Volume 29, Number 12 June 2019

Environment Hawai'i
a monthly newsletter

Smokin' Hot Litigation

Two decades ago, Big Tobacco began to be held accountable for decades of deliberately deceiving the public about the health effects of its products. Now, as a result of massive litigation, it's paying out billions of dollars to atone for its lies.

Turns out, the same playbook and many of the same players were employed by Big Oil – which, just like Big Tobacco, had full knowledge of the devastating impacts the burning of its product, fossil fuels, would have on the Earth's environment.

Will it be held to account in the same way as tobacco companies have been? As those attending a conference in Honolulu last month learned, a movement is afoot to force oil companies to help defray the billions and billions of dollars it will take to deal with rising seas and other effects of a changing climate.

IN THIS ISSUE

Climate Experts Explore Possibility Of Suing to Cover Mitigation Costs

Marti Townsend, director of the Sierra Club's Hawai'i Chapter, asked the audience crammed into a state capitol conference room last month to imagine a world in which fossil fuel companies in the 1980s took the warnings of its scientists about the dire future that lay ahead, "and acted responsibly, and acted as we expected as they should have acted."

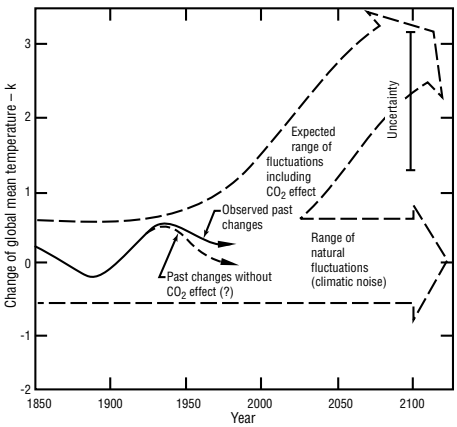
"They did the exact opposite. We would be living in a very different world right now," she said.

Townsend was the final speaker at a forum held May 3 by the William Richardson School of Law's Environmental Law Program on the potential local effects of the climate crisis, the science pinning those effects to the oil industry, and the role litigation might play in getting the companies responsible to help pay for mitigation.

Speaker Alyssa Johl of the Center for Climate Integrity had earlier detailed how records from those companies dating back to the 1950s show that they knew the potential effects of fossil fuel burning back then, and how remarkably on-target their scientists' predictions were. For example, one internal research document from Exxon predicted that noticeable climate changes would likely start occurring in 2010, as carbon dioxide concentrations reached 400 parts per million. Johl pointed out that that threshold was reached just a few years later, in 2014. "They were making these projections in 1979," she said.

Not only did the industry not disclose these findings, it concealed them and launched "coordinated, multi-dimensional campaigns to discredit climate science," she said.

All of these campaigns stood in stark contrast to what they knew, Johl said, noting that oil companies were actually raising drilling platforms to protect them from sea level rise.



Exxon produced a chart similar to this one in the 1980s, showing global mean temperatures from 1850 through 2100, "with Projected Instantaneous Climatic Response to Increasing CO2 Concentrations."

The Lawsuits

That deception, that failure to warn, is a key component of the dozen or so lawsuits that have been filed in recent years by cities and states seeking compensation for damages resulting from global warming, said forum speaker and California attorney Vic Sher. Sher is assisting plaintiffs in ten of those lawsuits, as well as one brought by an association of Dungeness crab fishers who claim the fossil fuel companies' actions have harmed their industry.

Half of all of the oil and gas industry's greenhouse gas emissions occurred after the late 1980s, "during a period of culpability and knowledge," Sher stressed. "Knowledge of the conduct is an independent and qualitative factor a jury may consider in determining if conduct is a substantial cause of the problem. The emissions are

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Environment Hawai'i

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NEW AND NOTEWORTHY

Landfill Violations Alleged: The City and County of Honolulu and Waste Management of Hawai'i, Inc., are being sued by the federal government and the state Department of Health for violations at the Waimanalo Gulch landfill,

Waimanalo Gulch Sanitary Landfill

which Waste Management operates for the city.

The civil complaint alleges multiple violations of the landfill's National Pollutant Discharge Elimination System permit and its Storm Water Pollution Control permit (SWPCP). Many of those are related to storm water runoff that occurred in late 2010 and 2011, when torrential rains hit the leeward coast of O'ahu.

As the complaint notes, in August 2010, without DOH approval and in violation of the existing NPDES permit, two 48-inch-wide corrugated metal pipes, which were to divert rainwater flows from upstream of the landfill around the landfill itself, were replaced by one 36-inch polyethylene pipe. When heavy rains came in late December, the 36-inch pipe was not adequate to capture and channel storm water from up canyon of the landfill, the lawsuit states. Storm water collected in a cell of the landfill, where it came into contact with solid waste; an open manhole then allowed the water, now contaminated with solid waste, to flow to the ocean.

A similar chain of events occurred when another rainstorm hit the area in January 2011.

In relation to the 2010 and 2011 events, criminal charges were filed against Waste Management and two of its employees in 2014. The plea agreement, however, left open the possibility that civil or administrative actions might yet be filed.

The lawsuit filed on April 29 alleges that the city and Waste Management "have not taken all steps necessary to ensure that during future large storms, storm water contaminated by contact with municipal solid waste and garbage will not again be released into Waimanalo Gulch." It notes that in relation to the federal violations, the defendants may be liable for up to $37,500 per day for each discharge of a pollutant in violation of the NPDES permit, and that under state law, they may face civil penalties of up to $25,000 per day.

A spreadsheet attached to the court filing lists 69 different violations of NPDES permit terms between December 23, 2010 and November 23, 2015.

(*Environment Hawai'i* reported on the 2010 and 2011 incidents in March 2011.)

Hawaiian Legacy Hardwoods Case: Litigation brought in 2015 by a consultant against Hawaiian Legacy Hardwoods, LLC (now known as HLH), four affiliated companies, and Jeffrey Dunster, has been resolved with an arbitrator's decision that goes largely against the consultant, Streamline Consulting Group, LLC.

Soon after the lawsuit was filed in federal court, it was referred to an arbitrator. The arbitrator did find that one of the companies, Legacy Carbon, LLC, had failed to pay invoices under a services agreement with Streamline and that Hawaiian Legacy Hardwoods had violated an independent-contractor agreement.

Overall, however, in a ruling handed down on May 10, federal Judge Susan Oki Mollway upheld the arbitrator's finding that, when all the awards and attorneys fees to the various parties were added up, "Streamline ended up owing defendants $343,414.06.

"Because this amount exceeded the reasonable fees and costs allowed by the arbitrator, the arbitrator reduced this amount to $273,930.14, plus applicable fees and costs of the arbitration."

(*Environment Hawai'i* reported on the lawsuit in February 2016.)

Quote of the Month

"It is not just that Big Oil uses the same techniques and tactics as [Big] Tobacco. It's literally the same human beings. … and I think that's why they know this whole thing is going to come crumbling down."

— Sen. Brian Schatz

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Hilo, Hawai'i 96720

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Environment Hawai'i is published monthly by Environment Hawai'i, Inc., a 501(c)(3) non-profit corporation. Subscriptions are $65 individual; $100 non-profits, libraries; $130 corporate. Send subscription inquiries, address changes, and all other correspondence to

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Environment Hawai'i is available in microform through University Microfilms' Alternative Press collection (300 North Zeeb Road, Ann Arbor, Michigan 48106-1346).

Production: Tim Officer

ISSN 1050-3285

Wespac's Maui Resort Junket Cost Roughly $200,000 Above the Norm

Talk about splurging.

Last June, Western Pacific Fishery Management Council members trumpeted a new Main Hawaiian Islands bottomfish stock assessment that allowed them to recommend to the National Marine Fisheries Service a 60 percent increase in the annual catch limit for the fishery that targets several species of fish known as the "Deep 7."

With the bulk of the fishery based on Maui, and with National Oceanic and Atmospheric Administration assistant administrator Chris Oliver scheduled to attend, council executive director Kitty Simonds chose to hold the meeting where the council made its recommendation on the island — at the Wailea Beach Resort Marriott, to be specific — rather than in Honolulu.

In an unusual move, she also chose to hold the council's Scientific and Statistical Committee (SSC) meeting a couple of days beforehand at the same venue.

According to records obtained by *Environment Hawai'i*, the council spent nearly $276,000 on its June 2018 meeting, those for its standing committees (also held at the resort), and the SSC. That's more than double what it cost to hold meetings for those same bodies three months earlier in Honolulu, about $116,000. The SSC met March 12-14, and the council and its standing committees met the following week.

On April 29, NOAA – the federal agency that underwrites Wespac – completed a Freedom of Information Act request *Environment Hawai'i* filed last year regarding the council's meeting expenditures. NOAA provided bills for the venues where the council hosted its meeting and its Fishers' Forum, a regular part of council meetings where council members and staff meet with members of the local fishing community over food and drinks. NOAA also provided lists of all meeting participants who received compensation, or who had their transportation and/or accommodations paid for by the council, as well as a list of the total airfare, ground transportation, and per diem/reimbursement costs for both the Honolulu and Maui meetings.

In a February 2019 story based on NOAA's initial responses to our two FOIA requests, we estimated the cost of the Maui meetings to be nearly $300,000. That amount included expenses likely incurred by Honolulu-based employees of various branches of NOAA who normally attend and participate in council meetings.

PHOTO: DRONEPICR CREATIVE COMMONS

Wailea Beach Resort Marriott

In total, the council paid transportation and airfare costs for 46 people for the Maui meeting and 20 for the Honolulu meeting.

In addition to choosing to meet for eight days (including a one-day break) at an expensive, outer-island resort, the documents NOAA provided in April suggest, the council bloated expenses for the Maui meeting in a number of other ways, including the following:

• It paid its SSC and Advisory Panel members who were present in Maui double the compensation they were paid for the Honolulu meeting. This may be due to the fact that both the SSC and council meetings on Maui were held just a day apart, resulting in an extended stay for anyone who wished to attend both. SSC meetings are usually held in the council's Honolulu office about a week ahead of the full council meeting. There was just one AP member – Layne Nakagawa – who attended the SSC meeting, while most of the other AP members present attended one or more days of the council meeting. The only SSC member who attended the council meeting was David Itano of Honolulu.

• It paid to fly out and host nearly a dozen Advisory Panel members, even though no advisory panel meetings were held on the island. Only two panel members attended the Honolulu meeting that was reviewed for comparison purposes.

• Nakagawa, the AP member who attended both the SSC and council meetings on Maui, had his accommodations paid for by the council, even though he lives on the island.

• The council also paid travel and lodging for former council chair Roy Morioka, who at the time did not serve on any council body, although he did aid in the research used in the new bottomfish stock assessment.

• It paid for 48 rooms, yet the list of people who were provided accommodations totaled only 45.

• It paid for an average of five nights per person for the Maui meeting, compared to an average of four nights per person for the Honolulu meeting.

Council staff did not respond to questions about these charges by press time.

At the June council meeting, Simonds reported that the organization's budget was pretty much the same as it had been in previous years, with one exception. "We're extra happy" Oliver was able to find an additional $1 million for all of the fishery management councils to share, Simonds said.

"Our percentage is 11 precent. We come after the North Pacific, and Pacific, and New England [councils]. Thank you very, very much, Chris. I really appreciate it. Hopefully, you can do the same next year and add another million."

Oliver said he would do whatever he could.

—Teresa Dawson

Hu Honua Faces New PUC Hearing, Well Issues, DOH Fines, and a Lawsuit

In December 2017, the Hawai'i Supreme Court told the state Public Utilities Commission that it had to consider greenhouse gas emissions in carrying out "all of the [commission's] duties."

The decision wasn't unanimous. In fact, it was as close as it could be: a three-justice majority, with a dissent written by the chief justice himself, Mark Recktenwald. Recktenwald disagreed with the majority's finding that the petitioners in the case, members of the Sierra Club of Maui, had a property interest in a clean and healthful environment.

The case did not receive the publicity that was its due, which may have had something to do with the fact that the subject of the appeal the justices were hearing was a power purchase agreement involving a power plant in Pu'unene that had been shut down even before the case was heard by the court.

But the case – *In re Application of Maui Elec. Co.,* or MECO for short – set an important precedent, as noted by Earthjustice attorney Isaac Moriwake, who represented the Sierra Club. "The issue of what happens on remand" – the case was remanded to the PUC – "is less important than the precedent we now have for future cases," he told *Environment Hawai'i* at the time.

And just how important was evident last month, when all five Supreme Court justices – Recktenwald included – signed on to a ruling in a case involving the power purchase agreement (PPA) between the Hu Honua power plant, being built along the Big Island's Hamakua Coast, and Hawaiian Electric Light Company (HELCO).

Unlike the Maui case, this one is not moot. Hu Honua Bioenergy, LLC, has had an on-again, off-again relationship with HELCO over the last several years. Since last summer, though, the switch has been "on," after the PUC approved an amended – from 2012 – power-purchase agreement between the plant, which proposes to burn eucalyptus logs as its fuel source, and HELCO. Hu Honua reports having spent in the neighborhood of $300 million to refurbish the plant, which, like the Pu'unene facility, originally burned bagasse from sugar mill operations.

Soon after the PPA was approved, the environmental group Life of the Land appealed. The Supreme Court heard oral arguments in October. And on May 10, it issued its 66-page ruling.

Consistent with the MECO decision, the justices found that the PUC had not given due consideration to the impact of the plant's operation on greenhouse gas emissions and had not allowed Life of the Land a "meaningful opportunity" to be heard regarding the impact of the plant's operation on the group's "right to a clean and healthful environment."

A Duty to Consider

Henry Curtis, executive director of Life of the Land, has raised the issue of the role of greenhouse gas emissions in climate change in both the original PUC docket on the Hu Honua PPA (begun in 2012) and the amended PPA (filed in 2017, after some disputes between Hu Honua and HELCO were ironed out). However, the several information requests – or IRs – that Curtis filed with Hu Honua, HELCO, and the state Consumer Advocate concerning the effect of using logs as a fuel source on greenhouse gas levels were not meaningfully answered.

"In response to at least one of the IRs that [Life of the Land] submitted to HELCO, HELCO objected and refused to respond," the Supreme Court noted in its decision, "arguing that the information sought was 'not relevant to and [was] outside the scope of LOL's authorized scope of limited participation.'"

Also, "The Consumer Advocate responded to LOL that it had not completed an analysis of the impact the project would have on GHG [greenhouse gas] emissions, and that any analysis should be comprehensive, including GHGs resulting from harvesting and transporting the feedstock. The Consumer Advocate further stated that it had not evaluated the need for a consultant to review GHGs and climate change in the instant proceeding," the ruling states.

For its part, Hu Honua stood firm in its claim that by burning a renewable fuel – logs – it would make a "significant contribution to the state's" renewable portfolio standards and "avoid the emission of hundreds of thousands of tons" of carbon dioxide, a major greenhouse gas.

In its final decision and order approving the power-purchase agreement in 2017, the PUC, adopting HELCO's analysis, found that the Hu Honua project "provides significant renewable energy-related benefits." At no time, however, did the PUC hold a hearing on the 2017 PPA or receive any argument on the subject of the greenhouse gases that would be emitted in the course of the plant's operation.

Yet, the Supreme Court found in MECO that a 2011 law – codified as Section 269-6(b) of Hawai'i Revised Statutes – requires the PUC to consider greenhouse gas emissions in the "fulfillment of all of the [PUC's] duties."

"That the facility involved in the amended PPA is a biofuel facility does not absolve the PUC of this duty," the court went on to state.

Other Issues

While the matter of greenhouse gas emissions was front and center in the Supreme Court's decision, Life of the Land's appeal was challenged on other issues as well.

Hu Honua, HELCO, and the commission argued that the group was not entitled to a contested case hearing because it failed to request one. They cited administrative rules of the Department of Land and Natural Resources and the Department of Health, which require claimants to submit a petition for a contested case.

The justices, however, pointed out that the commission's rules lack a similar requirement.

As to the group's standing to appeal the decision to the Supreme Court, the justices were clear: Life of the Land "has demonstrated an injury to its members, including their right to a clean and healthful environment … due to the PUC's approval of the amended PPA. LOL has therefore satisfied the first prong of the standing analysis."

Life of the Land's involvement in the PUC docket – submitting information requests and attempting to intervene in other ways – also bolstered the group's standing. "Because LOL was involved in the 2017 docket as a participant, it has met the second prong of the analysis," the justices found.

Nonetheless, the court left it to the commission to determine the extent to which Life of the Land may participate in the remanded proceeding, provided that the agency gives the group a meaningful opportunity to be heard and complies with its obligations to "consider the reduction of GHG emissions."

Attorney Lance Collins represented Life of the Land, going up against two former attorneys general: Margery Bronster (for Hawaiian Electric and HELCO) and David Louie (for Hu Honua Bioenergy, LLC).

Collins told *Environment Hawai'i* that

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the decision's most important features are that it solidifies the holding that people have a constitutional right to a clean and healthful environment, "rejects the PUC's disregard of its statutory mandate to consider the effects of its proposed decisions on greenhouse gas emissions," and "clarifies that the limitations on contested cases that appear in the BLNR rules are not based upon statute and, therefore, do not apply to other agencies."

Curtis, of Life of the Land, said his organization is thrilled with the court's decision, and looks forward to participating in a process "where there can be a thorough analysis of the greenhouse gas implications for biomass generation facilities."

Status

On February 12, HELCO informed the PUC that "Hu Honua anticipates being ready for interconnection acceptance testing on or about March/April 2019." However, wrote Brendan Bailey, the utility's legal division director, the amended PPA "is not effective unless the PUC's approval [of it] is final and non-appealable (Final Approval Requirement)."

Still, he continued, Hu Honua wanted to know whether HELCO might waive the Final Approval Requirement "so that the project may be placed into service so that Hawai'i Electric Light can begin making payments to Hu Honua."

HELCO, Bailey said, "is not amenable to Hu Honua's proposal," given the possibility "that the matter could be remanded back to the commission."

PHOTO: HU HONUA BIOENERGY

Well Concerns

Recently, the Hawai'i County Department of Water Supply weighed in on Hu Honua's proposal to pump 21.6 million gallons a day of freshwater and reinject the water, along with certain chemicals, back into the ground after it had been used in the power plant.

Keith Okamoto, chief engineer for the DWS, informed the state Department of Health's Safe Drinking Water Branch on March 12 March that his agency had concerns about the permits that would allow the company to proceed with its plan, given the wells' proximity to the county's potable groundwater wells.

DWS asked that the DOH require Hu Honua to develop groundwater modeling that would show potential impacts to the county wells; make a determination that Hu Honua's pumping and injection processes would have no adverse impacts on those wells; and that it require the company to develop a monitoring plan for "tracking water level and detecting select contaminants at DWS' nearby sources."

According to the DWS's Lawrence Beck, as of mid-May, the Department of Health had not responded.

However, about a month after the DWS letter went out, Hu Honua requested that the Department of Health allow the company to increase the depth of the three injection wells it will need to dispose of the process water, going from the currently permitted 400-foot depth to 800 feet.

The request followed testing of the first well drilled to a depth of 400 feet, which showed a capacity of just 2,950 gallons per minute (gpm). "The [Hu Honua plant] requires the combined capacity of its three disposal well be 15,000 gpm. … Clearly, far greater capacity than can be provided at 400-foot well depths and gravity delivery is required."

A source at the Department of Health said that Hu Honua was to publish a legal notice of the request to deepen the wells in the Hilo newspaper, the *Hawai'i Tribune-Herald*, on May 13. As of press time, notice had still not been published.

As to the sources of that process water, Hu Honua is using three wells drilled in the early 1970s by Pepe'ekeo Sugar and has applied for a fourth well. It also is seeking to deepen the existing wells to about 1,000 feet below sea level, to reach cooler salt water. Total combined capacity of the four wells comes to around 32 million gallons a day, according to staff with the state Commission on Water Resource Management.

Clean Water Act Violations

In November, the Department of Health sent investigators to the plant site to check out reports that the plant had discharged industrial wastewater to the ocean on the morning of November 9.

On November 30, the DOH issued a press release stating that it was pursuing "an enforcement action" against Hu Honua as a result.

The press release quoted DOH director Bruce Anderson as saying, "The discharge was a blatant disrespect of the environmental laws that govern this highly regulated industry. The history of concern over the operations of this facility emphasize the need for the Department of Health to take swift action on this violation."

On December 19, the DOH announced its investigation had determined that the plant had discharged between 3,500 and 32,500 gallons of treated industrial wastewater. The discharge included acidic metal cleaning solution and residue from descaling of the boiler. "While the dark green colored wastewater had been filtered and neutralized prior to discharge," the DOH press release stated, "it contained high levels of iron and is a regulated waste."

The notice of violation and order that was issued to Hu Honua required the plant to implement environmental compliance training for its employees within 30 days, develop standard operating procedures to prevent similar discharges, and pay a $25,000 penalty to the DOH. Also, the department issued a request for information to the company, requiring it to provide timely responses to the department's questions.

According to DOH spokesperson Janice Okubo, Hu Honua requested a contested case hearing and the department is in the process of scheduling it. She added that because the case is pending, Hu Honua has not paid the ordered penalty.

Meanwhile, in Circuit Court

A complaint that Hilo resident Claudia Rohr filed last fall against Hu Honua as well as state and county agencies is set for a hearing in 3rd Circuit Court in early June.

Rohr maintains that the County of Hawai'i Planning Department and the Windward Planning Commission should have required Hu Honua to comply with the state's environmental disclosure law, Chapter 343, before granting permits allowing work on the plant.

Attorneys for both the county and the state have filed motions to dismiss the lawsuit. Hu Honua has joined in those motions. ***— Patricia Tummons***

Climate from page 1

not the wrong here. … The wrong is the deception," he said.

In one of the cases, filed by the city of Oakland on behalf of the people of California, the city asked the court to order the fossil fuel companies to fund a climate change adaptation program. That program was estimated to cost billions of dollars to cover "the building of sea walls, raising the elevation of low-lying property and buildings and building such other infrastructure as is necessary for Oakland to adapt to climate change."

In her opening brief, city attorney Barbara Parker raised many of the points Johl did.

Parker described how in 1980, an American Petroleum Institute (API) task force on climate change invited climate expert Dr. J.A. Laurman to make a presentation attended by scientists and "executives from Texaco …, Exxon and SOHIO (a predecessor to BP)."

"Dr. Laurman informed the API task force that there was a 'Scientific Consensus on the Potential for Large Future Climatic Response to Increased CO_2 Levels.' He further informed the API task force in his presentation that, though exact temperature increases were difficult to predict, the 'physical facts agree on the probability of large effects 50 years away.' His own temperature forecast was of a 2.5 °C [4.5°F] rise by 2035, which would likely have 'MAJOR ECONOMIC CONSEQUENCES,' and a 5 °C [9°F] rise by 2067, which would likely produce 'GLOBALLY CATASTROPHIC EFFECTS.' He also suggested that, despite uncertainty, 'THERE IS NO LEEWAY' in the time for acting. API minutes show that the task force discussed topics including 'the technical implications of energy source changeover,' 'ground rules for energy release of fuels and the cleanup of fuels as they relate to CO_2 creation,' and researching 'the Market Penetration Requirements of Introducing a New Energy Source into World Wide Use,'" she stated.

Parker then described how the fossil fuel companies "borrowed the Big Tobacco playbook in order to promote their products." For example, an industry group called Global Climate Coalition (GCC) spent millions of dollars on campaigns to discredit climate science, including $13 million on one ad campaign alone, she wrote. As part of its campaign, the group provided hundreds of journalists with a video that claimed carbon dioxide emissions would increase crop production and feed the world's hungry, she continued.

This, despite the fact that a science primer for GCC members drafted in December 1995 by the group's Science and Technology Advisory Committee concluded that the arguments the group was making in these campaigns "do not offer convincing arguments against the conventional model of greenhouse gas emission-induced climate change."

"Due to this inconvenient conclusion, at its next meeting, in January 1996, the [committee] decided simply to drop this seven-page section of the report," Parker wrote.

Attribution

Today, scientists generally believe that the burning of fossil fuels is extremely likely to be the dominant cause of climate change, according to Union of Concerned Scientists (UCS) senior strategist and corporate campaign advisor Nancy Cole, who also spoke at the forum last month.

In 2013, Richard Heede published "Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1845-2010," in the journal *Climatic Change*. A similar emissions-tracking study by scientists with the UCS, the University of Oxford, and North Carolina State University was published in the same journal in 2017.

These researchers have found that emissions between 1880 and 2010 associated with 90 companies contributed to 57 percent of the increase in carbon dioxide in that time, almost 50 percent of the rise in surface temperature, and 25-30 percent of sea level rise, she said.

Sher called Heede's work brilliant, but conservative. "If you look at Chevron, he only looked at crude oil it took out of the ground … but Chevron refines so much more oil than it extracts itself and it wholesales more than it refines and if you understand that the wrong here is the over-marketing … you have to look at these companies as the vertically integrated retail extraction companies that that are," he said.

Cole said that scientists have also been doing some "amazing work" on attributing extreme events to climatic change. She said they've found that Hurricane Harvey, which devastated Houston in 2017 and caused $125 billion in damages, was three times more likely to have happened because of climatic change and rainfall was about 15 percent greater than it otherwise would have been.

In light of these kinds of conclusions, Cole said fossil fuel companies have now expressed a willingness to pay some kind of carbon tax.

"They are basically saying, 'We'll agree to pay a carbon tax, pay a price on carbon and you protect us from all these lawsuits these cities and states are threatening and stop any action by the EPA," she said.

She seemed doubtful a carbon tax would ever pass under the current administration, but suggested one might might come up in 2021.

"They're looking at a whole world's worth of damage that they may need to be held accountable for and they're worried," she said.

As Sen. Brian Schatz said later in the forum, "It is not just that Big Oil uses the same techniques and tactics as [Big] Tobacco. It's literally the same human beings, same law firms, same lobbyists … It's the same gang. And I think that's why they know this whole thing is going to come crumbling down." (Two decades ago, tobacco companies agreed to severely restrict their product promotion, and to pay more than $200 billion as part of a settlement with 46 states and the District of Columbia, which had sued them over the health effects of tobacco products on their citizens.)

He said that while he's not sure whether Republican colleagues who've expressed interest in climate legislation are also cracking, "this is the first time they are feeling political pressure to have an answer."

"Color me – as they say as the first printout comes out on election night – cautiously optimistic," he said.

Local Costs

In the Oakland lawsuit, the city claims that it will cost between $22 billion and $38 billion to replace property lost due to projected sea level rise. In addition to threatening its low-lying airport, sea level rise threatens to "prevent water from discharging properly from the sewer system, which will cause sewage to back up and flood certain sections of the city," the brief states.

At the climate forum in Honolulu, Chip Fletcher, associate dean for academic affairs at the University of Hawai'i's Department of Earth Sciences, ran through the long list of climate change effects already being seen in Hawai'i: The ocean and all four seasons have gotten hotter. Average daily wind speeds declined 6 percent per decade over the last 30 years. There's less rain, particularly on the Kona coast of Hawai'i island, and streams are suffering for it. Avian malaria threatens Hawaiian forest birds, as rising temperatures expand mosquito habitat.

Continued to page 7

And then there is the increase in extreme weather events, such as the rain bomb that swamped O'ahu and Kaua'i in April 2018, which he said caused $124 million in damages.

Kapua Sproat, director of Ka Huli Ao Center for Excellence in Native Hawaiian Law, also described how those changes affect Hawaiian cultural practices. Declining stream flows and rising sea levels threaten coastal plain agriculture, affect voyaging, devastate subsistence fisheries, fish ponds, in particular, she said. Rain bombs can hinder the growing of kalo, which is a food staple, and declining forest health will affect natural resources and the ability to gather them, she continued.

"Global warming jeopardizes our ability to live our culture," she said, noting that she comes from a long line of akule fishers, who traditionally operate in the summer. "Two months ago, in March, the akule are in. Traditional cycles are out of whack. … If you talk to many native Hawaiian practitioners, there are many concerns about the changes taking place now," she said.

University of Hawai'i law school professor Richard Wallsgrove asked whether a price tag could ever be put on the biological and biocultural losses Fletcher and Sproat described.

"Some amount will be put on it. Is it enough? Is it sufficient?" Sproat said. She noted that a lot of the work that's been done on valuing the local cost of climate change deals with more urban environments, such as Waikiki.

Sproat, a self-described country girl from Kaua'i, said she was also concerned with what's going to happen to rural communities, where there is just one road in and out.

University of Hawai'i's Department of Urban and Regional Planning chair Makena Coffman added, "Putting numbers on cultural resources is very sensitive and not often a good idea." However, she supported the idea of valuing damages otherwise, especially the major ones. "If we don't … then I think we're at this point where we'll say everything that's priceless is costless," she said.

She continued that little is known about the economic cost of the projected physical damages to Hawai'i as a result of climate change.

"We only have little slivers here and there and we need to think about this much more," she said, adding that the state's Sea Level Rise Vulnerability and Adaptation report released in late 2017 is probably the best touchstone for understanding the economic effects to Hawai'i of a 1-meter rise in sea level.

The report estimated that a sea level rise at that height could cause $19 billion in losses to property values throughout the state. The cost of damages to infrastructure was not included.

The state Department of Transportation's Ed Sniffen recently informed the state Climate Change Mitigation and Adaptation Commission that it costs $7.5 million to repair a single mile of damaged road. Given that, Coffman said, the true cost of sea level rise is going to be a much larger number very quickly. And that's just considering transportation infrastructure. As *Environment Hawai'i* has reported, the Honolulu Board of Water Supply expects sea level rise to accelerate corrosion of its transmission system in certain coastal areas.

She added that the expected drop in value of properties within the report's sea level rise exposure area on O'ahu could result in an 8 percent drop in property tax revenues to the City and County of Honolulu.

"It struck me as both big and small. Yeah, we can plan for, but if we don't, that's a lot," she said.

If cities fail to consider climate change effects in their infrastructure projects, their bond ratings will likely be downgraded, raising the cost of borrowing, she continued. That could be a huge problem for areas trying to rebuild after a disaster event, as will inadequate insurance.

"Catastrophe bonds are a thing now," she said, adding that what the city of Honolulu has in insurance coverage — about $200 million — is wildly insufficient. "That's nothing if you're talking about a big disaster event. Coffman noted that 1992's Hurricane Iniki caused $8.9 billion in damages (in 2018 dollars). And according to Fletcher and other experts, the hurricane threat to Hawai'i is expected to increase with global warming.

Coffman reported that at a recent meeting of the world's largest insurers and reinsurers, it was acknowledged that the world is on its way to become uninsurable. "This industry might not be able to function. Expect premiums to go up," she said.

To the Sierra Club's Townsend, fossil fuel companies needed to "pay for their contribution to this problem."

To date, the lawsuits that have been filed have met with mixed results in the courts. The Oakland case was dismissed by a federal judge, but that decision has been appealed (with Hawai'i Sen. Mazie Hirono joining in an amicus brief filed by several Democratic senators).

Townsend did not say whether her organization planned to initiate a lawsuit here, but did encourage those who attended the forum to go for it. "Yes, please, go sue. It takes lots and lots of tries. … There should be a homeowners' association saying, 'All our houses are falling into the ocean … pay up.' I think that's completely legitimate," she said.

The Rebuttal

What could a local plaintiff expect to encounter by, as Sher put it, poking the tiger? The Oakland case provide some clues.

In their 2018 motion to dismiss the Oakland lawsuit, BP, Chevron, ConocoPhillips, Exxon Mobil, and Royal Dutch Shell argued that before a court could assess the reasonableness their alleged conduct, it would need to find that greenhouse gas emissions unreasonably interfered with a public right. But the authority to make that determination rests with the Environmental Protection Agency, they wrote.

The companies, through their 26 attorneys, also argued that the public nuisance claim under federal common law fell short in that the city didn't and can't allege that the companies' conduct was unauthorized. "To the contrary, the production of fossil fuels is specifically authorized, and even encouraged, by numerous federal, state, and local laws," they wrote.

What's more, the companies didn't control the fossil fuels when they were burned "and thus cannot be held liable under black-letter nuisance law," they continued.

They added that the city's claims "depend on an attenuated causal chain including billions of intervening third parties—i.e., fossil fuel users like Plaintiffs themselves—and complex environmental phenomena occurring worldwide over many decades."

With regard to the relief being sought, they called the abatement fund "damages by another name," and argued that damages can be awarded only for harm actually incurred, not for "speculative future harms that may never eventuate."

Awarding such damages would violate the companies' constitutional due process rights "by imposing massive retroactive liability for conduct that was legal—in fact, encouraged—at the time it occurred (and still is today), as well as for protected First Amendment activities," they wrote.

The companies didn't speak to whether or not they misled the public about the effects of their product, but instead argued that misleading advertising is regulated by federal statutes, not common law, and that

Continued on next page

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"the speech that Plaintiffs seek to punish, whether commercial advertising or political discourse, is constitutionally protected."

Aftermath

Days after the forum, UH law professor and associate dean Denise Antolini, Fletcher, and Johl co-authored an editorial in the *Honolulu Star-Advertiser* making the case for climate change litigation in Hawai'i.

The industry responded on May 10. In a letter to the editor, Phil Goldberg, counsel to the Manufacturers' Accountability Project, accused Antolini of spreading propaganda. The project was created in 2017 by the National Association of Manufacturers, which includes BP, ConocoPhillips, ExxonMobil, and Shell as members. The association has spent more than $163 million lobbying the federal government since 1998, according to the Center for Responsive Politics.

Goldberg's letter stated that the U.S. Supreme Court unanimously decided in 2011 that "there is 'no room' for litigation over climate change public policy." He also claimed that "several federal courts and judges refused to blame America's energy manufacturers for global climate change, saying there is no legal wrong that needs to be remedied." (Nearly all of the cases were originally filed in state court, but some were moved to federal court as a delay tactic by the companies, according to Sher.)

Goldberg had made similar arguments in a May 2 email to Antolini.

In a May 21 response, Antolini accused him of misappropriating "the quote — and gravitas — of Associate Justice Ruth Bader Ginsberg (who authored the 2011 decision), deliberately, it seems, to create confusion in the mind of the reader."

Ginsberg's statement that there is "no room for a parallel track" was made in the context of the Environmental Protection Agency's rule-making proceedings to regulate fossil fuel-fired power plants. "That context matters," Antolini wrote. She added that Goldberg also ignored the fact that Ginsberg was referring only to federal common law and that she stated in the decision's last paragraph that the court was leaving the matter of whether a claim could be made under state nuisance law "open for consideration on remand."

With regard to Goldberg's claim about the positions of several federal courts on such lawsuits, Antolini had this to say: "[Y]ou omit any mention of the six lawsuits that were remanded to state court for further proceedings, which seems to contradict your overall point." — ***Teresa Dawson***

Stakeholders, Board Members Diverge On How to Resolve Kaua'i Water Fight

The Kaua'i Island Utility Cooperative (KIUC) is inching closer to securing a long-term lease for stream diversions that feed two hydroelectric plants on the island's east side. This month, the utility is expected to release a draft environmental assessment (EA) for the lease.

Theoretically, the utility could be in a position to bid on a lease by year's end, if it manages to get a final EA accepted without being challenged and if the Board of Land and Natural Resources approves a watershed management plan beforehand.

Standing in the way of that outcome are opponents with a long list of gripes. Some object to the fact that a small part of the diverted water is sold by Grove Farm to the county Department of Water Supply after passing through the company's Waiahi surface water treatment plant.

They also argue that the utility's diversions of Waikoko and Wai'ale'ale streams, which are located on state land, require a full environmental impact statement, not just an EA. Some have demanded that the utility's permit be revoked, claiming, among other things, that Waikoko Stream has not been restored as required by the existing permit and is dry in one stretch. Others have simply asked the Land Board to impose stricter conditions on the utility's revocable permit.

At the Land Board's April 26 meeting, KIUC communications manager Beth Tokioka reported on the outcome of facilitated discussions earlier this year with stakeholders, including those critics, in an effort to address their concerns. In short, mediator Robbie Alm recommended that they enter a formal dispute resolution process that addresses all of the stream diversions that feed the old sugar plantation irrigation system, not just the two on state land.

But KIUC has little time for more talk. The utility's permit expires in December and it's unclear whether the board can renew it, since the permit was authorized by a 2016 legislative act that sunsets this year.

Given the discussion at the board's April meeting, it seems unlikely that KIUC will be bidding on a lease come January 1.

Actual Needs

According to Tokioka, the Waikoko and Wai'ale'ale diversions provide 50 to 65 percent of the water that powers the plants.

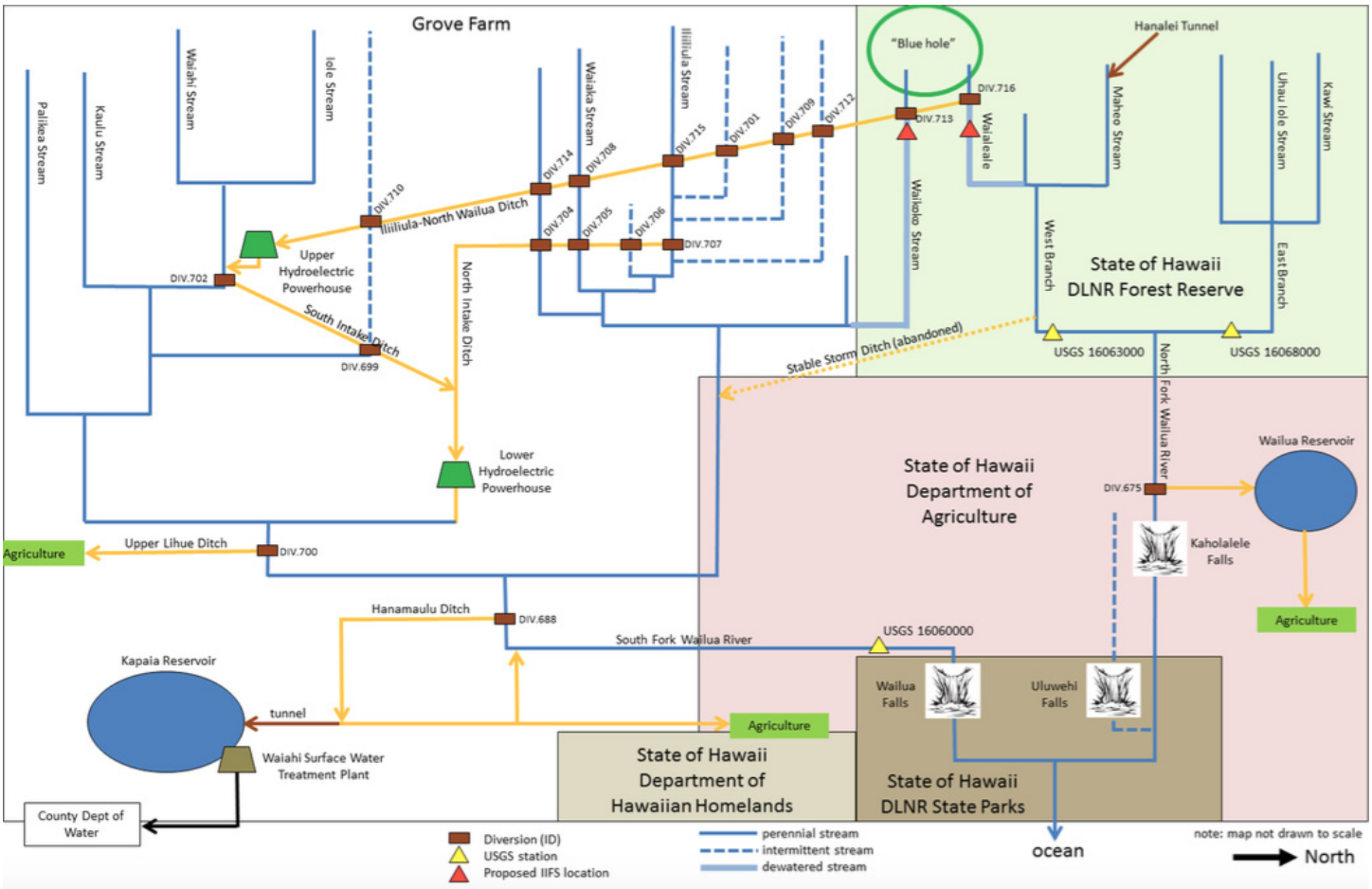
Water from about a dozen perennial and intermittent streams on Grove Farm lands join with water diverted from Waikoko and Wai'ale'ale to feed both plants. Tokioka said the utility historically took 14.2 million gallons a day (mgd) from the two streams on state land.

In accordance with its permit approved last December, the utility has been taking a combined 9.6 mgd from the streams, "unless flow is above median flows," she said.

She said the upper hydro plant needs 25 mgd and the lower one needs 42 mgd for maximum power production of 1.5 megawatts.

Continued on next page

"De-watered Waikoko Stream March 6, 2019," Kia'i Wai o Wai'ale'ale's Bridgette Hammerquist wrote of this photo in her testimony to the Land Board.



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Because the Land Board decided last December to limit the amount of water KIUC can take from the streams so that mauka-to-makai flows can be maintained, the plants are likely operating well under full capacity. Given that, Earthjustice attorney Leina'ala Ley testified in support of a formal resolution process — not necessarily a contested case hearing — to glean more detail about the utility's need to divert those two streams.

"Where is the water going and what is KIUC doing with it? … There might be further opportunity to consider whether additional permit conditions should be put on KIUC," she told the board.

In written testimony, she and colleague Isaac Moriwake had proposed several conditions on KIUC's permit for the diversions. Among other things, they included requiring the installation of water gauges on streams feeding the ditch to help enforce minimum flow requirements, adjusting diversion structures so that they capture high flows, rather than low flows, and requiring KIUC to demonstrate its "actual, reasonable-beneficial need for diversion of water from Wai'ale'ale and Waikoko streams in light of alternative water and electricity sources."

At the board meeting, member Yuen expressed confusion over what the Earthjustice attorneys meant by KIUC's "actual needs."

"For full power, they need 25 mgd [for the upper hydro]. Take 1 mgd out, they lose 4-5 percent of their power. What more information do you want to have? I mean, there is a trade-off: power production and the amount of water returned to the streams," Yuen said.

For one thing, Ley said, alternative water sources needed to be considered. As Kaua'i resident Bridget Hammerquist testified later, about 26 mgd flows in Waiahi stream alone. Waiahi runs through Grove Farm land and also feeds into the ditch system.

Ley also questioned whether it was necessary for the plants to run at maximum capacity at all times and mentioned the times they've been off line. "It's clear they don't operate at maximum capacity. It's not necessary," she said.

"I suppose nothing is necessary. If the plant broke down, you would probably not have rolling blackouts on the island of Kaua'i," Yuen replied. "The issue is, what point is the right tradeoff? People can disagree about that, but I'm just not sure what more information is really necessary," he continued.

Ley said she wanted to know how often water is taken from the two streams to meet actual power needs.

To Ley's apparent concern that the streams weren't being left with adequate flows, Yuen reminded her that KIUC's revocable permit required 4 mgd to be returned to the streams to provide continuous mauka-to-makai flow. (The KIUC's Tokioka testified earlier that it has been meeting the permit's flow requirements.)

"I think there's a very clear answer as to how much power is generated by having these diversions. Just on an engineering basis, they can give you a very clear answer," Yuen said. KIUC had testified in December that if the board approved the permit conditions as recommended — which it did — the hydros would produce 22.4 percent less power.

Ley countered that while KIUC has stated its flow requirements for maximum power generation, it wasn't clear whether the utility is using all of the power generated by the hydros all the time or whether power — and water — is being wasted.

If Ley wanted that kind of detail, Yuen said the utility has figures on the kilowatt

Continued on next page

hours generated. "I would think they would run the plant 24-7 if it didn't break once in a while," he added.

"I'm really baffled," he continued. "Earthjustice, if you look at your website, has this, 'We are in favor of clean energy, we litigate in favor of clean energy.' I understand, a lot of places people don't like dams because … [they're] bad for salmon. I think we pretty much established the last time here the biological benefits of restoring these streams are probably not what we would get in some other places due to the smallmouth bass situation," Yuen said. According to biologist James Parham, the introduced fish — and not poor stream flow — have suppressed native goby populations in the streams.

"I'm trying to get Earthjustice's position as an environmental law firm in reducing the amount of renewable energy produced by this plant," he said.

"I wouldn't say our interest is in reducing the amount of electricity," Ley replied. However, she said her firm believes there are missing pieces in KIUC's justification for taking water from the two streams on state land.

Board member Stanley Roehrig asked Ley's thoughts on whether the board should simply cancel KIUC's permit, since concerns had been raised earlier about the diversions' effect on native Hawaiian traditional and customary practices.

"That's not what we've asked for at this time, but that's an option the board has," she replied.

The Water of Kane

Ley's testimony focused, as did the utility's draft EA, mainly on KIUC's use of the water siphoned by stream diversions on state land.

Like Alm, Roehrig took a broader view.

"I have some difficulty understanding how you can be talking about an environmental assessment when you're diverting a lot of water to Grove Farm, [which is] selling some of that water to the county," Roehrig told Tokioka.

Tokioka said the EA simply supports KIUC's lease application for water for its hydros. "We don't consume any of that water in the plants," she said.

She explained that KIUC has been conducting environmental studies since 2008 and has been collaborating with Department of Land and Natural Resources staff to make sure the EA will be sufficient. "We're not doing it in a vacuum," she said.

To Roehrig's concern about the sale of water to Grove Farm, Maunakea Trask, a former attorney for Kaua'i county, argued that there is nothing inherently wrong with diverting stream water for drinking or to generate electricity.

"Everyone's rights and interests are not mutually exclusive. And neither does any one side — there are no sides — any one party, or individual get to claim the Hawaiian. No one is all business," he said before pointing out that some of the company's critics likely drink Waiahi water, since Kaua'i such a small island.

"Grove Farm wants to get away from this dichotomy that diversions are automatically non-Hawaiian. There's nothing inherently pilau (rotten) or hewa (wrong) about water diversions. Hawaiians, out of all of Polynesia, were the best engineers because of ditch diversions. You look at all of Kalalau, that's all ditch diversions," he said.

He added that many people tout the fact that 'Iolani Palace had electricity four years before the White House. "But how did King David Kalakaua light 325 incandescent lights by 1887? How did he light up Honolulu by 1888?" Trask asked.

"Hydros. Nu'uanu Stream. All that was done by 1888. What is the state cutoff for establishing traditional and customary practices under the Hawai'i Constitution? Under *State v. Zimring,* November 25, 1892," he said.

And Another Thing…

Because opponents of KIUC's diversions have consistently complained about Grove Farm's use of the water, company vice president Shawn Shimabukuro felt the need to respond at the Land Board meeting. He first addressed what he said was misinformation that's been spread about the quality of the drinking water produced by the Waiahi plant.

In both written and oral testimony to the Legislature earlier this year, Hammerquist suggested that the plant's potable water was somehow toxic because its discharge contained high levels of bauxite, which contains aluminum.

Bauxite occurs naturally in Kaua'i soils and Shimabukuro assured the Land Board that the Waiahi plant has a state-of-the-art filtration system that eliminates any traces of elements such as aluminum and bacteria. He added that the plant is regulated by the state Department of Health and county Department of Water Supply (DWS).

"Secondly, you've always heard Grove Farm is receiving in excess of $2 million a year [for Waiahi water]. This statement is made to portray Grove Farm as being a greedy, big bad corporation. However, just focusing on these revenues that we receive does not provide the compete story. We spent $11 million to build the facility and upgrades," he said, adding that there is also considerable cost to maintaining the land and reservoirs.

The county water department reimburses Grove Farm about $1.6 million a year for the water, but that covers just the treatment plant's operating cost and doesn't include any charge for the electricity needed to run it, he said.

Under an agreement between the DWS and Grove Farm, the company may receive a return on its investment in the plant, but that's not happened in last 15 years, he continued.

"Really, we're subsidizing the water. … This is a very critical facility. It provides water to 20 percent of Kaua'i's residents. It provides water to the industrial and commercial sectors," he said.

'Molecules'

Because of the company's relationship with KIUC, board member Roehrig wanted Grove Farm to somehow become an official participant in the Land Board's water allocation process.

Grove Farm was involved in the facilitated discussions held earlier this year, but now that they've ended, it's unclear how the company will continue its involvement, even in the event further discussions are deemed necessary.

"[A]s far as I'm concerned, you're getting a pass, coming here to say whatever you want, but we can't look into your operations from this side. It's all a one-way street," Roehrig told Trask. "You folks have to come before the Land Board with your petition and we'll work it out because we get all kinds of testimony against your folks' conduct. I'm not passing judgment here today on who's right or wrong. If you want to get it worked out, you can't just be a visitor," he added.

"Frankly, I'm baffled by why the Waiahi surface drinking water system keeps coming up in our discussion of the … diversions of Waikoko and Wai'ale'ale streams," he said. If the water from those streams stayed out of Grove Farm's ditch system, there would still be plenty of water in Waiahi stream to at least supply the 2 to 3 mgd needed for the water treatment plant.

Trask added that even the state Commission on Water Resource Management doesn't think Grove Farm uses enough of the water diverted from the two streams to justify its participation in a contested case

Continued on next page

hearing over proposed interim instream flow standards.

"According to CWRM staff, it is not a direct feed. It was on a molecular level. They acknowledge there were certain water molecules that may have been shared," Trask said.

"Well, exactly. The molecules of water that get diverted mix with the molecules of water that were there already, and there's no way to separate," Yuen said.

Despite Yuen and Trask's exchange, Roehrig stood firm in his belief that Grove Farm needed to get officially involved in KIUC's water lease process.

Trask countered that the watershed was never designated by the Water Commission as a water management area, which would require all water users to obtain a use permit from the agency.

Even so, Roehrig said a lease from the state to take the water would allow the company to better plan its future.

To this, Trask argued that Grove Farm has constitutionally protected and common law rights as a riparian landowner, "and there is no information to say we are misusing the water."

"The reason why we're here today is to share our information. We only get attacked. These are the only venues we have to give the other perspective," Trask said.

He added, "In all due respect, leases from the state are not safe, they are not secure, and they ride the sea of politics just like everything else."

The diversion's critics were split.

Ley sided with Trask and Yuen, pointing out that only about 11 mgd is diverted from Waikoko and Wai'ale'ale streams and there is at least 42 mgd flowing through the system before it reaches KIUC's lower hydro. "If Grove Farm's interest is 2 mgd, I don't see how it would tie in to the 11 mgd from these diversions, which is a small, small fraction of what's flowing through the Waiahi river," she said.

Hammerquist, however, called it a grave difficulty that downstream users of the diverted water, such as Grove Farm, are "insisting on the maintenance and continuation of those two state land stream diversions, but they're not on the RP, they're not someone the Land Board has jurisdiction over. … I don't believe it's appropriate for others not on the RP to come in and justify what this RP user gets to take."

The Path Forward

Trask started his testimony to the board by expressing his dissatisfaction with how the facilitated discussions went earlier this year. While it was the diversion's critics who had asked for them, when it came time to meet, Hammerquist's group, Kia'i Wai o Wai'ale'ale, asked that Alm keep discussions with the water diverters and users of diverted water and the other parties separate.

"Then we were in our respective echo chambers. We wanted to get back together. We got stuff to share," Trask said.

He said the only way to solve the impasse is through the traditional Hawaiian practice of ho'oponopono. "You come in first with the mind to resolve this. You don't want to come in wanting to fight more. No sense. You talk … total truth, absolute truth … and then you work though it," he said.

A contested case is a bad vehicle to resolve this dispute because it takes too long and is way too expensive, he said, adding, "If we can all identify what our interests are, openly and honestly, then maybe we can reverse engineer where we're going to."

Consultant Jonathan Scheuer, who participated in facilitated meetings on behalf of the Department of Hawaiian Home Lands, held the opposite view on how to proceed.

"You have to get this process into a contested case or some other type of proceeding to clarify what people's rights are, what the rules are, the facts are… Trying to have a facilitated conversation in the midst of a squishy administrative process doesn't really help," he said.

Such a structured process would do better at clarifying the mechanisms through which the DHHL can physically get the water it's entitled to delivered to its homestead lands, he suggested.

As things are, a bunch of state water gets into the control of a private entity, and, unless it is told to, it doesn't have to provide water to the DHHL lands, Scheuer complained.

Yuen pointed out that without the diversions of KIUC, waters from Waikoko and Wai'ale'ale would remain in the north fork of the Wailua river — and further away from the DHHL's lands. Scheuer replied that the department was also interested in taking its 30 percent share of any revenue derived from the transmission of state waters.

In any case, he added that the DHHL has not taken a position opposed to the diversion.

Roehrig ended up endorsing a formal dispute resolution process, even though he began by opposing it. Early in the meeting, he said conflict resolution is "a lot slower than you can resolve it by sitting in a room, because when you have a structured format, you have rules of procedure, rules of discovery."

Once he had revised his view, Roehrig argued that a contested case be held before the Land Board, despite the fact that one that addresses interim instream flow standards is already ongoing before the Water Commission.

"CWRM is good for the instream flows, not for how much are you going to pay for your lease, where does the water go …," he said.

When or whether the board — or the stakeholders — will decide how to proceed remains to be seen.

(For more background on this, see "Board Talk: Water Permits, Detector Dogs," from our January 2019 issue.)

— Teresa Dawson

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For Four Decades, Mary Evanson Fought for the Maui She Loved

Mary Evanson died last month. She was 97 years old.

In those 97 years, Mary lived more than most people could do in twice that time. It's hard to think of an environmental group on Maui that she did not help to found or volunteer with, or on whose board she did not serve.

Also, for 27 years, Mary served as a director on the board of *Environment Hawai'i.*

Up until 2006, when she was just a few months shy of her 85th birthday, Mary would regularly hike into and out of Haleakala crater, a place near and dear to her heart. She helped out in one of the early censuses of silverswords, when they were so scarce as to be on the brink of extinction. And she was thrilled to see them return in more recent years. Mary defended the drive to eradicate goats from Haleakala National Park, even though she was known to cave when it came to the orphaned kids. She adopted more than one as pets, and they helped keep down the weeds on the steep slopes of her garden near Makawao.

Mary was a founder of the group Friends of Haleakala National Park and served on its board for many years. She instigated its "adopt-a-nene" program, which not only raised funds for the park, but also educated countless visitors and residents about the park's vital role in protecting the island's natural beauty and resources.

She railed against the proposed extension of the Maui airport runway, which she feared would hasten the introduction of harmful plants and animals. She was instrumental in saving and transforming the Maui Nui Botanical Garden. She helped form the group State Park @ Makena (SPAM), which lobbied for the protection of a long swath of coast from Makena to La Perouse Bay. Kealia Pond owes its protection as a national wildlife refuge, in no small part, to Mary.

Mary McEldowney was born on O'ahu, where her father, George, worked for the Hawaiian Sugar Planters Association experiment station. The family lived in Wahiawa, where there was a forest nursery ("all aliens!" Mary lamented in an interview with Valerie Monson years later).

When Pearl Harbor was bombed, Mary recalled, she could see the smoke. To ensure her safety, her parents put her on "the first ship to the mainland."

After the war, she returned to O'ahu and taught school for many years, moving to Maui in the late 1970s after her children were grown. She settled into a home in a remote valley near Makawao, surrounded by giant koa trees and dozens of other native plants.

Monson recalled Mary fondly: "She was active physically and mentally throughout her life, which obviously contributed to her longevity and youthfulness.

"Until recently, she climbed a ladder to her bedroom loft every night. A couple of years ago, I phoned her and asked what she was doing. 'I'm re-reading Steinbeck,' she said."

Mary is survived by daughter Carol, son Bill, and her beloved dog, Pip.

PHOTO: PATRICIA TUMMONS

Mary Evanson