
From: Belanger, Marcel <FTA>
To: Nejako, Henry <FTA>; Ayres, Gregory <VOLPE>; Barr, James <FTA>; Bausch, Carl <FTA>; Chen, Roy Wei-Shun <FTA>; Chipman, Peter <FTA>; Herre, Susan <FTA>; Marner, Abbe <FTA>; Ossi, Joseph <FTA>; Robinson, Bruce <FTA>
Sent: 8/30/2007 10:50:15 AM
Subject: RE: Hawaii's Supreme Court determined that new ferry needed environmental review [Hawaii Reporter article]

First things first -- "Parents who use their children as human shields and put them in harms way are likely unfit parents -- the Department of Human Services should investigate whether these kids should be taken into custody until the situation can be sorted out."

-----Original Message-----

From: Nejako, Henry <FTA>
Sent: Thursday, August 30, 2007 1:19 PM
To: Ayres, Gregory <VOLPE>; Barr, James <FTA>; Bausch, Carl <FTA>; Belanger, Marcel <FTA>; Chen, Roy Wei-Shun <FTA>; Chipman, Peter <FTA>; Herre, Susan <FTA>; Marner, Abbe <FTA>; Ossi, Joseph <FTA>; Robinson, Bruce <FTA>
Subject: FW: Hawaii's Supreme Court determined that new ferry needed environmental review [Hawaii Reporter article]

State and Federal Agencies Abandon Rule of Law
Protesters Shut Down Kauai Harbor as Hawaii Superferry Launches; U.S Coast Guard, Governor, Tell Hawaii Superferry Owners to Cease Operations Because Safety Cannot Be Guaranteed
By Malia Zimmerman
Hawaii Reporter
8/29/2007

Capt. Vince Atkins, U.S. Coast Guard Captain of the Port in Honolulu, made a stunning announcement on Tuesday, Aug. 28. He acknowledged that the federal law enforcement agency charged with protecting American ports will back down from an estimated 150 protesters currently holding Kauai's state Nawiliwili Harbor hostage.

The protesters, not all from Kauai, are camped out in the state's main island harbor to prevent the private inter-island Hawaii Superferry from landing there. An \$85 million privately funded passenger vessel built to shuttle local families and business owners with their automobiles and fresh produce between Oahu and Kauai and Oahu and Maui, launched for the first time Sunday night with a sea of happy passengers on board. But when the Hawaii Superferry arrived in Kauai three hours later on schedule, protesters used thuggish tactics to scare the passengers as they disembarked by yelling and threatening their physical safety, all with dozens of children present. About 15 protesters on kayaks, surfboards and canoes surrounded the Hawaii Superferry as it entered the harbor to keep it from moving forward.

As Superferry officials unloaded the passengers' automobiles Sunday, dozens of protesters turned even more violent, attacking the vehicles by pounding on the windows, letting air out of tires, and denting the cars where they could before they were interrupted by county police and state law enforcement. That night, 9 people including 4 children were taken into police custody and charged with misdemeanor offenses from disorderly conduct to trespassing.

These disruptors didn't just threaten other Hawaii families. Monday night, when the Hawaii Superferry attempted its second-ever landing on Kauai, protesters raised the stakes by using their own children as human barricades, encouraging their youngsters to paddle surfboards in front of the Superferry as it moved into the harbor. State officials say protesters reportedly threatened to toss their children from the pier into the Superferry's path if the vessel wasn't stopped. Coast Guard officials mounted on small boats unsuccessfully chased after 50 or so protesters who darted quickly from their reach via various watercrafts. The conflict quickly descended into lawlessness, as county, state and federal law enforcement were unable to bring calm to the chaos either on land or in the harbor waters.

Instead of ensuring the ferry's safe passage, U.S. Coast Guard officials and the Superferry captain gave in late Monday night. Protesters let out resounding cheers of victory as the ship departed hours later without letting passengers off.

Tuesday, the news from the Coast Guard's Captain Atkins only worsened for Superferry supporters. "Based on our current assessment of the situation in Nawiliwili, we made a recommendation to the state that it would not have been a safe transit into the harbor. The U.S. Coast Guard is committed to safety and security and enforces all applicable laws in the maritime environment. In this instance, the risk level was too high for the vessel, its passengers and for the protesters." He added that the Coast Guard's use of force requires the "minimum force necessary to compel compliance along a continuum of force, and that the Coast Guard has used the minimum force necessary to ensure safety to this point."

While Gov. Linda Lingle offered her sympathies to the Hawaii Superferry, she emboldened protesters Tuesday when she also told the company to suspend operations to Kauai, at least for the night. She offered no National Guard assistance, instead telling Superferry operators that it is better to back down, than to confront protesters and have someone get hurt.

Superferry president John Garibaldi called the order by the Coast Guard and governor "unprecedented" but said the company will abide by the government's wishes and suspend all trips to Kauai "indefinitely."

All Aboard to Maui? Courts Say No

While the protesters are holding up operations on Kauai by direct personal confrontation with passengers, the environmental groups undertook another form of attack on Maui -- they went to court.

The legal battles with environmental groups over the Superferry began in Maui's Second Circuit Court in 2005. The court ruled that the state did not need to complete an environmental assessment before the ferry launched, mostly because no other cruise ship, cargo ship or other private vessel were compelled to do such an assessment before landing in the islands. To impose this requirement only on the Hawaii Superferry would be unfair.

Lawmakers took up the issue in the 2007 session and after great debate, came to the same conclusion.

Environmentalists appealed to the Hawaii Supreme Court and won. While the court had more than a year to issue a ruling, the Supreme Court Justices instead waited until one day after the Superferry began operating to drop that bombshell, further complicating the Superferry's operations and its passengers travel plans.

Three environmental groups who appealed the Second Circuit Court ruling went immediately back to the lower court armed with a Temporary Restraining Order, which the judge granted. The order says the ferry must stop all trips to Maui, at least for 10 days. The order came after the ferry's first trip to Maui, resulting in Maui passengers being stranded without their cars on Oahu and Oahu passengers in the same boat on Maui. Hawaii Superferry jumped in to pay for all travel and hotel accommodations for stranded passengers, but reuniting passengers who were forced to return home via airlines without their cars is proving to be more problematic.

Wednesday, Aug. 29, the Maui judge will hold a hearing to determine whether the Hawaii Superferry can operate while the Environmental Assessment is completed, or whether the company will have to wait until the state wraps up an Environmental Assessment over the next 6 months to 3 years.

The Hawaii Superferry operators are hoping they will get the go-ahead, because despite claims by environmental groups that the Superferry operators broke the law, they say they have abided by all the government requirements imposed on the company to date.

"For more than three years, Hawaii Superferry has met all the requirements of the state Department of Transportation, including provisions pertaining to environmental review. The company complied with, and in many instances, exceeded Hawaii and Federal environmental standards. The same careful attention to regulatory compliance and overall responsiveness has been applied to the protection of whales, safety and security issues, community and harbor users, prevention of the spread of invasive species, and traffic management. ... It is our continued hope and intention to serve the people of the state of Hawaii by providing the convenient inter-island travel and transportation alternative they desire. ... We are hopeful that we will prevail in our Aug. 29 hearing and expect to resume operations to Maui on Aug. 30."

The state is hoping the court ruling won't forced them to complete an Environmental Assessment for every carrier at every state harbor and airport before they are allowed to operate there because such a ruling could be devastating to Hawaii's economy.

Going Off Course

The U.S. Coast Guard says it will continue to work with state officials and law enforcement agencies "on the safest course of action for the Superferry's inter-island transits."

But there is no doubt that more should and must be done to get the Hawaii Superferry back on track and prevent the business from going bankrupt because of government incompetence.

The governor shouldn't tolerate violence or the threat of violence on state property, even if she has to call in the Hawaii National Guard. Protestors who use violence against law-abiding citizens should be arrested and prosecuted by law enforcement. Parents who use their children as human shields and put them in harms way are likely unfit parents -- the Department of Human Services should investigate whether these kids should be taken into custody until the situation can be sorted out.

And what about the U.S. Coast Guard? What does it say about this federal law enforcement agency that is charged with Homeland Security, if it's enforcement agents can't stop 50 surfers and kayakers from shutting down interstate transportation to Kauai? This is the agency charged with protecting our state waters from terrorists and it can't even get surfers under control? How safe should Hawaii residents feel now? This federal agency, which has the motto "Semper Paratus" meaning "Always Ready" should be embarrassed to make such an announcement.

Superferry Now Symbolic Of Fight Over Hawaii's Future

The Superferry story is about much, much more than just an \$85 million investment made by entrepreneurs with a dream of offering another transit option for Hawaii.

To the people against progress, the free market and further development on these neighbor islands, the Superferry represents unwanted expansion. The Kauai and Maui protesters say they don't want Oahu residents invading their island, taking over their beaches, hogging their roadways, hurting their environment by bringing over invasive species or hitting ocean wildlife with the speedy vessel on the way over. They claim First Amendment rights, but of course they have no right to hurt or threaten to hurt anyone or their property.

To most people in Hawaii however, the vessel represents a way for families and friends once separated by the vast Pacific Ocean to connect more easily; for farmers to move their produce quicker before it spoils; for canoe paddling teams to get their boats and teammates to other islands at a lesser cost; for handicapped travelers to get around more easily in their own specially made automobiles; and for teams and school groups to take trips to their neighbor islands along with their team or school bus.

The majority of people want the Hawaii Superferry as an option for local travel. The question is whether the state and federal governments will uphold the rule of law to ensure the majority wins or if they will give in to the vocal minority and allow chaos to triumph over law and order.

-----Original Message-----

From: Luden, Hymie <FTA>

Sent: Wednesday, August 29, 2007 6:33 PM

Subject: FTA article: Hawaii's Supreme Court determined that new ferry needed environmental review