

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: May 21, 2008
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
Conference Room 132
1151 Punchbowl Street
Honolulu, Hawaii 96813

Commissioner James Frazier called the meeting of the Commission on Water Resource Management to order at 9:01 a.m. and announced that Chair Thielen would join them shortly.

MEMBERS: Ms. Laura H. Thielen, Mr. James Frazier, Ms. Meredith Ching, Mr. Neal Fujiwara, Ms. Donna Kiyosaki

EXCUSED: Dr. Lawrence Miike, Dr. Chiyome Fukino

STAFF: Deputy Director Ken Kawahara, Robert Chong, Ed Sakoda, Roy Hardy, Ronnie Torres, Dean Uyeno

COUNSEL: Linda Chow and Randy Ishikawa, Esq.

OTHERS: Joan Kawamoto and Vernon Pico, ADA/WWS; Charlene Unoki, DLNR-Land Division; Manabu Tagomori, Oceanit; David Schulmeister, Cades Schutte; Brian Kau, DOA-ARMD; Myra Kaichi, ATG for ADC; Glenn Okamoto, DOA-ARMD; Sharon Ishikawa, US Army Corp.; Alfredo Lee, ADC; Paul Aчитoff, Earthjustice, Moses Haia, NHLC.

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

A. APPROVAL OF MINUTES

1. April 16, 2008

MOTION: Fujiwara/Kiyosaki
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Deputy Director Ken Kawahara announced that an offer was made for the vacant Hydrologist VI position. Currently, the personnel office is reviewing the paperwork and tentatively is scheduled to start work on June 16, 2008.

Budget: there is no change in status and the next Council of revenue meeting is on May 29.

Adhoc group of water professionals met for a third meeting on April 21 and planning to incorporate a good portion of their comments into the draft WRPP that should be ready for the Commission to look at for adoption no later than July.

AWUDP: The Department of Agriculture is reviewing the pre-final draft of the 3rd update to the AWUDP, prior to submitting the report to the Board of Agriculture. An extension to the contract is being sought which expires on June 30, 2008.

State Water Projects Plan: the Engineering Division is redrafting the proposed scope of work for the update to the State Water Projects Plan to work within the funds that are available. Deputy Kawahara said staff will be meeting with the consultant and Engineering Division again to finalize scope of work.

North Kona Water Protection Working Group (NKWPWG): there is no change in status. Staff attended a second meeting organized by the Kaloko-Honokohau National Historical Park regarding the anchialine ponds.

Kona Water Round Table: met on May 14 (organized by the Hawaii DWS and the US Geological Survey). Staff presented information concerning the Kona area sustainable yield updates, water use and development plan, and designation issues. This group is focusing on a much broader range of issues on West Hawaii rather than just the National Park Service.

Division of Aquatic Resources (DAR): continued stream surveys in East Maui during the first week of April as part of the process for amending the East Maui IIFS. Staff met with DAR to discuss the status of the surveys, identify any missing data gaps and status of the watershed atlas. Last month DAR completed the Watershed Atlas for the island of Maui and hopes to put it online. Deputy Kawahara explained that the Commission on Water Resource Management appropriated \$150,000 to DAR to assist with the baseline stream surveys.

On April 10, 2008, Commission staff conducted a community public information fact-gathering meeting regarding the Petitions to amend the Interim Instream Flow Standards for several East Maui streams. The deadline for written comments is June 10, 2008. Deputy Kawahara reported that very little comments were received other than what was submitted at the meeting.

Statewide stream division verifications study: the field work is finished for Maui and data is still being inputted.

Statewide Stream Channel Alteration Inventory project: the Deputy Attorney General is reviewing the contract.

Na Wai Eha Interim Instream Flow Standard (IIFS) Contested Case Hearing-Maui, Iao Ground Water Management Area high-level source water use permit applications and petition to amend interim instream flow standards of Waihee, Waiehu, Iao, and Waikapu Streams: there is no change in status.

Kukui (Molokai) Contested Case Status: Deputy Kawahara said that the Intervenor's memoranda was received on May 2nd and awaits the applicant's supplemental memorandum that is due on June 2nd.

Act 238, \$4M of funding for drought mitigation projects: staff continues to execute MOAs as authorized by the Commission. Deputy Kawahara reported that, as mentioned previously, they ran into some technical issues and the staff has met with their Fiscal Office, DAGS, Budget & Fiscal and the respective Attorney General Deputies to resolve the issues. Handouts were distributed.

The Commission designated Na Wai Eha for surface water management in March 2008. A Public Notice of its decision is required by the State Water Code, and the date of the Public Notice of April 30, 2008, is the effective date of designation. Existing users of surface water have one year to apply for water use permits from the Commission. Failure to file for an existing use within the one year deadline creates a presumption of the abandonment of the use, and the user must apply for a water use permit as a new use.

East Molokai: staff met with the Army Corp of Engineers (ACOE) and non-federal partners, which includes Maui DWS, DHHL and OHA, to discuss a cost-sharing arrangement for the study on ground water recharge, which was earlier proposed by USGS to be accomplished using numerical models. Non-federal partners have sought the assistance of ACOE to conduct this study. ACOE, citing the provisions of the Economy Act, requires alternative proposals from commercial enterprises that could match USGS' scope of work. However, some non-federal partners have expressed apprehension of a non-USGS led study, hinting a possible withdrawal from the partnership. Deputy Kawahara is not sure if this study will move forward before CWRM funds lapse on June 30. As a contingency, other studies that would benefit the Commission other than that on Molokai are being looked at in this regard.

Presentations: future presentations are being scheduled and hope to have at least one per Commission meeting.

Outreach Efforts:

- 5/13-5/15 Survey Quarterly Monitoring Wells on Big Island
- 5/14 Lorman Seminar: Integrating Water Law and Land Use Planning in Hawaii – staff presentation
- 5/14 Keiki Water Fest at Kalihi Elementary School
- 5/14 North Kona Water Protection Working Group – staff presentation
- 5/20 Stream/Riparian Workshop – staff presentation (handout distributed)
- 5/21 DBEDT Bioenergy Master Plan Kickoff Meeting: Water Resources Status and Availability – staff presentation
- 5/22 ASCE Meeting - staff presentation
- Week of 6/9: AWWA National Conference – Deputy Director to travel
- 6/18 BOR Briefing: Bureau of Reclamation
- Week of 6/23: Staff will be assisting the National Drought Mitigation Center with workshops on Maui and the Big Island
- Mural Elevator Mural and Audio
- Website Deputy Kawahara showed the new look to the website using quick links

Commissioner Frazier commended Deputy Kawahara and his staff on the great work being done on outreach programs with focus on water.

C. STREAM PROTECTION AND MANAGEMENT

1. Request to Enter Into a Contract for Professional Services to Assess Method for Measuring Diverted Streamflow

Presentation by: Dean Uyeno

RECOMMENDATION:

Staff recommends that the Commission authorize the Chairperson to enter into a contract for professional services to inventory and assess various methods for measuring diverted streamflow. The terms of this contact will be subject to the approval of the Chairperson and the Department's Deputy Attorney General. Contract execution will be done in accordance with Chapter 103D, HRS, and Chapter 3-122, Hawaii Administrative Rules.

DISCUSSION:

Commissioner Kiyosaki questioned whether this methodology will be developed into a standard and the Commission would require all diverters to use and will this study be implemented for Na Wai Eha.

Mr. Uyeno stated that water users are required to report their water use in water management areas. There isn't 100% compliance for ground water and surface water could be a lot harder however we would like to be able to recommend different methodologies to the users for measuring. Because there are such a wide range of diversion types (from hand-built rock walls, unlined ditches, lined ditches, auwai, PVC pipes) setting a standard is difficult so we would like to get the best information possible.

MOTION: Ching/Fujiwara
To approve submittal.
UNANIMOUSLY APPROVED.

Randy Ishikawa – recused himself from the next item.
Linda Chow - sat in.
Chair Thielen arrived during C2 presentation .

2. Request for Time Extension for Variable Water Use Permit for System Loss (WUP No. 851), for Waiahole Ditch Irrigation System, Oahu, TMKs: (1) 9-2-001:001 and 9-4-003:001

Presentation by: Robert Chong

RECOMMENDATION:

That the Commission:

- 1) Cancel ADC's Water Use Permit No. 851 for 2.03 mgd for system loss, and
- 2) Approve the issuance of a variable water use permit (WUP No. 852) for 2.00 million gallons per day for system loss. WUP No. 852 will be modified and decreased to

1.42 mgd no later than June 2010, or earlier if the reservoir linings are completed. ADC will report on the progress of the reservoir lining projects according to schedules and details to be determined by the Commission staff.

WUP No. 852 and subsequent modification to 1.42 mgd applies when the windward adjustment gate is open and some windward water is being diverted leeward. When the adjustment gate is closed and all windward tunnel waters are being diverted into windward streams, the water use permit will be for the Adit 8 reading (where the tunnel emerges into the ditch) minus metered water use.

WUP No. 852 is also subject to the standard conditions of a water use permit and any other applicable terms and conditions in the Commission's July 13, 2006, Decision and Order not directly addressed in this action.

DISCUSSION:

Chair Thielen expressed concern about the lack of urgency between sister agencies to obtain the funding and whether there will be support from the State to provide the required funding to match to the federal portion of this project so it can move forward. Chair Thielen explained that the intent of the recommendation is to send a message to the applicant and to the funding agencies at the State level, that this is an important project from the Commission's perspective. The applicant can seek additional extensions, but at this point it's a matter of being able to secure the State's commitment to move this project forward.

Commissioner Kiyosaki added that it is to make them accountable to a deadline and asked why additional funding wasn't secured this year instead of waiting until 2009.

Mr. Alfredo Lee explained that after the Corps of Engineers completed the design, the cost estimate was finished late last year. By that time they realized that they didn't have the matching funds, and they had missed the deadline to request additional money in the CIP budget. Mr. Lee stated that DOA and ADC are working together to put the request in next year, that hopefully it will pass, and that the Governor will release the money. The earliest they could get the money is July or August 2009. Mr. Lee feels that 2010 is not realistic. If they get the money, it would be in the fall of 2009 and to advertise and finish the job in 2010 is not realistic.

Commissioner Fujiwara asked if Corps has the money encumbered. Mr. Lee said yes, they have the money. Sharon Ishikawa, project manager of the Corps of Engineers, explained that there are sufficient federal funds based on their current cost estimate to proceed with their cost sharing match for Waihole. The Corps is waiting for the State's match before they can advertise for construction.

Chair Thielen asked if this was a 65-35% cost sharing with the Army Corps being responsible for 65% of the cost and inquired whether the State had funds when it was estimated for the \$2 to \$3 million for the cost sharing. Mr. Lee said that when they started in 2001 he believed that the estimate was \$2 million.

Chair Thielen asked if Mr. Lee knew how much additional funding is needed from the State to meet this cost share.

Brian Kau said if the State share is somewhere north of \$2 million, it would be another \$1.2-\$1.4 million that will be needed.

Chair Thielen asked what would happen if funds were not appropriated. Mr. Lee said then they would ask again because this is a big chunk of CIP money, and they do not have this kind of funding.

Commissioner Fujiwara said he noticed that the ditch is now lined, and asked if this was the ditch that was unlined. The Corps had recommended using a pipe line to replace the unlined ditch. Mr. Lee explained said the ditch was a settling ditch, along side of the lined ditch. It was used previously to settle solids before it went to their ponds. Mr. Lee said his crew figured out a way to bypass the unlined ditch and supply the users' pond directly from the lined ditch and eliminated the unlined section. That section is no longer needed, so there is no need to line it.

Commissioner Frazier asked if there has been any monitoring in the leakage. Mr. Lee said they were unable to do that. Mr. Lee said their results were not accurate and consistent using the standard stream flow measurement technique.

Chair Thielen asked if they will be able to come back to discuss the alternatives for this project in the event that full funding is not released or not provided by the State. Mr. Lee said they had discussed whether they should do one reservoir instead of waiting for funding for two, but the right thing to do is to do both.

Chair Thielen asked whether the right thing would be to do nothing pending getting full funding, or to move forward with a portion of a project and seek funding to do the remainder. Mr. Lee said he's not sure if it would be much faster to do one. Mr. Lee stated that there could possibly be enough funding to advertise and maybe finish the project in 2010. But if they waited another year they could do both at the same time and get both lined. Chair Thielen agreed that it would be cost efficient, but added that there should be a contingency plan in the event the funding is not awarded next year. Mr. Lee said then they probably would go ahead and do one.

Commissioner Ching was not familiar with ADC sources of revenue and asked if DOA or ADC could shift around funding to get this work done instead of waiting for next legislative session. Mr. Lee explained that ADC is a state agency and gets special funds from lease rents, and recoups money by charging people for water use. Mr. Lee said that DOA handles the CIP projects for ADC.

Chair Thielen asked if full funding was available to go forward with both reservoirs, wouldn't it be staged sequentially because they will need to continue to hold the water. Ms. Ishikawa said these reservoirs are physically separated across the street and could have separate work areas.

Commissioner Frazier pointed out that the location of 225 is right off Kunia Road and inquired whether it should be fenced. Mr. Lee agreed that they might have to consider that. Ms. Ishikawa said it is not a part of the project now but it can be added.

PUBLIC TESTIMONY:

Paul Achitoff stated that he represents the windward parties in the Waihole ditch contested case process and that the issue of waste from the ditch is not a new issue. Mr. Achitoff asked why the

discussion regarding not being able to finish this project was taking place just two weeks before its completion date of June 2008.

Chair Thielen's concern was to grant an extension without impressing upon the applicant and the State funding agency the urgency of the project and the need to see some progress being made. There was no assurance to the Commission that by just waiting and going back to the legislature next year will result in the project moving forward.

Commissioner Kiyosaki was not comfortable that all options have been explored and would like the applicant to come back with information on whether doing one reservoir is possible. Chair Thielen asked Mr. Lee how long it would take to prepare alternative ways to proceed with the funding that they have now and the next legislative session. Mr. Lee consulted with Ms. Ishikawa and responded that he needed three months. Ms. Ishikawa must consult with their contracting people and attorneys to determine whether there is enough funding to complete one reservoir.

Commissioner Frazier was not comfortable in accepting the applicant's position that by shifting water from one ditch to another that water loss would be reduced without any monitoring to quantify the amount of water loss.

Chair Thielen summarized that first, rather than granting an extension, require the applicant to return in three months and provide details on their contingency plan which would allow them to move forward with some improvements with the funding in hand, and what they would do to seek additional funding for the full project and second, explain how they are quantifying savings in water system loss by switching from the unlined ditch to the lined ditch.

Linda Chow confirmed that the Commission could give the applicant extra time to come back with measurements for system loss and change the permit terms for water system loss from 2.03 mgd to 2.0 mgd.

Chair Thielen asked if the applicant could complete quantifying the amount of water that's been conserved by the August meeting. Mr. Lee explained that doing stream flow measurement is very difficult, and they have tried to do that. They were using AA meters on the ditch, a standard method taught to them by USGS, and had very different results. Mr. Lee felt that it was not accurate enough to measure minute changes. Mr. Lee said theoretically, based on square area and the assumption that the material in the lined ditch is similar to the reservoir; it would leak the same rate. Referring to the 1,000 feet of unlined ditch, Mr. Lee stated that the right thing to do if it's not needed is to eliminate it rather than piping it.

Chair Thielen said that the application indicated that the system loss would be reduced by 0.03 mgd by taking this action in the ditch, so someone had to come up with the quantification of the system loss to come up with the 0.03. Mr. Lee stated that it wasn't from him. Chair Thielen said that the figure would need to be verified or a better estimate of what the savings would be.

AMENDED RECOMMENDATION:

- 1) Extend the existing permit to the Commission's meeting in August and direct the applicant to return, and

- 2) Provide alternative plans to move forward with a reduction of the system loss with the funding in hand and plans to seek additional funding in the subsequent year, and
- 3) Provide some quantification of the water savings by eliminating the unlined ditch.

MOTION: Kiyosaki/Ching
To approve submittal as amended.
UNANIMOUSLY APPROVED

Mr. Achitoff stated that he did not feel that it was appropriate procedurally for the permit to be modified in the way that it was being done by just putting it on the agenda. Mr. Achitoff felt that all the parties to the contested case have an interest in this matter and that as part of the contested case proceeding, so it seemed that procedurally, it should have been brought to the Commission with more notice.

Chair Thielen said that Mr. Achitoff's comments will be taken under advisement, and that any action regarding the hearing that needs to be discussed with counsel for the contested case parties will be put on next month's agenda.

D. NON-ACTION ITEMS

1. Status on the Land Board Contested Case hearing on the East Maui Irrigation System

Presentation by: Charlene Unoki in place of Morris Atta

Deputy Kawahara said the Land Division was asked to provide a briefing to provide information on what is being done on the Land Board side for the commissioners to understand what could ultimately be coming before the Commission for decision making.

Charlene Unoki gave a brief background on the water licenses.

In 1938, the government issued four water licenses to take government waters from East Maui watershed. Over the years this relationship continued until the water licenses started to expire in 1972, at which time the Department put them on 19 lot irrevocable permits which had to be renewed annually by the Land Board.

Linda Chow added that the initial petition was filed because A&B was in the process that a lease be issued for the four areas in the watershed that was previously been on the license. The idea was to let the RPs all end and it would be consolidated under one license. A contested case was held on this issue and went up on appeal. The judge told the Land Board that they could not issue a lease or license for water that are in excess that the stream requires under an IIFS, until you have an IIFS (you won't know what is excess). The petition for amending the IIFS was already pending before the Water Commission, the judge and board agreed that the Board would move forward on the long term dispositions once the amended IIFS were issued. This is where the Water Commission process in doing these amended IIFS comes into play in the Board's case. The long-term disposition is on hold until the Water Commission does its process.

2. Introduction to Amending Interim Instream Flow Standards

Presentation by: Dean Uyeno

Dean Uyeno shared a power point on this item. Hardcopy was distributed and made a part of record.

PUBLIC COMMENTS:

Moses Haia said he wanted to clarify how the streams were picked that USGS studied. His clients use all of the streams and intend to continue to use those streams for traditional and customary practices and other native Hawaiian rights. It was USGS' evaluation that those were a representative sampling of the rest of the streams in that hydrologic unit in the area. Those streams best represented the rest of all the streams that were petitioned.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

1. June 18, 2008
2. July 16, 2008

MOTION to Adjourn: Frazier/Ching

The meeting was adjourned at 11:25 a.m.

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director