

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 29, 2011  
TIME: 9:00 am  
PLACE: DLNR Board Room  
Kalanimoku Bldg.

Vice Chair Lawrence Miike called the meeting of the Commission on Water Resource Management to order at 9:05 a.m.

The following were in attendance:

**MEMBERS:** Mr. Lawrence Miike, Mr. William Balfour, Jr., Mr. Sumner Erdman, Mr. Neal Fujiwara, and Ms. Donna Fay Kiyosaki

**STAFF:** William Tam, Robert Chong, Neal Fujii, W. Roy Hardy, Ryan Imata, Lenore Ohye and Dean Uyeno.

**COUNSEL:** Linda Chow, Esq.

**OTHERS:** Derrick Elfalan, Faith Miyamoto, Jim Hayes, Michael Levine, Kaiwi Nui, Jonathan Ching, Jocelyn Doane and Ryan Tam

**A. APPROVAL OF MINUTES**

April 20, 2011

**MOTION:** (Erdman/Fujiwara  
To approve the minutes.  
UNANIMOUSLY APPROVED.

**B. ANNOUNCEMENTS**

Vice Chair Miike recognized Commissioner Kiyosaki as this was her last Commission meeting. She thanked the Commissioners and staff for their support and announced that she will be working at the University of Hawaii-West Oahu as Vice-Chancellor.

Deputy Tam updated the Commissioners on the State's budget and the Commission staffing. He mentioned that Glenn Bauer, retired State Geologist, graciously returned to the Commission on Water Resource Management and volunteered to work on water use reporting as well as accompany staff to Kona to conduct quarterly water level measurements. Staff is working on organizing appurtenant rights for Maui. The Na Wai Eha Public Hearing is postponed to October. Consultations with Oceanit continue regarding a computer system to provide the public access to file applications electronically.

In response to Commissioner Balfour's question regarding staff reductions/vacancies, Deputy Tam stated that Budget & Finance froze the Commission's ability to fill any positions. Authority to notice and/or fill positions is not expected for at least three months.

Vice Chair Miike noted that Chair Aila, Jr. is on Molokai.

**C. GROUND WATER REGULATION**

1. Request to Enter into a Memorandum of Agreement for the Maintenance and Use of the Pearl Harbor (Ewa-Kunia Mauka 2) Deep Monitor Well (State Well No. 2503-03), Island of Oahu

Deputy Tam stated that this submittal was withdrawn at the Attorney General's request, as negotiations continue.

**D. STREAM PROTECTION AND MANAGEMENT**

1. Application for Stream Channel Alteration Permit for Honolulu High-Capacity Transit Corridor Project (HHCTCP) Across Four (4) Streams: Waiawa Stream Tributary, Kapālama, Moanalua and Nu‘uanu Streams, Honolulu, O‘ahu, TMKs: various

Staff presentation by Robert Chong.

RECOMMENDATION:

That the Commission approve the Applicant's Stream Channel Alteration Permit (SCAP.2864.3) for Honolulu High-Capacity Transit Corridor Project (HHCTCP) at Waiawa Stream Tributary, Kapālama, Moanalua and Nu‘uanu Streams in Honolulu, O‘ahu at various TMKs, subject to the standard conditions in Exhibit 6.

Commissioner Balfour recused himself from this agenda item because he is employed by the City and County of Honolulu.

Commissioner Fujiwara presumed that the State Historic Preservation Division commented on the EIS as it was not listed as a reviewer.

Mr. Hayes with PB Americas explained that during the EIS process, the City and County performed a Section 106, consultation with the Historic Preservation Division and entered into a Programmatic Agreement (PA). He noted that it is part of the record of decision.

Mr. Chong stated that twenty-six parties signed the agreement.

Faith Miyamoto with the City Department of Transportation Services clarified that the PA is in excess of thirty consulting parties. The PA is executed by the Federal Transit Administration, the State Historic Preservation Officer and the City and County of Honolulu.

Vice Chair Miike referenced the top of page 9 regarding the 29 consulting parties.

Ms. Miyamoto explained that the 29 parties did not execute the document, they were provided with the opportunity to concur in the PA.

Vice Chair Miike noted that the submittal will be modified.

Mr. Chong noted that testimony was received from Life of the Land recommending that the Commission delay approval of the permits pending the outcome of a legal challenge to the adequacy of the EIS.

Vice Chair Miike stated that the issue was not within the Commission's jurisdiction.

Deputy Attorney General Chow's interpretation of Life of the Land's recommendation was to delay the Commission's decision-making because the EIS which is part of the pre-decisional document for the Commission is being challenged in Court.

Commissioner Kiyosaki asked what happens if the EIS is deemed invalid?

Deputy Attorney General Chow said that the Commission should then wait until a new EIS is issued and modify the permit accordingly. It will not nullify the Commission's decision.

Vice Chair Miike stated that according to the Commission's standard conditions, work shall start within six months and be completed within 2 years and can be extended with good cause.

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

2. Application for Stream Diversion Works Permit (SDWP.2789.6) to Remove Kolea Reservoir and Stream Channel Alteration Permit to Restore Kolea Stream, Kailua, Maui, TMK: (2) 1-1-001:050

Staff presentation by Robert Chong.

RECOMMENDATION:

That the Commission approve the Applicant's 1) Stream Diversion Works Permit (SDWP.2789.6) to remove Kolea Reservoir and 2) Stream Channel Alteration Permit to restore Kolea Stream at TMK: (2) 1-1-001:050, subject to the standard conditions in Exhibit 5.

Derrick Elfalan of Oceanit Laboratories, Inc. addressed Commissioner Erdman's concern regarding check dams and stated that check dams will be installed upstream of the breach to provide sediment catch and reservoir stabilization. Check dams will be installed temporarily until reservoir vegetation stabilizes the soil. Grouted riprap will be constructed downstream of the breach to provide stream stabilization and mitigate erosion.

Addressing Commissioner Balfour's concern regarding the June – November 2011 schedule, Mr. Elfalan explained that this application was filed earlier this year and was withdrawn until Oceanit received a final EA. Oceanit's recommendation will be to delay construction until a drier period next year since rainfall in that watershed is high during the months of November through January. The construction schedule will probably be pushed back.

Mr. Elfalan explained that the riprap presently inside the reservoir is designed to prevent embankment erosion and portions of that riprap will be salvaged and utilized to construct the riprap downstream.

Mr. Chong addressed Commissioner Erdman and Vice Chair Miike's concerns regarding the amount of downstream sediment and noted the diversion structure and check dam below the reservoir.

Mr. Elfalan added that a stream bypass will be constructed before the dam is breached and will be catching the upstream flow until the graded reservoir is grassed in. Permanent riprap structures below the reservoir will reinforce the steepness of the slope.

Mr. Elfalan answered Commissioner Erdman and Vice Chair Miike's questions regarding the bypass pipe line. He stated that the bypass is a 36-inch diameter polyurethane pipe; and it will take approximately 60 days for the grass to grow.

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

Deputy Tam asked the Commissioners if there are matters which they would like to be briefed. Vice Chair Miike asked if the implementation of the Na Wai Eha Decision with respect to Waiehu Stream was still suspended. Ms. Ohye stated that the stipulation was still in effect. Vice Chair Miike recommended limiting the suspension to a specified period of time [~~limited accommodation~~]. Ms. Ohye explained that the parties in the Na Wai Eha case [~~water use permit applicants~~] stipulated the suspension through their attorneys. Other users had not participated [~~have not yet applied~~]. Vice Chair Miike stated that the non-participants had adequate information but chose not to participate in the Na Wai Eha case. The implementation of the IIFS for Waiehu Stream should not be suspended indefinitely to accommodate them [~~non-applicants are unnotified~~]. Deputy Tam said that the public hearings on the permit applications will continue in October. Vice Chair Miike stated that the Attorney General's opinion is that any person who wanted to be part of the contested case had to apply before the end of the first day [~~close~~] of the public hearing. However, he is of the opinion that, since the public hearing is still open, anyone can still apply. He noted that he disagreed with the Attorney General's opinion. Vice Chair Miike asked if an appurtenant rights hearing was scheduled. Deputy Tam stated that a hearing has not been scheduled due to the complex issues and suggested an appurtenant rights briefing. Vice Chair Miike asked staff to provide a timeframe and the number of current applicants and non-applicants. Additional briefings include 1) status of dam safety rules and 2) Na Wai Eha stream flow update.

On behalf of the Commission staff, Deputy Tam thanked Commissioner Donna Kiyosaki for her services.

**F. NEXT COMMISSION MEETINGS (TENTATIVE)**

1. July 20 2011
2. August 17, 2011

Meeting was adjourned at 9:40 a.m.

Respectfully submitted,

KATHY YODA

APPROVED AS SUBMITTED:

WILLIAM M. TAM  
Deputy Director