

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: March 18, 2009
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Laura H. Thielen called the meeting of the Commission on Water Resource Management to order at 9:02 a.m.

The following were in attendance and/or excused:

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

STAFF: Ken Kawahara, Ed Sakoda, Roy Hardy, Ronnie Torres, Diane England, Robert Chong

EXCUSED: Dr. Chiyome Fukino

COUNSEL: Linda Chow, Esq.

OTHERS: Gordon Tribble (USGS); Ikaika Hussey (The Hawaii Independent)

A. APPROVAL OF MINUTES

1. February 18, 2008

Commissioner Frazier corrected minutes to include on page 4 (mid-page) to read, *former Maui Mayor Mr. Arakawa, representing the applicants Sarasin and Varal* said there are a number of reasons...

Commissioner Kiyosaki referred to Item D2 and shared her concern regarding public trust vs. non-public trust issue and feels that staff's submittal and the initial recommendation seem to indicate that there was a defining of what public trust and non-public trust was and was a prioritization that could set precedence in terms of how we look at these. Commissioner Kiyosaki thinks it should be clearer in the amended motion that the Commission was not making any inferences that we were defining non-public vs. public trust because there are still a lot of questions." On this particular agenda item we are not trying to categorically prioritize uses because we know something needs to be done on a case-by-case basis. Commissioner Kiyosaki would like this to be a part of the amended motion and feels that it will get lost if left within the discussion.

Commissioner Ching agreed with Commissioner Kiyosaki. Commissioner Miike suggested deferring this at this time to allow the Commissioners to offer further comment and suggest changes to be followed by AG review.

Minutes

MOTION: (Frazier/Kiyosaki)

To defer approval of the minutes (pending clarification of language).

UNANIMOUSLY APPROVED TO DEFER.

B. ANNOUNCEMENTS

Deputy Ken Kawahara suggested that all testifiers should come up to the table to speak to aid in getting a clearer recording for the preparation of minutes.

Vacancies and Budget: The geologist position is still vacant with the state-wide hiring freeze. This position was proposed to be abolished in the budget (when it was submitted to the House). This past Monday, the budget crossed over to the Senate from the House and in that version, the geologist position was restored. Handout was distributed on the Water Commission budget worksheet. Deputy Kawahara discussed the budget worksheet from the House. In that version, the geologist position was restored. In addition, the House restored \$529,046 of proposed cuts. Deputy Kawahara said that this budget does not reflect the latest Council of Revenue numbers that came out on March 12 and the Senate will be taking that into consideration.

Deputy Kawahara added that they are still actively trying to leverage what federal monies they have and submittals D1 and D2 reflect how we are able to get matching funds from some federal agencies.

Deputy Kawahara reported that staff submitted 19 projects totaling over \$12 million for DLNR's Environmental Federal Stimulus Package. Still trying to work with federal partners to determine how much of that funding will actually come to Hawaii. The preliminary information that we get suggests that USGS will receive about \$135,000 to increase the number of real time stations in Hawaii and Guam to upgrade loggers and measurement equipment. The Bureau of Reclamation (BOC) in determining allocations to the different states and will inform us of any funding for Hawaii in the month of May. In addition, we were recently contacted by the Army Corps of Engineers, and they may have additional monies in this federal fiscal year to do some cost matching. A list of priority projects was submitted so BOC are looking at the whole list compiled with other agencies to see what we can get accomplished. Depending on what happens on the latest budget shortfall on the Council of Revenue that came out on March 12, we may have to have further reductions on this year's budget.

The state experienced below normal rainfall for most of the state in January and February 2009 and near to above normal rainfall on the eastern part of the Big Island in February and continue to provide improvement for drought conditions in that area. However, drought continues to impact on Maui, Molokai, Lanai, and the Big Island.

Staff is still awaiting the Bureau of Reclamation's response to the four proposals for emergency drought assistance that were submitted in November 2008.

Minutes

Deputy Kawahara said there will be an update on the East Maui IIFS and asked the hearings officer, Dr. Miike, for an update regarding the Na Wai Eha contested case. Dr. Miike said in early December the parties submitted what they say should be the final Finding of Facts and Decision and Order and there are about three thousand Findings of Facts. Dr. Miike stated that by tomorrow or the next day he would be finished and he would have the proposed Finding of Facts and conclusion of law, and Decision and Order, on both the high level water use permits and more significantly the instream flow standards. The Attorney General's office will take a few weeks to review and on April 2nd Dr. Miike will meet with the AG. It is projected that the commission should have it around April 7, at which time he will be issuing an order giving the parties a certain deadline of 21 days for them to file exceptions. When the commission reviews that, they also have the exceptions at the party say they don't agree with and what you should adopt in place of what Dr. Miike is saying. The commission meeting will be closed deliberations because it's a decision on the contested case itself. There are around 700 findings of facts and the decision and order is straight forward.

Staff continues to participate in weekly conference calls initiated by State Civil Defense and other agencies regarding clearing the mouth of the Wailoa River in Waipio Valley, Big Island. This has to deal with the Governor's emergency proclamation. A lot of the sediment build up is believed to be caused by the October 2006 earthquake that caused extensive landslides mauka. These sediments have washed down since then, and since there was heavy equipment in the valley working on clearing the Lower Hamakua Ditch, they are looking at using the equipment to clear the mouth and alleviate some of the flooding that might be going on.

Most of the Steam Protection and Management Branch, Instream Use and Protection Section, are attending a week-long Surface Water Records Computation course being conducted by USGS. They are offering it to staff tuition free because CWRM is a cooperator with them. They'll learn various tools, how to interpret measured data, and also how to analyze surface water records.

OUTREACH:

Staff is partnering with our Division of Boating and Ocean Recreation and the Honolulu Board of Water Supply to performance test dual-flush toilet technology in the Boating and Recreation's office. This model of dual-flush toilet uses 0.8 gallons per flush of liquid and 1.6 gallons per flush for solid waste.

There are flyers around the building that March 16-20 is Fix a Leak Week. Deputy Kawahara come from a background of sewage and shared that if the toilet is running constantly, you could be wasting 200 gallons or more of water per day. A lot of times it's just a faulty toilet flapper.

Commissioner Kiyosaki asked if there were any bills at legislature or anything they should be aware of that may impact the commission. Deputy Kawahara mentioned that there were a few bills but does not think they made it through. One was dealing with trying to get funds from the Hawaii Tourism Authority (HTA) in the East Maui area since the tourists look at the waterfalls, etc., to get funds from HTA to give to the Water Commission to do more water studies in that area. There's a resolution coming up regarding Makapipi Stream and that is one of the 19 streams that we haven't

Minutes

gotten to yet in the instream flow studies. Commissioner Kiyosaki asked if there was anything to try to dictate the make-up or change the make-up of the commission. Deputy Kawahara said last year there was one to add a commissioner to represent OHA but hasn't seen it this session.

C. SURVEY

1. Request to Amend the Contract for Job No. G55CM18 for the Waihee Deep Monitor Well (Well No. 5631-09), Waihee, Maui

Presentation by: Diane England

RECOMMENDATION:

Staff recommends that the Commission approve the amending of the contract for DLNR Job No. G55CM18B, Waihee Deep Monitor Well (Well No. 5631-09), Waihee, Maui, Hawaii to include lining the open hole portion of the well with of PVC screen. Staff also recommends that the Commission authorize the Chairperson, subject to review and approval by the Attorney General, to modify the original contract and sign appurtenant documents that authorize the additional work with the Contractor, Wailani Drilling, Inc.

MOTION: (Frazier/Miike)

To approve the submittal.

UNANIMOUSLY APPROVED.

D. STREAM PROTECTION AND MANAGEMENT

1. Request to Enter into a Planning Assistance to States Agreement with U.S. Army Corps of Engineers to Conduct a Molokai Water Resource Study

Presentation by: Ed Sakoda

Deputy Kawahara added that the available funding before was \$230,000 on the federal side but it went to the conference committee between the federal House and Senate; it was decreased to \$200,000. A copy of the letter from the USACE was distributed. It reflects that on March 11 the President did sign into law the appropriation and it was for \$200,000. The submittal which was initially prepared before the President signed the appropriation.

Chair Thielen mentioned that there might be language submitted in our contracts in front of the Land Board that also have the "subject to the funding available" because of expectations on responding to the Council of Revenue downgrade on March 12 and also in May.

Commissioner Frazier said there was no mention of outreach to the community. Chair Thielen stated that there is a request to have the contract address the outreach and rolls of the different parties.

Minutes

RECOMMENDATION:

Staff recommends that the Commission authorize the Chairperson to enter into a Planning Assistance to States Agreement between the Commission and the U.S. Army Corps of Engineers to provide cost-share funding for the Commission's portion not to exceed \$200,000 for a Molokai Water Resource Study. The terms of this agreement will be subject to the approval of the Chairperson and the Department's Deputy Attorney General.

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

Commissioner Ching recused herself from item D2.

2. Request to Enter into Cooperative Agreements with U.S. Geological Survey for Hydrologic Data Collection for East Maui Interim Instream Flow Standards

Presentation by: Ed Sakoda

RECOMMENDATION:

1. 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 specified gage installation, rating development and operation and maintenance activities at five priority stream sites in east Maui.
2. Staff also recommends that the Commission authorize the Chairperson to enter into subsequent agreements between the Commission and the U.S. Geological Survey to undertake specified gage installation, rating development and operation and maintenance activities at up to ten new stream sites (Phase II).

The terms of these agreements will be subject to the availability of funding and the approval of the Chairperson and the Department's Deputy Attorney General.

Commissioner Kiyosaki asked if Ed Sakoda felt that the five sites would provide enough information to know what's going on with those streams. Mr. Sakoda said these are the main sites and will confirm the measurements taken now at these specific sites and set up more formal stations. Deputy Kawahara referred to page 2, at Honopou site A and site B, we're requesting site gages for those; for Hanehoi, we're requesting for site C, at site A there is one farmer and it would not be feasible to put in a separate gage; for site B it has been mostly dry; Piinaau is the same as Palauhulu Stream and in the same hydrological unit; and we're not requesting a gage for the Waiokamilo site A because there's an existing USGS gage there that the Land Division is funding; and the last one is Wailuanui.

Minutes

Deputy Kawahara clarified that in the recommendation for Phase II, staff is asking for up to 10 new stream sites and would like the flexibility for those 10, if we have to go back to any of the eight or any of the 19 streams, staff would like to place them where they feel is necessary (not only on the remaining 19 streams). Commissioner Kiyosaki thought there were some concerns about how the initial streams were chosen in East Maui, who had input into that and how was it prioritize. Ed Sakoda explained that they would have to do the same thing as the first, gather all the information. Commissioner Kiyosaki stated that the first set of streams that were looked at, her understanding was that the squeaky wheel got greased so whoever screamed the loudest, those were the streams that were put into the initial group. Deputy Kawahara said it depends on a lot of factors and doesn't really have a good answer but when they get out there and look at the streams and for example, if a stream is dry, it really doesn't make sense to put in a gage there if there is no water flowing. Maybe one factor is if when we go out there the flow is a lot higher than the IFS so it doesn't make sense to put a gage there, but look at ones that are borderline, is near or has the potential to go below the IIFS because it is set by the Commission on the other 19 streams. Commissioner Kiyosaki asked that he keep them informed on what's going on. Commissioner Miike said that not all those streams have potential appurtenant rights claims any way, right? Deputy Kawahara agreed, that some are isolated and not a lot of downstream uses. Mr. Sakoda said they are working with USGS who have done studies in East Maui and are trying to gain as much experience in that area to know which streams to monitor since they've walked most of these streams and know it quite well.

MOTION: (Miike/Frazier)

To approve the submittal. (Thielen, Frazier, Fujiwara, Miike, Kiyosaki.

Abstained: Ching)

E. NON-ACTION ITEMS

1. Update on the Implementation of East Maui Interim Instream Flow Standards.

Presentation by: Ed Sakoda

The quarterly update handouts were distributed. A copy is on file.

Ed Sakoda reported that he, Dean Uyeno and Chui Cheng went on trip 5 as well as the geologist from CWRM's Survey Branch, Ronnie Torres. There was a terminal waterfall at Waiokamilo with water coming out half way down the waterfall; a layer of permeable formation from where water was coming out. This area is geologically complex; there are sinkholes, that water goes down there and disappears, presumably comes out somewhere else but not sure if it's downstream or going laterally and then out.

Due to more rain, there were higher flow measurements but still in February, flows did not reach the adopted IIFS. Previously many of the gates were wide open so all the water would bypass the ditch unless the flow was really high and it went over the top of the gate (which happened a couple of times). So adjusting the sluice gates by lowering it, when the stream flows up to a certain point, it all flows downstream. If there is enough streamflow it will backup because the gate's closed. More water will go into the ditch above the low flows.

Minutes

The East Maui Irrigation (EMI) low-flow bypass channel will be installed at the Haiku Ditch on Honopou Stream is a metal plate that is put across the intake grating so instead of the water flowing directly into the ditch, it backs up on the metal plate and there's a low spot in the center of the grating that's lower than the height of the plate so the low-flows will go through that. Staff will be present for the installation to document the process at the end of March.

EMI has contacted all the permitting agencies and they don't have to go through the full permitting process to do that. It's only an interim measure that low-flow down the center in this particular bypass channel is just to get the water back so that the IIFS can be met. It's not designed at this point to aid the native species from going upstream; it's just trying to get the minimum amount back into the stream. Through this time, the adaptive management process, we'll see if it works or not and if it does, in the future we can look at ways to help the other aspects of instream flow standards.

Chair Thielen wanted to verify if staff is still contacting the parties who were involved to notify them. Deputy Kawahara confirmed that they were and posted on the website. For trip 6 they talked to the Department of Water Supply, the Maui Farm Bureau of Hawaii as well as State Department of Agriculture and are working on finding an available date. In addition, there is a mailing list and notices are posted and mailed. Ed Sakoda added that they actually contact them directly since they take staff out to the sites.

F. NEXT COMMISSION MEETINGS (TENTATIVE)

1. April 16, 2009
2. May 20, 2009

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

KEN C. KAWAHARA
Deputy Director