

GUEST VIEWPOINT

A councilmember's Superferry observations

Editor's note: This commentary was written before the Temporary Restraining Order was denied Friday, but is still relevant.

Tim Bynum

It is with increasing concern that I have observed the actions taken by both the Superferry and some of its opponents in the past weeks. Until recently the Superferry has moved forward step by step toward the seemingly inevitable implementation of the service. Since the Supreme Court Decision on Thursday, Aug. 23, events have escalated rapidly to a near-crisis state. During this time, in my opinion, irresponsible decisions have been made by individuals on both sides of the issue. Thank goodness we are in "cooling-off period" because it is critical the cool heads prevail going forward.

Many people's first reaction to the idea of a ferry service was that it sounded like a great idea. Others were immediately concerned with the potential environmental and social impacts the ferry might bring. Personally I took some comfort from the fact that in this day and age large commercial projects routinely go through a public process that includes an Environmental Assessment (EA) or an Environmental Impact Statement (EIS); particularly if the project involves public funds, transportation, the coastline or the marine environment. Surely a project of this scope would have a complete analysis of the potential impacts along with appropriate mitigation measures implemented to protect the environment and the public?

But wait, it was announced that the project would not do an EA or EIS. What? Many cried foul, particularly on the Neighbor Islands which would bear the brunt of any negative impacts. There must be some mistake, after all Hawai'i State Law in HRS 343.5 clearly states "... an environmental assessment shall be required for actions which: propose the use of State or county lands or the use of State or county funds, (or) propose any use within the shoreline area." Yet in spite of the law the Department of Transportation ruled no Environmental Assessment would be done. Those of us on the neighbor Islands have subsequently seen every petition and every attempt at compromised rebutted. Our appeals have fallen on deaf ears or have, in some instances, not even been acknowledged or received. So the Superferry was set to begin service on Tuesday, Aug. 28.

However on Thursday, Aug. 23, the Supreme Court unanimously ruled in a case brought regarding Kahului Harbor on Maui that the Department of Transportation erred and the law does require an EA or EIS.

The law also states, as is routinely the case, "Acceptance of a required final statement shall be a condition precedent to implementation of the proposed action." Or in other words you have to have the EA/EIS done before you can proceed. Seems clear right? Clear to some but as we have seen not clear to others. But when it comes to law assumptions can cause problems. For example many assume that because the Supreme Court ruled that an EA/EIS is required by law that it would include all the Harbors affected. It seems a reasonable assumption, but perhaps not to all.

I mentioned irresponsible behavior. It started in my opinion, with Superferry officials. Until the Supreme Court ruled, they have pretty much had

their way. But when the Supreme Court did rule the prudent course of action would have been to comply with the law and seek clarification of the outstanding legal questions. It is a reasonable position that the intent of the court is for an EA/EIS to be done prior to "implementation of proposed action" as the law states.

It is a reasonable position that an EA/EIS will have to be done for the whole project including Nawiliwili and other state harbors involved. These two legal questions still need to be answered.

Instead of acting cautiously what the Superferry officials did was sell hundreds of \$5 tickets and rush the ferry into service ahead of the original schedule. This was seen by many as a reckless and provocative act that dishonored our court and flew in the face of the law. Does anyone doubt that the dash into service was an attempt to act before the courts could respond or opponents could file the inevitable court motions to clarify the impact of the legal opinion?

This precipitous action fueled the ire of opponents and swelled the ranks of Superferry protesters. As a result Superferry customers were left stranded and the health and safety of Hawai'i citizens was put at risk.

No resumption of service should be contemplated until the outstanding legal questions are answered. Kaua'i County Councilmember JoAnn Yukimura has called on all the parties involved including the Superferry, the state, the counties and Superferry opponents to

jointly ask the Hawai'i State Supreme Court for a declaratory judgment to clarify the outstanding legal questions. I find this an outstanding notion and wish to join Councilmember Yukimura in calling for this action and in asking all parties to abide by the court's ruling.

Finally there is a need to address the protests that occurred Sunday and Monday night. I respect the rights of citizens to freely assemble and protest and I understand that the majority of the protesters were peaceful and treated others with respect and aloha. However, to my great sorrow, some people acted outrageously and abusively toward others. The people you threw insults and objects at were our friends and neighbors and included children. There is no excuse for this behavior under any circumstances. These individuals have done a great disservice to our island, the individuals they targeted and their own cause. I call on the organizers of the protest to publicly renounce any form of violence, intimidation or disrespect.

I encourage people who choose to protest to abide by the law. While not condoning any unlawful behavior I hope that any persons who choose to break the law enter into that decision fully aware of the potentially serious consequence of their choice. It is their responsibility to act in the tradition of non-violence modeled by Martin Luther King and his followers during the civil rights movement who never resisted arrest and always treated law enforcement personnel appropriately.

In this situation we all need to slow down, communicate clearly and treat one another with respect and dignity. The Superferry should not return to Kaua'i until and unless the court has ruled and all outstanding legal issues are clear.

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► Tim Bynum is a member of the Kaua'i County Council and a resident of Kapa'a.