

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

DATE: October 28, 2008
TIME: 11:00 a.m.
PLACE: Kalanimoku Building
Conference Room 132

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 11:03 a.m.

The following were in attendance and/or excused:

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

STAFF: Deputy Ken Kawahara, Robert Chong, Ronnie Torres, Lenore Ohye

EXCUSED: Ms. Meredith Ching; Dr. Chiyome Fukino

COUNSEL: Colin Lau, Esq.

OTHERS: Clifford Wasserman; Kaeo Duarte, Kamehameha Schools; Jerry Kringel, Owner of Pokiwai Property; Sean Dunckel, Lyon Associates for Mr. Kringel

A. APPROVAL OF MINUTES

1. September 24-25, 2008

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

B. ANNOUNCEMENTS

Deputy Ken Kawahara reported that a staff geologist for the instream use protection section returned to the private sector and unfortunately with the hiring freeze will not be able to fill her position.

Drought continues to impact the State ranging from D0 (abnormally dry) to D3 (drought – extreme) as shown in the U.S. Drought Monitor (handout distributed). The National Weather Service is forecasting a 40% chance of rainfall in the above normal class from January to May 2009, so it looks like Hawaii may have a wetter winter.

The Bureau of Reclamation asked if there were any projects that they could support us regarding funding for the State. This was facilitated through the Drought Council and the Drought Committees for each of the counties. Staff received four proposals, two from Maui

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and two from the Big Island, for emergency drought assistance; three were requests for water hauling and one was for emergency well pumping costs (Maui).

Deputy Kawahara mentioned that at the June 18 Commission meeting, Brown and Caldwell briefed on the stormwater reclamation and reuse appraisal study that is being funded by the Bureau of Reclamation in partnership with the Commission. The appraisal study is due to be completed next month. Staff is planning a workshop, scheduled for December 3rd, for identified stakeholders and agencies with an interest in stormwater reclamation and reuse to help prioritize the opportunities for the next phase, which is a feasibility study.

Waiahole Ditch Irrigation System (WUP No. 851): During the May 2008 Commission meeting, Mr. Paul Achitoff of Earthjustice raised some procedural issues regarding the extension of the Water Use Permit (WUP). Deputy Kawahara said that this was discussed with our counsel and it was determined that it does not fall under the contested case proceeding; however it should go through a permit modification process. Agribusiness Development Corporation (ADC) has submitted that permit and the application is currently awaiting chairperson's signature since some of the land falls under DLNR. This is required as ADC does not have a perpetual lease for the Kahana Tunnel portion of the ditch.

Staff will be attending the third Kona Water Round Table meeting (organized by the Hawaii Department of Water Supply) and the fourth North Kona Water Protection Working Group meeting (organized by the Kaloko-Honokohau National Historical Park) on November 3rd. Some of the discussion will be on the Kohanaiki Monitoring Plan that was approved by staff in consultation with the National Park Service, the County Planning Department, and Discovery Land (Kohanaiki Developer) and the implementation of this plan as part of their pump installation permits.

Deputy Kawahara said that they received a few phone calls from residents in the Nahiku area, concerned about public health, possibly dengue, leptospirosis and amoeba. The Department of Health is working on this and if it is a public health matter, DOH can make a declaration on their own and not involve the Commission.

Interim Instream Flow Standards: There were press releases (copies distributed) on two community meetings, one held this past Thursday and one scheduled tonight on Maui that Deputy Kawahara is conducting. What will be shared at these community meetings are the implementation of the IIFS that the Commission amended and the short term adjustments as well as the longer term adjustments (which may require permits from different agencies).

Interim Instream Flow Standards Update: Deputy Kawahara distributed the simplified diagrams for the five hydrologic units and the schedule for the three planned trips to east Maui and, as decided on Submittal C2 at the last meeting, provided an update to what is being done to implement these IIFS.

Trip 1: On Thursday, October 23, a site selection and pre-restoration flow measurement was done at IIFS site locations (refer to East Maui Site Visit schedule distributed). Deputy Kawahara said they were not always able to pinpoint an exact site location because of the geology and if the water level changes (in their

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discussions with USGS) the stream channel when it rises will change and what may be a good point at a very low flow may not be a good point for measuring as we get closer to the IIFS.

Day 2: staff was not able to take a measurement at site B since it was completely dry. They did select a possible site however, no measurement was taken.

Deputy Kawahara thanked EMI who cut a trail and put ropes up to the waterfall for staff. At the base of the waterfall is actually the pipe of the diversion of the Hawelo community. Site C needs to be above this diversion. At the top of the waterfall, the Aquatic Resources, U.S. Geological Survey (USGS) and staff moved a large rock and selected a site for a pre-restoration measurement. By the afternoon on day 2, staff was not able to select a site and take a restoration measurement because of the nature of the stream, it being wide with lots of moving rocks. They moved further upstream near the Hana Highway trying to establish a point.

For , staff tried to locate the existing USGS inactive gaging station, last used in the 1940s which they were not able to locate. This stream was very different from the rest of the streams, having huge boulders which made it very difficult to take measurements since the water flows under the boulders. DAR set up monitoring stations for pre-release of the monitoring of the biota.

Trip 2: Deputy Kawahara said staff was able to get everything accomplished except for Hanehoi Site B pre-restoration measurement because it was dry. Staff will also continue back to Wailuanui that staff wasn't able to accomplish on the first trip.

Deputy Kawahara thanked U.S. Geological Survey who accompanied staff on Thursday and Friday at no charge to the commission and Aquatic Resources for setting up their monitoring points, and also thanked East Maui Irrigation and the community members.

Deputy Kawahara mentioned that he was notified by EMI that they discovered that their sluice gate at Lowie Ditch was opened, so staff's measurements at Honopou stream could have been compromised by someone opening that gate. Deputy Kawahara said he will stress to the community at tonight's meeting that these actions will impact resources and data, and it's not really helping the process in trying to achieve this IIFS.

OUTREACH:

Oct. 20-31 Hawaii Water Works Association Conference: Staff will be presenting the Water Resources Protection Plan and IFS updates on October 29 and 30, respectively.

Nov. 20-21 HWEA Conference on Stormwater - A Valuable and Underutilized Resource: Staff asked to do presentation.

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- Dec. 3 Staff will be holding a workshop (video-conference) for identified stakeholders and agencies with an interest in stormwater reclamation and reuse to prioritize opportunities identified in the appraisal study. We are hopeful that the Bureau of Reclamation will continue to support this project as we move the next phase, which is a feasibility study.

Commissioner Frazier asked if the water was from upstream and not up ditch. Deputy Kawahara confirmed that it was upstream. The Haiku area, there is 50% of the normal rainfall within the last year, very dry.

Chair Thielen said it would be helpful if Deputy Kawahara would mention at the community meeting tonight that the Chair has concerns of people taking self help and not following the instream flow standards and the process laid out by the Water Commission. The Commission asked the community to work with us and it seemed there was a consensus in the room that it was a real groundbreaking effort by the Commission to amend the standards for the first time ever and think it's jeopardizing that effort to people engaging in self effort and ask the community to help contain the people who are trying to do that.

Commissioner Muike asked if by those actions doesn't it seem like there's more water in the stream than there really is before restoration? They are shooting themselves in the foot by making it seem like the stream is better than it really is.

C. **STREAM PROTECTION AND MANAGEMENT**

1. Application for Stream Channel Alteration Permit (SCAP.1989.6) to Stabilize an Existing Retaining Wall on Kanaha Stream; Lahaina, Maui TMK: (2) 4-6-017:012

PRESENTATION OF SUBMITTAL: Robert Chong

Robert Chong summarized the applicant's plans to stabilize the base of his existing retaining wall by placing approximately 10 cubic yards of rock under the base of his retaining wall adjacent to the stream and an additional 25 cubic yards of rocks and boulders in the streambed. The rocks and boulders at the base of the retaining wall and in the streambed will all be grouted together and be anchored to a large boulder that is approximately 20 feet long and 12 to 15 feet wide in size in the streambed.

RECOMMENDATION:

That the Commission:

Approve a Stream Channel Alteration Permit (SCAP) to stabilize an existing retaining wall on Kanaha Stream in Lahaina, Maui, TMK: (2) 4-6-017:012. The permit shall have a term of two (2) years subject to the Commission's standard permit conditions in Exhibit 4.

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Commissioner Fujiwara asked if the applicant will be getting an engineer to develop plans so that the erosion would not happen again and the retaining wall would not impact the stream. Mr. Chong said Mr. Michel will be doing the work himself. Commissioner Miike stated that a condition be included in staff's recommendation that the applicant's retaining wall must meet Maui County's building codes.

MOTION: (Fujiwara/Miike)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED.

**2. Application for a Stream Diversion Works Permit (SDWP.1794.8) and Amendment of the Interim Instream Flow Standard for the North Tributary to Puuokalepa Stream, Papaikou, Hawaii;
TMK: (3) 2-7-005:018**

PRESENTATION BY: Robert Chong

Robert Chong gave the background information and said that the diversion works was installed in 1985 but was not registered with the Commission during 1988-1989 registration of water uses.

RECOMMENDATION:

That the Commission:

Stream Diversion Works Permit

1. Approve a Stream Diversion Works Permit to replace a two-inch diameter pipe in the north tributary of Puuokalepa Stream, Papaikou, Hawaii, TMK: (3) 2-7-005:018. The permit shall be subject to the Commission's Standard Conditions in Exhibit 3.

Petition to Amend Interim Instream Flow Standard (IIFS)

1. Approve the applicant's petition to amend the interim instream flow standard for a stream diversion at the north tributary of Puuokalepa Stream, Papaikou, Hawaii, TMK: (3) 2-7-005:018.
2. Amend the Interim Instream Flow Standard for all streams in Hawaii, as adopted by the Commission on June 15, 1988, to include a new interim instream flow standard for the north tributary of Puuokalepa Stream, Papaikou, Hawaii, TMK: (3) 2-7-005:018.
3. Allow the applicant to replace the two-inch diameter intake pipe and to divert up to 0.12 cfs (0.08 mgd) for aquaculture purposes. The amendment of the interim instream flow standard shall be subject to the conditions for interim instream flow standard amendments in Exhibit 4.

Commissioner Miike said he assumed that it is not known what the flow in the stream was when the IIFS were adopted because it was just status quo and asked if it's amended, does it mean that it is

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the status quo minus 0.08 gpm? Commissioner Miike said if it is a *de minimis* change, he doesn't feel that the IIFS has to be amended.

Chair Thielen said it is a good point, and she feels a little uncomfortable given the process that the Commission went through to amend the East Maui IIFS. This doesn't follow the process, and it seems unusual. This burden can be put on the applicant.

Mr. Chong confirmed that the applicant did not file originally. Commissioner Miike asked Deputy AG Colin Lau to look for the specific section in the Water Code rather than the Rules.

Chair Thielen asked to continue with Item C3 while the Deputy AG checked on this.

- 3. Application for a Stream Diversion Works Abandonment Permits for:**
 - 1. Diversion #3-3353-005D, Punaluu Stream, Oahu, TMK: (1) 5-3-003:011:001, (SDWP.1910.3)**
 - 2. Diversion #3-3354-001D, Punaluu Stream, Oahu, TMK: (1) 5-3-003:011:001, (SDWP.1909.3)**
 - 3. Diversion #3-3453-001D, Punaluu Stream, Oahu, TMK: (1) 5-3-003:001, (SDWP.1908.3)**
 - 4. Diversion #3-3600-001D, Kaiwikoele Stream, Oahu, TMK: (1) 6-3-001:001, (SDWP.1911.3)**
 - 5. Diversion #8-6844-001D, Honokane Nui, Hawaii, TMK: (3) 5-1-001:004, (SDWP.1913.8)**

PRESENTATION BY: Robert Chong

Robert Chong gave the background information and said that Kamehameha Schools (KS)/Bishop Estate have applied for permits to abandon five stream diversions structures. Three diversions are located in Punaluu (Exhibit 1) and one in Waimea Valley (Exhibit 2) on Oahu, and one on the Big Island (Exhibit 3).

RECOMMENDATION:

That the Commission approves stream diversion works abandonment permits for the following stream diversion works:

1. Diversion #3-3353-005D, Punaluu Stream, Oahu, TMK: (1) 5-3-003:011:001, (SDWP.1910.3)
2. Diversion #3-3354-001D, Punaluu Stream, Oahu, TMK: (1) 5-3-003:011:001, (SDWP.1909.3)
3. Diversion #3-3453-001D, Punaluu Stream, Oahu, TMK: (1) 5-3-003:001, (SDWP.1908.3)
4. Diversion #3-3600-001D, Kaiwikoele Stream, Oahu, TMK: (1) 6-3-001:001, (SDWP.1911.3)
5. Diversion #8-6844-001D, Honokane Nui, Hawaii, TMK: (3) 5-1-001:004, (SDWP.1913.8)

Commissioner Miike referred to comments made by one of the agencies that any diversion structures should be removed, and he asked Mr. Kaeo Duarte of Kamehameha Schools if they would remove the rusty pipes. Mr. Duarte agreed that they would.

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

4. Application for Stream Channel Alteration Permit (SCAP.1652.3) Construction of a Retaining Wall along Kapaka Stream, Hauula, Oahu; TMK: (1) 5-3-014:003

PRESENTATION BY: Robert Chong

Robert Chong gave a brief background on this submittal.

Commission Review

The applicant had placed unpermitted boulders on his property along Kapaka Stream in 2006. The COE allowed the applicant to leave the unpermitted boulders in place to stabilize his property and prevent further discharge and erosion of the site under high rain and tide events while the COE was processing the applicant's permit for the final structure. On September 20, 2008, the applicant removed the unpermitted boulders from Kapaka Stream; consequently, there is no permit violation for a stream channel alteration.

The new retaining wall will be located outside of the COE's JD line and will not be subject to the COE's Section 404 or the DOH CWB's Section 401 Water Quality Certification (WQC) requirements. The new wall will stabilize the applicant's property and prevent discharge and erosion of the site in to Kapaka Stream.

RECOMMENDATION:

That the Commission:

Approve a Stream Channel Alteration Permit for a new retaining wall along Kapaka Stream, Hauula, Oahu, TMK: (1) 5-3-014:003. The permit shall be subject to the Commission's standard conditions in Exhibit 4.

Property owner Jerry Kringel said he is trying to retain his land that has been eroding.

Chair Thielen asked if an architectural design was hired to help the owner with the retaining wall and why was the work done without permits. Mr. Kringel said he was told to get a civil engineering to write a letter stating that there will be no adverse effect caused by the retaining wall; however, he was told it would take a long time to get the permits. Richard Lee was hired to remove the building and was able to bring in big boulders that were set in place to stop further erosion.

Mr. Kringel said he owns 17,062 square feet of land that is probably down to 8,000 square feet due to the erosion, and that the retaining wall is on his property. He said when it rains; a tremendous amount of water comes down from Sacred Falls and passes under the bridge. Unfortunately the sand builds up under the bridge and sometimes blocks the water from going into the ocean. Mr. Kringel said there is a 42 inch pipe that goes under Pokiwai Place that allows the water to go out. Since all

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the sand was removed, the wave washes into his property, and the pipe under Pokiwai Place is totally plugged.

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

Continuing with Item C2.

RECOMMENDATIONS:
That the Commission:

Stream Diversion Works Permit

1. Approve a Stream Diversion Works Permit to replace a two-inch diameter pipe in the north tributary of Puuokalepa Stream, Papaikou, Hawaii, TMK: (3) 2-7-005:018. The permit shall be subject to the Commission's Standard Conditions in Exhibit 3.

Petition to Amend Interim Instream Flow Standard

1. Approve the applicant's petition to amend the interim instream flow standard for a stream diversion at the north tributary of Puuokalepa Stream, Papaikou, Hawaii, TMK: (3) 2-7-005:018.
2. Amend the Interim Instream Flow Standard for all streams in Hawaii, as adopted by the Commission on June 15, 1988, to include a new interim instream flow standard for the north tributary of Puuokalepa Stream, Papaikou, Hawaii, TMK: (3) 2-7-005:018.
3. Allow the applicant to replace the two-inch diameter intake pipe and to divert up to 0.12 cfs (0.08 mgd) for aquaculture purposes. The amendment of the interim instream flow standard shall be subject to the conditions for interim instream flow standard amendments in Exhibit 4.

Commissioner Miike said there are procedures in the Rules that do not require going through the process of amending the IIFS when the amounts are insubstantial. It was concluded that if the amount falls within the range of error of the measurement of the IIFS, it's not changing it at all. Deputy AG Lau confirmed that it was correct and that the IIFS in HAR Chapter 13-169-43(b), states that interim instream flow standards are by their nature, temporary and subject to change, so if it is *de minimis* then you don't need to change the IIFS.

Commissioner Kiyosaki asked if all that was needed to be approved was the replacement of the two inch pipe. Chair Thielen stated that it needs to be noted that the diversion is *de minimis* and within the range of the existing interim IFS. AG Lau said because there is no specific rule or statute that says it's exempt, you are left with reasonable standards and making a finding that it is *de minimis* based on staff recommendations, then the Commission is probably on safe grounds. So, the permit can be approved without modifying interim IFS.

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The motion is amended to accept the staff's recommendation for the stream diversion work permit only.

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

D. NEXT COMMISSION MEETINGS (TENTATIVE)

1. November 19, 2008
2. December 17, 2008

The meeting was adjourned at noon.

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director