

ADDENDUM TO APPROVED AND
AMENDED MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: March 20, 2018
TIME: 9:00 am
PLACE: University of Hawaii/Maui College
Pilina Multipurpose Room
310 W. Kaahumanu Avenue
Kahului, Maui 96732

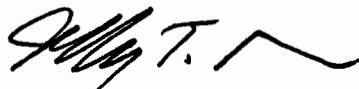
It was noted that Chair Case's contested case statement be included as an addendum and be part of the amended minutes of March 20, 2018. The following is the Chair's verbatim contested case statement:

"In some of the matters before the commission a person may wish to request a contested case hearing. If such a request is made before the board's decision then the board will consider the request first before considering the merits of the item before it. A person who want to contest a case may also wait until the board decides the issue then request the contested case after the decision. It's up to you. Any request must be made orally by the end of the meeting and followed up in writing within 10 days. If no request for contested case is made the board will make a decision and the department will treat the decision as final and proceed with the rule. Anyone that is going to make a request, let us know."

Respectfully submitted,


FAITH CHING
Secretary

APPROVED AS SUBMITTED:



JEFFREY T. PEARSON, P.E.
Deputy Director

Approved by the Commission on
Water Resource Management at
the meeting held on June 19, 2018.

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: March 20, 2018
TIME: 9:00 am
PLACE: University of Hawaii/Maui College
Pilina Multipurpose Room
310 W. Kaahumanu Avenue
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Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:04 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Suzanne Case, Mr. Kamana Beamer, Mr. Neil Hannahs, Mr. William Balfour, Mr. Paul Meyer, Ms. Joanna Seto (DOH Representative)

STAFF: Jeffrey Pearson, Dean Uyeno, Ayron Strauch, Rebecca Alakai

EXCUSED: Mr. Michael Buck

COUNSEL: Julie China

OTHERS: Jonathan Scheuer, Dylan Payne, Kane Poai Moku, Meagan ____, Kai Nishiki, Elle Cochran, Valerie Cos, Denise Tjarks, Jon Jancatenno, Dave Minami, Matt Rogers, Mark Nigh, Patrick Hannon, Mikiala Puaa-Freitas, Michael Asan??, Kealii J.H. Kaaikala, Lucienne DeNaie, Ray Fuqua, Laura Peddle, Archie Kalepa, Zach Williams, Tiare Lawrence, Alexa Deike, Keeaumoku Kapa, Brian Haina, Krishna Nacayan, Irene McPhee, Mish Shishido, Bre Rodrigues, Beverly B., Uilani Kapu, Paul Ratterman, Donna Kroetsch, Shaween Schweitzer, Matt Schweitzer, Kekai Keahi, Richard Siler, Neil Keahi, Kalai Kaeo, John Duey, Rosemarie Duey, Gordon, Firestein, Gunars Valkirs, Skippy Hau, Tom Ryan, Keaka Kaaihue, Margaret Sweeney, Kurt Thompson, Patty Johnson, Hokiau Pellegrino, Summer Kupau-Olo, Ekolu Lindsey, Gerard Harney, Albert Perez, Dave Ward, Kaipo Kekona, Wayne Nishiki, Katherine Larsen, Erika DiSalvo, Yolanda Dizon, Richard Nopone, Tom Nance, Jeff Anderson, Brian Esmeralda, R.W. Bock, Veronica Pielsch, Charles Palakiko, Gordy Pease, Lauren Kang, Crystal Schmuf, Charles Lindsey, Charles Johnson, Hans Michelim

Approved as amended by the Commission
on Water Resource Management at the
meeting held on May 15, 2018.
Amendments are listed on Page 45.

Item A-1

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

Before commencing with the agenda, Chair Case read the standard contested case statement.

A. APPROVAL OF MINUTES

January 16, 2018

MOTION: (BALFOUR/HANNAHS)

To approve the minutes.

UNANIMOUSLY APPROVED.

B. ACTION ITEMS

**2. Hanalei Traders, Inc. Application for a Stream Channel Alteration Permit
Biowall Stabilization Project, Hanalei River, Hanalei, Kaua'i, TMK: (4) 5-5-
010:067**

PRESENTATION OF SUBMITTAL: Ms. Rebecca Alakai

Commissioner Hannahs stated that the biowall seems like a nice solution to the property owner's interest but is the community concerned about the hau bush and trying to control that because it is just choking the life out of the stream?

Mr. Andy Hood, Sustainable Resources Group. He understood the concern about the biowall. For many years hau bush is left to grow into the river and the adjacent landowner has dismissed any engagement to control it. During the process of this permitting, they conducted and received comments pursuant to Chapter 343. During that time comments were received from community members from Hanalei hoping that this project would once again bring this project to some discourse to remove hau bush because it has been encroaching for a long time. In addition, channel geometry been altered upstream because there was a riprap placed by cow poop 15 years ago. Also, there has been engagement by the landowner, but no actions. The community members wanted engineers to intervene, but there was no action.

Commissioner Hannahs stated that it seems like a good treatment of the symptom of necessarily getting to the source of the problem and that is beyond our jurisdiction at the moment, but the communities worked to get the landowner responsible and control the hau bush. This should be supported.

MOTION: (HANNAHS/MEYER)

To approve the submittal.

UNANIMOUSLY APPROVED.

(TOOK SHORT BREAK TO SET UP ITEM B-1)

1. Amended Interim Instream Flow Standards For the Surface Water Hydrologic Units of Ukumehame (6004), Olowalu (6005), Launiupoko, (6006), and Kaua‘ula (6007), Maui

PRESENTATION OF SUBMITTAL: Dr. Ayron Strauch

Commissioner Beamer wondered if we have data on total flow and asked if on the Q50, are we certain that 50% of the time it's not going to be met because we don't have total flow numbers.

Dr. Strauch answered that we are only as certain as U.S. Geological Survey (USGA) report.

Commissioner Hannahs asked who is going to have less water and what does that mean?

Dr. Strauch answered that the hope was to not restrict agricultural demands. As he understood the service area, there are potable and non-potable connections. When someone has a non-potable connection, there is not an understanding if that is directly for agriculture or for whatever they want to use the water for. So, it is using modelling data for each of the crops on each parcel and the acreage occupied by these parcels is what was used to estimate the agricultural demands for water. That is how agricultural demand for non-potable water was separated from other uses of non-potable water. That is for the managers to assume.

Commissioner Hannahs asked if someone has water then they're not going to have water, do they have options?

Dr. Strauch answered - there are ground water resources that could be developed in the area. The Launiupoko aquifer sustainable yield is 7 mgd and the current (2017) 12-month moving average is 0.864 mgd and the Launiupoko Water Company 12-month moving average is 0.545 mgd from their three wells which is less than 40% of their installed pump capacity. There is anticipation that ground water would be used to meet some of the non-agricultural demand and therefore electricity cost will go up. He is fairly certain that most of the homes are not concerned with the electricity.

Commissioner Meyer thanked staff for the work that was done and asked if staff had any recommendations or thoughts, going forward, regarding the cleanup of debris and what sort of program would be recommended if at all.

Dr. Strauch answered that unfortunately most of the debris coming from high elevation reaches will continue to be mobilized and moved down stream as high flow events occur. He didn't think there is anything that can be done. For Wailuku Stream, every large flush of water carries lots of the sediment, new debris, whether its vegetation or cobble boulder, downstream. The debris makes it difficult to gage streamflow continuously.

Commissioner Meyer asked if he thought in terms of the permit process, is there a need for a maintenance requirement?

Dr. Strauch asked if was in terms of the permit process for modification for stream diversion?

Commissioner Meyer added, or for the diversion itself.

Dr. Strauch answered that the diversions are already registered. It is already grandfathered in. We don't do regulate maintenance or modifications to diversions as long as the footprint remains the same.

Commissioner Beamer commented that he appreciates linking the ground water and surface water numbers as a Commissioner to understand interconnectivity especially where streams are gaining and losing. He appreciated the information. Knowing that enforcement of IIFS are not easy for us as a Commission because of limited staff, especially on neighbor islands, he asked if we trying to be better at that. He did not read it through the context of the submittal. He stated that we should have very definite terms as to when existing diversions need to be modified and when the modifications need to be completed so that there is no uncertainty on any terms on when these diversions will get modified. He asked if that is in the submittal.

Dr. Strauch stated that he proposes timelines for modification of the diversions themselves but for the most part the IIFS could be established immediately based on opening and closing the existing structures. The subsequent diversions modifications to the intake gates to capture high flows more actively would probably come in front of the Commission later on but he did not propose any definite timelines for those.

Commissioner Beamer asked if that would help on enforcement?

Dr. Strauch answered more so real-time monitoring of natural flows above the diversions and the IFS will help us evaluate the feasibility of the implementing the IIFS.

Commissioner Balfour said that the upper Olowalu diversion on State land was destroyed in 2016. He then asked if there is a reason why it's not been reconstructed?

Dr. Strauch answered yes, the upper Olowalu diversions are on State land and they would have to go through the Land Board and the IFS process to activate to obtain a water lease. So instead they reactivated the lower Olowalu diversion which is on private land.

Commissioner Balfour asked if it takes less water right now?

Dr. Strauch said correct, but it's still meets their needs.

Commissioner Balfour asked so it's up to the state if it's going to be reconstructed, if at all.

Dr. Strauch said that would have to be brought up to the Land Board.

Chair Case commended staff that this is fantastic work and thanked the people for coming in front of the Commission. She questioned Launiupoko's recommendation is zero. She asked to double check what she heard, under natural conditions it doesn't normally reach the ocean and not have anything to do with the diversions.

Dr. Strauch answered correct; less than 20% of the time and only during peak flow events will it ever make it to the ocean. No testimony and no information that he received suggested that there was wetland agriculture or kalo grown in that area.

Chair Case asked if what was mentioned about the losing reaches of some of these streams that they were losing reaches not because of natural conditions but because of tunneling.

Dr. Strauch answered the development tunnels were intended to augment base flow above the diversion. They were dug so they would add water to the stream. The losing reaches tend to be in lower elevations and occurred naturally just because of the geology.

Chair Case asked to clarify how the amount of water used for landscaping or agriculture was calculated?

Dr. Strauch said it started with the tax map key data for the acreage of each parcel. Then the agriculture needs were estimated using remote sensing and visual ground-truthing to determine the acreage of crops and an estimate of the crop or orchard agricultural water demand. The acreage that was in a lawn or non-agricultural shrubs that were clearly irrigated. If someone traveled out to this area, it is pretty apparent that everything is brown unless water is added to them. So that was an estimate for each TMK parcel of the acreage that was in agriculture or landscaping.

Chair Case asked if that was the 194-acre figure and how much water is being used for that?

Dr. Strauch answered that the meter service does not distinguish between agriculture (ag) and non-ag non-potable water. The total water demand was estimated using the sod agricultural water demand and the landscaping tree ag water demand. Basically, it estimated the converted acreage of non-ag landscaping to water and based on this estimate it's about 1 mgd.

Chair Case was still wondering about the amount and was just trying to roughly figure out. Divide the potable demand by the number of users, you get a very high per day use. She is not sure if that includes the agriculture user/reserve. It was a high figure.

Dr. Strauch said each home has a potable connection and a non-potable connection and the irrigation systems, he would suspect, for landscaping and agriculture are connected to non-potable water. Each homestead might be unique, and these are just estimates.

Commissioner Beamer asked about Launiupoko and the recommendation. The Commission is recommending basically no change and the rationale is that it's a losing stream. If it is opened up, it is not confident that we are going to get Mauka to Makai connectivity. It

won't make it. With that being said, he asked what is the role between a so called losing stream and aquifer recharge.

Dr. Strauch answered there is a trade-off. Aquifer recharge is being given up for non-potable water.

Commissioner Beamer stated so the Commission can safely assume it's losing recharging the aquifer.

Dr. Strauch said that was correct.

Commissioner Beamer asked if the Commission were to make a recommendation around modifications of the ditch system and the existing structures within the stream, what would be an adequate timeline that gives the Commission some certainty that we're going to have connectivity with the oopu to have the ability to climb over whatever systems that is in place in the stream.

Dr. Strauch said he believes that if the intakes are closed at Kauaula and open it up from the top so that the first portion of the water continues downstream over the dam, the native species will be able to migrate over the Kauaula dam. That can happen immediately and modification to the intake to take the high flows would happen as they needed. In the submittal for an after the fact stream diversion modification at the Lower Olowalu Stream intake, West Maui Land are currently proposing to modify the intake using a design so that the intake is at the top of the gate so that the first amount of water in the stream at the intake stays in the stream and only above the certain amount will the stream feed Olowalu Ditch. That is proposed. Whatever time line they are working on right now is at the Land Board. Ukumehame – only the amount of water that is currently needed for the loi is being diverted; they can control the flow as needed. There is connectivity already at Ukumehame and the dam can be navigated by native species moving above and below the dam. That is not an issue, it is already in place.

Commissioner Beamer asked if the Commission were to execute this IIFS today, how long would it take to implement. When would they be effective.

Dr. Strauch said as soon as someone goes out and closes the intake gates, that could be tomorrow.

Commissioner Beamer asked if it is in this order that are going to close it tomorrow or next week?

Dr. Strauch answered he believed as soon as the Commission says the IIFS has to be met, it has to be met.

Commissioner Hannahs stated in going back to Chair Case's question. You have 2 ag parcels, one is for growing grass the other has crop. Does the Commission discriminate against those two or do we treat them equal?

Dr. Strauch said that the water demand was estimated for both agriculture and the landscaping for each parcel. As the manager of the system, they can discriminate. He believes, the Commission doesn't manage the systems unless it's a designated water management area and does not control end uses.

Commissioner Hannahs referred to Commissioner Beamer's question on how is the infrastructure operable? Do those gage work so they can be controlled.

TESTIMONIES: (Chair Case limited testimonies to 3 minutes)

Hokuau Pellegrino - President of Hui O Na Wai Eha is an organization that advocates the restoration and stewardship of Mauka to Makai streamflow in Waikapu, Wailuku, Waiehu Waihee to protect cultural and natural resources related to traditional and customary practices of Native Hawaiians and to engage Maui community to water resource management and outreach education. Our first point is the Launiupoko IIFS. Launiupoko Stream should have an amended IIFS. Just because the stream doesn't have instream users or his minimal flow is a losing reach and does not flow Mauka to Makai for a large duration of time is not a good justification to leave the stream completely diverted for all stream use.

Commissioner Hannahs asked Mr. Pellegrino on Launiupoko if he was stating to not set a standard, said to conduct the releases and do the research that allow and form standard for the future.

Mr. Pelligrino agreed to some extent with Dr. Strauch who mentioned that there wasn't many that came forward to support the IIFS. He believes that his constituents still want to conduct more research.

Commissioner Hannahs asked how is that different from the recommendation, if you said zero so now, just commit ourselves to the releases and research. Are you ready to hope that the decision making on IFS to wait for that to occur on Launiupoko?

Mr. Pelligrino answered no and that his thoughts are to move forward for the 3 streams Olowalu, Ukumehame and Kauaula and implement that and hopefully with some of the recommendations that are establish and work on controlled releases for Launiupoko and further analysis and hopefully at some point revise that.

Commissioner Hannahs and likewise in relationship in regard to the monitoring, enforcement plan, he asked Mr. Pelligrino if he would feel it's inadequate if the Commission recommend that we take the position, we hope that decision making until we develop a clear plan?

Mr. Pelligrino said that is a tough question to ask because if someone were to ask if we rather wait another year for Na Wai Eha for streams to flow but guaranteeing that we wouldn't get the IIFS, the monitoring and enforcement rights, our constituents may not agree to my opinion, but I'd rather do a good job from the start. People may not agree with

me on that but we are in somewhat dire straits on Na Wai Eha because of a lack of a plan and now we're having to back paddle and fix that while the diverters are essentially taking what they are getting without any type of enforcement. Mr. Pelligrino said that he would personally like to see a stronger implementation plan. He knows that these folks need water ASAP and he can value and respect that as well.

Commissioner Beamer asked Mr. Pelligrino in his mention that Waikapu was thought to be a losing stream and over time with releases the water table filled up and it does now connect.

Mr. Pelligrino said the he is not a hydrologist but based on the 15, 20 years of research it's fair to say that most of our streams are gaining in most of these areas. So Waikapu Stream is one of those. It's not a gaining stream but the amount that is being released now, there is somewhat of a trickle that reaches Kealia.

Commissioner Beamer asked Mr. Pelligrino about those release. He wonders if the Commission set the standard today that was different from the zeros, Q20. What was the amount in Waikapu that allows you to track the changes in the stream over time.

Mr. Pelligrino said that he thinks there are many benefactors. One is obviously the release of the IIFS. There was a time where there were also releasing Waihee Stream water into Waikapu Stream below of the diversions. But with that being somewhat void at this point, it seems that the water table, the saturation has allowed for Mauka to Makai stream flow for now almost 2 years on a regular basis and flowing out to Maalaea Bay. Waikapu is a different situation because it's a mass of wetland that somewhat blocks the water from entering the stream from the opening of the stream, but it does flow into the ground water and falls into Maalaea Bay underneath the Kealia Refuge.

Mr. Vincent Mina, President of Hawaii Farmers Union United and representing 1400 members statewide. In their policy, they basically support the efforts to restore streamflow. They believe that all freshwater resources both ground and surface waters, nearshore waters should be recognized and prioritized as public water trust resources to be held conserve, manage, regulated and shared for the greater public good. Mr. Mina would like to encourage any decision being made to be based on the Hawaiian practices of returning carbon back to the soil as a way to recharge our aquifers and to be able to have water resource for all to be able to utilize, especially our family farmers.

Mr. Tom Nance has been working on water resources development from early 1970s and now is a consultant for West Maui Land. Two aspects of staff submittal (1) as was shown on staff presentation. The Water Code requires you to evaluate the non-stream uses including the impact of restricting them. The staff submittal on pages 12 and 13 lists some of those possible impacts but no analysis of them. You can read through that list and figure out what it takes to basically provide ground water in place of surface water now being used and the cost but there is no analysis of that and the Code does require. The second aspect is the use of the hypothetical constructs, the USGS Q90 and Q70 flows. The bottom line is 2 things: one is need a better definition of what Q90 and Q70 is rather than these hypothetical constructs. You can all agree that the 20 years data Bert Hatton used 1956-1976 the stream

flows have generally gone down since then and yet the Q90 in the USGS study is actually substantial higher than that. You get better information on both of what these low flows actually are and what the consequences of the decision that you are making.

Commissioner Hannahs referred to pages 12 and 13 and asked Mr. Nance that the practical analysis of alternatives is the obligation of the Commission?

Mr. Nance said it says in the wording of the Code: the Code directs the Commission to weigh the importance of present and potential instream values with the present and potential uses of non-stream purposes including the economic impact of restricted such uses.

Commissioner Hannahs asked if we don't do that based on the analysis presented to us by a landowner or user?

Mr. Nance said that would be a way to do it. But thinks you have to solicit that. They would be in the best position to provide you that kind of information.

Commissioner Hannahs what is the cost to fund it?

Mr. Nance thinks they can in some cases by activating existing wells and using them and in other cases new wells will have to be drilled. The cost of operating them, every single one of these operators can provide you that information through me or others if not by themselves.

Commissioner Beamer had one question. He will talk more with Dr. Strauch about USGS and about the numbers. Given what was reported when sugar was still utilized and diverted, he asked Mr. Nance if he is suggesting that same amount would continue to be diverted even when there is no sugar?

Mr. Nance said that he was not saying that at all. He said to know what the low flows are and know the consequences of the IIFS and did not say no it should be maintained. There needs to be a balance.

Mr. John Duey, past president of Hui O Na Wai Eha, lives in Iao Valley, have crops there, in Lahaina. Have some experience in water issues. I recommend diversion if IFS for Olowalu would be 2 instead of 2.2. Olowalu has about half an acre of taro and the amount for taro and the amount for taro for West Maui is 230,000 gpd. By doing the math taro farmers would be running out of water. The water for taro does come from the diversion at Olowalu. There was no mention of the Maui wells in Ukumehame and Olowalu. They could be used for ground water use for lower elevations.

Mr. Gordon Firestein lives in Launiupoko and tent 2.2-acre farm. Supports and stand with the kuleana families who rely on the Kauaula Stream for the very existence. They have a dilemma. When purchased property 10 years ago, signed an affidavit that committed them to farming at least 51% of their property because it is ag zoned land. They took that commitment very seriously and are trying to be good stewards of the land and do what is

necessary to improve the soil. They are also members of the Hawaii Farmers Union and do the values that that organization and kuleana families. At the moment, they are sharing the water that is in that stream; they don't have a lot of options. Sometimes there is no water on the land, and don't get enough rain to sustain agriculture. Mr. Firestein is hoping that you will defer the decision. At this point they are not completely clear on what the impacts will be if the Commission accepts the staff recommendations. They don't understand what the numbers mean or what the implication will be other than the general idea that if implementation is recommended they will be subject to severe water restrictions and have real problems. He acknowledges his responsibilities to stay informed. In addition to deferring the decision today, if possible, it would be helpful to convene a meeting on the west side so all the affected parties can come together, receive a presentation like this, hear from other attributes, become better informed hopefully so we can express our concerns before a decision that has such a great potential impact on our lives.

Commissioner Hannahs asked if his farming is for commercial purposes.

Mr. Firestein answered everything that is grown is food for our own consumption and sharing. It's not a commercial operation.

Commissioner Hannahs asked in case we are off on the numbers, if he has access to potable water?

Mr. Firestein said yes.

Commissioner Hannahs asked if he can keep these things alive until such time the program, staff recommendation is implemented. Can you still keep your plants alive because you have potable water access?

Mr. Firestein said there are a couple of problems that should solve. They would need to find a way to interconnect the pump with the water system and irrigation system. The other problem is that if these recommendations are implemented the costs of both available potable water and non-potable water will go up with the electricity costs. There will be pumping involved and understand the system was designed as a non-potable water hydroelectric plant. They would be paying for the water. If that is removed from the system our water bills will go up.

Mr. Gunars Valkirs, owner of Maui Kuia Estate Chocolate in Lahaina is building a chocolate factory to process 110,000 pounds of fine chocolate. Chocolate made from cacao. Owns a cacao farm, 54 acres on Kamehameha School (KS) land. He put in the water structure for that area and supply water at no charge to the Hawaii farmers union foundation that has a 12-acre ulu farm that is also supported by KS as a demonstration project. Adjacent to his lease land, he also subleases 10 acres to Shane Simpliciano who owns Simply Fresh Produce. He is an organic farmer who is developing areas for crops for sale to restaurants and farmers markets. His concern which Hokuau Pelligrino stated that there is no management plan and key stake holders, which he considers himself as a stake holder; they were not consulted when this plan was developed. There is a very reassuring statement

with respect to KS land on bottom of page 27. Mr. Pelligrino didn't mention this specific number but he reiterated that there have been severe management issues from the release of the diversions on the east side of Maui. And they are suffering for that because there was no management plan in place. He feels that if this is implemented as is without a management plan that there will be people that will suffer and he would likely be one of them. At this point he doesn't have an alternative of bringing ground water. This is his only source of water. If it's turned off the trees will initially suffer and 2 or 3 weeks the young ones will die and in one or two months the more mature trees will die. He has 7000 trees in the ground now and plans on planting another 11,000 to satisfy the needs of that factory. The factory has a mission; the mission is dedicated to giving 100% of the net profit back to Maui charities. He stated that he is not doing this for myself; he is doing this for the community and concerned at this point that his vision will completely be catastrophically disrupted if the recommendations are implemented. If the Commission wait a year on what the result is, in one or two months Mr. Valkirs can tell you what the result will be if he doesn't have water. There will be no trees, the greenery on the west Maui hillside and KS lands will turn brown and agriculture will once again fail.

Mr. Tom Ryan, Manager of South Pacific Sod in Launiupoko grows about 70,000 sq. ft. of sod. This last summer he experienced a drought that went on a 3-day a week allowance of water. They went to great lengths to meet the needs of the agricultural 51% criteria. They went to great lengths to farm the land and put tons on money into the project. He feels the need for a sod farm on west Maui. So again, spent thousands of dollars to meet the needs of the 51% of our property to grow the sod. This summer they almost lost everything from the reduction of water. He stated to reconsideration that we are a commercial business that they pay taxes that they really want the Commission to reconsider their needs as farmers as people that literally are good stewards of the land that and keep it clean. They take great lengths to make their property and farm sustainable for the future. He never thought they would be penalized or water taken away. They didn't know anything about this. Even so, he feels that this is his responsibility to know what is going. He asked that the Commission take into consideration that they have gone through great lengths to do what is right for their farms and people of west Maui and to please reconsider this.

Commissioner Beamer asked how much water is he getting off the ditch system and how much is used.

Mr. Ryan did not have those numbers with him.

Commissioner Hannahs stated that staff recommendation is to not change Launiupoko but you are affected by the Kauaula system?

Mr. Ryan said yes.

Mr. Kurt Thompson's testimony on Item B-1: "I am a farmer in Makila Phase 2 purchased a farm 9 years ago. Our property today is about 75% agriculture and 25% lawn and landscaping. I've been maintaining and watch our agricultural water use from the one meter that we have in the stream. From December 2014 to present we average on our 5.9 acres

15,200 gpd to support our 75% agriculture and 25% of the yard and landscaping. I don't have a way to write down the percentage of water that is going down. What I can tell you is that when we have water shortages due to natural occurring events, the plants suffer and they begin to die. We are now rationing in our area to have water every 2-3 days for 6 hours. That is not enough to cover the areas that need to be covered. I have 46 different irrigations on my property set on different timers and different quantities of water to aerate my plants. During the past drought, we took it upon ourselves to modify our potable water that would allow us to temporarily pipe potable water to the non-potable system with a meter with backflow preventers and everything else to make sure we don't get cross contamination in the drinking water. That was done just to make sure we get some level of water to the olive trees so they got a little bit a day. We are at 525 feet. I can see it rain on the mountain side and not a drop on my property. We needed to do something to make the trees get water. The rest of the property, coconut palms, herb garden, fruit trees, none of those got water because the ag water was shut off and all of those suffered as well. Just think we need to take a global look at what the population has done in west Maui, where it's going, what the needs of water are for sustainable agriculture in west Maui. The changes that are being imposed significantly reduce the valued resource that is necessary for all those things that the county has allowed to happen and is planning to allow happen in the future."

Mr. Wayne Nishiki who is a citizen of Maui County testified that he is concerned that there is no mountain to ocean water in one area. He feels that the drilling of wells definitely has an impact on the health of the aquifers. He stated that if the Commission can reassess or relook at who is getting the water from these aquifers then perhaps more water will come from the mountain to the ocean.

Ms. Katharine Larsen owns property in Launiupoko. She stated that she doesn't know how to reconcile in keeping her ag lot with the kinds of restrictions the Commission is talking about on non-potable water. She would like suggestions from the Commission on how to reconcile this.

Mr. Kaipō Kekona – vice chair of the Hawaii Farmer Union United Chapter in Lahaina. He is in support of agenda item B-1. He said you the Commission has the responsibility to maintain the instream flows to sustain the native fauna and flora of Hawaii and that is also under the constitution of Hawaii. He encouraged the Commission that we stick to the law and with those guidelines everything else should fall in place and we should all have adequate space to coexist in this place together. That is what the law is there for. Work together to manage the water use.

Ms. Erika DiSalvo - She personally supports the full water stream flow. It's really important for the environment, for the land, for the ocean. If it's an issue where her livelihood is at stake, she asked that the Commission well take a good look at the local farmers. They have been compromised for a long time. She feels that the local farmers should be looked at first and foremost for water being restored and in flow.

Ms. Yolanda Dizon – She feels for the people who live out in Launiupoko. Developers promised the farmers that they would have enough water after development. But this is not

the case today. One hundred percent of that subdivision was supposed to be committed to agriculture. The people have suffered so long they need the water back to the river.

Mr. Albert Perez, Director of Maui Tomorrow Foundation thanked the Water Commission for being proactive in updating the stream flow standards for west Maui. It's a positive step in the right direction. Mr. Perez's comments are as follows: The presumption should be the water stays in the stream unless people can prove they have justification for reasonable beneficial use. In balancing instream uses with non-instream uses, it is important that the Commission recognize bonafide farmers not fake agriculture and certainly not future fake agriculture. We cannot facilitate abuse of our land use laws by speculative developers. Finally, on enforcement. Setting the IIFS is only the first step. As we have seen in east Maui and in Na Wai E Ha stream flow standards are not effective unless the stream flows are monitored and enforced. Each diversion for non-instream use needs to be gaged both above and below the diversions so that you know exactly how much water is being taken. The data from these gages needs to be provided in real time on a regular basis to the Water Commission and the cost of gathering this data including the purchase and maintenance of gages should be borne by the diverters using an assessment system similar to that used by water utilities. These diverters should not be in control for either the gathering or the transmission of the data to the Water Commission.

Mr. Richard Naponen – full time resident in Launiupoko living on 5.6 agriculture property. The reduction proposed by this report for a one year experiment would likely result in the death of his orchard. While the goal is the establish stream flows is honorable, the negative impact should be understood and mitigated in advance, for example, the report states that ground water is a viable alternative to support the current future water demands but there is no data to show that it is economically viable to achieve and how much time is needed to establish the substitution of ground water for stream water. If this body elects to curtail the existing ag water supply from the streams, please do so only after a viable alternative is in place. Without a sensible approach small farmers will suffer avoidable losses.

Mr. Jeff Anderson – Launiupoko farmer and Makila Homeowners Association president. Last summer they had one of the worst droughts. Many of the farmers struggled to keep their trees alive, including Mr. Anderson. Staff recommendations are partially based upon remote sensing of ag which does not appear to be accurate. He looked at some other properties which are also under estimated, but does not know how much the total is. The underestimation could be very significant. Global farmers have invested thousands to get their farms going including Mr. Anderson. His trees are not yet producing commercial quantities but his neighbors are producing commercial quantities. That income will go away if the water goes away. They were only just recently made aware of this issue. Mr. Anderson urges the Commission that if changes are made, give an opportunity to explore alternatives that will work for local farmers.

Mr. Charles Palakiko – resident and kalo farmer in Kauaula Valley. Mr. Palakiko stated that a lot of farmers here stated they took a lot of loss with their crops, and the taro farmers took a lot of loss in their patches too. There are means where all can survive together. He felt

that development needs to stop. The streams need the water first. He recommends that water be put back into the stream. Its almost there. $\frac{3}{4}$ of the streams have life.

Mr. Keeaumoku Kapu – He lives on kuleana lands in Kauaula Valley. Mr. Kapu commended the work that has been done by Ayron Strauch and CWRM. He is in full support of the IIFS with the reservations of the amount on the return of the water to support traditional taro cultivation, the livelihood of our independent and indigenous fauna and species such as the oopu, hihiwai and our natural resources for future generations ahead. Their people livelihood has suffered enough. He highly recommends this body follow the letter of the law and set these standards and assure it will be enforced. On enforcement, this body should look into ways of forming a task force which involves kuleana families in this area. Everyone should be involved for better management. He suggested this body to listen to the needs of the land and listen to the people who have suffered greatly.

Ms. Irene McPhee – Landowner in Launiupoko had the opportunity to purchase ag land when Pioneer Mill first went out of business. They are not Hawaiian descent but consider themselves kamaaina for 40 years. They have a family business that utilize the coconut plantation and coconuts and provide educational tours for tourists. The news that this Commission plans to limit the water to this community came as a surprise. The kind of reduction of water allocation would have devastating impacts their ability to continue any kind of farming operation on these lands. Having been a member of this community, her heart goes out to her neighbors. She understands their concern. There has to be a balance and wants the Commission to for a consideration of balance and to consider the investments that people have made in their agricultural pursuits which were mandated by the county.

Ms. Uilani Kapu – kuleana resident of Kauaula where water flows from top to bottom testified that now it doesn't; it goes half way. If the Commission allows it to go back the way it was, it's not going to be hard. They grow taro, strawberries, won bok, and carrots. They do farming in their kuleana lands; farming; that is sustainable. The water for them flows uphill from the hydro plant. She feels that they suffer the most in that valley only because if the water flow is low they don't get it pumped up fast enough. They sometimes go without water 2 to 3 days. Sometime the dam is blocked and when they call, it may come up on a Saturday, sometimes they have to wait. Those are concerns of how this balance is going to work. It's not hard it's not science. Its allowing what is natural to be natural, to allow diversion flows to flow. There are days when the flows go over the dam. There are days that there is not much but who is suffering. The Commission have been to Maui and have heard from people that the streams need to add that balance to their oceans. She said that they are losing the fishes and limus and this is without the establishment from mountain to ocean. The hydrology has to be calculated because for the kuleana landowners they live day by day. They don't grumble as much because they know how to sustain themselves with the rainfall and try to bring back the natural habitats of their areas, trees, bird life and fish life. They work the limu restorations at Kamehameha Iki Park in Lahaina because there is none. There are places in Lahaina that are trying to stop fishing, just to replenish. They need stream flows. That is very important to everything that works. The replenishment of the aquifer is very important to today's society because they live on an island. The report is only asking for 1 year. Allow it to work for 1 year and see how it

works because it has happened before and it needs to happen again. She feels that Launiupoko has too many pools and doesn't feel that it is sustainable.

Mr. Paul Ratterman represented Mahanaluanui Homeowners Association. They are asking for positive vote on Item B-1. They question the accuracy of the methodology of the data collection regarding the amount of ag usage in the Mahanaluanui and the Launiupoko region. He feels that the study did not allow for more animal farms. One example there is a 15-acre animal farm along a stream which was shown as non-agriculture on the map. He is 95% in compliance with county directive for the ag plan. In the TMK maps lists in the proposal, his ag lot is listed as none. He heard from various testifiers and neighbors that his ag lot is grossly underestimated, so he is questioning the accuracy of this. Also, on the maps shown, his lot was totally green. He has approximately 12,000 sq. ft. of grass. The rest is fruit trees and other vegetation. He claims this is inaccurate as well. The number of 5,000 gpd for an acre was mentioned earlier and he did some rough calculations. In his 2-acre lot, he is using just over 1.6 thousand gpd for 2 acres and this is with the ag, lawn and everything else. Lastly, they are mandated by the county to have 51% ag and to follow that, they need water. If water is taken away, they can no longer comply with the county's mandate.

Ms. Shawneen Schweitzer lives in Launiupoko and is concerned. Half of their property is on a ravine and has no access to potable water. Her property on the TMK shows 0 ag. Her husband and herself were one of the first to build up; they both grew up on west Maui and were so happy to be stewards of the land but also to have a farm. For 14 years they have been selling fruits and vegetables to the local farmers market, paying taxes, growing local so that people can buy local. To lose that water, they would lose their farm. There has to be a balance. The Commission has to figure out what is the answer. She heard that 83% of their non-potable water would be taken away. That would be devastating. More studies need to be made. There needs to be a connection between Maui County, the building permits and the planning departments and the local families. Kuleana families shouldn't be starving for water. There needs to be a balance. She suggests more time for studies is needed. Families at Launiupoko are in compliance with the law, with what was needed to be done. Potable water was the way fruits and vegetables are grown. She attests that there are lots of swimming pools, landscaping, but there are lots of small family farmers and is proud to be one of those family farmers. She needs that potable water and is willing to take drastic cuts in the potable water in order to still have it, so that the kuleana families can have water. There needs to be a balance.

Ms. Summer Kupao-Odo, attorney for EarthJustice (EJ). She stated that it seems that the Commission is enforced and that the IIFS mandate is fulfilled. EJ is very happy that the Commission has finally taken the initiative to restore stream flows to these 4 west Maui streams on its own. EJ has tremendous appreciation for the work that the Commission staff has done, especially Ayron Strauch. It is also important that the Commission is embracing its duty and on its own restoring stream flows. It is then offensive hearing testimony today by west Maui land consultant Tom Nance, asking the Commission to defer a decision or approval of the recommendations the staff has put forth. Its offensive and illegal. It is far too long the industry values have been ignored. Water has been diverted; off-stream uses

are not completely substantiated at the amounts requested. So finally, we have Commission staff to bring back the balance to bring this area into legal compliance. EJ is in support of staff recommendations to amend the IIFS and finally protecting the instream uses as it's the Commission's duty. EJ agrees with the adaptive management approach, to get water in the streams and see modifications. EJ also appreciates Commission staff consideration of alternative sources for stream uses. The IIFS means nothing without Commission monitoring and enforcement. It's the Commission that must see it through. Must see that the standards are set and implemented. It should not be left to the community folks vigilance to store data and to keep track of violations. It's the Commission that must independently verify the diverters and must be the one to investigate violations. Lastly, on off-stream demands, the Commission must require the diverters to substantiate their off-stream needs. The amount of water according to the report is wasteful.

The meeting recessed at approximately 12:40 pm and convened at 1:38 pm where Commissioner Kamana Beamer presided. Chair Case was excused.

Mr. Matt Rogers of Lahaina stressed one point that the main thing he wanted to stress is the resource plain. He recently purchased a house on 5 acres regular dirt rock. Hearing the testimonies and the potential of no water and the various negative impact, he'd rather keep growing rocks. His first interaction with the county was to have to use 51% of the land for farming. He thinks that relative to all the subdivisions going in, relative to zoning, they all have to be on the same page. He knows that is different jurisdiction, different charter but it's a conflict and its contradictory in terms of the information. He is contemplating to stop the forward motion of his plans because listening to the testimonies, the people has a lot of good points. He appreciates it and has learned a lot. There a lot of knowledgeable people here. His farming in on hold because he feels there is conflict.

Mr. Archie Kalepa - Lahaina. – He thanked the Commission for doing the study and thinks its crucial information and part of the Commission's role and responsibility to make sure that water resources are properly managed, whether it be from mauka to makai or east to west. He was fortunate to participate in the world voyage, Malama Honua, taking care of my elder and has learned in the last 5 years, what we have in Hawaii is remarkably special. The reason is because we continue for over a thousand years to practice farming. In modern times, you look at the skill of farming was done back then its incomparable to the way they farm, how they farm. We are beginning to re discover, re-learn these things that we've in a sense lost touch. A project was started about 7 years ago. This project was to begin to open up Kahome Stream. He thought it was impossible but today 5 years of being on this road, the first 2 years he asked himself if what he is doing going to make a difference. They opened up the stream and saw it replenish itself and the beauty of that stream turned clear and cold and began to see marine life come back. He lived grew up in Lahaina. A taro farmer taught them how important it is for the stream to flow from Mauka to Makai and are seeing the results today. The result is that they are witnessing marine life spawning. Fish spawn, respawn in this area where the stream meets the ocean. They are beginning to see marine life that have never seen before come back in the streams. Hihiwai, opai, oopu and different species of oopu. To see it come back today, he feels the need to take care of the stream. If they don't take care of the stream and don't allow the stream to flow from Mauka

to Makai, that is not a benefit as a taro farmer. That is not a benefit to the community who live in that community. They need to look at and take care of the resource first. They need to take care of that place and what's happening in that place and as a community can grow strong and live off the land. He feels it's really important for the Commission to make sure that the streams to flow from Mauka to Makai for more than one value other than their own. The value of this place and the value of this island the value of this earth for the value of generations to come.

Commissioner Hannahs stated that when Hokuleia was here there was an amazing outreach program. He asked Mr. Kalepa if he continues his outreach to the community in his neighborhood frequently. He asked Mr. Kalepa if he has reached out to the Launiupoko agriculture community.

Mr. Kalepa answered no that he has not reached out.

Commissioner Hannahs stated that they embrace the kamaaina spirit in their testimonies before us today and he thinks that they would benefit in being hands on your land in Kahoma, to learn those values of "he ali'i ka 'āina, he kauā ke kānaka" that place the needs of the land above those of people. All the testimony that was heard today was about "my investment" and not about the needs of the land. He thinks that they would learn that by going to Kahoma.

Mr. Kalepa stated that's what he found out. It's not about his needs or what he wants, it's because of what he grows on his land; it's about what he does to maintain that place so that he can enjoy what he has. That river, that stream, listening to it flow is what creates life. It is what allows us to live in this place. That's what we have to take care first of all. Thank you.

Mr. Kapali Keahi, Lahaina. He, too was on a project with Mr. Kalepa to help in restoring streams in Kahoma. They witnessed the fruits of that. He thanked Kamehameha Schools and the interested ohana in taking their time to do something that is very important in their generation. This Commission now has the chance to restore our streams. He does not feel comfortable about future developments. He is hoping that the Commission does consider at least the future of our kuleanas, the future of our ecology. I support what staff has recommended. For now, it is better than what we have been living with and he thinks it's a good time to help make that change happen and see this through.

Mr. Richard Siler – farmer, landowner. The Commission has a very complex decision to make. Mr. Siler's testimony: "As most of us families are created and generations develop, some people can't afford to live here. My parents moved away when I was 10 years old because they couldn't afford a home here. I spent 30 years trying to figure out how to give back. I worked all my life, raised my family was educated on the mainland and figured out a way to move my family back here so my kids could learn about Hawaii. Five years ago we moved here. I wasn't given my land. I purchased my land at great cost and able to establish a small family farm in Puunoa. We have 5 acres and I try to show my children respect for the land, respect for the culture, respect for the community and what the aloha

spirit is supposed to be like. Everybody has a livelihood. They are all driven on how their livelihood is affected here. I respect every bit of what the kuleana are saying about how their lives depending on some of this water to exist. I also respect every bit of everyone's dream not only for themselves but for their families. The decision the Commission makes is not going to affect today or next year. It will affect families here and generations to come. It is a complex decision. We're dealing with population, we're dealing with changes in education and the community, infrastructure and resources. Changing rules instead of planning is not the solution. We don't plan and we don't look at some of these actions, going forward it will affect the communities from now on. This is a big decision." Mr. Siler concluded by saying that he encourages the Commission to consider that in the decision to take time to make those decisions.

Mr. Kekai Keali – farmer. He feels the need to bring balance. A lot of farmers are in hardship. The farmers from Launiupoko are not losing anything, but he feels they are gaining. He is 100% for farming. Sometimes people look at them who are raising taro, not farmers. Raising taro is something cultural. He understands the money they put into their farm. They were under the false pretense that water would be available to them. The Launiupoko farmers are not losing anything, if at all, they are gaining. The taro farmers are the ones that are going to lose. The balance that is being talked about is not equal. Kahoma, for example, 10 years ago farmers met with KS and was a home-grown process for about 10 years. They finally considered putting water back into stream which was dead. There was no water above the intake. After 5-6 years when water was put back into the stream, it took that long to saturate the stream. The positive was that Mr. Keali teaches at an intermediate school and lot of these kids go to the river but they don't know that few years prior there was no water. They have fun now swimming in the river.

Mr. Shan Vierra – Olowalu, farmer, raises chickens, pigs and goats for 40 years.

Ms. Flora Pennel – president of Olowalu Homeowners Association and an Olowalu resident. She is also a homeowner. Her husband is fly fisherman, sustainable fishing, catch and release. They understand giving back to the land and not taking more than what is needed. They xeriscape the lands so not to use a lot of water. They are not using any ag water at all. They are not drawing from the stream. They went into this after the fact in making those decisions and didn't know that water would be such a problem. She pointed out that the Commission has a very important decision to make. Staff did comment that they have to monitor this because these numbers are not post flood numbers. A person would have to guess on what the future might look like. When the laws that were already developed and real estate people want to sell to make profits on the land and people instantly come in and buy land under the rules the county developed, 51% ag and they don't understand there no water. Ms. Pennel is hoping somehow the Commission send a message to other levels. She feels the resources should be considered first.

Mr. Neal Kauai Keahi testified that we all have differences but when it comes to water, we all come together. Water is what sustains us. He lives near Kauaula Stream. He works with West Maui Land. They broke down and cleaned homeless campsites along the stream. They cleared mattresses, needles, etc. and cleaned out that stream from Mauka to Makai. If

you walk this stream, its clean and no one is there putting rubbish into the stream. On Jan 23, 2018 year we went before the planning Commission to get a special use permit to start a camp on the property. Mr. Keahi is currently living there and will be the on-site manager for this camp. This camp will help families with children on the west side offering them a safe place to stay until permanent housing is available. Now they are waiting to go before the Maui Council to get a special use permit which will allow them to stay on. The reason why he is informing the Commission is because some of the services they will be offering, is not only social services. They will have farming, which he thinks is therapeutic. It will give a sense of purpose and it builds community. This can be nurturing and bring people together and commit to a plan. One of the projects is taro farming, making taro plants in Kauaula Stream where water from the stream will be used for taro patch. So, he asked the Commission to please allow us (everyone here) to use the water from the stream freely as it has always been not only to grow taro but other fruits and vegetables, but to grow people.

Ms. Lucienne DeNaie – Sierra Club Maui Group, Conservation Chair thanked the Commission for coming and having this proactive effort. The 3 streams Olowalu, Ukumehame, and Launiupoko are streams where Sierra Club has had concerns for many years. Having seen these streams, she said they all have great value. The demand was 160,000 gpd for the entire ag subdivision. But now it's nearing 270 gpd. She stated that this may have been a miscalculation by 100,000 gpd and has not been developed all the way. She speculates that the county told the developers there was enough water and that's why the county processed the permits. She says that we need to know if the stream water is being wisely used under the current conditions. Ukumehame does have kuleana usage but there are people that don't come out to hearings and write comments. It does have lots of stream life as the survey indicates. Launiupoko has major cultural sites; heiau, house sites. She feels that area is a bad area for agriculture. Pioneer Mill was short of water to grow sugar cane and really shouldn't have been broken up into agriculture parcels.

Ms. Tiare Lawrence – thanked Commission for setting new IFS for west Maui streams. There are huge long-awaited injustices by the plantation and corporations and developers. She is in full support of IIFS for Kauaula, Olowalu and Ukumehame Streams. Growing up in Lahaina, they never had streams. They would get so excited when there were big floods and would play in the streams. Now since Kahoma has been restored, it took 5 years to see the Mauka to Makai flow connectivity. She stated that the Commission needs to look at this longer because for Kahoma, the benefits are not realized for years. There is now an abundance of oopu. First time in years there will be harvesting of the kalo patch next month. She pointed out pictures of Launiupoko lots of swimming pools. She stated that they have lots of fake farms. She cannot accept having this precious resource for fancy landscaping over the need for the kuleana farmers. She cannot comprehend how these are allowed. She showed the Commission pictures of Launiupoko and said this is what surface water is used for. There are some people that are actually farming. They do well, doing great things out there but she argues that majority of the development in Launiupoko is like this. Showed visual. She brought up some points as follows: Since the IFS was mandated in 1987, she commended the Commission for taking the IIFS without litigation and doing this on your own. The proposed standards are flawed. There is a presumption that all water should remain in the stream and that users need to identify their needs instead of requiring

off stream users to identify reasonable and beneficial use. The proposed IIFS appears to be unintelligible and unenforceable. The Commission brought forth a report that is unintelligible to experts much less non-informative. How exactly would this protect our Mauka to Makai flow and kalo cultivation. Kauaula is desperately needed and should not have to beg for water. Launiupoko – basically giving up on recharge to save farms. If water is still valuable, then perhaps they should use the surface water for swimming pools and plants and landscaping. Olowalu, in your report says recreational resources of Olowalu as limited. Walking the stream, walking their dogs, report is severely false and an inaccurate statement. It doesn't consider the fishing and the practices that generates from Olowalu. Ukumehame – there is currently no stream diversion permit so technically how will you continue diverting. She urged the Commission to look at the public trust, and urged to support the IIFS. Note: Ms. Lawrence's testimony – inaudible at some points. Not talking into the microphone.

Mr. Dilllon Payne – Lahaina – works for West Maui Land. Grew up in Lahaina, have family and intend to spend the rest of his life there. He quoted an old proverb – “we do not inherit the earth from our ancestors, but we borrow it from our children.” He testifies as follows: “I have 3 small kids and I intend to try and make a better place for them. I think this is a very important issue and I don't envy you. I think that it is a challenging situation that we are in. I try to look for the best in everyone and I hope that we as a community and group can come together and find common ground, and it's going to require give and take from both sides. I hope that there is more that unites us than divides us. I really believe in the strength of community. We are all part of the same community, same challenge. I also think that the Commission approves the recommendation that Launiupoko Irrigation Company will cease to be a viable operation and that would be a loss to the community. They provide valuable service. There is a hydro plant there that is part of the system that provides renewable energy. We need to come up with a better solution that will work for everyone. There are lots of misunderstandings and misinformation and better data need to be collected before a decision is made.”

Note: Mr. Payne speaking/answering the same time when Commissioner Hannahs is asking a question.

Commissioner Hannahs – what is that you are pointing to exactly that is Mr. Payne answering before Commissioner Hannahs can finish asking question.

Mr. Payne said, determining the amount of agricultural lands in the operation currently. There is a lot of inaccuracy there. He thinks that people on the ground everyday see what's going on and they can provide additional information to the Commission that might be valuable in the decision as opposed to just create intermittent data points.

Commissioner Hannahs asked if he was comforted by the fact that staff is recommending an ongoing monitoring dialogue with the community about this.

Mr. Payne answered that he thought that the recommendations are such that they would create real problems. He thinks that the best solution might be a deferral of this decision until this study can be more informed.

Commissioner Hannahs reminded him that this decision, that was mandated is decades old. Putting a stake in the ground at some point and monitoring it to make sure of that. Because it's not based on perfect information, Commissioner Hannahs asked if that not a reasonable fact?

Mr. Payne –answered that he was not sure; it's the Commission's decision not his.

Ms. Alexa Deika – thanked the Commission for coming to Maui but disappointed that the meeting couldn't be on the west side. She supports the proposed IIFS. She also supports the testimonies of Maui Tomorrow, Sierra Club, and Tiare Lawrence. She does not agree on the IFS for Launiupoko Stream. She asked how can you call it a stream when zero water is going into the ocean. Nature intended the flow from Mauka to Makai. The Water Commission is here to take care of the water that is in public trust for everyone and not for people who come here and claim they are pioneers of farming now and they know what to do. They come here and make investments. Launiupoko is a dry area and needs a lot of water.

Ms. Mikiala Pua Freitas – kalo farmer from Waihee. She applauded the CWRM for implementing the IIFS and Ayron for all his work for getting us to this point. She has seen the importance of having the IIFS. She remembers vividly the frustration her tutu and father had when there was inadequate water flow. Waihee one of Maui's most powerful rivers was 100% diverted for a 2-mile stretch. It wasn't until 2010 that an IIFS was set for Waihee and Na Wai Eha. She has been to Kauaula and saw the struggle that Charlie Palakiko goes through on a daily basis, just to grow kalo, just to practice his traditional and customary rights to feed his family and community. In Ayron's presentation the auwai begins after that dam and is fed by a pipe and his water is controlled by West Maui Land Company. On any given day, water can stop flowing through the pipe and it's up to Charlie to figure out how he is going to get water for his loi. She heard him on the phone, begging them, calling them, demanding that he needed water. That is the reason the IIFS can help people like Charlie as his family has been struggling for years at the hands of these developers. Our kupunas were not at the table when these intricate water systems were put into place and generations of west Maui people were driven off their land had their water taken, denied their rights, their opportunity to grow kalo. Many of our kupunas were denied. So, for these standards to be set, it's not about us it's about our kupuna who never got the opportunity and for the future generations that will be affected by the decisions that we are making today. So again, she stated that she supports the IIFS.

Ms. Wahinehula Kaeo – supports IIFS. Her ohana on her mother's side come from Kaupono and her grandparents now reside in Kaupulua which is one of the very few streams that flow from Mauka to Makai without diversions. They were able to farm kalo. She supports the restoration of Mauka to Makai connectivity. It has been a multi generation struggle for Hawaiians. She would like to address the concerns on testimonies heard earlier

by simply saying take care of the people of this place first who have genealogical connection and kuleana. The loss of their crops is in no way compared to the losses of their kana. The losses of their kana have suffered over the generations of the maritimization displacement of the oppression of our people.

Gentleman speaking Hawaiian – He asked the Commission that they should really think about what is the future and what is the vision of Hawaii. What is going on is the condensation between the settler and the native people. Water is something that should sustain mind, provide sustenance for the land for our people

Mr. Dave Minami - Launiupoko Irrigation Company and Olowalu Irrigation Company. He is a system operator for both potable and non-potable systems. He is the person that gets called whenever there are issues or problems. The following briefly describes how the systems are connected. First of all, LIC delivers non-potable water for ag use from 3 sources, Kauaula Stream, Launiupoko Stream and wells. The Kauaula Stream is very important in the system. If the Commission decides to adopt staff submittal, he believes there will be some severe consequences of the action. Based on his years of experience the stream flows in Kauaula are not at the levels contained in staff submittal. He believes that flows in the stream are about 3.5 mgd. He believes that is based on the following facts. Iron Mill is on line with the system to divert. All the stream flows to the hydro plant and 2 reservoirs. From the reservoir LIC delivers about 1.6 mgd to its customers. From the ditches leading to the reservoir about 1 mgd are used by valley users, KS and back into the stream. Added to that, our system loss is at 22%. When these are added this tells you basically the stream flow is about 3.5 mgd. From reading staff submittal, it looks like it would be 6 mgd and the steam flows half the time. Based from his observation the stream flow over the past 15 years the number is not accurate and inflated. If his observation is correct, LIC will most likely stop operating the hydro plant which is a great renewable source of energy because it requires at least 3.5 mgd to operate efficiently. Based on the minimum flow of the proposed 140,000 gallons is much less than what is required for the operation of the hydro plant. LIC will likely stop diversions since the amount available for consistent use will be less than system loss in itself. If LIC stops this means potentially KS will not be getting any surface water since this is a part of the system after the diversion. The valley users in Kauaula will not get any surface water for their use as well because the main intake water after the diversion. LIC customers will not get any surface water from the stream since it is the only registered diversion on the stream. So effectively the recommendation will mean that all water will remain in the stream. Overall, if the Commission is going to do this, let's do this right. Let's make sure that the data and report is correct. So, this is done right one time.

Commissioner Hannahs pointed out the staff submittal on page 7 says that the outreach on this issue goes back to December 2016 and that on January 20, 2017 there was a Kahoma site visit, January 25 West Maui Land (WML) meeting in Kahului, on January 26 Kauaula Olowalu site visit with WML. So, he asked Mr. Minami if this is untrue or was there not an outreach by staff to West Maui Land? He then stated that the Launiupoko residents are saying they only heard about this last Friday.

Mr. Minami said that as far as the residents goes he cannot answer for them. He only got this report last week. So, we were jumping through hoops to get this information to the Commission.

Commissioner Hannahs stated that clearly the company has known since at least over a year that this was ongoing.

Commissioner Hannahs asked if any data has been shared by West Maui Land with the agencies since this work began.

Mr. Minami answered that he is sure a lot of data has been shared but may have some inaccuracies.

Commissioner Hannahs stated that staff is taking that under advisement. Staff knows that data isn't perfect but they're taking the stand based on what they have and they want to manage, monitor and have discussion about it. So, Commissioner asked Mr. Minami if West Maui Land will stand by the Commission as we make a decision and make the systems work.

Mr. Minami answered maybe we'll support, if it is liked this.

Commissioner Meyer asked Mr. Minami, about his estimate of mean flows in Kauaula. What was the number of represented as the mean flow?

Mr. Minami responded that he believed the mean flow was 3.5 mgd based on his operation of the system.

Commissioner Meyer said that would be about 60% of the Q50 flow cited in the report.

Someone from Waihee Valley, area called Kalua. "This is one place we always had water. Step on the ground there is water coming up underground. Step on the ground and water is seeping out. I go to Kauaula, Lahaina, Olowalu, step on the land, only dirt. There is no water on this land. The first thing that was taught was what was windward and what is leeward. We should learn to grow what grows there, what belongs there. I have generation of knowledge that these people who migrated here don't have. The problems that we deal with today are problems my kupuna have been doing for over 200 years. These people are complaining about 10, 20 years of investments. They bought my inheritance. So today with a statement of putting this water back into the river was a dream for all of us growing up. It was something taught to us as kids that should always be respected is that flow of the water. Another thing too, our scientist, Mr. Ayron, all his work, all his paperwork, he always went to the science first. The reason is that the information brought forward needs to be educated and needs to be used before we restore water. All he is asking for is one year worth of work. That's not even enough for him. He should have 10 years of work and should know how the water flows and what happens. You know what's going to happen the first year when we start releasing the water, all the ground that is dry, all the river that is dry in Launiupoko is going to run into the ocean because there is no vegetation and streambeds to keep the

water where it belongs. If there wasn't cement in the river where is the dirt supposed to stay. Where is the plants supposed to grow if it's continually moving down stream. I support putting the water back into the stream even if it's just for a year to see what happens. Because to count Mr. Ayrton's work out, is wrong."

Al from Olowalu Cultural Resource. He testified to ask for water for kalo and loi and to think of what your kupuna left. He said to look to the templates of old and we will begin to understand how we can move with science and tradition. It's called for at this time. (Note: did not sign up to testify, but testimony recorded. Most of his testimony was difficult to understand; too close to mic)

Linda, used to live in Olowalu on a farm, but was raised on a piggery farm. She witnessed the water flowing back during the time sugar cane was in operation. She asked why are the people in Kauaula have to suffer with the water not coming down. The farming today is meaning to make money for themselves not for the community. When we built our farming that food goes to feed the community. She supports staff submittal with additional study for 10 years.

Since there was no additional public testimony, Vice Chair Beamer closed public testimony. He asked Dr. Strauch to come up for questions by the Commissioners.

Commissioner Meyer asked if he was concerned about the mean flow being inaccurate.

Dr. Strauch answered that for the last 7 years that they have been reporting, the Q50 has been 4.4 mgd. That suggests that it's 1.1 higher than the proposed IIFS

Commissioner Hannahs asked about the Launiupoko recommendation of 0 instream flow standards and the discussions on other stream systems. Discussion was also about the discomfort the Commission has about diverting everything. Commissioner Hannahs asked if the Commission were to set a Q90 or something, would that be something meaningful to measure.

Dr. Strauch answered that it might flow for 200 feet; maybe. It wouldn't provide much in terms of Habitat. Possibly recharge with the aquifer. But the off-stream benefit or providing enough water for some agricultural uses was important.

Commissioner Hannahs then asked about the issue of enforcement. He asked if state and county officials were to sit down in discussion, could an enforcement plan be developed.

Dr. Strauch answered that there is already one gage measuring flow in Kauaula, and there were 3 gages in Olowalu and Ukumehame monitoring stream flow. Just to have a sense of what natural flows are making it to those monitoring stations. Staff is hoping to work with USGS in the coming year to establish gaging stations immediately below the Kauaula diversion. This is potential to monitor stream flow above Olowalu and Kauaula diversions to measure natural flows. We are also moving forward on more advanced monitoring equipment.

Vice Chair Beamer asked if the Commission does vote to approve and get into the enforcement and implementation aspects, are you comfortable that we will have access. Vice Chair Beamer does not want to be in a situation where staff goes and monitor, and we have the “he said” “she said” aspects of implementing the systems. He asked Dr. Strauch what would he do you to mitigate that. How are we going to make sure that whatever we decide is enforceable?

Dr. Strauch said that Ukumehame, generally speaking, is successful as the representative of Sierra Club discussed. Ukumehame, Olowalu, Launiupoko are accessible for Kuleana users. He doesn't believe there are specific restrictions to access the actual monitoring stations. On Olowalu we access from a road that is immediately adjacent. Kauaula is a little more challenging. There are people within the community that do have access. So, they could support our monitoring efforts.

Vice Chair Beamer asked if he spoke to these members on a plan for collective efforts and monitoring.

Dr. Strauch replied yes that they are working together.

Vice Chair Beamer thanked everyone who testified and that a nice amount of testimonies was heard and studies from Commission staff was presented. He said that now is the time to deliberate and asked for a motion or any further discussion.

Commissioner Hannahs' motion: “We probably never have perfect information. I think what Ayron has done in gathering information and being open about it and being transparent about reaching out for more is an important process, a great process on our part and it gives us some confidence in the information we have and then being open and receptive to the experience that we encounter. If we set the IFS I think it allows us to have even better-informed decisions, going forward, if changes are necessary. So, it's not something that we have perfect information but it's something that we must do. It's our job to set these standards so I'd like to move that we adopt staff's recommendation with a couple of caveats: 1) Launiupoko – that staff be a directive to develop a program for some type of controlled release and monitoring program so we can research the benefits to habitat of some release there; 2) to direct staff to work with stake holders to develop a monitoring enforcement program for these standards that we are setting by the end of this calendar year 2018. With those 2 caveats, I recommend that we adopt the IFS recommended by staff.”

Commissioner Balfour added that the Commission gets together with the county because we are on a collision course or we're already there and come to some kind of understanding of what they're saying and what we're saying because it's complicated. We're on Oahu. Right now, it's not working; it's not going to work till they make some changes.

Commissioner Hannahs acknowledged and accepted Commissioner Balfour's amendment and added his endorsement to it because we can wait for the county to get it right but we need to do our job and that's the problem with deferral. When they don't have the guidance

from us as to what these standards are they will make their own assumptions. We need to do our job to help them by clarifying the implementation of the Water Code.

Commissioner Balfour agreed and seconded Commissioner Hannahs' motion. He reiterated that we have to get together with the county now and come to some kind of understanding.

Vice Chair Beamer added that perhaps as a directive to staff on this particular issue the Water Resource Management Protection Plan might be the area that we might be able to reach out to the county and get work figured out. The county plan needs to roll off in the State Water Management Protection Plan. Maybe that provides a space for conversation to happen.

Commissioner Meyer commented that the point about in charge responsibilities, Commission to establish these IIFS is correct. He is a little concerned but the concept of enforce to establish new standards must be part of the program but to use a collaborative monitoring effort where you get into a he said she said situation is fought with difficulty. He would strongly recommend to our deputy director that we establish objective in controlled mechanism for monitoring. Whether we, the Commission and pay for it with USGS or do it ourselves and share that responsibility with stakeholders. On a primary basis for the subject of enforcement, it's going to be a very difficult exercise because we will have disagreements. But I certainly support the efforts in establishing the standards.

Vice Chair Beamer said that he was also in favor of the amended motions and staff's recommendations. He thanked Maui County to come out to testify. Water is truly our precious resource that brings us together and sometimes makes difficult conversations. He feels for all of our islands and community issues that we face with climate issues, global warming and decrease in rainfall. It's important that we get these issues right. We've been trying to come together and I think the conversation is moving forward. It's important. The mandate of this Commission is that we are here to protect and preserve the public trust in perpetuity and in Hawaii nobody owns the water. It's very clear. Our duty is to balance it; the most reasonable and beneficial use while protecting the public trust principles. It's really hard to the community but I think it's an important conversation for the future and he's hoping to continue bringing people together. Vice Chair Beamer voted for the motion.

Commissioner Hannahs added. The Commission must have the authority to enforce and as a singular governmental body but thinks the opportunity to monitor and help shape the rules relies on the whole community as well. If we don't have the support of the community then our enforcement job will be tough because we can't be there all the time. He thinks what staff has done and building relationships in Waimea and what staff has done here to build community around is perfect and contentious. It's really a good move. He stated that people may be disappointed of this outcome on way or the other or by what really happens when the Commission goes in the field, in the stream, but we, the Commission and staff urge all to continue to work together as a community to build stronger relationships as well as a better environment in which we all live.

Vice Chair Beamer added we have this 3-year evaluation period where Ayrone can work out to communities to find the best way to work out the best monitoring stations.

MOTION: (HANNAHS/BALFOUR)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

- 3. Request Imposing a Fine Against Landowner Olowalu Elua Associates LLC for Construction of a Stream Diversion Works and Diverting Water Without a Permit Required in HRS §174C-93 and HAR §13-168-32; Approve an After-the-Fact Stream Diversion Works Permit (SDWP.4722.6) Application for Construction of a Dam/Spillway to Divert 273,000 gallons per day Subject to Special Conditions Including Completion of a Remediation Plan; Olowalu Stream, Olowalu, Maui, Tax Map Key No.: (2) 4-8-003:108**

PRESENTATION OF SUBMITTAL: Rebecca Alakai

Vice Chair Beamer asked about the 600,000.

Ms. Alakai answered that they requested in their application 646,000, but when asked what is that water used for, how many acres. They couldn't answer.

Vice Chair Beamer asked if we had a plan.

Ms. Alakai said that there is no evidence that their service area changed. If they really need 600K that would be their argument today.

Vice Chair Beamer asked if we have an agricultural plan.

Ms. Alakai said no.

Commissioner Meyer asked if there is an understanding with the applicant as regards to the turn-around time or submittal of drawings and responses. Is there a protocol?

Ms. Alakai replied that they did submit as part of the application, the last exhibit in the staff submittal, what they proposed as in their remediation plan to fix the dam and spillway to accommodate fish passage and generally resign it so it doesn't erode or better construction design. They did submit that as part of their application.

Commissioner Balfour stated that as he read the submittal, it is his impression that they have been scheming along for a long time. There is no control and they are getting away with it.

Ms. Alakai added that they are on state lands without a permit. They now have a defective permit with PUC. They need to amend it.

Ms. Alakai said that if this passes and the remediation plan passes and if they don't do it, we can come back at a later date and it's possible that 5K per day be imposed.

Commissioner Balfour thought that if the party does what they are supposed to do, it's not the same and sounds like that is a lot of water. He stated that clearly, they are making a lot of money. This didn't sound right to him.

Commissioner Hannahs said the law provides for \$5K per day and your recommendations assess the minimum fine for \$5K for a single instance. This goes back to August 22, 2017 the day that of the notice. It could have totaled \$5K per day since then, but you stopped it.

Ms. Alakai said that it's possible from discussions in the office.

Commissioner Hannahs asked if the components can be mitigated.

Ms. Alakai answered that if they don't do the remediation plan, then we can assess a fine.

Commissioner Hannahs asked if this is being treated as a single incident. They have since receiving this and talking to you on what they can do and the mitigation plan. So, you will assess the fine, approve the mitigation plan, monitor their implementation of that plan and if there is any heal dragging then, then daily fines will kick in. He asked if they are forthcoming about the amount of water they need.

Ms. Alakai said no. They requested 646K, and they continue to divert over 2 mgd for 20 years.

Commissioner Hannahs stated that they are not being penalized for being uncooperative; you're just saying we are just going to give you the old amount.

Ms. Alakai, going back to PUC. This is a construction permit; it's not a water use permit.

Vice Chair Beamer asked about their diversion of 2 mgd without a permit.

Ms. Alakai said that is what was reported to us.

Vice Chair Beamer said based on the Commission before this that number will have to change?

Ms. Alakai answered that she hopes the work with the permit will.

Vice Chair Beamer asked that should it not be that, then would it be a repeat violation?

Mr. Dean Uyeno reminded the Commission that this was a registered diversion and it was there at one point. So, the focus here is on the construction, the reconstruction of the diversion structure. We don't know what was there before, that's why when they did build it, that's when the violation starts. That's a one-time violation. Going forward, now that the

IIFS has been set we can better enforce how much can be diverted. This isn't a water management area so we are not regulating the water use as we would with a water use permit.

Vice Chair Beamer then called on testifiers for agenda Item B-3.

Mr. John Duey stated that as far as monitoring these streams USGS is the better way to go. (Note: most of testimony inaudible; talking close to microphone. Lots of echo.)

Ms. Rosemary Duey is a representative for Olowalu Culture Reserve and request to reconsider Olowalu Associates LLC as we are one of their many recipients from their ag water system. We are very happy that we don't have to dig trenches or lay intakes and divert water personally. We get it from their system. On December 25, 2003, we received a lease of 54 acres of archaeological historical and kuleana culture sites. They are very significant sites. Within this area called Olowalu LLC property is on a 99-yr lease at a dollar a year. It's a first of its kind. The developer had made a commitment to set aside lands for the native people to continue their cultural practices. We are not farming Maui culture lands.

Commissioner Hannahs asked if her testimony that the unpermitted construction of the dam spillway was done for your benefit, for the benefit for these loi and kalo, exclusively for that benefit?

Ms. Duey answered that's the only way we get water.

Commissioner Hannahs asked about these other benefits as well for all the users of that water.

Ms. Duey answered that they used to get it from the old water system because is no way that their dam can reach the distance drop at least 60 feet down. They would have to put in their own pumps buy their own electricity which we do not have.

Ms. Tiare Lawrence is one of the people that did file a complaint and submit pictures to CWRM. She received calls from her ohana that about hundreds of gallons leaking. When she went to investigate she was surprised that this was being allowed. I discovered that there was illegal diversion being built which is the reason she testified. She documented the leakage for a few months even after she filed the complaint. Since 1999 the West Maui Land Company and Olowalu Cultural Reserve were diverting water without a permit. She urged the Commission to deny a stream diversion permit and if possible implement the fine. \$5,000 for a company like West Maui Land Company that is worth millions is only a slap on the wrist. Allowing them to get away with the minimal fines of that percent is a status quo to continue. She believes stricter fines should be imposed and brought up some points. Olowalu Water Company (OWC) is a subsidiary of West Maui Land Company applying for an after the fact stream diversion works permit. OWC continues to dewater the stream and diverts 2 mgd without a permit. In 2003 the PUC approved their certificate of public need. OWC estimated that 273K gpd

full build out. It's important to note that OWC never had rights to divert water from the upper intake. There was never agreement with the state. In 2014 to 2016 OWC reported their monthly water use from the upper diversions to the Commission. The water use was 2 mgd, nearly 10 times more than the amount approved by PUC. There is questionable use of water resource stewardship, OWC and its predecessor Pioneer Mill have been terrible stewards of Olowalu Stream waters. The upper diversion was reached decades ago. OWC had diverted water without permits for as long it had existed claiming diversion is needed to supply water to their reserve but it identifies no current usage. OWC claims the lower diversion was damaged in 2016 and therefore qualifies for exemption from the state, however, in 2015 an EIS was completed for the Olowalu town development and the water resource consultant stated the lower diversion had been on land before mid-1950s and the lower diversion dam had been destroyed by past storms. As long as she remembers as kids they always had to hike up above the upper intake to go swimming. She claims that it wasn't in use. There is an inconsistent representation about ag usage; they claim that they need 648K gpd for ag use and storm stabilization. In 2017 CWRM staff found ag and landscaping all of Olowalu not just OWC require the total of 487K gpd of non-potable water and yet OWC is diverting 2 mgd. Her next point is Olowalu Stream is a valuable cultural resource. She understands Aunty's concern about being sure that the cultural reserve does have water. She thinks that there has to be more of a holistic approach checklist and wanted to counter some of that information that was brought up. Lastly, Ms. Lawrence commended CWRM staff that they did an excellent job dealing with this complaint. It was Rebecca Alakai that was awesome at communicating and applauded CWRM for doing such a good job.

Mr. Hans Michel from Lahaina. Submits data once a month for the past 35 years. There is no water. He presented pictures of how the intake was in Olowalu. He showed pictures of inlet from intake in Olowalu. They could walk on the ditch, then over the hill. That is where he believes they are pumping water, over the hill, he didn't know. This was back in 1998. That is all he had to say, and submitted pictures. (He has a very heavy accent; couldn't understand most of his testimony.)

Ms. Lucienne DeNaie – spoke as a private citizen on the matter of the illegal construction and unpermitted use for 20 years the after the fact fee, no plea, no fines. She claims that there were dredging coral from the ocean to patch up the Olowalu landing. She estimates this to be about 15 to 18 years ago. There was a \$21K fine level what this bulldozer was working on state land. She recalls that there was a previous rupture of the stream when the earlier part of 2000. She is glad that the landowner proposes to restore some of it to the stream life and hopes that someone monitors to make it happen. She pointed out that the final EIS which in 2005 Olowalu town development reported that water was illegally diverted from the other diversion on state land where for a number of years and recorded at that time that 900K gpd was being diverted. In the same report, it said that ag use in all of Olowalu at that time was for 50 acres. The question is where is all this water going? Should they be cited for wasting water? What has been happening to this water? There was no mention of the kalo needs in this report. During that time people were telling water is being wasted yet there wasn't sufficient flow all the time to the streams. In that same final EIS for that 1500 urban proposed development the number 651K gallons

comes up as the means for non-potable water, so that may be where that number came from. No specific amount was reported in that report, only on the news. In fact, there is a chart of every kind of use for non-potable water. Only 75K gallons was assigned to the general category of ag. It's assumed that some of the demand will be met by a sewage treatment plant, 400 million gallons and the rest from the stream. But since we had some kind of match with this number of 650 mg for this proposed development need, she certainly hopes that the Dueys are being given false promises for future water by the landowners because there is nothing in the final EIS that specifically say any amount was being promised that the culture reserve more water will continue. Conclude by saying the Olowalu development as it stands now is 14 residential ag lots and 27 additional lots. The big thing is 300 ac of cattle pasture. We have to question, how much water should we allow for cattle pasture and how long will that cattle pasture going to be there. Remember that subdivision said they are only going to use 160K gallons including the culture reserve existed that time. She is in support of fining these folks. Dueys are good friends and she understands that they want this water and should have the water, but she thinks the fine is a separate matter. It seems like \$5k is trivial.

This person did not state his name and testified that he is against the applicant receiving an after the fact permit. He should also be fined.

This person did not state his name and believes that the Commission is being taken advantage of. He stated that there should be equality and asked that the Commission be brave and be real to stand strong, to set the precedence so in the future this doesn't happen again.

Mr. Keeaumoku Kapu from Lahaina. The illegal diversion needs to be cleaned up and restore the stream to its pristine condition so the cultural reserve can benefit the use of the water. The Commission's kuleana today is to make sure that law is applied in its utmost and he encouraged this party to make sure to stop the nonsense of the after the fact permits. He encouraged this body to look, if they had broken the law, apply the stream conditions of the law on them so this will serve as an example for other entities that try to do the same thing.

Mr. Albert Perez – Maui Tomorrow. He feels that Items B-3 and B-4 are quite serious violations. Fines need to be higher so they are not considered the cost of doing business. Fines need to be high enough to cause prospective water usage to see permits up front. If it hadn't been for Hawaiians exercising their rights and accessing this valley this would never have been discovered. Olowalu Water Company continues to dewater the stream and divert 2 mgd every day without a permit. After they were told that they shouldn't be doing that. He feels the fine should be much higher. A quick calculation \$5,000 per day from August 2013. That is 1,723 days = 8 million 615 thousand dollars. He believes that a fine of this magnitude would be appropriate and would send a much clearer message.

Commissioner Hannahs asked a question to staff. We have 3 issues here. Encroachment of state land, construction without a permit and excessive pumping diversion way beyond the PUC permit. Are we only looking at the construction?

Ms. Alakai stated that the upper diversion that was a State Land Board issue because it's on State land. They do have a registration with CWRM. So, from our perspective because they had registration back in 1987 they're ok. They didn't have a revocable permit from the Land Board.

Commissioner Hannahs asked if the encroachment issue off should be taken off?

Ms. Alakai said yes. In 2016 when there was that big storm, that's why they went down to the lower diversion. So that's where we are now; it's just the lower diversion.

Commissioner Hannahs asked, so we're not dealing at all with the 2 mgd pumping that they reported to staff?

Ms. Alakai answered that they reported 2 mgd for 20 years to us. That's in our records as well as the staff submittal.

Commissioner Hannahs asked why is that not an issue.

Ms. Alakai answered that it's an historic diversion and that's how much they've always diverted.

Commissioner Hannahs knows that is what they are diverting and they said that they reported that they have a permit with PUC to divert. He asked about the excess and if we should be concerned.

Dean Uyeno answered that we didn't have a measure of instream flow standard. That was based on what they were diverting and based on what they registered back in 1989. So now that the instream flow standard is set, we can better regulate how much they can take. They are basically allowed, going back to 1989 and from 1978 when the Water Code was enacted there was a period when to register your diversions. In 1990 west Maui had set at status quo. So, whatever was taken at that time was the diversion. He couldn't recall exactly what number they had in their registration for diversion but they could take up to that amount without any modifications. Come with the storm, the upper diversion was damaged so the that amount was switched to the lower diversion. The IFS is not specific as to location, it's just that as long as they stay within whatever was registered. To us, for the Commission, both diversions were registered, they were allowed. Now that we have an IFS, we can better regulate how much they can take or what needs to be released downstream. This permit is to regulate, what they can take.

Commissioner Hannahs asked the relevance to the PUC permit.

Ms. Alakai said that it was an indicator to their service area, what they needed, what they told another agency.

Commissioner Hannahs was trying to sort out what is relevant to the decision we have before us.

Mr. Uyeno stated that in Rebecca's presentation it determined exactly what they needed. Previously, what they had before what was on the application now and what they asked for from the PUC. So, we question the number and he believes she said that we didn't get a response from them. So, we're going to rely right now on the PUC amount of 273,000gpd.

Ms. Alakai said that they asked us for a stream diversion works permit for 600K gallons but they couldn't justify the amount.

Commissioner Hannahs understood that part but didn't understand if we are using as a bearing as to how much they diverted and how an IFS is set. He asked if using 273 not for setting an amount they can divert is just a reference point? He said they are diverting a lot more than that so why is that a problem. They are diverting 2 million.

Commissioner Hannahs stated that we're not trying to make a case that they lower diverted water based on their need which is what is suggesting. We're just trying to use that 273 as a baseline where they can in the future divert. Since they haven't been told that, there is no infraction that we are penalizing them for. The only infraction is the construction without the permit.

Vice Chair Beamer stated that if they didn't have a leased agreement for the diversion they never had a permit for the diversion on state land. So why are we saying it was registered. Why can they continue to utilize this if they never had a permit.

Mr. Uyeno stated that previously it was Pioneer Mill and not aware of whatever issues was for that back in 1989.

Ms. Alakai said the amount of water was for sugar. When sugar left in 1990s technically, they still can divert that amount because the IFS was status quo. It was informational that they continue to divert 2 mgd. They informed PUC they only needed 273 at full buildout.

Mr. Uyeno said that typically for a new diversion, they are required to get the land owner's permission, right of entry. In this case it's different because Pioneer Mill was the one that the Commission registered. There was an ownership change. Responsibility for the diversion exchanged hands. Olowalu should have gotten the revocable permit from the Land Board or Land Division. According to the submittal the information is that that was never executed. Right now, if they want to use that upper diversion they will need to go through the process; the same process that East Maui Irrigation is going through. Other folks that are diverting water through the State, trying to apply to a-long term water lease.

Vice Chair Beamer stated because Pioneer Mill owned it at one time, they registered the diversion. It was registered under Pioneer Mill and because of the new entity, the new entity inherited that even though there was no revocable permit.

Ms. Alakai stated that the upper diversion was for background. When they came to the lower diversion that was registered but it was not in continuous use. There was a photo in 2013 there was no diversion; it had been abandoned, washed away decades ago, they don't know when. So, when they came in to build it in 2016 they needed a stream diversion works permit. They did not get this. They constructed a stream diversion without a permit.

Vice Chair Beamer asked if they get the permit from us, whether we deny the SCAP?

Mr. Uyeno said that they went to the Army Corps and couldn't get anything from the Army Corps because they were under repairs, and maintenance.

Ms. Alakai said that the Commission inquired at OCCL and was silent on the issue if they needed an EA or not. They didn't make any inclusion regarding an EA because the stream diversion is technically in a conservation district. So OCCL said that according to their administrative rules, they're an existing structure.

For us we view the structure was not there. So, there was an intake still there. Some of the walls around the banks of the diversion are there. The dam itself blocking the stream was not there.

Vice Chair Beamer stated in terms of that lower diversion now and being built without a permit, SHPD in the submittal is requesting us not to grant the permit. If it was a historic diversion wouldn't it have been registered?

Ms. Alakai said the walls are still there; not the spillway in the stream. She speculates Pioneer Mill or someone did at some point but we don't have that information. There is some information on the length and width. There is no information on the height. So the height allowed Olowalu Water Company to divert 2 mgd at the lower diversion. She thinks the height of the spillway is more relevant to what their permit should be. As part of the remediation plan is to create a dam spillway that is constructed more appropriate to the amount requested. They put in a spillway/dam. There is no information anywhere about the height of the dam. In fact, in the registration in file for Pioneer Mill back in 1989, there is no mention of construction dimensions or amount diverted.

Commissioner Hannahs asked if there was any representation by Olowalu?

Mr. James Geiger - on behalf of Olowalu Elua stated the reason they are present is not because these were unregistered diversions. They are all registered. The company was diverting when the diversions were initially registered. Because of the catastrophic event in June 2016 it washed out the diversions in Olowalu. It washed out almost the remaining lower diversion. Portions of the diversion existed up through it being washed out in 2016. He urged the Commission to take a look at the application that was submitted. There are a number of things that is in there that answers some of the questions asked. Was the dam identified by SHPD an archaeological site? The answer is yes. Attached to the application

is a portion of an archaeological report in the area and identifies this diversion as an archaeological site. It has the length, width but does not have the height. But that's not unusual because they don't usually put that type of equation in an archaeological survey. They put in what they find, dimensions. So, we know it existed, we know that what it existed in 1998. If you look in the beginning application you will see what is in there now because photographs are included of what they did. Mr. Minami who was involved in the reconstruction of the lower intake will tell you what they did was they took the portion of the structure that was still remaining and they matched that structure. They didn't try to go higher, they didn't go lower. They just matched what was there because they were doing a repair. Should they have come to CWRM and said that they needed to do this repair, yes, they should have. But what they did was they first went to the Land Division because that was where the intake was and they believe they said we have an intake they want to repair. Land Division asked if there was still a lower intake. The answer was yes. They then asked why not just repair that; and that's what they did. They also checked with the Army Corps of Engineers (COE) to make sure that what they were doing met with the requirements. COE said yes, it meets with their requirements. And so, they did what they thought was appropriate. They should have also gone to CWRM and inquired if they need a permit. But you have to remember that point in time they didn't have any water. They had customers and people including cultural resource center that they needed to serve. And so, what they did was went ahead and made the repairs so they can get water to the people. Should they have gotten the permit, yes. They didn't; that's why we're here for an after the fact permit, a construction permit. They were not there to make a diversion, or replacing. They were present because of the after the fact construction permit.

Vice Chair Beamer asked that Land Division said you have the lower diversion, and you can do that? Do you have a revocable permit to the lower diversion?

Mr. James Geiger said they didn't need it because it's on private land, not on State land. They did go to DLNR and apply for a revocable permit. They applied when it was Pioneer Mill. It didn't get processed. We would have to apply in 2004, 2005. Unfortunately, this fell off the table. People forgot about it, didn't get handled, renewed. But they did take steps initially to try to get it done. They did take further steps initially to get it done. There's been some questions as to why they have 648K. Their users and what is charged to customer rates is approximately for 270K. But in addition to the permit they also deliver or allow people to take water from the system for cultural resource. The approximate balance is 550 gpd. So, they asked for 643K which would not quite but almost cover all the needs including the cultural resource people. The point is when you establish the IIFS we're stuck with the IFS. And that's fine. Since that is the Commission's ruling, they will have to live with it. It will create a hardship, for cultural resource but that's is not the issue so they will determine that issue later. They are happy that you are requiring a remediation plan. We think we can come up with a remediation plan and want to make sure that we address the required issues, the present issues. He pointed out one thing that people don't seem to recognize. Since the upper diversion washed out and that design was where most plantations resides. Effectively, they take all the water out of the stream. The design of the lower diversion is not like that. It is only to take a portion of water and that's what was done since 2016 when the repair was made. They have not diverted golf water from the stream.

The other thing that has happened is that as a result of this process they tried to get a much better understanding of what was actually being diverted. They know what is being used. Because what the system does before, even when water was taking from the upper intake, water would be diverted and the other returned to the plantation ditch system. But the upper reservoir overflows in where the lower diversion was and then the return to the stream at that point. Now they are removing, diverting water from all the diversion and returning the excess, whatever is not used for cultural resource, not used to our people, other customers. They have established a measurement to better handle on what is being diverted as opposed a guess. They installed a measuring device. They later amended all of our diversion reports recently and provided that to the Commission. They now have a better understanding on what is being diverted. He didn't have the numbers but he knows that is less than a million gpd. He believes it's closer to 600,000, not 2 mgd. There is a under wash in the structure that could undermine the structure. We need to address that so that the structure does not cause further damage. And also, there is a need to address it so that there is a method by which the aquatic life can get upstream. That's part of the remediation part of the application, that's what they are trying to do. They are trying to address these issues and looking forward of being much better at knowing how much they are taking, knowing how they are going to take, making sure they take only what is needed. They have employees that have been running the system for 15 years and have the best information of anybody about how things run. He's the person who is responsible for making this work and has been making it work. They believe that SHPD comments were misinformed. They don't agree that this is a new structure because the structure existed. Portions of it got washed down at various times. But it was put back as best could back in 1998. Mr. Geiger asked the Commission to approve the after the fact permit. Mr. Geiger said that he understands that the fine will be imposed and recognizes that. At this point the statute does say maximum \$5,000 but at this point the administrative rules say up to \$1,000. He knew that the Commission went through public hearings to change the administrative rules to match the statute, but did not believe those things have been fully implemented. Mr. Geiger questioned if the Commission has the authority to exceed what is in the permit.

Vice Chair Beamer asked Mr. Geiger that the Commission asked him to provide the amount of water that is being diverted to the lower diversion in 1989 without water diverting now. He stated that the response was that there was no record from Pioneer Mill the reporting of water from 1989 to 1999. Mr. Geiger also responded that Olowalu Water was not diverting any water from the lower diversion until November 2016. The intake was Olowalu Water's backup not in active use. The current amount diverted is 2.3 mgd.

Mr. James Geiger answered that during the time it was completed that is not what they are here for today. That would be for a new. They were asked by staff to apply if this were new construction because diversions have not been done for a couple of years. Pioneer Mill reported diversions at Olowalu combined the upper diversion to the lower diversion. So, they don't have any records of Pioneer Mill as to what they actually diverted from each diversion. They know that according to the records that Pioneer Mill submitted to the Water Commission that they had a combined diversion of those 2 diversions. That was the basis for what Olowalu's reporting is based on, Pioneer Mill's information. Since this has happened, they had discussions and reached an agreement with Commission staff, they

completed a measuring device so that they can have a good amount of what is being diverted from all the diversions and based on that now they have much better information. The application is based on the information obtained from Pioneer Mill. They have since amended because they have a better understanding of what is being diverted.

Commissioner Hannahs stated that if you take away the historical information, it's not relevant to the issue before us. He asked if Mr. Geiger agrees with staff recommendation except it should be \$1,000 instead of \$5,000?

Mr. Geiger answered yes and to consider approval of the after the fact permit. He also recommended that they enter or agree upon a remediation plan. He agreed with that.

Commissioner Hannahs stated that we can point fingers all day long on what was done in the past. For today, the IIFS that was set today, you are a key stakeholder in this. Perhaps you're here there are lots of work that can be done to build relationships and also to understand the release of water in the stream is going to work, how will the water be delivered to. So, we appreciate the fact that you are here and we hope for cooperation in the future. We are going to try to make this work for the benefit of the environment that we are all living in as well as the meeting of humans.

Mr. James Geiger stated that he appreciates that and hope that the Commission understood the representatives of the water communities who testified.

Vice Chair Beamer thought about those who have appurtenant rights, there might be some work to be done there. He didn't feel super comfortable if a permit should be granted, a permit that those are the people that will be cut off.

Mr. Geiger stated that now an IIFS has been placed, we will get only 273,000. The customer based for Olowalu Water as by PUC, we requested in this application enough to cover, but he is not certain it will. They would like to accommodate them, but the IIFS is at an over amount. He anticipates that this will be a problem.

Dr. Strauch said there was a distinct justification for putting the monitoring site for the IIFS that people at USGS station amount is below the return of water from the loi. So that more water can be diverted than the 273K, given that eventually the water will return back to the stream. (about 80% of the water). So, the ability for Olowalu Cultural Reserve to use water shouldn't be hampered by the IIFS. Because the IIFS point of monitoring is below the return of water.

Mr. Geiger stated that is fine. That means we can't take more than 273 mgd even though the IIFS is measured below.

Dr. Strauch stated that he was not quite clear why the construction has an amount you are allowed to divert. We don't usually do that unless it's a surface water management area.

Mr. Geiger stated that the staff report recommends that only that amount can be taken. If the Commission understands that that amount can be taken as long as we hit the IFS that won't be a problem. They don't want to have an enforcement action because they are doing something that someone else said it was ok to do.

Dr. Strauch said that from an instream prospective we only can measure from the stream not what it's taking out.

Mr. Uyeno said because this is a stream diversion permit, yes, we can determine the amount the diversion can be.

Vice Chair Beamer asked if it is certain the taro cultivation, taro farmers are not going to be affected with Ayron's solution where we measure the IIFS.

Mr. Uyeno answered from that perspective he would know best. To increase the amount of diversion, because of the return flow he deferred to him.

Commissioner Hannahs asked basically they're taking 273. Is some of that is going to the loi kalo? 80 percent of whatever the loi kalo uses will come back into the stream?

Mr. Uyeno stated the point is that and this is what we were not aware of was that 273 is for their paying customers.

Mr. Geiger said that they are presently delivering 171K gpd together with the system losses it is roughly at 210 and so that's why they had the condition that 648 was asked so that cultural resources would have the service.

Commissioner Hannahs commented that we have to watch this, so right now seems like it's not a problem. As you continue to buildout as additional need if we learn more about the losses after the loi use.

Mr. Geiger said that the 273K have the diversion that's going to leave about 30K for cultural resource. That's why he thinks the Dueys were here and the head of the cultural resources telling you they need water.

Commissioner Hannahs asked Mr. Geiger if he will need 500K?

Mr. Geiger answered that 643 K is what they asked for.

Vice Chair Beamer stated that they didn't have that transferring from staff. They didn't have the acreage report submitted showing the cultivation of crops.

Mr. Geiger said that they don't know how long the amount was being used. They were the actual user and can make estimates. We can't tell you how many acres. We don't have that amount.

Vice Chair Beamer asked Deputy Attorney General if we are good on the \$5,000 fine.

Deputy Attorney Julie China answered that because they went to public hearing to amend the rules fine amount to \$5K but it hasn't been passed yet, the current rule needs to be followed plus the \$500 administration fee.

Vice Chair Beamer asked why is it not \$1,000 per day?

Mr. Uyeno answered that it's the higher fine.

Commissioner Hannahs questioned but the assessment of one incident not the daily fine. What is the rationale to that?

Mr. Uyeno answered because this is for a construction permit; it's not for a violation and not getting a permit.

Commissioner Hannahs stated: "on the recommendation on Item 1 delete the word constructing. Delete the whole thing? It was a repair not a construction. So, #2, does it cover the permit violation that they did the repair without a permit? The suggestion is if it was new construction to delete Item 1 altogether. And that will be the fine is based on the repair without a permit which is covered in the statutory references in Item 2. That is a question, not a statement."

Mr. Uyeno answered yes, should be solely on the fine.

Commissioner Hannahs asked for Item 2 just sets the amount of the fine. It wasn't for construction it was for the repair without a permit?

Mr. Uyeno answered that in our mind from the evidence that we have is that the dam itself was not there in 2013. The wingwall was there, the sluiceway was there, the dam itself was not there.

Commissioner Hannahs asked if it would be preferred to see #1 left intact? It doesn't affect the outcome?

Mr. Uyeno said it was correct.

Commissioner Hannahs said to leave recommendation 1 as is. Change recommendation 2. In HRS 174C-93 (read the statute).

Mr. Geiger made comment that the only thing he is concerned about is the word "new". That may handle all the issues. Our concern is the implication is that it's new, but it isn't new.

Vice Chair Beamer asked if there is a record that was mentioned about going to DLNR and asking them to move to the lower diversion. He asked Mr. Geiger if he had evidence of that or recorded.

Mr. Geiger said that he did not have records. Mr. Minami will attest that he had meetings with management people.

>>>?? Can't hear.

Commissioner Hannahs went back to recommendation 1. If we strike the word new in #1. Change \$5,000 to \$1,000 in #2. And #3 we put diverting 273K gpd plus sufficient quantities to support the cultural uses. He asked if that would work. Make the remediation plan #4. Staff recommendation #3 would just be amended to striking the word new and adding making cultural uses are subject to the limits of the IFS but are accommodating.

Mr. Uyeno suggested that 3b delete the last sentence – Lower the dam/spillway height sufficient to divert 273,000 and keep #4. That's where the repeat violations.

Vice Chair Beamer asked how did we get the \$5,000 amount?

Mr. Uyeno said that was the higher amount.

Ms. Alakai said the \$5,000 is from the statute.

Commissioner Hannahs stated that our administrative rules have not caught up with the statutes. Summarized for the record: Retain Recommendation #1, delete the word new. Recommendation #2 change \$5,000 to \$1,000. Qualify #3 to the purpose of diverting 273K gpd plus sufficient quantities to support the cultural uses. Delete the last sentence of 3b, Lower the dam height.

Commissioner Hannahs made a motion to accept staff recommendations with amendments.

DOH Designee Joanna Seto seconded

Commissioner Meyer recused himself

Commissioner Balfour – abstained

Vice Chair Beamer – motion doesn't pass; 4 is needed for quorum

Ask AG – once recuse, cannot change.

Vice Chair Beamer asked for a short recess.

Vice Chair Beamer stated that we could wait for this and wait for the administrative rules to catch up. He asked when will the administrative rules be passed.

Deputy Director Pearson answered that at the April Commission meeting on the Big Island, we will be bringing the final approval to the Commission to revise the administrative rules to be consistent. So, the administrative rules and 174C will be coming forward. If that is

part of the issue and this item does not pass today, we can bring this in front of the Commission another time which the administrative rules will be consistent with the statutes.

Commissioner Balfour commented that he will not be changing his vote. He had a problem from the beginning and it hasn't been solved.

Vice Chair Beamer said he feels like it might be a better solution to take this up after the new administrative rules have passed.

Vice Chair Beamer said the motion fails and will defer to another time.

MOTION: (SETO/HANNAHS)
UNANIMOUSLY APPROVED TO DEFER TO A NEXT MEETING
MOTION PASSES

4. Request Imposing a Fine Against the Landowner Bock Family Revocable Trust for Altering the Stream Without a Permit Required in HRS §174C-71 and HAR §13-169-50; Approve an After-the-Fact Stream Channel Alteration Permit (SCAP.4700.6) Application for the Installation of Two Road Structures and Culverts and about 800 Feet of Channelization Subject to Special Conditions Including Completion of a Remediation Plan; East Kuiaha Stream, Ha'ikū, Maui, TMK: (2) 2-7-012:254

Presentation of submittal: Rebecca Alakai

Vice Chair Beamer asked if we were made aware of a complaint. Is the person in violation been in contact with us since we notified him?

Ms. Alakai said yes, they did turn in a SCAP application in the timeline. This is an after the fact SCAP, and said that we want them to do a remediation plan regarding the channelization and the culverts that they built. We don't know if it is safe in terms of any storm flows. There wasn't any engineering done on the design.

Commissioner Meyer asked where did the pictures come from and was the stream diverted during construction because there doesn't appear to be any water in the stream.

Ms. Alakai said she didn't know. She thinks it may have been done in the winter. According to our records the Hawaii Stream Assessment, prepared by the National Park Service and DAR is the source of stream descriptions. That East Kuiaha is a perennial stream. Other sources would say it is not perennial. Not sure where the pictures came from.

Ms. Audrey McCouly showed pictures of downstream property and said this has been going on for 5-6 years. She watched the development adjacent to her property and is concerned about the stream. She trusted what's going on to be correct. She then called Ms. Alakai. She stated that this hasn't happened before when living there. The cottage is her income. People living in the cottage were concerned. Talked to the property owner and working to

get it fixed. She had an engineer come and stand in the stream and tell her how to get this silt out and she paid thousands of dollars to get the silt out of the stream so that there wouldn't be so much flooding, but now there is still flooding. In January, it flooded. She can't leave her property when it rains, not regularly but several times a year. This is becoming more of a problem. When more development occurs down-stream properties gets affected. She thinks it's terrific if there is going to be guidelines.

Albert Perez – Maui Tomorrow Foundation didn't understand the section of the gravity components. He read the calculations on page 7: "if one or more of the gravity components are met, a daily fine will be imposed." There was a gravity component. He was confused as to why the Commission is not assessing more than just a single fine. He thinks there should be daily fines and encouraged the Commission to do that. If you don't currently have the power according to the statute or administrative rules, he said that it would be something the Commission could do to try to make a change. Go to the legislature, get more power to do this kind of stuff. He feels that these situations are just a slap on the wrist and it's an incentive to disobey the law. He asked the Commission to please consider that. He doesn't know if it's true or not, but because there is a gravity components involved here in this case where it says there is a violation where no permit is issued and no prior permits have been issued or no permits required. Also, no permit is on file and on property. That to him daily fines can be assessed. The same argument would apply to Item B-3.

Commissioner Hannahs asked Ms. McCouly if she filed a lawsuit for values to the Commission?

Ms. McCouly replied if remediation works, it may be small.

Commissioner Hannahs to Ms. Alakai – seems like there is a problem here that creates a relevance for the daily rate to apply here because it has a condition that every day creates a risk, while it exists. They did this without a permit. They created a situation now which has an ongoing risk every day it exists. Wouldn't that be relevant to apply that here?

Ms. Alakai stated that in a previous enforcement action, the staff was trying to implement daily fines and the Deputy Attorney General had issues with that. The guideline is recommended. The administrative rules are mandatory and when we brought the daily fines, they said it needed to be better defined. Even though these guidelines have been around for a while and these guidelines are similar, not as robust and DOH but similarly structured to DOH. The attorney general's office has issues with the definitions of daily fines. Maybe this needs to be better defined.

Commissioner Hannahs stated that as we go forward with the discussion of the administrative rules and aligning the amount that we can fine to statute will this issue be covered as well and putting some clarity as to when the daily fine applies and when it doesn't.

Deputy Director Pearson stated that in a case that we are going through right now on the revisions to the rules, we are not addressing that topic of daily fines. We're just revising the

rules to be consistent with the \$5,000 fines and we are also making a change to the permit fees for well permit applications. It's \$50 to \$300. Those are the only 2 items we are doing with this set of rule changes.

Commissioner Hannahs asked if he agreed or feel a need to clarify the daily rate issue.

Deputy Director Pearson answered yes. It's been confusing and in the past we had other violation issues where it was difficult to give a strong case on the daily fines. There was one daily fine to John Duey, that was for many reasons that wasn't administered.

Ms. Alakai said that there were ground water issues several months ago, that tried to do daily fines and it didn't fly.

Deputy Director Pearson said the Commission looked to that the damage daily and didn't see that, but staff argued that there could have been damage. The Commission didn't see it that way and looked not to apply daily fines.

Commissioner Hannahs suggested that it should be clarified.

Deputy Director Pearson added, or defined better.

Ms. Alakai commented that perhaps in surface water it's easier to see damage because it's above ground. Daily fines would be good. She is not sure how to get there.

Vice Chair Beamer stated that the next meeting of the administrative rules will be coming forth to the Commission and address amounts that some of the Commissioners were not happy today. We have seen the return of waters to the stream. It's obvious the enforcement part needs clarification. So we're figuring out where the next steps are. You can see examples here where it is dangerous to the public, people as well as the oopu and other stream life.

Since there was no other testimony, Vice Chair Beamer asked for a motion.

**MOTION: (HANNAHS/BALFOUR)
MOVED TO DEFER THIS ITEM UNTIL WE HAVE CLARITY IN THE
ADMINISTRATIVE RULES.
UNANIMOUSLY APPROVED TO DEFER**

C. NEXT COMMISSION MEETINGS (TENTATIVE)

April 17, 2018 (Tuesday)


May 15, 2018 (Tuesday)

This meeting was adjourned at 6:08 pm.

Respectfully submitted,


FAITH CHING
Secretary

APPROVED AS SUBMITTED:


JEFFREY T. PEARSON, P.E.
Deputy Director

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Amendments to the Minutes of March 20, 2018 Commission on Water Resource meeting

Page 2, typed line 3 where it starts: Before commencing. It was noted that Chair Case's contested case statement be included. The following is the Chair's verbatim contested case statement:

In some of the matters before the commission a person may wish to request a contested case hearing. If such a request is made before the board's decision then the board will consider the request first before considering the merits of the item before it. A person who want to contest a case may also wait until the board decides the issue then request the contested case after the decision. It's up to you. Any request must be made orally by the end of the meeting and followed up in writing within 10 days. If no request for contested case is made the board will make a decision and the department will treat the decision as final and proceed with the rule. Anyone that is going to make a request, let us know.

Page 16, line 10 of Mr. Archie Kalepa's testimony – correct typographical Kahome to Kahoma.

Page 17, line 1, correct spelling of Hokuleia to Hokulea