

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

IN THE MATTER OF) Case No. CCH-KA19-01
)
CONTESTED-CASE HEARING) MINUTE ORDER NO. 3
REGARDING AMENDED INTERIM)
INSTREAM FLOW STANDARDS FOR THE) Certificate of Service
SURFACE WATER HYDROLOGIC UNIT OF)
WAILUA (2040): WAIKOKO STREAM AND)
NORTH FORK WAILUA RIVER)
(WAI‘ALE‘ALE STREAM), KAUA‘I)
_____)

MINUTE ORDER NO. 3

On August 20, 2018, the Commission held a sunshine meeting on Kaua‘i at which an agenda item concerning an amendment to the Interim Instream Flow Standards (“IIFSs”) for Wai‘ale‘ale (North Fork Wailua) and Waikoko Streams was considered. During public testimony James Kapule Torio made a verbal request for a contested-case hearing conditioned upon another party making a firm request for a contested case hearing. After the close of public testimony, Kaua‘i Island Utility Cooperative (“KIUC”) made an oral request for a contested case hearing, after which Hui Ho‘opulapula Nā Wai o Puna also made an oral request for a contested case hearing. The Department of Hawaiian Home Lands (“DHHL”) made a verbal request to be an interested party. The Commission adjourned without making a decision on the proposed amendments to the IIFSs for Wai‘ale‘ale and Waikoko Streams.

After the meeting, Hui Ho‘opulapula Nā Wai o Puna, Mr. Torio, KIUC, DHHL, and Grove Farm Company, Inc. (“Grove Farm”) filed written petitions for a contested case hearing.

On October 16, 2018, the Commission considered a submittal to take action on the contested case hearing petitions filed by KIUC, Hui Ho‘opulapula Nā Wai o Puna, Mr. Torio,

DHHL, and Grove Farm. Following discussion of mediation, the Commission decided to defer action on the submittal and directed then-Deputy Director Jeffrey Pearson to meet with the parties and discuss the potential for mediation on this matter. After meeting with the parties, Commission staff concluded that a decision on the contested case hearing petitions and appointment of a hearing officer is necessary to enter into mediation.

On March 19, 2019, the Commission granted Hui Ho‘opulapula Nā Wai o Puna’s and James Kapule Torio’s (“Petitioners”) petitions for a contested case hearing. The Petitioners had filed the petitions in response to the contested case hearing request by KIUC. The Commission denied KIUC’s, Grove Farm’s, and DHHL’s petitions for contested case hearings and referred the requests to be named as parties to the hearing officer for consideration.

Subsequent to the Commission approving the contested case hearing, the United States Geological Survey (“USGS”) published its report on the low-flow characteristics of streams from Wailua to Hanapēpē. Commission staff have also maintained two continuous record gaging stations below the diversions on Wai‘ale‘ale and Waikoko Streams since the fall of 2018. Two new USGS gages have been activated in the Southeast Kaua‘i region on Waiahi Stream above the upper hydropower plant (16057900) and on Wai‘ale‘ale Stream above the diversion (16060950). With the new data, and in coordination and consultation with community, the Commission intends to reevaluate the IIFSs for Wai‘ale‘ale and Waikoko Streams from a regional perspective which would include other streams in Southeast Kaua‘i. Commission staff contacted the Petitioners about a withdrawal of their contested case hearing petition insofar as the new data and renewed community involvement may address Petitioners’ concerns of community involvement and suggested reconvened deliberations on the IIFSs. Petitioners understand that the withdrawal of their Petitions will allow the Commission to move forward

with new IIFS proposals for Wai‘ale‘ale and Waikoko Streams along with other streams in the Southeast Kaua‘i region.

On September 19, 2022, the Petitioners confirmed their willingness to withdraw their contested case hearing petitions in an email to Deputy Director Kaleo Manuel, attached hereto as Exhibit 1.

Based on the withdrawal of the petitions for contested case hearings filed by Petitioners, and there being no other parties to this contested case, the Commission orders the dismissal of this contested case hearing. This dismissal is without prejudice to the Petitioners’ rights to request contested case hearings concerning future IIFS amendments for Wai‘ale‘ale and Waikoko Streams.

DATED: Honolulu, Hawai‘i, Dec 20, 2022.

Suzanne Q. Case

SUZANNE CASE, Chairperson

Joanna Seto

JOANNA SETO

Michael G. Buck

MICHAEL G. BUCK

Neil J. Hannahs

NEIL J. HANNAHS

Aurora Kagawa-Viviani

AURORA KAGAWA-VIVIANI, PH.D.

Wayne K. Katayama

WAYNE K. KATAYAMA

Paul J. Meyer

PAUL J. MEYER

EXHIBIT 1

From: Leinaala Ley <lley@earthjustice.org>
Sent: Monday, September 19, 2022 3:12 PM
To: Manuel, Kaleo L <kaleo.l.manuel@hawaii.gov>
Cc: Isaac Moriwake <imoriwake@earthjustice.org>; Jimmy Torio <jimmytorio49@gmail.com>
Subject: [EXTERNAL] CCH KA 19-01; Waikoko Stream and North Wailua River (Wai'ale'ale Stream), Kaua'i

Aloha e Deputy Director Manuel:

In response to your request, I am writing to confirm that Hui Ho'opulapula Nā Wai o Puna and James Kapule Torio ("Petitioners") are willing to withdraw their respective Petitions for Contested Case Hearing on Interim Instream Flow Standards ("IIFSs") for Wai'ale'ale (North Fork Wailua) and Waikoko Streams, which Petitioners filed in response to the initial contested case hearing request by Kaua'i Island Utility Cooperative ("KIUC"), and which the Commission granted on March 19, 2019 (while denying KIUC's request)

(<https://files.hawaii.gov/dlnr/cwrm/minute/2019/mn20190319.pdf>; <https://files.hawaii.gov/dlnr/cwrm/submittal/2019/sb20190319B3.pdf>). Petitioners understand that the withdrawal of their Petitions will allow the Commission to move forward with new IIFS proposals to protect these two streams, along with other streams in the Puna region. Please confirm our understanding of the Commission's next steps.

Further, please let us know what steps the Commission can take to ensure that the gate on the public access road remains unlocked to allow the community full access to Wai'ale'ale and Waikoko Streams, particularly kūpuna who cannot hike all the way in from the public parking lot to the streams, as well as others who may be able to hike in but are deterred by the locked gate. Our understanding is that the gate is inhibiting traditional and customary uses of the area.

Finally, please note that Mr. Torio, as an unrepresented party, is copied separately in case there are any questions you may need to ask him directly.

Mahalo nui and we look forward to your responses.

Leinā'ala L. Ley (*she/her/hers*)

Sr. Associate Attorney

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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

IN THE MATTER OF)	Case No.
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CONTESTED-CASE HEARING)	CERTIFICATE OF SERVICE
REGARDING AMENDED INTERIM)	
INSTREAM FLOW STANDARDS FOR THE)	
SURFACE WATER HYDROLOGIC UNIT OF)	
WAILUA (2040): WAIKOKO STREAM AND)	
NORTH FORK WAILUA RIVER)	
(WAI'ALE'ALE STREAM), KAUA'I)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served on the following persons via email and by depositing the same in the United States mail, postage prepaid, on Dec 20, 2022:

Hui Ho'opulapula Nā Wai O Puna
c/o Earthjustice
850 Richards Street, Suite 400
Honolulu, HI 96813

Petitioner

James Torio
P.O. Box 51
Anahola, HI 96703

Petitioner

Miranda Steed
Territorial Building
465 So. King Street, Room 300
Honolulu, HI 96813

Deputy Attorney General

DATED: Honolulu, Hawai'i, Dec 20, 2022.

/s/ Kathy S. Yoda
KATHY S. YODA