

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: May 16, 2001
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 9:13 a.m.

The following were in attendance:

MEMBERS: Mr. Gilbert S. Coloma-Agaran, Dr. Bruce Anderson, Mr. Robert Giraldo, Mr. Brian Nishida, Mr. David Nobriga, Mr. Herbert Richards, Jr.

STAFF: Ms. Linnel Nishioka, Mr. Roy Hardy, Mr. Ed Sakoda, Mr. Eric Hirano, Mr. Dean Nakano, Mr. Ryan Imata, Ms. Lenore Nakama, Mr. Glenn Bauer, Mr. Dean Uyeno, Ms. Faith Ching

COUNSEL: Dawn Shigezawa

OTHERS: Bert Hatton, George Hiu, Karen Piltz, Bert Kuioka, Chester Lao, Naomi Kuwaye, Gordon Tribble, Frank and Naomi Turner

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

1. Minutes of the April 18, 2001 meeting

Commissioner Richards stated that the comment he made at the April 18, 2001 meeting on Item 5 on Punahou School's submittal be added to the minutes. He clarified that if Punahou School accepts the alternative of capturing and using the lily pond overflow water that is draining into Makiki Stream then Punahou School will not be liable for the change in flow in Makiki Stream and an amendment to interim instream flow standards will not be required.

MOTION: (RICHARDS/GIRALD)
To approve the minutes as amended.
UNANIMOUSLY APPROVED AS AMENDED.

2. Old Business/Announcements by Deputy Director Linnel Nishioka

Deputy Director gave an update summary of this past legislative session. The Governor signed the existing use bill (SB 1163).

The Governor did not make appointments during this session. At this point Commissioners Girald and Nobriga have agreed to stay on until the Governor makes the appointments. It is anticipated that the Governor will make interim appointments sometime during the fourth quarter of this year.

The Commission was able to obtain new monies over the next 2 years, \$232,000. This includes 2 positions, equipment and a vehicle. Over the next biennium the Commission also received \$250,000 to do aquatic biological studies so that baseline studies for the Interim Instream Flow Standards (IIFS) can be established. This amount is in the Aquatic Resources budget because they have the manpower and expertise to carry out the program. The Commission has received continued funding out of the special land and development fund for the 2 hydrologist positions. Lastly, grants for federal funding are currently being obtained from the State Civil Defense and the Bureau of Reclamation, Washington, D.C. The Commission is anticipating obtaining approximately \$210,000 for emergency drought relief and \$50,000 to \$100,000 to start the drought planning program.

Deputy Director Nishioka stated that on May 24, she would be briefing the Land Board on Waiahole. This briefing will take place on Maui.

Commissioner Nishida stated that he was able to participate in the meeting of the drought council and complimented staff on an extremely well done presentation.

3. Waiahole Ditch Combined Contested Case Hearing, Establish a Committee to Recommend Funding Amounts for Studies and Monitoring Activities and to Coordinate and Set Up the Mechanism for the Collection, Accounting, and Distribution of Funds

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

RECOMMENDATIONS:

1. That the Commission authorizes the establishment of the Funding Committee as proposed in the submittal.
2. The Funding Committee shall make findings and recommendations guided by the Waiahole Decision and Order, Section F.9, page 10, and the Supreme Court Decision, Section III.I, pages 150 to 155.
3. The Funding Committee shall submit findings and recommendations to the Commission by August 31, 2001, or as otherwise determined by the Chairperson of the Commission.

Commissioners Nishida and Richards recused themselves from Item No. 3.

Commissioner Anderson stated that he was not sure what the scope of work is and a logical process is to first determine what needs to be done, basically scope out the work (sampling, monitoring, etc.) and address the issues. He is concerned more about the process than the funding.

Deputy Director Nishioka stated that staff is working with the Division of Aquatic Resources in establishing a scope of work and the entire budget. When this is completed, a package will be presented to the Funding Committee who will make a recommendation to the Commission. The Commission will determine and make the decision on the proper scope of work and amounts for the project.

MOTION: (NOBRIGA/GIRALD)

To approve the submittal.

UNANIMOUSLY APPROVED.

4. City and County of Honolulu, Department of Design and Construction Application for a Stream Channel Alteration Permit (SCAP-OA-322), Temporary Support Bridge to Jet Grouting Rig, Kawainui Stream, Kailua , Oahu (TMK 4-2-01:01)

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit to the City and County of Honolulu, Department of Design and Construction, for the construction of a temporary support bridge and jet grouting operation at Kawainui Stream (TMK: 4-2-01:1) Kailua, Oahu. This project is subject to our standard conditions for stream channel alteration permits in Exhibit 5.

PRESENTATION OF SUBMITTAL: Mr. Edwin Sakoda

MOTION: (NOBRIGA/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

5. Del Monte Fresh Produce (Hawaii) Inc., APPLICATION FOR A WATER USE PERMIT, Kunia Well & Basal Well (Well No. 2703-01 & 02), TMK 9-2-005:002, Future (Agricultural) Use for 1.000 mgd, Ewa-Kunia Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Mr. Roy Hardy

RECOMMENDATIONS:

Staff recommends that the Commission defer action on this application to the next regular meeting on Oahu.

Commissioner Nishida recused himself from Item No. 5.

It was moved and seconded to defer Item No. 5 to the June 20, 2001 Commission meeting.

MOTION TO DEFER: (NOBRIGA/RICHARDS)

Deferred to June 20, 2001

UNANIMOUSLY APPROVED TO DEFER.

6. Ms. Ardith Harms / Turner Drilling and Pump, AFTER-THE-FACT WELL CONSTRUCTION / PUMP INSTALLATION PERMIT APPLICATIONS, Vacationland #1 through #4 Wells (Well No. 2979-02 through -05), Kapoho, Hawaii

PRESENTATION OF SUBMITTAL: Mr. Ryan Imata

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find the applicant and driller in violation of the various rules and standards according to Exhibit 4.
- B. Impose a fine of ~~\$800~~ \$5,672 on Ardith Harms, and \$5,672 on Turner Drilling and Pump as summarized in Exhibit 4. For the violations under recommendation A.
- C. ~~Approve~~ Deny the issuance of after-the-fact Well Construction Permits for the Vacationland #1 through #4 Wells (Well Nos. 2979-02, 2979-03, 2979-04 and 2979-05). ~~after the fine is paid, subject to standard conditions in Exhibits 5 & 6, and the following special conditions:~~
 1. ~~The well should not be used for drinking water unless it is properly tested and treated.~~
 2. ~~If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.~~
- D. ~~Approve and issue~~ Deny the issuance of an after-the-fact Pump Installation Permit. ~~upon submission and acceptance of the aquifer pump test forms required in Well Construction Standard Condition 6e (Exhibit 5), subject to the Standard Pump Installation Conditions in Exhibit 6.~~
- E. ~~Approve the request for a variance of Hawaii Well Construction and Pump Installation Standards Section 2.6(d), from 3" to 2 1/2".~~

- E. Seal all four (4) wells within sixty (60) days according to the Well Construction Standards; file an abandonment application. Suspend any current, pending or future applications until the fines are paid and the applicant/driller ~~completes the permit process for these four wells~~ complies with this Commission order.

Commissioner Anderson stated that according to Department of Health regulations residents in this area would be denied permits to drill wells for drinking water that are within 1,000 feet of a cesspool. He is concerned about giving approval to use the well, even with the fine, given the potential impacts on the adjacent property owners.

Commissioner Girald is concerned about the long-term impact if the Commission imposes a fine but yet approves this permit. He felt that if drillers are licensed, they should be more responsible in obtaining the necessary permits.

Commissioner Nishida is concerned about the integrity of the wells itself and the possibility of ground-water contamination. He does not feel comfortable that these wells are properly designed and constructed ground water wells.

Mr. Frank Turner of Turner Drilling apologized for the drilling and stated that he would like to correct the problem by abandoning and sealing the wells. They are not in use at this time and not hooked up or supplying water to anyone. One of the wells has a pump with an RO filter system but is also not hooked up and not being used. He stated that he should have known better and was very sorry for the mistake.

Chair Agaran asked if there was any interest that the Commission enters into executive session to confer with legal counsel on this item.

MOTION: (RICHARDS/NOBRIGA)

At 10:17 am the Commission went into Executive Session to confer with legal counsel.

The meeting was resumed at 10:50 am.

MOTION: (RICHARDS/GIRALD)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

7. Honolulu Board of Water Supply APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT AND MODIFICATION TO WUP NO. 320, Kaluanui III Well (Well No. 3554-06), Pump Installation: 700 gpm for Municipal use, TMK 5-3-11: 009, Kaluanui Valley, Oahu

Mr. Ryan Imata of the Commission staff stated that staff is recommending deferral to the June 20, 2001 meeting in order to discuss alternative settlements with the Board of Water Supply (BWS).

Deputy Director Nishioka further said that BWS expressed interest in converting the Kaluanui III Well to a deep monitoring well as an alternative penalty. She stated that an error in the submittal resulted in a last minute notice to BWS that the well could not be converted to a monitoring well but may require substantial drilling to deepen the well and BWS may need more time to discuss the matter and it may significantly affect the cost.

Mr. Bert Kuioka of the Water Resource Planning Unit of BWS stated that staff recommendation is acceptable, but requested to the Commission to return to the BWS for further discussions.

MOTION TO DEFER: (ANDERSON/RICHARDS)

Deferred to June 20, 2001.

UNANIMOUSLY APPROVED TO DEFER

8. The Estate of James Campbell REVOCATION/MODIFICATION OF WATER USE PERMIT NO. 231 TO WUP NO. 570, Pump 12 (Well No. 4057-07), TMK 5-6-6:18, Existing/Future Agriculture Use for 0.300 mgd, Koolauloa Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Mr. Ryan Imata

AMENDED RECOMMENDATIONS:

Staff recommends that the Commission:

1. Find Campbell Estate in violation of their water use permit WUP No. 231 for overpumping their allocation.
2. Assess a fine of \$4,275 to Campbell Estate based on the violation in recommendation 1.
3. Revoke WUP No. 231.
4. Approve the issuance of Water Use Permit No. 570 to the Estate of James Campbell for the total reasonable and beneficial use of 300,000 gallons per day of brackish water for agricultural use from Pump 12 (Well No. 4057-07), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:
 - a) Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
 - b) In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

5. Have Campbell Estate report to the Commission in 60 days actions that they are taking to better monitor their water systems and a schedule for implementing the changes in their water use and identify probable overpumping.

TESTIMONIES:

Commissioner Nobriga made a strong statement to the fact that an experienced driller was lax in obtaining proper permits, Board of Water Supply (BWS) installed a pump without a permit, and Campbell Estate admitted to overpumping, and both BWS and Campbell are knowledgeable about the Water Code so there is really no excuse for their non-compliance.

TESTIMONY BY APPLICANT:

Mr. Bert Hatton of Campbell Estate admitted that a mistake was made. Mr. Hatton stated that he is fairly new to the Estate and at the time he was hired, the Estate was going through a change of staff.

MOTION: (GIRALD/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

Commissioner Richards seconded the motion for discussion purposes.

In discussion, Commissioner Anderson shared Commissioner Nobriga's frustration that these problems are continuing. He stated that he has not had the opportunity to discuss with staff the rationale behind the reduction of the fines. He feels that \$4,275 is not much of a deterrent. He is concerned about the circumstance that caused the oversight on Campbell Estate.

Commissioner Richards stated that in testimonies given today people admitted to their mistakes. He wants to make sure that the fines are an adequate amount.

Commissioner Anderson suggested what staff could pursue as part of this action would be to require Campbell Estate to return to the Commission to report on how they might better monitor their water system and thereby determine compliance with the current conditions.

Commissioner Nobriga continued by stating that the Commission is accepting too many excuses, a better monitoring system should be implemented to prevent overpumpage and the water use reporting needs to be closely monitored.

Commissioner Girald feels that all the criteria that are used as the base of the fine are reasonable to a certain point. He has a concern about having applicants come before the Commission and give explanation as to why a violation occurred. He feels the Commission can be sympathetic to a point, but responsible monitoring should be implemented. He stated that the major users of water wells understand the seriousness and the predicament that they

place on the Commission. He does not want to be a “rubber stamp Commission”. The Commission is charged with a serious responsibility that should be kept in mind.

Deputy Director Nishioka stated that one priority of the Commission is the ability to have a better enforcement program. One of the problems that have continued is the lack of staffing, which has significantly affected staff’s ability to enforce the Water Code regulations across the State, and that overpumping is occurring throughout the State. Getting the Penalty Policy in place will start a more rigorous enforcement process. Another issue the staff will be working on during the summer is an enforcement policy on how staff can better enforce these violations.

MOTION: (ANDERSON/RICHARDS)

To approve the submittal as amended.

APPROVED AS AMENDED WITH 1 OPPOSITION (NOBRIGA).

9. **Other Business**

Commissioner Richards commented on the articles that appeared in the May 2001 issue of Environment Hawaii. He would like staff to reply to the articles. He pointed out that policing is not the only job of the Commission. We are looking out after the resources. Staff’s reply should point out what the Commission is planning to do. We need to lead the way and come up with policies.

Commissioner Nishida suggested that at the next legislative session, the Commission elicit the help from the agriculture board, etc. to obtain appropriate funding so that the agriculture water plan can be developed. He feels this is an extension of being able to make policy decisions.

Commissioner Anderson suggested that we may want to develop a strategic plan. There are various policy issues such as water reclamation and other water management issues that the Commission may want to explore and encourage. One way to pursue these policies would be a strategic plan. This would not be a part of the water plan, but something the Commission can use to measure actions by.

Commissioner Nobriga expressed his dissatisfaction about experienced drillers, well known entities, and government entities not complying with the Water Code.

Commissioner Girald stated that he feels that it is important for staff to make sure that all permits are in compliance with the Water Code. He also feels that staff should monitor the water usages closely. If these things are not done, then more and more people will not be in compliance with the Code. He feels that the efforts that are being made now are proper. He said that the standard water use permit conditions are very clear and explicit. If people cannot respect that, then he feels that it is incumbent on this Commission to take the violation in a serious manner. He said that maybe our penalties should not be so lenient. Mitigating factors were used to bring down the fines to be more reasonable to make a point but he stated that maybe a stronger point should be made instead. Commissioner Girald

stated that the Commission is charged with the responsibility of managing the resource and once it is damaged it becomes irreparable; we cannot allow this to continue. He is in agreement with the direction staff is taking in enforcement and compliance.

Chairperson Agaran asked for a motion to adjourn.
(RICHARDS/NOBRIGA)

This meeting was adjourned at 12:30 pm.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director