



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

September 24, 2009
Honolulu, Oahu

Approval to Conduct a Limited Meeting to View Users of East Maui Stream Water
In Connection with the Petitions to Amend East Maui Interim Instream Flow Standards
Relating to the Surface Water Hydrologic Units of Waikamoi, Puohokmoa, Haipuaena,
Punalau, Honomanu, Nuaailua, Ohia, West Wailuaiki, East Wailuaiki, Kopiliula,
Waiohue, Paakea, Waiaka, Kapaula, Hanawi, and Makapipi, Maui

SUMMARY OF REQUEST

Staff is requesting approval from the Commission on Water Resource Management (Commission) to conduct a limited meeting of the Commission on October 21 and 22, 2009 in compliance with section 92-3.1, Hawaii Revised Statutes (HRS).

BACKGROUND

On May 24, 2001, the Native Hawaiian Legal Corporation (NHLC) filed 27 Petitions to Amend the Interim Instream Flow Standards (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 the surface water hydrologic units of Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui.

The Commission was presented with interim IFS recommendations for the first five priority hydrologic units at its September 24-25, 2008 meeting. Along with the recommendations, staff agreed to begin preparation of the necessary Instream Flow Standard Assessment Reports (IFSAR) for the remaining 16 surface water hydrologic units (consisting of 19 petitions). The draft IFSARs for these remaining units would be presented to the Commission in late 2009, approximately one year from the September 2008 meeting. The remaining 16 surface water hydrologic units are listed below with the unit code, unit name, and petition notes in parentheses:

**Approved by Commission on
Water Resource Management
at the meeting held on**

- 6047 – Waikamoi (includes petitions for Alo and Wahinepee Streams)
- 6048 – Puohokamoa
- 6049 – Haipuaena
- 6050 – Punalau
- 6051 – Honomanu
- 6052 – Nuaailua
- 6054 – Ohia (petitioned as Waianu Stream)
- 6057 – West Wailuaiki
- 6058 – East Wailuaiki
- 6059 – Kopiliula (includes petition for Puakaa Stream)
- 6060 – Waiohue
- 6061 – Paakea
- 6062 – Waiaaka
- 6063 – Kapaula
- 6064 – Hanawi
- 6065 – Makapipi

On September 2 and 3, 2008, the Commission conducted a site visit of several east Maui streams and visited with area residents that rely upon the stream water. This site visit consisted of open and limited portions that included the East Maui Irrigation System, Kekahuna/Wallett properties in Honopou, Kamole Weir, and Wailuanui and Waiokamilo Streams.

Staff is preparing to present their findings and interim IFS recommendations on the remaining 16 petitions at the December Commission meeting. Staff believes it would be very beneficial for the Commissioners to visit some of the users in central Maui that rely upon the delivery of east Maui surface water, either by the East Maui Irrigation System or the Maui Department of Water Supply's Upcountry System. This site visit will provide Commissioners with the opportunity to fact find, appreciate, understand, and gather general knowledge that otherwise might not be available through reports or other means. Staff is recommending that the Commissioners conduct a site visit of several key users relating to the pending petitions on October 21 and 22, 2009. A proposed schedule and agenda is attached as Exhibit 1.

Portions of the proposed site visit will require the Commissioners to enter onto private property or property controlled and managed by a private entity. Some of these areas also have limitations as to the number of visitors that can be safely accommodated or present safety concerns for attendees. In particular, the Commission has been requested by the County of Maui Department of Water Supply (DWS) to limit the number of people attending the site visit to the Olinda water treatment facility, the Kahakapao and Waikamoi reservoirs, minor stream diversions and up to the Lower Dam, which is the terminus of the Waikamoi flume, to fifteen people for safety and security reasons. The letter from DWS is attached as Exhibit 2. These sites are scheduled to be visited on Wednesday, October 21, 2009. The Commission has also been requested by HC&S to limit the number of participants to the field operations at the Puunene Sugar Mill to 12 people for safety reasons. The letter from HC&S is attached as Exhibit 3. These sites are scheduled to be visited on Thursday, October 22, 2009.

Pursuant to HRS §92-3.1, the Commission is required to determine that it is necessary to hold a "Limited Meeting" and to specify, after sufficient public deliberation, that the location is either dangerous to health or safety or that on-site inspection is necessary and public attendance is impracticable. A copy of the relevant provisions of the State statutes on limited meetings is set forth in Exhibit 4.

To offset the absence of the public, there is a requirement to video tape the limited meetings. If approved, Staff will have video equipment available for this purpose.

RECOMMENDATION

The staff recommends that the Commission find it necessary for the Commission to conduct a site visit of various locations in Central/Upcountry Maui that could be affected by the decisions of the Commission related to pending petitions to amend interim IFS for 19 streams in East Maui. The site visit is needed in order for the Commission to better understand the needs and infrastructure of the water users receiving water from east Maui streams that are the subject of the petitions. Further, in doing so, the Commission:

1. Determines that within the proposed areas of the site visit are locations at which public attendance would not be practicable. Those portions of the meeting indicated in Exhibit 1 as "Limited" will be limited for purposes of the public's attendance. All other portions of the meeting will be open for public participation;
2. Declares that it will not make any decisions at the meetings during the site visit in accordance with HRS §92-3.1(b)(3); and
3. Directs the Commission on Water Resource Management Deputy Director to:
 - a. Seek the concurrence of the Director of the Office on Information Practices in accordance with HRS §92-3.1(a);
 - b. Notice said meeting in accordance with HRS §92-7;
 - c. Provide minutes of said meetings in accordance with HRS §92-9; and
 - d. Make arrangements to have the meeting videotaped.

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

- Exhibit(s):
1. Proposed Schedule and Agenda for October 21-22, 2009 Site Visit
 2. Letter from County of Maui Department of Water Supply
 3. Letter from HC&S
 4. A copy of §92-3.1, HRS

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson



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

AGENDA
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: October 21-22, 2009
TIME: Various, as indicated below
PLACE: Various, as indicated below

The Commission on Water Resource Management (Commission) will be conducting a site visit of the Kula Agricultural Park, Maui Department of Water Supply Olinda Water Treatment Facility and Upper Kula System, and Hawaiian Commercial & Sugar Company factory and field operations over the course of two days during October 21-22, 2009.

Due to the access and safety concerns, portions of the site visit will be limited (LIMITED) and not open to the general public. Other portions of the site visit will remain open to the general public (OPEN). Portions of the site visit are outlined in the schedule below. All times are tentative. The public will be responsible for their own transportation for the open portions of the site visit. Video recordings of all portions of the site visit will be made publicly available via the Commission website following the site visit.

DATE: Wednesday, October 21, 2009

TIME: 8:30 a.m. – Meet at Maui Department of Water Supply (Maui DWS) Baseyard, 614 Palapala Drive, Kahului. (OPEN)

The Commission will drive from the Maui Department of Water Supply Baseyard to the various locations of the site visit.

9:00 a.m. – Maui DWS' Olinda Water Treatment Facility, Kahakapao and Waikamoi Reservoirs, and Waikamoi Dam and Intake. (LIMITED)

12:45 p.m. – Meet at the Eddie Tam Memorial Center parking lot, 931 Makawao Avenue, Makawao.

1:00 p.m. – Meet with Upcountry farmers and ranchers. This portion will require driving to various farm and ranch operations in the Upcountry area. (OPEN)

DATE: Thursday, October 22, 2009

TIME: 7:30 a.m. – Meet at HC&S Puunene Office. (OPEN)

8:00 a.m. – HC&S harvesting, land preparation, planting, irrigation hookup and crop maintenance operations, Kamole Weir, hydroelectric power plant, and ground water well. (LIMITED)

12:00 p.m. – HC&S Puunene Mill and Maui Sugar Brand operations. (LIMITED)

CHARMAINE TAVARES
Mayor



JEFFREY K. ENG
Director
ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.maulwater.org

September 14, 2009

Mr. Dean Uyeno
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809

Dear Mr. Uyeno:

**Subject: Commission on Water Resource Management East Maui Site
Visit to the Kula Water Treatment Facility and Surface Water
Collection/Transmission System on October 21, 2009**

This letter confirms that the Maui Department of Water Supply (MDWS) will be available to provide the subject site visit to the water commissioners and relevant staff members. We plan to view the Olinda water treatment facility, the Kahakapao and Waikamoi reservoirs, some minor stream diversions, and tour up to the Lower Dam, which is the terminus of the Waikamoi flume. For safety and security reasons, we would appreciate having the number of participants limited to fifteen, not including MDWS staff members.

We look forward to seeing you on October 21, 2009.

Sincerely,

Handwritten signature of Jeffrey K. Eng in black ink.

JEFFREY K. ENG
Director

"By Water All Things Find Life"

EXHIBIT 2





September 16, 2009

Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State Department of Land and Natural Resources
P.O. 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

In response to your request, HC&S will be available to provide a site visit to Commissioners and staff on October 22, 2009. We are planning on showing harvesting, land preparation, planting, irrigation hookup and crop maintenance operations plus a visit to Kamole Weir, a hydroelectric power plant and ground water well. In addition we will tour the Puunene Mill and Maui Brand Sugar operations. As you are aware, sugar operations involve large, heavy machinery both in the field and in the factory. Due to safety concerns we are only able to accommodate up to 12 people on the site visit along with HC&S staff and HC&S policy does not allow private vehicles on company roads. HC&S staff will be escorting the Commissioners and staff around the plantation to view the various operations. We look forward to your visit to HC&S.

Sincerely,

Chris J. Benjamin
Plantation General Manager

EXHIBIT 3

§92-3.1 Limited meetings. (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

- (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
- (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
- (3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) At all limited meetings, the board shall:

- (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
- (2) Make the videotape available at the next regular meeting; and
- (3) Make no decisions at the meeting. [L 1995, c 212, §1;

am L 2008, c 20, §1]