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DEPARTMENT OF LAND AND NATURAL RESOURCES | KA 'OIHANA KUMUWAIWAI 'ĀINA
COMMISSION ON WATER RESOURCE MANAGEMENT | KE KAHUWAI PONO
P.O. BOX 621
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Welina me ke aloha,

Thank you for taking the time to serve in this critical role as a member of the Nominating Committee for the Commission on Water Resource Management.

You were chosen to assist the State of Hawai'i in filling two vacancies on the Commission on Water Resource Management (the Commission), which has exclusive jurisdiction in managing the waters of the State under the State Water Code (HRS chapter 174C).

There are seven members on the Commission, two of whom are *ex officio* – the DLNR Chairperson, who is also the Chairperson of the Commission; and the Director of the Department of Health or the Director's designee. You are here to select a list of at least three nominees for each open position of the remaining five members. The list will then be given to the Governor to select a nominee, who must be confirmed by advice and consent of the Senate.

Each nominee that you select must meet the criteria of having “**substantial experience in the area of water resource management.**” Attached to this handout are general tips regarding the conduct of the meeting, guidance on Sunshine Law, and a small collection of relevant statutory sections that may be helpful to refer to throughout the meeting.

If I can be of any assistance to you, please contact me at the numbers listed below.

Ola i ka wai,

/s/ Ciara W.K. Kahahane

CIARA W.K. KAHAHANE
Deputy Director
Commission on Water Resource Management

587-0212 (direct line)
587-0214 (main office line)

TIPS

General Timeline

1. Select a Chair to conduct the meeting and tabulate votes.
2. Take public testimony, if anyone wishes to testify before interviews begin.
3. Conduct interviews (see guidelines for how to do this in compliance with Sunshine Law).
4. If insufficient time is available to complete the interviews of all candidates, you may set a continuation date to hold another meeting. Because not all candidates' interviews have been scheduled for **today, June 9**, you will be required to hold at least one more meeting to interview all candidates.
5. Once all candidates have been interviewed, ask the CWRM secretary to record the names for the list of nominees and send it to the Governor's office with your signatures.

Q&A

Question: Are there limits to when we can take public testimony, and for how long?

Answer: No limits are imposed on the length of testimony, or when it can be taken.

Question: Are there any specific questions we should ask the applicants?

Answer: There is no requirement for which or how many questions should be asked of each candidate, although you may consider uniformity of treatment for purposes of fairness and consistency in determining whether a candidate has substantial experience in the area of water resource management.

Question: Can we select more than three nominees for each open position?

Answer: Yes. There is no maximum number of nominees.

Question: Should our list indicate a priority of nominees?

Answer: At your discretion, you may or may not indicate a priority of nominees. If you do intend the list to be prioritized, you should clearly indicate that on the list itself.

Question: Can we disclose the list of nominees?

Answer: Generally, disclosure of the nominee list is subject to provisions of the Uniform Information Practices Act (Chapter 92F). You are responsible for maintaining the personal privacy of the candidates, whether they are nominated or not and should **not** share any names of candidates unless they have agreed to have them disclosed to the public.

SUNSHINE LAW

Because the nominating committee members are appointed by statute (HRS §174C-7), a nominating committee meeting is subject to the state Sunshine Law (HRS chapter 92) and is initially conducted as an open meeting accessible to the public.

To preserve the personal privacy of the candidates, interviews are usually conducted confidentially in an executive session that is closed to the public. Candidates may request that their interviews be conducted in open session (i.e., in public).

Unless a candidate requests that the interview process be conducted in the open, the nominating committee should go into executive session according to the following procedure:

1. A committee member should make a motion to go into executive session before the candidate's interview begins.

For example, the motion could be stated as follows:

“I move to go into executive session to consider the selection of nominees to the Water Commission to consider the qualifications and matters affecting the personal privacy of the candidate(s) involved under section 92-5(a)(2), Hawaii Revised Statutes.”¹

2. At least three members of the committee must vote to go into executive session, or the motion will not carry.
3. Minutes must be taken by the CWRM secretary throughout the executive session.
4. Persons attending the executive session should be limited to those who are strictly necessary.
5. If the candidate notifies you that they wish to proceed in open session, exit executive session and hold the interview as an open meeting for that candidate.

¹ To consult with the assigned deputy attorney general, you may vote to go into executive session by motion “to consult with the committee's attorney on questions and issues pertaining to the committee's powers, duties, privileges, immunities, and liabilities” under HRS §92-5(a)(4).

If so, please remember to ask if there is any public testimony regarding the candidate. Otherwise, you may remain in executive session until all remaining candidates have been interviewed.

6. Each time that you return to an open meeting after exiting executive session, the Chair should give a brief general summary² of what was done in executive session without losing the confidential purpose for the session (e.g., “we just met in executive session to interview three candidates for a position on the Water Commission” or “we just met with our attorney to discuss a legal question about the nominating process” or “we just voted to nominate a list of three candidates to the Water Commission for the Governor’s consideration”).
7. Address all matters and recess as necessary.
8. Our current agenda indicates that interviews for the remaining candidates will be held at a future meeting on a date to be determined.

If you are unable to interview all six candidates whose interviews are scheduled for today, June 9, please leave executive session and publicly recess this nominating committee meeting, stating the new date, time, and place for further interviews.

9. Because you will not interview all the candidates for the Commission at this first meeting, you will not have to determine the final list of candidates. When you are finished interviewing all interested candidates, please take the vote to nominate individuals for selection while in executive session to protect the personal privacy of the candidates.

² HRS §92-4(a) states “... The reason for holding such [an executive meeting] shall be publicly announced ...” and (b) “Any discussion or final action taken by the board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held...”

REFERENCES

CHAPTER 174C STATE WATER CODE

§174C-7 Commission on water resource management. (a) There is established within the department a commission on water resource management consisting of seven members which shall have exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code, except as otherwise specifically provided in this chapter.

(b) Five members shall be appointed by the governor subject to confirmation by the senate, in a manner prescribed in subsection (d). Each member shall have substantial experience in the area of water resource management; provided that at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage such as those preserved by section 174C-101. The chairperson of the board of land and natural resources shall be the chairperson of the commission. The director of health shall serve as an ex officio voting member.

(c) The members of the commission shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) In appointing a member to the commission, the governor shall select from a list submitted by a nominating committee. The nominating committee shall be composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. The committee shall solicit applications and send to the governor the names of at least three individuals for each open position.

(e) Except as otherwise provided in this chapter, the commission shall be subject to sections 26-34, 26-35, and 26-36. [L 1987, c 45, pt of §2; am L 2003, c 184, §1]

...

§174C-101 Native Hawaiian water rights. (a) Provisions of this chapter shall not be construed to amend or modify rights or entitlements to water as provided for by the Hawaiian Homes Commission Act, 1920, as amended, and by chapters 167 and 168, relating to the Molokai irrigation system. Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act.

(b) No provision of this chapter shall diminish or extinguish trust revenues derived from existing water licenses unless compensation is made.

(c) Traditional and customary rights of ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778 shall not be abridged or denied by this chapter. Such traditional and customary rights shall include, but not be limited to, the cultivation or propagation of taro on one's own kuleana and the gathering of hihiwai, opae, o'opu, limu, thatch, ti leaf, aho cord, and medicinal plants for subsistence, cultural, and religious purposes.

(d) The appurtenant water rights of kuleana and taro lands, along with those traditional and customary rights assured in this section, including access by the holder thereof to conduct activities necessary to assure the use, delivery, and quality of water including temperature and turbidity, that shall not be unreasonably withheld, shall not be diminished or extinguished by a failure to apply for or to receive a permit under this chapter. [L 1987, c 45, pt of §2; am L 1991, c 325, §8; am L 2022, c 27, §5]

CHAPTER 92

PUBLIC AGENCY MEETINGS AND RECORDS

§92-4 Executive meetings. (a) A board may hold an executive meeting that is closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting.

(b) Any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held; provided that in describing the discussion or final action taken by the board:

- (1) The information reported shall not be inconsistent with the purpose for which the executive meeting was convened pursuant to section 92-5, including matters affecting the privacy of individuals; and
- (2) The board may maintain confidentiality for the information described in paragraph (1) for as long as disclosure would defeat the purpose of convening the executive meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2; am L 2023, c 19, §1]