

## Land Board Meeting 10-11-2019

[Transcript starts at 1:14:18]

**Suzanne Case:** Okay. Let me just check, is there anybody besides here for any item from the public, not staff, for anything besides the D-1? Which one are you?

**Male:** D-2 as well?

**Suzanne Case:** Yeah, but you can [1:14:32 inaudible] for D-1, yeah? Might as well dig in, D-1.

**Ian Hirokawa:** Good morning. I'm Ian Hirokawa with DLNR Land Division. Item D-1 is the continuation of the revocable permit for water use for statewide, kind of, you have the submittal so it kind of [1:15:14 inaudible].

**Suzanne Case:** Sorry, sorry, sorry.

[indistinct chatter]

**Ian Hirokawa:** For the -- all the permits statewide, again, this submittal is pretty long so I just kind of hit the -- sort of the main points. With respect to the smaller agricultural users, we're recommending that continuance along with the slight run adjustment to account for CPI. The applicants have made pretty good progress over the last year. We've met with them several occasions. We've worked with them to sort of specify their water use amounts and purposes.

The Ka'u beneficiaries have gone through their DHL beneficiary consultation. We're also bringing the watershed management plan to the process today so that hopefully get back to get some resolution. And we're working -- the big sort of issue to be resolved for all of the -- not just the appraisal but that's sort of working on that to try and come up with a valuation for that.

In addition for the Ag use, we're also asking in a revocable permit the issue to Ka'u Mahi. There are another Ka'u water user. They did apply for lease back in 2016 but they never had an RP. They have an existing RP, but we figured, okay, we've -- they've been working in good faith with the other applicants and now there's some clarity. We want to get them also legitimized through an RP as well. So we were asked that -- in addition to the continuance, we're asking for Ka'u Mahi be approved.

[1:17:02 POCO] is pretty much finished with all the [1:17:07 inaudible] requirements except for the watershed management and the appraisal. KIUC has just published their EA, I believe it was actually this past Wednesday that EA got published. So for the big remaining issues are the East Maui permits. We're asking that, you know, the diversions continued. I mean, there seems to be a, you know, a reasonable basis to

continue the diversions. But the question is really how much water should be diverted and making sure that that use is appropriate.

So the recommendations that staff has to address those issues, one is to impose our reporting requirement on A&B EMI that really exceeds your normal, like with the other permittees, they have to just report the amounts of water they're using. We're proposing a little more in depth in terms of how they're using the water to give clarity on that.

Also a limitation on how much water they can use. We kind of looked at the past usage over the past couple years and came up with a kind of what their higher average uses and recommended at 35 million gallons a day. I understand that there'll probably be a lot of discussion, too, on that number, but we do think of a limitation on the diversion amount is appropriate.

Also, DOFAW, we're working with DOFAW to address this idea of the license areas. Right now, in addition to the water, the permits cover about 33,000 acres of forest reserve lands and I think, you know, DOFAW has an interest in maybe not getting some of those lands back. So we're working with A&B EMI on that. But for the initial step is to withdraw the [1:19:09 inaudible] from the license area and that'll go back to DOFAW, that's about 7,500 acres.

Finally, EMI is EIS published on -- the draft EIS is published on September 23rd, so they're currently in the comment period. And, again, we continue to work with the applicants to get this process done and, you know, working with DHHL as well to ensure that their issues are resolved in the reservation and other issues [1:19:39 inaudible]. On that basis, we're asking [1:19:43 inaudible] to be continued.

Oh, one other, East Kauai water users co-op. They have requested that their permit not be continued. So we've discussed it with them, they voted on it. That's their -- by their decision so we're not -- that is the only permit that is not recommended to be continued under this action.

So the state will work with them on sort of the transition of the system back to the department and we'll see about what our options are. I mean, hopefully, another entity can assume management of the system to keep it operating. If not, I think if we'd have to look at possibly close -- just shutting down the system [1:20:31 inaudible] if nobody else can step up to operate it, but, you know, that's a lot of resources, so we're not sure where that'll go just yet. That's a lot of resources [1:20:39 inaudible].

**Suzanne Case:** Okay. Questions?

**Male:** So, Ian, on the KIUC, you're saying that they don't want to have a permit again, a revocable permit [1:20:52 inaudible]?

**Ian Hirokawa:** I'm sorry, KIUC does. It's the East Kauai water users co-op. Yeah, they're off the same stream but further down. Their agricultural co-op but, yes, they met -- we met with them, the representatives on a couple occasions and I believe it was Tuesday after Labor Day, they had a co-op meeting. I was there, Department of AG representatives were there as well and they voted to sort of -- not request a continuation of this permit. It'll set to expire on December 31st.

**Male:** I'm talking about, you know this Kauai co-op, the system that they use affects a lot of the farming community. And I notice in the report that he said the Department of AG refused that they can [1:21:44 inaudible] for costs. So how is Land Division going to handle the cost? Because I don't know if you can shut them down?

**Ian Hirokawa:** Well, I think that's -- I think the hope is that in the next session, hopefully, something can be worked out to provide DOA the resources they need to assume management of the system and continue. If not, yeah, I think we'd have to look at the option of shutting it down because Land Division or DLNR kept -- doesn't really have the resources or expertise to be a water provider.

You know, we only can operate the system and from my discussions with the co-op is that there's no way that the system can operate without some level of subsidy and probably significant subsidy. You cannot charge that like the -- you cannot charge the existing set of users enough to make the operational costs.

**Male:** I understand that but the way I look at it, you know, I don't think you can think about closing down the system. You know, I think it would make a big effort to even try to go to the legislative to try get funding for the system because if agriculture is one of the big issues that we are looking towards in Hawaii by closing out system, we're cutting back on agriculture.

**Ian Hirokawa:** Well, I agree. I think that's the idea. I mean, I think every -- I mean, myself, staff included will be if the idea would be if DOA could get the resources they need and we could simply set aside the system to them and they can continue to operate it. It's just that hasn't panned out. But I think that by far is the preferred or ideal resolution to this.

**Male:** I have a question on that [1:23:36 inaudible]. Same subject matter. Explain again why you want to close it down.

**Ian Hirokawa:** The co-op has decided not to continue the permit nor pursue a water lease. So basically, as of January 1st of next year, there'll be no longer operating or managing, maintaining the system. It will revert back to the department.

**Stan Roehrig:** Are all of the co-op members going out of agriculture, are they continuing? Why are they discontinuing? Is it a few people don't want

and the rest do, they don't want the responsibility? Are there any people in the co-op that are willing to keep going? And if so, rather than go through 171-58, why don't we do what we did with the Lo'i at Waioli and Hanalei and make a 171-13-2 easement, long term easement or perpetual easement for the water access for them and do it that way?

**Ian Hirokawa:** From discussing with them, the co-op doesn't have the resources to properly manage and maintain the system. I mean, versus what we saw in Waioli, this is a much larger system and the sort of manage our responsibilities are a lot greater. You have two reservoirs as part of the [1:25:14 dip] system. One of them is very significantly sized one. And so neither -- none of the members have one expressed any interest in replacing the co-op as a sole operator.

My understanding from speaking with the co-op members I've spoken to is that some of them will just, I guess, retire; some will look at getting water -- developing their own source like they might have a stream running through their property and they'll seek a diversion from it to utilize that.

Again, yeah, I don't know what the intricacies of every -- the members within the co-op but they didn't have a meeting and vote on it and pass that action.

**Stan Roehrig:** I joined Tommy's concern about that. In another life, I was the Ag chairman in the legislature and this problem of people don't want to stay in [1:26:12 inaudible] comes retirement, nobody took their place with -- but that time went back in the '60s and '70s, it was already a problem. So if we're trying to become self sustainable, this is going in the opposite direction.

**Ian Hirokawa:** Understood.

**Suzanne Case:** We are all worried about that. Yeah, because...

**Male:** Yeah, I agree with Tommy. You know, to actually close the system would be tragic. You know, states has spent 10s of millions of dollars buying land for agriculture and knew you have this water system that works, that supplies this agricultural land. And all the years I've been sitting here, nobody has testified against this particular licensee permittee.

So physically, you know, come January 1, the permit runs out. Are we going to stop -- the water is going to keep -- the water runs on its own, right? Unless you go in and do something.

**Ian Hirokawa:** Yeah, I think we'll have to look at closing the intakes that feed the system off whatever stream. We'll have to close that and we'll look at finding a way of at least basic maintenance for the reservoirs, you know, to make

sure that the levels are appropriate and the vegetation doesn't grow, you know, the basic operations.

And hopefully, I mean, if again, if in the next session, we can get the resources they need, we can bring it back with a set aside. If not, I mean, I, you know, I don't know. I mean, again, I think that no one wants to shut it down. It's just that if no one's going to -- if another entity or agency can step up, and you know, they can't get the resources or they won't be given the resources to do that.

I don't see how DLNR can be of, you know, substitute as an operator of the system. That just -- we don't have the staff resources, the budget to really do that. It's going to take a lot of -- and the expertise is going to take a lot of further subsidies which we just don't have, so.

**Male:** If you don't -- if you didn't close the intakes and the water kept running in the system and the permittees, they're not permittees anymore but they happen to have water, you know, flowing in the ditch across their property. What would happen? What would -- is there something that would go wrong? I don't know anything about the system because is there something that could go wrong?

**Ian Hirokawa:** I mean, I guess they have access -- I would assume they have access to water without, you know, without the permit. I guess the concern I would have is that if the water is flowing and nobody is maintaining, I guess, like I said we would do basic maintenance if we could close the intakes to make sure it sort of status quo. But I guess my main concern is what is the effect of having water kind of -- having the system in operation without an entity that's sort of doing a day to day operation and maintenance as a co-op was doing. I'm not sure what that effect would be.

**Male:** Yeah. I'd be interested to know what that is. And, you know, it may be considerable, I don't know.

**Male:** [1:29:35 Public testimonial]

**Male:** It...

**Male:** Okay, okay. Good.

**Male:** You know, I'm just -- I'm wondering if one of two things is going on, one that the co-op is hoping the system is going to keep just running on its own. Do you think that's possible?

**Suzanne Case:** Well, I also understand that in the area that many of the farmers are getting ready to retire and don't have the next generation pulling in. And, you know, I mean, the other consideration, obviously, is waste, you don't want to be running water through the system that's not being used and not

being used to - but I do -- and we've had, you know, discussions with the delegation about this.

This is -- we all share the concern about not letting this investment deteriorate. We have that problem in Hamakua obviously. And it's a big problem. And at the same time, there's, you know, there's no urgency of use. And so that's the challenge.

**Male:** A couple more things on the train thing? Did they talk about what it was about the lease that made it not feasible for them to apply for?

**Ian Hirokawa:** Yeah. And to the cost credit, they're very forthright in I think their dealings with us that they haven't really, you know, they've said one, I think one is just the cost burdens of getting the lease. I mean, if there's going to be any required that costs and also the watershed management plan issues, but also the, I guess, the long term implications of it. Again, they, you know, if they get the lease, it would be a long term responsibility for the operation and maintenance of the system which they don't -- I don't think they're able to really do, you know, just the dams up to code, you know, keep all the ditches, you know, to [1:31:57 inaudible]. I think that's a huge cost, huge cost. I don't think they have the resources to do that.

And I'm kind of relaying information secondhand but my understanding of talking to them was that when they first got the permit, I think this idea was -- the system serves a lot of Ag lands, but they're all private. And there hasn't been enough Ag activity on those lands to sort of build the co-op to word -- you know, get enough of a user-base to pay for the system, like a lot of those Ag lands haven't gone into production in the -- what is it, 16, 17 years they've had a permit.

So, you know, their membership remains small and all that, you know, and hasn't been able to grow but that's my understanding.

**Suzanne Case:** Big system, expensive to operate and not much land there being farmed.

**Ian Hirokawa:** So, yeah. So their hope was that it could get transferred to be away from the long term, you know, viability of it. But, you know, again, that hasn't gone through. DOA hasn't given the resources they need to do that.

**Suzanne Case:** Okay, are there other questions? Let's go to public testimony and let's start with the applicants. I'm just going to go down sort of in order in the exhibits. So A&B?

**Meredith Ching:** Thank you, Chair Case, and thank you for this opportunity to address the Board. My name is Meredith Ching representing A&B and with me is Grant Nakama who's the Operations Manager for Mahi Pono.

**Grant Nakama:** Good morning.

**Meredith Ching:** And Mahi Pono is the farming entity that late last year, after we last met, we've appeared before this Board, purchased the bulk of A&B's agricultural lands in Central Maui.

So Mahi Pono bought these lands to pursue a diversified agricultural operation and essentially the same footprint that our sugar operation was on. So it's approximately 36,000 acres of planned [1:33:58 inaudible] agriculture.

So going forward, it's going to be Mahi Pono who is the user of the state permit, not A&B. A&B is here before you today because, as you know, the permits are in A&B and EMI's names and they're non transferable. But Mahi Pono is now 50%, owner of EMI. So with that, I'm gonna let Grant tell you about what their plans are for Central Maui agricultural lands.

**Grant Nakama:** Good morning, Chair Case and the members of the Board. Before diving into the farm plan, I'll first have to give some background on who Mahi Pono is as a company. So Mahi Pono is a joint venture between Pomona Farming and the Public Sector Pension Investment Board also known as PSP. So Pomona Farming owns several successful large farms in California while PSP is one of Canada's largest pension investment managers.

Together they purchased 41,000 acres and a 50% interest in EMI from A&B. The intent of this purchase is to develop the largest diversified farm in the state. And in order to implement this, they formed the Maui-based company named Mahi Pono.

Our primary goal is to grow healthy food for the Hawaii market. And in order to meet our irrigation requirements, we're working hard to obtain a long term water lease from the State of Hawaii. The first step in this process was the recent filing of a draft EIS which is published on September 23rd.

While there's more work to do and we continue to work hard towards the lease. Our short term water rights are dependent on the continuance of A&B's and EMI's revocable permit.

So moving on to the farm plan, by the end of next year, we anticipate having over 4000 acres of food crops in the ground. We will also have over 12,000 acres of fence pasture to support our Kulolio Ranch operation. And for the record, all of these crops that we plan on planting will be non-GMO.

Of course, in order to grow these crops, we'll need water and -- but that said, we are 100% committed to honoring the interesting flow standards set by the 2018 IIFS.

For next year though, our 12-month average irrigation requirement will be 45 million gallons per day. And for the record, again, I want to say that that's a 12-month average number. So we will actually enter the year using approximately 34 million gallons. But by the end of the year, we end up using 56.1 million gallons. Yeah.

That said, using this amount of water will allow East Maui streams to remain in compliance with IIFS. Of course, we're not making this water request lightly and we understand that we need to invest heavily to develop more efficient irrigation systems.

Over the next three years, we'll be investing over \$20 million to install more efficient irrigation systems. And in total, we've invested over \$60 million so far to ramp up our farming operations.

Moving on to sales, this is, you know, obviously a lot of money to invest before you even have your first harvest. But we look forward to our first harvest occurring next month. So we have 70 acres of potatoes planted already. We will start harvesting those potatoes next month. We anticipate a yield of 20,000 pounds of potatoes per acre, per planted acre. And that's just the start of our harvesting operation.

So at full build-out, it's estimated that our farm will be able to annually produce 320 million pounds of product from just our orchard crops alone. Of course, in order to deal with this influx of product, we'll also be creating a significant amount of jobs. While we currently have approximately 50 in-house employees, we anticipate creating between 701,000 jobs as we ramp up our farming operation.

Stepping outside our farm plan, there are other uses for the water that we're requesting. So the first is the Department of Water Supply for the County of Maui. The EMI system delivers water to the county's Kamaole Weir treatment plant and it's the main supply of drinking water for over 35,000 residents in Upcountry Maui.

This agreement has been in place since 1973. But without our revocable permit, the agreement to provide water to the county will terminate, so the agreement that we have in place right now, four-year old agreement, is contingent on a revocable permit. Without it, it automatically permits.

We also understand that the staff recommendation is to implement a cap of 35 million gallons per day and as I mentioned earlier, we will enter the year already using 34 million gallons. In regards to that capital, I do want to point out two things. Like I said, it's not enough to meet our irrigation requirement or the water needs of the county.

Again, our average is 45 million gallons per day with the peak at the end of the year of 56 million gallons. Also, you know, no matter what happens, we remain 100% committed to honoring the IIFS. So our water



use will not approach a level that will cause any kind of violation of those standards.

So what I'm recommending or what we would like to see happen is that either we remove the cap entirely or increase the cap to at least 45 million gallons to accommodate our farming plant.

In closing, I would again like to say that Mahi Pono's goal is to grow healthy food for the Hawaii market. The continuance of this revocable permit is critical to our progress toward that mission. And I'll turn it back over to Meredith.

**Meredith Ching:**

So as part of your staff submittal, you have a letter from us from late September that noted that we did address all of the permit conditions that the Board imposed on the current permits, the 2019 permits. We know that staff is recommending a few nuance for the 2020 year and just wanted to provide some comments. Grant already address the cap and the need for the number to be higher in a 12-month moving average.

On number three, the reduced footprint for the licensed area, we did meet with DLNR including DOFAW and we just wanted to point out one thing that wasn't stated in the write up but that was discussed in our meeting and I think we all agreed to was that the reduced footprint doesn't imply a reduced access to water. And it's the same water collection area even though the management area may be smaller.

And as I mentioned to the staff write up, we will continue discussions with DOFAW and DLNR of what we've seen yet even further. But our concern is to keep the buffer that sufficient enough to protect the safety of the system, the safety of our employees to take care of the system and the safety of the water itself because it is a public drinking water source ultimately.

One other comment is there was a mentioned in the write up about a 5 million gallon per day set aside for a Pulehunui development. We know that's not part of the motion today but -- and we just want to say we're going to reserve comments for when that is formally brought before the Board. But otherwise in agreement with all the other conditions proposed by staff, including the more detailed, I guess, reporting requirements and more frequent reporting requirements that they're recommending.

So in closing, as Grant mentioned, we just want to highlight for the Board that we are making significant progress towards transitioning to a long term lease. The draft EIS what has been published and as mentioned by staff on your agenda are the minimum contents for the watershed management plan, which is another big piece of moving towards the lease.

So these permits should be temporary bridges to a longer term arrangement. And we asked for the Board's renewal of the permits with a

slightly modified conditions. There's a unique opportunity here to keep those lands in agriculture and keep the water system operating with a very capable and willing new owner of these lands.

**Suzanne Case:** Thank you. Any questions?

**Male:** Chair, I have a question but I would prefer waiting till I hear some of the public input.

**Suzanne Case:** Yeah, we can come back to...

**Male:** Just got a couple of [1:42:36 inaudible]...

**Suzanne Case:** Can I [1:42:37 inaudible] questions.

[indistinct chatter]

**Jimmy Gomes:** I just want to make sure everybody's on the same page, Ian, when we talked about 35 million gallons per day in the submittal, is that an annual average?

**Ian Hirokawa:** It's -- well, how it's written is that it's -- you take [1:42:57 inaudible] per month that would average out to 35 a day. It's like a month and then as long as that month, you don't have more than 35 million gallons a day because it's a month revocable permits. I didn't want to do it [1:43:09 inaudible].

**Jimmy Gomes:** Well, you mean every month, they couldn't go over 35 million?

**Ian Hirokawa:** As an average. I mean, they could -- if like they were slow flow periods and high flow fall within the same month.

**Jimmy Gomes:** Yeah. So but every month, there's a 35 million gallon per day cap.

**Ian Hirokawa:** Yeah, yeah, because the permit was monthly so I didn't want to treat it as like longer than that. And I think one thing I want to clarify, too, is that the numbers -- the information I use included the county's uses as part of the -- that's how...

**Male:** 35?

**Ian Hirokawa:** Yeah.

**Male:** Part of 35. Okay.

**Ian Hirokawa:** [1:43:39 inaudible]

**Jimmy Gomes:** Okay. So now I understand, you know, this is what I want to understand, you know, what the staff will get into what, you know, what we're going to do is talking about it. But they're talking about, you know, an annual, I

mean, it can be done either way but if it's -- for 35 million, that means that it's -- they get 35 million. If there's a drought, if it's a dry month, then they want to get more, they don't they don't get anymore. And that's it, right?

**Ian Hirokawa:** Yeah.

**Jimmy Gomes:** That's according to the way staff is looking at the current submittal. Okay. And then I want to understand your point of view on this, on the 45 that you're asking for, does that include the county's 5 million?

**Grant Nakama:** It does.

**Jimmy Gomes:** Okay. So what you're saying is...

**Grant Nakama:** Oh, no, not the 5 million...

**Jimmy Gomes:** No. So you're saying 50 then?

**Grant Nakama:** Not...

**Jimmy Gomes:** No?

**Meredith Ching:** No, it includes county's use, right?

**Grant Nakama:** Are you talking about the Kamaole Weir drinking water?

**Jimmy Gomes:** Yeah.

**Grant Nakama:** 5 million, yes, it does.

**Jimmy Gomes:** And so the 45 million that you're asking for has two things about it. One is it's averaged over the year, so it'd be less in the beginning and more at the end. And number two, it does include the 5 million -- is 5 million right for the county?

**Grant Nakama:** It's 7.1.

**Jimmy Gomes:** 7.1.

**Grant Nakama:** Yeah.

**Jimmy Gomes:** So you're talking 38 for Mahi Pono and 7 for the county and the 5 that we're talking about for the state projects is not going to kick in...

**Suzanne Case:** That's not current.

**Jimmy Gomes:** ...in the current year. Okay. I just want to understand where everybody's at. Okay.

**Suzanne Case:** Okay. Any other questions at this point? I will come back to you if we have any question.

**Grant Nakama:** Thank you.

**Suzanne Case:** Okay. Why don't we hear from Maui County [1:45:38 inaudible] on the system?

**Jeff Pearson:** Good morning. It's still morning. Jeff Pearson, the Director of Department of Water Supply with Corp. Counsel and [1:45:57 David Rope]. Thanks for having me here, Chair and Members of the Board. You're chasing numbers around. First, let me -- I guess, you know, pretty much the background of the Kamaole Weir that sits along the Wailoa Ditch and that serves the Upcountry residents. It isn't always the primary source. There's two other surface water sources that also feed the Upcountry residents.

But in times of low flows and in times of drought, that's the main source because that, of course, grabs water from the EMI ditch further towards the Hana side where there's still be rain even though it's drier in the central plains. So in those times, we're completely reliant, and not completely reliant, but strongly rely upon the Kamaole Weir to provide water to Upcountry residents. We pumped it up and supplied to the 36,000 residents. The capacity of that weir is -- excuse me, the treatment plan is about 6 million gallons a day as micro filtration could pump as much as 6 million gallons a day.

Most the time, of course, again, we don't pump that data. I think in my last contested case, it discussed the average of about 3 million gallons a day over a year. This last year, we've been pumping pretty steadily 2 million gallons a day to augment the other sources that are Upcountry. One thing -- I appreciate Grant for bringing up Department Water Supply and making -- they're quite aware that, you know, they provide water to that same ditch. He also brought up the case or the issues of IIFS and I was kind of pleased to be at the water commission at the time at that IIFS was resolved. And as he said, the water that's going into the streams has been decided. There's 10 streams that there's full flows to the restored flows. The other streams have various flows that were made -- the decision was made by the water commission. And that's one of the -- is it the only case that's never been appealed after the decision was made.

**Male:** After a contested case.

**Jeff Pearson:** Yeah, after a contested case so that's kind of interesting. So we got to make it clear that these streams now have the flows that were determined by the water commission in 2018. I keep repeating this because it's quite important.

**Male:** There are some streams that the IIFS never got determined.

**Jeff Pearson:** Correct.

**Male:** And there's about 13 or 14.

**Jeff Pearson:** I don't know that number but that's a good...

**Male:** Something like that.

**Jeff Pearson:** Yeah, correct.

**Male:** That's in the DEIF discussion.

**Jeff Pearson:** Okay. So...

**Male:** What's the implications of that? The ones that have not had the IIFS yet in your water supply, if any?

**Jeff Pearson:** None -- I don't -- I'm not really aware of those implications and I can't tell you the specifics of what EMI diverts from those streams, so -- or the volumes of water that come from those streams. So maybe EMI could -- Mark [1:48:59 inaudible] or someone else here could give you a better information on what water is provided through those streams by diversions, but I can't give you a good answer so I'm not going to try to guess. Anyway, I just -- I'm just trying to emphasize that the water has been returned in those 27 streams as part of the contested case.

So that's -- I think that's important. Beyond that water that goes past Kamaole Weir, there's Kula Ag Park, uses I think the last year's average was actually less than a million gallons, the county approved. There's property to expand the Kula Ag Park. So I would assume that would be 1 or 2 million gallons additional that hasn't even been laid out so that's long ways away. Beyond that, I thought it was too important of an issue for me to sit back and watch to see what happens. I trust you guys, you folks', judgment. I know that you realize that there's a need for this RP to divert water and not only for the agricultural issues, which is a beneficial use once the stream flows have been met, but, of course, the water that is provided for the Upcountry residents as domestic uses which is one of the public trust purposes. So that's why I'm here and I hope I trust that you guys will make a good decision to do what's right for the Maui county. Thank you.

**Suzanne Case:** Thank you. Any questions? Okay, thank you.

**Jeff Pearson:** Thank you.

**Suzanne Case:** Okay. Poco [1:50:41 inaudible].

**Male:** Oh, yeah, I just [1:50:43 inaudible]

**Suzanne Case:** Okay.

**Male:** Can we have a two-minute break, Chair?

**Suzanne Case:** Two-minute break. I'd make it a 5-minute break.

**[break]**

**Suzanne Case:** Okay, we're back from our break. The next applicant on the list is Kapapala Ranch. Anybody here from Kapapala? Okay, next is [2:01:31 Kuahiwi] contractors. Anyone here from Kuahiwi? Okay. Next is also [2:01:35 Alston], anybody here from Alston? Wood Valley, anybody here from Wood Valley? Okay, KIUC?

**David Bissell:** Aloha, Chair Case, Members of the Board. I'm David Bissell, Presidency of Kauai Island Utility Co-operative. And my associate Jason Heinz, our consultant, Joel Group has just joined me. Thank you for the opportunity to testify today. Since we were here last year for the revocable permit, there were several conditions put at us associated with the permit. I want to tell the Board that all of those have been met. One was regarding keeping a certain amount of water in the streams.

We have made modifications to the ditch systems shortly after the hearing last year that now has the requisite amount of water in the streams. I have handout to the chair. It shows the stream flow measurements of both the North Fork and at the Waikoko diversions. Relevant items down here is there's a red line that goes across that shows the minimum amount of water that's supposed to be in the stream at all times. The orange item above it is how much water is in the stream and you'll be able to see that at all times other than we were first setting 7 million standards are inadequate adjusting the gates and things. The total amount is always at least as much as the minimum amount of water kept in the streams.

Now, until we have a permanent lease if we are granted one, we cannot actually go in and modify the diversion itself. So the water comes in shortly at the sluice gate a little bit after the diversion at all times because we can't physically put a notch in the diversion, the very low flow items to cover it. So it's not [2:03:37 inaudible] there is a little bit on the Waikoko in particular probably 100 feet and in low water periods, it does go dry until it comes back in at the sluice gate pass it. But we have plans in front of the DLNR staff for modifications the diversion of that would allow for always having water in all parts of the stream.

Second and I guess was a rent increase, which is taking care of the third condition was we would hold up facilitated discussions with certain community members and report back to the Board that it's been done and requirements made several months ago back to the Board. So those conditions, we have complied with. I do want to make the Board aware of some operational issues we're having particularly impacting the upper hydro plant.

First of all, there was a leak in our -- in the concrete flume between the forebay and penstock before the water goes into the upper hydro which was identified in April and it's taken some time to be fixed that has been fixed now. Unfortunately, shortly, a few months after that was done and [2:04:45 inaudible] time to fix was done actually. We became aware that a large obesia tree had fallen on a section of the ditch where there's a siphon, basically, a metal pipe and it broke the pipe and damaged the area out there.

Board authorized this to go in and fix it but by the time we were ready to go out and fix that, this was a couple of months ago, we became aware that there was a significant landslide in that area as well. So the work has become more extensive. So until such time as that is fixed, the upper hydro was out of commission pending those repairs. So it's been a bad year production wise for the upper hydro. It's kind of as an indication of just how much work is involved in keeping these systems in use and things can go bad in a hurry without a lot of maintenance fouls.

Regarding the lease application, we've also completed a environmental assessment that was recently published last week. I have a paper copy for your guys pleasure, if anybody would like to read that or have them read paper instead of online, so that is yours to keep. We put out a press release soliciting comments from our community members and environmental assessment. And we continue to meet with various agencies on permitting and issues around the watershed management area including Office of Conservation, Coastal Lands, Division of Forestry and Wildlife and we'll continue to work with those agencies moving forward if we are granted the revocable permit. That's all I have.

**Suzanne Case:** Okay. Questions? Any questions? Okay, Chris?

**Christopher Yuen:** No, go ahead, Stan.

**Stan Roehrig:** I just -- I'll have my questions later. I have a lot of questions but I'll wait till later.

**Male:** I have a question. Have you met with the community that their testimony as far as the negative side [2:06:54 inaudible] with those individuals that kind of resolve whatever issues that they've had?

**David Bissell:** Yes, we had a series of facilitated meeting with those groups. There were three meetings held. Robbie Alm was the neutral facilitator. And unfortunately, I can't say that the issues were resolved at the end. He determined that the best mechanism to reach resolution was going through the contested case process on the water issues and having actually a formal proceeding is important as opposed to informal. He did not feel that there was a reasonable outcome of a successful compromise between the parties

**Male:** When was the latest [2:07:35 inaudible].

**David Bissell:** It's probably been -- I don't [2:07:40 inaudible] six months ago, several months ago, we had them soon after they were suggested.

**Male:** Okay. Always.

**Suzanne Case:** Chris.

**Christopher Yuen:** I'm trying to understand the stream, the stream flow measurements. It looks like most of the time, you weren't [2:08:03 inaudible] any water from Waialeale stream North Fork Wailua.

**Male:** That's true in the later part of the year for the reasons that David mentioned because of the siphon failure. Since we weren't producing with the upper hydro, we cut the diversions.

**Christopher Yuen:** Okay.

**Male:** So when the plant was able to be operated, we were diverting, which was earlier in the year. You can see those more diversion flow towards the left side of the graph, I believe.

**Christopher Yuen:** But even during that time, there's a lot of days. The way I remember it was the median flow was 15 million, is that right?

**Male:** Approximately.

**Christopher Yuen:** Yeah. And you were required to leave in 8, 7 and a half?

**Male:** Yeah, I think that the IIFS requires 4 MGD at the measurement point, at sea worms measurement point downstream which is about three and a half [2:09:06 inaudible] at the diversion itself.

**Christopher Yuen:** Okay, okay.

**Male:** And really, if we look at the data far more than that has been left in, I think the average diversion for the year is down to about 4 and a half where it typically was in the 10 to 14 range. So far more water has been left and partly because of the operational problems and partly because immediately we began releasing the 6 CFS served around GD at the diversion at all times.

**Christopher Yuen:** But even before, say -- when did the -- when did you stop operating for hydro?

**Male:** Well, there were -- the exact date -- maybe Brad could help me with the exact date. There were two -- there were two periods. The first one that David mentioned where there was an issue with the flume, it got shut down for a period. And then soon after that, it was shut down again because of the siphon and the obesia tree. And that was at least I want to say two to three months ago when that failure occurred.



**Christopher Yuen:** But even before July -- I mean, June 25, it seems like two-thirds of the time, you're not taking any water, is that my reading is wrong?

**Male:** I think it was April when we...

**Christopher Yuen:** Okay, April?

**Male:** ...had shut down, basically full time between.

**Male:** And there was a period at the end of the year where there were floods that took the intake

**Christopher Yuen:** Okay.

**Male:** That whole flow line has been around challenge this year for one reason or another. It's a bad year for production out there.

**Christopher Yuen:** Okay, all right.

**Male:** The lower hydro has been running well and that was going to take some time but the upper one that's sped primarily by [2:11:03 inaudible] where Waialeale is.

**Christopher Yuen:** Okay, all right.

**Male:** Experienced the number of...

**Christopher Yuen:** Okay, thank you.

**Male:** ...abnormal issues.

**Suzanne Case:** Okay, other questions? Okay, thanks. We'll come back to you. The last in the applicant list is Jeffrey Linder. Anybody here a Linder? Okay. Anybody else who's an applicant?

**Yvonne Izu:** Yvonne Izu on behalf of Kau Mahi.

**Suzanne Case:** Oh, yeah.

**Yvonne Izu:** Not an applicant for...

**Suzanne Case:** Yeah.

[2:11:43 to 2:2:12:19 indistinct chatter]

**Suzanne Case:** Please proceed.

**Yvonne Izu:** Thank you, Yvonne Izu on behalf of Kau Mahi. Kau Mahi is using one of the development tunnels that was used by coal sugar and when Cebu went out of business and kind of divvied up their RPs, for some reason,

they never renewed the RP or whoever was the successor, never renewed the RP for the Moa 'Ula Gulch tunnel. But people had been using it, the farmers had been using the water from the tunnel when Kau Mahi.

**Male:** Is it Ka'u?

**Yvonne Izu:** Ka'u.

**Male:** Ka'u.

**Male:** Ka'u Mahi.

**Yvonne Izu:** Yes. When they purchase some of the lands and their intent is to subdivide the land and to sell it to actually most of the people who are using the lands right now trying to -- they'll be offered to these people at a discounted rate. And then whatever is not taken, they'll try to sell it at market rate to other farmers. But when Ka'u Mahi as the entity, LLC, came on board, they decided that they really needed to legitimize the water use and that's why applied for a long term water lease.

At that time, we thought that, you know, we could actually get the long term lease within a year, didn't really foresee some of the big issues like the watershed management plan, the appraisal and whatnot. And so we kept moving along the path of a long term water lease and have been talking with Ian for years, couple years at least, and finally decided that this year, because of the issues not likely to be resolved by the end of this year, Ian suggested that we apply for RP instead as we move towards the long term. So that's our request.

**Suzanne Case:** Okay. Thank you. Any questions?

**Christopher Yuen:** I have a few.

**Suzanne Case:** Yeah.

**Christopher Yuen:** Who owns the land?

**Yvonne Izu:** Ka'u Mahi LLC, which is a subsidiary of Resource Land Holdings.

**Christopher Yuen:** Who is it? I mean, who are the owner?

**Yvonne Izu:** It's an investment company. They usually invest in agricultural lands.

**Christopher Yuen:** And where are they from?

**Yvonne Izu:** From the mainland. Yeah.

**Christopher Yuen:** Okay. And how many acres are we talking about?

**Yvonne Izu:** The Ka'u Mahi lands are over 2,000 acres.

**Christopher Yuen:** Okay, and where are these people from, from the mainland?

**Yvonne Izu:** The people that I work with are from Idaho.

**Christopher Yuen:** They're from Idaho.

**Yvonne Izu:** Right.

**Christopher Yuen:** Do they have any relationships with **Alston**? If you know.

**Yvonne Izu:** Legal relationship?

**Christopher Yuen:** Yeah.

**Yvonne Izu:** No. No.

**Christopher Yuen:** All right.

**Suzanne Case:** Okay. Any other questions? All right. Thank you.

**Yvonne Izu:** Thank you.

**Suzanne Case:** Okay, no other applicants, huh? Okay, so let's go to agencies, DHHL.

**Halealoha Ayau:** Aloha kakou. I'm Halealoha Ayau, Water Resource Management specialists with the Department of Hawaiian Homelands, here to present testimony in behalf of our Chairman, William J. Aila, Jr., Chairman of Hawaiian Homes Commission. DHHL supports the proposed submittal. We particularly appreciate the emphasis on securing water related to the MI lease for DHHL's use for Pulehunui on Maui. We asked for three amendments to the submittal prior to adoption.

The first on page three, amendment of conditions seven, to incorporate existing legal provisions related to the allocation of water for DHHL. Specific languages included in our submittal. Number two on page four, condition 8 as a six-member incorporating a representative of DHHL. Number three on page four also additional condition one, rewards section to clarify a requirement regarding the diversion and use of water. The RP holders should be required to measure the diversions and report their uses. So for the Board's reference, enclosed with our testimony is a conceptual plan of DHHL's proposed land uses on its lands at Pulehunui. So it includes our land designations as well as our potable and non-potable water demands.

**Suzanne Case:** So this question, you know, that's not ready, right? It's not...

**Halealoha Ayau:** Correct.

**Suzanne Case:** ...close the operation yet.

**Halealoha Ayau:** Correct. So we have done -- we did beneficiary consultation earlier this year for EMI. We submitted our report to the commission that approved in August. And now we're in the position of preparing our water lease request to this water. So that's what we're at in the process.

**Suzanne Case:** You anticipated coming online this -- in the next year?

**Halealoha Ayau:** Absolutely. Well, that's definitely the goal.

**Suzanne Case:** In the next year.

**Halealoha Ayau:** In terms of us submitting the -- our water lease request to this [2:17:44 inaudible].

**Suzanne Case:** No, no. What I mean is the need for water. I mean, I...

**Halealoha Ayau:** The need for water is always been I guess to me whether we have the infrastructure in place.

**Suzanne Case:** Yeah.

**Halealoha Ayau:** Not within the next year. But we want to make sure that we have our reservation in place and are able to move forward and acquiring the capital funding that we need to install the infrastructure. Definitely.

**Suzanne Case:** Other questions? Okay. Thank you. Okay. Department of Ag.

**Morris Atta:** Chair Case, Members of the Board, Morris Atta, Deputy Director for Department of Ag testifying on behalf of the Chairperson Phyllis Shimabukuro-Geiser. Thank you for the opportunity to testify on this agenda D-1. The department supports the approval of this request because it ensures the state's largest contiguous areas of prime agricultural lands in Maui, most of which are designated as important ag lands as of 2009.

And the Ka'u ranchers and coffee farmers on Hawaii Island to continue having access to vital irrigation waters. Hawaii's food sustainability remains a top priority of this administration and supporting agricultural access to water is critical to moving the needle towards increased local food production. The prime agricultural lands in Central Maui that are now being used by Mahi Pono include irrigated pasture for beef, diversify crops, bioenergy crops and in New County Ag Park.

These agricultural uses once established will substantially move the state's goals to increase food and energy self sufficiency. Providing access to reliable and affordable water for local ranchers and coffee farmers on Hawaii Island is also great significance in supporting our food production goals. Hawaii's livestock industry continues to provide a service to the community by producing fresh local beef to people of Hawaii. The coffee industry plays a vital role as a highly valued

commodity crop and a successful economic driver for the State of Hawaii. Maintaining access to reliable cost effective irrigation systems is critical in this regard. Thank you for the opportunity and I'm available for any questions.

**Suzanne Case:** Any questions? Okay, thank you very much.

**Morris Atta:** Thank you.

**Christopher Yuen:** Thank you, Morris.

**Suzanne Case:** Other agencies? Okay. DOFAW, if you want to -- let's do DOFAW and then we'll move on.

**Katie Ersbak:** Aloha, Chair, Members of the Board. My name is Katie Ersbak. I'm a planner with Division of Forestry and Wildlife.

**Scot Fretz:** Scot Fretz, I'm the Maui branch manager with Division of Forestry and Wildlife.

**Katie Ersbak:** We've submitted written testimony in response to Sierra Club's -- one of Sierra Club's recommendations to provide \$500,000 to DOFAW [2:21:15 inaudible] restoration fund for the East Hawaiian Watershed partnership for invasive species control within their local permit area. You should have a hard copy of that testimony in front of you, if you don't, I have extra copies. So our comments are again related to Sierra Club recommendation, that's included as exhibit 5 and submittal D-1. We just wanted to point out the following comments of the 23,000 acres that are part of this RP area.

Most of that is within the DOFAW forest reserve and Conservation District lands. DOFAW and our partner organizations are actively managing these lands and we have done so for many, many decades. We estimate that current expenditures for the year of FY20 will exceed \$1.5 million. That's funding that goes to support invasive species control, as well as other watershed management activities. That's funding -- state funding from the watershed partnerships program through DOFAW as well as Maui County Department of Water Supply. Obviously, additional funding to support all that management is always needed. And then we also wanted to point out that as part of Submittal D-2, we have an update on how we're handling our watershed management plan requirement under the water leases, HRS 171-58. As part of that, we are currently working on a cost share formula, which would be separate from the \$500,000 of Sierra Club as recommended.

**Suzanne Case:** Separate [2:22:48 inaudible]

**Katie Ersbak:** What Sierra Club is recommending is \$500,000 as part of the RP renewal, the cost share formula that we've been working on that

framework is related to the long term water lease and we haven't yet determined what that amount our number will look like.

**Suzanne Case:** So this is intended to address the same concept, is that right, watershed [2:23:10 inaudible]?

**Katie Ersbak:** We think so -- yes, supporting watershed protection. We did not consult with Sierra Club on their recommendation, we're just providing comments.

**Suzanne Case:** Okay.

**Scot Fretz:** To acknowledge that the amount of funds to manage this area's considerable and to give you an update on what those look like for fiscal year 20. And so the 1.57 is from what we have calculated, it's a pretty conservative estimate. I actually think it's going to be a little higher than that.

**Suzanne Case:** And have you done this estimate yet for all of the other users?

**Katie Ersbak:** For the cost share?

**Suzanne Case:** Yeah.

**Katie Ersbak:** We're working on it. We haven't -- we don't have a number.

**Suzanne Case:** Thanks.

**Christopher Yuen:** Can I ask some question?

**Suzanne Case:** Yeah.

**Christopher Yuen:** The 850,000 from the partnership, can you break that down by the various partners?

**Katie Ersbak:** So EMI is a member of that watershed partnership, the East Hawaii watershed partnership. DOFAW is also an active member, the Nature Conservancy and others. That \$815,000 number, I think half of that is coming from DOFAW's watershed partnerships program, which is a competitive proposal process reward state funding. And then the other question is capital improvement project money from the state legislature as part of [2:24:24 funds] replacement project, the upper boundary funds for East Maui.

**Male:** No, sorry, he was asking about the line, the top line East Maui watershed partnership \$815,000. So that's separate from...

**Male:** Yeah, just -- yeah, that's what...the very top line.

**Male:** That 200 or 300 is DOFAW, DLNR money in the watershed partnership program, I think 400 is county and TNC is about 150.

**Male:** I'm sorry, say that again.

**Male:** 250 I believe is State-DLNR watershed Partnership Grant.

**Male:** Okay.

**Male:** 400 I think is the county, 150 is TNC.

**Katie Ersbak:** And Nature Conservancy.

**Male:** Now funds to TNC.

**Male:** Yeah.

**Male:** I hope those add up, that's off the top of my head.

**Male:** Is there anything paid by EMI or do they do anything in kind that's credited in this?

**Male:** It's not counted in these dollars. We did not put that into these dollars.

**Male:** They're a part of the partnership, do this ever worked that's...

**Male:** You know, I know that sometimes the watershed partners are credited basically -- there's a 50% match and they have to -- they're credited with, you know, they go out and they do things, you know, not specifically like they put in money but somebody goes out and pulls weeds or maintains a road or something like that. Do we have a figure for that?

**Katie Ersbak:** That's included in these numbers here. But to our knowledge, EMI does not contribute financially to these Maui watershed partnership. They are an active member and they attend their meetings.

**Male:** I see. Okay.

**Suzanne Case:** Any other questions? Okay. Thank you.

**Wayne Tanaka:** Good afternoon, Chair Case, Members of the Board. Wayne Tanaka of Office of Hawaiian Affairs. Just wanted to add a couple of things in our written testimony on that we submitted on this agenda item. First, you know, I can just provide you context for the water [2:26:40 revocable] permits that are being considered for reissuance to Alexander & Baldwin. You know, you probably know this but in 2003, there's a court order for A&B to conduct an environmental assessment for the long term division of streams to East Maui, you know, and that was in the context of the pending water [2:26:58 inaudible] application.

And I think this provided folks with a small measure of hope that they would finally be in accounting for the impacts that the decades on the water of East Maui may have had and may have had on, you know, matching cultural resources, public trust, native Hawaiian cultural practices.

And unfortunately, for 14 years, they did nothing. You know, they could have used this time to look at all kinds of scenarios, all kinds of outcomes under an IIFS and analyze its impact as this required under our environmental laws. They didn't. Instead for 14 years, they basically use their workers to justify their continued diversion of the streams in East Maui.

Unfortunately, they ended up laying off these workers about a week after Christmas and which left the state and the county scrambling to figure out what they're going to do to support these hundreds of workers and their families while A&B reorganized into real estate investment trust. And 2016, there's still no EIS done. There's a court that order that basically said, you know, you guys can't just keep writing on this revocable permit until, you know, who knows when. And so there are appealment valid.

As you know, as you know, A&B got the legislature to give them the authority to continue receiving revocable permits subject to the public trust doctrine. And they did come back here and instead of providing basic information necessary to affordable trust doctrine, they provided no information as their action needs. They provided no recognition of the alternative water sources that could have been used to meet those needs as much as any other justification to support their continued authority to divert streams in East Maui.

You know, I think there are a number of concerns and conditions raised. I think none [2:28:42 inaudible] in particular, we're concerned with the lack of information coming from A&B and [2:28:46 inaudible] don't come back here again [2:28:48 inaudible]. We did come back subsequent years with some colorful maps. There is no indication of, you know, how much -- again, how much water we actually would need in the revocable permit periods. There is no recognition indication of the turn of water sources.

And, you know, again, there's no products in the EIS until 2017 when EIS [2:29:10 inaudible] came out. There's over two years that passed before any other progress on the EIS that's ordered originally in 2003. Yeah, had been indicated since that time. And I do want to note that, you know, for what it's worth, Mahi Pono did manage to come up with a, you know, relatively detailed agricultural plan with various water use scenarios, including [2:29:32 inaudible] scenarios, including, you know, alternative water sources.



That kind of plan is what could have been used to start the EIS, you know, many years ago. Mahi Pono essentially did in less than two years what the A&B failed to do in 20. And so I just provided context because for one, I don't know why A&B would be given any difference, but trust [2:29:56 inaudible] conditions without, you know, objective compliance enforcement mechanisms. I just want...probably A&B has never shown any consideration of a public trust doctrine. Now that their IT, Investment Trust, you know, it's clear their mission isn't -- their mission is the shareholders.

Their mission is not to consider public trust. It's the Board of Land and Natural Resources mission to uphold the public trust. And so, you know, given that I also want to note that, you know, contrary to what's proposed in the staff's [2:30:31 inaudible], you know, the Board can't just completely abdicate its responsibilities to public trust purposes, you know, service wise, particularly for the streams that are not subject to any IIFS and [2:30:44 analysis] whatsoever.

And, you know, I'd like to suggest that you do have two months, before there are [2:30:51 inaudible] that are going to -- going to end. Right now, you should have much more information about potential impacts to these streams and especially the non-IIFS streams, assuming the A&B has been doing the environmental impacts statement in good faith. You also have, you know, stream flow models [2:31:07 inaudible]. You have stream assessments. And there's a lot information that you could take over the next few months. Any gaps in information with regards to impacts and how to mitigate those impacts, you could, you know, fill in those gaps with the precautionary principle, which is, again, you know, something that's well established and there are [2:31:23 inaudible] in many opinions.

And so we come back in two months with something that's, you know, at least isn't a complete abdication of responsibilities over these streams in East Maui. And during that time, can also, you know, work to ensure that any conditions that you do also want to [2:31:41 inaudible] to in these RPs and others or, in fact, enforceable, including, you know, in particular, I think the -- it was mentioned to have measurements at the division themselves as opposed to the end of the system. You know, it's not clear how much longer [2:31:55 inaudible]. Yeah, so in summary, we just ask that you defer this matter until more appropriate consideration can be given to [2:32:04 inaudible] purposes.

**Suzanne Case:** Okay. Thank you. Any other agencies? If not, we'll go to public testimony.

**Male:** [2:32:18 inaudible]

**Suzanne Case:** Oh, yeah. We're going to take our lunch break till 1:30.

**Female:** Second session, 1:30.

**[0:00:03 to 0:02:58 Indistinct chatter]**

**Suzanne Case:** Okay. Are you guys ready to proceed? So then we will proceed by island for public testimony. So, first, we have Hawaii Island, anybody here from Hawaii Island? Nobody.

**Suzanne Case:** Okay. All right. Let's move to Maui.

**Suzanne Case:** Okay. May?

**Stan Roehrig:** May, you're up.

**Suzanne Case:** You want to come testify?

**James Gomes:** Warren and Raul?

**Suzanne Case:** Oh, yeah. You want to say something?

**James Gomes:** Yeah, go ahead. I need to recuse myself from A&B and EMI of Mahi Pono because of my involvement with their operation with a hotel on the...

**Warren Watanabe:** Aloha Chair Case, Members of the Board, my name is Warren Watanabe, Executive Director of the Maui County Farm Bureau. We are a county chapter of The Hawaii Farm Bureau representing 200 farm families and organizations on the island. Our mission seeks to protect and increase the viability of farms and ranches, while ensuring the social and environmental well being of the island. We appreciate the approval of the permit last year.

MCFP is again before you in strong support of the approval of the revocable permit serving our agriculture in upcountry residences on Maui. Providing time for the agency to develop procedures for long-term permits, as well as allow permitting to complete their EIS process. Maui is unique in its dependence on surface water sources. The East Maui Watershed is the largest single surface watershed in the state, providing to the second largest surface area on Maui.

It also services the largest contiguous agricultural area in the State of Hawaii. We have submitted a longer testimony and I am providing a summary of our key concerns. Maui experienced continuous months of record-breaking temperatures in 2019. We also saw erratic rainfall patterns where Haiku may rain and Pulehunui is still dry. We are sure these patterns are repeated in the watershed. Controversies about where water can be collected may result in reduced access to water. We have heard recommendations to only collect from EMI or Mahi Pono owned lands.

Can you guarantee that rain will always fall on those lands? That true - - the value of the Wailoa Ditch System is its length providing opportunities to capture rainfall even as its pattern maybe erratic. The unique relationship between the EMI Mahi Pono System and the County Board of Water Supply provides economies of scale as our country water delivery is piggybacked on deliveries to the fields in central Maui. Its complexity should not be underestimated, and careful thought given to unintended consequences from prematurely creating a change in the system.

Now IIFS process provides protection for cultural uses. The state constitution speaks of the -- to the importance of agriculture, as well as beneficial uses of water. Agriculture is not merely a business, it is what provides sustenance for everyone, especially when planes and ships don't arrive at our ports. Bottom line, if agriculture is expected to provide significant levels of self-sufficiency for our people, then irrigation will be critical.

Recommendations to identify drought tolerant plants is not consistent with self-sufficiency goals as it will limit plantings to [0:07:10 sea tree] or cactus types of plants such as pineapples. Vegetables and even fruit trees will need reliable water during critical growth periods. A&B was the first land owner to voluntarily their lands is important agricultural lands. Please be aware that IL Statute recognizes how critical water is for viable agricultural production. Without water, there can be no agriculture.

A provision addresses this concern allowing land owners to petition for removal of the IL designation if basic resources such as water cease to be available. This can pave the way to turn naysayer's predictions into reality, turning of those prime agricultural lands into development. Farm Bureau respectfully request your support of this measure and respectfully request that the agency provide a timely process for long-term permits. Thank you for this opportunity to fight our opinion.

**Suzanne Case:** Thank you. Maui, more Maui.

**Andy Ho:** Good afternoon. My name is Andy Ho, and I'm a resident of Upcountry Maui. I live up on top of Pulehuiki. I'm here to speak about Maui and the EMI Water System. I remember when I was little cleaning the taro patches down in [0:08:49 inaudible] with my cousins and always having water out there and sometimes when there wasn't water, I remember how hard EMI would work to restore the water. It's such a hard job working out there.

Uncle Jimmy [0:09:04 inaudible], Joe Range, Joe Ko'omoa, Steven Cabral, and I've seen them get older. And I've seen them get older and one of the common ailments was they would have bursitis, could be working in the cold water. And then they would always tell me, "You will learn to trade. Don't be like us. Don't work at EMI, it's such hard

work." But yet it's such an important part of the life of Maui. The water is the life for Maui and especially the central plain. How we get water Upcountry. Even today, we don't have enough water for enough -- for the people who live there, for meters to expand.

It's really sad that we have a big division over here between the supply, people who wanted in the country, the environmentalists, the farmers need to farm the Central Maui, the people who live Upcountry. And we need some kind of agriculture in the Central Plain, there's too much acreage to have a big dustbowl. You've heard about the fires, some of you have seen the fires. And it's not going to end like that. We need to come up with a viable alternative and we need to make changes. We cannot stay in the old ways, we have to compromise and I'm looking to the DLNR to provide guidance and help.

If you have a rift and a big opening, my vision and mission is to see that you act as the pewa. If you have a crack in your calabash, what do you do? Do you throw it away? No. You put the wedge in there, and you put the pewa and you join it together again and you make it work. And that's where I ask that I hope we have some mission and vision that will be something for my children and my children's children to have. Thank you.

**Suzanne Case:** Thank you.

**Lucienne deNaie:** Mahalo for listening to me three times today. My name is Lucienne deNaie, I am a resident of Huelo in one of the lease areas, it's covered by this area. And I've been here a number of times to testify. You know, what Uncle said just warmed my heart. I know in the old days EMI really did used to work with the community because our kupuna tell us about it. Mr. Robert Bruce, Mr. Smith, I think it was, Scott, these people did reach out and they try to keep the dialogue going.

Even in more recent times, when Ken Kawahara was Head of the Water Commission, everything -- if a test was done or if a modification was being done, the community was notified, we came out, we shared our mana'o, everyone, you know, has Guri Guri that maybe someone made homemade and it was very nice. That's not happening anymore. And I know Mark Vaught, he's a very nice guy. I think he maybe means to do this, but it doesn't happen. We had an incident just a few weeks ago where repairs were being done on Hanehoi Stream, much anticipated, much appreciated closing of -- up the great and no one let the community know.

And so when the blocked water was then released again after the concrete was done, this big long water came down and I got phone calls from my neighbors saying, "What is going on?" It is like it's not raining, there's not a cloud in the sky, and this wall of water came down and there were some people swimming in one of the traditional ponds that are used by our own community, they were almost swept over this

200-foot waterfall. Luckily, they had some rocks to grab on to, and someone nearby had a rope. But this could all been avoided by little communication.

Please, every year that I come here, I say, "Please put a provision in that says EMI needs to communicate regularly with the communities and especially if they're doing work on the stream." Probably most of the work on Hanehoi is done now except for minor divisions, but they'll be working on [0:13:41 Pu'uloa] stream, and people who live downstream from that. They'll be working on cleaning ditches on other streams that aren't even part of the lease, that are part of the IIFS. So all of these people need to know there's hundreds of people that live on these streams that weren't part of the petition for the IIFS.

These are very robust communities, they go back to before the Mahele [00:14:07 Ho'olawa] stream, Waipio stream, [00:14:12 Halabana] stream. And the people who live there just deserve to know what's going on. So that's my first request. And then the other request I have is that we have some accountability for the water. You've been told that plantings are on their way, we see plantings, we drive by fenced areas and see some, you know, evidence of tractors and evidence of things happening. I would hope you would ask some questions like how many thousands of gallons a day per acre is being estimated for these crops?

I did some rough calculations, if 45 million was needed as an average and you took out 5 million for the county, and that 5 million is only needed when it's really drought, which up into this point has never been more than two months of the year. But the rest of the year, the county uses far less than 5 million or 6 million, they can only treat 6 million because of those upper pipelines. If the upper pipelines are not getting rainfall, that are not in the lease area, then they need to depend on the lease area. But it's like if you take out 5 million gallons for the county, and you have 41 million or 40 million left, it's like 10,000 gallons an acre in like irrigated pasture doesn't need that much.

I don't know what crops they're growing that need that much, but just going to break down. I've read some of the farm plans that are in the EIS. They have various amounts, but it's nothing in that range. And there was never a plan to irrigate 12,000 acres of pasture because some of the pastures in areas where it rains, so I'm not sure if that's been figured into the mix. It's just very slippery-slidy. And in the farm plans that are in the EIS there's a provision to use pumped well water as was suggested in the decision in order from [0:16:19 inaudible] that a portion of the need would be met by 15 wells that HC&S has and has operated for years. They used to use the 29% of what HC&S use at one time came from those wells, 29% of their water.

And how much? Is this 45 million plus another 15 million or 10 million from the wells? And then does that count the water from the streams that aren't part of the IIFS? The 13 streams that can be diverted

at whatever rate, is that another 15 million or 20 million? Where are all these numbers heading? I don't think we have the numbers here. And no one wants to stop agriculture, but we've seen the same story come up year-after-year and A&B actually said back in the '70s that if they had a full supply of water, you know, like, even not giving any water to the county during the last four years, there's not been enough water during the summer months, without -- even without any diversion of water to the Board of Water Supply. That was in 1974.

So the model of growing here needs to be the right amount of land irrigated and proper preparation of the soil so that it uses less water. And I'm not sure that's being done. They talk about high tech solutions to just dribble out water, but the soil is the greatest factor in that. And I just like to close by saying people are so happy that they finally have a determination in the interim stream flow standards. And the case was not appealed. And there is the conclusion that the case was not appealed because the right amount of water was returned to the streams. That's not the case.

It's like I was on the board of one organization that had to make that decision, do we appeal or not? And what we looked at is, you know, this commission has worked very hard to try to listen to people. Let's give it a chance. Let's see what happens. But when you come back with things like are being asked today, you know, where the staff tries to make a reasonable recommendation, and A&B and everyone that supports the Mahi Pono, whatever they're called now says that, "Oh, no, you know, we're going to need much more than that." But gives you no proof, no, how many gallons per crop, per acre or anything. It's like, we just feel like, "Oh my gosh, we're kind of back to square one again, it's like, it's the same." We deserve every drop of water that the Commission says, you know, it's not needed by streams. And we're not even looking at the fact that the Commission didn't look at a third of the streams. They just didn't evaluate them, there wasn't time, there wasn't a petition, there wasn't whatever.

So I appreciate the work the Commission has done. I appreciate the work this Board has done. But please know that your work is ongoing and it's really needed by the community. Thank you.

**Suzanne Case:** Thank you. Maui.

**Stan Roehrig:** I have a few questions. Yeah. Unless anybody else first. So, we have 14 streams that did not get the...

**Lucienne deNaie:** Technically, it's 13 in the decision in order.

**Stan Roehrig:** Excuse me?

**Lucienne deNaie:** It's 13 listed in the decision...

**Stan Roehrig:** Thirteen?

**Lucienne deNaie:** ...in order.

**Stan Roehrig:** Okay, I'm going on the DEIS.

**Lucienne deNaie:** Yeah.

**Stan Roehrig:** They called 14.

**Lucienne deNaie:** Well...

**Stan Roehrig:** But that depends how you...

**Lucienne deNaie:** They counted two streams that aren't diverted there.

**Stan Roehrig:** Okay.

**Lucienne deNaie:** Ohia and Wahinepee.

**Stan Roehrig:** Anyway, I don't know if we need to read the names of. But would that be useful?

**Male:** No.

**Female:** No.

**Stan Roehrig:** Okay.

**Lucienne deNaie:** I mean, I know the names of the streams that are...

**Stan Roehrig:** Okay.

**Lucienne deNaie:** ...not part of the IIFS.

**Stan Roehrig:** So how much water used in each of those other 14 streams?

**Lucienne deNaie:** I only wish we knew. No studies have been done on them. [0:20:50 inaudible] study...

**Stan Roehrig:** How can we make a reasonable decision on how much water goes to these new developers and EMI, their partner, when we don't know what all the water is? How much is where? We know how much went into the IIFS streams, and most of them got filled up, how much is in the others? How much is available? If there's only a little bit available, then that affects how much goes to the new developers. And we don't even know the amounts.

**Lucienne deNaie:** No, we don't.

**Stan Roehrig:** And there are 14 streams and there's no -- nobody's given any testimony on this, and this goes to the heart of our decision. So...

**Lucienne deNaie:** This has been brought up in...

**Stan Roehrig:** ...that's the problem.

**Lucienne deNaie:** ...various proceedings in front of the Water Commission and a bit before you guys. But it's hard to explain, it's kind of complicated. And one of the streams -- your staff addresses this nicely. One of the streams serves as a dumping ground for water from the other streams. So it's really hard to calculate when you take water from several streams, dump it into another stream, and then the next stream over you're supposed to measure how much water is being taken. Well, that water goes to a lower ditch. And some of it may be lost on the way, it's not a much -- there's not a lot of accountability.

**Stan Roehrig:** And we don't know the condition of those streams. We don't know whether or not all of those streams are nice and cleaned up. We had some of our staff go to the IIFS stream, the DOFAW people, and when they started taking all the opala and the scrap metal and everything, they went and check. But we have no idea what's in the sort of 14 streams and it's a large land area.

**Lucienne deNaie:** It is.

**Stan Roehrig:** How many acres is that?

**Lucienne deNaie:** The Huelo license area that contains most of the streams that are not in the IIFS is 8,000...

**Stan Roehrig:** Eight thousand acres?

**Lucienne deNaie:** ...acres. Yeah. But of that, there are three streams that are in the IIFS but the rest are not.

**Stan Roehrig:** Okay. So...

**Lucienne deNaie:** So I think it'd be more like a 80-20 sort of thing. So 80% of that 8,000 acres has no measurements, no accountability.

**Female:** For some of the tributaries?

**Lucienne deNaie:** No. Those are the full streams.

**Stan Roehrig:** Yeah.

**Lucienne deNaie:** For tributaries, they're not counting. There's more streams in that that are tributaries.



**Stan Roehrig:** Chair, there's notation made, which ones are tributaries, and which one dumped into throughout the stream, there is notation on that. It says if it's a tributary or not. So then the next question is, who is maintaining those streams right now? Is that EMI or is that Mahi Pono or the streams that are sitting there that we don't know about, who takes care of it right now?

**Lucienne deNaie:** Well, EMI used to maintain the trails, they used to maintain the intakes. I mean, I've hiked these streams for more than 25 years. So I've hiked along these ditches for all that time. And I live in the area, so I hike up in the area. The maintenance, once sugar closed, the maintenance was really petering out before sugar close and when sugar closed, there's just logs across the road. I mean, you guys had a lot of time, you could come to Maui, and people would bring you slideshows of what it looks like on state land.

**Stan Roehrig:** Okay. I was going to go to Maui and then I was cautioned, "Don't go right now because things are in a state of flux," because the new orders are coming in. So I just held back and I didn't go look. But it occurred to me that it would be very helpful before we make these kinds of decisions. Millions of dollars with a decision we could make today. But I don't know how that place is getting maintained. If it's a mess or it's nice, that would be very helpful to me to know.

**Lucienne deNaie:** Well, in my humble opinion, it's a mess after seeing what the trails look like 20 years ago. There's not a lot of care there. Now, that might come back. But it hasn't in the last year since Mahi Pono has been involved since last December.

**Stan Roehrig:** Here's another concern that I have, and I guess this is an age old. You get one entity in there, they develop a big business model, we had the plantation. And after a while it didn't work out. So they stopped their sugar production, they had to do something with it. And along comes Mahi Pono or some people from Canada, some people from California that get together and here we go. And so, how long are they going to last?

We make all these horrendous decisions here at this board and then the legislature to Malama, each of the counties and all the people live there. And then we wake up in the morning we see headlines, "Oh, some other guys on the land now." And...

**Lucienne deNaie:** The community shares...

**Stan Roehrig:** And right in the middle of us trying to make a decision that was sensible for EMI, everything went down the road. And I'm not as smart as some of the board members, but for me, it's very confusing how we're shifting gears all of a sudden, and we're to embrace all of a sudden we're going to have acres of potatoes, maybe that's great, but I don't know too much about potatoes yet.

So, the next question I have, maybe it should be directed at you but I'm just using you as a person to ask because you're makule like me, and I don't see that as a bad thing, I see that as a good thing.

**Suzanne Case:** No, no. We earn those years.

**Stan Roehrig:** So, when EMI and Mahi Pono start developing, how much are they going to charge the third person, people who are going to be investing? Are they going to charge the same rate that we're charging them or are they going to make a profit on the sale of the water...

**Lucienne deNaie:** You mean the...

**Stan Roehrig:** ...the sale to transfer the water...

**Lucienne deNaie:** ...county?

**Stan Roehrig:** The sale to transfer the water, that's the state's water.

**Lucienne deNaie:** Yeah.

**Stan Roehrig:** Everybody got to understand, all the land owners got to understand, even the people just came from the Mainland that under the State Constitution, Article 1 of the State Constitution, that's our water and under the Kauai spring case, that's our water. And even if you look at Section 171-58, the first sentence it says, "The right to any surface or ground-water shall not be included in any lease agreement sale or sale. This right being reserved to the state."

So if you're going to sell the water or transfer the water and you're going to make a profit, the state has the expenses of picking up where you folks left off all the man ordered, we got to go in there and we're going to have to help to repair and maintain and whatever with whoever is going to be in there. And we have to take care of all of our streams that get hit by rainstorm. Like we did in Hanalei, the governor had to make emergency proclamation. This board have lot of dockets about that. And we have to pay the bills to clean up the stream to take the boulders and the trees off. And that money doesn't come from the air and the legislature is very prudent with their money and they tell us, "Find it in your budget," okay?

So we have a mechanism in our budget for that. And it's called the Special Land and Development Fund. And that comes under Section 171-19 A2. And so we need money for that fund, and the only place we can get it from is get it from the land owners who are selling our water or transferring our water, and they're making a profit. We need to get a cut of that, Maybe 20%.

**Lucienne deNaie:** Well, OHA and DHHL are supposed to get some revenues too.

**Stan Roehrig:** Yeah. If they want their share, we want our share. So we're parallel with them. **Pololei**, we're onboard with them. They want their share, we want our share too, because we're maintaining those streams. So it's very helpful for the land owners and the developers to be thinking and the legislators there -- why is it is to, the last session has legislation about this, and they're talking about the Water Committee that where we have land development, we have to be partners.

If you're not making money on the resale, you're -- and you're maintaining the ditches, you're not making a profit then you don't need to pay anything to us. But if you are making a profit, you have to pay us something because we pay for the maintenance and repairs of all these waterways. And that's why this fund was set up. But we're coming to this very, very slowly in small bites. And we've been talking about this now for about a year and a half. And it came to mind when we start talking about all this stuff in Maui, in Kauai, all the places that where the plantations closed on safety in Ka'u, all the places the plantations closed down to get all this stuff around.

So we're in it together. We're not against anybody. We got to work together with everybody. And we need everybody to understand what things we got to try to do. And you're going to -- we're asking for all your people's help. Give us a good idea. We're not here to skin nobody. We welcome new investors to come to Hawaii. All of our ancestors getting to Hawaii, from someplace else and there's -- even the Menehunes or the Hawaiians or even the Hawaiians came here, nobody was here. So my parents came in the '30s. So that's it. That's what I got right now.

**Female:** Thank you. Thank you, Commissioner.

**Lucienne deNaie:** Am I excused now Ms. Chair?

**Suzanne Case:** Yeah. Thank you. I think we want to do a little...

**Male:** I'm wondering...

**Suzanne Case:** Wait. Let me see, is there a testimony on the Linder permit any testimony on the Linder permit? Any testimony PM the Linder permit? Okay. Why don't you go ahead and...

**Male:** Yeah. My suggestion is, we haven't -- we've -- all have public testimony that remains is, I believe, for KIUC or EMI. And what I'm going to suggest is that we make a motion concerning all the other water RPs. Take a vote on that, and then return to public testimony on these two items. So the big island water permits and the Linder water permit.

**Stan Roehrig:** Can I make a comment about the big island ones only? We spent a lot of time studying the big island one, and including other parts of the big island that have private landowners, but a lot of water transfer is going

on Kohala in particular. And the idea of instead of having revocable permit, if you have...

**Suzanne Case:**

Stan, we're only talking about the permits that are on the submittal right now.

**Stan Roehrig:**

Yeah. That's what I'm talking about. That's what I'm talking about. I'm talking about the water permits at Ka'u. The water permits in Ka'u, we should explore with the permittees the advisability of shifting over from a revocable permit to a long-term easement.

**Suzanne Case:**

We are.

**Stan Roehrig:**

Okay.

**Male:**

No. He said easement.

**Suzanne Case:**

A long-term easement?

**Male:**

Yeah.

**Suzanne Case:**

But we're talking about lease.

**Stan Roehrig:**

171-132, like we did for Waiahole on -- in Kauai.

**Suzanne Case:**

That was not a water easement. It was an easement for land to distribute water.

**Stan Roehrig:**

My understanding is the easement was to transfer water from the stream...

**Suzanne Case:**

It's for the conveyance of water, it wasn't for the water itself.

**Stan Roehrig:**

Well, whether you call it for the water itself or you call it easement, it's still the same place. So, anyway, the idea is to get into a long-term relationship with some of those small users without going to public auction. If they are a good user, we can do it by direct negotiation on the 171-132 and that way we take care of those people who are doing a good job in the various counties on a small operations, we don't force them the public auction, and then have outsiders come in from wherever and outbid them.

**Suzanne Case:**

Did you have something to testify on?

**Brian Miyamoto:**

Thank you Madam Chair. Yes. Brian Miyamoto, Hawaii Farm Bureau. On behalf of our president, Randy Cabral, we're actually testifying on the couple -- the Hawaii Island as well as Maui.

**Suzanne Case:**

Okay. You want to go ahead and testify on?

**Brian Miyamoto:** If I may. I will summarize.

**Suzanne Case:** Okay.

**Brian Miyamoto:** Thank you Chair Case, members of the board. Again, Brian Miyamoto, Hawaii Farm Bureau. On behalf of Randy Cabral, President, we strongly support the continuation of revocable permits. We did some written testimony. In respect of everyone's time, I will summarize. As you heard the -- we all know the permits are going to expire at the end of the year. I appreciate the discussion on East **Kauai** Irrigation. We're concerned. We don't want the water to shut off. We don't want the farmers and ranchers to stop farming, that won't help us achieve our goal of doubling food production.

That concern we share with all the other revocable permits. The process is timely. And it can be costly and that's one of the concerns that our East **Kauai** Irrigation guys have as well as other RP holders. We believe the permit holders are taking the steps to convert to the long-term leases. Again, it is a process. Continuation will allow our RP permit holders additional time to work with DLNR to complete the requirements for the long-term lease. Continuation will enable our farmers and ranchers to continue to farm and enable the renewable energy to continue or help us achieve those two goals.

Without water, there's no agriculture. Our farmers are concerned, our ranchers are concerned. The uncertainty concerns them. This body had brought it up with Ian's testimony when we first brought this discussion up with East **Kauai** Irrigation, and we can't afford to shut the water off. However, the water -- if the water flows, we don't want -- our farmers and ranchers don't want to take the water without permits. We don't want to make them criminals. They want to continue to farm, they want to continue to ranch, they want to continue to help grow our industry, they want to grow agriculture. Water is key, it's essential.

We're concerned without continuation of these RPs, Kauai, Hawaii Island, Maui farmers and ranchers that are on these RPs, those users, there's uncertainty. Thank you for this opportunity to testify.

**Stan Roehrig:** Okay. Can I ask the question Ms. Chair? Chair?

**Suzanne Case:** Yes.

**Stan Roehrig:** Do you understand the -- about 171-132, what we did there?

**Brian Miyamoto:** I do not.

**Stan Roehrig:** Okay. Let me just explain you five cents worth. The idea of using 171-132 is that the Land Department, the DLNR, I should say, can negotiate directly with the water user, if it's an appropriate person or group, and negotiate a long-term easement with them to make access of water

available to the present users without having to go through a public auction.

And the reason why I suggested it, if we have users like the Ka'u people, for example, the people in Wood Valley, they have koa, [0:39:47 kuiwi] builders, okay?

- Suzanne Case:** Stan, Stan.
- Stan Roehrig:** I'm almost done.
- Suzanne Case:** Okay. I just it's off topic and we have a lot of people to testify.
- Stan Roehrig:** Okay. I'm -- one more minute. The farmers may be able to keep their place there for the long-term. If they have a competitive lease at auction, they may get outbid by other people. It's an open bid. And I'm not against an open bid, but whoever could bid the most is going to win. It might not be the present people. So that's my deep concern. So just talk to them about it.
- Suzanne Case:** Thank you. Chris, you want to make a motion?
- Christopher Yuen:** Yeah. Madam Chair, my motion was just to approve the staff submittal for all the RPs except for KIUC and EMI. And we'll continue that discussion with the group that's here, but given that there was no testimony in opposition to the -- all the ones on Hawaii Island and the remainder of the -- I think Linder was the only remaining one on Kauai. Let's go ahead and act on that and let people vote.
- Suzanne Case:** Okay. Is there a second?
- Male:** Second.
- Suzanne Case:** Okay. Any further discussion?
- Stan Roehrig:** Yes. The Mahi Pono -- excuse me, Ka'u Mahi, they have not submitted an application or have they? Is it timely for us to vote on them?
- Suzanne Case:** It's in the submittal.
- Stan Roehrig:** It's in -- I saw it in the submittal. But it wasn't -- when I revealed this -- well, you're okay with it Chair that it's timely?
- Suzanne Case:** It's -- yes.
- Stan Roehrig:** Okay. Then I'm okay with it.
- Suzanne Case:** Okay. Thank you. All right. Any further discussion? If not, all in favor?

**All:** Aye.

**Suzanne Case:** Any opposed? Okay, thank you. Okay, continuing Maui.

**Shiloh Stafford Jones:** Good afternoon Chair Case, Members of the Board of Land and Natural Resources. My name is Shiloh Stafford Jones. I was formerly a crop maintenance supervisor at a HC&S back in sugar in 2015. Now I'm a grown agronomic consultant on Maui for various farming operations.

Before coming to Maui from Missouri, I kind of found my new home. Want -- I want to eventually be able to farm on Maui. I want to help agriculture grow. I'm now working with landowner in Upcountry Maui to develop an orchard to help provide locally grown different fruits that are normally imported from the Mainland. But our hopes depend on access to water. If reliable water is not available as trees begin to flower and fruit, the trees will bore the fruit and we'll be left with nothing. I believe there's a huge opportunity to increase Maui self-sufficiency, as we -- as required in the state constitution.

I hope to live on Maui working agriculture. This proceeding is a personal interest to me, I follow the IIFS procedures and I support protection of the environment and respect of the cultural resources. At the same time, I believe that wise use of the resources needed it -- is needed to provide for the people of Hawaii. A healthy thriving agriculture industry will replace imports that can bring invasive species and threatens the watershed that we are all trying to protect. Respectfully urge you to strongly support this request. Thank you.

**Suzanne Case:** Thank you. Okay. Further Maui testifiers?

**Alan Murakami:** Members of the Board, good afternoon. My name is Alan Murakami with the Native Hawaiian Legal Corporation. And you've heard us here before on behalf of several clients that we have involving this issue on different actual actions that have been filed.

You know, as I listen to the testimony today, I am struck by, I think, in overwhelming sense that there's something good to do that's possible with the lands that are in the central plain. But as we have said all along, especially with the insertion of a new player in this proceeding, this can be done the right way. And what I want to bring to the table is our consistent message in the past and a couple of key things that -- steps that need to be taken. And this is to remind you of our arguments concerning the Ka Pa'akai decision which is constitutionally based, requires the three things that every state entity has if it's considered a permit that might affect the traditional customary practices.

And that is to identify those practices that's been done here. We've repeatedly come before you, in my testimony I point out a specific written testimony of **Jacinto** and Na Moku and others who have docu-

mented their use of streams and the petition area. And this goes beyond the 27 streams, by the way, because two of these Jacinto and Carmichael are, in fact, individuals, residents of East Maui who depend on these resources for their traditional customary practices that they described in detail in the declaration that I attached to our testimony. So that's one -- that's the first step. There's got to be identification that are possible traditional customary practices that could be impacted.

The second thing is that once that's identified, this body has an absolute duty to assess the potential impact of its decision to grant this permanent and all four permits on those practices. And then lastly, to take steps to reasonably protect the traditional customary practices that are identified and assessed. And it's a basic thing that is kind of preliminary to any action by this board. And it may seem to those that are new to this situation that this might be requests that will take too much time.

We initiated through Na Moku the contested case hearing in 2001. The judge in 2003, says an environmental assessment and probably EIS absolutely required for a long-term lease. She restricted a decision to that lease, but I don't think there's any argument that when a revocable permit last longer than the term of former leases or licenses get replaced, then something's wrong with that. And number two, that the requirements for assessment are absolutely required. Even for the so-called temporary short-term revocable permits.

Your four licenses expired, I think there are 25 years at the time and I believe 1976 in the first instance up and through 1987 in the last fourth license that expired. All of these would then convert to RPs and they've been going on since then. There's something wrong with this picture when you can have a temporary -- intended by the legislature to be temporary permits to be lasting almost double the time of the permits and -- or the leases that they replaced.

And in that time period, you've heard testimony about the attempts to not only force the duties under Ka Pa'akai to be performed before the action is taken, but also the environmental [0:48:22 inaudible]. It's taking decades for that to be done. Finally, a draft is submitted, but that should not prevent this board from following the process outlined in Chapter 343.

Yes, we were unfortunate in -- before the Intermediate Court of Appeals on this point, the court there disagreed with us that there should be this requirement. But I just want to be able to let you know that this is -- we have petitioned for share CRI and that issue will be hopefully taken up by the Supreme Court. I am...

**Stan Roehrig:**

Is that in Carmichael?



**Alan Murakami:** That's in Carmichael. And I'm not going to say that's going to happen because the court can do anything it wants. But I think the issues and topics that are covered by our multi-decade effort to protect the East Maui communities from the ravages of stream depletion, in some instances in the past complete, and now this attempt to take up to 54 million gallons of water at the end of the growing cycle, still require that kind of scrutiny that we've always argued needs to be done beforehand.

And I'm really kind of alarmed that as has been pointed out earlier by Lucienne and others, that the numbers here are really quite alarming. Yes, the average and that's at the -- on the average, not considering the upper end, 54 million gallons a day. Average, 40 million gallons per day for the 4,000 acres comes up to about 10,000 an acre. But as I understood it, some of that is pasture which is not going to get irrigated. And if that is true, and you remove those acreages, then the 10,000 is going to be way, way bigger.

Now from all the testimony and data gathered before, the typical truck crop is supposed to take about 2,500 gallons per day. So you already start with a figure that's four times that amount, and then there's unlikely a possibility that's going to exceed it by even more. These are the same kinds of questions and issues that were raised before the Water Commission where we were before them and contest the case, we could not get that kind of analysis nailed down so that we could get really firm figures for what exactly the crops were and how much water they were going to take to grow.

I mean, that seems to be a very minimal thing to ask for when you're considering the depletion of water resources from these 33,000 acres and maybe less now and our area taken out. But it's a very minimal thing to consider, especially when you're dealing not with a public trust purpose for the use of this water, but for a private commercial operator that has no public trust purpose to it, and has to be scrutinized much more strictly because it is a private commercial use of water. But we're not doing that. And that's what concerns me. I would love to see the ideal of a really vibrant, local agricultural industry that is producing crops to enhance our local food security.

Absolutely. I think even my clients would say that. But we got to do this the right way. And there are processes in state law quite established both in the Supreme Court precedent and our statutes that require certain primary steps be taken. And we need to take them. Otherwise we face the -- repeating the same debacle that's happened in East Maui for decades before our contested case, hearing, and proceedings brought to light some of the injustices that occurred for that period of time. And I don't know quite how to express what impact this has had on people's lives.

You know, I've lost two clients in the process, beautiful kupuna who were just looking for water to grow their taro, and they never got to see

the restoration that finally occur. How do you measure that kind of impact? How much longer is this going to take before all of these processes get, in fact, fully done so that we have a full plate of information and data upon which to make an informed decision? And so I might sound a little strident to say these permits should not be granted. But I think we've got to if we are a system of laws, and not to lose sight of that, because it's such an important decision not only for my clients and others who live in East Maui, but because it has to be done right and not justified, you know, with some kind of post hoc rationalization that these laws can be ignored.

And so I really implore on you to demand a higher level of scrutiny that these commercial/private users of water are legally bound -- that you are legally bound to have over such uses, and to give the priority where it belongs. With the protection under Ka Pa'akai and Chapter 343, they require the kind of more detailed and precise, more precise data information upon which you can make a really informed decision. We're in October right now and as all pointed out, there's still two more months, but I don't know if that's enough time but, you know, we've been before you for 18 years already asking for the same thing. Exactly the same thing. So, I just ask that you consider this in your deliberations and just do the right thing.

**Suzanne Case:** Thank you. Okay.

**Simon Russell:** Mahalo members of the Board, Chair Case, my name is Simon Russell, I live Upcountry Maui, and I'm a farmer in Central Maui and the Central Plain. I definitely support water for agriculture. And why come before you today, and I took the day off from work and away from my family during holidays to give you my testimony. I did submit it and hopefully you were able to take a look at it.

I'm very concerned about these RPs, and as the previous testifier was pointing out, going on for so long, maybe even twice as long as the lease periods. So I in good faith, I can't really support that. I would like to see long-term water dispositions to agriculture producers across the state that will give them the surety they need to take out the loans. One of my -- take out the loans that they need to pay for their Ag operations. One of my hats is I work for the USDA, I don't represent them, but I have a job with them. And we -- I work for the Farm Service Agency, we give loans. So as a farmer, if you don't have water security, if you're on some RP that is in question, maybe you won't get that loan that you need.

So I would really encourage the support to [0:55:49 sound], please. And I also want to thank you Jimmy for bringing up the issue of the transference of lands to the Department of Agriculture, that's off topic. I just want to express some of my concerns about the new land owner on Maui. I know that they're a very large landowner, you know, they've bought into 41,000 acres. But there's a very complex relationship on

some of those TMKs that I've observed within the real property tax division of the County of Maui showing that their CPR relationships going on thousands of acres.

So I'm concerned, you know, I grew up here. I grew up on old sugar land, that became ranch land, that became subdivisions that are now priced my family right over the Ag market and we can't afford to live there anymore. My mom moved away because taxes were too high, cost of living is too high and so she left. My interest in my life here in Hawaii is to lower the cost of living for farmers in the agriculture district. I would like to see not real estate profits driving farmers out of the Ag district, I would like to see, you know, cost of living goes down for agricultural producers.

And so that kind of brings me to the point of Mahi Pono or a new landowner on Maui. I know they're a Delaware Corporation. I know that they're owned by -- well, really, it's a natural asset class of the Canadian public sector pension fund. So, Canadian public sector pensions is a pension fund for retired government workers. And if you go to their website, you'll see Central Maui Plain right on their website under their natural asset class division. I've been told by pension fund manager that all they would need to do is one person could make a decision, transfer that to the real estate asset class and they could sell it off by the TMK, even if it is IAL. So that concerns me, they're staying power.

The other thing that's concerned me that was brought up by another testifier is their engagement with the community and I'm not really talking about EMI, I'm talking about Mahi Pono where I was at a county council meeting the other day and it was about the EIS, the draft EIS and nobody came, nobody from A&B, nobody EMI, nobody from Mahi Pono. I was pretty surprised that the county council would talk about their draft environmental impact statement regarding the water lease, and nobody even shows up.

So the Delaware Corporation thing bothers me because they're not going to pay corporate tax here. Why would they just register their business in Hawaii and pay us? I -- my last point, and it's kind of a big one get to the price of water. It's my understanding that the price is set at \$5 per million gallons. And that may be kind of reasonable since the EMI controls the delivery system, but it's way below what California charges which is where these folks come from. So they come from California where it's \$3 per thousand. So it's about 600 times cheaper the water here in Hawaii. So it's a big incentive for them to buy the EMI, they're 50% owner already, and you can kind of see where I'm going here. If somehow the state took ownership of the water delivery system of East Maui and use that revenue, you know, you could pay for roads, and the ditches, and the delivery, and the upgrades, and the invasive species.

You know, I'm surprised to hear earlier that the EMI doesn't pay for the East Maui Watershed Partnership. All these years I thought they were contributing. But the invasive species are off the hook. It's diminishing the forests ability to make water for us. And so the vision I am hoping to put out here in my final statement is that what I'd love to see is the return of the [0:59:32 inaudible], the people living in the watershed and maintaining it, planting the trees, eradicating invasive species, delivering the water and it needs to be under the control of a public benefit corporation not a Canadian pension fund because I don't see any public trust value in the Canadian pension fund delivering water for profit to their farm and keeping the profits offshore in Delaware or Canada or wherever.

I mean, it's nice to have food security, but we don't have any guarantee of that. My family went broke farming, you know, it's pretty common occurrence. And so, you know, the highest value of that land with water is real estate. And so I really would encourage you guys to be cautious with your decision making around these RPs. And thank you. Thank you for your service.

**Suzanne Case:** Thank you.

**Christopher Yuen:** Can I just want one quick question?

**Simon Russell:** Yes sir.

**Christopher Yuen:** Your figure for California agricultural irrigation water was \$3 per thousand?

**Simon Russell:** Correct.

**Christopher Yuen:** Yeah. \$3 per thousand gallon.

**Simon Russell:** Yeah. It's sold by the acre foot actually, not by the thousands. More like 500 per acre foot, but if you break it down, it's three bucks per thousand and that's in Northern California. In Southern California, it's even more, it's 1,000 per acre foot.

**Suzanne Case:** Is that a government charge or is that a secondary...

**Simon Russell:** I think it's the Central Valley Irrigation. I think it's owned by the government. Yeah.

**Christopher Yuen:** Five hundred an acre foot would be about \$1.50 a gallon.

**Simon Russell:** Okay. Yeah. And it goes up to 500 and it's 1,000. In Southern California, it's 2,000 an acre foot. So it ranges. And in Texas, it's the same in Texas.

**Christopher Yuen:** All right. Okay.

**Simon Russell:** So these huge agriculture states are charging 600 to 1,200 times more for their water than we are.

**Suzanne Case:** For -- that includes delivery.

**Simon Russell:** I'm not sure of that.

**Christopher Yuen:** Well that's end user.

**Simon Russell:** It might be the end user, it might not be at pressure. I think in Texas, for instance, it's all pumped. So those people pumping have to pay by the acre foot. So they're paying the pumping costs too. I don't think the government pumps their water for them for the big farms, they just pay a fee to the landlord. So I mean, we could have up to 175 million gallons -- \$175 million a year in our bank account if the EMI was being charged what it used to deliver, which is 160 million gallons a day, I think at its peak or average. So there's a lot of money in water, and hopefully we can keep it in Hawaii.

**Christopher Yuen:** Okay.

**Suzanne Case:** Thank you.

**Marti Townsend:** Hello Chair Case, members. Hi, I'm Marti Townsend, I'm the Director of Sierra Club Hawaii. Thank you very much for the opportunity to testify. And thank you for sitting through this. I'm here on behalf of our 20,000 members and supporters. You will all have our written testimony and I'll just summarize. I first wanted to begin by really acknowledging Ian, the staff submittal is excellent. It's a great improvement. We are very appreciative of him taking the time to hear us out.

That said, I'm not going to spend my time criticizing the staff's submittal. All right. I'm going to focus on the on the cap first, and just the issues around the amount of water. I'd like to also touch on the need for data and I will end with talking about the public trust obligations this board has. So appreciate that Ian tried to establish a cap, but 35 million gallons of water a day on average per month is too much. This is not about how -- this revocable permit is meant to be a status quo to hold in place until a long-term decision is made. This is not an opportunity for them to slow-by-slow ratchet up what it is they're doing without having to do any environmental review.

So this cap should be set at what we know they use. And the solid number that we have is from 2017, 2500.75 million gallons of water a day, on a monthly basis. That is what the cap should be. And Mahi Pono should farm based on how much water -- how much that water can grow. And they therefore will be motivated to hurry up and finish whatever farm plan and to ramp up their farming process consistent with the constrictions that are placed on their use of their -- lease their land. They should not be allowed to use this water for things like what

is currently used for which includes flushing toilets, making concrete. We know from our -- it's cited in our written testimony this source of information from Alexander and Baldwin, that a million gallons of water a day goes towards industrial uses which include making concrete and flushing toilets, and is absolutely unacceptable.

There is no grounds on which you can justify taking stream water to be used for those kinds of purposes. So please amend staff submittal to recommendation to reduce the cap down to 25.75 million gallons a day. And then I very much like for this board to take the initiative, go on the offensive in terms of planning for the future. There -- the Supreme Court ruled in the [01:04:52 Waiahole] case that it's the agency's obligation to take the initiative and planning for interim flow standards before the demand for new uses heightens the temptation, that's the courts words. Just to accept the renewal of diversions as a foregone conclusion.

It's your obligation to drive a conversation such that -- to drive the conversation to ensure that what is happening with the renewal of these revocable permits, the temporary permit is merely maintenance to status quo. We want to make sure that a country, my residents have water, we want to make sure that a minimum of water is provided for Central Maui...

**Stan Roehrig:** Can I interrupt you? I missed all that because of the screen.

**Marti Townsend:** Okay. No problem.

**Stan Roehrig:** Could you say it over again please?

**Marti Townsend:** My ask is that this -- your -- this Board take the initiative, follow the Supreme Court's ruling in the [01:05:52 Waiahole] case to take the initiative to plan for the future and not to allow for this situation that we're falling into now where it just becomes a foregone conclusion that these diversions will continue to exist.

I'd like to shift now to the issue of data, you need more data, you do not have enough information to be able to be making decisions about the 13, 14 streams that are not covered by the Water Commission's decision in the interim in stream flow standards. We have real problems with excessive dumping of water in Ho'olawa stream, for example, with not knowing what the conditions are on the other remaining streams. You don't have gauges above the diversions and below the diversions to know exactly how much water has been taken. And you cannot make an informed decision about public trust resources without that information.

So I would like for it very much to be a condition on this permit that gauges be installed. And that's something like an HC&S testified too even asking for many, many, many years. We'd also like to see the di-

versions that are not being used to be removed. So, the Water Commission made clear that their decision is focused on the flow of water, the amount, and they are not worried about the status of the environment. And that is something the Sierra Club is coming from, we are concerned about maintaining the natural ecosystems, the native ecosystems at these streams.

And the stream diversions that are left abandoned in place are horrible. They are ugly for one thing, they entrain and impinge native ecosystem -- native wildlife, fish and they also breed mosquito habitat which undermines the viability of native bird species. There are real problems with not enforcing the removal of stream leftovers. This is rebarred and PC -- PVC pipes and concrete and a site visit especially after for so many years we've been presenting evidence about the discards of old diversions in the stream being left there, a site visit by staff to help ensure that these standards are met is a minimum.

And now I'd like to move to the -- your public trust obligation. It is really concerning to us that they're maybe profiting off of the use of water here, the transfer of land from Alexander Baldwin to Mahi Pono included \$62 million in exchange for 30 million gallons of water a day guarantee. That's a problem. We need to make sure at the very least that the public sees all of that value back. And so we'd like to see you charge a higher amount and have some of that go towards -- a majority of that go towards invasive species removal and watershed protections and management. We have a fundamental problem with the way in which these diversions have been allowed to continue and the use of revocable permits without any kind of oversight without sufficient data.

Judge [1:09:16 inaudible] ruled in 2003, then EIS was required. And in that ruling, she said that if DLNR believes that it does not have the requisite expertise to investigate the situation, then it should wait until the Water Commission is acted or make its own application to establish and stream flow standards reflecting the diversion proposes to make before authorizing the diversion itself. So before you are moving forward with these diversions on these unprotected streams, these 13 streams that have no interesting flow standards, no minimum protections, the Board should be, one, extremely circumspect to very, very protective. Pick the most protective cautionary approach possible and require that data be delivered.

These are your tenants, you are the landlord, you can make requirements of them. You can require the remove the diversions that are abandoned and you can require they deliver data to you, and you can require that they help in removal of invasive species and the protection of native ecosystems. And that is the summation of our testimony, if you have any questions [01:10:24 inaudible].

Male:

[01:10:26 inaudible]

**Marti Townsend:** Now? On the advice of counsel, the Sierra Club would like to request a contested case hearing.

**Suzanne Case:** Okay. Let's see. Can you just briefly outline the basis on which you request the contested case?

**Marti Townsend:** Would you like me to...

**Dave Frankel:** The request is similar to the one last year. We'll file a written request within 10 days, but it's based on the fact that the Sierra Club members use and enjoy these streams are adversely affected by the diversion of them. And by the increased diversion of them with the steps the staff submittal allows for, as well as some of the member's property rights are adversely affected by your authorization.

**Suzanne Case:** In what way?

**Dave Frankel:** Which -- when there's not enough water in the stream, it affects people's ability to use water for -- on their land to recreate in, to enjoy. If you read the Maui Electric Case, talks about the constitutional basis for standing in a contested case hearing based on Article 9 Section 7, I believe it is, I might be getting that -- or Article 11 Section 1. You can review the written submission we submitted last year for more information on that.

**Suzanne Case:** Thank you. Okay.

**Christopher Yuen:** Just to review my recollection of this, didn't we have the same motion last year and the Board rejected it? Okay. Based on the foregoing, I would move to reject the petition for request for a contested case hearing.

**Suzanne Case:** Okay. Is there a second to that? Somebody want to make -- you made a motion to deny it since it's the same motion as last year.

**Stan Roehrig:** That would be so. I don't want to check it.

**Suzanne Case:** You want to make a motion that you want to accept the position?

**Stan Roehrig:** I'll make a motion to allow our contested case. I mean, the other one didn't get a second. So I think it's fair that we have a motion to allow a contested case.

**Suzanne Case:** All right. Is there a second to that? Okay.

**Sam Gon:** I move that Board go into Executive Session pursuant to Section 925A4. Board would advice statutes to consult with our attorney on questions, issues pertaining to our powers, duties, privileges, immunities and liabilities.



**Suzanne Case:** Is there a second to that?

**Stan Roehrig:** Second.

**Suzanne Case:** All in favor?

**All:** Aye.

**[EXECUTIVE SESSION]**

**Suzanne Case:** Okay. Back from Executive Session. Does anyone want to make a motion?

**Christopher Yuen:** I move to deny the contested case hearing request.

**Suzanne Case:** Is there a second?

**Tommy Oi:** I'll second it.

**Suzanne Case:** All in favor?

**All:** Aye.

**Suzanne Case:** Any opposed? Okay. Thank you. Further Maui testimony? Okay. Board members, do you want to go back to EMI or do you want to go through the [01:30:05 inaudible]

**Stan Roehrig:** Madam Chair, I would like to finish with Maui before we go to KIUC.

**Christopher Yuen:** I believe we'll finish with Maui.

**Suzanne Case:** Okay. Anybody have questions for the applicant?

**Stan Roehrig:** I have questions for an applicant but if other members have questions, I'll go after them so that I don't take their time.

**Suzanne Case:** Okay. Can we have the applicant? Does anybody else have questions? Okay. Stan, why don't you go ahead?

**Tommy Oi:** Okay. I'll go first. I'm just going to ask a simple question.

**Suzanne Case:** Go Tommy.

**Tommy Oi:** Like the Sierra Club was saying that you guys -- would you -- you know, you guys want to integrate this use of controlled water 35 million gallons and you guys wouldn't be able to use the existing 28, was it, 27.5 million gallons per day.

**Grant Nakama:** It would be significantly less than what we would like to enter the year with, which at the start of the year our water requirement, including the

county's requirement would be 34 million gallons per day. So we would enter the year already at a deficient level.

- Tommy Oi:** So what's you're saying is you have to -- is has to be increased under what you guys projected.
- Grant Nakama:** Yes.
- Tommy Oi:** And as far as your agricultural products and accounting.
- Grant Nakama:** In order to fulfill the plan for next year that we have laid out, we would need that additional water, yes.
- Meredith Ching:** Which is plating more acres, right? They want to plant more acres.
- Tommy Oi:** You know, that's a pretty good point. You bought something on the basis that you only could use -- you had 27.5 million gallons today and that you bought them and said, "No, I got to increase it."
- Meredith Ching:** But no, there wasn't a cap before. There was no cap in the year prior.
- Tommy Oi:** But you're asking for approval to raise the cap.
- Suzanne Case:** No, there was no cap before.
- Tommy Oi:** There was no cap.
- Suzanne Case:** No, it was just whatever is there because their farm plan was unclear. And now they're clarifying their farm plan.
- Meredith Ching:** And it was because they set the IIFS. So if you try to put a number in IIFS and this is just an estimate, it's in the draft EIS, if you comply with the IIFS, you should be able to convert about 93 million gallons per day. So this is well under, yeah.
- Tommy Oi:** Okay. Got it.
- Meredith Ching:** Well under.
- Tommy Oi:** And the other thing too is when we talk about debris left on the property, and I know we talked about restoring the property, you know, the diversions to what was before. Are you guys continuing to comply with that?
- Mark Vaught:** So, my name is Mark Vaught, I'm the manager of EMI. And we're trying our best to comply with that. We've already gone on a bunch of different missions out into the field and just gathered some of the things that we've seen that had been there, granted had been there for years and we're ignored and we definitely are starting to grab all that stuff, take it back to the base yard, dispose of it properly.

**Tommy Oi:** How about structures?

**Mark Vaught:** So the structure stuff, especially some of the stuff that's in the streams, they require a different level of permit and we kind of had preliminary discussions with the Water Commission about that and they kind of mentioned working through the first phase of at least returning the stream water first and then coming back in and looking at removing non-vital structures that are there that are coming. Because that will require different rule of permit.

**Tommy Oi:** So it's something that the Water Commission is...

**Meredith Ching:** Yeah. We're working very closing with their staff. And in some cases, if you were to remove the diversion, it's going to do more environmental damage and if you just left it in place. It's the whole system is very different and complex.

**Mark Vaught:** In different spots.

**Tommy Oi:** Not like you just going to leave them or whatever because it's something that you've been...

**Meredith Ching:** Working.

**Tommy Oi:** ...required to do.

**Mark Vaught:** Yeah. We had - we actually had a good site visit with Scott and some other staff and stuff and those are brought up and I think there were good points that if it's not necessary and it's not vital to the actually system, maybe those things can look at being removed and I think that's worth looking at.

**Tommy Oi:** Okay. Thank you.

**Suzanne Case:** And it's just generally, was there anything you wanted to clarify having heard the testimony? Okay.

**Tommy Oi:** Okay Stan, now you're ready.

**Stan Roehrig:** Thank you Tommy. Mahi Pono bought 30 million gallons per day for 60 million, is that correct?

**Meredith Ching:** Can I clarify that? No. That's not quite correct.

**Stan Roehrig:** Well what is correct?

**Meredith Ching:** So what Mahi Pono bought from Alexander and Baldwin was agriculture land that they -- to develop this diversified agricultural plan that they had which is basically to put the former sugar footprint into new Ag.

**Stan Roehrig:** Okay.

**Meredith Ching:** So they paid us agricultural value for that land as if it had water. However, it...

**Stan Roehrig:** As if it had water.

**Meredith Ching:** Yes. Because that they want to grow crops. So if you underwrite the deal, they underwrote it at agricultural -- productive agricultural land values. But everybody knew that there was still a lot of the water process to go through the lease get to -- to get to a lease that would provide them enough water. And there was a chance that it could give enough water or couldn't give enough water.

**Stan Roehrig:** But that was a condition of the deal.

**Meredith Ching:** So as a condition of the deal...

**Stan Roehrig:** Okay.

**Meredith Ching:** ...if they -- if going through the whole process they don't have enough water, then we owe them back some money because they paid us agricultural -- productive agricultural land values. So it's been a little misinterpreted, we were not selling state water. We knew the process had to be going through and it just...

**Stan Roehrig:** You folks have sales contract, is it online?

**Meredith Ching:** I think it is. It has to be filed.

**Stan Roehrig:** Okay.

**Meredith Ching:** I forgot the word, 8K or 10K and so it's -- I can get it for you.

**Stan Roehrig:** So the biggest item I'm concerned about is we're going to have all this cleanup costs, we have all these 14 streams and we can't wait forever. You folks are going -- trying at it but you folks are not going to burn down the forest in order to get it done quickly, but you folks are going to be down the road perhaps and when is it going to get done? And who's going to pay for it? And who's going to make those streams back the way they're supposed to be? Who's going to pay the cost for that?

**Meredith Ching:** Are you talking about the compliance with the IIFS?

**Stan Roehrig:** I'm talking about the 14 streams that haven't had IIFS.

**Meredith Ching:** So I think it's...

**Stan Roehrig:** The 14 other streams, they're listed in your folk's DEISs and they have not been looked at yet by the [1:38:13 inaudible] and they haven't been

looked at by us, but we're concerned about those streams, the streambeds, and the water and that is -- belong to the state. And so we want those streambeds to be placed in a reasonable condition commensurate with our trust responsibilities under, I said, Article 1 and was brought with Article 11 Section 1. Thank you for the correction.

And with that, Article 11 Section 1 and 3 and 6, those sections of Article 11 gives us a trust responsibility to take care of agricultural land, water, and economic development of water. And so our economic development of water depends on those streams getting fixed up. And it also depends our economic development of water includes us getting something for our water when it gets transferred to other people for a profit. That's our water that's getting transferred but I have to admit that this is something that the large land owners at Hawaii are agreeing with and has been contested many, many, many years and finally in 1978 the constitutional convention took a worldwide of our -- to put it in the constitution and said, we have the trust responsibility as the trustee of that to properly do it.

And that's why we're talking about it now. Because this is a great -- big transfer, we don't want the new owners to think that they're going to get a free ride. The new owners got to know that if you're going to use this water and you're going to make a profit on it, we want a reasonable percentage of your profit so that we can pay for the maintenance to repair of our water system under the special land and development fund, HRS 17119A2. So that's a big deal for us because we go hand and mouth to the legislature and sometimes, they're gracious and sometimes they're very, very tightfisted financially. We understand that.

But if we had our own revolving funds to do that adequate amount, we could do a better job. And we could help you. If we have those funds, we could help do it. Get our men down there to do it, and the equipment. But the opalas you get around those streams, all the rebar, whatever tractor parts of whatever is there, that's probably first priority because of the infestation of -- as what's stated by mosquitoes and whatever, whatever, and the birds are not only critters in the...

**Mark Vaught:** We've taken a substantial amount of stuff out of there.

**Stan Roehrig:** Okay.

**Mark Vaught:** And we'll still continue to do that with no question.

**Stan Roehrig:** Yeah. Okay. So I think any kind of a vote requires something for us to have a condition about this getting cleaned up properly and it's got to get cleaned up reasonable soon. This revocable permit is a month-to-month, year-to-year kind of a thing. And so it -- we shouldn't have a situation where this goes on forever especially when you guys are changing ownership.

But you're going to still be in their partners for part of it, right? You guys are going to stay on, EMI is staying on as 50-50, is that it?

**Meredith Ching:**

Yes.

**Stan Roehrig:**

For most of it. How are you going to make the decision to do 50-50? Most corporation, you're going to get 51 percent to get corporate control and they're not interested, right? I mean, that's what I see on the newspaper. So that's a rhetorical question. So that's the main thing that I'm concerned about and the 14 streams and the cleanup and...

**Suzanne Case:**

So the permit condition last year said permittee shall cleanup trash from a revocable permit areas. Starting with the areas that are accessible and close the streams and those conditions continue.

**Stan Roehrig:**

Okay. And now those -- did we say that we take the IIFS streams first or did we say right across the board, Chair?

**Suzanne Case:**

It's -- it doesn't make a distinction. It says starting with the areas that are accessible and close to streams.

**Stan Roehrig:**

Okay. And how long would it take you folks, EMI to cleanup those other 14 streams?

**Mark Vaught:**

When you say cleanup the streams, I'm sorry, I'm not understanding. Like to clean the debris that is around there?

**Stan Roehrig:**

Well, put it this way, put the streams back the way they used to look. If they got boulders and crap blocking the stream, or they got barriers, or concrete pipes or bridges or stuff that's blocking the flow and the utilization of the -- just like you folks did on the IIFS stream. The people around those streams, they want all this stuff taken out so the streams were the way they were. I think that's what we heard loud and clear a year ago and I think a year before that same message.

So these streams, either side these streams, who's the owner of all that? Is that some of the private or is it all state? Is that all state land on the 14 streams? Who owns those 14 -- who owns the land on either side of the 14 streams?

**Mark Vaught:**

Some is state's.

**Stan Roehrig:**

You don't know.

**Meredith Ching:**

It's a mix.

**Mark Vaught:**

Some is state is private.

**Stan Roehrig:**

Some is state and some -- and who's the private?

**Mark Vaught:** I imagine some of it would be us.

**Stan Roehrig:** Some of it you folks. And the other third person big owners?

**Mark Vaught:** I don't believe so.

**Stan Roehrig:** Okay. So, the state and EMI are the principal owners of the area where those other 14 streams are. Okay.

**Mark Vaught:** I would imagine so.

**Stan Roehrig:** So you folks need to go there with our staff and check it out. And that -  
- as part of that condition and go and see what we can do.

**Suzanne Case:** Okay, any other questions? You want to make a motion on this one?

**Christopher Yuen:** Yeah. Actually, I would make a motion to approve the staff submittal with two amendments, and one is to increase the cap to 45 million gallons per day averaged annually. And the second to advise that the permitting -- well Mahi Pono is to advise any third party lessees that they have, that the -- any decisions that they make are based on availability of water are based on something that is on a month-to-month basis renewable annually until -- unless and until there's a permanent lease.

And the -- you know, the figure -- let's start with the IIFS 27 streams, there is 93 million gallons per day approximately available for export, it -- after satisfying the IIFS. And the IIFS establishes the -- what should remain in the streams for public trust purposes. The Land Board can decide and if it adopts this motion will have decided for the coming year to only take half of what's extra after the IIFS for planting in Central Maui. The fact that they -- you know, I'd like to see them expand agriculture in Central Maui with this planting. We have a requirement that they make beneficial use of it and report the usage. But the second condition is to -- if somebody is establishing an annual crop, they get the crop out of the ground and they don't really need to care what happens after that.

But if somebody, you know, is -- might want to plant an orchard and there's planning on irrigating it, they need to be advised that the fact that Mahi Pono might be able to -- or EMI might be able to deliver water for them this year is no guarantee of any time in the future. So that's my motion.

**Suzanne Case:** Okay. Is there...

**Stan Roehrig:** I have a few comments about the motion.

**Suzanne Case:** Can we get a second first? And...

**Stan Roehrig:** I'll second it. I would like to make sure that we add that specifically on the 14 streams that haven't gone to IIFS that they continue the prompt cleanup of those streams, and that they go with our staff to those streams so that we're given a report every three months on their progress on the cleanup.

And I also -- I just saw it when Chris was talking about it, that we need to consider utilizing the state land that we have in the remaining -- around the remaining 14 streams, whether or not we want to have development of agricultural leases of state land in that area, since we already have opportunity to get adequate role -- water there, or we don't know exactly how adequate, but it is a -- because it already has a system of roads in it and it also already has a system of ditches, much of the infrastructure that we need to develop agricultural leases to also increase our agricultural productivity and Maui is already there.

And so I would ask us to have our staff when they go to look at it to report back not only on the cleanup, but the viability of that area for state agricultural water leases, land and water leases.

**Suzanne Case:** So can I just suggest that the report go to the staff rather than to the board every three months? And then if the staff thinks that there's an issue, they can bring it to the board?

**Stan Roehrig:** Sure. I'm okay with that.

**Suzanne Case:** Okay.

**Mark Vaught:** And just for point of clarification, the streams outside of the IIFS area, there's no legal requirement now to remove the diversion. So you're talking about actually trash and stuff that's not usable for the irrigation system.

**Stan Roehrig:** I'm not sure all of what -- I'm not sure of the content of what's there and -- but it's like the area where the people came to testify, there's all manner of remnants of the sugar plantation use along all these streams and we know from the other ones, we had multiple photos of all kinds of different pieces of bridges and pipes and concrete rears, all kinds of stuff all over the place.

Gates half open, water spilling out, all kinds of stuff. So I just -- I infer from that that the other 14 streams are of light character. And so we need to, one, clean it up. And number two, see about utilizing that state land for agricultural development if this is going to be a breadbasket, let's get on board.

**Christopher Yuen:** Okay. So I accept the motion, this -- the amendment on the state land to investigate that. And the trash with the understanding that that doesn't include facilities that are actually currently being used for irrigation diversion.



**Stan Roehrig:** Sure.

**Christopher Yuen:** That's, that's fine.

**Suzanne Case:** Okay.

**Christopher Yuen:** And if I can just make like a little comment, the dollar question is a very good one that people have raised. I mean, and there have been a number of very good suggestions. I certainly hear what Alan Murakami is saying about the passage of time, but it is moving toward a final resolution of this if progress is being made. And at that time we can -- we -- the department has an investigation in process to try to more fairly evaluate with the dollar valuation that this water should be. And so I'm pro continuing this on this basis for the next year at least.

**Suzanne Case:** Okay. Any further discussion? If not, then all in favor say aye.

**All:** Aye.

**Suzanne Case:** Any opposed? Okay. Thank you.

**[Transcript ends at 1:52:30]**