

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: March 13, 2008  
TIME: 9:00 a.m.  
PLACE: J. Cameron Center  
Auditorium  
95 Mahalani Street  
Wailuku, Maui 96793

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 9:00 a.m.

The following were in attendance and/or excused:

**MEMBERS:** Ms. Laura Thielen, Dr. Lawrence Miike, Mr. James Frazier, Mr. Neal Fujiwara, Ms. Donna Kiyosaki

**STAFF:** Ken Kawahara, Ed Sakoda, Lenore Ohye, Roy Hardy

**EXCUSED:** Dr. Chiyome Fukino, Ms. Meredith Ching

**COUNSEL:** Colin Lau, Esq.

**OTHERS:** Victor Pellegrino, Noho'ana Farm; John V. Duey, Hui O Na Wai Eha; Pam Bunn, Office of Hawaiian Affairs; Gary Kubota, Honolulu Star Bulletin; Clayton Suzuki, Wailuku Water Co.; Skippy Hau, Division of Aquatic Resources; T. Kamasaki; D. Schulmeister, HC&S; Garret Hew, HC&S/EMI; Carl Freedman, HDA for Maui DWS; Isaac Moriwake, Earthjustice; Ellen Kraftsow, Jeff Eng, DWS; Lucienne deNaie, Sierra Club Maui; Jock Yamaguchi, of Council member Michelle Anderson; Michelle Anderson, County Council member; Wendy Taomoto, DWS Maui; Tasha Kama; Russell Houge, MMK Maui; Melissa Prince, Independent Producer; Makalapua Kanuha, Ka'anapali Beach Hotel (Po'okela); Daniel Ornellas, DLNR Land Division; Judith Michaels, Maui Tomorrow Foundation; Bryan Moto, Corp Counsel, County of Maui; Nalani Smyth

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

Chair Thielen asked the Commissioners to introduce themselves and invited those there for the action item to stay for the updates afterward. Chair Thielen announced that there are multiple things taking place that affect the island of Maui, County of Maui, and the State of Hawaii.

## Minutes

### A. APPROVAL OF MINUTES

#### 1. February 21, 2008

MOTION: (Frazier/Fujiwara)

To approve the minutes.

UNANIMOUSLY APPROVED.

### B. ANNOUNCEMENTS

Deputy Director Ken Kawahara introduced himself and his staff, and thanked the Commission for coming to Maui, the last time being in the early 2000's.

Staffing of vacancies: the Geologist II position has been filled and is scheduled to start on Monday, (March 17). Deputy Kawahara reported that it has been very difficult to find qualified people for the Hydrologist position and is continuing with the external recruitment process. Interviews are being scheduled for five individuals who have recently expressed interest in the position, three of which are from the mainland.

Budget: it did go through the House side of the legislature and is now with the Senate. Deputy Kawahara said there was an article in the Advertiser regarding the Council on Revenues that met yesterday, projecting \$50M less in revenue in the remainder of the fiscal year. Deputy Kawahara mentioned that he's not sure of the impact on the Water Commission but is being more prudent on how money is being spent.

Draft Water Resource Protection Plan: Deputy Kawahara explained that there are eight components to the Hawaii Water Plan, the overarching being the Draft Water Resource Protection Plan. Seven public hearings were held on all the islands and comments were due on January 11, 2008. Commission staff has been meeting with our consultant to go through the comments and will decide which comments will result in amendments to the draft plan. Staff is hoping to have a recompiled draft plan by May. If significant changes are made, another round of statewide public hearings will be held.

Deputy Kawahara reported that the adhoc group of water professionals met on February 20 to clarify comments submitted primarily regarding sustainable yields. The next meeting is scheduled for late March.

Agriculture Water Use Development Plan (AWUDP): another component of the Hawaii Water Plan is the AWUDP. A pre-final draft of the third update to the AWUDP was completed. The Department of Agriculture (DOA) consultant is currently addressing comments. Deputy Kawahara said the contract will expire in June, the final report is due by September, and by the end of this year, another component of the Hawaii Water Plan should be ready for the Commission to review.

State Water Projects Plan is another component of the Hawaii Water Plan. Deputy Kawahara said that staff is providing technical assistance and guidance to the Engineering Division and its consultant during the negotiations for the final scope of work.

Molokai Water Working Group (MWWG): Deputy Kawahara reported that the MWWG held six meetings and at the last meeting, Maui Department of Water Supply made a presentation on the water

## Minutes

supply system, Molokai Properties shared information on their water supply systems, there was a general discussion of previous MWWG meetings, and recommendations for the preparation of the final report that will come to the Commission. The group is seeking other funding to continue these meetings until the Maui County WUDP process starts their meetings. The final MWWG meeting is scheduled for March 19.

Staff attended the Kaloko-Honokohau National Historical Park meeting to discuss the formation of a ground water working group in Kona. This is in response to the impacts from increasing ground water withdrawals in the areas above the Kaloko National Historical Park and its affect and mitigative actions on the anchaline ponds in the park.

North Kona Water Protection Working Group (NKWPWG): in addition to the NKWPWG, we received an invitation to participate with the Kona Water Round Table that is being organized by the Hawaii Department of Water Supply (DWS). Unfortunately, the invitation was received on February 28 and missed the first meeting held on February 21, which was on the same day as the last Water Commission meeting. Deputy Kawahara said that they plan to provide technical assistance and support at the next meeting.

East Maui Instream Flow Standards (IFS): Deputy Kawahara reviewed Division of Aquatic Resource (DAR) attempts during the last week on November and last week of January 2008 but was rained out. Aquatics will try again in late March or early April.

Public Information Gathering Meeting: on April 10, from 5 pm to 9 pm, there will be a public information gathering meeting at the Haiku Community Center to share information regarding those streams. Packets will be sent out to the community stakeholders and library. It will also be available on the CWRM website, however yesterday's uploading documents to the State's website was temporarily unavailable. Deputy Kawahara would like people to look at data, check for inaccuracies and bring forward additional information or studies.

Handout: Copies were available of the Na Wai Eha SWMA info sheet that listed action, interested parties and status for projects statewide.

Statewide Stream Diversion Verifications and Stream Channel Alteration Inventory: Deputy Kawahara announced that the consultants regarding the Statewide Stream Diversion Verifications completed most of the field work on Maui and is continuously inputting data; in addition, staff met with selected consultant and began discussions on Statewide Stream Channel Alteration Inventory project.

Na Wai Eha Interim Instream Flow Standard (IIFS) contested Case hearing-Maui, Iao Ground Water Management Area high-level source water use permit applications and petition to amend interim instream flow standards of Waihee, Waiehu, Iao, and Waikapu Streams: Late last month, Hearings Officer, Deputy Attorney General and staff, concluded the evidentiary phase and closing oral arguments to the Hearings Officer of the contested case hearing.

Hearings Officer Dr. Miike said the evidentiary phase started in early December 2007 and concluded on March 4, 2008. Once the full transcripts are made available to the parties, by consensus, they would have 60 days to submit their proposed findings of fact. Dr. Miike will write his proposed decision and

## Minutes

forward it to the Commission and reviewed by the Attorney General's office. Dr. Miike hopes it will be completed in three months.

Drought Mitigation Projects funded under Act 238, SLH 2007: Deputy Kawahara distributed an update on Act 238, which appropriated \$4M of funding for drought mitigation projects statewide. The Commission approved a priority list of projects to be funded, and if a project is withdrawn or deleted, stipulated that the staff would come back to the Commission to approve any substitute projects. The Department of Agriculture withdrew the Waimanalo Well project on Oahu because they received funding from the Federal Bureau of Reclamation. The Oahu Drought Committee will reconvene to review alternate proposals. In addition, the County of Hawaii withdrew the Emergency Community Water Stations project.

Presentations: Deputy Kawahara reported that the Maui Department of Water Supply and consultants Carl Freeman and Ellen Kraftsow will be giving a presentation on their Water Use and Development Plan, and also Don Thomas of the University of Hawaii will do a presentation on Mauna Kea Deep Borehole.

Chair Thielen said staff provided the table on different instream flow standard amendment petitions that will be coming in front of this Commission including ones initiated by the Commission staff and the Department of Land and Natural Resources. This will be added to this table as well as the Water Resources Plan that the Department is updating and going through final comments now, and the update on the Department of Agriculture since the plan will be coming before us, and our Engineering division staff will also update on the State Water Projects Plan so that the Commissioners can be versed with these plans, the processes and the scope, before it comes before the Commission for approval.

Deputy Director Kawahara added that the Water Commission staff participated with many other partners regarding Earth Month. There is a page on the Water Commission; the insert will be coming out April 2008.

### **C. STREAM PROTECTION AND MANAGEMENT**

#### **1. Final Findings of Fact and Chairperson's Recommendation, Hui o Na Wai Eha and Maui Tomorrow Foundation, Inc.'s Petition for Surface Water Management Area Designation; Waihee, Waiehu, Iao, and Waikapu Surface Water Hydrologic Units, Wailuku, Maui**

PRESENTATION OF SUBMITTAL: Ed Sakoda

Ed Sakoda referred to the Na Wai Eha SWMA Table (handout) and pointed out that the items listed are actions only on Maui beginning with the petition to amend the Interim Instream Flow Standards (IIFS) for the 27 East Maui Streams, the petitioners are Native Hawaiian Legal Corp. representing Na Moku Aupuni O Koolau Hui, and two individuals, Beatrice Kekahuna and Marjorie Wallet. Mr. Sakoda said that the IIFS process is under way and mentioned that the informational packets will be distributed this month at the April 10<sup>th</sup> meeting. Notice went out on March 11 and April 1st.

The second item on the list is the petition to designate Iao and Waihee Aquifer System Areas as ground water management areas, the petitioner is Maui Meadows Homeowners Association. The Commission designated just the Iao Aquifer system in July 2003, making that action complete.

## Minutes

The petition to amend the IIFS for Waihee, North and South Waiehu, Iao, and Waikapu Streams and their tributaries is the subject of the contested case that Dr. Miike previously explained.

Petitions to amend the IIFS for Honokohau and Honolua Streams, West Maui, petitioner is Maui Land & Pineapple Company, Inc., process is underway.

The last item is the petition for Surface Water Management Area Designation for the Waihee, Waiehu, Iao, and Waikapu Surface Water Hydrologic Units which is the agenda item.

Mr. Sakoda said the basic action today is that the Chairperson, after consulting with Maui's Mayor, County Council and the Department of Water Supply regarding finding of facts recommendations that the Commission staff prepared, recommends that the Commission accepts the final findings of fact and designate the Na Wai Eha Surface Water Hydrologic Units as water management areas. Mr. Sakoda referred to the 12 steps of the Designation Process listed on page 2 of Item C1.

Mr. Sakoda reviewed the background information of the filing of the petition on December 6, 2006, by Earthjustice and mentioned that the 12 steps to follow are listed in the Water Code.

### Summary of the Water Management Area Designation Process:

1. Petition filed with the Commission or recommendation by Chairperson.
2. Consultation with appropriate Mayor, County Council, and County Department of Water Supply (DWS).
3. Comments received from Mayor, County Council and DWS.
4. Chairperson makes a recommendation to the Commission to accept or reject petition within 60 days of receipts of the petition.
5. Commission accepts or rejects petition. Accepting the petition continues the designation process.
6. Publication of notice of public hearing.
7. Public hearing held.
8. Completion of staff investigation.
9. Completion of findings of fact.
10. Second consultation with Mayor County Council and DWS.
11. Recommendation to Commission for or against designation.
12. Commission final action.

On January 23, 2007, Mayor Charmaine Tavares and Acting Director of the DWS, Jeffrey Eng, responded that they believed that "the statutory criteria for surface water designation have been met."

The 4<sup>th</sup> step: the County Council adopted Resolution No. 07-13, "SUPPORTING THE PETITION TO DESIGNATE NA WAI EHA AS A SURFACE WATER MANAGEMENT AREA" by unanimous vote.

Step #5: Chairperson Peter Young (at that time) recommended that the Commission continue the surface water management area designation process and the Commission approved the Chairperson's recommendation.

Step #6: public notices of the required public hearing were published.

## Minutes

On April 26, 2007, a public hearing was held at the J. Walter Cameron Center. Thirty-nine (39) people testified and eight (8) people provided written testimonies. Mayor Tavares and Jeffrey Eng, now the director of the Department of Water Supply, provided oral and written testimony in support of the public management of public trust resources. Both cited the occurrence of serious disputes as the criterion for meeting the statutory requirements of this designation. All other testimonies were in favor of the Commission granting the petition to designate.

Mr Sakoda said the final Findings of Fact (FOF) is the completion of the staff's investigations and consultations by the Chairman with the County. There are three criteria for surface water designation under the Water Code and read from page 4 of the Submittal.

4.1 Whether regulation is necessary to preserve the diminishing surface water supply for future needs, as evidenced by excessively declining surface water levels, not related to rainfall variations, or increasing or proposed diversions of surface waters to levels which may detrimentally affect existing instream uses or prior existing of stream uses.

**Conclusion: Not a criterion for designation**

4.2 Whether the diversions of stream waters are reducing the capacity of the stream to assimilate pollutants to an extent which adversely affects public health or existing instream uses.

**Conclusion: Not a criterion for designation**

4.3 Serious disputes respecting the use of surface water resources are occurring.

**Conclusion: Serious disputes respecting the use of surface water resources are occurring. The criterion for §174C-45(3), HRS, is met.**

Mr. Sakoda continued that the Final FOF presents other issues regarding surface water designation that the Commission should consider. An important concern is the lack of adequate surface water use data available to make well-informed decisions. The lack of adequate data makes it difficult to clearly determine whether or not water is being used in a reasonable-beneficial manner. The Commission would have clearer authority in a surface water management area to require water use permittees to install meters, gages, or other appropriate measuring devices. Another complicating factor is the interrelationship between the high-level ground water and the streams of Na Wai Eha.

Finally, there are issues relating to changing land uses, "grandfathered" uses, existing uses, future uses, appurtenant rights, traditional and customary rights, etc. These are the issues that need to be addressed in the contested case hearing in amending the Interim Instream Flow Standards of Na Wai Eha.

Mr. Sakoda stated that we are at the final steps, Steps 11 and 12. Based on the conclusions of the final findings of facts that serious disputes respecting the use of surface water resources are occurring, the Chairperson after consultation with the Mayor, County Council and the Department of Water Supply, recommends that the Commission accepts the final findings of facts and designate Na Wai Eha for surface water management.

If the areas are designated, notice of decision will be given in appropriate newspapers. Existing surface water users within the areas will have one year to apply for water use permits. For basal aquifers, water use permits have been issued. If there are objections, a public hearing may be required. Water

## Minutes

use permits for existing uses will be evaluated according to criteria §174C-50 and for proposed uses §174C-49. Applications will be evaluated by the Commission and they will take action on the water use permits.

### **RECOMMENDATIONS:**

That the Commission on Water Resource Management accept the Final Findings of Fact and designate the Na Wai Eha surface water hydrologic units as surface water management areas.

Commissioner Fujiwara asked if the Commission designates today, how soon will the process for permitting take place. Mr. Sakoda explained that if the Commission designates today, then the notice of this decision will be published. The date of the publication will start the one year that the water users have to apply for water use permit. If the Interim Instream Flow Standard is still not set, there is an interim water use permit that can be granted. When the Interim Instream Flow Standard is determined then it can be looked into making the interim permanent which there is five years to do that.

Mr. Sakoda said he received ten emailed testimonies in support of designation.

### **TESTIFIERS:**

John Duey, lives in Iao Valley and testified on behalf of Hui O Hawaii, and supports designation of Na Wai Eha.

Victor Pellegrino, farms kalo on Noho'ana Farm in Waikapu, and supports designation of Na Wai Eha.

Pam Bunn, Office of Hawaiian Affairs, supports designation of Na Wai Eha.

Isaac Moriwake, Attorney for Earthjustice, representing Hui Na Wai Eha and Maui Tomorrow Foundation petitioners, fully supports designation.

Lucienne de Naie, Chairperson, Sierra Club Hawaii Chapter, on behalf of Sierra Club, Maui Group, supports designation.

Judith Michaels, President, Maui Tomorrow Foundation, Inc. supports designation.

Brian Moto, Corporation Counsel for the County of Maui, supports designation.

Michelle Anderson, County Council, as an individual, supports designation.

Tasha Kama, Wailuku resident, Hawaiian Homestead lessee-in-waiting, supports designation.

Nalani Smyth, gave testimony in the Hawaiian language, in support of designation.

MOTION: (Fujiwara/Miike)

To approve the submittal.

UNANIMOUSLY APPROVED.

Applause from audience.

## Minutes

Chair Thielen stated that this is a historic vote, as Corporation Counsel mentioned that this is the first time that the Commission designated an area, Surface Water Management Area. Chair Thielen commended the Commission staff and deputy for going through this process in a manner that has been very inclusive, very open, and very transparent, and thanked the County of Maui for being supportive of the Commission in moving forward.

Chair Thielen wanted to take the time to explain what happens after surface water designation (page 4 of the submittal) and mentioned that the steps will be posted on the website.

What happens after designation?

- (1) Notice of its decision will be given in the appropriate newspapers;
- (2) Existing surface water users will have one year to apply for water use permits;
- (3) Notice of water use permit applications will be published;
- (4) Public hearings may be required if there are objections to the water use permits;
- (5) Water use permit applications for exiting use will be evaluated according to the criteria in the State Water Code, §174C-50. Water use permit applications for proposed uses will be evaluated according to the criteria in the State Water Code, §174C-49;
- (6) The Commission will hear recommendations from the staff and take action on water use permit applications.

Chair Thielen referred to a question during testimonies about these applications. What if instream flow standards are not established? The Commission may issue an interim water use permit based on the interim standard.

Chair Thielen commended the Commission and the Water Commission staff under the leadership of Deputy Kawahara, because 'we are moving forward on a number of things right now and people have been waiting a long time and its wonderful this action taking place. I wish my predecessor Peter Young were still here because a lot began under him and he deserves a lot of credit for that, so I wanted to recognize him as well.'

Chair Thielen announced that the Legislature announced that their budget, although there was statement that the house finance committee was only cutting positions that were vacant eight (8) months or longer, DLNR has suffered a significant number of cuts including in the areas that affects the Water Commission, our Division of Aquatic Resources; and in some cases these positions have not been vacant that long and in other cases they are technical staff and the Commission has worked very aggressively to try and find their technical staff and gone through series of interviews; it's difficult trying to fill these positions.

Deputy Kawahara added that for existing uses there is a one year deadline and if you miss that one year deadline even though it's an existing use, it then becomes what is considered a new use.

Questions were taken from the audience. It was clarified that people who may have registered before, now that this has been designated a surface water management area must come back to the Commission and apply now for a permit. The standard to evaluate application for existing use is different from the standard that is used to evaluate a proposed use. Roy Hardy explained that one of the benefits of the registration program as done in ground water management is that registrants got the notice of designation in the mail as well as notice in the newspaper.

## Minutes

Ed Sakoda explained the individual domestic use. You do not have to apply for a water use permit if you have rain catchments. If you have one pipe in the stream for your house, that is an individual domestic use however if you have one pipe in the stream and you serve more than two or more houses, you would have to apply. Deputy Kawahara read the definition of domestic use as any use of water for individual, personal needs and for household purposes such as drinking, bathing, heating, cooking, non-commercial gardening and sanitation.

15 minute break at 10:30 a.m.

Chair Thielen explained that under the State Water Code, the Water Plan is comprised of eight (8) parts; four (4) parts at the State level (Water Resource Plan by Commission staff; Water Works Project Plan, DLNR Engineer; Agriculture Plan by State Department of Agriculture; and Water Quality Plan by the State Department of Health) and four (4) County components Water Use and Development Plan by each County. The next presentation is one of these eight (8) components.

### **D. NON-ACTION ITEMS:**

#### **1. Maui County Water Use and Development Plan Update Briefing**

Lenore Ohye introduced Department of Water Supply Director Jeff Eng, long range planner, Ellen Kraftsow, and their Water Use and Development Plan (WUDP) consultant, Carl Freedman of Haiku Design & Analysis. The primary objective of the WUDP is to set the broad allocation of water to land in that County over twenty-year planning horizon. The results of this process will serve to give guidance to the Commission in their decision making on regulatory and policy issues.

Carl Freedman and is one of the consultants to the Department of Water Supply to assist with the Water Use Development Plan update process.

Documents are available at [mauiwater.org/planning.html](http://mauiwater.org/planning.html). A hardcopy of Mr. Freedman's PowerPoint is part of this record.

Chair Thielen expressed concern regarding well head protection and the problem with old wells that have been lost without first being properly sealed. Chair Thielen encouraged the county to try to address the problem through the land use permitting process by conditioning discretionary development approval on searching and properly sealing unused wells. This is the approach that the

Land Use Commission has taken, and greater coordination and effort at the county level is encouraged.

Chair Thielen said that Lanai's WUDP was proposed to be completed two years ago. Due to disagreement between the stakeholders, the adoption of the WUPD was extended. Chair Thielen asked for an update on the adoption schedule.

Ellen Kraftsow said there was a draft completed a couple of years ago, which has gone through a couple of updates with the committee. There are still gaps in the draft. The original 1997 draft had the consensus of the committee, but it was not clear that there is consensus with the current draft.

## Minutes

Chair Thielen stated that our State Water Resources Plan hasn't been updated in some time to get to consensus on some of these issues; however, we are moving forward under the philosophy that it's better to have these plans in place. Planning is suppose to be updated on a regular basis, so any plan put in place is by definition a temporary document because you'll ultimately get better information, and it's better to move forward with finalizing a plan with best available data rather than to wait for perfection.

### **2. The Mauna Kea Deep Borehole: New Hydrologic Findings and Implications for Hawaii and Maui**

Roy Hardy introduced Dr. Don Thomas, geochemist at the University of Hawaii, Department of Geology and Geophysics. Dr. Thomas came to the Water Commission with permits for Hawaii Scientific Deep Hole project. Normally wells are a few hundred feet deep, rarely over 1,500 feet deep, however Dr. Thomas' project went over 10,000 feet.

Dr. Thomas said the National Science Foundation funded this project was to look at the planetary processes responsible for the Hawaiian isles. They also wanted to explore the structure of the Hawaiian volcano, to be able to look deep inside. Dr. Thomas' interest on the project was to characterize ground water resources.

The project discovered significant artesian freshwater resources underlying saltwater in the current basal aquifer conceptual model for the islands. Given what the project discovered, it has changed our conceptual model of ground water hydrology in the Hilo area and raised questions about ground water availability on the other islands. Consequently, Maui County is considering funding a similar project with Dr. Thomas on Maui to see if similar resources exist.

### **E. NEXT COMMISSION MEETINGS (TENTATIVE)**

1. April 16, 2008
2. May 21, 2008

The meeting was adjourned at 12:04 p.m.

Respectfully submitted,

KATHLEEN OSHIRO  
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA  
Deputy Director