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STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

August 28, 2008
Honolulu, Oahu

Hawaiian Commercial and Sugar Company's Motion to
Consolidate Petitions to Amend Interim Instream Flow Standards
for East Maui Streams and Complaint Relating Thereto filed May 29, 2008

SUMMARY OF REQUEST

Staff is requesting that the Commission approve a briefing schedule and hearing on the above referenced motion filed by Hawaiian Commercial and Sugar Company (HC&S) in connection with the 27 petitions filed for amendment of Interim Instream Flow Standards (IIFS) for streams in east Maui.

BACKGROUND

On May 24, 2001, the Native Hawaiian Legal Corporation (NHLC) filed 27 Petitions to Amend the IIFS for 27 East Maui streams on behalf of resident taro farmers. The petitions were accepted on July 13, 2001.

By a letter dated July 26, 2001, NHLC memorialized its conversation with Commission staff and reiterated its request for the Commission to focus its efforts to restore streamflow to Honopou, Hanehoi, Waiokamilo, Kualani, Piinau, Palauhulu, and Wailuanui streams. The parties agreed to obtain information and identify existing uses within and among these streams. Eventually the streams focused on would be reduced to include only Honopou, Hanehoi, Piinau, Waiokamilo, and Wailuanui.

From July 2001, there were meetings, site visits, and discussions among the interested parties regarding the possibility of a collaborative effort to carry out stream studies for the area. On March 20, 2002, the Commission approved a cooperative agreement between the United States Geological Survey (USGS) and the Commission for the Water Resource Investigations for

Northeast Maui Streams. The study was to run from October 2, 2002 to September 30, 2005. The study was completed in January 2006.

On July 19, 2005, Commission staff met with Maui Mayor Alan Arakawa and representatives from the USGS, Alexander & Baldwin (A&B) and their consultants, East Maui Irrigation (EMI), and NHLC, to discuss the USGS Draft Report -- Effects of Diversions on Streamflow and Native Macrofauna in Northeast Maui, Hawaii. The meeting was called by the USGS to present to the stakeholders an almost-final draft of the Report that was undergoing "colleague review." The final Report, Scientific Investigations Report 2005-5312, Effects of Surface-Water Diversions on Habitat Availability for Native Macrofauna, Northeast Maui, Hawaii, was released in January 2006.

On December 13, 2006, staff briefed the Commission on its proposed modified interim instream flow standard process. The Commission authorized staff to initiate and conduct public fact gathering of best available information necessary to amend instream flow standards.

On March 12, 2008, a public review draft of each of the Instream Flow Standard Assessment Reports for Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui, were made available online on the CWRM website and at the CWRM office. The public was invited to comment on the draft reports.

NHLC filed a complaint on behalf of Na Moku Aupuni O Koolau Hui, Beatrice Kekahuna, Marjorie Wallett, and Maui Tomorrow on May 29, 2008. The complaint alleges that HC&S is wasting water. The allegation is based on testimony of HC&S employee Lee Jakeway who testified at the Land Board contested case hearing on November 15, 2005. Staff has been corresponding with the parties to resolve the complaint.

On June 10, 2008, HC&S submitted to the Commission its comments to the public review draft of the Instream Flow Standard Assessment Reports.

On August 18, 2008, HC&S filed its Motion to Consolidate Petitions to Amend Interim Instream Flow Standards for East Maui Streams and Complaint Relating Thereto Filed May 29, 2008. In the motion HC&S is requesting that the Commission consolidate all 27 previously filed petitions into one and to consider amending the IIFS for all 27 streams in one unified proceeding. The motion also requests that the Complaint relating to waste be consolidated with the petition to amend IIFS.

RECOMMENDATION

The staff recommends that the Commission allow any other interested party to file a brief in response to HC&S' motion and to set the motion for hearing. In particular, the staff recommends that the Commission adopt the following:

1. All interested parties should file briefs on HC&S' motion no later than the close of business on Thursday, September 18, 2008. Briefs should be filed both on paper, nine (9) copies, and electronically. The electronic version may be e-mailed to: dlmr.cwrmm@hawaii.gov.

2. The hearing on HC&S' motion will be held on September 24, 2008, at the Haiku Community Center, 1008 Hana Highway, Haiku, HI 96708, at 2:00 p.m. Only persons submitting a brief will be allowed to present argument at the hearing on this motion.

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson