

*Approved by Commission on
Water Resource Management
at the meeting held on*
~~AUG 21 2013~~

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: July 17, 2013
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.
1151 Punchbowl St., Room 132
Honolulu, Hawaii 96813

Chairperson William Aila Jr. called the meeting of the Commission on Water Resource Management to order at 9:02 am.

The following were in attendance:

MEMBERS: Mr. William Aila Jr., Mr. Ted Yamamura, Mr. William Balfour,
Mr. Jonathan Starr, Ms. Loretta Fuddy, Mr. Milton Pavao,
Mr. Kamana Beamer

STAFF: William Tam, Lenore Ohye, Roy Hardy, Dean Uyeno, Ryan Imata,
Neal Fujii, Rebecca Alakai, Charley Ice, Patrick Casey, Paul Eyre,
Robert Chenet, Jonas Burgon

COUNSEL: Linda Chow, Esq.

OTHERS: Lisa Kurisaki (Kimura International), Francis Keloa Martin (HC&S),
Bob Akinaka (Akinaka & Associates Ltd.), Sheldon R. Biga (HC&S),
Warren Watanabe (MCFB), James Hatashima (Sato & Assoc.), Kealohi
Sandefur (Yogi Kwong Engineers, LLC), Wesley B. (HC&S), Jonathan
Scheuer (NPS), Ian Cabatingan (HC&S), Dana Gusman (A&B), Jocelyn
Doane (OHA), Lori Buchanan (resident of Molokai), Camille Kalama
(NHLC), Ashley Obrey (NHLC)

A. APPROVAL OF MINUTES

May 22, 2013

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

B. ANNOUNCEMENTS

Chair Aila thanked former Commissioner Sumner Erdman for his service and presented him with a small gift as a token of CWRM's appreciation.

Mr. Erdman welcomed the new commissioners and thanked the CWRM staff for their hard work.

C. ADMINISTRATION

Deputy Director William Tam reminded the commission that a special prehearing meeting will be held on Friday, August 30 in Wailuku, Maui to discuss the issue of appurtenant rights. This is not a regularly scheduled commission meeting. The hearing's officer will present his preliminary findings in the case of appurtenant rights in the area of Na Wai Eha on Maui.

Commissioner Starr asked if decision making would take place at the August 30 meeting.

Deputy Tam replied "yes." The goal of the meeting is for the Commission to make an initial provisional determination about which individuals have demonstrated sufficient proof that their parcel of land has an appurtenant right. It is a provisional determination – not a final decision.

Commissioner Starr asked if the Commission could request more information before making a determination.

Deputy Tam confirmed that there are mechanisms in place if the Commission feels there is insufficient evidence to make a determination.

Commissioner Starr complimented staff on their rapid response to address the issue of appurtenant rights.

Deputy Tam said that former CWRM planner Robert Chong was instrumental in starting the process and getting the work done.

Commissioner Yamamura suggested trying to secure a venue for August 30 at Maui Community College (MCC).

Deputy Tam said staff would look into MCC as an option.

Commissioner Pavao asked if the special meeting could be held after the regularly scheduled commission meeting to avoid added travel.

Deputy Tam explained that the regularly scheduled meeting on August 21 will be held on Oahu, not Maui.

Commissioner Beamer asked if the meeting on August 30 would look at title reports and/or kuleana awards.

Deputy Tam clarified that it will involve all types of evidence. This will be the first time the issue of appurtenant rights will be decided in administrative proceedings. It will set a precedent for the rest of the state.

Commissioner Starr asked if a presentation and/or workshop about the proceedings would be helpful.

Deputy Tam said a presentation to the Commission will take place at the August 21 commission meeting.

D. GROUND WATER REGULATION

- 1. Authorize the Chairperson to Enter into a Contract with a Consultant to Conduct Aquifer Analyses on Selected Aquifer Areas on the Islands of Hawaii, Maui, and Oahu**

SUBMITTAL PRESENTATION by: Patrick Casey (Geologist)

Patrick Casey (Commission on Water Resource Management) introduced Item D-1 as a request to authorize the Chairperson to enter into a contract with a consultant to conduct aquifer analyses for three specific areas on the Big Island, Maui and Oahu. The analysis will consolidate existing data into aquifer specific summaries. The data will be used to update the 2008 Water Resources Protection Plan. In addition, the analysis will benefit other branches in CWRM and aid in updating the new Water Resource Information Management System (WRIMS). The CWRM website will be updated to provide the public with current aquifer conditions and presentation slides. The Pearl Harbor (Oahu), Kona (Big Island) and Iao (Maui) aquifers are of the greatest concern. Pumping is close to the sustainable yield.

RECOMMENDATION:

Staff recommends that the Commission:

Authorizes the Chairperson to enter into a contract, not to exceed \$35,000, with a consultant to conduct aquifer analyses on a) selected aquifers on the Island of Hawaii, and b) selected aquifers in Ground Water Management Areas on the Islands of Maui and Oahu.

(DISCUSSION)

Commissioner Starr asked if the study on the Iao Aquifer would include North Waihee.

Mr. Casey said "yes." The areas on Maui are Waihee and Iao.

Commissioner Starr said he supports the study and hopes it will lead to more work throughout the state. He asked for a list of data points that would be useful to improve the knowledge base of these aquifer systems. More funding mechanisms are necessary to collect additional data.

Mr. Casey agreed and said CWRM is "playing catch-up."

Commissioner Pavao asked if the consultant names would be sent to the Commission.

Lenore Ohye (Commission on Water Resource Management) replied that the list of consultants will be handled through the professional services procurement method of contracting. Every year a list of qualified applicants is compiled. Typically the list is not shared with the commissioners.

Commissioner Pavao asked if the commissioners could see the top three.

Ms. Ohye replied "sure."

Commissioner Starr asked if the commissioners could be notified after contracts have been awarded.

Roy Hardy (Commission on Water Resource Management) talked at length about the WRIMS system and the contract with Oceanit. The WRIMS is intended to increase reporting among water users and improve monitoring. The contract with Oceanit has taken longer than expected, but reporting is moving forward.

Commissioner Pavao asked if the contract with Oceanit is part of the work proposed in Item D-1. He asked if \$35,000 would be enough money.

Mr. Hardy replied that \$35,000 should be sufficient and explained that the WRIMS will need to be updated with the new data.

Commissioner Beamer asked how the WRIMS works.

Mr. Hardy said it is important to know who is reporting. Pumpage as well as chloride levels are entered into the WRIMS.

Commissioner Beamer asked when the aquifer analyses would be completed.

Mr. Casey said "as soon as possible...within the year."

Commissioner Starr said the WRIMS tool will be very useful and help the Commission understand how much water is being pumped from the aquifers. He said he would like to have a specific completion date for the aquifer analyses and WRIMS system.

Deputy Tam explained that the contract with Oceanit has been delayed, which has frustrated the process. Updates will be coming soon.

Jocelyn Doane, Senior Policy Advocate at the Office of Hawaiian Affairs (OHA) welcomed the new commissioners. She asked if certain consultants who work with developers in the areas of the aquifer analyses would be excluded from the procurement process.

Ms. Ohye replied that the selection committee will rank every consultant on the list. Those rankings are based on a set of criteria outlined in the procurement process.

Commissioners Starr asked if information regarding the consultants could be made available.

Ms. Ohye said she could provide the commissioners with information on CWRM contracts. She said she would talk to the Deputy about querying the consultants about their work with other agencies and/or developers.

Ms. Doane explained that there are controversies in many of these areas and that some of the consultants may represent developers. She asked if the Commission has any intention of excluding consultants who have worked with private water developers.

Chair Aila asked the Deputy AG (Linda Chow) if excluding consultants based on previous work was possible.

Deputy AG Chow replied "not unless there is a conflict of interest." The procurement code is very specific about professional services contracts and is generally blind to those types of factors.

Commissioner Pavao said there should not be a conflict of interest since the consultant would be compiling existing data.

Ms. Doane explained that she is concerned about the interpretation of the data.

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

2. **Norman Rizk, Application For A Water Use Permit, Papohaku-Rizk Well (Well No. 1015-01, TMK 5-1-006:072, WUP No. 937, Future (Agricultural) Use for 0.006 mgd, Kaluakoi Ground Water Management Area, Molokai**

SUBMITTAL PRESENTATION by: Charley Ice (Hydrologist)

Charley Ice (Commission on Water Resource Management) explained that Item D-2 and Item D-3 are very similar. Item D-2 is an application from Mr. Norman Rizk to use 6,000 gallons of water per day for agriculture use along the west end of Molokai. The application for a water use permit was first submitted in October 2011 and re-submitted with amendments more than a year and a half later. The public notice was published on May 30, 2013 and June 6, 2013. Comments were due on June 21, 2013. On July 2, 2013, CWRM received comments from OHA via email. OHA believes the application is incomplete because it did not consult with readily available sources on gathering rights. OHA raised questions about the impact of pumping on the near shore discharge and the potential effect on marine resources and migratory birds. OHA's comments were recirculated to the Department of Health (DOH) and the Division of Aquatic Resources (DAR) at DLNR. Additional information can be found in Attachment A. No objections were submitted, but concerns were raised by several parties. According to the Water Code, CWRM may consider only objections filed by a person with a property interest or a direct impact on customary and traditional rights. Mr. Ice went on to describe the seven criteria used by staff when issuing a recommendation for a Ground Water Use Permit (GWUP). There are no reservations with the Department of Hawaiian Home Lands (DHHL) in the Kaluakoi Ground Water Management Area (GWMA). According to staff, water is available for this project. Comments from

DHHL state that public trust rights are distinct from DHHL reservations and that gathering rights need to be protected. Traditional and customary gathering rights have been established during litigation on Molokai. Comments did not point out specific gathering rights or locations. According to the applicant there is no limu on the beach, no salt is collected, and fishing is done off shore. Therefore, the applicant believes that gathering rights are not being pursued in the area. It is not clear what marine resources will be impacted by pumping or the amount of discharge. However, discharge from pumping is expected to be minimal. A letter from DHHL (Exhibit 5) states that the applicant has not provided sufficient information about the impact of pumping on the other aquifer systems.

RECOMMENDATION:

Staff recommends that the Commission:

Approve the issuance of ground water use permit No. 937 to Norman Rizk for the reasonable and beneficial use of 6,000 gallons per day (0.006 million gallons per day) of brackish ground water for Agricultural use from the anticipated Papohaku-Rizk Well (Well No. 1015-001), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Prior to commencement of well construction, the applicant shall present documentation to the Commission of consultation with the Department of Health regarding any necessary compliance with administrative rules concerning injection of desalting by-products or aquaculture discharge.
2. Prior to commencement of well construction, the applicant shall present documentation to the Commission of consultation with the Department of Agriculture's Aquaculture Program regarding any necessary compliance with administrative rules and proper preparation of an aquaculture plan to protect the near shore environment from negative impacts.
3. 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 asked if a WUP for 6,000 gallons per day (gpd) actually meant 6,000 gpd of brackish water and 6,000 gpd of brine.

Mr. Ice said he was not sure.

Commissioner Starr asked if there was anyone from DHHL present to answer questions. He said he would appreciate it if DHHL was more proactive in defining their water reservations. Commissioner Starr voiced his concerns about using well water to increase property value.

Commissioner Balfour asked if it was basal or caprock water.

Mr. Hardy said it is difficult to determine because the well has not been drilled.

Commissioner Balfour commented that the request for 6,000 gpd is relatively small.

Commissioner Beamer said the burden of proof regarding traditional and customary gathering rights lies with the applicant. He does not believe the applicant provided sufficient proof and asked for more information.

Mr. Ice said there is not much information.

Commissioner Beamer critiqued the use of water for citrus and fruit trees that are not native to the area.

Commissioner Pavao commented that there are many unknowns and asked why the application was being put before the Commission with questions unanswered.

Mr. Ice replied that the impact on discharge is negligible. Therefore, it is believed that it would not have a significant impact on customary and traditional gathering rights.

Mr. Hardy stated that CWRM processes "complete" applications.

Commissioner Pavao said he does not feel there is enough information to make a decision. He asked how far apart wells need to be spaced in brackish areas.

Mr. Hardy said there is no rule on spacing.

Mr. Ice said a typical injection well goes all the way down to salt water and is sealed.

Commissioner Starr asked what would happen to the brine and how it would be used. He expressed concern about the impact of the discharge on the near shore environment. He suspects that more applications will come in for similar uses to add value to the property. It is important to know the cumulative impact if more wells are drilled in the area.

Chair Aila asked if the Commission could request more information.

Deputy AG Chow said the application could be denied. A deferral would be a lack of action.

Jocelyn Doane testified on behalf of OHA and recommends that the Commission deny the application. The application states that there is no existing or pre-existing gathering rights near the property, but does not provide information about how the applicant reached this conclusion. The property is located near sand dunes and other Hawaiian access points to the shore line. There is no discussion about the resources available near the shoreline or whether practitioners access the shoreline. OHA's letter clearly states that gathering and fishing activities do take place in the area. The applicant has a burden that they have no fulfilled. Ms. Doane agrees with Commissioner Starr's comment that more applications will be forthcoming.

Mr. Ice asked about a property owner's right to use their property.

Deputy AG Chow replied that regardless of a property owner's right, if the Commission were to deny the application, the applicant may request a hearing.

Commissioner Starr commented that municipal water is available.

Lori Buchanan, a resident of Molokai, asked the Commission to deny the application. She thanked CWRM staff for the analysis and said she was not able to access information from the website. Ms. Buchanan said a Water Use and Development Plan (WUDP) has not been completed for Molokai. If the well is within a Special Management Area (SMA), then the applicant would need to get a SMA permit from the County of Maui. She expressed concerns about setting precedent for future applications and said she agrees with Commission Starr. Future water use permits on Molokai require greater scrutiny. In the past, permits have been issued without adequate review. Secondary impacts can result when salt water ponds attract invasive birds that interbreed with the native duck. Ms. Buchanan pointed out that water alternatives are available and should be considered prior to the issuance of a water use permit. She reiterated the need for community outreach on Molokai. Ms. Buchanan asked if the application would be approved by default if no action is taken after 90 days.

Deputy AG Chow replied "there is no consequence."

Commissioner Starr asked about Molokai's WUDP.

Ms. Ohye said the County of Maui and the Maui Department of Water Supply will work on the Molokai WUDP after the completion of the Maui WUDP.

Commissioner Starr asked if something could be done to expedite the process with the Maui Department of Water Supply. Commissioner Starr moved to deny the application due to the lack of information. More evidence is needed to prove that pumping does not pose an impact to the surrounding area.

Commissioner Balfour asked if a motion to deny both Items D-2 and D-3 could be made at this time.

Deputy AG Chow suggested that a decision be put on hold until Item D-3 was presented.

Commissioner Yamamura said he felt comfortable supporting staff's recommendation.

Commissioner Pavao disagreed and said more information is needed before a decision can be made.

Commissioner Yamamura said CWRM staff could have made a recommendation to deny. In this case, staff is recommending the approval of the application.

Commissioner Beamer commented on the lack of evidence surrounding traditional and customary gathering rights and said he agreed that the application should be denied at this time.

Commissioner Starr made clear that the commissioners are the decision makers and are not here to rubber stamp recommendations.

Commissioner Fuddy commented on the special conditions raised by staff and recommended that a special condition about gathering rights be added.

Chair Aila restated the motion to deny staff's recommendation.

Deputy Tam clarified that the motion is to deny the application without prejudice.

MOTION: (Starr / Pavao)

To deny the application without prejudice.

Aila, Starr, Pavao, Beamer, Fuddy, Balfour – aye; Yamamura – opposed)

The motion carries. The application is denied without prejudice.

- 3. Richard Foster, Application For A Water Use Permit, Papohaku-Foster Well (Well No. 0916-02), TMK 5-1-007:048, WUP No. 977, Future (Agricultural) Use for 0.008 mgd, Kaluakoi Ground Water Management Area, Molokai**

SUBMITTAL PRESENTATION by: Charley Ice

Item D-3 is similar to Item D-2. Mr. Ice explained that the applicant intends to irrigate citrus trees and use the water for aquaculture. CWRM is requesting an aquaculture plan before the applicant can begin to drill a well.

RECOMMENDATION:

Staff recommends that the Commission:

Approve and issue water use permit No. 977 to Richard Foster for the reasonable and beneficial use of 0.008 million gallons per day of brackish ground water for Agricultural from the Papohaku-Foster Well (Well No. 0916-002), subject to the standard water use permit conditions listed in Attachment B and the following special conditions:

1. Prior to commencement of well construction, the applicant shall present documentation to the Commission of consultation with the Department of Health regarding any necessary compliance with administrative rules concerning injection of desalting by-products or aquaculture discharge.
2. Prior to commencement of well construction, the applicant shall present documentation to the Commission of consultation with the Department of Agriculture's Aquaculture Program regarding any necessary compliance with administrative rules and proper preparation of an aquaculture plan to protect the near shore environment from negative impacts.
3. 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 Pavao commented that the applications for Item D-2 and D-3 are very similar. He asked about the differences.

Mr. Ice noted the aquaculture issue and said the DOH would need to be consulted about an aquaculture plan.

Commissioner Pavao asked if the application was basically the same as Item D-2 with minor exceptions.

Mr. Ice replied "right."

Commissioner Yamamura asked if staff was comfortable making a recommendation to approve the application, even though questions remained unanswered. He commented that the special conditions would act as safeguards.

Mr. Ice said the gathering rights issues are of some interest. However, it is unclear whether or not CWRM has jurisdiction beyond protecting the water resource. He said certain concerns about the pond creating new habitat should be explored. CWRM circulates the application to other agencies for comments and did not receive any comments specifically addressing those concerns. However, additional conditions could be needed.

Jocelyn Doane (OHA) stood on her testimony from the previous agenda item.

A member of the public expressed concerns about the absence of the applicant.

Lori Buchanan stood on her testimony from the previous agenda item and voiced her concerns about the proposal for aquaculture.

Commissioner Pavao made a motion to deny the application without prejudice based on a lack of information.

**MOTION: (Pavao / Starr)
To deny the application without prejudice.
Aila, Starr, Pavao, Beamer, Fuddy, Balfour – aye; Yamamura – opposed)**

The motion carries. The application is denied without prejudice.

E. STREAM PROTECTION AND MANAGEMENT

- 1. Delegation of Authority to the Chairperson to Appoint a Hearing Officer for the Contested Case Hearing in the matter of *the Petitions to Amend the Interim Instream Flow Standards for Waikamoi, Puohokamo, Haipuaena, Punalau/Kolea, Honomanu, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Kapaula and Hanawi Streams, Maui, Hawaii* (on remand CCH-MA13-01)**

SUBMITTAL PRESENTATION by: Dean Uyeno

Dean Uyeno (Commission on Water Resource Management) introduced Item E-1 as a procedural matter for delegation of authority to the Chairperson to appoint a hearing officer for the Contested Case Hearing in the matter of the petitions to amend the interim instream flow standards (IIFS) for various streams in East Maui. In 2001, the Native Hawaiian Legal Corporation (NHLC) filed petitions to amend the interim instream flow standards for 27 streams in East Maui. In the first phase, CWRM surveyed eight streams in 5 hydrologic units. In the second phase, 19 streams were addressed in 16 hydrologic units. CWRM asked NHLC to specify which streams they wanted to appeal based on the decision. Those streams are specified in the submittal and fall within 12 surface water hydrologic units. In June 2010, Na Moku Aupuni O Koolau Hui (Na Moku), represented by NHLC, filed a petition for a contested case hearing. In October 18, 2010, CWRM met to consider the petition. Per the Commission, the petition for hearing was denied. It was appealed by NHLC and Na Moku on November 17, 2010. A year later, the Intermediate Court of Appeals (ICA) vacated the Commission's October 18, 2010 decision (not the May 25, 2010 decision). The ICA ordered that the Commission conduct a contested case hearing for the 13 streams identified in the petition (pursuant to Haw. Rev. Stat. Chapter 91).

RECOMMENDATION:

Staff recommends that the Commission:

Delegate to the Chairperson the authority to appoint a qualified Hearing's Officer to conduct a Contested Case Hearing on Petitions to Amend Interim Instream Flow Standards for Waikamoi, Puohokamo, Haipuaena, Punalau/Kolea, Honomanu, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Kapaula and Hanawi Streams, pursuant to and consistent with the decisions of the Hawaii Supreme Court and the Intermediate Court of Appeals.

(DISCUSSION)

Commissioner Pavao asked if the Commission could see the list of consultants and requested that they not have a conflict of interest.

Mr. Uyeno stated that CWRM would follow the protocol for procurement.

Commissioner Starr asked how delegation works under procurement and inquired about the state procurement law.

Mr. Uyeno said CWRM would choose from a list of pre-qualified consultants compiled by the DLNR Engineering Division. A committee made up of CWRM staff and a member of the Engineering Division will review the list of pre-qualified applicants based on certain criteria (i.e.: performance history, timeliness of completion of projects, etc.) before determining the top three applicants. The list is then forwarded to the Chair for selection.

Commissioner Starr said the selection process scares him. He commented that an engineer may not be the most qualified person to assess culture and water law in Hawaii.

Mr. Uyeno said the committee will look for applicants with a background in water. It is the hearing officer's job to be well versed on the issue.

Deputy AG Chow commented that the parties are responsible for educating the hearing officer on the history, culture and specifics of the case.

Commissioner Starr said Deputy Tam and Chair Aila are much more qualified to create the criteria for selection. This is an issue that has never been addressed. He asked if the hearing officer would be paid.

Mr. Uyeno said payment would be through a contract for professional services. An amount and timeline are established.

Deputy AG Chow added that payment is on an hourly basis.

Commissioner Pavao asked if contracts are made in the name of the Commission or the Department.

Mr. Uyeno replied contracts are made in the name of the Chairperson of the Department.

Commission Pavao asked if extensions and additional requests for payment would need to come through the Commission.

Mr. Uyeno responded that the Chairperson has the delegation of authority.

Chair Aila reiterated that the recommendation of staff is to delegate authority to the Chairperson to appoint a qualified hearing officer.

Commissioner Yamamura commented on the dubious record of the Commission and asked if the Commission could be more active in the vetting and selection process. The procurement code does not work well for the selection of a hearing officer due to the complexity of the case.

Commissioner Beamer asked what types of groups would take up this type of contract.

Mr. Uyeno replied an individual, typically a lawyer or judge.

Rebecca Alakai (Commission on Water Resource Management) commented that the selection committee is required to take training classes.

Commissioner Starr asked for a monthly update on the status of contracts and the selection of consultants.

Commissioner Balfour agreed that the Commission needs to be aware of the process and informed on a timely basis. He asked if the commissioners could be kept apprised of the process and decisions.

Commissioner Beamer asked why the Commission served as a hearing officer in the Waiahole Contested Case.

Deputy Tam explained that a series of practices had to be established to interpret the Water Code. 27 parties were involved in Waiahole and it took a tremendous amount of time. Since then, a framework has been established. The Commission will hear the evidence and the hearing officer's recommendation and can proceed accordingly.

Commissioner Balfour asked if the Commission could provide input on the names presented to the Chairperson.

Chair Aila asked if the three names could be released.

Commissioner Fuddy said the names can be released after the selection is made.

Commissioner Beamer asked if the final decision in a contested case is made by the Commission.

Deputy Tam said "yes." The hearing officer will present a recommendation to the Commission. The Commission will make the final decision.

Jocelyn Doane testified on behalf of OHA in support of staff's recommendation.

Sheldon Biga, an employee of Hawaiian Commercial & Sugar Company (HC&S), said a decision on water in East Maui will affect HC&S employees and other local residents on Maui. Mr. Biga requested a fair decision by the Commission and expressed the importance of sharing water among users. He thanked the Commission for their time and service.

Wesley B. (HC&S) asked the Commission to look at the facts.

Chair Aila explained that the ICA disagreed with the former decision made by the Commission, which is why the issue is being revisited.

Camille Kalama (Na Moku, NHLC) testified in support of staff's recommendation. Timing is a critical issue and a decision about a hearing officer should be made quickly. She thanked the Commission for their thoughtful consideration and willingness to serve.

Francis Keloa Martin (HC&S) said he is a third generation HC&S employee. He thanked the former commissioners for their service and welcomed the new commissioners. He spoke about the need for water on Maui. Farmers need water to stay in business. He requested that the Commission look into alternate candidates to serve as the hearing officer. The hearing officer must understand Maui and the importance of water.

Warren Watanabe, Executive Director of the Maui County Farm Bureau (MCFB), advocated on behalf of the farmers on Maui. Maui is experiencing a drought and the amount of water from the streams in East Maui is decreasing. Farmers and ranchers have been forced to deal with higher water prices. He asked the Commission to thoroughly review the conduct of the East Maui hearings. Agriculture is critical to the State of Hawaii and there is an urgent need to balance consumption among water users. He asked the Commission to take an active role in the proceedings.

Chair Aila asked Mr. Watanabe if he had an alternative suggestion for a hearing officer.

Mr. Watanabe reiterated his request to involve the Commission. He did not have an alternative suggestion.

Commissioner Yamamura asked about the application period to be considered for the list.

Ms. Ohye said the original application deadline of June 4, 2013 was extended, but it is now closed.

Commissioner Yamamura asked if the list could be shared with the commissioners.

Deputy Tam said he would need to consult with the State Procurement Office. The selection process for candidates is not a public decision.

Commissioner Balfour restated his desire to stay informed.

Chair Aila asked Deputy Tam if the list could be made available after it is complete.

Ms. Ohye said she would check with the Procurement Office.

Deputy Tam informed the commissioners that they could ask for another list if they are not satisfied with the selection.

Commissioner Starr clarified that the Commission is the final decision maker. The Commission has the authority to disagree with the hearing officer's recommendation. There are examples of the Court overturning rulings made by the Commission.

Deputy Tam explained the role of the hearing officer.

Commissioner Starr said he supports the recommendation by staff.

Commissioner Pavao asked if the hearing officer is responsible for making a recommendation to the Commission.

Deputy Tam replied "yes."

Commissioner Pavao inquired about next steps if the Commission disagrees with the hearing officer's recommendation.

Deputy Tam said the Commission can disagree with the recommendation.

Deputy AG Chow said the Commission can come out with its own decision and make changes to the recommendation.

Commissioner Beamer described the hearing officer as a "fact finder." He asked if the hearing officer was required to make a recommendation.

Deputy Tam replied "yes" the hearing officer is mandated to analyze the law and make a recommendation based on the evidence presented.

Commissioner Yamamura expressed his frustration with the selection process and asked why the list could not be shared.

Deputy Tam explained that the authority to appoint is written into the statute and is delegated to the Chairperson.

Deputy AG Chow was unsure if the statue should be interpreted that way.

Commissioner Fuddy explained that directors of agencies are expected to appoint hearing officers as part of their scope of work. She said the names can be shared after a decision is made.

Commissioner Pavao asked if the Commission has the funds to enter into their own contracts.

Deputy Tam said technically the funds are appropriated by the Legislature.

Commissioner Starr made a motion to approve the submittal and asked to amend the recommendation to include a requirement for timely updates from staff.

MOTION: (Starr / Fuddy)

To approve the amended submittal.

Aila, Starr, Pavao, Beamer, Fuddy, Balfour – aye; Yamamura – opposed)

The motion carries.

2. Application for Stream Channel Alteration Permit (SCAP.3818.8), Riverside Apartments Improvements Stream Bank Bluff Protection and Stabilization, Wailuku River, Hilo, Hawaii (TMK: (3) 2-6-003:009)

SUBMITTAL PRESENTATION by: Rebecca Alakai

Item E-2 is a SCAP for a stream bank stabilization project along the Wailuku River in Hilo. Ms. Alakai introduced the consultant, Ms. Leslie Kurisaki of Kimura International and said engineers were present in the audience to answer any technical questions.

Ms. Kurisaki pointed to the location map and said the apartment building is a 74-unit affordable rental housing complex, located on a 1.8 acre property overlooking the Wailuku River. The property is situated on three terraced levels. The improvements

will take place on the second level (as shown on the map), behind the apartment building on a bluff overlooking the river and along the stream bank. The improvements are needed to prevent a failure of the stream embankment which could threaten the stability of the building and endanger tenants. The edge of the apartment building is very close to the edge of the stream (Exhibit 3). In 2008 there was a landslide in the third level terrace and an emergency SCAP was issued to undertake emergency repairs. Those improvements were completed in 2011. This project would involve similar repairs to avoid slope failure. A geo technical study identified that the second terrace level is "at risk" for slope failure from heavy rains. The improvements will occur in two areas – next to the building and along the stream bank (Exhibit 4). Soil nails and rock anchors will be installed at an angle on the steep slope of the river bank. No work will occur within the stream. All work will be at the top of the bank. The stream channel will not be altered. No Army Corps permit is required and best management practices will be utilized.

RECOMMENDATION:

Staff recommends that the Commission:

Approve a Stream Channel Alteration Permit (SCAP.3818.8) to install soil nails and rock anchors to reinforce the steep embankment slope, and install an 8 to 10 inch thick layer of reinforced shotcrete (gunite) over the slope to protect and stabilize the slope face. At the top of the slope, pave the level area between the upper limits of the shotcrete and the building. Install micropiles to underpin the building nearest the stream bank. Install an 8-foot tall chain link fence along the top of the bank to limit access down the improved slope on TMK (3) 2-6-003:009, subject to the standard conditions in Exhibit 8.

(DISCUSSION)

Commissioner Pavao asked about the diameter of the slope and if it is concrete incased.

Kealohi Sandefur (Yogi Kwong Engineers, LLC) replied that the soil nails and rock anchors measure 3.5 to 4 inches in diameter. A one inch steel rod will be installed to reinforce the slope.

Commissioner Pavao asked how far apart the anchors will be placed.

Mr. Sandefur said "4 feet apart."

Commissioner Pavao asked if they were at a 30 degree angle.

Mr. Sandefur replied "yes."

Commissioner Beamer asked what would be done to mitigate run-off from heavy rains.

Mr. Sandefur said the contractor will implement silt fences and barriers at the base of the slope and along the perimeter of the work area (Exhibit 4).

Commissioner Starr noted the use of chain link fencing. He asked if community members who fish off the bridge will still be able to access the area.

Mr. Sandefur said community members will still be able to fish. The work is limited to the boundaries of property. Fencing along the bank is an added measure to prevent people from falling off.

A member of the public asked if CWRM staff and the consultant could speak up and identify who they are.

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

Chairperson William Aila Jr. adjourned the meeting at 12:25 pm.

Respectfully submitted,



KATIE ERSBAK
Private Secretary to the Deputy

APPROVED AS SUBMITTED:



WILLIAM M. TAM
Deputy Director