

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 17, 2001  
TIME: 10:00 am  
PLACE: Dept. of Hawaiian Home Lands  
Molokai District Office  
Maunaloa Highway  
Kalamaula, Molokai

Chairperson Gilbert S. Coloma-Agaran called the meeting of the Commission on Water Resource Management to order at 10:32 a.m.

The following were in attendance:

**MEMBERS:** Mr. Gilbert S. Coloma-Agaran, Mr. Robert Girald, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

**STAFF:** Linnel Nishioka, Ed Sakoda, Charley Ice

**EXCUSED:** Dr. Bruce Anderson and Mr. David Nobriga

**COUNSEL:** Yvonne Izu

**OTHERS:** Gordon Tribble, Barry Hill, Tom DeCorsey, Martin Kahai, Adolph Helm, Dave Gilliland, Robert Granger, Steve Boland, Glenn Teves, William McKeon, Sarah Sykes

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 September 19, 2001 meeting**

MOTION: (GIRALD/NISHIDA)  
To approve the minutes.  
UNANIMOUSLY APPROVED.

**3. Cooperative Agreement with U.S. Geological Survey for Statewide Hydrologic Data Collection and Water Resource Investigations for Fiscal Year (FY) 2002**

PRESENTATION OF SUBMITTAL: Ed Sakoda

RECOMMENDATIONS:

That the Commission approve the subject cooperative agreement between the Commission and the U.S. Geological Survey, and authorize the Chairperson to execute the appropriate documents.

Final contract execution shall be contingent upon receiving the Governor's approval in accordance with Executive Memorandum No. 01-06 and approval of the contract by the Department of the Attorney General.

MOTION: (GIRALD/RICHARDS)

To approve the submittal.

UNANIMOUSLY APPROVED.

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

None

**4. Sphere LLC Valley Well Drilling, APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT, Maili Quarry (Well No. 2509-07), Pump Installation: 700 gpm for Dust Control & Sand Washing use, TMK 8-7-10:3, 86-601 Paakea Road, Waianae, Oahu**

PRESENTATION OF SUBMITTAL: Linnel Nishioka

RECOMMENDATIONS:

Staff recommends that the Commission:

- A. Find Valley Well Drilling and Sphere LLC in violation of the Pump Installation Permit for Well No. 2509-07, approved on January 22, 1999, for the installation of a larger capacity pump than that specified on the permit.
- B. Assess a fine of two hundred fifty dollars (\$250) to Valley Well Drilling for the unpermitted installation, to be paid within thirty (30) days from the date of this submittal.
- C. Assess no fine to Sphere LLC.
- D. Find that future applications from Valley Well Drilling may be considered incomplete until sanctions are fulfilled and/or violations are corrected.
- E. Approve the issuance of an After-the-Fact Pump Installation Permit for Maili Quarry Well (Well No. 2507-09), subject to the standard conditions in Exhibit 8 and the following special condition:

1. Pumping tests shall be conducted in accordance with the Aquifer (Pump) Test Procedures established in the Hawaii Well Construction and Pump Installation Standards. The test results shall be submitted to the Commission within sixty (60) days from the date of this submittal. The test results shall be used to validate the acceptability of the installed pump or to determine an appropriate capacity. If the test results show that a smaller pump is required to reduce the potential of affecting neighboring wells and localized upconing at the applicant's well, the installed pump shall be subject to removal. The permittee may request a hearing before the Commission if there is disagreement regarding the approved pump capacity.

MOTION: (RICHARDS/NISHIDA)  
To approve the submittal.  
UNANIMOUSLY APPROVED.

**5. State of Hawaii Department of Agriculture, Moloka'i Irrigation System, Waikolu Battery (Well No. 0855-01 to 06), TMK 6-1-1, Existing and Future (Agricultural) Use for 3.36 mgd, Waikolu Ground Water Management Area, Moloka'i**

PRESENTATION OF SUBMITTAL: Charley Ice

AMENDED RECOMMENDATIONS:

- A. Approve interim Water Use Permit No. 605 for a total of 0.853 mgd from the Waikolu Battery, Well Nos. 0855-01 to 05, subject to standard conditions and the following special conditions:
  1. Amounts over 0.744 mgd (0.109 mgd up to a total of 0.853 mgd), may only be pumped from Well 22. Well 22 may be pumped at its installed capacity, up to the total allocation, pending additional study of water levels and streamflow requirements.
  2. The amount permitted from this battery is subject to future modification based upon setting a new interim instream flow standard.
- B. Defer any further action on the Department of Agriculture's application or reapplication until an interim instream flow standard is set for Waikolu Stream, Moloka'i.
- C. Staff to report back in six (6) months on the progress of setting an interim instream flow standard for Waikolu Stream

Commissioner Richards stated that he would like to include a time period of 6 months and present this item back to the Commission.

Mr. Charley Ice stated that because this process has not been done before and that it was uncertain as to what kinds of efforts would be involved. A model is being prepared for staff. The Commission staff plans to work closely with the Division of Aquatic Resources. In view of the long-standing drought on Molokai, Mr. Ice stated that this project should take high priority.

Deputy Director Nishioka stated that this item would precede the 27 petitions. She felt that 6 months is reasonable to come back to the Commission.

#### TESTIMONIES:

Mr. Tom DeCorsey, President of the Molokai Farm Bureau, stated that considering the existing drought conditions on Molokai, the Farm Bureau cannot agree with staff's recommendation of 0.853 mgd. This is not adequate to irrigate the crops that are now growing. The farmers on Molokai are on drip irrigation. They have stopped irrigating their wind brakes. At this time they are pumping 0.853 mgd. It is estimated that they would run out of water within 40 days. Reduction would not be economically possible. They do support the Department of Agriculture's testimony, which will be heard later this afternoon.

Mr. Martin Kahai of Hoolehua stated that he objects to any future allocation to anyone at this time. As homesteaders they have been directed by the Department of Agriculture to cut back 20 to 30 percent each month. He feels that water is very important.

Mr. Adolph Helm read Senator Jan Yagi Buen's testimony. Her testimony is in opposition to the Commission adjusting the total to 0.853 mgd which falls far below the demand today. This would make farming more difficult since the island has a serious drought problem now. The economic recovery will be lessened. Her testimony asked the Commission to reconsider by not adjusting the pumping of water to 0.853 mgd.

Mr. Helm commended the Commission and staff in their work for protecting, controlling and regulating the use of Hawaii's water resources for the benefit of its people. Molokai's community farmers are willing to help and have genuine concerns on all water issues. At this time the farmers have no other alternate source other than that from the Molokai Irrigation System (MIS). The proposed 0.853 mgd falls short of the required amount to meet the 3.6 mgd current user demand. Mr. Helm asked that the Commission not alter the current user demand but to consider working with the Department of Agriculture, Department of Hawaiian Home Lands and other State agencies as well as communities to define beneficial and reasonable uses and establish criteria for these priorities.

Mr. Dave Gilliland presented testimony stating that the amount the Commission is proposing will drastically impact their operations. They are already using conservation methods and practices. Agricultural acreages will be less which will then create job losses. The use of this water is necessary for the economic benefit of this community. Mr. Gilliland

strongly urged the Commission to continue to allow the emergency pumping of the Waikolu Battery Well.

Mr. Robert Granger, a retired farmer who now sits on the MIS Advisory Board, supports the testimony of the Farm Bureau and Senator Buen. He stated that this drastic reduction would have a terrible impact and will worsen unemployment on Molokai.

Mr. Steve Boland, Manager of Hawaiian Research, supported the testimony of the Farm Bureau, Micogen, and Adolph Helm. He stated that if the water ever would cease in the reservoir, unemployment would increase. This reservoir supports 300 to 400 families and 3 or 4 of the largest agricultural businesses on the island are supported by this reservoir. Their annual clientele brings in approximately \$2 million dollars to the Molokai economy. Mr. Boland urged the Commission to continue with the emergency pumping to sustain agriculture until either the reservoir is full or the drought is over.

Mr. Glenn Teves, farmer, stated that water is the limitation for continuation expansion of agriculture. He agrees that more water is needed after the interim instream standards are established. He noted that in Table 1, Department of Agriculture's (DOA) application, there is no reservation for Hawaiian Homes water. According to the Hawaiian Homes Act, Hawaiian homesteaders have two-thirds rights to the water out of Waikolu Valley. He stated that the only way their rights could be protected is that if the Water Commission enforces the Hawaiian Homes rights.

Mr. Teves raised the issue that the Commission had sent a letter stating that it would defer any enforcement action on the current emergency project of the MIS pending final determination on the pending DOA application.

Deputy Director will check on the letter of enforcement.

Commissioner Girald stated that because the Island of Molokai has a very fragile economy and in respect to the Commission's responsibility there is very little room at this point than to accept staff's recommendation with the understanding that staff return in 6 months with a progress report as also requested by Commissioner Richards.

MOTION: (GIRALD/RICHARDS)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

**6. Corboy Limited Partnership, APPLICATION FOR A WATER USE PERMIT, Corboy Puuhonua (Well No. 0458-05), TMK 5-4-16:13, Existing and Future (Agricultural) Use for 0.03 mgd, Kawela Ground Water Management Area, Moloka'i**

PRESENTATION OF SUBMITTAL: Charley Ice

## AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find that Girish Patel ~~and Roxanne French have~~ has standing to request a contested case hearing for the Water Use Permit, Well Construction Permit, and Pump Installation Permit Applications for the Corboy Puuhonua Well (Well No. 0548-05). A hearing to determine standing is not required.
- B. Direct staff to publish a notice identifying a deadline for filing written petitions to intervene. Accept petitions for a contested case already submitted by Roxanne French, Sarah Sykes, Marlene Kamuela Purdy, Chikara Hirayama, Arvo and Judith Annus, Linda Johnston and Mark Marting as petitions to intervene, and defer determination on qualifying them as intervenors until a hearing is scheduled to determine standing. Others may also petition to intervene. Final decision on additional parties to be admitted will be made by the hearing officer.
- C. Direct staff to initiate a contested case proceeding on this application and delegate to the Chairperson the authority to appoint a hearing officer for this contested case hearing.

## TESTIMONY BY APPLICANT:

William McKeon, Esq. for Corboy Properties objects to staff's recommendation. He stated that at the September 19, 2001 public hearing, 4 people did request a contested case hearing (cch) before the close of the hearing. However, 2 of the 4 did so in a representative capacity. Ms. French requested a contested case on behalf of TT Meyer Inc. She stated that she is the President of TT Meyer Inc. and requested a cch on behalf of the corporation. TT Meyer Inc. did not submit a written petition requesting a cch within the deadline following the public hearing and he recalled that Ms. French did not, in her individual capacity, request a contested case by the close of the September 19, 2001 public hearing. Ms. French did file a contested case request in her name only. The 2 people that did request a contested case in a timely manner are Mr. Patel and Ms. Sykes. The single petition filed on behalf of 2 people, Linda Johnston and Mark Marting, is inappropriate and improper because according to the Water Code (Sec. 13-167-21), a person, if not an attorney, cannot represent another person. A person can represent himself. The same situation is with Arvo and Judith Annus. Arvo is stated as the contact person. Mr. Hirayama attended the hearing and did not request a contested case and subsequently submitted a petition requesting a contested case. His petition is untimely and should be stricken.

Chair Coloma-Agaran asked for a motion to enter into executive session to consult with counsel on this Item 6.

Commissioner Richards made a motion to enter into executive session to confer with legal counsel on this item.

**MOTION: (RICHARDS/NISHIDA)**

At 11:40 am the Commission went into Executive Session to confer with legal counsel.

At this time, the Commission approved the Minutes of Executive Sessions of May 16, 2001 and September 19, 2001.

The meeting was resumed at 11:45 am.

Deputy Director Nishioka stated that she will look into the validity of the petition that was filed by Ms. French. She will also listen to the tape. Ms. Nishioka stated that perhaps the Commission might want to defer action on hers but still consider her in the contested case.

Commissioner Girald made a motion to accept staff's recommendation with the provision that the tape be reviewed to identify whether or not Ms. French has standing in this contested case and any action on her application be deferred.

**MOTION: (GIRALD/NISHIDA)**

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