

**Female:** Land Board meeting November 9th, 2018.

**Suzanne Case:** You guys ready? All right. Good morning everyone. Oh, 9:14.

**Tommy Oi:** Oh, I call this one?

**Suzanne Case:** Oh, it's 9:16. It's 9:16 AM on November 9th, 2018. This is the Board of Land Natural Resources, thank you for being here. I just -- let's see, Sam, would you like to...

**Sam Gon:** [00:1:36 inaudible]. In some of the matters before the Board, a person may wish to request a contested case hearing. If such a request is made before the Board's decision on the matter and the Board will consider the request first before considering the merits of the item before it. And a person who wants to contest the case may also wait until the Board decides the issue, then request a contested case after the decision. Since then, be up to you.

Any request must be made orally by the end of the meeting and followed up in writing within 10 days. And if no requests for a contested issues made, the Board will make a decision and the department will treat the decision as final and proceed accordingly.

**Suzanne Case:** Thank you. So we are engaged in some general agenda management right now. So today is mostly land disposition matters. And then we added an extra meeting on December 7th, to cover other matters.

If you're here for D-17, that's a -- the Kahala Resort Trust Hawaii. We're going to hear that after lunch. So we will not hear that before 1:00 PM in case you want to go have a nice productive morning. Okay. And so the -- let's see -- we look -- so first up, on the move up agenda is going to be D-7.

**Male:** Chair, we withdraw D-14.

**Suzanne Case:** You're withdrawing D-14. Sorry. Okay. So withdrawn is D-14, D-14 or [00:03:17 inaudible]. So, we're not going to hear that one today either. Okay, D-7.

**Jimmy Gomes:** A&B, right?

**Suzanne Case:** Hmm?

**Jimmy Gomes:** A&B?

**Suzanne Case:** Yeah.

**Jimmy Gomes:** Chair, I have to disclose that my employer is involved with A&B. So I need to recuse myself from A&B.

**Suzanne Case:** Okay.

**Ian Hirokawa:** Good morning, my name is Ian ---

**Tommy Oi:** I do consultant work for [0:03:59 Dawn] and Associates which does work for A&B properties on Kauai.

**Suzanne Case:** Good. So you're making a disclosure but not a recusal. Great. Okay. Ian, go ahead.

**Ian Hirokawa:** Good morning. My name is Ian Hirokawa. I'm with DLNR Land Division and up for decision making is item D-7. It's a holdover of the four revocable permits, the East -- Alexander & Baldwin and East Maui Irrigation for water use on Maui. The permits are approved by the Board annually and holdover pursuant to Act 126. And that allows for the three year holdover wherein this is the final year. Basically, this has been sort of discussed extensively in the Board before, so I kind of just wanted to provide an update as to what's sort of transpired since the last approval.

Since at that point, an amended IIFS, Interim Instream Flow Standards has been approved by the Commission on Water Resource Management and involves also the -- will establish are the stream flow. It also require the closures of several -- or removal closure of several diversions as part of the system. And basically, as far as the -- what we've done is tailor this year's holdover approval to match as best as we can, match the conditions of IIFS. So there's a lot of sort of requirements that the Board had imposed the last two years which we consulted with the AG and anything that didn't quite, you know, meet -- match with the IIFS decision was removed. So that's why, if you see the recommendations of the Board this year are slightly different than before. So -- and -- but it's meant to comport with the current IIFS that's in place.

**Suzanne Case:** Okay.

**Ian Hirokawa:** And oh, the other thing is applicant is in the process of their EIS.

**Suzanne Case:** Thank you. The applicant want to say anything?

**Meredith Ching:** Good morning Chair Case and Members of the Board. Thank you for this opportunity to address you. My name is Meredith Ching, and I'm part of the team at A&B who works on water matters. In the past, you've been used to seeing [Garrett Hew] and Rick Volner in front of you, so just a little update. Garrett who is now completely retired, I believe playing with his grandkids. And Rick Volner here next to me is also in a transition. Rick is going to be leaving the company and starting a new job with HC&D which is formerly Ameron. But he is our biggest expert on the water system and our agricultural lands and we wanted to make sure he was here to answer any questions you might have. So with Rick's departure, we were very lucky to snare Darren Strand who has 18 years of agricultural experience, hands-on with companies like Del Monte,

Maui Pineapple Company, and most lately with Hali'imaile Pineapple Company.

He served on many government Ag-related boards, and we're just happy to have him with us to continue the momentum on our diversified Ag effort as our general manager. We are here asking for your approval of these holdovers of the water permits for another year as we have for the past two years. Your prior approvals have enabled us to continue to provide uninterrupted water to the County of Maui for its upcountry residents, farmers, and businesses and enable -- continual progress towards our goal of transitioning 36,000 acres in Central Maui from sugar to diversified agriculture. As you may recall, when we ceased our sugar operations, our vision for these lands was to establish a patchwork of successful farm operations that would keep Central Maui in green open space, provide jobs in new economic activity, further Hawaii's food and energy self sufficiency goals, and provide opportunities to employing new Ag practices that enable improved stewardship of the land and water resources on Maui.

We did expect that the transition would take a while, several years based on Hawaii's past experience in transitioning former cane lands to other crops. So right now, I'm going to turn this over to Darren Strand who can give you an update on our progress over the last two years in pursuing our diversified Ag.

**Darren Strand:**

Okay, thank you. Good morning Chair. The first part of our diversified Ag operation I'd like to explain is [0:08:51 Kulolio Ranch] and it's -- that we have about 5,000 acres dedicated for that, it's a grass bed cattle initiative in partnership with Maui Cattle Company. Three thousand acres right now are in active forage and pasture. And we have a herd that's just under 2,000 head of cattle.

The other 2,000 acres are in the process of converting to pasture, they're being -- the land is being prepared, they're being seeded, and fenced. Our role in that operation is to cultivate forage, just feed for the cattle it's -- that are owned by the Maui Cattle Company. And we use a rotational grazing system that allows the cattle to feed on fresh grass every day. While it's management intensive and takes a lot of work, it's -- and it's a fairly new and different system than we've seen in some places in Hawaii, it allows the animals to always be well fed and have fresh forage. The animals rotate through a paddock on a schedule, so that the portion that they just grazed will have about a 60 to a 90-day break before they come back to it again. And that allows the plants which we're using a mixture, but it's mostly signal grass to establish a healthy root system and be vigorous by the time the cattle come back to it.

These root systems are being studied by UH and further carbon capturing capabilities and they directly contribute to the health of the soil, water retention, and long-term soil health. The ranches that we have have developed a stock watering system that's pretty innovative and allows

them to get fresh moving water to each paddock and that's supplied by East Maui Water. We're expanding the pastures, like I said, there's 2,000 that we're still expanding to and irrigated pasture still is part of our long range plan.

**Sam Gon:** Is that -- is there an area that -- in point two that [00:11:04 inaudible]

**Darren Strand:** Yeah. If you're familiar with Maui, the green area on the left of that diagram on the side of Haleakala Highway. Let's see, so the other part we get -- we've had a lot of inquiries from small farmers and operators that are interested in farming on our lands. And we saw that as an opportunity to cooperate with the County of Maui. And they expressed some interest in 800 acres to establish an Ag Park expansion in Upcountry Maui. The cool -- the current Ag Park is fully leased out and there's a continuing demand for farming parcels, you know, 2, 5, 10 acre parcels of land. And so this was a good opportunity for us to meet that need.

The county -- we're moving forward with the county on this acquisition and the county council just approved last week the purchase of just under 300 acres for this. We also have on our plantation a partnership with TerViva and they have just under 30 acres of pongamia trees, which are an oilseed plant that has a range of uses from biofuels to animal feeds, natural oils. And the intention is to expand that to just about 250 acres.

We have 600 acres that are still set aside for biogas and feedstock crop production to support a renewable energy project with partnership with [00:12:44 Kahului] Wastewater System. We continue to do trial plantings of multi-crop rotations and these -- we're using really high tech equipment and low-tail strategies. And we've had quite a bit of success with these with these crops. The irrigation systems are long-term, very drip irrigation systems so they lower the cost and provide a lot of efficiency with the water system.

**Sam Gon:** Can you mention a few of the crops being experimented with?

**Darren Strand:** The -- it -- on this map where the red area is, we have some trials in that area.

**Sam Gon:** Oh, I meant species of crop.

**Darren Strand:** Oh. Corn, sorghum, soybeans, you know, we're rotating in cover crops and different...

**Sam Gon:** Thanks.

**Darren Strand:** Let's see. And also on the land, we have leases or partnerships with about -- with other farmers and we have about 800 acres leased there for various food and feed crops such as sweet potatoes, cassava, seed cane trial still. The most interesting occurrence really in the last year has been a -- the -- we're pursuing and we've had inquiry from a farming partner

out of California and they have an interest in farming nearly the whole footprint of land that we have. So we've -- we're in discussions with them looking at growing a whole variety of food crops.

We've been spending a lot of time with them. One of the things that plantation does really well is all the plantations did really well was collect a lot of data. So we've been sharing climate data, soil data, even crop trial data that we have with this group. So, you know, it's due to the nature of being a publicly traded company and the state that we are in these discussions, we can't really disclose anything more than that, but we can talk about the plans that we have going forward for this year and for farming these lands on Maui. So I -- we have a map of their -- of our plan to repurpose the lands and if you -- most of you that were here last year will recognize that it's very similar to the plan that the our group came forward with at the same time.

So the -- over the past few months, we've worked with them to share extensive data on the climate with what crops are suitable for what areas. And as you can see on this map, there's an expansion of the pasture area. An area of beverage crops or coffee over on the on the Kihei side, orchard crops and tropical fruits, and row crops. Again, on the West Maui portion greens, alfalfa, berries, and, again, there's the land set aside for the local farm tenants and agricultural park.

The plan is to grow food crops. And, you know, we understand the nature of the local market. So the plan is to supply food to the local market as well as export. The -- I'm excited this group brings a lot of expertise on the global food market. So it'll expand on the knowledge and skill set that we already have. And from a water use perspective, it's very similar to what we proposed to this group last year. That -- and just, again, the knowledge and the skill set that these guys have ensure that with our partnership that we'll have responsible farming practices and increased efficiencies and really excited about the -- this opportunity for us. Thank you.

**Suzanne Case:** Okay. Questions? Did you want to add anything?

**Meredith Ching:** Maybe a little bit more but maybe you want to ask questions.

**Suzanne Case:** Oh no, go ahead.

**Meredith Ching:** We just want to emphasize that, you know, a partnership with this farming group would greatly accelerate the achievement of our vision to turn this into a patchwork of productive and viable and sustainable diversified Ag farms. This group has an aligned vision with ours, they have extensive farming expertise, a solid source of funding, and established marketing channels, and also an interest in almost an entire footprint, which is a combination of promising attributes that we haven't seen from any of the hundreds of other parties that we've talked to in the last two plus years.

So they're in their final stages of feasibility analysis of a farming operation, again, scaled to the entire plantation footprint. And if they decide to proceed planting of new crops could begin in 2016...

- Suzanne Case:** 2020.
- Meredith Ching:** 2019, sorry. Next year.
- Tommy Oi:** The only question I have is, are you -- did you guys submit today's plan at the beginning to the Maui Soil and Conserve -- Soil and Water Conservation District?
- Rick Volner:** So the current landscape is still covered by our soil and water conservation permit that was outdated with the closure of sugar. And so as the new users come on, then we sit down as well...
- Tommy Oi:** So you guys constantly updating you guys permit?
- Rick Volner:** As the new lands are transitioned, yes.
- Tommy Oi:** Okay.
- Suzanne Case:** Okay. Other questions? Yes, go ahead.
- Christopher Yuen:** Last year, Board put on -- or maybe it's a year before, put a no diversion condition on Honomanu Stream. How was that treated in the IIFS? Was that part of a petition? I've forgotten.
- Meredith Ching:** Yeah, it was. The decision was to, they said restore H90 flows. So it's habitat restoration flows. It's about 64% of the median base flow that has to remain in the stream at all times.
- Christopher Yuen:** So if we adopted the conditions that the staff has presented. The -- would change it from a no flow to this H90 condition.
- Meredith Ching:** It would. It would. But, again, right now, our water needs are so low, I believe I don't -- it's completely unused right.
- Rick Volner:** And others remain unlevered.
- Christopher Yuen:** Well, it would be -- I mean, under the conditions of the past RP, it had to be undiverted. I'm just trying to sort out where this would stand based on the IIFS. Okay. Thanks.
- Suzanne Case:** Okay. Other questions? I have a question, can you just outline kind of where you are with the EIS?
- Meredith Ching:** Sure. Sure. So as you may recall, the Board directed A&B to prepare the EIS necessary for the long-term lease process. And we did continue work throughout this past year. A number of the technical studies have to be

kind of put on hold because they required the IIFS decision in order to complete their analyses. So the IIFS decision determines the maximum amount of water that could be diverted under the state lease and so that's kind of the proposed action.

So six out of the nine technical studies had to wait. Our consultants are now telling us they can finish their work on those studies by early next year. So our goal is to get a draft EIS to DLNR for review by the end of the second quarter of next year, I guess, second quarter of next year.

**Suzanne Case:** Thanks. Okay, Board Members, any other questions? No? Okay, thank you. We'll go to public testimony for now. We have more questions afterwards, we'll come back. Okay. Let's go to public testimony. I am going to ask that you limit your testimony to three minutes. Let's see. First up, I have let's see, Mayor Alan Arakawa, Maui County.

**Alan Arakawa:** Good morning. I just would like to point out the fact that, you know, on Maui, we've been working very hard to be able to work with the Commission on restoring stream flows. I was the one that asked for the designations of the areas. And I'm very much concerned that when we're looking at the goals of Maui County, there's a very strong push for us not to develop housing, 36,000 acres in Central Maui, we need to be able to keep it in agriculture and keep it green. And in order to do that, we have to have water to do it. That's just bottom line. I've been a farmer most of my life, third generation. And I'm going to continue to farm.

But the reality is, unless you have water, you're not going to be able to do it. And we're not going to be able to take water from the upper reaches of Haleakala to be able to support all the agriculture that we need to be able to do. Just don't have the water at that level. The other thing is if you're looking at water coming through the EMI system, it's a lot less expensive than trying to use treated water going through the county system. And the Ag line was abandoned this past year. So that is going to be -- they're trying to convert that into a drinking water line, the 24-inch Ag line that was being created by the state. So they abandoned that this year. In order to be able to keep agriculture going, and we're trying to expand even with the Kula Ag Park in the [00:22:35 inaudible] area, which I get a little over 800 acres, the council approved a little over 200 acres purchase, \$5 million from the state, \$1 million from the county, another \$4 million from the old Ag line coming down to fix the pump system all depend on being able to have water in the EMI ditch to be able to provide water for agriculture.

Our county water system also requires ditch water to be able to supply waters to the Upcountry area. So, until -- and, again, unless you have such a time as you have somebody that can deliver the water and replace it, it is required for us to be able to have a source of water. This lease is even though it's a year lease will at least guarantee us that the one year will have adequate water supply. And it's important that we continue because our water treatment plan, everything else, we don't have water

coming through there, we're not going to be able to provide that water for the community. That's just bottom line. So speaking for the Maui community, if we're going to be able to keep people living in a lot of these areas, we're going to have to do it. And long-term, we're going to have to look at East Maui for water as continued growth on Maui occurs.

So that's something to keep in mind as well. But, again, we're trying to keep 36 thousand acres plus or minus in agriculture, that's been the desire of the community. And as a farmer, I can tell you, you need water to do it. We will try to create that Ag Park so we actually have opportunities for small farmers, and people that cannot afford the large lots to be able to create farms. We have to grow farmers. That doesn't happen overnight, there's a lot of expenses that are going to -- have to be incurred to be able to create a lot of the Ag parcels. But we're working toward that. And I ask for your support and continuing to allow us and that A&B have a lease to provide water for us. Without that water, you might as well throw all the programs out, this -- nothing's going to work.

I think all of you are -- you have enough common sense to know that, you know, that's the way it is. And we have always diverted some water for the good for the community. Take Honolulu, for instance, if you put all the water back in the stream, you don't have any water for the people in Honolulu, just wouldn't work. So you have to be able to balance off the needs of the community and the environmental needs. And that's what I'm asking you to do. We need to return, we have supported returning water to some of the streams. But until you can find the replacements for the water that we're using, do it slowly and do it in a way that makes sense for the community. Don't deprive us of the water and then expect it to just pop up overnight, it's not going to happen. Thank you

**Suzanne Case:** Thank you.

**Stan Roehrig:** I have a question.

**Alan Arakawa:** Sure.

**Stan Roehrig:** Why didn't the county apply for a water lease?

**Alan Arakawa:** The distribution system, the EMI ditch system is not county way.

**Stan Roehrig:** I understand that.

**Male:** We have applied with A&B...

**Stan Roehrig:** But it's the state's water.

**Alan Arakawa:** Right. But we don't...



**Stan Roehrig:** It goes through their pipes. So you're saying that because you don't have a set of pipes you guys can't apply and only EMI can apply?

**Alan Arakawa:** Right. We have an agreement with EMI to supply the county water out of the EMI ditch. The cost to be able to bring a pipeline from the sources and develop the sources and bring it all the way in would be prohibitive for the county right now, that's the ideal goal.

**Stan Roehrig:** Why don't you condemn it? Why don't you condemn the pipes?

**Alan Arakawa:** Cost. We're actually trying to get from the state. The state's position on the EMI ditch which would allow more -- or would actually put pipes in the EMI system. But if we had to just do it, it would just be too expensive and unrealistic. At the same time, trying to manage all of that, because the county has barely enough revenue to be able to run the systems that we have for domestic use and for the existing agricultural use. We're required to have a balanced budget. This kind of an expenditure would be way, way over our capability. So that's my answer at this point.

**Stan Roehrig:** Are you suggesting that the state should go and condemn it?

**Alan Arakawa:** The state has by contract with A&B the use of the EMI ditch system, which is what I would like to have the state convert to the county, so the county would have the ability to use the EMI ditch system. We've been trying to work with the department to get that to the county. The gravity feed system that is the EMI ditch system is the ideal location because it already exist. You don't have to carve things out of the mountain, you don't have to dig tunnels, it already exists. And the state does have a position in it.

If that were turned over the county, would make it a lot easier to be able to put a piping system from sources all the way in. Ultimately, the goal should be to be doing lateral tunnels, and to be able to take subsurface water to be able to pipe it into Central Maui and for the rest of Maui to use, not surface water. But the system doesn't exist at this point. Now, if it were possible to do it today, I would say that's the way to go, subsurface water 100%. But that's going to take billions of dollars. And that's going to take decades to be able to create. So, that being said, what do we have as an alternative realistically? We have an existing system that's already been delivering water for 100 some odd years, which we depended on the contracts are based on that. Which is why we have it. What we don't have what you're suggesting, which would be the ideal. County owned the whole thing.

**Stan Roehrig:** Thank you.

**Alan Arakawa:** You're welcome.

**Suzanne Case:** Thank you. Next up is Scott Enright.

**Scott Enright:** Good morning Chair Case, Board Members. Scott Enright, Chairperson for the Hawaii Department of Agriculture. I wanted to take this opportunity to give verbal testimony to strongly encourage the Board to move forward to approve this request of this revocable permit. The farm, Alexander & Baldwin HC&S Farm on Maui, and its ultimate utilization in agriculture is going to be critical to moving this state forward on sustainable agriculture.

Having the ability to -- the understanding of what their resources are as they move forward with planning is critical to that success. So, again, I would like to strongly encourage the board to move forward and approve this revocable permit. Thank you all.

**Suzanne Case:** Thank you. Next up is Robert Osgood.

**Robert Osgood:** Good. Morning. I'm Robert Osgood, I'm speaking as a private citizen. I have a long-term experience in agriculture in Hawaii including sugarcane and the movement toward diversified crops on lands that have been taken out of sugar. I'm speaking today in favor of approval of the holdover of the water for Maui. It's extremely important. Water, as you all know, has been really the basis for Maui's development over the years for the past 150 years. It's still important today, and I really want you to approve this holdover permit for another year in order to have the water available for agriculture, but not only agriculture, domestic use, that water is also used to produce hydropower.

It's making A&B self-sufficient now in power that hydro, hydropower that comes from that water. So today I'm speaking in favor of approval of these holdover permits. And you've heard of all the reasons the agriculture that's proposed and the state's plan to make Hawaii more self-sufficient in agriculture. We need to support that. When I'm -- I don't need to review that. That's in my written testimony. But really what I want to talk about today is what would happen if we don't provide water for agriculture and other uses for Central Maui. The whole Central Valley would just be turned into a dry sort of wasteland with lots of guinea grass and hale koa, and kiawe trees, pretty much like it was 200 years ago. It's very important that we approve water usage and more important than just holdover permits, we need to have a long-term solution to this problem.

I mean, it's -- holdovers are fine for year-to-year but it makes business decisions hard to make for the farmers. And the other factor that I'd like to really talk about is infrastructure. The A&B, HC&S Company has built a tremendous infrastructure of roads and irrigation facilities over the last 150 years. Gosh, if water were not available, that would just disappear and it would be a huge price to reestablish that. So I really want to ask you to approve this holdover permit and work toward a long-term solution. Thank you for allowing me to testify.

**Suzanne Case:** Thank you. Warren Watanabe.

**Warren Watanabe:** Aloha Chair Case, Members of the Board. I'm Warren Watanabe, Executive Director of the Maui County Farm Bureau. The Maui County Farm Bureau is, again, before you in strong support of the approval of the holdover permits to Alexander & Baldwin and East Maui Irrigation Company for water use on the Island of Maui. The East Maui Watershed is the largest single surface watershed in the state, providing to the second largest surface area on Maui. It also services the largest contiguous agricultural area in the State of Hawaii.

Since the closure of HC&S following the downsizing of Maui Gold, we have seen the agriculture industry on Maui further digress. In the last months, we have seen continued business closures and other speaking of shutdowns. All of this puts Maui's Ag at a disadvantage to Oahu growers. Today's decision is important as it will be a step towards bringing back that critical mass needed to ensure that agricultural production is not just about Oahu, but providing capacity on the neighbor islands. The Maui County Council just approved the purchase of 262 acres of prime Ag lands from A&B. It is expected to be the first phase of the expansion of the county Ag park system. Our farmers are excited about this opportunity. However, we know its long-term success is contingent on water.

The results of these hearings and the long-term lease agreement are critical to the viability of Ag. We understand that today's hearing provides the means to ensure access to much needed water for the future of agriculture. Maui's agriculture has a chance to evolve, to move the needle on agricultural production in the state. We have ongoing dialogue with the Department of Education to provide fresh fruits and vegetables into the schools. And the recent **RTCA** rules stopping some movements of plants creates a local need for agriculture. We are on the cusp of opening doors to our floral culture and nursery industry, while protecting our precious watersheds. We need water for Ag lands to accomplish these goals.

Commercial agriculture grows food and raises livestock. So, many of you sitting in this room don't need to worry where your dinner will come from. A&B was the first land owner to voluntarily designate their lands as important agricultural lands. They showed leadership and commitment. While designated lands for agriculture use for future generations, they devalue their lands. The only way these lands can be rezoned is due to governmental actions that result in loss of access to water, or other events beyond the land owner or farmers control. Our government, policymakers, and the public all states that increase agricultural sustainability is a priority goal. Putting these continuous acres of proven productive agricultural lands at risk by removing access to water is counter to these objectives.

Some of our other farmers wanting to be here today, but due to responsibilities on the farm could not be here. These are the farms that provide to large retail outlets such as Costco, the Safeway, and Times.

They count on farm bureau to speak on their behalf. For these, again, we respectfully request your support by passing the request for revocable permits. Thank you.

**Suzanne Case:** Thank you. Randy Cabral.

**Randy Cabral:** Good morning Chair Case and Board. My name is Randy Cabral, President of Hawaii Farm Bureau, organized since 1948. We compromise -- we're made up of 1,900 farm families across the state and we serve as Hawaii's voice for agriculture to protect, advocate, and advance social and economic and educational interest of our diverse agricultural community. Hawaii Farm Bureau strongly supports approval of -- for the holdover of revocable permits to Alexander & Baldwin and East Maui Irrigation.

Without water there can be no agriculture. This decision is of substantial interest to agriculture statewide. As many of our Hawaii farmers and ranchers depend on divert water to grow crops and raise livestock. The future of one of the largest contiguous active agricultural lands in the state is at stake. Approval of the holdover permits will allow water to continue to irrigate approximately 30,000 acres of agricultural lands in Central Maui, as well as supply irrigation water to the small farmers of Kula and provide domestic water for 36,000 Upcountry Maui residents. Without holdover approval, HFB fears that agriculture in Central Maui will be just a memory.

Investing in farming and ranching is a risky business, given weather, pest and market challenges. The uncertainty of whether there will be water is a showstopper. This decision is a crucial step in the path to long-term lease to restoring agriculture to Central Maui. The approval of these holdover permits is an interim solution in part of the larger process to allow the fair distribution of water. Currently, diverted water provides irrigation water to Central Maui and to the county for Upcountry Maui use while the rest remains in the watershed. Without the requested holdover permit approvals, Maui's communities, its farm families, its landscape, and its ability to provide productive farms will be forever changed.

The lands of Central Maui, the largest farm in the state, provide a unique opportunity due to the favorable growing conditions, contiguous parcels, existing roads and irrigation infrastructure. Maui's long and proud agricultural history as the produce and flower breadbasket of the state does not have to be lost. The cool weather of Upcountry Maui, coupled with deep volcanic soils have produced iconic and much sought after crops such as the Maui Kula onion, protea, and persimmons. This heritage provides the perfect foundation for expansion into new and promising agricultural endeavors on the lands of Central Maui, but without diverted stream water, this will be impossible. Farmers cannot rely upon rainfall in this area. They must irrigate, but the salinity of the

Central Maui brackish water wells make farming dependent upon East Maui stream waters for many crops.

A&B has already restored water in multiple streams in East Maui and it has demonstrated a willingness to work with the community to find solutions. Approval of these holder permits will allow those with invested in and relied upon the waters to continue to farm or sending a policy message of commitment to agriculture to those who would like to farm. The future of farming in Maui including the welfare of our farmers and ranchers and the rural communities of Upcountry Maui is at stake. Hawaii Farm Bureau respectfully requests your strong support in authorizing the holdover permits for A&B and East Maui Irrigation. Thank you.

**Suzanne Case:** Thank you. Next up is David Robichaux.

**David Robichaux:** Thank you Madam Chair and Board. I appreciate the opportunity. I'm here representing the Hawaii Agriculture Research Center and I like to read a statement prepared by Stephanie Whalen, who is the Executive Director of HARC as well as president of the Kunia Water Association, Kunia Water Cooperative. Ms. Whalen's message to you is, transitions take a long time. It really -- you know, it hasn't been very long at this point. But if I may, this is from Ms. Whalen, "I want to relate how difficult and time-consuming it is to get large scale agricultural lands back into production. Oahu Sugar Company closed its operation in 1995. Del Monte Food closed in 2008. These lands have mainly been located and lease from Campbell."

"The first sale of this land occurred in 2006 in the last -- in 2010. By the time these sales occurred, the vast majority of land was overgrown, didn't have conservation plans, needed adjustment in soil pH and lacked irrigation systems. The size of the Kunia area is only about one-third of the agricultural area in question in Maui. In spite of the number of years that have passed, not all of the land has come into production due to significant costs with the aforementioned infrastructure development, and the unreliability of delivery systems. This is spanning a 20-year transition. I relate this because some will question the time this process is taken, notwithstanding the legal issues involved. It's heartening that the Commission on Water Resources Management has allocated 90% of the water needs for lands designated as IAL. But without a permit to access that water, that decision and the IAL designations are meaningless."

"So I encourage you to continue to be patient while all of the critical elements of this process are settled. IIFS completed EIS timeline established in the pending contested case hearing completed. I urge you to hold over the revocable permits for the A&B and East Maui Irrigation Company. Thank you for the opportunity.

**Suzanne Case:** Thank you. Next up is Lucienne deNaie.

**Lucienne deNaie:** Good morning Commissioners. My name is Lucienne deNaie. I'm Vice Chair of the Sierra Club, Hawaii chapter, I'm testifying on behalf of the Sierra Club. I'm also a resident of the lease area in East Maui. And we did provide written testimony to you this morning. Our testimony is brief. I think everyone supports there being farming in Central Maui, everyone's support sharing water on a reasonable basis. But, I think that your job is to have accountability as you apportion public resources. We find the accountability is sort of missing in this process to be brief, A&B presented their farming projects. They didn't mention how much water they're using for these farming projects.

They mentioned a new partner that might come in. I was called by the newspapers yesterday, the rumor is that the property is for sale, not a partnership. So needs to be determined if this is a transferable permit or if it's, you know, what we're talking about. Everybody hopes that there'd be someone who could really farm these lands, but it's your job to make sure that there's accountability in the process. Also, this Board was wise, we feel to readjust the fee structure. Obviously more information is needed. And more information is needed about other things as well. We really don't know a lot about how these conditions are being met. It's kind of a scout's honor kind of thing A&B submits a report and says, "Yes, we've done everything." But we in the community and Sierra Club members and supporters feel that the public should be involved in that process. There should be some sort of a hearing that Maui people can participate even if it's electronic where it's a, you know, remote location in Maui that people can come to and you folks can hear in the comfort of Oahu to hear how those conditions are being met.

I brought myself here some pictures of the debris that has not been removed. I can pass those on. Sure, it'd be nice to have A&B reach out to the community and say, "Here is, you know, some of the -- here's some of the things that we need you to take care of in terms of debris" -- Marti, these are the debris pictures. But that hasn't happened. I dropped by the EMI office in August to get a permit for hiking, and I asked Mr. Watt, you know, how things are going with the permit. And he didn't inform me that there was a whole new thread going on of trying to avoid the permit for 11 streams, including the streams I live on. It's like there's not a communication process here. You really need to strengthen Condition 6 and require that there be regular communication among the effective communities and the decisions that are being made by the state and EMI are, you know, three minutes, I can't say too much.

But I would like to say Central Maui was not full of kiawe trees and stuff 200 years ago, it was a dry land forest before grazing and sugar changed it. And we know this because of the old boundary markers that talks about, you know, this corner was Wiliwili grove, and this corner was, you know, some kukui trees and so forth. So there was something there. And there should be something good there again, including restorations of some of the native areas along gulches. But what we need is a plan that has accountability. We have suggested some conditions for you to

implement to help bring this about. And I was happy to hear the gentleman from the farmer's concern talk about the willingness to work with the community. We want to make sure that there's willingness to work with the community, our community that doesn't get forgotten.

There are folks in Honopou who are very concerned about the release of more water because debris basins are not being installed and they have historic bridges that could be wiped out if a lot of logs come down with big flows and they're taxing themselves to try to shore up these bridges, working with A&B to get permission. They're on A&B land, some of them. And none of this is -- none of this comes out, I think to your attention, but it's really the reason that community consultation is needed because these are the people that actually live in the lease area. So to conclude, we respectfully ask that these stronger conditions be put into place in any approval you give. And we strongly suggest that you actually get factual information from agencies like DAR before deciding that these streams have been restored for stream life passage, they have not.

I will speak to one thing and that's the pipe at Honopou -- I mean, the pipe at [00:48:44 Pualoa] Stream, it does not allow for any fish. It's an eight-inch pipe and the fish would have to swim across the road. So someone should be out checking these things and giving you real factual information so you know how your conditions are doing. And the public could be a good step in that, agencies could be. If these conditions and these concerns cannot be incorporated, Sierra Club Hawaii respectfully ask for a contested case on this matter today, and we're asking formally for that. I will end by passing out some pictures of Hanehoi Stream of July of this year. This is the stream supposed to be fully restored. This is what it looked like in July. This is a Sierra Club XCOM group met and went on a hike of the stream. So thank you for your time and attention and really appreciate the thought that's being put into this.

- Suzanne Case:** So just to clarify, you are right now asking for a contested case on this revocable permit?
- Lucienne deNaie:** If the conditions that we are suggesting and the due diligence that we are suggesting, we do not agree that...
- Suzanne Case:** So that -- so you're not asking right now for a contested case?
- Lucienne deNaie:** We are asking if those conditions cannot be -- are not incorporated.
- Suzanne Case:** Right. But that's not decided yet.
- Lucienne deNaie:** Okay. Well...
- Suzanne Case:** So if you're making a conditional request, I'm going to interpret that as not making a request yet.

**Lucienne deNaie:** I think our director can speak to that when she testifies. I need to fly home by 2:00. I don't know if you'll be having your decision by then yet.

**Christopher Yuen:** I think we need to do deal with that. Maybe we'll have the director come up and testify because if they -- it's one or the other. And if they made one right now, then we have to go -- I will make a motion and do it in a session with our -- to consult with our attorney. If they choose to wait until the Board has -- we cannot make a -- we cannot say that we're going to incorporate certain conditions in the middle of a public hearing...

**Suzanne Case:** Right.

**Christopher Yuen:** ...on this matter. And so...

**Female:** So I think the Sierra Club circuit can wait to see what the proposal is and then we can decide whether we feel the interest are [00:51:08] addressed or not].

**Suzanne Case:** Okay. So we're going to take that as not requesting yet.

**Tommy Oi:** I got a question.

**Suzanne Case:** Yes.

**Tommy Oi:** You retain residency on Kauai?

**Lucienne deNaie:** No. Huelo in Maui. No, I've lived in Huelo in 35 years.

**Tommy Oi:** I thought I see you on Kauai.

**Lucienne deNaie:** No. Maybe someone who looks like me. No, I'm a Huelo girl for, you know, half my life. Yeah.

**Tommy Oi:** Okay.

**Lucienne deNaie:** Yeah.

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

**Lucienne deNaie:** Thank you.

**Suzanne Case:** Marti Townsend.

**Marti Townsend:** My name is Marti Townsend. I'm the Director for the Sierra Club of Hawaii and the -- my elected lead volunteer has covered most of our issues. I just want to reiterate our support for the complete restoration of the streams and our concern that that hasn't been fulfilled on. We participated in this process for many, many years, including the legislation upon which this decision is being based. And we're concerned that the community's needs are not being met. And there are



opportunities for this Board and this Department to fulfill the community's needs. And this permit provides that opportunity. You would lay the groundwork for future legislation if that ever comes up. Thank you very much.

**Suzanne Case:** Thank you. Alan Murakami?

**Christopher Yuen:** Could I ask a question too? You say you're asking for a complete restoration of the stream. That's -- you don't mean all streams?

**Marti Townsend:** Yeah. I mean, the seven streams that A&B agreed to during the House Bill 2501 Legislation.

**Christopher Yuen:** Do you have more -- I think it's probably easier to do in writing than in the testimony, but do you have a -- something in writing as to the failures so far at A&B in completing the restoration on the streams?

**Marti Townsend:** See -- we have a testimony that the Sierra Club submitted, you have photos of particularly Hanehoi Stream is the one that we're most concerned about right now. That was one of the seven streams that was promised, [00:53:29 taro-feeding] streams. And it's -- we went this summer, it is dry. I'm in one of those photos. And so I feel like this is an opportunity for you all to, you know, ensure some sort of compliance.

I think that's really what we're coming down to. It's not that the Sierra Club wants to stop farming, all of that. We're interested in there's enough water for everyone, for the fish, for the natural ecosystem, for the farming, and for the residents.

**Christopher Yuen:** Where -- I'm not sure I saw that because -- I'm sorry, when was that this morning submitted?

**Marti Townsend:** We dropped it off this morning, this is the picture of the Hanehoi Stream, you can just pass these down.

**Christopher Yuen:** Okay.

**Marti Townsend:** So we have several examples of how the stream is still dry.

**Christopher Yuen:** All right. So I'm not sure -- I believe I actually haven't read that in your testimony.

**Marti Townsend:** Okay.

**Christopher Yuen:** Is there...

**Marti Townsend:** I will get you...

**Male:** We don't have her testimony.

**Female:** Not it was dropped this morning.

**Marti Townsend:** It's that. Thank you Sam.

**Christopher Yuen:** Where is the packet? Okay. I'm sorry.

**Female:** [00:54:26 inaudible] somewhere.

**Sam Gon:** Yeah. Thank you.

**Christopher Yuen:** All right. Let me take a moment.

**Marti Townsend:** Okay.

**Suzanne Case:** So can I just ask your understanding of requirements from the Water Commission side of carrying out the industry closed -- interim industry and close standards decision versus we're doing allocation of water here.

**Lucienne deNaie:** So, that's it's a very good question.

**Marti Townsend:** Yeah.

**Lucienne deNaie:** Your job is I think to make sure that when you get the leases that the resources are being well protected, and are being given reasonable and beneficial use. Now, the Water Commission is there to set the, you know, amount that is in each stream and monitor that and so forth. Right now there's no meaningful accountability, there's no timetable. Finally a permit is going to be issued because no permit is going to be needed for 15 streams.

**Suzanne Case:** The Water Commission decision just happened in June, right? So...

**Lucienne deNaie:** Yes.

**Suzanne Case:** ...in order to...

**Lucienne deNaie:** But the abandonment was not dependent on that because everyone had already agreed that those seven streams were going to be restored no matter what the Water Commission decided. It was announced publicly in April of 2016. And it has taken until this time, finally now there will be some work done. But, once again, the community is not being consulted on what work and how it's going to be done because how it's done is as important as what is done.

**Tommy Oi:** When you talk about community, which community? The farmers or who is the community you're talking about?

**Lucienne deNaie:** These are people who live in the lease area who are downstream from these events.

**Tommy Oi:** Are they farmers or they're residents?

**Lucienne deNaie:** Yes, they are. They are farmers, they are landowners, resident.

**Tommy Oi:** So these people over here that are talking is not part of that community?

**Lucienne deNaie:** Well, they are. But they are not directly affected by the decisions. The county has its own diversion lines that are not subject to this lease agreement, as well as getting water from the lease agreement. So it's complicated. In three minutes, it's hard to explain...

**Tommy Oi:** You know, it's kind of hard when you say, the community, you know, and you get farmers that are willing to help us approve the permits.

**Lucienne deNaie:** Yes.

**Tommy Oi:** So, you know, I get kind of confused because a lot of times, you know, you go to hearings and you talk about the community, but the community not necessarily is that everybody, yeah?

**Marti Townsend:** Yeah, we're talking about the residents of East Maui who live along these streams, some of whom are taro farmers, cultural practitioners who gather in these streams.

**Tommy Oi:** So -- and also what I'm trying to get at is, you guys is not there to stop the irrigation, the water?

**Lucienne deNaie:** No, we want accountability...

**Marti Townsend:** Yeah. There's a lot of...

**Lucienne deNaie:** ...and a timetable.

**Marti Townsend:** Yeah. There's a lot of water and that's for everything.

**Tommy Oi:** Is that you have concerns of your own. Okay.

**Marti Townsend:** We don't -- so, Alexander & Baldwin promised to restore these streams, we want to make sure that that promise is fulfilled. Our interest is making sure the ecosystem is functional so that the fish can -- you know, all the native stream environment can be restored with its original vibrance, and with that we think will come also, you know, a healthy traditional farming community in East Maui.

**Tommy Oi:** Because, you know, I did as a surveyor [00:57:42 inaudible] in the old days, you know, the '80s, we had to learn about Hawaiian history, Hawaiian culture. Now, if I remember correctly, everyone that uses the water supposed to be helping maintain the property.

**Lucienne deNaie:** Yes.

**Tommy Oi:** Will maintain the sources.

**Lucienne deNaie:** Yes.

**Tommy Oi:** Now, is the whole community or the -- ready to pitch in with water irrigation and help maintain the stream flows?

**Lucienne deNaie:** Yes. But there's been no discussion of it. There's no outreach. Wailua Nui and Ke'anae already have regular workdays out on state land in the watershed to maintain the 'auwai, to maintain the stream beds, [00:58:27 hack back hau]. But A&B owns a lot of the property. They need to reach out to the community. You should ask them to have community meetings regularly to talk about these, you know, activities, these malama activities. It would really -- it would make good sense we, would help everybody.

**Suzanne Case:** Thank you.

**Christopher Yuen:** I have a couple of more specific questions and A&B Puolua Stream, right, A&B in their written submittal says in response to the condition that was placed on -- around this permanent...

**Lucienne deNaie:** Connectivity. Yes.

**Christopher Yuen:** ...a year ago that they remove barriers to connectivity. They say that the eight-inch pipe that carries water over the top of the ditch was extended to reach the small pool below the ditch to provide connectivity. There's something inadequate about that?

**Lucienne deNaie:** Yes. So for many years, there were two four-inch pipes, two rusty four-inch pipes, you saw a picture of the rusty pipes that's part of the debris that's still there. They were removed in 2015 during the Water Commission hearing. Local farmers in our area and Huelo area, they asked for an eight-inch pipe all the way across for years and years and years because they were promised that.

So finally in 2015 -- this discussion started in 2001. So 14 years later, an eight-inch pipe was put all the way across, before there was an eight-inch pipe coming out in -- above the little pool. The pipe has to go under the road, the entire stream is diverted, it goes into the ditch, where this little pipe goes, in this eight-inch pipe, there's a -- there's like an informal dam that gets washed out with every rain. So Mr. Siu has to go up and try to restore the little dam. Otherwise, not much of the water makes it to the pipe, it just goes in the main part of the stream. And it -- you know, it needs its own little channel to even make it into this pipe. So this pipe is full this much. It's not a fish migration, you know, pathway.

**Suzanne Case:** Can I just say, Ayron Strauch from the Water Commission is here and available to answer questions regarding the implementation of the interim in stream flow decision also, so.

**Christopher Yuen:** Okay.

**Lucienne deNaie:** Great. So this is our community view that there's no connectivity for the fish and there won't be until there's something that allows that stream to actually -- the two parts of the stream to flow together. Right now, there's a road between the two parts of the stream, and there's this eight-inch pipe that now goes beyond the road. But that was done in 2015. It's not something that was newly done, it was done before your conditions were imposed in 2016.

**Christopher Yuen:** The pipe currently goes under the road and connects the two parts of the stream. And your position that's not adequate for fish to migrate through the pipe.

**Lucienne deNaie:** Well, no. Because the pipe is on the far-end of the stream. So some fish would have to know that they need to go over to where that pipe is. And there would need to be the little dam that kind of puts water into the pipe, most of the water just goes into the stream and flows right into -- just drops into the ditch.

So a fish would need to know, it would be swimming along, it would need to know that it needs to go over to the far side and you'd have to hope that there's enough water in that pipe. And then when the pipe drops into the other stream, it's all overgrown. In fact, A&B dumped a whole bunch of rubbish trees that they cut down there, and it's going to be hard for fish to navigate that, you know.

**Christopher Yuen:** Just like salmon. So then the other stream that is mentioned is Hanehoi and can you explain what the issue is in Hanehoi?

**Lucienne deNaie:** Well, Hanehoi is one of those streams that's diverted four times. It's a short stream, it's only a mile and a half. It has diversions at four different elevations. The only diversion that is open as part of this complete restoration is a very bottom gate at the bottom part of Hanehoi Stream. Now, if there's not a lot of rain, like there was in July -- when we have the big hurricanes, storms, and everything, that stream flows, you know, it always has, it's always flowing during big rains.

But if it's supposed to be completely restored, you need a way of not diverting at those top three diversions. A&B tried to get a permit. It didn't happen for two years. Finally, in July of this year, it was decided that they could close those gates without a permit as a regular maintenance sort of activity. Why it took almost two and a half years to decide that, we don't know. But the community is never consulted. There were two site visits this year. We were never invited. Water Commission came out and A&B came out. It's the people who live there who are dependent on these streams. We have no public water supply, these streams are our water supply, you know. We're really dependent on them. We should be consulted, that's all.

**Christopher Yuen:** Does the stream currently flows through? Because Hanehoi currently flows because of the closure of the diversion gates.

**Lucienne deNaie:** No. Hanehoi flows when it rains because only one diversion gate is disabled. The other three are continuing to divert water.

**Christopher Yuen:** I'm going to ask Ayrton about those when public testimony is finished.

**Lucienne deNaie:** Thank you.

**Christopher Yuen:** Then your letter says there's not time in these brief comments regarding the conditions on your test -- your written testimony this morning says there's not time in these brief comments to explain the lack of compliance we are aware of.

**Lucienne deNaie:** Uh-hmm. And then we...

**Christopher Yuen:** See I -- I mean, you have -- you can put it -- you know, we're here to hear what you have to say. And you can -- it would really help if you would put it in a letter. You don't -- you're not limited in any space or time by the letter to explain what is -- what the lack of compliance.

**Lucienne deNaie:** We understand. But OHA went into great detail and we agree with what they say. And we listed A, B, C and D, the areas of compliance that were lacking and gave like a one sentence explanation of what we thought the problem was. But I think if you read the OHA comments, you're going to find a lot of this addressed in great detail. So in the interest of making something that maybe you guys would read, I try to make it brief. I may be selling you short, but I've sometimes submitted 16 pages and find that, you know, it's -- nobody looks at it at the meeting anyway.

**Suzanne Case:** We read them ahead of time if we get them ahead of time.

**Lucienne deNaie:** Yeah.

**Christopher Yuen:** Yes. If I get something ahead of time, I will certainly read it.

**Lucienne deNaie:** We tried. We've been working on this for three or four days, but, you know, we get one week notice, so.

**Christopher Yuen:** Okay. I know. All right. That's all I have.

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

**Marti Townsend:** Thank you.

**Suzanne Case:** Alan Murakami.

**Alan Murakami:** Good morning Members of the Board. My name is Alan Murakami. I'm with the Native Hawaiian Legal Corporation and we have for almost a

couple of decades at least represented Na Moku out in East Maui. We have real concerns about this particular set of revocable permits because I want to point out to the Board that while we have been heavily involved in the 27 streams that we petitioned for IIFS amendments, there are over 100 streams and tributaries that are covered by these four license areas.

And that this does not mean that accorded means that there needs to be adequate analysis along the lines of what we have always been pushing for with the 27 streams. In particular, the Ka Pa'akai analysis that's required by Supreme Court and that there'll be an assessment of any impacts on any other traditional customary practices that may or may not be practiced by the members of Na Moku. We also are quite concerned about and have been throughout these past few months with the contested case hearings about the lack of real certainty about the actual water uses being planned. There seems to be a lot of as you've heard today uncertainty about how much and where these users are going to be made. And while you have imposed in the past and 80 million gallon per day cap on the maximum use of water from these areas, the only observed recordings of a monitor 20 to 25 mgd.

And I want to correct therefore, my second paragraph where we said that we would ask for the imposition of no more than 80 million, it should be 25 million. It should be limited to the observed and certain amount of water that has actually been used. There's no basis for giving allowances to take more. Now, you are today, I think a recent information about this new California entity that's not described and otherwise not identified because of apparent business negotiation secrets that need to be maintained. But that's the kind of uncertainty that we face over all these years of hearings. And we cannot make head or tail of how great the water demand will be over this period of time.

So technically, we've asked for a deferral on this decision until there's greater certainty, there's better processing of the EIS. The Board submittal says that there was a report that there was going to be a draft by the end of February. Now, I hear in this testimony today that it's going to be at the end of the second quarter, that's June. This kind of uncertainty, you know, gives us a lot of pause about how far along and how certain the EIS processing will occur. We've brought up this since before 2001, that EIS was necessary for the long-term permit. And this process has been dragging along for over a decade, even with your order, now they're saying, "Oh, we needed to have the IIFs decision to make a determination on our environmental assessment." Well, I have a hard time understanding that because you have to deal with scenarios in the environmental assessment, and probably would have to be an EIS, I'm sorry, because you did order an EIS.

As to the levels of potential water use and what their impacts might be on the environment and the community of East Maui, well, we've known for years that the -- there's a bottom line that we've been establishing for restoration at 64% return to the base flow. Now, there should be no

argument that anything less than that would be totally unacceptable. So I can't understand why there couldn't have been an analysis of the 64% rule for a lot of these streams, and certainly now that we know that the eight streams that have been fully restored, you know, that that should lead to no uncertainty as to what potential impacts there are there.

**Suzanne Case:** Sorry, can I ask you a question about that?

**Alan Murakami:** Sure.

**Suzanne Case:** Again, I'm trying to distinguish between the Water Commission process and the establishment of the interim instream flow standards, which went through a careful analysis stream-by-stream of instream values, and also the balancing with off stream uses and came up with established instream flow standards. So, that means that, you know, that now needs to be met, and other waters available for off stream uses.

**Alan Murakami:** Sure.

**Suzanne Case:** So I...

**Alan Murakami:** Well, that's what my first major point was, that takes care of maybe a quarter of the streams of East Maui. We still have 75% of them that have not been reviewed or analyzed by anybody. And that's one of the duties of this Board under the Ka Pa'akai analysis, at least to assess the impact of the potential diversions on traditional customary practices and to reasonably protect them. I see no analysis of that at all.

And I'm just bringing that to your attention because I think that duty does not -- the activities and the conclusions of the Water Commission do not relieve this Board of the continuing duties to protect these other streams. That's one of the points we tried to make when we tried to restart these -- the contested case hearings that we had so that independent issues like these are in fact being pushed forward after now 17 years, since we filed those petitions for a contested case hearing to challenge the long-term permit. So I think just from a logical viewpoint, we were taking the technical standard, there should be a deferral of this decision because of these concerns.

In the alternative, should there be granting of this because of the concerns about food, security, and sustainability. By the way, Na Moku has never taken the position of trying to negatively impact diversified small farmers, we've always been supportive of that. And none of the actions that we take in the past should be interpreted to mean that somehow we're in competition with them. We've always allowed for that use as a reasonable beneficial use. And as you may know, even the stay of decision in court protected those uses of the county. So we're not debating that part of this particular impact of this -- of RP. The uses of the county as quantified in though -- in that decision is not an issue. We are; however, I want to make it clear, we have this on record before the



Water Commission, we are opposed to reliance on surface water for expanded domestic use in Upcountry and elsewhere with the use of surface water from East Maui. I think that is a different discussion that should be handled in a different way because of the issues that are involved with expanded urban uses of water.

While it is a trust purpose, there are reasonable alternatives that have not been explored and need to be explored if you're going to advocate for expanded domestic uses of water from East Maui. We've always taken the position that there should be sufficient subsurface water and there's some suggestion that their ideas about that to meet that need. In particular though, let's see, you know, there was some concerns [01:13:50 inaudible] about that. But the community participated in taking responsibility for the maintenance of some of these areas so that there'd be sufficient flow to the community. Now, I just want to make the clear that Na Moku has regularly in I think every third Sunday or some day of the week, every month, participate in the cleanup of [01:14:10 Akeke] springs to assure that there's continued flow into the valley or sufficient amount for the taro farmers.

And the community is really buying into this notion of community management of the resource and those fully restored streams because now they're responsible for whatever comes down. So they want to accept their responsibility and continue that kind of stewardship of a sort that you were suggesting. However, there are also and we join with Sierra Club on this, in need of greater, I think, communication and cooperation with A&B EMI about the changes that are occurring, about the conditions that need to be enforced, particularly the respective cleanup of debris in the field and with some report of that, in the staff report. But Na Moku would like to get better access to these areas so they can see for themselves rather than have you have to rely on just Alexander & Baldwin's word about what's going on up there. And have eyes on the ground for you and hopefully join with you, cooperate with you so that you have better information on whether or not these conditions are being met.

So they would like to see the kind of involvement that Lucienne and Marti suggested so that there's better communication flow between the community and this major water diverter. And we would welcome that. And so far, it has worked with at least the combination -- get into combinations and whatever keys necessary to get up to [01:15:46 Akeke] spring. But Na Moku would like to expand that access ability so that they can gather the information and report to you any kind of concerns that they may have on the ground with better information with actual observations. So, we are really concerned to hear about especially the -- this new plan with this California entity.

We cannot see that you should give a blank check just because there is this prospect for expanded water use. For I think a mutually agreed upon good purpose, food security and promoting the food security,

sustainability goals of the state. You know, NaMoku joins in that and would like to see that really come to fruition. I think there's probably room for that kind of sharing to occur. But we are not willing to continue to rely on uncertain information, which was what I think I can characterize the Water Commission hearings to be like when information has to be brought forward as to what the actual need of the plantation was at that time and after their closure. We don't have that information and we are extremely uncomfortable, like trying to give any kind of blank check to this company given their past record that we have experienced.

So we want to limit basically, and kind of cap to what has already been observed no more than 25 mgd and I made an -- oh, please make that correction on page one of my testimony on the second paragraph. So I'm open to any questions you may have.

**Suzanne Case:** Thank you.

**Christopher Yuen:** Well, I have a couple of question.

**Suzanne Case:** Go ahead.

**Christopher Yuen:** Sorry. You almost escape.

**Alan Murakami:** I would expect that.

**Christopher Yuen:** You know, your discussion of a number of diverted streams, you know, I -- I'm going from memory here. You know, I remember looking at this very carefully, at probably the last time or perhaps the time before, my impression was that of the streams in the license areas that I'm not certain of the very west end of the system of Huelo, but of the streams and the licensed area that all of them are covered by either the IIFS or taro streams that were -- there's some overlap between the two. Is that good?

**Alan Murakami:** You know, I have to confess, I haven't gotten to that map and looked at every stream.

**Christopher Yuen:** Yeah.

**Alan Murakami:** There have been -- I'm relying basically on past staff submittal references to the number of streams in the Water Commission proceedings. And so, I cannot tell you for certainty how many there are. But they're clearly more -- much more. And as I recall the number, it was over 100 that was quoted by the staff report, that in 2008.

**Christopher Yuen:** Well, I think I'm -- I think there's maybe some difference in what people are counting because, you know, they're tributaries, they go into a lower stream and then if the IIFS is set for a named portion of the lower stream, then you have to let the water flow with the tributaries, you know. I just don't remember there being a significant number of streams in the license

area that are not covered in some way either by the tributary, by this tributary issue.

**Alan Murakami:** Yes.

**Christopher Yuen:** You can't name me a stream that is not covered...

**Alan Murakami:** That doesn't have a tributary.

**Christopher Yuen:** Right. That -- I mean, in the license area.

**Alan Murakami:** Yes. No, I think...

**Christopher Yuen:** Can you name me a stream that's not covered by [01:19:47 inaudible]

**Unknown:** Hoolawa

**Alan Murakami:** Hoolawa

**Christopher Yuen:** Which is -- where is Hoolawa

**Lucienne DeNaie:** They're on Huelo licenses area.

**Alan Murakami:** That's Huelo licensed area.

**Christopher Yuen:** Okay. So this is where -- yeah. I wasn't completely sure of what Huelo...

**Alan Murakami:** They are. I know they are.

**Christopher Yuen:** Okay.

**Alan Murakami:** I've seen the map, but I -- you know, frankly I haven't sat down and counted them, identified each one that wasn't covered by the IIFS. But I'm relying on the staff submittal that the quorum produced that there are over 100 streams.

**Christopher Yuen:** But why did you...

**Alan Murakami:** [01:20:16 inaudible]

**Christopher Yuen:** Yeah.

**Alan Murakami:** Well, I just want to bring that to your attention because frankly, that's kind of the burden that's on this agency for sure that those streams in fact have been looked at and analyzed.

**Christopher Yuen:** Yeah. I remember looking at -- you know, I -- looking at this in connection with the IIFS and carefully looking at the maps and trying to see if everything was covered. And as I said, I wasn't 100% sure Huelo area, but it seemed to me that in the other three licensed areas, everything

was covered. And -- I mean, your organization in making the IIFS petition was trying to ensure stream close and importantly...

**Alan Murakami:** That were important to the community. Yes.

**Christopher Yuen:** ...the, you know, which would be your [01:21:01 inaudible] community, your Nahiku community.

**Alan Murakami:** Wailuanui. Yes.

**Christopher Yuen:** Wailuanui. Okay. So that's -- that was my first question. My second question is, I'm not sure I see a point now in having limiting this RP to X number of gallons, because we have the IIFS decision, which is has to be implemented. But to that extent, the IIFS decision sets the baseline of biological integrity. Then we have the taro stream, which have -- which means still leaving implementation issues aside, all right? And then requires the restoration of close to taro soon.

And then we have no waste condition. So they're not supposed to just, you know, send it out down the pipe for no good reason. They have, apparently -- and this part is a technicality that I'm not sure I understand. But you have to keep some water in portions of the ditch where it dries up and it's part of the maintenance of the ditch. But we do have a no waste condition. If we limited the RP to what they've been using, then we're basically limiting them to whatever lack of success in expanding farming operations that they've had over the last couple of years. They're not going -- you know, the -- if somebody comes in next -- you know, in the next year that wants to farm and leave X number of gallons and it's available after leaving them water in the stream for the IIFS and leaving the water in it the stream for the taro farmers. If we adopted this 25 million gallon per day limit, then that farmer will be stuck.

**Alan Murakami:** Well that's my concern too that you're in because are we just saying basically, okay, there's a bank of water here and you get to use it whenever you come up with your diversified Ag plan. And that's been, you know, kind of really problematic for Na Moku for many, many years. And you're basically allowing the diverters to determine then what would be reasonable beneficial within this year period.

That actually feeds into another -- you know, maybe it supports the argument for deferral because why can't they come back and that show you that this stuff is reasonable to use? I mean, how about -- how hard would that be if they've got all these experts to rely on?

**Christopher Yuen:** Well, you know, to say to -- so, we are dealing with just this year, and certainly, when the Board looks at the long-term lease we have to take a careful look at are we going to leave more water in the stream or the IIFS and the taro requirements? But for the standpoint of the next year, the -- it would be difficult for somebody who wants to come in the next year to

then say -- well for them, indeed, I have to say to them, "Well, we have to go to the Board to get in more water for you."

**Alan Murakami:** But what -- that's my point though. If for an enterprise this big, when they're saying they're going to replace the footprint with diversified Ag farmer, why don't they know this, how much water is going to be needed? I mean, that seems to be a planning point that should be settled. Come in with a number about exactly what it would take to open up all these thousands of acres.

**Suzanne Case:** Well, I think we've heard testimony that, A, this was carefully considered by the Water Commission. And then, B, different types of crops require different amounts of water and they -- the goal is to promote diversified agriculture as well. So -- and they're in a transition. So, you know -- I mean, I agree, I don't see the harm in...

**Alan Murakami:** Well, I think we agree as to what the outcome should be. But I think we disagree as to how to get there. And I'm coming from the viewpoint of what our experience has been in the past about getting information and getting some certainty about the actual uses that are needed.

**Suzanne Case:** But, again, what are you trying -- what's -- what are you trying to protect? Because the instream flow standards have been set.

**Alan Murakami:** Yes. What I'm trying to protect basically is the contrary to what the Commission has to do. You have the ability as the lessor to dictate what kind of water use can be made from areas that are not subject to those IIFS or, you know, are more protected than the IIFS for those streams. So all I'm saying is that there should be more review, more scrutiny and better access by the public to seeing what these additional water uses are going to be and in what amounts.

And I think, basically, you know, maybe it's an overstatement, but giving them a blank check as to what that might be, is contrary I think the public needs to have in this instance and with such a monumental decision as this over the long-term.

**Christopher Yuen:** Well, I think when you say we're not making long-term decisions, when you say, you know, based on our experience, you have an IIFS that basically, under -- which no party has appealed, that should have ensured the biological integrity of the 27 petition streams. And you have the restoration of the taro streams. I think NHLC should declare victory. And if they need -- you know, we don't know what farming enterprise there would be.

I don't know what would be horrible about any particular farming enterprise that come into Central Maui in the next year or so. So I don't see a reason to limit it to 25 million gallons per day and make a new farming enterprise have to come to the Board in the next year.

**Alan Murakami:** Okay. I guess that's the point of our disagreement. Based on our experience, and based on what we believe to be the public trust duty over this resource that that should happen because it's -- I mean, if this was just a small farmer, okay, next year, you know, maybe whether it takes one or two more million gallons a day is fine. But we're talking here about the using, is it 36,000 acres, or whatever it is that remains in this map? And that could be a massive amount of water. We don't know that at this point.

What is the crop? Is going to be [01:28:05 inaudible] sugar is going to be less. We've been given fragments of information under the guys that they're still in negotiation. But maybe it's a matter of trust too, but I think you have to understand where Na Moku is coming from on that issue because the impact on the East Maui streams could be more or less severe than what we're imagining. Now, we just don't know.

**Christopher Yuen:** Well, I mean, we're back to if we adopt the -- even if we did -- you know, even if the Board was inclined to put more water in the stream, we can't take out anything. We can't -- we're not going to author -- we certainly not able to even authorize anything that would be below the IIFS...

**Alan Murakami:** Yes, I agree with you.

**Christopher Yuen:** ...or the taro streams. So -- and I -- you know -- I mean, I just think it's -- also I think it's a practical matter, you're not going to see him massive farming enterprise implemented in the next year or so in Central Maui. I'm forgiving some flexibility on the point.

**Alan Murakami:** Okay. Yeah. I'm not going to beat a dead horse. I'm just saying where we're coming from and I think what we're asking for is a more protective approach given what's happened at least in the past 50 to 100 years with this community with this company. And I think that it's warranted on that basis. But, you know, this is the Board's duty. I mean, how much of a stewardship role do you perform in this situation with this amount of water of this important resource?

And I think what we need to do. I think it's imperative on our part to at least advocate for a more precautionary approach because of that history and the need for protection of this resource for such a massive amount of land.

**Suzanne Case:** Stan has a question.

**Alan Murakami:** Am I ready for it?

**Stan Roehrig:** We'll see. This idea of having a community connection to the planning process to the issue of utilization of the water to the determination of which streams get fixed for -- through the termination of what place would be for taro and what place is not for taro. All of these issues suggest a permitting committee. Like, did you ever read the final

decision the Land Use Commission and the Kaupulehu docket at the Ewa LUC?

**Alan Murakami:** The actual Ka Pa'akai?

**Stan Roehrig:** Yeah.

**Alan Murakami:** Land use decision?

**Stan Roehrig:** No. Not Ka Pa'akai.

**Alan Murakami:** [01:31:01 inaudible]

**Stan Roehrig:** The Kaupulehu...

**Alan Murakami:** Okay. Okay. Okay.

**Stan Roehrig:** ...went to the Supreme Court and they said that we didn't pass rights correctly. It's about that time we had a bunch of new members in the LUC. And so we revisited the whole thing. And I can't remember how many days until -- at the end of that. We entered an order, it provided that **Hannah Springer** was going to represent the Hawaiian community in that neighborhood because her family was from there.

And then one of the executives from the Kona village, they are the landowner for the [01:31:43 inaudible] lava flow and the plan new area by -- forget the name of the gentleman from Texas, not **Barnwell** but anyway, they're developing a new facility in [01:32:04 inaudible] lava flow and they're trying to bulldoze certain areas and a lot of community uproar about it.

So the LUC put in place a permanent committee and they're paid staff. So they're not just going down there and make a manuahi and volunteer. These two people are paid and when they have an impasse, they pick a third person to break it. East Maui, you have a little different situation. But the idea of having a permanent relationship gives constant access for concerns of native Hawaiian, constant access or concerns of farmer, and other users of the water coming out of this area, and the landowner. Now, it doesn't matter going in the future landowner changes, we just keep the same committee there. And this model seemed to work on Kaupulehu because far as I know it's still going and it's been -- that was 2000 or 2002, somewhere around there. So, how does that sound?

**Alan Murakami:** I think Na Moku would welcome an idea like that.

**Stan Roehrig:** Okay.

**Alan Murakami:** I've seen -- somehow it work -- somewhat work in another context on Lanai where by agreement and settlement of a Land Use Commission decision pending at that time, we created a Hulopoe park concept to

regulate the activities and restrictions of the Hulopoe beach area, and it's still in existence after 26 years.

- Stan Roehrig:** Was that before the Kaupulehu or after?
- Alan Murakami:** One was Kaupulehu, that's more recent, I think.
- Stan Roehrig:** 2000.
- Alan Murakami:** No, this is the 19...
- Stan Roehrig:** 2000, 2001.
- Alan Murakami:** This was in 1990 -- no, 1987.
- Stan Roehrig:** See, I'm not familiar with that one.
- Alan Murakami:** I could show you that.
- Stan Roehrig:** Okay. But anyway, that idea, that -- are you folks concerned about certain stream, Huelo or whatever should be [01:34:16 inaudible]? You have input in it too an ongoing basis. It's not whether they show up for the meeting. It's set up -- you do this as part of the order.
- Alan Murakami:** Right.
- Stan Roehrig:** And so then we can -- well, that's it.
- Suzanne Case:** Can I just make a note that the Water Commission decision did require setting up points of contact and in order to facilitate communication between communities who were part of the stream system, and when...
- Alan Murakami:** [01:34:56 But it stops short of] what are you suggesting?
- Suzanne Case:** Yeah. Well, it's a start in that direction.
- Alan Murakami:** Yes, it's a start.
- Suzanne Case:** And this...
- Stan Roehrig:** Sounds like it was a good idea.
- Suzanne Case:** ...submittal incorporates those conditions into the requirements.
- Alan Murakami:** It could be beefed up. Certainly.
- Stan Roehrig:** Say that again?
- Alan Murakami:** It could be beefed up. Certainly along the lines that Lucienne and Marti and I have suggested.



**Suzanne Case:** Yeah. And maybe that's -- you know, maybe that's a topic for the longer term solution, we ought to start now. And, you know, see what works now so that we know where it needs to be beefed up in the...beefed up in the...

**Alan Murakami:** Yeah. And I think -- well, I can say that Na Moku would probably welcome an idea like that if it works the way along the lines you're suggesting.

**Stan Roehrig:** And you could tailor it. If it doesn't -- you know, this is just the beginning. If it doesn't work perfectly, you can always do a little bit of...

**Alan Murakami:** Sure. Tweaking.

**Stan Roehrig:** Tweaking.

**Alan Murakami:** Or tweaking.

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

**Keone Downing:** I got one question.

**Suzanne Case:** Sure.

**Keone Downing:** What is the future look like December 31st, 2019?

**Alan Murakami:** That's something that's really occupying my mind a lot. Because, yes, this is the end of the three-year period, there a lot of representations made about that's all it need -- the time they need and then there'll be prepared to, you know, issue or decide upon a long-term solution to this issue in terms of a license or lease. But I am a little pessimistic in terms of some of the pace of some of the things that have been happening, particularly with what's going on with the EIS processing and it's now three years in the making.

Somewhat dubious about what some of the constraints have been to prevent that. And that's why I've called in my testimony for -- and maybe it's too infrequent, semiannual reporting on the process -- on the progress of that EIS processing which could really, I think, trigger a lot of action that would help you make up your mind and give you the information through the environmental disclosure, the cultural impact disclosure that that statement would require. But I'm a little nervous, let's just say about whether or not all of that can happen over the next 13 months. And...

**Keone Downing:** So is it your understanding that the holdover ends is no more holdover.

**Alan Murakami:** That's right. Now, I don't know what's going to happen this next session. I hope we're not going through another round of extensions of that -- of Act 126. But we're totally against that as we have been with Act 126, frankly. But be it as it may. I think, you know, if this is the process, you

know, we'll follow it, but, you know, we are -- which was the right word, I was going to say, cautiously optimistic, I guess I should always remain that, that all of these processes in fact will work. But a lot of caution to that.

**Keone Downing:** Okay. Thank you.

**Suzanne Case:** Thank you.

**Alan Murakami:** Thank you very much.

**Suzanne Case:** Okay. Wayne Tanaka.

**Wayne Tanaka:** My name is Wayne Tanaka here with the Office of Hawaiian Affairs. I won't go over the entire testimony, I just -- I think it a gist of what we're urging you to do is to take your time in making this decision and make sure it need -- [01:38:32 inaudible] with the right information. And just, this is an initial context, I want to reemphasize the point that Alan made about the fact that IIFS applies to 27 streams, but to the extent that there may be 10, 20, 60, 70 other streams that are not subject to the IIFS, the current submittals recommendations would essentially allow the streams to completely diverted for any municipal agricultural use as it's written and it's just something to keep in mind. But, you know, I think one of the main points that I want to -- we want to raise is what we've raised over the last two years is that there needs to be far more information provided from Alexander & Baldwin about what their actual water needs are. Why their alternative -- why they're already existing a water resources that could provide them with up to 100 entities or more can't be used instead of diverting these East Maui streams that are on public state lands.

And why there needs should be a presumption in favor of the public use purposes which includes maintaining waters in a natural state. I just want to read from Waiahole which was established 20 years ago and reaffirmed repeatedly over the years, but as a state agency, the DLNR must apply presumption in favor of public use acts of enjoyment and the resource protection. It is duty-bound to place the burden on the applicant for private water use to justify the proposed water use in light of the public trust purposes. And the applicants must also demonstrate their actual needs and the propriety of draining water from public streams to satisfy these needs.

It's been two years and right now all we have is a map with colors on it. There's no water duties, there's no -- you know, there's -- I think, it would be very easy for A&B to come up with the actual quantified proposal and description of what the actual needs are. And I also don't understand why there's no mention of their alternative water sources includes, I think, 17,000 acres of privately owned watershed lands in East Maui that can be diverted from, includes all the Central Maui wells which Larry Miike found in his -- could produce up to 83 [01:40:49 mgds]. If you only need 20-25 entities, why can't they just access their own sources coming back

to the Board then? And so it's been quite clear, that passage I read is, in fact, expanded to include other [01:41:04 inaudible] Water Commission but it's going to expand it to include not only other state agencies but even county agencies in Kauai springs there was a county planning commission that the Supreme Court found has a duty to uphold public trust in water.

So, you know, this is probably one of your most important critical responsibilities on the constitution is to play the public trust in the correct manner and [01:41:24 inaudible] legal manner and to continue to give A&B a free pass, it really undermines I think, the -- not only the public interest, but the public trust and the public's trust in your ability to carry out this critical constitutional responsibility. That being said, you know, if and when a holdover is issued, I think it's also important to think about how you can ensure that the conditions you place will actually be compiled with and enforced.

If -- you know, so, say, if you're going to say no waste, then let's - why not have the applicant install water meters both on the stream side and on the Central Maui side so that you can compare, you know, what is going in, was coming out, and what the -- and what the water is used for. And if -- I think, you know, we have more than ample resources to provide that kind of infrastructure in terms of water. If you're going to say you only use it for agricultural purposes, and why not require, you know, quarterly agricultural productivity reports, you know, let's make sure this water is actually going to agriculture.

You know, and to extent that there have been conditions that I think have been delayed for considerable amount of time, let's have -- why not takes conditions like performance bond or something so that they don't -- so they have an incentive to actually take action and implement these conditions that you guys...

**Stan Roehrig:** Can you repeat that again?

**Wayne Tanaka:** So you could provide conditions that will give them more of an incentive to act more timely on the conditions that you impose, like performance bonds, timetables, things of that nature. Just things to think about for if and when you issue a holdover. And those conditions [01:43:11 inaudible] written testimony, I won't go through all of them, suggestions I mean.

And the last thing I wanted to point out was that this is actually a really -- could be a really critical opportunity to look forward to the long-term lease that A&B has been asking for or since 2000. You know, as he mentioned, the holdover authority Act 126 is about to sunset. They're going to need a lease unless there's some kind of legislative action. And so, you know, the water meters I mentioned earlier, that could be really important to understand how much water is flowing to the streams, to monitor how much water they would be taking out under any long-term

lease. I think, you know, understanding what their financial benefits are from having access to this water. What's the cost that you would have to spend to obtain water from alternative sources? I mean, I think it's very important to start to begin and understand that kind of information so that when you do have a lease you know that the public isn't being shortchanged from the private use of these public resources. And so, you know, there's additional conditions and suggestions in our testimony as well. So I recommend that you just take a look at them and make a decision carefully. Thank you.

**Suzanne Case:** Thank you. Anyone else want to testify that hasn't signed up?

**Male:** I seen um already.

**James Manaku:** Yes, Madam Chair, concerned parent, grandparent, great grandparent, my name is James K. Manaku, Sr. You know, my only concern about this is that -- well, let me rephrase one more thing to be clear, I'm also a cultural religious subsistence practitioner. So, my only concern is that, you know, like all of these big company that had the pineapple, the sugarcane and, you know, we don't know how they got the property but the concern is we're not being allowed access.

Here in Oahu, I had my friend confronted by a farmer, yeah? And he -- and the people he was with, they had guns on my friends, they were hiking and coming out of the Koolau -- I mean, the Waianae range. So, my only concern is that we need to have -- you folks need to make us -- make it possible for us to get the resources that we need. The resources that you folks supposed to be protecting for us. So, I'm not sure how you guys are going to do this, but I really, really appreciate you folk's diligence and trying to make sure so that we don't run into this thing. I mean, it's getting crazy.

I've never had anybody pull rifle on me. And I don't -- I don't think any of you had, but it's kind of scary. You know, the -- and the excitement somebody saying, "Just pull the trigger." So you folks know they -- us so-called subsistence practitioner that have the right to go -- to access and the right to gather the resources that we need. I'm not talking about something that belongs to somebody else, yeah? If there's papaya farm, it doesn't give me the right to go to his farm and pick these papayas as an example, or bananas, or anything that the -- their livelihood depends on. But it does give us the right to go to their property.

And I'm not saying we just go right up their driveway, of course, we all know that. We go someplace we are -- wouldn't have an impact on the people that's taking care of the place. So -- and today I'm trying to find out can you folks help us? Why aren't you folks helping us? See, this is [01:47:30 confuses you]. So, I'm -- you're right about the taro farming, you're right about our farming here in Hawaii, but [01:47:41 inaudible] it's not good. They need to be responsible for what they're going to do.

They need to be responsible, enough to know what they're going to do and how much they need.

So, like I say, please, you know, for us cultural subsistence practitioners we're having a problem with the A&B Mokuleia, yeah? So we need to have the help and then making them understand what our rights are because we've seen the state constitution Article 12-7.1 and it states clearly access and gather.

So, it would be a big help if you guys can go and educate these people so that they understand that we're not here to steal from them, we just get what we need to get because they will go buy the land or be using the land, leasing the land. But they don't like one of us to go through there. And that's not fair. So I just want to bring that to your attention. Thank you.

**Suzanne Case:** Thank you. Anyone else want to testify?

**Christopher Yuen:** I have a couple of questions for Ayron.

**Suzanne Case:** Yeah. Ayron. And I think Dean is outside too. He has some information - - background on this.

**Ayron Strauch:** Ayron Strauch, hydrologists instream protection and management branch to the Water Commission.

**Christopher Yuen:** So we had some discussion in the testimony about are there streams diverted in the license areas that are not covered by the IIFS or the taro restoration?

**Ayron Strauch:** Correct. The original petition was for 27 streams and license areas. Those were the 27 most important streams, the largest streams. Were streams where communities lived along them. And so the Water Commission did their due diligence to protect instream resources with the IIFS.

**Christopher Yuen:** And where are the streams that are not coming by the island?

**Ayron Strauch:** They're spread out through licensed areas.

**Christopher Yuen:** Okay.

**Sam Gon:** And is there a submitted numbers that were given, like over 100, is that accurate?

**Ayron Strauch:** Depends if they're calling an individual stream or hydrologic unit or a tributary or spring even. There are about 450 registered stream diversions, but the IIFSs account for many of them.

**Christopher Yuen:** So then we have questions, the two that came up on the inadequate restorations were Hanehoi and Puolua, are -- could you -- without getting

too deep, Is it a matter of things that are going to be done but haven't gotten -- haven't happened yet for one reason or another? Or is there some other problem going on here?

**Ayron Strauch:** So I don't deal with the regulations are permitting, but from what I understand the -- there's a process to either formally abandon or modify some of the diversions and that process often includes bringing -- getting Army Corps permits or DOH permits of which it takes a while is the answer.

**Dean Uyeno:** If I may, Dean Uyeno with the Commission on Water Resource Management, Stream Protection and Management Branch. Good morning Board Members. So on that note, A&B had submitted an application for abandonment for the stream diversions that were impacted by the Commission's Instream Flow Standard amendments. We initially met with Department of Health and there were some concerns there, excuse me. And so we wanted to wait until the Commission came up with its final decision, which was last -- this past June.

And so in working with A&B, you know, they file for, I think, there's over 100 diversions for it to be abandoned. In order to effectuate a cleaner review process, we asked them to go back and separate out those diversions into categories. Basically low, medium and hardest to have to abandon. And so in the case of Hanehoi and Huelo, the diversions -- the streams that flow directly into the ditch. And so it's not just a matter of sealing diversion intake or opening up the gate. In this case, they have to actually construct basically a culvert for the stream for the stream to cross over the ditch.

And so because now that's going to go into the ditch that's considered a stream. And so that's why the Army Corps review process had to take place at which A&B just got approved earlier this year. And so, we are moving forward with that. The plan is to -- they need to -- they have resubmitted the revised applications, there were little things here and there that we need to clean up with it. And so A&B will be filing hopefully next week, revised applications. So we intend to initiate the review process, we should take 30 days and then we'll -- hopefully early next year, hopefully January-February timeframe, we should bring it to the Commission for abandonment.

**Christopher Yuen:** Okay. That's all I have. Thank you.

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

**Sam Gon:** Could you repeat your name and title again please?

**Dean Uyeno:** Dean Uyeno. I'm the Program Manager for the Stream Protection and Management Branch.

**Tommy Oi:** The studies you guys did, your due diligence, you think that would qualify us under the Public Trust Doctrine?

**Dean Uyeno:** Yes. The Commission is responsible for -- the instream flow sides are intended to protect the public trust doctrine or at least the -- let me see...

**Suzanne Case:** It protects the public trust, implement the public trust.

**Dean Uyeno:** Implement the public trust doctrine. And so are -- yeah. Our review only focused on the 27 streams that were petitioned. Our goal is to eventually get to the rest of them. There are, what's been referred to as basically status quo interim instream flow standards as [01:54:19 inaudible] are enacted. So if I recall correctly, and I can't recall what the -- if it's between -- there's streams between Honopou and Maliko Gulch that are being diverted as well, that are outside the licensed area. But just to kind of clarify the numbers, I think it's roughly a third of the streams that are handled in petitions, and there's about two-thirds that are not, that are still within the licensed areas. Okay, any other questions?

**Suzanne Case:** Okay.

**Tommy Oi:** Thank you.

**Suzanne Case:** Okay. Any other questions? Okay, thank you. Any other questions of the applicants?

**Keone Downing:** I have a question.

**Suzanne Case:** And also if you wanted to add anything.

**Keone Downing:** Same question I'll ask [01:55:18 inaudible]. What does December 31st, 2019 going to look like?

**Meredith Ching:** I think he's right. There's no way we're going to be able to get to a long-term lease at the end of this revocable permit, because the EIS process has to be done first and after the draft EIS timetable that I explained to Chair, then you have to get the public comments, publish it, get public comments, and then print another final EIS.

So assuming there are no legal challenges or delays or not, you know, a huge amount of public comment that needs to be responded to, even that's going to take to the end of 2019. So it'll look -- the process will extend into 2020. And then I believe the DLNR has some things it has to do before a lease is actually put into public auction, get appraisals, lease documents, et cetera.

**Keone Downing:** So you have to go back to the legislature this year?

**Meredith Ching:** It appears that that's necessary. And it's not only us, there are nine other water revocable permit holders who have been on extended periods of

time who has of now haven't been able to get to a long-term lease and they include farmers on the Big Island, the Big Island utility, the Kauai utility, KIUC. So there'll be a bunch of people that will need relief.

**Keone Downing:** Thank you.

**Suzanne Case:** Any other questions? Anything you want to add?

**Meredith Ching:** Thanks. I think staff kind of covered. Again, we -- you know, just back on the stream restoration for the taro streams, when we made that promise in 2016, we did everything we could immediately and that really restored about 90% to 95% of the natural stream flows. The rest of that work and the work that's needed to permanently abandon as we had promised is what Dean explained is that lengthy permitting process and we've been working with them.

**Suzanne Case:** Thank you. Okay, thank you. Board Members are we ready to...

**Keone Downing:** Comment first. Listening today I hear two different communities ask for two different things and for me today is all about HRS 5-745, the Aloha Spirit, and I believe that we're going to need to move that way. We need to involve all community, all aspects of community, and all aspects in this is instance of a community of Maui. Not Honolulu, not the legislatures, not the Board, really.

Because until the community helps to find a solution and what I'm hearing is openness, openness to talk, not openness to hide my card on the table, that's an ace, but to let that ace be shown. And the sooner we involve everyone, because I think everyone in the big picture is only for the good of Maui. It's not looking for self interests. They're looking for, "How am I going to survive?" And I think they believe everybody should survive. I don't think they want to stop big business nor does the big business want to stop a small farmer.

So, how do we get to that point? I think it's moved that way. But it's gone slower than a snail because everybody's still trying to hold cards. And I think going forward, it'd be smart to try to speed up the situation. I don't see. And I don't see no -- I don't see any reason why we cannot put it all out there for everybody's concerns, you know, because if not, it becomes billable hours for attorneys, and consultants. And we lose as Hawaii. There's no gain for us, that we still end up in a situation that we're ending up now when the legislature passes something and then give them three years and now we cannot go back. So really, all that work that they did it's moot -- not going to matter. So, please, let's try to move forward as community and solve problems. Thank you.

**Suzanne Case:** Yeah. Stan then Tommy.

**Stan Roehrig:** I'm going to make a motion that we approve an extension of this RP. This is the last -- I'm going to give my explanation why this is the last year of



the three-year of the RP process. And we need to give the legislature an opportunity to examine this matter in some kind of stability next session because they're going to have to. And the Chairman of the Water Land Committee in the House and in the Senate are going to have to spend a lot of time on this issue.

And we can't operate in a vacuum. We have to do this together. And so I think we need this time and we need to have some stability while this -- we're trying to get it together. That's my first comment. The second comment I have to make is very impressed by the people of Maui. You folks have the greatest opportunity in agriculture in the state because you have one large landowner and you have a water system that connects much of East Maui and you look at the other island, we don't have that. Kauai to a certain extent is not as good as Maui. So we have a golden opportunity as good as we could get along with what Member Downing has said.

So, everybody got to start putting your cards on the table. I didn't hear one word from the applicant for how much water they were going to use. That disturbs me because they have the burden of proof under the case that the gentleman from OHA [02:02:41 cited] Supreme Court and said, "You're the applicant, you have the burden of proof, because it's presumed that everything is for public use, unless you convince the tribunals that your entire -- that it's a good idea to give it to private use."

So the days when that was an easy move to Maui Islands is long gone. Since statehood, a lot of the assumptions in Hawaii are turned upside down in their head. And so we're in the new the reality and the new reality is kind of complicated and messy, but Maui has got this opportunity. So I'm a favor of giving more time. But I do think that we need to have some kind of a formal relationship between the different stakeholders so that you address, you tell us that's the committee talking and that's a community talking. You tell us out of your committee, you sit down and talk. Maybe it's not going to be easy sitting down and talking but we don't want cane knives and machetes and all that kind of public display. We want you to sit down and talk.

And the stakeholders need to be there. But it has to be a small committee if it's going to get anything done, but you need to set your priorities. We can't put 100 conditions on this RP, that's not our job. And we wouldn't get them right if we did. So I'm not in favor of endless conditions. I'm in favor of having a committee. And you folks tell us what is important because you are folks with the boots on the ground, not us. And I'm very pleased that the Water Commission started this process, as you folks may know, or may not know, under state law, Suzanne Case is the Chairman of the Land Board, she's also the Chairman of the Water Commission.

And that's why set up that way so that we have some coordination between the Water Commission and the Land Board. And that's the bridge between the two. So part of my motion is that we have this

committee. And I'm not sure exactly how many we should have. But I would say no more than five. We only had two at Kaupulehu but it was much smaller and much more focused. We have a lot of different points of view here. I think that OHA and NHLC are needed at the table because they represent Native Hawaiians and they also represent a lot of native practitioners. And certainly we need to have somebody from A&B at the table. We need to have somebody from farming. And I'm open for whoever else should be at the table.

I'm not sure who that should be and what other entity, but I think that that gets us started. And you folks will discover what the answers are long before we will. And during the next year while the EIS is getting worked on, you folks are going to come up with ideas that haven't even been considered in the EIS. One more thing I want to stress. I hear from the grapevine you folks have a lot of opala on the property here and there. And then access has been restricted so that people don't see that. And I'm not sure if that's true, or that's just rumors. So I'm not gonna point the finger at anybody, but part of our responsibilities as a landlord is to keep the land clean. And if it's covered with trash and old pipes, and rusty machinery, then we got to get it off of there. And if you need help to do it, then you got to speak up, but don't hide it, because it just breeds distrust. That's all I have right now.

**Christopher Yuen:** Second. And what I'd like to discuss maybe a slight or more specific aspect to the committee that we're talking about. And the Sierra Club specifically asks for quarterly -- this is -- this RP is just for a year. They asked for quarterly meetings. I would suggest and between the taro farmers and the permittee to -- where A&B would present plans for stream restoration projects and the focus of the meeting should be explained the modifications plan before they're implemented to gather feedback and avoiding unintended impacts.

I would suggest that we say that we require one meeting, NHLC can be the point of contact to -- for the taro farmers, with specifically require one meeting between the taro farmers and A&B on to discuss plans for stream restorations specifically. The making a committee I think is an excellent idea for the lease. That -- but to make a committee for this next year, you know, you know to set up a group, I think that's a long-term process. So that would be my suggested slight modification of how we would implement this community.

**Keone Downing:** I have a comment on that one...

**Suzanne Case:** One meeting.

**Keone Downing:** This is not a short-term, even though it's an RP. We know it's going back to the legislature. We start this process now. It's a function that could help the legislators in making decisions. I'm on to the opposite, I'm for more meetings than one because, one, nothing's going to get done in one.

Questions are going to be asked and what's going to be -- again, yes, RP is one year.

But guess what, I'm sure we're going to get it back for another year and another year, because there's a process that needs to get done. And -- but by then forming the committee, maybe it helps community that is in distrust. So, I couldn't. I think there needs to be more than one person, so I couldn't vote for that.

**Suzanne Case:** Okay, Stan?

**Stan Roehrig:** I'm willing to call this an interim committee, you know. So, before you have a -- before you stop the war, you have to have a ceasefire meeting, you know. So maybe it doesn't take one day, maybe it takes four meetings over one month or two months, whatever it is to get to the point where you can start talking about the serious matters. So I have a sense of urgency about this. And I'm not interested in waiting for another year before we have a committee.

So I'm okay with saying that you have a permanent committee built into the lease because I think that's a really good idea that Chris has. We've never done that before on any of our leases. This could be the first one. This is a basic step. But I do you think that we need to have a sit down right away. You got potential owners, new owners, I don't know what that's all about. But people buy and sell their assets. The older they get the -- you know, the less they want to have stuff. They want to give it to the kids or the grandkids.

So it's not unusual for entities to trade and sell and make different models for business. And I think that that's a good thing, not a bad thing. But for anybody to be interested in getting involved in this who's on the outside looking in, they need to know there's some stability. And this is not the Wild West. Local people were interested in the Wild West, that's the way we are. But we got to get together. I learned that in intermediate school at Stevenson. We got to get together, not so easy, but I'm willing to call it an interim committee. And I'm just going to say five members with any of the Members of the Board want to choose where the other ones come from, that's fine, but I can say five members.

That somebody from OHA and NHLC have to be in there because they're -- they are the -- you want to put it their monkey wrench, the gears and that's a good thing in society. So the other -- I think the farming community needs to be in there. And I think, what do you call it, A&B needs to be in there. But after that, you know, I'm not so clear. Certainly the county and the state have major stakes in this but I'm flexible on that. We can have resources, come in meet with a committee. Oh, go ahead.

**Tommy Oi:** I want to plea.

**Suzanne Case:** Tommy and then Stan -- I mean, Sam.

**Tommy Oi:** I'm going to vote for a hold over because from what I hear from all the different groups it is about the water, everybody wants to water. This holdover is about the water, not who has to do more than the other person. Everything today is about letting the water flow so the farmers can get water. The county can get water.

You know, everything else is -- they have little concerns that's why I asked about, you know, why don't the communities get together and try to work out this differences. And I think Stan is right. And even Keone is right that before you move into the lease, if you guys can get together and communicate with each other, when you go to the EIS process, it will be easier because you wouldn't have opposition because everybody should be on the same page. Everybody should be going -- when we asked for the long -- they asked for a long-term lease with the same idea and the same movement for it in this area.

**Stan Roehrig:** So I'm...

**Suzanne Case:** So wait, wait. All right. Sam has a...

**Stan Roehrig:** I landed the plane...

**Suzanne Case:** No, Sam. Sam.

**Stan Roehrig:** I'm sorry.

**Sam Gon:** I think you landed the plane pretty well. I would only add someone representing the instream flow protection and the protection of the native stream ecosystem and biota to be on that committee as well. Because one of the key concerns that was risen was that the modifications that have been put in place to address some of those movement needs of biota have not been met, at least in the view of some people.

**Suzanne Case:** So if I could offer a different perspective on that, that's the Water Commission side of it. The Water Commission has asked for monitoring to make sure that the, you know, long-term monitoring of the streams to see if the way they set it up...

**Sam Gon:** Because that's what I mean, is that I would want to make sure that that monitoring is actually happening.

**Suzanne Case:** Yes. And I do know that DAR is willing and set up to do that, doesn't have division of aquatic resources, doesn't have funding it. So we have to solve that issue. But that concern is where that desire to ensure that -- the whole point of various parts of that decision was to try a few different things to see, you know, what does really restore the streams and what, you know, is a lesser amount enough. And so that's built into that decision.

**Sam Gon:** I understand that. It's just that with the interim committee that's being proposed here, you have presentation of Hawaiian issues, farming issues, A&B's interests, but no specific address...

**Suzanne Case:** Okay. So maybe somebody from Division of Aquatic Resources.

**Sam Gon:** Sure. Or others that would be able to participate in that manner.

**Suzanne Case:** Okay. Chris has one more comment and then Keone wants to talk.

**Christopher Yuen:** So -- I mean in the interests of achieving that consensus on the Board here, may I suggest that we just the look -- to build a little more specificity in this that we have a five member committee that has -- we'll leave it a broad but undefined mandate to discuss water usage issues out of the license area, not specific -- not as specific as what the request from the Sierra Club was that OHA and NHLC each designate a member of the Farm Bureau, A&B and the county each designate a member. DAR be available as a staff resource to discuss the biological issues. And so that would be just a more specific layout of how this would be set up.

**Stan Roehrig:** Can you say -- tell me the five...

**Christopher Yuen:** OHA and NHLC would each designate a member, the Farm Bureau, A&B and the county would each designate a member. And because we're discussing...

**Stan Roehrig:** So we got A&B, OHA and NHLC.

**Sam Gon:** And Farm Bureau.

**Stan Roehrig:** And Farm Bureau. Okay. And the county.

**Christopher Yuen:** And the county.

**Stan Roehrig:** Okay. So that's one, two, three, four, five. Count that. One, two, three, four -- okay five.

**Suzanne Case:** And needing help...

**Tommy Oi:** What happened to aquatic resources?

**Sam Gon:** Oh no, no. They'll be available as the resource. I'm going to give you that.

**Christopher Yuen:** They're available as -- well this is all advisors. You know, it's a discussion. It's a committee that discusses and so it's all advisors.

**Suzanne Case:** And did you have a comment about the frequency?

**Christopher Yuen:** I'll leave it -- I -- that's -- I think we should just leave it up to...

**Suzanne Case:** I would like to suggest we say at least quarterly and encourage more often in the beginning if, you know -- to -- we're trying to build a relationship here.

**Stan Roehrig:** It should be once a month at least. Oh, go ahead.

**Christopher Yuen:** Yes, go ahead.

**Suzanne Case:** Member Downing.

**Keone Downing:** Is it out of line to ask the people how many meetings they think we should have, instead of us determining the number? We have them all here. What...

**Suzanne Case:** Well, I think if we say at least quarterly and more often as useful.

**Keone Downing:** So we shouldn't ask them.

**Suzanne Case:** I'm just trying to be efficient here, so. Anybody have a strong feeling about it? Want to answer Member Downing?

**Keone Downing:** How many meetings do you think you folks need to do something good?

**Unknown:** Probably going to need at least monthly meetings to begin with. And then later on with the research a little bit longer stretches. So, quarterly with a provision...

**Suzanne Case:** So quarterly with -- monthly for the first quarter.

**Sam Gon:** uh-hmm. Okay.

**Suzanne Case:** All right.

**Christopher Yuen:** And then I just -- I think that's all. Great. I just wanted to make one clarification on the record here and one of the requested conditions in the Sierra Club was that the -- basically that the holdover RP not be assignable to a new entity and that my understanding -- I mean from having been on the Board just to put this on the record is that RPs are not assignable. And that if somebody else wants to, you know, have the RP, the old RP is terminated and on one is brought to the Board for a public action.

That's correct. With the terms currently in here without any amendment that is still -- that is what would happen with this RP, right? Correct? Yes, okay. That's all -- I think...

**Suzanne Case:** All right. We're good with a motion?

**Christopher Yuen:** That's... Stan, motion. Second.

**Suzanne Case:** Seconded.

**Christopher Yuen:** We've added -- approved the staff submittal with adding an interim committee with five members designated as shown to meet monthly for the first quarter, and at least quarterly thereafter.

**Suzanne Case:** Okay. All right. All those in favor.

**All:** Aye.

**Suzanne Case:** Any opposed? Thank you. Okay. We're going to take a short break.

[Break]