

Preliminary round today in Superferry legal wrangle

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WAILUKU – Critics of the Hawaii Superferry are expected to resist an effort by the state to have 2nd Circuit Judge Joseph Cardoza lift an injunction barring ferry operations until an environmental assessment is completed.

When both sides of the issue will be making their arguments is less clear.

Cardoza has scheduled a hearing for 10:30 a.m. today that will be on when he will take up a state motion seeking to dissolve the injunction.

The motion to dissolve is based on the approval of Act 2, a law approved during a special session allowing the Superferry to operate while an environmental impact statement is prepared. The new law also requires Gov. Linda Lingle to set conditions under which the ferry can operate, which she included in her announcement that she signed the bill into law on Monday.

But it's still up to Cardoza to agree to lift the injunction that he ordered on Oct. 9, finding that the state's environmental law mandates an assessment be completed before a project can proceed.

Ferry operations have been stalled since Aug. 27, by protests on Kauai and Cardoza's orders on Maui, after the Hawaii Supreme Court ruled that the state Department of Transportation had improperly granted an exemption from the environmental law for harbor improvements to accommodate the Superferry.

The hearing today will be covered by Hawaii media, with live streaming-video coverage by Akaku: Maui Community Television at www.akaku.org.

For today, the issue before Cardoza will be strictly on when he will conduct a hearing on the motion filed by the state, with the opposing parties – the Sierra Club Maui Chapter, Maui Tomorrow Foundation and Kahului Harbor Coalition – allowed up to 18 days under normal court rules of procedure to respond to the motion.

If Cardoza allows the 18-day time frame for filing response briefs, the hearing on the motion would be held after Thanksgiving.

Although Lingle imposed 40 conditions on the Superferry operation, critics say they are insufficient, citing in particular a 25-knot (29 mph) speed limit within the Hawaiian Humpback Whale National Marine Sanctuary. Whale advocates urged a 12-knot limit (14 mph), in line with recommendations by the National Oceanic and Atmospheric Administration for vessels operating around whales.

NOAA also has special rules for Hawaiian waters requiring vessels to stop all movement if a

whale is within 100 yards.

Maui Tomorrow Executive Director Irene Bowie said the restrictions imposed by Lingle are inadequate, and her organization will oppose the motion to lift the injunction.

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