

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: May 20, 2009
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
Board Room 132

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 9:02 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Laura H. Thielen, Dr. Lawrence Miike, Mr. Neal Fujiwara, Ms. Donna Kiyosaki, Ms. Meredith Ching, Dr. Chiyome Fukino

STAFF: Ken Kawahara, Roy Hardy, Lenore Ohye, Chui Cheng, Denise Mills

COUNSEL: Colin Lau, Esq.

OTHERS: Matthew Rose, Alfredo Lee, Robert Sutherland(Agribusiness Development Corporation/ADC); Paul Achitoff (EarthJustice); Yvonne Izu (Morihara Lau & Fong)

Chair Thielen opened with the sad news that Commissioner James Frazier passed away which was an unexpected event. Deputy Ken Kawahara read aloud Commissioner Frazier's bio and other commissioners took a moment to share their thoughts of their remembrance of him. The commissioners and staff will miss James Frazier.

A. APPROVAL OF MINUTES

1. February 18, 2009

The concern that Commissioner Kiyosaki raised (in reference to the Sarasin, Varel and the Maui Department of Water Supply applications for Water Use Permits submittal, Item D2 of the February 18, 2009 commission meeting) was to clarify that the Commission wasn't setting precedence because of the staff's recommendation that seemed to define certain parameters that they should not have been given. Commissioner Kiyosaki said she understood from the Attorney General at the last meeting that there is no way to amend the motion unless it is brought back to the Commission and as a new motion. Chair Thielen said the minutes reflect what it was that was passed and if you want to amend what the motion was that was voted on, we can't do that via the minutes. But if you feel that statements that were made prior to the motion is not accurately reflected in the minutes or not included in the minutes, then those statements can be put into the minutes. But if the statements were not made and you want some clarification then you have to bring the matter up to the Commission.

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Commissioner Kiyosaki mentioned that it might be easier to put the item on the agenda to clarify the motion itself. Chair Thielen reminded Commissioner Kiyosaki that the motion itself doesn't talk about the public use and other concerns she is raising. The original language in the motion was amended to just to grant the water use permit for up to 3,000 gpd for domestic and agriculture uses. Commissioner Kiyosaki said she believed the concern was more with the staff write up and recommendations, which are also part of the records, which led us down the path trying to establish that there were public trust–nonpublic trust priorities that we could be establishing and the whole issue that she believed Isaac Moriwake brought up about domestic use and the definition of domestic use. Commissioner Kiyosaki said she thought they all needed to clearly understand that while we agree to this number and that number reflects the staff recommendation that was based on maybe things that we don't quite agree with on a philosophical standpoint, that the number had nothing to do with the fact that we were also agreeing with what staff had said.

I think if it provides any comfort, Chair Thielen continued, staff's recommendation is simply that, a recommendation. It's the decision of the Commission that's reflected in the motion that becomes the actual decision of this body and in many cases the Commission may not accept the staff's recommendation and come up with their own. The motion itself that was voted on doesn't talk about the public trust and the other things, but I understand your concern is just because the number 3,000 is the same and you're worried about some confusion. But when looking back on the record the discussion is the discussion, but what would be binding is what's actually what motion is passed by the Commission. Chair Thielen explained that because some commissioners may raise something in the minutes for a reason and another commissioner may disagree and vote for it for a different reason, those reasons are a record of those discussions and the actual motion is what's binding. It's simply an approval for water use permit up to 3,000 gpd.

Commissioner Kiyosaki said that they may understand that but years from now when memories are weaker and different people are on the commission, you can imagine setting the written record the action that was taken, and there can be some confusion whether it was an adoption or sanction of the policies that were expressed.

Deputy Kawahara read the language provided from the amended motion; to eliminate any inferences that the commission's decision on this agenda item is based on the Commission defining public trust and non-public trust uses or categorical prioritization of uses. Chair Thielen stated that you can't eliminate references in the minutes because there was a discussion about this. The minutes just have to reflect the discussion and what the discussion was is that the commission did not accept that portion of the recommendation and the motion should just be to grant the up to 3,000 gpd.

Commissioner Miike was not at the February meeting, however asked what the reason behind the Maui DWS's 60%. Deputy Kawahara read, to approve the water use permit for the water use permits for the Maui County Department of Water Supply totaling 60% of their request in the amounts described in staff's recommendation and defer action on the remainder of the request and eliminate the term domestic, and defer action without prejudice on the remainder of the request water.

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Commissioner Miike said during the Na Wai Eha there was a meeting to clarify previous decision made on the contested case. Chair Thielen said, we can't say that we are going to strike any reference to this in the record because there was discussion on the topic. This matter should be put on the next meeting as an agenda item to clarify the decision.

Motion was made to accept the February 18, 2009 and April 16, 2009 minutes.

MOTION: (Fujiwara)

Discussion took place of reviewing the February 18, 2009 minutes before approving it.

Motion was withdrawn. (Fujiwara)

April 16, 2009 Minutes

MOTION: (Ching/Fujiwara)

To approve the minutes.

UNANIMOUSLY APPROVED.

February 18, 2009 Minutes

Motion was made to defer approval of the February 18, 2009 minutes and to put the item (Sarasin, Varel and the Maui Department of Water Supply applications for Water Use Permits, Item D2 submittal of the February 18, 2009 Commission meeting) on next month's agenda for clarification.

MOTION: (Ching/Fukino)

To defer approval of the minutes.

Unanimously agreed to defer approval.

B. ANNOUNCEMENTS

Deputy Ken Kawahara reported that during the last day of the legislative session the water commission budget was agreed upon by the House and Senate Conference Committee and subsequently passed the overall state budget bill. It is his understanding that the Governor has until July 15 to pass the budget into law or veto the bill. The House and Senate were able to agree on their differences and restored the Geologist position for the instream use protection section that was originally proposed to be abolished for the biennium (FY 10-11). Deputy Kawahara continued, with the state-wide hiring freeze we are not able to fill the position and it is unlikely that we will be able to fill it anytime soon. The CWRM Budget Worksheet was distributed. Deputy Kawahara said the legislature restored the funding for regional stream studies (\$379,480) for the biennium, however funding for the U.S. Geological Survey (USGS) Cooperative program (\$48,254 and in addition to not having the DOFW Watershed grant of \$48,000) and the Stream Program Activities (\$50,000) was cut. Funding was also cut for the Water Deputy position of \$45,466 for FY 11, which is approximately half of Deputy Kawahara's salary. This is separate from a bill that cuts 5% and from the salaries of all Directors, Deputies and Legislators. Deputy Kawahara believes that the way that bill was passed was that potentially what happens with the civil service and the rest of the state work force is that the Directors, Deputies and Legislators will have to take additional cuts on top of that 5%. Also in the media this past Monday, the Governor imposed an addition 2% restriction on spending of general funds

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for the current fiscal year. The next meeting on the Council of Revenues is scheduled for May 28. Depending on the projections, there is a possibility of additional restrictions in the future. Deputy Kawahara noted that staff will continue to actively pursue Federal matches to stretch our limited dollars.

Deputy Kawahara reported that April's monthly rainfall was variable across the state with many stations having below normal rainfall. The year to date rainfall in most areas is below normal except for some windward sites on Oahu, Maui, and the Big Island. Drought conditions persist with intensities of D0 (abnormally dry) to D2 (drought-severe) on all islands except for Kauai.

Staff met with the Oahu Drought Committee and has scheduled meetings with the Maui and Big Island Drought committees to review drought mitigation strategies.

Staff is still awaiting the Bureau of Reclamation's response to the four proposals for emergency drought assistance that were submitted in November.

East Maui Streams Update: The Division of Aquatic Resources continues their stream surveys of the remaining 19 streams.

The Na Wai Eha Surface Management Areas Update: April 30, 2009 was the deadline for existing uses to submit application for water use permits. Deputy Kawahara reported that over 130 applications were received for both existing as well as new uses. Additional applications still need to be processed and entered into the (SWIM) database system. Three Public Notices for 24 existing use permit applications have been published in the Maui News to date as required by the State Water Code. EarthJustice submitted 65 permit applications for existing uses on behalf of their clients.

Na Wai Eha Contested Case: Deputy Kawahara believe that the commissioners already received the Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Decision and Order (218 pages) and also the Parties Exceptions (five each). Both are posted on the CWRM's website. A briefing will be scheduled with the Attorney General and subsequently the Commission should hear the oral arguments for the parties.

Outreach:

National Hydrography Dataset (NHD) Stewardship Conference: In December 2008, DLNR conferred their support for the State of Hawaii's participation in the NHD Stewardship program. The intention is for DLNR to be designated as a data steward to aid the USGS in updating and maintaining the dataset for the State. In preparation for stewardship, one of our staff and about 150 people representing over 40 states, attended the NHD Stewardship Conference held in Colorado from April 13 to 17. It provided valuable technical training in the tools and applications that are used to perform the editing of the data. It also involved our Department of Health and Office of Planning who met on April 29 to discuss the possible next steps. Thanks to the USGS who funded staff's expenses.

Western Regional Conference "Building Strong Collaborative Relationships for a Sustainable Water Resources Future": Staff also attended this conference that was held in Kansas City on April

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19 to 21st and sponsored by the U.S. Army Corps of Engineers (USACOE) and the American Water Resources Association. This was beneficial in describing what states are doing to plan and manage their water resources and how the Federal government can better support states' water resources planning. Staff was fortunate to be one of only two states that had travel and conference expenses funded by the Army Corps of Engineers.

AWWA Hawaii Section Conference: Two different staff members presented at the May 12 to 15 conference. Staff introduced an upcoming draft and public input process for the five-year update of the Hawaii Well Construction and Pump Installation Standards, and the first draft scheduled to be ready on July 14, 2009, and that comments and public outreach will be performed between now and November when a final draft is anticipated to be ready for the Commission. Staff also presented the findings of the recently completed stormwater reclamation and reuse appraisal study.

Lorman Seminar: On May 14, staff gave a talk entitled "The Hawaii Water Plan – A Tool for Integrating Water and Land Use Planning" and Commissioner Miike presentation was titled "Decision-Making Process of the State Water Commission".

Website: Deputy Kawahara announced that staff has redesigned and updated the Hawaii Drought Monitor website to reflect the appearance and structure of the current CWRM website. The drought website is now easier to navigate and provides the public with more organized up-to-date drought information in Hawaii. Commissioners can visit the website at www.hawaiidrought.com or through the drought website link at the main CWRM website.

C. GROUND WATER

1. **Agribusiness Development Corporation, Application to Modify Water Use Permit for System Loss, Reduce System Loss Allocation to 2.000 mgd (WUP No. 862) and Request for Time Extension to Complete Reservoir Improvements to Further Reduce System Water Losses Waiahole Ditch Irrigation System, Oahu**

Presentation by: Denise Mills

RECOMMENDATION:

That the Commission:

1. Approve issuance of variable water use permit (WUP No. 862) to Agribusiness Development Corporation for 2.000 million gallons per day for system losses, subject to the standard water use permit conditions listed in Attachment A and the following special conditions:
 - a. The system loss allocation under WUP No. 862 will be decreased to 1.42 mgd no later than June 30, 2014, or earlier if the reservoir lining and other improvements and repairs are completed before that date. ADC shall report on the progress of the project according to schedules and details to be determined by Commission staff.

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- b. WUP No. 862, including subsequent modification to 1.42 mgd applies when the windward adjustment gate is open and some windward water is being diverted to leeward Oahu. When the adjustment gate is closed and all windward tunnel waters are being diverted into windward streams, the water use permit will be for the Adit 8 reading (where the tunnel emerges into the ditch) minus the metered water use.
 - c. WUP No. 862 is also subject to any other applicable terms and conditions set forth in Waiahole D&O III, issued by the Commission on July 13, 2006, and not directly addressed in this action.
 - d. Standard Condition No. 16 is waived.
2. Approve ADC's request for a time extension, with a requirement that the reservoir lining work must be completed no later than June 30, 2014. If this deadline cannot be met, ADC shall at least 180 days before this deadline, provide notice to the Commission that explains the reasons for delay and proposes an amended schedule to complete the work.

Ms. Mills reported that counsel advised staff that a water use permit application must be made before the water use permit can be modified. Agribusiness Development Corporation (ADC) has since submitted an application for the modification. Counsel also advised that this matter is not part of the contested case proceeding.

Alfredo Lee said on behalf of ADC Board of Directors, they all want to see this done. Last year the Corps of Engineers (Corps) were getting ready to finalize a few things and take the job to bid, and then the Phase I report came in. It surprised everyone that so much work had to be done to address dam safety. ADC is working with the Corps of Engineers, asking to help them with that. The Department of Agriculture (DOA) had a letter in to the Corps to ask for a scope change, so that's on someone's desk to be approved. In the meantime, DOA had secured an additional \$200,000 to match the design cost.

Paul Achitoff said this issue is not something that has been going on for a year or two, but surely something that's been going on for the last fifteen years. The issue of leakage or system losses or waste, etc. was discussed at great length back in the mid-90s in the Waiahole Ditch case and the issue has only to a minor degree been addressed in all that time. We ended up with an order in the last remanded hearings that the work to reduce the system losses will be done by a year ago. In fact, the reduction is from 2 mgd to 1.45 mgd, in reality the system losses are routinely exceed the 2 mgd that the permit currently allows, it can be 3 and 4 mgd. In a course of a year, we're talking about a substantial amount of water. I don't believe that we can dismiss this by saying the report came in and stuff happens and didn't realize it, it's tough but there you go. Mr. Achitoff said he received notification to modify the permit dated March 18 which contains no information whatsoever about any of the issues that is before the Commission today in terms of the delay. The engineering report, which is the basis of the requested extension of time, came in several weeks before this was sent out so he appreciates receiving the notice that was discussed a year ago, but Achitoff does not understand why it [the public notice] didn't contain any information on the extension, engineering report, or anything. He also stated that he doesn't see any evidence in the staff submittal or anywhere else that the matter is being handled in anything but the most casual way in terms of priorities or incentives. Mr. Achitoff said he doesn't see any information why five years is an

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appropriate extension, and doesn't think the Commission has any way to assess whether this should take five years. If this was run by a private company and water had monetary value, I'm sure no one would accept this as a basis for a five year extension to allow a billion gallons a year to be leaking from the ditch. Mr. Achitoff said that he doesn't see any effort being made to figure out what's the least reasonable period of time that this work can be done and how can we expedite it and what's the incentive to make sure it gets done as quickly as possible, how can we hold ADC's feet to the fire when it's been demonstrated that they don't seem to be moving very quickly on this. And it's a problem that's been outstanding for 15 years.

Commissioner Miike directed to staff that they actually provided recommendation that's really in two parts, 1) is to reduce the permit for system losses by 0.03, and 2) also combined that into the extension. Commissioner Miike said he would like to see those split because he agrees with Mr. Achitoff that more justification needs to be done, its insufficient justification for that 2014 date right now. Commissioner Miike said the issue is redoing the reservoirs.

Commissioner Fujiwara asked if the Corps was represented. The person in charge of this project is out of town today. Commissioner Fujiwara said it takes time for federal funding and the Corps can come in with money pretty quick. Looking at the investigative report, knowing you were going to line the reservoirs in prior years, a lot things in the investigative report should have been out even if you didn't put it in the investigative report back then, a lot of the things stated in priority 1 and priority 2 should have already been conceived or thought of prior to doing the lining. The only thing holding this up is the funding, am I right? Alfredo Lee responded, "No sir," and explained that it is his understanding that the Corps has \$4 to \$6 million dollars to apply to this project so funding on the federal side is no problem. On the state side we have the money to match the redesign because the design was already done when we first did it. The problem today is because it's the dam itself that has a slope that is not appropriate for the current standard. There's a one-to-one slope. I'm not an engineer, but I understand what they're saying, it needs to be less steep so they have to do a stability analysis and that was not done when it was first conceived, and I don't know why it was not done.

Chair Thielen asked Alfredo Lee if the studies that were done, Phase I and Step 2, were done after the state received funding under the Dam Safety Program, after the reservoir on Kauai burst and did the statewide analysis and then the Pacific Disaster Center started doing some additional work on the dams across the state and reservoirs? That was Ms. Mills' understanding. Chair Thielen thinks some of the timing issue and information that came out may have come out from the intensive work that was done across the state on the Phase I and Phase II, so there were program changes within the Dam Safety Program, which may be why certain information wasn't developed sooner. Chair Thielen asked Mr. Lee if they have a board at ADC. Mr. Lee confirmed that they do. Chair Thielen asked if the board laid out an action plan and steps that would support this five year request. Mr. Lee said they have not done that; it's just basically we have not been able to get the Corps of Engineers to give us a timeline and that is part of ADC's frustration as well.

Commissioner Fukino asked, you said you have design money? Alfredo Lee said yes, and as a matter of fact there's \$200,000 still in next year's budget. Commissioner Fukino asked what he is going to do if the state doesn't come up with the 35% match. Mr. Lee said they would make a new request. They are just like the water commission; we are under the government purview and even if they have the money doesn't mean they can release it.

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Chair Thielen understands the work that needs to be done on the reservoir but asked what about the ditch system itself. Mr. Lee responded that in a perfect world, they would like to pipe the ditch. Piping the ditch would be upwards of \$1 million per mile, and that was based on old data, it's probably more now. And there are siphons that need to be fixed. All that work could be as much as \$15 million. Mr. Lee stated that ADC would like to concentrate on fixing the reservoirs first.

Commissioner Miike asked if the revised cost estimates that go up from two, three to six or higher, is for the old idea of what's needed to be fixed or what is known now. Alfredo Lee said from the first time that it was presented, the cost was estimated at \$2 million and then last year it was up to about \$6 million, and that was just for lining. Now in addition, we need to do the slope analysis and probably redo the scope before they line, so that cost is estimated about \$8 million. Commissioner Miike asked how long the Corps of Engineers has access to the money that they have available now. Mr. Lee wasn't sure. Commissioner Miike continued, and you haven't heard from them what their revised construction plans are given the information that's above more than lining is needed but a ball park estimate is \$8 million. Alfredo Lee said that was correct, that was a casual conversation with the engineer, there is nothing in writing. Commissioner Miike asked if that part goes up does the federal government share go up too or is the state expected to make up the difference because they have secured 65% of the old figure. Mr. Lee said that his understanding is that pot of the money is called a Congressional add-in, so every year there's money coming in and the pot of money goes up every year. That pot of money is not just for Waiahole, it's for several systems and its Mr. Lee's request to the Corps of Engineers to do Waiahole first. Chair Thielen said she thinks the answer to the question is that the Corps requires, in our experience, a certain percentage so if the construction cost go up so does the state match. Mr. Lee said that was correct, it's 35% and if the price goes up, they'll have to ask for more.

Chair Thielen said that ADC may need to be taking a look at backup plans for what can done to reduce the loss aside from the lining. Commissioner Miike asked it's now ruled a high-hazard dam, how does that change the situation in terms of priorities and fixing it. Mr. Lee said he was not sure at this time and has been in discussion with the engineering division and dam safety and has no definitive answers. Commissioner Miike asked if he knew how many high hazard dams there are in the state. Chair Thielen responded that she needs to double check, but she did know the number.

Chair Thielen said it would be appropriate to refer back to the ADC board to develop a timeline and backup plan, certainly there will need to be more specific information from the Corps and added, if you are not able to get it, that's kind of a sign that this may take a little bit longer, so what's the backup plan to reduce the loss?

Chair Thielen stated that if they did want to divide the recommendation, in 1A it does talk about a system loss to be decreased no later than June 30, 2014, which is a five year extension. Commissioner Miike would like to revise staff's recommendation as: 1) approve the permit, a revised permit for system losses reducing it by 0.03 by the bypass of the unlined section; and 2) defer any action on the remaining system losses and a timeline by ADC until such time as the ADC Board can report back to the commission with a clearer explanation of what is needed, expected timelines and what alternative methods they may have to reduce system losses, probably not as much as 1.45 mgd, but what is a practical way of reducing some system loss that is occurring in the reservoir.

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Discussion on a realistic timeframe to return to the commission took place. The next time the ADC Board meets is in June. It was agreed to return to the commission in four months. Commissioner Kiyosaki asked that a representative from the Corps of Engineers be present because this is hinging upon them and their action and ADC is depending on them to move this schedule forward. Chair Thielen said the backup plan is going to be very important because the Corps' schedule is going to be somewhat out of ADC's control and you can already expect given that information that the construction costs are going to be higher so what are some alternative things that can be done either with the existing funding or changing operations that would help achieve water savings and how they could be phased in may be important.

Commissioner Kiyosaki asked if the Corps share of the funding could be diverted to some other type of water saving project as opposed to just reservoirs. Alfredo Lee said he believed that the description for that funding is for irrigation system improvements, and there were two or three different systems that were approved. The other systems also fall under ADC's control and ADC is saying to do Waiahole first.

Alfredo Lee said they will probably have to have input from the users as well, since ADC is there to service them. And as well as the landowners, there are two. ADC has easements for work on the reservoirs and needs to have the landowners' concurrence. Chair Thielen thought that this legislation went through this session about rights of entry to do water system improvements or dam safety improvements and with irrigation systems, that we have an ability to go in and do the improvements. She can't imagine any landowner who may oppose improvements to the irrigation system, but there may be questions that some may prefer the improvements go to the dam/reservoir as opposed to the ditch system. Mr. Lee said there were some discussions whether the reservoirs are adequate in the sense that we're spending too much money on the reservoirs, \$8 million to protect less than 20 million gallons of water. And the preference of the users is to keep those reservoirs.

Commissioner Fujiwara asked if they were planning on lining reservoir 155 prior to 225 or vice versa. Alfredo Lee said that the Corps of Engineers recommended to do both reservoirs at the same time; although one is a regulated dam the other is not, they are about the same size and shape and built around the same time. If one is inspected and it was said it's not safe, we suspect that the other one is about the same situation. Commissioner Fujiwara asked if they are planning to line the two the same time, on the same contract. Mr. Lee said he's not sure, he cannot speak for the Corps but that's what he understands. Commissioner Miike asked how they are going to regulate the ditch if both reservoirs are out of commission. Alfredo Lee clarified with, when he said "at the same time," he meant to do one first and then the other. But they haven't figured it out. They might have to do bypass and so on. Chair Thielen said she recalled talking about this last year, one of the questions the commission raised was if they don't have enough money to do both, why don't they do one and if you're going to be reducing the water loss, could you just do one. Mr. Lee said that was a question he raised to the Corps until this report came out and they said if 225 was built at the same time and is the same shape and dimension, we suspect it's in the same condition as 155. If the report says 155 is not safe we suspect that 225 is not safe as well.

Chair Thielen asked if they fixed one reservoir and eliminated the loss of water and not use the second reservoir would the amount of water savings be the same as having two efficient reservoirs. Chair Thielen further explained that if there are two reservoirs that aren't working very well and

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both are losing a lot of water, if you invested all your money in fixing one and it's a better reservoir, you may not need the other. Alfredo Lee said it has something to do with the location and operational efficiency. Alfredo Lee also added that they need the middle reservoir, and explained that they estimate how much water before they raise the gate, and there are times when there is not enough water for the end users. ADC has a pump at 225 where they pump the water into the ditch to supply the end users so we don't over supply the system and don't waste water.

Commissioner Miike said as far as the consideration by the ADC board, let's talk to the Corps and see what the deal is about having to do both at the same time if they've got some money and you're to come up with the match, instead of waiting because you have to do it in succession anyway, you can't do both at the same time. Alfredo Lee said he believed they still have to do a geotechnical analysis and slope analysis on both reservoirs. Commissioner Miike said in terms of starting to build, in talking to the Corps about how they are insisting it be done under one contract or even if it is done under one contract why it can't be phased so you can deal with one relatively soon rather than waiting to get the money for everything. Chair Thielen said the reality is that there won't be enough money to do both. Mr. Lee said they can suggest that.

Chair Thielen recapped that these are ideas that the ADC board can discuss coming up with their plan by phasing the backup and four months should be sufficient time. Chair Thielen said that ADC should make sure the Corps is included in coming back here when they do their presentation which would be very helpful. Chair Thielen suggests that ADC keep in contact with EarthJustice as well on what different options are being considered.

Commissioner Miike explained the two motions to be:

- 1) To reduce the permit for system losses to ADC by 0.03 in view of the now bypassing the unlined portion of the ditch, effective immediately.

MOTION: (Miike/Kiyosaki)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

- 2) To defer any action on reducing the permit further by the losses expected to be reduced by the reservoirs and defer action on the proposed timeline by ADC until the ADC board can discuss with the ADC staff a better explanation of the issues concerning the Corps' proposed studies and revisions and analysis of what the practical measures are in reducing some of those losses prior to fixing those two reservoirs, and that ADC is to report back to the Commission in four months.

MOTION: (Miike/Fujiwara)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

Denise Mills asked for clarification; there was a special condition recommended as part of staff's recommendation, (Page 10, Item 1c) and asked if it should be included. Commissioner Miike asked what those conditions are. Denise Mills said, to be honest she couldn't articulate that in detail but her understanding is that through the whole series of D&Os from the contested case hearing, there

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are a number of conditions stated and advice from counsel to staff has been to refer back to the Decision and Order. Commissioner Miike said they are only reducing the permit from 2.03 to 2.0; we're not changing any other condition of the permit.

D. STREAM PROTECTION AND MANAGEMENT

1. Request to amend the Cooperative Agreements with U.S. Geological Survey for Hydrologic Data Collection for East Maui Interim Instream Flow Standards

Presentation by: Chui Cheng

Chui Cheng pointed out changes to the submittal on Page 2 (first sentence, first paragraph) May 18, 2009 should be corrected to March 18, 2009; (first sentence, second paragraph) May, 18, 2009 should be corrected to March 18, 2009; and under Exhibit(s), May 18, 2009 should be corrected to March 18, 2009.

RECOMMENDATION:

1. Staff recommends that the Commission amend the Chairperson's authorization to enter into cooperative agreements with the U.S. Geological Survey (USGS) to conduct hydrologic data collection for established interim IFS sites in east Maui, to provide greater flexibility in the source of funding from General Funds, Special Funds, or a combination of both.

MOTION: (Ching/Fukino)

To approve the submittal.

UNANIMOUSLY APPROVED.

2. Request for Approval to Amend Contracts for Professional Services for Contract No. 55667, Statewide Field Investigations to Verify Surface Water Uses and Stream Diversions; Contract No. 57085, Statewide Inventory of Stream Channel Alterations and Contract No. 57377, Inventory and Assessment of Various Methods for Measuring Diverted Streamflow

Presentation by: Chui Cheng

RECOMMENDATION:

1. Staff recommends that the Commission approve the Supplemental Contract Amendments to allow the time of performance to be extended for each of the following contracts:

- Contract No. 55667, Statewide Field Investigations to Verify Surface Water Uses and Stream Diversions – Exercise the first of two (2) options to extend for a period of six (6) months, effectively extending the time of performance of this Contract to December 31, 2009.
- Contract No. 57377, Inventory and Assessment of Various Methods for Measuring Diverted Streamflow - Exercise the first of two (2) options to extend for a period of six (6) months, effectively extending the time of performance of this Contract to January 31, 2010.

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- Contract No. 57377, Inventory and Assessment of Various Methods for Measuring Diverted Streamflow - Exercise the sole option to extend for a period of six (6) months, effectively extending the time of performance of this Contract to December 31, 2009.

2. Staff recommends that the Commission clarify its delegation of authority to the Chairperson to include modifying and amending the following existing Contracts for Professional Services: Contract No. 55667, Statewide Field Investigations to Verify Surface Water Uses and Stream Diversions; Contract No. 57377, Inventory and Assessment of Various Methods for Measuring Diverted Streamflow; and Contract No. 57377, Inventory and Assessment of Various Methods for Measuring Diverted Streamflow.

MOTION: (Ching/Fukino)
To approve the submittal.
UNANIMOUSLY APPROVED.

F. NEXT COMMISSION MEETINGS (TENTATIVE)

1. June 17, 2009
2. July 15, 2009

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director