

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 19, 2007  
TIME: 9:00 am  
PLACE: DLNR Board Room  
Kalanimoku Bldg.

Alternate Chairperson Dr. Lawrence Miike called the meeting of the Commission on Water Resource Management to order at 9:07 a.m.

The following were in attendance and/or excused:

**MEMBERS:** Mr. Neal Fujiwara, Dr. Lawrence Miike, Dr. Chiyome Fukino, Ms. Donna Kiyosaki

**STAFF:** Ken Kawahara, Lenore Nakama, Roy Hardy, Ed Sakoda, Neal Fujii, Elise Leroux

**EXCUSED:** Mr. James Frazier, Ms. Meredith Ching, Chairperson Laura Thielen

**COUNSEL:** Randall Ishikawa, Esq.

**OTHERS:** Diane Holcomb, Jim Geronimos, Lee Ann Stonebreaker, Fred Holcomb, Jared Chang, Mike Alfonso, Tom Fee, Michael Bermeister, Rick Fontaine, Akira Fujita, Trevin Chang, Sandra Ichihara, Kaeo Duarte, Teresa Dawson, Grant Arnold

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**

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

**B. ANNOUNCEMENTS**

Deputy Director Ken Kawahara welcomed Elise Leroux, our new geologist. Mr. Kawahara stated that the division is in the selection process for the other geologist position as well as the hydrologist vacancy.

Mr. Kawahara updated the Commission as to the progress of the Molokai Water Working Group. The group is still trying to finalize membership, after which the group will update

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recommendations from their 1996 report which will help Maui County in their planned update of the Molokai Water Use and Development Plan.

Mr. Kawahara also stated that the Hawaii County, Department of Water Supply has completed their draft Water Use and Development Plan (WUDP). The staff's major comment was to encourage regional updates in areas where the draft WUDP has shown there is or will be competition for future water source development.

Mr. Kawahara informed the Commission that he will be giving a presentation on the Hawaii Water Plan at a Water Issues Workshop sponsored by Hawaii's Thousand Friends on September 29, 2007.

A request will be submitted to the Governor to release \$4 million in drought funding. Mr. Kawahara also stated that the Department of Agriculture has given notice to proceed to re-activate the abandoned diversion of the Lalakea Ditch on the Island of Hawaii so that it can feed the lower Hamakua Ditch. This act is to assist the farmers downstream. This is an opportunity for us to see how the diversion changes the natural baseline observation that has been going on in the past. The work on this diversion is scheduled to be completed by the end of the month.

Mr. Kawahara stated that after-the-fact stream channel alteration permits were a concern. He stated that the strategy now is to have press releases, utilize the CWRM website more, send mailers in a postcard form, and create a brochure and possibly a guidebook for consultants and engineers. Also in the future, would be presentations to communities and neighborhood boards, especially in areas where there are streams and a history of stream diversions. Consultant organizations, contractor associations, different county and public works staff, the Army Corps of Engineers, Natural Resources Conservation Service, and the Department of Health would also be contacted. Depending on the budget, other means of communication would be through Public Service Announcements and advertisements in the paper.

Mr. Kawahara stated that CWRM participated in the Day to Discover on August 25, 2007, at the Benjamin Parker Elementary School in Kaneohe. This event provided an opportunity to share with the public what we do. The display included a demonstration board that allowed the children to measure the water level in a deep monitoring well. The children were also educated about the different animals that reside in the streams.

## **C. SURVEY**

### **1. Cooperative Agreement with U.S. Geological Survey for Statewide Hydrologic Data Collection and Water Resource Investigations for Fiscal Year (FY) 2008**

PRESENTATION OF SUBMITTAL: Roy Hardy

Mr. Hardy gave a background between USGS and the State that officially began in 1909. In the beginning there were 12 streams that were gaged eventually growing to 197 gages in 1976.

Mr. Hardy explained the funding through a table exhibited in the staff submittal. The Commission shares the cost with USGS, grants from DOFAW, and the Waiahole Trust Fund.

#### RECOMMENDATIONS:

Staff recommends that the Commission authorize the Chairperson to enter into a cooperative agreement between the Commission and the U.S. Geological Survey to undertake the specified monitoring activities. The terms of this agreement 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: (Fukino/Fujiwara)

To approve the submittal

UNANIMOUSLY APPROVED

#### D. STREAM PROTECTION AND MANAGEMENT

##### 1. **Petition to Amend Interim Instream Flow Standard (SCAP.1550.8), Fredrick and Diane Holcomb, Aamakao Stream, North Kohala, Hawaii, TMK: 3-5-02-007:013**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that the applicants applied for a partial after-the-fact stream channel alteration permit (SCAP) in 2004 because their contractor graded the property without a permit. The Commission approved the SCAP to construct a 700-foot long driveway and to install a capped pipeline at Aamakao Stream. The pipeline would not be used until the applicants apply for a petition to amend the interim instream flow standard for Aamakao Stream.

Hawaii Administrative Rules Chapter 169 provides an administrative process for the Commission to review and approve requests to amend interim instream flow standard. Staff believes that the applicants are entitled to a reasonable amount of water diverted from Aamakao Stream based on the Land Commission Award (LCA) number for the applicants' property and the applicants' riparian rights to Aamakao Stream.

Staff recommends approval of the applicants' petition to amend the interim instream flow standard for Aamakao Stream based on the following:

- It appears that the applicants' property may have appurtenant rights to Aamakao Stream.

- The applicants have riparian rights to use water from Aamakao Stream for any reasonable and beneficial use: the applicants' property is adjacent to Aamakao Stream, and their intake pipe is located on their property.
- USGS stream flow measurements were taken in July 2007 during drought and low stream flow conditions. The amount of water that the applicants are proposing to divert from the side channel of Aamakao Stream (4.5 gallons per minute) is very small (less than 10%) compared to the overall side channel stream flow (96.9 gallons per minute) that was measured by the USGS on July 30, 2007. The flow in the main channel was not measured.
- The applicants' intake pipe will only divert water from the side channel of Aamakao Stream when there is sufficient stream flow (96.9 gallons per minute or more) in the side channel. Water will not be diverted during lower stream flows because the intake pipe is located above the lower stream flow.

#### RECOMMENDATIONS:

##### That the Commission:

1. Approve the applicants' petition to amend the interim instream flow standard for a stream diversion at Aamakao Stream at TMK 3-5-02-007:013.
2. Amend the Interim Instream Flow Standard for all streams on the Island of Hawaii, as adopted by the Commission on June 15, 1988, to include an amended interim instream flow standard for Aamakao Stream at TMK 3-5-02-007:013.
3. Allow the applicant to divert up to the capacity of the 10-inch PVC pipe by gravity flow for agricultural purposes, within the applicants' LCA 10859:1.
4. Waive condition 5 because: 1) the diverted amount will be by gravity flow only; 2) the flow will be limited to the area at the loi (LCA 10859:1); and 3) requiring measurement of the flow for this specific situation would be unduly burdensome to the applicants.
5. The amendment of the interim instream flow standard shall be subject to the conditions for interim instream flow standard amendments in Exhibit 6, with the exception of condition 5.

There was a discussion with the applicant regarding the amount of water needed for the loi.

After discussion, Mr. Holcomb stated that they could live with about 10 gallons per minute (12-month moving average) to supply his loi.

A motion was made to amend staff recommendation 3 to: Allow the applicant to divert approximately 10 gallons per minute (12-month moving average) through the 10-inch PVC pipe by gravity flow for agricultural purposes, within the applicants' LCA 10859:1.

MOTION: (Fujiwara/Kiyosaki)  
To approve the submittal as amended  
UNANIMOUSLY APPROVED AS AMENDED

**2. Application for a Stream Channel Alteration Permit (SCAP.1719.3),  
Retaining Wall and Storm Water Drain at Middle Street Intermodal Center,  
Kalihi Stream, Honolulu, Oahu, TMK: (1) 1-2-018:001**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda detailed the application of the Stream Channel Alteration Permit stating that it was to construct a reinforced concrete retaining wall along Kalihi Stream and a 48-inch storm drain for the Middle Street Intermodal Center, Kalihi Stream in Honolulu.

The Department of Planning and Permitting determined that this project is not located within a special management area and will require the applicant to prepare and submit a drainage report stating the improvements will not impact Kalihi Stream and its surrounding properties.

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit to construct a reinforced concrete retaining wall approximately 430 feet long along Kalihi Stream and a storm water drain for the Middle Street Intermodal Center, Kalihi Stream, Honolulu, Oahu. The permit shall have a term of two (2) years subject to the Commission's standard permit conditions in Exhibit 7.

Commissioner Miike stated that he passes that area quite frequently and he sees a problem with grading into the streambank. He stated that the grading goes right into the channel. He also stated that he doesn't have a problem with the grading of the land but grading into the stream is another problem. Commissioner Miike also stated that the applicant is only now applying for a permit when they in fact, already started grading.

Commissioner Miike stated that the Commission is starting to fine those that come in after-the-fact.

Mr. Akira Fujita, project manager, stated that originally they were not going to construct a wall. However, about a year ago there were complaints along the stream bank. One thing that came up in discussion was how were they going to stop the erosion along the stream bank? The alternative was to construct a wall to minimize any erosion.

Mr. Fujita stated that they also have a contamination problem on the second phase of their project. They asked the contractor if there were any contaminated material where the wall was to be constructed so proper action could be taken.

If the permit is granted they will start the construction of the wall.

Commissioner Miike asked that Commissioner Fukino have the Department of Health monitor this site.

MOTION: (Fujiwara/Kiyosaki)  
To approve the submittal  
UNANIMOUSLY APPROVED

**3. After-the-Fact Application for a Stream Channel Alteration Permit (SCAP.1748.2), Ms. LeeAnn Stonebreaker/Mr. Michael Bermeister, Tropic Works Productions, Inc., Construction of a Temporary Footbridge, Kapaa, Kauai, TMK: (4) 4-7-002:001 and (4) 4-6-009:044**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that this area was the only place a temporary footbridge could be constructed as it provided a “forest look” that they were unable to find elsewhere on Kauai. This footbridge was needed to provide access to the filming site for personnel safety reasons as the stream banks were too steep and posed a hazard to the film crew.

The temporary bridge was constructed on August 17, 2007 and removed on August 28, 2007.

Staff recommended that the duration of exposure be limited to a single day minimum.

Summary of Recommended Fines:

Basic Component:	\$250
Gravity Component:	\$25
Mitigative Component:	(\$75)
Total Fine:	\$200

Exhibit 6 is a summary of the penalty calculations for this case.

RECOMMENDATION:

That the Commission:

1. Find the applicant in violation of Hawaii Revised Statutes §174C-71(3) (A) for constructing a temporary footbridge across Kapaa Stream without the necessary stream channel alteration permit.
2. Impose a fine on the applicant of \$200.00 following the Commission’s Civil Penalty Guideline (G01-01) based on a first time, non-repeat violation for one incident, with gravity and mitigative components.

3. Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary stream channel alteration permit or stream diversion works permit may be considered repeat violations with fines up to \$5,000 for each day of violation.

MOTION: (Fujiwara/Kiyosaki)  
To approve the submittal  
UNANIMOUSLY APPROVED

4. **Application for a Stream Channel Alteration Permit (SCAP.1749.2), Ms. LeeAnn Stonebreaker/Mr. Michael Bermeister, Tropic Works, Productions, Inc., Construction of a Temporary Movie Set, Wainiha Stream, Wainiha, Kauai, TMK: (4) 5-8-003:003.**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that McBryde Sugar Company, Limited is the owner of the property and it is within the State's Rural Land Use District. The property across the Wainiha Stream is owned by Mr. Keith Robinson and it is within the State Conservation Land Use District.

This temporary movie set will be constructed and removed between September 2007 and October 2007. The work will be done by hand and no heavy equipment used.

Mr. Sakoda stated that the Division of Aquatic Resources reported that the Wainiha Stream has a high level of biologic integrity.

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit to construct a temporary movie set on the west bank of Wainiha Stream, Wainiha, Kauai, (TMK: (4) 5-8-003:003. The permit shall be valid for two years subject to the Commission's standard conditions in Exhibit 7.

Commissioner Kiyosaki asked if staff goes out and inspects what was approved and if the applicant is in compliance.

Mr. Sakoda stated no, especially if it is located on the neighbor islands.

Commissioner Kiyosaki asked who enforces or monitors.

Mr. Sakoda responded that no one does, unless there are complaints.

Commissioner Fujiwara recommended that the rose apple trees not be removed because of erosion.

Mr. Sakoda stated that they were not going to be removed.

MOTION: (Kiyosaki/Fujiwara)  
To approve the submittal  
UNANIMOUSLY APPROVED

**5. Application for a Stream Channel Alteration Permit (SCAP.1750.2), Tropic Works Productions, Inc., Construction of a Temporary Footbridge Across South Fork Wailua River (Waiahi Stream), Lihue-Koloa Forest Reserve, Kauai, TMK: (4) 3-8-001:001**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Mr. Sakoda stated that this footbridge is needed to provide temporary access while the special effects bridge that was approved back in May is blown up. This was an oversight as it should have been included in the original permit.

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit to construct a temporary pedestrian footbridge across the South Fork Wailua River (Waiahi Stream), to support Tropic Works Productions, Inc.'s movie production at the Upper Powerhouse Site. The permit shall be valid for one (1) year subject to the Commission's standard conditions in Exhibit 5. The temporary bridge shall be removed and the stream restored by September 19, 2008.

MOTION: (Fujiwara/Fukino)  
To approve the submittal  
UNANIMOUSLY APPROVED

**E. NON-ACTION ITEMS**

**1. RAM2 Modeling and the Determination of Sustainable Yields of Hawaii Basal Aquifers**

PRESENTATION: Roy Hardy

Mr. Hardy presented a PowerPoint on the RAM2 Modeling and the Determination of Sustainable Yield of Hawaiian Basal Aquifers. Handouts were distributed.

**2. Water Resource Protection Plan Update Overview**

PRESENTATION: Lenore Nakama

Ms. Nakama presented an overview of the Water Resource Protection Plan update. Handouts were distributed.

NEXT COMMISSION MEETINGS

1. October 17, 2007
2. November 15, 2007

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

PAULYNE K. ANAKALEA  
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA  
Deputy Director