

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: May 22, 2013
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.
1151 Punchbowl St., Room 132
Honolulu, Hawaii 96813

Acting Chairperson Neal Fujiwara called the meeting of the Commission on Water Resource Management to order at 9:00 am.

The following were in attendance:

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

ABSENT: Mr. William Aila, Jr.

STAFF: William Tam, Lenore Ohye, Roy Hardy, Denise Tu, Dean Uyeno, Ryan Imata, Neal Fujii, Rebecca Alakai

COUNSEL: Linda Chow, Esq.

OTHERS: Elijah Yip (Hawaiian Commercial & Sugar Co. / EMI), Julianna Kohl, Keith Kohl, Al Frenzel, Micah Kane (Pacific Links Hawaii), Larry Sumiba (Pacific Links Hawaii), Moana Kea Klausmeyer-Among, Pam Bunn (Office of Hawaiian Affairs), Jonathan Chun

A. APPROVAL OF MINUTES

March 20, 2013

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

B. ANNOUNCEMENTS

Deputy Director, William Tam introduced Rebecca Alakai, the new Planner for the Commission on Water Resource Management ("CWRM"). Ms. Alakai has previously worked for the Department of Hawaiian Home Lands ("DHHL") and the Division of Boating and Ocean Recreation ("DOBOR").

Deputy Tam bid farewell to CWRM Hydrologist, Denise Tu.

Lenore Ohye (CWRM) announced that the 39th Annual American Water Works Association ("AWWA") Hawaii Section Conference was held on May 7-10, 2013 at the

Hawaii Convention Center. Key initiatives were discussed and a workshop with the Honolulu Board of Water Supply ("HBWS") was organized by Neal Fujii (CWRM, State Drought and Water Conservation Coordinator). Conservation is a priority measure in the statewide Water Conservation Plan. More workshops are being planned. Chair Aila explained the importance of watershed protection, monitoring and regulating water resources, and how inland activities can affect the health of near shore environments, including coral reefs. Roy Hardy (CWRM) presented on CWRM's online water reporting system and conducted training on irrigation modeling.

Commissioner Starr asked if the CWRM could pay the registration fee so commissioners could participate in these types of workshops.

Deputy Tam said the CWRM was not accustomed to paying for conference fees and such costs are not in the budget. He said he would discuss it with Chair Aila.

C. ADMINISTRATION

Deputy Tam informed the Commission that the terms of Neal Fujiwara and Sumner Erdman would expire at the end of June and that two new members had been confirmed by the Senate and will begin their terms on July 1, 2013. The two new commissioners are Kamana Beamer and Milton Pavao.

D. STREAM PROTECTION AND MANAGEMENT

1. Delegation of Authority to the Chairperson to Appoint a Hearing's Officer for CCH-MA06-01 'Īao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihe'e River and Waiehu, 'Īao , and Waikapū Streams Contested Case Hearing on Remand, Maui, Hawai'i And Update on Scheduling

SUBMITTAL PRESENTATION by: Deputy Director, William Tam

Item D-1 requests authority for the Chairperson to appoint a hearing's officer to proceed with the Na Wai Eha case currently on remand from the Hawaii Supreme Court. Dr. Larry Miike is currently the hearing's officer for appurtenant rights and has been reviewing the applications. There are two batches of applications. The last deadline to file applications for objections was March 25, 2013. Once compiled, the information will be submitted to the parties sometime at the end of June / early July. A due process hearing will be scheduled and the Commission will review the hearing officer's report on appurtenant rights. All the parties will have an opportunity to make an argument to the Commission in a special proceeding on appurtenant rights. Dr. Miike was a hearing's officer in the earlier part of the Na Wai Eha contested case. The hearing's officer will be responsible for setting up a schedule.

RECOMMENDATION:

Staff recommends that the Commission:

Delegate authority to the Chairperson to appoint a qualified Hearing Officer to proceed with the Contested Case remanded from the Hawaii Supreme Court back to the Commission in CCH-MA06-01, 'Īao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihe'e River and Waiehu, 'Īao, and Waikapū Streams Contested Case Hearing, Maui, Hawai'i.

(DISCUSSION)

Commissioner Starr asked if there was a timeline.

Deputy Tam replied that the hearing's officer will meet with the parties *first* before outlining a prospective timeframe.

Commissioner Starr asked to be briefed on the prospective timeline.

Commissioner Balfour asked if Dr. Miike would be appointed the hearing's officer.

Deputy Tam said the Chairperson would decide. However, Dr. Miike is probably the most qualified since he has been involved since the very beginning.

Commissioner Erdman asked if Dr. Miike's work on appurtenant rights would conflict with his appointment as the hearing's officer in the contested case.

Deputy Tam said "no." It is part of the same proceedings with many of the same applicants.

Commissioner Balfour questioned whether or not Dr. Miike should be appointed the hearing's officer. He commented that it would be helpful to have someone else take a fresh look. He pointed out that Chair Aila was absent and recommended that a decision be deferred.

Deputy Tam, said the commissioners are free to have a conversation with the Chair. The submittal simply gives authority to the Chairperson to appoint a hearing's officer.

Commissioner Yamamura asked if the hearing would be limited to the items on remand from the Supreme Court or if the entire case would be heard again.

Deputy Tam said the order was vacated. The entire case will eventually be heard again.

Commissioner Yamamura commented that the Commission has a terrible record with the Court's decisions. He suggested that staff's recommendation be amended to allow the commissioners to participate in the appointment of a hearing's officer. He said he would like to be part of the decision.

John Dewey, a resident of Na Wai Eha testified before the Commission. He said he filed a petition for instream flow standards on June 25, 2004. He recounted the number of staff members who have since left the Commission. He recommended that Dr. Miike be appointed as the hearing's officer because he knows the case. He protested that Wailuku Sugar is illegally selling the water. He showed a picture of 'Īao Stream and said Wailuku Sugar currently takes 20 million gallons of water per day ("mgd"). It has been almost

nine years since he filed his petition. He asked the Commission to follow the law and said the river has rights to the water. Instream flow standards should come first.

Commissioner Starr said he appreciated Mr. Dewey's honest emotions and promised that things would start to move forward.

Pam Bunn testified on behalf of the Office of Hawaiian Affairs ("OHA") in support of the recommendation to appoint Dr. Miike. The original petition was filed almost 10 years ago, yet the public trust resources in Na Wai Eha are still not protected by interim instream flow standards. Ms. Bunn commented that the Hawaii Supreme Court agreed with Dr. Miike's opinion.

Commissioner Yamamura reiterated his preference to have the authority rest with the Commission rather than the Chairperson.

Commissioner Starr said he supports staff's recommendation and believes the Chairperson will make a wise and judicious choice.

MOTION: (Fuddy / Starr)

To approve the staff submittal as written.

(Fuddy, Starr, Fujiwara, Erdman – aye; Yamamura – objects; Balfour – abstains)

The motion carries. The submittal is approved.

2. Application for Stream Channel Alteration Permit (SCAP.3649.2) Kaumuali'i Highway Improvements of Lihu'e Mill Bridge to Rice Street Nāwiliwili Stream, Lihu'e, Kaua'i (TMKs: (4) 3-8-004:007 por., (4) 3-8-005:003 and (4) 3-8-005:009 por.)

SUBMITTAL PRESENTATION by: Dean Uyeno

Item D-2 is part of a larger project by the State Department of Transportation ("DOT") and includes construction of a new bridge span on the mauka side of the highway. In August 2000 the final Environmental Assessment ("EA") for improvements was issued and approved by the Office of Environmental Quality Control ("OEQC"). On January 25, 2013 CWRM received the completed SCAP application. A re-evaluation of the EA for this project was completed in February 2013. CWRM initiated the agency review process on February 27, 2013. CWRM met with various agencies on April 25, 2013 to discuss key project activities and certain aspects of the project scope. These agencies included the DOT Highways Division, Department of Health ("DOH") Clean Water Branch, and the Army Corps. As a result of these conversations, CWRM received modifications to the project on April 29, 2013 (noted in the submittal). Recently staff received notice from R.M. Towill that there would be additional revisions to the use of the rip rap structure to protect the pier. The submittal provides a summary of increments, which describes the modifications. The project time-frame is 18 months. Agency review comments are provided in the submittal.

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve a Stream Channel Alteration Permit (SCAP.3649.2) for construction of a new bridge span and approaches on the mauka side of the highway across the Nāwiliwili Stream gulch, including the installation of a temporary stream diversion, construction of one bridge pier, construction of 60-inch drainage outfall, and construction of bank stabilization, at Kaumuali'i Highway, Līhu'e Mill Bridge to Rice Street, Nāwiliwili Stream, Līhu'e, Kaua'i at TMKs: (4) 3-8-004:007 por., (4) 3-8-005:003 and (4) 3-8-005:009 por., subject to the following conditions:
 - a) The applicant shall obtain a Department of the Army permit from the U.S. Army Corps of Engineers before proceeding with any work in the stream channel.
 - b) The applicant shall obtain a Clean Water Act Section 401, Water Quality Certification from the Department of Health, Clean Water Branch before proceeding with any work in the stream channel.
 - c) Standard conditions in Exhibit 15.

(DISCUSSION)

Commissioner Starr asked if there was any opposition from the community.

Mr. Uyeno replied that the Clean Water Branch noted the need for a water quality certification. There were no objections from Land Division or State Parks. UH Environmental Center pointed out the water quality aspects of the project and potential impacts to the watershed. As a result of the project modifications, the issues are being discussed between the consultant, DOH and the Army Corps.

Commissioner Starr asked about the comments submitted by the UH Environmental Center. He asked about the addition of new impervious surfaces.

A representative from R.M. Towill responded that the project involves improvements to the existing bridge and the addition of two lanes of traffic. The addition of impervious surfaces is associated with the widening. Best management practices ("BMPs") will be implemented to control the increased run-off (i.e. bio swales).

Commissioner Starr asked if the BMPs would be used to treat the existing or additional run-off.

The representative responded "both."

Commissioner Yamamura asked who would be responsible if nearby properties were flooded during a storm.

The representative replied "the contractor and DOT."

Commissioner Balfour asked if the work had already begun.

The representative said "yes."

Commissioner Balfour said the new bridge will be approximately 50 feet wide. He critiqued the word "approximately" and asked why it was used.

The representative said the word “approximately” was used to simplify the narrative. The approximation is in inches, not feet.

Mike Okimoto (DOT) said the new and existing bridges have the same features (sidewalk, shoulder, bike lanes, etc.).

Commissioner Starr asked if anyone was going to monitor the BMPs to ensure that contaminants do not enter the ocean where families swim.

The representative said there is a maintenance program for BMPs, but no on-going monitoring plan. There will be someone on-site to monitor the construction work. Three samples will be collected and sent to the lab each week.

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

3. Application for Stream Channel Alteration Permit (SCAP.3645.3) Mākaha West Golf Course Improvements Mākaha and West Mākaha Streams, Mākaha, O‘ahu (TMKs: (1) 8-4-002:053, 055, and 067)

SUBMITTAL PRESENTATION by: Dean Uyeno

Dean Uyeno (Commission on Water Resource Management) informed the Commissioners that staff received a petition for a contested case hearing prior to the start of the meeting. As a result, there will be no decision-making on Item D-3.

(DISCUSSION)

Commissioner Erdman suggested that the briefing on the submittal be postponed until the new Commissioners started their terms in July 2013.

Commissioner Starr and Fujiwara agreed.

Commissioner Yamamura asked who filed for the contested case.

Mr. Uyeno replied Julianna Kohl.

Commissioner Starr asked if the footprint of the golf course is the same as the old footprint.

A representative from Wilson Okamoto responded that the new golf course design is on the same property. There are some holes outside the existing golf course, but within the bounds of the property.

Commissioner Starr said he would like to know more about the potential for run-off into the stream.

MOTION: No decision-making.

4. Application for Stream Channel Alteration Permit (SCAP.3528.2) Streambank Stabilization, Moloa'a Stream, Moloa'a, Kaua'I (TMK: (4) 4-9-014:021)

SUBMITTAL PRESENTATION by: Dean Uyeno

Dean Uyeno said the original submittal was presented to the Commission and deferred in September 2012. There were concerns that the hardened rip rap would adversely affect neighboring properties. The Commission voted to defer the submittal and give the applicant the opportunity to submit revised project plans. On February 22, 2013 CWRM received an email from the applicant's representative (Jonathan Chun) containing revised plans, along with comments from the U.S. Army Corps of Engineers and neighboring property owners. Additional comments received in August and September 2012 from neighboring property owners had no objections to the proposed plan.

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve a Stream Channel Alteration Permit (SCAP.3528.2) for construction of 70 linear feet of a bioengineered revetment to provide for stream bank stabilization, consisting of an embedded riprap toe to the mean water level and topped with mulch rolls covered with a coconut fiber blanket, on the bank of Moloa'a Stream, TMK (4) 4-9-014:021, subject to the following conditions:
 - a) The applicant shall obtain a Department of the Army permit from the U.S. Army Corps of Engineers before proceeding with any work in the stream channel. Upon issuance of the Department of the Army permit, the applicant shall notify the Commission and submit a set of plans approved by the U.S. Army Corps of Engineers.
 - b) The applicant shall obtain a Clean Water Act Section 401, Water Quality Certification from the Department of Health, Clean Water Branch before proceeding with any work in the stream channel.
 - c) Standard conditions in Exhibit 11.
2. Find and determine that the proposed work is exempt from the requirement to prepare an EA.

(DISCUSSION)

Commissioner Erdman said he was surprised that no one from the public was present to provide testimony.

Commissioner Starr asked about repair and maintenance.

Mr. Uyeno replied that maintenance of the rip rap would be allowed as long as it is within the same approved specs. He commented that the property is within a flood zone.

Deputy Attorney General, Linda Chow commented on staff's recommendation 2). She said it should be amended to say "the proposed work *does not trigger* the requirement to prepare an EA."

Commissioner Yamamura asked what impacts caused by the rip rap would be alleviated by using the bio-engineered material.

Mr. Uyeno said the material is not full-concrete and would allow for more vegetation and habitat for stream animals and plants.

Commissioner Starr asked about the size of the boulders.

Mr. Uyeno said the minimum size is 18 inches.

Commissioner Fujiwara commented that the stream could change farther downstream.

Jonathan Chun testified on behalf of the applicant. Mr. Chun said he contacted neighboring landowners, including those downstream. None of the downstream owners were interested in expanding the project to include their properties. They verbally expressed that they had no objections to the project.

Commissioner Erdman asked if the slope was enough to dissipate the force.

Mr. Uyeno said he could not answer on behalf of the engineer.

Mr. Chun expressed concerns with increasing the slope.

Commissioner Erdman said the larger the slope and the bigger the rocks, the happier the neighboring property owners will be. He encouraged Mr. Chun to talk to the adjacent property owners. He moved to approve the submittal with the changes recommended by the Attorney General's office.

**MOTION: (Erdman / Fuddy)
To approve the submittal as amended.
UNANIMOUSLY APPROVED.**

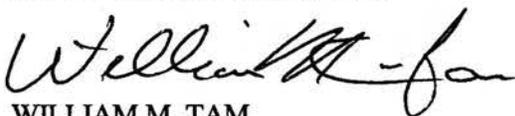
Acting Chairperson, Neal Fujiwara. adjourned the meeting at 10:04 am.

Respectfully submitted,



KATIE ERSBAK
Private Secretary to the Deputy

APPROVED AS SUBMITTED:



WILLIAM M. TAM
Deputy Director