

BOARD OF WATER SUPPLY  
COUNTY OF MAUI  
  
SPECIAL MEETING  
MINUTES OF NOVEMBER 4, 2019

The special meeting of the Maui County Board of Water Supply was held at the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, 96793, on Monday, November 4, 2019.

CALL TO ORDER

The meeting was called to order by Vice Chair Zoltan Milaskey at 9:05 a.m.

ATTENDANCE

Members present:           Zoltan Milaskey, Vice Chair  
                                  Joseph Aquino  
                                  Antonette Eaton  
                                  Dean Frampton  
                                  Norman Franco  
                                  Dr. Hanna Mounce  
                                  Buddy James Nobriga

Members excused:         Shay Chan Hodges, Chair

Staff present:             Helene Kau, Deputy Director  
                                  Jennifer Oana, Deputy Corporation Counsel  
                                  Noreen Saito, Commission Support Clerk  
                                  Linda Kimura, Secretary III

TESTIMONY FROM THE PUBLIC

No testimony from the public.

DISCUSSION

DEIS for the proposed water lease for the Nahiku, Ke'anae, Honomanu, and Huelo licensed areas dated September 9, 2019. As per the agenda, the board may vote to send it's comments on to the DEIS to applicant Alexander & Baldwin Inc., East Maui Irrigation Company via the consultant Wilson Okamoto Corporation with the copy to the approving agency which is the State of Hawaii Board of Land and Natural Resources. Limiting three comments per member.

COMMENTS

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Dean Frampton:

- 1) Supports the County finding ways to reducing our reliance on surface water for domestic purposes. If we are able to develop alternate resources, more water can go back into the streams.
- 2) Supports Ag in Central Maui. Wants to see the central plane green but doesn't want it done in a way that it takes from the taro farms, the people that have had the water taken away from them.
- 3) Taking a look at utilizing recycled water and also capturing surface water.

Norman Franco:

- 1) Read the summary and read HRS171-58(e). Says requires that any new leases of water rights shall contain a covenant that requires the lessee and DLNR to jointly develop and implement watershed plan. The board shall not approve any new lease of water rights throughout the foregoing covenant or watershed management plan. Doesn't see a watershed management plan in the report.
- 2) EIS doesn't address the human impact of diversion.
- 3) Shared a short comment of DIS that failed to show a watershed management or the impact that diversion has on the people that depend on those streams for their livelihood. Read Sugar Water, by Carol Wilcox pg. 31

Joseph Aquino:

- 1) Wants to look at the DHHL's requirements. Says DHHL still has rights to the water but, as far as it not being used for now, they can't use it. Did they set it aside for later or how are they going to use it later if somebody else is using it.

Dr. Hanna Mounce:

- 1) How our comments are can be used paralleling whether they agree or don't agree with the Department of Water Supply's comments.
- 2) We need to make sure we're setting the County up to be able to have a financial viable company running Ag in the Central valley.
- 3) Supports the County's comments even if this water is granted in perusing recycled water alternative for future use.

Buddy James Nobriga:

- 1) Supports agriculture, sustainable agriculture throughout Maui County.
- 2) The 30 year lease is extremely long and does not support it.
- 3) Supports the County's comments but there is a lot of gray areas in this issue. This water should be used for Ag and only Ag.

Toni Eaton:

- 1) Like Buddy said, his concern doesn't say that it's only going towards agriculture, What if Mahi Pono's plan doesn't work, what's to say they're going to have a next step plan and develop acres of non-important agriculture lands.
- 2) Water is important and it needs to be a public trust and stay in a public trust. Since the 1800's, it should have reverted back to the government. Water is not something to profit, water is something for the benefit of native Hawaiian culture and traditional uses, DHHL purposes, domestic uses, and then Ag.
- 3) Supports Director Pearson's letter, but does not support the 30-year lease and all available water going to Mahi Pono. Would like them to clarify and come up with a sustainable farm plan. What they're proposing is very vague.

Zoltan Milaskey:

- 1) Maui needs to stand on more than one foot. We can't just have tourism. Agriculture is super important.
- 2) We didn't hear from Mahi Pono. All we have is what they proposed to be facts, EIS statement that is not a consist plan.
- 3) We don't have the best numbers, figures that shows what is flowing in the streams.

COMMENTS TO EIS - ROUND ONE:

Motion: Dean Frampton: Moved to consider adopting an accountability committee, made up of volunteers, including stakeholders of East Maui, related government officials, and the operator/lessee, to ensure the terms of the water lease are being met on a regular basis. Section 5.8 Permits and Approvals.

Second: Vice Chair Milaskey

Discussion: None

Vote: Unanimous. Motion carried.

Motion: Norman Franco: Moved pursuant to HRS section 171-58(e), the Applicant shall provide a surety bond to ensure that the condition regarding developing and implementing a watershed management protection plan is met.

Second: Member Eaton

Vote: Unanimous. Motion carried.

Discussion: Vice Chair Milaskey: Wants to expand the section on the summary

found on page 4 paragraph 2 and would like to include the words, surety bond produced by Mahi Pono or the applicant.

Motion: Dr. Hanna Mounce: Moved we consider a sentence or bullet point that says, that the Board of Water Supply would be more in favor of supporting a shorter term lease than 30 years put forward.

Second: Joseph Aquino

Discussion: Dean Frampton: Expressed that Buddy had checks and balances and if Hanna would consider adding any of the term language to her motion.

Buddy Nobriga: Read section 5.8 Permits and Leases. And moved to propose a shorter term lease with one option to include, a 15 year agreement with a 10 year compliance report that, if not met lessee will not qualify for renewal. Compliance report to be monitored and enforced by government body. Subsections 5.8, 4.7

Toni Eaton: Suggested shorter than 10 year and a yearly report from EMI or Mahi Pono.

Buddy Nobriga: Suggested 10 year because with agriculture there's usually a huge investment upfront and the first 3 or 4 years is actually a losing proposition.

Toni Eaton: Would like them to be more accountable for their performances, monitoring their systems. EMI hasn't been very compliant with those issues. Suggested adding stipulation that they provide us yearly, with the losses the usages and flow. How much goes back to the streams, and how much comes out, then she would support the 15 year lease.

Buddy Nobriga: Suggest to write, that the compliance report has a year by year or every two year milestone. Then you will see by year 6 if they are on pace, "show their hand".

Dean Frampton: Would like to amend to include monitoring data and stream flow reporting.

Vice Chair Milaskey: Suggest to keep this separate.

Buddy Nobriga: We underestimate the ability of technology with these systems in the remote locations at this point and time. So having it monitored digitally is not as simple as it may seem at this point and time.

Toni Eaton disagrees, CWRM has it. Believes that they should invest in a monitoring system.

Vice Chair Milaskey: all those in favor for Hanna's motion.

Vote: Unanimous. Motion carried.

Motion: Buddy Nobriga moved on referencing Section 5.8. A 15 year lease with a 10 year compliance report that if not met, lessee will not qualify for renewal. Compliance report monitored and enforced by a government body.

Second: Dean Frampton

Discussion: Norman Franco: We covered this with Hanna's lesser than 30 years. The 10 year lease has annual review like Toni suggested. Anything less than 30 years is covered. Suggested putting a provision of an annual compliance or review by Dean's suggestion and further covered by the surety bond. If we're going to suggest a 10 year lease, stated that they comply with the other conditions, then we set forward.

Deputy Corp Counsel Jennifer Oana: went over HRS Section 171.13 Disposition of Public Land. This fits in with Buddy's conditions. No person shall be eligible to purchase or lease public land or be granted a license permit or easement covering public land who has had during the 5 years preceding the date of disposition of a previous lease covering public lands canceled for failure to satisfy the terms and conditions thereof. So, they do look 5 years back to see how they did on that lease.

Norman Franco: Mahi Pono has not given us a comprehensive plan or even a watershed management plan. If anything, give them a year to year lease.

Vice Chair Milaskey: We need to specifically state where we would like to see more specific compliance and regulations and reporting so that they do honor what is put forth in this draft EIS.

Buddy Nobriga: What he put forth is a timeframe thing, and what Dean put forth is an actual compliance committee. Is okay on both.

Vote: No vote. Buddy to review.

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Motion: Toni Eaton moved that we pose the question to Mahi Pono, EMI and A&B on what are their plans for monitoring the interim in stream flows standards set by CWRM.

Second: Norman Franco

Discussion: None

Vote: Unanimous. Motion carried.

RECESS

10 Minute Recess: 10:43 am - 10:53 am

10:55 am Reconvene: Board of Water Supply Special Meeting

Deputy Corp Counsel Jennifer Oana: Checked HRS, there is no reference to a designated compliance with the 30 year lease, and annual review or reviewing after so many years. Also likewise nothing with regards to surety bond. In HRS there is a section called Notice of Breach or Default. Section 171-20 of HRS Except as otherwise specifically provided in this chapter, in the event of a breach or default of any term, covenant, restriction or condition of any lease heretofore or hereafter issued under this chapter, the Board of Land and Natural Land Resources shall deliver a written notice of the breach or default by personal service or by registered or certified mail to the party in default and each holder of record having any security interest in the land covered by or subject to the lease or patent. Making the demand upon the party to cure or remedy the breach or default within 60 days from the date of receipt of the notice provided that where breach involves a failure to make timely rental payments pursuant to the lease or patent heretofore or hereafter issued. The written notice shall include a demand upon the party to cure the breach within less than 60 days but not less than 5 business days after the receipt of notice. Upon failure of the party to cure or remedy the breach or default within the time period herein or within such additional period as the board may allow for good cause, the board may subject to 171-21 exercise such right as it may have at law or set forth in the lease or patent.

Section 171-21 talks about rights of a holder of a security interest which says, when the board wants to issue a notice of default, they also have to issue a notice to any holder of the security interest. And goes on to the subsection 2, basically says if they don't cure those defaults of any of the covenants, they don't cure their breach. The State can resign or transfer their lease to somebody else.  
Nothing on an annual or periodic review.

CONTINUED: COMMENTS TO EIS - ROUND TWO

Motion: Buddy Nobriga moved that the lease shall clearly state that the lessee shall divert only for its agriculture use and County and DHHL use for domestic agriculture and municipal purposes.

Second: Toni Eaton

Discussion: None

Vote: Unanimous. Motion Carried.

Motion: Dr. Hanna Mounce moved in regards to 3.1.2 we support further consideration of recycled water use from Kahului at every level of review of this lease.

Comment: Dean Frampton: Is this only directed at Kahului Waste Water Treatment Plant or can this be applied to Upcountry areas as well? Capturing run offs, and other means of recycling water?

Dr. Hanna Mounce: That particular section was them saying, we don't have the means of using that from Kahului. This is obviously important and would be served to be a different point all together.

Second: Toni Eaton

Discussion: None

Voted: Unanimous. Motion Carried.

Joseph Aquino: Has no comments. His comments are covered in Dean's statement.

Vice Chair Milaskey: Went over 4.7.2, that EMI is a good system, is a historic system that has not just environmental impacts but social and cultural impacts in how it has impacted the communities in East Maui. Page 253 Social Impacts, Cultural Impacts. Found it's lacking A&B out of this paragraph.

Motion: Vice Chair Milaskey moved to include A&B alongside Mahi Pono, page 253 subsection 472 East Maui Impacts and litigation measures.

Second: Norman Franco

Discussion: None

Vote: Unanimous. Motion carried.

Motion: Dean Frampton moved as it relates to section 4.2.2 System Efficiency, to include language that says, provide more detail in methods to improve efficiency of the open ditch/aqueducts system.

Second: Norman Franco

Discussion: None

Vote: Unanimous. Motion carried.

### COMMENTS TO EIS - ROUND THREE

Norman Franco: declines

Dean Frampton: declines

Motion: Buddy Nobriga moved in regards to section 5.8 Leases and Permits. A 15 year lease with a 10 year compliance report that if not met, lessee will not qualify for renewal compliance report monitored and enforced by a government body.

Discussion: Norman Franco: What government agency will be reviewing the compliance of the lease? Think's Hanna's motion of anything less than 30 years, we'll let DLNR decide.

Buddy Nobriga: We are just making comments, not decisions.

Norman Franco: Would like some captiancy of the period of time of review, wouldn't wait 10 years. Probably 3 to 5 years. Suggest cutting it down to 5 years.

Buddy Nobriga: Will motion as is.

Second: Dean Frampton

Vote: In favor: Joseph Aquino, Toni Eaton, Dean Frampton, Buddy Nobriga.  
Ney: Norman Franco, Dr. Hanna Mounce, Vice Chair Milaskey.



DEPARTMENT OF WATER SUPPLY COMMENTS:

Dean Frampton recommends we leave this letter as is. Nothing more to add to this.

Norman Franco agrees with Dean. It's important what Jeff said on page 2, the EIS should access alternative solutions to mitigate the impact upon end users with the MDWS municipal public use in particular of the highest priority.

Joseph Aquino is in agreement with Dean and Norman. It seems to address several of the issues that the board has. Recycling water and to that note.

Dr. Hanna Mounce agrees that it be separate. No changes.

Buddy Nobriga has no comment, agrees.

Toni Eaton has no comment, agrees.

Motion: Vice Chair Milaskey moved that all in favor of the departments letter we draft a brief letter affirming our support of the department's comment.

Second: Buddy Nobriga

Vote: Unanimous. Motion carried.

Vice Chair Milaskey confirming, would like to have a separate letter for the department saying that the board supports the department's comment.

CONTINUED COMMENTS TO EIS:

Motion: Toni Eaton moved in regards to 4.7.3.1 EMI Operations page 262 section 4-149. Provide a detailed plan on mediating loss and improve efficiency to include repair and maintenance of the ditches.

Second: Vice Chair Milaskey

Discussion: Dr. Hanna Mounce: Who are you asking them to provide a detailed plan to?

Toni Eaton: In the final EIS.

Vote: Unanimous. Motion carried.

RECESS

10 Minute Recess: 11:36 am - 11:46 am

11:47 am Reconvene: Board of Water Supply Special Meeting

Motion: Toni Eaton moved to add another stipulation to the draft EIS. For them to provide a watershed protection plan.

Discussion: Toni Eaton: In order for the stream to get refilled, we do need some watershed protection. It is not mentioned about the watershed protection.

Dr. Hanna Mounce: They don't own any of that land that the water is coming from, so they can't make a plan for any of the water that is sending to the ditches.

Toni Eaton: As a user, they should provide some protection of our watershed. A plan to protect our watershed.

Norman Franco: Agreed. Protect the source of water.

Dr. Hanna Mounce: Strongly disagree because East Maui watershed partnership is the longest standing watershed partnership in the state and almost all of the land above the ditches is fenced and already protected.

Norman Franco: If we know what they're going to be doing so that our watersheds going to be around because it's the source of water, that means there must be some kind of plan so that we know what's happening with the source of water. By protecting the watershed.

Vice Chair Milaskey: Question to Hanna in regarding East Maui watershed partnership. EMI is asking for water rights and occasionally they have to access remote areas of that watershed to repair intake, or fix a flume. They do take precautions to insure they aren't taking with them on their boots (seeds, invasive species, and pollen). There needs to be more of an effort to protect that watershed.

Toni Eaton: What if we propose that 17,000 acres that A&B, EMI does own, what are their steps in providing the watershed protection?

Vice Chair Milaskey: With the lands that they own above Huelo and Haiku, did anyone see anything pertaining to watershed management for those lands? In the EIS?

So, the lease is pertaining to the State owned lands and water from those lands not the existing lands that they own that they do already harvest water from, is there a way to apply pressure so that responsible land management is approached.

Toni Eaton: They're not being accountable for the environment, they're just asking for the use of the land. We have to hold them accountable for some replenishment of the water.

Dean Frampton: Page 388, proposed actions and issuance of a water lease will also include a requirement that a watershed management plan be developed and implemented in addition, EMI was a founding member of the East Maui watershed plan and continues to be an active member. There is already stipulation for requirements and that EMI has a history of involvement.

Dr. Hanna Mounce: Asking them to create their own is an over reach. But Norman is speaking about invasive species protection and that's abiding by measures that are already in place in state agencies and other partners.

Toni Eaton: Would like to see their watershed plan in the final EIS.

Dean Frampton: Read, the March 22, 2019 meeting of the BLNR, DLNR proposed a watershed management cost share formula and contribution for leases of water rights pursuant to HRS 171.

Toni Eaton: Her understanding is that whatever questions or comments made, the final EIS needs to provide it.

Dean Frampton: Put a draft watershed management plan in the document?

Toni Eaton: Supposedly, they're a partner with the East Maui watershed program, I would like to see their plan in the final EIS. What their contributions have been.

Deputy Corp Counsel Jennifer Oana: Provide a watershed management protection plan or put, provide their watershed management protection plan.

Motion: Toni Eaton: Motioned

Second: Norman Franco

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Vote: All In favor  
Ney: Dr. Hanna Mounce

Vice Chair Milaskey: Completes the comment section. Have secretary read back to the board.

Deputy Corp Counsel Jennifer Oana: Because of the time delay, you will not see the draft for approval before it gets sent out.

Linda Kimura: Will send to Zoltan's review and signature.

Deputy Corp Counsel Jennifer Oana: If any words missing please speak out.

Noreen Saito: Read comments from Vice Chair Milaskey.

Vice Chair Milaskey: Okay with his motions.

Noreen Saito: Read comments from Toni Eaton.

Toni Eaton: Should put the whole diversion system?

Deputy Corp Counsel Jennifer Oana: Put, diversion systems and ditches.

Noreen Saito: Read comments 2 and 3, from Toni Eaton.

Noreen Saito: Read comments from Dean Frampton

Dean Frampton: Strike his comment that relates to watershed system loses, Toni covered it better.

Vice Chair Milaskey: Request it be read.

Noreen Saito: Continued with Dean Frampton's comments.

Dean Frampton: Strike the 2nd comment only.

Motion: Dean Frampton moved to withdraw his 2nd condition.

Second: Joe Aquino

Vote: Unanimous.

Noreen Saito: Read comment from Norman Franco.

Vice Chair Milaskey: Can this be tightened up?

Norman Franco: Agrees, make abbreviates.

Vice Chair Milaskey: Put in quotation section taking out of the EIS.

Norman Franco: HRS number and say, such covenant and or watershed plan to be bonded or have surety bond.

Linda Kimura: Reinstated HRS section 171-58(e), Mahi Pono to provide surety bond.

Deputy Corp Counsel Jennifer Oana: Should be provide surety bond to insure that condition is met. Or to insure the condition related to developing and implementing a watershed management plan is met.

Noreen Saito: Read Dr. Hanna Mounce's comments.

Noreen Saito: Read Buddy Nobriga's comments.

Vice Chair Milaskey: Commented that Hanna's comment says we encourage a shorter term lease and Buddy's comment saying we want a 15 year lease, which one?

Norman Franco: Ultimate discretion is DLNR.

Deputy Corp Counsel Jennifer Oana: To add the word, consider. Consider to shorter term, consider a 15 years lease.

Dr. Hanna Mounce: Would not want to vote to combine them. We could say, we're in favor of a shorter term lease, one consideration could be....and list detailed comment from Buddy.

Vice Chair Milaskey and Norman Franco agreed.

Vice Chair Milaskey asked to draft the letter, emailed and hard copy mail. On the email cc the board and department and DLNR.

Linda Kimura request that the board does not respond to her email.

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Motion: Deputy Corp Counsel Jennifer Oana, request to do a motion to send the comments read by staff to the consultant with cc to the approving agency and Department of Water Supply.

Second: Dean Frampton

Vote: Unanimous. Motion carried.

Other Business

Dean Frampton: Requested in the September meeting that we take up an agenda item on the Engineering's CIP budget. Talk about additional recourses the department is looking into in development. It wasn't placed in the October agenda. Asked it be placed on the next agenda.

Vice Chair Milaskey: There is draft of items to include on the next meeting. It's on there.

Buddy Nobriga: Requesting an agenda item of the Moloka'i water system improvement plans or just the Molokai improvement plan in general.

Chair Milaskey: Items for 11/21/19 are Department of Water correspondence in regards to voluntary water restrictions by Hanna. The Engineering's CIP budget, discussion of corporation counsel guidance by Shay and Zoltan pertaining to TIG. Discussion on board members conduct during meetings also pertaining to the meeting we had with TIG. Discussion on Board of Water Supply temporary investigative group, and report feasibility of purchasing and maintaining the EMI water delivery system. Discussion on County Council and water infrastructure committee agendas by Shay. Designation of a hearing officer duly appointed and designated to preside at hearings, pre hearings, conferences, and pre hearing motions for contested cases. Put on a future agenda, and see if we can get someone from Moloka'i to speak about Moloka'i's water system.

Linda Kimura: Reminder 9:00 am for November 21st for the contested case hearing and 1:30 pm Board meeting. We have 2 meetings.

ADJOURNMENT

There being no further business the special meeting was adjourned at 12:20p pm.

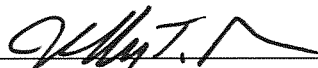
Prepared by:



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Noreen Saito  
Commission Support Clerk

Approved for distribution:



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Jeffrey T. Pearson, P.E.

Director