

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 10, 2012
TIME: 9:00 am
PLACE: Hawaii State Capitol
Room 309
415 South Beretania St.
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. Ted Yamamura,
Mr. William Balfour, Mr. Jonathan Starr, Ms. Loretta Fuddy

ABSENT: Mr. Neal Fujiwara

STAFF: William Tam, Lenore Ohye, Roy Hardy, Basil Gomez, Neal Fujii,
Charley Ice, Paul Eyre, Patrick Casey, Denise Tu, Ryan Imata, Jonas
Burgon, Robert Chenet

COUNSEL: Cindy Young, Esq.

OTHERS: Manabu Tagomori (Oceanit), Stephen Anthony (USGS), Leimana
Dafriate (HHC), Barbara Natale (Group 70, Int), Marc Chun (BWS),
Nancy Matsumoto (BWS), Giorgio Caldarone (KSBE), Kaeo Duarte
(KSBE), Neil Hannahs (KSBE)

Chairperson Aila, Jr. acknowledged that members of the Board of Agriculture (BOA), Agribusiness Development Corporation (ADC), and the Board of Land and Natural Resources (BLNR) were in attendance for the briefing and presentation.

A. BRIEFING AND PRESENTATION

1. “Finding Our Way: Redefining Wealth”

PRESENTATION by: Neil Hannahs, Director of Land Assets, Kamehameha Schools

Neil Hannahs introduced Kamehameha Schools Bishop Estate (KSBE) regional managers, Giorgio Caldarone and Kaeo Duarte. Mr. Hannahs acknowledged that KSBE recognizes the need for collaboration and that ecosystems need to be managed holistically. KSBE seeks to introduce a similar approach to land management and the agricultural industry in Hawaii.

Mr. Hannahs gave an overview of the presentation and discussed some of the milestones, challenges, and commitments for the future. The title “Finding Our Way” personifies the importance of finding *our* way of doing. KSBE must continuously navigate the currents of change and it is important to go back to cultural identity. KSBE lands should not be looked at as merely a commodity or endowment asset. The lands are tied to family and genealogy. This worldview should inform land management. The kupuna deified life supporting services and recognized the need to respect those systems. During the 19th century, land was set aside in perpetuity to restore the wellbeing of the Hawaiian people through educational programs. In 1887, KSBE owned 378,500 acres on 5 islands, worth approximately half a billion dollars, with an annual income of \$36,000. The needs of the beneficiary were set as the priority, which led to the transformation of landscapes and the monetization of many ahupua‘a. By 2000, KSBE was worth \$5.7 billion, many of it in commercial real estate. As development proceeded, KSBE was degrading resources and altering important habitats and landscapes. Natural, social and cultural capital was depleted, along with the economic resources needed to achieve well-being. In the 1990s, stakeholders instructed KSBE to change their approach to land management and adopt a sustainability model.

There are four plans that best exemplify KSBE’s new approach to land management. The 2009 Strategic Agricultural Plan identified 88,000 acres of land with high agricultural potential. Value chain analysis was used to determine the elements that would lead to success. By 2015, \$20 million will be invested in agriculture, specifically traditional agriculture. The Cultural Resource Management Plan will help protect and preserving volcanic landscapes, coastal and marine environments, fishponds, wetland terraces, ceremonial sites, trails and more. Communities are vital to restoration and can resuscitate cultural practices that inspire and enrich well-being. The Natural Resources Management Plan identifies natural resources that support life and cultural uniqueness. Since 2000, KSBE has helped to suppress invasive species and support restoration and recovery. The ‘Aina-Based Education Tactical Plan, uses KSBE lands as a “campus” for place-based learning. \$15 million will be invested through various collaborations to teach language, science, and leadership skills. Returns are measured by learner outcomes, community engagement, and land stewardship. Rather than bear witness to the destruction of cultural treasures such as streams and fishponds, KSBE is investing in systems that take what is needed and refurbish places like He‘eia Fishpond for future generations.

Giorgio Caldarone (KSBE Regional Asset Manager for Oahu, neighbor islands) elaborated on the North Shore Plan. In 2006, KSBE began looking at lands on the North Shore of Oahu. As an absentee landowner, KSBE collected money from Waialua Sugar Co. and had non-conforming, dilapidated commercial properties. There had been little investment in the North Shore area. A strategic plan was finished in 2008 and included 5 elements 1) increasing resource stewardship 2) expanding educational opportunities 3) enhancing diversified agriculture 4) generating renewable energy and 5) developing/redeveloping rural commercial. An Archaeological and Cultural Field School has been established to increase resource stewardship and expand educational opportunities. Students can do field work and learn about the land. Pua‘ena Point is being reserved in the master plan for community, cultural, and educational experiences. Community volunteer work days are taking place at Loko Ea Fishpond and have

been instrumental in establishing the Malama Loko Ea Foundation. The 'Uko'a wetlands are being cleared and reopened to create more habitat. A living classroom for traditional agriculture is being created at Anahulu. Ocean front property has been set aside as education sites and agriculture systems have been repaired and modernized to irrigate 2,200 acres. A wind farm will be located up mauka and 4,000 acres will be fenced for cattle. Investments will be made in agriculture processing, potable water, and a 90 acre organic farm. The Matsumoto Shave Ice Redevelopment Project in Haleiwa has been rezoned and the historic structures will be preserved.

These activities are intended to seek waiwai (non-material wealth) and to continue the growth of the KSBE financial portfolio. The new KSBE approach invests in the restoration of resources, reconnecting people to the land as resource managers, and reviving cultural practices that increase mana. The more we work together, the more we ensure each other's success.

(DISCUSSION)

Commissioner Starr thanked Mr. Hannahs and KSBE for their work and asked how large agriculture lands would be shifted from export crops to locally-based production and consumption.

Kaéo Duarte (KSBE Regional Asset Manager for land and water resources) said the 2008 Strategic Agricultural Plan reported on initiatives statewide. The North Shore is a blank slate and affords a great opportunity for a new model. KSBE is good at prepping the land and making it available for agriculture, but needs help creating the new generation of farmers and giving them the tools they need to be successful.

Mr. Caldarone mentioned that a lot of money is spent clearing the land, prepping infrastructure and targeting farmers who are growing crops for local consumption.

Mr. Hannahs commented that it is a land and people issue. Farmer education and business modeling are important investments for KSBE.

Commissioner Starr asked if the educational aspect needed to be part of the university and public school system.

Mr. Hannahs replied that Ma'ó Farms is pushing for an Agroecology degree at the University of Hawaii West Oahu. The degree will include elements of business, sustainability, culture and social justice. Farmers of all types are needed.

Chairperson Aila asked about the concept of stream diversions and "turning off" the water for the benefit of o'opu.

Mr. Duarte replied that the concept came out of conversations with the community, engineers, and biologists. They considered the life cycle of the species and how they migrate throughout their lifetime. The water is turned off for 2-3 hours at sunset to allow the larvae enough time to "drift." The solutions will be different depending on the place. Modern technology is used to emulate traditional management practices.

Chairperson Aila asked about monitoring.

Mr. Duarte said there were some issues to be worked out. Today there are 13 satellite-based ditch and stream gauges statewide.

Chairperson Aila asked if piping was attributed to the success of the ditch system.

Mr. Duarte said from an operational standpoint, a lot of time and money was spent managing the ditch system. The investment in piping has decreased seepage and evaporation loss and has reduced the cost of maintenance.

Commissioner Starr asked about increasing base flows through ditch infrastructure updates.

Mr. Duarte responded that on KSBE lands where water is limited, stream flow is intermittent. Having the ability to control flow (e.g. a diversion that turns off at night, and restores stream flow to native species) is thinking outside the box.

Commissioner Starr commented that water is becoming a finite resource with limited storage. People have unrealistic expectations about water availability. He asked about water storage capabilities into the future.

Mr. Duarte responded that dams and reservoir storage is challenging. Land use decisions need to be made based on an understanding of the resource and water availability. Certain areas are limited and do not receive as much rainfall. Therefore, land and water planning must happen concurrently.

Commissioner Yamamura asked if back-up irrigation systems are a key component of the overall agriculture plan.

Mr. Duarte said some back-up wells have been drilled but are not intended to be used. Due to the nature of the streams on the North Shore, investments were made in irrigation to ensure that farmers receive the water they need to irrigate their crops.

Chairperson Aila asked how KSBE could work with other private landowners.

Mr. Hannahs said KSBE has been involved in food and wine festivals.

Mr. Caldarone said it is about building relationships and talking to farmers and ranchers.

Chairperson Aila thanked KSBE's efforts to restore, maintain and manage watersheds throughout the state.

[BREAK]

B. APPROVAL OF MINUTES

September 19, 2012

MOTION: (Starr/Balfour)

To approve the minutes.

UNANIMOUSLY APPROVED.

C. ANNOUNCEMENTS

Roy Hardy (Commission on Water Resource Management) introduced new CWRM staff, Mr. Jonas Burgon, Dr. Basil Gomez, Mr. Patrick Casey, Mr. Bob Chenet, Mr. Paul Eyre, and Ms. Denise Tu.

Commissioner Starr asked what positions still needed to be filled.

Deputy Director William Tam said that an IT / GIS specialist and a ground water geologist still need to be hired.

D. GROUND WATER REGULATION**1. Monsanto Company, Applications for: 1) Ground Water Use; 2) Well Construction; and 3) Pump Installation Permits, Kunia Farm Well No. 1 (Well No. 2402-06), TMK (1) 9-2-001:001, GWUPA No. 954, Future back-up (Agricultural) Use for 2.636 Mgd & Declaratory Ruling DEC-ADM12-G6 allowing issuance of Pump Installation Permit without a Ground Water use Permit for Emergency Use in Ground Water Management Areas, Waipahu-Waiawa Ground Water Management Area, Oahu**

Chairperson Aila said Item D-1 had been withdrawn from the agenda in order to give the applicant more time to prepare a response.

Yvonne Izu expressed her frustrations with the withdrawal of agenda item D-1 and said Monsanto Company objects to the decision. The agenda item was deferred at the August 15, 2012 Commission Meeting and the staff submittal was finalized a few days before the meeting. Monsanto was not given ample time to prepare a response to staff's submittal and their testimony was not made available to the Commissioners until the morning of the meeting. Following the August meeting, Ms. Izu tried to meet with CWRM staff and was told the Monsanto submittal would appear on the October agenda. Monsanto prepared and filed a letter to the Commission on October 5, 2012 along with a cover letter asking that the letter be immediately distributed to the Commissioners. The letter was not distributed to the Commissioners. Ms. Izu handed out a copy of the letter to the Commissioners and explained the importance of having a back-up water source in the event of a failure of the Waiahole Ditch. There are concerns about the legal interpretation of the emergency provision. Monsanto does not agree that the water use permit for a back-up system should be denied. Ms. Izu requested that the Commission make a decision today.

(DISCUSSION)

Commissioner Starr said he had heard inconsistencies with the presentation and did not feel comfortable making a decision today.

Ms. Izu said Item D-1 was noticed on the agenda.

Chairperson Aila echoed Mr. Starr's sentiments and said he preferred to wait to make a decision until staff was finished with their analysis.

Commissioner Erdman asked if there was a provision in the Water Code for an emergency permit.

Deputy Tam explained that the submittal was withdrawn because the implications of the decision are complex. The CWRM staff is in the process of working through an analysis that would address Monsanto's request for an emergency allocation. Other issues and new problems need to be addressed before the Commission can devise a process for emergency back-ups and recommend a decision.

Commissioner Erdman asked Roy Hardy about the wells used along the Hamakua Ditch.

Mr. Hardy replied that emergency Stream Channel Alteration Permits (SCAPs) applied to the Hamakua situation.

Commissioner Starr commented that a process needs to be devised for dealing with emergency back-up systems. He asked that CWRM staff be given ample time to finalize their analysis.

Commissioner Yamamura asked the Deputy AG if the Commission has the authority to make a decision without a final submittal.

Deputy AG Cindy Young said "yes." Since it is on the agenda a decision could be made.

Commissioner Starr said the Commissioners received notice prior to the meeting that the agenda item had been withdrawn.

Ms. Young said it is up to the Commission to decide if they want to make a decision today.

Commissioner Starr objected to a decision being made.

Ms. Young said that proper notice had been made (Chapter 92, Sunshine Law).

Commissioner Yamamura asked what type of decision could be made since there is no written recommendation from staff.

Commissioner Erdman agreed that there is no recommendation from staff.

Commissioner Fuddy said she did not feel that there was sufficient information to make a decision today.

Chairperson Aila recommended making a motion to withdraw item D-1.

Commissioner Starr and Balfour made a motion to withdraw the agenda item.

Commissioner Yamamura said he would agree with a motion to withdraw if staff promised it would be on the agenda for November.

Deputy Tam said "yes" it will be on the agenda for November.

Commissioner Yamamura expressed his frustration with the delays and receiving his submittal packet late. He said it was not enough time to read and review in order to make a

decision. He requested that submittal packets be mailed out at least 5 days prior to the Commission Meeting.

Ms. Izu asked that the submittals be posted electronically at the same time as the agenda (6 days before the Commission Meeting).

Deputy Tam agreed.

Commissioner Starr said he did not like the idea of being leveraged and coerced by an applicant. He agreed with the request by Commissioner Yamamura to mail out the submittal packets early.

Commissioner Balfour said he found it disconcerting that his submittal packet was not mailed out in time for him to review prior to the meeting. The letter from Monsanto dated October 5, 2012 should have been sent to the Commissioners before the meeting. He said it was reasonable for Monsanto to expect a decision by today.

Commissioner Starr agreed with Commissioner Balfour and would like to have his submittal packet sent to him one week ahead of time.

Commissioner Erdman made a motion to defer a decision to the November meeting and requested that staff provide the Commissioners with the information prior to the meeting.

MOTION: (Erdman/Fuddy)

To defer a decision and post the submittal one week prior to the November meeting. UNANIMOUSLY APPROVED FOR DEFERRAL.

2. **Hearing to Review and Act on Water Use Permits in the Waialua Ground Water Management Area, Oahu 1) Dole Food Co. Voluntary Reduction of 13.710 Mgd; 2) Dole Food Co.'s Partial Modification or Revocation to 9.00 Mgd Existing Uses (Under Continuing Investigation); and 3) Theo J.P. Lopez Trust Voluntary Reduction and Partial Revocation of 0.056 Mgd, and Continued Use of 0.144 Mgd**

SUBMITTAL PRESENTATION by: Charley Ice

Charley Ice (Commission on Water Resource Management) said Item D-2 is a continuation from the February 15, 2012 Commission Meeting. Applications had come in for new Water Use Permits (WUPs), but could not be considered due to the over-allocations in the Waialua Ground Water Management Area. 30 million gallons per day (mgd) are currently allocated for a sustainable yield (sy) of 25 mgd. There have been voluntary cut-backs in the past and revocations are required for new allocations to be awarded. Dole food Co. expressed interest in voluntarily cutting back 13.7 mgd. The Theo Lopez Trust has agreed to accept the new amount of 0.144 mgd. Staff is recommending accepting the voluntary cut-backs. Dole proposes to hold the balance of the ground water use permits as a back-up if the Wahiawa irrigation system were to fail. However, WUPs to back-up reserves to existing systems are not considered reasonable and beneficial uses and may be inconsistent with the requirements of the Water Code. They are unfair to other applicants and could create a precedent for double counting. The Theo Lopez Trust is accepting the recommended revocation but will challenge further cut-backs.

RECOMMENDATION:

That the Commission:

- A. Approve Dole Food Co's voluntary cutback totaling 13.710 mgd as shown in Exhibit 6b. Continued use is 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.
- B. Defer action on Dole's remaining 9.000 mgd claim. By December 3, 2012, Dole shall submit a complete ground water use permit application (with the necessary water use footprint information identifying the field, crop, and water demand) to justify its claims and proposed uses. In the absence of a complete water use permit application, the permit and the claim for 9.0 mgd will be presented to the Commission for action including revocation for the Waialua Sugar Co. permit.
- C. Approve the Theo J.P. Lopez Trust's voluntary reduction and partial revocation of the 0.056 mgd and continued use of the 0.144 mgd.

The continued use is subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Require a current end use footprint map.
2. A flow meter must be installed and water use reported starting within 6 months.
3. Following six months' reporting, the amount of use will be reviewed for possible further modification of the ground water use permit.

(DISCUSSION)

Commissioner Erdman pointed out the typo on page 3, part 3. It should read 0.2 mgd instead of 2.0 mgd. He asked the Deputy AG if the Commission is allowed to accept the voluntary cutbacks if the water rights were never officially transferred from Waialua Sugar Co. to Dole Food Co.

Mr. Ice remarked that Dole Food Co. is the "parent" of Waialua Sugar Co.

Deputy Tam said that Waialua Sugar is no longer a viable entity. Dole Food Co. is the owner of the well sites and holds the permit. The only user can be the permit holder.

Commissioner Starr asked why the water use permits did not lapse after Waialua Sugar Co. went out of business.

Deputy Tam said that would be part of the discussion as the Commission moves forward with the 9.000 mgd allocation claim from Dole.

Commissioner Balfour commented on the time it takes to process the permits. The CWRM staff spends a lot of time gathering information and following up on requests. Commissioner Balfour expressed his frustration with the process and hopes it can become more efficient.

Commissioner Erdman said he moved to approve the submittal with the one typo change on page 2.

Deputy Tam said the figure at the bottom of the table on page 5 should reflect 8.007 mgd and not 8.063 mgd.

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

3. Honolulu Board of Water Supply, Application for a Water Use Permit, Waialua Wells (Well No. 3405-01 & 02), TMK (1) 6-4-001:008, WUP No. 868, Future (Municipal) Use of 0.270 mgd, for a new total allocation of 2.0 mgd, Waialua Ground Water Management Area, Oahu

SUBMITTAL PRESENTATION by: Charley Ice

Charley Ice (Commission on Water Resource Management) introduced Item D-3 as an application from the Honolulu Board of Water Supply (HBWS) for an additional 0.270 mgd to add to their Waialua battery for a variety of uses including commercial site landscaping and irrigation. The application was first submitted in November 2008 but was incomplete. It took 2 years before staff received a complete application. The sustainable yield is estimated at 25 mgd. Other existing water use permits total over 16.5 mgd leaving approximately 8 mgd available for other applications. The amount requested is efficient since there are no alternatives for potable water. Waste water and surface water use are not available and the ditch system does not provide potable use. Staff does not anticipate interference with other wells or uses.

RECOMMENDATION:

That the Commission:

1. Approve the issuance of Ground Water Use Permit No. 868 for the reasonable and beneficial use of an additional 0.270 million gallons per day of the potable water for Municipal use from the Waialua Wells (Well Nos. 3405-01 & 02). The new total permitted amount will be 2.0 mgd, subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

- a. The Commission shall delegate to the Honolulu Board of Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.
- b. Honolulu Board of Water Supply shall be exempt from the requirements of permit modifications as provided in §174C-57
- c. Should alternate permanent sources of water be found for these uses, then the Commission reserves the right to revoke this permit, after a hearing.
- d. 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.

(DISCUSSION)

Commissioner Starr requested a presentation on statewide sustainable yield modeling to gain a better understanding.

MOTION: (Balfour/Erdman)

To defer the submittal.

UNANIMOUSLY APPROVED.

4. **Mary Lou Gora, Application for a Water Use Permit, Gora 2011 Well (Well No. 3406-17), TMK (1) 6-6-016:001, WUP No. 952, Future (Agricultural) Use of 0.029 mgd, Waialua Ground Water Management Area, Oahu**

SUBMITTAL PRESENTATION by: Charley Ice

Charley Ice (Commission on Water Resource Management) introduced an application for a new well and water use permit. The applicant is requesting 0.029 mgd for agriculture (taro, fruit trees, and aquaculture). The permit was transferred to his wife after Mr. Gora passed away. A family dispute redistributed the properties and Ms. Gora is no longer occupying the parcel. The permit has been reassigned to the original owner. Ms. Gora has submitted applications for a well construction, pump installation, and water use permit. The HBWS commented on the drilling process to minimize waste and special conditions for completing the wellhead.

RECOMMENDATION:

That the Commission:

1. APPROVE a new ground water use permit (GWUP No. 952) to Mary Lou Gora for the reasonable and beneficial use of 0.029 mgd of potable water for Agricultural from the Gora 2011 Well (Well No. 3406-17), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

- a. 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.
 - b. 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.
2. Staff recommends the Commission APPROVE the well construction and pump installation permits for the Gora 2011 Well (Well No. 3406-17), subject to the standard conditions in Attachments C and D, and to the following special condition:
- a. Extra drilling precautions must be taken to avoid loss of artesian pressure and waste of water as the confining rock is penetrated, and the wellhead must be secured against leakage to meet the specifications in section 2.4(c) and 2.6(c) of the Hawaii Well Construction & Pump Installation Standard regarding the prevention of leakage and waste between aquifers.

(DISCUSSION)

Commissioner Erdman asked about the use of a pump for the artesian well.

Mr. Ice said the pump tests would help determine the situation.

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

Chairperson Aila, Jr. adjourned the meeting at 11:47am.

Respectfully submitted,

KATIE ERSBAK

APPROVED AS SUBMITTED:

WILLIAM M. TAM
Deputy Director