NO. 28970

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

NA MOKU AUPUNI O KO'OLAU HUI, BEATRICE KEKAHUNA and MARJORIE WALLET, Petitioners,

vs.

LAURA H. THIELEN, in her official capacity as Interim Chairperson of the Commission on Water Resource Management and Interim Chairperson of the Department of Land and Natural Resources; CHIYOME L. FUKINO, MEREDITH J. CHING, JAMES A. FRAZIER, NEAL S. FUJIWARA, DONNA FAY K. KIYOSAKI, and LAWRENCE H. MIIKE, in their official capacities as members of the Commission on Water Resource Management; and KEN KAWAHARA, in his official capacity as the Deputy Director for the Commission on Water Resource Management, Respondents.

ORIGINAL PROCEEDING

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of the petition for a writ of mandamus filed by petitioners Na Moku Aupuni O Ko'olau Hui, Beatrice Kekahuna and Marjorie Wallet, and the papers in support, it appears that petitioners consented to the three-year USGS study on the May 24, 2001 petitions and thereby waived the 180-day provision of HRS § 174C-71(2)(E) (1993).

It further appears that the Commission on Water Resource Management's (the Commission) purported duty -- under other authorities cited by petitioners -- to timely resolve the May 24, 2001 petitions is not a ministerial duty inasmuch the cited authorities do not prescribe and define the duty with precision and certainty as to leave nothing to the exercise of discretion or judgment. See Salling v. Moon, 76 Hawai'i 273, 274 n.3, 874 P.2d 1098, 1099 n.3 (1994).

It finally appears that the matter of the burden of proof on the May 24, 2001 petitions is reviewable on judicial review of a final decision on the May 24, 2001 petitions and petitioners fail to demonstrate that the Commission has refused to and will not render a final decision on the petitions. Therefore, petitioners are not entitled to mandamus relief. See Kema v. Gaddis, 91 Hawai'i 200, 204, 982 P.2d 334, 338 (1999) (A writ of mandamus is an extraordinary remedy that will not issue unless the petitioner demonstrates a clear and indisputable right to relief and a lack of alternative means to redress adequately the alleged wrong or obtain the requested action.); In Re Disciplinary Bd. of the Hawaii Supreme Court, 91 Hawai'i 363, 368, 984 P.2d 688, 693 (1999) (Mandamus relief is available to compel an official to perform a duty allegedly owed to an individual only if the individual's claim is clear and certain, the official's duty is ministerial and so plainly prescribed as to be free from doubt, and no other remedy is available.). Accordingly,

IT IS HEREBY ORDERED that the petition for a writ of mandamus is denied.

DATED: Honolulu, Hawai'i, February 19, 2008.