

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

Chairperson Timothy E. Johns called the meeting of the Commission on Water Resource Management to order at 9:05 a.m.

The following were in attendance:

MEMBERS: Mr. Timothy E. Johns
Mr. Richard Cox
Mr. David Nobriga
Mr. Herbert Richards, Jr.
Dr. Bruce Anderson
Mr. Robert Girald

STAFF: Mr. Edwin Sakoda
Mr. Roy Hardy
Ms. Lenore Nakama
Mr. David Higa
Mr. Charley Ice
Mr. Eric Hirano
Mr. Dean Nakano
Ms. Faith Ching

COUNSEL: Ms. Linnel Nishioka

OTHERS:

Benjamin Kudo	Kapua Sproat	George Hudes	Mike Miyahira
Manabu Tagomori	Charles Reppun	Felix Limtiaco	

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

1. Minutes of the November 6 and 18, 1998.

Typographical corrections to the November 6, 1998 minutes were on page 4, first paragraph of the testimonies to correct the word “comission” to “commission”; on page 5, the last line, delete the words “which was”; and on page 6 under Colette Machado’s testimony, second to the last sentence, take off the word “the” between words “that” and “she”.

MOTION: (RICHARDS/COX)

To approve the November 6 minutes as corrected.

UNANIMOUSLY APPROVED AS CORRECTED.

Minutes to the November 18, 1998 meeting.

**MOTION: (COX/RICHARDS)
UNANIMOUSLY APPROVED.**

2. Old Business/Announcements

Commissioner Cox welcomed two new members to the Commission, Chairperson Timothy E. Johns of the Department of Land and Natural Resources and Dr. Bruce S. Anderson of the Department of Health.

3. City and County of Honolulu, Department of Design and Construction, Application for a Stream Channel Alteration Permit (SCAP-OA-268), Upgrade of a Drain Line, Uhilehua Street, Kamooalii Stream, Kaneohe, Oahu (TMK 4-5-85:49)

PRESENTATION OF SUBMITTAL: Mr. Roy Hardy

STAFF RECOMMENDATION:

That the Commission approve a stream channel alteration permit for a drainage outlet structure and apron at Kamooalii Stream (TMK 4-5-85:49), Kaneohe, Oahu. The permit shall be valid for two (2) years subject to our standard stream channel alteration permit conditions in Exhibit 4 and the following special condition:

"Prior to construction the applicant shall submit written documentation from the Department of Health indicating compliance with Sections 401 and 402 of the Federal Clean Water Act."

TESTIMONY BY APPLICANT: NONE

TESTIMONIES: NONE

**MOTION: (NOBRIGA/GIRALD)
To approve the recommendation.**

UNANIMOUSLY APPROVED.

5. City and County of Honolulu, Department of Design and Construction Application, for a Stream Channel Alteration Permit (SCAP-OA-271), Construction of Cut-Off Wall, Laimi Street Bridge, Nuuanu Stream, Honolulu, Oahu (TMK 2-2-33:11, 13, 73; 2-2-35:27; 2-3-36:61)

PRESENTATION OF SUBMITTAL: Mr. Roy Hardy

STAFF RECOMMENDATION:

That the Commission approve a stream channel alteration permit for construction of a cut-off wall and repair of spalling at the Laimi Street Bridge, Nuuanu Stream (TMK 2-2-33:11, 13, 73; 2-2-35:27, 2-3-36:61), Honolulu, Oahu. The permit shall be valid for two (2) years subject to our standard stream channel alteration permit conditions in Exhibit 4.

TESTIMONY BY APPLICANT: NONE

TESTIMONIES: NONE

MOTION: (GIRALD/NOBRIGA)

To approve the recommendation.

UNANIMOUSLY APPROVED.

4. State of Hawaii, Department of Transportation, Application for a Stream Channel Alteration Permit (SCAP-OA-269), Kalakaua Avenue Bridge Widening, Ala Wai Canal, Honolulu, Oahu (TMK 2-3-34)

PRESENTATION OF SUBMITTAL: Mr. Roy Hardy

STAFF RECOMMENDATION:

That the Commission approve a stream channel alteration permit for a pedestrian bridge at Ala Wai Canal (TMK 2-3-34), Honolulu, Oahu. The permit shall be valid for two (2) years subject to our standard stream channel alteration permit conditions in Exhibit 4 and the following special conditions:

- a. If the project includes the disposal of dredged spoils, the applicant shall submit written documentation from the Department of Health indicating the disposal of the spoils have been authorized by the Department of Health.
- b. Prior to construction, the applicant shall submit written documentation from the Department of Health indicating compliance with Sections 401 and 402 of the Federal Clean Water Act.
- c. During construction of the pedestrian bridge, the applicant shall provide at least one span that is free and clear for navigation. If one span cannot be left free and clear, notice must be posted on the bridge and given to canoe clubs using the Ala Wai at least six weeks prior to closure. Closed channels shall be appropriately posted.

TESTIMONY BY APPLICANT: NONE

TESTIMONIES:

Mr. Mike Miyahira from Akinaka and Associates prepared the application on behalf of the Department of Transportation. In answer to Commissioner Cox's question, the existing sidewalk will remain in place. The project is not expected to affect the bridge. The second question relating to the canoe racing or the recreation activities, Mr. Miyahira stated that they have been in contact with Hawaii Canoe Racing Association as well as the various canoe racing clubs, yachting clubs, etc. Approximately 73 organizations were contacted as a part of the EA that was processed. As for the timing of the project with respect to the dredging, Mr. Miyahira's understanding was that it was to take place in late 1999, commencing around that period. He stated that the project currently does not have funding so it is undetermined as to exactly when this project will start. He has coordinated, when applicable, with the dredging project and will stay in touch with them whenever the project schedule gets settled. In clarifying the dredged spoils, since the application was submitted, sediment testing has been performed on the material within the area of the project. He stated that they plan to put the material in the Nanakuli Waste Landfill. The results have returned and they have verbal approval that the material is allowable in the landfill.

**MOTION: (NOBRIGA/RICHARDS)
To approve the recommendation.**

UNANIMOUSLY APPROVED.

6. **Coral Creek Golf, Inc., AFTER-THE-FACT APPLICATION FOR WELL CONSTRUCTION/PUMP INSTALLATION AND WATER USE PERMIT, Coral Creek Lake No. 1, Well No. 2002-19 (WUP No. 503), Future Backup Irrigation Use**

APPLICATION FOR WELL CONSTRUCTION/PUMP INSTALLATION AND WATER USE PERMIT, Coral Creek Lake No. 10, Well No. 2001-14 (WUP No. 508), Future Backup Irrigation Use

REVOCATION/MODIFICATION OF WATER USE PERMITS, Coral Creek No. 1, Well No. 2002-15 (WUP No. 437), Coral Creek Nos. 2 & 3, Well Nos. 2002-17 & 18 (WUP No. 496), Coral Creek No. 5, Well No. 1902-05 (WUP No. 498), Puuloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

STAFF RECOMMENDATION:

Staff recommended deferral at the request of the applicant because applicant was out of town.

MOTION: (NOBRIGA/RICHARDS)

UNANIMOUSLY APPROVED TO DEFER.

7. **Kamehameha Schools Bernice Pauahi Bishop Estate, APPLICATION FOR A WATER USE PERMIT (WUP No. 474), Waiawa Development Tunnel (Well No. 2657-05), TMK 9-6-05 & 06, Existing/Future Irrigation and Dust Control Use for 4.2 mgd, Waipahu-Waiawa Ground Water Management Area, Oahu**

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

STAFF RECOMMENDATION:

1. Find that Waiahole-Waikane Community Association, Hakipuu Ohana, Kahaluu Neighborhood Board, and Ka Lahui Hawaii have standing to object to the subject permit application.
2. Direct staff to initiate a public hearing proceeding on this application.

TESTIMONY BY APPLICANT:

Mr. Benjamin Kudo, KSBE, clarified that they were not applying for Windward stream water but that they were applying for the water that is on KSBE land which is downstream from the Windward stream sources. He believes that the Commission has its own authority to hold a public hearing.

TESTIMONIES:

Kapua Sproat, Attorney for Earthjustice Legal Defense Fund representing Waiahole-Waikane Community Association (WWCA), stated that her clients have standing to object to the application because both the entities that they represent, as well as the individuals within those organizations, are directly and immediately affected by the proposed use. She also stated that any water that is allocated to KSBE from the ditch, reduces the flow in the Windward streams. Because of that, it affects the availability of water for legal and existing Windward uses. She also stated that WWCA seeks a public hearing on any water use application before the Commission. She also feels that this permit is part of the Waiahole Ditch Contested Case Hearing in the sense that it renews an application that was initially submitted in the contested case and for that reason feels that this permit application is a conflict of interest for Commissioners that recused themselves.

Charlie Reppun stated that information should be gathered first before going into a public hearing and if they feel that information is not complete, then they would have to ask for a contested case before the end of the public hearing. To avoid this we should figure out how to implement an integrated water use plan. Feels that it's the Commission's duty and the Commission has the means to be able to do that.

Felix Limtiaco made clarification on the Integrated Water Plan (of the City) saying that the contract for the consultants to undertake this project is being processed. Public participation program is being developed. He is hoping the process would be ready sometime in

February. The 18 to 24-months time frame will complete the Oahu Water Management Plan.

George Hudes stated that they tried to estimate the cost of the Waiahole Ditch Contested Case. He said that this was difficult because they were not able to get information from all parties. Based on cost for Earthjustice, an estimate for spending was a minimum of \$10 million and probably close to \$20 million. That does not include any of the State's time.

EXECUTIVE SESSION:

Chairperson Johns called an Executive Session at 10:31 am to confer with counsel on matters relating to public hearings and issues of recusal.

Following the executive session, the Chairperson asked counsel to make a statement regarding the issue of recusal.

Deputy Attorney General Linnel Nishioka stated, for the record, the issue that was discussed. The question was whether any Commissioner has, given the parties involved, a conflict for which they must be recused either under the Water Code or the Ethics Code. She stated that she has advised all Commissioners, without disclosing attorney-client communications, that at this time none of the Commissioners are legally required to recuse themselves.

MOTION: (ANDERSON/NOBRIGA)

To approve all the recommendations as amended by staff.

Dr. Anderson moved that a public hearing be held on the application that was recommended by the staff and that the Chair be authorized to request for additional information from the applicant prior to the hearing. He further moved that the hearing be held with the understanding that it may be continued if necessary.

Deputy Attorney General Nishioka stated that there is an additional staff recommendation about whether the Waiahole-Waikane Community Association has standing and wasn't sure if that was to be included in the motion.

UNANIMOUSLY APPROVED STAFF RECOMMENDATIONS WITH AMENDMENTS.

8. **Kabushiki Kaisha Oban, IMPROPERLY ABANDONED WELLS, Lualualei Well 1 (Well No. 2408-08), Lualualei Golf Course Well 1 (Well No. 2508-10), Lualualei Golf Course Well 2 (Well No. 2508-11)**

VIOLATION OF WELL CONSTRUCTION PERMIT, Lualualei Well 2 (Well No. 2408-09)

**UNPERMITTED WELL CONSTRUCTION/PUMP INSTALLATION, Lualualei
Well 3 (Well No. 2408-10), TMK 8-7-9:2, Lualualei Aquifer System, Oahu**

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

STAFF RECOMMENDATION:

1. Find Kabushiki Kaisha Oban in violation of Section 3.1 of HWCPIS for improper abandonment of Well Nos. 2408-08, 2508-10, and 2508-11.
2. Find that the violations in Recommendation 1 are willful violations.
3. Refer the violations in Recommendation 1 to the Department of the Attorney General for possible legal action and remedy to prevent hazard to public health and safety and to protect the water resource from possible contamination.
4. Find Kabushiki Kaisha Oban in violation of Well Construction Permit Standard Condition 3.b. and Section 2.10(a)(4) of HWCPIS for failing to comply with the elevation survey requirement for Well No. 2408-09 .
5. Find that the violation in Recommendation 4 is a willful violation.
6. Fine the landowner \$500 per day for the violation in Recommendation 4, beginning on February 17, 1998, the date on which the first correct certified notice of the violation was sent to the permittee, to this submittal's date (337 days), for a total amount of \$168,500 (one hundred sixty-eight thousand five hundred dollars), and continue to fine the landowner \$500 per day starting January 21, 1999 until the violation is corrected.
7. Find Kabushiki Kaisha Oban in violation of Section 174C-84(a) Haw. Rev. Stat. for unpermitted well construction and pump installation for Well No. 2408-10.
8. Find that the violation in Recommendation 7 is a willful violation.
9. Fine the landowner \$500 per day for the violation in Recommendation 7, beginning on July 31, 1998, the date on which the first written notice of the violation was sent to the permittee, to this submittal's date (138 days), for a total amount of \$69,000 (sixty-nine thousand dollars), and continue to fine the landowner \$500 per day starting January 21, 1999 until the violation is corrected.
10. In the alternative to the fines in Recommendations 6 and 9, within sixty (60) days, the landowner may:
 - a. apply for permits to abandon/seal Well Nos. 2408-08, 2508-10, and 2508-11 and complete the abandonment and sealing of Well Nos. 2408-08, 2508-10, and 2508-11 in accordance with the Hawaii Well Construction and Pump Installation Standards (January, 1997); and
 - b. submit an elevation survey by a Hawaii-licensed surveyor for Well No. 2408-09; and

- c. submit an after-the-fact application for a well construction/pump installation permit for Well No. 2408-10 and submit completed Well Completion Reports Parts I and II.

TESTIMONY BY APPLICANT: None

TESTIMONIES: None

Amendments to the staff recommendations were as follows:

1. Item 6 – change 337 days to 345 days; total amount of \$168,500 to \$172,500 and January 21 to January 29.
2. Item 9 – change 138 days to 146 days; total amount of \$69,000 to \$73,000 and January 21 to January 29.

Ms. Nakama stated that the consultant called yesterday and they were able to speak to the landowner. The landowner is willing to comply and plans to be in full compliance within 30 days, although the submittal gives him 60 days. They will be working together and they seem to have every intent now to do the work.

After discussions on the fines, Chairperson Johns stated that we should make things clear as to when the fines start accruing. It could be in the last paragraph. That way the applicant will be aware of when the fine will start.

Deputy Attorney General Nishioka pointed out that the Commission is legally able to assess the fine from the first day the notice goes out. It may be a good suggestion to inform the applicants because they may think they have a grace period. Fines can be charged from the day the first notice has gone out.

Commissioner Anderson stated that the problem with waiting until the 90-day period is up is that there is no incentive to comply. The applicant will probably wait until notice is received. Having the clock start immediately would encourage work to be done on time.

Commissioner Richards stated that the letters clearly inform the applicant about the fine and when it starts.

MOTION: (NOBRIGA/ANDERSON)

To approve the recommendation as amended.

UNANIMOUSLY APPROVED AS AMENDED.

9. Other Business

Ed Sakoda started that the schedule for the year needs to be prepared.

Commissioner Girald suggested another day instead of Wednesday, if possible.

Commissioner Anderson stated that Mondays, Wednesdays, and Fridays are better days for him.

Everyone agreed that the third Friday of each month would be a convenient time to have upcoming Commission meetings, except for the month of February, which will be on February 17 (Wednesday). The following months will be on the third Friday.

Eric Hirano updated the Commissioners on legislative matters and the budget.

ADJOURNMENT: Chairperson Johns adjourned the meeting at 12:45 pm.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

EDWIN T. SAKODA
Acting Deputy Director