

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: April 18, 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 9:03 a.m.

The following were in attendance and/or excused:

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

STAFF: Roy Hardy, Ed Sakoda, Lenore Nakama, Ryan Imata, Robert Chong, Diane England

EXCUSED: Dr. Chiyome Fukino, Chairman, Mr. Peter Young

COUNSEL: Julie China, Esq.

OTHERS: Mr. Gilbert Butson, Mr. Paul Achitoff

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.

Chairman Peter Young opened the meeting, however, left shortly after. Commissioner Frazier took over and conducted the meeting

A. APPROVAL OF MINUTES

1. Approve minutes of the March 21, 2007 meeting as amended.

Per Commissioner Miike, it was not PMI's motion to withdraw; it was the Windward Party's motion to deny.

MOTION: (Whalen/Miike)

To approve minutes as amended.

UNANIMOUSLY APPROVED AS AMENDED

B. ANNOUNCEMENTS

Mr. Roy Hardy announced that there will be a meeting on April 26, 2007 at 7:00 p.m. at the Cameron Conference Center in Kahului, Maui, for the Designation of the Surface Water Hydrologic Units of Waihee, Waiehu, Iao, and Waikapu Streams, Na Wai Eha.

Mr. Hardy also stated the confirmation of Commissioner Mr. James Frazier for his second term commencing on July 1, 2007 through June 30, 2011.

Mr. Hardy stated that two issues were posed at the hearing. One was the question of why it is taking so long for a deputy to be chosen for the Commission, and second, the priority of the IIFS of East Maui and Na Wai Eha.

Commissioner Frazier asked if there were any comments on those issues.

Commissioner Miike stated that there was a Resolution on that.

Commissioner Miike also stated that the Commission was delayed on the Na Wai Eha issue because their attorney Yvonne Izu has withdrawn and are waiting for HC&S to find another attorney.

Commissioner Frazier suggested that staff have open lines of communication with Senator Russell Kokubun to advise him of the progress of Na Wai Eha and IIFS.

C. GROUND WATER REGULATION

1. Request to Enter Into a Contract for Professional Services to Conduct a Comprehensive 20-Year Review to Determine Compliance with Conditions on Water Use Permits Issued by the Commission on Water Resource Management

PRESENTATION OF SUBMITTAL: Ryan Imata

DISCUSSION:

Staff recommended that the Commission authorize the Chairman to enter into a contract or contracts for professional services to conduct a comprehensive review to determine compliance with conditions on Water Use Permits issued by the Commission on Water Resource Management. 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.

Commissioner Whalen asked if any grant opportunities mentioned by staff were applied for. Mr. Imata and Mr. Hardy stated that no grants have been applied for for this contract.

Mr. Hardy mentioned that Neal Fujii of Commission staff is most familiar with funding and grants and because Mr. Fujii was not present at the meeting, he could possibly do a presentation on the subject to the CWRM at a later date.

RECOMMENDATIONS:

Staff recommends that the Commission authorize the Chairperson to enter into a contract or contracts for professional services to conduct a comprehensive review to determine compliance with conditions on Water Use Permits issued by the Commission on Water Resource Management. 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.

MOTION: (Whalen/Fujiwara)

To approve the submittal as recommended by staff

UNANIMOUSLY APPROVED

2. Petitioners/Intervenors Hakipuu Ohana, Kahaluu Neighborhood Board, And Ka Lahui Hawaii's, Motion to Deny Puu Makakilo, Inc.'s Water Use Permit Application for Waiahole Ditch, Kahana, Koolaupoko, and Waipahu-Waiawa Ground Water Management Areas, Oahu

PRESENTATION OF SUBMITTAL: Lenore Nakama

Commissioner Whalen recused herself from Item C2.

DISCUSSION:

Ms. Nakama updated the Commission as to recent events that occurred after the staff submittal had been finalized. First, staff met with Mr. Gilbert Butson, attorney for PMI, at his request. The purpose of the meeting, which took place on April 12, 2007, was to inform staff of possible changes for PMI's use of its property in the near term. Staff deferred to Mr. Butson to explain the possible changes to the Commission.

Also, on April 16, 2007, Earthjustice sent a letter to the CWRM, addressing PMI's March 23, 2007 letter and raising issues of ex parte communication. A copy of Earthjustice's letter was distributed to the Commission.

Mr. Gilbert Butson, attorney for Puu Makakilo further explained the possible changes for the use of the site.

Mr. Paul Achitoff, attorney for Earthjustice, explained that their motion was to deny the application, not a review for permit revocation. The motion is the subject of their appeal, and if the appeal is denied, the motion is moot. If the appeal is upheld, the Commission will need to hear the motion. Mr. Achitoff also questioned the Commission's jurisdiction to address the motion. The motion is part of the contested case hearing and there have been

exparte communications, such as the letters and meetings that are not on the record and not noticed to all of the parties.

Dr. Miike summarized that if the appeal is denied, the motion is moot. If Earthjustice wins its appeal, and the Commission has already acted on the motion, the Commission would have to reconsider its action in the remand hearing. Therefore, Dr. Miike concluded that it would be best to wait until the appeal is decided.

Mssrs. Butson and Achitoff agreed.

RECOMMENDATION:

Staff recommends that the Commission:

1. ~~Deny without prejudice Petitioners/Interventors Haki-puu Ohana, Kahaluu Neighborhood Board, and Ka Lahui Hawaii's Motion to Deny Puu Makakilo, Inc.'s Water Use Permit Application.~~
2. ~~Require Puu Makakilo, Inc. to submit a revised schedule and work plan for completion of the golf course by June 30, 2007. Thereafter, require Puu Makakilo, Inc. to submit semi-annual reports documenting its activities, progress, and project status, including but not limited to actual acreage in use and development of appurtenant facilities.~~
3. ~~Direct staff to continue to monitor Puu Makakilo, Inc.'s compliance with WUP No. 775, and its use of the water allocated under said permit. Staff should report back to the Commission should no water use for the actual golf course be made by July 13, 2010.~~

AMENDED RECOMMENDATION:

To defer action on the motion.

H. NEXT COMMISSION MEETINGS (TENTATIVE)

1. May 16, 2007
2. June 20, 2007

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

APPROVED AS SUBMITTED:

W. ROY HARDY
Hydrologic Program Manager