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STAFF SUBMITTAL

COMMISSION ON WATER RESOURCE MANAGEMENT

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Honolulu, Hawaii

Delegation of Authority to the Chairperson to
Appoint a Hearing's Officer for Appurtenant Rights Claims for
Surface Water Use Permit Applications in the
Na Wai Eha Surface Water Management Areas, Maui

SUMMARY OF REQUEST:

Delegation of authority to the Chairperson to appoint a Hearing's Officer for Appurtenant Rights Claims for Surface Water Use Permit Applications (Applications) in the Na Wai Eha Surface Water Management Areas, Maui.

BACKGROUND:

On September 27, 2011, the Commission on Water Resource Management (Commission) approved a process for determining appurtenant water rights in the Na Wai Eha Surface Water Management Areas (SWMAs). The appurtenant rights determination will be a two-step process. The first step will be to determine whether there is an appurtenant water right associated a parcel of land on which water is being used or is proposed to be used. The second step will, as part of the surface water use permitting process, be to quantify the amount of water entitled by that right.

The Commission has the legal authority to determine appurtenant rights pursuant to HRS §174C-5(15) which provides that, in addition to its other powers and duties, the Commission "[s]hall determine appurtenant water rights, including quantification of the amount of water entitled to by that right..."

On November 1, and 8, 2011, the Commission published public notices of its intent to determine appurtenant rights in Na Wai Eha. Applications for appurtenant water rights were to have been submitted within 90 days from the date of the last notice publication (i.e., by February 6, 2012).

Commission staff have reviewed all applications for appurtenant right claims that were submitted and determined if each application can be deemed complete for processing. The Commission will shortly publish a public notice of the applications for appurtenant rights claims. This will establish a

deadline for persons with a legal or material interest in the water to file written objections to an application for appurtenant rights. All such persons must serve copies of their written objection(s) to the applicant and the Commission. Applicants will be given an opportunity to submit a rebuttal to the written objections.

Upon the timely receipt of written objections and rebuttals, or if the staff has knowledge of issues which require further investigation or deliberation, a Hearing's Officer will hear all legal and material evidence pertaining to an application and make appropriate recommendations to the Commission.

If no objections to an appurtenant right claim are filed, the Commission may proceed to act upon the application within 120 days of the application being deemed complete.

ANALYSIS/ISSUES:

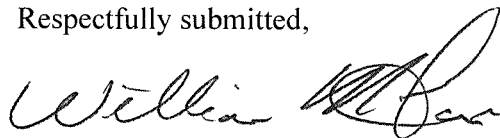
The Commission may conduct the hearing or has the authority under Hawaii Revised Statutes, sections 174C-11 and 92-16(3) and Hawaii Administrative Rules section 13-167-56(d) to appoint a Hearing's Officer or master to hear and reach a preliminary decision on any matter concerning the implementation or administration of the State Water Code. In the past to be efficient and expeditious in conducting various proceedings, the Commission has delegated authority to the Chairperson to appoint a Hearing's Officer.

In this matter, the appointed Hearing's Officer shall hear the legal and material evidence pertaining to the applications for appurtenant rights claims to which objections have been received and make appropriate recommendations to the Commission.

RECOMMENDATION:

That the Commission delegate authority to the Chairperson to appoint a Hearing's Officer for the appurtenant rights claims for Surface Water Use Permit Applications in the Na Wai Eha Surface Water Management Areas, Maui.

Respectfully submitted,



WILLIAM M. TAM
Deputy Director

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson