

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

DATE: June 21, 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 9:03 a.m.

**ROLL CALL**

The following were in attendance:

**MEMBERS**

Mr. Peter Young	Mr. James Frazier
Ms. Meredith Ching	Dr. Lawrence Miike
Mr. Neal Fujiwara	

Excused: Dr. Chiyome Fukino and Ms. Stephanie Whalen

**STAFF**

Dean Nakano, Ed Sakoda, Roy Hardy, Charley Ice, Dean Uyeno, Lenore Nakama, Joshua Hekekoa, Jeremy Kimura

**COUNSEL**

Randall Ishikawa, Esq.

**OTHERS**

Yvonne Izu, Dr. Jonathan Scheuer, Manabu Tagomori, Francis Oishi, Glenn Higashi, Steve Anthony, Dr. Steve Gingerich, Dr. James Parham, Darrell Kuamoo, Dr. Dwayne Meadows, David Penn, Bob Kinzie, Reuben Wolff, Kaeo Duarte, Linda Koch, Delwyn Oki, Barry Usagawa and Teresa Dawson

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

**B. ANNOUNCEMENTS**

Acting Deputy Director, Dean Nakano thanked Hearing Officer Dr. Miike and staff for conducting a standing hearing on Monday, June 19, on Maui for the Iao Combined Contested Case. Based on the hearing, 5 parties were determined to have standing. Dr. Miike and staff will be working out scheduled details to commence mediation sometime in July.

Mr. Nakano introduced two new Commission employees, Josh Hekekoa, a Planner in the Stream Protection and Management Branch and Jeremy Kimura, a Hydrologist in the Planning Branch.

**D. SURVEY**

**1. Authorization to Award the Construction Contract for Job No. G55CM18B, Waihee Deep Monitor Well, Waihee, Maui**

Presentation of Submittal: Kevin Gooding

**RECOMMENDATION:**

That the Commission authorize the Chairperson to proceed with awarding the contract for Job number G55CM18B, Waihee Deep Monitor Well, Waihee, Maui, to Wailani Drilling, for their low bid of \$333,910.00, and execute necessary documents to implement the project subject to the approval by the Deputy Attorney General.

MOTION: (Miike/Fujiwara)  
Approve as recommended by staff  
UNANIMOUSLY APPROVED

**E. STREAM PROTECTION AND MANAGEMENT**

**1. Application for a Stream Channel Alteration Permit (SCAP-KA-395), Wainiha Stream Bank Stabilization, Wainiha Stream, Hanalei, Kauai, (TMK: (4) 5-8-005:004)**

Presentation of Submittal: Ed Sakoda

**RECOMMENDATION:**

That the Commission approve a stream channel alteration permit for the Wainiha Stream Bank Stabilization Project, TMK: (4) 5-8-005:004, Hanalei, Kauai. The permit shall have a term of two years subject to the Commission's standard permit conditions in Exhibit 5.

DISCUSSION:

Commissioner Miike asked if the Corps of Engineers permit was still subject to the initial comments by the various reviewers.

Ed Sakoda stated yes, the applicant must answer to the Corps to whatever conditions they impose. Mr. Sakoda also stated that there were problems with the emergency authorization that was issued which will be addressed in the next submittal.

Commissioner Fujiwara asked if on the emergency authorization had the applicant done something, would he have needed engineering designs prior to doing it?

Mr. Sakoda stated that they would still need an after-the-fact permit, even if the work had been completed.

MOTION: (Frazier/Miike)  
Approve as recommended by staff  
UNANIMOUSLY APPROVED

**2. Request to Rescind September 1, 1993 Emergency Authorization Procedures**

Presentation of Submittal: Ed Sakoda

RECOMMENDATION:

That the Commission rescind the emergency authorization procedures that were approved by the Commission on September 1, 1993. Commission staff will follow the procedures for emergency work as provided in Section 13-169-55 of the Hawaii Administrative Rules.

DISCUSSION:

Commissioner Miike asked for a concrete example of how it would differ if we rescind.

Mr. Sakoda stated that it really would not differ. He pointed out as stated in Exhibit 1, Emergency Authorization (EA), Item c, the applicant is to notify the Chairperson no later than the first working day after initiation of any emergency work. In Exhibit 1, Item e, the applicant must also notify the Chairperson upon completion of the emergency work. Mr. Sakoda pointed out that the applicants may have different interpretation of the rules.

Mr. Sakoda also noted that Item g states “within” 30 days of his notification. He noted that the timeframe for notification was subject to interpretation so it would be simpler to go by the rules.

Mr. Sakoda stated that the condition for an EA is to remove threats to life and property. The work done should be to restore what was there before, not building new structures.

Commissioner Frazier asked what might have triggered the Commission in 1993 to alter or come up with this plan.

This EA in Item i states that the applicant has to come in after-the-fact even after they get an EA. This is not specifically stated in the emergency procedure in the rules. The section on getting permits applies to any type of stream channel alteration. Mr. Sakoda stated that one could apply emergency work to that. Mr. Sakoda believes that the EA was adopted to clarify the need for after-the-fact permits.

MOTION: (Ching/Fujiwara)  
Approve as recommended by staff  
UNANIMOUSLY APPROVED

**3. Application for a Stream Channel Alteration Permit (SCAP-KA-394), Pilaa 400 LLC, Remediation Plans, James H. Pflueger, Pilaa Stream & Two Unnamed Streams, Kilauea, Kauai (TMK: (4) 5-1-004: 008)**

Presentation of Submittal: Ed Sakoda

RECOMMENDATION:

That the Commission approve a stream channel alteration permit for the Pilaa Remediation Plans Project (TMK: 5-1-004:008) Kilauea, Kauai. The permit shall have a term of two years subject to the Commission's standard permit conditions in Exhibit 3, and the following special conditions:

1. A qualified archaeologist should conduct a field visit and assess whether the ponds will be adversely impacted by the proposed remediation plan; and
2. If it is determined that the ponds will be adversely impacted, then a qualified archaeologist should be on site to monitor any ground disturbance during construction, and to ensure historic sites are protected. An archaeological plan shall be submitted to the State Historic Preservation Division (SHPD) for review, comment and approval. Once approved, the project should be allowed to proceed; however, a report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include: 1) Detail drawings of burials and deposits to scale; 2) All artifacts shall be sketched and photographed; 3) Analysis of all perishable and datable remains shall be conducted; 4) Stratigraphic profiles shall be drawn and made to scale; 5) All locations of historic sites shall be on an overall map of the project area; 6) Initial significance evaluations shall be included for each historic site found; and 7) Documentation on the nature and age of the historic sites

shall be done. If significant historic sites are found then proposed mitigation or preservation plans can be submitted to the SHPD for review and approval.

DISCUSSION:

Chairman Young stated that the scope of work is more than the ponds.

Mr. Sakoda stated that the pond is just one area of the whole picture.

Chairman Young stated that the Commission might consider amending number 1 and 2 and not stating whether the ponds will affect historic sites but more specifically whether the remediation project will adversely affect any historic sites.

Commissioner Fujiwara asked if the ponds were temporary.

Mr. Sakoda stated that they are trying to restore what was there before.

Commissioner Fujiwara stated that if they are going to restore the streams and gulches, wouldn't the ponds be within the streams and the gulches?

Mr. Sakoda stated that it was and that it was destroyed by the landslides that took place with the heavy rains in the past. They are trying to restore what was there before.

Commissioner Frazier stated that lake 1 was created from a gulch. He asked if Commissioner Fujiwara worked on that lake.

Chairman Young stated that the project is fulfilling the requirements of a consent decree.

Mr. Sakoda stated that these agencies helped form that remediation plan. This is the best plan that is trying to put everything back to its natural condition.

Acting Deputy Director Dean Nakano clarified the changes to the Recommendation. For item 1, "A qualified archaeologist should conduct a field visit and assess whether the remediation project will adversely impact any historic sites;" and item 2, "If it is determined that any site will be adversely impacted . . . . .," then the rest should follow.

Chairman Young stated then it would be one rather than two conditions.

Mr. Nakano stated that yes it would be one. It would be cleaner that way.

Chairman Young then stated it would not just be pond action but the whole remediation project.

Mr. Nakano agreed.

AMENDED RECOMMENDATION:

That the Commission approve a stream channel alteration permit for the Pilaa Remediation Plans Project (TMK: 5-1-004:008) Kilauea, Kauai. The permit shall have a term of two years subject to the Commission's standard permit conditions in Exhibit 3, and the following special condition:

A qualified archaeologist should conduct a field visit and assess whether the remediation project will adversely impact any historic sites; ponds will be adversely impacted by the proposed remediation plan; and if it is determined that ~~the ponds~~ any site will be adversely impacted, then a qualified archaeologist should be on site to monitor any ground disturbance during construction, and to ensure historic sites are protected. An archaeological plan shall be submitted to the State Historic Preservation Division (SHPD) for review, comment and approval. Once approved, the project should be allowed to proceed; however, a report documenting the archaeological work shall be submitted to the SHPD for review and approval. The report shall include: 1) Detail drawings of burials and deposits to scale; 2) All artifacts shall be sketched and photographed; 3) Analysis of all perishable and datable remains shall be conducted; 4) Stratigraphic profiles shall be drawn and made to scale; 5) All locations of historic sites shall be on an overall map of the project area; 6) Initial significance evaluations shall be included for each historic site found and; 7) Documentation on the nature and age of the historic sites shall be done. If significant historic sites are found then proposed mitigation or preservation plans can be submitted to the SHPD for review and approval.

MOTION: (Miike/Fujiwara)  
Approve as amended by staff  
UNANIMOUSLY APPROVED

**4. Request to Enter Into a Contract for Professional Services to Conduct Statewide Field Investigations to Verify and Inventory Surface-Water Uses and Stream Diversions, and Update Existing Surface-Water Information**

Presentation of Submittal: Ed Sakoda

## RECOMMENDATION:

Staff recommends that the Commission authorize the Chairperson to enter into a contract or contracts for professional services to conduct the statewide field investigations to verify and inventory surface-water uses and stream diversions, and update existing surface-water information. The terms of this contract(s) will be subject to the approval of the Chairperson and the Department's Deputy Attorney General. Contract execution will be done in accordance with Chapter 103D, HRS, and Chapter 3-122, Hawaii Administrative Rules.

## DISCUSSION:

Chairman Young asked if these funds and potential contracts be leveraged with other partners so that we may be able to do more?

Mr. Sakoda stated that staff is looking into matching funds with other water users.

Commissioner Miike asked whether the 2,387 water use declarant files, of which, 2,175 were deemed completed, were all for stream diversions?

Mr. Sakoda stated that the 2,387 included wells and 1,260 would be the surface water diversions.

Commissioner Miike asked for those that didn't declare, what would be the legal status there? If we find out that they are using it and they are not recognized as users would they have to come in with after-the-fact diversion permits?

Mr. Sakoda stated yes, they would have to come in. He also stated that staff would use that process to find out who they are.

Dr. Jonathan Likeke Scheuer from the Office of Hawaiian Affairs (OHA) stated that OHA was very pleased that the Commission is finally taking action on a long overdue project and that they lobbied for this appropriation, also that the Legislature helped fund it. Dr. Scheuer had some questions about what is going on to make sure that this is successful and accomplishes what it set out to accomplish. Who is planning to do the work? The success of the project will depend on who does the work. Knowing that the budget might be insufficient, how are we going to prioritize?

Chairman Young asked if we could focus on the first issue. When it is stated who does it, it contemplates a contract so it will be someone other than the staff doing it. It would be a public process to do the selection and we don't know who will be doing it yet.

The following is a list of items discussed by Dr. Scheuer.

1. Who will be undertaking this contract work? The contractor should definitely meet certain criteria, including the knowledge of the code and its history, independent, widely recognized expertise in this work, and the ability to work with all interested parties including local communities.
2. How will this work be prioritized? The submittal acknowledges funding may be insufficient to assess all diversions with current funding levels. CWRM should consider prioritizing documentation of diversions in areas where sugar was formerly cultivated and we know uses have changed.
3. The fieldwork should measure the amount of water remaining in a stream, not just the amount of the diversion.
4. The fieldwork should also include documentation of waste (e.g. ditch disrepair) and whether the water is being put to reasonable and beneficial use.
5. Staff should work with the AG and DOCARE to develop the documentation protocol so that information can be used for enforcement of code and other violations.
6. Staff should work with the community in each area, as they may be aware of diversions, which have never been declared.
7. In areas where it is suspected significant diversions exist but are not being put to productive use, staff should document this without advance warning to landowners / diversion owners.
8. The data should be integrated in a manner with existing state GIS layers so that it can be used relationally.
9. The data should be made easily available to the public, ideally on-line.

MOTION: (Fujiwara/Miike)  
To approve as recommended by staff  
UNANIMOUSLY APPROVED

## G. NON-ACTION ITEMS

### **1. Presentation by the U.S. Geological Survey on the Effects of Surface-Water Diversions on Habitat Availability for Native Macrofauna, Northeast Maui, Hawaii. Scientific Investigation Report 2005-5213**

Mr. Steve Anthony, Associate Director of the USGS Pacific Islands Water Science Center, and Dr. Steve Gingerich, Project Chief for the recently completed study of Northeast Maui Streams did a presentation. This effort was initiated in 2002 taking a little over 3 years to complete resulting in two scientific reports. A colored handout was distributed.

### **2. Division of Aquatic Resources' Aquatics Surveys Database: Use and Applications, a presentation by Glenn Higashi and Darrell Kuamoo, Division of Aquatic Resources, and James Parham, Bishop Museum**

Acting Deputy Director Dean Nakano stated that with the cooperative efforts between DAR, USGS and CWRM, staff would be able to move forward in a coordinated manner with other agencies using their expertise and assistance.

Mr. Glenn Higashi, and Dr. James Parham from the Bishop Museum delivered a PowerPoint presentation. Their goals were to provide an update on the current version of the DAR database, to show how the information is integrated with GIS, and to describe how the database can help answer important questions about stream management issues. A colored informational handout was distributed.

**3. “Stream Biodiversity Prioritization Project,” a presentation by Dwayne Meadows, Division of Aquatic Resources**

Dr. Dwayne Meadows gave a presentation on the project that he’s been working on for the past 6 months with CWRM. DAR is trying to help the Commission in their goal to prioritize different streams for protection of instream uses. DAR also has an interest in prioritizing these streams for the protection measures that they are responsible for.

Dr. Meadows gave a brief introduction on fish, snails, crustaceans, opae, and insects that are found in the streams, many of them endangered. He briefly explained the extra protection that must be provided for these species.

Dr. Meadows explained how they are trying to pull together all the data into a standardized form so everyone can use it. This information was not readily available in the past. He stated that the problem in working with different agencies is that there are different definitions of what a watershed is, based on practical and historical reasons and uses. The Department of Health (DOH) stated that their responsibilities for water quality must be integrated at this time with those of the Commission. DOH must know what the Commission’s boundaries and definitions are as well as theirs.

Dr. Meadows spoke about the 56 streams and watersheds throughout the State that were identified. He stated that the Commission can narrow that list for dealing with instream flow determination as some of those have dams and diversions on them. Other screening criteria will need to be identified.

Dr. Meadows thanked everyone for assisting him in the funding and support of their project.

**4. Update on the Instream Use Protection Program**

Mr. Dean Uyeno presented an update on the Instream Use Protection Program. He thanked DAR and USGS on their presentations that provided a lot of background

information in support of CWRM's Instream Use Protection Program and the Stream Protection and Management (SPAM) Branch.

Through his PowerPoint presentation Mr. Uyeno summarized the presentations that were given as well as the submittal for diversion verification, explaining how they all fit into the instream flow process. Mr. Uyeno stated that in June 2005 the Commission adopted 558 surface water hydrological units statewide. There are 489 hydrological units on the 5 major islands that include perennial and intermittent streams.

Mr. Uyeno stated that a database of 1,260 known diversions has been created, however, the majority of diversions have not been verified and the diversion amounts are largely unknown.

The SPAM Program Implementation Plan was created last year. This Plan is being implemented as a living document and will be updated and revised as needed. Mr. Uyeno gave a brief on current program activities. The Punaluu Watershed Alliance is ongoing. The USGS is conducting a stream study on Punaluu Stream to assess the effects of diversion and groundwater withdrawal on streamflow and habitat. The Honolulu Board of Water Supply is conducting a Punaluu Agriculture Water System Assessment of water users and their uses. The Kamehameha Schools recently completed a cultural survey on Punaluu.

The Bishop Museum, along with Dr. Parham, has been working with the Lalakea Alternative Mitigation Study and recently completed the field portion of the study. The final report on this will be delivered in late 2006.

Mr. Uyeno used the Punaluu Watershed Alliance as an example that provides a stakeholder forum as opposed to a contested case setting. The Commission has been working cooperatively with the USGS, Kamehameha Schools, Honolulu Board of Water Supply and the Punaluu Community Association. The Commission has been trying to identify various elements that can be used or considered as they strive towards setting instream flow standards.

Mr. Uyeno stated that there are pending IIFS petitions that the Commission intends to address on a case-by-case basis. He stated that their goal was to establish a standardized instream flow standard methodology that would set forth a practical and consistent process for arriving at an instream flow standard recommendation.

Mr. Uyeno concluded by saying that they will continue to provide program updates as stream activities are progressing.

Dr. David Penn from the Environmental Planning Office of the Department of Health explained that they have responsibilities by virtue of the Federal Clean Water Act and State statutes that overlap and parallel those of the Commission and other divisions of the

Department of Land and Natural Resources. He stated his concern and support of the work that was discussed in the meeting.

One question that Dr. Penn raised was regarding a previous stream policy-working group that used to convene but which has not met for a long time to discuss some of these issues. He asked what the status of this group is at this time.

Dr. Jonathan Scheuer stated that a concern was a group that was meeting to talk about issues just stopped meeting and decisions have since been made without input from the public.

**H. NEXT COMMISSION MEETINGS (TENTATIVE)**

1. July 12, 2006
2. August 16, 2006

The meeting was adjourned at 11:35 a.m.

Respectfully submitted

PAULYNE K. ANAKALEA  
Secretary

Approved as submitted:

DEAN A. NAKANO  
Acting Deputy Director