

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: April 17, 2002  
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 9:05 a.m.

The following were in attendance:

**MEMBERS:** Mr. Gilbert S. Coloma-Agaran, Ms. Meredith Ching, Mr. Clayton Dela Cruz, Mr. Brian Nishida, Mr. Herbert Richards, Jr.

**STAFF:** Linnel Nishioka, Roy Hardy, Ed Sakoda, Glenn Bauer, Charley Ice, David Higa Dean Uyeno, Tiffany Mathias

**EXCUSED:** Dr. Bruce Anderson

**COUNSEL:** Edsel Yamada

**OTHERS:** Richard Cox, Peter Adler, Manabu Tagomori, Kapua Sproat, Gordon Tribble, George Hiu, John Reppun, Paul Matsuo, Brian Kau, Dave Penn, Marjorie Ziegler

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 March 20, 2002 meeting**

MOTION: (RICHARDS/DELA CRUZ)  
To approve the minutes.  
UNANIMOUSLY APPROVED.

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

Earthjustice requested an extension in the KS Waiawa application matter because their mainland expert witness would not be available until May 22, 2002. After taking an attendance count, the May 15 Commission meeting was changed to May 22. Earthjustice thanked the Commission for their consideration in this matter.

Commissioners Meredith Ching by a vote of 20 – 2 and Clayton Dela Cruz by unanimous approval were confirmed by the full Senate in the first week of April.

The Commission's bill on the appurtenant water rights is anticipated to be signed by the Governor within the next 5 days. The bill did not go to conference committee; it went straight to the Governor for approval.

Two positions in the budget were restored, the Deputy Director and Secretary, but the Drought Coordinator position was deleted. In the Senate version, 3 of the Commission's CIP monitoring wells were taken out. The first priority would be to reinstate a new monitoring well in Iao because of the drought conditions on the island of Maui.

The Commission was successful in obtaining another \$100,000 in federal funding from the Bureau of Reclamation.

Deputy Director Nishioka stated that she will be speaking on the drought plan at the upcoming AWWA conference in early May.

If all budget priorities are approved, the Commission will obtain 23 to 24 permanent positions. This would amount to a 25% increase in staff.

Deputy Director Nishioka acknowledged and thanked Mr. Peter Adler and former Commission Richard Cox for their work in the report and recommendation of the Funding Committee for the Waiahole Ditch Combined Contested Case Hearing.

**3. Waiahole Ditch Combined Contested Case Hearing, Staff Presentation on the Report and Recommendation of the Funding Committee for Studies and Monitoring Activities and to Coordinate and Set Up the Mechanism for the Collection, Accounting, and Distribution of Funds**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda provided a power point presentation on the Funding Committee's report and recommendations. Written comments to the report were received from Kamehameha Schools and Earthjustice. Mr. Sakoda talked about the costs of the studies and monitoring activities as well as the funding projections for it.

Commissioner Nishida recused himself from this submittal.

TESTIMONIES:

Kapua Sproat an attorney with Earthjustice, representing Waiahole Waikane Community Association et al submitted written comments in March but restated their request to the Commission to order to Kunia Water Cooperative (KWC) to provide additional information

that they have requested so that a written testimony can be prepared. Ms. Sproat asked the Commission to have KWC provide the information.

**4. Agribusiness Development Corporation's Request for Extension of Time to Submit an Assessment and Plan for Diverting Tunnel Water Into Waikane Stream, December 28, 2001 LEGAL FRAMEWORK, FINDINGS OF FACT AND DECISION AND ORDER, Waiahole Ditch Combined Contested Case Hearing (CCH-OA95-1)**

Item 4 was deferred to the next Commission meeting on May 22, 2002 because of lack of quorum. Dr. Anderson was excused from this meeting and Commissioners Nishida and Richards recused themselves from this item.

**5. Kamehameha Schools Request for Extensions to Submit an Application to Abandon the Lalakea Ditch System and Alternate Settlement Proposals, Complaint C98-08 and Earthjustice Legal Defense Fund Petition for Declaratory Order on Lalakea Stream, Lalakea Ditch, Kukuihaele, Hawaii (TMK: 4-8-03:06)**

PRESENTATION OF SUBMITTAL: Ed Sakoda

RECOMMENDATIONS:

That the Commission approve the request by KS to extend the deadline to submit the application to abandon the Lalakea Ditch System from March 29, 2002 to May 31, 2002.

That the Commission approve the request by KS to extend the deadline to submit an alternate settlement proposal for a project or projects, from April 28, 2002, to July 31, 2002. KS shall also provide written reports to the Commission on the status of the alternate settlement proposal at its meeting on June 19, 2002.

TESTIMONY BY APPLICANT:

Mr. Manabu Tagomori of Kamehameha Schools (KS) stated that the reason for the extension request is that the Army Corps of Engineers verbally approved the actions that KS are taking, but KS needs the approval in writing. At this point, KS is waiting for the written approval. Also, the application requires before and after conditions of the diversion. For this, KS needs to obtain a consultant to inspect and submit plans on how the work will be done. The procurement process of obtaining a consultant has been completed. At this point the contract needs to be signed. Weather permitting, the consultant feels that the work can be completed by the end of May.

With regard to the alternative settlement, KS realized there are many opportunities to leverage research funds. If matching funds can be obtained to complete studies, the overall scope will be attainable. KS has contacted the University of Hawaii, Hilo campus, science committee to assist in some studies.

Another project that can be started as soon as possible is with the Bishop Museum. Bishop Museum has submitted a proposal to KS to do a collaborative stream monitoring of the Lalakea Stream, the before and after abandoning conditions. KS has started a sole source procurement process.

The Kohala Center expressed interest in the instream studies and may collaborate with Bishop Museum in their project. In that project, Bishop Museum is proposing to establish an education-learning center in Waipio Valley in which students can have hands on experience.

Other potential agencies that KS has contacted for possible leveraging funds are the Department of Health, Honolulu Board of Water Supply, Water Resource Research Center of the University of Hawaii, Division of Aquatic Resources of DLNR, U.S. Geological Survey (USGS), and the U.S. Fish and Wildlife Service.

Lastly, Mr. Tagomori stated that the July extension would assist KS in formalizing most of these programs and projects.

At the request of Deputy Director Nishioka, Mr. Tagomori updated the Commission on USGS installing a stream gage in Waipio and KS approval for this. He stated that KS is trying to obtain federal grants in some of their programs. At the same time, because of conflicts, some of the federal programs are under review. Each of the cooperative watershed programs is under review. This includes the USGS stream gaging program. KS and USGS are coming to a resolution.

#### TESTIMONIES:

Marjorie Ziegler of Earthjustice representing Waipio Valley Community Association stated that on the matter of the extension for submitting the application to abandon, reluctantly support staff recommendations. EJ doesn't understand why the application was submitted unsigned and undated. The theory behind the monitoring before and after abandonment is acceptable. EJ's concern is that there will be no more delays and extensions requests.

MOTION: (RICHARDS/CHING)

To approve the submittal.

UNANIMOUSLY APPROVED.

#### 6. **Eric Jensen APPLICATION FOR A WATER USE PERMIT, Kaula Kai Irrigation Well (Well No. 1114-03), TMK 5-1-6:114, Landscape Irrigation Use for 11,000 mgd, Kaluako'i Ground Water Management Area, Moloka'i**

PRESENTATION OF SUBMITTAL: Charley Ice

AMENDED RECOMMENDATIONS:

That the Commission:

1. Find that Moloka'i Ranch has standing to object to the proposed water use permit application.
2. Direct staff to conduct a public hearing on Moloka'i to take testimony concerning the application for a water use permit no. 618 to Eric Jensen for the reasonable and beneficial use of 11,000 ~~million~~ thousand gallons per day of brackish water for landscape irrigation from the Kaula Kai Irrigation Well (Well No. 1114-03).

MOTION: (CHING/DELA CRUZ)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

**7. KSL Grand Wailea Resort, Inc. AFTER-THE-FACT WELL CONSTRUCTION/PUMP INSTALLATION PERMIT, Wailea Resort Saltwater Well (Well No. 4126-04), TMK 2-1-8:109, Kamaole Aquifer System, Central Aquifer Sector, Lobster Pond Feature Use of 200,000 gpd**

PRESENTATION OF SUBMITTAL: Charley Ice

RECOMMENDATIONS:

Staff recommends that the Commission:

1. Find that Well No. 4126-04 was constructed in violation of Water Code §174C-84, HRS Permits for Well Construction and Pump Installation, and that KSL Grand Wailea Resort or its assigns are responsible for this violation.
2. Fine KSL Grand Wailea Resort a total of \$250 for the violation in Recommendation 1, as shown in the Penalty calculation spreadsheet (Exhibit 3), payable within 30 days.
3. Approve issuance of after-the-fact Well Construction and Pump Installation Permits, subject to standard conditions in attachment A, for Wailea Resort Saltwater Well (Well No. 4126-04), to be issued only upon payment of the fine in full.
4. Suspend any current, pending, or future applications by KSL Grand Wailea Resort until the respective fine in Recommendation 2 is paid in full.

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

**8. Other Business/Announcements**

Deputy Director Nishioka announced that Dr. Corboy withdrew his application for a contested case hearing. This issue has been resolved.

There was a pending contested case hearing with Department of Hawaiian Home Lands. The party requesting a contested case hearing have withdrawn their request.

At this point, the Commission has no pending contested case hearing.

The Commission has come to an agreement with Amfac on the Kekaha matter of taking of some of the abandoned wells that were left on the State's property. Amfac will be sealing the wells and make an effort to find the missing wells and seal them as well.

Commissioner Richards requested staff to prepare a list of the various web sites on water related matters that the Commission can link to.

This meeting was adjourned at 10:14 am.

Respectfully submitted,

FAITH F. CHING  
Secretary

APPROVED AS SUBMITTED:

LINNEL T. NISHIOKA  
Deputy Director