1
00:00:00.000 --> 00:00:05.067
And I'm going to make Linda Chow a co-host.

2
00:00:18.380 --> 00:00:21.260
OK, Are you ready? Linda.

3
00:00:21.260 --> 00:00:24.697
Yep, OK all right. Good morning everyone.

4
00:00:24.700 --> 00:00:28.530
It's 903 AM. December 15, 2021.

5
00:00:28.530 --> 00:00:32.388
This is the last day of the hearings

6
00:00:32.388 --> 00:00:35.812
of the of this phase of the contested

7
00:00:35.812 --> 00:00:39.407
case proceeding in the East Maui Water

8
00:00:39.407 --> 00:00:42.963
revocable permits for 2021 and 2022.

9
00:00:42.963 --> 00:00:47.360
I'm good morning uhm.

10
00:00:47.360 --> 00:00:50.256
Let's see just a couple of points here.

11
00:00:50.260 --> 00:00:54.923
We we did try doing a transcript last

12
00:00:54.923 --> 00:00:56.974
even last evening off of the audio

13
00:00:56.974 --> 00:00:59.219
tape and it worked out pretty well,

14
00:00:00:59.220 --> 00:01:01.260

so will send that to you.

15
00:01:01.260 --> 00:01:03.660
And then we'll try to do the rest of them,

16
00:01:03.660 --> 00:01:08.286
uhm? Uh, shortly and get them out to you.

17
00:01:08.290 --> 00:01:11.498
I think it'll be helpful for for reference.

18
00:01:11.500 --> 00:01:17.090
And uhm. So today are the, uh, uh,

19
00:01:17.090 --> 00:01:19.540
closing arguments of the parties.

20
00:01:19.540 --> 00:01:21.524
You're going to have 1/2 an hour each

21
00:01:21.524 --> 00:01:26.590
up to 1/2 an hour each, and. Uhm?

22
00:01:26.590 --> 00:01:30.390
The UM and be in my Oracle first,

23
00:01:30.390 --> 00:01:32.664
then the county of Maui and

24
00:01:32.664 --> 00:01:38.800
then the Sierra Club. Uhm? And.

25
00:01:38.800 --> 00:01:39.538
There's no there.

26
00:01:39.538 --> 00:01:41.260
There is a public viewing room today.

27
00:01:41.260 --> 00:01:44.208
There's no one there.

28
00:01:44.210 --> 00:01:45.602
And anybody have any

29
00:01:45.602 --> 00:01:46.994
questions before we start?

30
00:01:50.220 --> 00:01:54.920
OK, if not a AMD you want to go ahead.

31
00:01:54.920 --> 00:01:58.490
Yes, this is the actual monster for.

32
00:01:58.490 --> 00:02:01.720
In my end in D.

33
00:02:01.720 --> 00:02:06.560
So just like to start by kind of thing

34
00:02:06.560 --> 00:02:08.720
briefly that you know what's at issue,

35
00:02:08.720 --> 00:02:11.864
here is the renewal and extension of the

36
00:02:11.864 --> 00:02:14.595
removable permits through the end of 2022.

37
00:02:14.595 --> 00:02:17.870
Not some later long term

38
00:02:17.870 --> 00:02:19.835
disposition and standard.

39
00:02:19.840 --> 00:02:22.731
Uh, for that is what's in the

40
00:02:22.731 --> 00:02:24.939
best interests of the state.

41
00:02:24.940 --> 00:02:27.865

And based on what's transpired

42
00:02:27.865 --> 00:02:30.205
in this hearing today?

43
00:02:30.210 --> 00:02:31.299
It's pretty clear.

44
00:02:31.299 --> 00:02:33.477
That the Sierra Club has conceded

45
00:02:33.477 --> 00:02:35.556
that the renewal of the RP's is

46
00:02:35.556 --> 00:02:37.327
in the best interest of the state.

47
00:02:37.330 --> 00:02:38.566
Because there's no,

48
00:02:38.566 --> 00:02:41.038
they're no longer advocating the argument

49
00:02:41.038 --> 00:02:43.946
that they the RP should be allowed to lapse.

50
00:02:43.950 --> 00:02:48.012
Instead, they've been focusing just on

51
00:02:48.012 --> 00:02:50.774
seeking modified additional conditions,

52
00:02:50.774 --> 00:02:52.880
modified conditions, etc.

53
00:02:52.880 --> 00:02:55.370
So so so the issues.

54
00:02:55.370 --> 00:02:58.714
Now the issues in this contested case have

55
00:02:58.714 --> 00:03:01.847
also been appropriately limited. Yeah,

56
00:03:01.847 --> 00:03:05.870
you know the reason is to afford Sierra Club.

57
00:03:05.870 --> 00:03:10.175
Uh, the due process that it has.

58
00:03:10.180 --> 00:03:13.449
Uh, you know, demanded and that the

59
00:03:13.449 --> 00:03:16.976
judge is essentially ordered to provide.

60
00:03:16.976 --> 00:03:19.888
Evidence of new facts.

61
00:03:19.890 --> 00:03:22.754
No Sierra Club has not actually offered much,

62
00:03:22.760 --> 00:03:24.540
if anything.

63
00:03:24.540 --> 00:03:27.350
In way of new facts.

64
00:03:27.350 --> 00:03:30.610
Sierra Club has instead.

65
00:03:30.610 --> 00:03:33.835
Recycled and reasserted the same

66
00:03:33.835 --> 00:03:36.714
facts that have already been

67
00:03:36.714 --> 00:03:38.205
extensively litigated previously,

68
00:03:38.205 --> 00:03:40.815

both in front of the Water

69
00:03:40.815 --> 00:03:42.120
Commissioner Fritz Crabtree.

70
00:03:42.120 --> 00:03:44.580
And they're trying to package them

71
00:03:44.580 --> 00:03:47.409
into new arguments about what the

72
00:03:47.409 --> 00:03:50.074
board's policy judgments should be.

73
00:03:50.080 --> 00:03:52.936
You know, when they do their balancing.

74
00:03:52.940 --> 00:03:55.028
So what these policy judgments should

75
00:03:55.028 --> 00:03:56.793
be regarding imposing new conditions

76
00:03:56.793 --> 00:04:00.400
on the RP's through calendar year 2022?

77
00:04:00.400 --> 00:04:01.904
So that is not.

78
00:04:01.904 --> 00:04:05.980
Those are not new facts, these are just.

79
00:04:05.980 --> 00:04:08.305
You know repeated arguments and

80
00:04:08.305 --> 00:04:11.010
their policy arguments in that fax.

81
00:04:13.160 --> 00:04:15.854
Emi's position on all this will

82
00:04:15.854 --> 00:04:17.650
be comprehensively set forth.

83
00:04:17.650 --> 00:04:19.850
In our proposed findings of

84
00:04:19.850 --> 00:04:22.050
fact and conclusions of law.

85
00:04:22.050 --> 00:04:23.558
But for purposes of this, closing.

86
00:04:23.558 --> 00:04:27.142
I will comment on some of what the

87
00:04:27.142 --> 00:04:30.366
Sierra Club has presented and argued.

88
00:04:30.370 --> 00:04:33.928
Beginning with a.

89
00:04:33.930 --> 00:04:36.121
Yeah, I would consider this a sort

90
00:04:36.121 --> 00:04:38.149
of a aggregate aggregate issue.

91
00:04:38.150 --> 00:04:42.290
Pretending to system losses.

92
00:04:42.290 --> 00:04:48.128
Versus waste. Versus you know,

93
00:04:48.128 --> 00:04:51.908
conditions to require system upgrades.

94
00:04:51.910 --> 00:04:54.058
Or to increase pumping from groundwater,

95
00:04:54.060 --> 00:04:56.358

I'm just going to this is

96
00:04:56.358 --> 00:04:57.507
all one interrelated?

97
00:04:57.510 --> 00:05:01.549
Issue and concern, which Sierra Club again.

98
00:05:01.550 --> 00:05:03.878
There's no new facts on this.

99
00:05:03.880 --> 00:05:06.322
This is just a continuing to

100
00:05:06.322 --> 00:05:08.550
argue what they've already before.

101
00:05:08.550 --> 00:05:10.694
Uh, which is that?

102
00:05:10.694 --> 00:05:13.374
You know the system losses

103
00:05:13.374 --> 00:05:15.629
from CBJ Vaporation.

104
00:05:15.630 --> 00:05:19.854
Are too high that efforts should be made

105
00:05:19.854 --> 00:05:23.306
to better account for and reduce it.

106
00:05:23.310 --> 00:05:26.410
And uhm.

107
00:05:26.410 --> 00:05:28.777
You know the the the fact that it goes

108
00:05:28.777 --> 00:05:31.116
into the aquifer is somehow irrelevant

109
00:05:31.120 --> 00:05:32.878
and the accurate should be pumped.

110
00:05:32.880 --> 00:05:35.076
All of these are arguments that

111
00:05:35.076 --> 00:05:39.018
were dealt with by sea worm.

112
00:05:39.018 --> 00:05:40.910
Uh, the.

113
00:05:40.910 --> 00:05:46.575
The 2018 DNO went over in

114
00:05:46.575 --> 00:05:48.750
fairly granular detail.

115
00:05:48.750 --> 00:05:51.490
The accounting for system losses

116
00:05:51.490 --> 00:05:54.230
that was presented by HCF.

117
00:05:54.230 --> 00:05:56.030
And the system losses from

118
00:05:56.030 --> 00:05:57.110
seepage and evaporation,

119
00:05:57.110 --> 00:06:00.166
which I went over and I identified the

120
00:06:00.166 --> 00:06:02.950
paragraphs in the DNO when I cross.

121
00:06:02.950 --> 00:06:04.894
Examined Wayne Tanaka.

122
00:06:04.894 --> 00:06:08.908

I mean, there was calculation that was done.

123
00:06:08.910 --> 00:06:12.038
It was based on.

124
00:06:12.040 --> 00:06:14.356
Surface area as far as evaporation

125
00:06:14.356 --> 00:06:17.686
is concerned and waited area

126
00:06:17.686 --> 00:06:19.864
as far as he is concerned,

127
00:06:19.870 --> 00:06:22.978
the the race of seepage through

128
00:06:22.978 --> 00:06:25.655
the different materials or the

129
00:06:25.655 --> 00:06:28.190
concrete lined or eartham etc.

130
00:06:28.190 --> 00:06:30.150
Those were got from the

131
00:06:30.150 --> 00:06:31.326
National Engineering Handbook.

132
00:06:31.330 --> 00:06:33.866
There was evidence you know put in that.

133
00:06:33.870 --> 00:06:34.750
Do you know about that?

134
00:06:34.750 --> 00:06:37.666
It was recounted in the findings.

135
00:06:37.670 --> 00:06:41.306
And the end result was that the

136
00:06:41.306 --> 00:06:43.858
Commission determined that the.

137
00:06:45.880 --> 00:06:51.282
The 22.7% of water diverted that was

138
00:06:51.282 --> 00:06:54.176
not otherwise accounted for fell

139
00:06:54.176 --> 00:07:00.600
well within the range. Of expected.

140
00:07:00.600 --> 00:07:03.215
System losses from CP generation

141
00:07:03.215 --> 00:07:05.990
based on these calculations and.

142
00:07:08.310 --> 00:07:12.640
Now. During the testimony of Mr.

143
00:07:12.640 --> 00:07:17.460
Tanaka. He essentially conceded this.

144
00:07:17.460 --> 00:07:19.566
But then he quickly said well,

145
00:07:19.570 --> 00:07:22.603
but we don't really agree that even at 22.7%.

146
00:07:22.603 --> 00:07:25.774
Uh, should be allowed in the future,

147
00:07:25.780 --> 00:07:27.792
so in other words.

148
00:07:27.792 --> 00:07:31.536
Sierra Club is trying to re litigate the

149
00:07:31.536 --> 00:07:33.800

question and essentially challenge what?

150
00:07:33.800 --> 00:07:37.405
With the workers already determined on this.

151
00:07:37.410 --> 00:07:40.665
And then during the redirect on Mr.

152
00:07:40.670 --> 00:07:43.470
Tanaka. Mr Frankel.

153
00:07:43.470 --> 00:07:46.990
You know then tried to argue from the

154
00:07:47.083 --> 00:07:52.678
SeaWorld decision that there was no.

155
00:07:52.680 --> 00:07:55.328
There's one thing for 322.7%,

156
00:07:55.328 --> 00:07:58.136
but but that reaches also apply.

157
00:07:58.140 --> 00:07:59.874
Apply to my hippona while they're

158
00:07:59.874 --> 00:08:01.890
in the process of transitioning.

159
00:08:01.890 --> 00:08:04.039
Using a very small amount of water

160
00:08:04.039 --> 00:08:06.230
compared to what was previously used,

161
00:08:06.230 --> 00:08:08.120
and you're not taking into account

162
00:08:08.120 --> 00:08:09.697
the fact that obviously you're

163
00:08:09.697 --> 00:08:11.627
going to have a higher incremental

164
00:08:11.627 --> 00:08:15.329
rate of sea bridge and evaporation.

165
00:08:15.330 --> 00:08:16.882
If you're if you're just using a small

166
00:08:16.882 --> 00:08:18.247
amount of water and he says well,

167
00:08:18.250 --> 00:08:19.750
but there's nothing in the scene

168
00:08:19.750 --> 00:08:21.540
where on decision that said that that

169
00:08:21.540 --> 00:08:23.022
was OK during a transition period,

170
00:08:23.030 --> 00:08:27.818
but in fact the serum decision.

171
00:08:27.820 --> 00:08:33.676
Did discuss the then current state of the

172
00:08:33.676 --> 00:08:39.720
transition to diversify in on page 187.

173
00:08:39.720 --> 00:08:42.150
Paragraph 7 online.

174
00:08:42.150 --> 00:08:42.804
You know,

175
00:08:42.804 --> 00:08:43.458
and the.

176
00:08:48.590 --> 00:08:50.206

Yeah, there's a discussion

177
00:08:50.206 --> 00:08:52.002
there of exactly what am.

178
00:08:52.002 --> 00:08:53.394
I was then diverting,

179
00:08:53.400 --> 00:08:55.115
which was approximately 20 million

180
00:08:55.115 --> 00:08:59.032
gallons per day and six to eight MGD is

181
00:08:59.032 --> 00:09:01.608
described as used for the county of Maui.

182
00:09:01.610 --> 00:09:04.526
And for the AG part and the county of

183
00:09:04.526 --> 00:09:07.270
Maui and one MGD for cattle operations,

184
00:09:07.270 --> 00:09:10.455
two MGD for bioenergy and six MGD

185
00:09:10.455 --> 00:09:13.226
for maintenance of reservoirs for

186
00:09:13.226 --> 00:09:16.184
Fire Protection and and in seepage

187
00:09:16.184 --> 00:09:19.010
loss of 4,000,000 gallons per day so.

188
00:09:19.010 --> 00:09:21.566
So there is there was in fact in front

189
00:09:21.566 --> 00:09:24.460
of ceiling at the time evidence that.

190
00:09:24.460 --> 00:09:27.881
Unlike the situation during sugar, when.

191
00:09:27.881 --> 00:09:30.478
He had over 100 million gallons well

192
00:09:30.478 --> 00:09:32.791
over 100,000,000 gallons per day being

193
00:09:32.791 --> 00:09:36.425
diverted and end of that scale of diversion.

194
00:09:36.430 --> 00:09:39.985
The expected cyklist loss was about 22.7%,

195
00:09:39.985 --> 00:09:42.665
but it was also in front of see

196
00:09:42.665 --> 00:09:45.623
where I'm going to hearing what was

197
00:09:45.623 --> 00:09:47.826
happening at the time of the hearing

198
00:09:47.830 --> 00:09:49.636
which was 20 MGD was being diverted

199
00:09:49.636 --> 00:09:51.648
and nowhere in the simmering decision.

200
00:09:51.650 --> 00:09:54.114
Do they try to say oh, we're going to

201
00:09:54.114 --> 00:09:57.080
take this 22.7% for full build out.

202
00:09:57.080 --> 00:09:58.560
And we're going to apply that back to

203
00:09:58.560 --> 00:10:00.286

the 20 MG that you're currently using,

204
00:10:00.290 --> 00:10:03.434
which is broken out in paragraph 700,

205
00:10:03.434 --> 00:10:04.348
seven 09.

206
00:10:04.348 --> 00:10:06.633
So it's really not correct

207
00:10:06.633 --> 00:10:09.049
that CRM didn't consider it,

208
00:10:09.050 --> 00:10:10.830
and it's certainly not correct.

209
00:10:10.830 --> 00:10:15.487
It seem worm intended to 22.7% to apply

210
00:10:15.487 --> 00:10:18.490
to anything other than full build out.

211
00:10:18.490 --> 00:10:23.090
And so I just wanted to make that point now.

212
00:10:25.760 --> 00:10:27.892
Now Mr Talk admitted.

213
00:10:27.892 --> 00:10:30.557
During his his cross examination

214
00:10:30.560 --> 00:10:32.324
that it just simply stands to reason

215
00:10:32.324 --> 00:10:34.309
as a matter of engineering and the

216
00:10:34.309 --> 00:10:36.073
laws of physics that have greatly

217
00:10:36.127 --> 00:10:37.857
reduced the total version amount.

218
00:10:37.860 --> 00:10:39.530
You're necessarily going to cause

219
00:10:39.530 --> 00:10:42.253
the percentage of that that is going

220
00:10:42.253 --> 00:10:44.558
to be lost acetogen evaporation

221
00:10:44.558 --> 00:10:46.840
to be to be greater,

222
00:10:46.840 --> 00:10:48.892
and this is even though the

223
00:10:48.892 --> 00:10:51.032
absolute amount of the season

224
00:10:51.032 --> 00:10:52.968
evaporation is considerably less.

225
00:10:52.970 --> 00:10:56.466
So. For example, during sugar. Uh.

226
00:10:56.466 --> 00:10:59.874
The amount of serious loss or or system

227
00:10:59.874 --> 00:11:03.584
loss was over 40 million gallons per day.

228
00:11:03.590 --> 00:11:04.774
And basically what Mr.

229
00:11:04.774 --> 00:11:05.394
Tacason? Yeah,

230
00:11:05.394 --> 00:11:07.014

that's totally unacceptable 40 something

231
00:11:07.014 --> 00:11:09.150
million gallons per day are unacceptable.

232
00:11:09.150 --> 00:11:11.635
And yet that's exactly what seeing Worms

233
00:11:11.635 --> 00:11:14.269
said was within industry standards and

234
00:11:14.269 --> 00:11:16.769
was reasonable during sugar cultivation.

235
00:11:16.770 --> 00:11:19.850
So so basically, CR club is not only

236
00:11:19.850 --> 00:11:22.404
re arguing what was previously argued,

237
00:11:22.404 --> 00:11:24.544
but they're also criticizing the

238
00:11:24.544 --> 00:11:25.960
conclusions that see Mermaid,

239
00:11:25.960 --> 00:11:27.748
which is inappropriate.

240
00:11:27.748 --> 00:11:28.940
It's proceeding.

241
00:11:28.940 --> 00:11:31.292
Uh, so there's nothing new here

242
00:11:31.292 --> 00:11:34.420
on this system, last issue.

243
00:11:34.420 --> 00:11:36.889
There's no surprises.

244
00:11:36.890 --> 00:11:40.610
How the system loss occurs where it curves.

245
00:11:40.610 --> 00:11:43.200
This is all looked at in granular

246
00:11:43.200 --> 00:11:43.940
detail previously.

247
00:11:46.700 --> 00:11:51.005
Alright, stop. And this is also argument

248
00:11:51.005 --> 00:11:54.296
for just Crabtree and so again, I'm just.

249
00:11:54.296 --> 00:11:57.320
There's nothing new here now the.

250
00:11:59.620 --> 00:12:04.779
The staff submittal for. Dr P renewal.

251
00:12:04.780 --> 00:12:07.138
You know, says the same thing.

252
00:12:07.140 --> 00:12:08.500
And as you know,

253
00:12:08.500 --> 00:12:12.322
in terms of where we are now, as as Mr.

254
00:12:12.322 --> 00:12:15.150
Hall testified, my.

255
00:12:15.150 --> 00:12:17.964
My hippona is moving forward with

256
00:12:17.964 --> 00:12:19.840
upgrades and operational improvements

257
00:12:19.840 --> 00:12:21.660

that are completely consistent.

258
00:12:21.660 --> 00:12:24.820
With the learning curve that you know,

259
00:12:24.820 --> 00:12:27.550
they necessarily need to navigate here.

260
00:12:27.550 --> 00:12:31.347
I mean, it would make no sense for

261
00:12:31.347 --> 00:12:34.056
the boards and now after what Siemers

262
00:12:34.056 --> 00:12:36.028
already decided with the judges

263
00:12:36.028 --> 00:12:38.272
already decided and the context of

264
00:12:38.272 --> 00:12:40.560
just continuing a permit through the

265
00:12:40.560 --> 00:12:44.380
end of 2022 to suddenly you know

266
00:12:44.380 --> 00:12:47.478
parent thoroughly impose short term

267
00:12:47.478 --> 00:12:49.974
requirements for extensive infrastructure

268
00:12:49.974 --> 00:12:52.463
upgrades between now and the end of 2022.

269
00:12:52.463 --> 00:12:55.121
I mean whether the reservoirs are

270
00:12:55.121 --> 00:12:58.379
even going to be used in the future.

271
00:12:58.380 --> 00:12:59.752
It's still under review,

272
00:12:59.752 --> 00:13:01.124
as Mr Hall says,

273
00:13:01.130 --> 00:13:03.650
reliance upon them may be reduced.

274
00:13:03.650 --> 00:13:06.345
Obviously it makes no sense to start.

275
00:13:06.350 --> 00:13:06.900
You know,

276
00:13:06.900 --> 00:13:09.456
it could be more than one year process of

277
00:13:09.456 --> 00:13:11.848
applying for permits to line and cover them.

278
00:13:11.850 --> 00:13:13.971
You know if some of these reservoirs

279
00:13:13.971 --> 00:13:16.300
may end up being decommissioned.

280
00:13:16.300 --> 00:13:17.830
See our clone witness, Mike.

281
00:13:17.830 --> 00:13:19.658
You totally.

282
00:13:19.658 --> 00:13:21.486
Gets that.

283
00:13:21.486 --> 00:13:24.878
And was very sensible in his comments.

284
00:13:24.880 --> 00:13:27.070

I think Sierra Club could perhaps

285
00:13:27.070 --> 00:13:29.627
learn something if they were to listen

286
00:13:29.627 --> 00:13:31.679
to their their own wrong witness.

287
00:13:31.680 --> 00:13:34.140
Uh.

288
00:13:34.140 --> 00:13:36.275
So the same can be said for

289
00:13:36.275 --> 00:13:36.885
increased pumping.

290
00:13:36.890 --> 00:13:40.649
I mean, currently a Central Maui Aquifer,

291
00:13:40.650 --> 00:13:42.190
which is a public trust,

292
00:13:42.190 --> 00:13:44.794
resources being benefit by any amounts

293
00:13:44.794 --> 00:13:48.204
that are being there seeping into the

294
00:13:48.204 --> 00:13:50.706
aquifer and at the same time that this is

295
00:13:50.706 --> 00:13:53.027
going on during this transition period,

296
00:13:53.030 --> 00:13:55.706
the IIF set by SeaWorld are

297
00:13:55.706 --> 00:13:57.490
being more than complex.

298
00:13:57.490 --> 00:13:58.564
In other words,

299
00:13:58.564 --> 00:13:59.996
on a daily basis.

300
00:14:00.000 --> 00:14:02.877
I mean there is more than 100

301
00:14:02.877 --> 00:14:04.990
million gallons a day more.

302
00:14:04.990 --> 00:14:07.314
Of water being restored to the streams

303
00:14:07.314 --> 00:14:09.947
compared to what was going on during sugar.

304
00:14:09.950 --> 00:14:10.405
So.

305
00:14:10.405 --> 00:14:12.225
Whatever season evaporation is

306
00:14:12.225 --> 00:14:14.500
occurring as an absolute number,

307
00:14:14.500 --> 00:14:16.385
it's less than what occurred

308
00:14:16.385 --> 00:14:18.331
under sugar and the meantime,

309
00:14:18.331 --> 00:14:20.713
you've got more than 100 million

310
00:14:20.713 --> 00:14:22.918
gallons of water being restored to the

311
00:14:22.918 --> 00:14:24.403

streams during this transition period,

312
00:14:24.410 --> 00:14:25.982
so the environment.

313
00:14:25.982 --> 00:14:28.078
He's not being hurt.

314
00:14:28.080 --> 00:14:29.851
This is more than what see were

315
00:14:29.851 --> 00:14:31.720
ordered to be restored because we

316
00:14:31.720 --> 00:14:33.475
are in this transition period.

317
00:14:33.480 --> 00:14:35.760
So the tide is coming in.

318
00:14:35.760 --> 00:14:36.930
For the streams in East Maui,

319
00:14:36.930 --> 00:14:38.210
it's not going out.

320
00:14:38.210 --> 00:14:40.130
There's no alarm bells going off.

321
00:14:40.130 --> 00:14:41.838
The current trajectory is

322
00:14:41.838 --> 00:14:43.546
positive for the environment.

323
00:14:43.550 --> 00:14:45.608
There's no Red Hill type of disaster

324
00:14:45.608 --> 00:14:47.809
going on here that the board has

325
00:14:47.809 --> 00:14:49.379
to suddenly take action upon.

326
00:14:52.060 --> 00:14:53.986
There's just nothing like that happening

327
00:14:53.986 --> 00:14:56.454
here, so there is no need to impose any

328
00:14:56.454 --> 00:14:59.900
new or different conditions in the RP's

329
00:14:59.900 --> 00:15:02.900
between the system losses or increased

330
00:15:02.900 --> 00:15:05.607
reliance on pump it a ground wire.

331
00:15:05.610 --> 00:15:07.647
Now the second issue, one coming on,

332
00:15:07.650 --> 00:15:10.242
it's just a general issue of water made

333
00:15:10.242 --> 00:15:14.210
available to the county camogli where again.

334
00:15:14.210 --> 00:15:17.360
We have heard no new facts.

335
00:15:17.360 --> 00:15:20.896
And this was covered in the decision order.

336
00:15:20.900 --> 00:15:23.225
There's a discussion about what

337
00:15:23.225 --> 00:15:25.836
county uses where it uses it,

338
00:15:25.836 --> 00:15:28.350

the amounts that are made available.

339
00:15:28.350 --> 00:15:31.260
Etc. So there's nothing new here.

340
00:15:31.260 --> 00:15:32.640
No, but you know again with

341
00:15:32.640 --> 00:15:34.234
share club is doing is they're

342
00:15:34.234 --> 00:15:35.774
really using this contested case.

343
00:15:35.780 --> 00:15:38.900
Hearing to just re argue policy

344
00:15:38.900 --> 00:15:40.980
judgments and balancing issues.

345
00:15:40.980 --> 00:15:43.292
It's not new facts,

346
00:15:43.292 --> 00:15:45.604
it's just recycling arguments.

347
00:15:45.610 --> 00:15:47.350
You know making the arguments

348
00:15:47.350 --> 00:15:49.090
same arguments that made before

349
00:15:49.090 --> 00:15:51.700
and in the organs themselves.

350
00:15:51.700 --> 00:15:52.342
You know,

351
00:15:52.342 --> 00:15:54.268
apart from the fact they've been

352
00:15:54.268 --> 00:15:56.279
made before and haven't succeeded,

353
00:15:56.280 --> 00:15:58.540
they don't have any.

354
00:15:58.540 --> 00:16:01.365
Persuasive force to him whatsoever.

355
00:16:01.370 --> 00:16:01.684
Uh,

356
00:16:01.684 --> 00:16:03.254
basically a Sierra Club just

357
00:16:03.254 --> 00:16:05.294
fails to take into account how

358
00:16:05.294 --> 00:16:07.094
the water comes into camogli,

359
00:16:07.100 --> 00:16:09.410
where and it's taken by the county.

360
00:16:09.410 --> 00:16:12.425
They argue it as if there's some sort of

361
00:16:12.430 --> 00:16:15.447
you know allocation of segregation of the

362
00:16:15.447 --> 00:16:18.818
water to the county that the EMI does,

363
00:16:18.820 --> 00:16:21.697
when in fact what happens and is

364
00:16:21.697 --> 00:16:23.880
very evident from the the photograph

365
00:16:23.880 --> 00:16:26.050

of kimono where that was put in

366
00:16:26.050 --> 00:16:28.079
as discussed by Tony Lindner.

367
00:16:28.080 --> 00:16:31.746
You know the water is in.

368
00:16:31.750 --> 00:16:34.612
Why load search the ditch just

369
00:16:34.612 --> 00:16:36.520
transitions into the weird.

370
00:16:36.520 --> 00:16:37.352
So in that picture,

371
00:16:37.352 --> 00:16:38.600
you're looking at the Y lo.

372
00:16:38.600 --> 00:16:41.128
At this you know the and it all

373
00:16:41.128 --> 00:16:43.328
comes in together and what EMI

374
00:16:43.328 --> 00:16:45.880
has to do as explained by Mr.

375
00:16:45.880 --> 00:16:48.010
Vaughan assessed affording this testimony.

376
00:16:50.190 --> 00:16:53.424
Is to plan on how much water.

377
00:16:53.430 --> 00:16:55.444
Is going to be coming in and this

378
00:16:55.444 --> 00:16:56.626
is just come only we're now.

379
00:16:56.630 --> 00:16:58.028
There's also the issue there dishes,

380
00:16:58.030 --> 00:17:01.519
but the county issue is only related

381
00:17:01.519 --> 00:17:05.591
to the why my Lord Ditch and Camogli

382
00:17:05.591 --> 00:17:07.438
where so it all comes in commingled.

383
00:17:07.440 --> 00:17:09.816
This is water that needs to be able

384
00:17:09.816 --> 00:17:12.116
to number one satisfy you might

385
00:17:12.116 --> 00:17:13.752
contractual obligation to make

386
00:17:13.752 --> 00:17:16.228
the water available to the county.

387
00:17:16.230 --> 00:17:20.304
And number 2. Have enough water there.

388
00:17:20.310 --> 00:17:23.306
So that my opponent can have enough

389
00:17:23.306 --> 00:17:25.550
leftover 'cause county takes first.

390
00:17:25.550 --> 00:17:28.286
You know, as is evident from that picture.

391
00:17:28.290 --> 00:17:31.258
You know the county has there's a gate

392
00:17:31.258 --> 00:17:34.330

that goes to the inlet to the treatment

393
00:17:34.330 --> 00:17:36.876
plan and the county controls that gate.

394
00:17:36.880 --> 00:17:39.568
Not you, my I mean I mean.

395
00:17:39.570 --> 00:17:42.220
They control the valve so.

396
00:17:42.220 --> 00:17:44.072
As Mr Linder explained.

397
00:17:44.072 --> 00:17:44.998
It's not.

398
00:17:45.000 --> 00:17:47.184
EMI is not making its not sending

399
00:17:47.184 --> 00:17:49.792
water to the county of what EMI is

400
00:17:49.792 --> 00:17:52.304
doing is just making sure that come

401
00:17:52.304 --> 00:17:54.830
only where there's enough water that

402
00:17:54.830 --> 00:17:56.555
the obligations of the county can be

403
00:17:56.555 --> 00:17:58.218
satisfied and it's up to the county to then.

404
00:17:58.220 --> 00:18:00.650
Actually, you know operate the valve

405
00:18:00.650 --> 00:18:04.528
to take as much water and use as Mr.

406
00:18:04.528 --> 00:18:05.696
Lindner explained.

407
00:18:05.696 --> 00:18:09.200
It is impossible to dial down,

408
00:18:09.200 --> 00:18:11.528
you know, no deliveries on any

409
00:18:11.528 --> 00:18:14.459
given day on a database basis.

410
00:18:14.460 --> 00:18:15.088
I mean,

411
00:18:15.088 --> 00:18:16.658
this is a huge system.

412
00:18:16.660 --> 00:18:17.732
You know it takes,

413
00:18:17.732 --> 00:18:19.646
you know you make a decision in

414
00:18:19.646 --> 00:18:21.361
the field and it takes at least

415
00:18:21.361 --> 00:18:23.339
24 hours or more for the effects

416
00:18:23.339 --> 00:18:24.764
to show up somewhere else.

417
00:18:24.770 --> 00:18:27.150
And so this is not the kind.

418
00:18:27.150 --> 00:18:28.968
It's not like Judge Crabtree pointed

419
00:18:28.968 --> 00:18:31.476

out it's not like a power plant where

420
00:18:31.476 --> 00:18:33.330
there's a master panel and console.

421
00:18:33.330 --> 00:18:35.110
You can just press buttons.

422
00:18:35.110 --> 00:18:38.883
And move millions of gallons of water

423
00:18:38.883 --> 00:18:40.990
instantaneously miles across Maui.

424
00:18:40.990 --> 00:18:43.114
You know, just by the presence of a button,

425
00:18:43.120 --> 00:18:45.080
it doesn't work that way.

426
00:18:45.080 --> 00:18:47.486
Sierra Club is not offered anything

427
00:18:47.490 --> 00:18:49.270
to the contrary, they haven't.

428
00:18:49.270 --> 00:18:51.489
I mean they tried to to suggest.

429
00:18:51.490 --> 00:18:53.866
Well if the county and Mark vow we

430
00:18:53.866 --> 00:18:55.794
just worked together a little better.

431
00:18:55.794 --> 00:18:57.282
You know they they could probably

432
00:18:57.282 --> 00:18:59.000
dial this down so that so that every

433
00:18:59.000 --> 00:19:00.541
day you could have just the amount

434
00:19:00.541 --> 00:19:02.078
of water to the county needs it.

435
00:19:02.078 --> 00:19:02.910
But that's not practical.

436
00:19:02.910 --> 00:19:04.134
Doesn't make sense.

437
00:19:04.134 --> 00:19:05.766
This is nothing new.

438
00:19:05.770 --> 00:19:07.500
Opportunities to argue this existed

439
00:19:07.500 --> 00:19:09.950
before the armies have been made before.

440
00:19:09.950 --> 00:19:12.590
There's there's no reason for

441
00:19:12.590 --> 00:19:16.130
anything different now in terms of.

442
00:19:16.130 --> 00:19:18.610
Conditions to the RP.

443
00:19:18.610 --> 00:19:22.650
Next Gen subject stream restoration.

444
00:19:22.650 --> 00:19:26.618
And this is a combination of combining here.

445
00:19:26.620 --> 00:19:30.160
Both the question of restoring flow.

446
00:19:30.160 --> 00:19:33.534

And also you know modifying the versions.

447
00:19:33.540 --> 00:19:36.730
Again, I mean this this.

448
00:19:36.730 --> 00:19:39.694
This is not an IFS proceeding

449
00:19:39.694 --> 00:19:41.670
and I think that.

450
00:19:41.670 --> 00:19:45.086
It's important to keep that in mind.

451
00:19:45.090 --> 00:19:48.069
These are clearly.

452
00:19:48.070 --> 00:19:50.056
Water Commission issues.

453
00:19:50.056 --> 00:19:51.380
And uhm.

454
00:19:54.460 --> 00:19:55.888
At this point, unlike,

455
00:19:55.888 --> 00:19:57.673
was the situation during the

456
00:19:57.673 --> 00:19:59.467
trial that we had in France.

457
00:19:59.470 --> 00:20:01.978
It's Crabtree. Sierra Club has a

458
00:20:01.978 --> 00:20:04.630
pending petition now to to amend it.

459
00:20:04.630 --> 00:20:06.010
You know, in Stringfellow standards,

460
00:20:06.010 --> 00:20:06.976
I don't know if you remember this,

461
00:20:06.980 --> 00:20:08.891
but one of the main arguments we

462
00:20:08.891 --> 00:20:11.092
had made in that trial both before

463
00:20:11.092 --> 00:20:13.380
the trial and during the trial was.

464
00:20:13.380 --> 00:20:15.505
You know the litigating the

465
00:20:15.505 --> 00:20:18.033
instream flow standards in front of

466
00:20:18.033 --> 00:20:20.383
either the court or the board is

467
00:20:20.383 --> 00:20:23.204
not the right place that is seen.

468
00:20:23.210 --> 00:20:25.850
Worms responsibilities now back then,

469
00:20:25.850 --> 00:20:27.594
they resisted that and they try to say,

470
00:20:27.600 --> 00:20:29.028
well, you know, board,

471
00:20:29.028 --> 00:20:31.598
you know has its own independent plus

472
00:20:31.598 --> 00:20:34.166
public trustee duties, etc etc etc.

473
00:20:34.170 --> 00:20:35.904

And while the boards of petitions

474
00:20:35.904 --> 00:20:38.021
see where are we shouldn't have to

475
00:20:38.021 --> 00:20:41.750
petition C or and. But for 20 years.

476
00:20:41.750 --> 00:20:43.300
The Sierra Club members knew

477
00:20:43.300 --> 00:20:44.540
about the warrant proceeding,

478
00:20:44.540 --> 00:20:46.976
some of them testified in the proceeding.

479
00:20:46.980 --> 00:20:48.972
The voluntary elected not to be

480
00:20:48.972 --> 00:20:51.202
involved now they've added a new member

481
00:20:51.202 --> 00:20:53.162
who was also involved from the MOKU.

482
00:20:53.170 --> 00:20:54.307
And you know,

483
00:20:54.307 --> 00:20:57.430
I mean what was going on during trial

484
00:20:57.430 --> 00:20:59.436
was Sierra Club was walking this line,

485
00:20:59.440 --> 00:21:00.272
saying, well,

486
00:21:00.272 --> 00:21:02.011
we're not challenging anything

487
00:21:02.011 --> 00:21:03.484
that SeaWorld did.

488
00:21:03.484 --> 00:21:06.820
We're not criticizing what sea worm did.

489
00:21:06.820 --> 00:21:10.651
We you know we didn't and and yet now

490
00:21:10.651 --> 00:21:12.253
they're at the point where they're

491
00:21:12.253 --> 00:21:13.970
being a little bit more explicit.

492
00:21:13.970 --> 00:21:15.558
Well, actually they are,

493
00:21:15.558 --> 00:21:17.061
because Linscott says, well,

494
00:21:17.061 --> 00:21:19.549
she has 100% agree with what she wanted

495
00:21:19.549 --> 00:21:22.559
and we have Wayne Tanaka now testifying that,

496
00:21:22.559 --> 00:21:22.968
well,

497
00:21:22.968 --> 00:21:25.422
the 22.7% even during sugar that

498
00:21:25.422 --> 00:21:27.350
shouldn't have been permitted.

499
00:21:27.350 --> 00:21:28.522
20 That's too high.

500
00:21:28.522 --> 00:21:31.577

So even if C so C worm calculated

501
00:21:31.577 --> 00:21:34.005
the reasonable beneficial use,

502
00:21:34.010 --> 00:21:36.026
the gross irrigation demand.

503
00:21:36.026 --> 00:21:38.050
To include the 22.7%.

504
00:21:40.310 --> 00:21:42.056
And now Sierra clubs argue well

505
00:21:42.056 --> 00:21:43.560
that you shouldn't do that.

506
00:21:43.560 --> 00:21:44.970
And so presumably in their

507
00:21:44.970 --> 00:21:46.643
current IF petition are going to

508
00:21:46.643 --> 00:21:48.099
be are going to see more yeah,

509
00:21:48.100 --> 00:21:49.330
and you shouldn't do that.

510
00:21:49.330 --> 00:21:51.190
So they are challenging it.

511
00:21:51.190 --> 00:21:52.546
You know, and and I mean,

512
00:21:52.550 --> 00:21:54.550
they're they're they're changing their

513
00:21:54.550 --> 00:21:57.250
position and and and and basically.

514
00:21:57.250 --> 00:21:58.430
It's 4:00 AM shopping.

515
00:21:58.430 --> 00:22:01.018
I mean they started by by going to

516
00:22:01.018 --> 00:22:03.794
court in a trial and to judge Crabtree.

517
00:22:03.794 --> 00:22:05.840
And he's not the one who

518
00:22:05.918 --> 00:22:07.590
should decide after us.

519
00:22:07.590 --> 00:22:09.557
They've argued in front of the board

520
00:22:09.557 --> 00:22:11.696
and now they're going back to see work,

521
00:22:11.700 --> 00:22:12.885
which is what they avoided

522
00:22:12.885 --> 00:22:14.070
doing in the first place.

523
00:22:14.070 --> 00:22:16.158
So whenever they don't get the

524
00:22:16.158 --> 00:22:18.086
result they want then they just

525
00:22:18.086 --> 00:22:20.130
try to argue it to somebody else.

526
00:22:20.130 --> 00:22:21.798
But the proper place for this

527
00:22:21.798 --> 00:22:22.632

will be decided.

528
00:22:22.640 --> 00:22:28.692
It is before sea worm so so currently on the.

529
00:22:28.692 --> 00:22:30.628
The harpies.

530
00:22:30.630 --> 00:22:33.489
There is no.

531
00:22:33.490 --> 00:22:35.914
There is no reason for the board to

532
00:22:35.914 --> 00:22:38.006
suddenly now modify what it's doing

533
00:22:38.006 --> 00:22:40.130
to preemptively get in the middle

534
00:22:40.196 --> 00:22:42.220
of what sea worm is going to do.

535
00:22:49.200 --> 00:22:50.750
Now the scene weren't proceeding.

536
00:22:53.000 --> 00:22:54.626
Apparently it's not likely to be

537
00:22:54.626 --> 00:22:56.220
completed before the end of 2022.

538
00:22:58.900 --> 00:23:01.540
Sierra Club, based on packs on past practice,

539
00:23:01.540 --> 00:23:03.766
will then probably request the contested

540
00:23:03.766 --> 00:23:05.950
case hearing to protect it further.

541
00:23:05.950 --> 00:23:08.078
So as far as the RP's are concerned,

542
00:23:08.080 --> 00:23:10.270
on the issue of stream restoration.

543
00:23:10.270 --> 00:23:11.674
And the staff submittal is still

544
00:23:11.674 --> 00:23:12.610
the best available information.

545
00:23:12.610 --> 00:23:15.546
There really is no new information put in.

546
00:23:15.546 --> 00:23:20.858
There was an attempt to have Mr. Quito.

547
00:23:20.860 --> 00:23:23.604
Testify as if there was new information,

548
00:23:23.610 --> 00:23:25.437
but there really wasn't any new facts.

549
00:23:25.440 --> 00:23:27.967
I mean, I mean, he admitted that.

550
00:23:27.970 --> 00:23:30.840
There weren't new facts here, he was just.

551
00:23:30.840 --> 00:23:33.290
He was just saying that that to

552
00:23:33.370 --> 00:23:35.992
the extent that the staff submittal

553
00:23:35.992 --> 00:23:38.939
relied on the ifsar from sea worm.

554
00:23:38.940 --> 00:23:41.550

That he didn't agree that his

555
00:23:41.550 --> 00:23:43.290
conclusions had been proven.

556
00:23:43.290 --> 00:23:46.390
Based on the information cited.

557
00:23:46.390 --> 00:23:48.735
And he's talking about the habitat model.

558
00:23:48.740 --> 00:23:50.994
But then he also admitted that he

559
00:23:50.994 --> 00:23:54.530
doesn't have better information, so.

560
00:23:54.530 --> 00:23:57.002
So the habitat modeling until all this other

561
00:23:57.002 --> 00:23:59.169
survey data is either done or analyzed.

562
00:23:59.170 --> 00:24:04.028
So the habitat modeling and the the.

563
00:24:04.030 --> 00:24:09.780
The the points relied upon in the ifsar.

564
00:24:09.780 --> 00:24:11.552
That's the best available

565
00:24:11.552 --> 00:24:13.767
information was a public trustee.

566
00:24:13.770 --> 00:24:15.546
You know that's what you're supposed to make.

567
00:24:15.550 --> 00:24:17.545
A decision is on best available information.

568
00:24:17.550 --> 00:24:19.310
So until there's something different,

569
00:24:19.310 --> 00:24:21.386
it's still the best available information,

570
00:24:21.390 --> 00:24:23.628
and it appears clear that there

571
00:24:23.628 --> 00:24:26.090
will not be better information.

572
00:24:26.090 --> 00:24:29.658
In time for the board to consider it.

573
00:24:29.660 --> 00:24:32.706
In terms of whether or not to continue

574
00:24:32.706 --> 00:24:35.764
the RP's through the end of 2022.

575
00:24:35.764 --> 00:24:39.237
So there's no reason to modify the permits

576
00:24:39.237 --> 00:24:42.357
conditions to do a stream restoration.

577
00:24:42.360 --> 00:24:43.900
That's not going to be the last

578
00:24:43.900 --> 00:24:45.390
word on the subject anyway.

579
00:24:45.390 --> 00:24:45.739
So.

580
00:24:45.739 --> 00:24:48.182
The C word process should be allowed

581
00:24:48.182 --> 00:24:51.248

to play out bielen are fulfilled this

582
00:24:51.248 --> 00:24:54.056
duty by listening and considering what

583
00:24:54.056 --> 00:24:56.506
was submitted and that it continues

584
00:24:56.506 --> 00:24:58.870
to be the best available information.

585
00:24:58.870 --> 00:25:02.386
A general subject of invasive species.

586
00:25:02.390 --> 00:25:05.900
Again, no new evidence or information.

587
00:25:05.900 --> 00:25:07.330
Same arguments made at trial,

588
00:25:07.330 --> 00:25:08.752
although they did not make that

589
00:25:08.752 --> 00:25:10.050
the focus of the trial,

590
00:25:10.050 --> 00:25:12.108
but they put that in their complaint

591
00:25:12.110 --> 00:25:14.216
and and they argued about it.

592
00:25:14.220 --> 00:25:16.080
The environmental impact statement

593
00:25:16.080 --> 00:25:18.405
has detailed studies and comments

594
00:25:18.405 --> 00:25:20.010
about invasive species.

595
00:25:20.010 --> 00:25:21.420
Just, you know,

596
00:25:21.420 --> 00:25:24.240
putting more conditions into the arpis.

597
00:25:24.240 --> 00:25:27.000
To deal with this. I mean, it's not.

598
00:25:27.000 --> 00:25:28.740
The issue is really not ripe.

599
00:25:28.740 --> 00:25:30.837
For being addressed in the context of an RP,

600
00:25:30.840 --> 00:25:32.996
it's going through the end of 2022.

601
00:25:32.996 --> 00:25:36.920
Uh, and another thing to keep in mind is.

602
00:25:36.920 --> 00:25:38.468
When you look at the arguments

603
00:25:38.468 --> 00:25:40.537
and what they tried to argue with

604
00:25:40.537 --> 00:25:41.518
regarding based species,

605
00:25:41.520 --> 00:25:44.730
which is primarily the mosquitoes.

606
00:25:44.730 --> 00:25:45.860
And uhm.

607
00:25:48.330 --> 00:25:51.980
I mean, their argument was that.

608
00:25:51.980 --> 00:25:54.620

Additional streamflow.

609
00:25:54.620 --> 00:25:57.490
It is going to reduce the breeding

610
00:25:57.490 --> 00:25:59.360
grounds for those skills.

611
00:25:59.360 --> 00:26:03.637
But that is exactly what interim in

612
00:26:03.637 --> 00:26:06.700
streamflow standards are addressing.

613
00:26:06.700 --> 00:26:08.365
Stream flow, so again it's

614
00:26:08.365 --> 00:26:10.770
just it just is an argument,

615
00:26:10.770 --> 00:26:13.066
it just goes right back into trying

616
00:26:13.066 --> 00:26:15.494
to get the board to second guess

617
00:26:15.494 --> 00:26:17.840
or put itself in some sort of.

618
00:26:17.840 --> 00:26:20.731
You know, uh, adversary position with the

619
00:26:20.731 --> 00:26:23.009
Water Commission Water Commission has.

620
00:26:23.010 --> 00:26:25.250
Determine what the industry flows should be,

621
00:26:25.250 --> 00:26:26.574
and now share close.

622
00:26:26.574 --> 00:26:28.229
Asked him to revisit that.

623
00:26:28.230 --> 00:26:30.528
That has its own track and

624
00:26:30.528 --> 00:26:32.996
will unfold as it does so.

625
00:26:32.996 --> 00:26:35.476
For purposes of invasive species,

626
00:26:35.480 --> 00:26:36.930
there's really nothing new here.

627
00:26:36.930 --> 00:26:38.422
And to extend that,

628
00:26:38.422 --> 00:26:41.636
what they're saying is that this man this

629
00:26:41.636 --> 00:26:44.330
counsels against having more stream flow.

630
00:26:44.330 --> 00:26:46.530
Well, that's the issue.

631
00:26:46.530 --> 00:26:48.180
That's enormous contracts.

632
00:26:48.180 --> 00:26:50.790
Uh. It's also, I think,

633
00:26:50.790 --> 00:26:53.250
important to keep in mind.

634
00:26:53.250 --> 00:26:54.528
That you know.

635
00:26:54.528 --> 00:26:57.360

I mean, apart from a very general statement,

636
00:26:57.360 --> 00:26:58.596
you know the Sierra Club is

637
00:26:58.596 --> 00:26:59.588
only has is saying, well,

638
00:26:59.588 --> 00:27:03.149
why don't we just, you know, add?

639
00:27:03.150 --> 00:27:05.130
Add amounts to rent to to,

640
00:27:05.130 --> 00:27:07.678
to to require a bunch of money to be paid by

641
00:27:07.678 --> 00:27:09.886
my opponent to deal with the basics pieces,

642
00:27:09.890 --> 00:27:12.466
but without a plan without a plan.

643
00:27:12.470 --> 00:27:15.818
And this is a.

644
00:27:15.820 --> 00:27:18.610
And this this is not.

645
00:27:18.610 --> 00:27:21.940
This is not how you promote.

646
00:27:21.940 --> 00:27:23.431
Agriculture bye bye.

647
00:27:23.431 --> 00:27:26.413
You know my parents come in.

648
00:27:26.420 --> 00:27:27.356
And you know, I,

649
00:27:27.356 --> 00:27:29.168
I think that one of the things

650
00:27:29.168 --> 00:27:30.878
was very gratifying to hear.

651
00:27:30.880 --> 00:27:31.130
Actually,

652
00:27:31.130 --> 00:27:33.380
in a hearing was was my key to talk

653
00:27:33.441 --> 00:27:35.665
about how impressed he was with my father

654
00:27:35.665 --> 00:27:37.835
and what a good thing it is for Maui,

655
00:27:37.840 --> 00:27:40.270
and what good thing it is for the state.

656
00:27:40.270 --> 00:27:44.758
And. The Constitution requires the board.

657
00:27:44.760 --> 00:27:47.580
To promote diversified agriculture.

658
00:27:47.580 --> 00:27:52.660
Unimportant AG lands you do not promote.

659
00:27:52.660 --> 00:27:54.892
Something by saddling somebody

660
00:27:54.892 --> 00:27:57.682
with for no reason with.

661
00:27:57.690 --> 00:28:00.210
Undefined costs as if it's their

662
00:28:00.210 --> 00:28:03.818

job now to to to erase all impact.

663
00:28:03.820 --> 00:28:05.560
So invasive species have occurred

664
00:28:05.560 --> 00:28:07.720
in the watershed for 100 years.

665
00:28:07.720 --> 00:28:09.855
That's going to be the condition for

666
00:28:09.855 --> 00:28:11.470
promoting agriculture in central Mali.

667
00:28:11.470 --> 00:28:14.370
That that does not.

668
00:28:14.370 --> 00:28:15.369
Make any sense?

669
00:28:17.450 --> 00:28:20.036
So just a couple final remarks,

670
00:28:20.040 --> 00:28:21.328
or then if I have any time left,

671
00:28:21.330 --> 00:28:24.506
I'd like to after this just reserve it.

672
00:28:24.510 --> 00:28:27.152
Uh, the board is public, trustee needs

673
00:28:27.152 --> 00:28:30.338
to balance competing interests and goals.

674
00:28:30.340 --> 00:28:32.062
So the board has to weigh

675
00:28:32.062 --> 00:28:33.900
all the input is received.

676
00:28:33.900 --> 00:28:36.054
I strike a sensible balance with

677
00:28:36.054 --> 00:28:38.106
regard to the conditions to be

678
00:28:38.106 --> 00:28:40.810
imposed on these temporary art keys.

679
00:28:40.810 --> 00:28:41.911
The staff submittal,

680
00:28:41.911 --> 00:28:43.746
which was very well done.

681
00:28:43.750 --> 00:28:45.964
And the action taken by the

682
00:28:45.964 --> 00:28:47.440
board did exactly that.

683
00:28:47.440 --> 00:28:48.724
It was sensible.

684
00:28:48.724 --> 00:28:51.720
Sierra Club's arguments for more and more

685
00:28:51.801 --> 00:28:54.606
stringent conditions are not sensible,

686
00:28:54.610 --> 00:28:56.668
and this is borne from the

687
00:28:56.668 --> 00:28:57.697
Sierra club's bias.

688
00:28:57.700 --> 00:28:59.768
Which is a disregard.

689
00:28:59.768 --> 00:29:01.746

The constitutional requirement to

690
00:29:01.746 --> 00:29:04.302
promote the maximum beneficial use of

691
00:29:04.302 --> 00:29:07.429
water by the public and to promote.

692
00:29:07.430 --> 00:29:10.060
Diversified agriculture in the states.

693
00:29:10.060 --> 00:29:12.799
Important AG lands.

694
00:29:12.800 --> 00:29:13.454
Now, Mr.

695
00:29:13.454 --> 00:29:13.781
Tanaka,

696
00:29:13.781 --> 00:29:15.743
when he understand he could not

697
00:29:15.743 --> 00:29:17.840
bring himself to say that the

698
00:29:17.840 --> 00:29:20.420
Sierra Club supports the return of

699
00:29:20.420 --> 00:29:22.550
agriculture as a central model.

700
00:29:22.550 --> 00:29:25.214
I was shocked. I mean, even Mr.

701
00:29:25.214 --> 00:29:27.608
Franco pays lip service that they don't.

702
00:29:27.610 --> 00:29:29.628
They're not opposed to that, but Mr.

703
00:29:29.628 --> 00:29:32.106
Tacker could not bring himself to say.

704
00:29:32.110 --> 00:29:34.984
They support the return of agricultural

705
00:29:34.984 --> 00:29:37.980
decentralize this more than anything else.

706
00:29:37.980 --> 00:29:40.235
You know very clearly establishes

707
00:29:40.235 --> 00:29:42.625
a circles lack credibility as

708
00:29:42.625 --> 00:29:46.135
an advocate for the balancing of

709
00:29:46.135 --> 00:29:47.305
competing interests.

710
00:29:47.310 --> 00:29:49.128
There they have no interest in

711
00:29:49.128 --> 00:29:50.037
balancing competing interests,

712
00:29:50.040 --> 00:29:52.470
and they won't even admit.

713
00:29:52.470 --> 00:29:55.008
That you know the return of

714
00:29:55.008 --> 00:29:56.277
diversified agricultural central.

715
00:29:56.280 --> 00:29:58.370
He is a good thing.

716
00:29:58.370 --> 00:30:00.282

And and because they,

717
00:30:00.282 --> 00:30:00.760
they,

718
00:30:00.760 --> 00:30:02.530
they put themselves in this

719
00:30:02.530 --> 00:30:04.300
position of advocating for just

720
00:30:04.360 --> 00:30:06.040
one of the spectrum and not.

721
00:30:06.040 --> 00:30:11.000
Being willing to acknowledge and engage

722
00:30:11.000 --> 00:30:13.550
in discussion about the balancing.

723
00:30:13.550 --> 00:30:16.160
This required the tradeoffs required.

724
00:30:16.160 --> 00:30:19.718
Then we get these just absurd

725
00:30:19.718 --> 00:30:22.455
hypothesis hyperboles. For example, Mr.

726
00:30:22.455 --> 00:30:25.030
Franklin Glass of water and.

727
00:30:25.030 --> 00:30:29.838
Uh. Mr. Tanaka saying well.

728
00:30:32.130 --> 00:30:35.955
It's water. If the water is coming

729
00:30:35.955 --> 00:30:38.050
from streams and it's from East Maui,

730
00:30:38.050 --> 00:30:39.766
there's a different standard for waste,

731
00:30:39.770 --> 00:30:42.094
and if it comes from somewhere else.

732
00:30:42.100 --> 00:30:45.475
So so if water is coming from East Maui,

733
00:30:45.480 --> 00:30:47.586
UM, as opposed to from somewhere

734
00:30:47.586 --> 00:30:50.558
else that you know they don't have a

735
00:30:50.558 --> 00:30:52.412
strange or whatever, then you know

736
00:30:52.412 --> 00:30:53.876
the standard of waste is different.

737
00:30:53.880 --> 00:30:56.288
So in this kind of is reminiscent of

738
00:30:56.288 --> 00:30:58.433
what the circle but earlier argued

739
00:30:58.433 --> 00:31:01.179
about the use of stream water for me,

740
00:31:01.180 --> 00:31:04.402
smiling to flush toilets at the

741
00:31:04.402 --> 00:31:06.981
AC and plant near ******.

742
00:31:06.981 --> 00:31:10.860
I mean, I mean to listen to Sierra Club.

743
00:31:10.860 --> 00:31:13.438

For every glass of water you know

744
00:31:13.438 --> 00:31:15.070
whether or not it's being wasted or not,

745
00:31:15.070 --> 00:31:17.510
it depends on weather where it came from.

746
00:31:17.510 --> 00:31:20.606
And if that's true, then are we going to,

747
00:31:20.610 --> 00:31:22.527
you know, put tent in the water so that,

748
00:31:22.530 --> 00:31:24.658
like when we when water goes to upcountry

749
00:31:24.658 --> 00:31:26.538
Maui, the the users in a contract,

750
00:31:26.540 --> 00:31:28.300
Maui will know well this much of the

751
00:31:28.300 --> 00:31:30.144
water came from East Maui, so we can't.

752
00:31:30.144 --> 00:31:31.670
We can only use it for this.

753
00:31:31.670 --> 00:31:32.876
We can't use it for that.

754
00:31:32.880 --> 00:31:35.544
There are not different standards for

755
00:31:35.544 --> 00:31:38.470
for waste and beneficial use based on

756
00:31:38.470 --> 00:31:40.976
where the water came from that would.

757
00:31:40.980 --> 00:31:42.968
That's crazy, I mean,

758
00:31:42.968 --> 00:31:46.084
and totally impossible to. To implement.

759
00:31:46.084 --> 00:31:49.756
But that's what happens when we

760
00:31:49.756 --> 00:31:52.544
meet in 30 minutes expired.

761
00:31:52.544 --> 00:31:52.902
Yeah,

762
00:31:52.902 --> 00:31:53.618
I'm sorry,

763
00:31:53.620 --> 00:31:54.090
yeah.

764
00:31:58.360 --> 00:32:00.466
I'm sorry, I I think you maybe I'm muted.

765
00:32:00.470 --> 00:32:01.766
You said something. Yeah I'm sorry.

766
00:32:01.770 --> 00:32:03.250
Yes you are about, uh,

767
00:32:03.250 --> 00:32:06.130
I'm sorry I'll give you a warning time.

768
00:32:06.130 --> 00:32:08.580
Well that's fine then I will I

769
00:32:08.580 --> 00:32:10.600
have nothing further at this time.

770
00:32:10.600 --> 00:32:13.384

OK, thank you. Alright,

771
00:32:13.384 --> 00:32:17.406
it's 935 Mr Rowe. Thank you,

772
00:32:17.406 --> 00:32:19.550
I'm I'm I'm not gonna use my full time.

773
00:32:19.550 --> 00:32:22.194
Also, I'll be pretty brief as the

774
00:32:22.194 --> 00:32:23.946
chair knows the county relies on

775
00:32:23.946 --> 00:32:25.884
the water from these license areas

776
00:32:25.884 --> 00:32:27.816
that are the subject of this.

777
00:32:27.820 --> 00:32:29.720
Hearing that flow through the

778
00:32:29.720 --> 00:32:31.620
Wailoa ditch to the komoly.

779
00:32:31.620 --> 00:32:34.476
We're treatment plant to serve over

780
00:32:34.480 --> 00:32:36.520
35,000 residents of Upcountry Maui,

781
00:32:36.520 --> 00:32:39.698
as well as many acres of agricultural

782
00:32:39.698 --> 00:32:42.732
land at the Kuag Park and county

783
00:32:42.732 --> 00:32:44.587
appreciates at the Sierra Club

784
00:32:44.587 --> 00:32:46.120
supports the county's water.

785
00:32:46.120 --> 00:32:48.235
Needs and has.

786
00:32:48.235 --> 00:32:53.170
Quantified it at 5,000,000 gallons a day.

787
00:32:53.170 --> 00:32:55.810
And when you kind of just look at

788
00:32:55.810 --> 00:32:58.416
the average use at the komoly weird

789
00:32:58.416 --> 00:33:00.656
treatment plan and the Kula Egg

790
00:33:00.656 --> 00:33:03.386
Park on a monthly or yearly basis.

791
00:33:03.390 --> 00:33:06.092
So I would suggest that this is

792
00:33:06.092 --> 00:33:08.010
a sufficient amount of water.

793
00:33:08.010 --> 00:33:10.369
But when you look at the fluctuating

794
00:33:10.369 --> 00:33:13.099
needs of the county on a daily basis,

795
00:33:13.100 --> 00:33:15.532
the board will be able to see why

796
00:33:15.532 --> 00:33:17.939
the county needs greater flexibility

797
00:33:17.940 --> 00:33:20.593

than that in order to meet its

798
00:33:20.593 --> 00:33:21.730
daily operational needs.

799
00:33:21.730 --> 00:33:22.758
As we have shown,

800
00:33:22.758 --> 00:33:24.300
the county often relies on additional

801
00:33:24.347 --> 00:33:26.027
water being available at the KOMOLY.

802
00:33:26.030 --> 00:33:27.870
We're facility to supplement the

803
00:33:27.870 --> 00:33:29.710
other surface water collected for

804
00:33:29.769 --> 00:33:31.707
other treatment plants and to fill

805
00:33:31.707 --> 00:33:33.357
the reservoirs at those treatment

806
00:33:33.357 --> 00:33:35.422
plants to act as a cushion against

807
00:33:35.422 --> 00:33:38.720
low flow and dry conditions.

808
00:33:38.720 --> 00:33:39.024
Indeed,

809
00:33:39.024 --> 00:33:40.848
as indicated by the exhibits submitted

810
00:33:40.848 --> 00:33:42.979
by the county and by the Sierra Club,

811
00:33:42.980 --> 00:33:44.852
there were several days when combined

812
00:33:44.852 --> 00:33:47.131
daily use at the KAMOLI facility when

813
00:33:47.131 --> 00:33:49.979
added to the average monthly use at the Kuag,

814
00:33:49.980 --> 00:33:51.588
Park did surpass 5,000,000

815
00:33:51.588 --> 00:33:53.640
gallons a day and I,

816
00:33:53.640 --> 00:33:56.160
I believe we we specified what

817
00:33:56.160 --> 00:33:58.878
exhibits we were relying on in

818
00:33:58.878 --> 00:34:01.554
our reply brief to indicate that.

819
00:34:01.560 --> 00:34:04.031
This was especially true in June of

820
00:34:04.031 --> 00:34:07.043
this year in the days and weeks leading

821
00:34:07.043 --> 00:34:09.878
up to the declaration of a stage one.

822
00:34:09.880 --> 00:34:12.860
Water shortage for upcountry Maui

823
00:34:12.860 --> 00:34:15.820
that commenced on July 2nd of 2021

824
00:34:15.820 --> 00:34:17.740

and lasted for almost four months

825
00:34:17.740 --> 00:34:19.728
before it was ended on October

826
00:34:19.728 --> 00:34:21.654
22nd after a heavy rain event,

827
00:34:21.660 --> 00:34:24.110
which refilled the county's reservoirs.

828
00:34:24.110 --> 00:34:24.494
Uh,

829
00:34:24.494 --> 00:34:26.414
the county's witness Tony Linder

830
00:34:26.414 --> 00:34:28.395
also testified that there are

831
00:34:28.395 --> 00:34:29.927
operational reasons for allowing

832
00:34:29.927 --> 00:34:32.202
the county to continue to have

833
00:34:32.202 --> 00:34:35.460
access to 6.5 million gallons a day.

834
00:34:35.460 --> 00:34:37.756
Which is the amount that E Maui

835
00:34:37.756 --> 00:34:39.132
irrigation does make available

836
00:34:39.132 --> 00:34:41.393
to the county on a daily basis.

837
00:34:41.400 --> 00:34:43.130
These relate to both pressurization

838
00:34:43.130 --> 00:34:45.187
because a certain level of water

839
00:34:45.187 --> 00:34:47.021
in the wailoa ditch at the kamoli

840
00:34:47.021 --> 00:34:48.785
we're 4 Bay is needed in order

841
00:34:48.785 --> 00:34:51.100
for the water to be able to enter

842
00:34:51.100 --> 00:34:53.380
the intake into the treatment plan

843
00:34:53.380 --> 00:34:55.598
and flowed downward into it.

844
00:34:55.600 --> 00:34:57.730
And he also mentioned that there

845
00:34:57.730 --> 00:34:59.439
are sedimentation concerns if the

846
00:34:59.439 --> 00:35:01.271
flow is too low and the you know

847
00:35:01.271 --> 00:35:02.504
the material that's collected

848
00:35:02.504 --> 00:35:04.709
at the bottom of the four Bay

849
00:35:04.710 --> 00:35:06.418
gets sucked into the.

850
00:35:06.418 --> 00:35:08.879
Into the intake and so. Again,

851
00:35:08.879 --> 00:35:11.630

while the county might not always use

852
00:35:11.705 --> 00:35:14.053
the full 6.5 million gallons a day, UM,

853
00:35:14.053 --> 00:35:17.117
it does continue to flow through the EMI

854
00:35:17.117 --> 00:35:19.724
system down to the plantation where it

855
00:35:19.724 --> 00:35:22.910
can be used in other productive ways.

856
00:35:22.910 --> 00:35:24.700
And so For these reasons,

857
00:35:24.700 --> 00:35:26.772
the county would ask that the hearings

858
00:35:26.772 --> 00:35:28.629
officer grant these revocable permits,

859
00:35:28.630 --> 00:35:29.774
and in doing so,

860
00:35:29.774 --> 00:35:31.490
provide enough water for EMI to

861
00:35:31.550 --> 00:35:33.961
continue to allow them to to make the

862
00:35:33.961 --> 00:35:35.803
6.5 million gallons a day available

863
00:35:35.803 --> 00:35:37.899
to the county on a daily basis.

864
00:35:37.900 --> 00:35:38.330
Thank you.

865
00:35:40.500 --> 00:35:41.516
Thank you very much.

866
00:35:41.516 --> 00:35:45.621
OK, it is a 938 Mr Frankel and

867
00:35:45.621 --> 00:35:48.148
you give me a couple minutes to

868
00:35:48.148 --> 00:35:50.388
bathroom break and transition here.

869
00:35:50.390 --> 00:35:52.169
Alright. Thank you.

870
00:37:24.780 --> 00:37:27.150
Alright. With that

871
00:37:30.650 --> 00:37:35.330
it's 940. Thank you true story.

872
00:37:35.330 --> 00:37:36.452
David Schulmeister brought

873
00:37:36.452 --> 00:37:38.768
it up Once Upon a time.

874
00:37:38.768 --> 00:37:41.630
There was a state agency that resisted

875
00:37:41.630 --> 00:37:43.880
having a contested case hearing.

876
00:37:43.880 --> 00:37:46.358
The agency believed the claims and

877
00:37:46.358 --> 00:37:49.370
promises made by the regulated entity.

878
00:37:49.370 --> 00:37:51.880

It didn't ask hard questions.

879
00:37:51.880 --> 00:37:54.382
The Sierra Club fought to have

880
00:37:54.382 --> 00:37:56.050
the contested case hearing

881
00:37:56.127 --> 00:37:58.245
and and to ask the questions.

882
00:37:58.250 --> 00:38:00.978
And then the Navy tanks polluted our water.

883
00:38:03.220 --> 00:38:05.688
That situation is similar

884
00:38:05.688 --> 00:38:09.390
to the one we face here.

885
00:38:09.390 --> 00:38:12.670
With the Sierra Club has asked for contested

886
00:38:12.670 --> 00:38:15.799
case hearing so it could ask hard questions.

887
00:38:15.800 --> 00:38:18.600
To ensure that our environment is protected,

888
00:38:18.600 --> 00:38:21.558
it's also similar to the situation.

889
00:38:21.560 --> 00:38:23.224
That sea worm faced.

890
00:38:23.224 --> 00:38:26.722
In resisting the pleas of the moku for

891
00:38:26.722 --> 00:38:29.470
a contested case hearing for years.

892
00:38:29.470 --> 00:38:33.286
In the end, Nomoco deserves so much credit.

893
00:38:33.290 --> 00:38:35.780
For fighting for decades to restore

894
00:38:35.780 --> 00:38:37.906
water to somebody, smelly streams.

895
00:38:37.906 --> 00:38:38.782
And frankly,

896
00:38:38.782 --> 00:38:42.739
so do you chair case and the Commission.

897
00:38:42.740 --> 00:38:44.896
You deserve a lot of praise for

898
00:38:44.896 --> 00:38:47.295
storing a lot of water to streams

899
00:38:47.295 --> 00:38:49.045
in so many small extremes.

900
00:38:52.150 --> 00:38:55.180
But that good work doesn't mean

901
00:38:55.180 --> 00:38:57.200
that everything is perfect.

902
00:38:57.200 --> 00:38:59.936
Even the greatest of our heroes have flaws.

903
00:38:59.940 --> 00:39:01.832
Even they make mistakes,

904
00:39:01.832 --> 00:39:05.200
and we should be honest about that.

905
00:39:05.200 --> 00:39:07.605

The greatest heroes and scientists

906
00:39:07.605 --> 00:39:10.580
recognize their mistakes and make amends.

907
00:39:10.580 --> 00:39:13.034
Kind of like doctor Stroke did

908
00:39:13.034 --> 00:39:15.820
in his testimony at this hearing.

909
00:39:15.820 --> 00:39:18.700
So what are some of the things we learned?

910
00:39:18.700 --> 00:39:20.772
I'm not gonna have time to go over

911
00:39:20.772 --> 00:39:22.637
everything we learned in this hearing.

912
00:39:22.640 --> 00:39:25.040
But I want I want to highlight a few things.

913
00:39:25.040 --> 00:39:28.046
Today I want to first talk about our streams.

914
00:39:31.870 --> 00:39:33.665
The streams that doesn't have

915
00:39:33.665 --> 00:39:36.175
streams that were not part of the

916
00:39:36.175 --> 00:39:38.520
C word proceeding. Need more water?

917
00:39:38.520 --> 00:39:41.280
Doctor Strout now agrees that is

918
00:39:41.280 --> 00:39:43.843
new information that A&B refuses

919
00:39:43.843 --> 00:39:46.861
to listen to refused to hear.

920
00:39:46.870 --> 00:39:48.298
That is new information.

921
00:39:50.870 --> 00:39:53.696
The water needs to be restored

922
00:39:53.696 --> 00:39:55.580
for native aquatic life.

923
00:39:55.580 --> 00:39:59.360
For recreation and for riparian uses,

924
00:39:59.360 --> 00:40:01.170
people actually live on these

925
00:40:01.170 --> 00:40:03.387
streams and depend on that water

926
00:40:03.387 --> 00:40:05.067
and one of the insufficient

927
00:40:05.067 --> 00:40:07.260
water they have to truck it in.

928
00:40:07.260 --> 00:40:10.566
No, we have suggested to you.

929
00:40:13.160 --> 00:40:15.896
Ah, I believe it's in our responsive brief

930
00:40:15.896 --> 00:40:18.627
3 courses of action that could be taken.

931
00:40:18.630 --> 00:40:20.880
Restore water to form all

932
00:40:20.880 --> 00:40:23.130

the water for the streams.

933
00:40:23.130 --> 00:40:25.686
Or don't allow diversions below wailord.

934
00:40:25.690 --> 00:40:27.377
Ditch with which account it depends on.

935
00:40:27.380 --> 00:40:29.420
Or make sure all the streams

936
00:40:29.420 --> 00:40:31.928
have 64% their base flow.

937
00:40:31.930 --> 00:40:33.740
We believe the board has

938
00:40:33.740 --> 00:40:35.550
the authority to do that.

939
00:40:35.550 --> 00:40:37.068
We also aren't.

940
00:40:37.068 --> 00:40:39.598
We also aren't complete idiots.

941
00:40:39.600 --> 00:40:41.075
We recognize that you don't

942
00:40:41.075 --> 00:40:42.550
want to use that authority.

943
00:40:42.550 --> 00:40:44.536
We recognize that you believe only

944
00:40:44.536 --> 00:40:46.369
the water Commission can do that.

945
00:40:46.370 --> 00:40:47.350
We don't agree with that,

946
00:40:47.350 --> 00:40:50.300
but we understand your position.

947
00:40:50.300 --> 00:40:54.444
In lieu of any kind of protection though.

948
00:40:54.450 --> 00:40:56.361
We are asking and will make it

949
00:40:56.361 --> 00:40:57.990
very specific in every post

950
00:40:57.990 --> 00:40:59.860
financial fact conclusions of law.

951
00:40:59.860 --> 00:41:03.269
That you maintain the cap of 25

952
00:41:03.269 --> 00:41:05.829
million gallons a day until.

953
00:41:05.830 --> 00:41:08.609
The Water Commission rules on the petition.

954
00:41:08.610 --> 00:41:13.265
It is not appropriate to increase diversions.

955
00:41:13.270 --> 00:41:14.170
Before.

956
00:41:16.680 --> 00:41:19.500
There is a resolution regarding

957
00:41:19.500 --> 00:41:21.756
the ecological and recreational

958
00:41:21.756 --> 00:41:25.046
value of these streams before the

959
00:41:25.046 --> 00:41:27.154

repairing uses are understood.

960
00:41:27.160 --> 00:41:29.715
That cap needs to be there to

961
00:41:29.715 --> 00:41:31.400
ensure that further degradation

962
00:41:31.400 --> 00:41:33.945
of the streams doesn't occur.

963
00:41:33.950 --> 00:41:38.576
And frankly the record is uncontroverted.

964
00:41:38.580 --> 00:41:40.040
Uncontroverted that if more

965
00:41:40.040 --> 00:41:42.230
water is taken from these streams

966
00:41:42.293 --> 00:41:43.728
it will cause more harm.

967
00:41:46.940 --> 00:41:49.890
Doctor Straub testified that, yes,

968
00:41:49.890 --> 00:41:52.690
these streams need more water.

969
00:41:52.690 --> 00:41:55.584
It would be wrong to allow and be.

970
00:41:55.584 --> 00:41:58.407
And when I say and I'm using that term

971
00:41:58.407 --> 00:42:02.530
exclusively to include me in my hip. Oh no.

972
00:42:02.530 --> 00:42:05.077
It would be wrong to let them take more

973
00:42:05.077 --> 00:42:08.250
water until the Water Commission decides.

974
00:42:08.250 --> 00:42:12.305
No, what about this cap? First of all,

975
00:42:12.305 --> 00:42:16.299
we know that it has not been a problem.

976
00:42:16.300 --> 00:42:19.585
Since it was a quarter pose in July 31st.

977
00:42:19.590 --> 00:42:20.814
There's both both.

978
00:42:20.814 --> 00:42:22.446
Mark Wagner comma testified.

979
00:42:22.450 --> 00:42:27.720
It is not posed a problem to my opponent.

980
00:42:27.720 --> 00:42:30.820
There's no evidence that Amb.

981
00:42:30.820 --> 00:42:33.088
They use that term again in a broad sense,

982
00:42:33.090 --> 00:42:36.220
and I'll continue to use it in a broad sense.

983
00:42:36.220 --> 00:42:37.708
There's no evidence that Andy provided

984
00:42:37.708 --> 00:42:39.170
that there would be a problem,

985
00:42:39.170 --> 00:42:42.705
and it is their burden of proof.

986
00:42:42.710 --> 00:42:45.570

And we know that it will not be a problem

987
00:42:45.645 --> 00:42:48.087
because my opponent has claimed it,

988
00:42:48.090 --> 00:42:48.900
it's insisted.

989
00:42:48.900 --> 00:42:52.140
That it is getting more and more efficient.

990
00:42:52.140 --> 00:42:54.450
And if its claims are true.

991
00:42:54.450 --> 00:42:57.840
It cannot argue that a cap

992
00:42:57.840 --> 00:43:00.100
will burden them anyway.

993
00:43:00.100 --> 00:43:03.446
Even with that cap there is room

994
00:43:03.446 --> 00:43:07.900
for agriculture to grow in 2022.

995
00:43:07.900 --> 00:43:09.600
They can irrigate more,

996
00:43:09.600 --> 00:43:10.875
they can grow.

997
00:43:10.880 --> 00:43:12.550
They can cultivate more acreage.

998
00:43:14.650 --> 00:43:15.892
With that cap.

999
00:43:15.892 --> 00:43:19.600
Maybe not quite as much as they want to.

1000
00:43:19.600 --> 00:43:21.712
But again, they should not be

1001
00:43:21.712 --> 00:43:24.036
insisting on more water from these

1002
00:43:24.036 --> 00:43:26.161
streams until the Water Commission

1003
00:43:26.161 --> 00:43:28.855
has an opportunity to render a decision

1004
00:43:28.855 --> 00:43:31.216
on the Sierra Club petition to set

1005
00:43:31.216 --> 00:43:32.520
real interesting flow standards

1006
00:43:32.520 --> 00:43:34.470
for those dozen streams and well.

1007
00:43:36.670 --> 00:43:39.886
And recall. Grant will say this to you

1008
00:43:39.886 --> 00:43:42.339
specifically in our proposed funding.

1009
00:43:42.340 --> 00:43:46.072
In fact, granted comma testified

1010
00:43:46.072 --> 00:43:48.928
Underoath in August 2020.

1011
00:43:48.930 --> 00:43:52.556
Data cap. Would have a

1012
00:43:52.556 --> 00:43:54.764
devastating impact on multipolar.

1013
00:43:54.770 --> 00:43:57.110

And frankly, he also testified

1014
00:43:57.110 --> 00:44:00.160
there has been no such impact.

1015
00:44:00.160 --> 00:44:04.558
So. You can impose or maintain the

1016
00:44:04.558 --> 00:44:07.150
CAP without causing any problems.

1017
00:44:09.670 --> 00:44:12.322
In this contested case it is

1018
00:44:12.322 --> 00:44:14.958
Alexander and Baldwin that has had

1019
00:44:14.958 --> 00:44:17.709
the burden to prove its water needs.

1020
00:44:17.710 --> 00:44:20.734
Let's look at those quote water needs.

1021
00:44:20.740 --> 00:44:24.191
One category is the category that they

1022
00:44:24.191 --> 00:44:27.140
label historic and industrial uses.

1023
00:44:27.140 --> 00:44:30.790
Those uses require 1.1.

1024
00:44:32.960 --> 00:44:38.030
Million gallons a day. Every month.

1025
00:44:38.030 --> 00:44:42.036
But as we learn in from grant comma.

1026
00:44:42.036 --> 00:44:45.620
There's no data that supports that figure.

1027
00:44:45.620 --> 00:44:48.390
There's no basis to it.

1028
00:44:48.390 --> 00:44:50.670
They have pledged to be

1029
00:44:50.670 --> 00:44:52.494
transparent with you staircase.

1030
00:44:52.500 --> 00:44:54.655
There's no transparency when they

1031
00:44:54.655 --> 00:44:57.080
put this 1.1 million gallon,

1032
00:44:57.080 --> 00:44:59.515
they figure there's no transparency.

1033
00:44:59.515 --> 00:45:01.840
Clearly the figure has no

1034
00:45:01.840 --> 00:45:04.158
validity when there's no change,

1035
00:45:04.160 --> 00:45:06.624
no matter how many days of the month

1036
00:45:06.630 --> 00:45:10.118
there are in a month or the weather.

1037
00:45:10.120 --> 00:45:12.436
And we now know that several

1038
00:45:12.436 --> 00:45:14.760
those use uses listed in there.

1039
00:45:14.760 --> 00:45:16.920
Do not use stream water daily

1040
00:45:16.920 --> 00:45:19.848

or even monthly 8C and D&H CNS.

1041
00:45:19.848 --> 00:45:22.620
Have it for fire suppression needs.

1042
00:45:22.620 --> 00:45:24.345
Potentially at some point it's

1043
00:45:24.345 --> 00:45:26.400
not a daily or monthly use.

1044
00:45:26.400 --> 00:45:27.024
Maui Demolition,

1045
00:45:27.024 --> 00:45:28.896
which was listed in that category,

1046
00:45:28.900 --> 00:45:30.670
uses water from now they ha.

1047
00:45:32.910 --> 00:45:35.466
Each CD is no longer using

1048
00:45:35.470 --> 00:45:38.060
250,000 gal to dystrophy between

1049
00:45:38.060 --> 00:45:40.910
250,000 and 300 gallons a day.

1050
00:45:40.910 --> 00:45:42.635
Yet that's not reflected in

1051
00:45:42.635 --> 00:45:44.298
their information check case.

1052
00:45:44.298 --> 00:45:47.202
There's no basis for them asking

1053
00:45:47.202 --> 00:45:51.060
for this 1.1 million gallons a day.

1054
00:45:51.060 --> 00:45:53.204
Some of those uses.

1055
00:45:53.204 --> 00:45:56.420
The Sierra Club will acknowledge our.

1056
00:45:56.420 --> 00:45:57.734
Probably good things.

1057
00:45:57.734 --> 00:46:01.647
But they have the burden to tell you to

1058
00:46:01.647 --> 00:46:04.695
tell us how much water those folks need.

1059
00:46:04.700 --> 00:46:06.765
You cannot give them a blank check.

1060
00:46:06.770 --> 00:46:10.190
They have failed to do that, no.

1061
00:46:10.190 --> 00:46:11.336
If they want to have another

1062
00:46:11.336 --> 00:46:12.440
hearing in a few months,

1063
00:46:12.440 --> 00:46:15.177
will they ask to increase that walk?

1064
00:46:15.180 --> 00:46:16.795
The water you provide to

1065
00:46:16.795 --> 00:46:18.122
those maybe noble enterprises,

1066
00:46:18.122 --> 00:46:19.458
and get enough water?

1067
00:46:19.460 --> 00:46:21.620

Great, but let them.

1068
00:46:21.620 --> 00:46:23.780
They've had multiple opportunities.

1069
00:46:23.780 --> 00:46:25.852
We've insisted that they

1070
00:46:25.852 --> 00:46:27.406
fulfill their burden.

1071
00:46:27.410 --> 00:46:28.970
We've let them know this was

1072
00:46:28.970 --> 00:46:31.273
going to be an issue and they

1073
00:46:31.273 --> 00:46:32.865
haven't fulfilled their burden.

1074
00:46:32.870 --> 00:46:35.354
The second a second,

1075
00:46:35.354 --> 00:46:37.838
use his firefighting listen.

1076
00:46:37.840 --> 00:46:40.720
With knowledge that's an important use.

1077
00:46:40.720 --> 00:46:42.740
But there's not a justification

1078
00:46:42.740 --> 00:46:45.110
for millions of gallons per day.

1079
00:46:45.110 --> 00:46:47.085
You asked specifically for ANV

1080
00:46:47.085 --> 00:46:49.060
to provide a determination with

1081
00:46:49.130 --> 00:46:50.534
the firefighting needs were

1082
00:46:50.534 --> 00:46:52.640
and they failed to do that.

1083
00:46:55.040 --> 00:46:57.285
A reservoir that contains 450

1084
00:46:57.285 --> 00:46:59.530
thousands of gallons of water

1085
00:46:59.612 --> 00:47:02.048
and when I use the word contain,

1086
00:47:02.050 --> 00:47:04.129
I mean that in all senses of

1087
00:47:04.129 --> 00:47:06.079
word it contains that water not.

1088
00:47:06.080 --> 00:47:07.624
Let's all leak out,

1089
00:47:07.624 --> 00:47:10.750
but a reservoir or multi multiple reservoirs

1090
00:47:10.750 --> 00:47:13.828
that contain 450,000 gallons of water.

1091
00:47:13.830 --> 00:47:16.218
Predict makes sense for public safety.

1092
00:47:16.220 --> 00:47:18.502
We provide you the math for that

1093
00:47:18.502 --> 00:47:20.708
in our proposed findings of fact.

1094
00:47:20.710 --> 00:47:21.962

But there's no evidence.

1095
00:47:21.962 --> 00:47:24.480
And again, Alexander Baldwin has a burden.

1096
00:47:24.480 --> 00:47:27.000
There's no evidence that 450,000

1097
00:47:27.000 --> 00:47:30.110
gallons of water are needed daily,

1098
00:47:30.110 --> 00:47:32.786
let alone millions of gallons daily,

1099
00:47:32.790 --> 00:47:36.367
to pour into reservoirs to fight fires.

1100
00:47:36.370 --> 00:47:38.008
They have not met their burden.

1101
00:47:38.010 --> 00:47:40.890
We don't want to mess with public safety,

1102
00:47:40.890 --> 00:47:43.898
but they have had years to provide the

1103
00:47:43.898 --> 00:47:47.220
data they are raising the bloody shirt.

1104
00:47:47.220 --> 00:47:51.272
Of fires to justify.

1105
00:47:51.272 --> 00:47:53.298
Wasting water.

1106
00:47:53.300 --> 00:47:55.582
Again, we want to make sure there's

1107
00:47:55.582 --> 00:47:57.399
enough water to fight fires,

1108
00:47:57.400 --> 00:48:01.440
but that shouldn't be used as a cover.

1109
00:48:01.440 --> 00:48:05.046
For waste or loss of water.

1110
00:48:05.050 --> 00:48:06.270
Next, use dust control.

1111
00:48:06.270 --> 00:48:08.984
If you do the math and will do it

1112
00:48:08.984 --> 00:48:11.220
for you in our findings of fat fat.

1113
00:48:11.220 --> 00:48:14.355
They need pain be needs between 48,000

1114
00:48:14.355 --> 00:48:17.120
and 100,000 gallons of water per day,

1115
00:48:17.120 --> 00:48:17.710
that's all.

1116
00:48:19.810 --> 00:48:20.580
Irrigation.

1117
00:48:22.850 --> 00:48:24.240
In our findings of fact,

1118
00:48:24.240 --> 00:48:26.898
it's probably too detailed to go

1119
00:48:26.898 --> 00:48:30.088
through here. We will provide.

1120
00:48:30.090 --> 00:48:34.134
Exact seven examples in which Amby

1121
00:48:34.134 --> 00:48:37.510

has exaggerated what they need.

1122
00:48:37.510 --> 00:48:41.986
Frankly, there is no justification for

1123
00:48:41.990 --> 00:48:45.198
allowing Mahi Pono to use more water in

1124
00:48:45.198 --> 00:48:48.292
its fields that dependent East Maui water

1125
00:48:48.292 --> 00:48:51.630
then for fields that use Navajo Water.

1126
00:48:51.630 --> 00:48:52.694
There are some differences

1127
00:48:52.694 --> 00:48:54.024
in the in the crops,

1128
00:48:54.030 --> 00:48:56.800
but not a significant difference.

1129
00:48:56.800 --> 00:48:58.198
And if there is and they

1130
00:48:58.198 --> 00:48:59.130
don't have enough water,

1131
00:48:59.130 --> 00:49:02.019
then they may have to change their crop mix,

1132
00:49:02.020 --> 00:49:04.953
but that's so that we can protect

1133
00:49:04.953 --> 00:49:07.380
streams because they are important.

1134
00:49:07.380 --> 00:49:10.838
My panel refused to produce the assumptions,

1135
00:49:10.840 --> 00:49:11.764
models, data,

1136
00:49:11.764 --> 00:49:14.536
or experts who drew the conclusions

1137
00:49:14.536 --> 00:49:17.438
of how much water they needed.

1138
00:49:17.440 --> 00:49:19.072
That's not appropriate.

1139
00:49:19.072 --> 00:49:21.248
Those are unsubstantiated claims.

1140
00:49:25.420 --> 00:49:32.770
Again. My Pono will be able to expand its its

1141
00:49:32.770 --> 00:49:36.870
agricultural cultivation in 2022 with a cap.

1142
00:49:36.870 --> 00:49:40.922
It may not be able to expand them as rapidly

1143
00:49:40.922 --> 00:49:44.370
and as extensively as they would like.

1144
00:49:44.370 --> 00:49:47.042
But they shouldn't until they know how much

1145
00:49:47.042 --> 00:49:49.349
water needs to be left in the streams.

1146
00:49:49.350 --> 00:49:50.427
And well, oh,

1147
00:49:50.427 --> 00:49:52.940
why would they want to risk more?

1148
00:49:52.940 --> 00:49:55.505

More of their money on crops which may not

1149
00:49:55.505 --> 00:49:58.078
be able to be irrigated in the future.

1150
00:49:58.080 --> 00:49:59.904
It doesn't make sense.

1151
00:49:59.904 --> 00:50:01.696
Again, the operations can expand,

1152
00:50:01.696 --> 00:50:04.818
but maybe not as much as they would like.

1153
00:50:04.820 --> 00:50:08.257
Another category of use that they have

1154
00:50:08.257 --> 00:50:11.496
proposed is what they call a cushion

1155
00:50:11.496 --> 00:50:14.910
or as a seal hall testified a buffer.

1156
00:50:14.910 --> 00:50:17.556
The Hawaii Supreme Court has made it

1157
00:50:17.556 --> 00:50:20.134
very clear that when allocating water

1158
00:50:20.134 --> 00:50:23.262
you can't have these buffers and we will

1159
00:50:23.262 --> 00:50:25.729
cite that for you in our conclusions of law.

1160
00:50:25.730 --> 00:50:28.010
I believe Linda Childs very well

1161
00:50:28.010 --> 00:50:29.940
familiar with that with that,

1162
00:50:29.940 --> 00:50:31.980
so they can't have this buffer.

1163
00:50:34.220 --> 00:50:38.290
The next category is. Reservoirs

1164
00:50:42.150 --> 00:50:44.607
let me be clear, it really doesn't

1165
00:50:44.607 --> 00:50:47.161
matter from a legal perspective whether

1166
00:50:47.161 --> 00:50:50.082
we look well, whether we label the

1167
00:50:50.082 --> 00:50:52.320
water that's been going into those

1168
00:50:52.392 --> 00:50:57.880
reservoirs as wasted or lost. Either way.

1169
00:50:57.880 --> 00:51:01.696
Either way, it's been. Too much.

1170
00:51:03.960 --> 00:51:05.608
You know it's funny.

1171
00:51:07.740 --> 00:51:09.770
Davidson Lester just pointed to

1172
00:51:09.770 --> 00:51:12.134
you two paragraph 709 of the Water

1173
00:51:12.134 --> 00:51:14.249
Commission's order and if you look at it,

1174
00:51:14.250 --> 00:51:15.840
the Water Commission said the

1175
00:51:15.840 --> 00:51:17.430

current total amount of water

1176
00:51:17.485 --> 00:51:19.480
diverter is 20 million gallons a day.

1177
00:51:19.480 --> 00:51:21.526
The amount of seepage losses 4,000,000

1178
00:51:21.526 --> 00:51:23.660
gallons a day if you do the math.

1179
00:51:23.660 --> 00:51:25.655
It's the rate 20 million

1180
00:51:25.655 --> 00:51:27.650
gallons times five is 100,

1181
00:51:27.650 --> 00:51:30.026
so that's going to give you a percentage.

1182
00:51:30.030 --> 00:51:31.434
4,000,000 gallons of they

1183
00:51:31.434 --> 00:51:33.189
see his last times 5.

1184
00:51:33.190 --> 00:51:36.090
He's 20. So back then,

1185
00:51:36.090 --> 00:51:39.100
the seepage loss was 20%.

1186
00:51:41.980 --> 00:51:43.500
But in this case,

1187
00:51:43.500 --> 00:51:45.400
the data that's been provided.

1188
00:51:45.400 --> 00:51:47.112
This is new information.

1189
00:51:47.112 --> 00:51:50.280
For that wasn't provided to court before,

1190
00:51:50.280 --> 00:51:52.618
and it's a long history now for

1191
00:51:52.620 --> 00:51:58.124
2020 and 2021. In some months,

1192
00:51:58.124 --> 00:52:02.045
as much as 70% of the water was

1193
00:52:02.045 --> 00:52:04.620
either quote wasted or lost.

1194
00:52:04.620 --> 00:52:07.652
In most months 50%.

1195
00:52:07.652 --> 00:52:09.582
Again, we don't care if

1196
00:52:09.582 --> 00:52:11.340
you call it waste or loss,

1197
00:52:11.340 --> 00:52:12.728
it is too much.

1198
00:52:12.728 --> 00:52:14.116
It is not appropriate.

1199
00:52:16.390 --> 00:52:18.034
I understand we understand

1200
00:52:18.034 --> 00:52:20.089
your inclination is to believe

1201
00:52:20.089 --> 00:52:22.100
what Alexander Baldwin says.

1202
00:52:24.270 --> 00:52:26.726

In an inclination is similar to the health

1203
00:52:26.730 --> 00:52:30.120
department's inclination to believe the Navy.

1204
00:52:30.120 --> 00:52:32.862
And we're asking you to please

1205
00:52:32.862 --> 00:52:35.770
look at the data carefully.

1206
00:52:35.770 --> 00:52:37.605
More water flowed into the

1207
00:52:37.605 --> 00:52:39.440
reservoirs than the capacity total

1208
00:52:39.510 --> 00:52:41.500
capacity of all those reservoirs.

1209
00:52:41.500 --> 00:52:43.720
The math says that capacity is

1210
00:52:43.720 --> 00:52:45.546
350 million gallons. Seal houses.

1211
00:52:45.546 --> 00:52:47.336
Actually, it's probably less than

1212
00:52:47.336 --> 00:52:49.400
that because of safety concerns,

1213
00:52:49.400 --> 00:52:51.493
yet more than 500 million gallons was

1214
00:52:51.493 --> 00:52:53.569
flowing into these reservoirs per month.

1215
00:52:53.570 --> 00:52:55.810
Sometimes 600 million gallons.

1216
00:52:55.810 --> 00:52:56.930
That's crazy.

1217
00:52:56.930 --> 00:53:01.600
That means all that water is looks or seeps.

1218
00:53:01.600 --> 00:53:03.880
No. And be justified in saying

1219
00:53:03.880 --> 00:53:06.160
it went to the aquifer.

1220
00:53:06.160 --> 00:53:08.778
Those are claims he likes to make.

1221
00:53:08.780 --> 00:53:12.014
Again, Alexander and Baldwin has the burden

1222
00:53:12.014 --> 00:53:14.740
of proof they have provided no evidence,

1223
00:53:14.740 --> 00:53:19.335
not one bit that the seepage in 2020-2021

1224
00:53:19.335 --> 00:53:22.775
not to see if it's from 20 years ago,

1225
00:53:22.775 --> 00:53:27.068
but this that the water that's going in

1226
00:53:27.068 --> 00:53:30.240
now a actually flows into the aquifer

1227
00:53:30.240 --> 00:53:33.396
and be more importantly stays there.

1228
00:53:33.400 --> 00:53:36.536
Airstrike pointed out it's more like a sieve,

1229
00:53:36.540 --> 00:53:38.010

and I think you you,

1230
00:53:38.010 --> 00:53:39.480
as a member of the Water Commissioner.

1231
00:53:39.480 --> 00:53:40.218
Sure case.

1232
00:53:40.218 --> 00:53:42.432
I'm sure you know this offers

1233
00:53:42.432 --> 00:53:43.840
are leaky vessels.

1234
00:53:43.840 --> 00:53:46.318
It's not like a contained cement

1235
00:53:46.318 --> 00:53:48.939
cistern where the water stays there.

1236
00:53:48.940 --> 00:53:53.224
It's it. It it it water moves.

1237
00:53:53.230 --> 00:53:54.616
It's not as if that water

1238
00:53:54.616 --> 00:53:56.179
there is there for future use.

1239
00:53:56.180 --> 00:53:57.236
In any case,

1240
00:53:57.236 --> 00:53:58.644
there's Alexander and Baldwin's

1241
00:53:58.644 --> 00:54:00.679
burden to provide a hydrologist if

1242
00:54:00.679 --> 00:54:02.821
that's the claim they wanted to make.

1243
00:54:02.830 --> 00:54:05.320
Instead, they make an unsubstantiated claim,

1244
00:54:05.320 --> 00:54:08.173
so it's all OK. It seeps into the ground.

1245
00:54:10.280 --> 00:54:11.830
But even kill manual for

1246
00:54:11.830 --> 00:54:13.070
the Water Commission signal,

1247
00:54:13.070 --> 00:54:15.050
that's not something that's acceptable.

1248
00:54:15.050 --> 00:54:16.725
You don't drain streams to

1249
00:54:16.725 --> 00:54:18.830
take water that may or may

1250
00:54:18.830 --> 00:54:20.600
not be flowing into locker.

1251
00:54:20.600 --> 00:54:21.260
It's just not right.

1252
00:54:24.100 --> 00:54:27.658
In any case. Mahi Pono has told

1253
00:54:27.658 --> 00:54:31.770
you that they plan on using less.

1254
00:54:31.770 --> 00:54:33.420
Putting less water in their

1255
00:54:33.420 --> 00:54:34.740
reservoirs in the future.

1256
00:54:34.740 --> 00:54:36.360

And that's a good thing.

1257
00:54:36.360 --> 00:54:38.831
Clearly they do not need as much

1258
00:54:38.831 --> 00:54:41.190
water going into these reservoirs,

1259
00:54:41.190 --> 00:54:43.758
so we are going to suggest to you.

1260
00:54:43.760 --> 00:54:47.080
A few conditions. Number one.

1261
00:54:47.080 --> 00:54:49.696
We're going to ask that you limit the

1262
00:54:49.696 --> 00:54:52.577
amount of water going into this category.

1263
00:54:52.580 --> 00:54:56.150
At 5,000,000 gallons a day. That some.

1264
00:54:56.150 --> 00:54:59.190
If they take 25 million gallons a day,

1265
00:54:59.190 --> 00:55:00.374
that's a 20% loss.

1266
00:55:00.374 --> 00:55:02.883
That's a little less than 22.7, but again,

1267
00:55:02.883 --> 00:55:05.712
see how promised you that their system is

1268
00:55:05.712 --> 00:55:07.944
getting much more efficient that there,

1269
00:55:07.950 --> 00:55:09.231
and that they hope to use much

1270
00:55:09.231 --> 00:55:10.449
less water in our reservoirs.

1271
00:55:10.450 --> 00:55:11.956
So let's hold them to it.

1272
00:55:11.960 --> 00:55:14.072
Let's give them incentive to make

1273
00:55:14.072 --> 00:55:16.180
their system much more efficient.

1274
00:55:16.180 --> 00:55:17.620
So that's number one condition,

1275
00:55:17.620 --> 00:55:20.200
second condition.

1276
00:55:20.200 --> 00:55:22.475
We're going to ask you to ask

1277
00:55:22.475 --> 00:55:24.459
them to line 1 reservoir.

1278
00:55:24.460 --> 00:55:26.480
Just one and one.

1279
00:55:26.480 --> 00:55:28.500
We're gonna specifically identify

1280
00:55:28.500 --> 00:55:30.130
the reservoirs that a.

1281
00:55:30.130 --> 00:55:31.394
Receive groundwater.

1282
00:55:31.394 --> 00:55:35.812
So there's a long term benefit, let's say,

1283
00:55:35.812 --> 00:55:38.300

for some reason that none of us can

1284
00:55:38.374 --> 00:55:40.609
really imagine the board decides.

1285
00:55:40.610 --> 00:55:42.234
You know, in the future my point,

1286
00:55:42.240 --> 00:55:43.240
you're not getting any water.

1287
00:55:43.240 --> 00:55:43.538
Well,

1288
00:55:43.538 --> 00:55:45.922
at least then they have a line reservoir

1289
00:55:45.922 --> 00:55:48.150
into which groundwater can be pumped.

1290
00:55:48.150 --> 00:55:49.440
So it's not like that money

1291
00:55:49.440 --> 00:55:50.710
is going to be wasted.

1292
00:55:50.710 --> 00:55:52.400
It's not a foolish investment,

1293
00:55:52.400 --> 00:55:54.248
and we're also going to suggest that this

1294
00:55:54.248 --> 00:55:55.747
reservoir be one of the larger ones.

1295
00:55:55.750 --> 00:55:58.648
That way the amount of water

1296
00:55:58.648 --> 00:56:00.580
lost will be less.

1297
00:56:00.580 --> 00:56:01.708
Another condition we're going

1298
00:56:01.708 --> 00:56:04.118
to ask is that they use the one

1299
00:56:04.118 --> 00:56:05.108
reservoir that's lined.

1300
00:56:09.420 --> 00:56:12.114
NB has the burden of proof they have

1301
00:56:12.114 --> 00:56:14.376
provided no evidence that it would

1302
00:56:14.376 --> 00:56:16.480
be impractical for this to be done.

1303
00:56:16.480 --> 00:56:19.744
No, if it takes if you we will

1304
00:56:19.744 --> 00:56:22.298
provide language to you that allows.

1305
00:56:22.300 --> 00:56:25.009
If for some reason the government delays

1306
00:56:25.009 --> 00:56:27.172
permitting that there be an extension

1307
00:56:27.172 --> 00:56:29.356
of time for line in the reservoir,

1308
00:56:29.360 --> 00:56:31.970
but they should use the one riser or this

1309
00:56:31.970 --> 00:56:34.121
line that's available for many fields

1310
00:56:34.121 --> 00:56:36.870

and they should line one reservoir now.

1311
00:56:36.870 --> 00:56:41.536
Amby has the burden to prove that the

1312
00:56:41.536 --> 00:56:43.500
mitigation measures are impractical.

1313
00:56:43.500 --> 00:56:44.872
That is too expensive.

1314
00:56:44.872 --> 00:56:47.760
They failed to provide you that information.

1315
00:56:47.760 --> 00:56:49.678
We. We even asked them about the

1316
00:56:49.678 --> 00:56:51.067
information they didn't know they

1317
00:56:51.067 --> 00:56:52.859
failed to meet their burden of proof.

1318
00:56:52.860 --> 00:56:55.290
But here's what we do know.

1319
00:56:55.290 --> 00:56:57.210
They've spent $30 million planning

1320
00:56:57.210 --> 00:56:59.130
on more than $30 million,

1321
00:56:59.130 --> 00:57:00.996
planning citrus according to Mr Howell.

1322
00:57:03.590 --> 00:57:05.080
If they can spend that

1323
00:57:05.080 --> 00:57:06.570
much money for a crop,

1324
00:57:06.570 --> 00:57:07.990
they don't know that they're

1325
00:57:07.990 --> 00:57:09.690
going to get water for her.

1326
00:57:09.690 --> 00:57:11.592
They can spend a little bit

1327
00:57:11.592 --> 00:57:12.860
money lining 1 reservoir.

1328
00:57:17.740 --> 00:57:20.914
They can also contribute to invasive

1329
00:57:20.914 --> 00:57:23.030
species controlled forest management.

1330
00:57:23.030 --> 00:57:24.058
And as a landlord,

1331
00:57:24.058 --> 00:57:25.600
you have the legal authority to

1332
00:57:25.652 --> 00:57:27.397
require that kind of contribution.

1333
00:57:30.470 --> 00:57:32.966
You can ask that they contribute 5 or

1334
00:57:32.966 --> 00:57:35.449
$0.10 per thousand gallons they take,

1335
00:57:35.450 --> 00:57:37.116
so the vision of four string lap

1336
00:57:37.116 --> 00:57:38.786
wildlife can do an even better

1337
00:57:38.786 --> 00:57:39.994

job fighting invasive species

1338
00:57:39.994 --> 00:57:41.650
and managing our native forest.

1339
00:57:41.650 --> 00:57:43.828
There is a need for that.

1340
00:57:43.830 --> 00:57:47.088
Here's a bit of new information.

1341
00:57:47.090 --> 00:57:50.576
My Pono pays according to their ESR.

1342
00:57:50.580 --> 00:57:56.706
Finally S 4.8 cents per 1000 gallons.

1343
00:57:56.710 --> 00:57:57.330
Of water.

1344
00:57:59.800 --> 00:58:02.502
Farmers who use water from my holy

1345
00:58:02.502 --> 00:58:06.280
ditch pay $0.58 per 1000 gallons.

1346
00:58:06.280 --> 00:58:09.280
That's ten times more.

1347
00:58:09.280 --> 00:58:14.092
If my pose costs increase for water double.

1348
00:58:14.092 --> 00:58:17.112
Because it has to provide

1349
00:58:17.112 --> 00:58:19.204
more water to sorry,

1350
00:58:19.204 --> 00:58:22.468
more money to fight invasive species.

1351
00:58:22.470 --> 00:58:24.120
And if they triple because

1352
00:58:24.120 --> 00:58:26.570
they have to line 1 reservoir.

1353
00:58:26.570 --> 00:58:29.664
They will still be paying less money

1354
00:58:29.670 --> 00:58:33.282
for water than its competitors who

1355
00:58:33.282 --> 00:58:37.559
are using water from what holy Ditch?

1356
00:58:37.560 --> 00:58:40.857
It is not. It is not impractical.

1357
00:58:40.860 --> 00:58:43.932
It is not a burden to have Amby

1358
00:58:43.932 --> 00:58:46.139
contribute this money or spend

1359
00:58:46.139 --> 00:58:48.389
that money they've failed to

1360
00:58:48.389 --> 00:58:50.648
produce any evidence to refute

1361
00:58:50.648 --> 00:58:53.623
what they admit in their own EIS.

1362
00:58:53.630 --> 00:58:58.590
So you can do this without harming.

1363
00:58:58.590 --> 00:58:59.010
Yeah.

1364
00:59:05.150 --> 00:59:07.817

Like in omoku. The Sierra Club has

1365
00:59:07.817 --> 00:59:10.749
had has no financial incentive.

1366
00:59:10.750 --> 00:59:14.214
To be involved in this contested case here.

1367
00:59:14.220 --> 00:59:15.472
Least Anthony could have

1368
00:59:15.472 --> 00:59:16.724
spent her time hiking.

1369
00:59:16.730 --> 00:59:18.502
Linscott could spend her

1370
00:59:18.502 --> 00:59:20.717
time in the inner Colonie.

1371
00:59:20.720 --> 00:59:22.718
Wayne Tanaka could have been fishing.

1372
00:59:22.720 --> 00:59:25.730
I could've had better things to do.

1373
00:59:25.730 --> 00:59:30.560
It is Amb Mahi Pono EMI who have a financial

1374
00:59:30.670 --> 00:59:35.494
incentive to take as much water as possible.

1375
00:59:35.500 --> 00:59:38.032
To provide the learner with as

1376
00:59:38.032 --> 00:59:39.720
little information as possible.

1377
00:59:39.720 --> 00:59:41.608
And resist all requirements.

1378
00:59:43.880 --> 00:59:48.947
The Sierra Club is here to help you do a

1379
00:59:48.947 --> 00:59:52.356
better job of protecting the public trust.

1380
00:59:52.360 --> 00:59:53.970
We're not here to give you a

1381
00:59:53.970 --> 00:59:55.600
hard time for hard times sake.

1382
00:59:55.600 --> 00:59:57.225
We want to have resources

1383
00:59:57.225 --> 00:59:58.525
protected like you do,

1384
00:59:58.530 --> 01:00:00.690
and we have been able to get new

1385
01:00:00.690 --> 01:00:02.267
information out of this contested

1386
01:00:02.267 --> 01:00:04.223
case hearing that has not been

1387
01:00:04.223 --> 01:00:05.400
available before before,

1388
01:00:05.400 --> 01:00:07.818
and I want I'll highlight again.

1389
01:00:07.820 --> 01:00:09.545
Aaron Strout believes that more

1390
01:00:09.545 --> 01:00:11.658
water should be going into those

1391
01:00:11.658 --> 01:00:13.402

who live streams and we will

1392
01:00:13.402 --> 01:00:15.180
fight you over and over and over

1393
01:00:15.244 --> 01:00:16.689
again where he said that.

1394
01:00:16.690 --> 01:00:17.320
And.

1395
01:00:21.100 --> 01:00:23.560
My ponus cost of water is

1396
01:00:23.560 --> 01:00:26.640
so low that it can't afford.

1397
01:00:26.640 --> 01:00:30.760
To pay for additional.

1398
01:00:30.760 --> 01:00:32.820
Mitigation measures,

1399
01:00:32.820 --> 01:00:35.928
including fighting invasive species

1400
01:00:35.928 --> 01:00:39.730
and lining 1 reservoir. And.

1401
01:00:42.420 --> 01:00:46.991
Mark Hippona will not suffer with a cap.

1402
01:00:46.991 --> 01:00:48.819
Agricultural can still grow

1403
01:00:48.819 --> 01:00:51.459
more acres can be cultivated,

1404
01:00:51.460 --> 01:00:55.121
but maybe not as quickly as my

1405
01:00:55.121 --> 01:00:57.920
opponent wants while irrigation.

1406
01:00:57.920 --> 01:01:01.448
Efficiency measures are put in place.

1407
01:01:01.450 --> 01:01:03.890
Mr. Franco, can I just ask you again?

1408
01:01:03.890 --> 01:01:05.338
I mean not again,

1409
01:01:05.338 --> 01:01:08.393
but you seem to be arguing now that

1410
01:01:08.393 --> 01:01:11.144
Mahi Pono should not get more water

1411
01:01:11.150 --> 01:01:14.414
than the 25 million gallons a day cap

1412
01:01:14.414 --> 01:01:17.995
until sea worm acts as a makes a final

1413
01:01:17.995 --> 01:01:20.852
decision on the Sierra Club's new

1414
01:01:20.852 --> 01:01:24.646
petition for II FS on hulo, you're nodding.

1415
01:01:24.646 --> 01:01:25.900
Yes, that's correct.

1416
01:01:29.940 --> 01:01:34.788
The. Is that that's that's my question.

1417
01:01:34.790 --> 01:01:38.046
Yeah, that and I I think that we come

1418
01:01:38.046 --> 01:01:40.530

I I feel like I wrote that we wrote

1419
01:01:40.603 --> 01:01:43.088
them in responsive brief so I don't.

1420
01:01:43.090 --> 01:01:44.532
But maybe you haven't had a chance

1421
01:01:44.532 --> 01:01:46.540
to look at that. But we have.

1422
01:01:46.540 --> 01:01:50.035
We have made this argument before and that is

1423
01:01:50.035 --> 01:01:52.140
what we're proposing in our findings of fact.

1424
01:01:52.140 --> 01:01:53.124
Conclusions of law.

1425
01:01:53.124 --> 01:01:54.764
Again, as I mentioned earlier,

1426
01:01:54.770 --> 01:01:56.410
our preference would be

1427
01:01:56.410 --> 01:01:58.460
for the board to make.

1428
01:01:58.460 --> 01:02:01.616
Specific measures to protect these streams.

1429
01:02:01.620 --> 01:02:04.120
We recognize that you are

1430
01:02:04.120 --> 01:02:05.620
uncomfortable with that,

1431
01:02:05.620 --> 01:02:07.095
that you feel it's not

1432
01:02:07.095 --> 01:02:07.980
within your jurisdiction.

1433
01:02:07.980 --> 01:02:09.152
We disagree with that.

1434
01:02:09.152 --> 01:02:10.910
So in lieu of actual measures

1435
01:02:10.970 --> 01:02:12.378
to protect these streams,

1436
01:02:12.380 --> 01:02:13.664
which doctor Stroud agrees,

1437
01:02:13.664 --> 01:02:15.987
need to have more water in and

1438
01:02:15.987 --> 01:02:17.985
which everyone who all the evidence

1439
01:02:17.985 --> 01:02:19.820
suggests that in lieu of that,

1440
01:02:19.820 --> 01:02:21.302
there should be a cap so

1441
01:02:21.302 --> 01:02:22.290
things don't get worse.

1442
01:02:24.470 --> 01:02:27.750
Is that clear like?

1443
01:02:27.750 --> 01:02:33.404
OK, so in conclusion. This case.

1444
01:02:33.404 --> 01:02:36.285
Is about Alexander Baldwin's

1445
01:02:36.285 --> 01:02:40.240

failure to meet its burden of proof.

1446
01:02:40.240 --> 01:02:44.286
It's about real answers to hard questions,

1447
01:02:44.290 --> 01:02:46.570
not unsubstantiated claims.

1448
01:02:46.570 --> 01:02:51.130
It is about biased towards protection.

1449
01:02:51.130 --> 01:02:54.065
Rather than the unquestioning belief

1450
01:02:54.065 --> 01:02:57.000
in assertions made by corporations

1451
01:02:57.092 --> 01:02:59.987
whose primary motivation is profit.

1452
01:02:59.990 --> 01:03:04.034
And whose assertions are fairly easy

1453
01:03:04.034 --> 01:03:08.750
under easily undercut with questioning.

1454
01:03:08.750 --> 01:03:12.929
This case is about water from streams.

1455
01:03:12.930 --> 01:03:15.698
That is not used.

1456
01:03:15.700 --> 01:03:18.580
It's about sensible mitigation measures,

1457
01:03:18.580 --> 01:03:20.028
alternatives and conditions which

1458
01:03:20.028 --> 01:03:21.838
we will layout with specificity

1459
01:03:21.838 --> 01:03:23.328
in our proposed monies.

1460
01:03:23.330 --> 01:03:24.580
In fact, conclusions of law.

1461
01:03:24.580 --> 01:03:25.170
Thank you.

1462
01:03:29.010 --> 01:03:31.460
K Thank you very much.

1463
01:03:31.460 --> 01:03:33.770
And so, that brings, uh,

1464
01:03:33.770 --> 01:03:36.227
this us, to a close of the

1465
01:03:36.227 --> 01:03:38.729
this part of the proceeding.

1466
01:03:38.730 --> 01:03:40.970
And so the next step is you

1467
01:03:40.970 --> 01:03:42.909
all are doing your proposed

1468
01:03:42.909 --> 01:03:45.139
findings of fact and conclusions

1469
01:03:45.139 --> 01:03:48.360
of law due next Wednesday. Uhm?

1470
01:03:51.380 --> 01:03:53.190
You had made a suggestion

1471
01:03:53.190 --> 01:03:55.000
that we revisit our timeline.

1472
01:03:58.180 --> 01:04:00.778

After Friday's hearing on the trial,

1473
01:04:00.780 --> 01:04:04.427
I think we'll just recognize her on

1474
01:04:04.427 --> 01:04:07.984
that after that proceeding. I don't.

1475
01:04:07.984 --> 01:04:10.366
I mean, I'll let me suggest I know you

1476
01:04:10.366 --> 01:04:12.527
you have a lot of other things going on.

1477
01:04:12.530 --> 01:04:13.810
Maybe it's the attorneys

1478
01:04:13.810 --> 01:04:15.521
can all talk about it.

1479
01:04:15.521 --> 01:04:18.689
After hearing I don't know if you want to.

1480
01:04:18.690 --> 01:04:20.740
Participate in that whole conversation,

1481
01:04:20.740 --> 01:04:22.186
but yeah, we should, we should.

1482
01:04:22.190 --> 01:04:24.020
I think we should talk after

1483
01:04:24.020 --> 01:04:25.630
Friday and then and then.

1484
01:04:25.630 --> 01:04:27.604
I guess I'm sort of curious about

1485
01:04:27.604 --> 01:04:29.457
the timing after the our proposed

1486
01:04:29.457 --> 01:04:30.721
findings of fact conclusions

1487
01:04:30.721 --> 01:04:32.630
of law are provided to you.

1488
01:04:32.630 --> 01:04:35.126
What are your what your thinking is about?

1489
01:04:35.130 --> 01:04:36.760
The next steps beyond that?

1490
01:04:39.110 --> 01:04:41.745
I I don't. I don't think we've, uh,

1491
01:04:41.745 --> 01:04:44.070
uh, maybe Linda chucking comment,

1492
01:04:44.070 --> 01:04:47.129
but I, I don't think we have.

1493
01:04:47.130 --> 01:04:48.178
Sorted that out yet.

1494
01:04:51.030 --> 01:04:54.075
I'm gonna turn off the recording because

1495
01:04:54.075 --> 01:04:57.107
we're at the end of the briefing.

1496
01:04:57.110 --> 01:04:58.468
And then, uh, Linda. I don't know

1497
01:04:58.468 --> 01:05:00.000
if you have any further comments.