MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE:	October 25, 2005
TIME:	9:00 a.m.
PLACE:	KALANIMOKU BUILDING CONFERENCE ROOM 132 1151 PUNCHBOWL STREET HONOLULU, HAWAII 96813

CALL TO ORDER

Chairperson Peter Young called the meeting of the Commission on Water Resource Management to order at 9:07 a.m.

ROLL CALL

The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Meredith Ching
Mr. Neal Fujiwara
Mr. James Frazier
Ms. Stephanie Whalen

Excused: Dr. Lawrence Miike and Dr. Chiyome Fukino

STAFF

Dean Nakano, Glenn Bauer, Roy Hardy, Ed Sakoda, Lenore Nakama

COUNSEL

Linda Chow, Esq.

OTHERS

Kapua Sproat, Jonathan Scheuer, Jeff Mikulina, Rebecca Alakai, Patrice Liu, Barry Usagawa, Allan Schildknecht, Kaeo Duarte, Michael Gibson, Diana Leone, Reid Yamashiro and Dan Polhemus

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

{Note: language for deletion is bracketed, new/added is underlined}

A. APPROVAL OF MINUTES

1. September 28, 2005

   Commissioner Frazier stated that the sentence on page 7 should be modified to read,

   "since the applicant controls both sides of Keanuiomano Stream and has development plans for both sides."

MOTION: (Frazier/Whalen)
To approve the minutes as modified.
UNANIMOUSLY APPROVED AS MODIFIED

B. ANNOUNCEMENTS

Mr. Roy Hardy announced that last Monday, October 17, 2005, a hearing on standing was held regarding the contested case hearing on the Iao Basal Water Use Permit Applications by hearings officer Dr. Lawrence Miike. Standing was granted to all five parties. The start of the Contested Case Hearing has been scheduled for April 18, 2006.

Mr. Ed Sakoda announced that a hearing for the Waiahole Ditch Contested Case Hearing was held in April 2005 where Dr. Miike was the hearings officer. In September 2005, Dr. Miike distributed his Findings of Fact, Conclusions of Law, and Decision and Order. The parties submitted their written exceptions on October 7, 2005. The Commission along with the Attorney General will then take the oral and written exceptions and incorporate it together with Dr. Miike's proposed Decision and Order and distribute it at a later date as the Final Decision and Order.

Deputy Attorney General Linda Chow asked if there would be oral arguments and exceptions. Mr. Sakoda stated possibly after the next Commission meeting.

C. GROUND WATER REGULATION

1. Waiawa Development LLC/ Kamehameha Schools, APPLICATIONS FOR WATER USE PERMIT, Gentry Waiawa Well 1 (Well No. 2658-07), TMK 9-6-005:003, WUP No. 692, New (Golf Irrigation) Use for 0.575 mgd, Gentry Waiawa Well 2 (Well No. 2658-08), TMK 9-6-005:003, WUP No. 693, New (Golf Course Irrigation) Use for 0.526 mgd, Waipahu-Waiawa Ground Water Management Area, Oahu

Commissioner Meredith Ching recused herself from Item C-1.
Presentation of Submittal: Lenore Nakama

Ms. Nakama stated that action on these applications was deferred at the August 17, 2005 Commission meeting for additional information to support the requested use quantities and analysis of practical alternatives. The August 17, 2005 submittal is attached as an exhibit and the issues covered therein would not be reintroduced. The present submittal will focus on the events that have transpired since August 17, 2005 and new issues not previously covered.

RECOMMENDATION:

Staff finds that the proposed permits meet the criteria in §174C-49(a) HRS to obtain a water use permit and recommends that the Commission approve the issuance of Water Use Permit Nos. 692 and 693 to Waiawa Development LLC / Kamehameha Schools for the reasonable and beneficial use of 0.524 mgd and 0.458 mgd of ground water from the Waipahu-Waiawa Aquifer for irrigation of the 181-acre North Golf Course and 149-acre South Golf Course, respectively, from Gentry Waiawa Wells 1 & 2 (Well Nos. 2658-07 & 08), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, the Commission reserves the right to revoke this permit, after a hearing.

2. This permit is approved under the assumptions that either: 1) treated wastewater will become available for reuse as an alternative supply source, provided that Department of Health concerns over the use of treated effluent over the potable water aquifer have been addressed; or 2) Waiahole Ditch water becomes available after the establishment of IIFS for the relevant windward streams.

3. These permits shall be subject to a review of actual use within four years for possible modification of the permitted amount.

4. The applicant shall obtain the most current version of the Department of Health's Guidelines Applicable To Golf Courses in Hawai`i. Where relevant and viable, items of the guidelines should be implemented and sustained appropriately. To obtain the current version, contact the Safe Drinking Water Branch, Environmental Management Division, at 808-586-4258 (Honolulu).

5. 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.

DISCUSSION:

Chairman Young asked if, under Special Conditions 1 and 2, the applicant would be required to use those alternative sources. Ms. Nakama responded yes, the applicant should not have long-term reliance on these permits as a permanent source of water. At some point an alternative will come on line and the applicant will be required to convert at that time.

Regarding Special Condition 2, Commissioner Fujiwara asked whether the options are treated wastewater "or" Waiahole Ditch or could it be "and/or"? Ms. Nakama said it could be changed to "and/or" to make it more flexible.

Commissioner Frazier asked who would communicate when the availability of alternatives becomes real. Ms. Nakama stated that staff would be aware when Waiahole Ditch becomes available and rely on Board of Water Supply (BWS) as the purveyor of R-1 water to note when this alternative is ready for delivery.

Ms. Patrice Liu, representing the applicant, Waiawa Development LLC, concurred with staff's original recommendation on their requests for water to irrigate their golf courses. Ms. Liu stated that with respect to the use of R-1 water, they have discussed with BWS the terms under which they will purchase the water when it becomes available. The applicant will be executing a Memorandum of Agreement with BWS committing to the use of R-1 water when it becomes available. The best estimate of when this will occur is within six years.

Ms. Liu stated that they have no concern with regard to conversion to R-1 water; however, regarding the conversion to Waiahole Ditch water, Ms. Liu stated that they would not be able to apply for that unless Kamehameha Schools (KS) is in agreement. KS is in control of the water source as well as being the landowner of the golf courses, and so without KS' concurrence, no application can be made.

Mr. Kaeo Duarte, Kamehameha Schools Water Resource Manager, suggested a restatement for the second special condition, to replace "shall be required to convert" with "shall be required to apply for an alternative source." The Chairman stated that this language may not be strong enough. Under the proposed wording, the applicant may submit an incomplete or otherwise deficient application without any intention to make a commitment to an actual conversion. The recommendation is that the groundwater is an interim use and an alternative non-potable water system or irrigation system is required for the long-term use.

Mr. Duarte's understanding from the Commission staff was that if an alternative source becomes available, the applicant is required to make a water use permit application for the alternative source, not specifically Waiahole Ditch water, whereby a hearing will have to take place on those alternative source applications, which may include Waiahole. But, the source cannot be determined until a hearing is held.

Acting Deputy Director, Mr. Dean Nakano proposed to keep the wording for the first alternative source option in Special Condition 2 intact, but change the wording of the second option to, "and/or other non-potable water source that may include Waiahole Ditch water."

Mr. Jeff Mikulina, Director of the Sierra Club, Hawaii Chapter, stated his appreciation for the Commission's attempts to require the developer to a convert to non-potable source

as soon as it becomes available. However, he would like to see it go a step further by asking the applicant to work on developing that source and making sure they are at the table expediting that process so they can use a non-potable source sooner.

Overall, Mr. Mikulina stated that the use of potable water for watering golf courses is inappropriate, given our current situation of being told by BWS that we have to cutback, reduce and conserve water. Mr. Mikulina stated that we're sending a mixed message to the public when all of a sudden we can come up with a million gallons of water from the same water source to water a golf course. These golf courses are part of a larger Waiawa development with over 10,000 units. The Environmental Impact Statement (EIS) for this project was put together over 20 years ago; therefore, we should be looking for a supplemental EIS as conditions have changed, times have changed, water supply, and traffic have changed over the past 2 decades. Before any permits are issued, a supplemental EIS should be required.

Mr. Mikulina also stated that certain water use plans have not been updated and need to be looked at. How much water do we have for the entire development? Not just these 2 golf courses but to satisfy the 10,000 plus units that are proposed to be built in addition to other developments in Central Oahu that have been approved. We need to provide for affordable housing, yet we're coming up with a million gallons for golf courses. The main question is, do we have enough water? Sierra Club would like to see amendments to require the applicant to use non-potable water as soon as possible.

Chairman Young asked, if the Commission makes the condition a requirement to convert when a non-potable source becomes available, then would it be okay? Mr. Mikulina stated that it would be an improvement.

Mr. Barry Usagawa, BWS, submitted written comments on the water use permit applications. He stated that BWS has no objections to the proposed amendments. Regarding the staff submittal, he felt that the costs associated with using the existing potable wells as an alternative appear to be on the high end, but he acknowledged that use of existing potable wells would add to the cost of the project.

Mr. Usagawa informed the Commission that a meeting between BWS and representatives of the Waiawa Development LLC was held on September 8, 2005. BWS's concerns were twofold: 1) the impacts of pumping groundwater above the existing municipal wells, and 2) creating more incentive to convert to recycled water because the BWS would be investing in the infrastructure and system and needed the customers to be ready for conversion. The terms and conditions of a Memorandum of Agreement (MOA) have been agreed upon, but the MOA has not yet been executed. The first condition under the proposed MOA clarifies that if pumping the golf course wells results in adverse water quality impacts, BWS, the developer, and the golf course operator shall cooperate to develop an operating scheme to address water quality issues. This would involve scheduling pump operations to balance out the pumpage so that it will reduce any impacts

on lower elevation wells. If this doesn't work, then BWS may petition the Commission to reduce or revoke the allocation for the golf courses in the future. In addition, Waiawa will agree to cooperate with BWS and the Commission to conduct monitoring studies undertaken by the Pearl Harbor Monitoring Working Group. The second point in the MOA establishes that the developer will pay the published rates for recycled water and if applicable, pay the impact fees that will recover some of the costs of the off site improvements. Based on these representations, BWS withdrew their request to develop existing potable wells for temporary irrigation of the golf course and have no objections to the water use permit.

Commissioner Fujiwara inquired as to the timing of the R-1 water availability. Mr. Usagawa stated the City and County Department of Environmental Services is working on environmental documents and a facilities plan for the Wahiawa Wastewater Treatment Plant. The two documents show a recycled water line coming down to the Central Oahu Regional Park and BWS is requesting that the line be extended to the Waiawa project area. BWS anticipates the facilities plan will be completed by the end of this year. The EIS preparation notice was filed a number of years ago; however, a draft EIS has not been developed as yet by the City and County Department of Design and Construction (DDC). DDC is looking at ways to eliminate the discharges from the Wahiawa Wastewater Treatment Plant into Lake Wilson.

Commissioner Whalen asked if the MOA is legally binding? Ms. Linda Chow, Deputy Attorney General, said that it depends on the MOA, but in most cases the MOA is more of an outline of what to do in the future rather than a contract, more like a statement of intent; and it is not as detailed as a development agreement.

Ms. Kapua Sproat, attorney with Earthjustice representing Windward parties in their effort to restore stream flow to the streams and communities diverted by the Waiahole Ditch system, including Hakipuu Ohana, Kahaluu Neighborhood Board, Makawai Stream Alliance and Ka Lahui Hawaii, said her clients have serious concerns regarding the use of water diverted by the Waiahole Ditch system. If the Commission elects to have Waiawa Development LLC pursue water from Windward streams and communities, Ms. Sproat wanted assurances that a water use permit application will be made, noticed, and must meet all of the conditions under §174C-49(a) HRS, including the reasonable and beneficial use test and must demonstrate the absence of an alternative water source. Ms. Sproat also requested that if permits for groundwater are issued and later revisited because of the claimed availability of alternative sources, that a group of affected stakeholders be convened to discuss any potential conversions, particularly if it concerns the Waiahole Ditch.
Ms. Sproat acknowledged Gentry's representation to use R-1 water when it becomes available and approved of the amendment to the staff recommendation as proposed by Mr. Dean Nakano.

Dr. Jonathan Scheuer, Office of Hawaiian Affairs, (OHA) commented on OHA's long involvement in the Waiahole Ditch issue and their objections to the use of Waiahole Ditch water for a golf course. Mr. Scheuer stated that although OHA withdrew its objections, their concerns remain and have not been addressed so far. The golf course should not be considered in isolation as it is part of a 12,000 home development, including a commercial center, two golf courses, and roadway. The entire project will use about 18 million gallons of water per day during peak times, and this is in addition to peak demands for Koa Ridge and other development plans for Central and Leeward Oahu.

Dr. Scheuer also stated that he was not aware of Commission staff's analysis that show how the water needs for the entire development will be accommodated in the future, or analysis that show there will be no adverse impacts on traditional customary Hawaiian rights from the overall scale of this development. The last EIS was approved in 1987 and probably not adequate for today's market. Traffic impacts from 12,000 new homes were not a consideration in 1987, as well as the change in water usage. The most important question is whether the development serves the public interest, Native Hawaiian interests in particular.

Chairman Young stated that the intent is that groundwater is the interim water source. Based on the representations of the applicant as well as BWS, there will be a MOA that commits the applicant to use R-1 water.

Chairman Young wanted to re-emphasize that the permitting and the processing of any alternative sources under the purview of the Commission would follow the statutory requirement.

AMENDED RECOMMENDATION:

Staff finds that the proposed permits meet the criteria in §174C-49(a) HRS to obtain a water use permit and recommends that the Commission approve the issuance of Water Use Permit Nos. 692 and 693 to Waiawa Development LLC/Kamehameha Schools for the reasonable and beneficial use of 0.524 mgd and 0.458 mgd of ground water from the Waipahu-Waiawa Aquifer for irrigation of the 181-acre North Golf Course and 149-acre South Golf Course, respectively, from Gentry Waiawa Wells 1 & 2 (Well Nos. 2658-07 & 08), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, the Commission reserves the right to revoke this permit, after a hearing.
2. [This permit is approved under the assumptions that either: 1) treated wastewater will become available for reuse as an alternative supply source, provided that Department of Health concerns over the use of treated effluent over the potable water aquifer have been addressed; or 2) Waiahole Ditch water becomes available after establishment of IIFS for the relevant windward streams.]

2. This permit is approved under the requirement that conversion to either:
    a. treated wastewater becoming available for reuse as an alternative supply source, provided that Department of Health concerns over the use of treated effluent over the potable water aquifer have been addressed; and/or
    b. another nonpotable source becoming available

    will occur in a timely manner.

3. These permits shall be subject to a review of actual use within four years for possible modification of the permitted amount.

4. The applicant shall obtain the most current version of the Department of Health's Guidelines Applicable To Golf Courses in Hawai`i. Where relevant and viable, items of the guidelines should be implemented and sustained appropriately. To obtain the current version, contact the Safe Drinking Water Branch, Environmental Management Division, at 808-586-4258 (Honolulu).

5. 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.

MOTION: (Whalen/Frazier)
To approve as amended by staff.
UNANIMOUSLY APPROVED AS AMENDED

2. Basin Project, Inc. dba John Dominis Restaurant / Hawaii Community Development Authority, APPLICATION FOR A WATER USE PERMIT, John Dominis Restaurant Well (Well No. 1751-09), TMK 2-1-60:13, WUP No.743, New (Salt-Water Aquarium), Use for 0.864 mgd of Salt Water, Nuuanu Ground Water Management Area, Oahu

Presentation of Submittal: Lenore Nakama

RECOMMENDATION:

Due to the applicant's ability to demonstrate consistency with the conditions for a water use permit, staff recommends that the Commission approve the issuance of Water Use Permit No. 743 to Basin Project, Inc. dba John Dominis Restaurant and Hawaii Community Development Authority for the reasonable and beneficial use of 0.864 million gallons per day of salt water from the John Dominis Restaurant Well (Well No. 1751-09) to supply the aquarium at the John Dominis Restaurant, subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. 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.

2. Standard Condition 16 is waived for salt-water wells.

3. The permittee shall contact the Department of Health, Clean Water Branch and obtain the necessary discharge permit(s).

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

G. NEXT COMMISSION MEETINGS (TENTATIVE)

1. December 16, 2005

Chairman Young introduced Mr. Dan Polhemus, new administrator for the Division of Aquatic Resources.

The meeting was adjourned at 10:16 a.m.

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

Approved as submitted:

DEAN A. NAKANO
Acting Deputy Director