

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 24-25, 2008
TIME: 11:00 a.m.
PLACE: Haiku Community Center
Hana Highway
Haiku, Maui

September 24, 2008

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 11:00 a.m.

The following were in attendance and/or excused:

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

STAFF: Deputy Director Ken Kawahara, Ed Sakoda, Dean Uyeno, Chui Cheng, Elise Leroux, Kathleen Oshiro

COUNSEL: Linda Chow, Esq.

OTHERS: Doug Jones; Isaac Moriwake, Earthjustice; Bryan Garash; Mitchell MacCluen, UAP; Thomas K. Koomoa; Carl Freedman; Kealiiokainalu Villarimo; Summer Starr; Robert Luuwai; Pete Sayer; Kimo Frias-Kaaramo; Kuulei H. Kaauamo; Solomon Kaauamo Jr.; Kai Akuna; Aja Early and JD & Stacey Pahukoa; Daniel Ornellas, DLNR-Land Div.; Beatrice P. Kekahuna; Sanford K. Kekahuna; Jacob R. Mau; Kanaka O Maui; Patrick Day; JD & Stacey Pahukoa; Kai Akuna; Aja Early; Eran McKinney; Kai Nishiki; Nelson K. Armitage; Moses A. Kahiamoe Jr.; Uilani & Keeaumokae Kapu; Seth Raabe; Guthier Freitas; Jay Freitas; Wesley Nohara, Maui Land & Pineapple Co.; Lyn Scott; Kamaui Aiona; Rosemarie Caires; Claudia Kalaola; Patrick Kalaola; Kawewehi Pundyke; Roland C. Poaipuni; Terry Lee Poaipuni; Dan Clark; Piiki John UKA Ballbaren Jr.; Terry P. Akuna; Opuiulani Kuhuhiwa; Walter McKuluhiwa Sr.; Michael Schwartz; Jeremiah Naone; Nikhilananda; Foama Von Schultze; Shari Frias; Kyle L. Elizares; Buck Mettao; Lasalle N. Kaauamo; Howard Dean; Lay Young; Beverly Young; Alyson Barrows; Martha Martin; Terry Sakevitz; Kekoa Duarte; Brennan Black; Bryson DeFrancia; Devin Sakamoto; Joshua Tatori; Makana Hoopai; Mana Rosa; Kainalu Garson; Chansi Carvalho; Mikie Webb; Chauncey Wells; Kika Echiverri; Robert Cabadol-Apo; Shane Alexzander; Devin

Approved by Commission on
Water Resource Management
at the meeting held on

OCT 28 2008

Jakubczak and Jordan Pua Robinson of Baldwin High School; John Belle; Megan Powers; L. Donglass; Michael D'addario; Haleakua Garden Farm; Andrea Conway; Claire D'Gara; Shannan Guillermo; DeGray Vanderbilt; John V. Duey, Na Wai Eha; Lesley Bruce; Phyllis Bruce; Garret Hew, East Maui Irrigation Co. (EMI); William Kennison, ILWU; Sharon Suzuki, MECO; Sean Loa, American Machinery; Sharon Coultray; John Ford; David Nobriga, Nobriga Ranch; Gary Wood; Bush Martin; Michael Howden, Maui County Water Board; Skippy Young; Shirley Watanabe; Charley Villalon; Hannah Kaauamo; Warren Watanabe, Hawaii Farm Bureau; Lance Santo, Hawaii Agriculture Research Center; Ed Wendt; Mahedeani Wend; Jock Yamaguchi; Councilmember Michelle Anderson; Amanda Martin; Solomon Hoopai; Michael Vietra, Irrigation Systems; Joseph Villarimo; Kai Nishiki; Bitaya Pakukia; Wayne Nishiki; Darren Strand; Barron Souza Jr; Pauahi Hookano; Ashley Correa; Doug Jones; Keeaumoku Kapu; Seth Raabe; David Schulmeister, Atty. Hawaiian Commercial & Sugar Co. (HC&S); Steven Hookano; Tracy Falite; Wesley Nohara; Kalei Luuwai, HC&S; Mark Sheenon; Wilapi Kap; Neola Caveny; Daniel Kanahale; Riki Torres; Angie Hofmann; Dan Clark; Rob Parsons; Jeremiah Naone; Nikhill Amanda; Megan Powers; John Blumer; Lucienne DeNaie; Thomas K. Koomoa; Framavon Schueter; Beatrice P. Kekahuna; Judy Bueltnier; Edgar Dwayne Kritow; Annjulie Vai; Corey Hanaike; Hanalei Colleado; Senator Kalani English; Isaac Hall; Dr. Dan Polhemus & Dr. Bob Nishimoto of DAR; Randy Awo and DOCARE officers

Chair Thielen gave a brief background on how the meeting will run and introduced the Commissioners. Chair Thielen also announced that Commissioner Ching will sit through the announcements and approval of the minutes; however she recused herself from the agenda items, C1 and C2.

A. APPROVAL OF MINUTES

1. August 28, 2008
Commissioner Ching amended the minutes with the following corrections:
Page 7, Commissioner Meredith Ching recused herself from item D2.
Page 9, Vote should indicate that Commissioner Ching abstained from voting.

2. September 2-3, 2008 Video

MOTION: To approve the August 28, 2008 minutes as amended, and the September 2nd and 3rd, 2008 minutes. (Frazier/Miike)

UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Deputy Director Ken Kawahara mentioned that the Water Resource Protection Plan (WRPP) (copies distributed) was approved and updated at the Commission's August 28th meeting. The updated plan will be posted on the Commission on Water Resource (CWRM)'s website this Friday. The handout shows the various HWP components and how it integrates at the County Water Use and Development Plan level. The table at the bottom summarizes the status of the other HWP component updates. Deputy Kawahara recognized and thanked agencies that are actively engaged in HWP component updates, understanding that agencies have competing priorities. Deputy Kawahara also stressed the importance of the HWP as it provides for more effective coordination and long-range water planning between state and county agencies.

Water Use and Development Plan (WUDP): Maui County is in the process of updating their WUDP. Deputy Kawahara expressed support for their extensive public outreach efforts to engage stakeholders in the updating of their plan. Deputy Kawahara thanked Jeff Eng and Ellen Kraftsow of the Maui Department of Water Supply, and their consultant, Carl Freedman. Mr. Freedman brought a sign-up list for anyone interested in receiving notifications on the Maui County Water Use and Development Plan. Deputy Kawahara made it clear that this is a component of the Hawaii Water Plan and not to be confused with what is on the agenda today.

Deputy Kawahara said that staff will also be presenting the sustainable yield numbers and Instream Flow Standard methodologies at the Hawaii Water Works Association conference here on Maui later in October.

Chair Thielen explained that for item C1, there are 10 parties that filed responses. Each party will be given up to 20 minutes, and may reserve some time for rebuttal.

Commissioner Ching recused herself from items C1 and C2.

C. STREAM PROTECTION AND MANAGEMENT**1. Hawaiian Commercial and Sugar Company's Motion to Consolidate Petitions to Amend Interim Instream Flow Standards for East Maui Streams and Complaint Relating Thereto filed May 29, 2008**

Presentation by: Ed Sakoda

Ed Sakoda said the Water Commission was given a year after the Water Code was passed to set interim Instream Flow Standards (interim IFS) statewide. At that time the Commissioners felt it was almost an impossible task to set standards statewide but have what is known as the status quo interim IFS that was set for East Maui streams, the Commission adopted the interim IFS status quo on June 15, 1988, and became effective on October 8, 1988.

Briefs received by close of business on Thursday, September 18, 2008:
Motion by: HC&S

In support of the motion: Maui Electric; ILWU Local 142; Hawaii Farm Bureau Federation; Teena Rasmussen, vice-president of Paradise Flower Farm and member of the Hawaii Farm Bureau; David Nobriga of Nobriga Ranch; James Tavares, grows sod at Kula Ag Park and former extension agent for the College of Tropical Agriculture and Human Resources; Sarah Strand, Associate Director of the Central Maui Soil and Water Conservation District; and Sean Loa of American Machinery.

In opposition: Native Hawaiian Legal Corporation

DISCUSSION:

HC&S states in their motion that: 1) they will submit a report regarding the economic importance of HC&S to the economies of Maui County and the State of Hawaii by the end of August or the first week of September 2008; 2) they will supplement the report with detailed information on its water use rates and management of its irrigation practices by mid-September 2008; and 3) they will submit a proposal, complete with economic and biological justifications, regarding appropriate interim IFS for all streams included in the 27 interim IFS petitions by mid-November 2008.

HC&S transmitted the economic report by email and hand-carried copies to the Commission office on September 12, 2008. Staff appreciates the information provided, is reviewing the information, and looks forward to receiving the other information mentioned.

Staff is using the five hydrologic units as a framework for the remaining hydrologic units in the area of interest and throughout the State, as this is the first time the Commission will be setting measurable interim IFS.

The Water Code provides that the Commission may adopt interim IFS on a stream-by-stream basis or a general IFS applicable to all streams within a specified area. The process being applied to developing the measurable interim IFS values represents a significant shift in thinking from the status quo interim IFS flows which did not appear to consider any ecological, social, or economic values, to a system which seeks to assess and balance all competing needs of instream and noninstream uses.

Staff believes that the Commission should move forward in amending the interim IFS for the five hydrologic units and will be proposing that the Commission adopt interim decisions that will be subject to adaptive management strategies. The basic tenets of adaptive management are to: 1) Establish management objectives; 2) Implement management decisions; 3) Monitor effectiveness of decisions; 4) Evaluate results of management; and 5) Revise management decisions as necessary. Should initial management decisions need further amendment, the decisions can then be revised and the process repeated. This is a learning process that can be revisited until a sound management decision is reached.

Due to the complex and dynamic nature of Hawaii's stream systems, adaptive management affords the Commission the ability to proceed in making reasonable management decisions and ensuring that ecological, social, and economic impacts are minimized in the face of uncertainty.

Staff will be recommending in the following submittal that within one year from the adoption of the interim IFS, a progress report be presented to the Commission on implementing the interim IFS and the preliminary results of the application of the adaptive management strategies. While staff monitors and evaluates the impact of these interim IFS upon both instream and noninstream uses, staff should be able to move forward with addressing other interim IFS petitions statewide.

Staff believes that the additional information provided by HC&S will first need to be analyzed and then can be incorporated into the progress report. Should an interim IFS need to be revised prior to one year from the date of adoption, or if the Commission wishes to consider all 27 streams together, staff can propose another amended IFS to the Commission.

SUMMARY OF REQUEST:

Staff is recommending that the Commission deny Hawaiian Commercial and Sugar Company's Motion to Consolidate Petitions to Amend Interim Instream Flow Standards (interim IFS) for East Maui Streams and complaint Relating Thereto Filed May 29, 2008.

1. HC&S - by David Schulmeister

HC&S believes that if the recommended IFS are adopted as official interim IFS determination it will set a bad precedence as the policy. Mr. Schulmeister also addressed the timing of the motion to consolidate because the opposition questioned why it wasn't filed sooner. Mr. Schulmeister said the petitions were filed around 2001 or 2002. The 27 petitions were filed on the same day and always intended to be dealt with together, not separately. Mr. Schulmeister said it wasn't until March 2008 when the CWRM staff published their instream flow assessment reports for the five units that it became clear that there was an administrative decision to decide the 27 streams in pieces rather than a group.

Mr. Schulmeister said they can't really judge what the economic impact is going to be because he doesn't know what will be done on the other streams and there's no schedule when it would be addressed. Mr. Schulmeister stressed that HC&S is not trying to delay or trying to interfere with getting immediate relief for the taro growers, what they are saying is not to do it by way of an IFS.

Those in support filed briefs and spoke in the order listed below. Their brief(s) may be viewed at http://hawaii.gov/dlnr/cwrn/currentissues_Petition27EastMaui.htm.

2. Hawaii Farm Bureau Federation - by Warren Watanabe
3. Maui Electric Company, Ltd. (MECO) - by Sharon Suzuki
4. American Machinery, John Deere - by Sean Loa
5. ILWU Local 142 - by William Kennison
6. Central Maui Soil & Water Conservation District - Darren Strand:
7. David Nobriga

Not present were Teena Rasmussen and James Tavares.

In opposition of HC&S motion to consolidate who submitted brief(s) may be viewed at http://hawaii.gov/dlnr/cwrn/currentissues_Petition27EastMaui.htm.

1. Na Moku - by Alan Murakami

Chair Thielen informed the public that the Commission could direct the staff to go back and work on interim instream flow standards for the entire system of the 27 hydrologic units, or they may want to move forward with this petition with the five hydrologic units. Chair Thielen explained to the public about the Sunshine Law and the deliberation process that is to take place. Chair Thielen also confirmed with the Deputy AG that the Commission has the legal authority to either approach interim instream flow standards on a stream by stream basis or as a comprehensive system; the AG Chow agreed that it is a policy call for the Commission.

Commissioner Miike said that many of the comments made by Mr. Schulmeister and Mr. Murakami applied to the second half of the agenda items. People in support of consolidating talked about uncertainty and because the Commission is looking at the status quo, in practical terms HC&S current amount of water will be reduced in some fashion.

Commissioner Kiyosaki asked if part of what is being considered included HC&S's filed supplemental paper that talked about putting more water back into the stream. Chair Thielen explained that HC&S motion is asking the Commission not to proceed with the five hydrologic units but instead to go back and do the work for all 27 units and then come back to set interim instream flow standards. Chair Thielen commented that she thought Mr. Schulmeister said that they would be open to interim releases which are different from interim IFS.

Commissioner Kiyosaki commented that she understands the needs of the taro farmers however, the items recommended by staff talks about the adaptive management strategy and it sounds like a guessing game, and that the Commission at any point and time will change it and does not feel it is fair. Commissioner Kiyosaki said she is very upset at anyone involved in terms of funding, because the law was passed but the State Water Code was not funded properly. Commissioner Kiyosaki said the Commissioners need information so that they can make informed decisions and feels very slighted because only part of the picture is being presented and not the entire picture. And yet the Commission is told to make a decision nevertheless the decision can be changed again at a later date. Concerned about the IIFS, the monitoring and doing progress reports made Commissioner Kiyosaki wonder if there will be enough resources; she does not want to promise anything that the Commission cannot carry out.

Commissioner Miike responded to Commissioner Kiyosaki's comments that he didn't feel the staff meant they will just change at will; there is still a process to follow if the IFS are to be amended again. Commissioner Miike said that an IFS is set as a temporary IFS, the situation is to monitor to the best of your ability and then see whether it would need to be modified.

Commissioner Kiyosaki said she is aware that the State is going through a very severe budget shortfall and asked "how are you going to find the resources to do this monitoring?" Commissioner Kiyosaki remarked that she doesn't want to come back in six months and not have any better information than what they have today. Concerned that if this Maui system is truly as important as everyone feels it is, then resources needs to be committed to this.

Chair Thielen explained again what was before the Commission and added that either answer will require the Water Commission to do work. Hypothetically, Chair Thielen said, if the staff's

recommendation is accepted, then the staff's recommendation will set an interim standard; if staff makes certain assumptions, then staff will need to monitor whether those assumptions were correct; then staff can come back to the Commission and make a recommendation on permanent instream flow standards. Chair Thielen continued that there would be work if the decision was to stay with the five and if this Commission instead says we need to consolidate, then the staff is being directed to go back and do work on the other hydrologic units and staff would not come back to this Commission until they were done with that work. In either case, Chair Thielen said the State will have to continue to expend resources to do the work as this Commission directs. Chair Thielen stated that it was very important that they start to make progress on instream flow standards, and it's time to move forward.

Commissioner Kiyosaki believes that under the Code, specific aspects are required whether it would be interim or permanent instream flow standards and feels that some very important components are missing in the information being considered today and also questioned, how can a decision be made if given only a piece of the puzzle?

Commissioner Fujiwara said he feels the same as Commissioner Kiyosaki, and is frustrated with the information but added that they have to realize that the instream flow standard is something new and needs to carry it out for the rest of the state of Hawaii. Commissioner Fujiwara said he knows they need to bring water to the taro growers, and DAR's presentation on September 2nd indicated that there needs to be water for the animals to live in the streams as well. He pointed out that everybody needs to make sacrifices.

Commissioner Fukino thought that, in regards to the second phase, a lot of information has already been gathered and provided to assist the Commission in making decisions about those specific streams. Commissioner Fukino said if they move forward then they would be dealing with considerably more information; and it would be very difficult to have 100% of the information that is needed.

For clarification, Chair Thielen said Item C1 is just to proceed to hear the petition on the five or to stop now and tell the staff to go back and do all 27. If it's to move forward, then the petition on the five units, agenda Item C2, will be heard today. If the Commission supports moving forward, it doesn't necessarily mean you would accept the staff recommendation of the five hydrologic units, that's a separate question; and explained that that the Commission is not stuck with supporting Item C2 if they decide to go with yes on Item C1.

Commissioner Kiyosaki thought that it was previously stated that they could move to consolidate and also move on to consider the five interim IFS. Chair Thielen said the whole point of the consolidation and the argument is that the irrigation system is based on multiple streams and staff would need to look into this irrigation system and set comprehensive instream flow standards for all those streams simultaneously. Chair Thielen said that is a policy call under the law, as the deputy AG advised today, the Commission has the discretion to either go stream by stream or do the comprehensive approach.

Commissioner Miike said he was the one who raised the question at the last meeting and stated that what he asked was, if the Commission accepted the motion to consolidate, would we nevertheless within the context of looking at all 27 streams, still take a progressive approach in the sense that we

could set interim IFS or sets of them, and keep revisiting as we move along so that it's a cumulative look still within the context of looking at all 27. And that question was not answered.

Chair Thielen said the Commission will have the discretion to direct staff on how they would want to proceed, how to move forward with the five, and in evaluating the presentation give further direction to the staff on how to move forward from that point; or the Commission can say that they don't want to start with the five but want staff to do all 27, but also let them know how to come back to the Commission.

Commissioner Miike said that without the motion being involved in this issue there is very little difference for either approach because he would advocate for a progressive use of hydrologic units and move along, keep revisiting the past ones so then the Commission finally addresses all 27. Unfortunately, there are a lot of emotions involved in this particular motion and people think that it's either an all or nothing approach but Commissioner Miike doesn't feel it is an all or nothing approach.

Commissioner Fukino did not want to wait for all 27 to be completed.

Commissioner Frazier mentioned that HC&S is not out of business if it's decided to work on just the five. He wanted the taro growers, the sugar companies, and the department of water supply to know that it's a work in progress.

Commissioner Kiyosaki does not want to set some kind of precedence and feels that a regional approach does make a lot of sense. In moving forward, it was suggested that it does not necessarily mean to follow the framework as stated by staff but to look at it more holistically, and believes that's the way all decisions should be looked at regarding land and water use.

A comment was made earlier that it's unfortunate that we are dealing with this in the biggest system. In other places, Commissioner Miike said, it makes sense to go hydrologic unit by hydrologic unit but pointed out that there is one system drawing water from many hydrologic units. It doesn't make much difference whether we accept or reject this motion; it's how we go ahead with the implementation plan. Commissioner Miike would rather have the flexibility of going the way the staff is recommending, knowing full well when the Commission finally talks about the 27 streams, it would be looked at in an integrated matter.

Commissioner Fujiwara expressed his hopes that it doesn't take too long and added that everybody here has been waiting many years. At the last meeting he asked the staff how long would it take to do the other 20+ streams and the answer he got was one year. Commissioner Fujiwara expressed his doubts that it can be done in one year.

Commissioner Frazier said Mr. Murakami mentioned the volume of total water in the ditch. Commissioner Frazier mentioned that it was difficult not having open dialogue since this would be a part of the second item.

Commissioner Kiyosaki objected to Commissioner Miike's statement that if we do a regional approach, we are somehow giving more credence to EMI being a party in this, this was not her intent but concerned about what needs to be considered, as in the water code, are main stream uses,

traditional Hawaiian customary gathering rights, ecological system, etc., and one of those is to look at the economical impact of the off stream uses.

Commissioner Fukino believed it would be real difficult to tell the staff to go away and do the 27 then come back and then show what was done. And after all that time, to then tell the staff that we don't like the way they did it? Commissioner Fukino felt that the Commission needed to proceed and see how the staff did their evaluation.

Chair Thielen recommended that they move forward and deny the motion to consolidate, get to Item C2 so they can hear what the content of that petition is, what the staff's analysis is, hear what the public thinks the deficiencies are in the analysis, and what the strengths are. The Commission may elect to give the staff guidance, may elect to accept the recommendations, or may elect at that point to say it's rejected and to come back with a broader spectrum of information.

Chair Thielen said one of the reasons it has taken the State Water Commission to get to this point is that the law doesn't make it really clear what the staff is suppose to do when they balance these interests. All the people who testified today had a valid interest and the Commission is tasked to balance those interests that affect many people. Chair Thielen said that they may have to take guidance from the Supreme Court but ultimately the State cannot wait for the Supreme Court to set the instream flow standards because it's too lengthy and too expensive; it's the Commission's responsibility to do it.

Chair Thielen told Commissioner Kiyosaki that she's right about not enough economic information as the Commission would like, but a lot of that is under the control of private parties so the Commission cannot access it unless the private parties are willing to give it to them.

RECOMMENDATION:

Deny Hawaiian Commercial and Sugar Company's Motion to Consolidate Petitions to Amend Interim Instream Flow Standards for East Maui Streams and Complaint Relating Thereto File May 29, 2008.

To approve the submittal.

MOTION: Miike/Frazier

FOR: Miike, Frazier, Thielen, Fujiwara, Fukino and Kiyosaki (voted with reservations.)

Abstained: Ching

One hour recess, back at 2:00 p.m.

Meeting reopened with pule (prayer) by Mr. Ed Wendt.

2. Petition to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Honopou (6034), Hanehoi (6037), Piinaau (6053), Waiokamilo (6055), and Wailuanui (6056), Maui

Presentation by: Deputy Director Ken Kawahara, Ed Sakoda, Dean Uyeno,
Elise Leroux, Chui Cheng

Deputy Ken Kawahara gave a brief background on staffing and funding since it was brought up during discussion. In July 2002, the Water Commission established the Stream Protection and Management branch otherwise known as SPAM. There are two sections, the Surface Water Regulation section and the Instream Use Protection section which is responsible for setting instream flow standards. As the results of the 2006 legislature, two positions were approved; Elise Leroux, geologist, and Chui Ling Cheng, hydrologist who both began late last year. In June 2007 when Deputy Kawahara started, there was only one person in that section.

Deputy Kawahara thanked the Division of Aquatic Resources, USGS and the various consultants who helped gather data that was needed and also thanked everyone who attended the April 10th public fact gathering meeting, and all those who submitted comments on the draft instream flow standards assessment reports. Lastly, Deputy Kawahara thanked everyone who helped with the site visit for the Commissioners that took place at the beginning of September.

The presentation is a significant shift from the status quo that was previously set in 1988. Staff's recommendation seeks to assess and balance all competing needs. Deputy Kawahara reported that the recommendation is based upon the best information available and if new information becomes available, staff can always go back and re-look at amending the IIFS for these five hydrologic units. Deputy Kawahara believes staff's recommendation is reasonable and responsible. The staff appreciates the support and looks forward to continuing to move ahead with amending the interim instream flow standards for the east Maui streams in these challenging times.

A power point was shown with staff's presentation.

SUMMARY OF REQUEST:

Staff is requesting that the Commission consider the recommendations for the eight (8) Petitions to amend the Interim Instream flow Standards for stream contained within the following five (5) surface water hydrologic units in the region of east Maui.

Ed Sakoda reviewed the timeline, explained the status quo IFS process and the considerations that the Commission must look at, and described the concept of adaptive management.

Copies of the Helpful Hydrology Definitions, FAQ and Ke Kahuwai Pono were distributed to the Commission and Dean Uyeno informed the public that it was also available to the public.

In the background information, Mr. Uyeno referred to diagrams taken from the US Geological Survey (USGS) fact sheet on surface water in Hawaii and explained Diagram A that depicts direct runoff from rainfall which goes directly into the stream or a subsurface storm flow, water that infiltrates soil and comes out subsurface; Diagram B depicts ground water discharge and commonly referred to as base flow; Diagram B and C, both referred to bank storage. As the rain fall and travels down as overland flow, the stream fills up. As the stream fills up, water saturates the adjacent bank and the stream is a high stage or flood stage. As the rainfall subsides, the level of the stream decreases and the water that's stored in the bank during flood stage gradually releases back into the stream. Mr. Uyeno

said the next component is rainfall that falls directly on the stream and another component is any additional water discharged from human activity, such as excess water from irrigation.

Mr. Uyeno referred to the graph for West Wailuaiki stream which was part of the study, the first report that USGS completed for east Maui. Staff will be referring to Q value, which is the rate of discharge, usually in cubic feet per second [cfs] or gallons per day [gpd].

Chair Thielen told the Commissioners that this is complex information, and explained that how you measure the hydrology in the stream and these terms will be used when staff gets to the stream by stream analysis.

Chair Thielen asked if this study was a snapshot of the stream levels varying on whether it's raining or not, and asked what the length of time is to obtain data to get to these numbers. Mr. Uyeno said for this specific example, West Wailuaiki, he understood was a long term gaging station used in the study.

Chair Thielen asked how drought affected the amount of water that's available so if these numbers where its estimated 95% of the time, the base load is at this level and so on. If there is gaging data for a significant period of time, it's likely considered periods of drought when you arrive at that picture. Chair Thielen said the gaging data for the five hydrologic units are going to be important when they get to the stream by stream.

Commissioner Miike said it's not known for sure what the base flow is versus total flow except when the base flow converts to total flow. The reason is there's no way to separate it out because there is water in the stream. Mr. Uyeno said one way is to extrapolate it from a model. The other way is through actual measurements within a short period of time in one day, to see where and how much ground water is coming in, and how it changes over the length of the stream.

Dean Uyeno then covered the General Considerations section that were identified by staff and other interested persons through the oral and written comments, submitted as part of the public review process.

Commissioner Miike questioned the water used by HC&S and EMI; whether there were any disputes on the total amount of water being 134 mgd? Commissioner Miike said EMI didn't agree with this two (2) out of seven (7) days; and asked if staff could explain why, what happened to the rest of the 134 mgd? Commissioner Miike said if the acreage is multiplied by 5,000 it wouldn't have added up to 134 mgd. Staff did not have an answer to that question. Chair Thielen announced that it would be helpful if HC&S could provide an answer to that question during public testimony. Chair Thielen stated that even using HC&S figures when crops were compared the amount of water used for irrigation, staff commented that this amount is higher than what would be necessary under the irrigation model, the irrigation model that this Commission has approved. Dean Uyeno responded that under the irrigation model it came out to 1,400 to 6,000 gallons per acre per day.

Chui Cheng explained the Irrigation Water Requirement Estimation Decision Support System (IWREDSS) irrigation model. IWREDSS was developed by the College of Tropical Agriculture and Human Resources at the University of Hawaii, Manoa. The crop factor estimates the amount of evaporation, how much water evaporates from that plant surface, based on how much water is needed

for a particular crop, which taro and sugar cane are one of the crops that the model does estimate water usage for. Chair Thielen asked if it shows that the crop that HC&S is growing could be grown with less water under the irrigation model. Ms. Cheng said the 1,400 represents during the winter months where there's more rainfall on average and 6,000 is during the summer when there's less rainfall. Chair Thielen asked if the Commission were to move forward, would this be an area under the adaptive management to compare the irrigation model to the actual irrigation HC&S is doing to determine whether there could be some water savings in their irrigation practices. Ms. Cheng confirmed that it was. Dr. Fukino asked if the numbers are specific for Maui and for this area. Ms. Cheng said it is specific to Maui because during the simulation, this uses GIS information and the locations are specified on maps.

Dean Uyeno gave a brief introduction as to how the areas are organized in the submittals. The key points covered under each of the five locations are A) Interim IFS Assessment Summary, B) Additional Considerations, C) Proposed Interim IFS and Rationale, D) Simplified Diagrams, and E) Proposed Adaptive Management Strategy.

As a reminder, Mr. Uyeno said that the staff compiled what they considered to be the best available information the instream flow standard assessment reports for each of the surface water hydrologic units were the basis of the staff presentation. However, he emphasized that the summary presentation is not intended to substitute the amount of information that is in each of these reports. Two diagrams used to explain the proposed instream IFS were a schematic stream diagram and a general graphical representation of the current flow in comparison with the proposed interim IFS. Mr. Uyeno stated that staff identified adaptive management strategies and recommendations which were specific to each stream, in addition to general strategies which would be applied to all five streams.

Elise Leroux described the interim IFS assessment summary for Honopou Hydrologic Unit and also explained under the summary section, Hydrology, Maintenance of Fish and Wildlife Habitat, Outdoor Recreational Activities, Maintenance of Ecosystems, Aesthetic Values, Maintenance of Water Quality, Conveyance of Irrigation and Domestic Water Supplies, Protection of Traditional and Customary Hawaiian Rights, and Noninstream Uses; followed by the Additional Considerations.

Dean Uyeno reported on the Rationale and the two proposed interim IFS, A and B.

Chui Cheng described how staff developed with the proposed interim IFS A and B for Honopou Hydrologic Unit.

Ms. Cheng said it would be more advantageous for EMI to divert at the most upstream which is Wailoa Ditch. On the other hand, for the downstream users, it would be more advantageous for EMI to have water in the middle to lower reaches in the streams. Ms. Cheng stated that the assumption made by staff is by no means suggestive or recommending where water should be diverted.

There are two proposed IFS values; one is at 0.72 cfs, interim IFS B at Honopou Stream. That's the minimum amount that should be available instream for stream biota. The other interim IFS being proposed is 2.0 cfs referred to as interim IFS A, and 2.0 cfs should be the minimum amount that's in the stream for the domestic, taro, and other instream uses at location A. Anything above 2.0 cfs would be available for noninstream uses, such as EMI.

Commissioner Miike expressed concern that EMI would be able to dewater portions of the stream while still being able to meet the interim IFS of 0.72 near the mouth of the stream.

Chair Thielen pointed out that when talking about the continuity of the stream for biota, the Division of Aquatic Resources (DAR) has presented information during the site visit meeting. DAR identified the wildlife resources in each of the streams and what would need to be done to protect the resource and whether it could be done. Chair Thielen also announced that the DAR staff is here and available if there are any questions.

Dean Uyeno read the Proposed Adaptive Management Strategy for the Honopou hydrologic unit.

Chair Thielen recapped that the staff's recommendation started from the very broad statutory considerations and comments received from the public, narrowed down to individual streams, ran through the balancing test for the Commission to look at and then the details of this one individual hydrologic unit. Looking at the aquatic life in the stream, based upon the survey it will depend whether it's possible to make the water flow continuously for aquatic life to come upstream, whether there's a terminal waterfall there, or whether it's a gaining or losing stream. The recommendation will vary based upon the hydrology, the topography and the aquatic life in that stream.

Chair Thielen continued that staff can make specific recommendations on the adaptive management cases where it's possible to have the biota go up stream. On this particular stream where there is the PVC pipe that takes the water but then it drops down, short of having fish ladders, fish cannot get back up. Some adjustments must be made to the infrastructure.

The implementation on general adaptive management strategy recommendations that became apparent on the site visit and discussions, even though instream flow standards talk about the amount of water that needs to remain in the stream, Chair Thielen said to keep in mind that this water code was passed long after this diversion infrastructure was built, so in some cases it will require that the infrastructure be adjusted because the recommendation is the stream uses come first and after that amount of water is met, then water can be diverted. In some cases, the infrastructure is designed to take the water first and the remainder goes back into the stream. Chair Thielen said the implementation recommendations under adaptive management recognizes that there's going to be some time needed to make these adjustments and it's going to vary stream by stream and diversion by diversion, because it's going to be very fact specific.

The monitoring section of the adaptive management recognizes that when you start to do this, there's going to be a lot of claims that are raised and it's important to get access to these areas, and in some cases these areas are private property, it's important that the parties that are raising the claims be bring information to substantiate them; that's where the economic impacts can be addressed if some of the parties either on the stream or off stream are claiming an economic impact will be asked to bring forward the specific data to substantiate those claims. At any point, a party may bring a petition to the Commission to ask for an amendment but in the evaluation section the staff is saying that in any circumstance they will be coming back to this Commission here on Maui by the end of the first year to report on the implementation and evaluation if the Commission decides to move forward today.

Commissioner Frazier said that the maintenance of the waterways wasn't addressed as to who is responsible to make sure the waterways are maintained and that water does not get lost along the way. Chair Thielen asked if Commissioner Frazier was referring to the diversions through the ditches or downstream of the ditches where the stream is losing water. Commissioner Frazier responded that he meant within the waterway itself, no seep holes or areas where water would be lost.

Chair Thielen mentioned that this was not raised in the hydrologic units where there are losing streams however this is a gaining stream. She asked if there were other areas where it is addressed in the recommendations. Dean Uyeno asked Commissioner Frazier if he is referencing stream maintenance in general and Commissioner Frazier said not auwai as much as streams from mauka to makai. Mr. Uyeno responded that there is a law in place that states that it is the property owner's responsibility to maintain stream channels. Deputy Kawahara said since this is a gaining stream and was not covered, the submittal on page 49, Waiokamilo's second bullet point under Adaptive Management Strategy reads, "Taro farmers, in coordination with staff, should repair and maintain coffer dams upstream of Dam 3 to redirect flow away from portions of the stream channel that appear to be losing flow underground." Deputy Kawahara said that recommendation is made in other hydrologic units.

Chair Thielen said Commissioner Frazier was raising a point of general stream maintenance. She suggested that perhaps later in the deliberation phase some modifications of the adaptive management be identified to clear out streams.

Commissioner Kiyosaki asked how often periodic flow measurements will be done. Deputy Kawahara said it was mentioned earlier today about funding, and mentioned that they have been fortunate that the legislature and the administration appropriated \$450,000 in the past two years. It is unsure how much money the commission would get in next year's budget. Deputy Kawahara did not want to make a commitment or to make guarantees that wouldn't be carried out. Deputy Kawahara explained that there is an annual cooperative agreement with USGS on stream gages and ground water monitoring wells. However, the number of stations was decreasing due to the lack of funding over the past two years.

Chair Thielen also added that there was an earlier discussion with USGS to see if there was a way to work with the federal government because a portion of USGS funding was decreased to these monitoring wells. USGS can fund up to 50% and it has dropped down below that. Chair Thielen said that depending on the decision today, the Commission would prioritize what needed to be done in this area to be able to meet this obligation.

Presentation of Hanehoi:

Elise Leroux reported on the Assessment Summary and Additional Considerations.

Dean Uyeno reported on the Proposed Interim IFS and Rationale.

Chui Cheng reported on the Hydrologic Unit: Stream System Schematic Diagram and the Hydrologic Unit: Current and Proposed Interim IFS Diagram.

Dean Uyeno reported on the Proposed Adaptive Management Strategy for Hanehoi hydrologic unit.

Commissioner Miike noted that staff had not proposed an interim IFS below the lowest diversion on Hanehoi Stream, but he understood that the IFS was in fact, being proposed below the last diversion.

Staff clarified that the IFS was set below the lowest EMI diversion but there were other registered diversions below Haiku Ditch. An IFS was not proposed below the lowest registered diversion, as was the case in Honopou.

Commissioner Frazier said in the '01 testimony he doesn't see where people are making reference to Hanehoi (page 69). Elise Leroux commented that in the gathering section a lot of people referred more generally to all East Maui streams.

Presentation of Piinaau:

Elise Leroux reported on the Assessment Summary and Additional Considerations.

Dean Uyeno reported on the Proposed Interim IFS and Rationale.

Chui Cheng reported on the Hydrologic Unit: Stream System Schematic Diagram and the Hydrologic Unit: Current and Proposed Interim IFS Diagram.

Dean Uyeno reported on the Proposed Adaptive Management Strategy.

Presentation of Waiokamilo:

Elise Leroux reported on the Assessment Summary and Additional Considerations.

Dean Uyeno reported on the Proposed Interim IFS and Rationale.

Chui Cheng reported on the Hydrologic Unit: Stream System Schematic Diagram and the Hydrologic Unit: Current and Proposed Interim IFS Diagram.

Dean Uyeno reported on the Proposed Adaptive Management Strategy.

Presentation of Wailuanui:

Elise Leroux reported on the Assessment Summary and Additional Considerations.

Dean Uyeno reported on the Proposed Interim IFS and Rationale.

Chui Cheng reported on the Hydrologic Unit: Stream System Schematic Diagram and the Hydrologic Unit: Current and Proposed Interim IFS Diagram.

Dean Uyeno reported on the Proposed Adaptive Management Strategy.

Recessed at 5:25 p.m.

Back in session for Public Testimony at 5:42 p.m.

Chair Thielen explained that there were some requests from those who had to leave early and will take them out of order from the sign-up list. Chair Thielen explained the ground rules and told the public that she would not put a time limit on the speakers. Also, although the Commission would like everyone to have a chance to testify and hope to get through that tonight, the Commission is prepared to come back tomorrow morning and deliberate before the vote. Chair Thielen asked that the audience please respect the diversity of opinions in this room and that there are strong passions on both sides of the issue of returning water to the stream or maintaining the diversions.

Chair Thielen noted that the staff went through a very long and detailed presentation in a nutshell and what the staff recommended the Commission to do, in almost every case, is to increase the amount of water that would remain in the stream and also start to change out the infrastructure of the diversions so the amount of water that is designated to remain in the stream is first and diversion of water would only occur when there is more water. There is uncertainty for everybody because its not clear of the impacts and that's why the staff has recommended the adaptive management to monitor, to work with

people, to measure these impacts over the course of the next year, and to come back to the Commission so they can evaluate where this is a good decision or whether it needs some adjustments.

PUBLIC TESTIMONY:

1. Mark Sheehan – release some of the water now, why diverters don't have to justify their use? The department refers to the water as EMI's water, it is not, and it is the public's water.
2. Skippy Young, owns Hana ti-leaf farm and has provided to hotels for about 25 years - Maui Pine has been taking 1M gallons a day, gave a copy of the permit. Seven day prior to pumping, they were to notify Hana Community. My need for water vs. EMI's need for water.
3. Neola Cavny, a farmer, neighbor is Ernie Shupp an active taro farmer upstream- couldn't get enough water from her catchment tank to grow taro. Is asking for release of water as soon as possible.
4. Ashley Kalanikaa, student, a senior at Kamehameha School, Maui campus – we are your leaders of tomorrow. The taro offspring cannot survive without water and neither can any thing else in this world.
5. Daniel Grantham –Take a walk up the stream. There are dams across the streams. Keep it simple.
6. Keamoku Kapua, from the other side of the mountain - Hawaiian resource is to be protected. Judgment on your part is not going to be based upon what is just, mainly based upon what is fair. But what is fair? Same mess in the west side. Kokua to outside community that there is an application enclosed, 2 petitions and six other people who actually filed for traditional use of kalo, that's another way to get us in the system to make sure that these bodies, do their share of judiciary duties to make sure that make sure we get what we need to get.
7. Garrett Hew, water resource manager for HC&S, also the President EMI - wanted to clarify Dr. Miike HC&S uses; the numbers there are demand numbers and not actual numbers used. Thanked the Commissioners and staff for coming out to the site visit. Mr. Hew said they are not depriving anyone of water. Hew said they are willing to do certain things to provide immediate relief to taro growers if you folks so desire, however has a problem with Palauhulu is a losing stream. If release is beneficial, but putting water in a losing stream is not a benefit to any taro growers. When there is very low flow, it hurts HC&S. Hew said they do not have any diversions on Waiokamilo stream since June of 2007.
8. Willie Kennison, ILWU 142, represents HC&S workers - Have reservations about the process to identify the interim streams flow standards. Respect all the parties involved and would like to see a happy medium.
9. Sharon Suzuki, manager, Maui Electric Company - stated that MECO is concern about the process undertaking today to establish interim IFS on only eight of the 27 streams. HECO depends on HC&S to provide renewable energy. Oppose staff recommendations.
10. Sean Lowe, account representative of John Deer, of Hawaiian decent - would like to see a balance of both needs of instream and off stream uses. What happens when there is lack of water in the summer if the drought continues? The decision today should address the needs of the entire system.
11. David Nobriga, third generation, rancher - formed Maui Cattle Company, made up of cattlemen of Maui. No one was going to give water to grow grain to feed cattle. HC&C gave cane tops and mixed it with molasses as feed. Without the cane top, they would not have been

- able to keep up. HC&S did not charge them for the cane tops. Nobriga feels there are a lot of good sides to HC&S too. And would like all to continue to operate.
12. Lyn Scott – was injured by the lack of water, cannot have their subsistence, their way of life and their culture. Ms. Scott walked the stream; there is no water in the stream. How can it be a stream if there is no water in it? The easiest way to figure out what the base flow and standard is is to cut off all the diversion and actually see what flows in the streams. Return the water to the stream. Would like to have their water back, all the water.
 13. Bush Martin, taro farmer at Wailuanui - with five students from Baldwin High School who helped work and clean his farm. The taro patch dried out. Martin grows a wetland taro, an endangered species and is the only one who has it in the world. There is no drought, the water is there. They lie who says there is no water. Student – ask to release water, the ground is cracking, the river is not flowing.
 14. Michael Howden, member of the Maui County Board of Water Supply – hanai by Papa Henry Awai. The rights of the use of the water by residents within their water of origin are guaranteed by the Hawaii State Constitution and confirmed by the Hawaii Supreme Court ruling. Comment to Suzuki, MECO burns over 60,000 tons of coal every year; I would not consider that a renewable source of energy. Let the stream flow again.
 15. Charley Villalon, Waiohuli Hawaiian Homestead/Keanae, of Hawaiian descent -how many of you ate something you grown in the last month? Dr. Miike responded that he did. Mr. Villalon said there is too much misinformation. Villalon asked the Commission to take the time to walk and see what is out there. Waiokamilo is a dying stream? If it is a dying stream how come it's servicing 70% of the biggest taro area in East Maui. There are 16 different diversions, and if it's not EMI's diversions, mark it off on the map and allow us up there and sledgehammer this Saturday, they're all gone. Mr. Villalon said to ask the red shirts, who's running the pumps, the crew runs the pump just so it doesn't overflow. Switching hats: Mr. Villalon made a statement to all state personnel, East Maui Irrigation's representatives present, the Water Commissioners and Mr. Ken Kawahara, as well as attorney general representative Linda Chow, that they're all on notice for the authority of the lawful state of Hawaii government. Given the authority by the private Prime Minister of foreign affairs, we're going to hold you guys accountable, I would love to give you deportation hearings and put you on the canoe. If you don't take this seriously and realize what you're doing to the Native Hawaiians, I am going to take it as an honorable task to issue every one of you guys' notices of civil rights, human violations and will execute the law to its fullest extent. We were told you that the water is presently running the way it's acceptable to us, let it run like that. You'd be held personally accountable for human rights violation under international law. The results will be the loss of all personal wealth and eventual deportation from our beloved nation of Hawaii.
 16. Soloman Kaauamo, testifying for Na Moku Aupuni O Koolau Hui, as a farmer and as a Hawaiian – his children and grandchildren work on the farm. There was a lot of water and they had to check the loi every day or the water would overflow and break the banks. The poi shop wouldn't take their taro. When the staff talked about what EMI said about a pipe elbow causing a problem. Kaauamo, when working for the county, installed that system. EMI said it's that elbow that's causing the problem. That's not the problem. If the water doesn't come up to the pipe, it's not going to get any water in the pipe. It's not suction, its only flow. There are three diversions in Waiokamilo stream, there's also one more down below. USGS came out and took the temperature reading and it's the old system, under the hau bush, not piped and

- the water is cool coming down there. Should increase the cfs to 6 cfs so can get water on the other side.
17. Hannah Kaauamo – said Garrett Hew said that one stream is not important, that we don't need it. They need the water, all the water. She's asking to release the water.
 18. Warren Watanabe, Maui County, Hawaii Farm Bureau – it sets a precedent of making decisions without consideration of all sides of the issue, respectfully requests your opposition and advocates a complete analysis before the instream inflow standard is adopted.
 19. Lance Santo, Hawaii Agriculture Research Center – to clarify the water use amount for agriculture in the staff's submittal. The amount stated in the report was 2,000 gallons per day (gpd) from NHLHC and 1,400 to 6,000 gpd for sugar cane. Irrigation amount for the truck crops, as reported by University of Hawaii, 3,300 to 8,100 gpd for the entire crop period. There are smaller acres on Maui, they are required to plant two or more crops per year and the fallow period would be about 30 to 60 days and, at this scenario, the water requirements is approximately 3,000 to 5,000 gpd. If the fallow period was less than 30 days then you would use more water. Asks that staff reconsider the water needs of agriculture when establishing the interim instream flow standards.
 20. Ed Wendt – the water diversion has had a great impact on the farmers and communities of East Maui. By lack of leadership did not protect the resources of Hawaii.
 21. Mahelani Wendt, executive director of Native Hawaiian Legal Corporation – should also take into consideration that presently almost every one of the streams are being diverted by EMI. Even with 100% release from Waiokamilo there is insufficient water. Please reconsider, there are those who are dissatisfied with your proposal, it's not enough.
 22. Jock Yamaguchi, executive assistant to Councilmember Michelle Anderson – Mr. Yamaguchi read Councilmember Anderson's written testimony. The Maui County Council had not had opportunity to take a formal position on this issue, as chair of the water resources committee, and individual member of the Maui County Council strongly supports the petition filed by the East Maui farmers to restore greater flow to the east Maui streams. Taro farming relies on cold water from the streams. The lack of water directly impacted downstream taro farmers.
 23. Amanda Martin, works for Councilmember Gladys Baisa, sister to Bush Marin, supports the east Maui taro farmers. Ms. Martin spoke of how the taro and poi helped her nephew, a special needs child.

Recessed at 7:55 p.m.

Back in session at 8:05 p.m.

24. John Ford, Aquatic Biologist - urges DAR and the Commission to consider streams that have the potential to be important sources of larvae by evaluating their reproductive output. As precious as water is, is it really wise to risk wasting water to the streambed in a watershed that already apparently has a rich emerging native stream species. Also, to better define the Commission's objectives and goals for adaptive management. The goal isn't to provide X amount of water, the goal is to increase population of native stream animals.
25. Joseph Villiarimo of Hana, grandpa used to work for DLNR who participated in a 1943 survey, book titled East Maui Irrigation. Said majority of the rivers no longer reaches the ocean, it is cut off way above. You take away our water; you take away our life source. Re-establish the natural flow.

26. Pete Sayer – not Hawaiian, not even American. Commission must take it to heart and give it (water) all back.
27. Nelson Armitage – does EMI still have a lease? The streams are not owned by the state of Hawaii, it is owned by the inherent sovereignty by federal law.
28. Pauahi Hookano – Onipaa Na Hui Kalo, supports the taro farmers. Asked what happened to the rest of the water based on EMI and HC&S' math? The recommendations of the staff, putting the burden of proof on those affected by the diversions are unreal. The burden of proof lies on the diverters to show that it does not harm the farmers. There is a lack of water in Wailuanui valley, where her husband farms. Suffers crop loss on every harvest. This is due to not enough cold flowing water reaching the loi. The Commission is an agent of the State and as such is required to uphold the Constitution and its laws. Why do you continue to allow Alexander and Baldwin, East Maui Irrigation and HC&S to break the law by issuing month to month revocable permits, and when that avenue is exhausted, create a permit that doesn't even exist in law, a hold over permit? How can a Commissioner on the Commission also be a senior vice president of Alexander and Baldwin? Even though Meredith (Ching) claimed to have recused herself from this matter she was still present at the site inspection, she was still present at the DAR presentation and she's here right now. I find it difficult to believe that her influences are not felt by the remaining members of this Board. As the rights of the taro farmers, their needs are to be considered first before any other stream water uses are considered. The burden of proof is on the diverters.
30. Doug Jones – asks the Commission to accept the flows as a minimum without exception as far as the water. Nobody wants to see a worker out of a job, but what good is a job if you're going to die of thirst. Burning sugar is pollution.
31. Seth Rabbe, farmer - drove through cane fields and saw tons of drip plastic drip lines, looking at tons of little pieces of black plastic, burnt soil and thinking that's not farming. The real farmers are those who live on, work on and live on their land.

9:00 p.m. Commissioner Donna Kiyosaki left the meeting.

32. David Schulmeister – is anxious to have all the petitions resolved. Whether we get consolidation or not, we can still do things to accommodate what we do down the road, the fact that it's an integrated system, concern is budget cuts, statement by staff that there's limited resources. He would really like to get the balance of the streams considered and not comfortable that identical processes are used for those that were used for the five. Doesn't see the light at the end of tunnel, ask if that's the road, the Commission restructure the schedule to make sure that the remaining 17 are dealt with in a timely fashion and whatever information and proposal HC&S submits can be acted upon by staff and moved forward on a timely basis. There should be a light at the end of the tunnel, very concerned about planning for the future.
32. Steven Hookano, taro farmer – we have no monitor if releases are being released; Garrett Hew said they don't take water from Kualani and the map was the wrong map. Hookano has video evidence and verbal that this is the release of Kualani and the water goes to Waiokamilo. It's released right now, but East Maui Irrigation did take water from Kualani. July 9, 2008, Bush Martin went up with the monitor and opened the diversions, to bring the water back to the taro. It was his right. If Hookano feels there is no water, he will just release the water, not through the State of Hawaii, but what he inherited. Wants 100% of the stream back, Wailuinui functioning with no diversions at the top. He has no water to farm on his land.

33. Tracy Falite – not Hawaiian, from Massachusetts. Supports the taro farmers.
34. Kalei Luuwai, employee of HC&S, supports the kalo guys and ohana to the kalo, but there are other Hawaiians that rely on this water. It doesn't make it right what's been happening all these years.
35. Daniel Kanahale – Considers this a historic day. Pono to meet the people face to face. He feels it's important to restore the streamflow. Without the native habitats there are no native species. Hawaiians need access to their natural resources. Also supports the law of the land passed down by the kupuna and that law is aloha aina, malama aina. To love and cherish the land.
36. Ricki Torres - asks the Commission to do what is right.
37. Joslyn Costa, with father – staff said lets dive into this presentation, because of the diversions, there is no water. The report also points out that it's based on the Hawaii Revised Statutes, back in 2006, she asked Dr. Miike and he informed that it was through the HRS, Kuleana rights and the Kingdom Law. Where within this presentation is the Kuleana rights and the Kingdom Law, besides the HRS which is a revised version of our Kingdom Law. Where in the world does sugar holds so much more weight than the people, it's only one product.
38. Joslyn Costa's father spoke in favor of the water.
39. Terry Akuna – In 1893 gave me one gun, today they come with gun. They don't protect the Hawaiian people; they're protecting money because this is what it's all about. In Iraq, oil. Without the oil the world shut down. Yeah, it's true right? These guys go over there, mess with these people because they like their oil. Same with these guys, our water is their oil
40. Rob Parsons - did see the EMI watershed while working for Maui County and invited to visit Wailuini valley by Steven Hookano. Supports streamflow in its natural course.
41. Bertrice Kekahuna of Honopou - kupuna really needs more water. Kekahuna lives almost at the end of the stream and by the time the water gets down to her, it's warm. It evaporates, not covered, not protected from the sun. Lost a lot of taro.

The meeting was recessed at 10:10 p.m.

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

DATE: September 25, 2008
 TIME: 9:00 a.m.
 PLACE: Haiku Community Center
 Hana Highway
 Haiku, Maui

Chairperson Laura H. Thielen resumed the meeting of the Commission on Water Resource Management to order at 9:00 a.m.

MEMBERS: Ms. Laura Thielen, Mr. James Frazier, Mr. Neal Fujiwara, Dr. Chiyome Fukino, Ms. Meredith Ching, Dr. Lawrence Miike

ABSENCE: Ms. Donna Kiyosaki

STAFF: Deputy Director Ken Kawahara, Ed Sakoda, Dean Uyeno, Chui Cheng, Elise Leroux, Kathleen Oshiro

COUNSEL: Linda Chow, Esq.

Chair Thielen told the public audience that the room needs to be cleared by 2:30 p.m. and although she gave testifiers as much time as they needed yesterday, there will be time constraints today or the Commission will not get a chance to get to decision making.

42. Thomas Koomoa worked for East Irrigation and also his father – knows every thing about EMI, been through every tunnel. Supports kalo growers, life in the streams without diversions.
43. Lucienne DeNaie of Maui Tomorrow – Remind the Commission, water is a gift, belongs to all the people, the questions here is how can we best share the water that we have. In the long term if EMI has more water than they can use, then what happens to that water?
44. Megan Powers - brought a taro plant, the main staple for all the people in Hawaii, provided there's enough water to grow it.
45. Hanalei Colleado – kahu read testimony starting with the bones.
46. Mau– worked as a DLNR ranger – gave written genealogy to Chair who passed it to the Commissioners. He was one of the rangers to be the security for EMI because the weed growers threatened EMI employees and him. The water is needed by the farmers.
47. Gary Woad – German, the water is there to support all of us.
48. Rick Volner Jr. – senior vice president for agricultural operations at HC&S – as presented, it could be that staff recommendation could be workable, although we have reservations of releasing water in streams that have losing reaches and corrected an erroneous statement in Maui News, HC&S opposes a piecemeal approach to setting IIFS without giving considerations to all 27 streams and the community impact to offstream users.
49. John Bellis – under administrative rule or under law? The people who live out there completely 100% owns rights to the water and feels that all the rights should be released to them.

50. DeGray Vanderbilt from Molokai – your decision today will be in the 2050 Sustainability Plan, which is truly the people’s plan and read portions from it. Feels the Commission is getting a lot of pressure from A&B, naturally wants to keep the water for future uses even if sugar goes out of business.
51. John V. Duey, president of Na Wai Eha, landowner and resident of Iao Valley – would rather see cane growing in central Maui rather than homes. Went through contested case hearing and don’t think you people want to do that, and hope that you can come to some kind of rational decision or something that you come together on.
52. Bill Mederios, Councilmember Representative – wanted to give his manao to the Commission. Streams were very important to his family. His mother had a great responsibility, to go with her mother to the beach or streams, gathering food for the family and then to the loi to cultivate taro. He is hopeful that the decision will benefit the culture of the islands so that they can continue to grow their kalo.
53. Carl Freedman – commented about the implementation that you’re going to tell your staff. What the instream IFS means? Felt that the Chair gave an explanation of what that meant what was actually clearer than anything in the statute, this is the number that will remain in the stream and it will go first to the stream until that number is met and then beyond that what is left over may be taken elsewhere.
54. Nelson Chun, senior vice president of Alexander and Baldwin – we want to make sure that the Commission understands that it is not HC&S’ position that there is no water. We offered interim releases during the arguments on the motion consolidation which was close to the staff’s recommendation. We will release water. What we’re asking for is a balancing act, to consider all the needs of everyone as required by law. Chun is asking the Commission to direct the staff to do it within the year. It’s not all or nothing.
55. Lacle Kalanu – Na Moku. The water should flow naturally and given back to the people of Hawaii and educate the younger generation.
56. Alan Murakami – (used a power point) Rights are in the water code and should be protected. Showed Beatrice Kekahuna’s land that she clearly was waiting for the water, the land was cracked. HC&S has to show that they are using the water with no waste, not necessarily how much they are using. There is no discussion of the well sources, no discussion of the need to use dams and reservoirs. Murakami asked Kimo Day to come up.
57. Kimo Day – wants the flow left as is in Wainuinui stream and a 50% reduction there would not be enough to feed his loi. Day said there is enough water because he went up there and opened the gates to keep it flowing.
Alan Murakami, for the record, wanted to request conditional contested case hearing. We do not want to stop any release from happening but made it for the record for a stream by stream basis where there is insufficient water that has not been replaced by failure analyze by actual needs of taro farmers, including Wailuanui, Kualani and Waiokamilo.

Chair Thielen formally closed the public testimony session

Recessed at 10:55 a.m.

Back in session at 11:21 a.m.

Chair Thielen explained that the public testimony session had concluded and that the Commissioners will have the opportunity to talk among themselves, ask questions of the staff on the specific recommendations and they may have questions for particular testifiers on the information that came up during the public testimony. At the end of this discussion, the Commission may make a motion, may make a vote, and then Chair Thielen will take the time to explain what it meant.

Commissioner Miike referred to several questions being raised and during Mr. Murakami's presentation. Miike wanted to give his context on how he looks at this case and how he will make his decision. What's the legal framework? A speaker today asked, doesn't the common law apply and a speaker last night said she had a discussion with Miike when he said that it was the code kuleana rights and the Hawaiian kingdom law. In that context he heard questions, why doesn't EMI have to justify its use and shouldn't the Hawaiians have first crack at the water, and shouldn't the burden of proof be on the diverters and not on the taro farmers, and do the kula farmers have the same rights as the taro farmers in the area and shouldn't the taro farmers have it first. Commissioner Miike explained that in 1978 the constitutional amendments called for the creation of this Commission and in 1987 the law was passed. The original law was to give us power to issue water permits across the state, but the compromise was they didn't give us that power, they said we have to designate that area as a water management area before we could issue permits in that area. What that also meant was that when it got designated every thing froze; whoever was using water at that time lawlessly or lawfully, were going to be recognized as existing uses so long as their use was reasonable and beneficial according to the code. Riparian rights, for which the people who live along the stream have access to and use that water; if they weren't using it at the day of designation, they no longer had that right. But kuleana users didn't get extinguished because the constitution also said that for kuleana users or appurtenant rights, even if you cannot use it, doesn't mean they're extinguished.

Commissioner Miike continued that Murakami brought up the issue about traditional and customary rights. Commissioner Miike disagreed with him on one point and that is they can lay back and not do anything and the burden is on the diverter. That may be true but first you need to show that you do have those rights. First, the land that you're using has kuleana rights, you simply showed your land title, but you also have to say how much water you had with that. But you have to do that first. The other one going on is because this is not a surface water management area, one of the things that Murakami was talking about which were permit provisions don't apply, the common law applies here. The common law is that you have riparian rights, you have kuleana rights. How about people who divert water away from riparian and kuleana lands? They don't really have rights, they have uses. Those are called appropriated uses, and that's allowed as long the use is reasonable amounts are commensurate with what they're doing, and if it doesn't impinge on the kuleana and riparian rights. If they are not exercising it and there's the water in there, then they can use it. Once kuleana and riparian rights users want the water and there's not enough, they have first right. It's not where there's alternatives or whether they're going to harm taro growers, etc. The last thing is, it's not a question of burden if the kuleana and riparian users (and you can be both at the same time, if your lands were along the stream, you're riparian rights, if you were also using the water to grow taro, you also got kuleana rights). If you're exercising traditional and customary rights on your kuleana lands, then you're exercising traditional and kuleana rights, but you have to show that those rights came from a family in the area long time ago and that date is November 25, 1892. In terms of gathering in the

streams, but another Hawaiian who lived along Waihee stream and said I have gathering rights and you tell them no, you don't have a right here or you might say we have enough, you can come pick opihi, it's not a right, you're just letting them use it.

Commissioner Miike said if the amount released is enough to satisfy kuleana growers and others downstream, then fine. If it's not, then you have to put in more. But Alan's people still have to come forward with evidence that says 'we had these kuleana lands, and we want this amount of water'.

Regarding Wailuanui stream, Commissioner Fujiwara asked if there were any gages that are active right now; do you know what the flow is since the gates had been left open? Chui Cheng answered, in terms of measured data that staff didn't know.

Commissioner Fukino said a question was raised about implementation, and wondered how determinations are made that the recommendations are being upheld on monitoring. Dean Uyeno said there are staff and budget issues and it was a concern. The stream flow varies over time and staff also had to think about the impacts of management and regulation. The best way to manage the resource is through regulation. If it's known that diversions have been registered or permitted then its known how much is allowed to divert.

Deputy Kawahara added that for the specific hydrologic stream under the monitoring section, the first bullet point under Honopou, "staff shall monitor stream flow by taking periodic flow measurements subject to available funding at the proposed interim IFS locations as weather permits. These will be point-in-time measurements however the installation of stream gaging stations remains an option for long term management. So if there is available funding, Deputy Kawahara would like to put in stream gaging stations. It would cost about \$14,000 to put in a gaging system however there is the continuous operation and maintenance of the gage. There is a contract with USGS in certain areas in the state, but we're talking approximately \$700-\$800K statewide. Real time gages can be downloaded it via the internet or the web, but some gages may have to include someone going up there and downloading it from the station, so it may not be real time.

Chair Thielen said the staff recommendation is that the first amount of water goes to the stream, for the biota and the instream uses for that amount of instream flow level, anything above that could go to the diversion. Because the infrastructure was put into place long before the water code, most of them were designed to take the first amount of water out. The Commission will be asking all the parties to work with us. It's a little uncertain because this has not been done before. Staff said they would come back in one year to report, not only on staff's progress but on the participation of the parties involved in the matter of helping to make this transition happen.

Ed Sakoda said until they actually go there and try to measure the interim IFS, that will be part of this process. It would be too expensive to put a USGS gage at each of the site. Staff would look at the sites, prioritize them and take the ones that are most urgent and solve that. When it's drought, that's when everybody hurts. If it's a wet year, we won't have to look at it.

Dean Uyeno said a change to the infrastructure needs to be made. Say in the case of Honopou where interim IFS is set at 2.0 cfs. If a change is made so that where we don't have to do the monitoring, then that amount of water can be assured at the interim IFS A location. Of course as we go through this process for the first time, we'll monitor, see what the results of increased flow coming down to that point are and what the impacts are.

Commissioner Fukino said it is apparent that there are differences of opinion between EMI and the taro farmers and there is not a whole lot of trust. It's one thing to have a number on a piece of paper and another thing to have the water in the stream.

Chair Thielen reiterated what Dean Uyeno stated that in some cases we may find that the infrastructure can be redesigned so it would not take water unless it reaches a certain level.

Commissioner Frazier said his concern is the protection of the resource. He senses that there is a 'this is mine attitude' as opposed to 'we have a valuable resource here and I don't care if it overflows there as long as I get mine.' Commissioner Frazer referred to Kimo Day saying that he takes off the cap on the pipe, if that water just goes in the gulch and the gulch is full of grass and the water just dissipates, we lost that asset. Commissioner Frasier believes that we all have to be sensitive to protecting the asset itself, don't have water overflow because someone wants all the water down in their loi, and then it runs into the ocean?

Chair Thielen said in the staff's recommendation and adaptive management, it does put requirements to take care of the stream upon all parties. It is not only talking about EMI. The approach is that all parties have to work together.

Dr. Fukino said to also include the County in this since they authorizes permits.

Chair Thielen said the recommendation of putting the stream first is a very important change in thinking and in the discussion with the staff, the water code does put the stream first. However, the reality is that the infrastructures for many stream diversions were designed long before the water code. Staff's recommendation is to change the infrastructure to meet what the legislative intent was behind the water code.

Commissioner Miike asked what would the Commission see when we say we're going to put 3.567 mgd as the IFS. Ed Sakoda said staff is trying to see that much water at that particular point during the lowest point. Commissioner Miike said he understands that there is no actual measurement now, and mathematical models were used to figure it out. He asked if there was any way to theoretically say how much would have to be taken from the ditch and put back in the stream to reach that theoretical level down there now. He asked this because you're going to reach a point down stream of the ditches that you set an IFS, you would want to put X amount from the ditch. In terms of the implementation, even though we don't know what the measurement is down there, we can use the same model to figure out what we might have to take out of the ditch to meet that amount down at the lower spot as the starting point to put water back rather than waiting. How do you know how to even start taking water out of the ditch?

Uyeno said to keep in mind that water from other areas can be restored back in the stream for purpose of meeting the proposed interim IFS. Miike said if you are making an estimate based on the model, can that model estimate what you would have to do above the stream to reach that. Uyeno said that is what needs to be seen through the infrastructure. Ed Sakoda said that's why we have to work with EMI, if anyone knows how much water needs to be put back at any point to reach another point, EMI would know.

Chair Thielen said in some of the streams, there isn't hard measurement information on how much water is flowing through that stream. The staff used models that come up with an estimate and give a minimum instream flow amount that must remain in that stream in any point and time. This is only an estimate. If staff finds that there is actually not that amount of water in the stream, then less than that total amount is flowing in the stream, then part of adaptive management would be for staff to come back and say here's the data, the information, here's how we worked with all the parties, this is what we looked at and how we may need to modify because there's less water in the stream than what the model said. The recommendation does not say if there is less water in the stream, you pull water from the ditch from another stream. Part of the reason why is because a lot of the invasive species are thriving in the ditch system and you don't want to pollute your stream by bringing in something from other areas.

Commissioner Miike said regarding Palauhulu Stream the recommendation is to let some water down. Discussion took place regarding how long the stream is and couldn't a pipe run across it rather than trying to let it run through the stream bed. Ms. Cheng said it is about 1 mile, which is too long.

Chair Thielen said some of the Commissioners are concerned that water is a limited resource and if there's restoration work is it a wise use of resource if it goes into a losing area or can steps be taken to salvage that. Chair Thielen recommends that in the adaptive management strategy, if restoration is done, then part of the monitoring would be to see if there is an increase in downstream flow even though it goes to a losing area. Again, staff will need to work with all the parties because if there is a loss in that resource, then maybe there is a way to divert it so you can bypass that losing area to retain more water in the stream. The Commission could give direction to the staff to incorporate that concern as part of their implementation and monitoring for this year, work with the parties and come back to us. Clearly the Commission would be concerned if it's the loss of water and not having the beneficial impacts of the continuity in the stream and helping with the downstream users.

Commissioner Miike wanted to add that he did not want to make EMI the bad guy. He stated that until 1973, EMI had leases from DLNR which gave them prescriptive rights to take the water out. Prior to 1973 you could own water, since 1973 you can't own water.

Commissioner Fujiwara asked if there is a timeline. Chair Thielen said part of that is going to depend upon the cooperation of the parties. Changing out the infrastructure in the current stream diversion is going to require the cooperation of EMI; that's the key in changing how that water is currently diverted to have the stream come first. In some cases, it may be relatively easy to do. Chair Thielen said EMI is very motivated for this staff to spend time looking at the entire 27 streams

comprehensively, so the more they cooperate with us on this transition the more time our staff has to move forward in a timely manner. This provides them with some certainty and some ability to plan for their water use in the future and infrastructure improvements. Our ability to be efficient in the adaptive management and to monitor is going to depend on a large part upon the other parties' willingness to cooperate with us.

Chair Thielen continued that if we end up making a decision today that goes in a contested case hearing, then all bets are off because then we're on hold until we find out whether the process that we're using, and the analysis we're using is something is valid. The Commission can make some decisions at the end of the year, at that point perhaps we'd ask the parties to work cooperatively together this year and see how far we can get because progress is better than not. And if people are not happy at the end of the year, when the Commission makes any decisions, they would have the ability to request a contested case hearing at that time. Cooperation now is not a waiver of any body's rights to contest that at a later date.

Commissioner Frazier asked if USGS could measure that water on a simple, one time basis. Gordon Tribble said there are many ways to verify and measure some of these restored flows. Tribble said there is a cooperative program working with EMI so if we do verifications of the rating curves on the diversions so they can gage their diversion ditches. Frazier said he's looking at downstream, receiving the water as opposed to sending the water; Tribble responded, same physics.

Commissioner Fukino addressed the water needs of the west side and HC&S, have there been conversation about alternative sources of water. She asked Councilmember Mederios if the state can count on the support of the County.

Councilmember Mederios made a correction that the water from east Maui doesn't go to the west side, rather it goes to central Maui. Mederios said he's sure the county wants to work with the state and the other parties and that Dr. Fukino made a correct assumption to consider the economics of A&B as one of the economic engines for the County of Maui. Councilmember Mederios wanted to comment on the statement made by Commissioner Frazier regarding the water leaving the stream being either a wasted asset or unused assets. Councilmember Mederios said some of the streams reappear as springs, like the watercress, it's a natural flow of water not a wasted asset. Trying to capture the water from going down to the ocean, in business terms it seems like a wasted asset, but in natural, ecological terms, the water that comes from the mountain, it picks up nutrients as it goes down to the ocean including going through loi, and you shouldn't break up the natural cycle in nature.

At the point where the stream may go underground, Chair Thielen said that her suggestion was to allow that to happen, let the natural system take its course first and monitor it before making any determination if any bypass is appropriate.

Commissioner Fujiwara asked if the other divisions within CWRM ever crossed hats as far as doing work for each other and the possibility of using other staff. Deputy Kawahara said there is a survey branch whose responsibility is to go out and monitor however because of a reduction enforced many years ago, they are not fully staffed with all positions. Their primary focus has been working with the

ground water regulation branch; they go out and monitor deep monitoring wells as well as the rain gages. In light of the budget restrictions they have been talking about giving them more responsibilities, may be taking over some of the work the USGS is helping with. As part of the adaptive in this particular submittal, staff has considered the use of Survey Branch staff versus SPAM Branch staff but survey may require training in conducting surface water measurement.

Chair Thielen said the department has been working over the last year on how the divisions can work more collaboratively together on key priorities for the DLNR. Chair Thielen recognized the Division of DAR administrator and the branch manager for the natural resource branch, Dan Polhemus and Bob Nishimoto. DAR is the division that was responsible for doing all the biota surveys of the streams and they invested their staff in bringing them to Maui from the various islands, to make sure that we had that stream survey and the observations.

Commissioner Fujiwara asked Mr. Schulmeister who said that there shouldn't be any problems giving water to the taro growers without developing interim IFS. Mr. Schulmeister said that in their supplemental memorandum, where the motion reads, it suggests that as an alternative to simply granting consolidation and dealing with all the IFS together, the interim relief could be ordered even though it's not an official IFS. Later, when Mr. Schulmeister testified after the motion to consolidate was denied, he said they still have a concern about the piece meal setting of the IFS without having completed the economic analysis of the cumulative impact of the off stream uses. As an alternative the Commission could order whatever staff recommended is immediately necessary for the relief of the taro grower, order that as the immediate release but reserve making the official determination on the IFS until all these gaps can be filled in.

Commissioner Miike said that because we're not under a surface water management area, we're under the common law, regardless of the economic impact to EMI uses, if the kuleana and riparian rights users need that water they should get it regardless of the impact.

Chair Thielen said one of the comments raised by EMI that was just heard, is they have concerns with a fragmentation of the process on the possibility of going with groups of streams by groups of streams and they end up with different contested case hearings, with different hearings officers and different decisions and that's a valid concern that you don't want to have inconsistency when you're talking about something across a system. HC&S is proposing instead of amending the interim IFS, to just order an interim release. Chair Thielen is not sure that legally the Commission has the ability to do that. Chair Thielen's recommendation is to recognize the validity and the concern by amending the interim IFS but provide the direction to staff that they progress using the same system for the entire 27 streams, use the adaptive management information on this particular group in making better decisions for the rest of the 27 total, and then to ultimately come back to the Commission for all 27. Chair said they may not get to a recommendation at the end of the one year timeframe but at least staff can start doing the work and gathering the information.

Commissioner Fukino asked if there was a strategy on which areas would go through first. Deputy Kawahara said it was the August 28 Commission meeting when that question was posed to staff and they had noted the one year. Kawahara wanted to clarify the statement for the remaining 19 streams

that they believe they could do the draft assessment reports and get them finished roughly in about a year. The one year timeline was based on preparing the draft assessment reports. Chair Thielen added another qualification, that if the Commission ended up in a contested case hearing on a decision made here until that is determined whether the process was appropriate, staff may not move forward on the other streams until it is determined that this applied process was appropriate. Chair explained that in a contested case hearing, there might be a challenge to a number of things including the model and determinations made, and conclusions that they came to. So until there is a final decision on that you're not sure whether to proceed doing the same thing on the other streams, or whether you would be ultimately told by the court that was completely wrong and throw it in the garbage and you need to start to do these other five things. What staff is saying is they can do the remaining streams in a set timeframe, when you would begin that work is whether we get to a conclusion today with the support of the people in the room to say let's move forward and start.

Commissioner Miike respectfully disagreed with Chair Thielen when she referred to a contested case, it's more a policy call whether the Court will overturn us on a particular process we undertake, but Commissioner Miike doesn't think that there's any legal prohibition against starting to move on to another set of streams while in a contested case. Chair Thielen said Commissioner Miike may be right that it's a policy call rather than a legal call, but when the department is facing a potential of 20% budget cuts, whether we're going to invest and diverse scarce resources not just from this division but from other divisions to move forward; when we sit down in a room with other administrators that don't fall under the purview of this board, there's going to be resistance to invest that time.

A supplement to Dr. Fukino's question in the preparation for making a recommendation for the remaining 19 petitions to amend the interim IFS, Deputy Kawahara said he's not sure what data gaps that DAR may have, as well as what information that USGS may or may not have. Chair Thielen agreed that when DAR was doing the stream surveys, they were held back a number of times because of storm events. If we have agreement to move forward, the system that we used for these eight took a little longer since it was the first time.

Dr. Fukino asked for the list if the Commission was to modify the recommendations. Chair Thielen said the specific interim IFS hydrologic unit by hydrologic unit is on page 60 of the staff's submittal. The adaptive management strategy is on pages 61 and 62, and the general adaptive management strategies that apply to all five hydrologic units could be found on page 63.

Commissioner Miike said perhaps it could be added that this is a first step integrated approach to all 27 streams and to make it clear that we're not asking for individual ones but people can come back and see how they integrate together.

Commissioner Frazier said it is recommended for one year, however can it be added that there be more frequent updates to stay more current instead of letting a year go by with out progress reports. Chair Thielen said the intent was that the Commission would come back to Maui in one year with a report on the progress and any amendments. Amendments would be premature to suggest prior to one year since it will take some time to work through a number of these issues. Chair Thielen said it could

be added that the staff will provide regular progress reports to the Commission at their regularly scheduled meetings.

Deputy Kawahara said permits may be required by the Federal Army Corps of Engineers and others if there's any modification to diversions. Gordon Tribble reminded Deputy Kawahara that the permit could take possibly one year or more. Chair Thielen said that some diversions may trigger something larger and we may have to take a look at it on a case-by-case basis. In the long term, any type of permanent change will have to go through some permitting process.

Recessed at 12:45 p.m.

Back in session at 1:00 p.m.

Commissioner Frazier said it was discussed with staff about dry reaches and he would like to add language in the amendment. Chair Thielen reminded the Commission that this is referring back to the discussion about whether it is wise to return water to a losing stream and her recommendation was to let it go to the losing stream and monitor, and come back with further information before making any decisions. Language to provide greater clarification for staff and all parties would be, in cases of returning water to losing streams, staff and all parties shall monitor and report whether there are increases in either downstream flows or ground water in the vicinity.

Dr. Miike said if that turns out to be the case and can't really physically meet the new IFS downstream we have to change the IFS or say it's unattainable at that level. Chair Thielen said that in many of these cases, the interim IFS are based on estimates where we don't have hard data on the amount of water in the streams. It may be that after the monitoring and evaluation, and the data gathering over the course of the year, we may find that there is not that amount of water that we estimated in that stream, it may be that we find there's more water than we estimated in that stream, and it may be that we find that we were exactly right. Deputy Kawahara said it is addressed on the bottom of page 63.

Dr. Miike said roughly after a year or two, we will be faced with the entire total and can go back and look at how realistically we accepted those original ones. Chair Thielen said part of the adaptive management recommendation does say that if parties feel that if they have been impacted that they would provide data regarding that. Another area we would be looking to EMI for cooperation is going back and doing the analysis on all 27 streams. Much of the data is exclusively within the control of the private party, so in order for staff to evaluate it, which is what the Commission is being asked to do, we would need to have the cooperation of all parties in providing that information to staff in a timely manner.

Motion is made to accept staff's recommendation with the following amendments:

Approved with the following three (3) amendments:

- 1) Moving forward on the staff's recommendation is the first step in integrated approach to all 27 (twenty-seven) streams that are subjects of these petitions.

- 2) Staff shall provide progress reports to the Commission at regularly scheduled meetings during the course of the year.
- 3) In cases of return of water to losing streams, staff and all parties shall monitor and report whether there are increases in either downstream flow or ground water in the vicinity.

MOTION: Fujiwara/Miike

To approve the submittal as amended.

FOR: Fujiwara, Miike, Thielen, Fukino and Frazier

UNANIMOUSLY APPROVED

Abstained: Ching

Chair Thielen said she mentioned earlier that she would explain what this all means. The recommendation is very simple. The minimal amount of water needs to stay in the stream first; anything above that minimum amount would be allowed to be diverted into the EMI system. It is a substantial change in how that water is being transported now. We recognize that the numbers for the minimum amount of stream flow standard that is in the staff's recommendations for each of the stream may not be the numbers that the taro farmers and the community want, but on the other hand you've been taking after the diversion. Under this transition the stream would get that amount first and it may be found that over the course of the year some requirements may be met or not. It will take some time for EMI to work through this with staff, how they would change those diversions and it is going to require some investments, and how it impacts the other areas.

Chair Thielen said the main thing that was passed today is setting minimum instream flow standards that require some infrastructure change, require some evaluation, cooperation and then coming back to the Commission and making final recommendations for the entire 27 stream units.

Chair Thielen thanked the Commission staff and Deputy Ken Kawahara for what they've done. Chair Thielen explained that this is one branch of the water Commission staff and what they've done is pretty monumental and there are a couple other branches in there as well. In this last year, this water Commission staff, all three branches, for the first time in 18 years updated the State Water Resource Protection Plan. That's the plan that sets the amount of sustainable yields in the aquifers across the state which is utilized by the Department of Agriculture, the Department of Health and the four County Board of Water Supply in knowing how much water we have. And it was a very big thing for this Commission staff to move forward with this year. In addition, earlier this year on Maui, we established the first surface water management area, ever, in the history of the State, and then today the Commission acted on the staff's recommendations for the first time ever, to set measurable instream flow standards. This Commission staff has been tasked to take leadership rolls on water issues across the state and they have stepped up to that task admirably. Chair Thielen announced that she is really, really proud of what they've done. She said, "You have been waiting for 20 years for this to happen and there's been a history of staff where it's like what do we do, we didn't have real clear guidance, we didn't have funding and this is a group of people who said we're going to set aside

those issues and take action with the best information we have and move forward with people because it's important for the state to make decisions on these and we can't keep putting them off. They've done a tremendous job over the last few years, so thank you very much."

Chair Thielen also thanked the Division of Aquatic Resources because it couldn't have been done without their help. They had to go through and do the stream surveys for the biotas and take a look at this stream by stream, from the bottom to the top and come up with some very detailed recommendations, despite all kinds of weather. Chair Thielen knew it was a lot of work and DAR prioritized it, came together as a department on this priority, moved forward on an expedited timeframe, and that their support is really appreciated.

Chair Thielen also thanked the other divisions in DLNR for their support who allowed us to come to a conclusion today, after a very, very long two-day meeting. Chair Thielen also thanked the parties for working with the Commission on this and hope they feel comfortable with the fact that the Department wants to move forward in good faith with the other streams. The Commission looks forward to working with all parties cooperatively, as it will be a learning curve for all of us.

Lastly, Chair Thielen closed with Mark Twain's saying "whiskey is for drinking and water's for fighting" and said that we've been spending a lot of time fighting in Hawaii and she truly hopes that we can stop that this year and set a model where we start working together, and "not just you and us and you and us (pointing to the Commission and to the different parties) but you and you (pointing to the two parties). We can make it happen."

On behalf of the state of Hawaii, Chair Thielen thanked the Commissioners who are volunteers and should feel very proud today.

A pule was said by Beatrice Kekahuna to close the meeting.

The meeting was adjourned at 1:20 p.m.

Respectfully submitted,



KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:



KEN C. KAWAHARA
Deputy Director