



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

December 13, 2006
Honolulu, Hawaii

Authorize Staff to Initiate and Conduct Public Fact Gathering
to Amend Interim Instream Flow Standards

SUMMARY OF REQUEST:

Staff is requesting that the Commission on Water Resource Management (Commission) authorize staff to initiate and conduct public fact gathering and inventorying of best available information necessary to amend interim instream flow standards (interim IFS).

BACKGROUND:

Under the State Water Code (Code), the primary means of protecting streams is through establishment of instream flow standards (IFS). Recognizing the complexity of establishing IFS for the State's 376 perennial streams, the Commission set interim IFS at "status quo" levels, defined as the amount of water flowing in each stream (with consideration for the natural variability in stream flow and conditions) at the time rules were adopted in 1988 and 1989. The Hawaii Supreme Court, on reviewing the Waiahole Ditch Contested Case Decision and Order, held that such "status quo" interim IFS were not adequate to protect streams and required the Commission to take immediate steps to assess stream flow characteristics and develop quantitative interim IFS for affected Windward Oahu streams, as well as other streams statewide.

Interim IFS Process. The law provides a process to amend an interim IFS in order to protect the public interest pending the establishment of a permanent IFS. The Code, at § 174C-71(2), describes the process to amend interim IFS.

Staff has previously briefed the Commission at its August 16, 2006 meeting on the general IFS process and the status of other program activities.

ANALYSIS/ISSUES:

A petition can come from any person with proper standing. A petition to amend an interim IFS shall set forth data and information concerning the need to protect and conserve beneficial instream uses of water and any other relevant and reasonable information required by the Commission. Staff will inventory and get the best available information on the subject stream and watershed area. Staff will compile the information and a recommendation will be prepared and presented to the Commission for action. In considering a petition to amend an interim IFS, the Commission must weigh the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses. An interim IFS may be amended on a stream-by-stream basis or may consist of a general instream flow standard applicable to all streams within a specified area.

After further staff discussions and with input from our Deputies Attorney General, staff is seeking to compile and inventory best available stream information through agency review and comments and incorporation of a public fact gathering process to amend interim IFS. The fact gathering process will include an agency/interested persons review and the holding of a duly noticed public fact gathering meeting on the island of interest. The public meeting for the interim IFS would not be a formal public hearing but rather an informal meeting to gather additional facts and input from interested persons in the affected area (Exhibit 1).

The fact gathering process staff will be undertaking provides for solicitation of more information than what the Code requires for the setting of interim IFS. Staff believes the additional agency/interested persons review and opportunity for additional public participation will be beneficial in seeking out best available information necessary for setting measurable interim IFS statewide.

RECOMMENDATION:

That the Commission authorize staff to initiate and conduct public fact gathering to amend interim IFS.

Respectfully submitted,

for: Dean A. Nakano
DEAN A. NAKANO
Acting Deputy Director

Exhibit: 1. MODIFIED INTERIM INSTREAM FLOW STANDARD PROCESS

APPROVED FOR SUBMITTAL:


PETER T. YOUNG
Chairperson

MODIFIED INTERIM INSTREAM FLOW STANDARD PROCESS

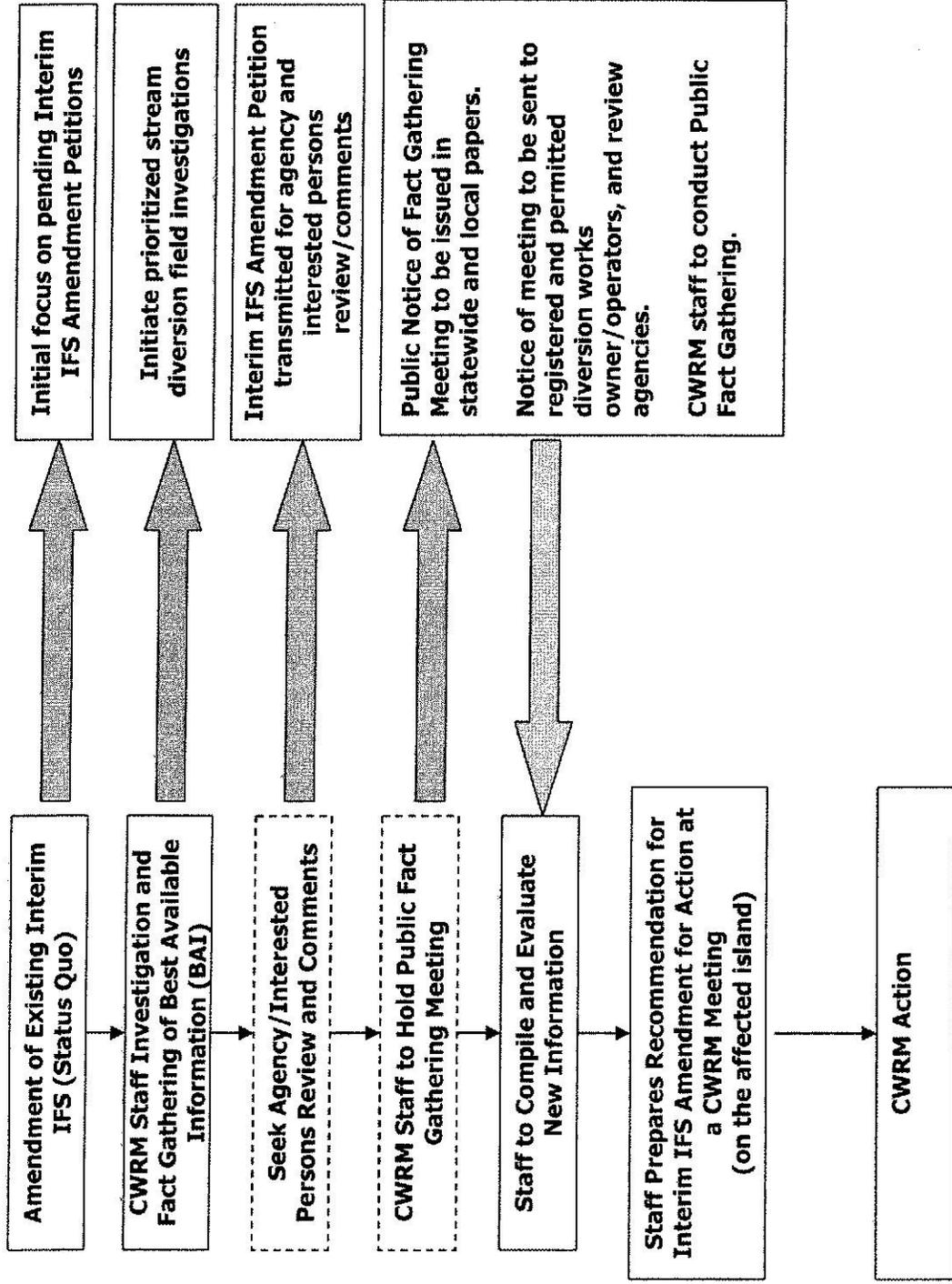


Exhibit 1