

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

DATE: May 21, 2024
TIME: 9:00 a.m.
PLACE: DLNR Boardroom, Kalanimoku Bldg.
1151 Punchbowl Street, 1st Floor
Online via Zoom, Meeting ID: 819 3668 8593

Online link to the video recording of the May 21, 2024 Commission on Water Resource Management meeting: <https://vimeo.com/949668856>

Chairperson Dawn Chang called the meeting of the Commission on Water Resource Management to order at 09:08 a.m. and stated it is a hybrid meeting being held in the Kalanimoku Building boardroom, remotely via Zoom and live streamed via YouTube. It was noted that people may testify via the information provided online. Chairperson Chang reminded the public not to use the chat feature for any comments, as it presents a Sunshine Law issue. She also read the standard contested case statement, took a roll call of Commissioners, and introduced Commission staff.

The following were in attendance and/or excused:

MEMBERS: Chairperson Dawn Chang, Mr. Neil Hannahs, Dr. Aurora Kagawa-Viviani, Mr. Wayne Katayama, Mr. Paul Meyer, Dr. Lawrence Miike

STAFF: Deputy Dean Uyeno, Dr. Ayron Strauch, Ms. Katie Roth, Mr. Ryan Imata, Ms. Alexa Deike, Ms. ‘Iwalani Kaaa

EXCUSED: Ms. Kathleen Ho

COUNSEL: Ms. Cindy Young

OTHERS: Mr. David Bills, Mr. Michael Domion – Honolulu Board of Water Supply (BWS); Joshua Uyebara, Kekaha Agriculture Association (KAA); Jordan Inafuku, Dawn Huff – Kaua‘i Island Utility Cooperative (KIUC); Mark Takemoto, Agribusiness Development Corporation (ADC)

All written testimonies submitted are available for review by interested parties and are posted online on the Commission on Water Resource Management website.

20240521 00:04:55

A. APPROVAL OF MINUTES

April 16, 2024

PUBLIC TESTIMONY – None

20240521 00:05:30

MOTION: (HANNAHS / KAGAWA-VIVIANI)

To approve minutes with non-substantive edits.

UNANIMOUSLY APPROVED

(MIKE/MEYER/KATAYAMA/CHANG/HANNAHS/KAGAWA-VIVIANI)

20240521 00:06:20 - Planning Branch Chief, Katie Roth, introduces Alyssandra Rousseve, a new hydrologist in the Planning Branch

20240521 00:08:45

B. ACTION ITEM

- 1. Approval of Stream Channel Alteration Permit (SCAP.6158.3) Application and Special Conditions, City and County of Honolulu, Board of Water Supply, Mākaha Wells II, III, and IV Access Road Repairs, Mākaha Stream, Mākaha, O‘ahu, Tax Map Key(s): (1) 8-4-030:004**

PRESENTATION OF SUBMITTAL: Deputy Dean Uyeno

Staff stated the summary of request to approve Stream Channel Alteration Permit (SCAP.6158.3) by the City and County of Honolulu, Board of Water Supply (BWS). The project proposes the replacement of six (6) existing culverts with a panel truss bridge and remove rock and debris that are blocking the Mākaha Stream.

QUESTIONS / COMMENTS

DAVID BILLS, BWS CONSULTANT: My name is David Bills, I’m a civil engineer working in Honolulu for 40 years. I’ve done many Board of Water Supply projects and I put together the application for the stream channel alteration permit, as well as the Army

Corps permit, and as well as coordinated the historic preservation aspects of the project. I don't have anything particular to add uh except for maybe one statement. Mākaha Stream is a relatively big stream and Board of Water Supply quite often, maybe under-sizes their culverts at locations that are critical. I proposed to the Board, rather than having a culvert that would spill over and basically destroy the downstream area, that we look at a panel thrust bridge. It's really nothing more than an old World War II bridge, but to make sure that we had three foot of freeboard from the bottom of the bridge uh to the water surface of the peak storm to make sure that that access road was available 24/7.

COMMISSIONER KAGAWA-VIVIANI: Thank you, Mr. Bills. I'm actually very familiar with this particular location, having driven over it many times. I was wondering if you could speak a little bit to the AIS (Archaeological Inventory Survey) and specifically the construction staging area that would be needed to carry out the work?

DAVID BILLS: Yes, well if you're familiar with the area, you have two gates you go through down at the bottom and then basically you're driving up an AC-paved road uh until you come up to the culvert crossing. There happens to be some area off to the left that would be available for staging, provided the appropriate archaeological uh inventory survey was done to provide clearance. If that site was not available to use as a staging area, then the contractor would have to stage at the very bottom of the road at the two gates and drive the two and a half to three miles up to the uh bridge site uh to perform their work properly. We know that that's an issue, but we went to SHPD (State Historic Preservation Division) pretty early and asked them if this was a possibility uh and they're still, as far as I understand, in the process of providing a clearance or making a determination at this point.

COMMISSIONER KAGAWA-VIVIANI: That's good to know that there are options, less desirable, but there are options.

DAVID BILLS: Glad you added the less desirable.

COMMISSIONER KAGAWA-VIVIANI: Okay, thank you for sharing that.

CHAIR CHANG: I'll be honest, I didn't even realize there were springs, there were streams up in Mākaha. I apologize for my ignorance on that.

COMMISSIONER KAGAWA-VIVIANI: Are there other folks online?

CHAIR CHANG: I think they were all with BWS. Did anybody else from BWS want to speak? They delegated everything to the consultant. I'll just ask, have you spoken to community people about this? Are there any impacts of this activity on downstream activities by community members?

DAVID BILLS: There has been, as far as the consultant side goes and me as a civil engineer, uh I have not particularly talked to people except for passers-by and things of that nature. Through the archaeological process, I don't think there's a cultural impact study being done, but I do not know the full requirements of at least the AIS portion of the documents they're doing in addition to the SHPD 6E.

CHAIR CHANG: I know, Dean, BWS is submitting or there's an application for uh Water Management Area right?

DEPUTY UYENO: Pending.

CHAIR CHANG: Is this all consistent with that plan that they've submitted to date or is it totally [inaudible]?

DEPUTY UYENO: Yeah, it should.

COMMISSIONER KAGAWA-VIVIANI: In reviewing the submittal and then taking a closer look at the permit application specifically referencing that construction staging area, and I think as to date the consultant hasn't contacted community, but the Board of Water Supply should. That is included in the recommendation on 1A and I want to endorse that just because Mākaha Valley is really significant archaeologically. Kāne'aki Heiau is right at sort of the bottom of upper Mākaha and there's a lot of intact agricultural terracing in the valley. I think it's really important that this be done right and that's on the Board of Water Supply who already works with I think Mōhala i Ka Wai, but maybe other groups. I would really strongly encourage some dialogue there with 1A.

In addition, I wanted to propose a modification to 1D. It says, "actions in the streambed are subject to SHPD concurrence." I know that we are focused on water, but the construction of the stream channel alteration is going to impact a nearby agricultural terracing area. If you look at page 108 of the permit application, there is a map that shows the features that would be impacted and not being an archaeologist, I don't know how these things work. Is it normally you just document before it gets disturbed? I think there's an opportunity if it is going to be impacted to do some work with partners to restore it post-construction or avoid impact. Again, I know that's not in the stream channel, but it is related to the stream channel work and I would want to be just very cognizant because of the agricultural significance of the valley to that whole region. I mean Mākaha used to be perennial, it's fed by Ka'ala, so just to show that the Board is engaging in best practices. I had here, consider alternative staging areas, Mr. Bills said that that's a possibility and I think engaging the community or community groups in the process of monitoring of activities and restoration as needed. The modification I just wanted to add was, it says, "actions in the streambed are subject to SHPD concurrence." I just wanted to add, "actions in the streambed **and necessary construction staging area** are subject to SHPD concurrence."

DAVID BILLS: This is David Bills once again. I would just like to add a little comment there. With my experience with many consultants working with me for archaeological reasons, typically State Historic Preservation Division will, so more or less, take two types of actions. 1) They will allow uh recordation of the information that was there for historical purposes. 2) If it happens to be significant enough, they will want it to not be touched or marked out and left there, notifying the community and particularly community groups interested uh in archaeological and cultural things. I would tend to agree with you that the Board of Water Supply already has a route there and might as well take advantage of it.

CHAIR CHANG: I appreciate, Aurora, your comment. Sometimes we find that the staging area, pre-construction, can be even more invasive than the actual activity. I'm not sure the scope of SHPD's review because if there's going to be any subsurface excavation or if there's going to be, usually they'll have a buffer zone around known historic properties, so if there are terraces or other historic properties that should have been included in SHPD's review. I think your proposed amendment is very appropriate. I would support the amendment. Mr. Bills, do you have any issues with that? Board of Water Supply?

DAVID BILLS: I personally don't have any, but uh I would like Board of Water Supply to also concur.

MICHAEL DOMION, BWS: Hi, good morning, Michael Domion, Board of Water Supply. We concur with the amendments and we will go ahead and contact uh the possibly affected community uh and inform them of our project.

CHAIR CHANG: Thank you. The leeward coast, in particular Mākaha, there are known lineal and cultural descendants from the area who may know of the...and Board of Water Supply, you have really been at the forefront of valuing community, so I would think someone like Ernie would take very seriously the whole issue of reaching out to the community, so thank you.

COMMISSIONER MIKE: Can you read the amendment? I'm a little confused about what we're now going to be approving. Are we going to be approving with additional conditions and if so I want to know what the condition. You said with amendments, I want to know what the amendment...

DEPUTY UYENO: Commissioner Kagawa-Viviani I believe made the addition to uh condition 1D which is, "actions in the streambed and necessary construction staging area are subject to SHPD concurrence if SHPD requires conditions delegate to deputy director to attach those as conditions."

COMMISSIONER KAGAWA-VIVIANI: The modification was the addition of the construction staging area.

COMMISSIONER MIIKE: But what exactly about the staging construction area are we uh requiring?

CHAIR CHANG: I think it's subject to SHPD review to determine whether the staging area may have any impact on known historic properties. If there's for example, lo'i, there's walls or there's any historic resources, but I think it's just asking that SHPD's concurrence be expanded to more than the streambed, but to where they may be doing construction activity that could have impacts on historic properties.

COMMISSIONER MIIKE: So, when we approve this, are we approving the permit or are we holding back on the permit until we hear about them?

DEPUTY UYENO: You're basically approving the permit on the condition once SHPD, State Historic Preservation Division, uh provides their letter of concurrence or any necessary actions that uh the applicant has to undertake, uh which may be certain things like uh conduct an AIS survey or certain actions.

CHAIR CHANG: I think Larry we're delegating to Dean. Once SHPD comes in with their concurrence letter, if there are conditions then that's delegated to Dean to include it on the permit conditions. If for example, Board of Water Supply finds any of those conditions unacceptable then they can always come back to the Commission, but otherwise that would be. So, nothing stops, it's just procedure.

COMMISSIONER MIIKE: That's all I was asking whether it was going to be delegated to the staff to reach the final decision. If that's why...

CHAIR CHANG: Yes.

COMMISSIONER MIIKE: Then okay.

CHAIR CHANG: Thank you for that clarification.

PUBLIC TESTIMONY - None

20240521 00:22:52

MOTION: (HANNAHS / MIIKE)

To approve staff recommendation with modifications to 1d.

- "Actions in the streambed and necessary construction staging area are subject to SHPD concurrence"

**UNANIMOUSLY APPROVED
(MIKE/KATAYAMA/HANNAHS/CHANG/MEYER/KAGAWA-VIVIANI)**

20240521 00:27:05

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

1. Briefing on the Outcomes of the 2023-2024 Legislative Biennium Related to the Commission on Water Resource Management

PRESENTATION GIVEN BY: Deputy Dean Uyeno & Katie Roth, Planning Branch Chief

Staff presented the outcome of bills related to the Commission during the 2023-2024 Legislative Biennium which included HB1800, HB1900, SB3327, and HB2690.

QUESTIONS / COMMENTS

CHAIR CHANG: I suspect there's a greater will now, in light of Lahaina, that people may be motivated, government entities may be motivated if there's a comprehensive plan, so good.

20240521 00:31:07 – *Deputy Uyeno resumes presentation*

CHAIR CHANG: If I can just make a comment to that, Chair Linda Ichiyama who's head of Water and Land for the House side, she did have Kaleo at the beginning of the year do a, what was she calling it, like a lunch hour, but he did a presentation on the Hawai'i mesonet. I really do think having those kinds of opportunities to meet with the legislators about some of the initiatives that we're working on makes a difference. We are encouraging all of our divisions to, where we can, whether they're site visits or whether they're training opportunities or providing them more information, but that really does seem to help with the legislators. I appreciate that effort and I think it resulted in the funding and Chair Ichiyama's champion of, she's been extremely helpful for DLNR.

20240521 00:32:55 – *Katie Roth resumes presentation*

COMMISSIONER HANNAHS: I seem to recall we had advanced consideration of the budget matters, that you brought them here under some briefing and that this is what was going to be in the budget and we see what we worked out. I don't remember a Commission discussion of this matter and is it our role to consider these things when they're in process, not like this after the fact and to help inform that position, Department takes?

DEPUTY UYENO: You're talking about the SB3327?

COMMISSIONER HANNAHS: Yeah.

CHAIR CHANG: Well, this one, the SB or did you want to do the Red Hill WAI?

COMMISSIONER HANNAHS: Well, both and it's a general, it's a broad question. There's a specific case here a couple a couple bills here, but it's the responsibility of the Commission to consider testimony on kind of the unplanned items that get introduced along the way. Do we weigh in at all on shaping the Commission's position?

DEPUTY UYENO: I should defer to Chair for that.

CHAIR CHANG: I think once when we brought that to the Commission, those were administrative bills.

COMMISSIONER HANNAHS: The budget matters.

CHAIR CHANG: Yeah, the budget as well as proposed legislation. These two were legislative initiatives so House-Senate Bill 3327 came from both Water Land, but Senator Inouye. I think this was in response to numerous things that happened over in the Maui wildfires, but it kind of morphed and we did bring this back to the Commission.

DEPUTY UYENO: Back in February.

CHAIR CHANG: We presented a more informational and that's when I did ask, we did a legislative update. I had Dean prepare all the bills that were going through and this one Senate Bill 3327 and we did ask all the Commission. I think Neil, you were not here that day.

COMMISSIONER KAGAWA-VIVIANI: There was a discussion about Commissioners can as individuals testify.

CHAIR CHANG: By himself but was the only one who had lodged, Larry's on here, he can speak for himself, but had an objection to Senate Bill 3327 which more shaped my testimony as a chairperson because I was both support, comments and oppose and after having the opportunity to have the Commission weigh in on that, then I took a different...well we still provided comments, support, opposition but it was more in opposition to taking CWRM out of DLNR. House Bill 2690 and the Red Hill WAI did not come to the Water Commission because it was more of an initiative that was being driven, quite frankly it was a legislative initiative by the House and the Senate leadership. In light of Red Hill, DLNR was part of some discussions with various State agencies as

well as the city to have a unified statement regarding Red Hill both the defueling and the remediation. The Red Hill WAI, the implementation was, this bill was designed to have capacity, three people out of the chairperson's office that would help coordinate, establish a fund in anticipation that federal funds would be appropriated for the Red Hill remediation that they could be housed in this fund. It was also to implement some of the Red Hill initiatives and to help do the community outreach. That bill unfortunately it did die as a result of coming in and adding the Senate Bill 3327. We did come back and brief the Commission, but you're correct, that is the meeting you were not here.

COMMISSIONER MIIKE: I have a few questions, it's mostly about the process. If I remember correctly, the Commission never had a position on these bills that were being introduced and that when we had that discussion, it was basically said while we can see on the website where these bills are going to go and that we could testify for, against, or comment on the bills as individual Commissioners. I'm okay with that, but I think that it's an obligation of the Department that if there are bills coming up like that not to say, oh you guys can go to Legislature or look at their website and find out what's going on. I think it's an obligation to let us know what's going on during the legislative process and that wasn't there. The other thing I wanted to ask was clearly the bill that did all those changes, proposed changes for the Commission, was a result of people's dissatisfaction with what happened in Lahaina, but who exactly introduced those bills? Do you have any idea? I'm sure you guys know where it came from.

CHAIR CHANG: It was Senator Inyoue who introduced the Senate bill.

COMMISSIONER MIIKE: But who was the force behind that? I know some of the people that have been involved in Water Commission issues for years have voiced their dissatisfaction with how the Commission has operated. I think also with the advice we have been getting from the Attorney General's office, in my experience over 25 years, you all know that I'm not really happy with the advice that we have gotten from the Attorney General's office. I guess then what happened was that people went to various legislators and had them sponsor bills that were reflecting their positions, correct?

CHAIR CHANG: That may be true, I don't know. Senator Inouye was the champion of this bill. I don't know who may have approached her or whether there were any special interests, but she was very...

COMMISSIONER MIIKE: All legislation is special interest.

COMMISSIONER KAGAWA-VIVIANI: I was going to say that's standard practice for some.

CHAIR CHANG: I don't know, Larry, who may have.

COMMISSIONER MIIKE: All I'm asking is that when we begin the legislative session again, don't just give us a one-time update about what's going on. I think that during the legislative session, every time we have a meeting, we should have a brief update about what's going on and not leaving it to us as individual Commissioners to decide where we want to get involved or not.

COMMISSIONER KAGAWA-VIVIANI: I as a follow up, our names as Commissioners are on the corner of everything that gets signed by staff, but I don't feel that we always...that public meeting was more informational and it wasn't necessarily an invitation. I'll just say the complexity of the issue, it's not always a comfortable space when we have the AG and Chair and if there is our dissenting views, to be honest about the merits of these kinds of- to have a really honest and open discussion about that. I guess in the spirit of civic engagement, maybe we should.

CHAIR CHANG: We should.

COMMISSIONER KAGAWA-VIVIANI: I think if I could make a request for next session it be that. Maybe it's hard right? The legislation gets introduced in what, January? I mean the timing of it is hard.

DEPUTY UYENO: The best thing we can do is once...Michael Yoshinaga, he used to be with our office and was kind of the departmental legislative coordinator or was the departmental coordinator, retired at the end of last year. Because of that, all the divisions have been tasked to basically review all the bills themselves and identify which ones are relevant to their divisions. Thankfully we have Alexa who with her attorney background or law background, she's very excited about the bills, but she did a great job in reviewing everything. After that, once we've reviewed it, we create a spreadsheet and then within our staff will identify who the lead branch is, basically, and then we'll have a spreadsheet. I think the best thing we can do is provide that spreadsheet to you folks at the beginning of the session and get your feedback, recognizing that it is a very quick turnaround. Once Leg(islature) gets going, we only have sometimes 48 hours, 72 hours to turn around our testimony and even then the bill is changing, at times. I think the only opportunity we can really outreach to you folks is at the beginning, after that it's very difficult to.

COMMISSIONER KAGAWA-VIVIANI: Sorry, I interrupted you. Is that it? Thinking about the format of meetings and Sunshine, perhaps staff could solicit us individually for comments and take that in as you develop your Commission position, otherwise we would have to have it in full Sunshine. That could be really long and complicated, but just general comments. Is that a potential?

CHAIR CHANG: The difficulty I have with that is if the Commission is going to take a position, in my mind it should be in an open discussion and we should all vote on it. Rather than putting the bill on the staff to try to decipher, okay some Commissioner said

this. That's a challenge. I think what we can try to do, I like Larry's comment, included in all the agenda items, included information updates on legislation. Normally, probably starting August, the departments are beginning to come in with developing their administrative bills. As we develop our administrative bills, what we can do is have a meeting included in one of our Water Commission meetings proposed legislation. I think what we saw was the penalty bill was an important one, the other important one was emergency powers. If we're going to do that because what I want to probably start June and I have initiated, is to have regular meetings with Dean and all of the County water directors and so that when we're proposing a legislation, to give them an advanced warning. I don't want us to come into the Leg(islature) where we've got the water departments at odds with us and that's what we did for those two bills. They came in during the veto period and opposed us, so I think we want to start and we should be much more collaborative with the counties, as well. When we're coming we can have a meeting maybe in July or August with the Commission to talk about proposed legislation, get the Commissioner's input, staff can develop some draft administrative bills and then I think we can actually take a formal position on those as a Commission. Do we as a Commission support this so that when we testify because normally when we draft testimony, it's really the chairperson of the Commission. But if we know that it's the Commission that supports this, it can be taken at a publicly noticed meeting, the Commission supports this administrative bill. We won't know what the non-administrative bills are until they're actually introduced probably come January or February and then we can provide you an update. If the Commission feels that they can take a position on proposed legislation, we can do that, but I think procedurally we will try to include Commission, get some guidance from you on proposed legislation, get a Commission decision if one can be made, and then two, move forward with the legislative session in January as new bills get introduced that may affect the Commission or CWRM. We'll include that as regular updates on our monthly meetings. Because Larry, what I have found at the Legislature, you got to show up, you got to be present and there are people who do show up. But it is helpful to have testimony written or oral testimony for various bills that we are trying to initiate. It's very hard when the only person sitting, defending a bill is just the Department. I know that on the other hand, unless we keep the Commission informed or our stakeholders informed, not everybody may have the same sense of urgency as we do, so we'll try to do a better job of keeping the Commissioners and our stakeholders informed of various proposed legislation.

COMMISSIONER KAGAWA-VIVIANI: I think for the matters that we can as a Commission, as a body, really comment on, I think I would like to be able to collectively support those and publicly support those to ensure their success, especially if they're really important for functioning. This sounds like a good plan to pregame a little bit and have those updates. Thank you.

COMMISSIONER MIIKE: The reason I bring this up is that we have all these proposed significant changes going on and as far as us as individual Commissioners, we're sort of

like passive watchers and that's kind of frustrating to be in that position. The other thing I wanted to ask was that we all know that bills get introduced, but it might take several years before certain ones get passed. It would be interesting to see what the Department's assessment is of the ones in this legislative session that made it fairly far along but then never made it through. When do you expect them to be reintroduced again and just to give us a heads up again. The other thing is that maybe we should also have a discussion during Commission meetings well before the legislative session about whether there are certain issues that we as individual or collectively as Commissioners would like to see legislation introduced. I for one think there's a lot of issues around designation of Water Management Areas that we really need to strengthen. Anyway, that's my three cents [inaudible].

COMMISSIONER HANNAHS: I'd like to respond to that.

20240521 00:52:08 - Commissioner Katayama leaves meeting

COMMISSIONER HANNAHS: I'll build on Larry's point that we know these issues will be back, right? These are issues, like you say, these things, bills, concepts tend to have a multi-year gestation period so there should be no surprise when we see these again next year. The issue of fines, the issues of emergency powers, the issue of independence and so forth. Fostering some kind of healthy discussion not when you're in the middle of the session and things are flying and bills are being moved around, but just a healthy discussion of this, I think at some advanced point would be a really good idea because it's not going away.

CHAIR CHANG: I agree. I see the role as a Commission, the Commission makes policy. Legislation is also part of policy. The role of CWRM is actually to implement the Commission's policy, so I do think it is worthwhile for us as a Commission to have some of those conversations and to talk about what kinds of policy changes. Whether, as Larry talks about Water Management Areas or the administration of CWRM, to me those are policy discussions that we should have. In the absence of them, yes, the chairperson then represents the Commission, but it may not necessarily represent all of the Commission's wishes. It would be helpful to have a discussion when we're not at a point where we have to make a decision, but as you say sort of safe space to have open discussions about that.

COMMISSIONER HANNAHS: I'll add this. This young lady came on board, she approached me at a conference and said if I had any advice for her. I said if you think of things as hard or challenging, they tend to self-fulfill, it becomes hard. To me, it's not so much that these are hard discussions as they're deep discussions, they're philosophically important discussions. The whole issue of independence for instance is not so much about, we have a problem with you or this administration and so forth, it's the idea that the protection of a public trust asset, people need to represent the unborn and not the current electorate. If this administration is going to stand up for the people who put them

in office, which they should, we get that, but sometimes an asset like this can't be managed to just the needs of this generation. That's the philosophical discussion. It's not a condemnation of anybody's behaviors or motives and so forth, it's just I think we would welcome that kind of deep philosophical discussion. What's the right path, what's the thing that takes care of the needs of today, but also adequately protects our future generations who aren't voting today? They're not putting this Governor or this legislator in office. I think that's an important part of our duty, but that's just me. Others may feel different.

CHAIR CHANG: I appreciate the discussion.

20240521 00:55:41 – Deputy Uyeno continues presentation

CHAIR CHANG: I do want to applaud and recognize the efforts of Katie and Kaleo last year worked with our Congressional delegates in getting some additional funds for monitoring. I think that's a source that we have not really fully tapped into, federal funding. I am encouraging all of our divisions to start looking at available federal funds to supplement monies that we get from the leg(islature). Any other questions? Anything else?

COMMISSIONER MEYER: Just a comment, I strongly support the greater collaboration with the Counties and the various public Departments of Water Supply and in particular, taking the time to be more involved in the formative process of legislation, as Larry recommended. I, for one, would be happy to devote the time to that and I think that's a critical component of the mission and functioning as has been echoed by Neil, as well, that we do that going forward. It requires a personal commitment, perhaps even an executive session as opposed to more formal meetings with the complications involved, but I think that's a very important function of this Commission and we should proceed to activate that, Chair.

CHAIR CHANG: Thank you very much, Commissioner Meyer. I hear a uniform voice of our water Commissioners supporting being more involved in legislation in a proactive way and being regularly updated. I have found that collaboration and keeping people informed is really critical to the success of all the work that we do. The water directors, they are a key component to some of the work that we do, so I am finding opportunities, having monthly meetings with all the water departments so we can update them on what we're doing. They can update us with what they're doing, but also talking about collaboration when we move into legislation rather than being at odds, being together, so addressing proactively their issues.

COMMISSIONER KAGAWA-VIVIANI: I do have one question since we do need to work with counties, but because our mission is public trust, are we investing the same effort in communicating with a variety of stakeholders? I guess I just want to be

cognizant of sometimes the utilities and public trust purposes are at odds, so just ensuring that we're proceeding in ways that are going to not apparently say "fast track" permits, but really show that we're doing our consideration of the multiple values. I'll always just sort of prod at that, but I agree, we do need to be in coordination if we want to see our infrastructural improvements go forward.

CHAIR CHANG: It's also getting good information from them. They're doing a lot of water development wells. What I'm finding is that there's a gap between, we're not finding opportunities to share information. For example, when we're talking to Hawai'i Island about doing this regional monitoring system, we don't know what they're monitoring, they don't know what we're monitoring, so just trying to have government entities work more collaboratively so that we can, rather than either duplicating or find where are we missing gaps, to do better, to service the people better. Far from fast tracking anybody's permit, it's looking at how can we be more efficient with our limited resources by working together. We're looking at the placement of new wells, is there a gap that they're finding, so I think there is value in those kinds of conversations with the regulators who provide. But your comment is well taken that we shouldn't only be having conversations in our Commission meetings, but I also see staff doing a lot of work in going out to the communities and the different plans that they're coming up with.

COMMISSIONER KAGAWA-VIVIANI: Not just because of optics, but when people are not in certain conversations, there can be constructions of explanations of what's happening that are not reflective of what the dialogues are focused on. But I do know that the utilities know their systems and know their wells and that's something we haven't always been able to share on. I appreciate this dialogue about the broader needs.

PUBLIC TESTIMONY – None

20240521 1:03:45 - Break

20240521 01:14:20

C. NON-ACTION ITEM / INFORMATIONAL BRIEFING

2. Update on Implementation of Waimea Watershed Agreement, Waimea, Kauai

PRESENTATION GIVEN BY: Deputy Dean Uyeno; Joshua Uyehara, Kekaha Agriculture Association (KAA); Jordan Inafuku, Kaua'i Island Utility Cooperative (KIUC); Mark Takemoto, Agribusiness Development Corporation (ADC)

Staff presented the progress of the Waimea Watershed Agreement which includes the parties of KAA, KIUC, ADC, Department of Hawaiian Homelands (DHHL), and Pō‘ai Wai Ola.

QUESTIONS / COMMENTS

20240521 01:17:12 – Joshua Uyehara begins presentation

20240521 01:19:47 – Jordan Inafuku begins presentation

20240521 01:22:35 – Mark Takemoto begins presentation

CHAIR CHANG: Mark, can I ask you is ADC supportive of KIUC’s original plan in 2018 without the additional modifications to expand the 2018 plan?

MARK TAKEMOTO, ADC: We don’t think it’s the best plan based on all the discussions, but we understand that as the project changed, we do not believe that is the best plan, however that is the plan that was agreed to. In absence of being able to agree to anything different, we’re saying that since that was agreed to then that would be the only place that we could do that. We don’t have the funds or the ability to just take over the work that was offered by KIUC, so right now we’re hoping that there’ll be some resolution that we can come to. Truthfully, we don’t think it’s the best plan, but in absence of being able to agree on an alternative, we have no choice but to say, well then go ahead.

COMMISSIONER MIIKE: Your original agreement was way before I was born, so I don’t know anything about the original, but when you come to an agreement, you never agree on one side thinks this is the best plan and the other side says, no it’s not. You come to some middle ground, so it seems to me that I don’t buy into a discussion that says, oh now we think the original agreement was not the best plan. You guys agreed, so I guess the question over here is that whether the offer from KIUC now is a reasonable offer and that the ones who have been offered to are, I know that’s not you, but it’s the other group. Are you holding out for the best plan or are you going to hold off for something that may be a little bit better than what was agreed on, but not what you now think is the perfect plan.

MARK TAKEMOTO: Well, the original agreement, I believe, was that KIUC would be running this system, this section, but we do realize that their plans have changed, that they’re no longer going to be running the system. We do understand that when we agreed to it, the understanding was that, well they’re going to be taking care of this so their modification should be based on their own plan. That’s how it started, I could be wrong, correct me if I’m wrong. That’s how those original modifications were determined and

now that they're not going to be running that segment, KAA is going to be running that segment, I would rather not impose upon KAA something that maybe is not workable. Like we said, because we can't quite come to an understanding on this and ADC is not financially able to just take over at the offer that was made by KIUC, then we have no choice but to say, well okay we still have to address the original agreement that there was a commitment there to complete. Like I said, in absence of an agreement, we cannot unilaterally say, well you have to do this or not. Again, we have no choice but we're going to agree to what everybody agreed to originally in absence of an alternate plan.

JORDAN INAFUKU, KIUC: Just a quick clarification for what Mr. Takemoto was referring to. The original agreement had two phases and the first phase KIUC committed to certain modifications of the system and it was not tied to the project because the agreement had to leave open the possibility of whether the project would move forward or not. Then the second phase would be if the project moved forward, then KIUC would take care of certain parts of the system and so we're still in the first phase and trying to do the first phase modification. The agreement was made without an understanding that KIUC would be running this system. There's always the possibility that the project would not move forward and KAA and ADC would still be running the system. I know there's a long history to this, but that's where the agreement stands, two phases.

ELENA BRYANT, EARTHJUSTICE – PŌ'AI WAIOLA: Hi, good morning, Chair. Thank you, good morning Commissioners. Elena Bryan on behalf of Earthjustice. We just want to underscore not only the importance but the urgency of these modifications and really urge the Commission to take an active role in ensuring that the obligations under the agreement that this Commission ordered are in fact carried out as expeditiously as possible. As you know, these modifications are phase one requirements under the agreement and they were intended to be implemented shortly after this Commission approved and ordered the terms of that agreement back in 2017. Looking at the language of the agreement, the modification plans were due to the Commission within 135 days and then work was supposed to begin within 45 days after approval of those plans, but 7 years later we're still waiting on these phase one modifications to be implemented. Since the Commission deferred in January, we've met multiple times and the parties continue to bounce back and forth between KIUC's plans or KAA's proposed plans and back to KIUC's plans and now KAA has an alternate plan. What's most concerning for our clients is that it was brought to our attention during these compliance meetings that interim instream flow standards on Kōke'e aren't being met, which we aren't able to monitor because the monitoring stations required under the agreement which would measure the amount of water coming into the ditches and the amount of water going into the streams below the diversions on a continuous real-time basis, haven't been installed. It's our position that monitoring is a bare minimum, elementary obligation for any ditch operator seeking to use public trust water resources which the agreement and order only makes more imperative and mandatory in prescribing specific extensive monitoring regimes. We did submit a notice of ongoing violations and complaint against waste with

the Commission almost a year ago in August of 2023, seeking to spur compliance with the agreement and the IIFS (interim instream flow standard) and to date, nothing has been done. Again, we just want to urge this Commission to take action to ensure that the public isn't waiting another seven years for these modifications and most importantly crucial monitoring to be implemented.

COMMISSIONER HANNAHS: I very much appreciate that testimony because our focus is on the resource itself and it sounds to me like our interests are being damaged by this delay because we're not able to monitor it appropriately as planned. We can and wait and wait for the parties to resolve, but meanwhile something that's of concern to us is at risk. What is staff's view of this? Do we proceed? Is it your recommendation that we proceed, encourage the parties to implement the phase one as originally planned and designed in terms of the impact that it has on our interests?

DEPUTY UYENO: I think, and Ayron may have thoughts on this more, but I think for us, if the KIUC project is not moving forward then we'd want and recognizing that KAA would be the one to take over, we'd want them to be in the best position to operate the system. Ideally, if they can come to some agreements and get the work done. Do you want to add anything?

DR. STRAUCH: Ayron Strauch, Stream Protection and Management Branch. There are certain elements of the KIUC proposal that were to be temporary in nature with the understanding that further phase two components would enhance the operation of the ditch. With the KIUC project phase two not moving forward, there are some concerns about the modifications that might in the long-term harm instream values, not allow for the most efficient operation of the system, and the State would be worst off, including the interests of DHHL, for example. We don't want to interject in the discussions between two parties that are, we're not the operators of the system, we don't have the money to modify it, but at the same time, I think it would be worth having the Commission weigh in on whatever agreement KIUC and KAA, ADC come to. I don't know where our role is, but for monitoring I think we do have much better monitoring of the streams today compared to seven years ago. I think we need more monitoring of the ditch system as a whole, but we can get that in place. We're working with KAA and staff will be installing soon this summer IIFS monitoring stations. Monitoring of Kauaikinana has been upgraded, the modifications to Waiakōali will ensure that the IIFS is met. I don't know if you have any questions.

COMMISSIONER HANNAHS: Let me see if I understand. Yes, there's an adverse impact in the continuing delay, but it's a risk that you sound like we're willing to take or live with because of the potential benefits to public trust interests if they get this done better, if they get this done well.

DR. STRAUCH: There are modifications that, say at the Waiakōali intake, that KIUC has proposed that are different from what KAA would do in the long run. KAA would make structural modifications to ensure the instream flow standards were met, but they're not going to put in a really complex monitoring setup to monitor those modifications, whereas we could, CWRM staff could monitor the IIFS ourselves. But in the original agreement, we weren't charged with doing that. It was an option but with the money on the table for KAA, there's just not enough for them to monitor the IIFS, but the ditch is being monitored at the moment and we could put in, CWRM staff could put in an IIFS monitoring station downstream to ensure compliance. That's where the original Commission order had the operator monitoring the IIFS, but the money on the table would just not be sufficient to monitor the IIFS by the operator, by KAA if they accepted the KIUC dollar. Whereas the majority of that money that's on the table from KIUC would go to modifying the Kawaiko'i intake better than what KIUC is proposing. The original plan for KIUC was a cofferdam structure which is quite intrusive into the stream channel, well into the ditch, which is in the stream channel at this point, and the KIUC proposal is not what would be implemented if KAA built what they're proposing, which is a functioning control gate at the point of the intake so that the water would remain in the stream. Long term, they could add power to it so it would be remotely operable and that sort of thing, I think that in the long term would benefit the stream.

COMMISSIONER HANNAHS: In a nutshell, we prefer the KAA plan,

DR. STRAUCH: Yes.

COMMISSIONER HANNAHS: But the means to pay for it is what's at issue. What more leverage do we have, does anybody have on KIUC to make them put up more than the half million they've offered when they don't have the project upon which we can make that a condition. So, is there a leverage to get them to contribute a greater amount?

DR. STRAUCH: I'm not in the position.

COMMISSIONER HANNAHS: It feels like they're preserving, they're doing this to preserve an option that they may want to do this in the future and they know that if they do this, they're still in the game. That may be an unfair, Mr. Inafuku can clarify that if that's not a fair characterization, but leverage. Do we have to get more from them and if time keeps going by where this goes unresolved because there seems to be a pretty big gap between the parties at some point, when do you decide just to do something even if it's not perfect? You can respond to Commissioner Miike.

DR. STRAUCH: One more on Kōke'e Stream, for example, the original proposal was a large pipe over the stream to carry the ditchwater to the tunnel. That in itself, I don't think could be built with the monitoring stations in the stream with money left over for all the other modifications. It's seems a little unreasonable. That's not the modifications that

KAA would want to do. I also don't think that we need monitoring in Kōke'e if we get the intake at the head of the tunnel because the stream is used to convey the ditchwater. It's a small stream, it's a challenging stream to monitor. There isn't really a great place upstream or downstream in the intake, but it's still a condition of the agreement is the problem. That's where the Commission needs to weigh in on, are all of these things that were in the original agreement still a requirement of KAA if they accept the KIUC money to implement what we think is the best plan?

COMMISSIONER HANNAHS: Is that a management issue or is that a legal issue?

DR. STRAUCH: It's partially a legal issue because if it's in the agreement it has to be done correct.

CINDY YOUNG: I'm not familiar with the agreement, let me check with the attorney who is.

COMMISSIONER MIIKE: A couple things, one is I hear might be, one says the best plan. I don't hear anything about some probabilities about any of these things happening. For example, it might be really bad for the stream, but with any particular proposal whether it be a KIUC or KAA, what's the chances of that happening? Now I don't want to wait to say that we're going to do something so that there is absolutely no risk, no such thing. Second of all, from the very first Supreme Court decision on these stream things which was the Waiāhole case, the Supreme Court said that, hey we're not an umpire trying to mediate between two parties, we're the ones that have to protect our resources. So, you make a decision whether these parties agree or not and it has to be that we look at the resource first and the economic interest or whatever of the parties secondary. I don't want to wait anymore for all these back and forth saying, oh we want to do this, no, I don't want you guys to do this, we want you to do this. We're not going to end up with anything, so I'd like to make a decision today.

CHAIR CHANG: Unfortunately, we can't, Larry, it's not agendized as a decision item.

COMMISSIONER MIIKE: Next time around then.

CHAIR CHANG: Yeah, next time.

COMMISSIONER MIIKE: It doesn't seem as though when we wait that there's going to be some agreement. There's so many contingencies about these people saying we want to do this, but we don't have the money, oh we want to do this but this is all we're going to give. It's going to be endless.

JORDAN INAFUKU: Just a short response, Chair, the agreement for phase one was that the parties would help cooperate with KIUC so that we could do due diligence for the

West Kaua'i Energy Project and in exchange, KIUC would proceed with the modification plan as agreed to by the parties. That modification plan is this 2018 plan. We were able to get the assistance of everybody to do the due diligence and we need to proceed with the 2018 plan. The second phase would be if we had chosen to do the project, then there would be a whole another set, a phase two. We are willing to do the 2018 plan. At this point, what's changing about the agreement is the parties view of that plan and so for KIUC's point of view, as the project is no longer proceeding, we have less of an input on the scope of the project that they would like to do moving forward, but our legal obligation is the 2018 plan and that's what we're offering and willing to do, or we have been discussing with KAA and ADC since they will be the ones operating the system. If they would like to do a different plan, we could give a monetary contribution to that plan rather than move forward and construct a plan that they don't want.

CHAIR CHANG: I'm sorry, did you want to add anything else?

JORDAN INAFUKU: No, just to say but under the agreement the obligation for KIUC to do the modification plan that we agreed to in 2018 and so that's the basis of our interest in this. Anyway, the negotiation discussion is ongoing but frankly this conversation today has been very informative because sometimes it's easier to hear everybody's point of view and perspective here.

CHAIR CHANG: I'm surprised, do you guys not have conversations where you're hearing each other's view? Is this the first one? Inside the testimony, there's been numerous meetings. Have you not had this kind of discussion?

JORDAN INAFUKU: There have been numerous meetings, Chair. I think there is some confusion about what the different parties' responsibilities and duties are under the agreement. I think the project being withdrawn has taken everybody for a little bit of a loop.

COMMISSIONER HANNAHS: But the original agreement contemplated that might happen.

JORDAN INAFUKU: It did, that's why the obligations are split into phase one and phase two.

COMMISSIONER HANNAHS: I wonder if KAA has a different view of the agreement?

CHAIR CHANG: Well can I just ask, Jordan, KIUC is offering \$500,000. Is your \$500,000 based upon a 2018? I'm just wondering for purposes of present value, that is now six years since the agreement. That \$500,000, is there a possibility just to reflect inflation and change? Construction cost, I mean everything has changed over the last six years. Your \$500,000 has remain stagnant based upon the 2018 agreement. Is there any

opportunity to increase that amount? I mean that's separate and apart, but is there an opportunity to increase that?

JORDAN INAFUKU: I understand the question and I'll let Dawn answer because she has more information about the basis for that.

DAWN HUFF: Aloha Chair, thank you. The basis for the proposed financial contribution of \$500,000, actually we developed that after receiving cost estimates from KAA for KAA's proposed plan and for KIUC's plan. KAA sent us two cost estimates, one was for their plan, the KAA plan, and one was KIUC's cost estimate for the KIUC 2018 plan. We reviewed those cost estimates and that's how we developed the \$500,000 to cover work commensurate from the KAA plan with the KIUC obligation.

CHAIR CHANG: Was it 2018? Go ahead, I'll let you finish.

DAWN HUFF: That \$500,000 was not a fixed cost estimate from 2018.

CHAIR CHANG: I see, so that \$500,000 is based upon KAA's present plans?

JORDAN INAFUKU: It's based on KAA's cost estimate for the 2018 plan and KAA also had provided a cost estimate for their plan, their preferred plan. The discussions that have been ongoing for the last few months, part of that discussion is what scope is in the 2018 plan and what scope the parties believe is outside the 2018 plan.

COMMISSIONER HANNAHS: But isn't the point of your question is are those 2018 estimates or are they current dollars?

DAWN HUFF: They're current.

JORDAN INAFUKU: They're current [inaudible] from KAA.

DR. STRAUCH: Can we clarify the if KIUC were to implement their 2018 plan, what the actual cost would be for that today?

JORDAN INAFUKU: We estimated it based on KAA's cost estimate.

DR. STRAUCH: But what is that number? I don't remember off the top of my head.

CHAIR CHANG: I just want to be real clear, so are you saying that KAA? Josh has got his hand up, Josh you want to add something to this?

JOSHUA UYEHARA, KAA: Yes, I should clarify here when we estimated the total cost of both projects, our initial estimate was somewhere north of \$2 million for both, so \$2

million plus for KAA's, about \$2 million for KIUC. We went through some, I guess you could call it value engineering discussions with Dawn, where she identified that we had put too much into sensor packages things like that. Our latest total estimate for the scope is about just shy of \$2 million for KIUC's plan and just shy of \$1.7 million for KAA's plan. As far as we can tell, the \$500,000 is based on if you took our current cost estimates for specific items in KAA's plan and the specific items in KIUC's plan and you just took the overlap between the two plans, the features that would be constructed in roughly analogous ways, in common between the two plans, that would be about \$500,000. That's our understanding of where that number came from, but if you had to build the entire 2018 plan, at least based on our estimate in today's dollars, it would be just shy of \$2 million.

CHAIR CHANG: I guess that's what I'm trying to get to is if we look at the 2018 plans but we're building it today in 2024, what is the actual cost estimate? I guess Dawn, there seems to be apples and oranges between what Josh is saying and what you're saying, at least for me.

DAWN HUFF: I think I'll go back to what Jordan was saying, from my perspective we have a disagreement on scope. So, until that gets reconciled, we have not done procurement, we were waiting on permits, getting our final permit before we do a procurement process to select a contractor for the work. I don't have, aside from KAA's cost estimates and some other data points I have on equipment and some installation cost, but not a complete installation cost package, I don't have a current cost separate from KAA's cost estimate for KIUC's plan. However, we do have a disagreement on scope, so I think that's where we are not aligning.

COMMISSIONER HANNAHS: Josh, is the \$2 million what it takes to implement phase one or phase one and phase two?

JOSHUA UYEHARA: Phase one, so just for order of magnitude, just building the cofferdam and all the required work going into that as well as the *pipe across Kōke'e Stream, we estimate that probably is in the ballpark of half a million already, just for those two things. Then you have to do the other work on other things and so we provided our estimates in detail, broken down to man hours required, equipment required, material costs at least based on our understanding. We did that to be transparent, partly also because enough of the work is analogous if not identical that if KIUC is able to get that work done for phase one much cheaper than our estimate, that implies that we also could have done that if we had better numbers. We tried to be very transparent on the detailed basis of our estimate and we did see some of that, as I mentioned earlier where we had cost for some of the sensor packages significantly higher than KIUC, so they gave us some information on what they had been planning to do instead and so we revised down our cost estimate for those things. That's kind of how we approached that.

COMMISSIONER HANNAHS: Is the dispute over scope or cost?

JORDAN INAFUKU: Right now, the disagreement is between when we get the cost estimates from KAA and the line items that they have allocated to those cost estimates, when we take a look at and compare it to the 2018 plan, we come out with a different number and those would be the areas that we could negotiate under.

COMMISSIONER HANNAHS: But my question is, do you just disagree on the cost or do you disagree on the line items? That's scope.

JORDAN INAFUKU: Yes, scope. We don't have another cost estimate at this point because until we get the permits, we have not done our own procurement for the work.

COMMISSIONER KAGAWA-VIVIANI: Can I ask a different question? This is for Ayrton, when I look at exhibit three of KAA's testimony, they have a detailed breakdown, present day value, KIUC and KAA alternative. What I see in the KAA alternative is remote control options for the diversions that basically double the cost of managing that diversion, but for phase one, we have temporary means to meet IIFSs. Is that temporary means sufficient for the near term? Because the added costs come in from that remote control. I'll just be honest, I don't think it's not necessarily fair to hold KIUC -that has no longer a long-term interest in this- to pay for that which is really in KAA's and ADC's long-term financial benefit and the stream. Is the interim kind of temporary measure to meet IIFS acceptable from our standpoint on the Commission?

DR. STRAUCH: Now I'm going to get multiple projects swirling in my head confused but at Waiakōali, let's just take one example, without investing much money KAA can modify the intake with boards, lumber. They can cut a notch in the dam and ensure that the IIFS is being met under low flow conditions, but they're not going to be able to regulate the intake.

COMMISSIONER KAGAWA-VIVIANI: But we're doing our part.

DR. STRAUCH: Part of the agreement was that the operator would take responsibility for meeting the IIFS and monitoring that, but if KAA were to implement the low cost option, they wouldn't have the money to monitor the IIFS. CWRM staff have used KIUC equipment and are monitoring the ditch and then we would put in our own low cost IIFS monitoring in the stream, but that would be independent of KAA's implementation of anything. They will be able to meet the IIFS, it just won't be in real time, it won't be adjustable remotely, that sort of thing.

COMMISSIONER KAGAWA-VIVIANI: Those are "nice to have."

DR. STRAUCH: That is sufficient, but it's in the agreement that they need to monitor real time, that the operator needs to monitor in real time. That's where I think there's this negotiation between KIUC and KAA, but there's also the requirements that the Commission ordered that are on the table that we might need to address or that you need to address.

COMMISSIONER KAGAWA-VIVIANI: The Commission is not party to this, we are external to it, we ordered or facilitated the mediation, but if this negotiation were to be revisited, that would mean that the parties have to agree. But what is up in front of us eventually is the permit and so what I recall from last meeting is things can be approved and then come back with modifications potentially.

DEPUTY UYENO: You mean the permits? Yeah.

COMMISSIONER KAGAWA-VIVIANI: If the design needs to change, I think KIUC is just trying to meet its obligations and to find the best path forward and have suggested monetary compensation. As the Commission, we need to think about does this meet what we ordered and then if we need to increase the cost or decrease the cost or reweight things, can we help provide the guidance to the parties so that they're not just playing tug of war with line items, but we say "this is what's needed at Waiakoali," "this is what's needed at Kawaiko'i" given the updated circumstances. Are we able to provide that technical information to help people understand what that threshold of meeting the IIFS is? I don't know if that's clear. Is there technical information that we can provide to help them navigate this next step at this point? Do we have all we need to know right now?

DR. STRAUCH: I don't know what you're asking so I think what we should do is modify Waiakoali a certain way, Kawaiko'i a certain way, Kawaikinana a certain way and we know where we need to monitor the IIFS. We are monitoring the streams as needed. The issue is that KIUC is proposing to build a giant cofferdam right behind the head wall in Kawaikoi which is going to be potentially [inaudible], but they're basically piling up a whole bunch of dirt with a pipe under underneath it and that in itself is problematic. I don't think that's a great use of State resources. This is going to be visually intrusive, it might get washed away by a high flood, there's some issue. It was meant to be temporary, there's not going to be a way to regulate the flow through the cofferdam.

COMMISSIONER KAGAWA-VIVIANI: I guess for me on the Commission, I don't want to micromanage the design of the specific feature but you have the technical expertise to advise us on whether it is a good decision or not. What I hear from you is KIUC's design is not something we necessarily want for multiple reasons and so do you have the line item? Has Josh provided, say Ayrone, some of the details of that cost estimate besides exhibit 3? Could the Commission staff weigh in on it?

DR. STRAUCH: We have weighed in and we've spoken to everybody. We can't force two parties to come to some sort of, I can't do it, the Commission can order maybe something, but I think a way forward would be potentially to have KIUC put to bid what this project is that they're proposing and come back to us with the cost estimate for what they're proposing. If it's different from KAA, okay, but we now know what it would cost for KIUC to implement their project and we have another point to work with.

CHAIR CHANG: Why doesn't KIUC just implement the terms of the agreement? Why is KAA?

DR. STRAUCH: It's like if somebody were to make a modification to a car and then return the keys to you and you don't want the way it was modified.

CHAIR CHANG: But can't KAA make conditions upon which they accept it and then we have an enforcement authority if they're not complying with the IIFS or if they're causing harm to the stream? Don't we have an enforcement arm to do that to ensure that they're in compliance?

DEPUTY UYENO: The thing is they've prepared this plan with the general acceptance of everybody, granted that was under the expectation that phase two was going to move forward.

CHAIR CHANG: I'm feeling like we're totally out of our lane, but the settlement is not, well I'm not sure.

DR. STRAUCH: Let me explain why it's important to be able to modify the intake successfully so that they can be operable because we have public trust uses that are dependent on the irrigation system and we want to make sure that the operator can meet those obligations while meeting the instream flow standard as best as possible.

CHAIR CHANG: Are you saying you cannot do that under the terms of that settlement agreement?

DR. STRAUCH: Well, I'm saying that there are certain modifications that need to be made so that the intakes can be controlled and specifically Kawaikoi is the primary intake that feeds the system. Remote operation of the Kawaikoi intake is key. There are better people who operate the irrigation system on the call that can talk to that.

JORDAN INAFUKU: I just wanted to share that I think the reason that they can't answer you on that is because we're talking about like what Commissioner Kagawa-Vivani was touching on, we're talking about the difference between manual and automatic monitoring and we're talking about the different preferences for this plan when in actuality it's already been agreed to by the parties what the scope of the plan is. It was

agreed to on April 2, 2018 and that is the structure of the mediation agreement as it stands. That's the responsibility of KIUC so that's the rub here, we keep moving toward changing the scope of what the plan is based on what the parties would like to do today, a lot of that around monitoring and having an automatic versus manual system there, but really there's no legal mechanism to change. We've already agreed on the scope of what it is that KIUC is responsible to do. If the parties would like to do a different scope, that's fine and that's why we've had these discussions and KIUC has tried to participate in that, but as far as KIUC's obligation here, that's the scope.

COMMISSIONER HANNAHS: That's what the parties agreed to, but did we approve?

JORDAN INAFUKU: The Commission staff verbally approved it, I believe in May of 2018.

COMMISSIONER HANNAHS: Phase one, phase two plan?

JORDAN INAFUKU: Yeah and that's also the recollection of all the parties as it's in ADC's testimony, as well.

DAWN HUFF: I just wanted to add that the Commission also approved permits, the same permits that are before you today, you approved those permits a few years ago. The reason they're back before you today is because they expired while we were waiting for other permits, but you did approve the plan in that the work was included in those permits that were before for you a few years ago. I can look at the specific data, I don't remember it off the top of my head, but same plan, same work.

CHAIR CHANG: During the 2018 when the agreement was, did it also contemplate that KAA would operate the system?

DAWN HUFF: Yes, I'm sorry, Jordan go ahead.

JORDAN INAFUKU: Yes, in the case that the project did not move forward, that's what the agreement contemplates.

JOSHUA UYEHARA: I would have to disagree with that. If you go back and look at ADC board minutes from November 2016, ADC board approved removal of the Kōke'e system from the scope of KAA's responsibility in their memorandum of agreement with ADC. There was an ongoing issue at the time where there are parts of the system that already are not under KAA's scope, but we operate just by necessity since there's no other operator. It wasn't clear that actually KAA would remain responsible if the energy project didn't move forward, in fact the plans were already in place, the approvals were already done for us to step away and not by our choice but originally we were told with this other thing going on, you no longer have any significant involvement in the system

or need for that going forward. The only reason we didn't move forward with executing on that approval with ADC was we told ADC at the time if we step away now, who's stepping into that the vacuum? I think there was some confusion as to whether from ADC's part as to whether KIUC would step in in the interim. As Jordan said, the agreement doesn't say that they do. The problem we saw at that point was we didn't want to remain in charge of the system at that point, but if we stepped away, no one would be operating it and shortly the system would become inoperable. In 20/20 hindsight, if you have a 7-year period with no operator that system would have been totally destroyed by now. It wasn't clear to us that KAA was going to be responsible, we chose to remain just to ensure that the system would remain functional in the interim period.

COMMISSIONER KAGAWA-VIVIANI: I have a question. Is the water from that diversion needed or not needed?

JOSHUA UYEHARA: It's needed, yeah.

COMMISSIONER KAGAWA-VIVIANI: Okay, then there's a vested interest in ADC and KAA in sustaining it.

JOSHUA UYEHARA: Well, the primary uses of the water are actually DLNR parks for the trout fishery in Pu'u Lua Reservoir and DHHL's property. ADC has largely held off on developing the mauka lands above Waimea because this issue is unresolved. We don't have certainty on what the significant supply of water would be available going forward. We put in plans, alternatives to pump water up from the Kekaha Ditch to irrigate the most arable sets of land on the ADC property. When you look at the actual preponderance of use and interest in the water, currently it's DLNR and DHHL.

COMMISSIONER KAGAWA-VIVIANI: I have a completely different question then and it's going back to something Ayron mentioned. I think it would be helpful for KIUC to have their own cost estimate and KAA to be able to share their design and cost estimate so that at least we and the Commission can understand if half a million dollars is a sufficient kind of settlement offer to meet phase one requirements that everyone agreed to. There are so many more questions that go beyond the scope of this particular permit that apparently need to be had, but I think a concrete step would be that independent cost estimate and to have a better understanding. I work with telemetered systems so I noticed the sort of flipping of the monitoring and control cost in that exhibit 3, but I think it would be really helpful when we come to a decision point to have that side to side because what I get is KAA is asking for more money because that doesn't cover the cost of their desired modifications which may meet our Commission objectives more and KIUC is trying to just close up things and move on. I guess that would be a request of KIUC.

JOSHUA UYEHARA: If I could just clarify one point. KAA did not reject out of hand KIUC's offer, what we did was we took the offer and tried to figure out what we could do with that amount of money and then we took that to the parties and said, okay well as Ayron said, there's not enough money to do some of the things that are possibly even in the agreement and we can't unilaterally decide to move forward with a plan where that is the case without the consent of the other parties. We took it to the other parties to say would you find it acceptable if this is what we're able to do with this funding today, understanding we will try to get the funding to do the rest in future legislative sessions or from the federal government or something, but we don't have a timeline on that and we don't have certainty on that. That's where we couldn't come to that agreement, so that wasn't a rejection by the KAA unilaterally.

COMMISSIONER KAGAWA-VIVIANI: Thank you for that clarification.

DR. STRAUCH: Commission staff are prepared to install IIFS monitoring where it has not historically been installed because we were waiting on phase one to go through.

CHAIR CHANG: What difference would it make on their cost estimates?

DR. STRAUCH: Probably reduce the, I don't know the individual cost estimates, but I think they proposed monitoring or at least KIUC's original monitoring plan was probably in the order of \$80,000 to \$120,000 for all of the stations. I don't know off the top my head all the intricacies because there's some monitoring stations that are in ditches, some are in streams, some are at diversions. We have already put in two of those stations.

CHAIR CHANG: Just based upon this exhibit 3, one it looks like, it's two, three maybe [inaudible] monitor. Somewhat of the difference between the KIUC and the KAA estimates.

DR. STRAUCH: Commission staff tend to, most of our stations are not telemetered. They're low impact, they're not built into the design of the modification of the intake where there's a fixed geometry, and we monitor streams and ditches where it's appropriate. But we have to do a substantial amount of field work involved, but some of the monitoring is tied to modifications of the system itself.

COMMISSIONER HANNAHS: The total monitoring here is more like a quarter million.

CHAIR CHANG: Which is probably the difference between KIUC and the KAA at least the total estimated cost which is far above the \$500,000. What are the next steps? What happens if you don't get an agreement? Do I have someone from DHHL here?

IWALANI KAAA: Jonathan Scheuer said he can jump on if you'd like.

CHAIR CHANG: Jonathan if you want to provide us, we've heard from the other parties to this. Do you want to jump on?

JOSHUA UYEHARA: I was going to say in response to the question I think as was mentioned previously. The only option that's already been agreed to in 2018 was the phase one and our best estimate is if we actually proceeded forward with that, it would cost KIUC roughly \$2 million to build, plus or minus. Maybe they can be more efficient than our estimates and then we would have to go to the legislature and get funding to modify it long term to meet all of our obligations and take out even some of the modifications that were installed by KIUC. I think there is sort of a default path, it's just so wasteful at least from our perspective, that's why we're kind of low to go down that.

CHAIR CHANG: I'm sorry Josh, what is the default path?

JOSHUA UYEHARA: The 2018 phase one.

CHAIR CHANG: Oh okay.

DR. STRAUCH: Let KIUC build what they want to build.

COMMISSIONER HANNAHS: But KIUC has said that if we don't want that build, they'll give us the commensurate value, cost of it to build what it is we want or that is wanted here.

CHAIR CHANG: I don't know if it's commensurate, it sounds like...

DR. STRAUCH: They're only giving \$500,000.

COMMISSIONER HANNAHS: The gap is between and KIUC's position is without any independent cost estimate. I'm not sure what you're pinning your \$500,000 estimate to, but the people supplying you the cost information are saying it's \$2 million so on what basis are you saying it's \$500,000?

DAWN HUFF: We developed the \$500,000 based on our review of KAA's cost estimates for both their plan and the KIUC plan. We received the letter from KAA very late, so we have not had a chance to actually read it and review it in detail. I can't really respond to that right now, but I think I'm hearing a lot of information for the first time today in this meeting. We have had a lot of meetings but we are hearing information for the very first time today that we can't respond today in full. I think there's some information lacking here so I would just like to say that I think we need to review the letter that was sent by KAA, we need to provide some additional information, full detailed information to everyone so we're all working with the same information, and I'm not really prepared to comment any further unless you want to add something, Jordan.

JORDAN INAFUKU: It's a little bit inaccurate the reference to 2018 KIUC because that's where the disagreement is, the scope and the cost estimate from KAA there and what we believe the 2018 plan says. We have space between those two so it's not just the amount but it's again as we said, scope, but we need a little bit more time to go and address that when we get these letters on the eve of a meeting or a Commission meeting.

COMMISSIONER MIIKE: Two things first, I want to ask the Earthjustice attorney what they think about this. I think in the last meeting you said you just want them to go ahead and get something done, correct?

ELENA BRYANT: Yes and no and thank you for the question. At the January meeting, that was the first that we had heard that there was a possible issue about KAA not being able to meet DHHL's needs if the KIUC plan went. During these meetings that we've had and with information I've gathered today, we really don't have any visibility or a full understanding on what the disagreement on scope is. We do agree that the KAA plan is advantageous and that it could be done quicker and what I gather from Ayrton and others, more effectively manage the resources. But without information on what the disagreement on scope is, we think it would be reasonable for KIUC to fund what they would have otherwise had to pay to do their modifications if KAA's plan fulfills those same obligations, which is to modify the divergence, to allow them to meet IIFS, stream connectivity, and then monitoring. We agree with Commissioner Kagawa-Viviani's approach, we think it would be helpful for the Commission staff or Commission to help the parties understand what modification elements are needed to meet the obligations under the order and perhaps weigh in on the funding issue once we have a fuller understanding of the cost estimates. I just want to note that these phase one modifications were intended to be temporary. This was supposed to be a quick fix so that we could meet IIFS, we could monitor, we could gather critical data, and here we are 7 years later. KIUC decided not to pursue the project and so now we're looking at a permanent installation and so I do agree with Josh that it would be wasteful to install the plan only for KAA to ask for more funding to implement their own plan. We hope that the parties can come to some sort of agreement on this cost issue because really the only thing that's suffering by this delay is the public trust resource.

COMMISSIONER MIIKE: My second issue is suppose we go ahead with KIUC's original agreement on phase one and implement it, number one I heard KAA say it would be so wasteful and I heard Ayrton say you're not going to be able to monitor long term. My answer is so what. If that's the issue you think it's wasteful and you fix it and if our staff thinks that it's not going to be able to monitor it long term and that's sort of you do the best you can and we fix it up later. Again, I don't want us to go toward what some people think is the perfect solution while we just stand by for another seven years not doing anything. I think Jonathan is here now, I'd like also to hear what DHHL.

ELENA BRYANT: If I could just briefly respond to that. We agree, we don't want any further delay, in fact we've been trying for years to get this moving, but at the same time it's our understanding that if KIUC were to move forward with their modifications, they have to go through procurement and bids and the process itself would be a lot longer than what KAA has said. I understand that this was back in our January, February, March discussions. We were told that they could get their modifications in by October of 2024. Of course, I'm assuming that that timeline has shifted because now we've been in four months of negotiations at this point, but just on that basis alone KAA as a ditch operator it sounds like would be able to get their modifications done a lot quicker.

COMMISSIONER MIIKE: But they say they don't have the money. Isn't that the issue now?

ELENA BRYANT: That's where the disagreement lies and again, that's why I think Commissioner Kagawa-Viviani's approach is helpful because it would help give the parties a better understanding on what the disagreement on scope is and I think if we have all of the information in front of us, what the disagreement is, what the cost estimates are, that perhaps the parties can more effectively negotiate a resolution.

COMMISSIONER MIIKE: From what my understanding is that so all of that is done, KAA still says they don't have the money even with whatever is the contribution of KIUC, correct?

ELENA BRYANT: I'll let KAA answer.

JOSHUA UYEHARA: What we did was we took KIUC's offer of half a million dollars and we outlined to the other parties what we thought we could do with that. We think there is a way to move forward, the problem with that path is there are some of the modifications that are delayed until we procure additional funding and that has to be acceptable to the other parties to the agreement, that's not something we can decide ourselves to accept. I think implicit in some of the other discussion about potentially modifying some of the requirements in the agreement, we treat that as requiring the consent of the parties to the agreement for that to occur. Given where our limited scope of modifications allowed by the funding offered imply an inability to meet some of those conditions right away, we need the consent of the other parties for that to be acceptable to them.

CHAIR CHANG: But I also heard Dawn say that maybe they need more time to review KAA's letter and I don't want to put words in KIUC, but is there a possibility? I'm wondering at today's meeting, we've got differences of opinion on scope, on price, have you been talking to each other? I don't know if that's rhetorical. Maybe we'll let Jonathan, if you want to, Jonathan, we wanted to hear from DHHL.

DR. JONATHAN SCHEUER, DHHL: Aloha mai kākou. Can you hear me? Mahalo, I've been monitoring the meeting via YouTube so I caught almost the entirety of the discussion, but this also happens to be the day the Hawaiian Homes Commission meets so I apologize for not being on Zoom the whole time. I really appreciate the Commission having this informational briefing and the contributions of the parties to bring the Commission up to speed on this admittedly very complex issue because they're trying to figure out what to do during these circumstances. I want to sort of start off by sharing DHHL's interest in this which may not be known to all of the Commissioners. We have about 6,000 acres of land on the slopes above the Manā plane, they are some of the original lands that were set aside in the Hawaiian Homes Commission Act in 1921. For the majority of the century that the Department has had these lands, they were actually at first leased out by the Department of Land Natural Resources and its predecessors rather than the Department of Hawaiian Homelands, which didn't have the authority of lands, weren't directly being used for homesteading. Some of the lands were being irrigated from these streams and operated by the Kekaha Sugar Company which then paid some lease revenue, some of which went to the Hawaiian Homes Commission. In 1962, a beneficiary on the island of Kaua'i, Jo Manini, approached the Hawaiian Homes Commission saying we'd like to actually see some of these lands homesteaded and in '62, the first request was met with, we talked about it but there's no water that's available for homesteading in this area, we're not going to allow your requests. He was very persistent. By 1971, he actually secured a lease to a pastoral lot at the very top of the DHHL land, five pastoral lots were issued and actually then fights commenced immediately that same year with the Kekaha Sugar Company over whether or not there was sufficient water available for those homesteading lands. Nevertheless, the Manini family has persisted on operating cattle on some of those lands and have struggled to maintain a sort of sufficient flow of water just for those bare homesteading uses. In prior to actually the petition to amend the interim instream flow standards for the four streams that are in discussion here, the Department was actually preparing as authorized under the Hawaiian Homes Commission Act, a reservation request and demand for water to make our lands in that area available, but then Earthjustice on behalf of Pō'ai Wai Ola filed their own petition for interim flow standard amendments. We participated in the subsequent negotiations and we signed the Waimea Watershed Agreement in part because we received assurances in that process from KIUC that immediately and during the construction process and with the ultimate design and buildout of the full project, during that entire time we were assured our existing homesteaders would get water and in addition, our future homesteaders would get water in the course of implementing the Waimea Watershed Agreement. We went through our own environmental review process, beneficiary designation, consultation process, developed a homesteading plan for our lines around [inaudible] and spent a lot of money investing that which was going to be made possible by the implementation phase two of the project.

To move up till the events now is sort of where things started to fall apart and KIUC indicated that it wasn't going to be pursuing the project as planned. Immediately prior to

your January meeting, we got contacted by KAA and by immediately prior, I mean like the night they reached out to us, the weekend before we had a chance to talk to them the afternoon before and I had a chance to talk to staff at DHHL for 15 minutes before the Water Commission meeting. We understood from KA at that time and so testified that we were told that if the KIUC modifications went in as planned, there would be possibly 30% to 50% of the time where our existing leasees, so the Kekaha Homestead Association around Pu'u 'Ōpae as well as the Maninis above them would not have any water from the system. That gave us concern and we asked the Commission to sort of pause on approving the proposed plan from KIUC based on the information that we had at that time. Our understanding now, having participated fully in all the discussions among the parties, that many of the parties have referred to today, that the issue of DHHL's existing beneficiaries being able to get water to its lands are less a matter of whether KIUC's design is preferable to KAA's design, but actually that in essence the current instream flow standards which were approved by this Commission as part of the settlement may now as we've seen in other interim instream flow standards set across the state even a few years ago, things are much drier and you can't actually meet the stream flow standards at the same time as providing for other off stream uses. Our concern is that we want at a minimum, our existing home stayers to be able to get the water that they need now. I think it's our understanding that that is better served over the long term with KAA's design. As the system operator, they can better assure us that they'll be able to deliver water from our beneficiaries with their design than with KIUC's design. Where we stand right now as we participate in discussions, we continue to be very interested in discussions, we want to partner and see whether or not an amicable solution among all the parties can be reached, but if an amicable solution can't be reached, we would like the Water Commission to step in and give direction to the parties to make sure that the public trust uses both instream and off stream from the system [inaudible]. I hope that's useful in terms of what the [inaudible].

COMMISSIONER HANNAHS: The path forward, is it logical to, moving on Commissioner Kagawa-Viviani's comment, to really have our staff, you, look at the scope of work that makes sense for fulfilling the phase one agreement? Not that we want to do that, but we want to really nail that work, that scope of work down and then once it's nailed down, submit it to the parties to then bid. KAA has already bid, KIUC is free to get their own independent cost, secondly we can quantify the amount of KIUC's obligation. Then you could treat that as money, KAA and CWRM can then look at to say, okay what is the best use of these funds? Break this down into three things, 1) this is what is the scope required to fulfill, for KIUC to fulfill their phase one obligation, 2) what is the cost of that and the parties may be very different on that and so that may not be an easy number to agree upon, and then thirdly, how do we use it? Does that make sense?

DR. STRAUCH: I don't think we're too far away from understanding the scope. I think there are some parts of the KAA project that are beyond the scope that KIUC doesn't

agree with, that's fine. I think the biggest question mark is the cost of implementing the KIUC project.

COMMISSIONER HANNAHS: Maybe step one is simple, not too much and step two is going to be gnarly because the parties, but right now KIUC needs to come up with their own independent bids so that they have a number to compare to KAA's. Again, it's not to implement but to get the money to then figure out, okay what could you do with that that really makes sense- that's not wasteful and duplicative and so forth and it really is used for the priority needs.

DR. STRAUCH: Yes, exactly.

COMMISSIONER MIKE: Suppose all of that goes through without a hitch and then we issue a permit, but there's still the issue of since everybody seems to be heading toward the better design by KAA, it's still the issue of whether they get a permit or apply for a permit or not, there's still going to be a long delay until we have the implementation. I'm not just talking about procurement, but if you don't have the money, you can't go out no matter what we do and no matter what the agreement is. We're still looking at years.

DR. STRAUCH: I would say that KAA can move quite rapidly with money in hand. They already have most of the elements of what they want to implement designed and or they have a manufacturer that has already built these things for them because they have implemented the parts of the agreement that addressed the Kekaha Ditch system already. So, they have the gates, the monitoring equipment, the modifications. They've already procured them. They have the experience, they have the...

COMMISSIONER MIKE: But also heard KAA saying that they would need more money beyond what would be a fair assessment of what KIUC's.

DR. STRAUCH: No, I don't I think that...

COMMISSIONER MIKE: Wait, wait, wait, I want to hear KAA answer that, not you.

JOSHUA UYEHARA: Based on our estimate, KIUC's project would cost more than what we want to do, so what we have to wait on and what we have to get legislative funding on really just depends on what is KIUC's contribution and I think our perspective is that provided we can get the all of the parties to agree, whatever that number is, we would proceed forward on that basis. So, if the number is big enough that we can build everything, great. If the number is even what they originally offered, we came up with, well what does that scenario look like? The amount of work that would need to be deferred really depends on how big the check is really at the end of the day.

COMMISSIONER MIIKE: You can get started but you don't know when you would finish.

JOSHUA UYEHARA: Right.

CHAIR CHANG: I also heard Ayrone, you say CWRM, you've got some capacity to do some of the monitoring.

DR. STRAUCH: That's just a very small part of the bigger picture.

COMMISSIONER HANNAHS: But we move forward, we get off the merry go round here and we start to take a step forward and you don't get there in the first step, but it's forward motion.

CHAIR CHANG: I would urge KIUC, as part of the discussions to recognize, I totally understand you're at this point, you're not going to build the larger project, but eight years have passed or six, seven years have passed and just to be collaborative. I also heard Dawn say you're going to look at their numbers because I think the starting point of \$500,000, there may need to be movement on that but now you can look at actual numbers to come up with a better both cost estimate. I am wondering what kind of conversations you are all having in these settlement discussions when I'm hearing some of you say for the first time you're hearing new information at this meeting. This really shouldn't be the meeting that you're hearing new information, you guys should be engaging in genuine discussion. We would urge you, it sounds like there's been some good sort of summary of next steps by both Aurora and Neil for you all to take into consideration and we would urge you, I think Larry's comment about time is of the essence. We do need to move on, so it is going to be incumbent upon the parties to try to move quickly on this and because we are expecting the matter to come back to the Water Commission in a timely fashion.

JORDAN INAFUKU: Thank you to the Commissioners and the board and Chair. I think those three steps, I think step one is taking care of we have the 2018 plan that everybody agreed to already and the scope of that plan and if the steps two and three are the steps that the parties here agree upon, then we can take that back to our board and see if we can move forward there. I think the part of the issue is we've had three or four paths going and not sure which one we're doing and KIUC is kind of taking a backseat to that because we're not going to be long term here, but if that's the path I think that's helpful for us moving forward and getting some kind of resolution.

CHAIR CHANG: Elena, do you have anything else you want to add before we close this?

ELENA BRYANT: No, it sounds like a good plan moving forward and I appreciate Commission for your guidance and help on this.

CHAIR CHANG: Jonathan, you have anything else?

DR. JONATHAN SCHEUER: Just to add, I think I neglected to say that the issue of whether the instream flow standards are sufficient or can be met at the same time as meaning DHHL's off stream uses are a function of the level of the instream flow standards as well as whether or not improvements are made to Pu'u Lua Reservoir. Under the proposed project Pu'u Lua was going to be improved and so there was more storage so you could divert more during high flow periods, store it, and provide for that. That's the other sort of moving factor that affects how you balance out ultimately the Commission meeting instream flow standards and meeting off stream public trust uses. I really appreciate the discussion.

CHAIR CHANG: Fair point. Josh?

JOSHUA UYEHARA: I'd just like to say thank you to the Commission for really having the patience to work through what is a very complicated issue. I think we all want what's best for the state in the long run and unfortunately a lot of those issues are not simple, as I'm sure you guys are very well aware, so I appreciate that.

CHAIR CHANG: Fair enough and I guess for me, our IIFS in 2018 was based upon a certain set of facts. Have those changed? I'm hearing Jonathan so I'm sure you guys are considering all of that as well. Time makes a difference. Last opportunity before I close this item.

DEPUTY UYENO: I guess my only question is our next meeting we have scheduled with the group is I believe May 29th, with the mediation group. Do we want to put a deadline of the next Commission meeting?

COMMISSIONER MIIKE: One comment, in my past life when I actually worked, in situations where people deferred making decisions because they wanted more information, that's really a wrong approach to do it. I hope that whatever happens in what's been decided, there's some conclusion fairly quickly. I don't want to come back again and hear that, well we don't know, we need more information.

CHAIR CHANG: I think we should target for the next meeting and then if we give you two months, everybody will wait till the end of this first month. Let's anticipate everybody that we'd come back within the next meeting which is scheduled for June 18th and that there is some better understanding based upon the recommendations by the Commission so that we've got some ability to either get good information or make decisions on the permits.

COMMISSIONER HANNAHS: Hopefully you get the scope issue, that's easy to get behind us real quick and you're going to have two numbers either KIUC will still have their same number or they'll have another number that's more informed and so then you'll see the gap. But we won't be arguing about scope, one thing will be done.

COMMISSIONER KAGAWA-VIVIANI: This is just for the permits, whether or not they act on it, just to keep them viable and that long process of all the permits that they went through. Hopefully that provides impetus for the working group to find a solution that works for everyone sooner.

COMMISSIONER HANNAHS: To move this forward, Dawn, you folks can start lining up who it is you're going to use as a consultant to give you some numbers, some cost figures. Once you take another look at the scope that can be done right now, you can start moving on that, getting that entity lined up.

DEPUTY UYENO: You're talking to KIUC?

COMMISSIONER HANNAHS: KIUC, Dawn Huff.

CHAIR CHANG: You guys should all be talking about apples and apples.

DAWN HUFF: I will need to talk with KIUC about this. How they would normally do that is go through a procurement process which is somewhere between three to four months, that is how they typically get bids. They are regulated by the Public Utilities Commission and they do have a procurement process, so I will need to talk with them about how we would go about developing cost estimates and what our options are to be within their procurement rules, but I will follow up on that.

CHAIR CHANG: I don't think we're necessarily asking KIUC to procure it, it's just to get an estimate.

DAWN HUFF: I understand.

CHAIR CHANG: I'm sure they've got a series of consultants that they may have on board. We will leave that up to you guys.

PUBLIC TESTIMONY – None

20240521 02:47:19

D. ANNOUNCEMENTS

Kaua'i Water Use and Development Plan Public Hearing, May 21, 2024, 5:30pm,
Kaua'i Community College

20240521 02:48:09

E. COMMISSION MEETING SCHEDULE (tentative)

June 17, 2024 – (Monday) proposed limited site meeting, Punalu'u Stream Restoration
project, Kamehameha Schools

June 18, 2024 (Tuesday)

July 16, 2024 (Tuesday)

The meeting adjourned at 11:50 a.m.

May 21, 2024

Minutes

Respectfully submitted,

Iwalani Kaaa

‘IWALANI KAAA
Commission Secretary

APPROVED AS SUBMITTED:



DEAN UYENO
Acting Deputy Director

WRITTEN TESTIMONIES RECEIVED:

Please refer to the Commission website to read and view written testimonies received:
<https://dlr.hawaii.gov/cwrm/newsevents/meetings/>