

COMMISSION ON WATER RESOURCE MANAGEMENT
STATE OF HAWAII

Surface Water Use Permit Applications,) Case No. CCH-MA 15-01
Integration of Appurtenant Rights and)
Amendments to the Interim Instream Flow) Minute Order #2; Certificate of Service
Standards, Na Wai Eha Surface Water)
Management Areas of Waihee, Waiehu, Iao)
and Waikapu Streams, Maui)
_____)

Minute Order # 2
Summary of the Prehearing Conference for the Contested Case
Hearing on Appurtenant Rights and Water-Use Permit Applications

Summary

At the August 11, 2015 prehearing conference, the following issues were discussed:

1. Evidence that applicants must provide for:
 - a. quantification of appurtenant rights; and/or
 - b. the amounts of water requested for water-use permits.
2. Procedures for submitting written testimonies and documents (exhibits).
3. Tentative starting date of the contested case hearing, and date for the next prehearing conference.

Discussion

1. Evidence of the Amount of Water Claimed Under Appurtenant Rights

a. Quantification of appurtenant rights

Applicants must document the amount of land in the Land Commission Award (LCA) from which their current TMK(s) are derived that was using water at the time of the original award. This requires translations of the original documents to show approximately what parts of

the TMK were using water, an estimate of the acreage using water at that time, and the purpose(s) of those uses (e.g., wetland kalo, crops such as bananas and sweet potatoes, pasture, household use, etc.).

Kapua Sproat of Earthjustice will explore the availability of students in the Hawaiian Studies Program at the University of Hawaii to assist in the translations for applicants who need such help, as well as possibly identifying and sponsoring experts on Mahele documents to testify at the hearing.

During the Fall 2015 semester, the University of Hawai'i at Mānoa's William S. Richardson School of Law's Environmental Law Clinic will be facilitating workshops and providing informational and other assistance to water use permit applicants in CCH-MA15-01. The Clinic seeks to help pro se applicants better understand the contested case hearing process as well as the legal framework for water resource management and water use permitting in particular. This information should better enable the pro se applicants to provide any supplemental information requested by the Hearings Officer.

b. Evidence in support of the amounts of water requested under water-use permits

Applications for existing and new uses must be supported by evidence that meets the Water Code's requirement that the amounts requested are "necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest." For water-use requests that are not based on appurtenant rights, applicants must also provide evidence that "reasonable alternatives" are not available.

Earthjustice and the Office of Hawaiian Affairs have agreed to sponsor expert witness(es) on the water requirements for wetland kalo for the hearing.

Other uses must be justified on a use-specific basis. For example, household users could refer to Maui Department of Water Supply standards, and specific crops might be justified by information on water requirements and practices for specific crops in the area of Maui where the crop is being grown or proposed to be grown.

Evidence from the Na Wai Eha interim instream contested case hearing (CWRM Case No. CCH-MA06-01) will be admissible in this proceeding if it reflects current conditions. The amount of water that is available for off-stream use, after the interim instream flow standard has been met, will be determined based on updates from CWRM staff that will be presented at the beginning of the contested case hearing.

2. Procedures for Submitting Written Testimonies and Documents (Exhibits)

Because of the large number of applicants, methods for reducing the burden of each applicant having to provide documents to all parties was discussed. Documents could be provided only to other parties requesting water from the same stream (including applicants requesting water from multiple streams, one of which is the stream in question). However, since all parties are entitled to receive documents from all other parties, the limitation would have to be voluntary. Thus, some method such as "sign-up sheets" might be used for voluntary compliance to receive documents from only certain applicants.

Again, because of the large number of applicants, how the documents would be distributed was also discussed. Two methods were discussed: 1) electronic, and 2) paper. For those with the technical capability, documents could be distributed and received electronically (e.g., as email attachments). For others, paper documents would be distributed and also converted to electronic files by the Commission staff. For example, paper documents would be

sent directly to those requesting them, and the Commission would also convert them to electronic files, which would be available on the Commission's website to all parties.

Attached to this minute order is a form that parties may fill out and return to receive further notices and filings from other parties and the Commission in electronic format. Parties opting to receive electronic notices and filings will no longer receive paper copies. Once parties start receiving electronic notifications and filings, they will be responsible for keeping parties informed of any changes to their email address.

A document setting forth how exhibits should be identified for each party, with examples, will be presented at the next pre-hearing meeting on November 5, 2015.

3. Tentative Starting Date for the Contested Case Hearing and Next Pre-Hearing Conference Date

The start of the contested case hearing has been tentatively established as the first week in June, 2016. Witness testimonies and exhibits, as well as any opening statements, would be due the first week in February. Any responsive testimonies and exhibits would be due six weeks later, or mid-March. Rebuttals (to any responses to initial testimonies and exhibits) would be due three weeks later, or the first or second week in April. Parties would then have six or seven weeks to prepare for the opening of the contested case. Sometime in May, another prehearing conference would be held to discuss the order of witnesses.

The next Prehearing Conference will be held on November 5, 2015 at 5:00 p.m. at the Wailuku Community Center, 395 Waena Place, Wailuku, Hawaii 96793. We will be discussing the status of the parties' preparation of their testimony and evidence, the due dates for filings and the commencement of the contested case hearing, and other procedural issues related to the contested case hearing.

Public Hearing

The Public Hearing on Applications for Surface Water Use Permits was continued for further hearing to October 14, 2015 at 1:00 p.m. at the Wailuku Community Center, 395 Waena Place, Wailuku, Hawaii 96793. At this public hearing, the Commission intends to take public testimony and to close the public hearing. The parties are not required to attend this public hearing as they have already been admitted as parties to the contested case and they will be allowed to present their information during the contested case hearing.

DATED: Honolulu, Hawaii, October 6, 2015.

A handwritten signature in black ink that reads "Lawrence Miike". The signature is written in a cursive style with a large initial "L".

LAWRENCE H. MIIKE, Hearings Officer

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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Management Areas of Waihee, Waiehu, Iao and)
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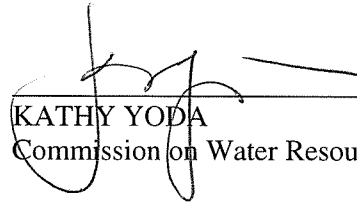
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