

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: February 21, 2007
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Peter T. Young called the meeting of the Commission on Water Resource Management to order at 9:05 a.m.

The following were in attendance and/or excused:

MEMBERS: Mr. Peter Young, Meredith Ching, Ms. Stephanie Whalen, Mr. James Frazier, Mr. Neal Fujiwara, Dr. Lawrence Miike

STAFF: Roy Hardy, Ed Sakoda, Lenore Nakama

EXCUSED: Dr. Chiyome Fukino

COUNSEL: Colin Lau, Esq.

OTHERS: Yvonne Izu, Isaac Moriwake, Kapua Sproat, Dr. Jonathan Likeke Scheuer, Jane Lovell, Steve Anthony, Koa Kaulukukui, Pam Bunn, Paul Achitoff, Rebecca Alakai, Curt Sanborn

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

A. APPROVAL OF MINUTES

1. January 24, 2007

MOTION: (Frazier/Fujiwara))
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Roy Hardy announced that the 2 vacant positions, State Geologist and Planner, have been filled and will start on March 1, 2007.

Commissioner Meredith Ching stated that she will recuse herself from item E1.

E. STREAM PROTECTION AND MANAGEMENT

1. Chairperson’s Recommendation. Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc.’s Petition for Surface Water Management Area Action, Waihee, Waiehu, Iao, and Waikapu Surface-Water Hydrologic Units, Wailuku, Maui

PRESENTATION OF SUBMITTAL: Ed Sakoda

DISCUSSION:

Mr. Sakoda stated that the Commission is now in step 4 where the Chairperson makes a recommendation to the Commission to accept or reject the petition, accepting meaning to continue the designation process, rejecting meaning to stop and end the designation proceedings.

The petition was filed on December 6, 2006. Included in this submittal are letters from Mayor Charmaine Tavares and Jeffrey Eng, now the Director of the Department of Water Supply (MDWS), supporting the process of this designation. On February 2, 2007, the County Council adopted Resolution No. 07-13, “Supporting the Petition to Designate Na Wai Eha as a Surface Water Management Area” by a unanimous vote.

Mr. Sakoda stated that the 60-day deadline was February 4, 2007; however, at the last meeting in January, the Commission recommended to continue the 60-day deadline from February 4, 2007 to the February 21, 2007 meeting.

Jane Lovell, Deputy Corporation Counsel with the Department of Corporation Counsel for the County of Maui stated that the petition to designate the surface water area on Maui has received unprecedented public support in the County of Maui. It was supported by the outgoing Mayor, Alan Arakawa and his Director of the MDWS, Mr. George Tengan. Immediately after taking office the new Mayor, Charmaine Tavares also supported the petition as did her new water director.

The Maui County Council unanimously supported this petition.

Ms. Lovell also stated that there are pending before the Commission many petitions to amend the interim instream flow standards (IIFS) for the 4 waters in West Maui. Also pending are contested cases on the related Wailuku Water Co. waste complaint and water use permit applications for the related high-level sources. These are inter-related. Ms. Lovell suggested that they concentrate their efforts and resources on the petitions to designate and to amend the IIFS as they would go hand in hand. These items should be given priority over other pending issues including the waste complaint.

Ms. Lovell stated that the County sees the designation of the surface water and IIFS amendments to be of importance. The County originally supported the idea hearing the

waste complaint first and separately from the other items to possibly allow unused ditch water to return to the streams quickly as an interim measure. This proceeding, however, has hit some unforeseen bumps in the road. At this point the County has requested that we re-order our priorities and address the petitions to amend the IIFS and to designate the surface water management areas.

Commissioner Miike stated that he was upset because the County were the ones that said not to delay and to settle the waste complaint first. The waste complaint is scheduled and now there's a motion to delay it again, since the County is now asking to set aside the waste complaint. Commissioner Miike asked if the contested case hearings concerning the waste complaint, petition to amend the IIFS, the high-level ground water use permits, and petition to designate the related surface waters could be dealt with all at the same time.

Ms. Lovell agreed, and took full responsibility for being one of those that thought the right thing to do was to separate the waste complaint and hear it first. Now given the petition to designate the surface water area, the County feels that it changes the whole playing field.

Commissioner Miike asked for an explanation of the changes.

Ms. Lovell stated that it would make a lot more sense to have these things work together instead of separately. Ms. Lovell stated that this was the position that was originally advocated.

Commissioner Miike stated the designation process was not part of the original issues.

Commissioner Miike wanted to make clear that when the IIFS is done and there are off stream diversions that are issued, these will have permitting type conditions because of the ground water and surface water inter-relationship. The permit provisions in the IIFS contested case should go forward as if it were a designated area. When the waste complaint was made, people complained that we weren't acting on it fast enough, and now the County wants to delay it. Unless the Commission takes away Commissioner Miike's authority as a hearings officer, there is nothing to stop him from running both the IIFS and waste complaint contested case hearings simultaneously. They are slightly different issues in terms of the waste complaint; where the burden is on the petitioners, while on the IIFS, even though the petitioners have the burden of showing about IIFS, the off-stream users have the burden showing the reasonable and beneficial use and other permitting privileges.

Commissioner Miike asked if everything, including the designation process, should be held simultaneously.

Ms. Lovell stated that it makes more sense to fold the waste complaint back into the IIFS and the Iao high-level source water use permit applications because they are opposite sides of the same coin.

Ms. Kapua Sproat from Earthjustice representing Hui o Na Eha and Maui Tomorrow Foundation, Inc. in these proceedings, echoed the sentiments that Maui County has shared and is pleased with the support from the administration, County Council, and the Maui Department of Water Supply. Ms. Sproat agreed that there is a serious conflict in the criterion for designation and hopes that the Commission will support the Chairman's recommendation, move forward immediately with the designation process. Also, while the public hearing process is pending, that staff will be able to base in part on the information provided in the petition, prepare findings of fact so that upon conclusion of the hearing process the matter can be brought back to the Commission quickly and decision made on the petition.

Commissioner Fujiwara asked if the term Na Wai Eha was a legal term putting the four streams together or just a term that came up?

Ms. Sproat stated that Na Wai Eha is the historical name for that area and in Hawaiian means, "four great waters".

Ms. Pam Bunn on behalf of the Office of Hawaiian Affairs (OHA), joined in support of the Chairman's recommendation of Item E1.

RECOMMENDATIONS:

That the Commission continues the surface water management area designation process. The designation process includes publicizing and holding a public hearing, initiating and completing investigations, completing findings of fact, further consultation with the Mayor, County Council, and the Department of Water Supply, and final Commission action.

MOTION: (Fujiwara/Frazier)
To approve the submittal as recommended by staff
UNANIMOUSLY APPROVED

2. **Application for a Stream Channel Alteration Permit (SCAP-OA-404), U.S. Army Garrison Hawaii DPW, Kahauiki Stream, Ft. Shafter, Oahu (TMK: 1-1-008:005)**

PRESENTATION OF SUBMITTAL: Ed Sakoda

DISCUSSION:

Mr. Sakoda stated that the applicant is proposing to install a concrete ramp to access Kahauiki Stream next to the elementary school at Ft. Shafter for maintenance activities. The applicant is also willing to provide access to maintenance for storm water control.

This Kahauiki Stream provides habitat for three native fish species. Mr. Sakoda stated that the applicant should follow three measures during the construction period: 1) replant vegetation or coverings as soon as possible to prevent erosion, 2) schedule excavation and grading site work during periods of minimal rainfall, and 3) prevent construction materials, petroleum products, and debris from falling or blowing into the aquatic environment.

RECOMMENDATIONS:

That the Commission approve a stream channel alteration permit to install a concrete ramp to access Kahauiki Stream adjacent to the elementary school at Ft. Shafter, for the purpose of semi-annual or as-needed maintenance to facilitate the unrestricted flow of storm water. The permit shall have a term of two (2) years subject to the Commission's standard permit conditions in Exhibit 3, and the following special condition:

During construction, lands denuded of vegetation shall be planted or covered as quickly as possible to prevent and mitigate erosion.

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

G. NON-ACTION ITEMS

1. Briefing on the Status of Puu Makakilo's Water Use Permit for the Waiahole Ditch System (WUP No.775)

Ms. Lenore Nakama gave a status briefing on the Puu Makakilo's Water Use Permit (WUP) for the Waiahole Ditch System. Ms. Nakama provided background information and a chronology of Puu Makakilo's WUP, which is part of the Waiahole Ditch combined contested case proceeding. During the most recent remand proceedings, the Windward parties made a motion to deny Puu Makakilo's WUP on the ground that new evidence established that Puu Makakilo did not need the water, was not using the water, and had made public statements that the area isn't suitable for a golf course. The hearing officer referred the motion to the Commission since the issues were beyond the scope of the remand proceedings. Ms. Nakama stated that this briefing is an opportunity for the Commission to indicate how it would like to address these new issues and the motion itself.

Commissioner Miike stated that as the hearing officer he did not make any ruling and asked the Deputy Attorney General if the Commission can address the complaint or do we have to wait for a new process

Deputy Attorney General Colin Lau stated that the matter could be referred to the Commission and acted on because it is two separate issues.

2. Briefing on the Status of 2007 Legislative Bills Affecting the Commission

Mr. Roy Hardy presented a handout tracking the bills that are of interest to the Commission on Water Resource Management. Also attached are testimonies that were supplied at the various hearings. At present there are eight bills in the House and six in the Senate.

The meeting adjourned at 9:37 a.m.

H. NEXT COMMISSION MEETINGS (TENTATIVE)

1. April 18, 2007
2. May 16, 2007

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

APPROVED AS SUBMITTED:

W. ROY HARDY
Hydrologic Program Manager