



Water Protector Legal Collective

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February 6, 2023

Via Online Portal

Jamie Marincola
US EPA Region 9, ECAD-3-2
75 Hawthorne St.
San Francisco, CA 94105

Re: Public Comment for Proposed Consent Order - Red Hill Bulk Fuel Storage Facility - EPA-R09-RCRA-2022-0970

Greetings,

I submit this public comment on behalf of the Water Protector Legal Collective (WPLC), in response to the U.S. Environmental Protection Agency (EPA) request for public comment on its proposed consent order regarding steps required of the Navy to ensure defueling and closure of the Red Hill Fuel Storage Facility. While specific comments and questions were provided in person at the EPA Town Hall on January 18, 2023, WPLC urges the EPA to re-draft the proposed consent order with input and consultation from the Board of Water Supply (BWS), and community partners that have long been invested in the closure of Red Hill including Sierra Club of Hawaii and Oahu Water Protectors.

The **Water Protector Legal Collective** (“WPLC”) is an Indigenous-led legal non-profit organization that works throughout the United States and internationally, in defense of the rights of Indigenous Peoples, the Earth, Water, and climate justice movements. Our legal collective was founded in 2016 at Standing Rock in support of Indigenous resistance of the Dakota Access Pipeline and in response to gross human rights violations that occurred there. Since then, WPLC continues to work in legal defense of and for the protection of the Earth, Water, as well as in defense of Water Protectors, Land and human rights defenders.

As a national and international legal organization, we stand in solidarity with the Kanaka Maoli/Native Hawaiian community, the *keiki* of Hawaii, and all of those affected by the Red Hill Fuel Tank leaks and the ongoing lack of attention and urgency in the defueling and decommissioning process by the United States Navy. We have kept a close eye on developments related to the shutdown of the Red Hill Fuel Tanks ops, given the gross mishandling of this public water crisis—and human rights crisis—by the United States Navy since 2021 and arguably, since the 1940s when public concerns were raised about the building of these tanks underground merely 100 feet above the Oahu’s sole-source aquifer.

Specifically, we note and recommend the following:

1) The proposed consent order does not fulfill the EPA mandate of protection of human health and the environment because it lacks input from key stakeholders.

It is part of the EPA's mandate as a federal agency to protect human health and the environment. According to the EPA website, part of its mission is to ensure that "contaminated lands and toxic sites are cleaned up by potentially responsible parties." Instead of working with key stakeholders – namely the Board of Water Supply and community partners like Sierra Club of Hawaii and Oahu Water Protectors who have fought to hold the U.S. Navy accountable – the EPA worked solely with the U.S. Navy to draft this proposed agreement. Part of the EPA's due diligence would be to consult with the people of Oahu, not just the Navy.

The lack of community consent and consultation by the EPA has effectively rendered the island of Oahu an environmental sacrifice zone.

It is imperative that the agency do better and rework this consent order with input from community stakeholders.

2) The proposed consent order does not comply with the Indigenous Knowledge Guidance for Federal Agencies released by the White House Council on Environmental Quality on December 1, 2022.

On December 1, 2022, the White House Council on Environmental Quality released the Indigenous Knowledge Guidance for Federal Agencies. In the press release for the new guidelines, CEQ Chair Brenda Mallory explained the need for incorporating Indigenous Knowledge: "As the original stewards of the natural environment, Tribes and Indigenous communities have expertise critical to finding solutions to the climate crisis and protecting our nation's ecosystems... The guidance released today will help ensure that their voices are included across the Federal Government for the collective benefit of our communities and the planet." The release of the guidelines further explains that it is meant to "help Federal agencies integrate Indigenous Knowledge in their work—from research, to environmental rulemaking, to co-management of lands and waters."

The EPA is bound to implement this guidance in its work and is specifically mentioned. There has been no effort to consult with the Native Hawaiian / aboriginal peoples of the island of Oahu. The EPA should comply with this guidance and consult with experts if it is unsure of how to implement this into its work at Red Hill.

3) The defueling and decommissioning timeline in the proposed consent order is not consistent with the urgency of this human rights and public health crisis.

At the Town Hall on January 18, 2023, the EPA representative for Region 9 stated that the EPA does in fact, consider Red Hill to be an emergency and a crisis. A defueling and decommissioning timeline that is congruent with a crisis and imminent threat **must be** shorter than the proposed consent decree timeline of three years for defueling and decommissioning. Every day that the Red Hill Bulk Fuel Storage Facility is open is a day where the public at large, the *wai*, and the people of Oahu are at risk of imminent public health harms and imminent danger.

The EPA and the Navy must cease **any** consideration of other beneficial uses for the tanks as doing so only prolongs a defueling timeline that has already gone unremedied for far too long. The Navy and EPA **both** should both be prioritizing closure instead of wasting precious time looking for additional ways to use these defunct, broken tanks. The people of this island cannot drink oil. This is a crisis and it should be treated as such.

4) The EPA must include specific and severe penalties that will push the U.S. Navy to adequately comply in a timely manner.

Specifically, there need to be clear deadlines, meaningful penalties, and ensure meaningful public participation.

We will continue to be in solidarity with the people of Hawaii and will work to protect the Water which is essential to all life. We (collectively) cannot drink oil and the *keiki* and people of Hawaii—including military families—should not be forced to do so. We will continue to follow these developments and look forward to reviewing a renewed draft of the proposed consent decree – this time with substantial community engagement, input, and oversight. Ola I Ka Wai.

Sincerely,

A handwritten signature in blue ink that reads "Natali Segovia". The signature is fluid and cursive, with a large loop at the end of the last name.

Natali Segovia, Legal Director & Staff Attorney
Water Protector Legal Collective
Mni Wiconi. Water is Life.