

AGRICULTURE AND PUBLIC TRUST COMMITTEE
Council of the County of Maui

MINUTES

November 16, 2021

Online Only via BlueJeans

CONVENE: 1:30 p.m.

PRESENT: VOTING MEMBERS:

Councilmember Shane M. Sinenci, Chair
Councilmember Gabe Johnson, Vice-Chair
Councilmember Kelly Takaya King, Member (In 1:43 p.m.)
Councilmember Alice L. Lee, Member
Councilmember Michael J. Molina, Member (Out 3:29 p.m.)
Councilmember Tamara Paltin, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member (In 1:35 p.m.)

STAFF:

Kasie Apo Takayama, Legislative Analyst
Lesley Milner, Legislative Analyst
Paige Greco, Legislative Analyst
James Forrest, Legislative Attorney
David Raatz, Deputy Director of Council Services
Keoni Shirota, Committee Secretary
Kristeena Locke, Council Services Assistant Clerk

Gina Young, Executive Assistant to Councilmember Shane M. Sinenci
Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King
Sarah Sexton, Executive Assistant to Councilmember Kelly Takaya King
Sarah Freistat Pajimola, Executive Assistant to Councilmember Keani Rawlins-Fernandez
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama
Lois Whitney, Executive Assistant to Councilmember Tasha Kama
Evan Dust, Executive Assistant to Councilmember Tasha Kama

Zhantell Lindo, Council Aide, Moloka'i Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lāna'i Council Office (via telephone conference bridge)
Mavis Oliveira-Medeiros, Council Aide, Hāna Council Office (via telephone conference bridge)
Michele Blair, Council Aide, West Maui Office (via telephone conference bridge)

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ADMIN.: Jeffrey Pearson, Director of Water Supply, Department of Water Supply
Stephanie Chen, Deputy Corporation Counsel, Department of the Corporation Counsel
Caleb Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel
Eva Blumenstein, Planning Program Manager, Department of Water Supply

OTHERS: Ian Hirokawa, Special Projects Coordinator, State of Hawai'i, Department of Land and Natural Resources
Blue Kaanehe, Appraisal and Real Estate Specialist, State of Hawai'i, Department of Land and Natural Resources
Lauren Yasaka, Staff Planner, State of Hawai'i, Department of Land and Natural Resources, Office of Conservation and Coastal Lands
Toni Eaton, Maui District Supervisor, State of Hawai'i, Department of Hawaiian Home Lands
Dr. Jonathan Likeke Scheuer, Land Use Commission, State of Hawai'i

Shay Chan Hodges (APT-57)
Lucienne de Naie, Sierra Club Maui (APT-35, APT-57)
Mary Ann Pahukoa (APT-35, APT-57)
Aja Eyre (APT-35, APT-57)
Barbara Barry (APT-35, APT-57)
Terrill James Kaneali'i Williams (APT-57)
Clare Apana (APT-57)
Dick Mayer (APT-35, APT-57)
Joyclynn Costa (APT-57)
Faith Chase (APT-35, APT-57)
Brett Gobar (APT-57)
Lala Johnson (APT-57)
Others - 4

PRESS: *Akakū: Maui Community Television, Inc.*

CHAIR SINENCI: . . . *(gavel)* . . . Aloha kākou and ni sa bula. Welcome, everybody, to the Agriculture and Public Trust Committee meeting of Tuesday, November 16th. It is 1:30 p.m. I'm Shane Sinenci, Chair of the Committee. I'm here in the Hāna District Office with my EA Dawn Lono. This online meeting is being conducted in accordance with the Governor's most recent emergency proclamation on COVID-19. Please see the last page of the agenda for information on meeting connectivity. Per as the Governor's most recent emergency proclamation also includes the following mandate. Okay. One moment, is anyone's TV on? Hold up real quick.

COUNCILMEMBER LEE: Yeah, I see you're going to screen share something, right?

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CHAIR SINENCI: Okay, *Akakū* just called that we're not on Channel 53, and so they're just waiting...just want a couple of minutes.

COUNCILMEMBER LEE: Actually we are on 53.

CHAIR SINENCI: Oh, we're on 53? Okay.

COUNCILMEMBER PALTIN: It's not...it's like BlueJeans. It just says BlueJeans something...not our faces. I mean not that anyone wants to see our faces, but...

CHAIR SINENCI: Okay, let's...okay, we'll recess until *Akakū* can get on board, Members. The APT Committee is in recess at the call of the Chair. . . .*(gavel)* . . .

RECESS: 1:33 p.m.

RECONVENE: 1:41 p.m.

CHAIR SINENCI: . . .*(gavel)* . . . Aloha kākou. Welcome back to the APT meeting of Tuesday, November 16th. I'm Shane Sinenci, Chair of the Committee. It is 1:41, and mahalo for your patience while we get *Akakū* back online. As a disclaimer, this online meeting is being conducted in accordance with the Governor's most recent emergency proclamation of COVID-19. Please see the last page of the agenda for information on meeting connectivity. Members, the Governor's most recent emergency proclamation also includes the following mandate, that a board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at non-public locations where board members are physically present or to identify those locations in the notice required by Section 92-7, HRS, provided that at the meeting, each board member shall state who, if anyone, is present at the non-public location with the member. So in accordance with the Governor's mandate, if you are at a non-public workspace, when your name is called, please identify by name who is present with you in the room, vehicle or workspace. Joining us today we have Committee Vice-Chair Member Johnson. Aloha 'auinalā, ni sa bula.

VICE-CHAIR JOHNSON: Ni sa bula, Chair and ni sa bula. . .*(inaudible)*. . . Oh, is that me?

CHAIR SINENCI: Yeah.

VICE-CHAIR JOHNSON: Okay. Hi, everybody. I'm here, and no one's in the room with me.

CHAIR SINENCI: Okay, great.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair.

CHAIR SINENCI: Oh, Member Rawlins-Fernandez, are we still on *Akakū*?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, you are, but I think the feedback is coming from your side, Chair.

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CHAIR SINENCI: Thank you, Member Rawlins-Fernandez, and mahalo Member Johnson. Next we have Councilmember Kelly King. Aloha and ni sa bula.

COUNCILMEMBER KING: Aloha. What was the greeting of the day?

CHAIR SINENCI: Ni sa bula.

COUNCILMEMBER KING: Ni sa bula. All right. Aloha, everyone.

CHAIR SINENCI: It's Fijian.

COUNCILMEMBER KING: Sorry, I'm late, but I had an errand to run...went a little over. Are we having technical difficulties?

CHAIR SINENCI: We had earlier.

COUNCILMEMBER KING: Oh, okay.

CHAIR SINENCI: Okay.

COUNCILMEMBER KING: All right. Well, I'm in my room alone again.

CHAIR SINENCI: Okay, great. Up next we have Council Chair Alice Lee. Ni sa bula.

COUNCILMEMBER LEE: Mr. Chair, ni sa bula kākou. I'm here alone in my office at home, and I want to say hello to all of my colleagues and the viewing and listening public. Thank you.

CHAIR SINENCI: Mahalo for being here. Next we have Councilmember Mike Molina, ni sa bula.

COUNCILMEMBER MOLINA: Aloha and sa bula [sic] to you, Mr. Chairman, and to my colleagues and everyone else joining us for our APT meeting today. For the record, I'm transmitting from my home in Makawao. And if you hear any snap, crackle and pop in the background, that's my wife frying tofu, and she's over six feet away. Aloha, Mr. Chair.

CHAIR SINENCI: Okay. Mahalo, Mr. Molina. Next, joining us today from the West Side, Councilmember Tamara Paltin. Aloha and ni sa bula.

COUNCILMEMBER PALTIN: Aloha 'auinalā and ni sa bula kākou, transmitting live and direct from the West Maui District Office, open to the public per the CDC guidelines. And I'm here with my EA Angela, who is more than six feet away from me.

CHAIR SINENCI: Mahalo, and mahalo Angela as well. And finally we have Council Vice-Chair, Mai Moloka'i nui, Ms. Rawlins-Fernandez, sa bula [sic].

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COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha ‘auinalā, Chair, Mai Molokai nui Ahina. I am at the Moloka‘i District Office by myself on this side of the office. Sa bula [sic] kākou...no, ni sa bula and bula bula.

CHAIR SINENCI: Mahalo, Vice-Chair. And also, Members, our Non-Voting Members today is Pro Tem Tasha Kama and Councilmember Sugimura. They’re always welcome to join us should they choose to. Mai ka Administration, today we have Director Pearson from Department of Water Supply; Ms. Eva Blumenstein, the Program Manager; Mr. Caleb Rowe from Corporation Counsel; as well as Ms. Stephanie Chen, our Deputy Corporation Counsel member. Our outside resources today is Mr. Ian Hirokawa, he’s the Special Projects Coordinator, Land Division of the State of Hawai‘i, Department of Land and Natural Resources. Our Staff today is Ms. Kasie Apo Takayama, our Legislative Analyst. Ni sa bula.

MS. APO TAKAYAMA: Ni sa bula, Committee Chair and Members.

CHAIR SINENCI: Okay. Next we have Mr. Shirota, our Committee Secretary. Ni sa bula.

MR. SHIROTA: Ni sa bula, Committee Chair and Members.

CHAIR SINENCI: Also our Legislative Attorney, Mr. Forrest, ni sa bula; as well as Ms. Lesley Milner, our Budget Committee Analyst, ni sa bula.

MS. MILNER: Aloha, Chair. Ni sa bula, Members.

CHAIR SINENCI: And Ms. Kristeena Locke, our Services Assistant Clerk. Ni sa bula. Okay, Members, we have two items today, APT-35 A&B’s Proposed Water Lease for the Nahiku, Keanae, Honomanu, and Huelo License Areas, as well as APT-57 on Water Use and Development for Maui. Let’s begin with public testimony. Oral testimony via phone or teleconference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting via the BlueJeans meeting link at <https://bluejeans.com/411641115> as noted on today’s agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290, entering meeting code 411641115, also noted on today’s agenda. Written testimony is highly encouraged. Instructions on how to submit testimony can be found at mauicounty.us/testify. Oral testimony is limited to three minutes per item. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying, please state your name. And if you are testifying on behalf of an organization, or if you are a paid lobbyist, please inform the Committee. Please also be mindful of the use of chat during the meeting, chat should not be used to provide testimony or chat with other testifiers. If you are here to provide testimony, please be courteous to others by turning off your video and muting your microphone while waiting for your turn to testify. Once you’re done testifying, you’ll be asked to disconnect from the call; however you are welcome to continue to view the remainder of the meeting on Akakū Channel 53, Facebook Live or on mauicounty.us. Participants who wish to view the meeting only without providing testimony, please also disconnect at this time and

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instead view the meeting on *Akakū* Channel 53, Facebook Live or visit mauicounty.us/agendas. Only Councilmembers, Staff and designated resource personnel will be connected to the video conference meeting once testimony concludes. A friendly reminder to Committee Members, Administration, and the public to please be patient if we run into any technological issues. Staff has been monitoring people joining today's meeting by phone and by video, and we will do our best to take each person up in an orderly fashion. If you're connected to the meeting and have not indicated that you do not wish to testify, Staff has added your name to our testifier list and will call on you when it's your turn. Okay, Staff, who is our first testifier please?

MS. APO TAKAYAMA: Thank you, Chair. The first testifier is Shay Chan Hodges testifying on Item APT-57, to be followed by Lucienne de Naie.

. . . BEGIN PUBLIC TESTIMONY . . .

MS. HODGES: Aloha.

CHAIR SINENCI: Aloha, Ms. Hodges.

MS. HODGES: Aloha, Chair Sinenci and Members of the Agriculture and Public Trust Committee. My name is Shay Chan Hodges, and I am respectfully requesting that you delay a vote on the revised Maui Island Water Use and Development Plan until a summary is available to the public that makes it clear what items have been changed in the draft WUDP in what way. As you may remember, exactly a year ago today, I and many other members of the public testified before the joint WIT and EACP Committees asking for an extension on approval of the WUDP to ensure that the plan that is ultimately approved is accurate and comprehensible by the general public. What I specifically said then was, understanding the complexity of our aquifers, our water systems, the ownership structures, the variety of uses, the history and more is not easy, but it is crucial. While most residents will never become experts on Maui's water--I don't think I ever will--in order to be able to weigh in and safeguard their interests, they need to understand the basics, and they need to have access to reliable and accurate data. That is why it's so important that any water use and development plan that is approved by the Council be usable by the general public. And by that, I mean that it one, includes accurate data; two, reflects the issues that are of concern to the community; and three, be easily understandable. We need to take the time to make sure this happens. The deadline to complete revisions to the WUDP was extended at that November 16, 2020 meeting, and I believe it's been extended again since. I so appreciate this Committee's work to improve the WUDP, and in particular for taking so much time to listen to the public's concerns. I also appreciate the hardworking community members who have testified at multiple meetings to explain the problems in the draft WUDP, and I want to thank the Council Staff and members of the Administration who have put in the work to address the issues raised. Unfortunately, it is currently unclear what the final changes look like and how issues have been addressed. As an example, this summer I testified on inclusion in the WUDP of the County's interest in purchasing Wailuku Water Company and the Board of Water

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Supply's recommendations related to such a purchase. I also testified about including the BWS's temporary investigative group report regarding a County purchase of an East Maui Irrigation system in the final version. I'm currently not clear whether anything about the potential Wailuku Water Company purchase has been included, and I believe the summary approved by the BWS about purchasing EMI may now be part of the WUDP, but I can't really tell where or how. So I know there are many other concerns raised by community members, but until we see a final summary of changes, residents cannot provide their input in an effective manner. I therefore ask you to delay a vote on approval by at least two weeks so that the community has time to thoroughly review the revisions that this Committee has worked so hard on. Thank you so much. Mahalo.

CHAIR SINENCI: Mahalo, Ms. Chan Hodges. Members, any questions for our testifier this afternoon? Seeing none. Thank you for joining us. Ms. Apo Takayama.

MS. APO TAKAYAMA: Thank you, Chair. The next testifier is Lucienne de Naie, to be followed by Mary Ann Pahukoa.

CHAIR SINENCI: Aloha, Ms. de Naie.

MS. DE NAIE: Aloha. I hope I don't get bumped off again. I've been bumped off once already since this meeting started. My name is Lucienne de Naie.

CHAIR SINENCI: We can hear you.

MS. DE NAIE: Yeah, you can all hear me. I'm representing the Sierra Club Maui Group today. I'd like to testify on Item 57 first. I'm really glad that this Committee is going to hear from Mr. Hirokawa on exactly what the Land Board is looking at in these very, very important leases. These are 30-year leases, and that's kind of a what, but I think what you guys need to really consider deeply is the how. I know that Hawaiian Home Lands really had some concerns that the percentage of revenue that's supposed to derive from our resources that would actually help our Hawaiian families get homesteads and add infrastructure for their homesteads. That wasn't too fleshed out in the discussions that had been held thus far, so that's an important point. But I have to say from the Sierra Club side, we just keep trying to get adequate information on which to decide how the leases will work. Will they...will they extend to all the streams in the East Maui area...all 43 streams? Will we have a situation like we have now, where nothing past...nothing East of Ke'anae is diverted anymore? These things really need to be made, I think, pretty transparent what the strategy is. Are the rates going to be enough that there's money to invest in the watershed and give our communities like Ke'anae and Wailuanui and Huelo where folks are trying to monitor their streams and be good managers, be good stewards of their streams...they could use a little support. You'll see throughout the Water Use and Development Plan there's all kinds of references to the community giving information...well, the community needs a way to get that information, so it would be good to have some of the gauges, some of the programs available to make sure that citizens are empowered to do that.

CHAIR SINENCI: Lucienne, real quick, we're having some feedback. Do you have a fan or

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anything on that's...we're...

MS. DE NAIE: I do...yeah, I do like have a little fan...hold a second. I'm so sorry.

CHAIR SINENCI: That might be...yeah, that might be blowing into your mic. Sorry, go ahead.

MS. DE NAIE: Okay...geez. Do I have to start over, or can I just continue?

CHAIR SINENCI: Just go ahead and continue. We could hear you, but just...

MS. DE NAIE: I would like to switch to the additional agenda Item 35 if...hopefully I was heard a little bit on Item 57. But I just urge you folks to ask that this process for the long-term leases really get more information than we have now, and more detailed information than we have now, so a good decision can be made. Moving on to Item 35, I kind of echo what...I think Shay Chan Hodges summed it up eloquently, you know, mahalo from the bottom of our hearts to all the time that the Committee, the Staff, the Water Department, you know, the Council Staff, the Water Department, has put into to try to update this plan, but like everybody else, I can't find an updated version online, so I don't think you guys are ready to vote on it. I think you really need to give a little bit more time to produce some sort of a snapshot of what's proposed to be updated and changed so the public can go, good, that's great, you know, thank you for your work. So I hope that the Committee can decide to do that today. And I just want to point out one thing. There's a chart in there having to do with the place where I live, Ko'olau, the Ko'olau Aquifer section which, you know, it's everything from the town of Ha'ikū all the way out to Nahiku. And that chart seems to say that in the next 15 years, only 50 more families are going to need water in this area at a rate of 400 gallons a day, which is the County standard rate, and which, of course, doesn't include ag water. I mean, I don't know where that kind of information comes from, but it doesn't make a lot of sense. You know, that's basically...I don't know, 10, 12 families a year or something that...less than that, that might move to Ha'ikū and build a house and need some water. I mean, it's kind of crazy low numbers. So I'm sure that can't be fixed at this point, but it's just kind of an evidence of the kind of frustration that people in the community see. It's sort of like we don't exist, and our water needs don't exist. But, you know, everybody thinks we have a lot of water. Mahalo.

CHAIR SINENCI: Mahalo, Ms. de Naie, for your testimony this afternoon. Members, any questions for Ms. de Naie? Seeing none. Again, and mahalo for all your help with this process as well. Thank you for joining us.

MS. DE NAIE: You're very welcome.

CHAIR SINENCI: Ms. Apo Takayama.

MS. APO TAKAYAMA: Chair, the next testifier is Mary Ann Pahukoa, to be followed by Blue Kaanehe.

CHAIR SINENCI: Aloha, Ms. Pahukoa.

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MS. PAHUKOA: Aloha. Do I get six minutes since I'm testifying on two items?

CHAIR SINENCI: You do.

MS. PAHUKOA: Well, if you could time me.

CHAIR SINENCI: We will.

MS. PAHUKOA: Aloha, Committee. Echoing the previous two testifiers, Ms. Shay Chan Hodges and Lucienne de Naie, I also request a delay to pass the Water Use Development Plan. I could talk water all day, but I promise to try to summarize this in six minutes. Obviously we're in a drought right now, and of course, it's probably the hardest, most complex, like mentioned earlier, issue facing Maui, which is water. And of course, coming from the most abundant watershed in Maui...in Hawai'i. So to understand and to even pass a Water Use Development Plan, to me, is probably the hardest matter any Committee Member or anyone on Maui would have to do without stepping on the toes of others, primarily stakeholders. And of course, meeting after meeting, what I don't see is the kua'aina testifiers, the Ho'okua'aina, the taro farmers, the fishermen, the ones that have no Wi-Fi and absolutely no idea that this meeting is even going on, let alone they have...they don't even have cellular service. So to me, what I think...what I strongly recommend this Committee do is to curate, if you haven't done so yet...but to curate that Council to work within the communities. Of course, this Council must have knowledge of the irrigation system, be good standing community member, understand all stakeholders involved. But to me, this water use plan seems to just normalize the sending off of our waters with no give back to the kua'aina. I continue to talk about water appropriation systems, which I believe this Committee has full potential to reach, which further serves riparian rights. And I mean, people keep forgetting that riparian rights cannot be lost through non-use of lands. They are indefinite in duration; so in perpetuity, you have riparian water rights. As a kalo farmer, if you don't have ten patches open, that doesn't mean your rights are gone. You are supposed to have these rights forever. So because I don't see a document publishing the restored streams...you know, I see some false documents curated by Mahi Pono and A&B which, you know, we don't anyone...what's the word...fact checking them. So I wonder if this Committee is supposed to be the fact checkers because in actuality, if we are publishing a plan...a water use plan and we're stepping on the toes of three or more families, to me, that's grounds to delay. So definitely delay all planning involved with, you know, sending off our waters because obviously, we see during the drought a lot of our waters are still getting sent to hotels, Upcountry...the water meter list alone is grounds to delay. I'm also waiting for this document to see if this Committee has fulfilled . . . *(timer sounds)*. . . the fiduciary kuleana to appropriate waters appropriately, so to say. And so I'd just like you guys to jump into the...jump into the seat of our kua'aina who don't have, you know, internet, they can't testify, time after time we're just normalizing the diverting of our waters, but yet they can live next to a dry streambed and then see the hotels thriving...see our water use just getting slurished *[sic]* throughout Mahi Pono's fields, it becomes really disheartening; but again, we've normalized that, which is wrong...it's wrong. And no offense to the State of Hawai'i Land Board and, you know, their leasing

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of lands, but they lease crown lands. And this Committee, Maui County has vested rights in those lands also. So like I said, again, I support Maui County adopting and taking over our irrigation system in East Maui...taking over, not purchasing...big difference. So taking over, and then of course, creating some subcommittees, watershed councils, to help because this is a very complex issue. I don't expect any one of you to understand the irrigation system, when it comes to restored streams...we have claimed restored streams, but in fact, they are not. Is that my beeper for six minutes? If you have specific questions about water appropriation or what I view a strong watershed council would be, please let me know. I'll be here standing by.

CHAIR SINENCI: Okay, mahalo. Yeah, we just kind of let you go after your first item. So Members, do you have any questions for Ms. Pahukoa? We have a question from Mr. Molina. Go ahead.

COUNCILMEMBER MOLINA: Yeah. Thank you, Mr. Chair. Aloha, Ms. Pahukoa, and mahalo for your testimony. Just more of a clarification question, you mentioned that there was false information given by A&B and Mahi Pono. Can you just cite one example?

MS. PAHUKOA: It would be the mile...miles...it would be the millions of gallons diverted at various streams. I cannot cite the exact page referencing their environmental impact statement because there was over 50 pages of data that looked good on paper, but when you see the stream...when you see the intake system, it's just wrong and false.

COUNCILMEMBER MOLINA: Okay. All right. Thank you. Thank you, Mr. Chair.

CHAIR SINENCI: Mahalo, Member Molina. Any other questions for Ms. Pahukoa? Seeing none. Mahalo for your testimony this afternoon. A hui hou. Ms. Apo Takayama, do we have any other testifiers?

MS. APO TAKAYAMA: Chair, the next testifier is Aja Eyre, to be followed by Barbara Barry.

CHAIR SINENCI: Aloha, Ms. Eyre.

MS. EYRE: Sorry...bula bula again. I would like to testify on both items at the same time, but only as three minutes. And it's so hard to follow Mary Ann because she just really nails a lot of the points I think a lot of us water warriors are concerned about. I just urge caution constantly with water, it's one of the most important and kind of forgotten issues of the last two decades. And I urge the Committee to just refrain from passing the WUDP right now, and just give it a little more time and get the information out. That's probably my biggest concern is just not being able to see the Water Use and Development Plan. It's been hard to access, it's been hard to delve through. And in conjunction with that, you know, it's so...it is so important that we have this WUDP really powerful and strong and covering all these bases so that the leases bow to the Water Use and Development Plan and not the other way around. Kind of speaking to Mary Ann's issue, I mean, one of the main problems...I mean, I have dozens of main problems with the environmental impact statement that was accepted by the DLNR, but one of them, for example, is that Mahi Pono and A&B said that they don't have water waste in their reservoirs when

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they're diverting water, but then they go on...it's around page 112 to 118, and then they go on to say that there is water waste in the reservoirs, and that's important to refill the groundwater in the Central Valley using the streams from East Maui. And then they go on to say that the groundwater isn't usable for crops except for sugar cane, but they're not growing sugar cane anymore. So there's just all of these discrepancies when we're dealing with that. And the way for it I see is just a WUDP that's powerful and covers these bases and addresses, you know, all of these issues. And I think most of them have come up over the last year that we've...that you guys have been looking at the Water Use and Development Plan. I guess it would be nice to see that draft of the final priorities into all the plan and make sure all of our I's are dotted and our T's are crossed and...you know, you guys have limited Staff, but there's a whole public out here wanting to just double check it. So please give us just a little bit more time to look at it. You know, there's no rush, it sounds like, from the State for us to have this approved plan, I think we just kind of want to...I think that your Committee just wants to move on to the next thing, of course, but we're almost there...we're just almost there. So I just urge that we wait a little bit more and let us all get our hands on it one last time. Thanks.

CHAIR SINENCI: Mahalo, Ms. Eyre, for your testimony. Members, any questions for Ms. Eyre this afternoon? Oh, we have a question from Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Eyre. Mahalo for your testimony.

MS. EYRE: Thanks.

COUNCILMEMBER RAWLINS-FERNANDEZ: So I just wanted to clarify, so you said a little bit more time. Do you know approximately how much time a little bit more is?

MS. EYRE: Well, I think for those of us that have been looking at the Water Use and Development Plan over the last year, if we had, you know, an accessible copy of the draft, I could see even just a couple of weeks would make a big difference. I mean, we're all kind of hyped up because we weren't given very much time with the...with the environmental impact statement, you know, the final EIS. And so we were able to go through about 800...roughly about 800 pages in about four days. So I don't think it's a ton of time...I really don't. It's just that we don't have it at all, so it depends. If it came out and it was a mess, then maybe we would want a little bit more time, but I think if it came out and it was fairly organized, and we were able to just see okay, these points are covered, and this has been amended and, you know, the points that we've been making over the last year have all been covered, it probably shouldn't take very long. I don't want to...I don't want to put everybody under the...you know, under the gun like Aja said two weeks...all we need is two weeks. I mean. it's hard to know...it's hard to know until we see it. but I'm feeling really capable. and I think everyone feels capable and ready to go at it. really, so we should be good.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Eyre. Mahalo, Chair.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. And yeah, if anybody did read all 800

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pages of the list is Miss...probably Ms. Eyre. Thank you. Okay, next Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next individual signed up to testify is Barbara Barry, to be followed by Terrill James Kaneali'i Williams.

CHAIR SINENCI: Aloha, Ms. Barry.

MS. BARRY: Aloha, Chair. Aloha, everyone. Thank you so much for allowing testimony today on this important issue. I submitted some testimony late last night, and hopefully it came through okay because I copied and pasted from an email I had sent that they told me I couldn't send. So anyway, hopefully it came through. I am not a paid lobbyist, and I am here in my studio with my cat somewhere, so no one else is around. I just wanted to thank you so much for your hard work on this WUDP bill, with this document. I think it still needs more work. I'm very concerned about that A&B and Mahi Pono believe that any water from any stream in the Ha'ikū region is theirs without any kind of monitoring. And I've been talking about the streams next to my gulch in the Huluhulu-nui Gulch does...suddenly, after all the years I've known it to be full and running year round, even in drought years, completely bone dry. So it's very worrisome to me to see this kind of water activity, or lack of water activity all of a sudden. I've sent an email to Mahi Pono, and I've copied, I think, many of you on it, as well as the Water Department, and haven't heard anything back from them. So I'm not sure if I'm just on the to be ignored list or whatever. So I also...because I'm a member of the Kula Ag Park Commission, I suggested in our last meeting that I was curious to see if any kind of research had been done on the cost benefit of bringing the ditch irrigation to the park, as opposed to digging a well and having the parks be sufficient for their own water so they didn't have to worry about drought years and the water not being accessible to the farmers there. So in summary, I just want to say please hold off on approving this today. There is more answers, and more work to be done, and it would be wonderful to be able to look at a document and see what updates have been made. So thank you so much.

CHAIR SINENCI: Mahalo, Ms. Barry. Members, any questions for our testifier this afternoon? Seeing none. Thank you for joining us.

MS. BARRY: Mahalo.

CHAIR SINENCI: Mr. Kaneali'i?

MR. WILLIAMS: Aloha. Can you folks hear me?

CHAIR SINENCI: Yes, we can hear you.

MR. WILLIAMS: Great. Aloha, my name is Terrill James Kaneali'i Williams. I'm testifying as a kuleana heir and kuleana landowner to Land Commission Award 3336, Royal Patent 2194, Heir Nalopi has all the information that you folks should be familiar with by now. I'm from Kuiaha...East Kuiaha, Ha'ikū Hamakua Maui...Hawaiian Kingdom. I'm sure you can see my flags flying. I want to start by saying that because this is a Royal Patent

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over the title that my family still maintains and we still have, you know, our genealogy and paperwork filed in the State of Hawai'i, Bureau of Conveyance and all that good stuff, this land is still not subject to the United States Government, or the County of Maui, or the State of Hawai'i. It's still sovereign nation in of itself and therefore, any diversions of or taking of resources from this ahupua'a from this that feed into this particular parcel, such as diverting water, taking of resource like that, is pillaging, right? And so...and pillaging, to me, is a war crime. Right now, this is my...this is the East Kuiaha Stream, it's still dry. With my countless testimonies I've given at this meeting...at these meetings about Mahi Pono and East Maui Irrigation taking water from my lo'i kalo that I've shown you folks before, my best advice for this Committee is that if you don't want it to look like you are enacting war crimes by participating and colluding with East Maui Irrigation and Mahi Pono, is that you actually allow the kuleana landowners to be involved in the direct management of the water resources, especially of our own ahupua'a. That's my best advice I can give you folks. There's a truck passing by real quick, sorry. I also have a copy of the fire incident report number 2021-0012675-000, which was a fire on September 6, 2021 at the old mushroom farm on the makai side of Hāna Highway in Kuiaha in this ahupua'a. In that report, it stated that it took four hours for them to put out that fire at the mushroom farm. There were two helicopters flying above my parcel going mauka in order to get water, which means that there was water up mauka, and shuttling it down to the mushroom farm. It took them four hours to put that out when, if the water was flowing from mauka to makai past my parcel, down the highway, past the highway, down to the ocean, the fire could have been put out much faster. Because the Fire Department is part of the County of Maui, I'm sure that's, you know, tax dollars that people are having to put in for a fire that could have been handled a lot faster if the water was flowing like it's supposed to be. There has been so many kuleana landowners that have stated time and time again that we need to be in charge of our water resources, and that needs to be put into this Water Use and Development Plan. That's as plain and simple as I can make it for you folks. I'm kind of getting irritated with this. I'm tired of coming to these meetings week after week. I know you folks are probably tired as well. I'm tired of the water not being in my river. I'm tired of having to deal with Mahi Pono and East Maui Irrigation. I don't want a third party managing my water, and I'm sure there's other families that don't want third parties managing the water, especially if those third parties do not have rights...actual legal rights to the water. They may have a financial interest . . . *(timer sounds)* . . . but they don't have a legal interest to the water, and kuleana landowners do. So that's the end of my testimony.

CHAIR SINENCI: Aloha, Mr. Kaneali'i Williams. And no, you're not a...we appreciate your testimony every week, so...and again we're looking to work with kuleana owners as well. Members, any questions for our testifier this afternoon? Okay. Seeing none. Okay, and mahalo nui for your testimony. Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next testifier is Clare Apana, to be followed by Dick Mayer.

CHAIR SINENCI: Aloha, Mr. Apana...Ms. Apana. Can you hear us?

MS. APANA: Okay. Good. Am I good? Yeah, I'm good. Thank you.

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CHAIR SINENCI: We can hear you.

MS. APANA: Thank you very much. I have to agree with everything Kaneali'i just said, and I would like to go even farther to say that I don't understand why it's not reflected in the new Water and Development Plan [sic] of the presence and the actual language of the laws that protect the kuleana water owners and landowners. I would suggest that there be a kuleana owners land board or water board so that they would actually have a way to advocate. So say they're taking all the water out of the stream for the hotels, they would have an actual way to advocate, you know, in a meaningful way. But that would really first start with identifying clearly what are the rights, stating them in this water plan so that when we go back to the water plan and say the kuleana water rights are not being upheld, you can actually find it in the water plan and say, yeah, there it is...this is our water plan. But I don't see it in enough definition in this water plan. And I would agree with the other testifiers that we need more time, and we need more clarity about what is being proposed to be changed so that I would know if my testimony that I gave to your Committee, to your office, is actually being used anywhere...is it being reflected anywhere. Personally, I do not see in the water plan that South Maui has a definite and defined water saving plan. I am extremely uncomfortable with South Maui residents being able to use way more water than people in Wailuku and Kahului. You're taking our water, and we don't use as much water because we're probably a little more thrifty, and don't have these kind of properties. So when the water restriction comes, we get the water restriction first. And I would like to say that I would like to see, one, that until the laws can be followed, such as the instream flow standards are met, and they can be proven that they are met in Wailuku moku, and when the kuleana water owners, landowners are satisfied in that no one else is saying that they are not getting water...when all the people who have been deemed to get water from the CWRM . . .(timer sounds). . . get water, and it is shown that we have excess water, then and only then should any building project that's going to take more water from our ahupua'a be given. I think that we should look at how . . .(inaudible). . . and that should definitely be in the water plan as I have been saying for years. And did I have more time, or was that my bell?

CHAIR SINENCI: You have a second item to speak to?

MS. APANA: I just wanted to say that I think that your Committee has made some bold steps to try to get the Ka Pa'akai analysis done, but I don't see the reflection of it. And it would be really good if we could have an actual reporting of that from the Water Department to see how they implemented the comments that we made for the Ka Pa'akai Study. I would like to have a meeting with the Water Board and hear them tell us how they implemented it. Because that was one of the big bones of contention before we started this process, and the Water Committee came to your office, and it's still a big bone of contention. I don't know how they implemented what we had to say and our Article 12, Section 7 rights as traditional practitioners and, of course, the water owners. So thank you very much. And I'm sure I've forgotten something, but I hope that you will delay it so that there's more time to do a really good job. And thank you for all of your efforts, Council, and this Committee, and your office.

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CHAIR SINENCI: Aloha, Ms. Apana, for your testimony this afternoon. Members, any questions for Ms. Apana this afternoon? We have a question from Member Paltin.

MS. APANA: Yes.

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to clarify...I wanted to see how the Board of Water Supply implemented the Ka Pa'akai analysis, is that...or the Water Department . . . *(inaudible)*. . .

MS. APANA: Yes. I would like to see where they implemented the many things that were said that were of traditional knowledge and value into this Water Use and Development Plan. And I think that goes with other people are saying, to have an actual listing of what they have included in this plan that is different than it was when we started this process.

COUNCILMEMBER PALTIN: Oh, so to clarify not the Board of Water Supply, but this Committee...what changes this Committee...

MS. APANA: So what's in the Water Use and Development Plan because I believe that there are many things that this Committee has spoken about in terms of Hawaiian water rights and use that are quite likely not in the Water Use and Development Plan. And those are also probably statements that were made during the Aha Moku...from the Aha Moku sessions where a lot of the traditional knowledge was being asked for. . . . *(inaudible)*. . .

COUNCILMEMBER PALTIN: I guess the part that I'm a little bit confused is, this Water Use and Development Plan came to us from the Board of Water Supply.

MS. APANA: Correct.

COUNCILMEMBER PALTIN: I don't think it's going to go back to the Board of Water Supply from us, it goes to like CWRM or something. So I don't think that the Board of Water Supply would have implemented it, it would be on us to include the Ka Pa'akai analysis into the Water Use Development Plan because it's not going back to the Board of Water Supply, right?

MS. APANA: Has it not changed since the last time that the Water Department put out the Water Use and Development Plan?

COUNCILMEMBER PALTIN: We...this Committee, I think, is the one that is...or has been making changes, not the Board of Water Supply anymore. It came to us from the Board of Water Supply, it's not going to go back, I don't think. So the Board of Water Supply wouldn't have an opportunity to implement changes from the Ka Pa'akai analysis because it's in our hands right now, so we would be the ones that would have to do that.

MS. APANA: So the way that it would go is, testimonies made about traditional use and practices to this...say to the Councilman's office, or whoever is taking the testimony.

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Then it's presented in a fashion to this Committee, the Committee votes on it, and then if it's voted upon favorably, it is put into the Water Use and Development Plan?

COUNCILMEMBER PALTIN: Yeah, I believe that's the process we're in right now.

MS. APANA: Okay, I thought that the Water Department still had some amount of control over what could be...what is put into the Water Use and Development Plan. So really, if we have any thoughts that our voices have not been heard and stated in this plan, we should come to this Committee and say, why haven't you put it in there?

COUNCILMEMBER PALTIN: I believe so, yeah. Not to say that the Water Department isn't inputting as well, but we're the ones...this Committee is the one voting...maybe based on their recommendation or against their recommendation.

MS. APANA: So then I would ask that it be clarified for the Aha Moku traditional users as to what was given in testimony, what was implemented...what has been implemented.

COUNCILMEMBER PALTIN: I think that might be number 91 on the Granicus.

CHAIR SINENCI: Okay. Did she answer your question, Member Paltin?

COUNCILMEMBER PALTIN: Thank you. Yeah, I understand what she's saying now. Thank you.

CHAIR SINENCI: Okay. Ms. Apana, we have a question from Member King.

MS. APANA: Yes.

COUNCILMEMBER KING: Hi, Clare. Thanks for coming. But I just wanted to clarify...I think what I'm hearing from you and other folks is...we did make a lot of changes in this Committee, but you have not seen a draft that reflects those changes. That's what my concern is.

MS. APANA: Right.

COUNCILMEMBER KING: So you want to see the draft that...because I've heard from some other people that it has not been posted with the changes that we've been making along, so I think you wanted...you and other folks want to see the draft with those changes before . . .(inaudible). . .

MS. APANA: Just the way that our community goes, I think it would be nice to actually have an explanation of what has been implemented and what has not been implemented. It's a very specific place, the traditional practices and knowledge, as well as the kuleana ownership, and I think that it would warrant having an actual session where it could be explained.

COUNCILMEMBER KING: Okay, or at least have it posted somewhere...that's what I've been

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hearing is that folks want to see a posting of the changes we've been making, and they haven't been able to find that.

MS. APANA: Correct. Well, that would be the very least that could be done.

COUNCILMEMBER KING: Okay. Because the explanations were...we were giving those explanations as we went through all of the changes...we made quite a few changes, as you recall, when we were...

MS. APANA: But most people were not on the meeting. Most...I would say most kanaka were not on the meeting.

COUNCILMEMBER KING: Right, but if we spend an equal amount of time going through all that again, that would be another few months, and they still may not be on the meeting. There's no guarantee that everybody is going to be on the meeting, so...but what I was hearing from folks--some of you testified already, and I think some are going to testify--is that they would like to see it in writing somewhere posted...the changes that we've actually been making, and they haven't been able to see...they haven't been able to access a document with those changes. That's what I've been hearing.

MS. APANA: That is true.

COUNCILMEMBER KING: Okay.

MS. APANA: That is true.

COUNCILMEMBER KING: Okay. Thank you.

MS. APANA: Yeah. Thank you.

CHAIR SINENCI: Mahalo, Member King, And mahalo, Ms. Apana, for your testimony, as always.

MS. APANA: Mahalo. Mahalo. Thank you for all your work.

CHAIR SINENCI: Okay, Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next testifier is Dick Mayer, to be followed by Joyclynn Costa.

CHAIR SINENCI: Aloha, Mr. Mayer.

MR. MAYER: Thank you very much, and thank you...and sorry you have to listen so much to me today. My apologies. I'd like to talk about the auction that may be coming up on this water lease. The title of this...my phone just rang. Hold on. The title for this topic today is A&B's proposed lease. It's assuming that A&B is going to get that lease, and I think that's a mistake on two levels. First, it should not be assumed that they're going to get the lease because we don't know who else will be bidding on the lease at the

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auction. And second of all, A&B sold all the Central Maui land and Mahi Pono land to...sold all the land...the East Maui Irrigation land to Mahi Pono, which will be the...getting the lease. Once the lease is obtained, it's expected, if A&B gets it, that they would have to transfer that lease directly over to Mahi Pono upon payment of \$2.7 million by Mahi Pono. So it's really going to be Mahi Pono's lease that really will be the one that we will be operating with the next 30 years if it goes according to their schedule. I'd like to raise some questions that I would like you to ask Mr. Hirokawa, who is the...who will be speaking to you in a little while about the auction itself. And I'm going to raise just a bunch of questions that you may do, and I also submitted these questions in the form of eComments today. Mahi Pono will hold this lease upon a transfer, is that correct, that that's going to happen automatically? Or will it have to go through another review process if A&B were to get the lease, and then the water transferred to Mahi Pono? What rates will be paid by the company who...entity that gets the lease for the water and to the State, and...but more importantly, what rates will not...Maui's Water Department have to pay to get that water for the Upcountry area and for the Kula Ag Park? And I think you need to find out and determine, that that could be very critical. This is the largest source of water perhaps in the whole State, the watershed in East Maui, and it's probably used on the most amount of land, all of Central Maui practically, all of Upcountry, and we really should know what the rates will be that the County will have to pay for it. What happens if Mahi Pono were to stop farming...what would happen to that lease? Who monitors compliance with the lease? Somebody in Honolulu, sitting in an office, who knows nothing about what's happening in the field? And what penalties are there that would have to be paid if there is no...incomplete compliance...not taking care of the watershed, wasting water, things of that sort? What will be the relationship between the entity that wins the lease and our Maui Water Supply Department? Will it be a contract? Will it be annual negotiations? Exactly what will happen? And I think the auction itself should indicate the conditions that the leaseholder will have to fulfill in order to do this. And this is already something that's a 30-year process, so it should be very clearly spelled out so the County knows what's going on. And the County may want to interact with DLNR to set up the conditions. And I would urge you . . . *(timer sounds)*. . . all to meet with them. I have another seven or eight items that I'd love to get on the record if it's possible.

CHAIR SINENCI: Mr. Mayer, I believe that we...

MR. MAYER: Let me...I'll go through very quickly.

CHAIR SINENCI: We received your written testimony...Members, have you received Mr. Mayer's testimony on the questions he posed?

MR. MAYER: Let me give one example that I think is important, I think, and I'll skip all the other ones. Mahi Pono would presumably have this lease and supply its farmers down country with water on land that was sugar cane in the past. That was not a problem because sugar cane did not compete with any other Maui farmers. But now, the farmers who operate on the lands in Central Maui will be competing with the lettuce and onion and other farmers Upcountry. And if those farmers have to pay the present rate of a dollar five per thousand gallons, and Mahi Pono farmers get it for virtually nothing, all

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of our local farmers Upcountry may be wiped out. This is an extremely important issue. And I'd lastly say the Water Use and Development Plan may have to be updated once we know the conditions of the auction, and who wins that auction, and how it's going to operate.

CHAIR SINENCI: Mahalo, Mr. Mayer, for your testimony. Members, any questions for Mr. Mayer? We have a question from Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Mayer, for your testimony. I do see an eComment testimony that looks as though a letter to Mr. Hirokawa. And I just wanted to clarify that you had sent this to him as well as to us, and you have not yet received a response yet to these like 27 questions.

MR. MAYER: I received a very nice response very quickly after I sent it from Mr. Hirokawa saying, we will be looking into this matter and will get back to you. But that's now a month and a half ago, and no response yet, and I have no idea what time frame that that response would come. But the questions I raised are extremely important to the Water Use and Development Plan and to all the discussions, both the future of Maui's Central Valley and Upcountry.

COUNCILMEMBER PALTIN: So no specific answer to the 27 specific questions at this time?

MR. MAYER: That's correct. Or the last items I've talked about was the time frame...how the auction itself will be done. Will the County have any input into the conditions on the license and the leases that are there? That's very important, and I would hope that you would insist that the County be part of that discussion so you know what's actually being leased out and what's been...affects all of East Maui, Upcountry, Central Maui.

COUNCILMEMBER PALTIN: Thank you. Thank you for answering my question and your testimony. Chair, maybe at the appropriate time we could make the questions from the Committee...it looks like there is a lot of good questions.

CHAIR SINENCI: Okay, mahalo. Staff, can we share the link to Member Paltin. Any other questions for Mr. Mayer? Seeing none. Again, mahalo, Mr. Mayer, for your testimony.

MR. MAYER: Thank you, and good luck.

CHAIR SINENCI: Thank you. Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next testifier is Joyclynn Costa, to be followed by Lala.

CHAIR SINENCI: Aloha, Ms. Costa.

MS. COSTA: Good afternoon, Councilmembers, Chair. My name is Joyclynn Costa. I'm the Aha Moku representative for Hamakualoa. I am also a lineal descendant of Lower Nahiku, specifically off of Makapipi. And I echo some of the voices that you've heard. Although there may be good intentions, the result when the kuleanas [*sic*] are absent is

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irreversible...not just devastating, it's irreversible. And I had given some comments when A&B was asking about the lease and in their draft Environmental Impact, and I want to...you know, they focus on taro farmers, but we are also farmers. My father considers himself farmers. He farms and harvests fish, and it is crucial to have the water down to the ocean, which has not happened for centuries. And there are still places where it has been left as like a desert, nothing grows there now. And so like I said, it is crucial that we have part of this decision making with a body of kuleanas [sic]. And because when you get responses from these big corporations, and even from the Council, it's too general. It says well, you can go look at the standard of, say for instance, impact on the fish...impact on, and they talk about surface water, yeah. Surface water is only what you're seeing, but the percolation also affects under. So if you think that you're not affecting the whole, you're badly mistaken. Mr. Baldwin himself, in his personal memoir, says we were foolish people to let the waters just run to the ocean and be wasted, when in fact, it is imperative that it does that. Every single stream. I'd like also for you to delay because I don't think it's complete yet. One of the things I'd like to see as far as language...and I pulled this out...this is actually HRS 13-95.1 through 4...this has to do with fishing. But in this, they have all the regulations on fishing. And the exception clause, which is the 1 through 4, is in B. B says nothing in this chapter shall prohibit the exercise of traditional and customary Native Hawaiian rights or practices for subsistency, cultural, and religious purposes. Nothing in this chapter. That is a little bit stronger . . . (timer sounds). . . and I also...if I may, I need to also include that...I lost my place here. If you can also include...well, we need to talk about because this is all about taking. Is there a section in here that talks about putting water back...creating a . . . (inaudible). . . system that puts the water back. Creating something that grows water...that's very Hawai'i. The water isn't there because you came in and it can be taken, it is there because our ancestors created that water. The system is not there for a ditch, and the water is there specifically because of how they had managed their resources from the past. So the seventh generation that is now supposed to be able to take care of it and utilize it are being all taken. We need a portion...a major portion of decision makers to be the kuleanas if anything, and the language of it being not nothing in this chapter shall prohibit should be there. Everybody talks about we're going to be according to the law, according to the Constitution...none of it gets followed. If not, we wouldn't have to go to court all the time. We wouldn't have to fight for our water rights. No Constitutional rights have ever been followed to the T...to the letter of the law when it comes to the people of Hawai'i. Mahalo.

CHAIR SINENCI: Mahalo, Ms. Costa, for your testimony this afternoon. Members, any questions for Ms. Costa? Seeing none. Again, mahalo for your participation this afternoon. Ms. Apo Takayama?

MS. APO TAKAYAMA: Thank you, Chair. The next testifier is Lala, to be followed by Faith Chase.

CHAIR SINENCI: Aloha, Lala.

MS. JOHNSON: Aloha kākou, can you hear me?

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CHAIR SINENCI: Yes, we can hear you.

MS. JOHNSON: Okay, mahalo. Mahalo for giving this time, Chair and all Councilmembers, for me to just kind of share a little bit. Of course I'm not from Ha'ikū or Upcountry, but my ahupua'a is in Waiehu. But also, to know that my tutus were farmers...taro farmers as well as lawai'a and as mentioned before, I think, you know, with all of this, it's a mindset, yeah, of how we are thinking about this, this system that we're in . . .
(inaudible). . .

CHAIR SINENCI: Oh, did we lose...oh, she's back. You cut off a little bit. You're muted.

MS. JOHNSON: Mahalo. So as I was saying, that I'm a kuleana family also ohana from Waiehu. My tutus were taro farmers as well as lawai'a so the importance of knowing how the system...if any system that we should be having a mindset on is the ahupua'a system, which is . . .*(inaudible)*. . .

CHAIR SINENCI: Oh, did we lose her again? It sounds like she's...okay. Lala, it looks like you're in a bad connection area because you're going in and out of the meeting. Okay, are you there...you still there? Okay, if she can get to a better location where we can then get better connectivity. Ms. Apo Takayama, can you call the next testifier until then?

MS. APO TAKAYAMA: Chair, the next testifier is Faith Chase, to be followed by Brett Gobar.

CHAIR SINENCI: Aloha, Ms. Chase.

MS. CHASE: Aloha, Chair. Aloha, Committee. You know, it took us like over 100 years to get at these crossroads, so I don't think rushing is a good idea. I do appreciate it being continuously on the agenda...you know, the last Council that we had, we lost four meetings in the Water Committee. While I won't get into that debacle, I'd like to think that we're trying to...you're trying to...as the Chair of this issue, trying to make up for lost time. So thank you for all the hard work. We do need to see the document before it can be decided on. Thank you for considering to...making serious considerations to delay it...or delay the review of it and the voting on it. I just wanted to expand a little bit on Department of Hawaiian Home Lands developments. Just this morning at the DHHL Commission, you know, the land managers are talking about new proposals of...you know, the beneficiaries, the wait listers, I've said it before, the homesteaders, they're actually being newly empowered with the help of some of my fellow Councilmembers here, but they're asking for 11 million gallons for Upcountry, Waiohuli, Keokea farmers. And so they are a...while they weren't always present and active for whatever reasons, they are now, and I think that that is worthy of a pause because they weren't at all those meetings that Eva Blumenstein put forward in the specific regions. Many times when I've been in meetings with you guys, it's like hey, what does DHHL think? Oh, well, let's invite them to come next time, you know, it's a slow process...we're slow to the roll. So you got new...you got new stakeholders that weren't there before. And I joked about it before when Mahi Pono was trying to do their land grab, water grab, back when that we would rather give...East Maui would rather give our fellow Hawaiian

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homesteads water before fake farming and hotel swimming pools...I mean, you know, it seems kind of outrageous to go all the way around that mountain to come to like Kahikinui, but you know, that's true. Why wouldn't, you know, aboriginal, you know, Hawaiians...native Hawaiians for lack of another term, you know, definition...why wouldn't they want to support their fellow homesteaders, no matter how far away they were. I just want to concur with Mary Ann Pahukoa in regards to forming...you know, working hard to form that Water Council. Again, you have people who are empowered, new to the scene, you have new technological developments that make engaging and meetings easier--Zoom, BlueJeans, all that--and I do agree with her in not bidding...not buying. There's a name for it, you guys have said it before, is it condemnation? Anyway, you take it back. That's yours. And Tony Eaton has this amazing lateral...bilateral...she did hard work in the TIG for the Board of Water Supply and then also, she...you know, she has come on to personal testify, but she also happens to work for the Department of Hawaiian Home Lands, and she's made personal testimony that's kind of in between both of those responsibilities that's fascinating. So, you know, she doesn't have an easy job, but she's trying to translate. And she has been the first to come and say, wait, wait, wait, wait, wait, wait. That's not the lands around the watershed and the intakes, that's your lands. And then God bless, you know, Councilmember Paltin for saying, wait a minute, let me clarify that. Are you saying that you'd like the County to come in and take possession of that and hold it in perpetuity for the people? Heck, yeah, exactly. So you guys are right there. I appreciate all the hard work. I don't know, you know . . . *(timer sounds)*. . . if this goes on too much father, I'm going to have to write a book, and you guys are a chapter of it. Thank you for your time.

CHAIR SINENCI: Mahalo, Ms. Chase, for your testimony this afternoon. Members, any questions for Ms. Chase? Seeing none. Again, mahalo again for your testimony this afternoon. Thank you.

MS. CHASE: I'll submit written...thank you so much. A hui hou.

CHAIR SINENCI: Yeah, go ahead. Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next testifier is Brett Gobar, and then if we want to return to Lala after that.

CHAIR SINENCI: Mr. Gobar.

MR. GOBAR: I can't turn on my camera. Thank you if you decide to. I'm Brett Gobar. I'm a gentlemen farmer. My BS degree is in Water Resource Management. I suggest you delay the WUDP approval for 90 days so that you can have further meetings with the community to help explain what the real meaning of the WUDP is. I attempted for days to decipher water data, charts, and graphs in some of the reports. I feel the document should be further summarized in a form that is palatable, understandable for the average citizen to evaluate. I had difficult that...with it even with my training. Water resource planning must incorporate desalinization facilities and conservation, agricultural practices, especially in the Central Valley. If you truly intend to preserve Hawaiian agriculture and quality of life, you need to stop the allocation of major parts

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of Maui's people's water to corporate farmers and corporate resorts. Mahi Pono seems to be growing citrus for export, not food for the benefit of local people. I'm really worried about relying on stream water and well water for any of Maui's uses, and I don't expect them to be reliable sources as the climate heats up. Thank you for all you do.

CHAIR SINENCI: Mahalo, Mr. Gobar, for your testimony. Members, any questions for our testifier? Seeing none. Again, thank you for joining us today. Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the last individual to testify is we want to return to Lala.

CHAIR SINENCI: Oh, okay is...Lala are you still...I know you've been going in and out.

MS. JOHNSON: Yeah, I'm still here.

CHAIR SINENCI: Okay, go ahead.

MS. JOHNSON: Okay, kala mai, yeah, for this mishap. But again, my name is Lala Johnson. I am a kuleana from the ahupua'a of Waiehu. As I had mentioned that my tutus have been taro farmers and also lawai'as [sic]. And so with that being said, understanding...the system that I understand and know of is ahupua'a system, which includes the kuleana families. And so hearing this, you know, although I'm not from Ha'ikū, but I am from . . . *(inaudible)*. . .

CHAIR SINENCI: Okay. Lala, you cut out again. Maybe you can send in written testimony to us.

MS. JOHNSON: Okay.

CHAIR SINENCI: Yeah.

MS. JOHNSON: Yeah, that sounds fine.

CHAIR SINENCI: Yeah, we appreciate you coming on though this afternoon. Thank you.

MS. JOHNSON: You're welcome. Mahalo.

CHAIR SINENCI: Mahalo nui.

MS. JOHNSON: Mahalo.

CHAIR SINENCI: Is there anyone else? Ae, hiki. Anyone else wishing to testify this afternoon? Okay, Members, seeing there are no more individuals wishing to testify, without objection, I'll now close oral testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR SINENCI: Thank you. And we'd like to thank all of our testifiers this afternoon and all

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the stakeholders that spent their time to come in and share their mana'o this afternoon.

. . . END PUBLIC TESTIMONY . . .

CHAIR SINENCI: Okay, Members, we're almost at the 3:00 hour...ten-minute break? Okay, with that, the APT Committee meeting of Tuesday, November 16th is now in recess to 3:07. . . .(gavel). . .

RECESS: 2:56 p.m.

RECONVENE: 3:07 p.m.

CHAIR SINENCI: . . .(gavel). . . Aloha kākou. Welcome back to the APT meeting today. It is now 3:07, mahalo for returning on time. And before we begin our second round, any objections to receiving written testimony into the record?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR SINENCI: Great. Mahalo, thanks for that reminder, Member Paltin...I mean, Member Rawlins-Fernandez. Excuse me.

**ITEM 35: A&B'S PROPOSED WATER LEASE FOR THE NĀHIKU,
KEANAE, HONOMANŪ, AND HUELO LICENSE AREAS
(CC 21-445)**

CHAIR SINENCI: Okay, Members. Moving on to our first item, APT-35 A&B's Proposed Water Lease for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas, the Committee is in receipt of County Communication 21-445 from myself relating to Alexander and Baldwin's Proposed Water Lease for the Nahiku, Ke'anae, Honomanū, and Huelo License Areas. So Members, today I wanted to take a larger look at the deeper dive so to speak that the State water auction process, where Maui County fits into this process, and how we're working to ensure continued delivery of the reliable and inexpensive water from domestic...for domestic and agricultural usage. So we do have with us today Mr. Ian Hirokawa, and he's the Special Projects Coordinator of the Land Division of the State of Hawai'i's Department of Land and Natural Resources. And we've invited him to discuss the auction and the water appraisal process, potential delays in that process should there be challenges over the lease and the water appraisal process, any anticipated timelines and...including questions that you might have for him today. We also have Deputy Corporation Counsel Caleb Rowe here today to explain the current agreement that we do have with East Maui Irrigation, what happens when a new long-term lease is awarded and a new owner takes over the lease, what the County is doing to prepare for this, what conditions they can ask for on the lease to assure water continues to flow to Maui County users, and how they will manage a new agreement with EMI should they be awarded the long-term lease. So we have...we also have with us our Director of Water Supply, Mr. Pearson, and our Planning Program Manager, Ms. Eva Blumenstein, in case the Members have any questions for the Department as well. With that, if there

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are no objections, I'd like to designate Mr. Hirokawa, Deputy Counsel Rowe, Director Pearson and Ms. Blumenstein as resource persons under Rule 18(A) of the Rules of the Council.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR SINENCI: Okay, great. Thank you, Members. With that, I see Mr. Hirokawa, you want to go ahead and provide opening remarks?

MR. HIROKAWA: Thank you, Chair Sinenci, and thank you, Members of the Committee. Again, I appreciate the opportunity to speak to you folks today and have a discussion on this important issue. My name is Ian Hirokawa, and I'm with the Department of Land and Natural Resources Land Division. And I also have Blue Ka'anehe, who's also a DLNR Land Division Staff, also working on these water leases with me as a backup. But I will try to field as many of your questions as possible. I kind of wanted to, you know, so we don't get too far along, quickly maybe summarize the water leasing process. And oh, I guess before I get into it, I do want to clarify that yes, you know, we did receive Mr. Mayer's comments and really, I would note that they're very...he raised some very significant issues and very relevant to, I think, how the lease will be eventually resolved. It's just that we're not in a position to really give specific answers to a lot of that right now, we're not there yet. And so I would say use that as a springboard to say, you know, I will answer your questions as best I can, knowing that...again, we're very early in terms of the lease...maybe what we call the lease drafting process...we're very early into it and the...you know, the appraisal process, we're very early into this. We really haven't started much of it at all. And I can, like I said, give you my impressions as a Staff member; again, I'm not the Chair of the Department or a member of the Board, so ultimately I'm giving you my impressions as a Staff member and, you know, would say...and ultimately, the decisions will be made by the Board of Land and Natural Resources. So I just want to maybe go over quickly so, you know, if there's...I'm not sure how familiar all of you folks are with how the water leasing process works, but it's codified in Section 171-58 of the Hawai'i Revised Statutes. You have our three sort of big requirements as part of the water leasing process. One is that under the vast majority of circumstances, it is done through a public auction. Additionally, as part of the leasing process, a water reservation for the Department of Hawaiian Home Lands is developed as...to be included in that lease. So basically, anyone who is awarded a water lease ultimately will commit to reserving some of that water for DHHL's needs. You also have to, you know, consult with OCCL, because a lot of these diversions are in the conservation district. Although, you know, again, a lot of these structures are...especially these older ones are pre-existing, so a lot of times we're not talking about constructing new diversion structures, there's already well...non-conforming structures, you know, very old, well beyond some of the time period. Also, you have to comply with environmental review under Chapter 343, HRS. So in this case, the A&B did do a...provided a final EIS for the Board to accept, and it was accepted at the September 24th Board meeting, and it's...I believe it's still in the challenge period, that hasn't...considered yet. Another thing is to develop a watershed...develop and implement a watershed management plan to...which is basically a means to sort of contribute back those ideas that, you know, a healthy watershed is the...you know,

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helps provide that water that can be used for, you know, whether it be hydro or agricultural, or what other uses. So the expectation...or the obligation, I should say, under statute is that the lessee, you know, helped to contribute to watershed management. I would also note that that is a separate item from what we'll call the lease rent for the water itself, so that's not folded into the rent, those are separate obligations of the lessee. The other sort of big issue to resolve is the valuation of the water. You know, as part of the public auction process, the...you have to determine what's known as the upset rent, which is...initially what it is is the opening bid at the auction. So that has to be determined by an appraiser, essentially at fair market value. And I think that has been the biggest challenge facing us, not with just EMI, but a lot of these leases, you know, for smaller agricultural users as well. Because, you know, pot water is a public trust resource, it's not an economic commodity so, you know, we've been having a...you know, great difficulty in trying to move that forward and saying okay, what is it worth in terms of a market value. In our, I believe it was the second meeting in October, the Board...we asked the Board to approve what we called guidance for appraisers, you know, sort of guidelines for them to look at and what considerations to look at when valuing water. They're not binding, but we kind of said, okay, what are the, you know, certain considerations they could give. So for example, what is the water being used for? What's the economic benefit for...you know, that the lessee gets from using the water? How much is being used, you know, as opposed to what's available? Certain factors like that was owed, you know, we've asked the...what we would want the appraiser to consider. So kind of with that being said, maybe give a quick overview of how the public auction works and then...how the public auction process works and then from there we can kind of try to take as...all your questions. So the first step and...you know, this is after everything is completed so, you know, you have the EIS, the watershed plan done, the DHHL reservation done, you take the...an approval for that public auction, not necessarily the lease again to a specific entity, but approval for public auction of a lease to the Board of Land and Natural Resources. And at that point we would, you know, do like a board submittal, including a draft of the lease. So at that point, you know, the public gets a chance to understand the proposed disposition and actually, you know, review and testify on the lease itself, the draft lease itself. And that would...you know, and especially with this one, I think what we're planning...what we can consider I think planning doing is, once we give the...once we reach this stage, potentially releasing the lease earlier for public review and comment...that's what we did with the EIS because, you know, we understand that...especially with the EIS was well over 1,000 pages. And we put it up on our website and did a press release, I think, three weeks before the Board meeting to allow the public extra time to review it because the agenda is released only a week before the Board meeting and, you know, we understand that it is very difficult for someone to...almost impossible for someone to review something like that in just a week. So, you know, much like the EIS, what we do is we put it on our website and did a press release to give the public additional opportunity to review the EIS and I think that...you know, I think we're going to consider doing that here with the lease. So, you know, there's ample opportunity for the public to review it. And I think...and hopefully at that point, I think a lot of...hopefully Mr. Mayer's questions will be answered. I don't know whether he'll like them or not, or anyone will like how we answer them, but I think that'll be the opportunity for the public to say, okay, these are how we...you know, we reviewed and sort of addressed these

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concerns and questions raised. And so, you know, the approval is done by the Board in a public meeting, you know, people have the right to contest the...request a contested case at that point on the decision. So that could...you know, as the Chair had noted, could delay the process. That's one point where, you know, a party can request a contested case on it and, you know, that could...who knows how long that could go, especially if it's litigated. Provided, you know, we get past that then, you know, we would...you know, in a normal public auction, we...at that point we contract with an appraiser to determine the upset rent when we're disposing of something like a ground lease or an easement. However, rather than waiting for the Board approval, I think in this case we might get the appraisal earlier so we can discuss in the Board submittal how the water was ultimately valued, so at least the public can...you know, there's an element of transparency there to how the water was valued, and the public can review and comment on that as well. Because normally, what it is, is once you...the public auction is approved, you don't go back to the Board at that point, you just go through the public auction process, and if there's a winning bidder, you award the lease. So the approval for the public auction is the last sort of stage that the public can have an involvement in this process. So I think, you know, it's important that we look at doing the appraiser...appraisal beforehand so again, the public understands how the water was valued, what the number is, and so on, I can comment to that. So after the approval, we put out a public notice of the auction, it's usually in the statewide...the *Star Advertiser*, which is statewide circulation, and the newspaper in which...for the County, Maui County, so we would publish it in two publications. At that point, with the public notice, we open...what we open is an application for potential bidders. So it's important to understand that with any public auction, not just for water or this lease, we want...we don't...it's not just any member of the public can attend the auction and bid, you know, you have to...essentially be prequalified as a bidder. So, you know, what we look at is...a lot of times like at least the most very base qualifications are one, you know, do you have the qualifications to do...to use the land and the water in a way that is called for in the lease. So for example if, you know, the character use of this lease will probably be like agricultural use, right, water for agricultural use. So to qualify, the bidder has to have that experience in doing this, and you have the capability to do this, you know. So those are some of the qualifications we look at. And bidders are invited to, you know, send in their applications, there's a review process, and then ultimately there's a...you know, the bidders that are deemed qualified are notified. After that, the public auction is conducted, you know, and...within the district of where the lease is being. So we would really be like...you know, well, prior to COVID, and I don't see this changing necessarily, is that we just have safeguards in places...you would actually have an in auction at the Maui District...or Maui District Land Office in Wailuku with the...all the bidders and, you know, conduct it and see who wins. Once the auction is completed, all that's left is to execute the lease and any related documents. So...and, you know, ranging from anywhere from that day to a month out...because it'll take time. Because the lease, the way it'll be, is it'll just be sort of a blank lease without a party name, so they'll need to...you know, the agents will need sort of finalize the lease for the winning bidder, and then it's executed. So...and that's basically...that's basically the process in a nutshell. I think other things that I may want to, you know, just touch upon in this is the lease would have sort of requirements for compliance, so I can definitely see them, you know, having sort of reporting requirements to ensure that the

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water that they...that they divert and use is done so for the appropriate purpose, you know. So whatever it is under the lease, whether it be hydro or agriculture, that it's being put to a reasonable and beneficial use. I can, you know, certainly see again...I can certainly see that based on the CWRM order, you know, there would be some...some way to address this idea of upgrading the...you know, the infrastructure to mitigate, you know, the system losses or waste, you know, depends maybe the ones you're talking to, they use the term interchangeably. But, you know, these system losses or water is retained better...that the watershed management...you know, the requirements are being upheld. It really would be a sort of a multi-division effort within DLNR, so it would be like Land Division, Forestry and Wildlife, and Commission on Water Resource Management. So that would be a, you know, pretty...pretty big effort, but especially with this one because it is such a substantial disposition. So we would look at, you know, including terms in the lease that provide for that. One other thing...oh, I'm sorry, another thing that's very important too is for the public...because I know Mr. Mayer raised it in his comments was, with the public auction lease...and this is what's very important about the drafting is that the way the law works is that once it goes out for bid, you can't change it. So if you have a 30-year lease, you cannot amend it after 10, 20 years, you're stuck with that lease. And so it's very important to sort of include whatever provisions...you know, the provisions themselves may give you some flexibility, but you can't amend provisions once you've gone out and auctioned and executed it, so that's an important thing to note. I think the other thing is it would be important that the right bidder is identified. I mean, you can...under the law you can assign a lease, but that is also subject to approval or consent by the Board, so it's probably best to determine who is going to be the lessee right off the bat. So to basically say it another way, you know, you just don't necessarily want A&B just to get the lease and sign it off to somebody else, you probably want whoever it is going to be the day to day sort of user, I'm assuming Mahi Pono, or EMI, or both, to be the actual lessee in the lease, rather than have to deal with an assignment afterwards. I'm trying to think, sorry, if there is anything...

CHAIR SINENCI: Okay. We can have some questions from the Members as well, Mr. Hirokawa. Do we want to hear from Mr. Rowe before your questions, Members, or...I know Mr. Molina has to leave at 3:30. Oh, so did you have a question for Mr. Hirokawa?

MR. HIROKAWA: Sorry, could I just say one other thing...one other thing quickly, I'm sorry. In terms of compliance, if the lessee is deemed not in compliance, we issue a notice of default, and the lessee is given an opportunity to cure. But ultimately...the penalty is ultimately the termination of the lease if, you know, the default is not cured. So that's the ultimate penalty. I'm sorry, but I just wanted to note that. Thank you.

CHAIR SINENCI: Thank you for that. Mr. Molina.

COUNCILMEMBER MOLINA: Yeah. Thank you very much, Chair, for your flexibility and consideration. Mr. Hirokawa, just a question with regards to the auction process. I believe that includes an appraisal of water rights. And if that is so, how is the value...one, how is the value of the water determined, and can you share with us what company or companies conduct these types of appraisals?

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MR. HIROKAWA: With the appraisals...well, we don't have a process yet, that's what we're trying to figure out now, you know, in trying to move forward is, how do we determine the value of water and establish a process or methodology, so to speak. What we do is we hire licensed qualified appraisers, you know, I believe the statute allows for a licensed appraiser and a qualified employee of the Board. But, you know, our sort of modern practice is we simply contract with private appraisers who are licensed because we feel that they have the best expertise and experience.

COUNCILMEMBER MOLINA: Okay. Do you have some names that you could share? I mean, this is like kind of new ground for a lot of us. So I'm just curious, I mean, who or what companies specialize in these types of appraisals? Do you use companies that come from the mainland or...I presume there's existing companies or individuals here in Hawai'i that can do these types of appraisals?

MR. HIROKAWA: You know, I...okay. It would probably be a local appraiser, but really, nobody has experience. What's why I think, you know, we need to...whoever we hire, we need to work with them to give them guidance to say okay, how do we...it's like we're working from, you know, zero, right, and trying to develop this methodology. There's no one with experience. My understanding is that there are mainland firms, you know, that do specialize in water rights. However, you know, they're dealing with markets and situations that are very, very different from us in Hawai'i where...you know, like I said, it's not a public trust resource owned by everybody, it's a commodity that's traded...you know, water rights are traded, bought and sold. And so, you know, we don't know if that would be appropriate to simply say, okay, how do we value it in California and do that here, you know, so...

COUNCILMEMBER MOLINA: Okay. Well, thank you for your responses, Mr. Hirokawa. Thank you, Mr. Chair.

MR. HIROKAWA: Thank you.

CHAIR SINENCI: Mahalo, Member Molina, and mahalo for joining us this afternoon. Members, we'll hear from Mr. Rowe, and then we'll go to questions.

MR. ROWE: Hi, I wasn't prepared to make an initial statement. I thought I was going to be here more as an informational resource. However, just kind of as a background of what's currently going on on this issue. There was recently a bill in our hearing on the draft Environmental Impact Statement, and that's being done in connection with the required contested case hearing on the 30-year lease. In the interim, the First Circuit Court, the Environmental Court for the First Circuit Court, determined that there was a necessity to also have a contested case hearing for the revocable permits, which are the one-year holdover permits that are pending the 30-year review. So the County was just actually admitted as a party yesterday by the BLNR (*phonetic*), so we will be participating in that, as well as continuing to participate in any long-term disposition by the BLNR. If anyone has any specific questions, I'd be more than happy to answer anything.

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CHAIR SINENCI: Okay, Members, we can open up the floor for questions. We'll go to Committee Vice-Chair Johnson, did you have a question? Members, do you want a two-minute round, or a three-minute round? Okay, we'll go with two minutes for now, and then we can do another round. Go ahead, Mr. Johnson.

VICE-CHAIR JOHNSON: Thank you, Councilmember Sinenci. This is for Mr. Hirokawa. In regard to who can be...you call them a prequalified bidder. So do you...I mean, I know you mentioned Maui Pono [*sic*]...or Mahi Pono and all those, but can the County be one? Can the State be one? I mean, is there...that's where I'm leading. Like why is just the corporate interest? Do we have...can you have a County one be a bidder?

MR. HIROKAWA: I don't...I don't see why the County couldn't submit a...you know, an application to be a bidder, provided they're going to...you know, they can use the water in the same way. The only...I guess the only thing is usually, and how has been past practice is we don't sort of put Government or...you know, Government or other municipal agencies in the position of competing against a private user. And that's kind of what the public auction does, right, they would have to...if they became a bidder, they would bid against Mahi Pono or whoever, you know, it is on that side, right, that's applying. So I think, you know, if there was, and I don't want to necessarily speak for the County, but I mean, I guess if there is this interest by them, then they should probably reach out to us and . . .(*inaudible*). . .

VICE-CHAIR JOHNSON: It's purely hypothetical, not...I don't want to put you on the spot...but I mean...

MR. HIROKAWA: Yeah, because I don't think...

VICE-CHAIR JOHNSON: You know, I just want to know your process. It's like why...I mean, why can't...I'm just saying why not, right? So okay, I get that. Like so my other question is, you mentioned that it's a public...you know, water is a public trust, you know, public trust doctrine, we've all heard that, so I can't imagine why the DLNR wouldn't look into having the County run it. So that's just where I was coming from with that question, and so I'm surprised that you're surprised, actually, that that doesn't happen. I mean, wow.

MR. HIROKAWA: Yeah, I mean, I guess I would say that my comment to and answer is that, you know, we'd need some indication from the County that they were interested in doing so, you know, to take over the system and...

VICE-CHAIR JOHNSON: I'm so glad you made that response. I'm so glad... . . .(*timer sounds*). . .

MR. HIROKAWA: Well thank you. One other...

VICE-CHAIR JOHNSON: My time's up. Go ahead, go ahead.

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MR. HIROKAWA: Sorry, one other...no, I wanted to add...and thank you...no, but thank you for that. But the other thing I wanted to add is that, you know, part of the system, like it's a...you know, it's a very extensive system located both on State and private land and, you know, as I understand it, you can't have two separate operators. So whoever would get the system on the State land would need to resolve that issue of, okay, that system on the private land, right? And I mean, I can't imagine...you know, I just can't imagine...I mean, I maybe speak a little informally here, I can't imagine the...you know, A&B, EMI or whoever just willingly saying, well, here you go, you know what I mean? I don't know.

VICE-CHAIR JOHNSON: Well, then that means what's the point of having an auction if it's already been . . .*(inaudible)*. . .

MR. HIROKAWA: Well...yeah.

VICE-CHAIR JOHNSON: Okay, that's...I'm running out of time. I'm sorry, Mr. Hirokawa. Thank you. Thank you, Chair.

CHAIR SINENCI: Thank you, Member Johnson. Next we have Member King, and then Member Lee.

COUNCILMEMBER KING: Thank you, Chair. I sort of had the same question, but...well, if the County were going to be one of the bidders, what would the process be? Would it have to go through the Administration, or is it a move that the Council could make? Do you know the answer to that?

MR. HIROKAWA: You know, I don't know. I mean, usually we deal with the County Administration, you know, either through the...you know, through the Mayor or a representative. I...again, I...again, I can't say because I don't know how the...you know, the Council works so...

COUNCILMEMBER KING: Because...the reason I'm asking is because we have...you know, we were looking at a parking lot at Keawekapu Beach that DLNR wanted to...expressed interest in basically handing over to the County, and they asked me for...because it's in my district, they asked me for a letter requesting an executive order. And they thought I could do it, but the better process was that the Mayor should do it, which it took him three months to get around to doing and finally did it, but...so, you know, what I was told was that if the Mayor won't do it, you could do it, it's just...come from a...you know, a Government entity. So that's why I was asking if the Mayor doesn't want to...if the Administration doesn't want to do that, this lease, my understanding was that our U.S. Rep Kai Kahele, one of his...in his first year, he wrote a letter to our Mayor saying we should apply for this lease, and it didn't...he never did apply.

MR. HIROKAWA: I think what we would expect on our end is whoever will manage this system. So I assume that's the Water Department, right, if they were to go to the County, we would need something from them, or the Mayor needs the Department saying, you know, we want it because we're going to manage it, right...if they were to...again, if they

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were interested and they asked for it, or any...not just this, but any land, you know, that they would be...we would expect it from the managing...or the perspective managing agency, right, versus someone from the Council.

COUNCILMEMBER KING: Yeah. Well, that's why I made my request to the Mayor to write for the EO for the parking lot because they're going to have...the Administration has to develop the parking lot and maintain it, so --

MR. HIROKAWA: Correct.

COUNCILMEMBER KING: -- it does make more sense. But yeah, I guess the question is, can we . . . *(timer sounds)*. . . we've written resos before and we've never had a single one of them come through, so...urging the Mayor to do stuff. So anyway, I think my time is up. Thank you. Thank you, Mr. Hirokawa.

MR. HIROKAWA: Thank you.

CHAIR SINENCI: Mahalo, Member King. Next we have Member Lee, and then Member Paltin.

COUNCILMEMBER LEE: Thank you, Chair. Mr. Hirokawa, so this auction, could it be delayed due to any type of legal actions or, you know, contested case...related contested case hearing or other legal actions?

MR. HIROKAWA: Yes. I believe we are still in the challenge period for the final Environmental Impact Statement acceptance so, you know, that could be legally challenged. Also, again, when we take the public auction...approval for public auction to the Board, that could be, again, the subject of a contested case and go in potentially litigation. So that would be...those would be the two that I see, the two major potential avenues for challenge at this point.

COUNCILMEMBER LEE: Okay. So potentially, how long could this delay the auction?

MR. HIROKAWA: You know, the litigation regarding the revocable permits is, I think, going on for almost 20 years, you know, so I mean hopefully it wouldn't, but I'm just saying it could be years, as...you know, because it runs through not just through the trial court, but it would go through the...you know, potentially the appeals court and the Supreme Court so, you know, it depends on how...how . . . *(inaudible)*. . .

COUNCILMEMBER LEE: Okay. So the status quo would remain until something is resolved.

MR. HIROKAWA: I would hope so. I mean, you know, I know the revocable permits are under, you know, litigation as well, and that's why I think we're trying to move forward with completing this lease, but I mean, I...you know, that's something the courts will decide.

COUNCILMEMBER LEE: Is the idea of getting an appraisal something new?

MR. HIROKAWA: Not in...generally, no. For this particular issue, it is new in the sense that

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it's not...we haven't done it before, you know, we haven't tried to value water before. But getting an appraisal in of itself is something . . . *(timer sounds)*. . . we do commonly.

COUNCILMEMBER LEE: Okay. Thank you very much. Thank you, Chair.

CHAIR SINENCI: Mahalo, Member Lee. Member Paltin, and then Member Rawlins-Fernandez.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Hirokawa. I might cut you off if I get the answers, because we only get two minutes.

MR. HIROKAWA: Okay, sorry.

COUNCILMEMBER PALTIN: But I just wanted to clarify, so you as the Staff, you're not the decision maker, but you would assist in drafting what the lease would look like; is that true?

MR. HIROKAWA: Yes, we would work as Staff and with the Attorney Generals to, you know, work to draft the lease, yes.

COUNCILMEMBER PALTIN: Thank you. And some of the comments that we have heard so far is whether the diversions are non-conforming or old or whatnot, that it's not working out for the kuleana users, the riparian users, and those with appurtenant rights. Would you be the person to ensure that the way that the lease is drafted that, you know, State law in terms of those people's rights who we've seen not be enforced would be enforced through this lease agreement? Because I mean, after all, it is the law.

MR. HIROKAWA: Yeah, I mean...well, I think the lease would have to, you know, be subject to and also...you know, be subject to the, you know, the...sort of these legal requirements, but the...like me, I'm trying to speak to the...you know, it's not necessarily an enforcement document. If anything, I think, you know, CWRM...you know, in terms of the complying with the IIFS, you know, the Interim Instream Flow Standards have been set, and if, you know, for example, the diversion structures are not in a condition where they are...you know, I mean, I don't know if they are now, but I'm saying if they aren't complying with that...the IFS requirements, then I think that's an issue more for CWRM as a regulator to address. You know, because the lease can't assess, like I said, financial penalties or anything, you know, it's a disposition of the used water. And ultimately, if you...like I said earlier, if you violate it, the most we can do is cancel the lease, you know, you can't necessarily use it as a way to say, okay, you have to pay a penalty or something like that. So I think maybe the CWRM option is a better way to ensure that. Although, you know, I'm sure it can be sort of included in the lease just as a...you know what I mean, to reinforce that.

COUNCILMEMBER PALTIN: I guess...you know, I mean, what we have been hearing from the community is kuleana water rights are not being respected to date. And then to go forward with a lease and not address those issues, it seems a little bit premature maybe.

MR. HIROKAWA: I mean, yeah...I mean, I guess I'd have to say I'm not sure the specific issues

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are, I mean, you know, a lot of these...I would say that, you know, not all the streams that are being diverted from our...under the lease because some of them are on...you know, the diversions are current on private land that aren't subject to our lease. They are still subject to CWRM regulatory requirements, whether they're private or on public land. But, yeah...I mean, I think if there's an issue where a diversion on State land, right, is not up to par in terms of meeting those requirements, then yeah, I'd think we would have to look at that and address that.

COUNCILMEMBER PALTIN: Okay. Thank you. Thank you for your work on this issue. I think my time...my bell rang.

MR. HIROKAWA: Thank you.

CHAIR SINENCI: Mahalo, Member Paltin. And we can come back if Members have a...for a second round of questioning. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I think I'll follow up on some of the questions that Member Paltin was asking because I was hoping that that's where she was going, and maybe that's where she was going, and then she wouldn't have to ask questions. Aloha, Mr. Hirokawa. Mahalo for being with us today and for outlining all the processes involved in this. So as Member Paltin sharing...shared, and I heard in testimony, that there's lots of issues with the kuleana water rights. And so would they go to you folks to enforce the law if it's being violated, or when it's being violated?

MR. HIROKAWA: Well, I think, you know, they could come to DLNR generally, so I think...I mean, my understanding is that when the interim...the instream flow standards were set, you know, they took into account off stream uses, you know, particularly with traditional customary practices and, you know, another...like the kuleana rights and, you know, they also look at things like the instream environment, you know. And what it is, is it tells, okay, you know, there's so many...there's so much water...what the full center does is it says, okay, this amount of water must be left in the stream and, you know, you can divert anything above it, right, and so, you know, ultimately it's CWRM to enforce that, but I don't...again, like if there's some violation though because they still have the revocable permits, right, and not...even though they don't have the lease yet, they still have to comply with all...you know, all laws, right, and regulations as part of that. So, you know, we need to know if there are violations. You know, with that being said, I'm not sure about the specifics of it...I mean, is it because they are taking away too much water, or is it drought conditions not having any water...I mean, I don't know. I'm not trying to say that it is or it isn't, I just don't know what the specifics are, whether...okay, is there really a violation? But again, if people have concerns, they should report it in to, you know, the Department.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So have they not been reporting it to the Department?

MR. HIROKAWA: I don't...I haven't heard of anything...I mean, I don't know if they've contacted CWRM really, because I don't think no one from CWRM is here today but, you know,

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they might have, but I haven't heard anything in regards to...no violations that would potentially affect their ability to keep the permits or get a lease. I haven't heard anything.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. And then I think my time will be up very soon, so my last question is regarding this process. So before going through, you know, like the appraisal process, the auctioneering...the auction process, which I assume would take a lot of time and money, would...do you folks consider like . . .*(timer sounds)*. . . out to Government agencies before opening up the bid to private entities?

MR. HIROKAWA: Yeah. I mean, I would say this. I think if...and again, I mean, I know the...if there is an interest by the County to expand the scope of their involvement in this, I think they should reach out to us as soon as possible. Because again, I don't think having the County as a competing bidder is really in anybody's best interest, you know, where public and private is competing. I think we want to resolve it one way or the other beforehand. So I mean, I hope that answers your question. But yeah, we could...you know, if the County says well, I want the system, then I think we'd have to say, okay, wait, let's at least hold and address this, you know, first, before we rush it to...or, you know, bring it to public auction, so...

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, yeah. So it was just about the process. So before like going through all of this process like, you know, how with the EIS process, letters are sent to all the agencies to provide comment before public testimony and all of that. So I was just wondering about the process, if letters are sent to...

MR. HIROKAWA: Yeah, I mean...oh, well, I think...like I said, what we would do is as we move forward on the lease or the public auction, we would try to find some means to give the public more opportunity to provide comment, or at least review the material other than okay, we'll put it on the Board agenda, and one week later the Board hears the item, you know. If anything, we would probably say okay, well, we intend to take this on like whatever Board meeting date, publicize it, and at least let the public, you know, review it longer. I don't think it would be...I would think the best way to do it is still have them testify at the Board meeting, because that's when the decision is actually being made, rather than send us in testimony ahead of time, but at least it'll give the public a chance to not rush, you know, and okay, you got seven days to figure this out and say something, right?

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo, Mr. Hirokawa, and mahalo, Chair. You can count that as my second round. Sorry, I know I went over...way over my time.

MR. HIROKAWA: Sorry. Thank you.

CHAIR SINENCI: Mahalo, Member Rawlins-Fernandez. I just had a question for Mr. Hirokawa. Has the Board already established criteria for the water appraisal?

MR. HIROKAWA: Not criteria, they have...like I said, the Board has approved guidelines on

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that for an appraiser. I can...if...you know, maybe I can send to your Staff the submittal that they approve so...and she can disseminate amongst you folks to see what was approved. But it's not what I would call binding criteria, it's more guidelines and factors that the appraiser should look at to give them some...give him or her some guidance as to okay, how do we approach this.

CHAIR SINENCI: Okay. And then was there still legislation about changing the appraisal...the water appraisal to just have DLNR do their own evaluation with the appraisals? I know it's a State law.

MR. HIROKAWA: Yeah, we hadn't...well, we hadn't proposed legislation in the past two years, and we intend to introduce it this year and it's not really to have the BLNR have authority over it, it's more just to adopt what...the guidelines that the Board approved into the statute so there's some...maybe more...I don't know if certainty is the right word, but, you know, a little bit more stability and certainty than just a Board policy that is subject to change. You know, having it codified in statute would give, you know, a lot more, that...you know, five years from now hopefully it would be the same, right, I mean...and there's other changes proposed too, yeah. But, you know, yeah, it's just that we haven't passed...we haven't been successful, so we figured okay, going to the Board is at least the next best thing we can do in order to keep...not have to wait for...continually for such an after session.

CHAIR SINENCI: Okay. Thank you. And then my other question was for Mr. Rowe. The current agreement that the County has with EMI, when does that expire?

MR. ROWE: Thank you for that question. So under the terms of the current agreement, it automatically renews every single year that a revocable permit . . . *(timer sounds)* . . . is issued by the BLNR. However the agreement's term also says that if EMI receives a long-term lease, the agreement can be terminated on 12 months' notice; and during that period, the parties shall negotiate in good faith for a long-term replacement of this agreement.

CHAIR SINENCI: Okay. All right. Thank you. So Members, any need for a second round of questions, just go ahead and raise your hands for the resources. We have Member Paltin, and then Member Lee.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Hirokawa. I just wanted to follow up on some of the answers last time because you're ma'a to the process. And, you know, when you said if there is a violation of the revocable permit, then they wouldn't get a chance at the long-term lease, but what about if there's a violation of water laws in terms that kuleana farmers and owners have rights to the water in the stream, and the stream is being 100 percent diverted, and there isn't an IIFS set; but the law that's being violated is the kuleana user doesn't have access to the water. Would that be considered a violation, or for these purposes, it has to specifically be a violation of the existing revocable permit?

MR. HIROKAWA: Well, what we usually say is, you know, be in compliance with Federal, State

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and County laws and regulations. So usually it's meant to say...what we've always interpreted it to mean is like, you know, statutory or in the case of a County or a revised ordinance, you know, that kind of legal violation. I...you know, as to something more than that, I mean I...you know, honestly, I don't know. I think that would be something I would really consult with an...you know, if I had my AG here, but they're not. But I don't know if...I mean, that would be a tough answer for me to give beyond that. I can give you the clear answer, which is again the...you know, if you look at a...like I said, you look at a statute or a revised ordinance, that's the easy one; but beyond that, it gets, I think, kind of unclear as to how we would deal with that.

COUNCILMEMBER PALTIN: And just one more follow-up question, Chair, if I could. You know, when you referenced past practice in leases, or revocable leases, and things like that, it feels like, you know, we're finally acknowledging that not everything in past practice was done correctly, including annexation and whatnot. So I just was wondering, and I know it's difficult as a Staff member, but . . . *(timer sounds)*. . . how is that being addressed in changing how we do things from past practice? Is there any efforts made to bring us to where we are today, in this point in time, of acknowledging the history and the water usage here?

MR. HIROKAWA: Well, I hope...I hope we're doing that because...you know, I mean, you look at a lot of these old leases, and they would just say, well, you get the right to use the water and that's it, right, and who knows how they valued it. I've heard it was valued based on the price of sugar but, you know, was it valued...you know what, I think, you know, that's why I think a lot of this is, we're not going back looking at old leases and say, okay, how did they do it back then, right, and we'll just do it the same way. We're trying to...and, you know, it's the difficulty in doing it, and why it's taking a little while is that we're really working almost from scratch, right, how do we value it appropriately? How do we account for watershed management and DHHL? You know, how is the lessee going to be held accountable within the lease for their...you know, the amount of water they use and how they use it, you know, and report it and...you know, so there's transparency there. So yeah, I would hope that we're...you know, at least our goal and our hope is that we're trying to do things much better than what was done, you know, before. I mean, I don't want to speak to what people thought back then...I mean, I don't know. But, you know, we're trying to do it as best we can and with what we know today.

COUNCILMEMBER PALTIN: Okay. Thank you. I don't envy your job.

CHAIR SINENCI: Mahalo, Member Paltin. Member Lee. a follow up? You're muted. Chair, you're muted.

COUNCILMEMBER LEE: Like Mr. Hirokawa said, they're starting from scratch, so no sense me asking the question I had. Thank you.

CHAIR SINENCI: Okay. Mahalo Member Lee. Okay, Members, if there are no...anymore questions, we'd like to go ahead and mahalo Mr. Hirokawa and Mr. Rowe for their participation this afternoon. Thank you.

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MR. ROWE: Thank you.

MR. HIROKAWA: Thank you very much.

CHAIR SINENCI: Okay. And Members, this item was posted for no legislative action, and we can always...if we have anymore inquiries, we can always bring back the item should you have any more. So if there are no objections, the Chair would like to defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MM)

ACTION: DEFER pending further discussion.

**ITEM 57: WATER USE AND DEVELOPMENT PLAN FOR MAUI
(CC 19-162)**

CHAIR SINENCI: Okay, great, and thank you for your...asking your questions. We just have our second item, which is APT-57, the Water Use and Development Plan for Maui. So Members, the Committee is in receipt of County Communication 19-162 from the Director of Water Supply relating to a proposed bill adopting an update to the County of Maui's Water Use and Development Plan. So Members, as you've heard from testimony today, our version of the WUDP showing the redacted changes was not posted for today, and with all the formatting changes, the redacted version became more confusing than helpful. Many of the changes that were made were non-substantive changes, like spelling and punctuation; and as a result, the redacted version came out to over 2,000 pages. So whereas as...and that's why we've been just posting sections of the report as we had our meetings. So...and of course, as you already know, we did not RFP the process out to a private consultant, so Staff has taken on this task on top of their regular duties with other Committees. We've extended our deadline for the WUDP several times now, with the last extension to the end of the year. So today's posting was to approve the report, and to consider the Council meetings to meet the current deadline that we've established. Our Committee work included meeting with the Aha Moku Councils, revisiting the Appendix 10 of the document, bringing those priorities into Part 2 of the report strategies for the Committee Members to consider for short-term and long-term action. In the course of the last year, we also revisited the different area sectors for discussion, and particularly the district tables that address community concerns. So we wanted to quickly address some of them for you today. Staff, can you...and we won't share everything, but we just wanted to kind of quickly show some areas of the work that this Committee did. Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Sorry to interrupt your flow, I just was wondering if you could clarify what you meant by the redacted version. Is it like a Ramseyer version, or is it like a new conversion?

CHAIR SINENCI: Yeah, the track changes.

COUNCILMEMBER PALTIN: So kind of like a Ramseyer version.

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CHAIR SINENCI: Yeah. And so we just posted the clean version for today's meeting.

COUNCILMEMBER PALTIN: So you posted a clean version of the entire WUDP?

CHAIR SINENCI: Correct. That was...yeah, that was what we posted for today's meeting, but we didn't include the redacted version with all the track changes. So I think that's what a lot of the testimony today was alluding to.

COUNCILMEMBER PALTIN: And that clean version, is that the correspondence to Corp. Counsel, November 10th, 2021?

CHAIR SINENCI: Yes.

COUNCILMEMBER PALTIN: Okay, okay. And so then that's what the people should have a little more time to go over.

CHAIR SINENCI: Right, and we can present to you some of our options for you today.

COUNCILMEMBER PALTIN: Okay, okay. Thank you. Sorry I wasn't clear what redacted...so I didn't understand. Thank you.

CHAIR SINENCI: No, great question. Thank you. Member Lee?

COUNCILMEMBER LEE: Yeah, Mr. Chair, are we going to extend the date again?

CHAIR SINENCI: If it's the will of this Committee, we can.

COUNCILMEMBER LEE: Well, it sounded like...sounded like the testifiers wanted a clean version, and also time to review...did you say it's 2,000 pages?

CHAIR SINENCI: Well, with all the...with all the changes that we did during the last year, that's why we didn't post what the...all the different changes that we did. Because on top of doing the additions, and the consensus that the Committee voted on, they also just did some, you know, changing of the spelling and punctuations and those types of things. So it did increase to over 2,000 pages with all of the changes in there.

COUNCILMEMBER LEE: Can I ask you why we wouldn't wait until the entire document is ready for public view and consumption to get it out there?

CHAIR SINENCI: Well, we did post the clean version of all the changes that we did, it's just that it sounds like the testifiers can't see what changes we made because it's in the clean document, and it's 1,360 pages. So...

COUNCILMEMBER LEE: I just thought maybe we all could look at it at the same time.

CHAIR SINENCI: Yeah, and so really quickly, if I may, Members, I just wanted to...Staff, can

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we share the track changes in the regional strategies. That was one of the areas that we did our...a lot of our work in in all the different tables. So if we can share it right here. Okay, just as an example, can we go down to Table 15-31, and just to show...so these are the changes that we did, right? So here's 15-39...so for instance, these were some of the things that we included...it's for funding the cost benefit analysis of improvements to the EMI non-potable conveyance system to mitigate losses and preserve existing reservoirs at risk of decommissioning. And these were some of the Ha'ikū Community Association's changes. As we scroll over, we'll see more...can you scroll down, Staff? Assess alternative options to restructure the process of existing Upcountry water meter list. Number 3, explore new basal well development in the Makawao aquifer. Number 4, to explore East Maui well development in combination with Makawao aquifer basal groundwater. Number 5, to explore aquifer for non-potable demand and potable use. So these are...in each aquifer district, we did all of these changes, which we posted, but we posted in a clean copy so you don't see all the...all these changes that we did. And I believe that's what a lot of people are seeing. But if you...you know, by looking at these, you'll see we've addressed a lot of the...what some of the testifiers were alluding to. Can you continue just a couple more, just to see where Ha'ikū...this was to execute...execute a long-term source agreement for use and maintenance for Wailua ditch.

COUNCILMEMBER PALTIN: Question.

CHAIR SINENCI: Go ahead, Member Paltin.

COUNCILMEMBER PALTIN: Oh, thank you. I just was wondering, is it not possible to post the 2,000 pages with the track changes? I know it's not something that I'd want to read on a Friday night, but if it's possible to post the 2,000 pages during this meeting, then it would be there if anyone does that sort of thing for fun and...or maybe break it up by chapter or something like that then, you know, I would feel like we're giving the people what they want.

CHAIR SINENCI: Sure, we can check with Staff if that's possible. I know it's been a...because of the volume of the document, we've just been, again, posting different area sectors. So Staff, is that a possibility, if we can...

MS. APO TAKAYAMA: Chair, if I can clarify. So the version posted as Member Paltin said, correspondence to Corporation Counsel is the entire document updated in clean version. And so all the changes that we made are included in there. The version that I think you're asking for is the track changes version, so that's this. It includes everything. So, you know, changing...making sure everything is an okina and not an apostrophe, spelling errors, things like that. And so it just seems...the document is a little bit confusing because some of the sections were moved around. And so if you don't review the entire document in its entirety all at once, it looks like we deleted sections; but really, we moved them to another section or, you know...and so that's why we were just worried it would be confusing to the public, you know, especially if they're going to go look at a specific section, for example, Ko'olau sector and things are removed, it's not that the information was removed, it's that it was placed in another section. Thank you,

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Chair.

CHAIR SINENCI: So Staff...so Ms. Apo Takayama, the question was, can we post the 2,000 pages of redacted...is that something we can do?

MS. APO TAKAYAMA: Chair, if it's the...if that's what this body prefers, we can post the track changes version. We don't have a Ramseyer version, but we can post the track changes version of the document.

CHAIR SINENCI: Okay. And then it looks like some of the community...and because we did it by sections or different sections, you know, the community is asking some kind of guide to see what changes that we've done. And so I just wanted to reiterate the last year of work, Members. We did...the last several months we did with the Aha Moku Councils of each district to see what their priorities, and so we've also added all of their concerns within Part 1 of the document. And so if they...I mean, we can show where we put all of these things. We also included...with the Ha'ikū Community Association, they included the 2003 court mandated consent decree within the appendices of this document, and in it the community expressed the need for more geohydrology analysis, groundwater quality analysis, stream flow studies, a stream restoration plan, biological studies of baseline conditions for streamline, the riparian species. We also brought on as one of...you know, one of our meetings the Nā Wai 'Ehā decision and order, and so we also included in the cultural and historical content in Part 1, Commissioner Doctor Kamanamaikalani Beamer's comments about the Nā Wai 'Ehā case, so we've included that. And also, in that meeting we had Mr. Moriwake come and speak to kuleana rights as the highest priority of water usage. We've also...and so on top of the water use plan, the Committee also pursued other avenues of water use and development, including a future ordinance by Member Rawlins-Fernandez to set a tier structure for highest users of water, including decreasing water allotments to suit O'ahu hotel standards. Again, today we had Mr. Moriwake and possible conditions to the water lease, as well as from DHHL constituents to adopt a strategy to create permanent native Hawaiian...the Native Hawaiian Water Advisory Council. So with that, Members, you know, those are just what we posted for today. And again, it's just to meet our deadline at the end of the year. So with that, we wanted to propose for your consideration...we have option number one, which is to pass the plan out of Committee today and we can put together an informational document breaking down our substantive revisions for first reading. A second option for you to consider today is to defer the item today and instead post a resolution extending the deadline to pass the plan again, once more; and in that case, we would also uphold the informational document in time for our next APT Committee meeting, and giving the public time to view the document before we pass it out of Committee. So I just wanted to get your thoughts as for you, what would...what are some of your thoughts moving forward. Chair Lee?

COUNCILMEMBER LEE: Just curious, what's your recommendation?

CHAIR SINENCI: I'm open. I think if we...like we said, I think a lot of people that testified today, Chair Lee, we just...like they're requesting, just a summary of where the changes were made. So if we could provide that in the next month, or if Members feel that you

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want to extend it for another two weeks to a month, then we can go ahead and put it out there to kind of give people time to see where all the changes that we made. So I'm open to whatever you guys like. Member Paltin.

COUNCILMEMBER PALTIN: Yeah, so you can shut me down, I don't want to volunteer you for more work, but I did hear one of the testifiers like ask for a presentation, maybe in the form of a town hall or something...like the way that Mr. Hirokawa was saying, like they post their things like three weeks before, and then they do a press release...or maybe you could put it up somewhere, like both versions, the Ramseyered one and the clean one, and then people can take their pick, and then put out a press release like, here it is, which one you want, or you want to look at both, and we'll come back and we'll see you in a couple of weeks or something. I was going to say twins, but triplets. Okay, never mind, something different.

CHAIR SINENCI: Mahalo, Member Paltin. And I think with this process, you know, not putting it out to RFP...and mahalo to the Staff, Ms. Apo Takayama and our Ms. Gina Flammer Young, I mean, they've been working on this and doing all the changes, especially the last couple of weekends. But what it did for us was we got to see the entirety of this document, right? And as you know, anticipating the Moloka'i Water Use and Development coming up and, you know, we can kind of prepare ourselves, we know now how to anticipate and how to work with, you know, in receiving the Moloka'i Water Use and Development Plan. So Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So I agree with Member Paltin and you, Chair. I heard Ms. Apo Takayama's concern, and I was thinking that, you know, perhaps we can just add, you know, a memo cover letter that flags a couple of things that community members may be concerned about, such as large, you know, sections of the plan being moved and then, you know, it looks like it was deleted. So, you know, just...like that.

CHAIR SINENCI: And then as Council Vice-Chair, should we have, you know, another meeting, you can help us do...approve an additional meeting? We got your commitment, yeah? Is that a yes? Okay. Okay. So Members, would you want to go ahead and...what do you guys prefer, to defer, and then we can go ahead and reach out and provide a summary. And, you know, there was a lot people involved in this process, including all of the Aha Moku people that came out and met with us, we met with all of them. So I think, you know, just kind of where we're going to meet the deadline as maybe anticlimactic for some...you know, some people...some stakeholders that really, you know, shared with us all their mana'o nui. So we're okay with celebrating and, you know, just honoring and letting those people know that we appreciate all of their input into this plan. Okay, so with that, Members, I'm going to go ahead and...if there are no objections, the Chair would like to defer this item, with the intent that we need to extend the deadline once more.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MM)

ACTION: DEFER pending further discussions.

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MS. APO TAKAYAMA: Chair.

CHAIR SINENCI: Okay, we have...oh, Staff, Ms. Apo Takayama.

MS. APO TAKAYAMA: Sorry, can I also...thank you. Can I also just clarify what we're posting for the next meeting, what the body has chosen to post?

CHAIR SINENCI: Okay, it looks like we're going to also include the redacted version so that people can see, but we'll also go ahead and provide, at a future meeting, summaries of where they can find larger areas of the plan. Member Paltin.

COUNCILMEMBER PALTIN: I just was going to say, if we post it at the next meeting it's not going to give folks the time that they want to review it. Is it possible to post it on the Council's website or something, or post it right now while we're open in the Committee? And just as a follow up, I guess, you know, we're all having so much fun with this WUDP, we just don't want it to end because you Chair such a great APT meeting...it's not a GREAT meeting, it's so APT. But I don't know if we can post it right now, if it's ready to go, or if we can post it in another location. Because if we wait until the next Committee meeting to post it with the agenda even, we're not giving folks time to look at the 2,000 pages and the 1,300 pages as much as they'd have, you know what I mean? But I can't hear you because you're muted...if you're talking to us.

CHAIR SINENCI: Okay, thank you for that. Ms. Apo Takayama, would we require more than a week?

MS. APO TAKAYAMA: Chair, we have the track changes version ready to go. If we would need to provide a cover sheet, you know, like Member Rawlins-Fernandez was explaining, where we would include some additional information, we would need some time for that. But it would really also depend on how long this body would propose to extend the deadline. Because if we're wanting to give the public time we could post it...you know, we could upload it to the item and just not hear the item again until two meetings from now instead of one, or something like that.

CHAIR SINENCI: But in that case, we would have to extend the deadline, yeah. We would have to do a PAF...

MS. APO TAKAYAMA: Either way, if we're deferring today, we need to extend the deadline.

CHAIR SINENCI: Okay.

MS. APO TAKAYAMA: Because we need two readings of the . . . *(inaudible)*. . . Thank you.

CHAIR SINENCI: Yeah, okay. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, one, I support extending the deadline so that...you know, I mean, that's the feedback that we got from the public

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is that they're asking for more time. And since we have that ability to give the public more time, I support doing that. Two, I just want a clarification on the redacted plan...so do you mean redacted, or do you mean track changes?

CHAIR SINENCI: I thought they were both in the same, but maybe Ms. Apo Takayama had it?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, because redacted means that information is blacked out.

CHAIR SINENCI: Right, and...

COUNCILMEMBER RAWLINS-FERNANDEZ: You know, like . . . *(inaudible)*. . . information.

CHAIR SINENCI: Okay, it would be for track changes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, track changes. I just wanted to make sure that was clear for those that are watching the meeting. And then the third thing is related to the memo that I talked about doing, like a cover letter. So because I understand the timing, and I know our OCS strive for perfection, and I'm sure that putting out a working document that isn't tied in a bow is probably giving them heartburn, and I can totally understand that, but perhaps, you know, putting like a...what's that called, a watermark that says draft on it...I mean, it's obviously a draft because there's going to be track changes, can help to ease some of the heartburn. And then posting the memo as a separate Granicus item as the cover letter, so that the track changed WUDP can be posted today or...yeah, today, if you can...I vote for that. And then having the memo like...as like a written correspondence from the Chair to Granicus, and then that way it can include some of the things that you'd want to flag for the community so that...to try to minimize any potential confusion in reading track changes document. Mahalo, Chair.

CHAIR SINENCI: Okay, mahalo for those recommendations, Member Rawlins-Fernandez. Chair Lee.

COUNCILMEMBER LEE: Chair, are you also thinking of extending the deadline today, because it's not on the agenda.

CHAIR SINENCI: Right, we would have to bring it back to the Council to...for approval.

COUNCILMEMBER LEE: Okay.

CHAIR SINENCI: Yeah. Okay, any other comments? We'll go ahead and take the Committee's recommendations, and defer, and provide those summaries and those memos, because I remember prior to, you know, going on this journey, a lot of comments said that this wasn't a very, you know, easy document to read, right? And so I think it still isn't. And so we'll provide those areas for people to better navigate it. Mahalo. Okay. So with that, Members, if there are no objections, the Chair would like to defer this item.

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COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MM)

ACTION: DEFER pending further discussion.

CHAIR SINENCI: Okay, great. Thank you. And mahalo...and that brings us to the end of the agenda. Staff, did I forget anything else for today's meeting?

MS. APO TAKAYAMA: No, Chair, there's nothing else. Thank you.

CHAIR SINENCI: Okay. And so with that we wanted to...oh, Member Paltin, did you have an announcement for...

COUNCILMEMBER PALTIN: If I could, we're having our town hall tonight on emergency airport lighting on the runway, and there will also be an update on the West Maui Cancer Center, and I believe they have a certificate of need Zoom tomorrow. So just letting folks know, the press release is on my Council Facebook page, and probably somewhere on the Maui County Council Facebook page as well. So that'll have the hookup information, and thank you for letting me plug that town hall.

CHAIR SINENCI: And we also have a Westpac public hearing on Thursday evening as well.

COUNCILMEMBER PALTIN: Oh, yeah. Thank you, thank you for mentioning that as well. That should be tons of fun...a lot of testimony.

CHAIR SINENCI: Okay, and then for tomorrow, Wednesday's meetings, we have the CARE Committee by Member King, and then tomorrow afternoon, a BFED Committee meeting with Member Rawlins-Fernandez. Okay, mahalo. With that, Members, I wanted to thank all of our resource personnel today for...also for our testifiers that provided their mana'o nui, and to the Department of Water Supply, as well as all of our...everybody who joined in today. So with that, the APT Committee meeting of Tuesday, November 16th is now adjourned. . . .(gavel) . . .

ADJOURN: 4:27 p.m.

APPROVED:



SHANE M. SINENCI, Chair
Agriculture and Public Trust Committee

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CERTIFICATION

I, Terianne Arreola, hereby certify that pages 1 through 47 of the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 17th day of December 2021, in Makawao, Hawai'i.

A handwritten signature in black ink, appearing to read 'Terianne Arreola', is written over a horizontal line.

Terianne Arreola