

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 20, 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 9:10 a.m.

The following were in attendance:

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

STAFF: Linnel Nishioka, Roy Hardy, Ed Sakoda, Eric Hirano, Dean Nakano, Lenore Nakama, Dean Uyeno, Neal Fujii, Charley Ice, Ryan Imata, Shirley Garcia

EXCUSED: Mr. David Nobriga

COUNSEL: Edsel Yamada

OTHERS: Bert Kuiuoka, Glenn Oyama, Mel Lima, Dr. John Corboy, Tracy Runnels, James Pflueger, Max Graham, Jr., William Tam, Calvin Oda, Naomi Kuwaye, Karen Piltz

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 May 16, 2001 meeting

Chair Coloma-Agaran made a correction to the minutes. He did not recall the motion being made to approve Item 8 on page 7. He recalled it being approved as amended on page 8.

MOTION: (NISHIDA/RICHARDS)

To approve the minutes as amended.

UNANIMOUSLY APPROVED AS AMENDED.

2. **Old Business/Announcements by Deputy Director Linnel Nishioka**

Deputy Director Nishioka introduced Shirley Garcia to the Commission. Shirley is a law student intern and will be working with the Commission during the summer.

A response to the May 2001 Environment Hawaii article was printed in the Honolulu Weekly of the June 10 Week. The Weekly printed the response almost verbatim.

Deputy Director Nishioka was asked to speak as Hawaii's representative at a National Drought Council meeting in Portland, Oregon. Neal Fujii, the State Drought Coordinator, will be accompanying her. They both left this meeting at 11:15 am.

3. Honolulu Board of Water Supply/Castle & Cooke Homes Hawaii, Inc., Mel's Water Works, APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMITS, Waipahu III (Well Nos. 2400-09 to 13), Pump Installations: 1050 gpm for Municipal use, TMK 9-4-05:74, Kamehameha Hwy., Waipio, Oahu

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

AMENDED RECOMMENDATIONS:

Staff recommends that the Commission:

1. Find Honolulu Board of Water Supply, ~~Mel's Water Works, and Castle & Cooke Homes Hawaii, Inc.~~ in violation of § 174C-84 Haw. Rev. Statutes for the installation of pumps without a permit in Well Nos. 2400-09 to 13.
2. Assess a fine of ~~three~~ eight thousand seven hundred fifty dollars (~~\$3,750~~) (\$8,750) to Honolulu Board of Water Supply for the unpermitted work, to be paid within thirty (30) days from the date of this submittal.
3. ~~Assess a fine of two thousand five hundred dollars (\$2,500) to Mel's Water Works for the unpermitted work, to be paid within thirty (30) days from the date of this submittal.~~
4. ~~Assess a fine of two thousand five hundred dollars (\$2,500) to Castle & Cooke Homes Hawaii, Inc. for the unpermitted work, to be paid within thirty (30) days from the date of this submittal.~~
3. Approve the issuance of an after-the-fact pump installation permit for (Well Nos. 2400-09 to 13), subject to the standard conditions in Exhibit 9, and the following special conditions:
 - a. Honolulu Board of Water Supply may continue to submit monthly reports of water use, water levels, chlorides, and temperature on their own forms,

provided that the information is submitted in a format that is acceptable to the Commission staff.

- b. A minimum 1¼-inch diameter monitor tube shall be permanently installed, in accordance with the Hawaii Well Construction and Pump Installation Standards (1997), to accurately record water levels, upon the replacement of a pump in any well in the battery.

TESTIMONY BY APPLICANT:

Mr. Bert Kuioka of the Honolulu Board of Water Supply (BWS), Water Resources Planning, sincerely apologized for the oversight. He assured the Commission that BWS is working diligently on this matter and will be implementing specific procedures to avoid any violations from occurring on any future well development projects. Lastly, he stated that the BWS concurs with Castle and Cooke's position that their fine should be waived. They had no involvement in the development or construction of this project. Castle and Cooke was merely in an extended land purchase situation with the BWS. Mr. Kuioka stated that BWS will assume the fine amount for Castle and Cooke.

Glenn Oyama who is a hydro-geologist for BWS gave locations and status of the monitor wells in the area.

Mel Lima of Mel's Waterworks stated that he worked on this project through a general contractor. He installed all five pumps. He did sign the permit but had no idea of the liabilities. He assumed that the BWS did all the necessary paper work. He stated that all 5 pumps are defective and need to be removed. By removing all 5 pumps the problem regarding lack of monitor tube can be solved. He apologized for this incident, but he stated that he had no control as far as obtaining the necessary permits.

Commissioner Anderson raised the issue of apportioning blame. Depending on the circumstances, the Commission would have to decipher who the responsible party(ies) might be and assess the penalties accordingly. Commissioner Anderson stated that for this instance, he felt that the permittee is the responsible party. The permittee should be responsible and assume all penalties. It will then be the permittee's responsibility to collect fines from the other parties if they chose to do so.

Commissioner Nishida was concerned about setting a precedence between a sophisticated and less sophisticated permittee.

Deputy Director Nishioka stated that the recommended penalties were done in this manner to be consistent with the Commission's action in the Turner case at the last meeting. That is why the recommended penalties were levied upon all the parties involved.

Commissioner Girald stated that there should be some responsibility on all contractors on making certain the work is being performed properly and that all necessary permits have been obtained.

MOTION: (RICHARDS/NISHIDA)

To approve the submittal as amended.
UNANIMOUSLY APPROVED AS AMENDED.

4. Corboy Limited Partnership, Applications for Water Use, Well Construction, and Pump Installation Permits, Corboy Puuhonua Well (Well No.0458-05), TMK 5-4-16:13, Replace Existing Agricultural Use of 0.03 mgd., Kawela Ground Water Management Area, Molokai

PRESENTATION OF SUBMITTAL: Mr. Charley Ice

AMENDED RECOMMENDATIONS:

Staff recommends that the Commission:

1. Allow staff to proceed in scheduling a hearing on Molokai by or before September 18, 2001 on the application for water use permit No. 586 by Corboy Limited Partnership for the reasonable and beneficial use of 0.03 million gallons per day of potable water for agricultural purposes from the Corboy Puuhonua Well (Well No.0458-05)

By requiring a public hearing, the timeframe for action is extended to 180 days, or to September 18, 2001.

TESTIMONY BY APPLICANT:

Dr. John Corboy warned the Commission that scheduling a public hearing on Molokai because of aggressive behaviors and irrelevant issues that have been discussed to this point will result in other irrelevant testimony that may not be pertinent to the main issues that are being presented. A public hearing will generate much “heat” but no “light” on the water resource issue. He requested permission to install the replacement well, as it will improve service, spread pumpage and demonstrate minimal impact to nearshore discharge and neighboring wells.

Tracey Runnels (driller) stated that drilling this well further in-land as proposed will yield valuable geologic information.

Commissioner Anderson stated that he believes that public hearings on Molokai are unique and some of the residents can be very contentious but it is important that the residents who have legitimate concerns be given the opportunity to comment on a proposal of this nature.

MOTION: (GIRALD/RICHARDS)

To approve the submittal as amended.
UNANIMOUSLY APPROVED AS AMENDED.

Chairperson Coloma-Agaran stated that he might be in conflict with Item 5 due to his prior involvement in working on cases related to Mr. Pflueger while in private practice even

though he has not met him. Counsel concurred that there may be potential conflict problems. Chairperson Coloma-Agaran then recused himself from Item 5.

Commissioner Robert Girald chaired Item 5.

5. Mr. James Pflueger, After-the-Fact Applications for Stream Channel Alteration and Stream Diversion Works Permits (SCAP-KA-292) and Petitions to Amend the Interim Instream Flow Standards, Puu Ka Ele and Waiakalua Streams, Kilauea, Kauai (TMK 5-2-03:01 and 5-1-04:08)

PRESENTATION OF SUBMITTAL: Mr. Ed Sakoda

AMENDED RECOMMENDATIONS:

- A. That the Commission find the applicant in violation of the following:
1. Hawaii Revised Statutes §174C-71 for building a surface water impoundment on Puu Ka Ele Stream (Site #1) without a SCAP.
 2. Hawaii Administrative Rules §169-45 for constructing a surface water impoundment on Puu Ka Ele Stream without amending the IIFS.
 3. Hawaii Revised Statutes §174C-71 for constructing two consecutive surface water impoundments on Waiakalua Stream (Site #3) without a SCAP.
 4. Hawaii Administrative Rules §169-45 for constructing two surface water impoundments on Waiakalua Stream without amending the IIFS.
 5. Hawaii Revised Statutes §174C-93 for construction of a diversion on Waiakalua Stream without a SDWP.
- B. Alternative 1:
1. That the Commission fine the applicant \$6,250.
 2. That the Commission deny without prejudice the after-the-fact SCAP application and petition to amend the IIFS for work done on Puu Ka Ele Stream (Site #1).
 3. That the Commission deny without prejudice the after-the-fact SCAP application and petition to amend the IIFS for work done on Waiakalua Stream (Site #3).
 4. That the Commission order the applicant to remove the surface water impoundments at both sites and restore the streams as closely as possible to their former conditions within one month (by July 20, 2001) of this order.

ORAlternative 2:

1. That the Commission fine the applicant \$12,500 to be paid within 30 days.
2. That the Commission deny without prejudice the after-the-fact SCAP application and petition to amend the IIFS for work done on Puu Ka Ele Stream (Site #1) UNLESS the applicant can satisfactorily address the concerns raised by the Kauai DPW, the Army COE, ~~DOH~~, DAR, and SHPD. Specifically, the applicant shall obtain letters from the Kauai DPW, the Army COE, ~~DOH~~, DAR, and SHPD stating that their concerns have been, or are being, addressed. The applicant shall have five months (by November 20, 2001) from the date of this action to submit the letters from the agencies. If the applicant cannot address the concerns of the agencies within the five months, the applicant shall remove the surface water impoundment and restore the stream as closely as possible to its former condition within six months (by December 20, 2001) of this order.

If the applicant satisfactorily addresses the agency concerns, the Chairperson shall approve the after-the-fact SCAP application and petition to amend the IIFS, subject to the Commission's standard SCAP conditions (Exhibit 6) and standard conditions for petition to amend the IIFS (Exhibit 7). The amendment to the IIFS shall be the surface water impoundment structure constructed by the applicant on Puu Ka Ele Stream, as approved by this action.

3. That the Commission deny without prejudice the after-the-fact SCAP application and petition to amend the IIFS for work done on Waiakalua Stream (Site #3) UNLESS the applicant can satisfactorily address the concerns raised by the Kauai DPW, the Army COE, ~~DOH~~, DAR, and SHPD. Specifically, the applicant shall obtain letters from the Kauai DPW, the Army COE, ~~DOH~~, DAR, and SHPD stating that their concerns have been, or are being, addressed. The applicant shall have five months (by November 20, 2001) from the date of this action to submit the letters from the agencies. If the applicant cannot address the concerns of the agencies within the five months, the applicant shall remove the surface water impoundments and restore the stream as closely as possible to its former condition within six months (by December 20, 2001) of this order.

If the applicant satisfactorily addresses the agency concerns, the Chairperson shall approve the after-the-fact SCAP application and petition to amend the IIFS, subject to the Commission's standard SCAP conditions (Exhibit 6) and standard conditions for petition to amend the IIFS (Exhibit 7). The amendment to the IIFS shall be the surface water impoundment structure constructed by the applicant on Waiakalua Stream, as approved by this action.

- C. That the Commission deny without prejudice the SDWP and petition to amend IIFS for an irrigation system on Waiakalua Stream, and that the applicant remove the pump and distribution pipes from the project site within one month of this action (by July 20, 2001). Note: there is a statement on the application that the pumps and the distribution pipes will be completely removed from the site at the end of the project.
- D. Inform the applicant that future violations of the Commission's rules and conditions may be considered to be repeat violations subject to fines up to \$1,000 per day per violation.
- E. Future applications from this applicant who has not paid fines or met alternative settlements, or for a project with outstanding violations, may be considered incomplete until sanctions are fulfilled and/or violations are corrected.

Commissioner Anderson stated that the Department of Health (DOH) would center on the actual construction and they would assure that the Best Management Practices (BMP) was done during the construction process and would not approve after-the-fact requests. If the Commission is considering Alternative 2 then DOH should be deleted from the review process because there would be no way the applicant can satisfy the DOH's concerns as it relates to BMP during the construction activity.

TESTIMONY BY THE APPLICANT:

Max Graham and Bill Tam, attorneys for Mr. Pflueger stated the Mr. Pflueger admitted that the work described was done without permits and asked the Commission to accept the recommendation that the staff impose Alternative 2 with the opportunity to obtain the necessary agencies approvals with the deletion of the Department of Health on these projects.

In response to Commissioner Nishida's question on the apparent delay in response to the requirements by the consultant, Mr. Pflueger stated that he had hired them to do the job and left all matters in their hands. He stated his innocence but accepted full responsibility because he hired the consultants.

MOTION: (ANDERSON/RICHARDS)

To approve the submittal as amended with Alternative 2 to include a 30-day timeframe.
UNANIMOUSLY APPROVED AS AMENDED.

At 10:50 am, Vice Chair Giraldo called for a recess.

The meeting resumed at 10:58 am.

6. Hawaii Drought Plan Briefing by the Commission Staff

Mr. Neal Fujii, State Drought Coordinator, did a powerpoint presentation of the Hawaii Drought Plan.

In answer to Commissioner Nishida's question on the Agricultural Water Use and Development Plan (AWUDP), Mr. Dean Nakano stated that no funds from this past legislature were appropriated. Because drought directly affects the agriculture industry, funding support for the plan is being pursued at both the federal and state level.

7. Waiahole-Waikane Community Association, Hakipu'u Ohana, Ka Lahui Hawaii, Kahalu'u Neighborhood Board No. 29, and Makawai Stream Restoration Alliance, PETITION FOR DECLARATORY ORDER DENYING BISHOP ESTATE'S WATER USE PERMIT APPLICATION FOR FAILING TO COMPLY WITH THE COMMISSION ON WATER RESOURCE MANAGEMENT'S FINAL DECISION AND ORDER IN THE WAIAHOLE DITCH COMBINED CONTESTED CASE HEARING (DEC-OA00-G6)

Kamehameha Schools APPLICATION FOR A WATER USE PERMIT, Waiawa Development Tunnel (Well No. 2657-05), TMK 9-6-05:003, Existing/New (Irrigation and Dust Control) Use for 4.2 mgd., Koolaupoko, Kahana, and Waipahu-Waiawa Ground Water Management Areas, Oahu

PRESENTATION OF SUBMITTAL: Mr. Ed Sakoda

RECOMMENDATIONS:

Staff recommends that the Commission approve an additional 60-day extension of time for a total of ninety days from the date KS provided a report the Earthjustice (May 30, 2001). Earthjustice shall amend their petition for declaratory order by August 28, 2001.

Commissioner Nishida recused himself from Item 7.

MOTION: (GIRALD/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

8. Del Monte Fresh Produce (Hawaii) Inc., REVOCATION/MODIFICATION OF WATER USE PERMIT, Del Monte Wells 3 & 4 (Well Nos. 2803-05 & 07), From WUP No. 116 (4.32 mgd) to WUP No. 589 (3.96 mgd), Wahiawa Ground Water Management Area, Oahu

MODIFICATION OF A WATER USE PERMIT, Kunia Well & Basal Well (Well No. 2703-01 & 02), TMK 9-2-005:002, Future (Agricultural) Use From WUP No. 113 (0.154 mgd) to WUP No. 507 (1.000 mgd), Ewa-Kunia Ground Water Management Area, Oahu

PRESENTATION OF SUBMITTAL: Ms. Lenore Nakama

AMENDED RECOMMENDATIONS:

Staff recommends that the Commission:

1. Approve the issuance of water use permit no. 507 to Del Monte Fresh Produce (Hawaii) Inc. for the reasonable and beneficial use of 1.075 million gallons per day of fresh, nonpotable water for agricultural use from the Kunia Well & Basal Well (Well Nos. 2703-01 & 01), 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.
 - c. This water use permit, WUP No. 507, shall supersede WUP No. 113.
 - d. WUP No. 113 is revoked.

2. Approve the issuance of water use permit no. 589 to Del Monte Fresh Produce (Hawaii) Inc. for the reasonable and beneficial use of 3.96 million gallons per day of fresh, nonpotable water for agricultural use from the Del Monte Wells (Well Nos. 2803-05 & 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.
 - c. This water use permit, WUP No. 589, shall supersede WUP No. 116.
 - d. WUP No. 116 is revoked.
 - e. The permittee shall obtain approvals from the the Department of Health and the U.S Environmental Protection Agency prior to use of the water.

Commissioner Nishida recused himself from Item 8.

TESTIMONY BY APPLICANT:

Mr. Calvin Oda, Sr. Director of Pineapple Research for Del Monte, stated that there are plans to convert one hundred percent of the Kunia section fields to drip irrigation and expand the production of a new variety of pineapple. This new variety has resulted in the creation of 100 new jobs. This new variety will require more than 2,000 gpad to grow. Mr. Oda supports staff's submittal for the modification of the water use permit. This approval will be a critical factor in the future operations.

Dr. Anderson expressed his concern about EDB contamination in the basal aquifer.

Mr. Oda stated that an alternative from a feasibility study is to implement a program called phase source control at the Kunia village area. This entails pumping a Kunia well and treating the water via air-stripping or by activated carbon. The water would be treated prior to introduction into the irrigation system. He stated that if Commission grants the approval, he would start the request to EPA for their approvals in treating the water.

MOTION: (RICHARDS/GIRALD)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

This meeting was adjourned at 11:50 am.

Respectfully submitted,

FAITH F. CHING
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA
Deputy Director