

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

IN RE PETITIONS TO AMEND INTERIM) Case No.. CCH-MA13-01
INSTREAM FLOW STANDARDS FOR)
HONOPOU, HANEHOI/PUOLUA (HUELO),)
WAIKAMOI, ALO, WAHINEPEE,)
PUOHOKAMOA, HAIPUAENA,)
PUNALAU/KOLEA, HONOMANU,)
NUAAILUA, PIINAAU, PALAUHULU,)
OHIA (WAIANU), WAIOKAMILO,)
KUALANI (HAMAU), WAILUANUI,)
WAIKANI, WEST WAILUAIKI, EAST)
WAILUAIKI, KOPILIULA, PUAKEA,)
WAIOHUE, PAAKEA, WAIAAKA,)
KAPULA, HANAWI, AND MAKAPIPI)
STREAMS)
_____)

MINUTE ORDER NO. 9

AMENDED SCOPE OF HEARING, CASE CAPTION, AND HEARING SCHEDULE

Amended Scope of Hearing

On June 30, 2014, a hearing was held on whether to amend the scope of this contested case hearing to take an integrative approach to establish interim instream flow standards (IIFS) for all twenty-seven streams that were the subject of petitions filed by Na Moku Aupuni O Koolau (“Na Moku”). Parties present at the hearing were Alan Murakami, Ashley Obrey, and Summer Sylva representing Na Moku, David Schulmeister and Elijah Yip representing Alexander & Baldwin Inc. and East Maui Irrigation Co., Ltd. (collectively “A&B”), Jennifer Oana and David Taylor representing the County of Maui, Department of Water Supply (“DWS”), and Isaac Hall and Irene Bowie, appearing by telephone, on behalf of the Maui Tomorrow Foundation (“MTF”).

The Hearings Officer, having heard and considered the briefs and arguments presented, and based on the explanation included in Attachment A to Minute Order No. 7, ruled that the scope of the hearing should be expanded to include all 27 streams. These streams are: Honopou, Hanehoi/Puolua (Huelo), Waikamoi, Alo, Wahinepee, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, Nuaailua, Piinaau, Palauhulu, Ohia (Waianu), Waiokamilo, Kualani (Hamau), Wailuanui, Waikani, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Waiaka, Kapaula, Hanawi, and Makapipi.

With regards to the IIFS previously set for the first 8 streams (Honopou, Hanehoi, Puolua (Huelo), Waiokamilo, Kualani, Piinau, Palahulu, and Wailuanui), the Hearings Officer also ruled that the prior CWRM decisions should be presumed to be provisional decisions with an emphasis on looking at underlying reasons for changing those decisions, the difficulty in implementing those decisions, and the effect of those decisions. The IIFS for the remaining 19 streams (Waikamoi, Alo, Wahinepee, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, Nuaailua, Ohia (Waianu), West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Waiaka, Kapaula, Hanawi, and Makapipi) would be set *de novo*.

On July 16, 2014, the Commission met to discuss a Proposed Procedural Order to conduct a Contested Case Hearing for all twenty-seven (27) streams, and on August 20, 2014, the Commission voted to authorize, order, delegate, and direct the Hearings Officer to conduct a Contested Case Hearing on Petitions to Amend the Interim Instream Flow Standards for all twenty seven (27) Petitions and streams filed by NHL.

Case Caption

The case caption will be amended to reflect the expansion of the scope of the case to all 27 streams. From this point forward, the case caption shall read:

In re Petitions to Amend Interim Instream Flow Standards for Honopou, Hanehoi/Puolua (Huelo), Waikamoi, Alo, Wahinepee, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, Nuaailua, Piinaau, Palauhulu, Ohia (Waianu), Waiokamilo, Kualani (Hamau), Wailuanui, Waikani, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Waiaaka, Kapaula, Hanawi, and Makapipi streams.

Hearing Schedule

As a result of the expanded scope of the hearing, as set forth above, the hearing schedule, as set forth in Minute Order No. 4, is amended to be as follows:

COB Tuesday, November 4, 2014: Opening Statements, Opening Briefs, Witness Lists, Witness Statements, and Exhibits

COB Wednesday, December 3, 2014: Responsive Briefs, Witness Lists, Witness Statements and Exhibits

COB, Wednesday, December 17, 2014: Rebuttal Briefs, Witness Lists, Witness Statements, and Exhibits

Every week day from Monday, January 12, 2015 until completed: Evidentiary Hearing

Any deadline not amended above shall remain as set forth in Minute Order No. 4.

A prehearing conference will be held in December 2014, at a date to be determined, to establish the order of witnesses and other matters pertaining to the conduct of the contested case hearing. The Hearing Officer will take testimony from CWRM staff, Division of Aquatic Resources (“DAR”) staff, and representatives of the United States Geological Survey (“USGS”) on stream restoration for amphidromus species, implementation of stream restoration, and summaries of information in CWRM files in response to past requests from the parties.

Thereafter, the presentation of evidence by the parties would commence. The order of the remaining witnesses will be set at the prehearing conference.

By agreement, service of this Minute Order to all parties shall be by electronic mail. One original and three copies shall be delivered to the Commission through Ms. Kathy Yoda (CWRM).

DATED: Honolulu, Hawaii, September 9, 2014.

A handwritten signature in cursive script that reads "Lawrence Miike". The signature is written in black ink and is positioned above a horizontal line.

LAWRENCE H. MIIKE
Hearings Officer

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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 (WAIANU), WAIOKAMILO, KUALANI)
 (HAMAU), WAILUANUI, WAIKANI, WEST)
 WAILUAIKI, EAST WAILUAIKI, KOPIIULA,)
 PUAKEA, WAIHUE, PAAKEA, WAIKAKA,)
 KAPULA, HANAWI, AND MAKAPII)
 STREAMS)
 _____)

CERTIFICATE OF SERVICE

On September 9, 2014, a copy of the foregoing document was served on:

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 Commission on Water Resource Management