

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: September 23, 2010
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 9:13 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Laura Thielen, Dr. Chiyome Fukino, Mr. Neal Fujiwara, Ms. Donna Kiyosaki, Mr. Sumner Erdman, Mr. William Balfour, Jr.

STAFF: Lenore Ohye, Dean Uyeno, Robert Chong, Chui Ling Cheng, Jeremy Kimura

EXCUSED: Dr. Lawrence Miike

COUNSEL: Colin Lau, Esq.

OTHERS: Dr. Jonathan Likeke Scheuer, Clyde Namuo (Office of Hawaiian Affairs), Colette Machado (Office of Hawaiian Affairs-Molokai), Dr. Jim Anthony, Guy Nakamoto, Creighton Matoon (Punaluu Community Association), Luella Costales (Hawaii Farm Bureau Federation), Warren Watanabe (Maui County Farm Bureau), Dawn K. Wasson (HLA/HMAL), Dave Arakawa (LURF), Bruce Tsuchida and Sherri Hiraoka (Townscape, Inc.), Lea Hong, Colleen Coyle Mathis, Christopher Mathis, Cathleen Matoon (Punaluu Community Association), Jocelyn Doane (Office of Hawaiian Affairs), George Kuo (Honolulu Board of Water Supply), Paul Quintiliani (Director, Kamehameha Schools), Barry Usagawa (Honolulu Board of Water Supply), Jeff Overton (Group 70), Kathy Sokugawa, Randolph Hara and Matt Higashida (CCH Department of Planning & Permitting), Col. Howard Killian (Military Lands Trusts), Steve Gingerich and Ron Rickman (U.S. Geological Survey)

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

A. APPROVAL OF MINUTES

1. August 25, 2010
MOTION: (Erdman/Balfour)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS/ADMINISTRATION**1. Chairperson's Recommendation, Approval of Mr. Jonathan Likeke Scheuer, Ph.D., Deputy to the Commission on Water Resource Management**

Chair Thielen referred to the testimonies that were received and wanted to make a point of clarification. Chair Thielen explained that most departments in the State have a deputy or multiple deputies and those deputies are appointed for a term that ends with the terms of the Governor or Chair of the Department. There are other bodies in the State, boards and commissions, that have executive directors and those executive directors are nominated by the Chair of the Department and approved, selected or hired by the Commission. Chair Thielen further explained that they do not have civil service protection and are not serving for a particular term; they are serving at the pleasure of the Commission. For example the Land Use Commission has an executive director, NELHA, the energy lab on the Big Island, and the Community Development Authority. Our water deputy is essentially the same as an executive director of a commission; it just so happens that it's called a water deputy because the Commission is attached to the Department of Land and Natural Resources. This nomination is by the Chair of the Commission, and under the state law, it's up to the Commission to evaluate whether they want to select the candidate who will continue to serve at the pleasure of the Commission, and whose appointment will not necessarily end when Chair Thielen leaves.

Chair Thielen said that some testifiers questioned why appoint a deputy now. She said one of the reasons is that an appointment for the water deputy is not necessarily just for three months. But, as the commissioners know there are a number of things going on right now including people in the first surface water management area in the entire state in Maui having waited now for about two years for a decision in the Na Wai Eha case. There are 125 permits sitting there waiting to be heard. This isn't going to be a simple matter for our staff to handle. We have never issued permits for the surface water management area before and there are many applicants claiming appurtenant rights. These are rights that have certain protection under our constitution and state laws. We do not have administrative rules in place on dealing with that. We need someone to come in as a water deputy who's very familiar with the water code, with the law, with the parties, to guide the staff through this first time process so that we can begin working through these 125 permit applications.

In addition, we have two orders in east and west Maui where we issued instream flow standards and as the Commission is aware, in one case we had the parties come forward and seek a stipulation to slow certain things down and so it's becoming a little more complicated than anticipated. On the other side, there needs to be engineering solutions and other things worked through, and we have the county water plans coming up.

After Ken Kawahara left, I realized that having strong leadership in a water deputy is critical for us to get the things done which we got done in the last two years. And, we've done a lot. Chair Thielen said that she doesn't want to see this fall apart at this point and felt to look for leadership to come into the commission to assist this Commission in forming our decisions as we go forward and assist the staff in implementing them.

Chair Thielen stated that it's up to the Commission at this point to determine whether this candidate has the experience, the character, the impartiality, the demeanor to assist the Commission going forward.

Chair Thielen invited Dr. Scheuer to come up and make a statement. She also stated that Dr. Scheuer was made aware by the Attorney General office that he can decide to go into executive session regarding personnel matters.

Dr. Scheuer said he did not want to go into executive session and thought it was important for everybody concerned that there be an open discussion. Dr. Scheuer thanked the commissioners and said he is distinctly honored and slightly overwhelmed over the possibility of taking on this position which he believes to be one of the most important positions in the State for those of us who care about the future of our islands. Dr. Scheuer said he will keep it brief but will give us the sense of two things; the policy orientation that he brings to the position and the kind of things he wants to focus on immediately.

Dr. Scheuer said the orientation that he brings to water policy and water politics in Hawaii has to do with some of the key experiences he has had professionally over the past 20 years of his career. There are four instances that have been instrumental in understanding and approaching water issues: 1) the first came almost 20 years ago when he actually did work for the department as the executive secretary for the Natural Area Reserves Commission (NARS), a sister commission to this one, which is served by an executive secretary as a staff member. NARS was starting to heavily implement pig fencing and pig snaring in the NARS, this is what clients had informed them was the best way to protect the native species in those lands. At the same time they did not do a lot of community work with the people who had been using those lands and in some cases did not even realize they were set aside as reserves. Dr. Scheuer said he participated in meetings, both before the commission and at community meetings in Molokai as well as other islands, which were distinctively unpleasant. There were sides, people yelling at each other, accusing each other of things that were really not necessarily accurate, and as he sat in those meetings, as hunters came in and threatened staff members, two things came out of it for him. One was that his undergraduate training had been primarily as a natural scientist and he thought biology did not teach him necessarily how to deal with these fights, and secondly, he became very interested because he realized that those people sitting around the room on two sides that might be separated by where they live or how they make their living, actually had far more in common with each other than they had opposing each other, and he saw this fight as unproductive and became very interested in finding ways that we can collaborate together.

He said that's what drove his academic work to get his masters and then his doctorate and to focus first on taro farming and the challenges faced by taro farmers who wanted to grow taro as an economic activity, not just as a cultural activity, and also eventually, because his interest was in taro, in water and water politics and policy where he studied the Waiahole case that was before this Commission for a number of years.

So he left with the appreciation that we fight a lot, it's not always productive, and we need to find better ways to collaborate. Then in a series of jobs, he had a chance to be involved on water issues, including for the Office of Hawaiian Affairs (OHA) as their point of contact on the ongoing appeals of the Waiahole case and later as the staff lead in the ground water portion of the Na Wai Eha

contested case. In the Waiahole case, almost 15 years now, and Na Wai Eha, six years now, each of the sides have gotten some assurance of the kind of water that they want to have whether instream or for agricultural or other offstream uses. Dr. Scheuer said he didn't think any of the parties are particularly satisfied with what's going on. He understands that the parties collectively have spent millions of dollars fighting this out and thousands of hours, and having been personally involved, have realized that at the end of these fights, the parties might be somewhat satisfied but we haven't actually solved the most fundamental issues that we're facing in Hawaii today. There's no more money that's been put in to restoring agricultural ditch systems because of these cases. Dr. Scheuer said that if we're going to spend millions of dollars, let's spend it on the things that are actually going to make things much better for ourselves and the next generation to come, protecting our watershed, and investing in agriculture systems.

The third thing that Dr Scheuer got involved in that's really been a great lesson for him was his involvement, while he was policy advocate for OHA, with helping OHA acquire the first two major pieces of real properties, Waimea Valley on Oahu and Wao Kele o Puna on Hawaii island.

The fourth orientation comes from when OHA became a land owner, Dr. Scheuer was asked to head the new land division. He had been working as a policy advocate and his job was to advocate on behalf of native Hawaiians which he thought he did well. This position was to first set up a policy for the board of Trustees for their recommendation and approval on how to acquire land and how to manage land. His role was to then implement that policy, which was an administrative role.

Dr. Scheuer understands that the deputy director for this commission is not an advocate. Water for agriculture, water for public trust, it's really an administrative role trying to bring the best information to the Commission so that they are able to make the policy-level decisions that the Commission is empowered to do under the Code.

On the long term, Dr. Scheuer said there are some well known things that the Commission should be dealing with. One is the Hawaii Water Plan which was last updated in 1990, although it's statutorily required to be updated every five years. That would be a priority for him. Also, partnering more extensively, building the existing partnership with the US Geological Survey (USGS) and the University of Hawaii to get more data, because of the current economic downturn, we're unfortunately getting less data on water resources in the State. Also, to work with the Department of Agriculture and across DLNR on trying to get more water for irrigation system rehabilitation as in most cases there is actually sufficient water in the area. And a lot of it has to do with the efficiency of delivery and reliability of delivery to agriculture rather than a lack of water per se. And finally on the horizon we have climate change issues, which on the long term might significantly affect the fundamental availability of water for all uses in Hawaii. Dr. Scheuer believes there are exciting federal interests coming in that he thinks have the possibility to bring resources to the Commission to do its work.

But more importantly before you, Dr. Scheuer continued, I understand that there is an administrative change, and Laura has touched on some of the short term issues that we need to deal with, including the surface water permits in Na Wai Eha. Applicants have been waiting for two years and there are some very interesting challenges ahead, especially because of the 100+ applicants, approximately half have indicated that they have appurtenant rights to the water. As Chairperson Thielen said, the Commission is empowered in the statute to make the determinations on who has appurtenant rights

and what they are but has not done this before; there are no rules in place. Dr. Scheuer thinks there's data gathering and analysis to be done to help move this forward so that all the permit applicants, large and small, can get a better sense that we're actually working on your applications so that we can process it and ideally have some assurance that they will get the water that is sought. Secondly, Chairperson Thielen is working on a transition plan for the next chairperson and described a very powerful strategic approach to try and let the next chairperson come in and have a better sense of the challenges, of the threats, of the opportunities that that person is going to face as they walk into one of the toughest jobs in the state.

Chair Thielen asked that the people here be given the opportunity to testify since some need to leave and have Jonathan Scheuer come back up for questions.

Testimony by:

1. Clyde Namuo, Chief Executive Officer of the Office of Hawaii Affairs: (submitted written testimony) Jonathan Scheuer left OHA for personal reasons and wanted to clarify that he did leave for family reasons and the relationship with the trustees played no part in his decision to leave. Mr. Namuo mentioned that the facts are the facts and felt that Dr. Scheuer would call it as he saw it. Mr. Namuo strongly supports Chair's recommendation.
2. Colette Machado, Trustee of the Office of Hawaiian Affairs, Molokai - (submitted written testimony) strongly supports the nomination of Jonathan Scheuer to the position of Deputy Director of the Water Commission. Jonathan is a quick study, brilliant, and his analysis is to the point. Despite the issues that the opposition is raising, if you think he's biased, Ms. Machado believes that he has a greater duty to serve all of Hawaii, and the fact that the Chair has seen in him the potential, and even if it appears to be a leadership change, his principal values are linked to the future of the State as well as the people of Hawaii; that's all you can ask of a public servant.
3. Col. Howard Killian –Department of the Army, Army Department of Defense on Environmental and Sustainability issues (testifying on his own behalf): supports Jonathan Scheuer and has his highest endorsement and echoes the praise as mentioned by the other testifiers. Col. Killian mentioned that Jonathan is level-headed, clear-thinking, and intellectually honest, and will be able to objectively assess the merits of impacts of a course of action.
4. Dr. Jim Anthony – is personally familiar with the eight previous deputy directors of the Water Commission who have served for different periods of time. He feels that whoever occupies this position can only be successful by the nature of the chemistry between the Chair and the deputy director. Because Jonathan Scheuer represented various community interests, he asked if Dr. Scheuer can be impartial, or more importantly, can he be seen to be impartial. Dr. Anthony believes he could. Dr. Anthony said he was glad that Jonathan mentioned that his focus would be the Hawaii Water Plan that has been outstanding for 20 years, and its component units including the County Water Use and Development plans. Dr. Anthony said the Pearl Harbor ground water management plan is now overdue for submittal to the Commission by 6-1/2 years. Dr. Anthony supports the Chair's nomination of Jonathan Scheuer. Although she mentioned it's her nominee, that's not entirely true. Dr.

Anthony said an appointment of this magnitude doesn't come before the Commission until it is vetted further up the chain of command. Invariably, the extent to which the deputy director can do his or her job successfully is dependent on the chemistry between himself or herself and the Chair of the Commission, and Dr. Scheuer would do well to keep this in mind, particularly as there will be administrative change, when administrative styles and priorities may have to be adjusted to fit the new style of the incoming Chair of the Commission. Dr. Scheuer will have to also learn to draw on and make prudent and creative use of the thinned down staff talent that he will inherit. The staff of this Commission has been reduced by 32 percent. He will have to deal with that reality. Dr. Anthony stated that Dr. Scheuer would do well to tap the substantial talent of existing staff.

5. Creighton Matoon, President, Punaluu Community Association: has experience with working with Dr. Scheuer with Kamehameha Schools and he showed knowledge and interest in our concerns regarding ground water and surface water in our area and as it affected not only instream uses but also the diversion of the water to various agriculture pursuits in the area. He is one that we could learn from and be a good team player.
6. Guy Nakamoto – Chair, Hawaii Laie Kawai Association (HLA): we support the Dr. Anthony's position on the appointment.
7. Luella Costellos – Executive Director, Hawaii Farm Bureau Federation (Mae Nakahata submitted written testimony): on behalf of the Hawaii Farm Bureau Federation, representing approximately 1,600 farm and ranch families and organizations statewide. From the Hawaii Farm Bureau and agriculture, she asked for deferral of the approval of Dr. Scheuer. The reality is that there will be a new administration coming in three months that we look forward to working with and would like you to take that into consideration in making this decision. Ms. Costellos said they had a good working relationship with Ken Kawahara and said they have a lot of confidence in the interim deputy director.
8. Warren Watanabe – Executive Director, Maui County Farm Bureau Federation: concur with the testimony of the Hawaii Farm Bureau Federation.
9. Dawn K. Lawson – Laie Community: is in support of Jonathan Scheuer's appointment. She would want someone who would give them an opportunity to present their cases about water issues and how to continue with the protection of these rights.
10. Lea Hong – Hawaii Island Program Director of The Trust for Public Land (submitted written testimony): supports the appointment of Jonathan Scheuer. He advocated the mission of the organization and what he was asked to do. Personally feels that he can be very fair.
11. Paul Quintiliani – Commercial Real Estate Director, Kamehameha Schools (submitted written testimony): supports the appointment of Jonathan Scheuer. The organization was challenged with how do we balance all of these interests and come to a fair and equitable decision that provides for all parties' needs in a way that mitigates and minimizes the amount of conflict and moves us forward and allows us to accomplish our mission. Jonathan was instrumental in bringing those forces together, developing those water

policies, and while working with him at OHA, he understood his advocacy role there. His role at Kamehameha Schools was very different, he showed the kind of temperament and ability to balance, as well as the ability to collaborate and be a strong team member.

12. Dave Arakawa – Executive Director, Land Use Research Foundation of Hawaii: does not know Jonathan Scheuer, and stated that it's less than two months before the next governor appoints a new director and based on these very important timing factors, requests that the Commission defer action on appointing any deputy director.

Chair Thielen asked if there was anyone else that wanted to testify on behalf of Jonathan Scheuer, and there being none, closed the public testimony at 10:22 a.m.

Chair Thielen reminded the commissioners that they have the opportunity to ask for advice of counsel and can invite Dr. Scheuer back up to ask him follow-up questions.

Dr. Scheuer was asked to come forward.

Commissioner Erdman referred to Dr. Anthony's remark about Dr. Scheuer's resume and asked about his two year changes in jobs. Jonathan Scheuer said that he has been doing consulting work and has been extremely happy. One of the difficulties he had when asked by Laura Thielen of his interest in this position was that he had this great work-life balance and does he really want to give this up, potentially for a short term just to do this job. Chair Thielen told him that these opportunities don't come up all the time. Dr. Scheuer said he would really like to do this job and would be disappointed if he does not get this opportunity. Regarding his terms of employment, the longest term was approximately six years with the Office of Hawaiian Affairs. Some of the short term employment had to do with the time he took to do his education.

Dr. Fukino asked Jonathan Scheuer to describe his management experience, as his resume indicated that he developed the land management Hale and refers to budgets, hiring and contracts. Dr. Scheuer said he managed a staff of eight individuals, consisting primarily of professionals, architect, accountant, and real estate professional, as well as managing administrative staff. He inherited some staff and hired some. Dr. Fukino asked if the staff were exempt or civil service employees. Dr. Scheuer said that no one is civil service at OHA, everybody is an at will employee. Dr. Fukino asked if he ever had to manage an employee that he thought was not performing well, and to describe his management style for those kinds of issues. Dr. Scheuer answered yes, and explained that in some ways his approach to teaching was the same as his approach to management, summarized as hard nosed and warm hearted. He said he feels for peoples' circumstances and where they are in life and then you have fundamentally the reasons why they are paid to be in a position to produce work. Dr. Scheuer said you should be able to relate to people on the individual level but not necessarily let them forget that in spite of all the challenges in our lives and work lives, we're paid to do particular work in a larger organizational structure and plan and that's our obligation.

Dr. Fukino mentioned that she was sure that he has heard comments about civil service workers in general. She told him that the commissioners are very appreciative of the commission staff, who work very hard under very challenging circumstances, because their work load has been greatly increased due to furlough and the inability to hire. Dr. Fukino thinks it's important to encourage

development of our workers no matter what their status is and to appreciate the fine work that they do for us. Dr. Scheuer said he has worked with half the staff directly and the comments that he received from people is that you have fantastic staff. He sees his job on a day to day basis as supporting the staff and that despite the workload increases, seeing that they get the things that they need and that they can afford with the existing budget. The vacant positions remain vacant, and described that it's a little like walking into a cemetery, so there's a certain moral issue that could be worked on in terms of filling those position even with short term graduates students with really high energy and high quality to help to do some of the work to support the staff.

Dr. Fukino also asked about his comment on federal working relationships (i.e. USGS), and asked him how he sees the current relationship and what kind of improvements he thinks are necessary. Dr. Scheuer said it was in terms of deepening or broadening the relationship, and not to suggest that there's not a good relationship there. Especially the data needs of this Commission are far outstripped than the data availability that we have so I really want to have extensive conversations with them and other institutions to say what can we do with you to really maximize what we believe, in consultation with commissioners, are the things that in a year or five years, you would look and say, thank goodness we actually had that data in place so that we could make a better decision.

Commissioner Kiyosaki mentioned that she asked for a copy of Dr. Scheuer's unpublished dissertation on Waiahole and read through it and found it very interesting. Commissioner Kiyosaki said she is disappointed that Dr. Miike isn't here today because Jonathan and Dr. Miike have had previous encounters and from what she could gather some of it was a little contentious and asked if he would like to comment on it. Commissioner Kiyosaki said she did not have the specifics but portions of his dissertation commented negatively on things that had occurred during Waiahole, some issues that Dr. Miike had taken a position on. Dr. Scheuer said that the focus of his dissertation was not necessarily to draw criticism per se to the working of the commission or the working of the Hawaii Supreme Court, but it was actually trying to explain the results of the decision in terms of a theory in political science that tries to explain how benefits and burdens are allocated. The position in his dissertation and today would not be to say Dr. Miike was legally or politically incorrect on point X but rather trying to explain why the commission acted the way it did in relationship to this theory. He appeared in front of this Commission with Dr. Miike on other matters but has actually had disagreements in policy direction when he was an advocate for OHA and he was a hearings officer. Dr. Scheuer said he was also disappointed that Dr. Miike was not here and feels there is a mutual respect for his expertise and for the work that he's done and added that when he was writing his dissertation and Dr. Miike was writing his book, they did spend time talking together.

Dr. Fukino pointed out that there was a lot of comments made about the short length of time before the change of administration and said that this is going to have an impact on his business in terms of stopping and potentially restarting it and asked when he considered this opportunity what was his thoughts of potentially having to leave or to change his course of direction depending on who the Chair is. Dr. Scheuer said his initial thought was trying to find a way to continue his consulting work while being in this position. It takes a lot of energy building a business, and opportunities that were there one moment might not be there the next, and two things that he realized, was partly due to his nature, he was not going to focus on anything else even if theoretically he wanted to do some work outside and here. He felt that if he's in this job, he's in this job completely. It came down to

yes, it might be disruptive, and it may be economically difficult. Dr. Scheuer said he is going to approach this as trying to get as much done in this time.

Commissioner Fujiwara commented that he has seen Dr. Scheuer before at our Commission meetings and one of the thoughts that came to him was whether he could be fair or not. He respects all of the people that came in to support Dr. Scheuer, and thinks Mr. Namuo made a very good written testimony which covered all the bases that he was looking for as to what the job description really is. Commissioner Fujiwara believes Dr. Scheuer can be fair and be balanced. The big question is working and partnering with the agriculture side. In doing our work with east Maui water issues and in Na Wai Eha, he wished that the Commission itself didn't have to make the decision. It would be better if the landowners met prior to and conceived something that was equitable to everybody, but no the Commission had to make that decision. Commissioner Fujiwara said he formerly worked with US Department of Agriculture and so was always in agriculture. He can see Dr. Scheuer and Dr. Miike getting into different things but believes there is mutual respect. The last thing that Commissioner Fujiwara said was that he didn't expect Mr. Arakawa to come up to say what he was thinking all along about how the new administration is going to come in. He really would like to see the new administration come up with a nominee like Dr. Scheuer as he feels Dr. Scheuer fits the job. However, Commissioner Fujiwara stated that he will vote for a deferral because of that situation. He said that he does hope that all of his supporters would come up and see the new administration and politic for you and possibly for even Laura's position because he would probably fit the bill for that. Commissioner Fujiwara commented that he was not being disrespectful to Laura because she might get her position back. In the meantime, he hopes that Dr. Scheuer is invited to the Farm Bureau and even the Cattlemen's Association and make them believe in you because he does, but still would like to see the new administration come in.

Dr. Scheuer thanked him for his thoughts. Unfortunately, the non-supportive testimony that came in was from the Cattlemen's Association. He said he's seen Alan Gottlieb's testimony, emailed him and is interested in meeting with him, regardless of the outcome. There is also a former Commissioner, Stevie Whalen, who definitely represents agriculture and supported his nomination. Part of the lack of experience or lack of connections had to do with the nature of his work. As he mentioned, when he met with the Governor, he had no objections of water being taken out of the streams for agriculture. It's all about can we balance it, can we implement the law of public trust and balance it with offstream uses. Dr. Scheuer said he respected the role that the commissioners hold and if they vote to defer, he will respect that. But even if it's for a short time, Dr. Scheuer really would like this tremendous opportunity. There is important work to be done and even talking with the staff, they are eager to have an extra hand onboard the canoe to get through some of these issues. Understanding that things could change, the chemistry between him and the next Chair would be critical and it could result in them saying 'you know Jonathan, thank you for your 3 months and I suggest you move on', and he would do so very respectfully.

Commissioner Erdman wanted to seek legal council and made a motion to enter into executive session to confer with counsel on this item under 925A4.

MOTION: (Erdman/Kiyosaki)

Unanimously Approved.

At 10:45 a.m. the commission went into Executive Session.

The meeting was resumed at 11:01 a.m.

Chair Thielen reviewed that one commissioner made a comment before they went into executive session, but she wanted to explain why she put forward the appointment now as part of this discussion. Chair Thielen said she wasn't here when Ken Kawahara was appointed as Water Deputy, that was done under the former Chair. She imagines this one might be a little bit unusual in getting the request for a deferral and doesn't think it's unusual for an administration as it goes out to be appointing commission executive directors. What she finds interesting is from the question being asked and from the testimonies, it was clear that the people that were asking for deferral just didn't know the candidate. This appointment is gathering some attention because the Water Commission has been moving forward these past few years in taking action and doing our job, that frankly in many cases had been pushed off for years because these are very hard decisions that have to be made, very tough issues that have to be tackled and there was some strong leadership at the Water Commission that developed procedures and brought it to this Commission. This Commission gained a lot of momentum, made decisions not only in the contested case but set precedent by going to east Maui and adopting instream flow standards.

Chair Thielen said, you have heard me time and again at those public meetings in east Maui that the people in that room had more in common with each other than any of them had with the people who don't bother to come to these meetings. And when Ken Kawahara left, what I was very concerned about was that there's a good likelihood in the change of administration if we were to wait, a new governor comes in, they've got 18 directors to appoint, 30 deputies to appoint, they have over a thousand boards and commissions, all those directors have to go through confirmation their first session. They're setting a biennial budget having to walk into these positions where they're not familiar with the nuts and bolts of the details and we're still on the heels of the biggest economic crisis our state's gone through in history. One of the reasons that I told the Governor to fill this position despite the limited time left on our term is, I was afraid that we would lose momentum and in the absence of a deputy and this Commission wouldn't be able to pick it up again that easily. If you have what sounds like a three month hiatus is it really more like a six month or nine month hiatus until we get to that one on the list. The candidate here has probably more credentials related to the subject matter of this Commission than any prior deputy. I inherited Ken, I think what Dr. Anthony testified to that the relationship between the deputy and the Chair of this Commission is critical, but I inherited Ken. But that fact didn't mean we couldn't have a good relationship. I look back at the prior chairs of this department, Bill Paty, Tim Johns, Gil Keith-Agaran, Peter Young, it doesn't matter what political party you're in, you're in charge of a department that's managing policy, legal and resource issues and you need very good people in place. As much as I respected Ken and loved working with him and was very sad to see him go, as more of an engineer, I think Jonathan brings into this position more of that policy background as well as the science that will be a real benefit. Most of you Commissioners are going to be here after Dr. Fukino and I are gone. It's an issue for you to really decide, is the timing right, is the candidate right. And I think the timing, even if the candidate is right, is a valid question to wrestle with. But that said, this candidate made it clear and we can question him further, if a new administration comes in and it's not the right match, he would not stay, he's an at will employee.

In the meantime, Chair Thielen said it is her recommendation not to defer and to take a look at the candidate on the merits because of these surface water management permits that are pending,

because of the implementation of the instream flow, because in her experience if we're to leave it vacant, we're not talking three month period, we're talking more six to nine months. And that's an awful long hiatus to have during this critical time.

Dr. Fukino said that in her department, they are working every day to complete as much as they can on behalf of Hawaii and people that they serve. Dr. Fukino said there is so much work that needs to be done and feels they need to make a decision today. Dr. Fukino said she is a very strong supporter of agriculture and animal husbandry and believes that Hawaii needs to become more food self sustaining and independent. It is a great concern to her that we moved from providing 83% to 85% of the food that we consumed in the 1960's to 15% now. We are a group of islands in the middle of the ocean and the turbulence of the world around us has tremendous impact on our economy. I believe that we need to work together to figure out how we do this going forward. People come and people go. Opportunities rise and you need to take them. Dr. Fukino said she agrees with Jonathan that when an opportunity comes you should try to take it and do the best you can with it and do the best you can for the time you have. Dr. Fukino said she feels confident that he will do his best. Dr. Fukino supports a vote today.

Commissioner Kiyosaki stated that she was very impressed by everything she heard today. Having a passion for water is very critical for our state. However, I've spent 13 years of my professional career as either director or deputy of large government entities, on the Big Island and Oahu. I find myself agreeing with Dr. Anthony that it is critical that the director and deputy, Chairperson and deputy, have the relationship to move the department forward. There are important issues that are facing the department. I have been in relationships where either it has worked or it hasn't and it can be detrimental to the department when it's not good. Commissioner Kiyosaki questions the timing and knows that it could be longer than two to three months but is hopeful that the next administration can see how important this particular position is and move forward expeditiously to get someone in here.

Commissioner Kiyosaki said she feels very comfortable with the current Acting Deputy. The decisions that have come before us have been very difficult, but this Water Commission has done a lot more than the previous Commission, as far as really substantial things that are changing the way water is looked at and the way water is appreciated, and the way we are trying to shape future generations in terms of how we sustain and take care of our resources. Commissioner Kiyosaki added, so I really appreciate you for that Laura. She said she will be voting to not confirm at this time. She does think it's important that the next administration have the opportunity. The relationship between the Chair and the water deputy is critical. Commissioner Kiyosaki said, I know that Laura actually did use Ken for a lot more than the water commission deputy. Ken took care of other divisions within DLNR, outside of Water. And I think a lot of that was because he and Laura were able to work things out between them and to have some common goals and objectives. Commissioner Kiyosaki said she feels that it's important to allow that to happen and like Mr. Arakawa said, she hopes to see Jonathan Scheuer in front of the Commission. She doesn't agree with allowing this to occur for two months, having turbulence and upheaval and thinks there should be decisions made that would last a long time.

Discussion took place of how many was needed to take a vote. Chair Thielen said it looks like one commissioner is silent, two in favor of deferral, one not looking at taking action at this point. Commissioner Fukino asked if there is anything that would prohibit them from bringing this issue

up again. Chair Thielen said what she's hearing from at least three commissioners, is that their preference is to wait for the next administration to appoint the Water Deputy. It looks like they do not have the votes for approving the appointment at this point.

Chair Thielen said some of the commissioners said they are hoping that this applicant may throw his hat in the ring at the next administration and assuming that the applicant is interested in that, I would like to leave something on the record that makes it clear that the commission is leaving the door open for this applicant to come back and submit his name for consideration with the next administration.

Dr. Scheuer thanked the Commission for their time. He echoed Dr. Fukino, if you ask me today would I be interested, yes I am. I do not know what comes tomorrow. I clearly will be involved as long as I can in my career of trying to resolve productively the conflict in Hawaii.

Motion was made to defer appointment based on a timing issue, that it may be premature to make any selection due to the change of administration, with the opportunity to consider this candidate without prejudice in the future.

MOTION: (Erdman/Fujiwara)

Dr. Fukino asked who convenes the Commission. Chair Thielen said all the departments and Governor serve until the new governor is sworn in which is the first Monday in December at noon. There are three departments with exceptions in the State Law and those are governed by commissions or boards, the Department of Agriculture, the Department of Hawaiian Home Lands and the Department of Land and Natural Resources. Our terms go until the end of the calendar year, but obviously serve at the pleasure of the governor, although it is designed that in the event the new governor doesn't have anybody in place until January, at least until December you can continue to do business. If there's a gap longer than that for some reason, on the Land Board, the most senior member of the board would be acting Chair in her absence. And there would be an acting deputy to call the meeting and set the agenda.

MOTION: (Kiyosaki/Fujiwara)
 Approved to defer (Fujiwara, Balfour, Kiyosaki, Thielen)
 Opposed (Fukino)
 Abstained (Erdman)

Recessed at 11:27 a.m.

The meeting was resumed at 11:35 a.m.

C. STREAM PROTECTION AND MANAGEMENT

- 1. Application for Stream Diversion Works Permit (SDWP.2677.4) and Petition to Amend Interim Instream Flow Standard for 2.5 GPM Solar Pump in Loiloa Spring, Kaunakakai, Molokai, TMK: (2) 5-7-007:028**

Presentation of submittal: Robert Chong

RECOMMENDATIONS:

That the Commission:

1. Approve the applicant's Stream Diversion Works Permit (SDWP.2677.4) for a 2.5 GPM Solar Pump in Loiloa Spring, Kaunakakai, Molokai at TMK: (2) 5-7-007:028;
2. Allow the applicant to divert up to 1,000 gallons per day at a pumping rate of 0.0015 cfs for domestic and irrigation purposes; and
3. Find that the applicant's proposed daily withdrawal of 0.001 mgd is considered to be de minimis; and, therefore, a Petition to Amend the Interim Instream Flow Standard (PAIIFS) is not required.

MOTION: (Erdman/Fujiwara)
To approve the submittal.
UNANIMOUSLY APPROVED.

F. PLANNING

1. **Request to Enter into a Cooperative Agreement with U.S. Geological Survey for Statewide Hydrologic Data Collection and Water Resource Monitoring for Federal Fiscal Year (FFY) 2011**

Presentation of submittal: Jeremy Kimura

Jeremy Kimura said this comes up every year and that 1909 was the official start date of the U.S. Geological Survey (USGS) cooperative agreement. This agreement is the same as last year; however, the difference is that staff did a quarterly approval of the agreement due to funding concerns, but this year we are seeking full funding of the agreement. The other difference is that in the past, the USGS the cost share has been close to 40% on USGS' end and 60% on our end, but this year USGS is able to match 50%. Even though the stations themselves increased, the total cost has gone down for us. That enabled us to actually add stations that were taken away in the past. Six stations were added in consultation with USGS.

Chair Thielen asked that he mentioned changing payment schedule but on the payment schedule on Attachment 3, it talks about quarterly payments. And given that the payments coming out of B&F are still quarterly payments, are you going to change to an annual payment. Mr. Kimura explained that they will still pay on a quarterly basis but get approval for the full year.

RECOMMENDATIONS:

Staff recommends that the Commission authorize the Chairperson to enter into a cooperative agreement with the U.S. Geological Survey in FFY 2011 to undertake the specified monitoring activities.

The terms of this agreement will be subject to the approval of the Department's Deputy Attorney General. Contract execution will be done in accordance with Chapter 103D, HRS, and Chapter 3-122, Hawaii Administrative Rules.

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

Item E1 was taken out of order and presented before item D2.

E. NON-ACTION ITEM

1. Presentation by the Honolulu Board of Water Supply on the Waianae & Koolau Loa Watershed Management Plans

Copies of the power point were distributed.

Barry Usagawa, the Water Use Program Manager for the Board of Water Supply, presented the adoption of the Waianae and Koolau Loan Watershed Management Plans and thanked the Commission staff for their strong support.

Sherry Hiraoka of Townscape presented the power point of the Waianae Watershed Management Plan. The County Water Use and Development plan is mandated by the State Water Code as well as by city ordinance. The City Department of Planning and Permitting as well as the Board of Water Supply worked together. The watershed approach to this is looking at resource management as well as water use and development. What is a little unusual with what the other counties are doing is that Honolulu decided to break up the plan into eight districts, looking at the city development plan districts and match those up so that we could look at some areas with specific issues and needs.

In 2004, we came to you with our scope of work that was approved and we have periodically briefed the Commission over the years. We've had public presentations, over 40 individual and community meetings in each district. We've had our public review draft come out in 2006, gotten the neighborhood endorsement, after that there was a bit of a delay because the Commission started to revise the aquifer sustainable yields. In 2008, it was finalized, we made minor revisions and finalized our plan in 2009 and went into the approval process this year.

The basic look at the approval process they went through, starting with the briefing earlier in the year, started the city council and commission processes in tandem. The reason for doing that was that they wanted each process to inform the other. There were various hearings at the city level through the council meetings and committee meetings, as well as public meetings. The plan was approved in August and signed into ordinance this month.

These regional plans are components to the island wide water plan. There are two main components, the water use and development plan which is mandated and the watershed

management objective and strategies which are not mandated, but felt it was important for resource protection. For the part of the water use and development plan we looked at things like available water resources, current water use and projected future water use. For the watershed management side we looked at stakeholder involvement and also doing the watershed profile, this brings some background and research on what's going on. From all of that we hope to get healthy streams, strong culture, sustainable water sheds and reliable water supply and a vibrant community.

The overview is the island wide context of each of the district plans.

The plan came up with 33 projects. Some of the major findings that BWS came out with were that they need to continue conservation efforts, make sure there is sufficient use, developing non portable water for agriculture use; surface water is limited because there are streams that do not flow continuously. New Board of Water Supply potable well development is not really feasible because of the cost of developing a new well and the yields are pretty low. Because of all that, we are going to need to look at bringing in some water from Pearl Harbor aquifer that they already do, needing to increase some of that water. If we are going to propose that, we need to update the Pearl Harbor aquifer model in order to optimize the pumping of existing sources.

Focusing on their options we're looking at ground water, reducing Board of Water Supply withdrawals in Waianae to be able to protect the streams as well as some additional import from Pearl Harbor, other sources for the future long term is looking at desalination at Kalaeloa, surface water is very limited that would probably be used primarily for cultural practices and of course conservation. Looking at demand and supply, we did three scenarios: a low scenario based on the city's policies, their general plan and sustainable community plan policies. We did a mid-range growth which is basically looking at the city's trend projections and we did a high growth that exceeded the trend but looking at what's possible based on the growth that already happened in Waianae.

Jeff Overton of Group 70 worked on the Koolau Loa Watershed Management Plan. Major concerns are growth management and underneath the city's sustainable community plan for Koolau Loa, really looking for the reliability of the ground water potential. There is allocation and water use set for both private and BWS uses, instream flow standards still pending so that will be an important part for streamflow across the windward side. Flooding issues are a big concern and limiting future source development and eliminating export of water so as not to diminish the aquifer. An assurance that some of the plans that we come up with in this go forward in a future planning environment.

The findings of the Koolau Loa management plan, no new stream diversions are planned and as the instream flow standards are yet to be amended in the future, but increasing the efficiency of the diversions because the systems have some leaks and really that water is important to be managed and returning it to the stream is also a priority. Koolau Loa ground water management area is really the primary source for the board supply and the community supply. No Kahana ground water management area aquifer development. Water conservation is the one of the tools that we employ here as well as agriculture savings as well as the systems that deliver.

Punaluu is a special subarea and that pumpage can decrease with conservation and other sources elsewhere outside the district. Transfers out of Koolau Loa will not be detrimental to the water supply in the district.

In the grouping of projects that we came up with, we had a cluster of projects focused around surface water. Land management, how we deal with some of these specific projects maintaining along the streams, conservation buffers, getting off cesspools, dealing with gray water, pollution prevention, feral pig, a series of projects that came out when we met with the community on land management issues. The board has specific set of issues relating to water supply and how they take care of their facilities, their mandate for water supply. There was a short list projects and a group of projects that are mid-term and long-term.

The different sources of water we're dealing with are ground water primarily but reclaimed water, conservation and surface water use and minimizing loss in the ag system. This is showing that there is enough water for this sector of the island and overall as part of the process.

Barry Usagawa said in a typical water use and development plan, we basically look at how much water you're going to use and where you're going to develop, and that's usually for urban and ag. Ground water to natural resources, we'll be looking at new sources that won't affect surface water. We also want to reduce pumpage so we can keep water in the ground, building up the aquifer for drought mitigation and for those sources that do affect streams that there will be some restoration. There is more quantity of ground water than surface water in Honolulu. BWS potable system is 100% ground water. We're not planning for surface water for urban uses, we have recycled water and conservation for that. Desalted water because of its high cost will only be for urban.

These next two slides were presented before to the Commission in the scope approval and briefings, showing 2000 water use and transfer map. Shows uses and transfers in from Pearl Harbor and exports out of Koolauloa. 2030 projections are a baseline from which the plans start from, and how the transfers will change. Island-wide sources that were defined in the plan and alternative sources were also defined for BWS system as well as private and military.

Commissioner Kiyosaki left the meeting at noon.

Dr. Fukino left the meeting at 12:25 p.m.

D2. Update to the Hawaii Water Plan, Adoption of the Waianae and Koolau Loa Watershed Management Plans

Presentation by: Jeremy Kimura

Disruption by Dr. Anthony at 12:15. Chair Thielen called recess. Dr. Anthony would not step outside as requested and was told by Chair Thielen not to interrupt the meeting.

Chair Thielen resumed the meeting.

Jeremy Kimura stated that staff is recommending adoption of the plans as updates to the Hawaii Water Plan. Exhibit 1 shows the Hawaii Water Plan components and their status. It's a little confusing because we talk about the Oahu Water Management Plan, but that is really the City and

County Water Use Development Plan. The watershed management plans that staff is recommending for adoption follows the guidelines in the framework that the Commission adopted to guide them in the creation of the different components so that's the main reason we're recommending adoption. Some of the framework considerations that they put in place through the plan, they've looked at maximum reasonable and beneficial use of their resources, refined their projections of the 2030 water demand and water useage, they've also looked at the other Hawaii water plan components and intergrated them in the total of their Watershed Management Plan. Mr. Kimura mentioned that these plans are part of the total Oahu Water Management Plan so will be integrated with the other watershed management plans. Because these two watershed plans are part of the Oahu Management Plan and they're being updated separately, there might be some discrepancies between regions based on when the plans were completed. Once all the plans are completed and submitted to us, the total Oahu watershed management plan the discrepancies should be dealt with then.

RECOMMENDATIONS:

Staff recommends that the Commission:

1. Adopt the Waianae and Koolau Loa Watershed Management Plans as updates to the Hawaii Water Plan.

Chair Thielen asked when all eight regions will be done. Barry Usagawa said it depends on funding. Besides these two plans we have Koolaupoko that should be done by the beginning of next year. And then North Shore, we only have partial funding for that. And then the four regions of south Oahu will be subsequent to that dependent on funding. Hopefully within the next five years. Also, these plans are periodically updated approximately five years and that's just to update the implementation and data.

Dr. Fukino asked how much funding is required. Mr. Usagawa said, \$400,000 and that's because one third of that is for community outreach, but that's where they get their information from.

Chair Thielen asked if the Commission is to approve the County Use and Development Plan, the way the code is written is its saying that it is a single plan and what is being done now is being broken down into eight regions and ultimately when all are done, it will come to us as an intergrated plan where it may amend any discrepancies between the various eight regional plans. My technical question is, what we are adopting today is a subplan under the County Use and Development Plan? Deputy Ohye said the water code does provide for regional updates and regional plans to be done, and so when the Commission approved the Board of Water Supply project description which is a requirement of the framework, the Board did indicate they understood there should be a lot of integrations between the land use and water use planning and that's what staff really feels is the intent of the water Code is to integrate land use and put water consideration and so the Board opted to put in their project description to go ahead and follow the sustainable community plan, and once those were updated, the board will follow up and come up with the water use and development plan for that region. Barry's final slides were trying to point out that they did look at the islandwide picture as part of the regional plan and recognizes that there may be considerations for an intergrated system. What they tried to do is to look at the big picture in a broad way. Their focus is

to tie it to the sustainable community plan updates as well as to do extensive stakeholder outreach, so to do that, they wanted to do it by region.

Chair Thielen said she doesn't have a problem of the concept of doing that and she understands that the Code acknowledges regional planning, but under the Code this body is asked to approve a County use and development plan. Under the Code is it envisioned that we do that on a regional basis or that we do that after they got the entire island done, or both?

Deputy Ohye said the Code is up for interpretation, it does talk about regional plans, and a county wide development plan. Different counties are approaching it differently. Maui county has also submitted a description for a regional plan, the Big Island for an island wide plan. So with the framework, it's to recognize that the counties have difference issues and to give the counties flexibility to do the planning according with the funding that's available and in accordance with what they felt their specific issues and focus was. The counties worked within the framework to be flexible.

Chair Thielen said if they go through with the regional plans, reviewing them as they are moved forward at the county level, in the end we get to say, number 7 and 8 regions, the next step would be to go in and create an intergrated plan so that if there is any discrepancies between the regions, to address it at that point. Do you go back and amend those regional plans to modify those discrepancies; is that one whole thing for the island at that point?

Mr. Usagawa said it is basically reconciling the amount of transfers between the districts because the systems extend beyond the land use plans. There will probably be a document that looks at the consolidation just to put the eight plans in context. We would amend the plans in their five years in the periodic updates through the reconciliation process if there were changes. The transfer maps that were shown, that provides the base and he does not expect the base to change much. For instance, if water from the north shore were planned to be brought in from Ewa, that would be a major conflict with what we've presented so far. I don't see that happening, but that's the kind of example that could happen, and we'll go back and reconcile that.

Chair Thielen said the two regions being worked on now, there are no transfers between them and it sounds like you're following the timetable for the sustainable communities' development plan updates and asked if that's why those two regions were picked. Mr. Usagawa said they're actually on their own schedule. We picked Waianae because it's a dry area that we would illustrate the issues of a dry area that relies on the import water from another district. Koolau Loa is a wet area that has issue of water being transferred out. It was an attempt by us to put our arms around all of the major issues, Waianae and Koolau Loa gave us so much information about how the rest of the districts would work.

Chair Thielen said looking at where discrepancies may arise would generally be between districts where you have transfers in and out. You're going to see things down the line that you may have to go back and amend in a variety of places if you're picking districts that are not necessarily adjacent to each other having transfers in and out.

1. Dr. Anthony, executive director of Hawaii Laie Kawai Association, and testifying on behalf of that organization. If you rule in a particular way that we feel we are

dissatisfied with, we are consulting with counsel and we will take it to contested case hearing. They participated in the making of the Koolau Loa watershed management plan and feels that the Board of Water Supply people are trying to give you the impression that there were very large numbers of people from the community who participated in the making of this plan. This is false as in the beginning maybe 25-30 people came and in the first third of the 18 month period, participation was reduced to 8. Dr. Anthony said the Code states that it is the Commission's job to oversee the Code and that it is properly enforced. For a plan to be a plan, it needs to specify priorities, action items that have to be earmarked by timelines, and dedicated funding. If you add up the line items on the Koolau Loa plan, which has been changed considerably, the version that went to the Neighborhood Board is not the version that is before the Commission today. There are no provisions in the Code for subplans. How much is it going to cost to implement the eight region plans?

Dr. Anthony said you have to take into account how submarine discharge is affected when you take water from ground water system, they asked for a plan that would protect aquifers, in addition should the taxpayer alone bear the burden for implementing these plans? Barry Usagawa indicated 35 related projects. The Commission can change the water use permits that each of these entities has in what is a ground water management area. The Board of Water Supply externalizes the real cost of water delivered to your faucet and mine. Those 35 projects will cost a lot of money. Government operates on the basis on getting money from where the water comes from. Money can come from private purveyors, the BWS raising their rates. Dr. Anthony asked to have this deferred until it can go back to the Neighborhood Board, until there is further discussion with staff, and look at where the money is going to come from

Commission Erdman asked that when Dr. Anthony stated that the money should come from private purveyors, shouldn't it include anybody who owns a well. Dr. Anthony agreed.

2. Creighton Matoon (Punaluu Community Association, Koolau Loa Neighborhood Board, Koolau Loa Watershed Management Plan and Working Group, Koolau Loa Sustainable Community Plan Working Group, Citizen) understands that the planning of the Water Management Plan is trying to coordinate with the planners of the sustainable community plan, and in so doing it creates a problem. When it comes to Koolau Loa sustainable community plan, we haven't had a meeting for over a year. In regards to the watershed management plan, we haven't met with the Koolau Loa neighborhood board, endorsement was for the preliminary draft in 2007. The neighborhood board did not take a position or reviewed on the prefinal draft. Mr. Matoon urges for deferral.
3. Dawn Lawson of Laie is concerned about putting both Waianae and Koolau Loa together and would like to see it discussed separately. She is concerned about development and would like the opportunity to have input into the report that they have not been able to present and ask this item be deferred.

4. Guy Nakamoto chair of Hawaii Laie Kawai Association asks for deferral. No one is talking about the balance of water resource.

Public testimony was closed.

The Commission wanted to seek legal council and made a motion to enter into executive session to confer with counsel on this item under 925A4.

MOTION: (Erdman/Fujiwara)
Unanimously Approved.

At 12:48 p.m. the commission went into Executive Session.

The meeting was resumed at 1:00 p.m.

Chair Thielen said it looks like back in March of 2004 the Board of Water Supply brought forward to the Commission a Oahu Water Management Plan framework scope of work for the Waianae and Koolau Loa Watershed Management Plan, and that's attached as Exhibit 2 on item D2 on the agenda. And staff made a recommendation to the Commission that was accepted that we approve their management plan framework and scope of work for the two watershed management plans, require the Board of Water Supply to come and work with our staff when they were putting together the proposal of work to put it out to bid for the update. And we authorized our staff to participate in community meetings. If you take a look at Exhibit 2 attached to the submittal, what came in front of us at that time was the watershed planning approach where the BWS broke the eight regions into three groups, beginning funding in fiscal year 2004 with Waianae and Koolau Loa, target date for submittal to CWRM for approval, the first quarter of fiscal year 2006. Then beginning north shore and Koolau Poko next, target date for submittal to CWRM for approval second quarter of fiscal year 2007, and then the south Oahu and urban areas, target date for submittal to CWRM for approval second quarter of fiscal year 2008, so what was under discussion back in 2004 with the BWS was ideally going to result in a process where this commission would see three sets of regional plans within a two year period. Then, it would be manageable to resolve any discrepancies under those plans. And I recognize BWS is taking the fact that our predecessors reviewed this process, approved it and moved it forward, but I think there's some questions coming up now about on how to resolve discrepancies especially with the planning process that it is now five years beyond the target dates back then, we're uncertain about funding in the future and if we're talking about plan updates that's it's taken this long to get the first two done, we'll be updating these two plans before finishing all other six regions.

In executive session just having a question about what is the legal status of the regional plans, the Counties may plan regionally and it makes sense to do it with the land use planning and in some cases maybe preceding land use planning because then the water becomes a ceiling for the land use planning. Just a question about are these regional plans something the Commission approves?

Commissioner Erdman said his biggest concern is how you adopt an island wide plan when 85% of it is in central Oahu, I'd rather see that incorporated before we adopt an island wide plan. (Can't clearly hear Sumner's comment.) Chair Thielen said the county may plan and go through this

sequentially by region but the Water Commission needs to see the entire island plan in total. Commissioner Balfour said he agrees and doesn't see how we can do it by piece meal.

Chair Thielen said to be fair to the Board of Water Supply, what they did do is bring in front of the commission in 2004, a more segregated approach, putting eight regions of the island into three series of plans, but I think had we met those original timetables, I may have felt more obligated to follow through with this prior Commission's vote to looking at these separately. But we are so far off from those timetables right now and the fact that we don't have dedicated funding to get us through the two series of plans in a timely manner, I'm a little concern about imprinting these regional plans by adopting them at the commission level. I would leave the door open to the possibility of maybe not the whole island but at the minimum we need to see a lot more significant progress.

Chair Thielen stated that she didn't know if the law requires the Commission to adopt or approve a regional plan. So I don't think its saying that a regional plan at the county level is an invalid document and certainly can keep working on it. But what the commission needs to be doing is taking a look at the island wide plans.

Commissioner Erdman got clarification that this is actually an update to a plan that was previously adopted in 1990.

Chair Thielen said what we have is a recommendation by staff that we adopt the two regional plans. The Commission is actually expressing concerns about the timing that these plans are actually coming out on and the need to get all of them completed so that this Commission can take a look at the island wide Water Use Plan.

Barry Usagawa said that it was one of the reasons why they inserted an island wide overview because as he understand the Water Code requires the County Use and Water Development Plan. The Water Use and Development Plan should provide guidance to the commission for Water Use Permits decisions. He believes by deferring the data will be old, if you're saying we should wait until all eight are approved, it could be ten years apart and then there's the question of updating the old ones again.

Chair Thielen said the Water commission under the code is asked to take a look at the island wide Water Use and Development Plans. If your concern is under the funding schedule going through this process is going to take a total of ten years to get to it, I think that it makes the likelihood that the discrepancies and issues between the regions and trying to consolidate that into a single plan, more problematic. And I have more concerns about the Commission being asked to adopt regional plans as opposed to an island wide plan. I think that the fact that you would report these plans to us that we're aware that they're in existence, as you go forward with the other regions and update or amend the plans there. Our staff should continue to go to those meetings, we should be aware of what your plans are but what you should come back to the Commission with is the island wide because at that point, you would have had to have gone through amending any discrepancies between these regions. I am very concern that given the timetable that you're on now that you're asking us to adopt a regional plan and frankly we should have caught it back in 2004, but it could be everybody was optimistic about the quick turnaround time that that under the Code, it doesn't look like the commission has a lull with the regional plan, actually we're taking a look at the island wide.

Chair Thielen said that the staff's recommendations looked at whether the regional plans were complete. Did you do any analysis whether this would be sufficient under the Water Code as an island wide Water Use and Development Plan? Deputy Ohye said no, we are recommending adoption of the regional plans. Chair Thielen continued that if the argument is being raised by the Board of Water Supply that this is sufficient to be adopted as an island wide Water Use and Development Plan, would you need more time for analysis on whether it is accurate or not. At this point, Chair Thielen said, we don't even have staff analysis on whether it would meet criteria under the Water Code.

Commissioner Erdman said the Commission adopted their plan in 1990. Deputy Ohye said yes. So under what part of the Code are we suppose to readopt it or change it? Deputy Ohye said she thinks there is a citation in the submittal there that you are adopting a modification to the Hawaii Water Plan, that the Code recognizes that the Plan is going to get updated as all plans do and recommends that the Water Plan be updated as necessary. What we're following here is a modification and update, and the Code does provide for that. I know there's concern about the timing and the fact that the island wide plan hasn't come together yet, I think they've done an island wide analysis to set the transfers and they're comfortable with that. One of the things that you might consider is a conditional adoption at this point of these regional plans with a timeframe for the Board to come to the island wide plan. These types of issues won't come up in the next couple of years. The system is going to be sort of intact until we get farther out so if the concern is that you want to have the island wide plan and all the inter-regional considerations worked out, I think there's time to do that. Chair Thielen asked what inhibits the Board of Water Supply from using these numbers in your operations. As far as what you're planning, why is it that you need us to approve what you put in front of us today in order to operate. Barry Usagawa said they will operate their system as it states on the plan to the extent that if we wanted to develop resources in the plan, and we come to you with water use permits and you question whether it's in the plan, then that would affect our operations.

Commissioner Erdman said that none of the commissioners where here in 2004. I'd feel much more comfortable that, if we're voting on the changes, I'd like to know what we are changing. Chair Thielen said she's uncomfortable being asked to vote on approving a bunch of new water sources that may even include things outside these regions when we haven't seen the plans to those regions that have funding for it and perhaps we should be asking those questions, or your successors come to ask to develop new water sources that gives us a venue to be able to say you have to do a plan and that would help to provide funding for the plan.

The adopted plan is by water system that crosses over all the districts.

Commissioner Fujiwara said it doesn't look like they would be adopting these regional plans today. According to Barry they already have an island wide plan, but you might want to get together with staff again and bring it up at the next meeting.

Deputy Ohye said for staff's part, we'd like to communicate to with the other counties because Maui County also submitted a regional approach and some of their components are at the County council now so if it's the commission's intent that regional plans are not adequate for adoption, we'd like to inform the county.

Chair Thielen said that right now the Commission is expressing some concern that while people were looking at the regional approach the timetable has gotten so long that they are some real concerns about what's that's going to do when it stretches out pass the five year update for the set of regions and you haven't even started the plans for the final set.

Commissioner Erdman said he is more uncomfortable when it's being talked about water is either going in or out from someplace else. Curious that if the commission adopts these and the next set of plans comes in and something has to change.

Chair Thielen said the Board of Water Supply has moved forward with this planning more so than any other county and the regional approach is a good approach, a practical approach, in looking at it for land use planning for the area is a way to deal with it. The concern is the timetable, I think maybe reporting these to the Commission so we stay apprised of what's going on, until we can see that the island wide regions are starting to get updated and we can see the linkage and the in and outs and what are the discrepancies if any between them before we do any form of any adoption of an update would be more appropriate. I do have concerns about if part of this submittal to us includes water development projects outside these two regions, that would make me even more concerned about adopting a regional plan. I appreciate looking at it on an island wide basis but without seeing what those plans are for the other regions, without seeing if there are discrepancies between the transfers in and out of the regions, it's hard for us to approve something. I feel that this is reported to us as a non-action item and directing the counties to continue with its updates because we strongly encourage you to get to all of the region updates completed and work with you on approving an island wide update and possibly if people feel more comfortable in a regional approach once we see the regions in a group.

Chair Thielen said before coming up with anything dramatically different, it looks like the next administration is going to come in, look at who is the water deputy, and that might be the more appropriate time to sit down rather than now, but as far today goes it doesn't look like we have the votes to adopt something but it doesn't mean you have to stop the process.

Commissioner Erdman made the motion to table this item.

MOTION: (Sumner/Fujiwara)
Kiyosaki and Fukino left the meeting and are not included in the vote.
To deferred approval of the submittal.
UNANIMOUSLY APPROVED to DEFER.

F. NEXT COMMISSION MEETINGS (TENTATIVE)

1. October 20, 2010
2. November 17, 2010

G. The meeting was adjourned at 1:30 p.m.

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

LENORE N. OHYE
Acting Deputy Director