

BOARD OF WATER SUPPLY
County of Maui
Regular Meeting
Thursday, January 24, 2008
9:00 a.m.
Planning Department Conference Room
First Floor, Kalana Pakui Building
250 South High Street
Wailuku, HI 96793

I. Call to Order

Chair Lee Aldridge called the January 24, 2008 Board of Water Supply meeting to order at 9:05 a.m.

II. Attendance

Board Members:

Chair Lee Aldridge
Vice Chair Carl Holmberg
Marion Haller
Michael Howden
Kui Lester
Scott Luck
Kelli Myers
Kenneth Okamura

Staff:

Jeffrey Eng, Director
Eric Yamashige, Deputy Director
Edward Kushi, Jr., Deputy Corporation Counsel
Holly Perdido, Fiscal Officer
Ellen Kraftsow, Water Resources & Planning Manager
Gaye Hayashida, Commission Support Clerk

Others:

Member(s) Excused:

Phyllis Robinson

Bruce Macler, EPA San Francisco
Bill Davis, EPA Dallas
Andy Waite, EPA Dallas
Barry Pollock, EPA San Francisco
Joe Medeiros
Cheryl Medeiros
Jock Yamaguchi, Council Services

III. Announcements

Chair Aldridge asked if it was appropriate at this time to ask when the next board meeting is scheduled for. The department staff announced that the next meeting is February 28th though the room has not been confirmed.

IV. Approval of Minutes

The Chair asked to defer the approval of the minutes to the later part of the meeting.

V. Testimony from the Public

A. None.

VI. Appeals

A. Appeal 07-02 Findings of Fact, Conclusions of Law, Decision and Order. An appeal by Cheryl Medeiros of the Director's decision/order dated May 22, 2007, denying her proposed alternatives to satisfy the department's requirements for water service to her property located on Polipoli Road, identified as tmk (2) 2-2-004-098 (lot 35C).

The Findings of Fact, Conclusions of Law, Decision and Order document was distributed to all the Board members under separate cover.

Chair Aldridge asked if there were any questions or comments regarding what Corporation Counsel had prepared.

Member Haller wanted clarification and asked if the document allows the Medeiros' to proceed even if the neighbor chooses not to opt for the water meter and not to participate in the building of the water system.

Mr. Kushi replied that it is his understanding in drafting the decision that this would be the case. The appellants can request a refund of the reservation fee for the second meter and then upon that happening the Department can send a letter to the Chevaliers if they want to reserve that meter. Assuming they don't then that meter is forfeited and the Medeiros' would do the improvements specifically for their lot. If they do then they would have the reservation but they would also have to participate in any improvements.

Now the question becomes what happens to lot 35A. The family subdivision agreement still applies to that lot. In the future, when any requests for water service or building permits for that lot is made then the water system improvements for that lot will kick in. This would also apply to the other owner, Ms. Feldman.

Member Okamura asked if the Findings of Fact has to state that the same applies to the other party.

Mr. Kushi replied that this Decision and Order allows the appellants to proceed with improvements for their lot. If the others join in then they'll get water service and the ability to get building permits for their lots.

Member Okamura asked if the document should also mention the other parties.

Mr. Kushi stated no because they are not parties to this appeal.

At this time Chair Aldridge asked that the record reflect that Vice Chair Holmberg is now present.

Chair Aldridge asked if it is correct that this matter has already been approved by the Board.

Mr. Kushi stated that it is correct. At the last board meeting it was brought up and the Board did vote on it. This is just to formalize the decision.

Chair Aldridge asked that once this document is signed it will be issued to the appellant?

Mr. Kushi replied that is correct and certificate of services have been prepared to serve the appellant with the Decision and Order. Any appeal to the Board's Decision and Order will start from today.

At this time Chair Aldridge signed the Findings of Fact, Conclusions of Law, Decision and Order regarding Appeal No. 07-02, Appellant Cheryl Medeiros.

Certified copies were distributed to Cheryl Medeiros and to Jeffrey Eng, Director of Water Supply.

VII. Unfinished Business

A. None.

VII. Communications

A. None.

VIII. Director's Report

Director Eng asked the Chair if he could give an update of the Fiscal Year 09 Budget. Chair Aldridge allowed his request.

The Director explained that the Department recently met with the mayor and her budget staff on the O & M budget and will meet again with them tomorrow regarding the CIP budget.

He stated that they are still looking at the rate design which will take effect July 1, 2008. Though it hasn't been finalized, they will continue with the 3-block tier and any increases in revenue and rates will be focused on the third block. They want to

protect those in the first and second block which are the life line and the average single family customers respectively.

Member Howden asked about the fuel surcharge.

Director Eng replied that they already have a power rate charge incorporated in the rate design which started this past year. This is even charged to the non-potable and ag customers. Currently it is 90 cents per thousand gallons, but because the cost of electricity has gone up, they are looking to increase it to a reasonable amount.

Member Okamura asked if there has been any effort or desire to have some conservation effect in the rates.

The Director stated that if we're going to load the 3rd block with most of the revenue needs there will definitely be conservation results. Those who are over 30,000 gallons for a bi-monthly period will be paying the most, so yes, it will be built in.

Member Holmberg asked if there was any way to recognize those who are already using a minimal amount of water per person and not be penalized with threat of meter removal when their consumption increases due to unexpected reasons.

Chair Aldridge asked that this subject be held for the Water Conservation Plan agenda item.

IX. Other Business

A. Discussion and Briefing by the EPA on the Upcountry Maui Drinking Water Treatment and Distribution System Optimization Study

Dr. Bruce Macler from the U. S. EPA San Francisco office gave a power point presentation on the purpose of this study.

Andy Waite from the Dallas U. S. EPA gave a presentation on the evaluation of the performance versus the goals.

Bill Davis gave a power point presentation on their recommendations.

Copies of the power point presentation are attached and made a part of these minutes.

After the presentation, Member Howden stated that at the public meeting the EPA team said they will not be looking at the wells, he wondered what else is missing from the study.

Dr. Macler replied that the mandate was to look at the Upcountry surface water system. But in fact they did some work out in the areas where the wells were and it was included in the findings. They evaluated the water in the distribution system served by those wells.

Member Howden asked if they dared to go and look at the rickety flume system that feeds Waikamoi.

Dr. Macler stated that water is moved all around by the utility between one distribution system and another. The lower distribution system and source water that serves that is fairly abundant so there is a bit of a cushion there that even if raw water became scarce at the upper elevation there is flexibility to move some of it up there.

Mr. Waite stated that this is a water quality study not a water quantity study and they were not addressing issues of acquiring more water capacity.

Member Haller asked if they could give a layman's summary or a grade. Do we get a B or a C, or did we flunk, are we A+? Where are we at with our water quality? There was no mention of the Boyle Report and what your Peer Review found. She wanted to know if they could address this also.

Mr. Waite stated that biologically the water is very safe. The Department tests a whole lot more than is required and all of those tests are coming back positive. When issues come up the Department seems to be addressing them. So biologically the Department has an A.

Dr. Macler stated this is a pass/fail grading and the Department is passing. The Optimization is like your first day of the school year, you don't have a grade yet, but you see you have a lot of work to do. Because there are communication and siloing issues there's going to have to be a lot of work done.

The Boyle study was an engineering study to address some specific questions that were written into the contract. It was not designed to be a holistic study. It met the contract requirements but didn't meet quality assurance goals that were set. It didn't merit that kind of peer review, though some of the data were useful to the EPA team.

After the presentation Member Haller asked Director Eng for his reaction.

Director Eng stated that when this study was in the planning stages he had concerns, but things have worked out quite well.

When the EPA presented their findings to him and his staff, all those things they pointed out regarding communications was obvious. It was obvious to him when he

first took this job. His biggest disappointment during his first year on the job was that he was not being able to break down those walls and develop teamwork.

But it was good that this was brought up by the study. He believes that this is something the Department needs to really focus on for the betterment of not only the Department but for the entire community.

B. Discussion/possible action regarding the Water Conservation Plan (WR-14)

Chair Aldridge stated that there are specific questions posed by Chair Michelle Anderson in her letter to him that he would like to address. If they cannot answer all the questions then he would need to request an extension of time.

The Chair read the first question, "how might the water conservation plan impact administrative responsibilities within the Department of Water Supply", then asked Director Eng for his comments or if he had even seen this.

Director Eng replied that he had and explained that this letter or a similar letter was sent out to each of the county department heads. He is polling all of his division heads to see how this might have an impact within their divisions. Once he gets feedback from his division heads, the Department will come up with a response.

Chair Aldridge stated that perhaps the Board could respond that the Department is currently reviewing this and the Department will respond directly.

Director Eng replied yes, that will be fine.

Member Haller suggested an education program for the community involving wastewater from irrigation "flow off" that people need to learn to pay attention to. She then asked if this falls to the Department once it is implemented.

Director Eng replied yes, they will have an ongoing conservation education program. He noted that this is a scaled back conservation plan and believes that Chair Anderson's intent is to get something in place that can be revised and amended over time.

Chair Aldridge read the second question, "what additional regulatory measures, if any, would you include in the water conservation plan? Please include specific language".

The Chair asked if there were any additional regulatory requirements or measures that the Department is considering in light of this water conservation plan.

The Director stated that the key to all this is not wastewater and earlier thought that there might be some enforcement attached to this. All the other communities who

have successful conservation plans have some kind of enforcement or hotline that the public can call. He believes the Water Resources chair understands that.

Chair Aldridge stated that the plan had possible additional terms for water conservation legislation that included a proposed enforcement section, 14.03.100 which calls for establishment of citations and penalties. Personally, he felt he didn't want to criminalize the use of water and pointed out that the Department has the capability of pulling meters in the event that there is excessive use.

Director Eng corrected the chair and explained not for excessive use of water but for illegal use of water or non-payment of the water bill.

The Director further stated that enforcement is not something he really wants to do because he doesn't have the staff.

Member Howden noted that the document they are reviewing now has been edited considerably from what Ellen Kraftsow had given the board. It would be better if they went back to the earlier drafts because it was certainly more thorough.

Chair Aldridge concurred that the earlier drafts were more substantial in respect to different measures for conserving water but they still did not address the regulatory or the enforcement aspect, which is still a good question and one that needs to be answered. He added, what is the purpose of having a water conservation plan if you can't enforce it?

Member Howden stated that it is a start but at least it would set standards. He feels this proposed version doesn't have enough substance and is not thorough enough.

Member Haller stated that it became clear to her that Chair Anderson is to do this step by step. If anything, they could talk about whether the board thinks that this is effective instead of doing one large comprehensive ordinance. In her experience, the more complicated you make an ordinance, the longer it takes to get it into effect. This is easier to get through because the more you put in the longer it will take for the county to pass it. She thought that Chair Anderson's strategy was brilliant which is to get it started in a simple way and then add on to it.

Chair Aldridge stated Chair Anderson had indicated that she was looking to this board to provide assistance in establishing specific regulatory rules that the council could adopt in terms of enforcement.

The Chair asked if it was true that the Department was looking at means of enforcing the water conservation plan measures.

Director Eng stated that Ellen and her staff have a much more substantial conservation draft plan. He agrees that if this will expedite getting this into code

then he supports it. He likes the aspect of allowing the Board to continue to review and make recommendations and suggested that the Board might want to meet with Ellen and her staff from time to time to discuss what regulations they want to see added.

Member Haller stated that the only thing she sees in this ordinance that might be worth considering for a “first time out the door” bill that would be easy to pass is new construction inside restrictions. New construction cannot be done without a low flow or a 1.6 gallon flow toilet. This is not difficult and it is not asking people to retrofit. It is just saying new construction has to use low flow.

Director Eng stated that current Maui County codes require it for new buildings, but it would be nice to have retrofit language.

Ms. Kraftsow stated that the last version she read called for an update on evaluating the effect of conservation programs within 180 days. In the process of doing a water use and development plan, some of the conservation and demand side management options have come up looking more cost effective than others. The consultant may recommend to the Department to hire a specific targeted conservation consultant to help them design a program.

Personally, she would rather focus the energy on developing the program and staffing it rather than spending time and paperwork reporting to council what may or may not be valid to report on yet. As far as enforcement, some of the old drafts have enforcement and some don't. When it comes down to it, the Department has not had the staff to do it full on.

Her concern with the 180 days is that it is not a full evaluation period. You are actually not getting work done because you are so busy reporting on everything.

Member Holmberg stated that if the enforcement actions are a matter of the permit process as opposed to going out catching people after the act then that takes the burden off the Department.

Chair Aldridge stated that these regulations address outdoor watering and do not distinguish whether it is new or existing. So there is still the question of enforcing the requirements for control of outdoor watering by existing users. He feels that if you do not come up on your own rules with some reasonable enforcement procedures then one may be devised for you which you cannot live with. He would like to see the Department come back with some proposed workable enforcement measures, such as monitoring consumption.

Member Haller pointed out that the proposed ordinance does say under Outdoor Watering, section A, that it shall be unlawful. If it in fact becomes unlawful to do these things then does that not give the director the right to pull a water meter?

The Chair referred this to Corporation Counsel.

Mr. Kushi stated that he tends to agree with the Director that the Board's rules currently provide for pulling the meter if they don't pay their water bill or if there is illegal use on selling water. It says nothing about overuse.

As far as enforcement, he was the one who told the Council's Water Resources Committee that if we don't have enforcement conditions then this bill means nothing. If they don't include enforcement conditions and because this is in Title 14, then technically the Department Public Works could be the water police because they have enforcement jurisdiction in Title 18, 19, 12 and 14. That would put the burden on a different department.

The provision that is before this Board states that the Department of Water Supply shall be the enforcing agency. If you read closely, it says the Department or any police officer can go out and cite. That puts the burden on the police department. All this comes down to if this is a criminal penalty then the penalty provisions are anywhere from \$25 to no more than \$1,000. In a criminal scheme of penalties that's a violation like a traffic ticket. They don't go to jail but they pay the money. The district court of the State of Hawaii decides guilty or not guilty. That means the State gets the money. So, who's going to pay the police officer's time and the Department's time to enforce these things?

The other way to do it is to call it a civil fine. That way you can assess them with a notice of violation. You get to collect the money but it will go through a separate process and they get to appeal to the Board of Variances. So you would be setting up a whole different system of penalties whether it is criminal or civil.

If you are going to do something like this, then Corporation Counsel's advice is to get some teeth into it. Otherwise, it is good to look at but means nothing.

His response to Member Haller's question is no, he doesn't think the Department can pull the meter right now for mis-use or over use of water, unless you change the rule on pulling meters. Right now all the Board's rules are before the council to be changed into ordinances and they haven't acted on it.

Chair Aldridge thinks that the Department needs to consider some enforcement procedures. He would like to respond back to Council's Water Resources Committee that the Board will defer their response to this question pending the Department's review and determination on what enforcement procedures are necessary and that the Department will bring this back to the Board for review and consideration.

Director Eng accepted the Chair's recommendation.

Chair Aldridge read the third question, “do you know of other Maui County sections that may need to be revised or considered in conjunction with the water conservation plan?”

Member Haller stated yes, the water meter “pulling” rule. It makes sense to her that if you’re going to enforce a penalty as it relates to water to let the citizens make the call. If she had a neighbor who consistently over water, she would like to be able to turn him in.

Chair Aldridge asked if there are also changes to the sections in the building permit issuance that would be impacted. For instance, this water re-use for new commercial car wash facilities. He doesn’t know if this is currently in affect or not. So there are some questions as to whether or not there are other permitting agencies or other regulatory agencies that would need to change their current requirements.

Director Eng stated that though he cannot speak for Water Resources Committee Chair Anderson but he believes that she would have sent this draft conservation plan to commercial car wash operators to see if this would impose any difficulties. He assumes that she may already have been contacted by them by now. He believes she has taken a very open-minded approach.

Mr. Kushi stated he believes Council Member Anderson sent this out to all the County departments, specifically Public Works, Environmental Management, Fire Department, Parks Department and other county agencies that use water. And he thinks she may have sent it to the Contractors Association and the Arborist Committee also.

Chair Aldridge stated for this water conservation plan to be effective depends very heavily on some means of enforcement. He personally would like to see that the enforcement be handled within the Department in the most convenient and efficient manner as possible and the Department should also benefit from any of fines levied instead of the State. He would hate to see the police be burdened with something like this because they have enough to enforce already. This should be kept within the Water Department.

Member Howden stated it would be no problem for Public Works for them to issue citations because they are already keeping an eye on all kind of stuff. This would augment the already lean water personnel.

Member Okamura wondered what happened to their proposal that new developments limit the turf on their landscapes. Maybe the Board could put in something to try to have new developments put in more water conserving landscape. Right now he doesn’t think there are any regulations or requirements.

Member Haller pointed out on page 11 of their packet there is possible additional terms for water conservation legislation and the first paragraph is called Planting. She too thought that this would be a good way for new construction to start.

Chair Aldridge stated that under additional terms for water conservation legislation, Planting and Irrigation, is that it didn't specifically indicate that this was only for new development.

Member Haller agreed and she would change it to that. Make it initial and then you would make it retrofit in future.

Director Eng added that the Department always has a lot of concern about planting. You might want to talk about what kind of plants.

Ms. Kraftsow stated that the Department's first landscape ordinance draft was passed out in 2005 and was based on 2 major methods used throughout the country. One is restriction on turf because it is one of the most thirsty plants. The other way is a water budget method which takes a reference grass species and set a percentage, 70 or 80 percent, limit on the amount needed if it was fully planted in this grass. Within that you can have wet areas, zeriscape dry areas, as long as the total water budget does not exceed this.

To allow flexibility the first draft was written such that you have your choice, you just limit the turf or do a water budget. The problem is in Hawaii there was no study done to promote native Hawaiian plants that they can use to compare.

At the time the first landscape ordinance was drafted in the late 1990's there was not enough information on acquiring and maintaining native Hawaiian plants. Now there are more nurseries producing these plants in commercial amounts. This ordinance is still sitting there with this water budget and turf options. So for now they have opted to go with the turf restrictions until there is the data for native Hawaiian plants.

All the studies have shown that metering alone is one of the most effective conservation measure and we are lucky in that we have most of our customers metered. The next level is to meter multi-unit structures, separating landscape.

Enforcement was taken out of the original draft because the Department did not have enough staff but there was a draft that had enforcement with progressive fines leading to loss of meter and progressively expense meter re-installation fees. This is not in the version before the Board.

Chair Aldridge stated that he would like to bring this water conservation plan measure back for continuing discussion at the next meeting and he will also prepare

a response letter to the Water Resources Committee indicating that the Board will be in continuance discussion regarding these impacts and enforcement procedures. The Board will report back to them when they have some resolution on this matter.

Mr. Kushi stated the Board may want to consider to leave the initial enforcement to the courts and the police with the Department allowed to cite and maybe pull the water meter after 3 strikes, after 3 convictions then the Department gets to pull the meter.

IV. Approval of Minutes

Chair Aldridge proposed to approve these minutes pending the commission clerk's receipt of the members' corrections within the next 30 days by e-mail.

Motion: By Member Howden to approve all the minutes pending the member's corrections within 30 days.

Second: By Vice Chair Holmberg

Discussion: None.

Vote: Unanimous.

Agenda items C through F were deferred to the next meeting due to the meeting running late.

C. Discussion regarding the Water Availability Bill and Potential Impacts of Private Water Systems

D. Discussion regarding the Upcountry Water System

E. Discussion/possible action on the Central Maui Water System and West Maui Water Availability

F. Discussion regarding Public Outreach by Board Members

G. Discussion regarding an Invitation to Gordon Tribble, Center Director, U. S. Geological Survey Pacific Islands Water Science Center

Chair Aldridge informed the members that this agenda item was for their information only.

H. Receipt of Board Member request for agenda items to be placed on future agendas

Board of Water Supply
Minutes of January 24, 2008

1. Water Conservation Plan (WR-14)
2. Focused report on Pookela Well
3. Piiholo Well Agreement
4. Dual Line
5. Upcountry and Central Maui water systems

X. Division Reports

XII. Adjournment

The January 24, 2008 Board of Water Supply meeting was adjourned at 11:57 a.m.

Prepared and submitted by:

Gaye Hayashida
Commission Support Clerk

Approved on: _____