

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: March 17, 2004
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

A. CALL TO ORDER

Chairperson Peter T. Young called the meeting of the Commission on Water Resource Management to order at 9:08 A.M.

B. ROLL CALL

The following were in attendance:

MEMBERS: Mr. Peter T. Young, Ms. Meredith Ching, Mr. Clayton Dela Cruz, Ms. Stephanie Whalen, Mr. James Frazier and Dr. Chiyome Fukino

STAFF: Ernie Lau, Dean Nakano, Roy Hardy, Ed Sakoda, Glenn Bauer, Lenore Nakama, Dean Uyeno, Kevin Gooding, David Higa, Charley Ice, Ryan Imata, Dean Nakano, Tiffany Mathias

COUNSEL: Linda Chow, Yvonne Izu

OTHERS: Kapua Sproat, George Kuo, Manabu Tagomori, Rosemary Liu, Barry Usagawa, Ron Englund, Mr. and Mrs. Frederick Holcomb, Delwyn Oki, Bill Beach, Klaus Conventz, Katina Henderson, Bruce Tsuchida, Robert Lum, Marjorie Ziegler, Jim Yamamoto, Jeff Overton, Nelson Ayers, Betsy Gagne and Reid Yamashiro

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

C. ACCEPTANCE OF AGENDA

The items were taken out of order and they are shown in the order taken up by the Commission.

D. APPROVAL OF MINUTES

MOTION: (Frazier/Whalen)

To approve the minutes of the February 18, 2004 meeting as circulated.

E. CORRESPONDENCE/ANNOUNCEMENTS

Deputy Ernest Lau mentioned that there were no announcements and that correspondence had been distributed.

Commissioner Frazier asked if the staff resolved the MOA with Maui DWS. Deputy Ernest Lau stated that it would take another couple of months to complete.

F. OLD BUSINESS

G. NEW BUSINESS

- 1. Application for a Stream Channel Alteration Permit (SCAP-HA-364), Fredrick and Diane Holcomb, Partial After-the-Fact Construction of a Driveway and Proposed Capped Pipeline, Aamakao Stream, North Kohala, Hawaii (TMK: 5-2-07:13 and 14)**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda explained that the request was to construct a 700' driveway and install a capped-pipeline under the driveway. The SCAP is partially after-the-fact because the contractor previously graded the area for the driveway without a permit. The proposal here is only for the driveway portion and to install the pipeline under the driveway for now which leads to an area where the applicant proposes to grow taro in the future. The applicant will have to come back to the Commission in the future if he wants to divert water from the stream.

Staff was made aware of the grading of the driveway without a permit back in February 2002 through a DOCARE report that included a complaint from the Hawaii District Land Agent and another member of the public. The report stated that the stream was being excavated by a backhoe. The permit was submitted in July 2003. There are some discrepancies in the amount of stream water reported in the stream as well as the amount that the applicant requested to be diverted.

Aamakao Stream is a perennial stream. The Hawaii Stream Assessment ranks the stream as outstanding for aquatic and cultural resources and substantial from a recreational standpoint. The applicant's parcel is riparian to Aamakao Stream and is not in a surface water management area; therefore we believe that the applicants are entitled to a reasonable amount of water from the stream. This determination will be made through the instream flow standard amendment process. Applications were sent out for review to various agencies. The Hawaii County Department of Public Works indicate that a FEMA certification of no rise determination is not required for the project and this is not a flood hazard area designated by the flood insurance rate maps. The department does not object to the issuance of the stream channel alteration permit. The County Planning Department indicates that the area is zoned agriculture and the parcels in

question are not in the coastal zone management area, therefore, no special management area permit is required.

The Division of Aquatic Resources has conducted surveys of Aamakao Stream and found several native fish there. They will continue their surveys from time to time at the stream. The Department of Health (DOH) has offered the following: 1) There was a question of whether or not a national pollutant discharge elimination system or NPDES permit was required. We have since found out that a NPDES permit is not required. 2) They also recommend that a special condition be imposed to develop and implement site specific best management practices. The stream has been listed as a water quality limited water source under the Federal Clean Water Act, Section 303D. The DOH indicates that there should be no net increase in pollutant loading to the stream during construction.

Commissioner Whalen had some questions about what we do to get the correct information out to the applicants. It should be the contractor's responsibility. However, in this case a violation was made and there is no recourse.

Klaus Conventz represented the Holcomb's and stated that there was no consultant in the beginning. The machinery on the property belongs to the owner, Mr. Holcomb. The cooperation of the Holcomb's has benefited them.

Commissioner Frazier moved that the Commission accept the amended recommendations by staff, Commissioner Dela Cruz seconded.

Commissioner Frazier stated that it be clear that applicants shall provide access and not rely upon thinking that someone else is going to do it. It should be a major part of the condition, that the applicant meet those standards. This is in reference to A2.

AMENDED RECOMMENDATIONS:

Staff is recommending that the applicants be found in violation of the Water Code for grading and excavating the right bank of Aamakao Stream without a permit. In lieu of the \$250 fine, staff recommends that the applicants be required to allow access to their property to agencies assisting the Commission in setting interim instream flow standards for Aamakao Stream.

A. Violation: Find the applicants in violation of Hawaii Revised Statutes §174C-71(3)(A) for ~~the after the fact~~ grading and excavation of the right bank of Aamakao Stream without the necessary stream channel alteration permit.

B. 1) Remedy: Impose a \$250 fine on the applicants for the ~~after the fact~~ violation. The proposed fine is based on a first time single violation based on the Commission's Penalty Policy Guidelines adopted on April 19, 2001. However, the staff also suggests the Commission consider an alternative, as proposed in "~~C~~" 2 below.

C. 2) Alternative Remedy: In lieu of the fine described in “B” 1, the Commission requires the applicants to allow access to their property for agencies who cooperate with the Commission in developing an interim instream flow standard for Aamakao Stream. The Commission imposes the following special condition on this stream channel alteration permit:

“The applicants shall provide access to their parcels for aquatic surveys, hydrologic studies and water quality studies. These include allowing the Commission/US Geological Survey to install a stream gage on the applicants’ parcel for a period of at least one year. The applicants shall also allow access to the parcels to the staff of the Commission, the Division of Aquatic Resources, the Department of Health and the US Geological Survey for aquatic and water quality surveys and seepage runs for a period of at least one year from the date of approval of this stream channel alteration permit. The staff notes that the applicants are already cooperating with the Division of Aquatic Resources by allowing access for stream surveys at the applicants’ parcels.”

D. B. Warning: The applicants shall be warned that future violations of the Water Code and attendant rules may be subject to fines of up to \$1000 per day per violation in accordance with Hawaii Revised Statutes §174C-15. This includes the unauthorized use of Aamakao Stream water from the proposed pipeline without the attendant stream diversion works permit (Hawaii Revised Statutes §174C-93) and amendment to the interim instream flow standard (Hawaii Administrative Rules §169-46).

E. C. Approval with Standard and Special Conditions: Approve a ~~partial after the fact~~ stream channel alteration permit for the construction of a driveway and installation of a 10-inch polyvinyl chloride pipeline on the right bank of Aamakao Stream (TMK: 5-2-07:13 and 14). The stream channel alteration permit will be valid for two years subject to the Commission’s standard conditions in Exhibit 6 and the following special conditions:

1) ~~In the event that the Department of Health determines that an NPDES permit is not required,~~ The applicants shall prepare a Best Management Practices Plan to minimize water pollution. The BMPP shall be acceptable to the Department of Health Clean Water Branch, and the applicants shall submit documentation to the Commission indicating the BMPP is acceptable to DOH-CWB. The applicants shall follow all practices to minimize water pollution identified in the BMPP, and comply with all remedial measures required by the Department of Health during construction work. Prior to construction work the applicants shall provide written documentation from the Department of Health that the BMPP is acceptable.

2) ~~The applicants shall prepare an archaeological monitoring plan acceptable to the State Historic Preservation Division prior to construction. During construction work the applicants shall have a qualified archaeologist monitor the construction work and implement the archaeological monitoring plan.~~

3) 2) The applicants shall provide access to their parcels for aquatic surveys, hydrologic studies and water quality studies. These include allowing the Commission/US Geological Survey to install a stream gage on their parcel for a period of at least one year. The applicants shall also allow access to their parcels to the staff of the Commission, the Division of Aquatic

Resources, the Department of Health and the US Geological Survey for aquatic and water quality surveys and seepage runs for a period of at least one year from the date of approval of this stream channel alteration permit.

MOTION: (Frazier/Dela Cruz)

To approve as amended.

UNANIMOUSLY APPROVED

3. Application for a Stream Diversion Works Abandonment Permit (SCAP-HA-341), Kamehameha Schools, Abandonment of Diversion Works Intakes at Lalakea and Hakalaoa Streams, Lalakea Ditch, Hamakua, Hawaii (TMK: 4-8-003:006)

PRESENTATION OF SUBMITTAL: Ed Sakoda

Lalakea Ditch is above Hiilawe Falls and not in Waipio Valley. A fairly short ditch system, it has intakes on 2 tributaries to Lalakea Stream and Hakalaoa Stream.

Mr. Manabu Tagomori representing Kamehameha Schools, gave reasons why Kamehameha Schools application to abandon the ditch is strictly a business call. They own the ditch and coupled with the Commission's Water Code requirement that any diverted flow be used and not wasted, they could not afford to maintain the ditch or find users or subsidize anyone to come in and do maintenance work. The Hamakua farmers did come forward, however, nothing materialized.

Ron Englund from the Bishop Museum reported on their stream study and training with native Hawaiian children in the latest scientific techniques. He reported that the taro crops were destroyed by the recent flood and the farmers will not be able to irrigate their crops. The community expressed their interest in being present when the stream is restored at the end of April.

Mr. Tagomori stated that the Commission is to make a decision on a diversion of the main stream, that is, the closure of the diversions. A permit from the Land Board to abandon the reservoir is also required.

Commissioner Frazier asked if the contractor has met the obligations for Kamehameha Schools as far as the research and education components are concerned. Mr. Tagomori stated that it is a 3-year LAMP Study and they are in their second year with one remaining. They have met their obligation up to this point. The study is to gather baseline data and to determine the impact after the closure.

Bill Beach, representing the Hamakua Community, the Kukuihaele Community Association, the Waipio Taro Farmers Association and the Hamakua chapter of the Farm Bureau gave testimony. He expressed that you have to be sensitive to the people's feelings and under the new regime at

Kamehameha it has improved. Mr. Beach asked that the Commission consider keeping the reservoir open for wild fire control in the region.

Kapua Sproat, attorney from Earthjustice representing the Waipi'o Valley Community Association, urged the Commission to support the staff's recommendation and to vote to provide Kamehameha Schools with the permit to abandon the Lalakea Ditch System. Ms. Sproat mentioned that various groups in the community, her clients included, and other educational programs like the Edith Kanakaole Foundation and Kanoa O Kaina have praised Kamehameha's decision to abandon the ditch system. They recognize that it is visionary and that the system that they have in place has been diverting water for over 15 years has no consistent use.

Marjorie Ziegler from the Conservation Council for Hawaii presented her testimony. Ms. Ziegler strongly supports staff's recommendation to grant the permit for abandonment of the Lalakea Ditch System. Instream uses are important. By putting the water back into the streams, we would be offering potential habitat for the native stream fauna as well as supporting the taro farmers that would like to use more water on Hiilawe Stream. The reservoir is very shallow and inefficient.

RECOMMENDATION:

1. Approve a stream diversion works abandonment permit for the abandonment of Lalakea Ditch, TMK: 4-8-003:006, Hamakua, Hawaii.
2. The diversions works abandonment permit will be valid for a period of one year subject to our standard conditions.

MOTION: (Whalen/Dela Cruz)

To approve as presented by staff.

UNANIMOUSLY APPROVED

Recess at 10:27a.m.

Resumed at 10:33a.m.

2. Approval of the Oahu Water Management Plan Framework and Scope of Work for Waianae and Koolauloa Watershed Management Plans

PRESENTATION OF STAFF SUBMITTAL: Dean Nakano

Mr. Barry Usagawa from the Board of Water Supply gave an overview of their proposed framework and water use and development plan update. Mr. Usagawa was accompanied by his staff George Kuo from Long Range Planning Section and consultants Jimmy Yamamoto from R.M. Towill, Bruce Tsuchida from Townscapes Inc., and Jeff Overton from Group 70 who will be assisting BWS in the development of watershed plans and water use strategies for Waianae and Koolauloa.

A handout covering the Oahu Water Management Plan Framework (OWMP) and Watershed Planning Approach for the Waianae and Koolauloa Watershed Management Plans were distributed by Mr. Usagawa.

Mr. Dean Nakano stated that the statutory and framework provisions described in the submittal set forth the minimum requirements for updating the WUDP including the overall planning framework that should be followed by the Counties in updating their respective plans. In accordance with these provisions, the City and County of Honolulu and the Board of Water Supply have submitted to the Commission for review and approval the "Oahu Water Management Plan Framework and Scope of Work for Waianae and Koolauloa Watershed Management Plans" dated February 20, 2004.

Staff reported that they have evaluated the submitted planning framework, scope of work and the planning elements described therein and have determined that the proposed WUDP updating process for Waianae and Koolauloa meets with the provisions and guidelines set forth in the State Water Code and the Commission's Statewide Framework for Updating the Hawaii Water Plan.

Staff looks forward to the Board of Water Supply's implementation of a comprehensive planning approach which facilitates the development and regular updating of a WUDP that conforms to the intentions of the county land use plans. The WUDP should provide guidance for decision-making on water allocation requests as well as guidance for the formulation of recommended and alternative strategies for resource development to meet future water needs.

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve the City and County of Honolulu, Board of Water Supply's Oahu Water Management Plan Framework and Scopes of Work for the Waianae and Koolauloa Watershed Management Plans;
2. Require that the Board of Water Supply, prior to the commencement of the other watershed plans for North Shore, Koolaupoko, and South Oahu (Ewa, Central Oahu, Primary Urban Center, and East Honolulu), submit proposed scopes of work (i.e., "Project Descriptions") for those regional areas to the CWRM for review and approval; and
3. Authorize staff to participate in meetings and/or workshops, as necessary, with pertinent State and County agencies to facilitate implementation of statutory and framework provisions for updating Oahu's County Water Use and Development Plan.

MOTION: (Ching/Whalen)
To approve as presented by staff.
UNANIMOUSLY APPROVED

4. Request to release funds for a proposal from Dr. Clark C.K. Liu, Water Resources Research Center, University of Hawaii at Manoa, Analytical Groundwater Flow and Transport Modeling for the Estimation of the Sustainable Yield of Pearl Harbor Aquifer

PRESENTATION OF SUBMITTAL: Kevin Gooding

Mr. Gooding outlined three issues: 1) Dr. Liu's work would be a complimentary effort, 2) analytical models are valid methods in analyzing ground-water flow and 3) a closer relationship with the Water Resources Research Center is being encouraged.

RECOMMENDATIONS:

Due to the need for additional ground-water management tools, staff recommends that the Commission approve the funding agreement between the Commission and the University of Hawaii, 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.

Dr. Liu and Dr. James Moncur, Director of the Water Resource Center visited DLNR/CWRM with the intention of establishing closer ties as well as proposing several ideas to the department. This particular project is more cost effective.

Mr. Delwyn Oki, hydrologist for the USGS commented on USGS publishing a study describing some of the limitations of the Ram Model. He suggested that the work being proposed address some of those conditions dealing with the hydraulic limitations of the model.

MOTION: (Whalen/Frazier)
To approve as presented by staff.
UNANIMOUSLY APPROVED

H. REPORTS

1. Update to Permitting Process for Wells and Pumps

PRESENTATION OF REPORT: Roy Hardy

Mr. Roy Hardy, Ground-Water Regulations Branch Chief, reported on proposed revisions to the Well Construction/Pump Installation Permitting process. However, mid-way through the presentation, the CWRM lost quorum and had to adjourn the meeting. The report will be rescheduled for the April 21, 2004 Commission meeting.

I. TOPICS FOR FUTURE COMMISSION MEETINGS

J. NEXT COMMISSION MEETINGS (TENTATIVE)

1. April 21, 2004
2. May 19, 2004

K. UPCOMING EVENTS

L. EXECUTIVE SESSION

M. ADJOURNMENT

The meeting was adjourned at 12:06P.M.

Motion: (Dela Cruz/Fukino)
UNANIMOUSLY APPROVED

Respectfully submitted,

PAULYNE ANAKALEA
Secretary

APPROVED AS SUBMITTED:

ERNEST Y.W.LAU
Deputy Director