

West Maui Forecast: Cloudy, Chance of Storms

Disputes over Maui water are nothing new, but, as articles in this month's edition suggest, we ain't seen nothing yet.

The decade-long allocation process for Nā Wai 'Ehā, the four waters on the eastern side of the mountains of West Maui, concluded last year, only to be followed immediately by appeals and fights over implementation.

And as for the western side of those mountains, long-simmering disputes threaten to boil over, as forecasts for aquifer recharge in the region provide little assurance that sufficient water will be available to meet even current needs in years to come, much less new demand.

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Land Use Commission Denies Permit For Hilo's Connections Charter School

Water Commission Learns of Threats To West Maui Ground, Surface Sources

“We just keep getting drier is the bottom line and we’re not making it up,” Ayrton Strauch said of the ongoing rainfall deficit in West Maui.

At the state Commission on Water Resource Management’s January 18 meeting, Strauch, a hydrologist with the commission’s stream protection and management branch, joined deputy director Kaleo Manuel in briefing the commission on their rationale for why they believe it should designate the ground and surface water systems in West Maui as water management areas.

Designation, which can be triggered if water resources are threatened or if there are serious disputes over their use, gives the commission the authority to decide

who gets to use water in the designated area and how much they should receive via water use permits.

To Water Commission staff, there is no question that the closely linked ground and surface water resources in West Maui are threatened.

Regarding the rainfall deficit, Strauch explained that from January 2018 through last fall, cumulative rainfall in West Maui has fallen further and further below the long-term average.

Some statistical downscaling models also suggest that whether greenhouse gas emissions stabilize or continue their current increasing trend, the Lahaina aquifer sector, which currently has a sustainable yield of 34 million gallons a day, will see a decrease in recharge.

Under those model scenarios, Strauch said, recharge in the Launiupoko and Honokōwai aquifer areas that lie within the Lahaina sector are projected to substantially decrease, from 10-25 percent in next 50-70 years.

These two aquifer systems have a combined sustainable yield of 13 mgd and supply the highly developed resort areas of Lahaina and Ka’anapali.

Under the state Water Code, designation must occur if there is “an increase in use or authorized planned use that may cause the maximum rate of withdrawal to reach 90 percent of the sustainable yield.”

According to commission staff, that trigger has already been exceeded for the Honokōwai and Launiupoko aquifer systems.

Launiupoko has a sustainable yield of

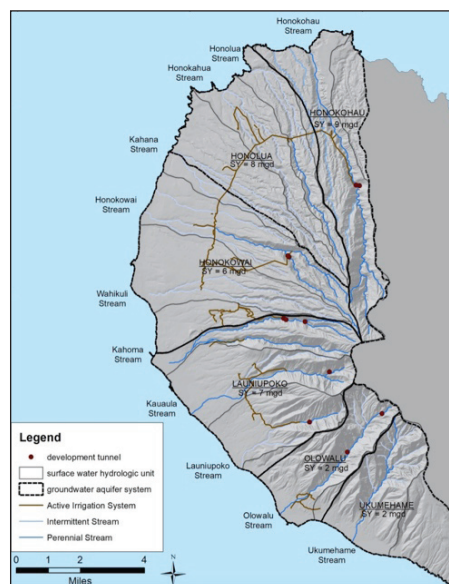
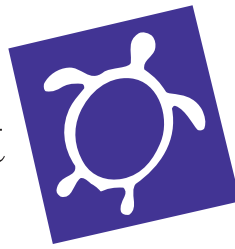


PHOTO: COMMISSION ON WATER RESOURCE MANAGEMENT

Ground water Aquifer Systems Areas and their sustainable yields (SY) for the Lahaina Aquifer Sector with overlaying surface water hydrologic units and their perennial and intermittent streams with development tunnels and active irrigation ditch systems.

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NEW AND NOTEWORTHY

Hu Honua Rebuffed: The on-again, off-again dispute over the Hu Honua power plant just north of Hilo is now on again. This comes after Hu Honua itself sought to postpone—possibly for months—the scheduled start of a hearing before the state Public Utilities Commission on the greenhouse-gas impact of the 28-megawatt plant, to be powered with biomass from plantations on the Big Island.

Just days before the January 31 scheduled start of the hearing, Hu Honua attorney Bruce Voss filed an appeal with the state Supreme Court, challenging a decision by the PUC about the applicability of Act 82, passed by the Legislature last year. Voss argued that the new language means that the PUC should not consider emissions from biofuel projects, but only those from plants burning fossil fuels.

Other parties to the PUC proceeding—Life of the Land and Tawhiri Power—submitted briefs supporting the PUC's order. The state Consumer Advocate also disagreed with Hu Honua, arguing further that its pleading was

precluded by the PUC's rules barring successive motions for reconsideration.

A day after the initial appeal was filed, Life of the Land attorney Bianca Isaki filed a motion to dismiss, and calling Hu Honua's appeal a "last-ditch attempt to prevent the commission from holding an evidentiary hearing on greenhouse gas emissions." In addition, Isaki lodged a request for a speedy decision on Hu Honua's appeal, including an affidavit from Henry Curtis of Life of the Land. In it, Curtis suggests that the real reason for the appeal was the announcement on January 7 that PUC chair Jay Griffin would be leaving the commission at the end of June. This, Curtis states, creates "an opportunity for Hu Honua to exercise its political influence over the selection of a new third member of the commission."

On February 4, the Supreme Court obliged. All five justices agreed to reject Hu Honua's appeal, finding that there was no final appealable decision before it, and calling Hu Honua's appeal "particularly outlandish, and because for months Hu Honua assented to and complied with the PUC's procedural schedule."

(*Environment Hawai'i* has published extensively on this subject. A complete list of past articles is available on our website. Use the search engine to find articles on Hu Honua.)

Fuel Spill Records: On February 2, 1st Circuit Judge Jeffrey Crabtree heard arguments on a motion for summary judgment filed by the Sierra Club of Hawai'i regarding documents held by the state Department of Health.

Last October, the Sierra Club filed a complaint alleging that the department had failed to adequately respond to the group's request for records regarding the fuel spill or spills at Hotel Pier in Pearl Harbor last year that are believed to have stemmed from the U.S. Navy's Red Hill bulk fuel storage facility.

The Sierra Club is a petitioner in an ongoing contested case hearing over the Navy's proposed permit to continue operating the Red Hill facility, and the organization believed the Hotel Pier records were relevant to the case proceedings.

Widespread contamination of the Navy's potable water system with fuel from Red Hill last November has since superseded concerns over the permit, as the Health Department issued an emergency order requiring the Navy to empty the tanks.

Even so, the Sierra Club still believes the DOH should provide some of the records it had requested.

In a January 5 filing, Sierra Club attorney David Kimo Frankel noted that the organization "does not wish to prolong the fight over these documents or unnecessarily burden the Department of Health." He also conceded that the department had provided some redacted documents and that federal law allows the Department of Defense to "retain control over documents provided to the Department of Health."

Frankel suggested that the DOH could release records such as internal emails not protected by the attorney-client privilege, letters and emails the DOH sent to the Navy, reports made by the Navy in March 2020 to the department, and internal Navy emails that a whistleblower provided to the department.

A status hearing has been set for March 2 regarding the delivery of internal emails, materials provided by the whistle blower, and other outstanding Defense Department documents. The DOH must file a supplemental brief by February 18, and Frankel must submit a status report and supplemental response by February 24.

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Patricia Tummons, Editor
Teresa Dawson, Managing Editor

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Environment Hawai'i
421 Ka'anini Street, Hilo Hawai'i 96720.
Telephone: 808 933-2455.
E-mail: ptummons@gmail.com
Web page: <http://www.environment-hawaii.org>
Twitter: Envhawaii

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Directors

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Quote of the Month

"If you cut the lumber too short, you cannot get a board stretcher. ... More better have extra than not enough."

— **Kennard Kaipō Kekona**
on the need to regulate withdrawals from freshwater sources in West Maui

USGS Modeling Mostly Predicts a Decline In Future Aquifer Recharge for the Islands

How will the climate crisis affect groundwater recharge in Hawai'i?

As a presentation the U.S. Geological Survey gave to the state Commission on Water Resource Management last month illustrated, that's not an easy question to answer.

The commission, through the development of its Water Resources Protection Plan, sets the sustainable yields for each aquifer system throughout the state.

Currently, those numbers do not reflect possible changes in rainfall due to global warming. But they soon may.

The data USGS geologists Heidi Kāne and Alan Mair of the agency's Pacific Islands Water Science Center presented were admittedly preliminary and subject to revision, but the center is expected to publish final recharge modeling results sometime this year. And Water Commission staff are poised to incorporate those results into revised sustainable yield estimates.

To estimate future recharge, the USGS used statistical and dynamical downscaling models to predict rainfall under different greenhouse gas conditions. It then compared the results to a 1978-2007 "reference climate," and fed them into a water budget model.

Using the statistical downscaling model, the agency developed mid-century projections for the years 2041-2071 and projections for 2071-2099, which would reflect the driest possible outcomes.

Using two different Hawai'i regional climate models, which are considered dynamical models, the USGS developed projections for the years 2080-2099, each with a different greenhouse gas emission scenario.

For each island, they came up with six projections, then later whittled them down to three: one mid-century, one "wet," and one "dry."

Because there is no consensus on which type of downscaling model is better, statistical or dynamical, "it's best, when you do a study like this, to include both of them so you get a very wide range of what could happen in the Hawaiian Islands for future climate conditions," Kāne said. (Downscaling models are used to provide regional climate projections because global climate models only predict changes for very large

areas.)

For all of the inhabited main Hawaiian Islands, island-wide recharge was expected to decrease under the mid-century and dry climate scenarios. That was also true for the wet climate scenarios for Kaua'i, Moloka'i, and Hawai'i island.

Lana'i was projected to see a decrease in recharge under the mid-century and dry scenarios, but was projected to see an increase in recharge of 5 percent under the wet scenario.

Water commissioner Mike Buck questioned how the wet scenario results showed Lanaihale, which is the forested center of the island, would see a decrease in recharge, while the non-forested areas would see an increase. Commissioner Neil Hannahs said it seemed counter-intuitive, given the ground cover.

Kāne admitted that she and Mair were not expecting that result. She said that a few months during the year with high episodic rainfall are driving higher projected recharge in the non-forested areas of the island.

Mair added that the disparity in the lowland areas could be due to a variety of factors, including how they estimated runoff — which was based on stream gage data from other islands.

The wet scenario for O'ahu also projected an increase in recharge (1 percent), as did the one for Maui (11 percent).

Under the dry scenarios, decreases in recharge were projected to reach 55 percent for Lana'i, 29 percent for Kaua'i, 24 percent for O'ahu and Moloka'i, 20 percent for Hawai'i island, and 14 percent for Maui. (Under a special drought scenario run for Lana'i, recharge was expected to decrease by 59 percent compared to a reference climate from 1998 to 2002.)

The Lahaina aquifer sector, which we discuss in our cover story and which commission staff believes should be designated as water management area, is projected to see a decrease in recharge of 19 percent by mid-century and 24 percent in the dry scenario. Under the wet scenario, it will see 4 percent increase in recharge.

The Pearl Harbor aquifer sector, which provides most of the potable water on O'ahu, was projected to see a decrease of up to 21 percent under the dry scenario, and an

increase of 2 percent under the wet.

The Keauhou aquifer system on Hawai'i island, which has also been considered for designation, is projected to see a decrease in recharge across all three climate scenarios, from 33 percent to 53 percent.

In the latter part of her presentation, Kāne threw a curve ball at commissioners. In addition to running the models to determine how changes in rainfall and runoff would affect recharge, her agency also developed projections that took into account potential effects warming and increased atmospheric carbon would have on evapotranspiration, and the subsequent effects on recharge.

Those projections found that recharge wouldn't change all that much in either direction for all of the islands.

Commissioner Buck seemed dumbfounded.

"You presented this frightening data on decreases, then all of a sudden, it's going to be offset by CO₂ in the air? Where did that come from?" he asked.

Mair explained that some relatively new studies indicate that an increase in atmospheric carbon dioxide "offsets the effects of drying just from warming. . . . In some cases, it more than compensates, and you actually see an increase in recharge. . . . Plants transpire less and you have more water in the root cell that can become recharge."

He added that those projections are "only accounting for that input, and not adjusting for other changes like rainfall, or daily rainfall frequency changes . . . The results that we showed you in the earlier slides were only accounts for that first input: only rainfall and seasonal runoff to rainfall ratios."

Commissioner Aurora Kagawa-Viviani asked whether the USGS had considered the effects increased fire frequency would have on recharge.

"I think what you're talking about is field data collection, which is beyond the scope. This is strictly a water budget modeling study," Mair said.

Commission chair Suzanne Case said she hoped all of the USGS results would be made available soon and called it "important work."

"It's just a strange world that we live in that the inputs on water is a huge uncertainty that we have to analyze like this. For all of humanity, we've been looking at the outputs — population, ag use those kinds of variables," she said. — *T.D.*

Lahaina from Page 1

7 mgd. Current use, development tunnel discharge, authorized planned use, and other permitted well capacity together exceed 8 mgd.

For Honokōwai, with its sustainable yield of 6 mgd, it's even worse. The same combination of uses and well capacity there exceeds 10 mgd.

For the other four aquifer systems in the Lahaina sector — Honokōhau, Honolulu, Olowalu, and Ukumehame — current and potential future uses range from 8 percent of the sustainable yield (at Olowalu) to 71 percent (at Honolulu).

Earlier in the meeting, representatives from the U.S. Geological Survey reported some preliminary findings on the potential effects climate change will have on aquifer recharge statewide. The agency has not yet published its results and its presentation to the commission noted that they were subject to revision. Still, commissioners, CWRM staff, and members of the public repeatedly referenced them during the discussion of the proposed designation.

For the Lahaina sector, the USGS reported that a statistical downscaling model using a “business as usual” greenhouse gas emission scenario found that recharge will decline over the next several decades in all six aquifer systems. The models predicted a sector-wide decrease in recharge of 19-24 percent.

The USGS also reported that preliminary results from its dynamical downscaling model found that the Lahaina sector would see a four percent increase in recharge.

In all scenarios, the Ukumehame system, which is the furthest south,

will see a drop in recharge of up to 67 percent in the “dry” scenario and down to 4.2 percent in the “wet” scenario. (Dynamical downscaling models rely mainly on input from lower-resolution, global climate models, while statistical downscaling models are informed more by local weather data.)

Conflict

Another trigger for designation is if there are serious disputes over the use of groundwater or surface water. According to commission deputy director Manuel, that is the case in West Maui.

He explained in his report to the commission that after it had amended the interim instream flow standards for six perennial West Maui streams in 2018, “subsequent reductions in the availability of water to meet off-stream demand continue to strain existing water uses, including kuleana tenants and traditional and customary practitioners, and have led to additional conflicts.”

His report goes on to say, “A number of informal (e.g., phone calls, letters, emails) and five formal complaints have been filed with the commission regarding the lack of streamflow, the waste of diverted surface water, the delivery of water, and issues with diversion management from Honokōhau, Honokōwai, Kahoma, Kanaha, Kaua‘ula, Launiupoko, Olowalu, and Ukumehame since 2018. In 2020 alone, commission staff have fielded complaints for Honokōhau, Kahoma, Kanaha, Kaua‘ula, and Ukumehame streams. The latest is a waste complaint filed for Kaua‘ula Stream on December 9, 2021, alleging leakages of water at multiple locations of [Launi-

upoko Irrigation Company’s] system and a reduction of water delivered for kalo cultivation from the needed 90,000 [gallons per day] to between 47,000-52,000 gpd.”

He and Strauch also noted that because the commission ordered more water to remain in the streams, some users are now targeting groundwater resources. For example, Launiupoko Irrigation Company, Inc. is seeking permission from the Public Utilities Commission to increase its rates for delivering stream water from Launiupoko and Kaua‘ula streams and “pumping of existing and new ground water sources in the Launiupoko aquifer,” according to Manuel’s report.

Manuel explained that in the Lahaina region, where surface water and groundwater are clearly connected hydrologically, establishing an IIFS alone isn’t protective enough. Increased groundwater withdrawals can affect groundwater-dependent ecosystems and coastal discharge, he said.

“So that is one of the impetuses for recommending a coordinated, integrated approach to management and designation here. We’re thinking we’re doing a lot, setting IIFS, but if it’s just shifting the burden to our groundwater resources, then it’s a net zero. It’s not actually helping out in managing resources holistically,” he said.

He also noted that the commission’s current sustainable yield numbers “don’t account for the climate conversation we just had.”

Already, certain wells in the Lahaina sector are exceeding the 250 parts per million chloride levels that are generally considered at the top of what is safe for drinking, he said.

Designation of the groundwater sources would give the commission the ability to regulate the location, spacing, and pumping of wells, he added.

‘Overzealous’

Director of the Maui Department of Water Supply Jeff Pearson — a former deputy director for the Water Commission — did not share his former staff’s view on the need to designate the entire Lahaina sector.

He admitted that the Honokōwai aquifer system may need to be design-

Continued on next page

System	SY (mgd)	2020 12-month average (mgd)	2021 12-month average (mgd)	development tunnel discharge (mgd)	entitled/ auth. planned use* (mgd)	other permitted well capacity (mgd)	total existing and auth. planned use (mgd)	% of SY
Ukumehame	2.0	0.042	0.030	0.00	1.080	0.000	1.11	56%
Olowalu	2.0	0.082	0.064	0.10	0.003	0.000	0.167	8%
Launiupoko	7.0	1.637	1.305	3.91	1.036	1.777	8.028	115%
Honokōwai	6.0	3.480	3.998	2.50	2.533	1.150	10.181	170%
Honolulu	8.0	2.131	2.554	0.00	1.969	1.150	5.673	71%
Honokōhau	9.0	0.000	0.000	3.75	0.001	0.000	3.751	42%

The aquifer systems of West Maui highlighted in red indicate those areas where authorized and planned uses exceed sustainable yield.

PHOTO: CWRM

nated, given the apparent threat to the sustainable yield. He added that having just seen Strauch's presentation, the Launiupoko aquifer system "may also be in jeopardy."

"Maybe those two aquifer systems should be looked at more closely by the commission and consider designation for those," he said. But to suggest designation for all surface water and groundwater in West Maui "is a little overzealous. ... Just take this slow and look at it from all sides," he said.

Commissioner Neil Hannahs suggested that the commission would actually be exercising caution if it designated the entire Lahaina sector. He reminded Pearson of the USGS's bleak projections for future rainfall and aquifer recharge.

"No matter what the current state is today, it's going to be tested in the future as we look at those projections. So what's the risk of designating a large area? Why is that an inconvenience? Why is that not cautious?" Hannahs asked.

"You can take cautious too far," Pearson replied, adding, "Yeah, the predictions of reduced rainfall ... are there but that doesn't mean we need to jump on the bandwagon and designate based on this recent presentation."

"I'm not going to discount the shortage of rainfall or climate change. I'm not that naive. But I still don't think we need to jump to conclusions and designate the entire aquifer without additional information."

He added that well development is ongoing in West Maui and warned that if the commission were to designate the area, well permits could be held up, which could limit or stop planned growth.

Pearson noted that none of the aquifer systems except for Honokōwai and Launiupoko were threatened by current or future authorized planned use. "What is the upside of designating that? ... They're not anywhere near the sustainable yield," he said.

He said that while the Maui Board of Water Supply favors designation, his office and that of the mayor do not.

The DWS's Eva Blumenstein added that she would like to see the commission issue more guidance on how groundwater models should be interpreted and used. She also said there should be another monitoring well in Launiupoko

to help inform pump distributions. Currently, there is only one.

Public Trust Needs

In response to the DWS's comments, Strauch pointed out that with regard to surface water, much of it is diverted and managed by private entities, and without designation, the commission has no way of ensuring that public trust needs are met.

Jonathan Likeke Scheuer testified on behalf of the Department of Hawaiian Home Lands in favor of designation. Water uses by the DHHL are a public trust use.

If the commission designates the area, the department's surface and groundwater reservations there would be adopted as an administrative rule, which offers "a layer of protection and assurance DHHL can rely on," he said.

He also said that the state constitution calls on the commission to take action to protect the public trust long before a crisis develops. He recounted that when the commission designated the 'Iao aquifer more than a decade ago as a groundwater management area, it first debated whether or not to designate the adjacent Waihe'e aquifer at the same time. Because pumping had not yet reached 90 percent of the sustainable yield in the latter, the commission declined to designate it, he said.

"Really soon afterwards, a private developer came in, saying, 'We're putting in wells in the Waihe'e aquifer right next to the boundary.' This was the Betsill brothers. ... The staff said, 'Oh my god, we actually don't want to recommend this permit, but they have correlative rights so we're not going to deny it.' ...

"The reason why you want to take a comprehensive approach is to avoid people going right outside the boundary line and starting to move your problems and you're playing whack-a-mole for the next few decades," he said.

Several native Hawaiian farmers from the area with kuleana rights also testified in support of designation.

Ke'eaumoku Kapu, who lives and grows kalo on kuleana land in Kau'ula valley, said West Maui should have been designated as a water management area long ago.

"Our 'ohana's use of water for kalo is

protected. ... Despite this, we often don't have enough water in the stream to water our lo'i," he said, adding that because the population in the area is projected to grow, "it is important to secure our water future for generations to come."

Kekai Keahi, whose family has kuleana land in Kanaha valley, took issue with the DWS's claim that designating the entire Lahaina sector would be overzealous. He pointed out that the six aquifer systems that make up the sector don't have any real hydrologic boundaries between them and the idea that water could be taken from one system for use in another "is one disaster waiting to happen."

He complained that his family has been waiting for the return of stream water since the commission amended the IIFS in 2018. "The water has never returned. In fact, the county has not put one inch of effort into redesigning the intakes so that we can farm our land," he said. At the same time, he added, the county is dewatering streams to dilute water from the salty wells in Kanaha that are being overdrawn.

"The designation is something we desperately need," he said.

Kennard Kaipō Kekona, a farmer in Lahaina, also complained about the amended IIFS not being met and expressed his concern that pending development will force the county to draw from the aquifer systems outside Honokōwai and Launiupoko.

Somewhere close to 40,000 homes are going to be developed in Lahaina, according to the general plan, he said. "We've been constantly trying to make efforts to lessen the impact to the community. ... The planned growth isn't considering and factoring what we just looked at today," he said, referring to the USGS recharge projections.

"I think for us to take a large scope action and grab ahold of that is probably the best ...

If you cut the lumber too short, you cannot get a board stretcher.... More better have extra than not enough," he said.

According to Manuel, he plans to bring to the commission a recommendation for some kind of action this month. After holding hearings in March, he said he hoped to make a final recommendation to the commission in April or May. — *Teresa Dawson*

Kuleana Farmers Again Complain Of Scant Water from Nā Wai 'Ehā

The heavy lifting is far from over. Nearly 20 years ago, Hui o Nā Wai 'Ehā and the Maui Tomorrow Foundation filed their petition to amend the interim instream flow standards for Waikapū, Waihe'e, North and South Waiehu streams and Wailuku River, known collectively as Nā Wai 'Ehā.

Since then, the state Commission on Water Resource Management has designated the Nā Wai 'Ehā watersheds as surface water management areas, adopted new interim instream flow standards, and, last summer, it issued its Findings of Fact, Conclusions of Law, and Decision and Order in the contested case on water use permits in the area.

That last decision articulated who would receive a water use permit and why, how much water they should get, and what the water would be used for.

Many of the parties in that contested case filed appeals with the Hawai'i Supreme Court last fall. Meanwhile, Water Commission staff have been working to help enforce the decision's provisions so that water is going to those who are supposed to have it.

As *Environment Hawai'i* reported last October, permittees with kuleana rights to water from South Waikapū Stream reported that they were not receiving the water they are entitled to. Some claimed that Wailuku Water Company, which owns and operates the old sugarcane plantation ditch system that diverts the streams, was improperly restricting flows. They also complained that others with lower priority permits or no permit

at all were drawing water from the system before they got their share.

That month, the Water Commission took steps to ensure that a farm that didn't have a permit for water from South Waikapū Stream stopped drawing water from the system. (Read more on that elsewhere in this issue.) But the problem of maintaining the 'auwai that feeds the kuleana lots, or reviving the traditional 'auwai to bypass the ditch system, remains: Both cross private land.

These same problems — and more — plague the taro farmers at the end of the Wailuku Town kuleana 'auwai.

"This is a South Waikapū kuleana issue all over again," Hui o Nā Wai 'Ehā president Hōkūao Pellegrino told the commission at its January 18 meeting.

Dean Uyeno, head of the Water Commission's stream protection and management branch, briefed commissioners that day on the heated tug-of-war between the Wailuku Water Company and Robert Street, who farms taro on one of the kuleana properties at the end of the 'auwai.

Since last October through last month, Street has repeatedly engaged in what WWC president Avery Chumbley calls "self-help vandalism," opening a valve and even cutting the chain on it to allow more water to flow from the company's Waihe'e ditch into the top of the 'auwai.

Chumbley insists that his company has been meeting and at times exceeding the Decision and Order's requirement that 88,000 gallons a day be released into the 'auwai.

The commission had intended for the kuleana users to take responsibility for maintenance of their 'auwai and to work out on their own how to make sure they received their due, assuming that the amount of water the D&O required to be released into the 'auwai was actually there.

In the case of the Wailuku Town kuleana 'auwai, there are only four users. Imua Family Services, located near the top, takes water from a pipe controlled by WWC that then goes underground for about 200 feet. The 'auwai crosses a couple of properties, then runs past the

Wailuku public library. Further down, a couple of storm drains intersect the 'auwai, which then resurfaces toward the end of Kalua Road. After that, it passes through several culverts and under driveways before it comes to a junction that serves the final three users, all of whom grow taro.

Where's the Water?

On September 29, the Water Commission received an email from Street, who grows taro on Jordanela Ciotti's property. Ciotti received a water use permit for 8,265 gallons per day from the 'auwai to grow kalo, although she was recognized to have appurtenant rights to 34,500 gallons per day of water.

According to a commission staff report, Street was angry about not receiving enough water. He followed up with a phone call on October 7, complaining that the water coming to his farm was a mere trickle.

A few days later, WWC's Chumbley reported to the commission that somebody had vandalized the valve that releases water into the 'auwai.

Throughout October, November, and into December, Street continued to complain about insufficient or no water, while Chumbley reported repeated vandalism of the valve.

Street told commission staff that the Wailuku Water Company used to maintain the 'auwai when sugarcane was still being grown and also used to fully open its valves and release water to the kuleana landowners three days a week. Since the commission's Decision and Order, WWC has chosen to try to release just 88,000 gallons every day. While some of the company's meter readings suggest that amount and sometimes more is, in fact, being released, Street submitted photos of WWC's meter to the commission that seemed to indicate no water was being released at times.

In one of his many emails he stated: "The only business WWC has in the Wailuku Town 'auwai system, is [to ensure] that the valve that comes directly off of Waihe'e ditch remains in the open position. This valve is the start of the Wailuku Town 'auwai system. Our files also indicate that the minimum flow before we were cut off was 160,000 gallons per day. We are legally entitled

Continued on next page



The low flows into Jordanela Ciotti's property have been difficult for Water Commission staff to accurately measure.

to water that we were accustomed to, to satisfy our needs to grow kalo and other agricultural products we grow.

"It is not our responsibility to do your job by continuously sending photos to verify what is 'oia'i'o [true or real]. This has become an overused copout by the CWRM. The situation has become so untenable, that what little trust we had in you and your team is gone," Street stated. He also repeatedly called for commission deputy director Kaleo Manuel to be fired.

Chumbley was equally incensed. After the eighth time Street vandalized the distribution pipe, Chumbley wrote to Water Commission chair Suzanne Case, "As I have stated in the past to the staff and now directly to you Chair Case, I am requesting that the CWRM take a formal action to revoke Permit # 2247 to Ciotti based on these blatant and continued actions of self-help/theft and waste of water, which is clearly allowed and stated as a consequence under the D&O. WWC will continue to pursue with the MPD and Maui Prosecutor's office criminal property damage and criminal trespass charges against Mr. Street."

He later wrote, "WWC is providing the delivery drop at the ['auwai] distribution point. Mr. Street MAY have little to no water due to the condition of the 'auwai, NOT that WWC is withholding the deliveries."

On October 29, commission staff did a site visit and attempted to do a "back of the envelope calculation" of how much water was reaching the kuleana farmers. Using a leaf to try to determine flow velocity, Dean Uyeno of the commission's stream protection and management branch said he believed the flow at the time was just above the permitted amount. The branch's Ayrton Strauch later tried again, using a different method, and found that WWC was likely not meeting the 88,000 gallons per day minimum flow into the 'auwai. However, Uyeno, said, that estimate had a 20 percent chance of being accurate because the measuring device Strauch used doesn't perform well in such low flows.

'Excuse my language'

While the commission intended for kuleana users to take charge of manag-



PHOTO: COMMISSION ON WATER RESOURCE MANAGEMENT

The Wailuku Town kuleana 'auwai, about a mile long, runs underground in parts and receives runoff from two storm drains before it reaches three kuleana parcels.

ing their 'auwai once WWC drops the required minimum amount of water into it, this case involved some unforeseen complications and has forced staff to seek guidance.

Uyeno posed the following questions to the commission: Who has the responsibility to manage the Wailuku Town kuleana 'auwai and where should WWC provide the 88,000 gallons per day required by the D&O?

Whether the release point is at the end of WWC's Waihe'e ditch or at the distribution valve about 800 feet makai, Uyeno said, the amount may need to be increased due to apparent losses from the 'auwai.

Staff has so far been unable to quantify those losses because a lot of the system is underground, he said.

Manuel noted that it took more than

a decade for the commission to take action on all of the water use permit applications for Nā Wai 'Ehā. And in that time, landowners changed, as did the scope of uses on the properties. So the amount of water that the original permit applicants asked for may now be insufficient, he said. What's more, he added, no one ever took a baseline measurement of the water that WWC was releasing pre-D&O, when it was fully opening its valves three times a week.

To make sure the kuleana users are getting enough water, Manuel suggested that the commission could have WWC return to its pre-D&O release practice and release something like 100,000 more gallons a day into the 'auwai. He pointed out that the three end users have appurtenant rights totaling 347,000 gallons

Continued on next page

per day, so there is a potential to award them more water.

For kuleana users in rural areas, where 'auwai are more traditionally designed, having users manage it is workable, Manuel argued.

“We knew there would be some horrible implementation issues. This is an example of that.”

— Mike Buck, water commissioner

“In this case, you have a system that’s in an urban built environment that’s a relic of its time, that’s lasted the building to streets and other infrastructure ... It still exists, but has a lot of layers on top of it. Easily managing that system ... is almost impossible,” he said.

He said that in addition to just receiving more water from the 'auwai system, the end users could perhaps hop onto the county water system. The Department of Water Supply would have to evaluate whether it had the infrastructure to do so, and the users would then become paying customers, he continued.

Commissioner Mike Buck thanked Manuel and his staff for trying to find a resolution.

“As a commission, we can make broad policy calls and we knew there would be some horrible implementation issues. This is an example of that,” Buck said.

“It would be great if we could just stick to our decision and order and tell everyone else, ‘You figure it out as long as the water WWC is responsible for is available at the top of that,’” Buck said, admitting that that was perhaps naive. “We were looking for community leadership that didn’t have to come from the water commission staff. ... I hope that still might be possible.”

The dispute over where the 'auwai starts needs to be resolved before that can happen, Manuel suggested. If it starts at the end of the ditch, then it wouldn’t be up to WWC to decide what comes out of the valve at Imua Family Services.

However, WWC says that the valve is where they always used to release water into the 'auwai.

“Who gets to manage the 'auwai is really important. We may need to clarify or amend the D&O because it was broadly written,” Manuel said.

Buck agreed that it was definitely the commission’s responsibility to determine that.

Manuel also pointed out that the 'auwai itself “has various formal and informal records of existence. Portions of it do have its own easement on maps. ... Others are just drawings on TMKs. No formal easement or access rights to anybody.”

He mentioned that Earthjustice, in its exceptions to the Water Commission’s D&O, argued that kuleana tenants have access rights to 'auwai on private

“Where is our water? ... We didn’t sign up for this type of nonsense.”

— Robert Street, taro farmer

property.

Commissioners discussed the possibility of fixing the 'auwai to reduce system losses. While the D&O considered documented losses from WWC’s main ditch system, there was no evaluation or record of system losses from distribution lines or 'auwais.

“It seems like that was something that was forgotten but something that’s clearly coming back to, excuse my language, but bite us in the ass,” commissioner Aurora Kagawa-Viviani said.

“These are things we’re learning from,” Manuel said, adding that he hoped the commission will be able to get information from future water use permit applicants on where their water comes from, whether it’s from an unlined 'auwai, etc.

Public Testimony

When it was the public’s turn to testify, it was clear that the beef between Street and Chumbley was still very much alive. Chumbley again alleged property damage and trespassing by Street. “The most recent just happening January 13 for the tenth time now. There are videos and witnesses ... We are still in discussions with the prosecutor’s office and may press criminal charges later on,” Chumbley said.

Street, on the other hand, argued that as kuleana tenants, “we have an implied easement. We are not trespassing and they never understood that.”

Chumbley claimed that his recent water meter readings show that WWC is releasing double what is required. Street, however, told the commission, “I have sent you photographs of that valve registering zero.”

“Where is our water? ... We didn’t sign up for this type of nonsense,” he said, adding that Chumbley should be charged with water theft.

Hui o Nā Wai ‘Ehā president Pellegrino urged the commission to help find a solution quickly. “Let’s not make this a 2.0 of Waikapū,” where a resolution to the kuleana water issues took more than a year to address, he said.

“I understand Mr. Street’s frustration. The hui may not agree with his strategies to communicate his frustration, but his frustration is

justified ... same with other kuleana farmers that are caught as pawns in this numbers game,” Pellegrino said.

Lucienne de Naie of the Maui Tomorrow Foundation added that her organization has also received complaints from the community about the lack of water for permittees. “People feel like they went through this long process. ... Everybody thought when we reached the end, the water would be there and they could count on it. ... Certainly people are entitled to enough water. If that means raising the allocation so the loss is mitigated, the commission has a duty to do that,” she said.

Commissioners Buck and Hannahs recognized that Manuel had taken the brunt of community frustrations over the lack of water. “You do not deserve to

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PHOTO: COMMISSION ON WATER RESOURCE MANAGEMENT



The chained water valve and pipe that releases water into the Wailuku Town kuleana 'auwai.

South Waikapū Kuleana Tenants Seek Greater Control Over Water Delivery

In October, *Environment Hawai'i* reported on a complaint that kuleana tenants with permits to use water from South Waikapū Stream, one of the four streams of Nā Wai 'Ehā, were not receiving what they were due.

They blamed the Wailuku Water Company, LLC, for restricting flows into their 'auwai and accused the company of selling water to Kumu Farms, which does not have a permit for South Waikapū water, and of allowing former WWC vice president Clayton Suzuki to receive water before them, despite him having a lower priority permit.

On October 19, the Commission on Water Resource Management ordered Wailuku Water Company, and Waikapū Properties, LLC, to stop delivering water to Kumu Farms from Reservoir 1, which receives water from South Waikapū Stream.

Under the state Commission on Water Resource Management decision and order for Nā Wai 'Ehā water use permits, Kumu Farms was to use Waikapū water only until certified organic fields that could be fed by WWC's Wahie'e ditch became available. Once those fields were certified organic, Kumu Farms' water allocation from Waikapū Stream would be reduced to 250 gallons a day for cattle.

In response to the complaint, Kumu

Farms informed the commission that water from the stream was only being provided as drinking water to livestock.

"All farming operations have been moved to the makai side of the Waihe'e Ditch and/or to the makai side of Honoapiilani Highway. Kumu Farms is in the process of finalizing infrastructure that would allow it to transition to pumping water from the Waihe'e Ditch," it stated in a September letter to the commission.

Even so, commission staff learned from WWC president Avery Chumbley that his company had continued to provide 75,000 to 125,000 gallons per day of water from Reservoir 1 to Kumu Farms. That was a huge percentage of the 265,188 gallons per day that were supposed to be going to South Waikapū 'auwai users. Those users included Ho'okahi Alves, John Minamina Brown Trust/Crystal Smythe, George and Yoneko Higa, Teruo Kamasaki, Clayton Suzuki, and Nadao Makimoto.

While the actual amount of water being released to the 'auwai users during a staff site visit exceeded the 265,188 gallons required by the commission's decision and order, flows dried up about 250 feet beyond the point where water was dropped into a lower 'auwai segment, well before it could reach the Alves property

and Smythe's upper kalo fields, according to a commission staff report.

While it appeared from the site visit that WWC had not been restricting flows to into the 'auwai, Hui o Nā Wai 'Ehā president Hōkūao Pellegrino still believed the company played a role in depriving the kuleana users of their water.

He testified to the commission at the October meeting that the Hui wanted it on record that WWC had been selling water to Kumu Farms in apparent violation of the commission's June 28 decision and order.

"That's 113 days and over 11 [million gallons], that should've been either in the Waikapū Stream or provided to the South Waikapū kuleana farmers. Please commission, when will you bring the hammer down on these deplorable type of acts, corporate water theft and thugs, Avery Chumbley, Kent Lucien and Alan Kubo of Wailuku Water Company?" he asked.

In written testimony, Chumbley did not address the sale of water to Kumu Farms. He did, however, try to correct statements that had been made at the commission's September meeting.

For instance, he noted that while some had said that a control gate before Reservoir 1 had provided water to the kuleana users but was later cemented shut after being vandalized, that was only partially true. The gate, he said, was an

Continued on next page

'Auwai from Page 8

have people talking about you that way," Buck said, referring to Street's personal attacks against Manuel in emails to the commission.

Manuel suggested trying to coordinate with the involved parties on efforts to accurately quantify what is reaching the end of the 'auwai. Despite the attempts by Uyeno and Strauch, Manuel said his staff has never had a chance to "work through the calibration of the system" to truly understand whether or not flows are sufficient.

Chumbley said he would be happy to coordinate a field visit, and again insisted, "we're delivering water. It's just not getting to the bottom."

Next Steps

Manuel said he hoped to bring a rec-

ommendation to the commission this month on an immediate, short-term resolution to the kuleana tenants' lack of water. It might entail a temporary increase in what's released into the 'auwai "to account for system loss with a strict monitoring and measuring component," he said. Meanwhile, staff would try to figure out what is happening to the water and evaluate longer-term solutions.

Commissioner Hannahs said he wanted to make sure than any solution the commission adopted affirmed its recognition of kuleana rights and allocated water sufficient to exercise those rights.

He encouraged staff to engage stakeholders to analyze options, including using the current infrastructure. He and commissioner Wayne Katayama

suggested that the county Department of Water Supply might consider taking on the three end users in exchange for allowing the storm drains to empty into the 'auwai.

Katayama noted that oils, pesticides and other hazardous substances could be making their way into the drains and to the kalo farms. He suggested that the count could allow the farmers to pay agricultural rates. Hannahs, however, suggested that they should get the water for free or at a deeply subsidized rate.

Commissioner Paul Meyer suggested that this issue could be resolved best by inserting a smaller plastic pipeline into the 'auwai that could be metered at both ends. It was probably the safest and best long-term option, since it would prevent contaminated street water from entering the 'auwai. — T.D.

Waikapū from Page 9

emergency control gate and was never used as a release point into the 'auwai. It was, however, vandalized to release more water, he added.

'Auwai Fix

In September, Pellegrino described his investigations into the improving the leaky, unlined 'auwai so that it's more efficient. The cost to install a pipe was nearly \$1 million, he found. What's more, the 'auwai is on land owned by Waikapū Properties and covered by a perpetual easement held by WWC.

He proposed that the commission require the companies to allow kuleana users to manage the 'auwai and/or restore the traditional 'auwai system, which is also on privately owned land.

At the commission meeting in October, Waikapū Properties manager Michael Atherton offered a temporary solution.

"We have an 8-inch main line that we installed 10 years ago for a possible coffee plantation; I can tap into that line and run the pipe over to the kuleana ditch and drop it in right where our property touches the first kuleana property and it would easily be able to reach the South kuleana users and their lo'i," he said, adding that he could accommodate Suzuki at the same time.

He reported that he had been talking with Chumbley about acquiring the South Waikapū system. "It's an attempt on Waikapū Properties' part for a longer-term solution to create a win-win-win for us," he said.

Earthjustice attorney Isaac Moriwake,

who represents the Hui, stressed the need to find a long-term solution.

"We have that short-term temporary solution that's a band-aid. The pipe is under high pressure and may burst and require repair. It's only a matter of time," he said.

He argued that the commission has the authority "to protect the appurtenant rights that includes not just the paper quantity of water, but the 'auwai, water course and access rights. To say we can only give you a quantity makes no sense legally or practically. It's like me selling you a house and not the driveway," he continued.

"We can't tell the kuleanas to reduce loss and improve efficiency, but not give them the recourse to do that. I want to make it clear that there's still more steps. We'll try to work with the parties to restore that traditional 'auwai and ultimately may have to come to this commission to order that access. We may disagree on the commission's authority. If so, let's put that on the table and make it clear where things stand and we can all move forward in figuring out how to protect kuleana rights like they should be, once and for all," he said.

"The kuleanas didn't ask to be put on this system, they were told it's the way it's going to be because the plantations were irrigating their sugar crops, draining the streams dry," he said.

He argued that the kuleana users have appurtenant and traditional and customary rights to restore a direct connection to the stream. "The opening of the 'auwai is on Mr. Chumbley's land. That traditional 'auwai could be opened tomorrow but Mr. Chumbley has indicated that he refuses to let that happen," Moriwake said.

Pellegrino added that he worried that the traditional 'auwai was in danger of being damaged, having recently witnessed clearing occurring on the south side on Chumbley's property near the 'auwai.

"We would like to get this in sooner than later and put in the infrastructure that's needed and ensure the kuleanas can manage this system independently as their kupuna once did," he said. He argued that using the traditional 'auwai would also be more efficient and reduce waste.

He proposed developing an agreement with Chumbley covering who

can access his land to clean the ditch. "I understand it's personal property and at the same time this is a traditional and customary right access issue that needs to be enforced and followed," Pellegrino said.

Chumbley countered that "this alleged traditional 'auwai usage was ceased in 1901....I've walked up and down this property from one side to the other and I can assure you that the elevations of the stream are significantly different. The alleged po'owai ['auwai head] off of the stream are different than what some of the documents that we have indicate."

"The topography of the land today is not conducive to allow for a po'owai diversion off of this stream in this alleged location; so there's a tremendous amount of misinformation that's being represented to you today," he said.

Commissioner Neil Hannahs asked Chumbley whether he would be able to accommodate the 'auwai if it could be proven that it was a traditional system.

"I can't say I would or wouldn't because I need a better understanding of what the locations and course would be," Chumbley replied.

He said a process and protocols for interaction could be developed among the commission, the diverters and community that would help address implementation issues regarding the June decision and order.

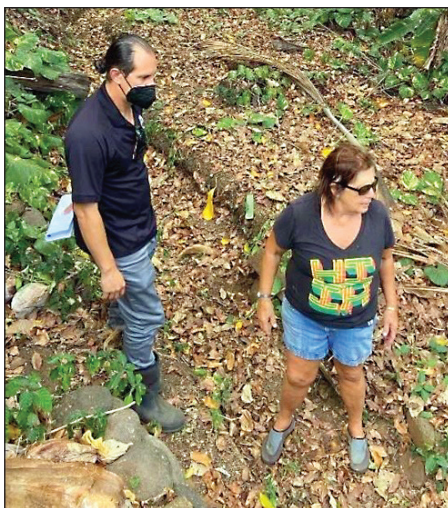
"We made that suggestion at the August 24th meeting of staff and the [attorney general's office], but nothing has come of it yet," he said.

Moriwake seemed skeptical, noting that "no one on our side has seen any of that."

"We've done mediations before and with the power differential in terms of people not only refusing to discuss whether an 'auwai should be open, but even refusing access on the land. Where is this mutual discussion going to take place and how's that going to happen? The commission needs to not micro-manage and do the job for everyone, but be present at staff level to make sure this moves forward," he said.

Commissioner Aurora Kagawa-Viviani then suggested that community members should draft their own protocols. "It might be the role of the commission to look at where that overlap is," she said.

— T.D.



Hökūiao Pellegrino and Emilou Alves stand in a dry section of the 'auwai above her property.

Land Use Commission Denies Permit For Hilo's Connections Charter School

In the end, it wasn't even close. By the time the Land Use Commission was set to vote on a special permit allowing the construction of a charter school on 70 acres of state-owned land in the Kaumana area, just upslope of Hilo town, it was clear that the decade-long push to get the project approved would be turned down.

Not that the commissioners disagreed with the need for the Connections New Century charter school to develop a new campus, or with the proposed school's curriculum focusing on developing husbandry skills among its students.

No, the beef was instead with the way the expansion had been processed at the county level. And as a further sign of the commission's unhappiness with Hawai'i County's handling of the permit application process, the commission did not just remand the matter back to the county, it flat-out rejected it.

A decade after proposing the permit, and 11 years after the state leased the land to the school, it's back to the drawing board for Connections.

A Convoluted History

By statute, any proposed use of land in the state Agricultural or Rural land use district that is not specified in law requires a special permit. The use requested must be found to be "unusual and reasonable" by the appropriate county agency – in this case, the county's Windward Planning Commission (WPC) – and must also "promote the effectiveness and objectives" of the state's land use law (Chapter 205 of Hawai'i Revised Statutes). If the proposed use is for more than 15 acres, the permit is then forwarded to the state Land Use Commission, which can approve or deny.

Soon after obtaining the lease, Connections filed an environmental assessment and applied for a special permit covering the entire area. The draft EA anticipated using all 70 acres for buildings and other improvements. When concerns were raised about the presence of Kaumana Cave under the mauka portion, plans were revised so that the buildings and parking areas would be restricted to land makai of Edita Street, with the upper portion of the land being used for agri-forestry projects.

In 2013, the WPC authorized a contested case on the permit application, and in April 2014, the hearing officer recommended denial. A month later, the WPC endorsed the recommendation. Connections and its non-profit support organization, Community Based Education Support Services (CBESS) then appealed the decision to 3rd Circuit Court.

The circuit court upheld the WPC's decision with a final judgment issued January 13, 2017. Connections and CBESS then took the case to the Intermediate Court of Appeals.

On January 31, 2020, the ICA remanded the permit on appeal back to the Windward Planning Commission, vacating some of the findings of fact as "clearly erroneous" and others as lacking foundation. Yet many of the findings that were adverse to Connections either went unchallenged or were upheld on appeal.

On remand, the WPC decided to limit the evidence in the record only to what had been presented in the earlier case. At its October 2021 meeting, it approved the permit, and in November, it formally adopted the findings of fact, conclusions of law, and decision and order setting the terms and conditions of approval.

Before the LUC

By law, the Land Use Commission must

make a decision on a special permit within 45 days of the date the county has forwarded to it the complete record – voluminous, in this case, involving as it does litigation before two courts as well as an environmental assessment, transcripts of hearings, written testimonies, and countless other documents. Also, the LUC cannot ask for or receive evidence that would expand that record; it is limited to considering nothing more or less than the county record.

For two days last month – represented by deputy attorney general Kevin Richardson, on behalf of Connections, and by Hilo attorney Ted Hong, on behalf of CBESS. While attorneys for the county Planning Department and the Windward Planning Commission were also participating, it was mainly left to Hong to press the school's case. Arguing against the permit was attorney Michael Matsukawa, representing Jeffrey Gomes, the sole intervenor in the county's proceedings.

Much of the commission's questioning dealt with the adequacy of the WPC's decision. Commissioner Dawn Chang expressed skepticism about the efforts made by the school to reach out to Native Hawaiians to determine if the area might be used for cultural and traditional purposes. She was not satisfied the efforts were sufficient to comply with Article 12 of the state constitution or laws protecting such practices.

LUC chair Jonathan Scheuer pointed

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to an apparent deficiency in the record. LUC rules require that the landowner—in this case, the state—consent to the filing of the permit application and agree to accept conditions or restrictions on the land that a permit might impose. Neither Hong nor any of the other attorneys could point to a specific sign-off from the state.

Maui commissioner Lee Ohigashi suggested that the school should seek a boundary amendment for the property instead of a special permit. The special permit process, he noted, was mainly for uses that were intended to be temporary. Scheuer agreed, but Hong said that in early discussions with the county, the school and county determined a special permit was the appropriate “vehicle.” Deputy planning director Jeff Darrow confirmed Hong’s statement.

(Hong later seemed to accuse the LUC of racial and class bias, alleging that the commission only accepted his account of talks with the county after Darrow confirmed it. “I have continually represented that we worked with the county planning director,” Hong stated in his closing comments. “You have questioned my integrity at every point... I give credit to Jeff Darrow for telling the truth. He remembered precisely what I had told you about how this happened.”

(Hong continued to fulminate: “I know my license to practice law is not based on the shape of my eyes, ethnicity, bank account, political party. That’s why when I say something, I know it has to be the truth in the record.”

(“I would bet good money that lawyers from big downtown Honolulu firms would not have their integrity questioned in front of their clients and the general public by the commission – you know, the Tesla-driving, Lexus-driving, Infiniti-driving, Waialae Kahala Outrigger club

types. I’m sure the LUC lays down the red carpet for them.” The outburst prompted Ohigashi to note that he drives a 2006 Honda Civic; Scheuer added that he drives a used Prius.)

Frustration

When it came time to deliberate, the six members of the commission participating in the discussion were clearly frustrated by what was before them. (The LUC is authorized to have nine members, but one seat is currently unfilled. Two members – Big Island commissioner Nancy Cabral and O’ahu’s Gary Okuda – recused themselves from the matter owing to conflicts of interest.)

It fell to Chang to make a motion to deny the special permit. “I applaud this project,” she said. “I think it is innovative. I like the concept of integrating forest management, working with our young people... But then I have to weigh that against what is before us.

“The quandary I have is that the Planning Commission in 2014, based on the evidence – the same evidence on the record now – chose to deny. It goes to the Intermediate Court of Appeals, which upholds certain findings but remands for other findings.

“The Planning Commission chooses not to reopen the record, so it makes a decision in 2021 based on that same record. No additional information. Nothing new in the record – but they make a totally different finding and conclusion. ...

“What I’m faced with is looking at the rules, looking at the record before us, but also looking at the ICA opinion... [which] found no error specifically with respect to the adverse impacts of traffic...

“I also look at what is in our constitutional obligation. We have the obligation under Article 12, Section 7, to preserve and

protect cultural practices. I find the record sent up by the Planning Commission to be totally inadequate....

“It is with a very heavy heart, again, because I think this is a very, very worthy project.”

Commissioner Edmund Aczon seconded the motion to deny: “We are bound to make our decision based on the records forwarded to us by the Planning Commission. ... A lot of our questions would have been answered if the Planning Commission had done its due diligence in trying to answer some of those questions....

“The county sent a clear message that they’re done with this case. They even ignored the intervenor’s proposed decision and order.”

Ohigashi echoed Chang’s concern over constitutional compliance, but also on “the findings untouched by the ICA. “It’s important for us to preserve what the special permit is for. ... The balance of interests is properly done through a District Boundary Amendment. And that is what I believe should be done.”

Scheuer said his opposition was not based on the merits but on the lack of compliance with the requirement of landowner consent and failure to obtain clearance from the State Historic Preservation Division. “It’s very clear that my vote is based on those things and not whether the school is a good thing. I personally feel that, despite being attacked by certain counsel, this is a worthwhile project which I would like to succeed.”

The motion passed unanimously.

Following the decision, Hong told *Environment Hawai'i* that his client would be appealing the decision. “We will appeal because this decision is the height of arbitrariness and capriciousness by a governmental agency,” he said in an email.

— **Patricia Tummons**