



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

September 24, 2008
Haiku, Maui

Hawaiian Commercial and Sugar Company's Motion to
Consolidate Petitions to Amend Interim Instream Flow Standards
for East Maui Streams and Complaint Relating Thereto Filed May 29, 2008

SUMMARY OF REQUEST

Staff is recommending that the Commission deny Hawaiian Commercial and Sugar Company's Motion to Consolidate Petitions to Amend Interim Instream Flow Standards (interim IFS) for East Maui Streams and Complaint Relating Thereto Filed May 29, 2008.

BACKGROUND

On May 24, 2001, the Native Hawaiian Legal Corporation (NHLC) filed 27 Petitions to Amend the interim IFS for 27 East Maui streams on behalf of resident taro farmers. The petitions were accepted on July 13, 2001.

On December 13, 2006, staff briefed the Commission on its proposed modified interim IFS process. The Commission authorized staff to initiate and conduct public fact gathering of best available information necessary to amend interim IFS.

On March 12, 2008, a public review draft of each of the Instream Flow Standard Assessment Reports for Honopou, Hanehoi, Piinaau, Waiokamilo, and Wailuanui, was made available online on the CWRM website and at the CWRM office. The public was invited to comment on the draft reports.

On May 29, 2008, NHLC filed a complaint on behalf of Na Moku Aupuni O Koolau Hui, Beatrice Kekahuna, Marjorie Wallett, and Maui Tomorrow. The complaint alleges that Hawaiian Commercial and Sugar Company (HC&S) is wasting water. The allegation is based

on testimony of an HC&S employee who testified at the Land Board contested case hearing on November 15, 2005. Staff has been corresponding with the parties in an effort to resolve the complaint.

On June 10, 2008, HC&S submitted to the Commission its comments to the public review draft of the Instream Flow Standard Assessment Reports.

On August 18, 2008, HC&S filed its Motion to Consolidate Petitions to Amend Interim Instream Flow Standards for East Maui Streams and Complaint Relating Thereto Filed May 29, 2008. In the motion, HC&S is requesting that the Commission consolidate all 27 previously filed petitions into one and to consider amending the interim IFS for all 27 streams in one unified proceeding. The motion also requests that the Complaint relating to waste be consolidated with the petition to amend interim IFS.

On August 28, 2008, the Commission approved staff recommendations that: 1) all interested parties should file briefs on HC&S' motion no later than the close of business on Thursday, September 18, 2008; and 2) the hearing on HC&S' motion will be held on September 24, 2008, at the Haiku Community Center, 1008 Hana Highway, Haiku, Hawaii 96708. Only persons submitting a brief will be allowed to present arguments at the hearing on this motion.

DISCUSSION:

HC&S states in their motion that: 1) they will submit a report regarding the economic importance of HC&S to the economies of Maui County and the State of Hawaii by the end of August or the first week of September 2008; 2) they will supplement the report with detailed information on its water use rates and management of its irrigation practices by mid-September 2008; and 3) they will submit a proposal, complete with economic and biological justifications, regarding appropriate interim IFS for all streams included in the 27 interim IFS petitions by mid-November 2008.

HC&S transmitted the economic report by email and hand-carried copies to the Commission office on September 12, 2008. Staff appreciates the information provided, is reviewing the information, and looks forward to receiving the other information mentioned.

Staff is using the five hydrologic units as a framework for the remaining hydrologic units in the area of interest and throughout the State, as this is the first time the Commission will be setting measurable interim IFS. The Water Code provides that the Commission may adopt interim IFS on a stream-by-stream basis or a general IFS applicable to all streams within a specified area. The process being applied to developing the measurable interim IFS values represents a significant shift in thinking from the status quo interim IFS flows which did not appear to consider any ecological, social, or economic values, to a system which seeks to assess and balance all competing needs of instream and noninstream uses. Staff believes that the Commission should move forward in amending the interim IFS for the five hydrologic units and will be proposing that the Commission adopt interim decisions that will be subject to adaptive management strategies. The basic tenets of adaptive management are to: 1) Establish management objectives; 2) Implement management decisions; 3) Monitor effectiveness of decisions; 4) Evaluate results of management; and 5) Revise management decisions as necessary.

Should initial management decisions need further amendment, the decisions can then be revised and the process repeated. This is a learning process that can be revisited until a sound management decision is reached. Due to the complex and dynamic nature of Hawaii's stream systems, adaptive management affords the Commission the ability to proceed in making reasonable management decisions and ensuring that ecological, social, and economic impacts are minimized in the face of uncertainty.

Staff will be recommending in the following submittal that within one year from the adoption of the interim IFS, a progress report be presented to the Commission on implementing the interim IFS and the preliminary results of the application of the adaptive management strategies. While staff monitors and evaluates the impact of these interim IFS upon both instream and noninstream uses, staff should be able to move forward with addressing other interim IFS petitions statewide.

Staff believes that the additional information provided by HC&S will first need to be analyzed and then can be incorporated into the progress report. Should an interim IFS need to be revised prior to one year from the date of adoption, or if the Commission wishes to consider all 27 streams together, staff can propose another amended IFS to the Commission.

RECOMMENDATION

Deny Hawaiian Commercial and Sugar Company's Motion to Consolidate Petitions to Amend Interim Instream Flow Standards for East Maui Streams and Complaint Relating Thereto Filed May 29, 2008.

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson