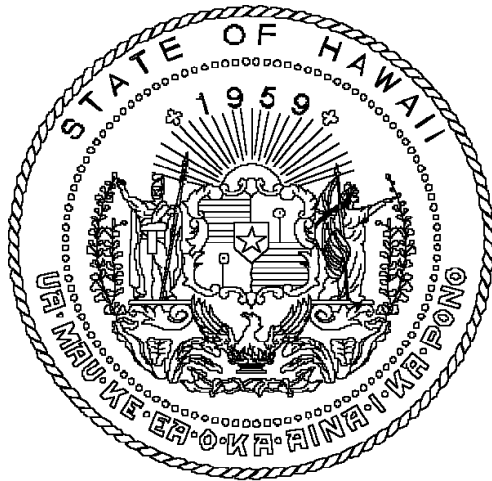


Report to the Twenty-Fourth Legislature
2008 Regular Session

On

IDENTIFICATION OF RIVERS AND STREAMS WORTHY OF PROTECTION



Prepared by the

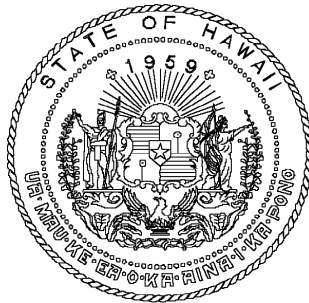
Department of Land and Natural Resources
Commission on Water Resource Management
State of Hawaii

In response to

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

Honolulu, Hawaii

November 2007



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IDENTIFICATION OF RIVERS AND STREAMS WORTHY OF PROTECTION

INTRODUCTION

Section 174C-31, Hawaii Revised Statutes (HRS), of the State Water Code, reads, in pertinent part:

"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 Report to the Legislature provides an update on the current activities of the Department of Land and Natural Resources' (DLNR) Commission on Water Resource Management (Commission) to implement the provisions of Section 174C-31, HRS.

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 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 the cornerstone of the Commission's long-term Stream Management Program. Other activities undertaken since the initial preparation of the HSA Report include: 1) Convening of a stream protection and management (SPAM) task force, and 2) Completion of the Commission's Multi-Attribute Prioritization of Streams (MAPS) project summarized in the Commission's 1999 Annual Report to the Legislature. This 2007 Annual Report summarizes the planning efforts and on-going activities currently being carried out

by the Commission's Stream Protection and Management Branch to develop and implement a statewide stream protection program.

STREAM PROTECTION AND MANAGEMENT BRANCH

In 1990, HSA made the recommendation to “dedicate a Commission staff position specifically and exclusively to conservation.” The SPAM Task Force, in 1994, recommended that “general fund monies are needed for additional permanent CWRM positions for streams for: (d) a streamkeeper with a conservation point of view.” A surface-water hydrologist was hired in March 2002, to specifically address the issues of furthering the stream protection and management goals of the Commission.

On August 22, 2000, the Hawaii Supreme Court (Supreme Court) released its ruling on the appeal of the Waiahole Ditch Decision and Order. In their decision, the Supreme Court emphasized that “instream flow standards serve as the primary mechanism by which the Commission is to discharge its duty to protect and promote the entire range of public trust purposes dependent upon instream flows.” It is under this interpretation of the State Water Code that the Commission has directed its efforts to develop a methodology for establishing instream flow standards, to ultimately identify rivers and streams worthy of protection and implement the provisions of Section 174C-31, HRS.

In line with the Supreme Court decision, the Commission established the Stream Protection and Management (SPAM) Branch in July 2002. The SPAM Branch is comprised of the Instream Use and Protection Section and the Surface Water Regulation Section. The duties of the Instream Use and Protection Section, which focus on the implementation of Section 174C-31, HRS, include, but are not limited to, the following:

- Administers the statewide Instream Use and Protection Program in cooperation with federal, state and county agencies.
- Prepares and enforces instream flow standards to protect instream water uses.
- Prepares interim instream flow standards (IFS), pending the establishment of permanent standards.
- Inventories stream systems, assesses their resource values, recommends stream protection policies, and develops a stream management plan for Commission adoption and use.
- Protects watersheds, streams, and wetlands from degradation.

On July 27, 2005, the Commission was presented with the first draft of the SPAM Implementation Plan (Plan). The Plan is a critical step in laying out the foundational elements to guide the SPAM Program towards proactively addressing IFS statewide and improving the

overall management of Hawaii's surface-water resources. This sentiment is highlighted in the Plan within the SPAM Program's mission statement:

“Manage and Protect Hawaii’s Surface-Water Resources through a Comprehensive Instream Use Protection Program and the Establishment of Instream Flow Standards.”

Under this mission, the Plan is comprised of specific goals, strategic issues, actions, and work tasks. These elements identify the informational requirements and necessary steps that the Commission must take to establish a statewide IFS methodology, with the intention of providing consistency and transparency to the complexity of issues that the Commission is tasked with addressing.

The Commission recognizes that the Plan is not complete and additional steps must be taken to ensure the development of measurable IFS in a timely manner. The Plan is intended to be a “living” document and will be evaluated regularly over the course of each year to identify tasks that have been completed, those that must be initiated, and any new tasks that need to be included. In essence, this document shall serve as a tracking mechanism for the progress of the SPAM Program, as a whole.

The goals of the Plan are to:

- Establish and adopt clear working policies that lead to proactive resource management measures.
- Delineate and prioritize program objectives to improve information management and allocation of resources.
- Implement program objectives in a coordinated and phased approach to accomplish goals in a timely manner.
- Develop measurable interim IFS, by surface-water hydrologic unit, based on best available information.
- Improve consistency and coordination between various surface-water program efforts and surface-water users to achieve greater efficiency and a better understanding of the resource.

Within the Plan, the status and results of each specific work task is outlined. The Plan shall be continually updated to reflect the progress of each task, and provide an update of the SPAM Branch's progress towards achieving IFS statewide.

In addition, the Commission recently completed hiring of its Geologist I and Hydrologist II positions as appropriated by the 2006 Legislature. These two positions were placed within the Instream Use and Protection Section of the SPAM Branch and will greatly improve the Commission's ability to move forward on IFS issues. Specific duties of the positions includes

the collection and compilation of baseline hydraulic and biologic data, conducting of baseline research and field surveys, inventorying of instream uses, and the development of water use reporting and long-term stream monitoring programs.

CURRENT ACTIVITIES

The Commission is continuing to address a multitude of water-related issues throughout the State. A key part of this effort will be to compile best available information toward establishment of IFS statewide. This task will involve an accounting of hydrologic and watershed characteristics that have, or may have, an impact upon streamflow. Data requirements for developing an IFS methodology and IFS may vary widely as reflected in the definition of an IFS under the State Water Code. The various ongoing and planned studies and projects that the Commission is involved in will help to identify data gaps and address specific informational requirements.

Below is a brief summary of some of the activities that the SPAM Branch is currently undertaking:

IFS for East Maui: In May 2002, the Commission entered into a cooperative agreement with the United States Geological Survey (USGS) to conduct a study of selected streams located in East Maui. The Study included the collection and analysis of data, including, but not limited to, hydrology, geology, rainfall, and stream macrofauna. The Study was funded, in part, by the USGS, the Commission, DLNR's Land Division, County of Maui Department of Water Supply, and Alexander and Baldwin, Inc. The objectives of the 3-year Study were to: 1) Assess the effects of existing surface-water diversions on flow characteristics for perennial streams in Northeast Maui; 2) Characterize the effects of diversions on instream temperature variations; and 3) Estimate the effects that streamflow restoration (full or partial) would have on habitat availability for native stream fauna (fish, shrimp, and snails) in Northeast Maui.

In mid-2005, USGS released the first of two reports summarizing the study findings, entitled *Median and Low-Flow Characteristics for Streams under Natural and Diverted Conditions, Northeast Maui, Hawaii*, which provided an in-depth analysis of streamflow conditions for selected study sites. The second report, entitled *Effects of Surface-Water Diversions on Habitat Availability for Native Macrofauna, Northeast Maui, Hawaii*, was distributed in early 2006. The latter report described habitat availability, utilization, and preference for the native macrofauna and the effects of selected diversion scenarios on habitat availability.

The Commission is currently in the process of compiling best available information for seven priority streams as identified by the IFS petitioner, Native Hawaiian Legal Corporation (NHLC). NHLC requested that the Commission focus its efforts of establishing measurable IFS for the Honopou, Hanehoi, Waiokamilo, Kualani, Piinaau, Palauhulu, and Wailuanui streams. In accordance with an interim IFS amendment process authorized by the Commission in December 2006, Commission staff shall forward the compiled data, referred to as Instream Flow Standard Assessments, to various agencies, stakeholders, and other interested persons. Commission staff

will also conduct a public fact gathering meeting on the island of interest. The public meeting for the interim IFS would not be a formal public hearing, but rather an informal meeting to gather additional facts and input from interested persons in the affected area. The Commission intends to hold the meetings for the seven priority streams in late 2007. The remaining streams identified in the initial petition will continue to be addressed throughout 2008.

Punaluu Watershed Alliance: The Punaluu Watershed Alliance (Alliance), comprised of the Punaluu Community Association, Kamehameha Schools, Honolulu Board of Water Supply (BWS), USGS, and the Commission, was formed to provide better information for setting IFS, build community participation, and provide opportunities for student education. The members of the Alliance met in 2002 and decided to put a petition to designate the Ahupuaa of Punaluu as a surface-water management area “on hold” in favor of setting up the Alliance to resolve issues among the interested parties. A memorandum of understanding for establishing the Alliance was formally entered into on October 19, 2005.

In September 2006, USGS completed a Punaluu Stream study, entitled *Effects of Surface-Water Diversion and Ground-Water Withdrawal on Streamflow and Habitat, Punaluu Stream, Oahu, Hawaii*, which was cooperatively funded by USGS, BWS, and Kamehameha Schools. The objectives of the Study were to: 1) Assess the effects of ground-water withdrawals on streamflow; 2) Assess the effects of existing diversions on streamflow; 3) Characterize the effects of diversions on instream temperatures; and 4) Estimate the effects of streamflow restoration on aquatic habitats. An additional survey, funded by BWS, to identify and assess all components of the Punaluu Water System, has also been completed. The report was released in May 2007 and provides a comprehensive overview of stream diversion locations and end uses for the entire Punaluu Watershed.

Commission staff continues to meet regularly with the Alliance to discuss community needs and concerns, in addition to coordinating efforts to address instream flow standards.

Lalakea Alternative Mitigation Project: The Lalakea Alternative Mitigation Project (LAMP) is the product of an alternative settlement agreement with Kamehameha Schools. In February 2002, the Commission ordered Kamehameha Schools to develop an alternative mitigation project in lieu of a fine of \$453,000. The resulting LAMP is a cooperative effort between Kamehameha Schools and Bishop Museum, with oversight by the Commission. The primary objective of LAMP is to conduct baseline studies on the streams diverted by the Lalakea Ditch System prior to restoring flows to the streams. Upon restoration of stream flows, studies will continue for a limited period of time to determine how the streams are affected by the restoration of flows. The scientific portion of the LAMP involves scientists from Bishop Museum, DLNR’s Division of Aquatic Resources (DAR), USGS Biological Resources Division, University of Hawaii, Smithsonian Institute, Louisiana State University, and the University of Nebraska-Lincoln. Study areas include: 1) Aquatic macroalgae monitoring; 2) Stream invertebrate assessment; 3) Native and alien fish monitoring and parasite assessment; 4) Geographic Information System (GIS) stream habitat mapping; and 5) Streamflow/water quality monitoring. A secondary objective of the LAMP is community participation and education involving the local community in the vicinity of the Lalakea Ditch System.

The last educational and research field trip took place in June 2006. Bishop Museum has been conducting further data analysis and is preparing a final project report. The draft of the final report is being reviewed and is scheduled to be submitted to the Commission by the end of 2007 or early 2008.

Central Maui (Na Wai Eha) Stream Study: In June 2006, the Commission entered into a cooperative agreement with USGS to conduct a multi-phase study to assess hydrological and biological conditions of Waihee River and Waiehu, Iao, and Waikapu Streams. The Commission will use the Study's findings to address in part the petition to amend the interim IFS and a waste complaint concerning water diverted from these streams, both filed by Earthjustice in June 2004, on behalf of Hui o Na Wai Eha and Maui Tomorrow Foundation, Inc. A total of about \$1,212,000 is needed for this 3.5-year Study, which is being undertaken as a cooperative project between USGS, the Commission, County of Maui, and the Office of Hawaiian Affairs. The Study will assess the following: 1) Streamflow characteristics in the study area and an assessment of the effects of surface-water diversion on streamflow; 2) Effects of diversions on potential recharge from the streams to the underlying Iao and Waihee Aquifers; 3) Temperature variations of instream flows above and below diversions; 4) The native fauna present in the streams under current diverted conditions; and 5) Effects of selected diversion scenarios on habitat availability.

The initial phase of the Study, conducted during federal Fiscal Year 2006, included compilation and analysis of existing information, baseline reconnaissance surveys, establishment of monitoring sites, and preliminary data collection. The second (Phase 2) and third (Phase 3) years of the Study will include: 1) Establishing additional low-flow partial record stations; 2) Establishing additional temperature-monitoring sites; 3) Continued monitoring of the frequency of dry days in the diverted streams; 4) Surveying the abundances of native stream fauna in selected study reaches; 5) Collecting macrohabitat, microhabitat, and channel-geometry information in selected study reaches downstream from existing diversions; and 6) Analyzing data and producing a report summarizing the study findings. As part of the Study, USGS has also convened an aquatic biology working group consisting of the Commission, DAR, Department of Health's Environmental Planning Office (DOH-EPO), Maui Department of Water Supply, University of Hawaii, Michigan State University, and Bishop Museum. The objective of the working group is to develop a coordinated study approach that appropriately addresses native stream fauna. In addition, working group participants such as DAR and DOH-EPO have agreed to conduct complimentary studies and/or surveys to strengthen the overall study parameters.

USGS held a Na Wai Eha Stakeholders meeting on Maui in October 2007 to present initial data collected from their field efforts. The Study is entering its third year as data collection winds down and the analysis phase is initiated. In coordination with USGS, scientists from Michigan State University have been collecting data on stream macrofauna through 2007, while DAR is planning to conduct standardized point-quadrat longitudinal surveys of the four streams in late 2007.

Statewide Stream Diversion Study: The 2006 Legislature, by way of Act 160, appropriated to the Commission, the sum of \$650,000 for the purpose of conducting statewide field investigations to verify and inventory surface-water uses and stream diversions, and update

existing surface water information. This is one of the key requisite steps toward the establishing of IFS statewide.

The Commission has contracted R.M. Towill Corporation (Consultant) in its effort to verify and inventory registered surface-water use diversions statewide. The Stream Diversion Study (Study) commenced in March 2007 and is expected to be completed within 24 to 36 months. The project schedule for completion will be subject to weather and site accessibility.

The Commission has prioritized the Study into the following Priority Areas: 1) Priority 1 Areas, which have pending petitions to establish IFS; 2) Priority 2 Areas, which have agricultural irrigations systems studied in the Agricultural Water Use and Development Plan (AWUDP) component of the Hawaii Water Plan; 3) Priority 3 Areas, which have unstudied agricultural systems; and 4) Priority 4 Areas, which include any remaining diversions not yet surveyed and/or those that necessitate additional investigation. Based on the prioritization, the Consultant is currently conducting field investigations across Maui.

The field investigations include: 1) Conducting research to determine declared surface-water uses, diversions, owners, locations, and current condition of existing diversion structures; 2) Development and implementation of a standardized field investigation methodology; 3) Mobilization and traversing stream reaches to existing stream diversion locations; 4) Determination of Global Positioning System (GPS) derived locations of each surface-water diversion in terms of latitude and longitude coordinates and tax map key numbers, all plotted on tax maps and USGS quadrangle maps; 5) Documentation of each surface-water diversion through field inspection, photographs, and system/structure descriptions; 6) A written descriptive summary identifying the withdrawal capacity of the stream diversion, the time, manner, and quantity of taking, the user of the water from the source, and the nature of the water use; and 7) Identification and description of the size and/or capacity of any infrastructure, such as pipes or ditches used to transport the water from the source to the area of use, and any other information that may be useful in the establishment of IFS.

Statewide Stream Channel Condition Inventory: Recognizing the importance and continuing need for stream information, DLNR included as part of its Fiscal Biennium 2007-2009 budget request, funding to undertake regional stream studies in support of establishing IFS. The 2007 Legislature subsequently approved \$400,000 to the Commission, \$150,000 of which will be transferred to DAR for various stream studies including, but not limited to, standardized point-quadrat aquatics surveys and rapid bioassessment surveys in under-sampled watersheds. Of the remaining \$250,000, the Commission has appropriated \$200,000 to conducting a Statewide Stream Channel Condition Inventory (Inventory).

In 1983, DLNR's former Division of Water & Land Development (DOWALD) published a report titled *Instream Use Study: Windward Oahu (Report R68)*. The purposes of the study were to: 1) Identify instream resources in Windward Oahu; 2) Identify and recommend methods of assessing instream flow requirements; and 3) Identify potential strategies for protecting instream values. Having been prepared prior to the enactment of the State Water Code, this report served as one of the earliest attempts to address instream flows and instream uses on a regional basis. One component of the report was to identify and delineate stream channel

modifications, since this was a major consideration in defining recreational activities and other instream uses.

Unfortunately, similar studies do not exist for other regions of the State. The 1990 HSA report provided a rather comprehensive assessment of biological, riparian, recreational and cultural values, but only briefly addressed stream modifications. This proposed Inventory would require the identification and documentation of existing stream channel alterations statewide. The Inventory would include, but not be limited to, GIS derived locations of: (1) Channelizations; (2) Retaining walls; (3) Dams; (4) In-stream reservoirs; (5) Bridges; (6) Culvert crossings; (7) Ford crossings; (8) Access ramps; and (9) Flood-prevention structures. The \$200,000 is an estimated amount in consideration of time and effort required to complete coordination with various government agencies, perform GIS assessments of aerial imagery, and conduct site-specific field investigations where necessary.

The condition of the stream channel, whether natural or modified, is an important component in assessing the instream uses for a given stream system. Streams provide habitat for native fishes which require unimpeded access to the ocean as part of their diadromous life cycle. Loss of natural stream channels often indicates a reduction in riparian and wetland habitat, accompanied by a reduction of recreational opportunities and aesthetic values. However, stream channel modifications are often necessary to protect property, prevent flooding, store water, and to provide access to otherwise inaccessible areas. These components are necessary considerations in the development of IFS. As such, the Commission expects to select and hire a consultant in early 2008.

Interagency Coordination: The Commission has begun conducting regular interagency meetings in order to strengthen relationships and improve coordination efforts. These collaborative efforts include various federal and state agencies such as USGS, Natural Resources Conservation Service (NRCS), DAR, DLNR's Engineering Division, and the Department of the Attorney General

USGS: The Commission and USGS continue to work closely together in cost-sharing and conducting specific regional studies, in addition to the annual cooperative agreement for statewide hydrologic data collection and water resource investigations. Recent regional studies include the East Maui Stream Study (completed 2006), Punaluu Stream Study (completed 2006), and the Central Maui (Na Wai Eha) Stream Study (in progress). The annual cooperative agreement officially began in 1909 with only 12 streams being continuously gaged. At its peak, the gaging program included 197 gages on streams and irrigation systems. Currently, the cooperative monitoring program is limited to 33 continuous-record stream/ditch gaging stations.

A supplemental funding request of \$175,000 was approved by the 2007 Legislature. The Commission also applied for and received a Watershed Partnership Program Grant of \$118,175 from DLNR's Division of Forestry and Wildlife. These combined funds allowed the Commission to maintain its cooperative monitoring network of ground- and surface-water gaging stations.

DAR: The Commission continues to coordinate with DAR in utilizing available resources to collect and evaluate best available biological information as part of the instream flow standard process. DAR has completed initial development of their Aquatic Surveys Database, which will provide for better integration and sharing of aquatic and invertebrate survey information. The Database is undergoing continual refinement to improve data outputs, reports, and overall data management. DAR is also nearing completion of their Atlas of Hawaiian Watersheds and Their Aquatic Resources, following an earlier draft release.

Current DAR plans include the development of additional atlases to improve the overall knowledge base of stream species in relation to their habitat requirements. A draft release of the Atlas of Hawaiian Stream Species is expected in early 2008 and will contain the habitat and distribution of species using all of the data in the DAR Aquatic Surveys Database. A third Atlas of Predicted Hawaiian Stream Communities will blend together the Atlas of Hawaiian Watersheds and Their Aquatic Resources and the Atlas of Hawaiian Stream Species to make predictions on species occurrence and stream habitat availability, essentially providing an estimate of “natural” stream conditions. A draft release of this third atlas is expected in mid to late 2008.

Engineering Division: In light of the record-setting rainfall that the State experienced in March/April 2006, the Commission continues to work closely with the Engineering Division as they embark on a statewide effort to assess dams and reservoirs. The surveys conducted by the Engineering Division will help to expand the Commission’s information base of reservoirs in relation to irrigation systems and associated inlet structures. Information derived from the survey of dams/reservoirs will also augment the Commission’s own effort to verify diversions statewide, thereby providing a better understanding of surface-water diversions, specific irrigation systems, storage, capacities, and water use.

Department of the Attorney General: The Commission staff convenes regular meetings with the Land/Transportation Division of the Department of the Attorney General regarding statutes, rules, policies, general procedures, and other matters, related to the Commission’s establishment of IFS. These meetings have proved beneficial by providing clear and consistent guidance to Commission staff regarding the solicitation of public information, applicability of contested case hearings, and in addressing potential surface-water management issues.

In summary, the information and results garnered from the studies and coordination efforts listed above will be incorporated into the Commission’s overall SPAM Program. The Commission is committed to continuing and expanding on these collaborative efforts to improve its understanding and protection of Hawaii’s stream systems.

OTHER STREAM-RELATED ACTIONS

Waiahole Ditch Contested Case Hearing

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

On December 28, 2001, the Commission issued its LEGAL FRAMEWORK, FINDINGS OF FACT, AND DECISION AND ORDER (D&O II). The D&O II amended the interim IFS for four Windward Oahu streams, based on the best information presently available, as directed by the Supreme Court's August 22, 2000 ruling (Supreme Court's Ruling).

On June 21, 2004, the Supreme Court released its second ruling, In the Matter of Water Use Permit Applications, Petitions for Interim Instream Flow Standard Amendments, and Petitions for Water Reservations for the Waiahole Ditch Combined Contested Case Hearing, NO. 24873, APPEAL FROM THE COMMISSION ON WATER RESOURCE MANAGEMENT (CASE NO. CCH-OA95-1). The Supreme Court vacated in part the Commission's D&O II and remanded for further findings and conclusions regarding: (1) The designation of an interim IFS for Windward streams; (2) The 2.2 mgd of unpermitted water; (3) The practicability of Campbell Estate and Puu Makakilo, Inc. using alternative ground water sources; (4) The actual needs of Fields Nos. 115, 116, and 145 (Jefts); (5) The actual needs of 229 acres in Field Nos. 146 and 166 (Garst Seeds); and (6) Agribusiness Development Corporation's permit for systems losses.

In August 2004, the Commission delegated the conduct of the second remand to a hearing officer. The remand proceedings before the hearing officer began and concluded on April 5, 2005. Closing oral arguments before the hearing officer were held on June 22, 2005. Proposed Findings of Fact, Conclusions of Law, and Decisions and Orders were submitted on June 29, 2005. The Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order were issued to the parties on September 6, 2005. The parties in the case had the opportunity to file written exceptions to the Hearing Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, by October 7, 2005. The Commission heard oral arguments on the written exceptions on November 16, 2005. The Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order (D&O III) on July 13, 2006. On August 11, 2006, three of the parties in the contested case hearing filed two Notices of Appeal. The matter is currently under review by the intermediate appellate court.

Iao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee, Waiehu, Iao, & Waikapu Streams Contested Case Hearing:

In June 2004, Earthjustice, on behalf of its clients Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc., filed a petition to amend the interim IFS for Waihee, North and South Waiehu, Iao, and Waikapu Streams (Na Wai Eha). In May 2006, the Commission notified

the affected parties that the petition to amend the interim IFS for Na Wai Eha would be combined with the Iao High-Level Ground Water Use Permit Applications. In June 2006, standing was granted to Hui O Na Wai Eha/Maui Tomorrow Foundation, Office of Hawaiian Affairs, Maui Department of Water Supply, Wailuku Water Company, LLC, and Hawaiian Commercial & Sugar Company. The contested case hearing is scheduled to begin on December 3, 2007 on Maui.

Designation of the Na Wai Eha Surface-Water Hydrologic Units as a Surface Water Management Area

In December 2006, Earthjustice, on behalf of its clients Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc., filed a petition to designate the Na Wai Eha Surface-Water Hydrologic Units as a surface water management area. The Commission has held a public hearing, conducted an investigation and produced a Findings of Fact Report, and is in the process of final consultation with the County of Maui Mayor, Maui County Council, and Department of Water Supply, regarding the proposed designation. The Commission is planning to make a decision regarding the proposed designation on Maui by the end of 2007 or early 2008

The ongoing efforts identified in this report are consistent with the Supreme Court's directives and will provide needed information in support of the Commission's implementation of a comprehensive 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 future updates of the Hawaii Water Plan.

As noted, all of the above efforts are critical to developing IFS and will lead to improving the Commission's overall management of surface water resources, enhancing the Commission's current surface water data collection and monitoring program, and facilitating needed discussion and agency/public input regarding stream-related issues.