

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM) Case No.. CCH-MA13-01
INSTREAM FLOW STANDARDS FOR)
WAIKAMOI, PUOHOKAMOA,)
HAIPUAENA, PUNALAU/KOLEA,)
HONOMANU, WEST WAILUAIKI, EAST)
WAILUAIKI, KOPILIULA, PUAKAA,)
WAIOHUE, PAAKEA, KAPULA &)
HANAWI STREAMS)
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MINUTE ORDER 3
Notice of Hearing

PLEASE TAKE NOTICE that a contested case hearing in the above-entitled matter will be held on November 3, 5-7, 10, 12-14 and December 1-5 and 8-12, 2014, on Maui at times and places to be determined. More days may be scheduled as warranted. The hearing will be held pursuant to Haw. Rev. Stat. (HRS) chapter 91 and Haw. Admin. R. §§ 13-167-51, 13-167-52, and 13-167-56.

This contested case arises out of petitions to amending interim instream standards (IIFS) for 27 streams in East Maui. On May 25, 2010, the Commission on Water Resources Management (Commission) made a decision regarding amendment of the IIFS for 19 of the 27 streams for which Appellants filed petitions.¹ These 19² streams are grouped into 16 hydrologic units. The Commission decided to restore flow to 6 of the streams. The Commission decided that the IIFS for the remaining 13 streams would remain unamended, i.e. at status quo.

Prior to the end of the May 25, 2010, Commission meeting, counsel for Na Moku Aupuni O Koolau Hui, Beatrice Kekahuna, Marjorie Walleth, and Elizabeth Lehua Lapenia (collectively “Na Moku”) made an oral request for a contested case hearing. On June 4, 2010, Na Moku followed up its oral request by filing a petition for a contested case hearing (Petition) before the

¹ The amendment of the IIFS for the remaining 8 streams had previously been decided by the Commission.

² The 19 streams that were the subject of the Commission action are: Waikamoi, Alo, Wahinepee, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, Nuaailua, Ohia, West Wailuaiki, East Wailuaiki, Kopiliula, Puakaa, Waiohue, Paakea, Waiaaka, Kapaula, Hanawi, and Makapipi.

Commission.³ The interest asserted by Na Moku was the right to sufficient stream flow to support the exercise of their traditional and customary native Hawaiian rights to grow kalo and gather in, among, and around east Maui streams and estuaries and the exercise of other rights for religious, cultural, and subsistence purposes. Na Moku asserts that the rights being claimed by its members are derived from HRS §§ 1-1, 7-1, 10-13.5, 174C-63, 71 and 101; Hawaii Const. Art. XI, §§ 1 and 7; Hawaii Const. Art. XII, § 7; Hawaiian Homes Comm. Act §§ 213(i) and 221; Hawaii Admission Act § 5(f); 42 U.S.C. § 1983; and the public trust doctrine.

On June 3, 2010, the County of Maui Dept. of Water Supply (County) filed an application to be a party in a contested case hearing before the Commission. The interest asserted by the County is as the county's purveyor of water to the public, including homes, farms, schools, churches, and businesses in Upcountry Maui.

Pursuant to its contested case petition, Na Moku raises the following issues:

1. The IIFS set by the Commission fails to restore sufficient water to the subject streams to adequately protect and promote instream public trust uses of the streams, including Native Hawaiian traditional and customary rights and practices.
2. The Commission has not carried its obligations under the public trust by failing to require Hawaiian Commercial & Sugar (HC&S) and East Maui Irrigation (EMI) to affirmatively prove: (1) their actual need; (2) that there are no feasible alternative sources of water to accommodate that need; and (3) the amount of water diverted to accommodate such need does not, in fact, harm a public trust purpose or any potential harm does not rise to a level that would preclude a finding that the requested use is nevertheless reasonable-beneficial.
3. The Commission must also make specific findings and conclusions as to: (1) the identity and scope of valued cultural, historical, or natural resources in the area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources - including traditional and customary native Hawaiian rights - will be affected or impaired by the proposed action; and (3) the feasibly action, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist.

The issues raised by Na Moku in its Petition will be addressed by the parties as part of the contested case held by the Commission to establish IIFS that will protect instream values to the extent practicable and protect the public interest for the following streams: Waikamoi, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, West Wailuaiki, East Wailuaiki, Kopiliula and Puakaa, Waiohue, Paakea, Kapaula and Hanawi. HRS § 174C-71.

Any party may retain counsel if the party so desires or an individual may appear on the individual's own behalf, or a member of a partnership may represent the partnership, or an

³ The Petition filed by Na Moku relates only to the IIFS for the following streams: Waikamoi, Puohokamoa, Haipuaena, Punalau/Kolea, Honomanu, West Wailuaiki, East Wailuaiki, Kopiliula and Puakaa, Waiohue, Paakea, Kapaula and Hanawi.

officer or authorized employee of a corporation or trust or association may represent the corporation, trust or association.

All parties shall have the opportunity to present evidence and argument on all issues involved.

DATED: Honolulu, Hawaii April 21, 2014 .

A handwritten signature in black ink, reading "Lawrence Miike". The signature is written in a cursive style with a large initial "L".

LAWRENCE H. MIIKE, Hearing Officer
Commission on Water Resource Management

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STATE OF HAWAII

IN RE PETITION TO AMEND INTERIM) Case No. CCH-MA13-01
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WAIIOHUE, PAAKEA, KAPAULA &)
HANAWI STREAMS)
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CERTIFICATE OF SERVICE

On April 21, 2014, a copy of the foregoing document was served on:

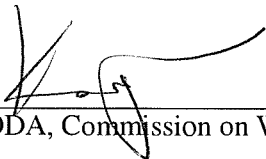
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KATHY YODA, Commission on Water Resource Management