

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: August 15, 2012
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

Chairperson William Aila, Jr. called the meeting of the Commission on Water Resource Management to order at 9:06am.

The following were in attendance:

MEMBERS: Mr. William Aila, Jr., Mr. Sumner Erdman, Mr. Neal Fujiwara, Mr. Ted Yamamura, Mr. William Balfour, Mr. Jonathan Starr, Ms. Loretta Fuddy

ABSENT: None

STAFF: William Tam, Lenore Ohye, Roy Hardy, Basil Gomez, Ryan Imata, Robert Chong, and Amanda Sawa

COUNSEL: Colin Lau, Esq.

OTHERS: Kylie Wager (ICAP), Victoria Keener (East-West Center/Pacific RISA), Richard Wallsgrove (ICAP), Zena Grecni (ICAP), Robert Creps (Grace Pacific), Sara Thomas (Grace Pacific), Pam Pogue (Maui County DWS), Dave Taylor (Maui County DWS), Keith Kohl, Juliana Kohl, Moana Kea Klausmeyer-Among, Pam Bunn (Alston Hunt Floyd & Ing), Yvonne Izu (Morikawa Lau & Fong), Dan Clegg (Monsanto Company), Tony Hermann (Monsanto Company), Tiger Mills (OCCL)

A. APPROVAL OF MINUTES

June 21, 2012

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

B. ANNOUNCEMENTS

Chairperson Aila welcomed new Commissioner, Mr. Jonathan Starr from Maui.

F. UPDATES AND BRIEFINGS**2. Briefing by the University of Hawaii (UH) Center for Island Climate Adaptation and Policy (ICAP) on Water Resources and Climate Change Adaptation in Hawaii: Adaptive Tools in the Current Law and Policy Framework¹**

PRESENTATION by: Richard Wallsgrove

Richard Wallsgrove from the Center for Island Climate Adaptation and Policy (ICAP) at the University of Hawaii at Manoa introduced ICAP's findings on Water Resources and Climate Change Adaptation in Hawaii. The State recognizes water as an important part of the discussion on climate change. In 2008, the Governor stated that protecting water resources in Hawaii is of the highest priority for public agencies like the Water Commission. ICAP's work focuses on law and policy and the concept of climate change adaptation. Studies by Delwyn Oki (2004) indicate a decline in stream flow on every island in Hawaii. ICAP has done research and identified the common threads for climate change adaptation. The characteristics of adaptation include 1) forward thinking 2) flexibility 3) an integrated approach and 4) iteration.

The legal framework for regulating water in Hawaii is largely directed by the State Water Code. ICAP has worked to identify 12 specific mechanisms for climate change adaptation in Hawaii. The categories include various types of planning and policy tools such as Hawaii's Water Use and Development Plans (WUDP), conservation and recycling plans, climate scenario planning (e.g. California's planning model for adaptation), frequent updates to current plans, and forecasting future water demands based on land use. Regulatory tools for Hawaii include expanding designated Water Management Areas, enforcing water use monitoring and reporting, and re-assessing sustainable yield and instream flow standards to account for anticipated climate change. The permitting process could be more adaptive and include regular inspections and compliance fees. Permits could be used to bolster the use of monitoring gauges for water use, rainfall, and stream flows. More deep monitoring wells are also needed throughout the State. Market-based tools can also be used to advance adaptation. These include imposing a more tiered approach to the fee schedule for water use permits. Market forces can promote water conscious infrastructure through the use of rebates and public benefit fees.

The Water Commission is empowered to protect and advance the people's rights to water for future generations. As such, it has the potential to be a major champion for climate change adaptation in the State of Hawaii.

(DISCUSSION)

Commissioner Starr said that funding is a major obstacle to adaptation and asked Mr. Wallsgrove to clarify his suggestion for a permit fee.

¹ The ICAP video presentation is available to view on the CWRM website http://hawaii.gov/dlnr/cwrn/info_climate.htm

Mr. Wallsgrove replied that there are opportunities for fees and efficiencies that could save money and help finance more monitoring.

C. STREAM PROTECTION AND MANAGEMENT

1. Delegation of Authority to the Chairperson to Appoint a Hearing's Officer for Appurtenant Rights Claims for Surface Water Use Permit Applications in the Na Wai Eha Surface Water Management Areas, Maui

SUBMITTAL PRESENTATION by: Robert Chong

In September 2011, the Commission on Water Resource Management (CWRM) approved an appurtenant right process and a public notice was published in November 2011. In February 2012, the Water Commission received applications for appurtenant right claims. The Water Commission has reviewed the applications and a public notice will be published at the end of the month.

RECOMMENDATION:

That the Commission:

1. Delegate authority to the Chairperson to appoint a Hearing's Officer for the appurtenant rights claims for Surface Water Use Permit Applications in the Na Wai Eha Surface Water Management Areas of Maui.

MOTION: (Starr/Fuddy)

To approve the submittal.

UNANIMOUSLY APPROVED.

D. GROUND WATER REGULATION

1. Monsanto Company, Applications For Ground Water Use, Well Construction, and Pump Installation Permits, Kunia Farm Well No. 1 (Well No. 2402-06), TMK (1) 9-2-001: 001, WUPA No. 954, Future back-up (Agricultural) Use for 2.636 Mgd, Waipahu-Waiawa Ground Water Management Area, Oahu

SUBMITTAL PRESENTATION by: Ryan Imata

Ryan Imata (Commission on Water Resource Management) handed out a revised recommendation for Item D-1. The applicant (Monsanto Company) has submitted an application for a new well intended for future back-up agriculture use. The applicant has a current allocation of 2.636 mgd from the Waiahole Ditch and is asking for the same quantity of potable basal ground water from a new well in Waipahu-Waiawa.

Through the Waiahole Contested Case Hearing, Ground Water Use Permit (GWUP) No. 828 was issued to Monsanto Company for 2.636 mgd. It was

originally issued to Campbell Estate and transferred to Monsanto. The Waiahole Ditch system is maintained by the State Agribusiness Development Corporation (ADC). The applicant is concerned that if the Waiahole Ditch were to go down it would leave Monsanto without water for an extended period of time. On May 4, 2012 Monsanto Company submitted an application for construction permits, but did not list the contractor. The CWRM did not consider the application for a construction permit or GWUP complete. The well and the pump permits are normally handled administratively. However, the Commission can choose to address the well and pump permits independently of the water use permit.

Mr. Imata clarified that the information in Attachment A has been corrected to indicate a request for 2.636 *million* gallons per day.

Water is available from Waipahu-Waiawa and a graph indicates the current pumpage. As of 2006, the total usage was 50.0 mgd. There is sufficient water to accommodate the request by Monsanto for 2.636 mgd. The reasonable-beneficial use should be interpreted to include agriculture use and the quantity justification and efficiency were addressed in the Waiahole Contested Case Hearing. The applicant concluded that no practical alternatives are available. No other production wells exist within a mile of the source. There are contaminated Del Monte wells located to the north that are the subject of an Environmental Protection Agency (EPA) consent decree. The proposed well is outside the area of the EPA consent decree and the water will not be used for potable purposes. Pump tests will be required for the well and the results will be used to evaluate any adverse impacts. Staff does not anticipate adverse impacts due to pumping. The use is considered within the public interest. However, the Honolulu Board of Water Supply (HBWS) commented that duplicate water use permits for 2.636 mgd will reduce the available allocation for future uses. No other objections to the well and pump permit applications have been received. The use is in the State Agriculture District. The Department of Hawaiian Home Lands (DHHL) has a reservation for 1.358 mgd. This number may change after Central Oahu Recharge and Evapo-transpiration studies are completed in 2014. DHHL's request can be considered under a separate action and the Monsanto application does not appear to interfere with DHHL rights. The proposed permits do not trigger the need for an Environmental Assessment (EA).

In the past the CWRM has allowed allocation for back-up sources for existing wells with Water Use Permits (WUP) where the wells are part of a battery from an existing source or part of an allocation within a single aquifer system. Exhibit 3 describes this declaratory judgment. HBWS and the Maui Department of Water Supply (DWS) have used back-up sources to optimize pumpage, but they are unique because they provide island-wide services. This practice and declaratory ruling does not apply to Monsanto's situation. The new well is being proposed in a different aquifer system and is not a part of a battery of wells.

Allocation for the same use from two different aquifer systems raises the problem of "double counting." If two separate allocations are approved, the CWRM is concerned that other landowners would be precluded from applying for ground water in the same area. In the past, the CWRM has allowed wells to be constructed in a Ground Water Management Area (GWMA) before a GWUP was issued (Exhibits 4 and 5). However, these were intended as exploratory permits

and pump installation permits are not currently permitted prior to the approval of a GWUP. This approach is used to address the issue of compliance and the risk of constructing a well where a GWUP is not issued. Knowledge of the Waipahu-Waiawa area suggests that approval of 2.636 mgd for a new well would not have an immediate impact on the source and emergency pumping should not harm third parties. However, it would change the precedent for approval of a pump installation permit prior to a GWUP.

Three options were identified by staff:

- 1) Deny the Ground Water Use Permit Application (GWUPA)
- 2) Grant the Well Construction and Pump Installation Permits
- 3) Apply the Water Code's Shortage Plan Provisions to address emergencies

The applicant seeks assurance that a reasonable alternative is available should something happen to the Waiahole Ditch. The CWRM cannot anticipate the type of emergency and would need to address the duration of the emergency and the issue of alternative water sources when and if the emergency occurs. The State Water Code §174C-62(g), explains the emergency provision and allows the Commission to fashion remedies that are appropriate to the situation.

To avoid issues with double counting the Commission could deny the application, allow the construction of the well and installation of the pump to provide emergency relief and to use the shortage plans provision of the Water Code. This does not require an allocation from Waipahu-Waiawa that could preclude other users from applying.

The second alternative is to issue a GWUP for 0.0 mgd. This would allow the Commission to administratively issue well construction and pump installation permits. A special condition could allow intermediate relief pumpage in the event of an emergency and also require the applicant to submit an application for a GWUP within a prescribed amount of time.

The third approach is to issue a permit for the full amount of 2.636 mgd. The permit would be fully or partially revoked if the allocations were fully allocated to the sustainable yield and the revocation would not be subject to hearings. The applicant would need to notify the Commission immediately after turning on the pump for consumptive use. At no time should the pumpage exceed the combined total of 2.636 mgd from the Waiahole Ditch and the new well. Should an alternative source be available or adverse effects found, the allocation and permit can be revoked without a hearing.

RECOMMENDATION:

The staff strongly recommends that the Commission adopt option No. 1 and act as follows:

1. Deny the Groundwater Use Permit (GWUP) application without prejudice.
2. Authorize the Chairperson to approve the Well Construction Permit, but only after the Applicant identifies and secures a licensed contractor.

3. Authorize the Chairperson to approve the Pump Installation Permit and pump testing, but only after the Applicant identifies and secures a licensed contractor; and subject to the following conditions:
 - a) Other than for routine maintenance, the pump may only be turned on and water pumped from the well if the Applicant informs the Commission of the nature and extent of the emergency related to the Waiahole Ditch System, and the Commission declares an emergency related to the Waiahole Ditch System. If the Applicant turns on the pump before the emergency declaration, the Applicant may be subject to fines;
 - b) After the emergency occurs, the Applicant shall immediately submit a written application for a emergency Groundwater Use Permit to the Commission;
 - c) The use of groundwater from the proposed well no. 2402-06 does not replace or duplicate ditch water that remains actually available under the Applicant's existing Water Use Permit no. 828.
 - d) The total quantity of ground water used from both the proposed well no. 2402-06 and the Waiahole Ditch System may not exceed the quantity of water authorized under Applicant's existing Water Use Permit no. 828.
 - e) The ground water from the proposed well no. 2402-06 shall only be used on the same locations (the same fields), for the same purposes, in the same quantities, and under the same conditions (as applicable) as required by the existing Water Use Permit no. 828.
 - f) If alternative sources of water are or become available, the Applicant shall make all reasonable efforts to use alternative sources. If alternative sources are available, but the Applicant determines such sources are not sufficient or practically available during the period of the emergency, then the Applicant shall explain the situation to the Commission and request an exemption.
 - g) The period of time during which the groundwater is or may be pumped from the proposed well no. 2402-06 shall not extend beyond the time of the declaration of emergency or as otherwise specified in any Commission action on the future emergency Groundwater Use Permit Application.
 - h) The Applicant shall keep the Commission fully informed on the status of the emergency condition and submit regular and timely reports on the efforts to remedy the emergency and shall submit water use reports on a monthly basis.
 - i) Such other conditions that the Chairperson determines are reasonable, necessary, and appropriate to address the emergency situation.

(DISCUSSION)

Commissioner Erdman commented on the discrepancies between the reference to "Chairperson" in section i) of the recommendation and the word "Commission" in sections a) and g).

Mr. Imata said the intent was to allow the Chair to make reasonable conditions without the Commission having to convene.

Commissioner Erdman agreed, but suggested that the Chairperson be allowed to declare an emergency rather than the Commission itself.

Deputy Director William Tam noted that a phone conversation with the Commission could substitute for a face-to-face meeting.

Commissioner Starr asked how quickly an emergency decree could be issued.

Deputy Tam said it could be done by phone or conference call within 24 hours.

Commissioner Erdman said that in the case of Na Wai Eha it was difficult to get in touch with the Commissioners.

Mr. Imata clarified that if the applicant turns on the pump prior to the declaration of an emergency they *may* be subject to fines. The Commission may not fine the applicant if the situation turns out to be an emergency.

Commissioner Erdman suggested that the Chairperson be given temporary authority until the Commission is able to convene.

Commissioner Balfour said crops rely on water from the Waiahole Ditch and the decision to turn on the pumps in the case of an emergency needs to be instantaneous. He disagreed with the double counting and said a back-up system is necessary. The logical choice is to eliminate the need to have the Commission convene to declare an emergency.

Commissioner Erdman agreed that the Commission needs to find a way to issue water to farmers during an emergency situation and give them the ability to water crops.

Commissioner Yamamura commented on Missouri's recent emergency well-drilling for cattle and crops. He said that after an emergency is declared it could be too late. The Commission needs to be proactive and prepare for future occurrences. Commissioner Yamamura said he agrees with Commissioner Balfour.

Commissioner Starr asked if an emergency decree would be relevant to drought conditions.

Mr. Imata said the recommendation does not distinguish drought as an emergency but it could be amended.

Commissioner Starr asked the Attorney General if the Commission gave up any rights by delegating authority to the Chair to issue an emergency Ground Water Use Permit (GWUP).

Deputy Tam clarified that the Chair would act on behalf of the Commission and no GWUP would be issued.

Roy Hardy (Commission on Water Resource Management) stated that historically the Commission has not issued any pump installation permits prior to a GWUP.

Commissioner Starr asked about the negative impacts.

Deputy Tam explained that this is part of the evolution of shortage plans. The Water Code provides for it and the CWRM is in the process of adjusting some of the policies that deal with drought, shortages and emergency situations. Gradually a policy will be developed based on case-by-case applications.

Commissioner Balfour reiterated that the hypothetical emergency is the failure of the Waiahole Ditch. He said back-up systems make prudent sense and are necessary if the Waiahole Ditch goes down.

Commissioner Starr recommended that staff modify some of the wording in the recommendation to accommodate Commissioner Erdman's concern that would allow the Chair to act.

Yvonne Izu (Morikawa Lau & Fong) spoke on behalf of Monsanto Company and introduced Dan Clegg (Monsanto, Land and Water Resources Manager) and Tony Hermann (Monsanto, Manager for Kunia farm). She handed out a response from Monsanto to the Commissioners and apologized for submitting it late due to delays in receiving the staff submittal. She summarized the response and said it seems that the CWRM does not want to provide back-up water sources for agriculture. The staff recommendation is unacceptable to Monsanto. Ms. Izu pointed out that the emergency provision (§174C-62(g)) gives the Commission the power to make emergency decisions. A system failure was probably not considered as an "emergency" when this section of the Water Code was written. The well would be a significant financial investment for Monsanto and they are worried about different interpretations of §174C-62(g) by future Commissioners and Deputies. Monsanto is not sure if §174C-62(g) applies to emergency back-up wells and disagrees with the double counting issue. The Commission should continually re-evaluate allocations and permits, including back-up supplies. Monsanto disagrees that approving a back-up well will lead to analytical gridlock and generate legal issues among users. Ms. Izu cited page 7 of the applicant's response and discussed Monsanto's proposed conditions, including notifying the Commission and the HBWS within 72 hours of turning on the emergency pump. Monsanto agrees with staff's recommendation that the Commission could revoke or reduce the permit if the Waipahu-Waiawa Aquifer becomes fully allocated, but does not agree with the automatic revocation. Even though the current allocations in Waipahu-Waiawa exceed 83 mgd, actual pumping is around 50 mgd. The Commission may want to revoke un-used allocations before revoking back-up permits. Ms. Izu confirmed that Monsanto would not apply for a contested case if the permit were revoked. Monsanto is requesting that the Commission reject the staff recommendation and adopt staff's option 3 with Monsanto's proposals.

Commissioner Erdman asked how much Waiahole Ditch water is currently used in the Waipahu-Waiawa Aquifer.

Mr. Imata said the total allocation for Waiahole Ditch is 12.2 mgd. 15 permits were allocated to the Leeward side through the contested case hearing. The Department of Agriculture (DOA) and Syngenta currently have open applications below 15.0 mgd.

Ms. Izu responded that some of the Waiahole Ditch allocations are for the Mililani Golf Course.

Commissioner Erdman asked how many of the allocations are in Wahiawa.

Mr. Imata replied that all the allocations are in the Waipahu-Waiawa Aquifer and if the Monsanto application were approved, 16,508 would still be available. However, if everyone had back-up systems, allocations would likely reach the sustainable yield (SY).

Commissioner Fujiwara asked why Monsanto wants an allocation of 2.636 mgd.

Ms. Izu replied that there is legal uncertainty regarding §174C-62(g). Even if §174C-62(g) does apply, the Commission would need to “adopt a rule” for declaration of an emergency. Ms. Izu said she would not advise Monsanto to drill without a permit.

Commissioner Fujiwara asked if Monsanto would still be bound by the emergency declaration if a GWUP was issued.

Ms. Izu responded “no.” The GWUP would include a condition that the pump could only be turned on if the Waiahole Ditch fails.

Mr. Imata suggested that the Commission address items c) and d) and not allow the total allocation to exceed 2.636 mgd.

Ms. Izu agreed that it should not exceed 2.636 mgd.

Commissioner Fujiwara asked if Monsanto has been using 2.636 mgd.

Mr. Hermann said Monsanto averages between 2.0 and 2.2 mgd.

Mr. Imata said staff reviewed Monsanto’s usage and they are near their total allocation.

Chairperson Aila asked if the Commission had ever issued a temporary GWUP.

Lenore Ohye (Commission on Water Resource Management) replied “yes” in the early 1990s for the Ewa caprock but staff was advised to discontinue the practice because there are no provisions under the law for issuing temporary water use permits. The CWRM does not issue temporary permits anymore.

Chairperson Aila asked the Deputy Attorney General (Colin Lau) if the Commission has the statutory authority to issue a temporary allocation based on the condition of a failure of the Waiahole Ditch.

Ms. Izu said the Supreme Court Case discussed interim / temporary permits for existing users in Designated Water Management Areas.

Deputy AG Lau replied that certain criteria exist for the declaration of a water shortage, which differs from an emergency declaration.

Chairperson Aila asked if the Commission could identify an emergency and then issue an allocation.

Deputy AG Lau said the term “emergency” would need to be better defined.

Commissioner Starr asked about the process of rule making.

Deputy AG Lau recommended not passing a rule for a single situation (i.e. failure of the Waiahole Ditch).

Deputy Tam said that under the law the Commission has the authority to deal with an emergency that threatens water resources. A rule may not be necessary. He recommended the staff come back to the Commission with a more detailed analysis.

Commissioner Erdman agreed with the intent of back-up systems, but recognizes that the Commission would be setting precedence for “water banking.” He asked that the application be deferred.

Commissioner Yamamura asked if the Commission could make a motion to adopt option 3 of staff’s recommendation, together with the conditions proposed by the applicant.

Deputy AG Lau said “yes.”

Chairperson Aila asked to see more analysis by staff.

Deputy AG Lau questioned the applicant’s request that revocation after 4 years of non-use be waived.

Ms. Izu commented that Monsanto would agree to a deferral and asked staff to give Monsanto more time to review the submittal.

Commissioner Starr agreed that a process for emergency back-up should be determined along with a discussion about “water banking.” He asked Monsanto to disclose the types of chemicals that would be applied to crops in the Wellhead Protection Area.

Commissioner Erdman recommended that the application be deferred until further analysis can be done by staff.

Commissioner Yamamura asked staff to focus on the issue of a back-up well.

Commissioner Balfour agreed that the issue of a back-up well is very straightforward and should remain simple.

MOTION: (Erdman/Fujiwara)

To defer the submittal.

UNANIMOUSLY APPROVED FOR DEFERRAL.

(BREAK)

2. **Grace Pacific Corporation, Application For A Water Use Permit, Upper and Lower Quarry Wells (Well Nos. 2103-06 & 2104-01), TMK (1) 9-2-003:082 & (1) 9-1-016:004, WUP No. 958, Existing and Future (Dust Control and Renaturalization) Use for 0.601 Mgd, Ewa-Kunia Ground Water Management Area, Oahu**

SUBMITTAL PRESENTATION by: Ryan Imata

Grace Pacific Corporation is requesting the approval of a Water Use Permit (GWUP) for 0.601 mgd of potable basal ground water to provide 202 acres of irrigation for re-naturalization and dust control.

On April 4, 1997 a GWUP was issued for 0.124 for dust control for the Lower Quarry Well. On October 29, 2003 a separate GWUP was issued for 0.044 mgd for the Lower Quarry Well. Both allocations were issued as separate permits at the request of the applicant to prepare for possible revocation of one of the permits. On June 6, 2012 Grace Pacific submitted a completed GWUP requesting that the two permits be combined to include the Upper Quarry Well.

The Ewa-Kunia Aquifer System Area has a sustainable yield of 16.0 mgd. Although not all the users in the aquifer system are reporting monthly water usage, pumping has been as high as 14.0 mgd (2004). While the Ewa-Kunia Aquifer System is getting close to its sustainable yield, there is adequate water available to accommodate the request from Grace Pacific. The request is in compliance with the State Water Code for irrigation and industrial uses. The applicant requests 0.601 mgd for the re-naturalization of ground water and dust control. This is the maximum requirement based on their plans until the year 2035. Typically the Commission uses the Irrigation Water Requirement Estimation Decision Support System (IWREDSS) as a guideline to assess reasonable and beneficial use for allocation requests. However, in this case the applicant's request is very specific so the model for this particular soil type yielded irrigation needs as high as 4,300 gallons per day per acre. The value was based on an 80% rainfall event. For dust control the applicant is requesting 1,000 gallons per day per acre.

The operations are considered to be water efficient because Grace Pacific intends to use drought tolerant species. The applicant has analyzed alternatives to using potable ground water and has concluded that R-1 reclaimed water is no feasible due to limited hours of water availability. Grace Pacific is investigating the feasibility of purchasing and installing a filter to re-use their industrial wastewater. The applicant has submitted a GWUP for the Waiahole Ditch but the Intermediate Court of Appeals (ICA) vacated this permit through the Waiahole Contested Case Hearing on October 13, 2010. Desalination and surface water are not feasible because the site is in proximity to potential sources. To minimize the long-term use of water in the re-naturalized areas, the applicant has chosen drought-tolerant species. The applicant is currently designing a storm water retention system that will supplement well water usage.

There are 5 other wells within one mile of both the Upper and Lower Quarry Wells. The Lower Quarry Well does not have any pump test data and no pump tests will be required. The construction of the Upper Quarry Well will require pump tests. Staff will analyze the pump test data to determine if there is any interference with the Barber's Point Shaft.

The use of water for irrigation and industrial purposes is deemed to be in the public interest. It is compliant with State and County land use designations. A copy of the application was sent to the Honolulu Board of Water Supply (HBWS). The HBWS provided comments included in Exhibit 6 and asked that

the Commission defer 0.433 mgd until Grace Pacific turns in water use report data from 2006 onwards. The Commission has since found water use report data that is current until 2011. HBWS suggested phasing the permitted use in incremental periods of 4 years. Their suggestion was incorporated into the staff's recommendation. There were no comments from other agencies and no trigger for an Environmental Assessment (EA).

Any unused allocation may be revoked after 4 years (2016).

RECOMMENDATION:

That the Commission:

Approve the issuance of Ground Water Use Permit no. 958 to Grace Pacific Corporation for the reasonable and beneficial use of 0.256 million gallons per day of potable water for industrial and irrigation uses from the Upper and Lower Quarry Wells (State Well Nos 2103-06 and 2104-01), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
2. 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.
3. This permit supersedes and consolidates Water Use Permits 205 and 664.

(DISCUSSION)

Commissioner Balfour asked about the pumpage requirement reports and said it should be enforced. He asked staff to investigate options for using R-1 water.

Mr. Imata clarified that the water use reporting for the Lower Quarry Well was received by the Commission. However, due to cuts within the Survey Branch, the data was never entered.

Deputy Tam informed the Commission that the online reporting system should be up and running very soon.

Commissioner Starr asked to be briefed on the status of the online reporting system at the next Commission Meeting. He said it looked like the water would not be used to grow crops and asked what the water would be used for.

Commissioner Erdman reiterated the need to re-evaluate how to measure droughts.

Deputy Tam informed the Commission that they will be briefed on drought measures in the next few months.

Robert Creps (Grace Pacific) and Sara Thomas (Environmental Compliance Specialist, Grace Pacific) informed the Commission that they received permission in 2008 to extend the life of the Quarry on the condition that they vacate the Lower Quarry and move all activity to the Upper Quarry site. The Upper Quarry will be the site of re-naturalization. The pump tests of the new Upper Quarry Well will establish the direction of ground water flow. Long-term monitoring includes discontinuing operations in the Lower Quarry and turning the existing well into a monitoring well. Grace Pacific requested that the allocation be 0.288 mgd based on expected water needs in 2020.

Commissioner Starr asked if Grace Pacific could re-naturalize and do dust control with less water.

Mr. Creps explained that water re-use is an option and can help limit consumption.

Ms. Thomas said that the hope is to extend the recycled water line by the HBWS and Grace Pacific is receptive to reusing recycled water.

Commissioner Starr asked when the re-naturalization of the Lower Quarry site would be complete.

Mr. Creps estimated approximately 3 years.

Commissioner Starr asked if Grace Pacific was looking into ways to save water and lower the requested allocation.

Deputy Tam reiterated the restrictions on reasonable and beneficial use and the provision for a reduction due to non-use. If alternative water sources become available (e.g.: recycled water) that could replace potable uses.

Mr. Imata explained that the Commission could revoke the allocation after 4 years.

Ms. Thomas said Grace Pacific has been in talks with the University of Hawaii and intends to use the site as a study ground for drought tolerant plants.

Commissioner Erdman asked if it was a rock quarry.

Mr. Creps responded "yes."

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

E. PLANNING

1. Adoption of the Lanai Water Use and Development Plan for Incorporation into the Hawaii Water Plan

SUBMITTAL PRESENTATION by: Charley Ice

Staff is recommending that the Commission adopt the February 25, 2011 Department of Water Supply (DWS) Amended Draft Lanai Water Use and

Development Plan, which is an update to the County of Maui's Water Use and Development Plan (WUDP).

The plan was put together over a period of 10 years with strong support from the public. Lanai has one of the smallest sustainable yields of all the islands and is highly dependent on precipitation and fog drip. The watershed is in slow decline. Strategies for resource development include new source development, expanding water re-use, and desalinization. Watershed protection is a major priority and there has been a significant investment in fencing projects for ungulate removal, invasive species protection, and erosion management to restore the value of the watershed. A substantial investment in infrastructure has been made to convert the island from a pineapple to a resort economy. Water conservation projects have been implemented to prevent system losses. The Lanai Aquifer is divided into two systems and most of the well infrastructure is on the leeward side. One of the strategies is to move pumpage over to the windward side. There are a number of provisions that seek to determine whether resources are available for new land use entitlements without risk to existing uses.

RECOMMENDATION:

That the Commission:

Adopt the Lanai Water Use and Development Plan as an update to the County of Maui's Water Use and Development Plan for incorporation into the Hawaii Water Plan.

(DISCUSSION)

Commissioner Starr said he supports the plan. He said if the plan is not followed it could lead to disaster. He read the summary of the plan aloud.

Lanai faces some daunting challenges in preparing for its water future. The sustainable yield of the island is small and is highly dependent on a forested watershed. The watershed itself is at a low elevation for cloud cover, making it susceptible to rising inversion layers, climatic change and invasive species. The watershed has been in decline for decades. Development programs were ambitious with total build out of the project likely to meet or exceed sustainable yield. Unaccountable water is high. Much of the pipe on the island is old, leaky and in need of replacement. While this represents a conservation opportunity, the rate and fee structure of the Lanai Water Company is not sufficient to enable the necessary replacements.

Lanai has a private water system, which is dependent on the resorts for funding and operation. The previous owners did not invest in fencing the watershed, resulting in deer and invasive species. Commissioner Starr hopes that the recommendations in the Plan are implemented and enforced. He suggested that Lanai be designated as a Ground Water Management Area.

MOTION: (Starr/Erdman)

To approve the submittal.

UNANIMOUSLY APPROVED.

2. Approval of Revised Project Description for Updating the Maui County Water Use and Development Plan

SUBMITTAL PRESENTATION by: Lenore Ohye

Agenda Item E-2 is requesting the approval of a revised project description for completing the rest of Maui County's Water Use and Development Plan (WUDP) update. Under the 2004 project description, Maui completed the Lanai WUDP as well as an update to the 1990 Plan for the Central District of Maui island. The 2004 project description proposed updating the WUDP for Maui island in regions, according to the planning districts. However, staff had expressed concern that the Central District WUDP was not comprehensive in that it only focused on municipal needs and supplies. The intent and objective of the WUDP is to look at county-wide needs, which is especially important in cases where competition exists. In the Central District of Maui there is competition with agriculture, Native Hawaiian water rights, and environmental needs.

In 2010 Maui County Council adopted the Central District WUDP by ordinance. The plan was then formally submitted to the Commission. Although limited in scope, the plan does contain valuable information that is useful to the County for CIP planning as well as water use and development planning. Staff met with the new DWS administration and shared our concerns regarding the Central District WUDP. Staff also shared the approaches taken by other counties. Staff and the DWS administration jointly agreed not to submit the Central District WUDP to the Commission for adoption. Instead, DWS decided to revise their project description.

The revised project description now proposes to update the WUDP for the entire island in one document, instead of doing regional updates. It will also be comprehensive, incorporating private as well as municipal and other needs within the County. It will look at a range of planning scenarios and a mix of supply strategies and will seek the best allocation of water to land use. Staff is also encouraging all WUDP updates to include planning for climate change, and there is a component in the revised project description to look at climate change impacts on both supply and demand.

The revised project description meets the requirements of the State Water Code and Framework. The CWRM is committed to working with the county to provide assistance and is planning to revise the Framework to incorporate planning strategies to address the issue of climate change.

RECOMMENDATION:

That the Commission:

1. Approve the County of Maui's Project Description for updating the Maui County WUDP, and
2. Authorize staff to participate in meetings and/or workshops, as necessary, with pertinent State and County agencies to facilitate implementation of statutory and framework provisions for updating Maui County's Water Use and Development Plan.

(DISCUSSION)

Pam Pogue, the Planning Director for the Maui County Department of Water Supply (DWS) explained that there will be one WUDP to address all the various water systems, (both public and private). The Maui Island Plan addresses land use and population projections. The public process began in 2004 and has been very extensive. The goal of the Plan is to be objective, technical and offer data analysis that addresses water issues on Maui. There will be a total integration between the Maui WUDP and the Maui Island Plan and is not DWS-centric. The process will be very collaborative and involve the Maui County Planning Department, DHHL, and more. It is a staged approach that will involve the public and various agencies including the USGS and watershed partnership groups. There is an emphasis on integrated resource planning and climate change. The public will have the opportunity to review the various drafts of the Plan and can provide comments at numerous public meetings.

Commissioner Starr commented that he recommended an update to the Plan 12-13 years ago and has been frustrated with the lack of action. He said he was impressed with the Oahu, Koolaupoko Watershed Management Plan (WMP) and asked how the Maui Plan would compare.

Ms. Pogue replied that the plan needs to fit Maui and said there are good ideas in the Koolaupoko WMP.

Commissioner Starr asked if integrating systems and reclaimed water was being discussed.

Dave Taylor, Director of Maui County DWS, said engineers are looking at all water resources (new wells, existing surface water, reservoirs, recycled water, desalinization, conservation and efficiency). Risk cost-benefit analysis will be matched with projected growth in the Maui Island Plan to determine the best approach for supply and demand.

Commissioner Starr asked how the Plan will be drafted while simultaneously gathering information.

Ms. Pogue replied that the schedule is a guideline and the approach is meant to be broad and things are expected to change, evolve, and adapt as technical studies are completed. Mr. Taylor commented that the first draft of the plan could be a binder with a table of contents and chapter headings so the public will understand the scope of the update and the data needed to flesh out the report so that the plan will be focused and able to be completed in a timely manner.

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

F. UPDATES AND BRIEFINGS (continued)**1. Update on Senate Bill 3010 (Act 218) relating to Transportation, Bridges, and Exemptions**

Presentation by: Robert Chong

Robert Chong (Commission on Water Resource Management) gave an update on the deferment of a Stream Channel Alteration Permit (SCAP) by the Department of Transportation (DOT) for replacement of the Makaha Bridges 3 and 3A. On July 5, 2012 the Governor signed Senate Bill 3010 (Act 218) to expedite DOT construction projects for bridge rehabilitation. The State Water Code was exempted by Act 218, which also listed the Makaha Bridges as exempt.

Commissioner Starr commented that more than 11 bridges appear to fall under the exemption (e.g. the Hana Highway Preservation Plan and Projects).

Chairperson Aila said he would allow members of the public to comment, but noted that the Water Commission no longer has jurisdiction over the Makaha Bridges 3 and 3A.

Moana Kea Klausmeyer-Among, a resident of Makaha, said she does not agree with the Governor's decision. She explained that no Environmental Impact Statement (EIS) was prepared and the concerns of the community were ignored. Residents in Makaha want new bridges, but the scope of the project will likely harm their properties and cause further damage. Ms. Among expressed her frustration with the DOT and the lack of communication.

Chairperson Aila informed Ms. Among that the Water Commission no longer has jurisdiction.

Ms. Among asked how SB3010 could override a Land Court Order or Supreme Court Ruling. She asked if the Water Commission could draft a letter stating that the Commission no longer has jurisdiction. She asked what the legal process would be.

Mr. Chong said a letter was sent informing Ms. Among and residents living along the stream. It stated that the CWRM was not taking action on the SCAP because the Governor signed SB3010, which exempted the bridge project.

Chairperson Aila explained that the item was put on the Agenda to update the Commission. No action will be taken.

Keith Kohl, a resident of Makaha, said he understands that no action will be taken on the SCAP permit and there is no need for a contested case. Mr. Kohl reiterated his frustrations with the project and explained his concerns.

Juliana Kohl, a resident of Makaha, restated that she opposes the bridge project. She pointed out that the State Law cannot override a Land Court Order and explained the engineering flaws with the project.

Chairperson Aila, Jr. adjourned the meeting at 12:40pm.

Respectfully submitted,

KATIE ERSBAK

APPROVED AS SUBMITTED:

WILLIAM M. TAM
Deputy Director