

**MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT**

DATE: January 17, 2017
TIME: 10:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.
1151 Punchbowl St., Room 132
Honolulu, Hawaii 96813

Chair Case called the meeting of the Commission on Water Resource Management to order at 10:03 am. The following were in attendance:

MEMBERS: Ms. Suzanne Case, Mr. William Balfour, Jr., Dr. Kamana Beamer, Ph.D.,
Mr. Michael Buck, Mr. Neil J. Hannahs

**DEPARTMENT OF
HEALTH'S DESIGNEE:** Mr. Keith Kawaoka

ABSENT: Mr. Milton Pavao

STAFF: Rebecca Alakai, Roy Hardy, Charley Ice, Jeffrey Pearson, P.E.,
Ayron Strauch, Dean Uyeno

COUNSEL: Cindy Young, Esq.

OTHERS: Kaleo Manuel (DHHL), E. Halealoha Ayau (DHHL)
Nancy Nishikawa (CH2M), Jason Kage (CH2M), Robert Alm (CLN)
David Henkin (Earthjustice/ Po'ai Wai Ola)

A. ACTION ITEMS

1. Federal Highway Administration, Application for a Stream Channel Alteration Permit (SCAP.4517.2), Hanapēpē Bridge Replacement, Hanapēpē River, Hanapēpē, Kauai, TMK: (4) 1-9-007:001 por., 013 por., and 034 por.; 1-9-010:014 por., 015., 046 por., and 050 por.

SUBMITTAL PRESENTATION by Rebecca Alakai

[Commissioner Buck arrived at 10:05 am]

Item A.1. is a Stream Channel Alteration Permit application from the Federal Highways Administration for the Hanapepe Bridge replacement. Hanapēpē is a perennial river approximately 15.6 miles long. The bridge was built in 1938. There are four species of 'o'opu that are typically found in this estuary. Other fish and crustaceans observed or reported include āholehole, mullet, tilapia, barracuda, 'ōpae and prawns. The new bridge will be longer (from 275-feet to 308-feet) and wider (from 36-feet to 52-feet) than the existing bridge. Two existing piers will be removed. The existing abutments will be demolished and removed. The new bridge abutments will be set back from the main channel to avoid interference with the existing foundation and provide greater hydraulic

capacity. The project also includes scour protection, utility relocations and temporary staging areas. The river will be temporarily diverted around the construction site using a method chosen by the contractor. These could include diversion pipes, coffering or other methods singly or in combination. A Final Environmental Assessment and Finding of No Significant Impact was issued by the State Department of Transportation in August 2016. HAR §13-169-52 Criteria for ruling on an application for stream channel alterations is that the quantity and quality of the stream water or the stream ecology should be minimized or not allowed. Staff believes that any adverse effects to the quantity and quality of the stream water or the stream ecology are small, temporary and would be mitigated through other agency permitting and BMPs. The applicant has confirmed that fish passage will be maintained through the duration of the proposed project.

RECOMMENDATION:

That the Commission:

1. Approve the Stream Channel Alteration Permit (SCAP.4517.2) application to replace the existing Hanapēpē Bridge with a three-span, arched, girder bridge which includes scour protection, supporting walls and slopes, utility relocations, and temporary staging areas subject to the standard conditions in **Exhibit 4**.

MOTION: (Hannahs / Balfour)
To approve the staff recommendation.
UNANIMOUSLY APPROVED.

2. Request to Delegate Authority to the Chairperson to Procure Consultant Services to Complete Larval Drift Study, Waihe'e River and Wai'ehu Stream, Maui

SUBMITTAL PRESENTATION by Ayrton Strauch

One of the purposes of establishing instream flow standards is to improve habitat for native fresh water faunas. Endemic freshwater Hawaiian fish, shrimp and mollusks have an amphidromous life-cycle: adults live in freshwater streams, producing eggs that hatch into larvae and drift into the ocean. There is very little information on the actual impacts of stream restoration to larval drift. In an effort to better understand how flow restoration impacts native stream species, a freshwater ecologist initiated a study on larval production in the Waihee River and Waiehu Stream. The Commission staff is seeking consultant services to conclude the analysis of the larval drift samples and report write-up.

RECOMMENDATION:

Staff recommends that the Commission:

1. Delegate authority to the Chairperson to procure consultant services to complete the study of amphidromous larval export from the watersheds of Waihe'e and Wai'ehu, Maui, before and after the 2010 flow restoration, and to approve funding not to exceed \$10,000.

Procurement will be done in accordance with Hawaii Revised Statutes Chapter 103D and Hawaii Administrative Rules, Chapter 3-122.

Commissioner Buck remarked on the cost of the study.

Mr. Strauch said samples were collected from 2010 – 2013. Samples from 2010 – 2012 have been processed. The objective of this study is to complete the 2013 sample processing. This study is not a complicated study and will be completed within a few weeks.

Commissioner Buck asked if this study could have been delegated to the Chair for approval.

Mr. Strauch said there is a possibility for a follow-up study with more data collection. Additional costs may be incurred.

Chair Case agreed with Commissioner Buck, however she believed the staff submittal was informative for the Commissioners.

Commissioner Hannahs asked if there were any conflicts of interest with the person who launched this study.

Mr. Strauch replied, “no”. The study was done by a graduate student.

Commissioner Hannahs asked if staff would have unfettered use of the results.

Mr. Strauch said the goal is to complete the dataset. Deliverables to the Commission will include the dataset and a summary report.

Chair Case asked staff to confirm the rules for delegating authority to the Chair for approval of contracts.

**MOTION: (Balfour / Hannahs)
To approve the staff recommendation.
UNANIMOUSLY APPROVED.**

3. Kaukonahua Ho'ola, LLC, Application for a Water Use Permit, Kaukonahua-Hoola (Well No. 1-3105-001), TMK (1) 6-5-001:022, 034, 043; GWUP No. 01032, New Irrigation and Domestic Use for 0.040 mgd, Waiialua Ground Water Management Area, Oahu

STAFF PRESENTATION by Charley Ice

The applicant is requesting an allocation of 0.040 mgd for 1) a total of 13 acres of tree crops; 2) 2 acres of pasture; 3) stockwater for 10 horses and 10 goats; and 4) seven “farm dwellings”. The Commission received no comments or objections. The allocation conforms to all requirements. The cumulative impacts review does not apply to this application.

RECOMMENDATION:

1. Staff recommends that the Commission approve the issuance of Ground Water Use Permit No. 01032 to Kaukonahua Ho'ola, LLC for the reasonable and beneficial use of 0.040 million gallons per day of fresh water for agriculture from the Kaukonahua-Hoola (Well No. 1-3105-001), as described in the recommended allocation portion of Exhibit 7, and subject to the standard water use permit conditions listed in Exhibit 8 and the following special conditions:

- a. This permit is invalid if the use as described in Exhibit 7 changes. This includes, but is not limited to: type of use, location of use, land use classification changes, or anything that varies from the application.
 - b. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.
2. Staff also recommends that the Commission approve a well construction permit for Kaukonahua-Hoola (Well No. 1-3105-001), subject to the standard well construction permit conditions as described in Exhibit 9.
 3. Staff also recommends that the Commission approve a pump installation permit for Kaukonahua-Hoola (Well No. 1-3105-001), subject to the standard pump installation permit conditions as described in Exhibit 10.

Commissioner Buck asked if the water use reporting requirement should be included in the staff's recommendation.

Mr. Ice said staff informs the applicants to set-up an online water use reporting account prior to issuing the permits.

Commissioner Buck emphasized the importance of people reporting their water use data.

Roy Hardy said that water use reporting is a provision of the Water Code. Reporting water usage is a Water Use Permit Standard Condition and is also described in the Certificate of Water Use. A Commission staff is also fully dedicated to following up with well owners.

Commissioner Buck asked what happens if well owners do not report their water use data. He commented that people may not be aware of the Commission's rules and regulations.

Chair Case asked staff to consider emphasizing the monitoring requirement in the staff submittal.

**MOTION: (Balfour / Hannahs)
To approve the staff recommendation.
UNANIMOUSLY APPROVED.**

B. UPDATES

1. Update on the Mediation for the Complaint and Petition for Declaratory Order Against Waste Filed by Po'ai Wai Ola and West Kaua'i Watershed Alliance (through Earthjustice)

Robbie Alm updated the Commission on the Petition and reiterated that it is really unusual to try to resolve this issue without studies and findings and a significant factual record. All the parties are being asked to come to an agreement with significant risk to what the future will hold for them and have been unable to reach a consensus by year-end. He requested an extension of time to the end of February 2017 for the parties to reach an agreement on 3-4 very specific issues.

[Commissioner Beamer arrived at 10:22 am]

Chair Case thanked all the parties for their hard work and mediation efforts.

Commissioner Balfour urged the Commissioners to approve Mr. Alm's request for an additional 2 months for the parties to reach an agreement.

Commissioner Hannahs asked if any party would benefit from the status quo.

Mr. Alm believed no party would benefit. He hoped the parties will decide it is better to act now, to have certainty and to have more water. However, it is difficult for the parties in a mediated proceeding as they have to voluntarily agree to things that they may not be entirely comfortable with.

Commissioner Hannahs asked if there is anything staff can do to help the mediation process.

Mr. Alm believed that the Commission said publicly that it would like to see this resolved via mediation as opposed to litigation and the Commission's continued emphasis on that is important.

Commissioner Buck asked if some Commission direction might help the mediation process.

Mr. Alm believed that would have to be done very carefully because the Commission is the ultimate decision maker.

Commissioner Buck asked if the Commission could make a decision on the formal complaint and deal with some specific issues regarding the complaint without addressing the more global issues that the parties are trying to agree to in mediation.

Mr. Alm believed the Commission will have to consult with the Deputy Attorney General to the degree to which it should be stating for the record what its decision would be depending upon the stage it is at in the process.

Commissioner Beamer apologized as his flight from Kona was delayed. He inquired if the parties agreed that there is waste of water diverted from the Waimea River.

Chair Case cautioned the Commissioners to discuss procedural issues only.

Commissioner Beamer apologized. He was concerned about the status of the mediation as traditional and customary rights are being impaired.

Mr. Alm explained that the parties are at a point in the mediation where if there is an agreement the parties are going to have to accept things they don't want to accept. If Earthjustice, Kauai Island Utility Cooperative (KIUC), Kekaha Agriculture Association (KAA), Agribusiness Development Corporation (ADC) and Department of Hawaiian Home Lands (DHHL) can come to an agreement, different pieces have to be in place or there would never be a settlement. The parties have worked very hard and if there was no progress, mediation would have ended in November. He requested the mediation to continue through February.

Commissioner Balfour reiterated his approval.

Commissioner Beamer agreed. He understood that the mediation is confidential, however he preferred a more specific update.

Commissioner Buck was in favor of the extension as well.

Commissioner Hannahs said mediation is better than a contested case, but education may be better than mediation (e.g., education as to why it is important for 'o'opu to get upstream, education as to why it is important to have a certain amount of streamflow).

Mr. Alm commended the parties' willingness to understand what it is like to view the world from a different person's viewpoint and said that is one of the reasons why mediation has taken this long. It is not easy to voluntarily give up things that one would otherwise fight for.

Commissioners were in favor of the extension of time to the end of February 2017.

The meeting was adjourned at 10:50 am.

Respectfully submitted,



KATHY YODA

APPROVED AS SUBMITTED:



JEFFREY T. PEARSON
Deputy Director