

Approved by Commission on  
Water Resource Management  
at the meeting held on  
8-20-14

MINUTES  
FOR THE MEETING OF THE  
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: June 18, 2014  
TIME: 9:30 am  
PLACE: DLNR Board Room  
Kalanimoku Bldg.  
1151 Punchbowl St., Room 132  
Honolulu, Hawaii 96813

Chairperson William Aila called the meeting of the Commission on Water Resource Management to order at 9:36 am.

The following were in attendance:

**MEMBERS:** Mr. William J. Aila Jr., Mr. William Balfour, Mr. Milton Pavao,  
Mr. Jonathan Starr, Mr. Ted Yamamura

**ABSENT:** Mr. Kamana Beamer, Ms. Linda Rosen

**STAFF:** William Tam, Roy Hardy, Dean Uyeno, Paul Eyre, Jonas Burgon,  
Rebecca Alakai, Neal Fujii, Malie Beach-Smith, Lenore Ohye, Ryan  
Imata, Patrick Casey, Charley Ice, Jeremy Kimura, Robert Chenet

**COUNSEL:** Julie China, Esq.

**OTHERS:** Nancy Matsumoto, Jonathan Scheuer, Wayne Tanaka, Myra Kaichi,  
Daniel Jacob, Bo Kahui, Michael Tauchen, Steve Anthony, Ernie Lau,  
Barry Usagawa, Gary Gill, Michael Buck

**A. APPROVAL OF MINUTES**

May 21, 2014

**MOTION: (Starr / Pavao)**  
**To approve the minutes.**  
**UNANIMOUSLY APPROVED.**

**B. ANNOUNCEMENTS**

**1. Farewell Commissioner William Balfour**

Chair Aila presented Commissioner Balfour with a farewell gift and thanked him for his years of service.

Commissioner Balfour shared his parting thoughts with the commissioners and staff. We are one of millions of living entities on Earth. Millions have come and gone. Every year we lose some species or organism, but new ones are also discovered. Of

all the living entities in the world, humans are the most important. Two elements are absolute to our survival – water and air. Without air we last a few minutes. Without water we last a few days. There is more than enough air as long as we stop polluting it. However, there is a decreasing supply of water and an increasing demand for it. There are too many places in the world where people are dying every day due to a lack of water and proper sanitation. Here in Hawaii we have our own water and do not share our water with any other population. Unfortunately, we are also dealing with a declining supply and increasing demand. We need potable water daily to survive. The Water Commission needs to make more rationale, intelligent and logical decisions. The Commission must lead with the head and not with the heart. Laws, rules and regulations have been created by others who do not understand our mandates. The watersheds need our immediate and continued attention. Hawaii's watersheds are being threatened by invasive plants and animals, which represent the greatest threat to Hawaii's potable water supply. Other arms of government and the private sector must help the Water Commission achieve its goals. Commissioner Balfour shared his admiration for the staff and the other commissioners.

Commissioner Starr thanked Commissioner Balfour for sharing his knowledge and wisdom. He agreed with his statements and wished him the best in his future endeavors.

Commissioner Pavao also thanked Commissioner Balfour and bid him good luck.

Commissioner Yamamura expressed his appreciation for Commissioner Balfour's mana'o and friendship.

Chair Aila echoed similar sentiments.

Deputy Tam commented on Commissioner Balfour's love of the land and his deep connection to the 'aina.

Commissioner Balfour said he hoped to continue to work with staff in the future.

## **2. Hawaii Conservation Conference (HCC) July 15-17, 2014**

Deputy Director, William Tam notified the commissioners that they could submit a travel request to attend the upcoming HCC July 15-17, 2014.

## **3. Revisit new travel policy for commissioners**

Deputy Tam briefly reiterated the revised travel policy.

Commissioner Yamamura asked if the commissioners could be notified in cases where funding is not available to attend a specific conference.

Deputy Tam replied "yes." The budget will eventually include travel for commissioners.

Commissioner Starr noted the practicality of water conferences and encouraged his fellow commissioners to attend.

Deputy Tam commented on water issues in California and the nexus between water and energy.

## C. UPDATES

### 1. Status of Proceedings: Na Wai Eha (Appurtenant Rights); East Maui Instream Flow Standards (after remand); Petition to Designate Kona as a Ground Water Management Area, West Kauai surface water investigation

Deputy Tam gave an update on the following proceedings.

#### 1a. Na Wai Eha (Appurtenant Rights)

A preliminary round of talks between the parties and the landowners took place last week to discuss plans for stream restoration. Suggestions were made for engineering fixes to the system. The design issues should be sorted out by mid-July. The issue of appurtenant rights will be taken up later in the summer. The appurtenant rights briefing and hearing will be held on Maui. The instream flow, appurtenant rights and water use permits will eventually be folded into a single process.

#### 1b. East Maui Instream Flow Standards (after remand)

The hearings officer, Larry Miike is holding meetings and working out the process issues. A hearing on the merits of the instream flows is currently scheduled for November. Some of the parties are also involved in the Na Wai Eha case.

#### 1c. Petition to Designate Kona as a Ground Water Management Area

Staff has been talking with the U.S. Geological Survey ("USGS") about their pending studies. USGS has agreed to share the results of their non-published findings with the Commission and the public sometime in the fall. A meeting and site visit in Kona is being planned for September.

Bo Kahui, Chairman of the Hawaiian Affairs Committee and Executive Director of La'i'opua, testified on the National Park Service ("NPS") petition to designate the Keauhou Aquifer. He said community stakeholders are in opposition to the petition. The Villages of La'i'opua ("VOLMA") Board have adopted a resolution to oppose the NPS petition to designate. Copies of his testimony were handed out to the commissioners.

#### 1d. West Kauai surface water investigation

A consultant has been selected and the contract has been approved. Steve Spengler of Element Environmental will be conducting site visits to assess the condition of the system. The investigation is expected to take a little more than a year. Most of the land involved in the assessment is public land and is not privately owned. Preliminary reports and a site visit for commissioners will be arranged for the fall.

Commissioner Starr reiterated his desire to participate in the site visits.

**D. PRESENTATIONS AND BRIEFINGS****1. "Update on the Source Water Concerns in the Moanalua and Waimalu Aquifer Systems Area" by Honolulu Board of Water Supply**

Ernie Lau, Manager and Chief Engineer for the Honolulu Board of Water Supply ("BWS"), thanked Commissioner Balfour for his service on the Water Commission. Mr. Lau discussed the source water concerns in the Moanalua and Waimalu Aquifer and restated the state's obligation to protect, control and regulate the use of Hawaii's water resources for the benefit of the public. The Water Commission, as established by law, must define reasonable and beneficial uses and protect groundwater and surface water resources. The State Water Code shall be deliberately interpreted to protect and improve the quality of the waters of the State and to provide that no substances be discharged without first receiving the necessary treatment or other corrective action. In addition to quantity, the Water Commission must also ensure the *quality* of our water resources.

In January 2014 the Navy reported the leakage of jet fuel from the Red Hill underground storage facility. BWS owns and operates five wells near the vicinity. The BWS wells provide 25% of source capacity for Honolulu. The Navy operates its own drinking water facility downhill from the storage fuel tanks. The 20 fuel tanks were constructed in the 1940s and sit over the Moanalua and Waimalu Aquifers. Each tank can hold approximately 12.5 million gallons of fuel. In comparison, the Exxon Valdez spill in Alaska produced 11 million of gallons of fuel. The underground tanks are only 100 feet above the water table and basal aquifer.

Commissioner Pavao asked Mr. Lau to point out the BWS wells on the map.

Mr. Lau responded that the nearest well (Halawa Shaft) is located 3,000 feet away. The average well head is between 18-20 feet. The BWS is concerned about the impact of the fuel tanks on their wells located to the north-west and south.

Commissioner Starr asked about the location of the Navy wells.

Mr. Lau pointed out the Navy well facility located downhill of the fuel storage tanks, which is also directly connected by an underground tunnel.

Chair Aila asked if the pipelines were inspected.

Mr. Lau said the pipelines are considered vulnerable. They are made of welded steel.

Commissioner Pavao noted that the pumping pressure must be high.

Mr. Lau said approximately 100 pounds per square inch ("psi"). The Navy's fuel and drinking water pipelines are located in the same underground tunnel.

Deputy Tam asked about monitoring wells.

Mr. Lau said there are five monitoring wells in the surrounding area.

Commissioner Starr asked about the gradient of the groundwater flow in relation to the monitoring wells.

Mr. Lau explained there is a north-west gradient in the direction of the BWS Halawa Shaft. BWS and the Department of Health ("DOH") have been working to address the concerns regarding large scale contamination of the groundwater resources. The Navy's underground storage facility is exempt from many federal regulations. Different studies and reports detail the increasing concern about leaks due to the age of the facility. Approximately 1.2 million gallons of fuel have leaked from the facility since 1947 – perhaps more. The BWS has discovered traces of gasoline in one of the Water Commission's deep monitoring wells located nearby. There are no monitoring wells between the Red Hill facility and the Halawa Shaft. BWS is talking to the Navy about putting in new monitor wells. In May 2014, significant amounts of diesel were detected in a monitor well below Tripler Hospital. BWS has started to conduct more frequent testing of their wells. So far BWS has not detected any significant levels, but it is difficult to detect the range of the plume. In early June 2014, the Navy found three small pinholes in tank #5. The final report is still pending completion. Tank #5 had been out of service for five years and was recently repaired. Once it was put back in service the Navy started to notice that the fuel levels were dropping.

Commissioner Starr asked if tank #5 had been vacuumed tested before it was put back into service.

Mr. Lau said he did not know. He reiterated the need for more monitoring wells to detect the potential migration of the contamination plume. BWS is working with USGS to study contaminant flow and groundwater transport. More information is needed in order to adequately protect the resources.

Commissioner Pavao asked if BWS had plans to retrofit or relocate any of its wells.

Mr. Lau said pumpage could be shifted, but relocation is unlikely. A treatment system could be built to help remove the hydrocarbons. Ultimately, prevention is cheaper than treatment. Once contaminated, the basal aquifer is in jeopardy.

Commission Pavao asked what could be done to prevent the fuel leaks and contamination of the groundwater.

Mr. Lau responded that the BWS has no authority, but is working with DOH to implement a solution. The Navy is exempt from many environmental regulations and large amounts of money would need to be expended to retrofit their facility.

Commissioner Pavao noted that monitoring wells will give BWS information about the plume but will not help prevent contamination.

Mr. Lau said there are many unknowns.

Commissioner Starr reflected on the seriousness of the situation. The Water Commission has a responsibility to address the contamination concerns. He requested a presentation from the Navy at a future meeting and a workshop on water quality.

Mr. Lau reiterated the role of the Water Commission in addressing water quality concerns. He reflected on the importance of Oahu's groundwater resources to support its growing population.

Commissioner Balfour said the Navy has not been forthright in reporting the leaks.

Mr. Lau said BWS will make sure the water meets the DOH and Environmental Protection Agency ("EPA") drinking water requirements. Decades ago, the waste product from the cleaning of the tanks (approximately 5 million gallons) used to be dumped in an unlined hole in the ground. From 1970 – 1980 the Navy built a lined facility. In the late 1990s the facility was closed. Today, the waste product is transported and treated.

Commissioner Yamamura asked if the Hawaii congressional delegation had been briefed on the Red Hill situation.

Mr. Lau replied "yes." Senator Schatz has been talking to the Navy.

Commissioner Starr restated the need for upgrades to the facility.

Gary Gill, Deputy Director of Environmental Health said the solid and hazardous waste and safe drinking water programs at DOH are actively talking to the Navy. There are multiple layers of command entities that own and operate the Red Hill facility. One entity owns the fuel and another owns the tanks. Working directly with EPA, DOH has provided two draft documents 1) a statement of work and 2) an administrative order on consent. The documents are currently in negotiation and being reviewed by the Navy. There are 15 critical issues that need to be resolved. The Navy has funding for new monitoring wells to help identify the contamination plume. They have found more than a dozen holes in tank #5. DOH has requested that the Navy follow-up on their response to the spill including clean-up, determining levels of contamination and where the contamination is going, and the drilling of new monitoring wells. In addition, they need to address upgrades and the long-term maintenance plans for the current facility.

Chair Aila asked about the role of the Water Commission.

Deputy Gill said Oahu's water supply will be in jeopardy if the BWS wells are contaminated by the leak. The Water Commission should remain engaged and could participate in a task force to direct the course of the work.

Commissioner Pavao agreed that the Navy should disclose if they have plans to decommission the facility at Red Hill.

[Commissioner Balfour left the meeting at 11:00am]

## **2. CWRM application fees**

In September 2012 the Commission authorized a change to increase the amount charged for application fees. The original rule, established in 1988, set a flat fee of \$25.00 per application. The Water Commission staff will conduct public hearings on the new rules. No fees will be established, but rather the adoption of a fee schedule.

Deputy Tam shared estimates on the “cost” of processing a typical application. It is estimated to cost \$2,250 to process an application for a basic pump installation permit. A routine water use permit is estimated at \$2,800. There are similar costs associated with the surface water use permits. Staff will make recommendations about the specific amounts. The Commission will have the authority to waive fees due to hardship. The fee schedule will not account for contested cases or applications that may be particularly complex. The fees are internal administrative costs and not related to the water. A single notice in the newspaper can cost the Commission upwards of \$36,000. The cost to the government of publishing public notice is exorbitant and one justification for reassessing application fees.

Deputy Attorney General (“AG”) Julie China asked if the draft rule would be released prior to public hearing.

Deputy Tam said the submittal, which included the rule was already approved in September 2012. The new language will be inserted. Staff will put the new language into Ramseyer format before going to public hearing.

Commissioner Starr asked if a vote was required.

Deputy Tam said “no.” The purpose of the conversation is to update the commissioners about the process moving forward.

Commissioner Starr asked to be kept abreast of the public hearings schedule.

## **E. STREAM PROTECTION AND MANAGEMENT**

### **1. Stream Channel Alteration Permit (SCAP.3854.3/2864.3) Modification, Honolulu Authority for Rapid Transportation, Waiawa Stream and Tributary, Honolulu, O‘ahu, TMKs: various**

Rebecca Alakai (Planner, Commission on Water Resource Management) introduced Michael Tauchen from the Honolulu Authority for Rapid Transportation (“HART”). In 2011, the Water Commission approved a Stream Channel Alteration Permit (“SCAP”) to construct rail bridges across four streams. HART seeks to modify the SCAP with regards to Waiawa Stream and its tributary. The main changes include the filling and diversion of the tributary and the addition of a 36 inch pipe and storm drain. Portions of the stream will be lined with vegetation and gravel to prevent erosion and protect permanent transit system structures. The location is mapped in Exhibit 1. The tributary is approximately 120 feet long. The headwaters are surface water runoff from the highway and other streams in the area. A spring contributes some flow and there is a berm in the tributary. The Waiawa Stream supports some gobies. No permanent structures will be placed in the stream to impede migration. Native plants will be used to stabilize soil and any invasive tree species will be removed. The clearing and grading associated with the project will maintain the floodway and hydrology and be done in phases. The tributary will be temporarily diverted through a storm drain. Exhibit 3 describes the excavation to be done near the stream. The piping in the tributary will be buried below the final grade. Stream bank hardening will also be installed and should affect any wells or diversion downstream of the area. The Department of Planning and Permitting (“DPP”) has no

comments. The Department of Hawaiian Home Lands ("DHHL") is concerned about drainage and erosion, but staff does not believe the project will have a significant impact. Other agencies had no objections to the project.

**RECOMMENDATION:**

Staff recommends that the Commission:

1. APPROVE the Stream Channel Alteration Permit (SCAP.3854.3) modification application to the City and County of Honolulu, Honolulu Authority for Rapid Transportation to:
  - (a) Fill in the Waiawa Tributary and divert into a 36-inch pipe and permanent storm drain and drain it into the Waiawa Stream; and
  - (b) Line portions of the Waiawa Stream with vegetated reinforced soil slope, rock keys, and gravel cobble to prevent erosion and scour and protect permanent transit system structures adjacent to and within the Waiawa Stream and Tributary, Honolulu, O'ahu, located on various TMK's subject to the standard conditions in Exhibit 8.
2. Properly seal Well Nos. 3-2459-016, 017, 025 in accordance with HAR §13-168.

**(DISCUSSION)**

Commissioner Starr asked about photos of the stream and the placement of the columns. He requested on-site photos be included in future SCAP submittals. He asked if the pipe would be put in the tributary.

Mr. Tauchen from HART replied that the main source of water into the tributary comes from the highway. There is no natural runoff. The berm prevents the runoff from entering Waiawa Stream. Exhibit 4 depicts where the diversion pipe will connect.

Commissioner Starr asked if the spring would be impacted by the project.

Mr. Tauchen explained that the tributary is small and overgrown. HART does not anticipate any ponding of water. The spring runoff will eventually make its way into Waiawa Stream.

Commissioner Yamamura reiterated the request for more photos.

**MOTION: (Pavao / Yamamura)**

**To approve staff's recommendation.**

**UNANIMOUSLY APPROVED.**

2. Application for an After-the-Fact Stream Channel Alteration Permit (SCAP.3790.8), Paul Dolnick's Road and Culvert Crossing, Waikolu Stream, North Hilo District, Hawaii, TMK: (3) 3-2-002:046, 047, 999; and 3-2-003:003, 008, 999



Rebecca Alakai introduced the after-the-fact SCAP permit for Mr. Paul Dolnick. The applicant altered a cobblestone portion of the stream with fill to improve the road after the existing road collapsed after heavy rains. The stream bank was hardened with riprap and grout. The applicant was informed that the road was owned by the County of Hawaii ("County"). In 2012 the Division of Conservation and Resource Enforcement ("DOCARE") learned about the road improvements. They took photos and provided an investigation report. Staff also visited the site and sent Mr. Dolnick a notice of violation. Within 30 days Mr. Dolnick submitted an after-the-fact SCAP application. At that time, Mr. Dolnick was informed that it was not a private road. The County wants a culvert designed road and disagreed with Mr. Dolnick's design. The stream is perennial and the surrounding area is private property. There are no fish in the stream. There is one stream diversion located downstream and several alterations consisting of road crossings. After the road wash-out, Mr. Dolnick installed concrete to improve the road in order to cross the stream.

Commissioner Yamamura asked if the applicant thought the road was private.

Ms. Alakai said the applicant concreted in the area that he thought was part of the private road. Regardless, a SCAP is required.

Commissioner Pavao noted that the Big Island has an issue with "roads in limbo." In many cases, it is difficult to determine ownership.

Ms. Alakai explained that the County has since approved Mr. Dolnick's design and engineering plans for the road. The County fined Mr. Dolnick for grading without a permit. Other agencies have no objections or comments about the after-the-fact SCAP. At the time Mr. Dolnick filled out his application he thought it was a private road. Therefore, there was no trigger for an Environmental Assessment ("EA"). The County recently issued an exemption for the EA.

RECOMMENDATION:

Staff recommends that the Commission:

1. Approve an after-the-fact Stream Channel Alteration Permit for roadbed and streambank hardening on Waikolu Stream in North Hilo, Hawaii on TMK's (3) 3-2-002:046, 047, 999; and 3-2-003:003, 008, 999 subject to the standard conditions in Exhibit 7.
2. Find that the applicant was in violation of HRS §174C-71(3)(A) for altering a stream channel without a SCAP on Waikolu Stream in North Hilo, Hawaii.
3. Fine the applicant \$250 for the violation listed above.
4. Issue a written warning to the applicant indicating any future violations involving the alteration of stream channels or stream diversions without the necessary permits may be considered repeat violations with fines up to \$5,000 for each day of violation.

5. That the Applicant obtain final approval from the County and address its concerns regarding easement and right-of-way issues.

(DISCUSSION)

Commissioner Pavao asked why the County was letting Mr. Dolnick install the riprap if it was their road. The County is required to go out for bid on improvements to county roads.

Ms. Alakai said it was unusual that the applicant was applying for a permit rather than the County.

Commissioner Starr commented that private developers often undertake improvements on behalf of the County of Maui. He voiced his concerns about dumping concrete into a perennial stream and said the fine should be increased.

Ms. Alakai said the \$250.00 fine is the minimum. The Commission has the authority to raise the fine. The applicant submitted testimony disputing the fine. Mr. Dolnick claims that his improvements were made to an existing road.

Dean Uyeno (Branch Chief, Commission on Water Resource Management) noted that the stream tends to be intermittent and not perennial.

Commissioner Starr said the low fine will embolden people to dump concrete into streams, especially when the penalties are so slight.

Ms. Alakai said Exhibit 5 describes the penalty policy. The minimum fine is \$250.00 per violation. There was no harm or damage done to the resource and the applicant showed good faith by applying for an after-the-fact SCAP.

Commissioner Starr asked how long the material had been sitting in the stream.

Mr. Uyeno said DOCARE went out to the site in April 2013. It is unclear how long the fill and riprap were in the stream.

Commissioner Pavao agreed with the \$250.00 fine and said the applicant has learned his lesson.

Chair Aila asked if staff time and administrative fees were calculated into the fine.

Ms. Alakai said "no."

Chair Aila asked if the staff recommendation could be amended to determine a fine after staff time and administrative costs were calculated into the total.

Deputy AG China asked if staff time would be easily determinable.

Deputy Tam said it could be done.

Commissioner Starr supported Chair Aila's recommendation to amend the fine and incorporate staff time.

Ms. Rebecca said staff time would also include travel to/from the Big Island to visit the site.

Mr. Uyeno asked if the new fine could be discussed internally by staff before making a motion. The decision may impact future fines.

Commissioner Yamamura agreed and said the penalty policy should be defined first.

Commissioner Starr said staff time needs to be considered in the fine amount.

Mr. Uyeno said the cement company is also a culpable party.

Deputy Tam noted that the Commission has the statutory authority to cover administrative costs.

Commissioner Pavao said it would be unfair to fine this applicant if previous violations had not been held to the same standards. The new penalty policy, inclusive of administrative costs, should be defined first.

Commissioner Yamamura asked if notice should have been given to applicant about increasing the fine.

Deputy AG China agreed that notice should be given to the applicant.

Commissioner Starr disagreed and asked why the Commission would need to notice something that is clearly stated in the Commission's rules.

Deputy AG China said the applicant may have taken the time to fly to Oahu to testify had he known that the fine could have exceeded \$250.00.

Commissioner Yamamura mentioned that the Land Board includes administrative costs in their fines.

Chair Aila suggested that staff come back to the Commission at a future meeting and explain their intent to charge administrative fees.

Mr. Uyeno said administrative costs could be added to the revised penalty policy.

**MOTION: (Starr / Aila)**

**To approve staff's recommendation with the addition of administrative costs, which will be applied to future violations, not to exceed \$1,000.**

**(Starr, Aila = aye; Pavao, Yamamura = opposed)**

**Non-decision.**

**MOTION: (Yamamura / Pavao)**

**To approve staff's recommendation.**

**(Pavao, Yamamura = aye; Starr, Aila = opposed)**

**Non-decision.**

Commissioner Starr made a motion to defer so staff could come back with a revised recommendation and give proper notice to the applicant.

Chair Aila asked if the submittal is automatically deferred since there is no affirmative vote.

Deputy AG China said "no." The motion did not pass. A motion to defer can be made.

Deputy Tam said the staff could come back to the Commission with an updated penalty policy.

Commissioner Pavao said it was unfair to the applicant.

**MOTION: (Starr / Aila)  
To defer the submittal.  
(Starr, Aila = aye; Pavao, Yamamura = opposed)  
Non-decision.**

Commissioner Yamamura asked if the submittal could be deferred to the next meeting so more commissioners could have the opportunity to vote.

Chair Aila said a non-decision means the after-the-fact SCAP is not approved, the violation still occurs and the penalty is not resolved.

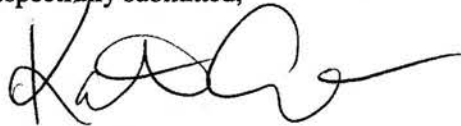
Deputy Tam said the submittal would be brought before the Commission at a later date.

Commissioner Starr noted that in the past, non-decisions meant that the action has failed.

Deputy Tam explained that an enforcement case requires action. The submittal will be presented to the Commission at the next meeting. In addition staff will come back with a revised penalty policy.

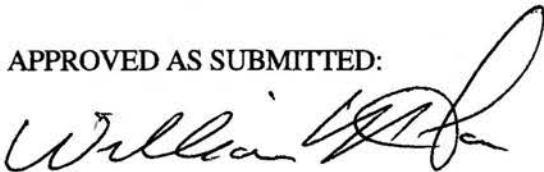
Chairperson William J. Aila, Jr. adjourned the meeting at 12:30 pm.

Respectfully submitted,



KATIE ERSBAK  
Private Secretary to the Deputy

APPROVED AS SUBMITTED:



WILLIAM M. TAM  
Deputy Director