Members, our first item in accordance with . . . is APT-1(3) Nā Wai ‘Ehā Streams. Members, in accordance with Rule 7(b) of the Rules of the Council, the Committee may receive and discuss matters relating to Nā Wai ‘Ehā streams. As someone who has followed this matter closely and a party to the case, Mr. Moriwake, is here today to provide a brief overview of the Nā Wai ‘Ehā decision and order as it pertains to water usage. Members, our initial plan was to hear from Mr. Moriwake today, and to hear from the Commission on Water Resource Management during our special meeting next week, however, we are currently in a period where parties to the decision and order have at least 90 days to appeal the decision. In that time, CWRM felt it was best to hold off on their briefing for now. Mr. Kimura of CWRM did inform us that the Department of Water Supply received water allocation that decision and order, and may be able to provide some information as to how it relates to the Water Use Development Plan. So, this said, I’d like to designate Mr. Moriwake, but we also have Ms. Blumenstein and Director Pearson as resource persons under Rule 18(A) of the Rules of the Council, if there are no objections, Members?

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay, mahalo. Mr. Moriwake, are you on to provide us your comments--

MR. MORIWAKE: I am.

CHAIR SINENCI: Oh, yup, we can hear and see you. Go ahead.

MR. MORIWAKE: Good afternoon, Chair Sinenci, Vice-Chair Johnson, Members of the Committee. So good to see you after . . . it’s been a long time, and by the way, I wasn’t aware that Mr. Pellegrino was going to be joining this meeting, and I believe he’s still on . . . I’m not sure if it’s protocol, but if the Committee Members are so inclined, he’s just as, if not more knowledgeable, on the details of this case from the perspective of Hui Nā Wai ‘Ehā. I think would be an excellent opportunity to hear from him in case the Members have any questions on some of these details.

CHAIR SINENCI: We have invited him to a future meeting.

MR. MORIWAKE: Okay.

CHAIR SINENCI: To provide our comments, yeah.

MR. MORIWAKE: Excellent. So, yeah, I wasn’t completely clear about, you know, the plan for this meeting, and what the Members, you know, were intending to discuss as Chair Sinenci you point that out, we’re still kind of in an early stage for processing the decision. There are several motions for a reconsideration that are pending. Potential appeals, you know, we don’t know. And so, for that reason as you mentioned, the Water Commission is not joining because I suppose they’re working on those motions for reconsideration. And so, at this stage, I didn’t prepare a presentation not knowing



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exactly the direction we were headed on this, but everyone is, I'm sure, familiar with the news reports coming in. The Maui News had a couple of really good articles that pretty accurately sum the situation up. As sort of like documentation resources, I had forwarded to the e-mail address some of the press materials, some of, you know, publicly available documents that included the statement from Hui O Nā Wai 'Ehā that was issued several days after the decision, after we finally had an opportunity to read it front to back at least on first review. And then, also, a press release issued by Earthjustice along the same time. That's pretty much like the broad overview of our take on the decision, and I'm sure, Councilmembers, you have your own takes based on what you've been hearing, and maybe reading yourselves. So, you know, if I may, I'm happy to give maybe like, you know, the couple minutes summary of where we're at. And then, you know, I think it'll be more helpful if folks have any specific questions following up, you know, I'm happy to answer what I can at this stage knowing what I know now.

CHAIR SINENCI: That sounds great, Mr. Moriwake, go ahead.

MR. MORIWAKE: Okay, great. So, as folks know, this case, at least in its modern iteration of these legal actions before the Water Commission of the State of Hawai'i . . . recognizing Nā Wai 'Ehā has a 150 plus year history of, you know, political and legal battles over this precious resource, and it's kind of ground zero for Maui water, really, you know, if you go all the way back. But, in this most modern version of these legal actions, it goes back to 2014 when the Hui O Nā Wai 'Ehā and Maui Tomorrow brought legal action before the Water Commission to restore stream flows to all four of Nā Wai 'Ehā. So, that was 17 years ago, and I believe we filed in June so, literally, 17 years ago. And, we've come a long way, and I believe this final decision from the Commission reflects that. It is the most comprehensive, top to bottom adjudication of water rights in the history of Hawai'i. All of history of Hawai'i. If we're looking at serve legal ruling of who has rights, and where does the water go, this is the biggest it's every gotten. And so, it's a testament too, I think, that the modern framework for regulating, and protecting water resources in Hawai'i that we've gotten this far, and, let me say, it's been a kākou effort. Folks like Hui O Nā Wai 'Ehā, starting with the Duey's in Iao, have been there from the beginning, and even before. And they've carried the burden all the way, all this time. And we also have the next generation taking the mantle and carrying it forward from now. And so, yeah, it's been a long time, and I think the takeaway now is that it's not over yet. And, as you've probably seen from the reports there are some questions about some basic details in the decision, and those are partially covered by the motions for reconsideration, but, you know, we have to see how it all sorts out. If I can just offer the headlines, there are three specific pending motions for reconsideration. One, the Hui and Office Hawaiian Affairs, and we've been allied with the Office of Hawaiian Affairs this entire time. They've been a critical partner in this key process. We filed a focused motion for reconsideration basically trying to correct what should be an obvious error in the Commission decision regarding the treatment of kuleana rights. First of all, the Commission for some reason decided after the fact to require all kuleana right holders to prove that there has been no extinguishment of those rights by doing an entire title search back to the Mahele, and that's just unrealistic. It would take years, if anyone could even do that. And if they even tried, thousands of dollars, and it's a non-starter. And so, we're hoping that, you know, with the clarification we provided, the Commission

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would just cease and desist on that if you will. And related to that, there was, I think, an oversight with regards to appurtenant rights recognized for Wailuku Country Estates. In that instance, that land passed through plantation hands, and the rights when the former Wailuku Sugar Company sold the lands to the developers of that subdivision, they extinguished the water rights. And, yeah, that should have basically eliminated or severed the . . . any kind of claims of appurtenant or kuleana rights for those particular lots, but for some reason the Commission recognize those rights as still valid. So, we just wanted to correct that for the record. That should be easy, but, again, that motion is pending. And then, the other two motions have to deal with some individual water users that are contesting or seeking clarification on what the Water Commission did. And that was, first of all, the King Kam golf course, MMK is the name of the company, they're requesting clarification as to the allocation that they were given. And then, Mahi Pono, the successor of the HC&S Plantation that acquired those lands, they're seeking reconsideration based on what the Commission allocated to them. You might have seen in some of the press coverage, there's a little bit of drama involved in that. First, when the decision came out, the Water Commission basically rubber stamped inflated figures that went back to HC&S's original request, and it had nothing to do with the reality right now. And, I guess, when the press statements started coming out and I called it publicly a head scratcher, then the Commission sort of on its own initiative issued an errata which is essentially supposed to be a typo correction, and they corrected the allocation to Mahi Pono to a lot less water, and Mahi Pono is challenging that right now in a motion. So, that's where we stand on, you know, at least the legal back and forth. As far as the County goes, I'll just say really quickly, I think you might have heard that the County got exactly what it asked for in terms of a water allocation, and that was a water permit for three point two million gallons a day from Wailuku river. No one contested that, in fact, the Hui supported it, you know, going back years. And so, we're glad we resolved that, and that should at least open the way for the County to be able to use that water for, you know, municipal purposes to supply the needs of the County of Maui. I'll leave it at that, and there's some other high-level concerns, but if anyone has any questions at this point in terms of the current status, I'm happy to answer. Thank you.

CHAIR SINENCI: Mahalo, Mr. Moriwake. Yes, we have a question from Chair Lee. Members, maybe we'll do a two minute round for now, and then if there's a need to do a second round, we'll go ahead and do a second round. Chair Lee.

COUNCILMEMBER LEE: Thank you, Chair. Hi, Isaac.

MR. MORIWAKE: Hello.

COUNCILMEMBER LEE: On your first point, you mentioned something about the Hui and OHA are filing some kind of focused motion for reconsideration regarding the treatment of kuleana rights?

MR. MORIWAKE: Exactly.

COUNCILMEMBER LEE: Is that what I heard?

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MR. MORIWAKE: Yes.

COUNCILMEMBER LEE: And it has something to do with the requirement of a title search back to the Mahele if someone who is . . . who has kuleana rights wants to move forward with that?

MR. MORIWAKE: Right.

COUNCILMEMBER LEE: So, why would you want to sort of prevent that, preclude that?

MR. MORIWAKE: Well no, our point is that the many kuleana right holders who have participated in these proceedings and had waited for their rights to finally be recognized, and I would emphasize this is the first time in history . . . the history of the Commission, history of the Water Code of the State that these kuleana rights have finally been legally recognized, formally, in this decision. So, that's a good thing but the curveball that the Water Commission threw at us was that, but you're not there yet, we're going to move the goal post further a little bit more and require you before we really, really recognize your rights to do a full title search, and that's just wrong.

COUNCILMEMBER LEE: Okay, so, but Isaac, you're not representing the kuleana owners, right?

MR. MORIWAKE: No, we're not representing the kuleana owners, but at a high policy level, we are definitely supporting, you know, their cause, and supporting the policy interest in finally getting these rights recognized, and stop hassling the kuleanas [sic].

COUNCILMEMBER LEE: Okay, frankly, do they have a chance to have a say and be recognized?

MR. MORIWAKE: The kuleana land owners who have participated in this process, have already been recognized. And so, that's a unambiguous positive in this final decision. Not only have their rights finally been recognized, subject to this last issue that we're trying to resolve about hassling them for a title search back to the Mahele, but their rights have been recognized. And then also, clearly in the decision, the Water Commission prioritizes these kuleana rights as number one. So, at the top of the pyramid of priorities. And so, yeah, I wanted to make clear as far as positives go, and, you know, this is the first big decision to bring everything together in an adjudication under the Modern Regulatory Framework, this is the first time that such rights have been recognized and begin given the top priority as they should be.

COUNCILMEMBER LEE: Okay. Thank you, and my time is up. Thank you, Isaac. Thank you, Chair.

CHAIR SINENCI: Okay, mahalo . . . Mahalo, Chair Lee. And, Members, we . . . I believe we also have Eva and Director Pearson available should you have any questions for them. Any other questions for Mr. Moriwake? Okay, go ahead, Member Rawlins-Fernandez, then Member Molina.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. And mahalo, Mr. Moriwake, for serving as a resource for us today. My question is regarding enforcement, and this has been an issue, longstanding issue as you know, of IIFS and IFS now that they've, CWRM, has made determinations on more IFS instreams. In your opinion or whatever mana'o you can share with us, what would it take to ensure enforcement of the CWRM set IFS?

MR. MORIWAKE: It comes down to Commission doing its job, and yes, this has been a longstanding problem. I believe Jeff Pearson is on this call, and the problems date back to his time as well and even before, and yes I think we see in the final decision another positive in that the Commission has put in a framework for, first of all, the diverters have to put in the equipment to monitor the streamflows', monitor exactly what they're taking and where. And then, setting up a system where unambiguously if you don't comply with, you know, the permit amounts what you're limited to. Also, the requirements for instream flows, the Commission is making clear that it's going to enforce. They say that in this decision. And so, it's been a process, and it's been very frustrating as you know, Councilmember, but the Commission made clear that it heard these complaints during this proceeding and they're setting up there system to follow up on that next necessary step of implementation enforcement monitoring what have you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for your response, Mr. Moriwake. As far as the equipment needed to monitor the stream levels, do you know if they specifically asked for the more efficient types of monitoring or if it kind of left the discretion up to the entities that are monitoring the IFS . . . the stream? So, you know, from what I understand, I guess the electric like laser type of measurement has been on the move.

MR. MORIWAKE: Yes, thank you for that question. Maybe, let's see, well I'm not sure if Mr. Pellegrino's in the position to step in here too because he's studied this specific issue in particular, but I'm flipping through the decision right now and I'm not sure if the decision got that detail about the specific kind of equipment required, but it certainly imposed all kinds of requirements on Wailuku Water Company in particular because it's its ditch system. In terms of the constant auditing that they have to do, the reports that they have to submit, making sure they minimize losses, and then ensuring that they deliver a required amount of water to every kuleana auwai. And then also installed . . . installings [sic], it says Commission Staff approved water meters and what have you. So, yeah, there's requirements, and I'm not sure if they go to that level of technical detail though.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Moriwake. Yeah, 'cause I remember Nā Wai 'Ehā, the Wailuku Water Company put in their first attempt at monitoring the stream and it was a joke.

MR. MORIWAKE: Right.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, I see in the chat that Mr. Pellegrino would like to respond to that question. I did hear the timer. So either I can . . . on the second

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round I can ask Mr. Pellegrino, or if another Member would like to ask him to expound after me.

CHAIR SINENCI: I know that they'll . . . there's not--

COUNCILMEMBER RAWLINS-FERNANDEZ: . . . *(inaudible)*. . .

CHAIR SINENCI: We did not designate Mr. Pellegrino as a resource, but I'm sure he can share it in the eComments. Can he still go ahead and share in the eComments and we can access his answer in eComments? Is that right Mr. Apo Takayama? Can he still do that?

MS. APO TAKAYAMA: Yes, Chair, you can either designate him as a resource in this meeting or he can provide it . . . written testimony's still open.

CHAIR SINENCI: Okay, we'll come around or if anybody else has a question for Mr. Pellegrino, we can designate him.

MR. MORIWAKE: Thank you for clarifying that protocol. I just note that in the written comments, yes, Mr. Pellegrino has clarified that Waikapu Stream has a real-time gauge. By the way that wasn't installed by Wailuku Water Company, that was installed by the Water Commission. And then also Wailuku has several real-time gauges. Now, it's clear that as the diverter and now we're in a water permitting regime, the diverter's have the responsibility at least to fund the equipment, if not to install it themselves, but recognizing sort of the trust issue that, yeah, especially in Nā Wai 'Ehā, but, you know, elsewhere as well, the Water Commission has been the one making sure that these gauges are accurate and downloading the data. So, we have that accountability aspect, you know, we take care of that.

CHAIR SINENCI: Okay. Mahalo for that. Next we had Member Molina.

COUNCILMEMBER MOLINA: Yes, thank you very much, Mr. Chairman, and good afternoon Mr. Moriwake. I'm going to ask maybe I guess a two part question in one in my two minutes. You heard the concerns expressed to the Committee by Mr. Kamaunu related to, I guess, would categorize it as sort of being left out of the conversation, wondering if you can comment on that? And also, if the County proceeds towards obtaining this system, what in your opinion should the County prioritize the use of this water for?

MR. MORIWAKE: Thank you, Mr. Molina, Member Molina. Just wanted to make sure I have both of those. Okay, so number one with regards to the concerns, yes, we hear those concerns and the bottom line is whether or not kuleana land owners, any particular individual or ohana participated in this round of proceedings and had their rights recognized, their rights don't go away. As Mr. Kamaunu made clear, their rights are vested and nothing that the State can do, you know, can eliminate those rights. So, he's safe in that regard. Now, this process has all been going on for a long time, and there were people that decided to participate and go through the process to get their rights recognized. And mind you, they went through a long process, and it was a lot of

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headaches, and it's not over yet. But, hopefully, we're almost there and we're seeing the light at the end of the tunnel. And there were other kuleana right holders including Mr. Kamaunu, that opted not to participate in this particular process at this time. And that was fine, and we had conversations, and it was made clear at that time as well that your rights are vested, they don't go away just because it's not recognized in this round by the State Water Commission. And so, as far as the Hui goes, as far as Earthjustice goes, including Office of Hawaiian Affairs as a close ally in the entire process, I can say with confidence that we did the maximum community outreach as possible to make sure no one fell through the cracks, you know, that wanted to participate, and were able to participate in this process. We had Professor Sproat from the UH having generations of Law students helping out these folks, to fill out their forms, provide testimony. And so, everyone, you know, that we could bring aboard, we did, and they went through the process. I give them all kinds of credit for them enduring this long, and as far as folks that had made a decision, you know, not to go forward at this time, totally respect that, and there will be other opportunities should they choose that they, you know, want to go through that process and have their rights respected. I'm sorry I took that long to answer question number one, I'm happy to answer question number two.

COUNCILMEMBER MOLINA: Okay, Mr. Chair, if you will allow it or otherwise I can ask the next Member to ask that same question for me?

CHAIR SINENCI: Okay, yeah, we can--

COUNCILMEMBER MOLINA: Whatever your preference, Chair.

CHAIR SINENCI: We can come back to you, Mr. Molina. We have Member Paltin, and then we can come back for your second question.

COUNCILMEMBER MOLINA: Okay.

MR. MORIWAKE: But, thank you, Member Molina, for asking that question because it's really important, right? We all saw what happened in the Mahele, and as far as Earthjustice, the Hui was concerned, that was never going to happen again, you know, not under our watch, and we did everything we could to make sure it didn't. And, you know, if anyone didn't participate in this process, they still have their rights. That's not going away.

CHAIR SINENCI: Okay, thank you. Member Paltin. Two minutes.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Moriwake. My question also goes to enforcement in the previous question. I was wondering if any timeframe was given for the enforcement? And any like the installation of gauges and what not? And if there were consequences for non-compliance? Because, you know, in not getting the water, there's definitely consequences for those that need it, in that, you know, their crops do not survive, and those types of consequences, but if there's non-compliance on the diverter's side, what is the consequences, and what is the timeframe? Sorry, I didn't read the full 433 pages that you submitted.

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MR. MORIWAKE: Yeah, I don't suggest that you actually read all those pages. I'm not sure if you gain anything by the page on this one. But, yes, timeframes, it's immediate, you know, effective now. And so, you know, whether that's actually going to happen is the big question that even Councilmember Rawlins-Fernandez asked. As far as consequences, again, this order is making additional steps, taking additional steps forward. They made clear that there will be consequences. The Commission will follow up, the Staff has ability to monitor, go on to land, checkout what's going on, there will be a quick investigation process, and the Commission has the ability to impose penalties. They made that clear, I think for the first time in this context, that they're, you know, they have the authority, and they're going to exercise it in this, in this situation.

COUNCILMEMBER PALTIN: So, if a regular person has complaints like Waikapu not getting their streamflow or what not? What would you suggest to them to do?

MR. MORIWAKE: So, given that this orders binding and effective now, and for example in the Waikapu situation, it specifies an amount of water in million gallons a day that has to be delivered to the kuleana Hawai'i now, it would be a matter of going to the Commission and asking them to enforce the order because that . . . you mentioned the Waikapu's situation, it's, you know, it's been going on for a while, still not resolved, but, yeah, it's a matter of the Water Commission enforcing its own decision and order. I believe the Hui is working on following up on that specific issue right now if they haven't already.

COUNCILMEMBER PALTIN: Thank you. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member Paltin. Did Member King or Member Johnson have any questions for our resource? Member King.

COUNCILMEMBER KING: Yeah, mine was kind of in line with Member Molina's second question, so I'll ask his second question for him. And, basically, it was just, you know, should we get the purchase of or should be go through with the purchase of the Wailuku Water Company which it sounds like the Hui is advocating for, are there any thoughts by yourself or the Hui on how we should prioritize use of that water like not geographically, but categorically like, you know, agriculture versus and local agriculture could be, you know, taro farming things like that?

MR. MORIWAKE: Right. So, with regards to priorities, the Commission has already set forth a ranking of priorities in its decision. It's on page 291 of the document. This is the page number on the bottom of the pages, and not the pdf page. But, yeah, so the Commission has resolved that at this point. And they made clear Priority 1 is appurtenant rights or kuleana rights, traditional and customary Native Hawaiian rights, domestic uses . . . individual domestic uses of the general public who are using that water sort of in place, you know, when their living by the river or by a spring, for example, Department of Hawaiian Homelands, and Maui Department of Water Supply water users . . . users . . . uses, sorry. So, that's Priority 1, and they're all ranked first, and as between those categories, there's no priorities, and, you know, you have to basically share and ration essentially if it comes to competition between those highest ranking

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users. But, that's what I mentioned before in terms of, for the first time in history, at the top of the list, kuleana rights, at the top of the list, traditional and customary Native Hawaiian rights.

COUNCILMEMBER KING: Okay, is that--

MR. MORIWAKE: Even if the County--

COUNCILMEMBER KING: No, I just wanted to say, and the Hui agrees with those . . . that prioritization?

MR. MORIWAKE: Yes, and, you know, were the County to acquire the system, the County wouldn't be in a position to reorder or reprioritize that. That's the kuleana of the Water Commission. And then, Priority 2 is existing, other existing uses. Going down from there Priority 3: Diversified agriculture, commercial lo'i kalo. And then, Priority 4: New uses. And so, that's, you know, the ranking and how the County work to become sort of the public steward of this infrastructure, it would have to respect those categories. But, as you heard, the County own municipal uses is right up there in category one.

COUNCILMEMBER KING: Okay. And, there's no appeal of those prioritizations, those priorities?

MR. MORIWAKE: Not yet, but as you know the appeal period is still pending.

COUNCILMEMBER KING: All right, thank you. Thank you very much. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member King. Committee Vice-Chair Johnson, you had a question.

VICE-CHAIR JOHNSON: Thank you, Chair. Just a follow up question off of Councilmember Kelly King's line of question. Thank you, Mr. Moriwake, for coming out. But, in regards to the priorities, you know, I'm on page 291, where would a hotel be in that priority list?

MR. MORIWAKE: Priority 4.

VICE-CHAIR JOHNSON: Okay. That's all I have. Thank you so much. I have no further questions.

CHAIR SINENCI: Mahalo, Committee Vice-Chair Johnson. Mr. Moriwake, I have a quick questions. The hearings officer recommended to define kuleana uses and we were wondering where can we read the hearings officer's recommendations in the documents?

MR. MORIWAKE: I'm sorry, if you could repeat your question. You're asking about the Hearings Officer's recommendations?

CHAIR SINENCI: Yeah, where could we find that in the document?



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MR. MORIWAKE: That is not in this document. That was the previous recommended or proposed decision that was issued, I believe in November of 2018 or 17. It's been so long, I lose track of the dates. But, what the document we're looking at now is the final decision by the entire Water Commission. The previous proposed or recommended decision was by the Hearings Officer who conducted the contested case hearing process. But, that's now been superseded by this final decision.

CHAIR SINENCI: Okay. Mahalo, Mr. Moriwake. And my second question was for Eva. Mr. Kimura said that the Department of Water Supply received in the decision and order some additional water allocation, can you speak—

MR. MORIWAKE: They received their amount they requested which was a total of 3.2 million gallons a day.

CHAIR SINENCI: . . .*(inaudible)*. . .

MS. BLUMENSTEIN: Did you want me to respond, Mr. Chair?

CHAIR SINENCI: Yeah, go ahead. Go ahead, Eva.

MS. BLUMENSTEIN: Thank you. Yeah, so, the decision order as of this year is consistent with the Hearings Commissioner's November 2017 recommendation. So, that there would be water use permits issued for the existing use for the Department, 1.784 mgd, and requested new use for 1.416. So, that's a total of 3.2.

CHAIR SINENCI: Was that from the streams, or was that . . . was there an increase in Well #7?

MS. BLUMENSTEIN: So, that the Water Use Permit is all from Wailuku River, the full 3.2.

CHAIR SINENCI: Okay, and not . . . I thought the errata said something about an increase amount of Well #7.

MR. MORIWAKE: If I could address that?

MS. BLUMENSTEIN: . . .*(inaudible)*. . .

MR. MORIWAKE: Yeah.

CHAIR SINENCI: Mr. Moriwake. Okay.

MR. MORIWAKE: The errata had to do with Mahi Pono's proposed uses.

CHAIR SINENCI: Okay.

MR. MORIWAKE: And, yeah, so the 3.2 million gallons a day, as to the County's permit, that's what the Water Commission allocated and no one is challenging that. Frankly, no one

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challenged that during this entire process. With regards to the errata and the use of Well 7, yeah that well is on Mahi Pono's property, and it's one of the largest brackish ag wells in the entire state, and there's a question of whether that's a practical alternative for Mahi Pono instead of, you know, diverting Nā Wai 'Ehā rivers and streams.

CHAIR SINENCI: Okay. Mahalo, Mr. Moriwake. Members, any need to ask any more questions of our resource person today? I know we've got a couple things to move on to. Okay, seeing none with that, we wanted to mahalo, Mr. Moriwake, for coming on and answering our questions. We appreciate it and we'll keep in touch to see how this moves forward, yeah. Again, mahalo, for joining us today.

MR. MORIWAKE: Mahalo. Hopefully that was a little bit helpful. But, yes, stay tuned because, again, the top headline we've come a long way, but not pau yet.

CHAIR SINENCI: Okay. Thank you. Aloha.

MR. MORIWAKE: Aloha.

CHAIR SINENCI: Ms. Apo Takayama, I know that we had Mr. Baz, and he's getting ready to do his 4:00, the Mayor's address. So, is Mr. Baz available at this time? If so, we were going to take things out of order. Members, if there are no objections?

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Okay, thank you. Okay, as we . . . you know what, we've reached, almost reached our mid-meeting break, so why don't we take our break now. It's 3:03, and we'll come . . . take a ten minute break and we'll return at 3:13. APT Committee is now in recess. . . . *(gavel)* . . .

**RECESS:** 3:03 p.m.

**RECONVENE:** 3:13 p.m.

CHAIR SINENCI: . . . *(gavel)* . . . Aloha kākou, and welcome back to the APT Committee of Tuesday, July 20, 2021. It is 3:13 right on the dot. And, Members, I forgot to defer APT item 1(3) before the recess, so without objections, I'll go ahead and do that now.

**COUNCILMEMBERS VOICED NO OBJECTIONS**

**ACTION: DEFER pending further discussion.**

**ITEM 1(2): ACQUISITION OF WAILUKU WATER COMPANY'S SYSTEM**

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CHAIR SINENCI: Mahalo. And then, we're going to go ahead to APT-1(2) Acquisition of the Wailuku Water Company's System. As you know, there's been ongoing talks between the Administration and Wailuku Water Company over the purchase of the water system. Past Councils have appropriated funding for this purchase but those funds have lapsed. Members, we approved the CIP proposal in Fiscal Year 2022, but we anticipate an updated budget request should we move forward with the purchase and after receiving updated costs. So, Members, today we have . . . Director Baz is here with us today to provide a brief update on the Wailuku Water Company System. And, I'd like to designate Director Baz as a resource person under Rule 18(A) of the Rules of the Council if there are no objections.

COUNCILMEMBERS: No Objections.

CHAIR SINENCI: Okay. And I believe we still have Ms. Blumenstein and Director Pearson, if he's on, as additional resources as well. Director Baz.

MR. BAZ: Good afternoon, Chair, Members. This call is as a multitasking, so my videos not going to be on, I'm on my phone.

CHAIR SINENCI: Okay. Go ahead, Mr. Baz.

MR. BAZ: Anyway, yeah, no, thank you, Chair, for bringing us here and having this item up for an update. I don't know how you wanted to go about this. I did. . . *(inaudible)*. . . some questions from your Staff, this morning's e-mail, which I can go over briefly or if you want to go through them and take the question and answer. But as a general update, the Wailuku Water Company acquisition is moving forward through process that we have contracted with two different contracts to evaluate the system as a water system, it's asset, the, you know, the condition of the intake, and the system itself. And then, also as a financial component of being a water delivery company. And so those have been executed, we haven't given the notice to proceed yet. Still working with Avery, Wailuku Water Company, as far as what information is going to be available to them to gather so that we can get a good report back. Then, you know, that will be information that we can utilize to not only acquire the system itself, but also as the Water Department will be managing it in the future, will give us good information as far as the process of, you know, what's going to be criteria and options available for us to maintain and operate this water system which we haven't done anything like that in the past. The surface water systems that we have generally the intakes are provided by others and we take the raw water through sometimes County delivery systems, and sometimes through non-County delivery systems, and process it. And we're generally good at from the processing point, and delivery to customers. But this will be a new process for us so we want to make sure that we're doing it correctly, getting enough good information about the system itself, and it's condition to be able to understand, yeah, for one, again, on how to operate it, and what the needed assessment and investments we're going to need, but also if we can determine a value from that. It's not going to be an appraisal. There's no way that we feel that an appraisal like you would normally appraise a business or a house purchase, but this would be comparable and be able to give us

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good information as far as the value. The other component which I always stress to the Council as we acquire property is, you know, the negotiation between the seller and the buyer have to come to an agreement, right? So, really there's the components of where we're at with that purchase right now. And, so, Chair, if you'd like to go through those questions, I can read the question and as far as I know what responses and answers might be available for those.

CHAIR SINENCI: Sure thing Director Baz. We sent him a few questions, so, yeah, if you want to go ahead and do that. And then, we'll go to the Members afterwards.

MR. BAZ: Okay. So, first question is does the CWRM decision order affect the County's water usage in ways beyond additional water allowed for domestic use? And actually that question and questions, a good resource for the Committee is actually Caleb Rowe, from Corporation Counsel. He was the one who was involved in that, and I would encourage you, maybe if you want to continue discussion on decision and order, at a later date having him be able to present, basically, the County's interaction with CWRM and that decision order. He has really good information that will be useful to the Committee. How does the Mayor's policy of allocating extra water to affordable housing be codified? So, we are working on amending the rules of the water . . . groundwater supply Administrative Rules so that we can make it basically a process. For right now, it is a Mayor's directive, and that 1.4 . . . excess of 1.4 million gallons per day available for the Central Maui System as it gets allocated in the future will be allocated to affordable housing projects and we'll keep a track record of that. But again, we do plan on amending the Administrative Rules to codify that process. Does the County intend to charge kuleana users? That is really up to the County Council as it sets rates and fees. We don't believe that we will, and not even sure that we can. But, as we develop the rates and fees for the raw water that's coming out of the Wailuku Water System, then we'll have to develop that process, and, you know, figure out how we're going to be able to handle that. Is the County looking at hydroelectric energy as a revenue source? Hydroelectric energy is a good development of energy if we can develop it and sell it, maybe, but no, not specifically. If we could utilize the power generator from hydroelectric to power some of the County's, the Iao treatment plant or some of the other things, that might be beneficial as well, but no, not specifically a revenue source at this point. I'll discuss that with our energy staff to see what the capabilities are of that. Please provide the scope and timeline of the business model study? I will provide to you that in writing. So, the rest of the answer will generate a response in writing, get that to you. Will the plan present revenue generating ideas? Will it look at operational models including a water authority? That is not the current scope of that plan. It's more just a current assessment of the system, well financially and operationally. Will bonds be used to acquire the system and make necessary infrastructure improvements? The two million dollars that has been allocated in FY22, I believe, is bond funds. But, that . . . yes, so, yes, most likely. And depending on the size of the improvement repairs that are necessary, we would evaluate whether bonds or SRF Loans, or if there's cash available, cash. Would any of the improvements qualify for Federal funding under the new infrastructure plan? Possibly. We'd have to evaluate that. Since we don't own the system yet, you know, it's hard for us to be able to understand that. We have reached out to our Congressional delegation as well as other Federal sources, maybe not

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necessarily the part of the ARPA, but there are, or this new infrastructure that their trying to work on, but there are possibly capabilities of getting Federal assistance for this development. Where is the Department of Water Supply in processing a determination of the operational needs of the system? Again, you know, that's a study and then we'll take a look at that as well. And, you know, the Mayor's desire is to possibly contract with either Wailuku Water Company to maintain it for a certain period of time until we can understand best how to continue maintenance of it, or, you know, there may be some former employees' group, or something like that. We haven't quite defined that yet. And, I didn't get a deadline of when the reports are due. I'll have to get back to you on that. Chair, that was initially the questions that you had proposed.

CHAIR SINENCI: Mahalo, Director Baz. I'll open it up to the Members for their line of questioning. We'll start with Council Vice-Chair Johnson. Then go down the line for two-minute rounds. Go ahead, Member Johnson.

VICE-CHAIR JOHNSON: Thank you, Chair. Good afternoon, Mr. Baz, I appreciate you joining us. I know your time is tight so I'll be quick. You mentioned that you, your guys are looking at the condition of the uptake [sic], so do you have a update on the condition of the uptake [sic]?

MR. BAZ: Okay, are you talking about the intake in Wailuku River, no.

VICE-CHAIR JOHNSON: Okay, so no update on that. And then, the Mayor directive 1.4 million dollars [sic] . . . or 1.4 million gallons they allocated to affordable housing, that's is . . . is that Central Maui only, yes, is that my understanding?

MR. BAZ: Yes, this is additional water into the Central Maui System which serves all the way from basically Pā'ia, Spreckelsville area up through, you know, Wailuku and into . . . all the way out to Kihei, Makena.

VICE-CHAIR JOHNSON: Okay. Great. And is that number moveable at all?

MR. BAZ: No, that's the additional allocation provided by the decision and order that was not previously calculated into the Central Maui System's water capacity. So, that's really what we've been able to allocate. It's not additional sources. Un . . . you know, not counted before as part of the system's capacity.

VICE-CHAIR JOHNSON: Okay, so, what I'm hearing is that it probably won't go higher but it will also not go lower?

MR. BAZ: Yeah, no, the Mayor has set that at the 1.4 million gallons.

VICE-CHAIR JOHNSON: Okay.

MR. BAZ: Really, that's where we're looking at. That . . . if you look at single-family homes, that could be a lot, 2,300 single family homes, maybe a little bit more. If you look at multi-family homes, could, you know, be significantly more than that.

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VICE-CHAIR JOHNSON: Okay.

MR. BAZ: 3,000, 3,500. Water saving measures could increase that as well.

VICE-CHAIR JOHNSON: Okay. Thank you so much, Mr. Baz, for that clarification and making it in numbers that we understand. 2,300 homes, single-family homes. Thank you. Thank you, Chair, I have no further questions.

CHAIR SINENCI: Mahalo, Committee Vice-Chair Johnson. Next, we have Member King.

COUNCILMEMBER KING: Thank you, Chair. Aloha, Sandy, and I can hear you, but I don't see you on the screen, so I'm not sure if your video unmuted. But, what I wanted to ask you was have you folks looked at any and addressed any of the Board of Water Supply recommendations that are dated February 18, 2021? Says that they recommend that Maui County authorize a purchase of Wailuku Water Company under the following conditions, and there are four bullet points starting with an appraisal on engineering study, so that you could . . . so you could get an estimate or cost of repair and maintenance. Then, a revenue model, or user fees developed to take into consideration community needs. The fourth . . . third one is a plan for operations and stewardship of this system. And the fourth one is an offer for purchase based on the foregoing information. So, are you looking at those recommendations and have you addressed any of them?

MR. BAZ: Right. Yes, those are items that are included in the studies that we're procuring. The only one that's really not going to be presented as a part of those is the rate study and evaluation.

COUNCILMEMBER KING: Okay, but you said you weren't doing an appraisal, and they requested an MIA [sic] Appraisal and Engineering Study. Are you doing that?

MR. BAZ: No, we're not. Like I mentioned, you're not going to get . . . we did look at that different . . . that type of appraisal, and what that acronym means, I forget what it is right now. But, really is nothing . . . it's going to be very costly and not significantly beneficial to the decision making on the acquisition itself.

COUNCILMEMBER KING: So, you don't think that the condition, or the amount of money we have to spend on it to get it up to speed to repair and maintain it would have bearing on negotiation?

MR. BAZ: That we're getting. Yeah—oh, excuse me, Chair, sorry—yeah, that we're getting as a part of the study, but that specific type of appraisal we're not, we're not doing.

COUNCILMEMBER KING: Okay. So, you are doing the engineering study?

MR. BAZ: The evaluation of the condition of assets is something we're definitely doing.

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COUNCILMEMBER KING: Okay. And in the plan for operations and stewardship, are you considering what the ESG group is working on as a potential community-owned company?

MR. BAZ: Yeah, possibly, but, it's a . . . yeah, basically, a financing system more than . . . that we haven't really discussed the possibility of a creation of a community group like Kaua'i has for management of it. They have a cooperative for their Kaua'i . . . that Kaua'i system that was acquired, and we really, you know, at this point it would be under Department of Water Supply. If the Council desires us to look more closely at that, we can, and start that evaluation process, but that would be something different that, you know, the County could acquire the system, and then, either lease it to a cooperative or grant it to that cooperative to maintain.

COUNCILMEMBER KING: Okay. Okay, well, it's good to know that you're open to that. All right, thank you. Thank you, Chair.

CHAIR SINENCI: Mahalo.

MR. BAZ: Yeah, there's some considerations with that. Sorry, Chair, real quick. Some considerations with that though, also are that, we're a government entity so we're not subject to PUC, and that makes a pretty big difference in operations as compared to an non-profit or a private entity operationing [sic] operating, and charging fees and things like that.

CHAIR SINENCI: Mahalo for that, Director Baz.

MR. BAZ: Sure. Thank you, Chair.

CHAIR SINENCI: Next. Next, we have Chair Lee, followed by Member Molina.

COUNCILMEMBER LEE: Hi Sandy. I'm glad you're open to working with, let's say an advisory group or cooperative group, because as you know, Hōkūao has, Pellegrino, has mentioned on several occasions that he knows of people who are very familiar with this system and could, you know, hit the ground running with maintenance and repairs and et cetera. So, I'm hoping that you keep that in mind, so that you can work with either the Hui and/ or kuleana owners, and/or general community people, so that we can move this project forward because this is one of the slowest projects I've ever come across, unfortunately. Thank you.

CHAIR SINENCI: Okay. Mahalo, Chair Lee. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. Good afternoon, Mr. Baz. And I looked at that article with regards to the decision made by the State Water Commission, and you mentioned that because decision has been made, it doesn't necessarily speed up the process for a potential acquisition. So, I appreciate you updating us on that. With regards to your comments about amending the Admin Rules for the Board of Water Supply. So, the processes I understand it is the Mayor or the Water Director will take

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these proposed amendments or codification to the Board of Water Supply, so they.. ultimately, it will rest with them, or is this something that's discretionary where the Water Director can just, you know, make these rules, Admin Rules, codified? Can I get a clarification on that? Just trying to get myself up to speed on that.

MR. BAZ: Sure. Yeah, so, HRS-91 sets the parameters for Administrative Rules. It includes, you know, the development drafting of it. Then, a public hearing. And then, the . . . once a public hearing is done, and then the actual adoption of the Administrative Rules would be signed off by the Mayor. We could include the Board of Water Supply, but it's not . . . this isn't the Board of Water Supply's rules, this is Administrative Rule, Department of Water Supply.

COUNCILMEMBER MOLINA: Okay. So, yeah, so they have no say, but then the public will be given . . . there will be a public hearing so they can bring in the public.

MR. BAZ: Oh, definitely.

COUNCILMEMBER MOLINA: Okay.

MR. BAZ: Definitely, yeah.

COUNCILMEMBER MOLINA: All right, okay. Thank you, Mr. Baz. Thank you, Mr. Chair.

MR. BAZ: Okay, thank you.

CHAIR SINENCI: Mahalo, Member Molina. Next, we have Member Paltin, followed by our Council Vice-Chair.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Baz. Just wondering why it's been so difficult to get the information from Mr. Chumbley that . . . prior, you know.

MR. BAZ: Well, Wailuku Water Company is a privately held organization. There's no public requirements that he provide information to us. He has provided information to the PUC, and so we have accessible information. It's not maybe in all that we want, but at least it's some information. We also are requesting the . . . and he has provided us the detailed information in the past via, basically a confidentiality agreement, non-disclosure agreement, so we're going to be approaching him again with that. If, you know, if the Council desires to move forward with this, one option, and I'm not necessarily recommending it, but one option could be that the Council does provide the authorization for the County to acquire Wailuku Water Company assets, you know, and have, you know, basically a purchase and sale agreement entered into subjects to, you know, us confirming all this information prior to closing. We do this, you know, with other acquisitions. Even with Maui News right now, we haven't closed yet because we're going back and forth on certain items. So, there is that capability, if they did want to move it a little bit quicker and provide some certainty, but understanding that the information that we provide to the Council is going to be limited. So, the decision would be based on, you know, not as much information definitely as we would like, but at



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least, you know, if it's something we want to move forward with, we can move forward in that manner and they're still, you know, subject to final an . . . our agreement between, basically, then at that point the Mayor and the seller.

COUNCILMEMBER PALTIN: So, is eminent domain an option as well.

MR. BAZ: Yeah, eminent domain is an option, but It's not a quick process, and it wouldn't necessarily save us any money either, and we would have less information at that point than actually trying to work with the seller to get good information.

COUNCILMEMBER PALTIN: Okay, thank you. My time is up.

CHAIR SINENCI: Mahalo, Member Paltin. Next, we have Council Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo, Managing Director Baz. I have two questions. The first, it's regarding the 1.4 mgd for affordable housing. Would you be able to share with us whatever policy would be in place for the use of that water? Is it going to be on a first come, first serve basis? Will it be for 100 percent affordable housing only? Did you have anything that you can share at the time?

MR. BAZ: Yes, it will be for 100 percent affordable housing only. As far as first come, first serve, it's going to be basically, at this point, since it is the Mayor's directive, you know, the Mayor would be approving the project authorization to use that allocation versus the current allocation of water available. And, understand, that the current Central Maui System does have some water available for affordable housing development as is. This is, you know, additional source that we wanted to make what we set aside before it got allocated for other purposes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, great. And then my second question, I guess kind of dovetails off of what Member Paltin was asking. So, when a tenant is in someone's house, and the landlord has evicted the tenant. I believe the Sherriff comes, and removes the tenant from the house if that person isn't willingly leaving. And so, I've been thinking about this for a while, if there are unlawful waters or plantation owner's that have remained on the lands, descendants, heirs of the plantation companies, and it . . . they're basically unlawfully staying on the land, then wouldn't we just evict them, you know, not necessarily exercise eminent domain? And if we were to purchase the land, we would be unjustly enriching them for something that they stole, yeah?

MR. BAZ: Okay, that goes beyond my ability to respond. I think Corporation Counsel should probably be best to respond to that question. I will say in general evictions, there's generally a judicial order especially when there's land title discrepancies or conflict. Then, the Courts will make a judgement based on that. But, yeah, I defer to Corporation Counsel respond to that specific question. Sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Managing Director. Mahalo, Chair.

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CHAIR SINENCI: Mahalo, Council Vice-Chair. I do just have a couple questions for the Director. We had a couple testifiers today speak about title research. Is that part of the process as well? Looking at some of the title research for some of the parcels of the acquisition.

MR. BAZ: Yes, we're trying to actually get as much title searches as we can done on the acquisition of properties as well as the easements themselves.

CHAIR SINENCI: Okay, great. And then, has the State appropriated funds for their share of the purchase in their budget?

MR. BAZ: I am not confident about that. I do have a meeting with the State group towards the end of July. And so, we will have better information after that meet.

CHAIR SINENCI: Okay. Mahalo, Director Baz. I know you need to prepare for the Mayor's press release coming up at four so, if there are no other questions for Director Baz, we'll go ahead and excuse him at this time. Okay, mahalo, Director.

MR. BAZ: All right. Mahalo, Chair. Mahalo, Members.

CHAIR SINENCI: Thank you. So, Members, if there are no objections, the Chair would like to defer this item?

**COUNCILMEMBERS VOICED NO OBJECTIONS**

**ACTION: DEFER pending further discussion.**

**ITEM 57: WATER USE AND DEVELOPMENT PLAN FOR MAUI (CC 19-162)**

CHAIR SINENCI: Okay. Mahalo. Okay, so going . . . moving on to our last item, APT-57 The Water Use and Development Plan for Maui. My intention for today's meeting is to discuss the Wailuku Aquifer Sector Area of the Plan. And since this is a long-term plan, we all are aware of the different external factors that influence the Water Use Development Plan including the Nā Wai 'Ehā case and the acquisition of the Wailuku Water System. So today we wanted to discuss those areas prior to the WUDP, especially looking at some of the CWRM . . . anticipating the CWRM decisions and looking forward to the acquisition. For the Members reference, I did transmit a memo providing relevant sections of the Plan for the discussion today. It would be in Granicus under item number 88. And so, Committee Staff has made the addendum changes to the Wailuku Aquifer Sector. So, Kasie or Nicole, can we share those screens of the addendum changes that the . . . Staff has made. And there's only a few of 'em. Wanted to review them for the Members.

MS. SIEGEL: Yes, Chair, I'll get the screen ready now.

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CHAIR SINENCI: Okay, great. Thank you. I believe it was Table 14-34, and 14-35 of the memo, Members, if you want to . . . if you have it up handy. Okay, yeah. Great. Thank you. And, I don't know if . . . Eva, are you available to . . . I see Table 14-34. It looks like it was the total population base mild growth, and the total population base mid-growth. Those were some of the changes. I'll refer to Eva about the addendum changes, if you want to quickly speak to them?

MS. BLUMENSTEIN: Sure. Thank you, Chair. Table 14-34, we revised in the 20 . . . in the August 2020 Addendum because of the joint motion for withdrawal on the substitution of parties for the Surface Water Use Permit Application that revised downward. . . *(inaudible)*. . . from Mahi Pono and agriculture demand. So that addendum reflects the reduced ag demand of 5.2 mgd. So, you would see it on, I guess that's 1, 2, 3, 4<sup>th</sup> row Agriculture and Irrigation, the revised demand, 20 year demand. In year 2035 is 32.09 mgd. So that revised downward overall demand as well.

CHAIR SINENCI: Was, Eva, was that from the Nā Wai 'Ehā Surface Water Use Permits of 2019? Okay.

MS. BLUMENSTEIN: Yes, so. . . *(inaudible)*. . . yes, so the March 2019 original WUDP was based on the Hearing Officer's proposed decision order, guess that was. . . *(inaudible)*. . . proposed November 2017 order. And then, the two addenda that we did last summer, looked at issues that have occurred since 2018 on. So, therefore, we included the joint motion for withdrawal and substitution of parties that was part of the settlement with Mahi Pono, Maui Tomorrow and Hui O Nā Wai 'Ehā.

CHAIR SINENCI: Okay. Great. That was--

MS. BLUMENSTEIN: But it does--

CHAIR SINENCI: --our testifiers eluded to that, yeah, go ahead. Members, any other questions for Ms. Blumenstein? On the addendum changes, this was due to the. . . *(audio interference)*. . . Nā Wai 'Ehā. Okay. All right, thank you, Staff, for sharing that. If there are no objections. And then, Staff, can we go to ES.4 Executive Summary dot four, I believe. Can share screen on that one?

MS. SIEGEL: One moment, Chair, I'm pulling up that page.

CHAIR SINENCI: Okay, and I'll just preface the Members. So, Members, Table ES.4 was the Selected Demand Scenario, and this is just up for discussion today. Members, throughout the Executive Summary of the Wailuku Aquifer Sector, the Water Use and Development Plan list in several areas in this sector the Ko'olau District Sector for an increase water use to meet the planned population growth demands. For example, on page 19, mentions projected population base growth will require groundwater development in the Ko'olau Aquifer Sector. This is at the bottom, to . . . second to the last row. It's listed in green and we just . . . I just brought this up, Members, because at our last APT meeting, as you know, we voted to include the East Maui Consent Decree

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within the Water Use Plan and to adhere to, you know, to the details . . . the decision of the Consent Decree. So, with the additional water mentioned in the CWRM decision and order, I just wanted to address the new numbers within the WUDP plan and particularly those areas that look at Ko'olau Aquifer Sector for expanded water use. With these external variables, again, we did want to look at if this is a continued plan, now that we've got these different variables in front of us like the acquisition and the CWRM d and o in front of us. So, Eva, did you want to speak with these external variables that's this kind of . . . are we looking at the CWRM decision or the acquisition--

MS. BLUMENSTEIN: . . . *(inaudible)*. . .

CHAIR SINENCI: --or more water usage? Go ahead.

MS. BLUMENSTEIN: Yes, in terms of this . . . the Table Executive Summary 4, that summarizes, of course, the overall demand and supply in Chapter 14. So, again, the original 2019 anticipated demand and supply incorporated that 2017 recommendation decision and order. And, now with the final decision order, the CWRM confirmed the requested Water Use Permit of 3.2 mgd to supply municipal needs. So, that is reflected in Table ES.4. You can see under Year 2035 Potable surface water 3.2. So, because of us as they anticipated and hoped to have the full amount available for potable uses, this doesn't change the demand or the recommended supply strategies for the aquifer sector. It just confirms what we had in there. In terms of non-potable surface water, course we have not scrutinized the decision order, the June 28 decision and order, because there are some revisions to requested Water Use Permits for non-Department needs. So, I don't really want to say whether the 30.63 mgd by 2035 should stand or not. I'm just speaking to the potable surface water of 3.2. So, overall, the recommendation with the need for additional groundwater from outside the region, still stands because we had assumed the 3.2 mgd would be available, of course, along with the other resources from Iao, Waihe'e, conservation, recycled water, et cetera.

CHAIR SINENCI: Okay, and does . . . oh, we have a question from Chair Lee. Go ahead, Chair.

COUNCILMEMBER LEE: Did I hear you, Mr. Chair, say something about at our last meeting, we incorporated a Consent Decree for East Maui in the WUDP? Did--

CHAIR SINENCI: Yes, I think that was--

COUNCILMEMBER LEE: I thought, I thought we decided only to put it in the appendix as a reference.

CHAIR SINENCI: Oh, right. Yeah, that's what I meant, Chair.

COUNCILMEMBER LEE: Oh, oh, okay. All right. Thanks.

CHAIR SINENCI: Yeah. And then, just in some sections we had like some verbiage that was from the Consent Decree that we all voted on. Thank you for the question. Member Paltin.

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COUNCILMEMBER PALTIN: Oh, thank you, Chair. I just had like a, I guess, maybe a point of information question. Earlier, I had pulled up this document on Granicus, but now it's like not . . . saying it that's it's not available, and when I pull up the agenda, it only has the other two items in the meeting details, and I just was wondering if you knew if that was a problem specific to me or if you could access?

COUNCILMEMBER LEE: Me too, me too.

COUNCILMEMBER PALTIN: Oh, okay.

CHAIR SINENCI: Oh, you weren't, you weren't able to access the memo?

COUNCILMEMBER PALTIN: Yeah, like when I press the link in the agenda, it says not available. And then when I press the meeting details in the Granicus, it only has the other two items that we covered earlier. But, earlier when I was preparing for the meeting, I was able to like briefly look at it, but I kind of like to follow along sometimes, and I was just thinking if I'm not able to then the general public is also not able to access the document.

CHAIR SINENCI: Okay. Staff, are we able to send the memo document to the Members or back on to Granicus, Kasie?

MS. APO TAKAYAMA: Chair, we're looking into the issue now. Thank you.

CHAIR SINENCI: Okay. All right. Let me know. Okay, thanks for informing us. Okay, any other questions on this, on ES.4? Okay. All right. Moving on to, Members, Table 14-41. So, 14-41 of the Recommended Strategies for the Wailuku Aquifer Sector, it reads, to establish a diverse working group to address alternative structures for future management of the watershed lands, and sustain operations of the Wailuku Water Company ditch system, and we're just bringing up the different areas in Section 14 that speaks about the Wailuku Water Company Acquisition. So, Staff, can we share 14-41. And let me know if you guys are able to access Table 14-41?

MS. SIEGEL: Chair, did you want us . . . me to display the other document as well for the side by side, or just the table for now?

CHAIR SINENCI: Is there a . . . yeah, just the table for now. Thank you, Nicole. Okay, so, under number two strategy, to establish a diverse working group to address alternative structures for future management of the watershed lands and sustained operations of the Wailuku Water ditch system. And . . . know we have Ms. Shay Chan-Hodges on as a resource. She did provide some testimony, but if . . . Ms. Blumenstein, can you . . . did you want to provide any opening comments on this section?

MS. BLUMENSTEIN: Sure. Thank you, Chair. Yes, so, of course, this strategy was developed in 2016, and base situation back then, and the input we had from the community. So, what we heard and at the time there was a lot of outreach to community groups and we

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heard that because the traditional and customary users, they rely on the ditch system, and the management of the system, there's a potential risk that operations would cease and Wailuku Water Company couldn't run it. It wouldn't be economically viable. So, the recommendation then was, you know, to make sure that ditch operations are sustained, and to have more community based land management strategy. We wanted to make sure that all parties affected would be included and I think this was what Mr. Kaniloa Kanaumu [sic] spoke to also. So, the recommendation was to establish a working group that would include all, of course, the Hui, Maui Tomorrow, all major land owners, and Aha Moku as well. So, see I wouldn't, you know, disregard this idea or this strategy based on the study at the time, and the former administrations looking at acquiring the system back then too. But this is sort of more . . . an active working group to address structure for future management both of the land and the system. That was the fault at the time.

CHAIR SINENCI: Okay. Mahalo, Ms. Blumenstein. And, Members . . . oh, we had a question from Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair.

CHAIR SINENCI: Are you . . . were you able to access it on Granicus?

COUNCILMEMBER PALTIN: Oh, no. No, I wasn't. It says document not currently available or something. But, I just was wondering for clarification purposed when we're talking about support for our watershed management partnerships, for the Wailuku Aquifer Sector Area, it's the same watershed area that we share with West Maui, like is it considered Pu'u Kukui, or I guess West Maui watershed partnership or something as well or is there a different name or partners on the Wailuku side that's separate from the West Maui side? I guess is my question when we're talking about Wailuku's Aquifer Sector Area watershed.

MS. BLUMENSTEIN: Yeah, Chair, if I may respond?

CHAIR SINENCI: Go ahead.

MS. BLUMENSTEIN: Yes, so, it's primarily Mauna Kahālāwai watershed partnership that covers, I think there's a graphic within the plan, Figure 14-32, so that shows . . . so Mauna Kahālāwai watershed partnership is sort of encompassing Pu'u Kukui preserve as well. So . . . but on the Westside, you have some additional projects of that the Department fund in a way by the Nature Conservancy, but the main watershed protector, I would say is, Mauna Kālāwai [sic]. So, the funding that's mentioned in this strategies for Wailuku, is for . . . the example there is . . . and their annual average cost from all sources is from Mauna Kālāwai [sic].

COUNCILMEMBER PALTIN: Thank you.

CHAIR SINENCI: Mahalo, Member Paltin. Any other questions, Members? Nicole, can we zoom in? There's a request to make it larger for . . . thank you. Okay. And then,

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Members, we did receive testimony today from Ms. Shay Chan Hodges and we've asked her to remain on as a resource and she seeks to include, take the strategy a bit further, to include community members, kind of like what Eva was saying, kalo farmers, and other affected by the . . . users, instream and off stream users. So, I just wanted to . . . I don't know if people were able to access hers, but we can share, Nicole, can we share Ms. Shay Chan Hodges . . . her testimony?

MS. SIEGEL: One moment.

CHAIR SINENCI: And then, Shay, are you still on there?

MS. CHAN HODGES: I'm here.

CHAIR SINENCI: Oh, great. So, okay, maybe go ahead and zoom in. So, Shay, did you want to share your mana'o on some of . . . ?

MS. CHAN HODGES: Sure. I mean I think I covered it in the testimony, but this just kind of shows how it could be integrated. I don't know if the language is completely . . . the style of it is completely consistent with, you know, the way it is in the table, but what I was attempting to do was just taking the recommendations from the Board of Water Supply and just, you know, some of these are kind of common sense recommendations as far as, you know, the revenue model, you know, determining what the cost of repair and maintenance would be before purchase and figuring out what a revenue model would be so that it's covered and of course engaging the community, the folks who are affected by the streams in a more intentional and proactive manner, right? So, that's basically . . . and then I did put some numbers in 'cause I was just trying to follow the table in there, I just, you know, I know that, you know, kind of what an engineering 'cause I have no idea what am MAI appraisal cost or anything like that. So, I was just kind of throwing things out there. So, yeah.

CHAIR SINENCI: Okay, thanks, Shay.

MS. CHAN HODGES: But, I . . . but, you know . . . oh, I'm sorry. I was just going to say the key thing, of course, is just acknowledging that there is a desire for, you know, that it is for sale, that the County has a desire to control whether the community has or desires. So, and that would affect things, right, what needs to be done to the system.

CHAIR SINENCI: Right. And, Members, I like that Shay had included, you know, it's kind of taking it further, you know, we do list the Aha Moku, Hui O Nā Wai 'Ehā, OHA, Maui County, and so, what Shay does in number three is to ensure that community members, kalo farmers, and others affected by the system including instream and off stream users are actively engaged and plans for the operations and the stewardship of the system with regard to any future operation of the system. And, you know, as policymakers, I think this is good policy. We've . . . last week, we did approve a resolution to look at other funding for private funding through the WIFIA grants. And so, I think this is something if . . . for the Members consideration, I don't think it has because it says, and because of the discussion that we've been having, it says planning objectives ensure

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that the systems are monitored and diverters are complying with laws to ensure that instream users have access to water on a regular basis including some of the kuleana land owners and some of their concerns that they have. So, Members . . . oh, Eva, did you have any . . . and then we'll go to Chair Lee.

MS. BLUMENSTEIN: Yeah, two comments there, more on the format too. We want to make sure that, you know, these tables, those summary tables are consistent for each chapter, and also how they're going to feed into implementation table; which agency is responsible, whose budget is it coming out from, et cetera. So, for one thing, the column for planning objectives, they are taken directly from the communities established planning objectives that are listed previously in the chapter. So, we probably want to be consistent and there are, you know, a list of those. They fall under those general planning objectives, but these are sort of . . . the way it's written now would be defining new planning objectives that are not directly listed previously in the plan. And I would say under the column Agency, there's a lot of big projects that will be contracted out through RFP but it should still list a lead agency or entity that is responsible for budgeting and implementing that strategy.

CHAIR SINENCI: Oh, okay. Thank you. So, usually that column Agency is . . . would be more towards . . . geared towards budget. We do have Maui County listed on there. Should we add private sources as well? Or like you said we would take it out to RFP, yeah. Oh, we had a question from Chair Lee. Go ahead, Chair.

COUNCILMEMBER LEE: Oh, Chair, is it possible for our Staff to work with the Water Department to put the verbiage in the correct format?

CHAIR SINENCI: Sure.

COUNCILMEMBER LEE: And then, give us a draft to look at. And then, you know, work from.

CHAIR SINENCI: Yes, we could do that.

COUNCILMEMBER LEE: Okay. That's . . . if I could request that?

CHAIR SINENCI: Okay, we can request that of the Department. Okay, that one was just for number three. And, I just wanted to get on number four if the County intends to purchase the Wailuku Water Company complete an MIA [*sic*] appraisal and engineering study of the delivery system that provides estimates of the cost of repair and maintenance of the system. I know some of those questions were submitted to Director Baz. So, I was just wondering, is this something that we could consider during the Budget process or is this more of a policy item? 'Cause it includes an appraisal and engineering study. Shay, did you want to speak more to this section?

MS. CHAN HODGES: Yeah, again, it's really just . . . was one of the recommendations from the Board of Water Supply, and I guess you raise a good question, Chair, you know, something that comes up quite often--well, I'm not on there anymore--but, something that did come up quite often was if there was a . . . some desire from the Board of Water



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Supply, how does that get implemented? Does it go through the Mayor, does it go through the Council, what is our next step? And often we really, you know, all we can do or all we did was send an e . . . you know, a letter to you folks and to the Mayor, and kind of hope that you would make the decision about how it gets implemented. So, you know, whether even the Water Use Development Plan is the appropriate place, I don't know, you know, but there is that kind of black hole that these recommendations go into when there isn't sort of a clear pathway.

CHAIR SINENCI: Right. And it's, I guess, us as the Council, we can go ahead and make those maybe recommendations to the Administration, you know, prior to whether it be signing a letter of intent or part of the budget process, yeah? Chair Lee.

COUNCILMEMBER LEE: Yeah, Mr. Chair, I think, this is a long term document we're working on, so I don't think that type of wording would go into this document. I think a letter like you said, recommending to the Mayor, all of the things that we anticipate and expect to see with regard to the part of the purchase be included and then provide him a list. And so that when it's time to actually spend down the funding all of these other additional expenses are, you know, are already planned for.

CHAIR SINENCI: Okay. . .*(inaudible)*. . .

COUNCILMEMBER LEE: But this is immediate. What you're talking about is . . . this purchase is immediate versus the long-term document.

CHAIR SINENCI: Okay, thank you, Chair, for that input. So, yeah, is that okay, Shay, that we can write that to the Administration as the Council?

MS. CHAN HODGES: Of course.

CHAIR SINENCI: And we can start there. The Committee can go ahead and do that.

MS. CHAN HODGES: Yeah, I think, my main concern was just that it be understood somewhere in this document that, you know, because again in the first line of the table, which is not written by me of course, is Wailuku Water Company is considered a stakeholder but they might, you know, not exist as a stakeholder in one or two years, and as Chair Lee said it's a long-term document. So, just kind of clarifying, just that whoever owns it, and just sort of making it clear that it is for sale and that won't change things. I mean, one would hope that a new owner whoever it is would be taking care of it and, you know, the issues that were raised today.

CHAIR SINENCI: Right, and, yeah, that . . . and we brought up that we don't own it yet. So, right, and then until then we still have to . . . we're requesting all of these things prior to the acquisition. Okay, so, we'll . . . the Committee can go ahead and send these items as a request to the Administration. I know the Board of Water Supply already did, but I think the Council can also send one to the Administration. Next we have item five, develop a revenue model or user fees and take into consideration community needs and desires for the system as determined through a community engagement process. So my

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question is is this more of a policy that we can consider in this Table 14-41? Eva, did you have any comments or how can we--?

MS. BLUMENSTEIN: Yeah, I mean, same comments on all these three in terms of, you know, they should . . . if there's a strategy added, to me I tend to agree with what Chair Lee said that, you know, it should be tied really to a . . . a policy on water resource management demand or supply, so these are more short term. Does it immediately or long-term impact demand supply? Well, probably not, not the purchase per se, I mean, that's more about rates and management of the system or what not, but if you do include it, then it should be consistent reflecting the planning objectives that are coming from the community and they should propose a lead agency or an entity for budget purposes.

CHAIR SINENCI: Okay, great. So, is this something to that the community can work it the Department to keep in line with the language? Eva, is this something that we can work with you to just--?

MS. BLUMENSTEIN: Oh, of course. Yes.

CHAIR SINENCI: Okay. All right, Members, is that . . . we're going to work with the Department to come up with more language that can be more policy driven versus whether it be budgeting or immediate versus having that immediacy versus long term. Everybody consensus? That we follow through with that?

COUNCILMEMBERS: Consensus.

CHAIR SINENCI: Okay, great. Thank you. All right. Mahalo. And then, we didn't see other areas of the . . . of this . . . the Wailuku Aquifer Sector that we wanted to discuss. We did have one last item on conservation, 14 . . . Section 14.8.2, and we weren't sure if under conservation whether the Wailuku Water acquisition could possibly be part of this section. And it reads, Wailuku-Kahului Community Plan and the input from the WUDP public process identified an overall planning objective to "maximize efficiency of water use". The following supply augmentation and demand controls: Promote conservation of potable water through use of treated wastewater effluent for irrigation; reuse treated effluent from the--thanks, Nicole--from the County's waste water treatment system for irrigation and other suitable purpose in a manner that is environmentally sound; provide incentives for water and energy conservation practices; promote energy conservation and renewables; incorporate drought tolerant plant species and, think that that's, xeriscaping in future landscape planting. I think the reason why we wanted to look at this is some of the current users, as you know part of the acquisition would be all of those users that are receiving money from the . . . excuse me, water from the Wailuku Water Company, and I'm not sure if some of these users, I believe, two of the golf courses are also on the Wailuku Water System. So, I think as we move forward maybe looking at more conservation or use, maybe possibly, the use of recycled water, expanding the recycle of recycled water usage for some of those users. So, I think that's why I think we brought this up, conservation up on this section.

MS. BLUMENSTEIN: Chair.

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CHAIR SINENCI: Go ahead, Eva. And then question from Mike . . . Mr. Molina, and then, Member Paltin.

MS. BLUMENSTEIN: Yes, thank you for that. And, I want to emphasize to conservation is really a key strategy whether that is for offsetting potable or non-potable uses. And it's addressed in a separate chapter, but also under Chapter 14, xeriscaping. And, one of the strategies is also to change County code in increasing . . . changing the proximity of properties to hookup to or one water where that distribution system is available. And, in terms of Wailuku Water Company, there's a discussion in Chapter 14 on page 97 that this addresses specifically Agricultural Water Systems Water Loss Mitigation. So, it's not a specific strategy, but it does state the current status of water losses for the system as reported issues with the reservoirs and that further water losses are investments in lining the ditch or whatnot should be addressed by the working group. That was one of the strategies, yeah, to establish their diverse working group.

CHAIR SINENCI: Thank you, Eva. We had a question from Member Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. Just in regards to Strategy 9 of the WUDP, it states identify private-public partnerships, State and Federal funding sources, maximize utilization of recycled water produced at the Kihei waste water treatment facility, and supplemental non-potable sources for seasonal use of R1 water. My question is, have partnerships been developed and has funding been secured and can you also elaborate a little bit about the entities you have chosen to partner with as it relates to this strategy?

MS. BLUMENSTEIN: Those are not strategies that aren't necessarily in effect, but those are recommendations because we did learn that there are SRF funding available for waste water system expansion as well. So, one of the ideas in that strategy is really to partner with DEM where up till this point, as you know, we're water rate funded. We have separate CIP budgets from DEM, but there are opportunities with Federal and State funds that could be available through Department of Water Supply, but to benefit expansion of the waste water or the R1 system.

COUNCILMEMBER MOLINA: Okay, so no--

MS. BLUMENSTEIN: That's some of the things that could. . .*(inaudible)*. . .

COUNCILMEMBER MOLINA: Oh, okay, so the partnerships just with government agencies then?

MS. BLUMENSTEIN: Yes.

COUNCILMEMBER MOLINA: Okay.

MS. BLUMENSTEIN: We take advantage of SRF loans and grants.

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COUNCILMEMBER MOLINA: Okay. All right. Thank you for that clarification. Thank you, Mr. Chair.

CHAIR SINENCI: Mahalo, Member Molina. Member Paltin.

COUNCILMEMBER PALTIN: Thank you. I just had a question in relation to 14.8.2 where it says incorporate drought tolerant plant species and xeriscaping in future landscape planning, and how the top talks about the Wailuku-Kahului Community Plan identified bees. I guess was wondering . . . had a question from a constituent if we can mandate that? For like, you know, hotels. And then, I guess, on that note because a lot of the Wailuku-Kahului or Wailuku Aquifer Sector Area water does make its way to Kihei, would it then follow that incorporating drought tolerant plant species and xeriscaping in future landscape planting on areas that receive Wailuku Area Sector, Wailuku Aquifer Sector Area waters? Just wondering like if this is a strategy for Wailuku Aquifer Sector Area, does it then carry out to South Maui as well because they receive Wailuku Aquifer Sector Area waters?

MS. BLUMENSTEIN: Yeah, that strategies for Wailuku Aquifer Sector is for the Central Maui System as a whole, right, but we have to illustrate water users within and the resources within the Wailuku Aquifer Sector. But, when you look at overall demand and the supply to meet that demand, it addresses the Central System as a whole which spans from Waihe'e out to Pa'ia-Kuau and all the way out to Makena, right?

COUNCILMEMBER PALTIN: Oh.

MS. BLUMENSTEIN: So, the Demand Side Conservation Measures that are recommended apply to South Maui and, yes, they are specifically targeting dry areas where xeriscaping regulations that would have to be through a conservation ordinance or change in County Code, those are land use restrictions, right, but it could be imposed to have climate appropriate plans in new development. And that's actually one of those measures that would provide large cumulative savings over time because, as you know, a lot of the potable water is used for incidental household use by this irrigation and the dryer the area, the more irrigation you tend to have.

COUNCILMEMBER PALTIN: And so that could only be legislated for new properties? It couldn't be legislated for existing properties?

MS. BLUMENSTEIN: Well, it could be that in multiple ways. I mean, normally if you would restrict use . . . existing uses are grandfathered in but there's many ways to, I don't want to say skin a cat, but, to do it. So, it's sort of like a portfolio of incentives for existing uses. You rip out your lawn, you know, it could be tax benefit or something to that. Or revising your landscaping to more climate appropriate plants. So, I mean, that's mostly what we do now. It's outreach and education and incentives, right? But, if you're mandating a water user to rip out their lawn or changing their plants, is different than perhaps saying new development will need to have water efficient irrigation technology. No more than x percent of turf in new development et cetera. So, it's always easier to regulate new uses upfront design than retrofitting.

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COUNCILMEMBER PALTIN: And, would your recommendation for that to be in Chapter 14 of the Maui County Code, or would it be under land use or water use?

MS. BLUMENSTEIN: Well, we're looking . . . my division's looking at it right now. And, kind of running into the same issue as we did with the Well Protection Ordinance. It's really . . . we're trying to protect water quality, but it's really a land use restriction. So, we proposed it in Title 19. So, it could be 14, 19, or both. I don't know.

COUNCILMEMBER PALTIN: Okay, thank you. Thank you so much, Chair.

CHAIR SINENCI: Mahalo, Member Paltin. Any other questions on this item, Members? I don't . . . oh, go ahead, Chair Lee. I don't see the other Members so, go ahead and unmute if you have any more questions. Go ahead, Chair Lee.

COUNCILMEMBER LEE: No, I heard you say earlier something about golf courses and R1 water, is that something that you were considering? Because golf courses already cannot use potable water. They're prohibited except for Waiehu golf course by the way. And so, all other golf courses must use brackish water or recycled water. So, I was just . . . I heard you say something, and then but, I didn't hear you make a recommendation.

CHAIR SINENCI: Yeah, no, and that was just that a couple of the golf courses are users under the Wailuku Water Company.

COUNCILMEMBER LEE: Yeah.

CHAIR SINENCI: So, so those, you know, should we require, you know, we could propose more conservation measures to some of . . . we'll need to also look at some of the users, the current users, of the Wailuku Water System. And then, maybe we could promote more. I think that's what the discussion with conservation was, and if we could look more options for conservation. So, again that's--

COUNCILMEMBER LEE: And I think that's something to be considered in the future. Right now there is no R1 water available to them. They use brackish water.

CHAIR SINENCI: Okay.

COUNCILMEMBER LEE: Okay.

CHAIR SINENCI: Thank you, Chair. Committee Vice-Chair Johnson, did you have a ninau?

VICE-CHAIR JOHNSON: No. No thank you, Chair. I'm just following along. No question at this time.

CHAIR SINENCI: Okay. Mahalo. With that, Members, if there are no other questions, we can come back and revisit some of Table 14-41. And then, moving on, those are the only

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items that we saw in the Wailuku Aquifer Sector that we wanted to . . . that came up in some previous discussions. So, with that, if there's no other questions, I'll let Eva go. Mahalo, Eva. And then, our Staff will reach out to you for some of the work with the language on 14-41. Mahalo, for your input today.

MS. BLUMENSTEIN: Sounds good. Thank you.

CHAIR SINENCI: Thank you. And so, if there are no objections, the Chair would like to defer this item?

**COUNCILMEMBERS VOICED NO OBJECTIONS**

**ACTION: DEFER pending further discussion.**

CHAIR SINENCI: Okay. Thank you. And then, so the last thing we have, Members . . . Kasie, I know she wanted to share screen just moving forward just to prep you for next week's meeting. You want to share screen? The timeline. I think we . . . okay, great. Thank you. So, for next week's meeting, special meeting, we have Appendix 10, which was mentioned earlier in today's meeting. So, we'll be covering Appendix 10, and the Lāhainā Aquifer Sector Area. And then, we'll go ahead and post a memo with those areas for you guys. Then of course we did share the upcoming . . . we need to have August to kind of cover . . . August 3<sup>rd</sup> we have Water for Agriculture, Kula Ag Park, Wailoa Ditch, and the Central Maui Aquifer Sector. August 17<sup>th</sup> we have the Upcountry Water Meter List, and some of the water agreements with the Department. And then, we did . . . we are proposing an amendment of the . . . to extend the Plan, however, just by one day, so we get one more, instead of September 31<sup>st</sup>, we're extending it to October 1<sup>st</sup>, so that we get one more Council meeting to approve the Plan. So, that's why . . . and then, August 31<sup>st</sup>, the Hana Aquifer Sector. Then, I believe, the East Maui Irrigation. So, those are some of the upcoming . . . this is what we shared with everybody on the Plan. Any questions on this?

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair.

CHAIR SINENCI: Council Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo, for the schedule. My question is, so you wanted to extend the deadline to October 1<sup>st</sup>? And--

CHAIR SINENCI: Correct, only to--oh, go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: And so, you plan to do that by resolution at the Council meeting?

CHAIR SINENCI: I believe so. Ms. Apo Takayama, was that at this Council meeting, we're proposing that?

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MS. APO TAKAYAMA: Chair, the plan that we had discussed--I don't want to get too deep into it 'cause this isn't posted on our agenda today—but, was to have the resolution posted during our special meeting, and then have that sent to Council because we still have time. And the reason we were extending that one day was because the Council meeting falls on October 1<sup>st</sup>, and so that would give us two readings.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, for answering my question. So, you know, similar to what we did with the West Maui CPAC, I think we gave them like an extra 30 days just in case unforeseen things happen since we're going to go this route that perhaps we just make the deadline, you know, like October 30. And then, knowing that the Plan is to pass it second reading at the October 1 Council meeting, but just in case.

CHAIR SINENCI: Okay. Mahalo, Council Vice-Chair. I know we did need some time to go over some of the track changes that we did do. So, I think that would be . . . give us, the Committee, some time to do track changes. So, we can discuss that at next week's meeting. Thank you for that proposal though. Okay, anything else, Members? Mahalo again for today's participation. I wanted to mahalo the Members, our resource people and the Administration for joining us today. And with that, the APT meeting of Tuesday, July 20 is now adjourned. It is 3:31 [sic]. . . . *(gavel)* . . .

**ADJOURN:** 4:31 p.m.

APPROVED:



SHANE M. SINENCI, Chair  
Agriculture and Public Trust Committee

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Transcribed by: Keoni Shirota