

Annual Report to the Twenty-First Legislature
2002 Regular Session

On

IDENTIFICATION OF RIVERS AND STREAMS WORTHY OF PROTECTION



Prepared by the

Department of Land and Natural Resources
Commission on Water Resource Management
State of Hawaii

In response to

Section 174C-31(c) (4)
Hawaii Revised Statutes

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INTRODUCTION

Senate Bill 2462, Senate Draft 1, House Draft 1, Conference Draft 1, was signed into law (Act 276, Session Laws of Hawaii 1988) by Governor John Waihee on June 13, 1988. This Act amended Section 174C-31 (Subsection (c)(4)), Hawaii Revised Statutes, of the State Water Code, and reads, in pertinent part, as follows:

"Identify rivers or streams, or portions of a river or stream, which appropriately may be placed within a wild and scenic river system, to be preserved and protected as part of the public trust. For the purpose of this paragraph, the term 'wild and scenic rivers' means rivers or streams, or a portion of a river or stream, of high natural quality or that possess significant scenic value, including but not limited to, rivers or streams which are within the natural area reserves system. The Commission shall report its findings to the legislature twenty days prior to the convening of each regular legislative session."

This fourteenth annual report to the Legislature provides an update on the current activities of the Commission on Water Resource Management (Commission) to implement the provisions of the Act.

BACKGROUND

Initial efforts undertaken by the Commission, in response to the legislative directive to list streams of high natural quality, involved a joint project with the National Park Service to prepare the "Hawaii Stream Assessment" (HSA), a two-year project with two primary objectives: 1) inventory Hawaii's perennial streams and their physical characteristics and 2) assess the aquatic, riparian, cultural, and recreational values of Hawaii's perennial streams. Secondary objectives of the HSA included: (1) centralizing stream-related data and reference sources in a database and bibliography; (2) identifying and prioritizing areas where more information is needed; (3) providing data to assist in making management decisions within a statewide context rather than on an ad hoc basis; (4) developing general stream protection guidelines; and (5) identifying specific streams appropriate for protection and enhancement.

Completion of the HSA report in 1990 led to the development of a preliminary database, and supporting references and files that continue to serve as a key cornerstone of the department's long-term stream management program. Other activities undertaken since the initial preparation of the HSA report include: convening of a Stream Protection and Management (SPAM) Task Force, drafting of proposed administrative rules incorporating SPAM Task Force recommendations, and completion of the Commission's Multi-Attribute Prioritization of Streams (MAPS) project

summarized in the 1999 annual report to the Legislature. Statewide public hearings have been held on the proposed SPAM provisions amending Chapter 13-169, Hawaii Administrative Rules, however, based upon public comments received, these draft rules are being revised and will require future statewide public hearings.

HAWAII WATER PLAN (HWP)

Recognizing the complexities associated with planning, regulation, and management of the State's water resources, the Commission developed a Statewide Framework for Updating the HWP. The framework advocates an Integrated Resource Planning (IRP) approach to provide for coordination and guidance in updating and integrating the various components of the HWP. Implementation of an IRP process will facilitate current planning and decision-making processes administered by the State and County, and will enable agencies to set priorities and develop appropriate strategies to meet the State's growing water demands. This framework, adopted by the Commission on February 16, 2000, serves as a guiding document to preparation and/or updates to the eight (8) component parts of the HWP which include the Water Resource Protection Plan, Water Quality Plan, State Water Projects Plan, Agricultural Water Use and Development Plan, and the four (4) County Water Use and Development Plans.

Funding constraints have limited updating of the HWP to the following components: the State Water Projects Plan and a partial update of the Water Resource Protection Plan. Related to these efforts, the Honolulu Board of Water Supply, as the lead agency for the City and County of Honolulu, and the Maui Department of Water Supply, as the lead agency for the County of Maui, are continuing their efforts to update the Oahu and Maui Water Use and Development Plans (WUDP), respectively. Preparation and updating of these County WUDPs will require close coordination with the Commission and compliance with the statewide framework adopted by the Commission.

STATE WATER PROJECTS PLAN (SWPP)

A final draft of the updated SWPP has been completed and consists, in part, of an extensive survey and evaluation of future State agency project water demands. The primary objective of the SWPP is to provide a coordinated framework for the planning and implementation of source development strategies to meet projected State agency water demands. The update of the SWPP also involved inventorying of State water sources including wells, stream diversions, and water systems, and the preliminary assessment of State department water conservation programs. The SWPP also identifies system service areas, system capacity, existing uses for each system, and provides a range of forecasts (high, medium, low) for future water demands, based on a 20-year projection. On October 26, 2000, the Commission approved the final draft of the SWPP and authorized the scheduling of public hearings to solicit public comment on the draft update of the SWPP. However, pursuant to recent changes in project plans and scheduling, State agency water demand projections are currently being re-assessed and may require subsequent revisions to the final draft of the SWPP. The scheduling and conduct of statewide public hearings are pending completion of this plan review.

WATER RESOURCE PROTECTION PLAN (WRPP)

The Commission has also undertaken steps to complete a partial update of the WRPP. Updating of the WRPP has been focused on efforts to augment the Commission's current surface water protection and management program. Efforts include the identification and delineation of watershed sectors/systems suitable for adoption as surface water hydrographic units. Establishment of statewide hydrographic units along with the development and adoption of an associated stream (and stream segment) coding system will aid the Commission in its regulation and management of our state's surface water resources. The partial update to the WRPP will also include an initial assessment/inventory of stream diversions and related information about the location of stream diversions and stream channel alterations within each designated watershed units. The data will consist of geographic coordinates, which will be used to produce geographic information system (GIS) coverages allowing for enhanced analysis of surface water issues by the Commission.

Updating of these components of the WRPP will facilitate further refinement of proposed SPAM administrative rules and will lead to more effective implementation of current and proposed stream protection and management measures under the Commission's Instream Use Protection Program. As part of this effort, the current update of the WRPP will incorporate available information (e.g., the adopted 1990 WRPP, the draft 1992 WRPP, the 1990 HSA, SPAM Task Force recommendations/provisions, and results of the draft MAPS study) to identify and prioritize rivers and streams for potential designation and protection as Heritage Streams. Following the conceptual approach and preliminary findings of the MAPS projects, an acceptable stream ranking system will be developed to identify and prioritize high-quality streams. Such ranking will also aid the Commission in prioritizing further data collection and analyses of streams statewide.

Concurrent with the updating of the WRPP, the Commission also plans to solicit inter-agency and public participation in the discussion of stream-related issues and the development of an acceptable stream assessment methodology. The goals of these discussions include, but are not limited to: 1) the identification of evaluation criteria and acceptable approaches for evaluating surface water resources; 2) establishment of quantifiable interim instream flow standards; 3) development of permanent instream flow standards; 4) assessment of stream quality and availability for development; 5) identification and prioritization of needed stream assessment studies and/or management projects; and 6) identification of alternative sources of funding.

OTHER STREAM-RELATED ACTIONS

On August 22, 2000, the Hawaii Supreme Court (Court) released its ruling on the appeal of the Waiahole Ditch Decision and Order issued by the Commission on December 24, 1997. The Court remanded seven items to the Commission for additional findings and conclusions, with further hearings if necessary. Two of the seven items addressed interim instream flow standards for windward Oahu streams.

On October 3, 2000, as amended by order dated October 15, 2000, the Commission issued an order halting all further diversions from Windward streams affected by the ditch pending determination of interim instream flow standards.

On November 29, 2000, the Commission delegated the remanded Waiahole Ditch Combined Contested Case Hearing to a hearing officer. A prehearing conference was held on February 2, 2001, and the date of the start of the hearing was set at April 4, 2001. On April 4, 2001, the parties began and concluded their opening statements and presentation of evidence on five of the seven remanded issues. On April 18, 2001, the parties filed written closing arguments. On April 24, 2001, the hearing officer heard closing arguments. On April 26, 2001, the parties filed Proposed Findings of Fact, Conclusions of Law, and Decision and Order for the five remanded issues heard on April 4, 2001.

On August 1, 2001, the Hearing Officer issued the HEARING OFFICER'S PROPOSED LEGAL FRAMEWORK, FINDINGS OF FACT, AND DECISION AND ORDER. The parties were given to noon, Tuesday, September 4, 2001, to submit written exceptions. On or about September 4, 2001, the nine parties filed written exceptions.

On October 1, 2001, the Commission heard oral arguments on the written exceptions to the Hearing Officer's Proposed Decision and Order. The Commission will issue a final decision and order on the seven remanded issues at a future date.

The Commission is proceeding with appropriate care and attention in addressing these and other issues resulting from the Court's decision. The ongoing efforts to update the WRPP are consistent with the Court's directive and will provide needed information in support of the Commission's implementation of a quantitative-based stream protection and management program statewide. Refined assessments of available water resources, as they are developed based upon ongoing and new data collection, will be appropriately incorporated in the current update and within future iterations of the WRPP.

PROGRAM LIMITATIONS

Program limitations stem primarily from inadequate staffing and a lack of funding resources. The following are excerpts from a State Auditor's report (Report No. 96-3):

1. "Overall activity in the area of surface water protection has been limited;"
2. "The Commission has issued stream alteration/diversion permits and accepted petitions for the designation of surface water management areas, but lacks adequate resources to carry out further mandates;" and
3. "The Commission's task force--Stream Protection and Management (SPAM)--developed recommendations for protecting surface water in 1994, but the Commission has yet to use the recommendations in developing an overall program. It

needs to identify the staffing and funding requirements necessary for carrying out a surface water protection program and proceed to obtain these resources."

It will continue to be the objective of the Commission to seek additional positions; the permanency of existing temporary positions; and to secure required funding from the Legislature to properly carry out the statutory provisions of the State Water Code. These objectives are consistent with the recommendations of the State Auditor and are in direct compliance with the Hawaii Supreme Court's decision re-affirming the Commission's stream-related mandate and statewide responsibility to protect and manage the State's water resources.