

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: July 16, 2008
TIME: 9:00 a.m.
PLACE: Kalanimoku Building
Conference Room 132

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 9:04 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Laura Thielen, Ms. Meredith Ching, Ms. Donna Kiyosaki, Mr. James Frazier, Mr. Neal Fujiwara, Dr. Chiyome Fukino, Dr. Lawrence Miike

STAFF: Deputy Director Ken Kawahara, Kathleen Oshiro, Ed Sakoda, Robert Chong, Lenore Nakama, Neal Fujii, Jeremy Kimura, Charley Ice, Chui Cheng

COUNSEL: Colin Lau, Esq.

OTHERS: Gordon Tribble and Steven Gingerich, USGS; Susan Tius, Alan Murakami, Dan Polhemus, DAR

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. June 18, 2008

MOTION: (Frazier/Miike)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Deputy Director Ken Kawahara reported that the Water Commission is looking at what cuts would need to be made on the budget. The Legislature imposed a 4% reduction across the board for all Departments and in addition, the Administration asked that we identify items for a 4% restriction.

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Act 238, \$4M Funding for Drought Mitigation Projects: the deadline for encumbering Act 238 funds was June 30, 2008. Staff will be giving a briefing on the projects and status - Item D-2 on the agenda. Deputy Kawahara thanked the Planning Branch, especially staff Neal Fujii, for their work. Deputy Kawahara announced that he just received a mahalo letter from the Kohala Group working on the Kohala ditch.

Honolulu Advertiser headline article: last Friday's article focused on "new" technologies for stormwater management in Hawaii. The article discussed the use of permeable pavement to prevent pooling and limit runoff. At the same time, pervious concrete lets the water to seep through to recharge underground aquifers. CWRM is partnering in a stormwater reclamation and reuse study with the U.S. Bureau of Reclamation to encourage the use of stormwater as an alternative water source and to augment our natural supplies. Deputy Kawahara is excited that this under-utilized resource is gaining attention and acceptance.

Following three meetings with an adhoc group of water professionals, staff refined proposed sustainable yield estimates and attached confidence rankings to qualify the reliability of the estimates. The sustainable yield estimates are incorporated in the updated WRPP, which will be presented to CWRM for adoption at the August meeting. Copies of the updated WRPP were distributed so the Commissioners would have time to review the final document before next month.

During last month's meeting, the Commission authorized staff to enter in a partnership and cost-sharing agreement with the Army Corps of Engineers to update the Rainfall Atlas of Hawaii (1986). We were able to execute an agreement prior to the end of the fiscal year.

North Kona Water Protection Working Group (NKWPWG): staff will be attending a third meeting organized by the Kaloko-Honokohau National Historic Park on July 23, which will focus on the park's actual biological concerns and constraints regarding their anchialine ponds. This is in response to the possible impact from increasing ground water withdrawals in the areas above the Kaloko National Historical Park, and mitigative actions for the anchialine ponds in the park.

In addition to the North Kona Water Protection Working Group (NKWPWG), we will be attending the second Kona Water Round Table meeting on July 23rd that is being organized by the Hawaii DWS. In the first round table meeting, 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, some of which overlap with the NKWPWG.

Draft Interim Instream Flow Standard Assessment Reports for Hanehoi, Honopou, Piinaau, Waiokamilo, and Wailuanui hydrologic units: Deputy Kawahara mentioned that the deadline for written comments was on June 10, 2008. Numerous comments were received from interested members of the public, along with a substantial amount of comments and documentation from Native Hawaiian Legal Corporation and Hawaiian Commercial & Sugar Company (HC&S). HC&S, specifically, has indicated that they intend to prepare a supplemental submission focused on economic impacts. We have asked that they submit the additional information by July 25, 2008.

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Staff has forwarded copies of the report and related comments to Dr. Pearl Imada Iboshi at the Department of Business, Economic Development and Tourism for review and comment by August 1, 2008, specifically focusing on the economic assessment portions of the report.

The Division of Aquatic Resources submitted their reports on the five hydrologic units. They will be presenting at the next Commission meeting.

Statewide Stream Diversion Verification Study: field work completed for Maui and delivered data to staff.

Statewide Stream Channel Alteration Inventory project: contract has been fully executed. A project kick-off meeting was held this week.

Inventory and Assessment of Methods for Measuring Diverted Streamflow: Deputy AG has reviewed the draft contract and recommended some revisions. We have sent them back to the contractor for their review.

Na Wai Eha Interim Instream Flow Standard (IIFS) Contested Case – Maui: a scheduling conference was held on July 9, 2008. Parties are to file their Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders by the close of business on September 26, 2008. Dr. Miike reported that he will then start to write his decision, will submit it to the Attorney General and it will go to the Commission.

The Commission designated Na Wai Eha for surface water management in March 2008. A Public Notice was published on April 30, 2008, which allows existing users of surface water, one year to apply (deadline is April 30, 2009) 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.

In addition to updating the existing use water use permit application for surface water that was presented to the Commission at its April 16 meeting, staff is readying the new use water use permit applications for both surface and ground water. It should be posted on the Water Commission website by the end of this week. These future use requests may affect the Commission's decisions regarding existing uses and setting the interim instream flow standards.

Molokai Water Resources Study: it is our understanding that USGS, DHHL, OHA and the Maui DWS were able to execute an agreement to conduct a four year study. Although CWRM is not a partner, we are interested in this numerical modeling study and have offered in-kind services.

Outreach

Week of June 23	Staff assisted the National Drought Mitigation Center with workshops on Maui and the Big Island
July 24	National Conference of State Legislators – Representative Clift Tsuji will be doing a presentation on drought and participating on a panel discussion. Staff briefed him in preparation of his presentation

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July 10	Molokai (Maui County WUDP) staff presented the updated sustainable yields and IFS methodology to the Molokai Water Advisory Committee in the context of the final draft of the updated Water Resource Protection Plan.
July 25	Lanai Water Advisory Council
August 2	Staff participating at the 20 th Anniversary of the Halawa Xeriscape Garden for the Honolulu Board of Water Supply
August 20	Staff will be presenting the final draft of Water Resource Protection Plan at the Lanai Planning Commission meeting
October 29-31	Staff will be presenting the Water Resource Protection Plan at the Hawaii Water Works Association Conference in Maui

Commissioner Frazier asked if the legislators are informed of meetings (such as sustainable yields) and felt that there should be more information out there. Deputy Kawahara said that most of the time staff are invited and do not know who is on the invitation list (for meetings not organized by CWRM staff). Community meetings notices are sent to the senators, representatives and council members of the district and also those sit as chair and vice chair of the committees that CWRM hosts.

Commissioner Kiyosaki inquired on the comments for the IIFS June 10 deadline and requested the info ahead of time. Kawahara said they will try to schedule a site visit for the Commission. Chair Thielen said the staff submittal would need to address the recommendation, the process followed, the comments received and responses. There will be materials and if Commissioners have specific questions, Chair Thielen encouraged them to raise them so they have the opportunity for staff to provide that information at the September meeting.

C. STREAM PROTECTION AND MANAGEMENT

1. **Application for an After-the-Fact Stream Diversion Works Permit (SDWP.1904.8) and Amendment of the Interim Instream Flow Standard for Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052**

Presentation of submittal: Robert Chong

RECOMMENDATION:

1. That the Commission:

Stream Diversion Works Permit (SDWP)

1. Find the applicant in violation of Hawaii Revised Statutes §174C-71(3)(A) for installing a one-half horsepower submersible pump in Keanuiomano Stream without a Stream Diversion Works Permit (SDWP) from the Commission.
2. Impose a fine on the applicant of \$200.00 following the Commission's Civil Penalty Guideline (G01-01) based on a first time, non-repeat violation for one incident with

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mitigative components.

3. Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to \$5,000 for each day of violation.
4. Approve an After-the Fact Stream Diversion Works Permit for a submersible pump in Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052. The permit shall be subject to the Commission's Standard Conditions in Exhibit 8 (Standard Conditions 4 to 8 do not apply to this permit).

Petition to Amend the Interim Instream Flow Standard (PAIIFS)

5. Approve the applicant's petition to amend the interim instream flow standard for a stream diversion at Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052.
6. Amend the Interim Instream Flow Standard for all streams in Hawaii, as adopted by the Commission on June 15, 1988, to include a new interim instream flow standard for Keanuiomano Stream, Kamuela, Hawaii, TMK: (3) 6-2-011:052.
7. Allow the applicant to divert up to 15,000 gallons per day, at the pumping rate of 1,000 gallons per hour, for irrigation purposes, from the existing location of the intake. The amendment of the interim instream flow standard shall be subject to the conditions for interim instream flow standard amendments in Exhibit 9.

Commissioner Muike referred to the amendment to the PAIIFS and questioned that since the stream flow is so variable and the small amount of water that will be withdrawn is small compared to the average streamflow, wouldn't the provision in the Code for significant change apply?

Ed Sakoda responded that the location of the pump needed to be documented because it makes a difference where the pump location is in relation to the stream which is dry most of the time, and when there is enough water in the stream to be pumped. If the pump is moved further down into the stream, the location and condition change and possibly more water could be withdrawn.

The stream diversion permit is site specific and the pump location is part of that permit. However, the pump can be easily moved so its current location must be documented.

Chair Thielen commented that the Department moved forward several legislative bills this year to increase the penalties for natural resource violations. Because this law had already been changed earlier with fines up to \$5,000 per day for the Commission, the Department did not make a recommendation to amend this. This staff submittal reflects the policy guideline that the Commission adopted on penalties, when the maximum fines were \$1,000 per day, and she did not feel it was fair to change our policy guideline midstream, but Chair Thielen did ask staff to revisit the policy guideline and determine if perhaps the policy guideline should be amended.

The applicant's spouse, Susan Tius, introduced herself and was available for questions.

MOTION: (Frazier/Fujiwara)

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To approve the submittal.
UNANIMOUSLY APPROVED.

**2. Application for a Stream Channel Alteration Permit (SCAP.1920.3)
Construction of a New 18-inch Diameter Drain Line and Related Drainage
Improvements Manoa Stream, Manoa, Oahu, TMK: (1) 2-9-029:056**

Presentation of submittal: Robert Chong

RECOMMENDATION:

That the Commission approves a Stream Channel Alteration Permit to construct a new 18-inch diameter drain line and related drainage improvements in Manoa Stream, Manoa, Oahu, TMK: (1) 2-9-029:056. The permit shall have a term of two (2) years subject to the Commission's standard permit conditions in Exhibit 5.

Commissioner Fukino stepped out and did not vote on this submittal.

MOTION: (Fujiwara/Miike)
To approve the submittal.
UNANIMOUSLY APPROVED.

**3. Application for an After-the-Fact Stream Diversion Works Permit
(SDWP.1873.6)
For a Four-Inch Diameter PVC Pipe in Niulii Stream, North Kohala, Hawaii,
TMK: (3) 5-2-008:001**

Presentation of submittal: Robert Chong

RECOMMENDATION:

That the Commission:

1. Approve an After-the-Fact Stream Diversion Works Permit for a four-inch diameter PVC pipe to replace a storm-damaged auwai in Niulii Stream, North Kohala, Hawaii, TMK: (3) 5-2-008:001. The permit shall be subject to the Commission's Standard Conditions in Exhibit 5 (Standard Conditions 4 to 8 do not apply to this permit).
2. Allow the applicant to divert water from Niulii Stream via a four-inch diameter PVC pipe for irrigation purposes. The interim instream flow standard for Niulii Stream does not need to be amended because the applicant is diverting less water

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presently via the four-inch diameter pipe from Niulii Stream than via the auwai previously.

Commissioner Fukino returned and voted on this submittal.

MOTION: (Frazier/Miike)
To approve the submittal.
UNANIMOUSLY APPROVED.

D. NON-ACTION ITEMS

1. Understanding the Effect of Streamflow Diversion on Habitat for Native Stream Animals in East Maui

Presentation by: Gordon Tribble

Gordon Tribble, Director of the USGS Water Resource office in Honolulu, presented a prelude to some of the issues to be addressed in North East Maui. Mr. Tribble's power point dealt with the use of surface water's many roles, a range of functions such as agriculture and domestic supply, as well as cultural practices and habitat protection for native species.

Copies of the power point were distributed and made a part of this record.

2. Briefing on the Status and Details for Act 238 funds

Presentation by: Neal Fujii

Neal Fujii updated the project status on the Drought Mitigation Projects funded under Act 238, SLH 2007. Most of the funding will be encumbered however, for a number of reasons approximately \$18,000 will lapse.

Mr. Fujii added information on the drought status by the National Weather Service which started last month. Prior to this, 'drought' was never used but referred to as dry conditions, low rainfall. This drought information statement summarizes rainfall and impacts on the different islands and forms the basis for the U.S. Drought Monitor. Mr. Fujii referred to the U.S. Seasonal Drought Outlook and reported that it doesn't look good for Hawaii. Up until September, it will either persist or intensify in the drier areas.

Copies were distributed and are made a part of this record.

Mr. Fujii mentioned that drought workshops were conducted on Maui and the Big Island. The workshops were put on by the National Drought Mitigation Center, which presented some of the

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tools available for drought assessment. Speakers included representatives from the University of Hawaii, the Weather Service, and ranchers who shared their experiences.

Deputy Kawahara added that the National Drought Mitigation Center workshops were at no cost to the Commission. Deputy Kawahara said he just received a report from State Parks on some of the restroom facilities that rely on water from streams in Maui are at very low levels and might bring in portable toilets. This confirms the dry conditions all over the state are affecting some of DLNR's operations.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

1. August 20, 2008
2. September 17, 2008

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director