

# **ENVIRONMENTAL, AGRICULTURAL, AND CULTURAL PRESERVATION COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**October 7, 2019**

**Council Chamber**

**CONVENE:** 9:09 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Shane M. Sinenci, Chair  
Councilmember Tasha Kama, Vice-Chair (in at 10:46 a.m.)  
Councilmember Kelly T. King  
Councilmember Michael J. Molina  
Councilmember Tamara Paltin (left at 12:03 p.m.)

**EXCUSED:** VOTING MEMBERS:

Councilmember Alice L. Lee  
Councilmember Yuki Lei K. Sugimura

**STAFF:** Kasie Apo Takayama, Legislative Analyst  
Nicole Siegel, Committee Secretary

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Mavis Oliveira-Medeiros, Council Aide, Hana Council Office (via telephone conference bridge)

Don Atay, Executive Assistant to Councilmember Shane M. Sinenci  
Gina Flammer, Executive Assistant to Councilmember Shane M. Sinenci

**ADMIN.:** Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel  
Caleb Rowe, Deputy Corporation Counsel, Department of Corporation Counsel  
Eva Blumenstein, Planning Program Manager, Department of Water Supply

**OTHERS:** Norman Franco  
Lucienne de Naie  
Albert Perez, Executive Director, Maui Tomorrow  
Shay Chan Hodges

Valerie Lasciak  
Toni Eaton  
Simon Russell, Owner, Farm Maui LLC  
Tom Bacon (via telephone conference bridge, Hana Council Office)

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Chris Gaardner (via telephone conference bridge, Hana Council Office)  
Others (2)

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

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CHAIR SINENCI: . . . *(gavel)* . . . Aloha mai kakou, and welcome to the rescheduled Environmental, Agricultural, and Cultural Preservation Committee meeting. It's Monday, October 7<sup>th</sup>, and it's 9:09. I'm Shane Sinenci, the Committee Chair. And before we proceed, may I ask that we all silence all cell phones and noise-making devices? Thank you. For Members present today, it's an off week, so we have bare quorum. We have Member Tamara Paltin.

COUNCILMEMBER PALTIN: Aloha kakahiaka, Chair.

CHAIR SINENCI: Aloha kakahiaka. Thanks for being here. From Upcountry, Member Michael Molina. Aloha.

COUNCILMEMBER MOLINA: Good morning, Mr. Chairman.

CHAIR SINENCI: Thank you. Thank you for being here. And Chair King.

COUNCILMEMBER KING: Aloha kakahiaka.

CHAIR SINENCI: Aloha kakahiaka. Thank you for being here. Today, we have excused, Members Alice Lee, Tasha Kama, and Yuki Lei Sugimura. For our non-voting Members, Riki Hokama and Keani Rawlins-Fernandez. Other Staff here today, from the Department of Corporation Counsel, we have Deputy Corporation Counsel, Richelle Thomson and Caleb Rowe. Aloha. We were expecting Mr. Jeff Pearson, he might be in route. We'll let...oh, instead of Mr. Pearson, we have Eva Blumenstein. Thank you for being here. And then for our community resource people, we have Ms. Lucienne de Naie. Welcome. Albert Perez, the Executive Director for Maui Tomorrow; Norman Franco, Board Member of the Board of Water Supply; and also Ms. Shay Hodges, welcome. For our Staff, we have Ms. Kasie Apo Takayama, Legislative Analyst, and Nicole Siegel, Committee Secretary. For our District Offices, we have Ms. Mavis Oliveira-Medeiros in our Hana Office, Ms. Denise Fernandez in our Lanai District Office, and Ms. Zhantell Lindo at our Molokai District Office. Members, today we have one item, EACP-22, the Protection and Preservation of East Maui Streams. So, today we will be discussing and making comments on the East Maui Water Lease Draft Environmental Impact Statement. Our purpose today, Members, is to take a look at the Draft EIS, and see if it contains all the information needed for policymakers, and in this case, the Board of Land and Natural Resources, to make an educated decision. The resolution we are considering today authorizes the Council Chair to write a letter on behalf of the Maui County Council, incorporating ours and the public's comments on the Draft EIS. To assist us in this process, we have our

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representative from the Water Supply, Ms. Eva Blumenstein, and three community representatives with a vast...or four, with Shan, with a vast amount of knowledge on this subject. We have Lucienne de Naie. She has written extensively on Maui's water resources and is a former Board of Water Supply member. She's also on the Board and the former President of Maui Tomorrow Foundation and the Sierra Club, and also served on the Maui General Plan Advisory Committee. Mr. Albert Perez is the Executive Director of Maui Tomorrow. He has a master's degree in Urban and Regional Planning from UH Manoa, and has worked at the State Office for Coastal Management, and the County of Maui Planning Department. Mr. Norman Franco is a member of the Board of Water Supply and the Chair of the subcommittee researching the feasibility of buying and maintaining the EMI system. He can share with us the works and findings of this group. And we also have Ms. Shan Chay Hodges [sic] and she's the President of the Board...

UNIDENTIFIED SPEAKER: Chair.

CHAIR SINENCI: The Chairman, okay, thank you. I also wanted to let the Members know that we did invite the EIS consultant at Okamoto Wilson, and they weren't available to make it. We also invited a representative from Mahi Pono, and they were unable to send someone today. So, Members, if there are no objections, I'd like to designate these community members as resource persons pursuant to 18(a) of the Rules of the Council.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Thank you. And so, before we take some...we have a couple people in the audience that want to go ahead and give public testimony. But before we do, we wanted to give the floor to Mr. Perez, and so he was just going to have some opening comments on what the process is today and what's our plans going forward for today's meeting. Mr. Perez?

MR. PEREZ: Thank you, Chair. Is this on? Yes, thank you, Chair. And, Councilmembers, I tried to pass out this process document, it's just what I'm going to go over, so you should be receiving that shortly. Anyway, what we're talking about today is an Environmental Impact Statement for the East Maui, a lease of 33,000 acres of State lands stretching from Nahiku over to Honopou for the purpose of developing, diverting, transporting, and using government-owned waters through the existing EMI aqueduct system which supplies water to domestic and agricultural water users. And it's important to realize that this process is not about whether the lease should be granted. This process...that decision will be made later by the Board of Land and Natural Resources. This process is about disclosing the impacts of the proposed action. So, if you want to get a hold of the 2,700-page document, you can do a search for...I did a search for DEIS East Maui Water; and DEIS stands for draft Environmental Impact Statement. And then the first link I came up to, you can download it from the Office of Environmental Quality Control's EIS library. So, I have that link, the actual link on your sheet that I passed out, Councilmembers. So,

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comments are due on or before November 7<sup>th</sup> and I have the addresses there, it's the Board of Land and Natural Resources with their e-mails and phone numbers; and all of this information is also in the EIS that the public can download. And the County Council can submit comments as well through the public process. So, the draft EIS is supposed to discuss the impacts of the proposed action and any mitigation measures that will lessen those impacts. It has to discuss impacts on the environmental setting, rare environmental resources, and historic archaeological or aesthetic resources, and a full listing of the content requirements as contained in the Hawaii Administrative Rules Chapter 11-200. So, for those of you who are aware that those rules were updated August 9<sup>th</sup>, there's a provision that allows people who started the process before that to continue under the old rules, and A&B and EMI have chosen to be grandfathered under those old rules. The draft EIS must also discuss alternatives that could attain the objectives of the proposed action. If you don't think that the draft EIS discusses all of these requirements, you can submit comments that must be addressed in the final EIS. So, your comments could address if you think there's incomplete information or missing information or incorrect information. And also for those that responded to the February 2017 Environmental Impact statement Preparation notice, the draft EIS must respond to your comments in a point-by-point manner; and if it does not, that can form the basis for some of your comments as well. So, the draft EIS is supposed to contain...it's required to contain an explanation of the environmental consequences of the proposed 30-year lease including direct, indirect, and cumulative impacts and mitigation measures. And after the comment period closes on November 7<sup>th</sup>, A&B and EMI will proceed to prepare a final EIS and this must respond to, in a point-by-point manner, to all comments from the draft EIS, and both the comments and the responses must be included in the final EIS. So, the Board of Land and Natural Resources is the accepting authority in this case, and they will make a determination on whether to accept the final EIS within 30 days, or it will be deemed accepted. In order for them to accept the final EIS, they must find that the EIS meets the requirements of HRS Chapter 343 and HAR 11-200, and they must be satisfied that it meets the process, content, and response to comments requirements in order to accept it. If it is accepted, the public will have 60 days from the date of publication in the Office of Environmental Quality Control environmental notice, 60 days to challenge that acceptance in court. A&B, as I said, has chosen to submit this under the old EIS rules, and then once the final EIS is accepted, then the Board of Land and Natural Resources will hold a public hearing on whether to grant the lease, and if so, under what terms. Thank you, Chair.

CHAIR SINENCI: Thank you, Mr. Perez, for that summary. And so now, let's go to testimony. For individuals testifying in the Chamber, please sign up at the desk just outside the Chamber door. If testifying from one of the remote testimony sites, please sign up with District Office Staff. Testimony will be limited to the item on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. When testifying, please state your name and the name of any organization you may be representing. Pursuant to the Rules of the Council, if you're a paid lobbyist, please inform the Committee. We have established a

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connection to the Council District Offices, so, Ms. Apo Takayama, would you like to call the first testifier up to the podium please?

**. . . BEGIN PUBLIC TESTIMONY . . .**

MS. APO TAKAYAMA: Thank you, Chair. The first testifier is Valerie Lasciak, testifying on EACP-22, to be followed by Toni Eaton.

MS. LASCIAK: Hi, good morning. I'm Valerie Lasciak, and I'm concerned about the situation. I wasn't really sure how to handle it. And I just heard something that I would like to present, and that is that if we modify, meaning the County, modifies the EIS or appeals it in any way, it improves their request for a lease. And so therefore, it's not really your position to defend...to change their EIS, but rather to accept it and show that it's not worthy of approval and find out why it's not worthy of approval. And there are very important questions. Keanae did not have any water because the water that ran to the ocean was taken away, and we learned that that was painful and that it hurt Keanae, and it also defied US Federal regulation, which is one of the things that we have said we would do is to at least adhere to Federal regulation. Now, how do you get to do that? Is the one, is there a rule regarding the ownership of supposedly public water? This was transferred from the king to a lease and it was never really truly defined and we have been trying to modify our response so that we have now the governmental rules of the County of Maui that is in charge of what's going to happen. And I think that we've learned from Keanae. Will we require what we need to require to make sure that everybody along the way doesn't get hurt and that we're compliant? Those are the things that I'd like to see us stand for because that's what's important is how will this County and all of its citizens be affected? And will they be considered? And what are the rules of \_\_\_\_ water? When can you take it and when can you not take it? Have we designed that? Thank you.

CHAIR SINENCI: Thank you, Ms. Lasciak. And I think we're just for today's agenda...Ms. Lasciak?

COUNCILMEMBER KING: Valerie. Wait, wait.

CHAIR SINENCI: Valerie? One moment. We just, I think, today we're just trying to...we want to provide some comments to the draft EIS that's coming from the County. I don't think we can change it in any way if anything, but we wanted to provide our own comments to the draft EIS; like everybody else, they have a comment period till November 7<sup>th</sup>. Members, did you have any questions?

COUNCILMEMBER KING: I have a question just to clarify.

CHAIR SINENCI: We had a question from Chair King.

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COUNCILMEMBER KING: Yeah, can you come up to the podium? Thank you. Thanks for being here, Valerie. So, yeah, I just wanted to clarify that we're not here to recommend any changes, we don't have the authority to change the EIS, we're here to talk about comments that may be made about the EIS, you know, that the --

MS. LASCIAK: So...

COUNCILMEMBER KING: --Council may make to...the EIS was created by A&B for, you know, to show the impacts of what would happen if they got this lease, that was their requirement. But my question to you is you...I just wanted to clarify something that you said earlier, that the water diversion was damaging to Keanae or has been?

MS. LASCIAK: My presumption is after what happened that there's a minimum amount of water that must transpire from the mountain to the ocean to assure the life of the fish, to assure the life of the taro farmer, to assure the life --

COUNCILMEMBER KING: Right.

MS. LASCIAK: --of the population living there.

COUNCILMEMBER KING: Yeah, no, I thought you had a comment about how it affected Keanae.

MS. LASCIAK: Well, that to me was an indication that we needed to make sure that when the water was...if the water is diverted with an agreement, that everybody along the way is considered and provided for and that the things that are an issue need to be defended.

COUNCILMEMBER KING: Okay.

MS. LASCIAK: And I think the citizens of our, of the County, the health of our oceans, the health of our fishing industry, the health of what, you know, is a very critical portion of everything that I consider.

COUNCILMEMBER KING: Yeah. And I think --

MS. LASCIAK: And that's the just part of it.

COUNCILMEMBER KING: --that's going to be our discussion today is going to be about that, so thank you.

MS. LASCIAK: Yeah.

COUNCILMEMBER KING: Thank you for being here.

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CHAIR SINENCI: Anyone else? Thank you, Ms. Lasciak, for your testimony. And it's correct, we wanted to include the comments and testimonies from today's testifiers as well. Okay, Ms. Apo Takayama?

MS. APO TAKAYAMA: Chair, the next testifier is Toni Eaton, to be followed by Simon Russell.

MS. EATON: Aloha, Chair. Aloha, Councilmembers.

CHAIR SINENCI: Aloha.

MS. EATON: My name is Toni Eaton, and I'm here testifying on my personal behalf. I was going to give you a little bit background of when all of these things started and it started, you know, 154 years ago when the Kingdom in 1825, they had enacted a law of 1825 which stated that all the Crown lands...and I'll get to the point why I'm giving you this historical context, but the council chiefs enacted the law of '25 which retained the ownership of the Kingdom's lands. At that time they already saw the Western influence coming in and they saw what it was doing to the Native Hawaiian people. In 1839, Kamehameha III proclaimed the declarations of rights, and in 1840 a constitution was made to further establish that the Crown lands were to stay within the Kingdom and passed down to the heirs and successors for perpetuity, forever, okay? So, in 1841 the...a concession was made for these big sugar plantations, these Western influence, that gave 50-year leases. Eighty forty-one now, that's an important date because 50 years later it would have expired, which is 1891. Our queen got overthrown in 1893, but it was already in the works back then. Eighteen forty-five with the Board of Commission to quiet land titles was established. Now, it's the...it was known after that as the Land Commission. Three years later after the Great Mahele, the Crown lands totaled 2.5 million acres, which is 60 percent of the lands in all of Hawaii. Now, the Kuleana Act of 1850 was enacted along with the Board, Land Commission, to give native tenants' rights to their lands, okay. But the problem was is that our native tenants didn't know the law. Another problem was they didn't have money. And then, the third one is that they thought that if they were to put any claims into their land they were, sorry, they were betraying the chiefs. But, you know, at the end Mahi Pono is asking for the lease to five of the water licenses. They...17,000 acres of those land from Nahiku to Honopou is Crown lands. So, you know, one question is who really owns the land? It was supposed to revert back to the Kingdom after sugar plantation. It was supposed to revert to the Kingdom after sugar plantation along with the flumes and all the diversions.

CHAIR SINENCI: Thank you, Ms. Eaton. We have a question from Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Eaton, for this information. My first question is, are you submitting this under your own as comments to the DEIS?

MS. EATON: Yes. On my personal behalf, yes.

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COUNCILMEMBER PALTIN: Thank you. And my second question is when you said in 1840 the Crown lands are for the heirs and successors, is your understanding of that as in their, like, biological children are the heirs and successors is the...of the position?

MS. EATON: Of the monarchy. As you know, many of the aliis didn't have children. So, it was to be the Crown, the monarchy's lands, once we had established our own government.

COUNCILMEMBER PALTIN: Okay, and I think I understand all the stuff, the historical information. I guess I don't understand what is the solution or the outcome that you wanted to see.

MS. EATON: I want to see the Maui County Council establish the ownership of that land. If it was indeed Crown lands, then why was it sold when it...all Crown lands, I mean, all leases for the 50 years whatever, should have been reverted back to the Crown. That was the intention of leasing the lands. It was never the intentions of selling the lands to the sugar plantations. It was always the intention of leasing it and getting it back.

COUNCILMEMBER PALTIN: So then, are you...is the Maui...if the County owns the land is it like in a trust for the heirs and successors? Or is it to --

MS. EATON: Not...

COUNCILMEMBER PALTIN: --deliver the water? Why...what would we be doing when we own the land?

MS. EATON: Okay, so, it's actually, it would go back into the State of Hawaii at this time to be held in trust for the native people, for the Crown, you know, once it gets established and for the native people. The land is an issue because there's so much water in it. That's why it's such an issue. So, 17,000 acres of Crown land is included in this five lease areas. So, it's...water is a public trust and it should be held for the public to, you know, to use, and the State should have better management of it.

COUNCILMEMBER PALTIN: And, sorry, couple more. If that was to all happen then would we be expecting, you expecting the County to fix the transmission and provide the water to Upcountry or stop the diversion, or just take however much is...do you know if there's CWRM IIFS for those...

MS. EATON: Yes.

COUNCILMEMBER PALTIN: Oh, there is.

MS. EATON: There is.

COUNCILMEMBER PALTIN: And are they being met?

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MS. EATON: It's hard to tell with the monitoring system, EMI has basically...have never monitored their instream flows.

COUNCILMEMBER PALTIN: So, your proposal is for us to acquire it and then meet the CWRM IIFS and be able to deliver the rest to Upcountry or wherever is the DWS supplies?

MS. EATON: Yes. So, the thing is, is that we cannot trust, basically, we cannot trust one large corporation to handle public trust. It needs to be put in the hands of the County or...and this goes back to 2016 when HC&S closed down. The County should've thought of it at that time. Why wouldn't we want to take over EMI? It's...I think it's like \$2.5 million a year and Shay will answer that if I'm not correct but to maintain the system. And we all know that it hasn't been maintained over the last hundred something years. So, we need somebody else to be proactive and take our water back from these big corporations and make sure the whole County is not held hostage by a big corporation saying that if they don't get the lease, Maui, Upcountry, Maui not going get their water, which is not true. It is not true.

COUNCILMEMBER PALTIN: Thank you so much for all the information. I wasn't super prepared to be here today, so I appreciate this information. Basically you want a neutral party to have accountability for how it happens?

MS. EATON: Exactly.

COUNCILMEMBER PALTIN: Thank you.

MS. EATON: And it should've been done a long time ago.

COUNCILMEMBER PALTIN: I just got here.

CHAIR SINENCI: Thank you. We have a question from Chair King.

COUNCILMEMBER KING: Thank you for being here, Ms. Eaton. So, I was kind of chuckling because I had just written down after the previous testifier a note to myself to check native Hawaiian law and rights and then you came with this book. So, I just wanted to get clarity on your background, are you a...do you have a law background?

MS. EATON: I do not.

COUNCILMEMBER KING: Oh, okay. So, you're speaking as a citizen?

MS. EATON: Yes.

COUNCILMEMBER KING: Okay. And then, so, our discussion here today is what comments the County Council should make on the EIS, on the draft EIS, and I just wanted to

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clarify that your testimony would be basically that it's that the proposal for the lease is a violation of Native Hawaiian rights?

MS. EATON: It's a...I believe it is, yes.

COUNCILMEMBER KING: Okay.

MS. EATON: Yes.

COUNCILMEMBER KING: All right, thank you. I, you know, I went to that, I went to the training the last time they had the all-day training on the Native Hawaiian law here on Maui and that was one of the things that struck me was the water rights were, I thought, in Native Hawaiian in the law as Native Hawaiian rights. So, that's maybe, Chair, something that we could look into and further discuss. Thank you for bringing that up.

MS. EATON: You're welcome.

CHAIR SINENCI: Thank you, Chair King. And one more question from Member Molina.

COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Good morning, Ms. Eaton. Thank you for being here and for sharing the historical perspective. I just wanted to clarify the dates in your testimony, you mentioned 1841 and if I'm correct there was like a, so-called 50-year agreement to turn over the lands, the Crown lands, yeah? And then around roughly 1891 then you were saying that it should have...the question is it should've been turned back and instead of sold to, I guess, A&B or whoever it was at that time, yeah? Am I correct with that assessment?

MS. EATON: Yes. So, the...in 1841 the concession was made for 50-year leases and it should've been reverted with all of the land, the rights to the water, and the diversions should've been reverted back to the Crown.

COUNCILMEMBER MOLINA: Okay, and then the Mahele was around 1848, yeah? Late 1840s.

MS. EATON: Eighteen forty-eight, yeah.

COUNCILMEMBER MOLINA: Forty-eight yeah?

MS. EATON: And that's when, you know, the Crown lands was 60 percent of all lands, 2.5 million and, you know, then when it came to 1855, only 1 million were Crown lands.

COUNCILMEMBER MOLINA: Okay, all right, thank you.

MS. EATON: You're welcome.

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COUNCILMEMBER MOLINA: Thank you, Chair.

CHAIR SINENCI: Thank you. I think we have one more question.

COUNCILMEMBER PALTIN: Yeah, I just was wondering if you could submit that testimony in e-mail --

MS. EATON: Sure.

COUNCILMEMBER PALTIN: --to the Committee?

MS. EATON: Sure.

COUNCILMEMBER PALTIN: Thank you.

CHAIR SINENCI: Thank you, Ms. Eaton --

MS. EATON: Thank you.

CHAIR SINENCI: --for being here. Ms. Apo Takayama, can you call the next testifier please?

MS. APO TAKAYAMA: Chair, the last testifier signed up in the Council Chambers Simon Russell, but I do believe that we have testifiers in the Hana District Office.

CHAIR SINENCI: Okay, we'll go to the Hana District Office right after.

MR. RUSSELL: Good morning, Chair.

CHAIR SINENCI: Good morning.

MR. RUSSELL: Good morning, Councilmembers.

COUNCILMEMBERS: Good morning.

MR. RUSSELL: Thank you for hearing my testimony today. I apologize for not submitting it in writing, I would rather have done that, but I was not able to make that happen. My name is Simon Russell. I am a farmer, I'm representing Farm Maui, and I'm also a paid lobbyist. I'd like to address a couple points that come to mind with regards to the EIS that's going to be given comments on at the BLNR on Oahu and I think all comments are due by November 7<sup>th</sup>. The one that jumps right out at me and one that was commented on during testimony in the last legislative session on I think it was April 2<sup>nd</sup> at the Water and Land Committee hearing, and these hearings are online, you can watch the hearings; questions were asked, why is A&B doing the EIS? That's like a fox guarding the henhouse situation. They have, you know, everything to lose by revealing certain things that would cost them water. So, I'm not in favor of them

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doing their EIS, I hope that you can deliver comments on that in that vein in that it's not a good idea for the corporation taking the water to do their own study. And DLNR has the full capacity to do the EIS and I had recommended to Chair Case and others that they would do that and pass on the cost of the EIS to the lessee if...should they even ever lease water and I kind of stand with Ms. Eaton that I don't think they should lease the water, I think definitely the IIFS needs to be established and really verified, you know, there has to be verification before any leasing or even long-term permitting are granted. I'm also very opposed to Canadian pension funds owning our water delivery systems here on Maui. I think we're at a huge disadvantage when a foreign, for-profit corporation who has a fiduciary responsibility to their pensioners in this case, you know, their shareholders to deliver a profit of whatever their profit is per year. I've heard it's 12 percent. And I'm having a really hard time supporting a 30-year lease without having seen their long-term plans. I think we should also question the whole process itself. Why are our waters being controlled by people making decisions on Oahu? Why shouldn't we control our own water delivery systems and the permitting and leasing thereof? I think we need to devolve more power to our local community. You know, the sugar days are over, we need new methods of watershed management. I think through watershed councils, increased local control, and all the revenues staying on Maui from our water and that's a great source of revenue for maybe our schools and things in Maui County. Maui needs to control its own water delivery systems, I don't think it's a good idea to have EMI doing it, so I support the Board of Water Supply and its temporary investigative group to look at acquiring the EMI water delivery system and I sure hope it starts with Upcountry because we've been really abused and propagandized in my opinion, by people saying that if those revocable permits aren't granted, then we're going to lose our access to water. It's very upsetting for me because I live in Makawao and I know that that's not true just like Ms. Eaton pointed out earlier. So, I just want to mahalo the Board of Water Supply and the temporary investigative group and this Committee for doing this work. Mahalo.

CHAIR SINENCI: Thank you, Mr. Simon. Any questions for the testifier? Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, just quick clarification. So, you're a paid lobbyist for Farm Maui?

MR. RUSSELL: Farm Maui's my company, yeah, and I'm registered as a lobbyist with the County so I can spend lots of time working with you without having to worry about conflict of interest stuff.

COUNCILMEMBER PALTIN: Okay, so that...you're a paid lobbyist for yourself kind of?

MR. RUSSELL: Yeah, pretty much. Yeah, I pay myself.

COUNCILMEMBER PALTIN: Okay, I just didn't get that at first.

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MR. RUSSELL: Yeah, yeah. Yeah, I registered as a lobbyist. If I spend more than a certain amount of time with Members of this body, then I need to register as a lobbyist. So, my company pays me.

CHAIR SINENCI: Thank you. Mr. Simon --

MR. RUSSELL: Yes, sir. Yes, Mr. Chairman?

CHAIR SINENCI: --right, as part of the executive summary, I believe it's on like the second page of the executive summary it said that a change of ownership of the EMI aqueduct system was similarly considered but dismissed from further study, and then they come up with reasonable alternatives that were comparatively analyzed with the proposed actions. And so, some of the actions is one, reduce water volume alternative where the water lease would be issued allowing the lessee to use less water than is permitted under the CWRM \_\_\_\_\_. So, actually looking at the County acquiring the system, it sounds like that was an alternative that was considered in the draft EIS. So, that was what your comments were about --

MR. RUSSELL: Yeah --

CHAIR SINENCI: --possibly acquire...

MR. RUSSELL: --you mean A&B was going to acquire, allow Maui to acquire it from them?

CHAIR SINENCI: I...it's...it just said that there was an, a change of ownership of the EMI aqueduct system was...

MR. RUSSELL: Well, I...sir, I know that Mahi Pono owns 50 percent of it and I'm assuming, it's probably a broad assumption, that once the long-term lease is granted that Mahi Pono would take over 100 percent ownership. So, that would be a change in ownership.

CHAIR SINENCI: So, right now it's between A&B and Mahi Pono?

MR. RUSSELL: It's 50/50. And that's kind of weird in my opinion because who make the decisions then if it's 50/50 if you have two votes and they don't agree, then nothing can happen or they both have to agree for something to happen. So, one assumes that really A&B must be in control and they know the process so they probably should be in control because they know the process with the BLNR. And I would really hope that the County can ask DLNR to do the EIS and reveal the true nature of the environmental impact because the user, end-user doesn't have a good incentive to reveal any negative impacts that they find.

CHAIR SINENCI: Okay, thank you. Chair King, you had a question for Simon?

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COUNCILMEMBER KING: I, yeah, I do and I wanted to follow up on that, thanks for being here, Simon. We don't have any control over the EIS process, that's OEQC that kind of, you know, determines that. And I have been, I have sat in other EIS hearings with the Land Use Commission where the community came out and gave comments and something was recalled. I mean when we looked at that megamall, that was one of the issues where the EIS had not, you know, as you said, had not included everything that should've been. It was done by the landowners and it didn't include potential significant cultural sites.

MR. RUSSELL: Yeah.

COUNCILMEMBER KING: And I think about 30 of the Aha Moku representatives came out and said that in those words. So, the comment process is what's meant to...for us to be able to point out the things that aren't in there, which is what we're trying to do. But, so, you had, I mean, I was trying to write them down, but you had a list of four or five things that I think we may want to discuss today if you can share your notes with us --

MR. RUSSELL: Sure.

COUNCILMEMBER KING: --because those are issues that we would, that an individual would normally bring up and I wanted to find out if you have...do you already submitted comments as well to the...on the EIS?

MR. RUSSELL: I have not.

COUNCILMEMBER KING: Okay.

MR. RUSSELL: It's a daunting document of 2,700 pages, but you just mentioned that for the megamall, the landowner did their own EIS. Well, in this case the landowner's actually us, the State of Hawaii, so why don't we do our own EIS and take our time with --

COUNCILMEMBER KING: Well, I guess --

MR. RUSSELL: --150 years.

COUNCILMEMBER KING: --it's the permittee, the applicant that was doing the EIS. The applicant for that process, so --

MR. RUSSELL: Right, right.

COUNCILMEMBER KING: --I guess these guys are the applicant --

MR. RUSSELL: Yeah.

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COUNCILMEMBER KING: --that, you know, doing the EIS. But...and I'm not defending, I'm just saying that that's kind of the process that we're dealing with. But it would be great to have, you know, just those kind of bullet points that you mentioned at the end for our discussion a little bit later if you can turn those over.

MR. RUSSELL: Yeah, I sure will e-mail them to the Committee.

COUNCILMEMBER KING: Okay.

MR. RUSSELL: The one that jumps out is the conflict of interest of what we're talking about and a foreign pension fund controlling our water delivery system.

COUNCILMEMBER KING: Okay.

MR. RUSSELL: I think that they have to make their profit every year and there's no way around that for them and what if there's a drought and they have to keep their crops alive and we, the people of Maui, don't get enough water because they need water. I mean, these things have happened in other countries; Bolivia comes to mind.

COUNCILMEMBER KING: Okay.

MR. RUSSELL: Ecuador when Bechtel bought their water delivery systems. And this looks very similar.

COUNCILMEMBER KING: And so, by foreign interest, you mean the Mahi Pono, the Canadian hedge fund, is that what you're talking about?

MR. RUSSELL: The pension fund --

COUNCILMEMBER KING: Okay.

MR. RUSSELL: --owns --

COUNCILMEMBER KING: Or pension fund.

MR. RUSSELL: --the...

COUNCILMEMBER KING: Okay.

MR. RUSSELL: I believe they will end up owning the water delivery system called EMI --

COUNCILMEMBER KING: Okay.

MR. RUSSELL: --and it'd be better for us just to sell them water. I should make a note that Maui waters are very cheap because they're gravity fed, there's not much pumping, relatively cheap. I think ag water Upcountry costs about \$1.20 per 1,000, and in the

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central valley California I've studied, I've read in different instances it's \$1.75 per 1,000. So, we're coming in cheaper with our County water, County-delivered water than California is, which is amazing because California's such a bigger system.

COUNCILMEMBER KING: Okay.

MR. RUSSELL: So, we could --

COUNCILMEMBER KING: Thank you.

MR. RUSSELL: --be competitive and make money.

COUNCILMEMBER KING: I appreciate it. Thank you for your testimony.

MR. RUSSELL: Sure. I'll e-mail the Committee my comments.

COUNCILMEMBER KING: Okay.

MR. RUSSELL: Thank you so much.

CHAIR SINENCI: Thank you, Mr. Russell. We're waiting on some people in Hana to arrive and testify. So, if there are no objections, I'm going to take a quick recess, call of the Chair.

COUNCILMEMBERS: No objections.

CHAIR SINENCI: Thank you. . . . *(gavel)* . . .

**RECESS: 9:49 a.m.**

**RECONVENE: 10:04 a.m.**

CHAIR SINENCI: . . . *(gavel)* . . . Will the Environmental, Agricultural, and Cultural Preservation meeting please come back to order? It's Monday, October 7, and it's 10:04. And, so, Members, because we have bare quorum today, just in case if anybody needs to use the restroom or get out of their seat, just let me know, and then we can take a quick recess when we do that. So, continuing on with our meeting, we're going to go to Hana for testimony. Ms. Mavis Oliveira-Medeiros?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair. This is Mavis from the Hana District Office and I have two testifiers, Tom Bacon and Chris Gaardner on EACP-22.

CHAIR SINENCI: Okay, go ahead and then...

MR. BACON: Aloha, Committee, thank you so much for taking our late testimony. We did our best to get here on time. We're really concerned about a 30-year lease straight up

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to anyone for water rights who has not had a proven track record with the State. I think that rather than a 30-year lease, being as they're going to spend 10 years remediating things and it doesn't sound like they're going to produce anything much of value during that time, I think what needs to be is, like, incremental lease of water, say maybe 10 years. Based on their plan as they define it better, and I have to admit that I haven't been able to read the entire plan now or even much of it, but I think it needs to be pieced out incrementally based on performance that say maybe that the 10-year lease for however many gallons they need to remediate the land. And then when they perform that and they actually do what they say they will, then it's a kind of an automatic extension into the next 10 or 20 years. In fact, I'd say 10 more years and then they say maybe they're going to plant half of their crops in that time, and then just make it contingent on their performance. So, in a sense it's a 30-year lease because if they perform they'll get that 30-years lease. But to give them a flat-out 30 years just is not a good way to do it in my opinion. Other than that I think it really needs to be looked at if this balance is being made for cultural uses of water and other uses of water as well also. That also needs to be figured in. But if it's figured out that there is water to share with them, I think that it needs to be performance-based agreements. Because I totally understand why they won't commit without some sort of long-term agreement, but giving them the whole keys to the kingdom so to speak isn't the way to go. Thank you very much for hearing what we have to say and for waiting.

CHAIR SINENCI: Mahalo, we have a...

MS. OLIVEIRA-MEDEIROS: Okay.

CHAIR SINENCI: Mavis, we have a question from Ms. Paltin.

COUNCILMEMBER PALTIN: I just wanted to clarify --

MS. OLIVEIRA-MEDEIROS: Can you repeat the question --

COUNCILMEMBER PALTIN: --what was that...

MS. OLIVEIRA-MEDEIROS: --because I cannot hear the Council people.

COUNCILMEMBER PALTIN: Was that Tom Bacon or Chris...the other one?

CHAIR SINENCI: Was that Mr. Bacon's testimony?

MR. BACON: Yes, that was Tom Bacon from Nahiku.

CHAIR SINENCI: Okay, thank you, Tom, for your testimony. You know, part of the unresolved issues in the executive session says that the parameters of a watershed management plans are not known at this time yet. So, I believe prior to any consideration of any water lease, there needs to be some type of watershed

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management plan produced and that is one of the unresolved issues of the EIS, so thank you for bringing that up.

MR. BACON: Yeah.

CHAIR SINENCI: Mavis, do you have your second testifier?

MS. OLIVEIRA-MEDEIROS: Yes, we have Chris Gaardner. Here he is.

MR. GAARDNER: Aloha, Council and Committee, and thank you again for taking our testimony and waiting for us. My testimony is pretty much along the lines of Tom's. I believe that, first of all, I'm happy to see that Mahi Pono has something of a farm plan, and I think they deserve to get some sort of water rights. But I agree that 30-year lease at this point in time is probably too long and maybe a 10 to 15-year lease with renewal at that time would be more appropriate. As has been pointed out it'll take 10 to 12 years to remediate the land and who knows what's going to happen in that time period with climate change and population growth. Also, Mahi Pono unfortunately has a history of water abuse in California with their almond growing operations, and so I think we really need to hold their feet to the fire on this and probably put a serious restriction on how much water and for how long they can take it. Again, that was it, thank you very much.

CHAIR SINENCI: Thank you, Mr. Gaardner. We have a question from Member Paltin.

COUNCILMEMBER PALTIN: Aloha, Mr. Gaardner. Were you planning on submitting these as written comments to the draft EIS?

CHAIR SINENCI: Mavis, did you hear that?

MR. GAARDNER: I couldn't hear.

CHAIR SINENCI: The question was --

MS. OLIVEIRA-MEDEIROS: Can you repeat it, Shane?

CHAIR SINENCI: --well, the question was will you be submitting your testimony to the draft EIS?

MR. BACON: Oh yes.

MR. GAARDNER: Yes, we will.

COUNCILMEMBER PALTIN: Oh, thank you. And I was not clear about the history of water use in California regarding almonds, can you clarify that? What happened?

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CHAIR SINENCI: Can you explain the comment on the California water concerns, water abuse?

MR. GAARDNER: From what I have read, and it was well documented in *Maui Time*, the company has a history of buying up the land in California, buying up land that has aquifers and water rights, and using all of that water to grow almonds.

CHAIR SINENCI: Okay.

COUNCILMEMBER PALTIN: Thank you.

CHAIR SINENCI: Thank you. Any other questions? Seeing none, thank you for your guys' testimony. Mahalo.

UNIDENTIFIED SPEAKER: Thank you guys for waiting, for your patience.

CHAIR SINENCI: A`ole pilikia. Is there anyone else in the Chambers who would like to offer testimony? Seeing none, so if no objections, we'd like to close testimony at this time.

COUNCILMEMBERS: No objections.

**. . . END OF PUBLIC TESTIMONY . . .**

CHAIR SINENCI: Thank you for providing those, really helpful. So, at this time, we're going to receive opening remarks from Ms. Lucienne de Naie, and then we'll go to Mr. Perez, and then Mr. Franco, and then Ms. Chan Hodges. But before we do, let's take a quick recess to reorganize the Chambers. Thank you. . . . (*gavel*) . . .

**RECESS: 10:12 a.m.**

**RECONVENE: 10:27 a.m.**

**EACP-22 PROTECTION AND PRESERVATION OF EAST MAUI STREAMS (CC 19-119)**

CHAIR SINENCI: . . . (*gavel*) . . . Will the Environmental, Agricultural, and Cultural Preservation Committee please come back to order. It's 10:27, Monday, October 7. And, so, again, Members, just to be clear, it's not my intention to take a stance on whether or not we think A&B and EMI should receive the proposed lease, but rather to identify strong and weak points with the draft EIS. Focusing on our attention on the information presented in the draft EIS will allow for more productive discussion to help Chair King with drafting up her comments. And, again, each of...each and one of us individually can also submit testimony on our own. We have until November 7<sup>th</sup>. So, with that we're going to go to Ms. Lucienne de Naie to provide some brief comments about the draft EIS. Ms. de Naie?

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MS. de NAIE: Thank you. Thank you, Chair. Oh good, this is working. My name is Lucienne de Naie. As the Chair mentioned I serve as the Conservation Chair of the Sierra Club Maui Group, I also serve on the Board of Maui Tomorrow Foundation and was the President for a couple of years, and I'm also President of the Community Association in Haiku, and I am also an East Maui resident. So, for the last 35 years I lived in one of the lease areas that is covered by this EIS and I have watched as my friends and neighbors have struggled to have adequate flows of water available for their own domestic needs and certainly for agriculture, and for traditional and cultural practices. I live in the community of Huelo, which is a traditional Hawaiian community. We still have our Hawaiian churches there where services are conducted in the Hawaiian language some of the time, and we have families that have been there for many, many generations. And like our neighbors in Keanae, Wailua Nui, and Nahiku, there are many hurts in our community over how land was kind of spirited away from Hawaiian families and put into what is now EMI ownership. And so these hurts have not been resolved. We did meet in our community with a member of the EIS consultants' team on the social impact study and shared our mana`o. Folks came from about five valleys that are loosely considered Huelo, although they are really separate places, Ho`olawa, Waipio, Honopou, Kailua, Hanawana, and our valley, which is the Huelo Point, Huelo Stream, Pualua Stream, Hanehoi Stream. My comments are about what is missing and what is perhaps not being portrayed in the AIS [sic]. And some essential questions that are kind of left hanging. One of the first ones, and I think this was brought up by a testifier, is can this document only be used by A&B or could it be used by Maui County Water Department or an independent water authority if they wanted to make their own bid for the State lease areas? In other words, is this only a EIS for the proposed action of the growing on 30,000 acres? And if so, should it really be a broader document because this kind of assumes that there's one bidder and one bidder only, and doesn't seem like it's much of a bid if there's only one bidder. So, that's the first thought that comes up. The second thought that comes up are some of the unresolved issues and missing information. The most kind of glaring one is that this EIS assumes, the draft EIS assumes that our natural conditions that the EIS is examining is what has been the 100-year practice of severely diverting 40 or 50 streams in East Maui and all their tributaries. Really, those are not natural conditions. So, if you're looking at impacts based on these unnatural conditions that we're left with now, there're a different set of impacts than it would be to looking at this as a whole system as it originally existed prior to the 1870s. Just to give you a little example of this, there's a conclusion in, or, a suggestion in the draft EIS that having gone through an interim instream flow standard process, the Commission on Water Resources, which covered 24 streams and changed the flows in only 22 of those 24. Because that process has been completed that that basically has the potential to eliminate any cultural impacts or impacts to stream wildlife. This is just really, boy, a big leap. What is not mentioned very clearly in that assumption, it is kind of buried further in the EIS, is that 12...13 streams were left entirely out of that process including streams where I live. One of our streams was included, Hanehoi, Pualua, but the other six or seven streams that have hundreds of people living along them and depending on the water with no public water supply were never studied, they have no

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information on them in this draft EIS, they have no information in the database of the Water Commission, the Water Commission has not proposed any interim stream flow standards for these streams, and yet these “community streams” really have hundreds of people depending upon them. And it’s just assumed that maybe they won’t be diverted as much under this alternative...the preferred alternative and so a small amount of their use and habitat might be restored; but 80 percent of its potential habitat of the 12 to 13 streams would be lost. So, that’s kind of like a big assumption to make that, hey, we’ve solved all the problems. Also, even in the totally restored streams, and I hike these streams regularly, it’s going to be tough for native stream life to recolonize some of the areas because the dams and structures have all been left and, you know, the fish are going to have a hard time navigating around them as they have for the last 100 years. So, that is one of the unresolved things. The assumption of where we start to evaluate the very impacts themselves. Do we start with the natural system or do we start with the system after 100 years of diversion? The second thing is there’s an assumption that there is water needed to serve a farm plan, but there really isn’t a discussion in-depth of what would be the options for the farm plan to change. There are some different scenarios, there’s the scenario of no water, and there’s the scenario of reduced water, but they’re kind of dismissed as, no, we would never do that. And yet, none of us really knows where this farm plan is going to end up. So, to start on the presumption that you need virtually every ounce of water that’s allowed under the current CWRM decision, the current amount that belongs back in the streams and everything else is just fair game for a farm plan, and that even includes using up the Department of Hawaiian Home Lands allocation “until they need it.” I don’t think that’s legal; I think Hawaiian Home Lands actually gets to keep allocations kind of out of the pool so that their needs, their long-term needs can be satisfied. Because let’s face it, you know, Hawaiians have been left at the kind of end of the story for so long, the law now does say that Hawaiian Home Lands get precedence. We need to honor that in how this document is written, and those waters do need to be set aside. And then there’s the management plan discussion, so it makes no sense to me as a person who has walked this watershed for 25 years, hiked virtually every single mile of the trails, and seen the devastation of our native plants. I’ve seen them, like, go downhill on my watch, basically, and feel helpless. And these are on State land, they’re on public lands. And that this EIS would say, “oh, a management plan comes later after we get the lease.” I mean, I think they really need to talk about what the management plan would cover, what they would be willing to do. They’re waiting for the State to do a management plan, that may not happen for another 20 years, we don’t know. It’s really an unresolved matter. Now, when you look at the old agreements that were had, they always included management responsibilities for EMI. And those management responsibilities in the old days, you know, old days being the ‘40s, the ‘50s, the ‘30s, they were taken seriously because people realized you wouldn’t have water in the future unless you managed the entire watershed. Now, we have the East Maui Watershed Partnership which was established as a result of a legal challenge from Native Hawaiian Legal Corp. After that legal challenge was resolved and the partnership was formed, the clients of Native Hawaiian Legal Corp were left out of the Watershed Partnership, which is one of the great hewas of this whole process. There was such pain in the Wailua Nui, Keanae

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community on how their role in managing the waters of life that are part of their community for eight, nine generations, they've just been left out and people in my community have been left out as well. The other things that are kind of like dismissed too easily are reconfiguring storage and repurposing storage as one of the tactics for better management of high flows and reducing long-term needs of water. A very kind of glib scenario is provided that there's over a billion gallons of storage but it's all in disrepair and this and that, and yet when you talk to, you know, A&B, they always want to emphasize, no, their system, their aquifer system, their aqueduct system's in good repair, their reservoirs are in good repair; but when it serves their purposes here, they say, oh gee, it will cost millions to bring them up to speed. You know, the City and County of Honolulu regards the old plantation reservoirs as a huge resource and they are using them to manage stormwater and then have that water to recharge their aquifers. That possibility is just dismissed as being too expensive, too hard to comply with regulations, too this, too that. Most of the reservoirs are in uninhabited areas, you know, they're not really impacting anybody. They're in the middle of cane fields, of old cane fields. It just seems like we have problems now with the increased flows during storm times, you know, we have these killer storms that used to come once every ten years and now you have two or three a year. And we really need to start adapting the intakes so that high waters some of the time can be repurposed and stored and used to help either irrigate the...and recharge the aquifers or used during drought periods. We need to think smart, not think like this system was built a hundred years ago and that's how we're going to use it. And Mahi Pono describes the state-of-the-art techniques they're going to use to water their plants and so forth, but the very basic management system which was part of Hawaiian culture, which was part of plantation culture when you read the old plantation documents, they talk about that they don't...didn't really...they had to pay for the high waters that they didn't need when it was raining, but they used them to recharge the aquifers. So, this was a conscious decision, it was a good decision, and we should be making the same sort of management plans right now. But our EIS just assumes that all this is impossible, too costly, you know, couldn't be a partnership with the County, with the State, with the Federal government for climate change mitigation, all of those possible discussions, even though things like this are being done other places, were just left off the table and out of the EIS. And that is a really kind of, it's silly, you know. We need to manage what we have because we don't know when the water's going to be coming. The system is dependent on rainfall. You and I and EMI and Mahi Pono have no say in when it rains. We only have a say in what we do with the water when it rains. The other thing that was dismissed was the ownership change. Of course, it was dismissed because it was speculative because the system was not for sale because no change in ownership, and this is another broad assumption, would enhance environmental quality. And yet they admitted that if they had the no water, no lease water alternative that Maui Water Department, they think would be left high and dry with no water. Now, why an EIS would not discuss in the event of a no-lease alternative how the Maui Department of Water Supply would continue to get its water which is a very important public concern here for, I think it's, you know, 30,000-plus people Upcountry. Why that should be left out, I don't know. To me, that is a big empty spot and it sort of shows, you know, my way or the highway type of thinking.

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Like, well, if we don't get this lease, you don't get nothing. It's like, this is public water, this is a public water system, there's got to be some connection. When you read the old contracts you see that, I think, as of 1986, all of the ditch systems on public land reverted to public ownership and there were provisions for a lease arrangement that could go either way for the public to manage the system and lease from A&B, or for A&B to manage the system and lease from the State or the public. This is not very well explored, and it really should be. There should be a truthful analysis in the EIS. I'm sorry, I'm taking a lot of time here, but I've got a couple more points. One of the alternatives that is discussed is that the lease area would be reduced in size sufficient to maintain the public safety and integrity of the aquifer system. This is something that really deserves an engineering study. I have walked up there on hikes and a couple of the hikes I've been on actually had hydrological engineers, people who knew what they were doing, they had a lot to comment and went, wow, has anyone ever assessed whether some of these intakes should just be abandoned? Some sections just seem like that they're not really serving a good purpose. But we find none of this in the EIS and really the first thing with a 100-plus year old system is to look at its engineering reliability and how it can be redesigned for the 21<sup>st</sup> Century. So, I really appreciate this opportunity to offer comments. I too have not read the whole document. It's daunting. I think everyone should ask for an additional 30 days for review just for common sense for a document this size. This is commonly done, and it would make a lot of sense. Thank you.

CHAIR SINENCI: Mahalo, Ms. de Naie, for your comments. Members, do you guys want to ask questions now of each speaker and we'll take a couple and...after each one speaks if that's okay?

COUNCILMEMBER MOLINA: Mr. Chair?

COUNCILMEMBER KING: Yeah.

CHAIR SINENCI: Member Molina?

COUNCILMEMBER MOLINA: Yeah, Mr. Chair, just as a suggestion for time management if you will, because I think, you know, some of us have to leave at 12:00 and I know we've got several panelists so if want to run a clock on each of us. So, maybe two or three questions per round, that way it keeps it flowing so to speak.

CHAIR SINENCI: Oh, yeah we can clock you guys.

COUNCILMEMBER MOLINA: Yeah. I mean, yeah, in a nice way. But I leave it to you, Mr. Chairman, to manage this for us.

CHAIR SINENCI: Okay, Ms. Apo Takayama --

COUNCILMEMBER KING: Chair?

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CHAIR SINENCI: --would you like to put on the three-minute clock?

COUNCILMEMBER MOLINA: Maybe a little bit more.

COUNCILMEMBER KING: I just have a quick question I don't need a timer.

CHAIR SINENCI: Oh, okay.

COUNCILMEMBER KING: I think we can all be conscious of the time.

CHAIR SINENCI: Okay, thank you, Member.

COUNCILMEMBER KING: Yeah, just a quick question for Lucienne. So, when you said the ownership change was dismissed in the EIS --

MS. de NAIE: Yeah.

COUNCILMEMBER KING: --was that actively dismissed by DLNR or was it...

MS. de NAIE: No, by the consultants to the EIS.

COUNCILMEMBER KING: They just chose not to put any impact of ownership change in there, is that what you're saying?

MS. de NAIE: Well, what they said is it was very speculative at this time, I'm quoting, and that the system was not for sale. This is kind of funny because it was just sold. But I guess it's not to sale...for sale to others. And then it would not...the assumption was it would not...new ownership would not enhance environmental quality. How you could know that without comparing some options, I wouldn't know.

COUNCILMEMBER KING: Okay, so I guess you were kind of approaching it from the point of view of whether...what the impact might be if the County or State were to own it?

MS. de NAIE: Oh, well --

COUNCILMEMBER KING: That was not explored.

MS. de NAIE: --they're just saying it doesn't even deserve discussion.

COUNCILMEMBER KING: Okay.

MS. de NAIE: Yeah.

COUNCILMEMBER KING: Alright. Thank you.

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CHAIR SINENCI: Thank you, Chair. The Chair would like to recognize Committee Vice-Chair Ms. Tasha Kama. Welcome.

VICE-CHAIR KAMA: Thank you, Chair. I'm sorry for being late, my daughter had --

CHAIR SINENCI: Oh, thanks for being...

VICE-CHAIR KAMA: --a long doctor appointment today.

CHAIR SINENCI: Thanks for being here. It's Monday morning. But we're just going to go through each one of our panelists, and then you guys can ask a few questions afterwards, if...again, it's just for informational purposes for us to comment on the draft EIS that's out for public review.

MS. de NAIE: I'm happy to provide those comments in writing. I have rough notes and typed notes here but --

CHAIR SINENCI: Oh, thank you.

MS. de NAIE: --I'll clean them up and provide them to you.

CHAIR SINENCI: Thank you, and then the public can access that later. So, next we have Mr. Perez, he's going to say a few...oh.

COUNCILMEMBER PALTIN: I had some questions, should I clock myself to four minutes or three? What is the amount?

CHAIR SINENCI: How much you guys like?

COUNCILMEMBER PALTIN: Five?

CHAIR SINENCI: Five minutes?

COUNCILMEMBER PALTIN: Okay.

CHAIR SINENCI: Five minutes.

COUNCILMEMBER PALTIN: All right, I got it. So, my first question is, you know when you said you can't control the rain, would this DEIS process be an appropriate time to suggest alternatives?

MS. de NAIE: Well, all DEIS's now have to consider climate change. Let's see, maybe, was that in the old rules? I'm not sure --

COUNCILMEMBER PALTIN: I mean, like --

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MS. de NAIE: --if it's in the old rules. It's in the new rules.

COUNCILMEMBER PALTIN: --different sources of water for them to have. Like I heard some folks say that A&B is committed to providing land to the County for something, wastewater treatment plant facilities because our wastewater treatment plant facilities is in the tsunami high --

MS. de NAIE: Yes, yes.

COUNCILMEMBER PALTIN: --sea-level rise zone. And I believe those lands are close to where the Mahi Pono lands are, and we know that we have toilets flushing every day regardless of how it rains and R-1 water can be used for ag uses. So, I mean, it kind of seems like a win-win for if Mahi Pono wants to go into wastewater treatment facility business with the County and they get all the R-1 water to use and then alleviate their needs on our streams?

MS. de NAIE: Well, that was discussed and dismissed briefly in the EIS. It was said that the existing water from Kahului Treatment Plant is R-2 not R-1, and so it would be costly to upgrade it to R-1 so it could be used on food crops. It could be used on, you know, grass and things now but not food now.

COUNCILMEMBER PALTIN: Yeah, I'm not suggesting that we use Kahului Plant's R-2 water...

MS. de NAIE: The other option was not discussed. The other option, it's just, you know...many facts were left out of this. The whole facts on the 30-year lease were left out. I mean, I didn't want to take up everybody's time, but the amount of information that was left out is legion, and yet assumptions were grown. But that assumption that there would be a new wastewater plant in Central Maui and the water can be used, not on the radar.

COUNCILMEMBER PALTIN: Okay, and then if that were to be proposed, then it would say in like conjunction with the County of Maui and Mahi Pono, would it need to be like a feasibility study on that?

MS. de NAIE: Oh, I'm above my pay grade here, you'd probably have to ask your attorneys. But generally anything involving public funds would have to have some sort of Environmental Assessment to determine what its impacts would be.

COUNCILMEMBER PALTIN: Okay. I guess I only had three minutes of questions. Thanks.

CHAIR SINENCI: Okay.

MR. PEREZ: Chair, can I comment on that?

CHAIR SINENCI: We were going to let...oh, go ahead, Mr. Perez.

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MR. PEREZ: I just wanted to say that it sounds like possibly a suggestion that the EIS consider that as an alternative that can be included in the Council's comments.

COUNCILMEMBER PALTIN: Yeah, because I mean if we're thinking about the next 30 years and the reliability of water source, I mean, we have no control over the rain, like how you said. But, you know, I mean, if we're going to continue on in the tourist industry or whatever, people going to keep flushing their toilets and even the residents flush toilets and --

MS. de NAIE: Everyone flushes toilets.

COUNCILMEMBER PALTIN: --so that seems like a guaranteed source of water and kind of a win-win for all concerned. And, I mean, I think that would be probably the way to go if you ask me.

MS. de NAIE: Good suggestion for the comments.

COUNCILMEMBER PALTIN: I don't want to take credit, I heard that at a alliance or community association meeting, so that wasn't an original idea.

CHAIR SINENCI: Thank you, Member Paltin. And that has also been the discussion at some of the previous meetings where a lot of constituents was asking for an inventory of available water first, prior to coming for the lease. So, that, I know that has been an issue that people have brought up in the past.

MS. de NAIE: Very true. Very little reporting on what water comes from where and how much makes it to Central Maui, how much is lost on the way.

CHAIR SINENCI: Yeah, thank you. Okay, Mr. Perez, would you like to offer some comments?

MR. PEREZ: Yes, thank you, Chair. And a good segue because the first thing I was going to talk about is the need for gauges. If we're going to be talking about measuring how much stream flow is coming out of each stream at particular points, which is how the way...that's the way that the interim stream flow standards are set, we don't really know at this point. There aren't that many gauges out there in the license area. There is one gauge and Honopou that measures the total that's coming through, but there could be a lot more. And, in fact, there used to be a lot more before the USGS cut their funding. But if we are going to be talking about managing and meeting these interim stream flow standards, we need a better way to measure it. So, it's my opinion that there should be a gauge above each diversion and below each diversion so that you can know what's going into the ditches and the tunnels if possible. Ms. de Naie talked about the baseline and I wanted to just read a little bit from the language of the summary. So, it says that the diversion of surface waters under the proposed action would not involve the construction of any new facilities and therefore it's not

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anticipated that there would be any unavoidable impacts or probable adverse effects. So, what this is saying is that they want to go back to when they were diverting all the water to Central Maui and consider that to be the base condition. I am very concerned about that. In the meantime, so that was in 2016, I think, at the end of 2016. So, it's been about three years and if you talk to people in Keanae and Wailua Nui, if you talk to fishermen on the Hana coast, they will tell you that the opae have come back. They will tell you that the fishing is better offshore. So, if we're going to be going back to diverting all the water that was diverted and dewatering those streams, there will be some impacts and I think the Council should be asking that this EIS discuss those impacts. The next one I wanted to talk about was the no lease scenario, and there are several places in the document where it implies if it doesn't exactly state that if no lease is granted that there won't be any water up, for Upcountry. This is simply not true. The water figures, the treatment figures from our three treatment plants, the Pi'iholo, and Olinda are Upcountry, and Kamole only treats the water that comes from this diversion system. So, over the annual basis the closest that I can come, and I've been tracking these figures a little bit like over the last year, it's about 26 percent that's provided by the water coming out of the lease areas and the rest is provided by the Pi'iholo Treatment Plant and the Olinda Treatment Plant, as well as the various wells that we have Upcountry. So, I think that needs to be clarified and it needs to be talked about because it really varies by year, and it varies by season. If we're having a drought then yes, the percentage that comes out of Kamole and out of the East Maui lease areas is much higher. So, also, there are some private lands that are available. The water from the private lands that is west of Honopou Stream, these are not part of the lease area, but the water is available to Mahi Pono and their own estimate during February of last year before the State Senate was between 27 and 34 million gallons a day. So, I think that needs to be discussed in the EIS. And I will freely admit that I have not read the whole thing, so, maybe it's in there, but...

MS. de NAIE: I think that chart's in there.-

MR. PEREZ: Okay. Well, anyway, the other thing that should be talked about is that not only is there water available from stream diversions, but there's water available from what's called development tunnels; and these are considered groundwater. If they don't have much of a exposure to surface water or just to the air. So, if they're just holes in the ground that are contributing water to the tunnels and the ditches, they provide water, but they're not considered part of the interim stream flow standards. So, this all figures into the...countering the idea that if there's no lease there won't be water Upcountry. That's just not true. So, I do think that they should discuss the percentage and the frequency of water delivery from the lease areas to the Upcountry system. As far as alternatives, they had an interesting discussion and I won't go into that too much because Lucienne talked about that, but I would like to see the use of climate appropriate crops that use less water that are still profitable for agriculture and that would leave more water in the streams for the, all of the public trust and stream uses that are protected. So, I don't see that as an alternative. And two more things, Chair. One is that the mitigation measures as I read them, they all say this should be done and that should be done, I believe that those should all use the word

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“shall.” And, finally, this is an interesting one. This may be in the depths of the EIS that I haven’t gotten to, but I think it’s very important that we talk about the exact area that’s going to be served by this water that’s diverted. We’ve been told that there’s, I don’t know, 31,000 acres, 30,000 acres; the number, to me, keeps changing. But also, along with that discussion I think they should identify the exact parcels that they’re going to be serving and the ownership because to my knowledge there are 15 condominium property regimes on some of these parcels, and A&B retains ownership of a portion of those CPRs. So, is this water being diverted going to be supplied to A&B as well? And so that, I think that’s a very important consideration because it’s supposed to be for agriculture. And that sums up what I know, my concerns for now. Thank you, Chair.

CHAIR SINENCI: Thank you, Mr. Perez, I just wanted to point out for the Members in the executive summary under significant beneficial adverse impacts, I believe it’s on Page V or five, first paragraph, the water lease would also allow the continuation of a supply of water to MDWS, which in turn provides water for domestic and agricultural water needs in Upcountry, Maui including agricultural users at the Kula Ag Park, and the planned 262 acre Kula Ag Park expansion, as well as for the Nahiku community which draws 20,000 to 45,000 gallons per day depending on the weather. So, on that page, it lists domestic as well as agriculture usage. Just for your...Ms. Paltin? We’ll take like one or two and then afterwards we’ll have more time for the entire panel.

COUNCILMEMBER PALTIN: Thank you. So, I guess my one or two questions is when you said the private lands east of Honopou Stream, the 27 to 34 million gallons a day, do you know who owns those lands and is that what A&B and EMI are currently asking for in this 30-year lease for 27 to 34 million gallons a day?

MR. PEREZ: So, no. I was referring to the no lease scenario. So, if they don’t get the lease they’ll still have water from those lands coming in. And my...to my knowledge it’s a mix of lands. There’s some private owners. And we’re talking about between Honopou Stream and Maliko Gulch, so there’s some private landowners in that area and then EMI owns some of the land, and there’s a few diversions; I think there’s a total of 14 streams in that area that they’re diverting from.

COUNCILMEMBER PALTIN: And that’s not privy to the BLNR decision but they can get that water and use it for their needs?

MR. PEREZ: That’s correct. It’s not part of the State...it’s not part of the State land so it’s not part of the lease, but they do have access. And they have registered diversions in that area that according to the estimate that I saw would provide 27 to 34 million gallons a day.

COUNCILMEMBER PALTIN: And is that sufficient to meet the needs that they say they need?

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MR. PEREZ: I think it depends on how much agriculture they're doing at a particular time. But my understanding is that it would be more than sufficient for them to get started.

COUNCILMEMBER PALTIN: And what is the total amount that they're requesting with this 30-year lease? Does it have a number like 27, 34, or 58?

MS. de NAIE: Around 65 million.

COUNCILMEMBER PALTIN: Oh, okay. Alright, thank you.

CHAIR SINENCI: Okay, thank you, Members. We're going to go to Ms. Shay Chan Hodges for comments.

MS. CHAN HODGES: Okay, is this working? Hi, aloha, everyone. So, I wanted to give you folks a little background on the Board of Water Supply temporary investigative group. I think you probably know that in July we, our...the Board of Water Supply unanimously approved forming this TIG and the, you know, the impetus for all of this was we started when HB 1326 became an issue we started putting that on the agenda in January and we had a lot of questions because, as you guys heard, there's this question about the water Upcountry and whether there would be an issue; particularly sort of a health crisis. And so as the Board of Water Supply, we felt like we needed to address that and, you know, there was a lot of conflicting information. So, we asked Mahi Pono to come and speak to us and they would not even respond to our letters at all. Nothing. So, we actually, you know, we've reached out several times. Finally, in July because of this lack of response and because of additional concerns, we approved doing the temporary investigative committee. But I did want to let you folks know that at the last Board meeting, September 19<sup>th</sup>, we did approve another letter to Mahi Pono. We were told that it has to be approved by the Mayor before it goes out, so I don't know if it has gone out yet. But in that letter, we specifically asked some questions, some of which are kind of answered in the EIS. But we asked if Mahi Pono does not obtain a revocable permit, will Mahi Pono be able to still commit to working with the County of Maui to ensure affordable access to water for Upcountry, Maui residents since the water that flows from the Wailoa Ditch to the Kamole Treatment Plant is maintained by Mahi Pono and EMI, would the lack of a revocable permit cease that ditch maintenance and flow? Is Mahi Pono interested in exploring an agreement to provide water that is harvested from its own lands to the County's Kamole Water Treatment Plant? And there are a couple other questions, but basically the point was will Mahi Pono commit to making sure that we have some water. And, you know, in terms of the amount of water needed, that really varies if you look at the 2018 DWS annual report, which probably was a pretty rainy year, but it was 1.5 million gallons a day. So, you've got this range of in the EIS it being stated that Upcountry needs something like 7 or 8 million gallons a day. Sometimes it's as little as 1.5 and it is kind of, it's supposed to...you know, it's redundancy, you know. So, in any case I wanted to let you know we've been moving forward on the TIG. We can't talk to you about the recommendations, that kind of thing. But basically what we did was we compiled a lot of information. A lot of it from the Water Use and Development Plan

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which is really informative. I strongly encourage you to look at the Ko`olau and Central sections because those are super helpful. I know some of it is...it doesn't take Mahi Pono into consideration because that wasn't an issue then. And we also pulled a lot of information from the EIS itself. I too have not read all 2,700 pages, I tried to kind of speed read and pull out...if you can get through the first 20 to 30, you'll get a lot of information. The other document that we looked at which is really interesting is the Fresh Water Blueprint for Action. And going back to what seems to be missing from the EIS as both Lucienne and Albert spoke to are all kinds of things that we can be doing to address climate change and drought that relate to watershed protection, stream restoration, and actual water production. And what I found really interesting in this Fresh Water Blueprint for Action is it is...it was...it's a Hawaii Community Foundation Ulupono initiative where they brought in all these experts and the goal was how do we create, actually create 100 million gallons a day more of water, I think, by 2035, which sounds amazing and certainly they have, you know, recommendations about how to do that. And of course it has to do with conservation, recharge, and water reuse. So, those are things that obviously we have to be looking at when there's this sort of idea that there's a shortage of water. So, I also sent you folks some of the research that we've done so far. I sent it on Friday, so you probably haven't had a chance to look at it. But it does have a lot of, and again, it's just public information. It's stuff from the Water Use and Development Plan, from the EIS, and from this Action; and also contracts that Toni referred to as far as the old...between the Kingdom and HC&S, and those are super interesting as well. So, I mean, the real issue is having enough information which I don't think is in the EIS. The other thing I wanted to point out to folks, which you may not be aware of is...so, we were looking at the delivery of the system because of public versus private interest, which Simon also touched on. And obviously a public interest is climate change and, you know, conservation and having as much water available, which some of that would not really necessarily be in the best interest of a private entity to look at. So, the cost of the EMI system, Mahi Pono, the sales price to Mahi Pono was \$5.4 million. They've only paid half of it so far, but that's the cost if the County were to buy it. Based on the EIS, Mahi Pono says it costs \$2.5 million a year to run it. Now, they say that includes everything so in my mind that includes the restoration issues that Lucienne and Albert, you know, referred to and that seems like a very small amount if your 2.5 also includes personnel and everything else. I don't know if they have any money for watershed protection or any other kind of conservation efforts because this 2.5 is everything. And if you take that 65 million gallons per day and we were to, the County were to have it and we were to sell it at the going rate, which is actually \$1.10 per 1,000 gallons for agricultural uses. So, I mean obviously a small part of that would also have to be for domestic use, but that actually would be revenues of 26.5 million per year. So, that gives us a lot of wiggle room to return water to the streams, to put money into watershed protection, to put millions of dollars into restoration, and to pay for studies. The other thing is if a public entity, whether it was the County or some kind of water authority owned it, we might be able to get grants and other things. So...

CHAIR SINENCI: Thank you, Ms. Chan Hodges. Member King, you have a question?

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COUNCILMEMBER KING: Yes, thank you, Chair. And thank you for that analysis because that sounds pretty promising. So, just to clarify, you said that Mahi Pono bought the EMI for 5 million?

MS. CHAN HODGES: Five point four million.

COUNCILMEMBER KING: Five point four million and then they're saying it's going to cost 2.5 million per year to operate?

MS. CHAN HODGES: According to the EIS.

COUNCILMEMBER KING: Okay. And that's just a base operation, it doesn't...and then they would obviously be getting paid for that water so, to cover those operations?

MS. CHAN HODGES: Yeah, I mean, they're using the water so --

COUNCILMEMBER KING: Oh, okay.

MS. CHAN HODGES: --do they pay themselves? They're...

COUNCILMEMBER KING: But I mean, does the...who gets paid for the water that we're using that's getting delivered?

MS. CHAN HODGES: The water that goes to MDWS, they charge us currently 6 cents per thousand gallons. In the EIS it says that it'll go up to 10 cents per thousand gallons. That's nothing, right, that's like \$260,000 a year. So, they're not doing it to make money off the County, but they are...they have \$26 million worth of water that they get for their 5 million plus their operations cost.

COUNCILMEMBER KING: Okay, as a value to themselves.

MS. CHAN HODGES: Yeah.

COUNCILMEMBER KING: Okay, so not necessarily that they would turn around and be able to recoup that.

MS. CHAN HODGES: Well, I don't know.

COUNCILMEMBER KING: I guess, depending who they sell it to. And then the other question I had was when you talked about that the EIS is missing any references to watershed protection, stream restoration, or other ways to create water sources, but then you made a statement that...but, that they're talking about conservation, water recharge, et cetera?

MS. CHAN HODGES: No, no. That's in the Fresh Water Blueprint for Action Plan.

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COUNCILMEMBER KING: Oh, that's in Fresh Water Blueprint?

MS. CHAN HODGES: Yeah.

COUNCILMEMBER KING: Okay, so that's what we might be looking for.

MS. CHAN HODGES: Yeah, it's a very interesting document because it provides a lot of...and of course with...

COUNCILMEMBER KING: Is that a State document?

MS. CHAN HODGES: No, it's a Hawaii Community Foundation --

COUNCILMEMBER KING: Oh, okay.

MS. CHAN HODGES: --and I included it in the document that I sent you --

COUNCILMEMBER KING: Okay.

MS. CHAN HODGES: --links. I mean, I included excerpts and then links to the full document.

COUNCILMEMBER KING: Okay, and then I wanted to ask you about the...what...who told you that there's a requirement that the Board of Water Supply has to have the Mayor's approval for any letters that they send out?

MS. CHAN HODGES: Director Pearson and Corp. Counsel.

COUNCILMEMBER KING: Oh, okay. So, I just wanted to ask Corp. Counsel, is that...where is that requirement written?

MS. THOMSON: I'm sorry, Chair, I don't advise the Board of Water Supply, so I'd have to check with the Corp. Counsel who gave that advice --

COUNCILMEMBER KING: Oh.

MS. THOMSON: --but I'm happy to do so.

COUNCILMEMBER KING: Yeah, I just was wondering because I think, I thought the Board of Water Supply was independent, so I'm just kind of curious as to why they would need approval from the Mayor before they send out a letter. Especially a letter asking --

MS. CHAN HODGES: Just asking for...

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COUNCILMEMBER KING: --for a response from Mahi Pono when they won't show up in person. So, I think that's curious. And I guess my last question is I'm not sure if you guys sent this...someone put this on our desk, this letter from --

MS. CHAN HODGES: Kai Kahele.

COUNCILMEMBER KING: --Senator Kai Kahele that was sent back in May, I guess, advising the Mayor that he should...or urging him to apply for a water lease permit directly from DLNR and I don't know who this is from, Chair. I just wanted to ask whoever...was this from...

CHAIR SINENCI: This was from my office --

COUNCILMEMBER KING: Oh, okay.

CHAIR SINENCI: --but, so it's a letter sent from Kaiali'i Kahele --

COUNCILMEMBER KING: Yeah.

CHAIR SINENCI: --to the Mayor on May 2<sup>nd</sup>.

COUNCILMEMBER KING: Yeah, okay. I know I've seen this before and I just wondered if you could comment on whether maybe, Shay, you can comment on whether that's something that the County could actually do --

MS. CHAN HODGES: Yeah, so --

COUNCILMEMBER KING: --or maybe Corp. Counsel.

MS. CHAN HODGES: --we had it on our agenda at the last meeting and actually the first question I'd asked Director Pearson was why we hadn't been provided with a copy of it. I mean, Senator Kahele didn't copy us on it but we didn't...we were never informed of the letter. I actually ran into Senator Kahele and he mentioned it and so then I got a copy. That's why it's showing up so late, right, it's a May letter. And I believe Dean, who's a Water Board member also, asked Mr. Pearson, you know, whether that was something that he thought that the County should pursue, and Pearson, Director Pierson said no because we don't own the diversion. And my question was well, if we have a possibly higher chance of getting a lease or a license because it's a public trust, even if we didn't own the diversion, wouldn't that provide us with some sort of negotiation leverage when we're dealing with Mahi Pono? Because Mr. Pearson himself said at the last meeting that he keeps encouraging Mahi Pono to come speak to us and they just don't. So, whatever leverage we have for communication...and the only reason we want them to speak to us isn't because we think we're so special, it's because we think that they need to present information to the community at large and that is one way to do so. And as far as we know, they haven't really. So, that is another reason, again, that we feel like it's worth pursuing some sort of public

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ownership of the system because if the County won't use what leverage it has, then, you know, we need to find out some other way. Or if the County doesn't feel like that is real leverage, you know.

COUNCILMEMBER KING: Okay, well is that something you would expect to see in the EIS, any kind of analysis of whether the County or State, you know, about government entity purchasing?

MS. CHAN HODGES: Well, that would've been helpful.

COUNCILMEMBER KING: Yeah, okay. Alright, thank you, Chair.

CHAIR SINENCI: Thank you, Chair. Mr. Molina --

COUNCILMEMBER MOLINA: Yeah --

CHAIR SINENCI: --has a question.

COUNCILMEMBER MOLINA: --thank you very much, Mr. Chairman. And thank you, Ms. Chan Hodges, I think this is a good thing you guys did forming this TIG to do an inquiry on all of this. Just following up on the process with the letters. Now, you said these letters were approved by the Board to, I guess, to have Mahi Pono come, but I guess the process with this Administration, all letters have to be approved by the Mayor to be before it's sent out? And I ask this because I worked in the previous Administration dealing with boards and commissions and on occasion you'd have a chair from a particular board that would like to send out inquiries and sometimes there were occasion...well, I believe the policy was, yes, the Mayor should take a look at it. But, my question's more how long have these letters finally been authorized by the Mayor to send out or is it still hasn't been authorized by the Mayor's Office?

MS. CHAN HODGES: We had a previous letter that was approved by the Board and then I don't remember why but I ended up having a conversation with Sandy Baz and he asked me to send it to the Mayor and he said I don't think it'll be a problem and then the Mayor didn't want it sent out, so then it kind of created this whole...

COUNCILMEMBER MOLINA: So, to date it still hasn't been sent out?

MS. CHAN HODGES: That's an old letter.

COUNCILMEMBER MOLINA: Okay.

MS. CHAN HODGES: Then we did a new letter and then...so then that, yes, and then we...and I actually at the request of the Corp. Counsel I drafted sort of a formal letter to the Mayor asking him to approve it and I did ask for clarification because we've sent out letters, for example, to private water purveyors asking them to communicate with

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us and for the record, none of them answered. So, but, I don't believe that was approved. We've sent out letters asking people to come do presentations...

COUNCILMEMBER MOLINA: And the dates you sent those letters out if you have them? So, it's been, what, since July? August? No...

MS. CHAN HODGES: No, this most recent one is just since the last Board meeting, so it's only been a couple weeks. But the first one was...didn't go out at all, so.

COUNCILMEMBER MOLINA: Okay, that's interesting.

MS. CHAN HODGES: Yeah.

COUNCILMEMBER MOLINA: I find that unusual because you are a citizen's group and you, just in my opinion, you have the right to seek opinion for the Board's sake. Okay, now maybe a quick question for you, Mr. Chair. Just for the record because the subject folks who did the EIS, A&B, Mahi Pono, for the record, were they offered a chance to be a panelist for today's discussion?

CHAIR SINENCI: Yes --

COUNCILMEMBER MOLINA: And they declined?

CHAIR SINENCI: --we reached out to them and they weren't available to come.

COUNCILMEMBER MOLINA: Okay.

CHAIR SINENCI: Yeah.

COUNCILMEMBER MOLINA: Now, if I recall maybe Lucienne can help refresh my memory at a Haiku Community Association meeting and I don't know if it was this year or last year, representatives for Mahi Pono were, I believe, Mr. Vaught, Mark Vaught, and also Ms. Tiare Lawrence, and --

MS. de NAIE: And Jacob Tavares.

COUNCILMEMBER MOLINA: --Tavares.

MS. de NAIE: Yes.

COUNCILMEMBER MOLINA: And of course there was Mr. Tsutsui, our former Lieutenant Governor, who's...

MS. de NAIE: He was not able to make it. He had a scheduling conflict. He was invited but the other three made it. I think it was April of this year.

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COUNCILMEMBER MOLINA: Okay.

MS. de NAIE: Yeah.

COUNCILMEMBER MOLINA: Yeah, I just wanted that put into the record to, you know, outreach or we've been reaching out --

CHAIR SINENCI: Right.

COUNCILMEMBER MOLINA: --and for whatever reasons they've found it inconvenient to come here today. So, anyway, moving on to the whole...I've got some questions that are more technical questions, I don't know if it's more appropriate for --

CHAIR SINENCI: Yeah, we got a couple more --

COUNCILMEMBER MOLINA: --Lucienne...

CHAIR SINENCI: --panelists --

COUNCILMEMBER MOLINA: Oh.

CHAIR SINENCI: --and then we can go --

COUNCILMEMBER MOLINA: Okay --

CHAIR SINENCI: --afterwards.

COUNCILMEMBER MOLINA: --I'll, you know what, Mr. Chair, I'll go ahead and yield so we can kind of, I know time is kind of getting, you know...

CHAIR SINENCI: Okay.

COUNCILMEMBER MOLINA: So, at least we hear from our panelists and then I'll save my questions for once all panelists are done.

CHAIR SINENCI: Okay, thank you. And then we have Mr. Norman Franco with the Water Board.

MR. FRANCO: One of the things...thank you, Chair and Members, for giving me the opportunity. One of the things we looked at or we were request to do with our TIG was to look at comprehensive alternatives to what is presently the system. And I did some investigative work in looking at different water authorities and what they do and I was quite impressed with the Arizona Water Authority who diverts water from Colorado River but it's all done scientifically. What happens is when a farmer is going to plant a field and has a irrigation requirement, the request is made for a certain number of gallons of water diverted to his area, and by computer system, it releases that exact

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amount of water to that farmer. And what I see with the system we have now is that there's a lot of waste and not a very good management of the resource we have, and water should be held as a public trust. I was told by a member of your group that Mahi Pono is very mad at me for stealing their water. And I says well I...you gotta make a correction here, it's the people's water. We have a fiduciary responsibility to look after the needs of the people and not for any one corporation or any one group. And water, as testified by Toni who's a member of our TIG, Toni Eaton, is part of the Hawaiian culture. Wailuku itself means...we all know wai means water, and maybe Toni can tell me what luku means, but it's got something to do with water, you know. And we see wai in Waihee, you know. Wailua, and so, it's part of the culture of the Hawaiians and they in my mind have priority as to the usage of water. I was told that it takes 1,000 gallons of water to produce one pound of sugar. Well, we don't have sugar anymore. Okay, it doesn't take that much to raise potatoes or whatever Mahi Pono is doing now. So, why are we still diverting? It's not necessary and we should have better management control of the entire system. One final comment, I have to tell you that there's two words that's sticking to my mind for the rest of my life, it's called self-determination. Self-determination was used as a reason why I was sent to Vietnam along with 2.7 million Americans; 58,000-plus didn't make it back. I lost two of my very good friends there, okay. And if the government puts so much emphasis on self-determination, why don't we do the same? We have the right to determine our future, and our future's tied into water. How can we get affordable housing without water? And as Shane just said, the numbers show that we'll come out way ahead if we owned the system. And remember, you only...if you go that route, you know, we're not saying we gonna go that route but we're gonna show as an alternative. As an appraiser, you only buying the easement over the land that A&B owns that these canals, primarily the Wailua Ditch traverses. You're not buying the land; you're buying an easement over the land. And that you figure the cost of that by an appraisal. So, one of the things that the Council should look at is start looking at the probability of buying the system and starting with an appraisal of what's there so that you can make a educated decision to acquire the delivery system or not to. It's up to you, but you should start looking at that possibility. Okay, that's all I got to say, thank you.

CHAIR SINENCI: Thank you, Mr. Franco. Next we have Ms. Eva Blumenstein to provide some comments.

MS. BLUMENSTEIN: Thank you, Chair. The Department has not commented, or I have not read the full EIS either yet, but I can provide you some information that we suggested in the pre-consultation for the prep notice for the EIS --

CHAIR SINENCI: Sure.

MS. BLUMENSTEIN: --back in 2016. So, I do not know whether these were incorporated or not. So, that was before the IIFS was established for the petition streams in East Maui. So, because we anticipated that the IIFS would address, when the contested case was reopened, we assumed it was going to address the interaction between

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groundwater and Central Maui and how that was impacted from a decreased irrigation as additional stream flow was returned to the streams. We did suggest that the EIS would address the interaction with groundwater and surface water flow in the license area because that was not addressed in the IIFS. We did suggest that the costs of the EMI system management, capital improvement, system operation and maintenance would be incorporated so future viability of the system could be assessed. Relevant information that should be included are current projected costs of EMI system management, capital improvements, operations, and maintenance. And some of these things were sort of not relevant anymore because things have changed since 2016. Then I wanted also to add...so, that was just our pre-consultation comments, and from the Water Use and Development Plan aspect which is not the Department per se but we discussed that in this body at the last Committee meeting, overall suggestions and strategies that, although they are suggested for climate adaptation in the Water Use and Development Plan, and even though the EIS is prepared under the old rules, they are still relevant because it is speaking to the alternative analysis and one of the strategies in the, in Chapter 12 of the Water Use and Development Plan is diversifying supply for agriculture use to increase reliability under extended droughts and low stream flows, diversified ag on what was H&S [sic] lands, now Mahi Pono lands, will compete with priority public trust uses for surface water, so therefore, recycled water, climate adapted or microclimate adapted crops, those sort of things, should be incorporated and addressed in the EIS. Other than that of course we have high needs for any surface water we can get at the Kamole Weir, gravity-fed surface water is always going to be our cheapest supply compared to anything else and our alternative would be groundwater that would require pumpage at a much higher cost. So, I don't know whether these things were address or not in the EIS but I will look.

CHAIR SINENCI: Okay.

MS. BLUMENSTEIN: Thank you.

CHAIR SINENCI: Thank you, Ms. Blumenstein. And then we have one more speaker and then we can go to questions. We invited Caleb Rowe because there are current and past litigation and he wanted to speak on the County's role in any of those cases. Mr. Rowe?

MR. ROWE: Thank you, Chair. And I think my...the best I can do is answer any questions you guys have, kind of, of the legal status of what's going on; but I'll go into a little bit of the background. There are kind of two separate administrative proceedings that we're dealing with right now, that's the 30-year lease application before the Board of Land and Natural Resources. There's also been a lot of talk about the interim instream flow standards that's before the Commission on Water Resources Management. So, these are kind of two separate processes. The BLNR clearly is over A&B, EMI, and Mahi Pono's continued use of the license areas to divert water, deliver that water to the Central Maui fields, and also deliver that water to the County of Maui Department of Water Supply. The IIFS is a separate proceeding where the Commission on Water Resources Management has primary jurisdiction to set how

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much water needs to be left in the streams in order to maintain certain instream values, that includes Native Hawaiian use, biodiversity, and kind of view planes is another thing that they look at. Twenty-seven of those streams have had IIFS's set; that was done last year after a lengthy process. We went through two rounds of contested case hearings; one before A&B closed HC&S, and one after the cessation of sugar operations. There was a decision that was rendered in that and as far as I know, that is the first Commission on Water Resources Management contested case hearing decision that has not been appealed to the Supreme Court. So, everyone, I think, was pretty happy with that. However, the 27 streams only deal with 27 streams. There are considerably more streams in the East Maui license areas. The IIFS for those was actually set in 1988 by the Commission on Water Resources Management to be the status quo saying that nothing more could be diverted unless there was an amended instream interim flow standard.

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

MR. ROWE: Nineteen eighty-eight. Sorry, I'm going a bit fast. That was in 1988 and that's also pursuant to Hawaii Administrative Rules 13-169-44. Now, at any time people can petition to have those IIFS's changed, that's how the 27 that there was a decision made on, that's how there was a decision made on those was community groups including Na Moku and who's represented by Native Hawaiian Legal Corporation; they petitioned the Commission on Water Resources Management for an IIFS on those. So, that can also be done on those other streams. However, that has not been done so right now the BLNR now is tasked with determining how much water can be taken from the streams under the terms of the lease agreement. And on that note I just, I think something that's useful to note is that the BLNR can use the CWRM's determination on the IIFS as their basis for how much can be taken out of the streams. However, they're not bound by that. They can require that any licensee keep more water in the streams, for example. That would especially be relevant for the streams that haven't had an actual contested case hearing on the IIFS which are the other than the 27 current streams. We are also in litigation in the First Circuit Court and the...we're in the Supreme Court regarding the revocable permits. Now, the revocable permits have been passed on a yearly basis ever since the 30-year application was submitted. The purpose of the revocable permits was to allow water to continue to be diverted while there was a contested case hearing pending. That contested case hearing was basically waiting all this time for the EIS to be completed so we're now in the process of doing that. However, we are still in litigation. The Carmichael Decision, which I've spoken to you before, has been appealed to the Supreme Court. That's over the 2015 revocable permits. The case that I'm currently involved in regards the...is regarding the 2019 revocable permits. Or, I'm sorry...yes, the 2019 revocable permits. That was passed in December of 2018. So, that's just kind of a little bit of background of the legal status and the litigation history of these issues.

CHAIR SINENCI: Thank you, Mr. Rowe. Ms. Thomson, did you want to provide some comments?

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MS. THOMSON: Sure, thank you, Chair. So, as just to the business before you today, the body is looking at this draft Environmental Impact Statement and providing its comments. I know that there's a bit of a time constraint. One of the things that the body can ask for, which has been mentioned, is a request to extend the time to increase the time period to allow for more comments either by this body or members of the public. One of the things that I was going to recommend is that we, this body, consider attaching the testimonies, the transcript from today's hearing, rather than trying to...because there's...I tried to capture most of the comments but there are a lot. So, that may be one way of handling it is to have your own comments as Members of the Committee, but also, you know, attaching the transcript from today. As far as the process for today's comments though, I think the best way would be to go through them as a group and then adapt those as the body's formal comments, which the Chair then can transmit on the Council's behalf.

CHAIR SINENCI: Thank you, Ms. Thomson. I believe the consultant did get back to us and they did not extend the comment period for us. Yeah. Okay, did you have a clarification question --

COUNCILMEMBER KING: Yeah.

CHAIR SINENCI: --Chair?

COUNCILMEMBER KING: I did, thank you, Chair. So, I'm just trying to think, I mean, okay, I heard that the consultant, what, refused to extend the comment period? Or just said they weren't...or just said they haven't extended? I mean, I'm not sure if Ms. Thomson is talking about us passing out a resolution requesting that they extend the comment period, which I think would be prudent to do based on the length and complexity of this report and the fact that many stakeholder groups have admittedly not had time to go through all of the salient points of this --

COUNCILMEMBER PALTIN: Consensus.

COUNCILMEMBER KING: --document. So, you know, for me it's going to take more than 20 minutes for us to go through the points that we want to approve for testimony, for, you know, comments. And then they would still have to go through the full Council. So, I would like to see us pass out a resolution requesting...and I actually wrote some language in here to add a whereas the DEIS is extremely lengthy and complex, and many stakeholder groups have still not completely reviewed all the salient points of the report, and then in the be it resolved that the Council of the County Maui request a 60-day extension of the comment period, and then the copies of the resolution be transmitted to Mahi Pono, A&B, EMI, DLNR, CWRM, and the Mayor of Maui. But I think that would be something that we could do, we could agree on at this meeting --

VICE-CHAIR KAMA: So move.

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COUNCILMEMBER KING: --and we could get...

COUNCILMEMBER PALTIN: Second.

COUNCILMEMBER KING: Oh, thank you. That was easy. So, if we can approve that then, I mean, I don't...I just, I know Mr. Molina said he has to leave at noon, I have a appointment at 12:15, and for us to try to agree on all of these points that we've been discussing in the next 20 minutes I think is going to be pretty hard to do.

CHAIR SINENCI: So, you're saying that we passed a reso that's on here with those comments attached to it?

COUNCILMEMBER KING: With those amendments to, so we would add the one whereas that I talked about asking for the extension or stating that the document is extremely lengthy and complex and many stakeholder groups have not completely reviewed all of the salient points, and then the first be it resolved would be changed to say be it resolved that the Council of the County of Maui requests a 60-day extension of the comment period, and two, that copies of this resolution be transmitted to Mahi Pono, A&B, EMI, DLNR, CWRM, and then the Mayor of Maui. We can ask the Staff to put, you know, put in the non-substantive changes to add the names, like Suzanne Case of DLNR, you know, all the names and titles of the heads of those organizations.

CHAIR SINENCI: Okay, thank you, Chair.

COUNCILMEMBER KING: So, I think we have a motion...

CHAIR SINENCI: Member Molina, you had...

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chairman. Just following up on the questions from Chair King. So, it was mentioned that the consultant made the call not to grant an extension --

CHAIR SINENCI: Correct.

COUNCILMEMBER MOLINA: --so basically we're asking the consultant now to consider a 60-day extension. Now if they don't then what happens? I mean, it's...so basically it's in their hands so not the BLNR or anybody like that can make that --

CHAIR SINENCI: Right --

COUNCILMEMBER MOLINA: --request to extend --

CHAIR SINENCI: --and this was for --

COUNCILMEMBER MOLINA: --for commenting?

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CHAIR SINENCI: --you know, us --

COUNCILMEMBER MOLINA: Yeah.

CHAIR SINENCI: --a Council to send our own comments.

COUNCILMEMBER MOLINA: And if I may ask, Chair, who is the consultant? Because I know it's only been said consultant, let's get it in for the record. Who is the consultant?

COUNCILMEMBER PALTIN: Wilson Okamoto.

COUNCILMEMBER MOLINA: Wilson Okamoto.

CHAIR SINENCI: Correct.

COUNCILMEMBER MOLINA: Okay, I wanted that in the record. Okay. So, and with the reso and the process itself, so now whether we get the 60-day extension or not, the reso is asking the Chair to submit comments and I assume maybe questions to the, I guess, who was it, the OEQC. So, it's incumbent upon all us, the rest of the Members to give input to the Chair as far as what we would like asked or provide comment \_\_\_\_\_ and when it does go to the Council...so, okay, it gets approved, then will we have, how much time do we have, I guess it depends on the extension? Can we start like submitting comments and questions to the Chair now assuming we take action? Because that's how I understand this, right, the Chair is going to speak for the whole Council, right, or in seeking, providing comments.

CHAIR SINENCI: We were going to take comments from --

COUNCILMEMBER KING: Yeah.

CHAIR SINENCI: --the Committee and public testimony --

COUNCILMEMBER MOLINA: Right --

COUNCILMEMBER KING: Right.

COUNCILMEMBER MOLINA: --and as Ms. Thomson explained --

CHAIR SINENCI: --and include those...

COUNCILMEMBER MOLINA: --she's going to, you know, she recommended attaching all the public commentary as well. I just want to know for sure because we don't have all nine Members here, Mr. Chairman, and I'm trying to avoid any misunderstandings later on from Members saying they weren't aware of the process in terms of getting comments and maybe if Chair King --

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COUNCILMEMBER KING: Chair? Yeah.

COUNCILMEMBER MOLINA: --can answer how she will, you know --

COUNCILMEMBER KING: Well --

COUNCILMEMBER MOLINA: --illicit the comments.

COUNCILMEMBER KING: --actually my proposal is to take that piece out for now and ask for the extension.

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER KING: Because I think what we're doing is we're asking the body not the consultant --

UNIDENTIFIED SPEAKER: Right.

COUNCILMEMBER KING: --to make the extension. You know, the consultant, I don't think the consultant can just --

UNIDENTIFIED SPEAKER: He cannot.

COUNCILMEMBER KING: --arbitrarily say there will be no extension. It's going to be up to whoever creates the process. And maybe this should also go to OEQC because they're the, kind of the keepers of the EIS process. So, what we're asking for is an extension. The problem I had, and I think it's Mr. Molina has that same problem, is that if we ask myself as Chair to provide comments, I need to know what those comments are if it's going to represent the entire Council, and I don't think we have time right now before noon to actually decide what all those comments are going to be. But clearly we heard from everybody in this room as well as, you know, the people that testified that nobody has read the entire document and so we have concerns that we don't even know if they've been addressed in there because no one's read the entire thing. So, that...So, I would have a concern about sending in, you know, even if we as a body write all of our concerns and we send that in, we might be sending in, you know, concerns that have been discussed in the document and we just haven't read them yet. I think a lot of us, you know, what is it, over 2,000 pages?

VICE-CHAIR KAMA: Twenty-seven hundred.

CHAIR SINENCI: Twenty-seven hundred.

COUNCILMEMBER KING: Two thousand seven hundred pages. A lot of us are going to feel that we need a lot more time to, especially come to a consensus as a body that these are the comments we want to make --

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VICE-CHAIR KAMA: Yes.

COUNCILMEMBER KING: --which I would, you know, like you said any Councilmember can make our own comments --

CHAIR SINENCI: Comments.

COUNCILMEMBER KING: --and my office was working on that, but I think it is stronger if we make comments as a body.

UNIDENTIFIED SPEAKER: As a body. Yes.

COUNCILMEMBER KING: But I think we need more time to do that.

UNIDENTIFIED SPEAKER: Yes.

CHAIR SINENCI: Okay, so, I guess the question from Member Molina is that if we ask for an extension that's just for us but we're...but...

COUNCILMEMBER KING: Well, I think it's just for everybody.

CHAIR SINENCI: Oh, it's for everybody --

COUNCILMEMBER KING: I mean, we're just asking them to extend the comment period. Yeah. Public.

UNIDENTIFIED SPEAKER: Yeah.

CHAIR SINENCI: --but if it's not granted, and the consultant already didn't grant us an extension, does that mean we lose out on that as a Council?

COUNCILMEMBER MOLINA: Chair, maybe we can consult, ask for some thoughts from Corp. Counsel?

UNIDENTIFIED SPEAKER: Yeah.

CHAIR SINENCI: Ms. Thomson?

MS. THOMSON: Thank you. I might have missed the last part of the question, but I wanted to...so reviewing the State laws as far as the time limit for the comments, it's 45 days from the date of publication. I would need to look into it a little bit more in terms of which body would be able to grant any extension. Any of the ones that I've been involved with have been basically an agreement, you know, to extend comment periods. So, you know, by reso, you know, or letter, you can request that extension but it's not within this body's...I just want to make sure that everyone knows --

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COUNCILMEMBER KING: Right.

MS. THOMSON: --it's not within this body's purview to extend the time period.

COUNCILMEMBER KING: Right.

MS. THOMSON: So, you may want to make the comments that you have and then if the comment period is extended, make further comments. Or, you know, as it has been mentioned, individually you can also make comments.

COUNCILMEMBER KING: Well, Chair, so, if...so, maybe we're talking about two different resos. And, you know, well, the reason that I mentioned it was because I know it's not within our purview, that's why we do resos because we're urging somebody to do something. But the comment was made earlier that it's fairly common to have an extension; I think Lucienne de Naie made that comment. So, if we can ask for that extension, it's not just for us. It's just asking them to extend the deadline.

UNIDENTIFIED SPEAKER: For everybody.

COUNCILMEMBER KING: And, yeah, I'm not sure who makes that call. I know the EIS rules are made by OEQC but that they don't necessarily oversee each EIS. So, that's...that was my thought in putting that all those entities into this and maybe we could just also, you know, make an agreement to add if Ms. Thomson can figure out who the entity we should actually address this to and it's not one of them that we could add that entity. Do you think we have it covered, Ms. Thomson, by all those entities I mentioned? Or could it be somebody else besides them?

MS. THOMSON: It'd be the accepting authority and the proposer. So, the applicant and the accepting authority. I'm just trying to quickly look up to see if I have any other thing that I can offer you. If you'll just give me a minute --

COUNCILMEMBER KING: Sure. Yeah.

MS. THOMSON: --I'll look that up.

COUNCILMEMBER KING: Sure. But the applicant would be, if we say Mahi Pono, A&B, and EMI, that pretty much covers the applicant?

MS. THOMSON: Right, exactly.

COUNCILMEMBER KING: Okay.

MS. THOMSON: And then BLNR.

COUNCILMEMBER KING: Okay.

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CHAIR SINENCI: Member Kama and then Member Paltin.

VICE-CHAIR KAMA: Thank you, Chair. So, my sense is that we should go ahead and call for the question on the reso today and get that out. But even so, not just wait and twiddle our thumbs but to actually continue to read the EIS and make our comments and do whatever it is we can and get them prepped just in case they do give us the extension. But the extension isn't just for us, it's to ask for all of the public to comment because 2,700 pages is not something you just want to scan. It's something, especially when it comes to this issue, you really want to read it clearly, you want to make sure that you understand it, your staff understands it, so you can just roll off your mouth when you talk about, similar to how our panel talks about it here. So, I think I'd like to make that happen.

CHAIR SINENCI: And this is just a draft EIS.

VICE-CHAIR KAMA: Yes.

CHAIR SINENCI: So, there's going to be a final EIS as well --

VICE-CHAIR KAMA: Yes.

CHAIR SINENCI: --that we can go ahead and comment on. Correct? We cannot provide comment on the final EIS?

VICE-CHAIR KAMA: It's a draft until they get it all done and then it becomes final. But if we, I don't know--

CHAIR SINENCI: And we cannot comment on the final?

VICE-CHAIR KAMA: --but we should comment this...we should be able to comment as soon as possible, which is on the front end.

CHAIR SINENCI: Ms. Thomson?

MS. THOMSON: Thank you, so, the time for comments is right now in this draft EIS and the reason that comments are important during this period of time is that the applicant must respond to each of those comments in a formal sense. You can make comments at any time throughout a project, but this is a critical period of time to make comments.

CHAIR SINENCI: Okay, Ms. Paltin and then Ms. de Naie.

COUNCILMEMBER PALTIN: Thank you, Chair. I'm not sure if this is the proper time, but I thought we were going to have time to ask questions and I did have a couple questions for the Board of Water Supply Members that are presented.

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CHAIR SINENCI: We're here to...am I going to lose some people at 12:00, 12:15?

COUNCILMEMBER MOLINA: Yeah, I'll be gone at 12:00, Chair. But, again, my question more related to the process and how this is going to work. And, you know, I can support Member Kama said I think, you know, we still...or I'm sorry, Ms. Thomson recommended we still should be throwing in comments. I know a proposal has been made by the Chair about let's ask for the extension first, but I'm looking for the best way, if we can do both. Because I think it's a valid request to ask for an extension, but what if we don't...that whatever regulating body says no? Then what? I still want us to get comments in as well. And so --

CHAIR SINENCI: Right.

COUNCILMEMBER MOLINA: --you know, through the Chair, which is your resolution, that's kind of where my major concern is at this point. So, anyway.

CHAIR SINENCI: Okay, Member Paltin and then Chair King.

COUNCILMEMBER PALTIN: So, my major concern is that this major player Mahi Pono is not like out and about and coming to this meeting here today though they were invited, not coming to the Board of Water Supply, like, voluntarily. I mean, really, do they need to be invited when the issue is on the subject agenda. I...my question is if the Board of Water Supply members or if there is a Corporation Counsel that is familiar with the process has seen this type of thing before where somebody with this financial interest in continuing to divert the public trust for their own financial gain has just clammed up and not showed up to these things where...I mean, we're trying to get everyone a seat at the table and find out the intention and work out something for the best of the land and the people and they're just not showing up time after time after time. And so, I guess my question is have we seen this kind of behavior from a big corporation on Maui before? Is it like a stall tactic that's commonly used? Or, I mean, where's the transparency, is that how it generally works? 'Cause I'm new to this thing and I'm not super ma`a to the stuff that goes on on that side of the island. Is this like a common thing or, like, do they usually...do the diverters usually show up and tell their side of the story and sit down at the table or is that just regular behavior from corporation nowadays or in the past?

MS. CHAN HODGES: Well, we haven't actually been in this situation where we invited somebody like that to come to our meetings. Although we did, as I mentioned, send out a letter to all the private purveyors and we had a little bit of a glitch because our clerk retired and so there's no follow-up. So, all I know is I have a list of a bunch of letters she sent out. So, this is all private purveyors and, you know, I didn't even know there were so many private purveyors before I was on the Water Board. And from Lahaina, you probably know there's quite a few, right? And part of why we were asking them to come was because even though we were told, you know, by Corp. Counsel that, you know, they're their own thing. Water Department doesn't have any

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control over them. We felt like it was important to have the whole picture of the island.

COUNCILMEMBER PALTIN: I kind of feel similarly so I'm confused why they're not sitting at the table with us.

MS. CHAN HODGES: So, not...as far as I know, not a single one responded. So, as far as is it normal for private companies to completely ignore the Department of Water Supply? Based on my very small window of experience, so, it would appear that way. Yes, which is a problem, because how do we figure out what our whole aquifer's doing, et cetera?

MR. FRANCO: One of the things that we're very concerned about is since there's all these private purveyors besides EMI, you have the West Maui, and they're draining our water resources with no knowledge as to what its status is. I mean, we should have a comprehensive study; and that's why an idea of maybe a water authority as an oversight looking at what we have and what's being used and what we can do to meet the demands of the future. The island's going to continue to grow so with Mahi Pono not coming to the table, pretty much tells me that their whole premise for buying that property from A&B, I don't think it's really for farming frankly.

COUNCILMEMBER PALTIN: 'Cause they can --

MR. FRANCO: I think it's the water.

COUNCILMEMBER PALTIN: --do the ag subdivision --

MR. FRANCO: They want to control the water.

COUNCILMEMBER PALTIN: --without public review or appeal process.

MR. FRANCO: Yeah, and that's where the money is for them.

COUNCILMEMBER PALTIN: No contribution to infrastructure, or commitment to affordable housing, they can make gentlemen estates up the whole entire place and not contribute anything to our community and steal all the water --

MR. FRANCO: That's right.

COUNCILMEMBER PALTIN: --from the people, the public trust. Got it. Thank you.

MR. FRANCO: Okay.

CHAIR SINENCI: Ms. de Naie, did you want to provide comments to that? Seeing none, Chair King? So, I've got about seven minutes, Members --

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COUNCILMEMBER KING: Chair?

CHAIR SINENCI: --before I lose quorum on this --

VICE-CHAIR KAMA: Motion on the floor.

CHAIR SINENCI: --and we'd like to --

COUNCILMEMBER KING: Okay.

CHAIR SINENCI: --address the...

COUNCILMEMBER KING: We have a...well, we have a motion on the floor with a second, so if we could go ahead and --

VICE-CHAIR KAMA: Call for the question.

COUNCILMEMBER KING: --call for that question first, then we get that resolution settled, then we can discuss --

CHAIR SINENCI: . . . *(inaudible)* . . .

COUNCILMEMBER KING: --Member Molina's concerns about wanting to make comments and I have some suggestions about that.

COUNCILMEMBER MOLINA: Yeah. Yeah, Chair --

UNIDENTIFIED SPEAKER: Chair?

COUNCILMEMBER MOLINA: --yeah, just for...can we restate the motion for the record?

CHAIR SINENCI: So, the Chair will entertain a motion to recommend that the proposed resolution entitled Authorizing the Council Chair to Provide Comments on a Draft Environmental Impact Statement for the East Maui Water Lease to be Sent to Council for Passage on First Reading...

COUNCILMEMBER KING: Oh, Chair?

CHAIR SINENCI: Oh.

COUNCILMEMBER KING: Sorry, yeah, no, the motion on the floor is to change the resolution so that the resolution...I forgot to address the title, would be changed to say Requesting an Extension --

VICE-CHAIR KAMA: Extension, yeah.

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COUNCILMEMBER KING: --of the Draft EIS. I think Ms. Thomson was going to identify who would we...who would be authorizing that, but we would be requesting...yeah, the first resolution was to request that extension. And so, the...it would add a whereas --

CHAIR SINENCI: To the existing...

COUNCILMEMBER KING: --to the existing whereas, it would add the whereas the DES [*sic*] is extremely lengthy and complex, and many stakeholder groups have still not completely reviewed all the salient points, now therefore be it resolved that the Council of the County of Maui requests a 60-day extension of the comment period for the DEIS, and two, that copies of this resolution be transmitted to Mahi Pono, A&B, EMI, DLNR, OEQC, CWRM, and the Mayor of the County of Maui. And then allowing the Staff to make any non-substantive changes including heads of those departments by name. I think Suzanne Case is the head of DLNR, I'm not sure who the head of CWRM is, but we can ask the Staff to add those names in. And so, this would be like the first step requesting that extension --

CHAIR SINENCI: That's...

COUNCILMEMBER KING: --but I think while we have that motion on that floor we should...

MS. APO TAKAYAMA: Chair?

CHAIR SINENCI: So, that was an amendment to the reso that's...that we just spoke of?

COUNCILMEMBER KING: Right.

MS. APO TAKAYAMA: Chair?

COUNCILMEMBER KING: Because we didn't have a motion on the floor yet, so, I guess it would sort of...

CHAIR SINENCI: Staff? Ms. Apo Takayama?

MS. APO TAKAYAMA: And to clarify, is that amending to authorize Council Chair and ask for the extension?

COUNCILMEMBER KING: No, it was just to --

VICE-CHAIR KAMA: Just the extension.

COUNCILMEMBER KING: --ask for the extension because we don't have a, you know, just...the recognition that we still need to work on what that authorization is because we don't have those talking points done. I mean, we could do...I guess we could put them both in there, but we don't have an agreement on what we're authorizing the Chair to do yet --

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VICE-CHAIR KAMA: Right.

COUNCILMEMBER KING: --so...

CHAIR SINENCI: We have another meeting on October 15<sup>th</sup>, we could put some of the comments on for that second meeting if...I don't know if we have time to do that. Staff?

MS. APO TAKAYAMA: So, if we did take it up on the October 15<sup>th</sup> meeting and we didn't get the extension, we would miss the deadline because the Council meeting following that meeting is November 8<sup>th</sup>.

COUNCILMEMBER KING: So, what we could do, Chair, is we could vote on this resolution for requesting the extension --

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER KING: --right now --

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER KING: --and if you want to on your meeting on the 15<sup>th</sup>, you could put it...you could put this one on the agenda asking the Chair to, on behalf of the Council to make comments and you could use that meeting --

UNIDENTIFIED SPEAKER: Yes.

COUNCILMEMBER KING: --to go over all the comments that should be made. Have the talking points confirmed, and then just...and then not make a vote but discharge it to the October 18<sup>th</sup> meeting so we could put it on the agenda for the full Council for October 18<sup>th</sup>, and then you could just agree to discharge it when it comes to the full Council meeting after having that discussion. It still won't resolve Mr. Molina's concern that not all Councilmembers are here because you don't have nine Councilmembers on your Committee, but maybe you'll get a few more, you know, Councilmembers. I think we have just one, two, three, four, five...

VICE-CHAIR KAMA: We have seven.

COUNCILMEMBER KING: So, we're missing two from the Committee, so maybe we'll get two more that will participate in that conversation.

CHAIR SINENCI: On the 15<sup>th</sup>?

COUNCILMEMBER KING: Yeah. But the way to do it is to, and correct me if I'm wrong, Kasie, but the way to do it would be to put it on your agenda, have it simultaneously on the agenda for the 18<sup>th</sup>, and then you have your discussion and then just charge it

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when it comes to the 18<sup>th</sup> and we can make that decision in full Council. Is that correct, Ms. Thomson?

VICE-CHAIR KAMA: Correct.

MS. THOMSON: Yes, I think that's a good idea.

COUNCILMEMBER KING: Okay.

CHAIR SINENCI: Okay, Member Molina --

COUNCILMEMBER MOLINA: Yeah.

CHAIR SINENCI: --you wanted to comment?

COUNCILMEMBER MOLINA: Yeah, thank you, Mr. Chairman. And whether we have seven Members, nine Members, you know, this is an important enough issue if all nine Members want to be here they can be here. So, I just want to make that point. For Corporation Counsel, because the Chair's proposing a resolution, a newly titled resolution, are we safe with the Sunshine Law parameters because it wasn't noticed to the public prior to this meeting? If we're looking at a title change, I don't know if it changes the substance of what we're discussing but I just want to make sure we're safe with the Sunshine Law police if we act on this resolution and title change?

MS. THOMSON: Thank you, thanks for that question. Yes, I think that the title of the item and the resolution that was originally on the agenda is sufficiently broad to include, you know, the request to extend time.

COUNCILMEMBER MOLINA: Okay, thank you for that clarification. Thank you, Chair.

CHAIR SINENCI: Okay, so, there's a motion on the floor by Chair King and seconded by...

VICE-CHAIR KAMA: No --

COUNCILMEMBER KING: No.

VICE-CHAIR KAMA: --I made the motion --

CHAIR SINENCI: Oh.

COUNCILMEMBER KING: Actually...

VICE-CHAIR KAMA: --and Tamara seconded.

COUNCILMEMBER KING: Yeah.

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CHAIR SINENCI: Okay, a motion on the floor by Member Tasha Kama and seconded by Tamara Paltin.

VICE-CHAIR KAMA: All those in favor say...

CHAIR SINENCI: Any discussion? We had that discussion. Okay, so, all in favor say, "aye."

COUNCILMEMBERS: Aye.

CHAIR SINENCI: And so that is five "ayes," two excused.

UNIDENTIFIED SPEAKER: Correct.

COUNCILMEMBER PALTIN: Lee and Sugimura.

CHAIR SINENCI: Okay, the motion passes.

COUNCILMEMBER KING: Yay, we did something.

CHAIR SINENCI: Okay, thank you.

COUNCILMEMBER PALTIN: Yeah, we got 15 seconds to spare.

CHAIR SINENCI: And one minute to go. Staff, did we want to...does that suffice?

MS. APO TAKAYAMA: To clarify, was that just to amend or --

COUNCILMEMBER PALTIN: Oh yeah...

MS. APO TAKAYAMA: --did we pass?

COUNCILMEMBER KING: Okay, well that was the actual motion --

MS. APO TAKAYAMA: That was just to amend?

COUNCILMEMBER KING: --there was no original motion for the original resolution.

MS. APO TAKAYAMA: So, that was...

VICE-CHAIR KAMA: That was the motion --

MS. APO TAKAYAMA: So, that was just amending the reso?

VICE-CHAIR KAMA: --to request an extension.

COUNCILMEMBER KING: That was --

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CHAIR SINENCI: Okay, so we need a final with the amendments?

COUNCILMEMBER KING: --actually, yeah, that was actually the motion was the amended reso because there was no original motion on the floor for this reso.

COUNCILMEMBER PALTIN: I move we pass the amended reso.

COUNCILMEMBER KING: Second.

VICE-CHAIR KAMA: Second.

CHAIR SINENCI: Okay, so there's been a motion to pass the amended reso with those comments and seconded by Member Kama. All in favor?

COUNCILMEMBER PALTIN: Aye.

COUNCILMEMBER KING: Aye.

VICE-CHAIR KAMA: Aye.

COUNCILMEMBER MOLINA: Chair, wait, wait.

CHAIR SINENCI: Discussion, yes.

COUNCILMEMBER MOLINA: I got a question. Wait, wait. I'm just trying to sort this out.

CHAIR SINENCI: Go ahead.

COUNCILMEMBER MOLINA: Okay, so there was your resolution is on the agenda today was not...no motion was made on that. So, what we did was we just made an amendment to this...

CHAIR SINENCI: Asking for an extension.

COUNCILMEMBER MOLINA: Okay, so maybe procedurally we should have acted on the initial reso and then the amendment made by Chair King, then, right? I mean, to make it more cleaner --

CHAIR SINENCI: Ms. Thomson?

COUNCILMEMBER MOLINA: --so there's less confusion?

MS. THOMSON: I actually almost see it more as a brand new reso that's really just tailored to asking for the 60-day time extension and that's kind of how I saw the action that you took was a brand new reso. So, you're really not acting on the reso that's talking

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about comments and all. But if you want to, you know, if you want to do it adopting the reso as amended, you can and then we'll, you know, work on a new one for next time.

COUNCILMEMBER KING: Okay.

VICE-CHAIR KAMA: Okay.

COUNCILMEMBER KING: But you don't have a problem with the original, with the motion we just passed going forward?

MS. THOMSON: I think that it was clear, yeah.

COUNCILMEMBER KING: Okay.

COUNCILMEMBER MOLINA: Okay.

COUNCILMEMBER KING: Because I think, Chair, we will have, you know --

VICE-CHAIR KAMA: Comments.

COUNCILMEMBER KING: --I don't think we need to amend this because we are going to be looking at this reso --

CHAIR SINENCI: Next meeting.

COUNCILMEMBER KING: --passing this reso possibly out of the next Council meeting. So, we don't want to have taken this and turned it into something else. We want to still keep this up for approval.

COUNCILMEMBER MOLINA: So, Chair, is it your intent then to act on the reso as agendized, take action on that? Only because Staff had mentioned about the concerns with the deadline and, you know, to get comments. Especially in the event if the presiding organization, State organization that can make that determination whether an extension can be granted, if they say no, then I would just be concerned that us not getting enough comments and the Chair doing her due diligence to get the Councilmembers comments into OEQC. So, anyway, that's where, again, I just want clarification on that. So, are you...is it your intention to act on this original reso on the agenda?

CHAIR SINENCI: On the 15<sup>th</sup>.

COUNCILMEMBER MOLINA: Well, what's on your agenda today, yeah. 'Cause we just acted right now on a whole new resolution from the Chair. Now, your intent as the Chair of this Committee, you plan on acting on this reso too as well?

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CHAIR SINENCI: On the 15<sup>th</sup>.

COUNCILMEMBER MOLINA: Oh, so, you're not...

CHAIR SINENCI: Correct?

COUNCILMEMBER MOLINA: So, you're going to defer this?

CHAIR SINENCI: Yeah.

COUNCILMEMBER MOLINA: So, that'll give us sufficient time if we delay this to October 15. Okay, yeah, I just don't want to miss any deadlines in case the extension is not granted to us.

CHAIR SINENCI: Right, and then we were going to from the 15<sup>th</sup>, we're also going to post for the 18<sup>th</sup> in front of the full Council.

COUNCILMEMBER MOLINA: Okay.

COUNCILMEMBER KING: Chair, so, your intent...so, in order to get this approved on the 18<sup>th</sup>, your intent would be, I believe, to agendize it for the 15<sup>th</sup> for your Committee meeting, have that discussion, create that list of comments, and then not act on it but discharge it to the full Council meeting on the 18<sup>th</sup> for us to act on. Because I think that's the...otherwise we have to wait for the Committee report and then that pushes...if you act on it on the 15<sup>th</sup>, you have to wait for a Committee report and that pushes it into the next November meeting. I believe that's what would happen, Ms. Thomson?

CHAIR SINENCI: Ms. Thomson?

MS. THOMSON: Thank you, I'm trying to make sure that I'm following all the steps. Yes, so my understanding is that the Council Rules require a Committee report but if you basically, you know, come forward with your full list of comments, right, and then discharge it back to Council, then Council takes action.

COUNCILMEMBER KING: On the 18<sup>th</sup>?

MS. THOMSON: Right.

CHAIR SINENCI: Okay, thank you, Ms. Thomson. Ms. Apo Takayama, so we're deferring this to the 15<sup>th</sup> --

MS. APO TAKAYAMA: And...

CHAIR SINENCI: --the one that's listed on the agenda today.

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MS. APO TAKAYAMA: Okay, and passing...the last thing was to pass the...a new reso?

CHAIR SINENCI: Yeah.

UNIDENTIFIED SPEAKER: Yes.

CHAIR SINENCI: Right, right. Yeah, correct. Okay, so...

COUNCILMEMBER KING: Chair?

CHAIR SINENCI: Chair?

COUNCILMEMBER KING: I'm sorry but I have to leave and that's going to...since we had one Member leave already that's going to be the end of this meeting.

UNIDENTIFIED SPEAKER: Sorry.

CHAIR SINENCI: Okay, wait. So, we're going to defer...without objections we're going to defer the item that's listed on today's agenda, if no objections.

COUNCILMEMBERS: No objections.

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: ALL, YKS, TP)

**ACTION: DEFER PENDING FURTHER DISCUSSION.**

CHAIR SINENCI: And, Ms. Apo Takayama, anything else? Okay, with that, we wanted to mahalo everybody that came today and stay tuned for more action at the Environmental, Agriculture, Cultural Preservation Committee until next week. Mahalo, everybody. And the October 7<sup>th</sup> meeting is adjourned. Thank you. . . . (gavel) . . .

**ADJOURN: 12:04 p.m.**

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APPROVED:



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SHANE M. SINENCI, Chair  
Environmental, Agricultural, and Cultural  
Preservation Committee

eacp:min:191007:cs

Transcribed by: Crystal Sakai

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CERTIFICATE

I, Crystal Sakai, hereby certify that 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 1<sup>st</sup> day of November, 2019, in Kahului, Hawaii



Crystal Sakai