

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: November 20, 2019
TIME: 9:00 am
PLACE: Waiola Church – Keopuolani Hall
DLNR Board Room 132
535 Waine‘e Street
Lahaina, Hawai‘i 96761

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 9:07 a.m.

MEMBERS: Ms. Suzanne Case, Dr. Bruce Anderson, Dr. Kamana Beamer, Mr. Michael Buck, Mr. Neil Hannahs, Mr. Wayne Katayama, Mr. Paul Meyer

STAFF: Deputy M. Kaleo Manuel, Dean Uyeno, Rebecca Alakai, Dr. Ayron Strauch

COUNSEL: Ms. Linda Chow

OTHERS: (listed as those who “signed” in) Ke‘eaumoku Kapu; Amanda Stone, Matt Rosener, Ka‘apuni Aiwohi, Hokuao Pellegrino, Paul Subrata, Tim Esaki , Jen Mather, Marti Buckner, Sean O’Keefe, Michael Gropemeyer, Jeff Pearson, Karyn Kanekoa, David Schulmeister, Ann William, Lahela Aiwohi, Fay McFarlane, Geoff Fricker, Lucienne deNae

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

Chair Case – read the contested case disclaimer

A. APPROVAL OF MINUTES

October 15, 2019

**MOTION: (BEAMER/HANNAHS)
To approve the minutes as submitted
UNANIMOUSLY APPROVED**

B. FOR INFORMATION ONLY**1. Groundwater Recharge for Projected Future Climate and Stakeholder Defined Land-Cover Scenarios for the Island of Maui**

PRESENTATION GIVEN BY: Dr. Alan Mair, Pacific Islands Water Resource Center; Dr. Delwyn Oki, U.S. Geological Survey (USGS)

Dr. Oki – summarized what Dr. Mair would be presenting and how projected future climate and land-cover might affect groundwater recharge on the island of Maui. USGS compiled and assembled all the information to see how that would impact recharge. One of the benefits is that USGS is already working with CWRM on recharge studies statewide.

Dr. Mair – provided a power point presentation and detailed each slide and how it relates to the groundwater recharge study. A summary of a water-budget model scenario was explained, and end-of-century rainfall projections were presented from a “dry climate” (statistical approach) -13% (decrease) in rainfall and “wet climate” projection (dynamical approach) +10% (increase) in rainfall. In the wet climate projection and 2017 land cover scenario, the island-wide recharge estimates a +12% increase or +144 mgd to (17) of its 25 Aquifer systems. In the dry climate projection and future 1 (conservation) land cover estimates, there were substantial recharge increases for Central Maui in: Launiupoko, Olowalu, Ukumehame and ‘Īao areas, and are mainly driven by substantial increases in irrigation rates associated with the expansion of diversified agriculture and taro. Tables and maps are included in the presentation to show recharge estimate examples of a plus or minus scenario.

QUESTIONS / DISCUSSION

Commissioner Buck – what does that look like, development and balanced?

Dr. Mair – these were scenarios developed by Pacific Water Science Center, their dialogue with stakeholders here on Maui

Commissioner Buck – but does it mean more houses or hotels?

Dr. Mair – for example on the map (page 13) it shows the land cover keys which identifies “red” as diversified agriculture, lime green as taro, and the native forest and alien forest with fog versus no-fog and the grays and black is urbanization - development

Commissioner Beamer – in the consultations with stakeholders, is the development scenario based off of actual land plans and is it projected to happen or is it more conceptual?

Dr. Mair – they were considered and did have dialogue with the (Maui) Planning Department, but I can’t speak on specifics

Commissioner Katayama – the ET rates are a plus or minus?

Dr. Mair – the added value represents an increase in total ET so it’s a positive

Commissioner Katayama – so more water is used that's evaporated; and irrigation same – surface water is used

Dr. Mair – yes, but we did not make a distinction on where's the source of the water, so whether is ground or surface water

Commissioner Katayama – and what's the horizon – is it today's number or a 20-year number and how far out is that?

Dr. Mair – for this scenario using a dry climate projection which is an end of century projection and because it represents a wide range of conditions, I can't put an exact date of determination.

Commissioner Katayama – our challenge is that people are making decisions whether how fast to put in the development and what the sustainable yields are and what we're looking at is if our water systems can support that increase, is that the off-date of this analysis? I would think the business as usual would have evidence in that

Dr. Mair – for your first question on time frame, I can say more information is forthcoming in the publication; but it's our intention to use this information on how, recharge and pumping rates, how that might affect the proposed sustainable fall rates on groundwater wells

Commissioner Beamer – I understand in the conservation setting there is increase in evapotranspiration in the forests, irrigation theoretically you're getting recharge and even the fog interception is a plus, even the dry scenarios; if you can offer feedback?

Dr. Mair – for business as usual, the increase in aquaculture which requires a lot of irrigation that has a net positive impact on recharge which is a change from a non-irrigated condition and the low intensity development scenarios areas has a positive increase in irrigation because it's assumed there's landscaping which can have a positive impact on recharge

Commissioner Beamer – and with the scale of aquifers you'll see significant conditions of loss in certain areas and you'll get some positives in relatively small pockets; so in any case the business as usual is the best option for recharge of our aquifers of what these studies are suggesting

Dr. Mair – there is a large uncertainty in range of impacts that will require adaptive management strategies

Chair Case – what is the range of expectation for the dry versus the wet climate scenario and what percentage chance it will be a dry or wet climate scenario?

Dr. Mair – at the time we developed the study there were (4) climate projections using the systematical and (1) from the dynamical models, so what you're seeing now is the extremes between 4 of the 5 island-wide rainfall

Commissioner Hannahs – what’s the difference of the statistical and dynamic approach and do you rely on one more than the other?

Dr. Mair – we do not; until we receive more information, we’d treat them as the representative of the ranges for climate projections. The statistical approach looks at large scale patterns and relates that to a single point, for example Lahaina. The dynamic approach uses a regional climate model then downscales it to a kilometer resolution using physics in the model

Commissioner Meyer – what is the long-term implications and can you draw any long-term comparisons or analogies to the other neighbor-islands, for instance translate it to O‘ahu or Kaua‘i?

Dr. Mair – we are planning on conducting additional studies on the neighbor islands using the same approach. Maui is somewhat different, and the reason that Maui went first is because when they did the downscale resolution of the entire state, they found there weren’t representing the rainfall and extremes very well in the topography on Maui and O‘ahu so they chose Maui as a pilot case, and down-scaled to a kilometer in resolution. There’s now a new set of dynamical down-scaled climate projections which brought it down to 800 meters, so we considered using that on Maui and the other islands.

Commissioner Beamer – has there been any work comparing statistical and dynamical approach as time has passed and which has been more accurate in predicting actual precipitation?

Dr. Mair – I haven’t seen it published, but there is a dialogue going with the PIWSC to see if they can get their projections to converge and see the differences in the areas, but I haven’t seen the responses for that yet.

Commissioner Beamer – and were projecting so far out that it’s hard to track the last 10 years which model would be more accurate and that’s part of the conundrum.

Commissioner Katayama – do you have a sense of which model is more impactful for the final recharge rates and the key elements?

Dr. Mair – the study I was most recently involved with looked at climate as a whole and conducted a sensitivity analysis, and clearly what has the largest effect on recharge is rainfall; other parameters such as evapo rates can affect recharge with the combined amount of rainfall will also have a slight impact on recharge. All these are summarized in a report my colleague Howard Johnson (and I) did.

Commissioner Anderson – has (USGS) gone back to see what model is best for tracking with respectively the rainfall patterns and to see what the differences are, has that been done? The difference in the models is extreme.

Dr. Oki – the developers of those projections have used historical data to calibrate their models and there are some differences in their abilities to represent historical conditions. The wet and dry are based on different assumptions not only in terms of the method but in

terms of what are the drivers for the future climate. Right now, there is a bit of apples and oranges mixed in terms of statistical and dynamical down-scaling with not only the method but what's driving the future climate. As we move forward, that uncertainty will narrow over time

Commissioner Hannahs – I'm surprised we don't know more on non-native versus native forests, what do you know?

Dr. Mair – we have information for a limited number of species; there's been a fair amount of work with strawberry-guava but there are a lot of species. We've been engaged in a state-wide study to look at the impact of non-native species on fresh water availability, in that process we went through a series of different workshops to identify high priority non-native species; from that list we noted big gaps in data; there's a lot of species we don't have much information on, there's few high priority such as strawberry-guava where there's a fair amount of work and those studies are done only in select environments; the studies are done collaboratively with UH and other agencies. We are working to get more information to answer that question fairly; we have that information, but it's limited to special environments and cases for a few select species

Chair Case – so you're hoping in the future to compare in different types of environments like the strawberry-guava, Eucalyptus forest or Christmas berry forest; and saying those different alien species may be a basic forest and a native forest would be a 'ohia / koa mix but in a non-native forest it could be those different species and could have a significant evapotranspiration rates?

Dr. Mair – yes, they could; but it's difficult to identify these ideal sites. Tom is developing a new modified approach to allow us to estimate a statistical relationship, transpiration characteristics of different plants in different environments to allow that kind of distinction to be made

Commissioner Beamer – I appreciate the work and the search for real scientific certainty and as a trustee and manager of the water, we can't have that same level of certainty because we have to make decisions now. Even though these models differ greatly, we probably should take a more pre-cautionary measure to ensure we have water resources; it's not just plant specific it's what is in the forests itself that helps the recharge

Dr. Mair – yes, absolutely; right now we're just getting pieces of information; I mentioned infiltration rates but I didn't talk about fog interception which will make a difference

Chair Case – some of it is going to specifics to estimate water availability for the future; obviously the more data collected the better the model however this kind of data is hugely helpful for general directions for water planning

Commissioner Hannahs – where does animal control fit into this? One of the most devastating things to the forests, are ungulates uncontrolled that gobble up the understory and throw off the recharge; how do you factor that into these scenarios?

Chair Case – that will factor into it when you consider the run-off rates; I think the animals grazing does effect that quite a bit

Dr. Mair – one of our partners at Pacific Island Eco Research Center did the infiltration study here on the island of Maui, Hawai‘i and Kaua‘i and saw an effect of ungulate and infiltration rate, that information is forthcoming in an upcoming report.

Chair Case – the 30 by 30 forest management control is being managed for ungulate impacts, so if that parcel managed is considered protected status as oppose to not protected, the species in it is protected

Dr. Mair – (acknowledged collaborators on project)

Commissioner Buck – the climate models differ by 25%, but agree that West and Central Maui will have reduced rainfall and in your model it shows that rainfall is the number one factor in recharge; so now the take home is the decisions that are made in West Maui, Na Wai ‘Ehā, we have to consider we’ll have reduced rainfall recharge in the future. The East Maui forests will sustain more rainfall so protection of that forest for irrigation or recharge is a must.

Commissioner Beamer – Mahalo Alan for the important work, one big question is how the model deals with the intensity of rainfall; what we’re seeing is 39 inches of rain in a 36-hr period and not a lot of that is going back into the aquifer and it seems like that trend is across all the islands where we’re getting monsoon like conditions, how does the model deal with that – the intensity of rainfall over a small duration period?

Dr. Mair – we use a round ratio to estimate run-off and that’s based on aggregation over a period of time like winter season; episodic extremes are not captured in our approach; the other graphs captures the rainfall frequency that’s concentrated over shorter or longer period of days, but episodic events is not addressed currently.

Dr. Oki – this approach used for this study we used a regional simplified approach, but we do have other models that will show the differences in rainfall. For example, on the island of Kaua‘i we developed a model for a particular watershed and is able to simulate an hourly timeframe. We are in the works with our national office, looking at these watershed models on an island-wide scale which will give us better capability to represent these processes

Commissioner Hannahs – I encourage us to collaborate and involve critical stakeholders and see what kind of decisions can be made to help make improvements for a better water future for us; and also to reflect on the next steps and how we can improve and narrow down uncertainties for instance with the feral ungulates and alien forests

Dr. Oki – part of that collaborative effort with Pacific WRISA did involve the stakeholders outreach and developed those RAM covered future scenarios we incorporated. We recognize there are some limitations in what we’re doing and it reflects in where we are today in terms of our knowing and we have room for improvement in collecting additional data and narrowing down the uncertainty and looking at how run-off is affected by feral ungulates and other factors. We will be working on ways of improving

Chair Case – thank you so much, really appreciate this, it was a very interesting report – thank you for your hard-work.

PUBLIC TESTIMONY

Lucienne deNae, (Conservation Chair, Sierra Club Maui) – we were consulted when a lot of the research was being done on the scope of the in-depth climate change studies done a few years back, some of which is incorporated here. We concluded some of the same things we heard the CWRM say, that the people part of this is really important and the large landowners have a huge role to play and the communities that are surrounded; you got to involve the communities in caring for the land, it's where they live. Right now, there is no structure for that. The watershed partnerships deal with the upper elevation and they do not include the people that live in East Maui, there's no official way for people to participate. Folks at Ke'anae and Wailuanui are writing grants so they can hire people within their community to get to the watershed and take care some of these areas. These are sobering predictions and we really need the people part, thank you.

2. Landowner Bock Family Revocable Trust Altering a Stream Without a Permit Required in HRS §174C-71 and HAR §13-169-50; East Kuiaha Stream, Ha'ikū, Maui, TMK: (2) 2-7-012:254

PRESENTATION GIVEN BY: Mr. Dean Uyeno, Stream Protection and Management (SPAM) Manager

Mr. Uyeno – provided update on the informational briefing item and noted that it came before the CWRM on 3/20/18, 5/15/18 and 2/19/19 in which CWRM deferred approving a remediation plan in regards to the flood issues, thus asked the CWRM that the remediation plan be reviewed and approved by the Federal, State and County agencies. Two culverts relating to structures constructed in the stream channel as well as grading, grubbing, filling, channelization, and construction of a retaining wall are included in submittal. CWRM received (2) emails from (Stacy) Otomo Engineering; recently on June 27, 2019, regarding a status update that notified CWRM of the meeting that took place with the County Planning Department to coordinate the required permits and flood permits that were submitted to the Planning Department on May 22, 2019, and at that time had not received any comments. Mr. Otomo stated that a permit from the Army Corps of Engineers is required and is currently being worked on and has not received any response yet from the Department of Health (DOH). Other permits and reports are pending and should be received shortly. Maui County Planning Department (MCPD) had given (Mr. Otomo) verbal approval for the flood permits and are awaiting the Department of Public Works, Engineering Division to approve the drainage report. In a letter, the MCPD requested that the flood permits be approved after approval of the remediation plan, which is what Mr. Otomo has requested. The reason being is that if CWRM and staff request revisions, they will need to submit an amended flood development permit and they're (MCPD) trying to avoid that; they would seek approval once it's (the remediation plan) approved by the Commission.

Mr. Stacy Otomo, (Engineer) – the flood development permit has been issued and approved and has also submitted an application to U.S. Army Corps of Engineers (USACE) and is working with DOH and an archaeologist (State Historic Preservation Division, SHPD) awaiting review and comments. Once we get the report and approval of the flood development permit, we'll apply for the grading permit. We anticipate getting back to CWRM with a full stream channel alteration permit and all approvals of the agencies sometime in the first quarter of 2020.

TESTIMONIES

Mr. Ryan Bock, (Landowner) – to date, I have never testified on the matter and I wanted to state my case but first to apologize for grading without a permit and showed evidence (photos from 2008 and 2010) of grading prior to owning the property in 2012. The incident happened due to climate change and the flooding that occurred because of it (also provided video of Hurricane Lane flood). Neighbors and I cleared the stream area of heavy debris after the flood and was told that a permit was needed and questioned that. I live in a 'ohana type community where we all help one another in need and didn't think we're doing anything wrong by clearing the stream due to the flooding. I interfered with one bank of the stream because there were large trees toppled over and laid in the stream bank. On one instance when Rebecca and staff came to my property there wasn't a drop of water in the stream. (Mr. Bock showed photo slides of other neighboring properties and explained how one property effects the others downstream and also provided written testimony on other upstream neighbors with regards to their flooding issues – Mr. Bock testified that he is in financial debt due to the permits and work that needs to be done for remediation) I've requested to meet Ms. Maguelyly at her property so we (Mr. Otomo) could understand the flow of water from the stream, and she refused and instead asked Mr. Wayne Arakaki (Engineer) to look at her property and the stream flow to see if the flooding issue can be resolved. Mr. Arakaki stated to Ms. Maguelyly that nothing can be done because of the right degree angle the water is flowing down from. I apologize for my emotions and thank the Commission for hearing my testimony.

QUESTIONS

Commissioner Hannahs – thank you for providing context to your actions. Some of the actions required permits, which you did not have and now have the guidance. Mr. Otomo are you satisfied with the actions necessary and are in the process for obtaining all the permits needed and is it necessary to restore and that the community is able to see this process and provide their input?

Mr. Otomo – yes, the flood development permit was signed (approved) on 10/31/19 and I could not get a copy as the person in charge was on vacation

Commissioner Hannahs – so the take away from your testimony and what is decided at the end of the day is that you are addressing the situation and in the process of obtaining all permits necessary and that those involved whether it's the community and those further upstream had an opportunity to see what's going on and is a transparent process?

Mr. Otomo – yes and if you recall our last meeting, the permit path we’re taking required certain things. The USACE, DOH, there’s a requirement to contact SHPD, and get the flood development permit and I believe you folks were relying on their (DOH) expertise; we have gone through that and it was the long list item and we’re proceeding in getting all the permits right now.

Mr. Bock – after this very day, I have spent \$194,000 to get permits; and when you needed a better explanation for the remediation process, that costed me \$7,000. It ruined me financially and I’m a \$100,000 in debt and I couldn’t start on my house even when I had the permit. Before this whole thing started in 2016 before the ‘Āao Valley flood, Mrs. Maguely asked me for help with a tree that had fallen into her stream bed and I kokua and cut the tree up and removed it. After the ‘Āao Valley flood, Mrs. Maguely stated she is getting flooded and I was at fault. She stated she is getting her culvert evaluated and it would cost \$25,000 and I should be responsible. Then she started a crusade with the Engineers and Planning Department not because she wanted to find a solution, but it was vengeance.

TESTIMONY

Mrs. Audrey Maguely – I presented a lot of information to Rebecca regarding each issue that he (Mr. Bock) was talking about including the permit I have from Army Corps to do the work I need to in my stream. The point I wanted to make here is that I’ve spent 20+ years on my property and I did not have any problems before the work was done upstream. Even the people further upstream from Mr. Bock were having flooding as seen in the picture. I didn’t experience that on my property because the distance (7-1/2 acres); there was so much retention area in that gulf, it never made it down to my property. Mr. Bock has made a lot of assumptions on how the stream could be managed, I would continue to say I need help with this issue and support and very much appreciate you speaking of this matter and I do believe it is a matter of the law which is the real issue here, and my downstream property is being flooded, that’s about it, thank you.

3. Fish Ladder Pilot Project, Wailuku River, Maui

PRESENTATION GIVEN BY: Mr. Dean Uyeno, SPAM Manager; M. Kaleo Manuel, Deputy Director

Mr. Uyeno – gave a power point presentation and photos to provide a chronological timeline of the project and provided background information; and also explained the events that occurred from commencing the project (installation) until completion. In 2010, as part of the Nā Wai ‘Ehā D&O, CWRM staff also conferred with the Division of Aquatic Resources (DAR), Maui County and other parties to address fish passages on a portion of ‘Āao Stream; (‘Āao Stream has since been renamed Wailuku River) In 2015, CWRM staff sought a grant from the U.S. Fish & Wildlife Service (USFWS) for a fish passage project and entered into a joint funding agreement with USFWS contributing \$25k and CWRM contributed \$15k and \$10k of in-kind services. This pilot project was to ensure connectivity and enable fish passage within the stream. In June 2018, CWRM staff and USFWS met with USACE whom noted no permit was needed due to the small-scale impact of the fish ladder to the

face of the concrete wall as part of the flood control project. CWRM staff also met with DAR and Hui O Nā Wai 'Ehā on a few occasions to discuss the project. On September 17, 2019, CWRM delegated to the Chair the authority to temporarily suspend the interim instream flow standard (IIFS) for the project installation. On October 8, 2019, due to concerns raised by Earthjustice and Office of Hawaiian Affairs (OHA), CWRM staff teleconferenced with Wailuku Water Company, Mahi Pono and Earthjustice to discuss diversion of water during project installation. It was noted that Wailuku Water Company (WWC) would not be able to divert all the water. The intent was the remaining water Mahi Pono would take some of it at Spreckels Ditch, route it around and put it back downstream near the project area. (showed maps and photos of the various intakes and diversions leading to the project area and just below it) October 29, 2019, was the projection installation and October 30, 2019, Deputy Manuel received various reports of the 'o'opu fish kill. October 31, 2019, an internal memo was sent to Mahi Pono and WWC regarding the IIFS reestablishment. On November 4, 2019, CWRM staff met with various entities to assess the situation. Discussed with USGS to provide better public outreach and improve community awareness and stream gaging. Next steps: installing signage at the fish ladder and more community engagement as well with other entities.

I want to say that there were a lot of issues and steps that we could've done better and wish we could've prevented this; unfortunately it was a perfect storm – with the conditions of the stream flow and lack of water, and apologize for the events that occurred after.

QUESTIONS / DISCUSSION

Commissioner Buck – to confirm the reason for suspending the IIFS is for the health and safety for the workers?

Mr. Uyeno – that was the idea; and knowing that WWC could not take it all, so for continuity of the flow from the Wailuku intake down to the flood control project.

Commissioner Buck – what was the estimated time (of suspension) for the installation?

Mr. Uyeno – 3-5 days max with the hopes of completion in 3 days

Commissioner Beamer – did you say the community was going to do weekly checks?

Mr. Uyeno – it's USGS – Monday's they'll measure stream flow and the gage properly

Commissioner Hannahs – Dean, thank you for that formal apology; I'm looking forward to the next steps and actions. When we think of our role with this precious resource, it's not just about gallons, but the life that the gallons support and we should feel at the loss and sadness of these treasured species, this 'ohana. I hope we have expressed this loss and sense of regret for any way we contributed as it was unintended. Have we made that expression to the stakeholders in this matter in the meetings that come up? What have we learned from this experience and how are we incorporating those lessons into changes in our protocol and practices so that we avoid or reduce this from happening again?

Deputy Manuel – Mahalo Commissioner Hannahs; to answer your first question, we met with a subset of the community on the November 12th (I unfortunately had the flu), however Dean came and I was off-island at the time of the event; to those community members that we had a chance to sit down and talk with, I did share a sincere leo mihi to that community, and that I understand the kaumaha and pain that the community is dealing with and that it is part of this legacy and history which was referenced through Nā Wai ‘Ehā. Having the experience working with the Department of Hawaiian Home Lands and knowing the historic trauma and baggage that comes with an agency and being one of the newest staff at the Commission, moving forward and keeping projects going, I apologize; and to those in the community I haven’t had a chance to personally apologize to, I am sorry. Better oversight and management of projects like this is key and how we interact with stream systems is not just going through a process and checking boxes, we need to work closely with community to do that, and so I am committed to this community (Maui) and Nā Wai ‘Ehā to engage with them more frequently, find ways to communicate and build that into our full process and include them in some of the decision making, designing and dreaming of what a better future looks like for our stream systems; and now moving forward, how do we become better stewards of our stream systems. Other things we learned from this is going through the environmental process – streams are very sensitive and some of the normal or simple procedures may have large implications that we need to think through more holistically, communicate with all stakeholders in the process and pause for a moment instead of sprinting to get a project done even though we anticipated communication that it would be a good project to help with some of these man-made impediments to fish passage.

Commissioner Hannahs – thank you for what you’ve done and for your comments. Normally we’re seen as a heartless bureaucracy, but I don’t feel that way at the Water Commission and with yours and Suzanne’s leadership and with the attitudes we have of something that’s so precious it’s more a family business than bureaucracy, so I think when you say oversight – what it means is that you don’t abandon your loved ones when they’re in crisis or at a pivotal point, you stay there on-site, on island whomever responsible from our team to make sure it gets done. That’s what will separate us from being a bureaucracy to really having a vested interest in the outcome. I know you (and the team) feel in your hearts so I think translating it into protocols and systems will help.

Commissioner Beamer – Mahalo Kaleo and Dean; first of all for agendizing this; it’s such a kaumaha, a travesty and mistake on our part as a Commission and I appreciate Dean’s formal apology and Chair issued a written apology; and to those in the room I want to say as an individual Commissioner, I deeply apologize to the communities of Maui and Nā Wai ‘Ehā for the nameless ‘o‘opu (our kūpuna). It was disturbing. We talked at length with our attorneys on O‘ahu and talked how sensitive the installation would be, how it needed to be done efficiently and quickly and the key was how long the water is going to be diverted and IIFS would not be met. Unfortunately, we end with this result and I apologize for that. We need to make sure this never happens again and be sure that our communications and processes don’t allow it and have the Commission get caught in this kind of conundrum. (*referred to the chronological order slide*) we were successful and found ways to remove the water and was sure the work will be done as quickly as possible, to me it’s a success; but I’m wondering about “how the diverters were notified to restore the flow (after), I think you said they were (notified) text, to me that is a lesson we can learn. The message needs to be made very clear to the diverters that the IIFS needed to be rectified and water needs to be

moved immediately. Had that been done, that may have accomplished avoiding this. A formal notification is needed; what I don't see on there is when water was returned – 2 days later?

Mr. Uyeno – to my understanding, Mahi Pono went in Wednesday morning and removed sandbags and essentially water flowed past Spreckels intake; Wailuku Water Company went Thursday and returned flow back into the stream

Commissioner Beamer – in this complex process and for transparency for those in the community can see the conflicts, as you have diverters potentially making money off the water and the need for IIFS, so as managers we need to be upfront with communicating urgency and as a role in the Commission to balance reasonable and beneficial uses, instream flow of public trust uses is our kuleana. I want to echo Commissioner Hannahs' comments that I do believe we try our best with limited staff and as voluntary Commissioners. We can do a better job in upholding the public trust and we have to treat diverters and everyone equally.

Commissioner Katayama – an important factor is lessons learned, how will you judge the sensitivity or importance of stream flow and the sense of urgency to react? What would be reasonable or who would you look to, to help make this kind of assessment?

Mr. Uyeno – in general, every stream channel and situation is different, some are more stable. In this case, the stream was in a lower region and we need to look at that on a case-by-case basis. Moving forward looking at this situation and for future projects whether it's for stream channel or fish passage permits primarily, I would recommend that the water not be turned off – that it be bypassed through some means whether it's a coffer damn or via a pipe that's sandbagged and installed in the channel to route the water around the project area.

Commissioner Katayama – do you think this was from oxygen deprivation because the water was not flowing?

Mr. Uyeno – I think it was a matter that the water dropped so quickly there was no flow in the lower regions

Deputy Manuel – I want to add that in the learning of the processes, sequencing and designing of projects, it's not just the planning and implementation, it boils down to better pre, during and post monitoring; and the timeline or horizon of a project doesn't end when the job is done on-site; there needs to be more thoughtful and thorough analysis about immediate and potential long-term impacts, which is part of the EA process. Part of that evaluation comes in-house in areas of streams with high sensitivity or where we know water is scarce or a sensitive environment; how do we build in the best management practices? – is with the community; pre, during and post and engaging the media, everyone else and Commissioners and in that process collectively is something we can build into this. CWRM is administratively attached to DLNR and there are divisions with expertise in the department like DAR, working closely with staff on island, similarly with the Division of Conservation and Resources Enforcement and our enforcement team; making sure that things that are happening in the stream are legal and we're upholding the law, including

holding ourselves accountable; those are lessons learned. It's changing the culture of our agency. Again, this is a pilot project and the Commission hasn't done this, we need to think through how we operate and function as staff, as well as the Commission.

Commissioner Hannahs – I'm glad to hear that. What I wouldn't want to hear is that we are not going to take these kinds of risks because we do need to do it, but proceed smarter and it sounds like the ideas you have shared will enable us to proceed next time with greater confidence.

Commissioner Anderson – moving forward, how is it working and is it working the way it should? And by the way, Skippy Hau, he's probably the expert on this and has valuable knowledge to contribute with aquatic resources in regards to monitoring.

Deputy Manuel – that's still to be determined; I haven't been back to the site specifically or in the stream; it's coordinating with DAR, our stream team, going to the site and how are we going to monitor; there is the need to find a way to determine whether it is or isn't working, if there's increased 'o'opu or aquatic species presence on the ladder itself. We do need to circle back around in-house and coordinate with community on how to monitor this. If the challenge here is USACE with the flood channel, it's being able to communicate with all the relevant parties, how often we'll be there; obviously during low-flow periods is when we need to figure out if this is actually functioning; we don't know, that's the short answer. We have to design that monitoring program, we were focused on the implementation and that wasn't necessarily the best approach. With pre-installation we should've have had these identified and communicated to all parties.

Chair Case – Thank you Dean and Kaleo. I want to say live that I also apologize to the community for this fish kill. It was really rough to see it and not what was intended. I did say in the paper right away that it was ironic we had this result. This is our first fish ladder, we're not used to doing this kind of project ourselves, we're used to monitoring other people doing it and obviously we have a lot of learning to do. One thing that's exciting about this time is we're seeing so clearly the direct connection between water in the stream and fish life; we're seeing fish come back (in East Maui) and also seen the flip-side of it. It's a very rich time to restore the connections of visual, emotional and technical. An indirect technical thing is climate change: drought, heat, daytime vs nighttime; tides (high and lows), are all things that have a direct impact on what the water table is. I spent that morning trying to watch all the videos to understand, and seeing there was water coming down the stream; (at first I thought it was all diverted) then seeing it was not (all diverted) there had to be something going on between the private area and the stream mouth is a rich example of the impact of a losing reach in a dry time. Internally it's exciting to see the building of a relationship between CWRM and DAR. Skippy was there however we did not monitor what was going on down stream; that's a big learning lesson. Over the last few years he informed us (CWRM) a lot of the life cycle of 'o'opu and aquatic resources in the stream. We need to monitor what's happening up and down stream and it's a great time to look at streams holistically and the purposes of what we're regulating it for, not just looking at the regulatory process, so let's pay attention on accomplishing those goals. Another thing of importance is both community and staff knowledge of what happens to these streams during different kinds of flows and incorporating that into our project planning; and how quickly

we officially notify diverters to turn the water back on. These are my assessment and am hoping to hear from community members for best possible processes.

Commissioner Anderson – I remember seeing a culvert at Pearl Harbor and the Engineers there designed a channel into a sub-drain; it's a matter of seeing what would make a project work; it's creating ways and different approaches; certainly the fish ladder can be done again in another stream and approach it of how we can make it better and prevent something like this happening again, I think is the take away and lesson.

PUBLIC TESTIMONY

Hökū'ao Pellegrino, President, Hui O Nā Wai 'Ehā – On behalf of myself and the Hui, I'd like to acknowledge your sincere apologies and appreciate the sentiments you (all) shared and would like to Mahalo Dean and Kaleo. I think they did a very good job presenting the facts and timeline as for myself and the organization we share similar perspectives and want to give more details in between the timeline what was shared and want to make it clear that none of this is meant to be negative towards anyone within CWRM. We appreciate the staff coming out to meet with us about 1-1/2 week after the issue. I think its important from a community perspective how it started, where it came from, what occurred and the next steps we all collectively can improve on. Knowing there are issues within Wailuku River in many areas such as sections that are open between the upper channelized portion and lower channel and there was discussion in Decisions & Orders (D&O) in the past about fish passage, the Hui has known for a decade about these challenges, and we also didn't know if a fish ladder would or wouldn't work. We should've listened to Uncle Skippy from the beginning... "put the water back in the stream and all would be great". If we learned anything from this, is to look at the population that was in that stream and how much it increased since 2014.

For me personally, I was astonished to see what was actually in that stream at the time. Formally it began in June 2015 with communication from Rebecca Alakai to the Hui about the approval of a \$50,000 grant from USFWS. Moving forward to 2018, 95% of our communication has been with Rebecca. We discussed if the Hui knows a contractor and our response was that we don't have the expertise with it. I want to make clear that there were no discussions on whether we (Hui) support this but more so the idea of this happening. June 17, 2019, the Hui asked to work on communication with the community and the response from Rebecca was that in August there's potentially a community meeting, while we supported that, on record, it was made clear by Commission staff there will be an attempt to have a larger community meeting. It was made clear in our communication that although the Hui has membership of over 1,000, we don't speak for the entire community at large; a community meeting initiated by CWRM would've been the appropriate thing to do and it didn't happen.

For our own short-coming, in August 28th there was a site visit (at the fish passage installation) and unfortunately, we missed it. It was clear in communication before and after with staff that there should be further consultation beyond the Hui and especially with kuleana landowners and residents of 'Īao Valley who had benefitted greatly since 2014 of the IIFS; and kuleana in the lower region near the muliwai to those who's gathering (in the lower regions) 'o'opu, hihīwai and 'ōpae. They were the front line when this issue came

about; taking their coolers and scooping them; the surfers were coming to shore and helped to collect whatever they can and taking it above the diversion, that was not the efforts of the Hui but the community which rallied around and the Hui supported that later. Another issue that came about in early discussions with Department of Water Supply (DWS) Maui was that since the IIFS was going to be suspended, the water had to go somewhere? Water going to 'Āao will go towards Wailuku Country Estates and DWS will take an increased amount. The earlier discussions specified that DWS will max out their system because they just had the treatment facility online and wanted to see if they had the capacity to manage the numbers.

In August an email was sent to us asking (the CWRM staff writing a quote for the Hui and Maui Tomorrow – without having acknowledgment from us first) are you okay with this: “Hōkūao Pellegrino, Hui O Nā Wai 'Ehā supports this project. We hope the knowledge we gained from this project can be used to develop future fish passage.” This was written by CWRM staff. The response was immediate: “I want to make sure that everything is good and that there is communication with the greater community prior to any type of approval and support from the Hui.” After, things went silent from that point to early September.

In September, there were discussions on the suspension of the IIFS and it became a serious issue for us, while philosophically we supported the idea of the fish ladder, we didn't support the suspension of the IIFS because we know how sensitive Wailuku River was. With discussion with OHA and Earthjustice, we agreed that if the IIFS is suspended, it needs to go back online asap. The first day it occurred, a couple board members and I went and saw there were some water flowing in the stream, and knew it was likely there were going to be issues in the lower regions. It wasn't until the last day of the project (I arrived an hour before completion) and I asked the staff there directly “who's going to be communicating with Wailuku Water Company to be sure the stream is put back on?” It was made clear that as soon as it was done, the contractors were going to contact WWC; our assumption when we left that Tuesday (10/29), was that it was going to be taken care of. An email was sent stating the project was completed early. We know two of the diverters (WWC/Mahi Pono) were notified because the following day Mahi Pono sent an email on Wednesday (which we appreciate) that said - we immediately took out the sandbags and stopped diverting. They got it, they didn't want to deal with issues and for that, I mahalo them, they took care of what was needed.

Why was there no restoration of stream flow by WWC? I don't want to dive into assumptions, but that is the heart of one of the major concerns here – is that water was not put back on. It wasn't released - knowing that we are in some of the lowest flows the last three decades. That to me was the biggest missteps in this whole issue that we could've minimized or had no fish kill. When we went down to the muliwai on Wednesday, the community started contacting us and saying the fish were dying and we're trying to collect them. We took thermometers in the stream to the ponds where there were hundreds of 'o'opu and it was upwards of 90 degrees, that area is channelized so the temperature is increased heavily, the ponds can't stay cool because of the concrete channel, it's just open area for the fish to skirmish in. I brought pictures and videos but I realize that it's not appropriate anymore.

We contacted CWRM on day three and Kaleo specifically asked why is the water not going back on? We got replies from CWRM staff but nothing to do with the inquiries brought forth which was putting the water back in the stream. There were other emails, but it seemed like it brushed our concerns on the side which made us angry that it was not heard by CWRM staff. I appreciate the apologies, but when these emergencies were happening, there were no response at all. Water returned on Thursday, but in our opinion it did not meet the IIFS. A week after the issue took place when Ayrone came and measured the stream flow it was reported the stream is flowing at an extremely low flow at 8 mgd. On Friday we got a disturbing call that treated water from the Mokuauia Rock was being dumped into Wailuku River by DWS. Our board member spoke to DWS Director about it and there were concerns about tests done in the area and the holding pond could only hold so much water and a lot of (treated) water poured into Wailuku River. With the lack of water had then treated water dumped into the river was detrimental to the native species. Kaleo said it right, it was a perfect storm with all kinds of issues happening that week. We understand in the early communications it specified the IIFS would be suspended for five days; the project was done in two and the water should've been back. After communicating with Deputy Director Kaleo and staff, it was made clear that text messages are not considered a "formal" way of communication between CWRM and parties, but there has to be an internal memo set, I believe Dean has shared and it went out on Thursday. Why was the memo not drafted early and ready to go so that when Tuesday came along it would've been ready to turn the water back on? It took an actual memo in addition to a text for Wailuku Water Company to put some water back in the stream. I want to make clear (because there were communication from WWC) that there were issues with water not going into the stream appropriately, and that there was not enough water for the river to meet the IIFS, and at the same time you have in your hands a formal complaint that WWC was dumping Wailuku water in Waikapu and Pale'a'ahu gulch at the same time they said they couldn't put water back into the stream to meet the needs of the native aquatic species. That's an important concern to look at.

What should've happened was that community meeting should've taken place prior. We need to have better communication with the 'Iao Valley kuleana residents, the Hui and the greater community at large. Environmental review (needed) knowing the sensitivity of the stream and internal monitoring during installation of the ladder and post. I think everyone was surprised not only about the fish kill, but the sheer number of native species that was in the stream. Another thing this posed was a health issue. When the water came back on, it pushed the rotted carcasses down into the ocean where people live, gather and surf in that area; to me there should've been involvement from DOH to monitor that. When I went on Friday, you could smell it everywhere, you didn't have to go close to the stream.

Moving forward, the Hui and community made it very clear that even though we did not support the suspension of the IIFS, we would not support or allow that to ever happen again. We have countless research projects we looked at where all over the world where they're doing things in streams and massive rivers, they don't have the capability to shut "off" the stream, they work around it, whether it's sandbagging or other 21st century technology used. For future projects, I hope that CWRM staff would consider those things. To reiterate, if there is a formal memo that needs to be in place for communication, it should be drafted ahead of time so it goes out immediately.

I believe Dean and Kaleo covered a lot of it which I appreciate. Monitoring enforcement in these situations is critical. I don't think anyone besides community knew it was low flow. We didn't have gages in place and if we did and it were running and streaming live, there could've been a better time for this to be done. I want to put on record that the open channel area has been of contention for the Hui. It's a losing section; the Hui does not support any efforts to channelize that section of the stream. We want to make sure that stream stays open. That was probably one of the major issues. Streams naturally have loss and we want to make sure there's sufficient stream flow to ensure passage beyond those areas.

On behalf of the Hui, I'd just want to Mahalo you folks and I hope that we all learned something here and a big piece is just simply – communication and hope we can have further collaborative opportunities with the Commission as we've always shared over the last decade or so; we just ask for better communication and meeting with the community. We're open to dialogue and working with you folks as always, Mahalo.

Commissioner Hannahs – Mahalo for sharing here today and working through that and to offer concrete, helpful productive suggestions into how we proceed forward.

Commissioner Buck – thank you for your testimony; for me it reminds me of the huge responsibility we have. I'm a Commissioner from O'ahu, we approved this project and seemed like a no brainer and realize how naïve I was in not considering all the potential impacts. It's a reminder to this Commissioner the huge impacts we have and to be sure we are very thoughtful; thank you.

PUBLIC TESTIMONY CONT'D

Ms. Lucienne de Naie, Maui Tomorrow – we work closely with the Hui o Nā Wai 'Ehā on all aspects of the case and we got the very, very sad text and Facebook postings and our Executive Director, Albert went down to check things out. Like the Hui, we've been consulted early on about this project, and like the Commissioners it sounded like a great idea to figure out a way that these man-made structures could be adapted after-the-fact to allow more native stream life to have a fuller habitat area. I never recalling or mentioning (unless it's buried in the fine print) about absolutely turning-off the flow of the river for five days; that would've been a red-flag for me.

We're experiencing this in East Maui and very much hope that some lessons learned here could be applied there because we had our stream in Hanehoi turned off for 1-1/2 days and turned back on with no one notified. Either way, no one was notified of it turning off or on and hundreds of people live below the stream, some were nearly swept away by a wall of water that came down when it opened-up again; this is serious stuff. Once again it's the process...the intent is good. The process we need to get right and do need to involve the people that live around the area. I attended the meeting at the Old Nature Center, there was a lot of heartfelt sharing there. We want to treat our streams as more than a plumbing system, it's a very sad state of affair; because if you need to call some guy to turn a wheel, and that's what brings water and life back to a stream, and that's the only way we can have beneficial uses of the stream for our community, we need to start rethinking that and figure out if there's more natural ways of diverting.

On behalf of Maui Tomorrow, we're very appreciative of the response by the Commission, of taking responsibility, trying to learn from this experience and move forward. Please think about this granting of permits for East Maui, many involve exactly the same thing, with no process in consulting the community. You have a chance to put that in conditions. I was involved with negotiations on the settlement because I'm also on the Hui o Nā Wai 'Ehā board. We absolutely needed to see that regular monitoring, access and communication with the community as part of the settlement and had to be enforceable. We need that for every stream and a standard that needs to be met, thank you so much.

Ms. Malia Kaupe, 'Āao Valley – We live on the river and our property is about ½ mile from the Kepaniwai Bridge. First of all, I want to Mahalo you (CWRM) for putting this on the agenda so there's public discussion about it. I appreciate the staff and the Hui for putting together our community meeting at the Nature Center that we hash out a lot of the details. I feel I have more questions. 1) the grant that was given for the fish ladder – what were the stipulations of the grant? We know when you receive a grant there's a lot of reporting that's needed and boxes to check-off to fulfill the needs of the grant. I'm curious to know what that was and how it worked out moving forward. 2) I think Hōkū'ao is spot on in that there needs to be more biological studies. The fact was we didn't know there were that many 'o'opu in our river; 3) The fish ladder was good intention but it may be beneficial in rivers that have fish that can't climb; as you seen with the water flowing from mauka to makai, our fish did just fine; so it's sad we're taking this step back because of something that was meant to be helpful for them.

So now, I don't know if there were biological studies that was done in that river prior to the fish ladder so we don't have a gage to see how big of a change that was with the amount of dead species. It was hard to see the photos and videos shared by community members and it was emotional knowing it was indigenous and endemic species of our stream, seeing it in the thousands. There were overwhelming sense of urgency of community members headed down there with their coolers, scooping them up and taking them ('o'opu) up to cooler running water. There were a lot of short-comings with this project and I think we're all aware of that and happy to hear that people realize it. I'm curious also to know why was it timed at this part of the year when it was spawning season? Given they're endemic and an indigenous species there should be a lot more recognition of the sensitivity of the river, especially a time when we're going through drought, its spawning season for the species and the plain fact we're able to "turn-off" our river, that shouldn't be the case.

We talked about the USGS stream gages and not knowing it was a low-flow period. We (the community) have a good gage on how much the flow is, so with knowing all of that and not being talked to prior to this getting implemented, was gut wrenching; knowing it was happening in our backyard and we didn't have an opportunity to say our piece. I'm disappointed it was Wailuku River that was chosen as a pilot project with no research done prior to. Moving forward, is there going to be any studies done to know how detrimental this project was if there's going to be water quality testing or recount of stream diversity. I would like to see the basis of what we need to start doing for how long it takes to get back to that. It didn't take long once we got the IIFS set to have that many species, but I'm worried that there were many large adults, it would take time to get those populations back.

Is there any way we can hear or get information about the grant and what those needs were to receive it? There were many unknowns and first times, and we didn't know anything except for what happened and now, we have lots of good ideas moving forward.

I feel that when Dean and Kaleo was first explaining the whole situation, it seemed as if you folks were not in the talks of this project. Did you all sit at the table and talk about this and give the okay or was it a staff meeting project?

Chair Case – the quick answer is that the Commission used the submittals from the staff and did do a site visit in August before the project was implemented; then it came back to the Commission in September for approval.

Ms. Kaupe – I guess it was a learning thing and we're trying to make a community connection but a lot of it gets passed on when we're making suggestions were we have to take it to the Commission and always this passing of responsibilities; for us as a community we're unsure who ultimately makes those decisions and want to make sure there's communication directly with you guys.

Chair Case – that's why we have public testimony at Commission meetings so we can get input in addition to what staff has.

Ms. Kaupe – I think anytime there's a project there be a meeting that the Commission comes to also (attend), not just the staff, that would be my suggestion, thank you.

RECESS: 12:30 PM

RESUME: 1:08 PM

C. ACTION ITEMS

2. Request to Address the Waste Complaint Filed by Ka Malu O Kahalawai and West Maui Preservation Association Against Maui Land and Pineapple Company Alleging Water Diverted from Honokōhau Stream Overflows the Honokōhau Ditch, Pursuant to Hawai'i Revised Statutes §174C-13, and to Amend the Interim Instream Flow Standards for the Surface Water Hydrologic Units of Honolulu (6013) and Honokōhau (6014), West Maui

PRESENTATION GIVEN BY: Dr. Ayrton Strauch, Hydrologist
M. Kaleo Manuel, Deputy Director

Deputy Manuel – commented that staff is recommending deferral of recommendations relating to setting IIFS in Honokōhau - Honolulu Hydrologic Units and only focusing on the waste complaint recommendations and waste complaint received by Ka Malu O Kahalawai, staff analysis of the complaint, and recommended actions staff is recommending, in terms of system improvements, intakes, gaging and monitoring that would help address the complaint.

Dr. Strauch – thanked those who worked along in the field on the project such as Maui County, Department of Water Supply, Maui Land & Pine (MLP) and all the community groups who've been very helpful in working collaboratively towards a solution that addresses both the need for IIFS and the formal waste complaint.

(gave a power point presentation which highlighted the timeline of the complaint and the fieldwork that CWRM staff has done to address complaint) – The complaint is focused on water being diverted from Honokōhau Stream through the Honolua ditch in the two hydrologic units. Water is diverted in excess of actual needs and the instream uses are being affected. On April 23, 2019 a formal complaint was received. From May to September 2019, numerous discussions were held between CWRM staff, MLP, community group, and Ka'anapali Land; site visits were also conducted to gather more information and install more monitoring in the system. In July 2019 a monitoring gage was installed at Mahinahina which is important as the (Maui) County treatment facility is located at Mahinahina; just pass the Honokōwai gulch, basically where the Honolua ditch stops operating in a tunnel. There's a monitoring station that's been re-established at Mahinahina; essentially this is the point in the system where MLP does not control the land, therefore does not control the ditch. We want to know how much water is exiting the system at that point, which is not being used and considered “waste”, so it's really important to monitor that point.

Due to the August and September 2018 Hurricanes and other severe storms in 2019, there were heavy debris build-up and damage to the ditch itself; the ability to release water back into the valley was compromised by the floods temporarily. The control gate that regulates the amount of water that goes into the ditch has been non-functional for some time.

From 2005-2016 MLP began releasing about 1.2mgd at Aotaki Weir or the main intake, which provides a wetted path for the valley residents.

DWS Maui operates the Mahinahina treatment supply and (DWS) is the single largest user of non-potable water from Honokōhau ditch. The treatment facility's max capacity is 2.5mgd, the last few years there average +/- flow delivered to them is 1.7mgd.

DISCUSSION

Commissioner Hannahs – is this a case where this company who's managed this system now can't support this kind of operation, so we're left with infrastructure and duties to fulfill allocations without bodies on site to help support?

Dr. Strauch – I'm not going to speak of MLP capabilities but will say they've been struggling just as much with the issue as we have on the flip side with understanding the issue.

Commissioner Beamer – the ditch we're looking at, is that post diversion?

Dr. Strauch – the Honolua tunnel is running left to right (from underground), and this is an access point to the tunnel and the other side of the concrete is the ditch; this is a way to release water from the ditch back into the valley.

Chair Case – what is the difference between wetted path and connectivity?

Dr. Strauch – In this situation, water released through Aotaki Gate does not support connectivity because if you were an ‘o‘opu in the stream, you can’t get “over” the concrete.

Chair Case – not through the tunnel?

Dr. Strauch – no because at the bottom is high pressure; but during some flood events water does over top the dam and as shown in previous surveys, restoration in combination with flood events, provides sufficient water downstream for recruitment to occur upstream. Before damage to the infrastructure, water was still released down the stream; but because of the damage, it’s stuck in place.

Commissioner Buck – the water that’s not being used, where does it go?

Dr. Strauch – it ends up either in Honokōwai Gulch or the ditch as it passes through parts of state-owned land which is in disrepair and in some areas, like Hahakea or Wahikuli, it’s flowing into the gulches.

Commissioner Beamer – are the flows peaking at night?

Dr. Strauch – just the last few days we had a lot of rain. For Mahinahina it takes about 6 to 10 hours for water from the stream to make it to Mahinahina. From the USGS gage on Honokōhau, you can see it peaked just before midnight.

Chair Case – how far is that?

Dr. Strauch – Eight miles.

Commissioner Meyer – with the diversion works, there’s a massive cleanout gate that’s not Aotaki which is not operable; if that is in operation, that presumably would somewhat help the waste situation.

Dr. Strauch – our recommendation, step one at this stream is formal abandonment of the stream diversion works at Honolua and removal of any debris that ended up downstream, within a few thousand feet of the intake.

Chair Case – does it change any flows?

Dr. Strauch – no, it’s gone now; for Honolua Stream.

Commissioner Beamer – the Aotaki Weir, what diversion number is that?

Dr. Strauch – 770, the main intake it supplies most of the water.

Commissioner Buck – approximately, how much mgd will be put back into the stream?

Dr. Strauch – their total end use even with system losses, is probably no more than 5 or 6 mgd; last night they took upwards of 40 mgd; there's a lot more water that should be in the stream.

Commissioner Buck – is Mahinahina taking anything from Honokōhau?

Dr. Strauch – it gets water from Honokōhau ditch, but their max capacity is 2.5 mgd and average processing over the last few years has been 1.7 mgd

Commissioner Meyer – does elevation compromise the current diversion works?

Dr. Strauch – not at the moment.

Deputy Manuel – now is a good time to go through the staff recommendations; on page 26 under recommendations; under Honolulu Hydrologic Unit, the first and second bullet point, we're recommending deferral. The second bullet under implementation, that's the first recommendation. Amendment is to cross out (the word) "the" <and add>...diversion "769 at Honolulu Stream". It's a recommended action related to Honolulu Stream. We recommend the Monitoring bullet point. Under Honokōhau Hydrologic Unit, under Kaluanui Stream, we're recommend deferring the first bullet but recommending action and amendment to the second bullet under "implementation" to read ... "abandon the diversion 768 at Kaluanui Stream".

Under Honokōhau Stream, recommend deferral of first bullet point under Phase One and Two; under proposed action system modifications, number one and two is recommended for action. Moving to implementation, recommend deferral of first bullet; recommend approval of bullet point two and three <read aloud bullets two and three>; recommending deferral of bullets four and five; and staff recommends approval of bullet points six through nine <read aloud six through nine>. Under "Monitoring" staff is recommending approval; but recommending deferral on bullet items under "Enforcement, Evaluation and related to the Formal Complaint" language because we feel that the recommended action items address portions of the formal complaint related to Honolulu and Honokōhau.

QUESTIONS

Commissioner Beamer – thank you for the presentation and the deferrals; are we deferring the waste complaint as well?

Deputy Manuel –under the formal waste complaint, there's three bullet points that relate to the IIFS, and we're deferring IIFS matters. Our recommendations in the staff approval are addressing the waste complaint issues in making system improvements to avoid waste.

Commissioner Hannahs – so they can take what they need?

Deputy Manuel – no, the recommendation for approval is specific to the diversion works that we issue and regulate, and we're recommending the Commission to make improvements to the diversion works to manage water within the system. We're not

establishing IIFS or anything of that nature and we're not allocating water off-stream. We're focusing on the improvements to the SDWP

Commissioner Hannahs – so when improvements are made, we'll consider addressing the IIFS.

Deputy Manuel – establishment of the IIFS will be addressed at a later CWRM meeting, and at this time to address the waste complaint and be sure there is water in the stream and it's not being taken out and being wasted, these are the recommendations of staff to deal with that via system modifications.

Commissioner Buck – can you give a roadmap and timeline of when we will come back and talk about IIFS?

Deputy Manuel – one of the hydrologic units that's not in this submittal is Honokōwai, which was part of this regional assessment; as part of the outreach and data collection, we received additional information and that's why it's not presented here and we're looking at moving forward on Honokōwai, within three to six months. At that time, we are in legislative session so any off-island CWRM meeting is challenging, so the earliest if we wanted to take action on island which is appropriate, is April.

Commissioner Beamer – will staff be meeting with the communities and other parties involved?

Deputy Manuel – working with Ayrton (with the stream flow team) as well as Rebecca to coordinate with all parties that are affected in this region and those streams Honokōwai, Honolua and Honokōhau, and moving forward coming up with recommendations for the commissioners on future instream flows. Additional data is coming in daily and want to make sure we do our due diligence and analysis in proposing a recommended IIFS.

Commissioner Meyer – thank you very much; I think your recommendations and approach is clear. I have a question regarding the modifications to 770 to replace the damage intake and make it remotely operated.

Dr. Strauch – we don't want to force one type of solution; I know MLP is working with consultants to address the situation with the right possibilities of what will last long-term and is practicable; they're working on specifics of the actual design and are working on it already.

Commissioner Katayama – modification of 770 will provide remote control to ensure water is kept in the stream, correct?

Dr. Strauch – so that only the amount of water needed is removed from the stream.

Commissioner Meyer – one condition I think should be placed immediately is to fix the clean-out gate and clean the basin so that it could operate effectively and provide clean water.

Dr. Strauch – yes, we are also in a situation like Wailuku Stream where these recent flood events have mobilized material upstream via landslides at unprecedented levels. There's an amount of material moving down stream that has never been dealt with before; I don't see them removing material unless there's a dedicated crew going up weekly, especially now that we're moving into the wet season.

Commissioner Beamer – if the Commission does move forward with these recommendations, I see for instance on some timelines it says the Commission to take action within 120 days, it appears from the presentation that the system has not been actively managed from 2004, I want your assessment on the likelihood of these changes being accomplished?

Dr. Strauch – it's only about a year it has been very hands-off, they had a manager in September of last year. In 2004-05, a lot of changes have been happening. The decision was made to stop the diversion of water at Honolua and Kaluanui streams. Those diversion works were basically left to fall apart without saying that they stopped using it. Part of the recommendation is to remove whatever infrastructure that is still in place to clean up the stream as much as possible and diversions. MLP can speak to their present day operation, I know they've worked with other contractors that know the system, but on an as need basis.

Commissioner Hannahs – water from the gulch, is there a capture benefit from there?

Dr. Strauch – at the moment, it's below the kuleana users in the gulch unless they put in temporary piping to get it up stream.

Commissioner Anderson – when we were there and saw limited flows into the ditch and with the diversion, is there going to be connectivity or a problem for the aquatic species?

Dr. Strauch – at the moment connectivity is of less concern because there's a bypass channel and the stability is yet to be determined.

Commissioner Anderson – we need to make sure that happens, and figure how to quickly maintain that region of water especially with periods of low-flow and water stopping from going downstream.

Dr. Strauch – even in the dry, low-flow periods there is about 10-11 mgd; it's the hope that they're only taking what they need, and there's still water in the stream.

Deputy Manuel – within the recommended action of the submittal for the SDWP, as part of the review process we can work with them to see what potential improvements would be made to that diversion to help ensure fish passage. Having heard some of the matters with infrastructure issues, this is something that will have to come before the Commission for action.

Commissioner Beamer – to build off that, knowing that we can move on this recommendation and for future submittal discussions on connectivity would be really important for the Commission, knowing that the public trust principles and conditions guide us to protect water; we want to see more connectivity if we can, Mahalo.

Commissioner Meyer – with respect to the siphon in Honokahua, is there any thought to determine size of piping or infrastructure?

Dr. Strauch – based on a similarly aged infrastructure on Kaua‘i, slip-lining the siphon may be the best solution. The original size I believe is thirty inches and clearly they don’t need a thirty inch size siphon. Slip-lining with an 18 inch pipeline might be the best solution.

PUBLIC TESTIMONY

Yvonne Izu, Council for Maui Land & Pine (MLP) and Tim Esaki, Chief Financial Officer, MLP

MLP has no objections to the staff recommendations and as Ayron pointed out, we already started working on most of the fixes to the gates. We’re here to answer any questions you may have

Commissioner Buck – I want to commend MLP with their partnership program to preserve their mauka forests and including the watershed, thank you for that. We’ve been learning a lot of the economics of the water systems and demands it takes to maintain a delivery system, can you talk about current economics of what you charge or receive from any of the public trust water you’re using now?

Mr. Esaki – I’m not prepared for that kind of detail, but we can provide that information to staff.

Commissioner Buck – the resources it takes to convert a hundred-year old water system is something to be managed without using the water you have now; and these are public trust waters you’re utilizing, this commissioner would appreciate some level of determining what you are charging for your use and who’s receiving water? That helps us determine sustainability for the water delivery system now, and in the future.

Ms. Izu – as Tim said, we can provide that information and note that Kapalua Water Company (KWC) is regulated by the Hawai‘i PUC, so a lot of the water that is used by MLP is for KWC. There are other uses that MLP provides water to, not through the water company, but its own entity.

Commissioner Katayama – the complaint is based on the lack of control of the water that’s diverted to your system and seems like the primary fix for that is the upgrade and improvement of 770 diversion, yet timeline and weather makes it not an ideal time to do it now, so whether you touch it today or a year from now, it’s not going to affect the diversion of the water or control of the water issue existing. Is the nature of the timing based on weather or engineering?

Ms. Izu – MLP did not come up with the timeline, it was from CWRM staff. We are not opposed to the timeline. As far as the abandonment permits and fixes to 770, my take on this is the permits will be done mostly by someone like me, whereas the actual fixes are

done by engineers. I don't see a conflict if we do the abandonment permits at the same time the fixes are done to 770, one should not delay the other.

Commissioner Katayama – the CWRM staff is asking to remove some of the material

Mr. Esaki – you may be referring to the abandonment of Honolua and those can happen simultaneously; we are working with (CWRM) staff to address the first issue, which we all agree is the priority, which is to somehow automate the gate.

Commissioner Katayama – is that 180 day start a reasonable prioritization addressing the complaint?

Mr. Esaki – I can't say off-hand as we just got these now, I will discuss this with our engineers and inform them time is of the essence and see if they can meet the 180 days.

Ms. Izu – I want to add and repeat that MLP has already engaged engineers to look at how to do an automated gate, so as Tim pointed out, maybe it's just lighting a fire under them regarding 180-day timeline from CWRM.

Commissioner Beamer – who are the users of the water right now?

Mr. Esaki – Ayron provided a slide; there's a number of different customers within Kapalua Resort as well as the County and some farmers and residents.

Commissioner Beamer – and you're (MLP) not using all the water that's being diverted now?

Mr. Esaki – yes

Commissioner Beamer – for future sake, we do understand that water is part of the public trust and can't be "owned" by any entity and the story connected in the stream is super important and one of the mandates of this Commission. With these recommendations you can accomplish the abandonments of these diversions and fixes and the issue of an operator; are you folks going to hire anyone?

Mr. Esaki – the manager that Ayron was referring to was Steven Nakaido whom passed away suddenly, there was a lot of institutional knowledge that he had and we have consultants that's going through that door as we speak.

Chair Case - *<disclosed that cousin Steve Case is a majority owner of MLP and Chair Case receives no economic benefit from that; MLP has also setup a conservation easement with the Nature Conservancy to protect 8,000 acres at Pu'u Kukui and has invested their own monies on watershed management matched by state funds and is continuing the very important investment in watershed management>*

Commissioner Meyer – with urgency on implementation conditions and consistency, we can move those that are 120 days to 180 days, will that be acceptable with intent to move forward and will it be acceptable to staff?

Mr. Esaki – fair enough

Dr. Strauch – the deadlines are for the application for two (2) diversion works permit; it still has to be approved by Commission and it's a two-year window once granted approval. We put a stipulation that once the approvals process occurs, the construction commences in 120 days after that; there's no deadline for completing it other than the two-year permit deadline.

Commissioner Hannahs – your work with Pu'u Kukui is extraordinary and makes you think of the water forecast (recharge) and with the rains will be critical. One thing you may want to think of is how does this community work? MLP does not have the system it once had and scope of the landscape; but you're a big and leading player. How do you start to work with this community with regards to how long the balance will sway? If you're not going to respond to that now you need to know this is a new era of agriculture and the economy and have some balanced use of resource and learning from it and stimulate your thinking on this too; you can react to us but at the end of the day may not get it right. You can be a part of the community and sit down with others, which is really vital, and a shared commitment to this and update the infrastructure and keep it operable. I commend what you're doing and encourage you to do more, thank you.

Commissioner Katayama – my other point is showing the right priorities throughout the community, something that's passive versus something active.

Ms. Izu – I hear what you're saying and understand that any other work should not be a big expense in delaying with fixing of the gate, it's a priority and I think it is; with the engineers. They already got the insurance proceeds to begin some of the work.

Commissioner Beamer – I appreciate that comment by Commissioner Katayama, there is a real sense of urgency especially we agree that part of the water is not being used and wasted. We should be able to mitigate and remediate a reasonable beneficial use along with public trust principles and purposes; we can move on the timeline and the comfort to take action on conditions to restore stream flow and move quickly and to work with the community truthfully.

Commissioner Anderson – if you can make adjustments in a timely way that manually operate the gate, would probably be better with hands on, people there and checking things and not second guessing and getting it going right away your comments would be helpful on that.

Mr. Esaki – I believe the automation recommendation by the staff is based on the fact the gate is in a remote area and not easily accessible. To manually go up and adjust the gate is very time consuming and rigorous process. Ultimately, the goal would be to remotely adjust the gate.

Ms. Izu – my understanding is at present, they're fixing the gate to what it was before so that there's some control; but because it's a manual control unit, it's hard to get there; you set the controls at a certain place. Once that "old-fashioned" control gate is fixed, we'll see some improvement on the (water) waste. You can't control it as timely as you would like to, so

they're looking at what would be the higher needs for the diverted water; and secondly won't have users complaining they don't have water. When they put in the remote gate, it will be more timely.

Commissioner Anderson – going in and checking the intake and looking at other things to be sure there working properly, has some value in going in regularly to do that. If you're comfortable with having this provision be automatically operated, then leaving it that way, but to make adjustments in a timely manner.

Commissioner Meyer – regarding IIFS being 8.6 mgd, will that be adequate in your estimation to provide for other uses

Chair Case – we're not talking on IIFS, all IIFS is deferred.

PUBLIC TESTIMONY CONT'D

Lance Collins/Linda Nai, Attorneys for Ka Malu O Kahalawai & West Maui Preservation Association – I would like to request since we have members of our organization here, if they can come up and give their testimony first and we can answer any questions you may have.

Chair Case – (announced will take public testimony from Ka Malu O Kahalawai & WMPA

Kekai Keahi (Ka Malu O Kahalawai) – we filed a complaint in April of 2018, but when I was a kid water was already being wasted; I'm 47 years old. I remember at Hanaka'o'o Beach and they dumping water into Hahakea (stream) and prior to that was coming into Crater Village, which was taken to Commission. It did not happen two years ago; it was because of the storm and has been happening since I was a kid. It's ironic that you're praising Maui Land for the watershed when the fact is, they deforested the area and pulled out the water from the valleys and at the same time we're praising them for damages they had done.

As far as Aotaki goes (not sure if you been there), it's a hike. With Aotaki gate, that's what puts water back in the river past the diversion. You can crack the gate on the bottom, water flows through. A watering event, it's blocked up. We used to call Steven and would be 1-2 weeks before he can get to the back, by then our taro patches are gone. It's not like he able to come tomorrow, he has to prepare to get up there; it's not an easy walk. If you walked back there you'll see how hard it is. It's grueling, I had to bend down for miles walking through the tunnels, it's not easy; and with one rain event Aotaki is plugged.

The volatility of Honokōhau is almost every other day, you can ask the residents. It's a long valley, almost nine (9) miles long; it's about six miles to the intake. The issue is not maintaining the intake. If we never push the issue, MLP would leave it as is, as it's been for years. It's not necessarily they're trying to do the right thing, we had to force your hand to force theirs to make improvements. It somewhat pisses me off to praise them after what they did. Look at who owns almost all the land at Honokōhau? There are over 4,000 taro patches (there) and almost all is owned by MLP, how? By de-watering the valley, moving

the people out and coming in and acquiring the land; by praising them is like pointing a finger to us.

I don't know if you have a say (Chair) when it comes down to what they put back into the stream, but maybe you should remove yourself from the vote or what decisions we're going to make because you implied that even though you don't benefit, you pushed the issue that it was such a good company. People on the West-Side, we know Maui Land and what they did. It's coming from us guys, the "real" people of West Maui and not a corporation who invented this 100-year old diversion. In the end, who's the people that suffered for 100 years? The people that's in the valley. It's like having a bank robber robbing the bank and returning the money, like you're a good person for returning the money, BS, that guy still robbed the bank.

Hanaka'o'o Beach Park is 10-12 miles away from Honokōhau and is not uncommon to see (not talking about a storm event) Hahakea Stream (which only runs during a good storm event) flood. (In the summer) it flooded so high, it damaged the Hyatt parking lot. If you touched the water, it was warm; not the cold water coming straight from the mountains, but warm water that's been in the ditch going through the pass 10-12 miles, emptying out at Hahakea. Since they shut down Crater Village, (MLP) has been dumping this water for years.

Commissioner Buck – thank you and appreciate your comments. I've lived in Hawai'i for forty plus years and I appreciate hearing from those that have gone through a much longer history of issues in Hawai'i.

Kekai Keahi – same story every valley, every place.

Commissioner Beamer – Mahalo Kekai for your testimony. You're right, I meant to say that earlier. This wouldn't have initiated if you folks haven't filed the petition earlier and we are seeing more issues like this and it's something that the Commission needs to recognize with a greater level of urgency, mahalo.

Kekai Keahi – it's not uncommon for me to get a call letting me know somethings happening (in the river), case and point when we lost all the water coming down from Kahoma. People are watching; MLP got away with it because there's no oversight or enforcement; at least we're moving.

Karen Kānekoa, Honokōhau Valley resident and member of Nā Mamo Honokōhau – As Kumu Kai said, plantation days are over yet at Honokōhau nothing changed for MLP when it comes to the water. And the fact they had to push families out of Honokōhau and not being able to farm because they've taken almost all of the water, and it continues today, which is a really big concern for us.

Why do they (MLP) need so much water when they have three wells and don't use them to their full capacity and those wells come from a different aquifer? If the water is a public trust, how come they are not required to exhaust all other options?

We recommend for the new intake design that it should be flipped; where they monitor how much they are allowed to take out and that's all that is being taken out; the rest goes back into the stream. Right now, they can shut our water off coming down to the stream and they're ensuring they're getting their water and all the extra. It's not fair they can take all that extra water when it can be put back into the stream. If it's going to be a remote operated ditch system and they're allotted 4.6 mgd, that's all that's going underneath the tunnels and pipes. If not, what's the point in making an IIFS, it doesn't make sense.

It seems very mismanaged and needs more oversight. They need to get community involved; I live there and haven't talked or saw anyone from MLP, that's concerning. There needs to be more consequences and be held accountable because it directly affects us instream users and we're just as important as the off-stream users, so that's why I'm here today, mahalo.

Mr. Keaumoku Kapu, Kaua'ula Resident – My (taro) patches been dry for four months. When the IIFS was set for the first four valleys, there's been a drastic change of what's happening versus what's going into the surface, down the river and what's going into the beach. I've listened to the last testifier, Karen; apparently its' the ditch we're talking about and what they're allowed to take from it. How come the Commission can't say put all the water back in the river and all you folks have to re-apply for the water, so you can get the exact percentage amount of water each user can claim rightfully. It's unfair that MLP has the right to draw 100% of the water from the river; they want the ditch they can have it.

There are times when the water is shut-off and homes are restricted. How long have me and my 'ohana struggled with the politics of the PUC. The PUC versus the inability of the CWRM that can only address surface water, where, as our 'ohana, because of the changes within our kuleana, have been subject to a ditch or a pipe to get our water.

Chair Case – what stream?

Mr. Kapu – Kaua'ula Stream; I'm going to lump sum this and get possible resolutions on how we can fix the problem because the community is always ousted when it comes to of how your guys foresee where we fit into the equation as kuleana land owners.

With the changes of the kuleana, I've been subject over the years as to who I need to go through with my complaints. You can only address surface and ground water but if I'm not getting the resources from them, I'm getting it from a ditch; who I got to see? Bottom line is who do we go to address our concerns? Kuleana is very different because it's supposed to be protected under the Mahoe state constitution law under section 7, along with the right to access with the purpose of my gathering rights (especially when it comes to water); HRS 7-1.

West-side has no management area; different from the East-side - Nā Wai 'Ehā has one. Our lives have been dictated and determined by a PUC or private sectors. All the valleys are privately controlled; every time I run out of water, who do I call, the PUC which they say to take my complaints to you (CWRM) because you have set the IIFS. Because they are forced to put the 1.8 mgd back in the river, my problem is not theirs, but yours; and that's why I'm here.

As this Commission continues to go west to implementing the IIFS for the remaining valleys of West Maui, I ask this Commission: what is the possibility of forming the formation of a water management committee made up of kuleana? How did they establish a water management committee on the east-side where the state has some jurisdiction? We don't have the same privy because all these valleys are controlled privately. So where do we fit in where I know my rights are being protected by the Hawai'i State Constitution and your fiduciary duty to protect that right for me, so I can live my life as a kuleana knowing that the health, welfare of my 'ohana; and I stress this because I get sixteen (16) grandchildren and sometimes some can't bathe, all because of how the system is managed – so I come to you, how are you going to help me to make sure my life will be healthy in that valley.

I ask again, what is the possibility of forming a water management committee made up of kuleana, as well as the community and other stakeholders? Having an advisory setup, you (CWRM) can get updated information of the health and welfare of the water and kanaka that depend on the resources; or every time you come to Maui, you'll have a line of people coming to testify, griping and troubling about how come life is unfair that we have to come in front of a body and don't know if that body can help our situation.

I mahalo you for your time; is there an application I need to fill-out or a complaint to get the ball rolling in the right direction? Up in my valley there's seven (7) kuleana land owners. Kahoma and Kanaha there's more. Every valley you implement IIFS, there's no oversight, enforcement or monitoring; with the kuleana that live there, at least you can get some information of what's happening. Mahalo for allowing me this opportunity to speak.

Commissioner Beamer – to give you some context and the difference between Nā Wai 'Ehā and the process; right now, Nā Wai 'Ehā is the only surface water management area (WMA) this Commission has designated. My understanding is that they have legal representation and filed a petition to the Commission for a surface WMA. That's a big difference between the interaction of this Commission and West Maui. The other issue is that often times, kuleana land owners that had kalo to be cultivated at time of the Māhele, in that process had priority rights to water or appurtenant rights. In Nā Wai 'Ehā, the Commission is having to distinguish/determine who has appurtenant rights, which also gets allocations to water. It isn't a perfect system and to be truthful, this is the first appurtenant rights that has been addressed by the Commission, we only been given this since 2010. Those are some of the differences and distinctions.

Mr. Kapu – what will be the triggers to change that dynamic of the possibility of forming an advisory body on this side, knowing that the state doesn't have a WMA, but the state still has jurisdiction of surface water?

Commissioner Beamer – yes, it does. It does have jurisdiction over water in the stream, but in surface WMA there's higher level of management and hands-on. In this process, as Kaleo is meeting with stakeholders regarding IIFS, he can have this conversation with your side as well.

Mr. Kapu – I just feel that we can help in this situation. We've been taking notes and preparing ourselves for when you folks show up but, it feels like I'm not getting anywhere on how this can work for me, because the lack of oversight and enforcement on this side. We bring in different dynamics, with Nā Wai 'Ehā they have a case because they're part of a WMA. I'm trying to figure out our kuleana within the fabric of justifying our cause, if this is not the body that I can bring it forward, where is that? Do I have to go through civic clubs so they can enact some kind of resolution so we can change laws on legislation? There has to be a simpler way to address the issue for the kuleana that is on-going and suffering on the west-side; mahalo.

Commissioner Hannahs – Mahalo Keaumoku for being here today, your testimony and being vigilant; you're always here. Mahalo for what you're trying to do for your 'ohana and this community and the resources. I understand your frustration and the fight you are doing. I don't think you need the government to form an advisory committee for you, your hui. I sense you have the leadership ability and your collective voice will and matter even more; look at the examples of organizations like Nā Wai 'Ehā and others. You're right, the plantation era is gone and we need a new era. The opportunity is there to all work together.

Mr. Kapu – Mahalo for your encouragement. We tried every different angle especially with the 'Aha Moku council system that was setup, and that's a different animal because with that dynamics, you have to include the whole community and there's some things that are not meant for the general community like kuleana rights. Mahalo for the encouragement and I will look into it to form a kuleana management within the families that exists in the valley and see if we can spin the wheels in the right direction.

Mr. Anthony Loy – it's bad that the diversions are losing water. I'm confused that we had to point that out and our remedy is giving more time to figure it out. This is years of waste and not an accident. This condition created that culture. Even today, we have Wailuku Water Company that is proud to tell CWRM that they release water.

I whole-hearted support staff recommendations and the diversions and what the diversion look like should be part of the community and how we can work together, it can't be a take all system that we're used to and worrying if the gate is open and how much degrees it is. If we can avoid that as much as possible, by only allowing to take what's needed, would help remedy complaints like this. We take water very seriously, and those that have the very least, take it (matter) most seriously, not the people who have the millions of dollars and taking it from our valley; and I don't think these issues would happen if our valleys still had all those people in it. When the diversions was put in, it was a take all system and all those people below had to move away and then they had taro gates; there's a few families still trying to hold out and do what is needed to do.

As for future use, who is telling you we need to compare our future use to what it currently looks like? Why is it a status quo that we need to move forward, that's not going to take us into the next century. Look at who was most affected or all the families that had to move away because there's no water (in the taro patches).

We need the government to speak to us; our water deserves that justice since the early 1900s, when all of that was taken out, and our communities still hasn't recovered, mahalo.

Ms. Katie, Honokohau Valley Resident – I'm not Hawaiian and don't claim to be, I'm from Texas. My parents dropped me off at a country club in the summer; I never went without water and a/c. I married a Hawaiian guy that I met at a gas station and now we live off-grid, it's a shock. Growing up we had water and my parents told me turn off the water while brushing your teeth, not because we worried about running out, but because it's the right thing to do.

We have a company who's acting similar to other government entities. When you get this much (water) and you don't use it, you lose it; so we're going to use it anyway we can; whether it's dumping it in the ditch we got to do it because we'd lose it. When I see a new road put in, I'm asking why is there a new road? It's for the budget or we'll lose it next year. I'm shaking being on the other side of this. There's six (6) children sleeping in those rooms now that all live in Honokohau Valley, those are just the pre-schoolers and I live out there and they don't have a water meter, well let's get one. I called and they said it's \$20,000; okay what's the process? I found they're not issuing them. They're putting in a new pipe, but no meters. There were six (6) trucks in front of my house and the next day someone from the water company came by and said to stop making phone calls.

This is a serious issue. I don't waste water because I'm a conservationist, it's because we have to go to town and fill-up giant barrels with a water hose and drive it back home, then my husband takes a hose and puts it in another barrel with a pump that's connected to a battery. I can't spend a night at my house alone, and I've lived there for eight (8) years; because I don't know how to work that system if it breaks.

Everything about MLP taking this water, the Water Department, KWC, whoever; I don't come from a third-world country; I know this isn't the normal. My husband's been there for ten (10) generations as far back as they can go, they're used to it, I am not. Maybe it takes you guys hearing from an outsider to hear what's really going on instead of the same six (6) people who sit here all day; we got here at 8:30 am and we're just getting to talk. I wasn't going to talk but I've been here all day. These people need to be heard, thanks.

Ms. Gretchen Asano, former resident of Honokōhau - I wanted to speak a little about what Kekai was saying because I think context is really important when we're talking about this. You received the presentation about the flooding lands of Honokōhau due to the effect of Hurricane Olivia. Prior to Olivia I was a resident of Honokōhau. My 'ohana lost our home in that flood. Our home flooded downriver and my daughter's house ended up in the ocean. The long-standing structure was hit with a sixteen (16) foot wall of water and the reason it happened because it was more water than we've ever seen in a short amount of time.

There hasn't been a formal complaint filed yet in regards to this, but it's important you know this and why it happened. There was a bridge with 5-6, six-inch black pipes, tied to the bridge that ran across Honokōhau Stream, taking water out of the Stream. In Feb-March of 2018, there was a flood and that bridge collapsed on top of the river and made a dam. It sat there across the river and all the Water Department and the Hui Watershed guys seeing this across the river for over six (6) months. When the hurricane came, the

water built up and that bridge swung open and that's when the wall of water came down. If my 'ohana had been home, we would've lost keiki and people in our family; luckily we weren't home. Every other family in the valley was home when that happened. You're talking about giving MLP credit, it's important to know that after the flood happened and people's homes been destroyed in there, we didn't see a single person from MLP or the Hui Watershed; they did not come to the valley. There was a massive mobilization of our community that came every day for a month, and we didn't see anyone from MLP. Nobody came up to our house that was totally destroyed.

The context is really important. There is an agreement (I don't know the details) between MLP and the DWS that utilized that bridge and those types; it's not the resident kuleana to take care of that situation but we were the ones that suffered and we didn't receive any help from MLP as a result of that; so I think it's important you know that moving forward and giving all this time to make fixes. There's been an extreme negligence on behalf of this company. Unfortunately, I'm sad to say they own the majority of the land in Honokōhau Valley. Why is there an extreme negligence from a major land owner and such a disconnect between the land owner and people who live at Honokōhau, I don't know. You're encouraging them to talk to our community and there's plenty of opportunity for that to happen. We appreciate the Hui Watershed and their restoration projects; we have a good relationship with them; but there was a very obvious ploy after the flood and we didn't see anybody, thank you for your time.

Ms. Lani Arcagad, Wailuku Resident – The same watershed that feeds us, feeds this side to. I wanted to testify regarding my reaction to the staff's recommendation regarding this waste complaint. This really hasn't inspired confidence that the waste complaint filed against Wailuku Water Company would be taken seriously and enforced appropriately. I think asking the system owner to maintain and upgrade their system to work properly is their burden, and to raise their standards and expectations, that's their burden because that's what they should be doing already.

For the past 150 years, this community, watershed and the people who live along these rivers have watched the abuse of our rivers being diverted and our lifestyles altered and our health suffering as well as culturally and environmentally, and we are ready to recover and had enough. The first step in recovery is to acknowledge the fact the abuse is occurring. If the abuser does not acknowledge the fact of the abuse, you cannot expect the behavior to change. There needs to be a plan of action to make it better and make it right, I have yet to see it happen.

We've lodged several complaints on IIFS and waste and not one of them has been handled in a timely and appropriate way or enforced.

Last week, I appreciate Kaleo and Dean guys that came up and talked with the Wailuku community about the fish ladder and we also had a waste complaint to. The Wailuku and 'Īao community asked: what does it take to enforce the law? We're given a bureaucratic answer; that it takes evidence, data and time. In the same conversation we asked if WWC file a complaint about what we're doing in the river? The answer was "yes, informally". But they had already received the consideration of the Attorney General; and so, felt that our

voices don't matter as much as these corporations, not in practice. You can say that they do and there's a fair process, but in practice it's not fair and needs to be better and made right.

If these corporations who have profited and benefitted from our suffering at the hand of their abuse and not hold themselves accountable, we need you to do more to do it for them, mahalo.

Ms. Karen Kanekoa, Secretary of West Maui Preservation Assn., Honokōhau Valley Resident – MLP needs less than 4.6 mgd; I was home last night when the water came up, it was about 11:15 pm when I heard the river. They got 40 mgd, it blows my mind. You are the body that protects this public trust and it should be concerning; thank you.

Mr. Kapali Keahi, Lahaina Resident – MLP does not have a good track record especially with the people from the 'ohana from Honokōhau. As far as I can remember, there was an agreement with the taro raising families of Honokōhau and MLP; trying to find some balance so they can continue to farm taro in that place the way it always has been for generations. MLP agreed to release 9 mgd in the valley which never did materialize. MLP went as far as to send a representative to talk with families to try and convince them to farm "dry land" taro because no water was needed for that. I have no reason to lie about it, our families have been dealing with it for a long time. It's part of the generational trauma and enduring that kind of pressure, sent everybody outside of the valley; and contending with outside of their normal means trying to put food on their table.

I wish the Commission could do more and provide adequate measures in seeing that these traditional type of (kalo) farming is accommodated because that is our economy and not the plantations economy. We are still burdened by the plantation even though we don't have sugar or pineapple, they are Mahi Pono. This is still a foreign entity because we depend on them but didn't need to if the Commission could accommodate water being released in the valleys, our people returning home to farm their food. They control the land and the water but really, it's of no control. Our ancestors properly managed our resources and no plantations can rival the 'ahupua'a land management systems we had in place for centuries.

I have keiki and I want to make our place a better place for them to live. Talking and chanting Hawaiian is no good if we can't live here anymore. I think Honokōhau has a huge dormant potential for our people to take care ourselves. Whatever you need to do, hopefully it positively effects our children, mahalo.

Ms. Bianca Isaki, Lance Collins, and Linda Nae for Ka Malu O Kahalawai and West Maui Preservation Association

We support staff recommendation on deferral and approval and want to pick up on Kapali's point on MLP's track record. There's a three (3) decade history in time since this Ka Malu 2019 complaint, and a list of concerns compliant similar to those that Commissioner Beamer advocated whether MLP will make these changes happen.

In 1991, the West Maui Taro farmers Association with this Commission against MLP saying the taro farmers in Honokōhau Valley were having difficulty farming citing the

shortage of water in Honokōhau Stream from MLP due to the dam constructed by MLP many years ago and water being released by MLP.

In 1994 another complaint filed by a taro farmer, in 1997, MLP replied to Kimo Lindsey's complaint that he couldn't farm taro and that was that proposal to restore 1 mgd through the taro gate.

Today, the 'auwai next to Wili Woods, Honokōhau Resident, next to a lo'i is running slow and has a slow drip. The 'o'opu are dying in the stream next to him. He was here early but had to go back (home).

In light of this history, the complainants are anxious for the IIFSs to come back as soon as possible and want to suggest that along with the recommendations, to stress that regular clean-up is needed, or it will push the water back into the intake and could be done prior to the construction. I want to clarify that an automated intake system is not special engineering. What was installed at Kahoma was done so apparently quickly as Commissioner Hannahs has pointed out.

Mr. Collins - what are the costs of repairing and maintaining the system? Have the staff considered that these costs are passed on to rate payers of this PUC regulated private water system and are not county rate payers. Most who are serviced by this system are wealthy, MLP isn't going to take any of these costs. There are some that live on Maui but most of the people (in the spreadsheet) are investors and visitors. Also, what is MLP's and the PUC's subsidiaries alternatives including using the wells that are not being used and the cost of that, so the Commission has all of the costs and significance of them? All the additional information may be helpful for the final conclusion of the waste complaint and IIFS; as oppose to just looking at the engineering practical costs of repairing or maintaining the system.

Ms. Nae – not sure which Commissioner brought it up, the idea this could take a long time, it could by the time MLP gets all the permits from the corps and everyone else could take a while which means the water will be continued to be wasted. I heard MLP talk about plans to fix or return the taro gate to the condition it was in, prior to Hurricane Olivia and provide a ditch rider for the interim so the taro gate can be monitored and adjusted prior to the time it's going to take for build out and do a remote system.

Bianca mentioned we do need someone to pay attention to the cleanup to periodically take place. I know Ayron said it will be a never ending task, but at this point since MLP has turned a corner in terms of its responsibility to the community and willingness to work together, that they're willing to come to the table with the valley residents, to talk about a plan on how the cleanup can occur and work cooperatively, because there's a lot of valley residents who will be willing to help with that and looking to the future, this would be a great start.

Commissioner Buck – checking to see if there are no specific changes in the recommendations that's in front of us now?

Mr. Collins - the ones that are not being deferred; we support the full restoration of Honolua and Kaluanui Stream and upgrade to 770

Commissioner Buck – we’re not here as much, but MLP is right there and I think they heard a lot and I encourage you to start that interaction. Any request for us for them to work better with you is one thing but I encourage the face to face with them.

Commissioner Anderson – I also support that recommendation because we need action to clear out the debris that’s blocking the intake there

Ms. Isaki – it’s something we want to put on record that would be a good faith kind of thing. As Commissioner Buck said we should repair it again until MLP decides.

Commissioner Beamer – the addition was to repair the taro gate?

Ms. Isaki – I just want to point out there’s a history of non-compliance and doing a regular cleanup is important, and just putting it out there but not necessarily amend the staff recommendation and perhaps offer MLP’s leadership too.

Commissioner Beamer – I wonder how hard will that be to have that as a recommendation to restore the taro gate?

Mr. Lopaka Wilson, Honokōhau Valley Resident (w/toddler son ‘Eha Wilson) – This is my son, who is the great-grandson of ‘Aimoku Pali, who filed a complaint in 1991; he passed away last year. This is who the water is for, these keiki around here. We are here and not going anywhere, we’re still in the valley. My son told me earlier, “tell them give back the water”.

Lucienne deNae, East Maui Resident – I’ve hiked a lot at Honokōhau over the years, I’m a Sierra Club hike leader since ‘95; and we’ve lost our privileges there because I testified at a County Council hearing that they should give back more water. At that time 28 million gallons a day was being diverted on an average from Honokōhau Valley and the taro gate gave back 1.5 mgd every day. We’ve hiked and heard the plights of the families there, including ‘Aimoku who’s a wonderful man and full of Aloha. When came the opportunity to speak of the conditions we’ve seen at the stream, we spoke out.

It’s a tragedy; people there have no public water supply, the County needs to truck in a tank there; meanwhile the stream is being bled dry and people are left to fend for themselves. This is a matter of justice. There has been waste for a long time, the system is busted up.

Pioneer Mill went out of business in ‘98-‘99 and they’ve used most of the water from Honokōhau; wasn’t MLP that used it, the golf course uses it. The real irony is that Kapalua Land Company, which is no longer owned by Maui Land and Pine, which is a PUC regulated system, has three (3) good wells, that barely use the capacity of one well; and here just a few miles away, their neighbors have no clean water supply.

So often is the case on Maui; many of you probably live at Honolulu and you don’t realize how much of Maui has no public water supply. The people in Waihe‘e have no

water supply. Even though their aquifers are tapped, the city water of South Maui it's really not their system at this point. Even adding a water management area for the surface water like we do at Nā Wai 'Ehā, this is something I personally worked hard on with the Tavares administration, the Hui, Maui Tomorrow and other organizations; and everyone was on the same page and the water designation was setup in one (1) year from start to finish because everyone supported it to have a Surface Water Management Area, the first and only in the State, for Nā Wai 'Ehā. We don't have that for East Maui, we have no management, we have no aquifers designated, it's a free for all as in West Maui.

Even if it's more work for the Commission, maybe they should consider creating SWMA in other places and have a handle on some of the big diverters so justice can be restored. Thank you for your recommendation, and I, like everybody else, would like to see things happen in a timely manner, thank you.

Mr. Michael Gropemeyer – I have delivered testimony on behalf of the Plantation Estates Lot Owners Association (PELOA). Our community is very supportive of the Commission's overall intent to restore stream flows. Specifically, we're supportive of the phase 1 IIFS and would like to see those asap however, we understand there's a lot of work to be done by MLP and be sure they have the opportunity to get it done; also with the health and welfare of everyone in the community.

Commissioner Buck – who delivers your water?

Mr. Gropemeyer – we get potable water from Kapalua Water Company and irrigation water from them.

Commissioner Buck – and what do they charge?

Mr. Gropemeyer – there's a pretty big base charge for the meter and there's tiered charges for the potable and I believe (don't quote me) \$2.20 per thousand gallons for the irrigation water; and my understanding is they're going to have a rate increase because these rates are at least ten (10) years old and they're not recovering their costs. They also put in new meter which allows us to (over the internet) detect leaks and usage and the notice should go in effect by the end of the year. It will be a big plus because if you have a leak, you'll know right away.

Commissioner Buck – is there a concern among the owners that if subsequently we increase the IIFS and put more water back in the stream, your rates will go up and you may not have the quantity of water you're used to?

Mr. Gropemeyer – we expect it to go up somewhat but don't know how much. We also expect to be using well water during periods of drought to supplement. Right now, we only use about 0.15 mgd on average which is 1% of the Q-50 flow rate. We expect that will be fine unless it's an extreme drought and expect to use well water during those periods.

Chair Case – called a recess at 3:43 pm

RECONVENE: 3:58 pm

Deputy Manuel – just to bring back MLP to answer the question that was raised prior to the recess about what are the interim measures that can be taken?

Ms. Yvonne Izu, Council for MLP – MLP has already obtained the insurance proceeds due to the flood damage. The insurance proceeds are to restore the gate to pre-flood damages and will be doing that as an interim measure and intend to pursue the automatic gate. As an interim measure, there'll be some control as the gate will be fixed to pre-flood condition. The status now is that MLP has already done the assessment of the ditch to see what the damage is and is currently working on specs to fix the gate diversion and when that is done, will go out to bid on the actual construction.

Commissioner Beamer – how hard will it be to update the system or the taro gate, to make sure it's operable and water is received

Mr. Tim Esaki – it's part of the assessment that our engineers have done; we've not seen the report yet, but that was included because it was a pre-storm issue.

Commissioner Beamer – if we amend the staff submission to make it more clear, the restoration of the taro gate to make it operable, you guys will take care of that?

Mr. Tim Esaki – yes

Chair Case – to clarify, and thank you for those amendments; for time wise, you don't have to wait for this paperwork, is that correct?

Ms. Izu – yes, it's on-going

Commissioner Anderson – do you need any permits to do that work?

Mr. Esaki – not at the moment, no

Chair Case – anymore questions or comments?

Commissioner Buck – look forward next time to hearing about improvements on the outreach.

Chair Case – asked for a motion

Commissioner Beamer – I would like to amend the motion

Chair Case – your motion is to amend the submittal to reflect the changes that Kaleo (Deputy Manuel) discussed

Commissioner Beamer – yes, to reflect staff changes and make an additional amendment to page 28 and include an update to the taro gate to ensure proper functioning and water delivery in the system to pre-flood conditions

<Chair Case asked if there are any further discussion>

Commissioner Beamer – I want to thank the Maui community for their testimony and being here for a very long day; and echo the comments of the Commissioners, we know that water is a public trust, know the conditions where you identified waste, and water needs to return into the streams; and look forward to coming back and making decisions on those requirements of the Commission; and even in the midst of difficult situations in the communities, we found that groups will come together as a whole, mahalo.

MOTION: (BEAMER/ANDERSON)

To approve C-2 as amended

UNANIMOUSLY APPROVED

C. ACTION ITEMS

1. Approval of an After-the-Fact Stream Diversion Works Permit Application (SDWP.4951.6) by East Maui Irrigation Company to Remove and Abandon 29 Diversions (Category 4) on Waiokamilo and Wailuanui Streams, and Find that SDWP.4951.6 is Exempt from Hawaii Revised Statutes, Chapter 343, East Maui Irrigation System, East Maui, Hawai‘i; TMK: Various

PRESENTATION GIVEN BY: Mr. Dean Uyeno, SPAM Manager
M. Kaleo Manuel, Deputy Director

Mr. Uyeno – read the summary of request, provided background information and gave a power point presentation explaining the twenty-eight (28) ditch intake diversions at Waiokamilo Stream and one (1) at Wailuanui Stream. These streams are referred to as Kalo and Community Streams with the goal to return free flowing water with no upstream diversions to all streams, which have historically supported significant kalo cultivation. In reference to the table on page 1, those diversion that has an “alpha” at the end is considered “minor” diversions by East Maui Irrigation (EMI) Co., which captures water from springs and those with only numbers, are diversions occurring on streams.

Commissioner Buck – has all this work been done already, these are all after-the-fact?

Mr. Uyeno – yes, the work that was done previously, it was done in response to the Board of Land and Natural Resources decision/ruling. We are set to go back and do a recon of what was done back then. We haven’t visited the site since 2009, so at this point we want to go back and assess what was done previously what’s still out in the field, then make recommendations to EMI of what should be done further.

Do you (Commissioners) want me to go through all this?

Commissioner Beamer – maybe general questions first and I appreciate all the pictures. In the D&O you had provisions and we wanted to review it on a case-by-case basis. Are you asking if we approve these after-the facts? I’m expecting to see things cleaned up; I’m not

expecting to see mosquito ponds, old pipes and cement littered across the streams. I'm not going to approve something that allows that status quo.

Mr. Uyeno – to be clear, for minor diversions, the ones with the alpha at the end, tend to be off-stream. They are catchment seeps and drains along the service road. Some we may not be able to locate because they're located above the service road and a pipe had brought it down to the level of the ditch to carry water into it.

Commissioner Beamer – I see Division of Forestry and Wildlife's (DOFAW) comments, they're asking for things to be cleaned up.

Mr. Uyeno – right, and that's the primary objective for us initially going in, that's clean up as best as possible, especially with the pvc pipes out there and whatever metal pipes.

Commissioner Buck – to be clear, you're not recommending any work to be done, this is just to approve work that was done previously as well as do a recon of all the ones to get to, and see if any work needs to be done?

Mr. Uyeno – no this won't include work; that's why the permit. It's not considered after-the-fact and part of the permit we're going to do a reconnaissance with EMI. The recommendation calls for representatives from Na Moku 'Aupuni O Ko'olau; and working with EMI with recommendations on what needs to be done to clean up everything further than the diversions itself.

Commissioner Beamer – doesn't it say in the recommendation, approve after-the-fact Stream Works Permit?

Mr. Uyeno – my apology, initially that was; and when we initially drafted the submittal it was treated as after-the-fact. At this point now, we're going back to do work. We can remove that as an amendment to the recommendation. The point is to do work and further properly abandon these diversions. As an example, on page 55, number 25 (on the table), back in 2007 when BLNR ordered to put back 6 mgd, EMI's goal was to get the water in the stream as soon as possible. In this case you see the low dam wall along the "spray", they cut that pipe which was delivering water to the main ditch. In some cases, it may have put it into the ditch on the side of the service road that then carried the water to the stream, where it would be picked up in the main diversion.

It was an extremely efficient system that captured all the seeps and springs that was occurring along the service road, adjacent to the streams. The objective is to go back out, look at what's still there. In this case there's still a pipe that's running about 10-feet below the wall, and make sure it's removed.

Commissioner Beamer – would you be removing or cutting the pipe back?

Mr. Uyeno – as best as possible. In some instances when we went back in 2008-09, back then, it was difficult to locate some of these because they're so small. It might just be a little concrete berm that's constructed around a seep coming out of the ground. A lot of these are very small diversions that we want to go back and clean it up as best possible.

Commissioner Anderson – so your standard is to remove the pipes and any other obstruction associated with the diversions?

Mr. Uyeno – correct

Commissioner Anderson – and your goal is to find remaining obstructions to restore flow and get rid of the pipes and everything else obstructing the stream?

Mr. Uyeno – some concrete work will need to be done; it's been years since I've been out there and we will be looking at every diversion.

Commissioner Hannahs – on page 55, not only the pipe but you may determine that the concrete wall may be removed as well?

Mr. Uyeno – yes

Commissioner Hannahs – and if that's not made, you'll make those decisions and determine with EMI as well as Na Moku. On page 81-82, recommendation from Sierra Club, (referring to the picture) what's happening there? I see a little pipe, but the pipe is catching it out of the basin, what's our remediation there?

Mr. Uyeno – these are category 1 diversions that have yet to come before you. These, we allowed EMI to go for quick modifications to enable immediate continuation of flow downstream. If you look on page 81, that gate is on the left bank of stream next to this wall (page 82 – showing illustration); they opened the gate so any water in the stream can continue to flow downstream, this has yet to come before you.

Commissioner Hannahs – so you're not seeking approval for that?

Mr. Uyeno – no

Commissioner Buck – these streams are called kalo streams so the Commission's decision and order to restore flow and that would be your criteria in coming back to us

Mr. Uyeno – correct, we can come back

Chair Case – to clarify on this case-by-case review by staff and the Commission, you said that some of these clearly should be taken out and some may not be necessary or worthwhile; but opportunity for safety, stream flow and fish passage.

Deputy Manuel – as part of the recommendations and to make it clear, on page 67, #1 – staff is recommending to take out “after-the-fact” and recommend to approve SDWP; #2 – is add reconnaissance survey with staff inclusive of EMI, staff also included DOFAW and DAR staff (those that commented/participated on this); and on the last sentence of “a site inspection report shall be submitted to the Commission for review”...and what I heard was review and approval? Is that something I'm hearing in the conversation and context of what the concerns and questions are? And whether or not they needed a conditional approval

subject to the Commission's "seeing" the site-by-site or is it something you want staff to work with EMI on and then come back with a report, when work is completed, that's the question?

Commissioner Buck – I think it's important this decision have some finality; I would have no problem with review and approval; especially when you have community and staff out there. I would recommend that any future actions I would add "to achieve a full un-diverted stream flow as practical", is the criteria we'd look at. I think it's important for the community and everyone to have finality on this.

Commissioner Anderson – there may be issues with some of the pipes there; need to ensure the water quality and safety when removing them

Commissioner Beamer – I think having the community and DAR there and paying attention to everyone's comments and with DAR doing the studies on the streams, guided our decisions. I think DAR's recommendations are very important, so is DOFAW's. Certainly, we take these recommendations and site expertise, so having finality and adding our approval so we can come back and see what you saw and what's presented. We should take into account what we've learned from the fish ladder experience, to be mindful in what's being done; I think adding an approval will be helpful.

Chair Case – thank you Kamana; basically, I've delegated to you with these guidelines that final approval. My comment is that DOFAW's comments are all the same for each one, you just need to decide which are important for each site and which are not.

Commissioner Hannahs – it's a toss-up because the community is part of this, but it says the Commission staff with DAR and DOFAW as well and EMI; would there be any community involvement?

Deputy Manuel – yes, the first line (it reads) Na Moku 'Aupuni O Ko'olau; on page 67; based on comments received, we've included that group especially because were the party in the original contested case hearing with EMI. As in practice and learning from experiences with cases on this island, before work is done in the community, going out to community and having conversation to inform them that these are the things we're looking at and doing, so if you see people in the field or stream, just as FYI that's something I'll coordinate with EMI, to make sure we're being fully transparent and giving people a heads up before anything happens in the community so they can advise us maybe it's a dry time and not a good time to go, or maybe there was a flood and that's not a good place to go. It's a good way to coordinate / communicate with local community; it's not in the recommendation but something that's on record, on the staff side.

Commissioner Beamer – for clarity, I think the delegation is for off-site visit, we recommend to meet with community; but I want to add at the end of #2, "report shall be submitted to the Commission for review and final approval"

<side conversations between Commissioners Case, Beamer and Anderson>

Deputy Manuel – I can propose recommended language to address both concerns having heard what’s being said. So again, under #1 would be “Approve the SDWP” (take out after-the-fact); #2, Direct Commission staff to reconnaissance survey all the way to...for review...add “utilizing criteria to achieve full stream restoration, full un-diverted stream flow and to ensure there is no future unauthorized use, and the Commission reserves the right, based on the inspection report submission to request additional work be completed, if unsatisfied with report finding. - To sum it up; the Commission reserves the right to request further actions, based on the inspection report submission.

Chair Case – I want to add DOFAW criteria here; full un-diverted stream flow, fish passage, safety, no derelict accessory structures, erosion protection, and minimizing stagnant waters to make it comparable to the rest of the stream. I’m reiterating those criteria.

Commissioner Anderson – the bars there are associated with seeps and springs which aren’t streams and I know you’re looking at removing all those as well; it’s not just for stream flow but restoring natural water flow too, that effect and returning the water flow to its natural conditions would cover most of the diversions

Commissioner Beamer – with regards to standing water, if we take the natural conditions of the stream water will puddle; but we don’t want a cement structure like a catchment system, especially having reports of malaria that are spreading further across Maui.

PUBLIC TESTIMONY

Mr. Mark Vaught, Manager, East Maui Irrigation Company (EMI) – Aloha mai kākou Commission Chair and Commissioners. Mahalo for your patience today sitting through this long day as everyone did, but you folks had to sit up front and be attentive the whole time, mahalo for that.

I’ve been with EMI for many, many years. I was at the flumes that goes up along those intakes in 2007, and familiar with many of them. We’ve read through the submittal; we agree with all the amendments and to take care what we need to. We fully intend to remove anything that is not part of any structure out there and doesn’t belong and whatever the Commission staff deems necessary, we’re fully prepared to comply. Any questions for me?

Commissioner Hannahs – it really speaks of your character as an individual as well as the company. As others see the government just leave ‘ōpala all over the place, so mahalo for that.

Mr. Mark Vaught – thanks, it really has been brought to light in the last several years and is something we’re diligently working on. I’ve got piles of stuff at my baseyard that we pulled out of the mountain and taken pictures of it to make sure people know we’re doing what we say we’re going to do.

Ms. Lucienne deNae, Sierra Club – being a hiker, I’ve seen a lot of the places that have to do with the Water Commission decisions; Sierra Club did submit extensive comments on this and other stream permit application that was heard in September. I’ve been in East Maui for 35 years and am personally very familiar with most of the areas of these

permits. As you've noticed, our testimony was summarized that we just didn't want you to give the permit, but that's not actually is what we said. We're saying what you folks are saying now; don't approve the after-the-fact permit until the staff and the Ke'anae Wailuanui Community members are satisfied there's a plan and implementation scheduled to restore the biological connectivity for native stream species for the Waiokamilo and Wailuanui stream systems. This is the same conclusion you are coming to, that we need connectivity, clean out the debris that no longer functions; and we fully support DOFAW comments. We gave specific stream-by-stream conditions we noted in particular areas and the need for changes.

We feel strongly, like the Commission does, to ensure the Native Hawaiian residents of these areas, have the best functioning habitat for the uses of these streams. We're not here about gallons, but the whole quality of the stream, that's an important consideration. We would definitely support all the things you've suggested and if there could be a specific timeline that is put forth for the communities understanding. I don't live in Wailuanui or Ke'anae, but know many people who do because those communities are connected by families. The people always ask me "what are they doing Lucy, have they done that yet? I never hear anything." If there could be some communication through EMI and the Commission that would be great.

It's important to realize that some of these diversions are on state land, the Waiokamilo twenty-eight (28) diversions, some on the Kikokiko; they're not part of the regular ditch system, so disassembling them is not going to affect the performance of the Wailoa Ditch. This is a great place to start because it's the low-hanging fruit in terms of not impeding ditch operations.

We've been told some of the pipes lead to a small spring or seep which is not part of the stream, but a local resident that wrote in 2017 saying, EMI apparently no longer utilizes water from Waiokamilo, but this is not the same as restoration. EMI formally diverted water not only from the main flume at Kikokiko, but also from numerous tributaries of various sizes, which before the existence of the ditch, eventually found its way to Waiokamilo Stream. The water was collected by EMI via two dozen diversions consisting primary of concrete catchment basins with pipes, etc. EMI has cut these pipes so that water no longer goes into the ditch, instead it drips or flows onto the ditch road. It makes access difficult and dangerous, and feeds alien plants.

For restoration, allowing these seeps and sprays to have their natural course, and not be wasted water is very important. Another thing to point out, the monitoring and reporting is key like we heard of Nā Wai 'Ehā yesterday; the follow-up report the community could see would be good. I would also request (while a representative from Na Moku is appropriate) that outreach to the general community and a representative from Maui Tomorrow could also be invited to the site visit, so we could be of support to our allies there at Wailuanui and Ke'anae area.

Thank you for your careful consideration of this and look forward; this is the first decision where the permit says let's remove some things, I'm happy to hear it.

Deputy Manuel – on page 67, with the recommendations; amend recommendation #1 – to remove “after-the fact”; amend recommendation #2 – at the end of the paragraph add: “staff should use the following criteria in determining further actions that include: restoration of full un-diverted stream flow, fish passage, safety, no derelict accessory structures, erosion protection, minimizing stagnant waters to return to natural conditions as best as possible, and to limit future unauthorized diversions. The Commission reserves the right to require additional work upon submission and review of the final site inspection report. Also to recommendation #2 – (first line) ...with assistance from “Division of Aquatic Resources, Division of Forestry and Wildlife...and to add “Hui” (after the Na Moku ‘Aupuni O Ko‘olau) for the official name correct.

Commissioner Beamer – and to add a representative from Maui Tomorrow

Deputy Manuel – yes, we will make that addition to add a representative from Maui Tomorrow.

Mr. Uyeno – (*referring to EMI’s liability matters*)

Chair Case – asked for a motion

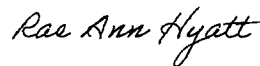
**MOTION: (ANDERSON/MEYER)
To approve C-1 as amended
UNANIMOUSLY APPROVED**

D. NEXT COMMISSION MEETINGS (TENTATIVE)

December 17, 2019 (TUESDAY)
January 14, 2019 (TUESDAY)

This meeting was adjourned at 4:46 pm.

Respectfully submitted,



RAE ANN HYATT
Secretary

OLA I KA WAI:



M. KALEO MANUEL
Deputy Director

Civil No. 19-1-0019-01 (JPC)

Defendant A&B/EMI's Exhibit AB-75

FOR IDENTIFICATION _____

RECEIVED IN EVIDENCE _____

CLERK _____