

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

DATE: November 19, 2008
TIME: 9:00 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 9:01 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Laura Thielen, Ms. Meredith Ching, Mr. James Frazier, Mr. Neal Fujiwara, Ms. Donna Kiyosaki

STAFF: Ken Kawahara, Robert Chong, Ryan Imata, Roy Hardy, Lenore Ohye, Ronnie Torres

EXCUSED: Dr. Lawrence Miike, Dr. Chiyome Fukino

COUNSEL: Randy Ishikawa, Esq.

OTHERS: Chris Faribairn (DHH project manager), Harold Edwards (ITC Water Management, Inc.), Mark Yoshimura (Okahara & Associates), Kaeo Duarte (Kamehameha Schools), Sallie Beavers and Melia Lane-Kamahele (National Park Service)

A. APPROVAL OF MINUTES

- 1. October 28, 2008**
MOTION: (Frazier/Fujiwara)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Deputy Ken Kawahara announced that the geologist position for the instream use protection section remains vacant and will not be filled due to the state-wide hiring freeze.

Deputy Kawahara reported that although there was rain the past few days, drought continues to impact the State and added that the drought monitor is unchanged from the last meeting.

Bureau of Reclamation (BOR) Emergency Drought Assistance: Staff received four requests for emergency drought assistance (two from Maui and two from the Big Island) and transmitted the three requests for water hauling and one for emergency well pumping costs (Maui) to the BOR.

Kona Water Round Table (organized by the Hawaii Department of Water Supply) and the fourth North Kona Water Protection Working Group (organized by the Kalako Honokohau National

Historical Park): Staff attended the meetings held on November 3rd. Some of the discussion was on the Kohanaiki Monitoring Plan. The implementation of this plan is part of their pump installation permits which were approved by staff in consultation with the National Park Service, the County Planning Department, and the Discovery Land (Kohanaiki Developer).

East Maui Site Visit (Trip 3 agenda was distributed): Deputy Kawahara mentioned that most of the stream staff is on Maui from Monday through Wednesday to measure pre- and post- restoration flows at various East Maui streams. Yesterday, there was quite a bit of rain and staff may have to adjust the site visits. Staff was in the Palauhulu and Wailuanui areas on Monday, at Kualani yesterday (Tuesday) and will be going into the taro patches today. Deputy Kawahara said that part of the recommendation the Commission made on September 25 was to work with the private property owners to gain access and reported that some of the taro farmers are beginning to allow access to staff.

Weather permitting; staff will do post-restoration measurements at Honopou. Deputy Kawahara mentioned that on Trip 2, at the Haiku diversion on Honopou Stream, the community members worked with EMI and staff to build a small dam out of banana stumps on the diversion. This was to raise the water level and increase the pressure through three plastic (PVC) pipes to provide more water downstream in an attempt to meet the interim instream flow standards (IIFS). Deputy Kawahara said some of the pictures indicated it was working, however the flow increased when it rained and it pushed away some of the stumps. According to EMI's discussion with the Army Corp of Engineers, only materials along the stream could be used instead of bringing in foreign materials.

Adjustments to implement the IIFS: EMI wrote to the Army Corp of Engineers for a request of determination and various agencies on their plans with photos. The Office of Conservation and Coastal Lands and the water commission staff responded that permits are not required for what is being proposed.

Chair Thielen asked what the Army Corps of Engineers' jurisdiction for a non-navigable stream. Gordon Tribble of USGS said that he understood that, although you wouldn't consider it to be navigable, the stream was under the Corps' jurisdiction. Deputy Kawahara said when Dam 3 was rebuilt it was required to get a permit from the Army Corp of Engineers.

Deputy Kawahara will have the stream branch compile the photos from the three trips, pre-restoration and post restoration. Chair Thielen asked if the report and photos could be shared with the community. Deputy Kawahara said it was part of the plan and will also include the flow measurements. Deputy Kawahara said some of the quality control was not close to their initial predictions but others were actually on the mark, within 0.1 cubic feet per second.

Kuhiwa Well Issue: The ground water staff is looking into some of the complaints and will relay back to the Commission on the permit or decision and order.

Interim Instream Flow Standards (IIFS): Deputy Kawahara said he made the community members aware that NHLHC did submit a letter asking staff to focus on the eight streams, which the Commission amended in September. Staff is also working on the 19 streams and that the Commission directed staff to work on the 19 streams as a package. Part of the issue is that the weather has been very dry.

OUTREACH:

Oct. 29-31 Staff attended and presented on the Water Resource Protection Plan and interim IFS at the Hawaii Water Works Association conference.

Nov. 20 Staff will do a presentation at the AWWA/HWEA conference to highlight the findings of appraisal-level study exploring stormwater reclamation and reuse opportunities for Hawaii. The appraisal study, which was fully funded by the Bureau of Reclamation, identified 20 opportunities statewide. Jayne Harkin, Regional Deputy Director for the Federal Bureau of Reclamation, Lower Colorado Region, will also be presenting at the conference. The Department of Kauai Water Supply staff, the consultant, and Commission staff will be taking Ms. Harkin on site visits for the opportunities on Kauai. On December 3, 2008, the Commission staff will host a statewide video conference for identified stakeholders and agencies that may have an interest in the stormwater reclamation reuse opportunities. The purpose of the stakeholder’s meeting is to prioritize opportunities for a feasibility study. Deputy Kawahara said they are looking for non-federal support to conduct the feasibility study, which will require cost sharing with federal funding.

Commissioner Frazier said Mauna Kea Soil and Water Conservation District indicated an interest in stormwater reclamation and reuse and asked how the information will be taken out to other communities to keep them informed. Deputy Kawahara said the December 3rd meeting is focused on the stakeholders identified in the appraisal study; however, the presentation at the AWWA/HWWA conference is an attempt to engage a wider audience, and staff will be conducting more outreach in the future.

C. STREAM PROTECTION AND MANAGEMENT

- 1. Application for Stream Channel Alteration Permit (SCAP.2023.8)
Installation of Culvert Crossing on Lanikepu Stream and Grouted Rip-Rap Lining on Lanikepu and Keanuiomano Streams, Kamuela, Hawaii
TMK: (3) 6-6-001:054 and (3) 6-6-004:012**

PRESENTATION BY: Robert Chong

RECOMMENDATION:

That the Commission approve a Stream Channel Alteration Permit (SCAP) for the installation of a culvert crossing on Lanikepu Stream and grouted rip-rap lining along Lanikepu and Keanuiomano Streams, Kamuela, Hawaii, TMK: (3) 6-6-001:054 and (3) 6-6-004:012. The permit shall have a term of two (2) years subject to the Commission’s standard permit conditions in Exhibit 4.

Commissioner Frazier mentioned that the contractor has been a good steward of the existing stream through the construction process.

Chris Fairbairn with DHHL said they conducted a field visit on Friday, October 14, with Joy Aramizu of the Corps of Engineers. Ms. Aramizu’s findings were that the work was outside of the

Corps' jurisdiction, and the application, page 8A topo section, which originated from an aerial, does not accurately reflect the topo. Mr. Fairbairn said that they initiated a field survey and will provide that to the Army Corps and Department of Health as requested. They will delineate the center line of the stream, edge of stream and the toe of the rip-rap, which is anywhere from six to 40 feet outside of the stream.

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

**2. Application for a Stream Diversion Works Permit (SDWP.2008.3)
Reconstruction of Stream Diversion and Intake, Punaluu Stream, Punaluu,
Oahu, TMK: (1) 5-3-011:001**

PRESENTATION BY: Robert Chong

RECOMMENDATION:

That the Commission approve a Stream Diversion Works Permit (SDWP) to reconstruct the existing diversion and intake to the Punaluu Ditch on Punaluu Stream, Punaluu, Oahu, TMK: (1) 5-3-011:001.

Commissioner Ching wanted to make sure there were no other regulations involving the quantity of water, a designated water management area, or instream flow standards. Mr. Chong said that the diversion was not in a designated water management area and that the amount of water being diverted would be *de minimis*.

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

**3. Declaratory Ruling No. DEC-OA08-S11, James Campbell Company LLC
Stream Clearing Activities**

PRESENTATION BY: Robert Chong

RECOMMENDATION:

That the Commission adopt Declaratory Ruling No. DEC-OA08-S11, STREAM CLEARING ACTIVITIES FOR JAMES CAMPBELL COMPANY LLC to apply specifically to periodic and as-needed work done by the James Campbell LLC in the Kahuku and Malaekahana areas on Oahu without further permit extensions or approvals from the Commission. The declaratory ruling shall be subject to the Commission's Standard conditions in Exhibit 4. (Standard Conditions 4 to 8 do not apply to this permit).

Regarding the Declaratory Ruling, Deputy AG Randy Ishikawa said that the Commission had the authority under the Administrative Rules to issue a declaratory ruling as to a particular need for a permit. However, upon review of the submittal, the AG's Office had questions as to whether these were in fact streams. The Section A of the analysis indicated that if it was not a natural watercourse or stream, no stream channel alteration permit was required. Section B of the

analysis stated that if it was a stream but if it was only routine maintenance, it can be subject to an exemption from the stream channel alteration permit process. The AG Office's concern was that there was no reference whether it was a stream or a non-natural water course for the five identified watercourses. Deputy AG Ishikawa continued that without that information, it would be proper to only approve the declaratory ruling as to streams, since that was what Campbell's application was for, work on streams. He stated that Section A of the declaratory ruling relating to non-natural watercourses not be adopted simply because Campbell had apparently characterized them as streams in their application. Deputy AG Ishikawa said from the legal standpoint, he would recommend that Section B of the recommendation be adopted, that no stream channel alteration permit was required for the identified minor routine stream maintenance activities proposed.

For clarification, Chair Thielen asked if it was because the application referred to only streams that it should be limited to streams, or if the Commission does not have the authority to do a declaratory ruling for watercourses. Deputy AG Ishikawa said it was not known whether these watercourses were streams or non-natural water courses. The Commission did have the authority to issue a declaratory ruling for watercourses, although Deputy AG Ishikawa said that they were not identified as non-natural water courses subject to this petition.

Mr. Chong said that he was unable to contact James Campbell Company to confirm which were watercourses and which were streams. Mr. Chong believed that the Malaekahana, Kii and Ohia were streams and was not sure about East West and Mill which could be ditches or drainage ways.

Chair Thielen asked again if the Commission had the authority to do this for watercourses and streams. Deputy AG Ishikawa confirmed that it could be done for the identified watercourses that were listed in the request as a declaratory ruling. Deputy AG said that Campbell applied for an extension of a stream channel alteration permit, and he was assuming that Campbell was treating them as streams. Chair Thielen asked if the permit originally covered all five; Mr. Chong said yes. Deputy AG Ishikawa said it was as streams, therefore the declaratory ruling on Section A for non-streams was not applicable because there were no streams involved in this petition.

Deputy AG Ishikawa recapped that his recommendation was that the Commission accept staff's recommendation for Section B with respect to the five watercourses. The legal issue was not knowing which watercourses were covered by Section A and which watercourses were covered by Section B. The applicant requested stream permits for all five, and at that point it would be proper to issue the declaratory ruling as to the five. The declaratory ruling was if a permit was required. Staff concluded that the permit was not required because the work was considered routine maintenance activities in the streams.

Commissioner Fujiwara asked if the five watercourses or streams were identified on the USGS maps. Mr. Chong said three out of five were on the USGS map. Commissioner Ching inquired if there was no harm in providing a declaratory ruling for a stream channel alteration permit for things that may not be streams, and wondered if there was no downside for the applicant or the Commission.

Chair Thielen's concern was that there was a permit for all five, and now the Deputy AG was raising the questions that some of the five may not actually be streams, and asked if it wouldn't

be better to make a declaratory ruling that said a permit is not needed for any of those that are streams and a permit is not needed for any of those that aren't streams. Deputy AG Ishikawa said the Commission should avoid rule making as opposed to a declaratory ruling on certain identified streams. If there was going to be a rule made, you must go through rule making that would address things that were not covered in the petition.

Chair Thielen referred to the five and said, in the proposed declaratory ruling that because this was minor work and was beneficial, no permit was needed for any of these that were streams, but in the event that any of these five are later deemed to be watercourses, you need a permit either.

Deputy AG Ishikawa agreed that as long as it pertained to these identified five watercourses and clarified that the amendment to the recommendation was that the petition be approved on both grounds for the five identified water courses – Malaekahana, East West, Kii, Ohia or Mill.

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

D. NON-ACTION ITEMS

1. Briefing for Kaloko-Honokohau National Park and Kohanaiki Ground Water Monitoring Plan – Kona, Hawaii

PRESENTATION by: Ryan Imata

A hardcopy of the power point presentation is made a part of this record.

Ryan Imata presented the overview of the Kohanaiki project and the monitoring plan created to address the concern of impacts to the Kaloko-Honokohau National Park.

E. NEXT COMMISSION MEETINGS (TENTATIVE)

1. December 17, 2008
2. January 21, 2009

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director