

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: November 17, 2020  
TIME: 9:00 am  
PLACE: Online via Zoom  
Meeting ID: 950 4687 7473

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:01 a.m. and stated it is being live streamed via YouTube for public viewing due to the ongoing Covid-19 pandemic and noted the meeting was set to take live oral testimony and any written testimony would be acknowledged when the submittal items come up. Chairperson Case also read the standard contested case statement.

**MEMBERS:** Chairperson Suzanne Case, Dr. Kamana Beamer,  
Mr. Michael Buck, Mr. Neil Hannahs, Mr. Wayne Katayama,  
Mr. Keith Kawaoka, Mr. Paul Meyer

**COUNSEL:** Ms. Lauren Chun; Ms. Cindy Young

**STAFF:** Deputy M. Kaleo Manuel, Mr. Roy Hardy, Mr. Dean Uyeno,  
Mr. Ryan Imata, Dr. Ayrton Strauch, Ms. Rae Ann Hyatt

**OTHERS:** Mr. Colin Lau, Deputy AG (DLNR), Mr. Rainer Bock,  
Mr. Stacy Otomo (Otomo Engineering), Mr. Paul Mancini  
(Mancini Welch & Geiger), Mr. Mike Faye (Kekaha Agriculture  
Assoc. (KAA)), Mr. Joshua Uyehara (KAA), Mr. Isaac Moriwake  
(Earthjustice), Ms. Kylie Wager (Earthjustice), Mr. Andrew Choy  
(Department of Hawaiian Home Lands (DHHL)), Ms. Natasha  
Baldauf (Counsel for DHHL), Ms. Myra Kaichi (Agribusiness  
Development Corporation), Ms. Dawn Huff (Kaua'i Island Utility  
Cooperative (KIUC)), Ms. Kelsey Yamaguchi, (Counsel for KIUC),  
Mr. Van Kawai Warren

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

**20201117 00:02:05**

**A. APPROVAL OF MINUTES**

October 20, 2020

PUBLIC TESTIMONY – None

**MOTION: (BUCK/HANNAHS)  
To approve minutes as submitted  
UNANIMOUSLY APPROVED –  
(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER)**

20201117 00:02:50

**B. ACTION ITEMS**

**1. Delegation from the Commission on Water Resource Management to the Chairperson To Approve 10-day Filing Extension of Requests for Hearings Pursuant to HAR §13-167-52**

PRESENTATION GIVEN BY: Mr. Ryan Imata, CWRM Groundwater Regulation Branch

Mr. Imata presented background information and stated the Hawaii Administrative Rules §13-167-52 which establishes the deadlines for requests for contested case hearings. He also noted that *the commission may extend the time for submitting a written petition for an additional ten days if necessary*. Delegating authority from the Commission to the Chairperson to approve 10-day extensions for the filing a written petition would resolve this issue. The Chairperson would be able to determine, on behalf of the Commission, if the 10-day extension is “necessary” as set forth in the rule.

QUESTIONS

Commissioner Buck – asked for example of people making an extension request.

Mr. Imata – noted it wasn’t the same, but a request was made by Michael Biechler of Protect Mokeleī‘a Hui for an extension to provide additional information after the initial filing, regarding the Dillingham Water Use Permit Application #1088.

Commissioner Katayama – asked if in the statute the written submission cannot be amended once submitted?

Mr. Imata – maybe AG’s should weigh in on it but interpreted that they just need to submit a written petition. I can’t imagine that staff or the Commission can’t ask for additional questions on the petition, so perhaps granting authority to the Chair would assist the Commission in getting more information from the petition once it is brought to the Commission. However, not sure if the statute explicitly says whether they can’t provide information *after* the initial filing.

Commissioner Katayama – noted the current statute of the application is 10-calendar days

Mr. Imata – yes, it’s not “working days” but 10-calendar days and sometimes it falls on Sundays and its difficult when the Commission only meets once a month.

Commissioner Katayama – so it can't be interpreted that if there's a request for an extension, the time between the request and the next Commission meeting, the clock stops running.

Mr. Imata – I don't think the clock stops as the rules specifically says it's 10-days and another 10-days; so 20-days after the close of the public hearing or the Commission hearing.

PUBLIC TESTIMONY – None

*Chairperson Case asked the Commissioners for a motion for item B-1 as submitted*

**MOTION: (BUCK/MEYER)**

**To approve B-1 as submitted.**

**UNANIMOUSLY APPROVED –**

**(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER)**

**20201117 00:10:59**

**2. Approval of Stream Diversion Works Permit Application (SDWP.5349.6) to Abandon Registration of Stream Diversion Works No. 1081, Norman Stubbs 'Uaoa Stream, Ha'ikū, Maui, Tax Map Key: (2) 2-8-002:223**

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection and Management Branch

Mr. Uyeno provided the summary of request and provided background information on the submittal item.

'Uaoa Stream is a perennial stream about six miles long and is the only stream in the watershed. It is an ungaged stream and an unranked stream in the Hawai'i Stream Assessment (1990). The project scope is to formally abandon the subject registered diversion, described as use of water "carried in a bucket." No work is proposed. There were no comments or objections received by other agencies and no traditional or customary practices will be affected. Chapter 343, HRS is not triggered as no work was done to the stream. Removing this registration from active management should not interfere with any instream or non-instream uses. There are three registered diversions located downstream and one registered diversion upstream from Mr. Stubbs' property.

Mr. Uyeno read the staff recommendation to the Commission.

**QUESTIONS**

Commissioner Buck – I have no problem with the approval of this as well as B-3; complimented the landowner for following due process however noted "hand-carrying"

buckets of water and the paperwork portion of the process feels like it doesn't need to come before the Commission.

Commissioner Beamer – Mahalo Dean; I agree with Commissioner Buck. Asked if there were improvements to the stream or infrastructure placed? Wondered why the landowner needed to file a permit as such if they're getting water from "a bucket?"

Mr. Uyeno – noted going back to the registering period, people registered anything and everything, whether taking buckets of water, cows drinking from the stream, other infrastructure, and/or recreational uses, people wanted to protect their rights. There was outreach especially to Native Hawaiians to reserve their rights. We did receive a lot of forms simply stating they reserve the rights to these waters, listed the TMKs and stated the various reasons. The contractors at the time focused on whether it was physical diversions of the water or removal of water from the stream. There were instances where cows or hand-carry buckets were categorized as Category 1 diversions and this is an example.

Commissioner Beamer – so this was with our staff for quite a bit of time, what's making it priority now of how we're getting through it as I agree with Commissioner Buck, this shouldn't be a Category 1.

Mr. Uyeno – our main focus is to get the water user to report so we focused a lot on the large irrigation systems. Our next steps are focusing on areas that have an IIFS set. Ha'ikū is part of East Maui where we are working on and our next area is Windward O'ahu, as we're looking at developing instream flow standards on O'ahu and moving forward on other areas and to get people to report their water use.

Commissioner Katayama – just wanted to be clear there was no alteration to the stream? It was just a request for removal of water?

Mr. Uyeno – when staff inspected in 1993, nothing was found. Staff wasn't able to access the stream at this point because there's no trail down to the stream channel and as far as we know, nothing was developed in the stream channel itself.

Commissioner Katayama – how do you define a diversion?

Mr. Uyeno – removal of water from the stream; that was the definition back when the registration database was developed

Chairperson Case – this was early on before we sorted this out and folks were registering these but it doesn't rise to the level of needing to report so if had to, might as well do your abandonment and get off the list. Is there a motion to approve B-2 as submitted?

PUBLIC TESTIMONY – None

**MOTION: (HANNAHS/BEAMER)****To approve B-2 as submitted.****UNANIMOUSLY APPROVED –****(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER)***20201117 00:20:53***B. ACTION ITEMS (CONT'D)****3. Declaratory Order No. DEC-ADM20-17 on Delegation of Authority to the Chairperson to Approve Applications for Abandonment of Stream Diversion Works Permits for Abandoned Category 1 Diversions Meeting Certain Criteria Statewide**

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection and Management Branch

Mr. Uyeno noted that on the advisement of the Deputy Attorney General, no declaratory order is needed, however we are requesting a delegation of authority to the Chairperson.

*Chairperson Case noted that some discussion on subject matters of Item B-3 were also discussed during Item B-2.*

Mr. Uyeno continued with a summary of background information noting the four categories of diversions. Following the database development effort, there were an estimated 1,242 registered Category 1 water diversions in the State. The SPAM Branch actively manages these diversions in its consideration of instream flow standards, water use reporting requirements, and regulation of diversion modifications and abandonments. Associated with these efforts, SPAM Branch staff is encountering situations where: 1) registrants have passed on and successors are unaware of the registered diversion; 2) the diversion was destroyed in a high-flow event and was not reconstructed; and 3) the diversion was removed by the registrant and an application for abandonment was never filed. The staff recommendations were then stated.

**QUESTIONS**

Commissioner Buck – I'm assuming it's an administrative thing but I would move hand-carry from streams to Category-2 not 1; we've talked about lack of staff not having ability to monitor and having it as the same categories as the others seems inconsistent. Again, I support B-3.

Commissioner Hannahs – commend staff on the apparent move to cleanup records and the database and to be focused on things that matter as we're headed into some very obscured times in terms of our State budget and need to continue to advocate for more resources or become more efficient and focused with resources that you have and I see those strategies employed in some ways of B-1, 2 and 3 on the agenda today; and commend staff for these measures and support this particular item.

Commissioner Katayama – for the items listed in the Category 1, what is left in terms of outstanding permits; what’s the remaining size of the paperwork if the three items in Category-1 are being administratively administered?

Mr. Uyeno – I would say half of the diversions of the 1,242 are registered - so irrigation, plantation diversions and many are actively in use as you know and some have been abandoned. The other remaining tend to be small, private home-owner type diversions.

Commissioner Katayama – I agree with Commissioner Hannahs that you need to revisit on how to make this more efficient to administer. Why wouldn’t it make more sense to treat the entire Category 1 as an administrative action or is there an aggregation of impact? It seems by definition you would move all the Category 1 registrations into an administrative action rather than segregating these three.

Mr. Uyeno – as you recall, the East Maui and the Maui Land and Pineapple diversions are considered to be Category 1 as well; would be a question to you folks – would you want to put those on the same level in their abandonment? You folks provided good insight on abandonment and we learned from those. Especially the Maui ones where we’ve gone through the different categories, to where we are with the latest Category 1 which was deferred a few months ago. We’re working with EMI to see how we can abandon those physical structures on those streams. I think bringing those bigger ones to you folks is important to get your feedback on versus these which someone can put in and pull-out overnight. *(and reiterated parts of the B-3 submittal)*

Chairperson Case – asked for clarification on #3 regarding not meeting the applicability of Chapter 343 – is that your intention to cover both or an exemption applies?

Mr. Uyeno – more so it’s not triggered; private property, no use of government funds or government lands; in those cases, we would still want to bring that back to the Commission.

Commissioner Hannahs – I want to build-off of Commissioner Katayama’s point in that I think you want to look at the large complex diversions on a system basis. If you peel off Category 1 and it’s not in consideration when we’re making determination on how much they can divert, you lose part of the picture. I think it’s appropriate to peel these off and treat this one-way and maybe the same kind of infrastructure left in this category but be treated a little differently and continue to be under our review; because it’s part of a larger system. One doesn’t amount to much, but a lot of them over 28 Ahupua‘a becomes a lot, thank you.

Commissioner Beamer – Mahalo Dean, I also appreciate the work. I agree with Commissioner Buck. I’d like to take off the “hand-carry” bucket use from category-1, I don’t think it makes a lot of sense from a management perspective as it is very different having someone carrying a bucket versus a pipe pulling water, perhaps we entertain that in a motion?

Mr. Uyeno – people registered these diversions (“hand-carry” buckets) and received confirmation from the Commission that it would be considered as a “diversion”. To remove them from management would require to go back and find these registrants, send them letters saying it’s no longer treated as a diversion, therefore don’t have to report; but it is something that needs to be discussed as I’m not sure if there’s legal ramifications being that there was a process that they went through back in 1989 to register their use of the water.

Chairperson Case – fair to say you wouldn’t require it now if someone came in and say I want to take water now from a hand-carry bucket – you wouldn’t require it to be registered as a diversion?

Mr. Uyeno – good question, but I don’t think anyone would come to us now and ask for that.

Chairperson Case – if you have one and if they want to de-register they can to make it a much simpler process?

Mr. Uyeno – right, and maybe it’s one thing we can do first is to follow-up with these folks who (registered) use of hand-carry buckets from the stream; but don’t know how we may amend that? If they no longer do it, we can just remove it by authority of the Chairperson.

Commissioner Hannahs – to be clear, the matter before us is just those that applications that fell in this category and delegates the authority to the Chairperson to approve abandonment of those applications at your discretion. You don’t have to approve them all. The Chairperson might elect to not approve for matters of the Commission and further consideration, if we picture in our mind a person carrying a bucket it doesn’t seem like much and I think it’s safe to say it doesn’t apply; but what we’re doing is allowing the Chairperson to look at the database of diversions in place of this category and make a decision that’s efficient regarding abandonment. This doesn’t affect future forward applications, it’s a related issue, and you want to be consistent to handle this a certain way with respect to the extent diversions and treat incoming ones with a similar principle; but that’s not what’s on the table right now as I understand.

Commissioner Katayama – following on Commissioner Hannah’s logic, why couldn’t we take the approach where you would give the authority of regulating Category 1 diversions to the Chairperson with the exception the Chair has ability with the case of integrated diversions that’s a part of a bigger system? The Chair could then forward that action to the Commission. I think that would help the department with paperwork and ability to be timely on their action.

PUBLIC TESTIMONY – None

*Chairperson Case asked for a motion on the Item B-3 as submitted*

**MOTION: (HANNAHS/BUCK)**

**To approve B-3 as submitted.**

**UNANIMOUSLY APPROVED –**

**(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER)**

RECESS: 10:40 AM

RECONVENE: 10:50 AM

*20201117 00:50:30*

**B. ACTION ITEMS (CONT'D)**

- 4. Authorize Imposing a Fine Against the Applicant Rainer Werner Bock, Trustee, for Altering a Stream Channel Without a Permit as Required in HRS §174C-71(3)(A) and HAR §13-169-50; and Approve the After-the-Fact Stream Channel Alteration Permit (SCAP.5422.6) Application for the Construction of Culverts, Channelization and Remediation Plan East Kuiaha Stream, Ha'ikū, Maui, TMK: (2) 2-7-012:254**

PRESENTATION GIVEN BY: Mr. Dean Uyeno, CWRM Stream Protection and Management Branch

Mr. Uyeno read the summary of request and provided background information. Commission actions were taken up on May 15, 2018; February 19, 2019, and actions to be voted upon today. There were no comments or objections received from other agencies. On January 4, 2019, the Commission received a comment letter from Audrey McGauley. On December 5, 2019, the Applicant received an Archaeological Field Inspection report from Scientific Consultant Services, Inc. The survey did not find any historic properties and concluded that any construction will not have an adverse impact on historic sites. Chapter 343, HRS is not triggered as it's on private property and no use of government lands or funds.

On October 1, 2014, the Commission approved its Administrative and Civil Penalty Guideline (G14-01) to provide a logical and consistent means to assess penalties and guide the settlement of Commission enforcement cases. The guidelines are non-binding. The system is used to: a) Deter violations; b) Remove the economic benefit of violations; c) Provide fair treatment of the regulated community; and d) Offer the violator a chance to undertake a beneficial alternative, under proper conditions, in a partial or total replacement of a cash penalty.

Mr. Uyeno stated the violations and fee components and the summary of total recommended fines and also read staff recommendations.

QUESTIONS



Commissioner Hannahs – wanted clarification on page #3 of submittal regarding court appeals and timeline references and what considerations have been given and current status before the State Supreme Court?

Mr. Uyeno – replied not aware of current court status and would need to consult with applicant and/or their attorney.

Commissioner Hannahs – asked on the October 21, 2018 regarding “stayed the deadlines” if it affected the number of days of violations?

Mr. Uyeno – answered the fines were based on the original request for response of complaint on May 2017 and the date they submitted their first application on October 26, 2017

Commissioner Hannahs – asked Lauren Chun, Deputy AG, for clarification of court status

Ms. Lauren Chun, Counsel – replied do not have current status and referred to Deputy AG, Ms. Cindy Young.

Ms. Cindy Young, Counsel – answered the status of the appeal of Mr. Bock’s attorney and the State stipulated to dismiss the complaint so that case is done. Can’t recall the stay language but will try to pull up file and recognized Mr. Paul Mancini, Counsel for Mr. Bock is present during today’s Commission meeting (via Zoom).

*10:08 AM - Commissioner Keith Kawaoka joined the Commission meeting*

Commissioner Hannahs – asked if applicant has all permits needed and all government agencies with jurisdiction over this have reviewed and approved the plans and issued a permit to proceed?

Mr. Uyeno – replied yes, that’s our understanding as far as we’re concerned.

Commissioner Hannahs – asked if all the improvements are on the owner’s private property and referenced the applicants written testimony with regards to A&B

Mr. Uyeno – answered yes improvements on owner’s property and noted he inquired with staff on the diversion if it’s on East Kuiaha and noted that Maui is experiencing a severe drought at this time and not sure if that has a role in the testimony.

Commissioner Hannahs – commented that it’s clearly a stream and subject to the SCAP requirements.

Mr. Uyeno – replied yes

Commissioner Meyer – thanked Dean for a thorough presentation and the pictures provided and also thanked staff for the work put in and asked for clarity on the gravity

G2 component as it relates to resource and noted the stream course alteration and perhaps damage to wildlife and asked what was the exact damage and harm to the resource you felt to justify in settling on the G2.

Mr. Uyeno – referenced exhibit #4 photo evidence of the stream channel and entire bank cutout and a lot of areas where the stream was dug out and is considered as actual resource damage

Commissioner Beamer – referred to the photos of the submittals

Mr. Uyeno – reiterated the exhibits and referenced the photos

Commissioner Buck – thanked Dean as this is the third time this is at the Commission and the understanding to send a strong signal to property owners that you can't do this type of work without permits and approval and to repair the damage that's done; and wanted clarification on payment in full before any work is done for the remediation.

Mr. Uyeno – replied yes

Commissioner Buck – and asked what is the estimated total cost of the remediation plan?

Mr. Uyeno – no idea but rough estimate more than tens of thousands

Commissioner Buck – commented the cost of the remediation is actually 5x than the actual permit required

Mr. Uyeno – yes, I would think so.

Commissioner Buck – asked if staff thought about a scenario that the applicant can pay off fine in installments while starting on the remediation plan as worse-case scenario someone goes bankrupt and can't afford the fine and we're left with no landowner, a fine and erosion to the stream.

Mr. Uyeno – no, we have not given any thought to that.

*Chairperson Case called upon the applicant and listed the order of testifiers for B-4 – Mr. Rainer Bock, Mr. Stacy Otomo and Mr. Paul Mancini for an oral testimony*

#### PUBLIC TESTIMONY

Mr. Paul Mancini (Mancini Welch & Geiger), Counsel for Mr. Rainer Bock – Good morning and aloha. I'd like to first comment on Cindy's issue on the Supreme Court case. That was dismissed, Cindy and I worked on that dismissal about two-years ago; if the Commission doesn't have a copy of that dismissal, I'd be pleased to send it on.

*Chairperson Case asked Mr. Mancini to pause a moment as the Deputy AG, Ms. Lauren Chun wanted to make a clarification on a statement*

Ms. Chun – recognized we do have the order in the consolidated appeal that was referred to as a “stay”. The order only stayed the appellant deadline and the briefing schedule, but since the appeal has been dismissed, this order does not relate to any deadlines regarding the underlying file.

*(Mr. Mancini continued with his testimony)*

Mr. Mancini – just to clarify, the case is dismissed so the stay is no longer applicable, the appeal is not relevant to these hearings. I have a few brief comments, it has to do with the daily fines. On the staff submittal on page #14, paragraph 2, the authorization is 174(C)-15 and 13-169-3; if you go back to the staff submittal of 2019 on page 12, staff indicated....“no staff recommendation can exceed the amount allowable under HRS 174(C)-15 and therefore limitation of the fine of \$1,500”. My recollection at that time that there was significant discussion on the limitation on the ability to utilize the guidelines. I believe it was the position of the Commission and also thought the Deputy Attorney General, that the statute had to be amended in order to address the daily fines. My recollection also is that you went to the Legislature, a bill put in the Legislature in 2019, to amend HRS 174(C)-15 and possibly the guidelines, HRS 174(C)-71, Authorization for Guidelines, to address processing and considering applications.

There was testimony submitted by the Commission asking the legislation to do the amendment to allow greater flexibility on daily penalties. That bill died in the legislature and committee. I thought possibly it may have passed this year, but over the weekend I couldn't find that HRS 174(C)-15 had been amended. My question is why isn't the statement in February 19, 2019, on page 24 applicable? There's still that limitation of HRS 174(C)-15 and I'm asking you to confer with your attorneys on that because there's significant history in going to the legislature in the implications of that statute of daily fines.

The other comment I had has to do with the duration request for 154-days – if the guidelines are permissible? It seems unfair to start the period on notice. On May 25, 2017, Mr. Pearson wrote to Mr. Bock. I responded in June 2017 and asked Jeff Pearson for a site visit so we all could understand what was happening on the property. Staff did the site visit and a later time we brought in the (Army) Corps of Engineers. It wasn't until August 23, 2017 that a Notice of Violation was issued. At that time, the landowner was to file a permit within 30-days which we were trying to do in collaboration with staff which helped us go through what happened on the property and what the permit would have in it. We asked for a 30-day extension, Mr. Pearson granted it and we met that deadline. The time from the NOV to filing the permit was approximately 60-days not 154-days to penalize the landowner by having a series of onsite visits with the State and Corps of Engineers, as part of that penalty process; it doesn't seem to connect or be fair and has nothing to do with the filing of the permit.

The staff report continually indicates the owner acted in good faith, met all the deadlines and given an initial 30-day extension to satisfy that. If the guidelines are applicable it

would not appear that the criteria for the 154-days is fair. I tried to be as brief as possible but happy to entertain any questions.

*Chairperson Case asked for a statement from Mr. Otomo. (It appeared that Mr. Otomo had audio technical difficulties.) Chairperson Case then asked for a statement by applicant, Mr. Bock.*

Chairperson Case made a motion to go into Executive Session

**MOTION: (CASE/HANNAHS)**

**To go into Executive Session.**

**UNANIMIOUSLY APPROVED**

At 10:29 a.m. the Commission went into Executive Session pursuant to 92-5(a)(4), Hawaii Revised Statutes in order to consult with its attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities and liabilities.

RECONVENE: 11:14 a.m.

Chairperson Case asked Mr. Otomo if he wanted to add a statement. *(It appeared Mr. Otomo still had technical audio difficulty <the Commission could hear him, but he could not hear the ongoing meeting>).*

Commissioner Hannahs asked Chair Case on confirmation of Executive Session attendees.

Chairperson Case stated that Deputy Kaleo Manuel did not join the Executive Session and Commissioner Kawaoka recused himself from the Executive Session and asked Commissioner Kawaoka to state his reasoning.

Commissioner Kawaoka stated he joined the meeting late and therefore will abstain from voting on Item B-4.

*Chairperson Case called upon Mr. Otomo. Commission Secretary, Rae Ann Hyatt clarified the technical audio difficulty was on Mr. Otomo's end and stated that chat and email messages were sent to Mr. Otomo requesting an oral statement. Upon Chair's request, Ms. Hyatt phoned (and texted) Mr. Otomo for clarification. Mr. Otomo stated he and Mr. Bock could not hear the meeting and stated they both did not have any testimony but Mr. Bock wanted to thank the Commission for the hard work on this project.*

Chairperson Case thanked them and asked Commissioners on proceeding.

Commissioner Buck – made a motion to approve Item B-4 with amendments as follows: In recommendation #2-in the second line, would give applicant 90-days rather than 30 days to pay the fine. The purpose of amendment is to decouple the fine from the actual initiation of beginning the remediation work. The last two lines would be.... suspend any (you would remove the word current) and be a full stop after future applications. It

would read “and suspend any pending or future applications”. With those items, I would move to approve Item B-4.

**MOTION: (BUCK/HANNAHS)**

**To approve B-4 as amended.**

**UNANIMOUSLY APPROVED -**

**(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER) – KAWAOKA ABSTAINED)**

RECESS: 11:20 AM

RECONVENE: 11:35 AM

**20201117 02:35:35**

**C. INFORMATIONAL BRIEFING**

- 1. Update on the Mediation Agreement for the Waimea Watershed Area, dated and signed April 18, 2017 (re: Pō‘ai Wai Ola/West Kaua‘i Watershed Alliance’s Combined Petition to Amend the Interim Instream Flow Standards for Waimea River and its Headwaters and Tributaries, and the Complaint and Petition for Declaratory Order Against Waste, for Waimea, Island of Kaua‘i, State of Hawai‘i)**

Mr. Dean Uyeno, CWRM Stream Protection and Management Branch introduced the various presenters for Item C-1:

Department of Hawaiian Home Lands (DHHL)

- Andrew Choy, Acting Planning Program Manager
- Natasha Baldauf, Counsel

Earthjustice (on behalf of Pō‘ai Wai Ola and West Kaua‘i Watershed Alliance)

- Isaac Moriwake, Counsel
- Kylie Wager Cruz, Counsel

Kaua‘i Island Utility Cooperative (KIUC)

- Dawn Huff, Consultant
- Kelsey Yamaguchi, Counsel

Kekaha Agriculture Association (KAA)

- Joshua Uyehara, Board President
- Mike Faye, Manager

Agribusiness Development Corporation (ADC)

- Myra Kaichi, Senior Executive Assistant

PRESENTATION GIVEN BY: Dr. Ayrton Strauch, CWRM Stream Protection and Management Branch

Dr. Strauch provided an overview of Kōke'e and Kekaha Irrigation Systems along with a timeline of events. He also touched on the Pō'ai / West Kaua'i Watershed Alliance complaint and petition to amend the instream flow standards, went over specific details of the mediated agreement and the implementation problems with the agreement, gave details of the management goals which are also listed in the agreement, went over outstanding hydrological questions, and concluded that new data is needed to provide better management of the systems. In June 2020, the CWRM station 2-169 was installed at Waimea River below Waiahulu Intake.

QUESTIONS

Commissioner Beamer – inquired on who's debating the sluice gates at the Waimea Diversion at Mauka Hydropower plant.

Dr. Strauch – explained the elevation of the diversion and it's mainly an operational function to keep the water flowing in one direction and that when the hydropower plant is down, the intake is used to divert water; There is still a need to identify what is necessary to be in place to operate this intake.

Commissioner Beamer – asked about the demand for Kekaha ditch is 1.79 mgd

Dr. Strauch – confirmed its reported by ADC and KAA

Commissioner Beamer – commented the leakage to get there after the black pipe siphon is 2.9 mgd to provide less than 2 mgd; we are losing almost 3?

Dr. Strauch – yes, it doesn't include the Waiawa hydropower plant which generates energy from the water; moving forward, improvements to the system could be made to better meet the IIFS.

Commissioner Beamer – noted the location and use of the black pipe siphon

Commissioner Hannahs – commented that it's a 60% loss and it's far in excess of what we're seeing in other systems and asked what to attribute to it?

Dr. Strauch – replied it's an old system and CWRM staff are working with KAA to identify their timeline for system improvements.

Commissioner Meyer – asked about the leakage within ditch system

Dr. Strauch – answered there are a number large sections of unlined ditch and sections with cracks but there are plans for improvements and noted for KAA to comment regarding their improvement plans.

*Chairperson Case called upon DHHL for their presentation*

PRESENTATION GIVEN BY: Ms. Natasha Baldauf, Counsel for DHHL

Mr. Andrew Choy, Acting Program Planning Manager introduced himself and Ms. Natasha Baldauf started DHHL's presentation

Ms. Baldauf stated as part of the Agreement that DHHL is expected to benefit from KIUC's hydroelectric project, a portion of which is located at DHHL's Pu'u 'Ōpae Reservoir by gaining a reliable means to transmit water to DHHL's lands and shifting to KIUC the costs of rehabilitating, maintaining and improving key infrastructure on DHHL's parcel. She noted the timeline (milestones) of events and briefed on the Pu'u 'Ōpae Settlement Plan.

PRESENTATION GIVEN BY: Mr. Andrew Choy, Acting Program Planning Manager for DHHL

Mr. Choy reiterated the Pu'u 'Ōpae Settlement Plan which DHHL is expected to use 3.25 mgd of the water reservation. DHHL has approximately 20,000 acres on Kaua'i and the Department anticipates developing 240 – 1/2-acre Ag lots and 10 to 12 Pastoral lots of 10-acres each. He noted a reminder that the fulfillment of the Waimea Mediation Agreement (WMA) is critical to the implementation of the DHHL plan to return Native Hawaiian beneficiaries to its lands.

## QUESTIONS

Commissioner Hannahs – asked that Ag at this scale if it's intended to support a beneficiary lifestyle or viable commercial use to make a living; what is the goal?

Mr. Choy – answered the DHHL is providing Kuleana Homestead lots and, in their terminology, is to provide a subsistence type of lifestyle. In this particular area there is a great opportunity to provide non-potable water to beneficiaries as well. This effort is to settle areas that are remote and far away from urban infrastructures and provide additional agriculture opportunities for beneficiaries.

Commissioner Hannahs – asked if there are areas of concern for DHHL to meet its goals

Mr. Choy – noted that developments can be tricky as there are many moving pieces but noted a positive thing is the community relationship and communication which provides a lot of feedback and input into its plans and the WMA has allowed all parties to communicate better with one another.

Commissioner Katayama – asked if the Kuleana subsistence Ag lots, is there intention to have a residential occupation in those lots? What is the community use area intent? Also asked if it requires potable water.

Mr. Choy – replied DHHL’s Admin rules do not require a residence but does allow the beneficiary to live on the lot full-time if they choose to and its planned out for that possibility. The community use areas are licensed to the Kekaha Community Association for educational activities related to agriculture with the intent to provide education and training programs to DHHL beneficiaries. At this time, the lessee would be required to secure potable water; it’s a trade off in order to accelerate the awarding of lots, DHHL is providing minimal infrastructure for the lots to be awarded quicker.

Commissioner Katayama – noted is glad to see the program moving forward.

*Chairperson Case called upon Earthjustice for their presentation*

Mr. Isaac Moriwake, Counsel and Ms. Kylie Wager Cruz, Counsel – Earthjustice on behalf of Pō‘ai Wai Ola and West Kaua‘i Watershed Alliance

PRESENTATION GIVEN BY: Mr. Isaac Moriwake, Earthjustice

Mr. Moriwake thanked Commissioners for having the submittal item on the agenda as it is well overdue and summarized the bottom line coming from the community groups is that compliance from the Waimea IIFS has fallen short but appreciate the incremental recent progress in the past 6-months but noted overall problems that need focus and Commission action if necessary. Noted the presentation focuses on the Kekaha Ditch and highlighted the agreement as binding as it was voted, approved and ordered by the Commission which has its own legal power and duty to enforce. The only way to be sure the IIFS are met is continued monitoring and appreciate Ayron putting in the CWRM gage recently.

Commented on the frustration of the length of time taking to complete the modifications and that basic actions as installing gages and weirs remain in limbo and noted over 200 days of violations from 11/1/17 to 9/30/20 in regards to the IIFS in Lower Waimea River, citing real-time monitoring is much needed. There are a few concerns for future implementation that need to be addressed and regular updates and CWRM action is certainly needed. Community members are aware of the ongoing issues and wanting to participate today however could not meet the deadline to request to testify but mentioned there was one community member here today to testify.

*Chairperson Case called upon Mr. Van Kawai Warren for his oral testimony*

#### PUBLIC TESTIMONY

Mr. Van Kawai Warren – Good afternoon CWRM Commission and Madame Chair. My name is Kawai Warren and I’m testifying as a traditional cultural gatherer from the ocean and the river – a Kanaka, Kekaha Hawaiian Homesteader, community member of Moku O Waimea and member of Na Kia‘i Kai who has been protecting our fisheries off of the Manā Plains.

Commissioners recall when the Commission came to Kaua‘i to announce this agreement, the community packed the room. There was a lot of hope from this agreement it will



actually happen, that the water will be released back into the river. Now there's a lot of concern and distrust. The Westside community has seen more of its share of raw deals and false, broken promises. We do not take these things lightly. The plantation shut-down in 2000 and ADC came 2008, first to manage the river, irrigation and piping. (*Audio interference*) ...the water that sustains our 'o'opu, 'ōpae and hīhīwai. In this agreement, the trust says the river gets the water first, not the leaky ditches and hydro systems that doesn't support the amount of need for agriculture uses. (*Audio interference*) ...the IIFS numbers meeting the minimal amount but it seems the diverters have the priority to take whatever water they need. (*Audio interference*) ...so why did it take three years for this? It's a kuleana whoever wants public water use. In 2013, part of WHHA (Waimea Hawaiian Homesteaders Association) we needed water for our farming irrigation plan and had minimal amount of water, we didn't know why.

Our groups went out and hiked and found they were dumping water at Kauhao and saw the green strips coming down Waimea Valley since 2013, seven years ago; water is still not put back rightfully into the river. This raises more concerns about the plans for the KIUC project. I think the KIUC permit could take over the Kekaha ditch on the bottom, the Waiawa Reservoir. There's concerns that KAA diverting way more water than needed and dumping it on the plain so when water is not used for agriculture it ends up in the ditch system which gets dumped out in the Kinekine ditch where its affecting our reef style fisheries. In kupuna interviews of 'Ele'ele says that was the place where the baby fishes would spawn. Now you have dead fishes from other aquaponic activities on the plain. When additional water not being used for agriculture being dumped in Kinekine ditch, this is going to hurt our food system and endangered species, the turtles (honus) that live on the reef.

I really think we need to look at the amount of water that's not being used, dumping on the plain. KIUC pump storage has one solution and keeps the water in the system. Lastly, the Commission has its own kuleana and should enforce this agreement, impose penalties if necessary.

We've been waiting from 2000; as a traditional gatherer, the river has been dry since the 2000's when the plantation shut-down. This is 20-years later and three (3) years after a formal agreement; anyway, I really appreciate Commissioners what you folks do. Ayrone, that was a great update; thank you Isaac for your input. There's a better way of managing these water systems and part of it is KIUC and KAA. With money being tight all around, we need to re-look at these two, to minimize waste of the most precious resource, thank you very much.

*Chairperson Case thanked Mr. Warren and noted a break and then will continue presentations with KIUC and KAA and noted upon return of the break, Commissioner Beamer will commence as Chair of the meeting as Chair Case will attend a prior commitment.*

RECESS: 12:50 PM

RECONVENE: 12:56 PM

Commissioner Hannahs – thanked and appreciated Mr. Warren for taking the time off of work to testify and providing important input and perspective of the subject matter.

Commissioner Beamer – also stated his thanks and appreciation for Mr. Warren’s perspective and noted on the time frame to request to provide live oral testimony.

PRESENTATION GIVEN BY: Ms. Dawn Huff, Consultant for Kaua‘i Island Utility Cooperative (KIUC)

(Ms. Kelsey Yamaguchi, Counsel)

Ms. Huff went over the KIUC’s Kōke‘e modifications and flow monitoring plans highlighting the Phase 1 of the mediation agreement IIFS of KIUC requirements and the KIUC energy project in development. Ms. Huff commented on the Kōke‘e plans timeline and verified various permit status. She touched base on the Pu‘u ‘Ōpae /West Kaua‘i energy project which will be providing irrigation for DHHL, ADC, the Manā plains, and storage in Pu‘u Lua, Pu‘u ‘Ōpae, and Manā Reservoirs specifically for irrigation. The draft EA is in process and is anticipating submission by the end of this year with some concerns of delays.

Clarified this is a pump storage project and does have an additional hydro-flow-through hydro component to it and (it’s their) hope that all the flow-through water will be utilized for irrigation. Recently, batteries were added to assist on the high levels of intermittency on the solar side so the pumps don’t have to work quite as hard.

The next steps are, once all the permits are received, the procurement process can begin with construction and gaging starting immediately once contractor is selected; and hoping to get work done in the dry season, preferably in summer. Once gaging is in place, data will be available to CWRM and all parties.

#### QUESTIONS

Commissioner Hannahs – expressed concern of project timeline relating to Mr. Moriwake’s comments if she agrees with that

Ms. Huff – replied may have missed something in his testimony and thought he was referring to the KAA plans.

Mr. Moriwake – commented yes, he was referring to the Kekaha Ag side plans; and believed KIUC complied with their own timelines

*Commissioner Beamer called upon Kekaha Agriculture Association for their presentation*

PRESENTATION GIVEN BY: Mr. Joshua Uyehara, Board President, Kekaha Agriculture Association

(Mr. Mike Faye, Manager, Kekaha Agriculture Association; and Ms. Myra Kaichi, Senior Executive Assistant, Agribusiness Development Corporation)

Since the Waimea Watershed Agreement (WWA), there's been numerous meetings and site visits. The recent focus has been regarding the Waimea diversion with actions to upgrade and install a new automated gate, new fish ladder and new monitoring device; all to improve monitoring ditch flows and protect aquatic species. Noting that the Waimea diversion is a fairly complex structure which was originally built at top of the Kekaha ditch back in 1908.

KAA has identified key areas of improvements to address system loss which has been ongoing even before the agreement. Mr. Uyehara touched on the timeline of the ditch system operations and considerable costs. KAA remains committed to the successful implementation of the WWA with the importance of ongoing cooperation and collaboration with CWRM and other parties involved.

21<sup>st</sup> Century technology is underway and since the WWA implementation, the Kekaha ditch flows have been currently maintained at 9 mgd from 31 mgd back in 1980-2000.

## QUESTIONS

Commissioner Buck – noted the substantial funds needed for improvements and asked about the source of funding? Also, asked without State funds if improvements will be halted?

Mr. Uyehara – replied the significant majority has been CIP State funds and supplemented with private funding through KAA and looking to privately finance the future major improvements with the understanding that State funds will be significantly challenging, moving forward; and not sure if project will halt as hoping to secure private financing further but it will be tough to complete further without CIP funds and consider it's a State-owned property.

Commissioner Hannahs – asked on the timeframe, IIFS and delivery on the stated agreement and asked if it's a funding issue?

Mr. Uyehara – noted that each individual case is different and some more complex than others, however implementing significant steps to reduce flows to try to meet the IIFS but no way to tell with the lack of gaging in system; and is pushing for an aggressive but achievable timeline; noted had some hiccups with permitting which delayed parts of project.

Commissioner Hannahs – commented he does not want to see an erosion of the trust built between parties of the agreement and noted DHHL's highlighted the importance and value of communication and asked if there should be quarterly milestones with regular variance reporting of all parties to create more transparency to achieve the goal with CWRM creating a template to assist.

Mr. Uyehara – answered it was helpful when CWRM facilitated regular meeting with minutes attached; we have that structure and would be beneficial to comeback to the full Commission with updates on a regular basis (for KAA’s part). On an operational perspective, having those regular meetings has been helpful in making sure communication stays open.

Commissioner Beamer – understands the delays in permits and some timelines might be hard to meet but the gaging and getting important information of what’s happening in the stream, real-time gaging is an essential portion of this mediated agreement and remember advocating on how important that was and asked on the delays in gaging.

Mr. Uyehara – replied the data is from areas with installed gaging and some critical gaging points requires modification of the diversion and those are the ones requiring installing a flume structure which is currently hung-up in permitting. Elsewhere, has installed gaging where found to be beneficial, also relying on U.S. Geological Survey for long-term gaging in the stream system, upstream of the diversion points which can be challenging (*explained the positioning of the “boards” in the stream relating to IIFS and ditch flows*).

*Mr. Moriwake requested for a chance to comment. Commissioner Beamer asked if there are more questions on the related topic and noted the importance of understanding any issues and all sides better in terms of the implementation of the mediated agreement.*

*Commissioner Buck commented it has been an important project for the Commission and critical we (all parties) can think of ultimate ways to resolve community issues and go through mediation rather than a lengthy contested case and thanked KIUC for a different economic flux for making it work and the relationship between Phase 1 & 2 is important for no delays, but obviously there’s deadlines that have not been met; so it’s critical on all sides that this works out with achievable deadlines; thank you everyone for working on this project.*

Mr. Moriwake – commended the questions and comments from Commissioners with the feedback being on point and wanted to clarify some matters. Recognizing delays in some permitting, some permits (for KAA) may no longer be needed; noted a permit being held up with Army Corps with no other status given. Highlighted the lengthy timeframe of moving parts of the project forward which is critical in the agreement and noted the issue of placing gaging in KAA’s ditch which is needed for real-time reporting to comply with the IIFS; need urgency and not further delays or excuses to be sure the agreement is complied with.

Mr. Uyehara – replied KAA has spent over \$60,000 on access repairs and most times the access washed-out before utilizing. The improvements will help KAA as a ditch operator as there’s no benefit for KAA to prolong improvements but understand the frustration as well and is open to beneficial suggestions.

Mr. Moriwake – suggested on the gaging that CWRM installs with KAA funding as in the Nā Wai ‘Ehā case and commented on funding issues.

Commissioner Hannahs – commented on the system losses as reminded by Isaac and asked what is reasonable in terms of improvements?

Mr. Uyehara – clarified the Kekaha system is roughly a 15% system loss and went over the figures of the loss and the vast majority of the dollars spent is going towards ditch upgrades/improvements and piping.

Commissioner Hannahs – (to Ayrton) commended his technical and people skills and asked on variance reporting if there's a dashboard <template> that all parties can report on to better the communication between the involved parties.

Dr. Strauch – referred to Dean as he keeps record of the actual meeting progress. He (Ayrton) has record of work in the field on site visits and in 2020 seen progress with the Kekaha system but frustrated with lack of gaging; and with the overall agreement promise, some things are on hold because of it being tied to other issues such as permits, easements, etc.

Commissioner Hannahs – commented on managing expectations and the paper trail of progression.

Dr. Strauch – replied there's meeting minutes and notes and recognize the Commission did approve spending funds on an additional USGS gaging stations above the Waiahulu diversion; this station was discontinued 40-years ago but will provide valuable information for future IIFS modifications in terms of water availability if the KIUC system goes forward. New information will be gathered soon but doesn't excuse for the lack of information within the ditch systems.

Commissioner Katayama – (to KAA) asked on the schedule of action items provided pertaining to spending from 2015-19 what is the reason for "estimated costs?" In 2020 you projected spending \$1.8mil, are you on a fiscal or calendar year and what percent is spent?

Mr. Uyehara – not from a capital project per se, but had a lot of expenses from operating budget and it's a calendar year estimate (and referred to Mike Faye of KAA)

Mr. Faye – answered most is spent as KAA took advantage of funds that were going to lapse and purchased bigger ticket items/equipment needed for major improvements.

Commissioner Katayama – asked about 2021 projected projects and allocations.

Mr. Faye – replied that's what Josh was referring to regarding working on the funding; the big-ticket item is getting the Phase 1 of the pressurized system installed and spoke of the equipment that will utilize.

Commissioner Katayama – referred to Isaac and Ayrton's issues and cost related difficulties.

Mr. Faye – answered committed on the major projects such as gaging and flow meter on the system and working on the software programming to better serve the monitoring at Hukipō

and water entering the ditch at the Mauka hydro that has various plantation era gates, diversions and leaks; a gage will be installed downstream from all of that to have an accurate amount of water entering the top of the ditch and measure line losses.

Commissioner Katayama – asked on anticipated (future) water uses as historically it has been above the current usage and referred to the acreage on Manā plain.

Mr. Faye – replied we are adding farms (acreage) although there was a dip in use; we're increasing the number of diversified agriculture and tightening up losses with the amount of water being used versus the type of Ag usage.

Commissioner Katayama – asked about the 2 mgd, what is it planned for?

Mr. Faye – answered I don't have that number but the 6 mgd was calculated to provide sufficient water for much of the plain.

Mr. Uyehara – clarified that it would serve the capacity of part of the plain and also the minimum amount we feel the system can be operated on and planning to grow our diversified agriculture use.

Commissioner Beamer – thanked the parties, staff and Commissioners on comments given and touched on dealing with waste and working on efficiencies to benefit the public trust first and reiterated that's what this settlement agreement provided that opportunity to do, decision-making in a different format outside of contested cases; and as the other Commissioners have said, we need to get it right. Also noted how all Commissioners are dedicated by volunteering their time because of important issues dealing with and encouraged regular updates and a next update from KAA regarding installing gages.

Asked Ayron if CWRM could install the gages and what is the hiccup and what can be done to improve that?

Dr. Strauch – replied we could install monitoring on the Kōke'e streams. There is one USGS station there and CWRM could add more. It would take a lot of effort to develop the rating curve and it's not easy to get to and would take a lot of day trips to get stations installed on Kōke'e coming from O'ahu. There's one installed in Waimea River for the Kekaha system. Access is challenging in the wet season but if it's necessary we can do it but getting three (3) additional systems in on Kōke'e Streams would be a big challenge logistically, pending this (Covid) pandemic.

We could assist with the ditch gaging but Kekaha Ag has at least done some installation and working towards getting the real-time ditch gaging in place. KIUC ditch gaging is tied to their construction permits so it's going to be a while; I take my direction from the Commission.

Commissioner Beamer – commented on the excitement of the agreement when it first came to be and reiterated the timeframe and deadlines of the project and process and noted the community's anticipation and now eroding trust and with media briefings, we (the parties)

need to find a solution to get this “right” and move forward on projected deadlines and need regular updates and action; but appreciated everyone’s input, time and hard-work.

*(end of Item C-1)*

**20201117 05:05:35**

Per advice from Deputy Attorney General, Ms. Lauren Chun, Commissioner Beamer made a motion to move into executive session to discuss matters regarding the previous agenda item B-4.

Deputy AG, Mr. Colin Lau clarified for the record the reasons going into Executive Session.

Commissioner Kawaoka recused himself from the Executive Session and left the meeting.

Deputy AG, Ms. Linda Chow also joined the Executive Session.

**MOTION: (BEAMER/HANNAHS)**

**To go into Executive Session.**

**UNANMIOUSLY APPROVED**

At 2:08 p.m. the Commission went into Executive Session pursuant to 92-5(a)(4), Hawaii Revised Statutes in order to consult with its attorney on questions and issues pertaining to the Commission’s powers, duties, privileges, immunities and liabilities.

Chairperson Case joined the Executive Session and regular meeting.

RECONVENE: 2:25 p.m.

Mr. Paul Mancini rejoined the regular meeting.

**20201117 05:25:44**

**B. ACTION ITEMS (CONT’D)**

- 4. Authorize Imposing a Fine Against the Applicant Rainer Werner Bock, Trustee, for Altering a Stream Channel Without a Permit as Required in HRS §174C-71(3)(A) and HAR §13-169-50; and Approve the After-the-Fact Stream Channel Alteration Permit (SCAP.5422.6) Application for the Construction of Culverts, Channelization and Remediation Plan East Kuiaha Stream, Ha‘ikū, Maui, TMK: (2) 2-7-012:254**

Commissioner Buck – motion to rescind Item B-4

**MOTION: (BUCK/HANNAHS)**

**To rescind Item B-4.**

**UNANIMOUSLY APPROVED  
(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER)**

Chairperson Case noted the connectivity issues with Mr. Bock and asked Mr. Mancini how does he want to proceed.

Mr. Mancini noted the Commission rescinded Item B-4.

Chairperson Case acknowledged that while B-4 occurred, Mr. Otomo stated he could not hear the conversations but had nothing further to add; however currently Mr. Otomo and Mr. Bock wanted to provide further testimony and notes Mr. Mancini is authorized to provide the statements upon their behalf; therefore, the Commission voted to rescind the original decision on B-4 to hear further testimony to the matter for reconsideration.

Mr. Mancini – the major problem has already been expressed through correspondence, is the \$39,000 fine and Mr. Bock's ability to raise that in any reasonable period of time as well as the monies for the remediation plan. The process is he's going to have to get an appraisal on his property and then go to a lender. His major concern if there's the \$39,000 fine is the ability to deal with it. He's in serious trauma thinking if he doesn't pay it within 30-days he'd be in another violation and a multiplier effect on the economic crisis he's already in. I think he wanted to explain with the pandemic and the ability to make a living, he's got a serious financial problem.

He does want to go forward with the remediation plan but to do it, he needs a loan. As Mr. Buck indicated earlier and sustained by staff, it's going to be a significant amount of money put into that. What we understood in the email from staff's decision is that he had to pay the \$39,000 fine first; and we didn't know if there's the 30-day limitation on it or not. There's been significant panic about it and that's what he wanted to express and it's been difficult for all of us and trying to do this through Zoom, but a good exercise in patience in any case.

Chair Case – asked if he had a comment on what the appropriate payment schedule would be from your perspective, with a fine?

Mr. Mancini – let's assume there's a fine; it'd be reasonable to give an appropriate period of time to raise the money for the fine; and the most important thing is to develop a schedule to be done in an organized manner. The problem is it's going to take time to figure what the costs of the remediation plan is especially during the pandemic. We'd like to propose a schedule to you. Seems like you rescinded the matter, maybe the better thing is to put it back onto your next meeting to get better participation and see if we can come forward with the plan.

Chair Case – we want to deal with it today as it's on the agenda and heard the matter; Mr. Buck did you have a thought?

Commissioner Buck – Mr. Mancini, I'm not sure if you heard the amendments we made. In the fine we extended the 30-days to 90-days and also decoupled the start of the remediation



so he would not have to pay the fine first. We made those amendments to item B-4, that was the decision we made; in many ways to address the issues you brought up.

Mr. Mancini – I did not understand that from the memo I received; I didn't see the 90-days identified in the email and still don't understand when he has to commence the remediation plan?

Commissioner Buck – reiterated his previous statement.

Mr. Mancini – restated Mr. Bock's financial situation regards to costs of the fine and remediation plan.

Commissioner Hannahs – stated we can't leave this open-ended and asked for a counter.

Mr. Mancini – request to move the 90-days to 120-days and ask for a progress report within 90-days. Trying to find a mechanism to get this to work in an organized way.

Chair Case – I would be okay with that; report to staff within 90-days and put a 120-day timetable on it if you want to proceed on that basis; Mr. Buck would you like to make an amendment to your motion?

Commissioner Buck – this would be recommendation #2 – “issue a written notice of violation to the applicant in pursuant to HRS \_\_\_ and HAR and authorizing imposing a fine of \$39,000; alternate #2 due within 120-days of Commission action; issue a written warning in any future violations involving a stream channel alteration without the necessary permits shall be considered a repeat violation, suspend any ~~current~~ pending or future applications. Submit a progress report to the Commission staff in 90-days on funding for fine and remediation project.

Mr. Uyeno – reminded that the Stream Channel Alteration Permit has a two-year timeframe

*Chair Case clarified if Mr. Mancini understood the motion.*

*Mr. Mancini stated that he does*

Commissioner Hannahs – seconded the motion and verified with Mr. Uyeno on the two-year time frame if work can be completed by then.

Mr. Uyeno – stated that the permit is good for two-years and they can start at anytime within that timeframe.

**MOTION: (BUCK/HANNAHS)**

**To reapprove B-4 as amended.**

**UNANIMOUSLY APPROVED**

**(CASE/BUCK/HANNAHS/MEYER/KATAYAMA/BEAMER)**

DISCUSSION

Chairperson Case and Mr. Mancini discussed requesting a contested case hearing before the end of the meeting and although Mr. Mancini didn't have the ability to confer with his client (at the time) on that matter, he requested a contested case and noted he will follow-up in writing within 10-days. The Deputy AG's conferred the request is just and Mr. Mancini appreciated the Commission for reopening B-4.

Chairperson Case thanked the Commissioners, AG's, staff, and public for their interest and participation.

**D. NEXT COMMISSION MEETINGS (TENTATIVE)**

December 15, 2020 (Tuesday)

January 19, 2021 (Tuesday)

This meeting was adjourned at 2:38 p.m.

Respectfully submitted,



RAE ANN HYATT  
Secretary

OLA I KA WAI:



M. KALEO MANUEL  
Deputy Director