

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: April 18, 2017
TIME: 10:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Suzanne D. Case called the meeting of the Commission on Water Resource Management to order at 10:03 a.m.

The following were in attendance and/or excused:

MEMBERS: Ms. Suzanne Case, Keith Kawaoka, DOH Designee for Dr. Virginia Pressler, Mr. Neil Hannahs, Mr. William Balfour, Dr. Kamana Beamer, Mr. Michael Buck

STAFF: Deputy Director Jeffrey T. Pearson, P.E., Dean Uyeno, Ms. Malie Beach-Smith

EXCUSED: Mr. Milton Pavao

COUNSEL: Linda Chow, Esq.

OTHERS: Yvonne Izu, William Aila, Jonathan Scheuer, Kylie Wager, Jason Hines, David Henkin, Myra Kaichi, Linda Rosehill, Dawn Huff, Natasha Baldauf, Doug Codiga, Isaac Moriwaki

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties.

A. APPROVAL OF MINUTES

March 21, 2017

Commissioner Buck suggested that because there were discussions between the Commission and Dept. of Health on the Red Hill update, he would prefer a summary of the discussions in addition to the attached powerpoint presentation. Commissioner Buck was willing to accept the minutes as is, but for future meetings, he would prefer a more detailed minutes of the discussions.

Commissioner Beamer supported Commissioner Buck's suggestion that a summary of discussions in future updates that captures conversations would be recommended.

Approved by Commission on
Water Resource Management
at the meeting held on
May 16, 2017

Exhibit Y-49

Item A-3

MOTION: (BUCK/BALFOUR)

To approve the minutes to add more verbiage on future discussions on updates.
UNANIMOUSLY APPROVED.

B1. UPDATE/ACTION

Update on the Mediation of the Combined Petition to Amend the Interim Instream Flow Standards for Waimea River and its Headwaters and Tributaries, and Complaint and Petition for Declaratory Order Against Waste, Filed by Po'ai Wai Ola/West Kauai Watershed Alliance (through Earthjustice); and if there is a fully executed Mediation Agreement presented, Approval or Disapproval by the Commission.

Deputy Director Jeffrey Pearson introduced Robbie Alm, mediator, who asked for an extension of one month at the March 21, 2017 Commission meeting to fine-tune the Mediation Agreement with the parties.

Deputy Director Pearson summarized by reading the agenda that the Commission may go into Executive Session pursuant to Sec. 92-5(a)(8), HRS. He pointed out key words in that paragraph, "confidential" and "agreement". He also referenced the Terms of Reference from the Minutes of February 16, 2016 Commission meeting. It stated that the Commission and parties agreed to the Terms of Reference.

Robbie Alm stated that he has a brief presentation and hopefully a positive one and a proposal to present in Executive Session. He intends to brief the Commissioners on the present status with the parties.

Being that there were no public testimonies, Chair Case asked Commission members if there is a motion to move into Executive Session.

MOTION: (BALFOUR/HANNAHS)

Chair Case read, "The Commission may go into executive session pursuant to Sec. 92-5(a)(8), HRS, to discuss an agreement between the parties brought forth in mediation under Sec. 13-167-91, HAR, and held confidential under Secs. 13-167-89 and 13-167-90, HAR. The Commission may also go into executive session pursuant to Sec. 92-5(a)(4), HRS, to consult with their attorney on questions and issues pertaining to the Commission's duties, privileges, immunities, and liabilities."

UNANIMOUSLY APPROVED.

At 10:10 am the Commission convened into Executive Session.

The Commission returned at 12:17 pm subsequent to Executive Session.

Chair Case thanked all who work so diligently the past year on this Mediation Agreement. The Commission had a very detailed review of the proposed Agreement and a good chance to understand the many intricate details of it. Chair Case announced that the Commission voted to approve the Agreement. She stated that this was such a huge amount of work on everyone's part and clearly everyone voiced their standpoint on what was needed. Chair Case also stated that the parties all capably represented their interest and were also able to see the larger picture. She noted that what was amazing was what didn't happen after years of discussions. Chair Case then offered the Commission an opportunity to voice their impressions of the Agreement and why each voted to support the Agreement.

Commissioner Buck thanked everyone for their hard work and success in setting a new model for how the Water Commission can deal with these issues. Public trust, responsibilities of providing DHHL beneficiaries, restoring streams while still providing exciting opportunities for renewable energy, preserving agriculture and maintaining that for Kauai were key issues that was dealt with. It's a complicated Agreement that the normal process would have been difficult to obtain. The addition of renewable energy provided a lot of compromises. The difficult part for you is that you would have to report to the stakeholders and justify why you took the position. Because of its complexity, Commissioner Buck asked the parties for their continued help to explain this to the stakeholders. Hopefully, we can work through the permitting. Commissioner Buck feels that this is a historic day for him as well. He appreciated everyone's hard work and looking forward to Kauai to meet with the stakeholders.

Commissioner Beamer also thanked all the parties, especially Robbie Alm for taking the time to take on this task and the efforts accomplished in getting everyone together and finding compromise and the implementation of the Agreement. This made it a stronger mediated agreement and will enable us to get water back into the stream soon and efficiently. Robbie explained that there were agreements in areas where boards could be opened up and removal of gates which was agreed upon by all parties. Commissioner Beamer stated that was very substantial for him. In addition, there is a fine point where 25 mgd will be measured in Waimea Stream/River, and that is a great point because staff can obtain immediate updates on what levels are and would not have to travel to Kauai and test it monthly. It's about 19 feet above sea level, fairly close to bridge, can assume connectivity, from Mauka to Makai. He commended staff's effort in working with Robbie Alm and others to define that up front was really helpful as a Commissioner. He thanked Po'ai Wai Ola; this mediation would not have taken place had this not been brought to the Commission. The Commission was then made aware and went through the process of investigation. Lastly, Commissioner Beamer stated that he was a part of the Na Wai Eha mediated agreement. This would be a second time for him and stated that he is very happy that the parties could get together and continue to move forward. He feels this is a great start and looking forward to seeing everyone on Kauai. The challenge is to explain the Agreement to the community members and make sure that everyone understands the reasons behind this decision.

Commissioner Hannahs stated that it took effort listening to each other to achieve coming to an agreement; this is a really good sign. He appreciated Robbie's work on this mediation.

Commissioner Hannahs commented that if we want to invest in a better community and a return of that yield multi-fold for your interest, acquire more mediation skills. Because what this does, not only financially, but in terms of relationships and so forth, he thinks that this will be a wonderful investment. Whether in a law firm or operating interest, the better we get at this, the better society is. He gave example of work being done with Nainoa Thompson and PBS and Malama Honua. They took a message of Malama Honua around the world, looking to be inspired and found pockets of inspiration. They returned and realized it right here and probably leading the world. This whole historic legacy of fighting with each other and not integrating other people's values, should be connected to our own. He referred to Dr. Beamer's confirmation referring to One Water as a principle and he thought it an awesome thought. It's actually one oiwī. It's about being one with each other in all forms of this place. He felt that is our core value. When we start to commit to that and listen to how we balance all these interest, and how we live in this place, not in a perfect way, but where we are improving day to day. The footprint we leave on this earth in a way that we accommodate each other. That's the Hawaii we want for ourselves, children, and grandchildren. You took steps towards that with this Agreement and probably gave up (or gained) something for your individual interest, but for the larger interest is much more. He thanked the parties for that. He stated that it made our job easier, but also it sets a standard. Now we can go to the next community and say the good we did for Kauai. They can consult with the parties for inspiration and advice. This process was awesome and precedence setting and the outcome shows it.

Commissioner Balfour echoed what the Commissioners said. He was particularly proud of the parties. They did a marvelous job. It was a mighty task and they had a premier mediator who did great. He feels this was a marvelous agreement; it covered the waterfront and was very proud. He thanked the parties for their efforts.

DOH Designee Keith Kawaoka also echoed what the Commissioners stated and thanked everyone who was involved in this process. He noticed that the parties came from different perspectives, different interests, but somehow came up with an agreement that everyone can go forth from here. He thanked Mr. Alm for seeing this through. For the largest perspective, speaking from another agency, he feels like this is a good tool that can be recognized and a perfect one to use here and possibly for future disagreements. Speaking for himself who was born on Kauai, he appreciated the involvement of everyone as well as everyone who lives and works on Kauai and appreciate the efforts going on for the future of Kauai, especially on the West side. He stated that this a good tool to look at for future disagreements throughout the State. Overall, everyone has come through with the spirit of aloha in recognizing that we are living here in a small environment; we have to protect it for future generations to come. Mahalo to everyone.

Chair Case concluded by thanking Po'ai Wai Ola for reporting issues for Kauai and for all of the parties for sorting through these details for such a long period of time. Her deepest Aloha went to Robbie Alm for his determination and working well with the parties. She thanked staff for the technical expertise and communication and support of this process. A special Mahalo went to Jeff Pearson for believing in this process as a way to move forward

to protect our resources, protect our public trust obligations and come to a collective agreement on these very important issues.

Chair Case asked for a motion to adjourn.

(HANNAHS/BEAMER)

MOVED AND SECONDED TO ADJOURN

The April 18, 2017 Commission meeting was adjourned at 12:30 pm

Deputy Director Pearson made brief statement after adjournment to tentatively set a date for a public meeting on Kauai for Thursday, May 4, 2017 at 5:30 pm. He stated that this meeting will be sunshined regardless if the Commissioners are there or not. They will not be required to attend this public information meeting. He suggested the parties attend to answer questions from the public. Staff will be there. Again, this is tentative. We will work with the parties.

Chair Case felt that this Agreement is very important and historic and feels like a news release should be published today.

Deputy Director Pearson stated that this will be put on the Commission's website as soon as possible.

Deputy AG Linda Chow stated that in the Agreement there is a reference to the DHHL number of 6.908. It should be 6.903 according to their Water Use and Development Plan.

Deputy Director Pearson stated that it will be amended with Chair's support.

Respectfully submitted,



FAITH CHING
Secretary

APPROVED AS SUBMITTED:



JEFFREY T. PEARSON, P.E.
Deputy Director