

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: January 11, 2006
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 0900 a.m.

ROLL CALL

The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Meredith Ching
Mr. Neal Fujiwara

Mr. James Frazier
Dr. Lawrence Miike
Ms. Stephanie Whalen

Excused: Dr. Chiyome Fukino

STAFF

Dean Nakano, Roy Hardy, Ed Sakoda, Neal Fujii, Lenore Nakama, Kevin Gooding, Charley Ice, David Higa, Dean Uyeno

COUNSEL

Linda Chow, Esq.

OTHERS

Barry Usagawa, Kapua Sproat, Dr. Jonathan Likeke Scheuer, Gordon Tribble, Steve Anthony, Avery Chumbley, Kent T. Weir, Tracy Runnells, John Duey, Garrett Hew, Linnel Nishioka, George Tengan, Jane Lovell, Bert Ito, Isaac Moriwake, Mayor Alan Arakawa, Delwyn Oki, Linda Coble, William Tam, Brian Moto, Teresa Dawson

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}

APPROVAL OF MINUTES

December 16, 2006

MOTION: (Whalen/Ching)
To approve the minutes
UNANIMOUSLY APPROVED

B. ANNOUNCEMENTS

Acting Deputy Director Dean Nakano announced that a petition was made to designate the Mahukona Aquifer as a ground water management area.

Mr. Nakano recognized David Higa who will be retiring on January 31, 2006 after 30 years of government service.

Mr. Nakano also stated that Mr. Kepa Maly would be discussing more on cultural perspectives on water.

C. GROUND WATER REGULATION

1. VIP Sanitation, Inc./ Department of Hawaiian Home Lands, APPLICATION FOR A WATER USE PERMIT, VIP Sanitation Well (Well No.1805-16), TMK 9-1-13:09, WUP No. 750, New (Industrial and Irrigation) Use for 0.003 mgd Malakole Ground Water Management Area, Oahu

Presentation of Submittal: Lenore Nakama

DISCUSSION:

The applicant, VIP Sanitation, Inc., is requesting brackish water to clean and supply portable restrooms. If the water is fresh enough they would like to use up to 50 gallons per day to water planters around the perimeter of the property.

Dr. Miike asked whether R-1 is a practical alternative or not, given the stagnation issue. Staff responded that the Board of Water Supply (BWS) has stated that its policy is that users must accept whatever comes out of the pipeline.

Mr. Tracey Runnells, VIP's consultant, stated that he told BWS that stagnant water is not acceptable. There is over 1 mile of stagnant pipe, and at the proposed use of 3,000 gpd, it would take over 10 days to clear the pipe. What's in the pipe is no longer R-1 water by

the time it reaches VIP's parcel. It would be black sludge and the Department of Health (DOH) would have to evaluate the water 1 mile away. DOH does not allow R-1 mist to be inhaled. He also questioned the use of R-1 water for cleaning restrooms. Regarding the disposal issue, he compared the 3 gallons of well water to the 80 gallons of effluent. If VIP can't use well water, they will use potable water to fill the tanks. Mr. Runnells concluded by urging the Commission to approve the water use permit.

Mr. Bert Ito of VIP explained that their truck carries a 500-gallon tank of water and a 1,000-gallon tank of wastewater. They obtain water from construction sites. Ninety percent of the water is used for washing down the interior and exterior of the units. Drivers are forced to be efficient in their water use because once they leave the base yard, they don't come back.

Mr. Barry Usagawa, BWS, stated that BWS supports staff's recommendation. BWS is trying to promote R-1. VIP's parcel is adjacent to the R-1 line. Stagnation may be an issue because there is about 1 mile of closed valve line; BWS will flush out the line.

According to the Reuse Guidelines, R-1 water quality is required at the reclamation facility. BWS is not clear if DOH requires a certain quality at the end of the pipe. BWS will seek clarification from DOH. Disposal is an issue for the Department of Environmental Services (ENV), and needs to be addressed. It is a policy question as to what levels of chlorides ENV will accept. It doesn't matter what the well will produce, what matters is what ENV will accept. Mr. Usagawa concluded by stating that if the Commission wanted to go ahead and approve the water use permit, he recommends that a condition be attached to the permit to require VIP to convert to R-1 when more users come online.

Commissioner Whalen asked if BWS would test the R-1 quality if it were a requirement of a water use permit. It is reasonable to expect that BWS must show that the water delivered to VIP is of R-1 quality. Users cannot be expected to pay where there is no guarantee of the water quality being delivered. Commissioner Whalen also expressed concerns regarding possible exposure. It is not clear what is meant by "protective clothing" in the Reuse Guidelines.

Mr. Usagawa agreed that BWS must be responsive to clients. He stated that BWS needs to obtain clarification from DOH. Are chloroform and TDS standards also applicable at distribution points?

Commissioner Whalen noted that, at the proposed use rate of 3,000 gpd, it would take 10 days to use the water in the pipe.

Mr. Usagawa stated that BWS would flush the line, wait 10 days then test again.

Commissioner Whalen expressed concern over the rising chloride levels in the R-1 water. Why have levels risen from 250 ppm to 300 ppm over the last 5 years? Will the R-1 become unusable in the future? If the R-1 becomes too salty, agricultural application will cause the salts to build up in the soils. The Commission is making decisions with reliance on R-1 water availability.

Mr. Usagawa replied that repair and maintenance of sewers is an issue. There are expansive coastal areas where much of the sewer line is submerged in salt water. If there are leaks in the sewer lines, then the chlorides will increase.

Commissioner Miike stated that the salt-water intrusion is a bigger problem than VIP's proposed use, so the water use permit should be approved with conditions to convert.

Commissioner Frazier asked if the permittee would be required to regularly report the chloride content of the well water. Staff responded that chloride reporting was a standard condition of all water use permits.

RECOMMENDATION:

Staff recommends that the Commission find that additional information is needed to support the applicant's request, specifically an analysis of the health and/or economic impacts of the combined potable/R-1 alternative suggested by Board of Water Supply. The analysis should include a concurrence letter from the Department of Health regarding the consistency of the proposed use with the Reuse Guidelines. In addition, the applicant shall address the City's concern regarding the waste disposal. If additional supporting information is not received within ninety (90) days from this submittal's date, then the application shall be deemed denied without further action by the Commission.

AMENDED RECOMMENDATION:

The Commission voted to approve the water use permit with a requirement to convert a practical alternative becomes available.

MOTION: (Miike/Whalen)

To approve as amended

UNANIMOUSLY APPROVED

Staff requested clarification as to whether the Commission was also attaching Standard and Special Conditions, such as requested by DAR. The Chairperson responded that that was implied since it was included in the submittal.

E. STREAM PROTECTION AND MANAGEMENT

1. Application for a Stream Channel Alteration Permit (SCAP-KA-389), And

Declaratory Ruling DEC-KA06-S10, Waimea River Dredging to Restore Flow Capacity, Department of Public Works, County of Kauai (TMK: (1-6-02)

Presentation of Submittal: Ed Sakoda

DISCUSSION:

The applicant, County of Kauai is proposing to dredge approximately 25,000 cubic yards of material from a portion of the Waimea River on Kauai.

The U.S. Army Corps of Engineers inspected the area in question in October 2004. The findings rated the project as “unacceptable” due to lack of maintenance by the local sponsor. This project was placed in inactive status and is presently ineligible for the Corps of Engineer’s Federal assistance under Public Law 84-99, should this project receive damages due to an adverse flood event.

RECOMMENDATION:

That the Commission issue a declaratory ruling that the dredging of approximately 25,000 cubic yards of silt and debris at the confluence of Makaweli River and Waimea River, Kauai, by the County of Kauai, Department of Public Works, and similar Corps of Engineers-required maintenance activity for the entire lower reach of Waimea River be exempt from a stream channel alteration permit pursuant to Hawaii Revised Statutes §174C-71.

Staff will ask, by letter, that the County of Kauai provide courtesy notification of such Corps of Engineers-required activities.

MOTION: (Ching/Whalen)
To approve submittal as recommended by staff
UNANIMOUSLY APPROVED

G. NON-ACTION ITEMS

1. “Briefing on Pending Ground Water and Surface Water Actions in the Wailuku, Maui Area.”
2. Presentation by Mayor Alan M. Arakawa on the Resolution of the Office of Hawaiian Affairs, Hui O Na Wai Eha, and Maui Meadows Association’s Objections and Concerns Regarding Maui Department of Water Supply’s Water Use Permit Application for the Iao Aquifer (MA-CCH-MA-05-1)

Acting Deputy Director Dean Nakano introduced Mayor Alan Arakawa from Maui who read excerpts from a June 9, 2003 memo from Mr. Avery Chumbley, President of Wailuku Agribusiness, (now Wailuku Water Company-WWC) to Maui County Council member, Wayne Nishiki explaining its use of water. Mayor Arakawa emphasized the huge economic impact when some of the lands that were sold by Wailuku Ag converted to urban development from agriculture.

Mayor Arakawa suggested immediate restoration of water, however, this is not to obstruct the Interim Instream Flow amendment petition. Mayor Arakawa stated that the ditch water was not managed well and they presently have a very poor system. Many farmers have complained that they are not receiving the water that was promised them. Combining all the agricultural land converted to the new urban developments of unknown ownership with the former agricultural water demand reduced, the Mayor wondered where all that water is going to now.

Some issues and concerns were: the inability to collect perfect data, as stated by Dr. Miike; the balancing of off stream uses versus economic impact data, by Commissioner Meredith Ching; cost and numbers not availability of water by Commissioner Whalen; and since the closing of the plantations, where has the surface water gone and is it available for urban use, by Commissioner Neal Fujiwara.

Mayor Arakawa stated that the water system should be evaluated by the direction that the Commission would want it to go, not just the construction part but also the economic and environmental impact. We need take a step back to see what direction we should move in and then figure how to get there. The Mayor stated that some of these areas should be kept open space, not be built-in, conservation, or agriculture. Mayor Arakawa stated that these areas should not be controlled by developers who just want to construct special housing. What's happening right now is that these developers want to bypass the system because the housing market's growth. What will happen is that the County will have to step in and help these communities because of the sub-standard water systems and most of them will not have good management of these systems.

Mayor Arakawa stated that the County has been hauling water to Kahakuloa for the past three weeks because their pump broke down. He mentioned that these things would happen on a more frequent basis when water systems are managed and developed by people that don't have the expertise at the level that it should be.

Mayor Arakawa also stressed that the County will have to provide water to agriculture as well as residential. With the exit of the sugar industry, water should be used not only by developers but also by the entire community. Public resources should be managed the way the County would manage it. This will not work if the County keeps giving it away piece by piece, and then trying to fight all the lawsuits in trying to put them together again. Mayor Arakawa emphasized that it won't be as easy as it is right now to get these

water systems back under control; once they are split to the independent water companies it would be almost impossible to wade through all the lawsuits to get them back together.

Commissioner Whalen stated that it all boils down to cost, not source. At one point Oahu was 90% agriculture and 10% urban; now there is no sugar so where did that water go on Oahu? Mayor Arakawa clarified that the numbers used were from June 9, 2003 and the point he was trying to make, even with all the other uses, was that there was still the 29.25 mgd of extra water and where was that water going if not to these places? It wasn't being diverted back to the stream, where was it going? The cost portion is workable but in reality it's the policy and working with the public trust to be able to provide water for the communities, not just this year but generations and centuries to come. Where should the policy go when we're having this huge shift? From a practical standpoint, we try to deliver water at a most reasonable cost. If the easy and convenient available water was taken away, then we must look for the high priced water that couldn't have been developed before. In looking at the companies like Pioneer Mill and Wailuku Agribusiness, the purpose was to give water to that agricultural-based company. They had the benefit for the entire time the company was in existence; they used that water and made profits from the cane company. That was fine. However, when the company disappeared, the use of water disappeared. The community should then go back and re-evaluate the situation.

The Commission should join in the studies and if necessary, support designating the area as a surface water management area.

Chairman Young thanked the Mayor and expressed his appreciation to commit to the update of the water use and development plan for Maui, as well as water conservation, and funding for studies to give us a better understanding and better information.

Mr. Chumbley stated that Wailuku Water Company has been around for 147 years and takes water management very seriously and is committed to follow the State Water Code. Unfortunately, with petitions filed, it could not move forward to resolve Instream Flow Standards. The Wailuku Water Company has managed the water system for over 100 years and has informed the public of the sale and water usage. However, misinformation stated in the Office of Hawaiian Affairs (OHA) newsletter saying that the Wailuku Water Company is using only one-half of the diverted water is incorrect. They are using 100 per cent of the water and there is simply no waste, Mr. Chumbley reported.

The uses have changed over the years from sugar and pineapple to macadamia, coffee and residential. Mr. Chumbley explained that the diversions in place do not take all the water out of the streams and what is not being used is put back into the streams. Mr. Chumbley noted from a paper that he authored in June 2003 of how land was sold to people to farm. The kuleana flows have remained constant and we've never denied water to the farmers. Maui County wanting to purchase the water system resulted in this June 2003 document, however, they didn't follow through. The Maui County Water

Department is receiving water through the Iao-Waikapu Ditch and Iao Tunnel. Mr. Chumbley stated that if the Mayor was serious in restoring streams that the MDWS use of 4.4 mgd from the ditch should be restored to the stream as well as the kuleana flow.

Ms. Kapua Sproat attorney with Earthjustice and Mr. John Duey, President of Hui O Na Wai Eha, gave testimony. Mr. Duey stated that he and his wife purchased 18 acres of land from Mr. Chumbley. He's taken many walks on his property at different times and found the stream to be dried up. However, down further there are 2 to 3 million gallons of water flowing into the Pohakea Gulch. Mr. Duey would like to see more gages placed to get information on how much water is being diverted.

Mr. Chumbley quoted, "I take exception to the statement that we're playing a shell game." He stated that information was transmitted to the Commission and staff has that information. Diversions that are in place do not take all water out of streams. As stated, the USGS indicated a decline in water flow. Mr. Chumbley also said that what water is not used is returned downstream.

Ms. Sproat thanked Mayor Arakawa however; she stated that her clients have been very patient, 19 months since the first petition was filed and 15 months since the second. Their patience is wearing thin. Based on communication with CWRM staff, there is no information on end use. The only data available is the amount being diverted. There needs to be more accountability.

Ms. Sproat mentioned that evidence of dumping in Reservoirs 6 and 9 at Pohakea Bridge was presented to the Commission. Also stated was that there was excess water from Wailuku, however, it is being sold to other companies. Time was not on their side. In the first year that the petition was filed, WWC has tripled their water revenues. This period covered June 2004 through June 2005. Ms. Sproat urged the Commission to take action and make a decision soon stating that water is a public trust resource.

In reference to dike-impounded-waters, Ms. Sproat stated that the Commission had recognized a citizen complaint and the Interim Instream Flow Standards petition must be determined before the Water Use Permit Application is issued.

Mr. Garrett Hew from Hawaiian Commercial & Sugar Company (HC & S), acknowledged support from Mayor Arakawa and stated that HC & S is a very active agriculture company with 900 employees, unlike Waiahole.

Dr. Jonathan Likeke Scheuer, representative from the Office of Hawaiian Affairs, thanked the Commission for their service. He further stated that King Kamehameha III allowed some privatization of land, but not water. According to Mr. Chumbley's statements, if you start below the diversion those streams are dry, however, not for short distances but for hundreds of yards. Dr. Scheuer stated that it was nice that Wailuku Ag

has been around for 147 years; however, the Hawaiians have been around a lot longer trying to care for these systems.

It was suggested by Dr. Scheuer that the Commission act now and do an interim study as people are making money off the water. He recognized that the Department of Land and Natural Resources inherited many problems in the making. The IIFS petition from Na Wai Eha was filed under the direction of Chairman Young.

Acting Deputy Director Dean Nakano stated that with a number of changing deputies, staff works hard and makes every effort to move forward legally and expeditiously. An example is the item on 3,000 gallons of water a day for washing bathrooms. It is complex; there are no excuses, just reality. Acting Deputy Nakano relayed that staff will re-group and work as best as they can.

H. NEXT COMMISSION MEETINGS (TENTATIVE)

1. February 15, 2006
2. March 15, 2006

The meeting adjourned at 11:55 a.m.

Respectfully submitted

PAULYNE K. ANAKALEA
Secretary

Approved as submitted:

DEAN A. NAKANO
Acting Deputy Director