

Approved by Commission on
Water Resource Management
at the meeting held on
11-19-14

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 1, 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 9:34 am.

The following were in attendance:

MEMBERS: Mr. William J. Aila Jr., Mr. Jonathan Starr, Mr. Michael Buck,
Mr. Kamana Beamer, Ms. Linda Rosen

ABSENT: Mr. Milton Pavao

STAFF: William Tam, Roy Hardy, Dean Uyeno, Jonas Burgon, Rebecca Alakai,
Neal Fujii, Malie Beach-Smith, Lenore Ohye, Patrick Casey, Jeremy
Kimura, Robert Chenet

COUNSEL: Julie China, Esq.

OTHERS: Paul Dolnick, Myra Kaichi, Kaleo Manuel

A. APPROVAL OF MINUTES

August 20, 2014

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

B. ANNOUNCEMENTS

**1. Hawaii Water Works Association (HWWA), Annual Conference, Kauai,
October 15-17, 2014**

Lenore Ohye (Branch Chief, Planning) announced the HWWA meeting on Kauai on October 15-17, 2014. The commissioners are welcome to attend.

**2. Hawaii Water Environmental Association (HWEA) / American Water Works
Association Hawaii Section (AWWAH) / American Society of Civil Engineering
(ASCE) Water Reuse Conference, Oahu, November 13-14, 2014**

Commissioner Starr expressed interest in attending the HWEA Reuse Conference in November. He thanked staff for the information and looks forward to attending.

C. UPDATES

1. CWRM Nominating Committee

The Nominating Committee will meet on November 7 and 8, 2014 to interview four applicants to fill one vacancy on the Water Commission. Members of the Nominating Committee include Rebecca Soon, Neil Hannahs, Max Sword and Michael Chun.

2. Water Resource Protection Plan (WRPP) Update

Jeremy Kimura (Hydrologist, Planning Branch) explained the update to the WRPP. The WRPP is the foundational document that helps direct the Hawaii Water Plan. The original 2008 WRPP was a very technical document. The update will include an appendix with a plan that outlines the Commission's actions over the next 5 years. A proposed schedule is also included. Stakeholder feedback is critical. The first section on drought planning is now available on the CWRM website for public review and comment.

Commissioner Starr asked how staff was addressing sustainable yield in the different aquifers.

Mr. Kimura said staff is currently updating all of the sustainable yields for the entire state. Recent information on recharge values and the hydro-geology of each island are being used to determine the new sustainable yields. Local hydrologists and stakeholders will be asked to review the new numbers before they are finalized in the WRPP (Section 3).

Commissioner Starr requested to be notified about the meeting.

Mr. Kimura said the group of experts is typically limited to scientists and hydro-geologists. The meeting minutes will be made available to the public.

Commissioner Starr reiterated his request and asked if the sustainable yield update numbers could be brought before the Commission.

Commissioner Buck asked if the WRPP would be integrated with the Department of Health's ("DOH") Water Quality Plan.

Mr. Kimura commented on water resource studies on Oahu. The U.S. Geological Survey ("USGS") is doing a recharge estimate for the island of Oahu and is working with the Honolulu Board of Water Supply ("BWS") to develop a new ground water recharge model for the Pearl Harbor Aquifer. That information will be folded into the WRPP update and the new figures on sustainable yield.

Commissioner Beamer asked about the potential sources of funding.

Mr. Kimura explained that certain projects may need a source of public funding in order to implement the WRPP.

Commissioner Starr reflected on the USGS data presented at various meetings that indicate an increase in rainfall over the next few decades. He expressed concerns about discrepancies in the data.

Neal Fujii (Planning Branch) answered that the USGS study uses data from Kevin Hamilton's dynamic downscaled climate models. Mr. Hamilton has been asked to present at the November 19, 2014 Commission Meeting.

Mr. Kimura added that sustainable yield numbers are typically set lower than what is the maximum.

Dan Purcell commented on the group of experts used to determine sustainable yield.

Mr. Kimura said he could forward the list of names.

Deputy Director, William Tam commented on the dynamic downscaling models used to estimate rainfall. He said the methods are varied and have not been refined to the scale of Hawaii.

3. 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)

Water will be released into Iao and Waikapu streams on October 13, 2014. The commissioners are welcome to attend.

Commissioner Beamer asked about the timeline for the release and what went wrong along the way.

Deputy Tam explained that engineering fixes were required to make the changes permanent. Legitimate questions about measuring stream flow have been raised. The Commission staff must be more aggressive about ensuring a timely response and implementing the agreement.

Commissioner Starr said he was happy to see the releases moving forward. Quantity and connectivity issues remain unanswered.

Deputy Tam explained that the lower stretch of Iao Stream is under the Army Corps of Engineers and may require physical structural changes.

Commissioner Buck asked about public access during the releases.

Deputy Tam said the public is invited to attend. The releases will be video-taped.

Commissioner Beamer thanked staff for the update.

The appurtenant rights hearing on Maui is scheduled for October 14, 2014. The hearing will involve numerous parties and individuals. On November 21, 2014 the Commission will return to Maui for a continuation of the appurtenant rights hearing.

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

The hearings officer (Dr. Lawrence Miike) will meet with the parties in early 2015.

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

The next site visit and investigation is scheduled for October 9, 2014. The public is welcome to attend the site visits. No testimony will be taken. On December 10, 2014 the Commission will fly to Kona to decide whether to proceed with the petition to designate the Keauhou Aquifer. A decision on the merits of the petition will likely be made in early March 2015.

1d. West Kauai surface water investigation

Issues regarding rights-of-entry and liability are still being worked out. Deputy Tam said he would likely intervene shortly to make sure the site visits get scheduled.

4. Tentative calendar for upcoming meeting dates

The next Water Commission meeting is scheduled for November 19, 2014.

5. Red Hill Storage Tanks Update

Patrick Casey (Geologist, Survey Branch) updated the commissioners on the first Red Hill Task Force Meeting. The draft notes from the September 3, 2014 meeting were distributed to the commissioners. Questions were posed to the Navy during the meeting. The Navy was unable to answer many of the technical questions, but intends to respond to the questions soon. One of two ground water monitoring wells has been drilled. Sampling from the well is expected in October 2014.

Commissioner Starr asked if the Navy intends to line the storage tanks.

Mr. Casey said they are working on solutions to protect the water resources in the area, but may be reluctant to move the tanks.

Commissioner Starr asked if the Navy aims to replace or line the tanks to avoid a future catastrophe. He said the Commission has an obligation to hold the Navy accountable.

Commissioner Rosen agreed with the concerns raised by Commissioner Starr. She said the Commission should continue to put pressure on the military. The Navy has admitted that the tank leaked but has not confessed to the potential severity of the leak or future leaks. It will cost a lot of money to replace the tanks.

Commissioner Beamer shared the concerns raised by the other commissioners. He asked for guidance about jurisdiction and authority. The Commission is the trustee of Hawaii's water and is responsible for ensuring a solution.

Commissioner Buck asked if staff could arrange another briefing for the December 19, 2014 Commission Meeting. He said the issue needs to remain at the forefront of discussion.

Deputy Tam said the Commission has the authority to take action. He suggested that the Commission wait for results from the next Red Hill Task Force Meeting.

Commissioner Rosen advocated for ongoing monitoring.

Commissioner Starr said no gas station can legally store millions of gallons of fuel in a single-wall tank. He requested the presence of the Navy at the next Commission meeting to answer questions. He criticized the Navy's response.

Commissioner Rosen said it is difficult for the state to ask for transparency from federal agencies. She cautioned against being too critical.

Commissioner Beamer said he was interested in understanding the solutions and ensuring water quality for future generations.

Barry Usagawa (Honolulu Board of Water Supply) gave an update on the Task Force Meeting. The BWS recommended creating a technical sub-committee to inform the task force members. A consent agreement is in the works, but no details have been disclosed at this time. The task force must report to the Legislature before January 2015. The water quality issues are of interest to the gubernatorial candidates. The Environmental Protection Agency ("EPA") is considering a new rule to ensure that the tanks comply with EPA regulations. Corrosion protection for the tanks is needed. BWS is planning to conduct tests using the Halawa Deep Monitoring Well. BWS is working with the USGS to help with testing and sampling. Updates from the Navy are expected at the next Task Force Meeting.

Commissioner Starr asked how much water is pulled from the Halawa Shaft.

Mr. Usagawa replied 10mgd from the Halawa Shaft and 3mgd from the Moanalua wells.

Commissioner Starr asked for technical updates at the November Water Commission Meeting and the legal authority of the Water Commission.

Dan Purcell said the Task Force will meet again next week. He said the leaks are due to faulty workmanship. At the Board of Water Supply Meeting there was little information. Mr. Purcell said BWS needs to be forward-thinking.

6. World Water Week in Sweden – recap from Deputy Director

Deputy Tam reflected on his experience at World Water Week in Sweden. The focus of the conference was the nexus between water and energy. He noted the importance of using waste water for agriculture and the new technologies coming out of Sweden.

The next conference will be held in August/September 2015. He encouraged the other commissioners to attend.

D. GROUND WATER REGULATION

1. Penalty Guidelines (G14-01) (Revising G01-01)

The CWRM Penalty Guidelines have been revised to alleviate additional administrative work associated with enforcement actions. Once a violation is determined, a flat fee of \$500 will be attached to each violation. \$500 understates the actual cost. CWRM is in the process of preparing a letter to the Attorney General authorizing rule-making to amend its HAR §13-167-10(b), §13-168-3(a), and §13-169-3(a) to conform the Commission's current rules on fines (\$1,000 maximum) to the amended statutory amount (\$5,000).

RECOMMENDATION:

Staff recommends that the Commission:

Staff recommends that the Commission adopt the new Penalty Guidelines (G14-01) attached as Exhibit 3.

(DISCUSSION)

Commissioner Rosen asked about the date of the original Penalty Guideline.

Deputy Tam said the original Penalty Policy was drafted in 2001.

Commissioner Rosen said it was good to have a document that justifies the revised penalty guidelines.

Deputy Tam commented that the goal is to change conduct, not collect money. The public needs to understand the consequences of their actions.

Chair Aila suggested that the staff recommendation include a provision to amend the penalty policy to conform to the new statute after the rule-making process is complete.

Commissioner Buck asked why a public hearing was necessary if the statute was already changed.

Chair Aila said the CWRM rule needs to be consistent with the new statute.

Dan Purcell asked that public meetings and testimony not be referred to as ministerial actions.

MOTION: (Buck / Starr)

To approve staff's recommendation and amendments.

UNANIMOUSLY APPROVED.

E. STREAM PROTECTION AND MANAGEMENT**1. Application for an After-the-Fact Stream Channel Alteration Permit (SCAP.3790.8) Paul Dolnick's Road and Culvert, Waikolu Stream, North Hilo District, Hawaii TMK: (3) 3-2-002:046, 047, 999; and 3-2-003:003, 008, 999**

Rebecca Alakai (Planner, Stream Protection and Management) said the applicant is requesting an after-the-fact SCAP permit for construction of a gravel road. A portion of stream was filled with gravel, and rip rap was added to the stream bank. In December 2012, the Division of Conservation and Resource Enforcement ("DOCARE") sent CWRM a report about a road that had been constructed across Waikolu Stream. In April 2013 CWRM investigated the activities and a notice of an apparent violation was mailed to the applicant. In March 2014 the applicant updated his after-the-fact SCAP application based on input from the County of Hawaii about the road design. An administrative fee of \$500 has been included in the overall violation fee.

RECOMMENDATION:

Staff recommends that the Commission:

1. Find that the Applicant was in violation of HRS §174C-71(3)(A) and HAR §13-169-50 for altering a stream channel without a SCAP on Waikolu Stream in North Hilo, Hawaii.
2. Fine the Applicant \$750 for the violations listed above.
3. 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.
4. Approve a Stream Channel Alteration Permit for a road and culvert (shown in Exhibit 4) on the Waikolu Stream in North Hilo, Hawaii on TMK's (3) 3-2-002:046, 047, 999; and 3-2-003:003, 008, and 999 subject to the standard conditions in Exhibit 5.

(DISCUSSION)

Commissioner Buck asked if Mr. Paul Dolnick's testimony would change staff's recommendation.

Mrs. Alakai replied "no."

Commissioner Rosen asked if there was proof that material was put into the stream.

Mrs. Alakai referred to the pictures in the exhibits.

Commissioner Rosen said it was difficult to tell from the pictures and asked staff to clarify the boundaries of the stream.

Mrs. Alakai said CWRM staff visited the site as part of the investigation.

Commissioner Beamer asked about the perennial nature of Waikolu Stream.

Mrs. Alakai said Waikolu Stream is dry a portion of the time and does not always run.

Paul Dolnick testified in opposition to staff's recommendation.

Commissioner Beamer asked Mr. Dolnick to clarify the status of the road in question.

Mr. Dolnick said it is a pre-existing road that has been used by various residents. He clarified that he did not build a road across Waikolu Stream. Mr. Dolnick read his testimony aloud and summarized his perspective of the events. He said notice of violation is different than a notice of *apparent* violation. He requested that the \$750 fine be dismissed.

Commissioner Beamer asked Mr. Dolnick to clarify the term "old government road."

Mr. Dolnick replied that the state granted the roads to the counties to absolve themselves from liability. Today they are called "roads in limbo."

Commissioner Rosen commented that "government roads" are largely abandoned and used by people with 4-wheel drive vehicles. These are not new roads and there is historical evidence that they were used in the past.

Mr. Dolnick said "government roads" are typically not maintained by the counties. He said the County of Hawaii asked him to survey his driveway to determine ownership. The County granted him an easement for a portion of the road that they claimed.

Chair Aila asked why Mr. Dolnick acknowledged that the County owned a portion of the road.

Mr. Dolnick said he wanted to maintain access to his property and was eager to find a solution.

Commissioner Beamer asked if Mr. Dolnick cemented in the rocks and considered the impact on stream life.

Mr. Dolnick said there is no stream life in Waikolu Stream. He denied putting red dirt in the stream.

Chair Aila stated that o'opu live in the stream.

Commissioner Buck asked about the cost of the culvert.

Mr. Dolnick said the pipe cost \$11,000 plus an additional \$15,000.

Dean Uyeno (Branch Chief, Stream Protection and Management) explained that the road was unpaved prior to the attempted improvements made by Mr. Dolnick. Waikolu Stream is intermittent, but portions of it do have water.

Chair Aila asked about Mr. Dolnick's testimony regarding existing facilities.

Mrs. Alakai commented that a stream is not a facility.

Mr. Uyeno said flow could be provided through a concrete channel. However, the County preferred a culvert.

Commissioner Buck asked if a culvert would enhance connectivity.

Mr. Uyeno said it could help with connectivity.

Commissioner Buck asked about the amount of the fine.

Mrs. Alakai said the commissioners have the discretion to raise or lower the fine.

Commissioner Starr asked about the red dirt fill that was put in the stream.

Commissioner Rosen asked if the red dirt was deliberately placed in the stream.

Commissioner Starr said the red dirt is called basecourse.

Commissioner Beamer commented on his experience with floods in Waipio Valley and said high flow events do not leave red dirt.

Mrs. Alakai said the applicant acknowledged that he put basecourse into the stream. Any activity in the stream channel requires a permit. The addition of concrete and fill to the area surrounding the stream bank is a violation.

Mr. Dolnick acknowledged that he applied basecourse so he could access his property.

Mr. Purcell asked if testimony could be made available to members of the public. He supported the idea of fines as a deterrent, but said the burden on neighbor island residents is greatly increased by the need to fly to meetings.

Commissioner Rosen said could not vote in favor of staff's recommendation.

Commissioner Buck supported the motion but asked to amend the motion to reduce the fine to \$250 based on the mitigative factors and the cost of the culvert.

Commissioner Beamer agreed with staff's recommendation, but said he was open to reducing the fine.

Commissioner Starr said the actions of the applicant are not acceptable and are destructive to the stream ecology. He said he would not support a lower fine.

MOTION: (Starr / Beamer)

To approve staff's recommendation.

Starr, Beamer, Buck, Aila = yes; Rosen = no

Staff's recommendation to fine the applicant \$750 is approved.

Mr. Dolnick protested the fine.

Chair Aila said the applicant could follow-up within 10 days with a written request for a contested case.

Commissioner Rosen asked if the road would become an existing facility after the culvert is approved and installed.

Mr. Uyeno replied "yes."

Chair Aila explained the contested case process to Mr. Dolnick.

Mr. Dolnick reserved his right to a contested case.

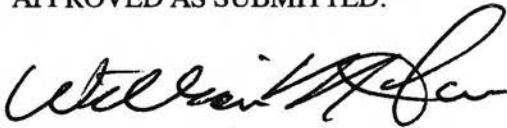
Chairperson William J. Aila, Jr. adjourned the meeting at 12:35 pm.

Respectfully submitted,



KATIE ERSBAK
Private Secretary to the Deputy

APPROVED AS SUBMITTED:



WILLIAM M. TAM
Deputy Director