

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: JANUARY 20, 2011
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson William J. Aila, Jr. called the meeting of the Commission on Water Resource Management to order at 9:05 a.m.

The following were in attendance and/or excused:

MEMBERS: Mr. William J. Aila, Jr., Mr. Neal Fujiwara, Dr. Lawrence Miike, Mr. Sumner Erdman, Mr. William Balfour, Jr.

STAFF: William Tam, Lenore Ohye, Roy Hardy, Dean Uyeno, Robert Chong, Neal Fujii, Jeremy Kimura

EXCUSED: Ms. Donna Kiyosaki, Dr. Neal Palafox

COUNSEL: Colin Lau, Esq.

OTHERS: Pam Bunn (PJPN), Cynthia Nojima (NAVEAC HI), Jonathan Scheuer, Greg Hayashi (NAVFAC HI), Kyleteraoea (FAVFACHI), Sara Nakasone (NAVFAC), Russell Okita (NAVFAC HI), Jocelyn Doane (Office of Hawaiian Affairs), Tyler Gomes (Office of Hawaiian Affairs), Deborah Solis (USACE Ft. Shafter), Aaron Poentis (U.S. Navy, NAVFAC HI), Dale Bonar, James Ebitsu (U.S. Navy NAVFAC HI), Rae Louie, Bob Nakata, Dick Cox, Yvonne Izu, Dean Nakano

Chair Aila explained that we were going to deviate slightly from the agenda. He then introduced interim Deputy Director William (Bill) Tam.

Mr. Tam introduced Bill Paty, who was the first chairperson of the Water Commission. He talked briefly about how the first Commission worked. Four of the original Commission members (Dick Cox, Bob Nakata, Guy Fujimura, and Mike Chun,) and previous Deputies Dean Nakano, Rae Louie, Yvonne Izu, and Lenore Ohye were present.

Bill Paty said it was an honor to be asked to speak. It has been 23 years since they had their first meeting. He said that he will be joining the 'club 90' on Saturday (1/22/11).

Mr. Paty said they had a good working group taking on the Code. They looked at the whole picture. It is a special, unique responsibility for a resource that is incredible. Right now, it must be sustainable. It is a huge management job of doing what is sustainable, fair, and reasonable. The old saying that 'whiskey is for drinking and water

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is for fighting' still applies. Through that time we began to recognize we had good research, good people and we depended on that. Legal advice was strong. That is important because you can get outside this your legal bounds and not know it. At the time Bill Tam was our legal hound. Mr. Paty said he considered it a privilege to be involved with these people. It does take collective effort with genuine, sincere feeling that this is a problem that we can work out.

Chair Aila thanked Bill Paty and all the Commission members and Deputies for laying the foundation for this commission to continue to move what needs to be done. Water is life. As long as we live we are going to need it. We have to find ways to balance all of our needs.

Everyone surprised Bill Paty with cake and ice cream to celebrate his 90th birthday. Mr. Tam presented Mr. Paty with leis and a small token of appreciation, (a photo collection of Polynesian artifacts).

Chair Aila explained that Bill Paty came to see him and provided the best advice he had received: Get out of the office and talk with people. Do not stay in your office as much. What you need to do is get out and get the lepo under your feet. Chair Aila plans to do that. He mentioned that when he was interviewed, he was told, "you do not have executive experience so how do you expect to run one of the largest departments in the state." Chair Aila said he will do it just like Bill, and meant that Mr. Paty never micro-managed anything. He always allowed people to do what they needed to do. Occasionally he herded them back in the right direction and provided resources that were necessary.

A. APPROVAL OF MINUTES

November 17, 2010

Dr. Miike asked for clarification on the minutes of the hearing process. He did not understand the Attorney General's opinion that individuals had to ask for (a contested case) at the first public hearing rather than the later (and last one). Dr. Miike asked that the attorney general go back and explain why they came up with that.

MOTION: (Balfour/Sumner)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS/ADMINISTRATION

- 1. Chairperson's Recommendation: Approval of Mr. William M. Tam as Deputy Director, Commission on Water Resource Management**

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Chair Aila introduced Bill Tam, and said he has been around this process for a long time and on both sides of many problems. Chair Aila noted there is not an individual that has a better understanding of the history and the process.

Bill Tam said that after thirteen years of private practice with a law firm representing private interests he looks forward to the opportunity to come back and work in the public sector which is something he has always cared about. He spent more than 20 years in the public sector, 17 years actually at this (BLNR/CWRM) table and where his heart is. He is glad to be back and looking forward to working with all of them.

Commissioner Balfour stated that he had no problems with the individual but thought the Code provided the Commission with the opportunity to select among a list of candidates. Dr. Miike pointed out the Code provides that the Commission approves (or not) the recommendation of the Chair. HRS Chapter 174C, and in the Administrative Rules states that the Chair chooses the Water Deputy subject to the approval of the Commission. Commissioner Balfour said he stands corrected.

TESTIMONY:

1. Dale Bonar testified in strong support of William Tam as the Water Deputy. Bill's extensive knowledge of water issues, legal training, and experience makes him an exceptional candidate for the position. He recognizes the critical need for all the resource users to work together.
2. Rae Louie, (water Deputy for seven years (1990's)) testified that Bill's background, and technical knowledge goes without saying. It is a very complex area and his background is necessary coming into the job. Beyond that, what is important for this position is to facilitate decisions by the Commission in a fair and objective manner. "You are the conduit for all the information so that the Commission can make a decision." She supports and recommends that the Commission approve his appointment.
3. Bob Nakata, former Commissioner testified that Mr. Tam had demonstrated his ability to be objective. Mr. Nakata described the Ewa Marina contested case in where Bill did tell him what to do but to look at the facts.
4. Former Commissioner Dick Cox who served with Bill Paty testified that Bill Tam has the experience to handle this position very well.

Commissioner Erdman commented that they were presented with a very qualified candidate a few months ago and the reason for not selecting that candidate is that the Commissioners wanted to wait for the new Chair to select the water Deputy. Commissioner Erdman said they should support Chair Aila's recommendation. Chair Aila thanked Jonathan Scheuer (the prior candidate) for putting himself up for service.

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

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Mr. Tam thanked the Commission and remarked that Bill Paty did it right. Bill Paty set the gold standard for how this Commission should act. Mr. Tam thanked Bill Paty who was a model how public service should be conducted.

C. GROUND WATER REGULATION

1. Naval Facilities Engineering Command, Hawaii, Application for a Modification of Water Use Permit No. 433 to 899, Wahiawa Deep Well (Well No. 3100-02), TMK 7-1-002:007, Existing / Future (Military) Use for 0.864 mgd, Wahiawa Ground Water Management Area, Oahu

Staff presentation by Roy Hardy.

The Navy's application seeks to modify a ground water use permit. Mr. Hardy pointed out that § II. Quantity Justification (page 3, Exhibit 3) breakdowns the domestic uses and industrial uses. The difference between staff analysis and the applicant's request is the maximum daily demand. The applicant used a factor of 2.25, that is typically used for fire demand (peak day demand). The staff standard for long-term demand is the Department of Water Supply, Water System Standards for municipal domestic uses. The latest 2002 version in the Water System Standards is lower than what the Navy used. Thus the new figure is 0.444. Staff believes 0.444 mgd is a better long term estimate.

RECOMMENDATION:

Staff recommends that the Commission approve the issuance of water use permit no. 899 to Naval Facilities Engineering Command, Hawaii for the reasonable and beneficial use of 0.444 million gallons per day of potable water for military use from the Wahiawa Deep Well (Well No. 3100-02), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

Commissioner Erdman asked if rainfall decreases, and the aquifer is not as sustainable as it is today, or if Hawaiian Homes wants water and we do not curtail the Navy's use, does the entire water use permit get impacted in that way or is the original 0.208 mgd have precedence as of the 1996 date. Mr. Tam explained that Hawaii law is a correlative rights model. It is not based on first come first served, which is the Western prior appropriation model. Therefore, allocation is pro rata reductions. No one loses every thing. It is not based on time. It is based upon equitable distribution after reasonable conservation measures and efficiencies. No one will be cut out.

Aaron Poentis, the Navy Region Hawaii Environmental Program Director and the Naval Facilities Engineering Command Environmental Business Line Coordinator, spoke for the Navy. Mr. Poentis said the Naval Computer and Telecommunications Area Master Station Pacific (NCTAMSPAC) operates a reliable and secure and battle ready navy network providing sustain information to the

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Navy joint and coalition war fighters and the Pacific and Indian Ocean areas of responsibility. Providing water for domestic and industrial uses at NCTAMSPAC is a critical mission requirement. The Navy finds the 12-month moving average of 0.444 million gallon a day reasonable. In the event of emergencies and changes to mission we will continue to cooperate and coordinate with the Commission and submit requested information to support consumption above the 0.444 million gallons per day allocation. The Navy is committed to conserving water and has water conservation programs in place. The Navy also understands that the Commission needs to plan for the future and will continue to provide our water usage data.

Dr. Miike asked what “NR” stood for in the aquifer allocation table. “Not reported”. He said he is fine that the Navy accepted staff’s reduced figures, but he was also looking at the Wailua Sugar unused allocations. Staff is moving to reduce service in Waiahole. Is staff planning to do the same for the Wahiawa Aquifer. Mr. Hardy said that they did not have it in the immediate plans but since we are near sustainable yields, it is probably a good idea. Mr. Hardy added that in fact they have started asking Wailua Sugar because there are other issues involved in the northern water management areas, there will be applications coming to the Commission soon where we will go over sustainable yield in those areas. Wailua Sugar no longer operates. They have the bulk of the permits there. They have two permits in Wahiawa. It would be a good idea up in this area to look at allocations as well.

MOTION: (Sumner/Miike)

To approve the submittal.

UNANIMOUSLY APPROVED.

D. STREAM PROTECTION AND MANAGEMENT

1. Request to Authorize the Chairperson to Enter into a Joint Funding Agreement with U.S. Geological Survey to Conduct an East Maui Irrigation Diversion System Seepage Reconnaissance Study, East Maui, Hawaii

Staff presentation by Dean Uyeno.

Dean Uyeno said that one of the adaptive management strategies ordered by the Commission under Monitoring states that, “EMI, in coordination with the Commission and USGS, shall seek to cooperatively fund and undertake a system efficiency study to accurately determine EMI (East Maui Irrigation Company) systems losses and/or gains. Should such an effort not be possible, Commission staff shall report back to the Commission.”

The Commission share of \$43,000 is available in this fiscal year budget.

RECOMMENDATIONS:

1. Staff recommends that the Commission authorize the Chairperson to enter into a Joint Funding Agreement between the Commission and the U.S. Geological Survey to conduct an East Maui Irrigation Diversion System Seepage Reconnaissance Study, East Maui, Hawaii.

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Dr. Miike asked that it is for seepage and not the diversion flows coming from the various streams. That it was correct the EMI system consists of 75 miles of ditches and tunnels including close to 500 main diversions and a number of minor diversions. Dr. Miike said there are losses and gains. He asked if they are expecting to see gains. These are basically shallow ditches. Mr. Uyeno said that over 50 miles (two-thirds of the system) is tunnels. There could be gains in those tunnels.

Dr. Miike asked if there are any plans to measure the losses in the reservoirs. Mr. Uyeno said they have initiated discussions with USGS via teleconference last week and are looking to get the study in this year's funding. USGS said their budget would not have funds available for the (reservoir) study. Dr. Miike asked if EMI is covering any of these costs. Mr. Uyeno said that EMI will provide a third of the costs for this study. The agreement will be contingent upon HC&S passing the funds through the Commission.

Commissioner Erdman asked if he needed to recuse himself on east Maui issues and if this is considered an east Maui issue. Mr. Tam said this is a research project that is being undertaken as a joint public/private investigation, not a legal fact finding. Deputy AG Lau suggested that, in the future, Commissioner Erdman should check with the Ethics Commission ahead of time. Ms. Yvonne Izu, representing Hawaiian Commercial & Sugar Co. and EMI, stated that they did not have any problems with Commissioner Erdman on the matter.

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

F. PLANNING

1. Request to Increase Funding for Existing Planning Assistance to States Agreements with the U.S. Army Corps of Engineers

Staff presentation by Neal Fujii.

Neal Fujii said experts are not sure how climate change will impact Hawaii, but there is a lot of evidence that it is changing. We do not know how climate change will affect temperature, rainfall, water availability and water demands, or how plants use water – All these things are changing. It is the responsibility of the Commission and Commission staff to try to understand that, especially with respect to sustainable yields and instream flow standards. Mr. Fujii gave a brief background on both studies.

RECOMMENDATIONS:

1. The Commission authorize \$69,000 in additional funding to investigate historical rainfall trends and future changes to extreme rainfall events; and approve the revised scope of work (Exhibit 3). This additional work will be incorporated in the existing project to update the Rainfall Atlas of Hawaii.

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2. The Commission authorize \$65,000 in additional funding for the development of maps of actual ET, based on modeling and additional data analysis; and analysis of ET variability. This additional work will be incorporated in the existing project to Establish Evapotranspiration Rates and Develop a Statewide Water Conservation Plan.

3. Commission funding would be from general funds or special funds or a combination of both, subject to the availability of funding. Funding may also be provided from other government agencies through a temporary trust fund or in-kind services.

4. The terms of the Planning Assistance to States agreements are subject to Chairperson and Deputy Attorney General approval.

5. The Commission delegate authority to the Chairperson for no-cost amendments to the Planning Assistance to States agreements.

Commissioner Fujiwara asked if it was the Corps of Engineers or Commission who initiated the study. Mr. Fujii said that it was collaboration between agencies for both studies. The original federal funding was through an earmark. Commissioner Fujiwara said that he is asking because when this was first presented there are a lot of agencies out there that uses these kinds of records. He asked if they have been approached to contribute some money. Mr. Fujii said that they have not been approached and is something that should be looked at in the future. Mr. Fujii said it would have to be a non-federal agency for cost sharing. Debra Solis explained for clarification that there is a possibility to cost-share with another federal agency, and there would need to be this authorization within that agency. Ms. Solis said that the in-kind services they were counting on (but could not be utilized) was from NOAA. The legal determination was that within the authorization where they received the money they did not have the ability to share the in-kind services.

Commissioner Erdman said personally one of the problems they do have is the lack of information on evapotranspiration in many areas of the state. This information is needed in order to design and plan for water tanks and reservoirs, and for understanding how fast grass is going to dry out.

Dr. Miike asked if this is subject to appropriation. Mr. Fujii said they have existing funding within the current fiscal year budget. Dr. Miike asked if they were asking for more. Mr. Fujii said that they are asking the Commission to approve expenditure of funding but it's in existing CWRM 2011 budget. Dr. Miike said it might be a good idea for multiple agencies to coordinate future visits to the legislature (to explain funding requests) rather than having to go piece meal and the legislature getting confused when agencies approach them individually.

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

Commissioner Erdman stated that he wanted to thank interim deputy director Lenore Ohye for her fantastic job.

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H. NEXT COMMISSION MEETINGS (TENTATIVE)

1. February 16, 2011
2. March 16, 2011

Meeting was adjourned at 10:22 a.m.

Respectfully submitted,

KATHLEEN OSHIRO
Secretary

APPROVED AS SUBMITTED:

WILLIAM TAM
Deputy Director