

BOARD OF WATER SUPPLY  
County of Maui  
Regular Meeting  
Thursday, February 22, 2007  
9:00 a.m.  
Committee Room, Office of Council Services  
Kalana o Maui  
200 South High Street, Room 707  
Wailuku, HI 96793

I. Call to Order

Chair Kenneth Okamura called the February 22, 2007 Board of Water Supply meeting to order at 9:06 a.m.

II. Attendance

Board Members Present:

Also Present:

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

Jeffrey K. Eng, Acting Director  
Edward Kushi, Jr., Deputy Corporation Counsel  
Alva Nakamura, Engineering Program Manager  
Ellen Kraftsow, Planning Program Manager  
Alan Murata, staff engineer  
Gaye Hayashida, Commission Support Clerk

Others:

Jane Lovell, Deputy Corporation Counsel  
Carl Freedman, consultant for the WUDP  
Kim Willenbrink, Legislative Analyst, Water Resources Committee

III. Announcements

A. None.

IV. Approval of Minutes

A. January 25, 2007 Meeting

Motion: By Member Ginny Parsons to approve the minutes of January 25, 2007 with a 30-day review period.

Second: By Vice Chair Lee Aldridge

Discussion: None.

Vote: Ayes – Unanimous. Motion carried.

V. Testimony from the Public

A. Dawn M. Silva

Ms. Silva requested that her property at 937 Kokomo Road, Haiku, tmk 2-7-11-031 be provided a water meter. Her parents, Walter and Katherine Silva, contracted ECM in 1989 to subdivide family land into 2 R-2 lots. The job was completed in 1991 but ECM failed to inform her parents that they needed to apply for a water meter. Her family has until now assumed that they had a water meter.

They met the Department of Water Supply's requirements by installing service laterals as shown on the preliminary plat and pay a storage assessment of \$100. No one from the Department informed her parents to apply for a water meter when the laterals were installed. A notice was sent out by the Department via the Maui News stating, "Effective October 4, 2002, all Upcountry residents must apply for a 5/8" water meter within a 60-day period." Ms. Silva states that this notification is insufficient. Why did the DWS not mail out notices to all the Upcountry residents with laterals? This would have been sufficient and she would have received notification and could have applied for a meter.

It appears that ECM did not finish the work that they were hired for, to provide water to their family subdivision. For the past 15 years they believed that a water meter was on their property.

In a letter to Director Jeffrey K. Eng, dated January 10, 2007, Ms. Silva requested a water meter for this property. She received letter dated January 19, 2007 from the Department stated that she should place her property on the priority list. She noted that she had already done that in April. On January 28, 2007 she wrote to Mr. Kenneth Okamura requesting to be placed on the February 2007 docket. On February 14, 2007 Gaye from DWS stated that she could not place her on the Board's February 22<sup>nd</sup> agenda and further stated that she would be placed on the agenda of the next available Board of Water Supply meeting. The letter didn't advise her that she could testify nor did it give any details on when she could be seen.

Member Holmberg asked what actions has Ms. Silva taken with ECM. Ms. Silva replied that right now she is under legal counsel.

Member Parsons asked if Ms. Silva would come back with her plans if they could place her on next month's agenda. Ms. Silva replied absolutely.

The Chair stated that there would also be a requirement that the department has their material together, do the proper research before this Board can hear her case.

X. Other Business

A. Verbal Update on Pookela Well.

At this time the Chair moved this agenda item up.

Alva Nakamura stated that the construction is done with a few exceptions. There are seven items the contractor still has to follow through.

Alan Murata stated that by contract the completion date was August or September of 2006 and there are provisions for liquidated damages but the penalties have not been enforced. The contractor has argued that some of the delays were caused by the Department though he has never filed a formal change order for time extension. The Department could pursue liquidated damages but it may not make things go faster.

Member Parsons suggested that the Department work with the legal department and put together a letter with some teeth to it.

Mr. Murata stated that he believes the contractor knows what is at stake here, and Alva Nakamura has been meeting with him 2 to 3 times a month. The contractor is paying for the demand charges for electricity, which is about \$2,000 to \$3,000 a month. He's paying for this and there is no progress so he is feeling it financially.

Member Howden stated that the fact that this well has not been functioning and was promised that it would be, is just a continuing embarrassment to the county government. He urged the Department to utilize Corporation Counsel and move forward with this. We should also look at not doing business with this contractor anymore or put him on a probation period.

Mr. Murata suggested the Board talk to the contractor directly. He might give a different picture of the project. We're giving it to you from the Department's standpoint. He would give it to you from the contractor's standpoint. He may have some legitimate points.

Vice Chair Aldridge stated the Department should take whatever legal provisions they have and to at least threaten enforcement to make sure he understands that we are being serious about this.

Member Parsons asked, when was the notice to proceed issued? What was the time frame?

Mr. Murata stated that the contractor was awarded the contract at the beginning of 2005 and the notice to proceed was around March 2005.

VI. Unfinished Business

- A. Discussion/possible action for a Resolution Supporting the Petition to Designate Na Wai Eha as a Surface Water Management Area with Corporation Counsel Jane Lovell.

Motion: By Member Howden to accept and submit the same resolution that has already been submitted to the state water commission by Kapua Sproat.

Second: By Member Parsons.

Discussion: Deputy Corporation Counsel Edward Kushi stated that this resolution needs to be changed to reflect the Board of Water Supply.

Deputy Corporation Counsel Jane Lovell suggested taking out the 3 "Whereas" on page 7 then continue with "Be it resolved by the Board of Water Supply of the County of Maui..."

Member Howden stated he will amend the motion to be "as amended by the Corporation Counsel office."

The Chair restated Member Howden's motion, "we support the resolution as amended by Corporation Counsel."

Mr. Kushi stated that they will amend the resolution and then submit it to the chair.

Vote: Unanimous. Motion carried.

- B. Discussion for a Resolution of the East Maui Water Licenses Litigation with Corporation Counsel Jane Lovell.

Deputy Corporation Counsel Lovell advised that it is not wise to send a letter or a resolution or any other statement that in essence urges the Board of Land and Natural Resources to hurry up. She stated that the Board of Water Supply

should still keep an eye on this matter but not take any further action, not even a gentle nudge.

Member Howden stated that he accepts Ms. Lovell's opinion and the Board should let this matter lie until there is some kind of response.

VII. Communications

A. None.

VIII. Director's Report

A. None.

IX. Committee Report

A. Water Supply Rules (WR-1)

A copy of the Water Supply Rules Subcommittee's report is attached and made a part of these minutes.

Member Parsons suggested that they ask the Mayor to designate areas where she wants the Board to address, such as issues on water meters and resolutions.

Mr. Kushi explained that because of the charter change, the Board's rule making powers have been taken away. So now the Board's administrative rules and regulations will be put into ordinance form like a code, ie., fire code, building code, and this process goes through the council. He has put it into ordinance form and drafted five out of the seven chapters for the council to review.

Right now the Water Resources Committee is going through the rules and they have sent a memo to Public Works and to the Fire Department for their comments also.

The Board's subcommittee has listed 6 items in their report that they felt should be incorporated or revised in the proposed rules. Referring to item 2 of the report, Mr. Kushi stated that the subcommittee felt an appeals board should be established, separate from this Board.

As established at the last meeting, the procedure was to set up this subcommittee, have the subcommittee meet, then prepare and submit a report to this Board. There can be no action taken until the next Board meeting in March.

Vice Chair Aldridge asked, is it really contrary to the charter amendment, legally or in spirit, that this water board not be written into the regulations as the final

arbiter of certain rules and regulations issues and therefore does not necessitate a separate appeals board?

Mr. Kushi responded by stating that his office has taken the position that prior to the charter change, the board could overturn, modify or confirm any decisions by the director, hire and fire the director, and could enact rules and regulations including rates and fees. Those powers were specifically taken away with the charter change and now the board acts in advisory capacity to the department, mayor and the county. That being the intent and the language of the charter amendment, his office believes that those powers cannot be given back by ordinance. The question is can the council now enact an ordinance giving back the board those powers? His office would say no, because the charter amendment specifically took those away. In the hierarchy of county government authority, first you have the charter, then, second are the ordinances which have to be consistent with the charter, then departmental rules and regulations.

Vice Chair Aldridge suggested that if a separate appeals board is created then 2 or 3 members of this board should also be members of that appeals board.

Mr. Kushi stated that because of the recent OIP opinion on subcommittees of the council that may be a problem. You have sitting members of one board being members of another board, there may be issues of quorum and the authority of sitting members.

Member Haller asked, is there anything wrong with the way this board has been operating where the director has basically chosen to listened to the board's recommendations?

Member Parsons stated that the problem would be if the director didn't take the recommendations of the board. Then where does the customer go?

Member Haller suggested the (variances and) appeals board.

Member Holmberg asked how long would it take the council to go through these rules.

Mr. Kushi stated he would be surprised if they could go through this before the end of this calendar year.

Member Holmberg asked why not fix the charter change for next November, in essence making this board the appeals board?

Mr. Kushi stated that charter amendments can only be placed on the ballots during election years and the next election is 2008.

Member Parsons asked if the council can remove the fire flow issue from the Water Department and move it into the Fire Department's purview.

Mr. Kushi stated that the problem is, if they are going on hydrants and stand-pipes, the water supplying them is through the Water Department's lines not the Fire Department's. So it is a mixed bag, fire flow requirements versus the Water Department system's infrastructures.

Chair Okamura stated that the subcommittee also felt that the Department needs to look at the ordinance in terms of the engineering staff's interpretation to make it a workable rule.

Director Eng agreed and stated that the engineering staff is reviewing the applicable rules.

Motion: By Member Howden to accept the subcommittee's report.

Second: By Member Parsons

Discussion: None.

Vote: Unanimous. Motion carried.

X. Other Business (continued)

A. Discussion on General Summary of the Purpose, Content and Current Status of the Water Use and Development Plan with the DWS Planning Division.

Ellen Kraftsow asked the Board to keep in mind that everything is still a draft and the board's input would be welcomed and appreciated.

Carl Freedman gave a power point presentation on the status of the Maui Water Use and Development Plan Process. A paper copy of this presentation is attached as part of these minutes.

Mr. Freedman distributed drafts of the Candidate Resource Strategies for the Central District and the Upcountry District, a paper copy of the power point presentation, a flow chart of the Water Use Development Plan process and flow charts of the Central System and Upcountry System Variable Operating Costs which are basically electricity costs.

Member Parsons asked would it not be helpful to have disinfection costs as well? Mr. Freedman replied that for the surface treatment water that's what you are looking at.

Mr. Freedman explained that the Water Use and Development Plan is defined by state law, state water code, and is part of the Hawaii Water Plan which includes a water resources protection plan, a water quality plan, an agricultural plan, and a state projects plan. The Water Use and Development Plan is the county's part of the state water plan. It is a long range plan to guide state and county policies and allocates water to land use according to the statutes. This plan would ultimately be adopted by the county council as an ordinance.

The procedure is that the Department will be administering the process, the water advisory committees have been formed for each district, the water use and development plan is being developed with public input by the water advisory committees and by the Board, the Council and the Mayor. The final WUDP will be drafted by the Department, reviewed by the Board, reviewed and approved by the Maui County Council, reviewed by the state water commission and then ultimately adopted by the county as an ordinance and by the state water commission as part of the water plan.

The Lana'i District is in the Final Review process with the Lana'i water advisory committee. The Central Maui and Upcountry Districts are almost done and right now are in Candidate Strategies and they about choose which Candidate Strategy to use. They have done some of the processes but have not started the public process for the East Maui, West Maui and Moloka'i Districts.

Basically we are down to the selection of the final strategies which will be selected by the Department. Once they are selected then it has to be reviewed in detail, the assumptions refined, and do more rigorous analyses. This is where we are with the Central and Upcountry Districts. The West Maui District is the next to go.

The WUDP Chapters are available on the Department's website, along with the working group reports for Molokai and Lana'i and the advisory groups.

Member Parsons asked how have you allotted for microbial research funding. Mr. Freedman stated that you will find it in CIP and the Water Department budget in the short term. There are water quality and resource protection chapters that could be part of the WUDP.

Member Howden asked if OTEC was considered for this at all. Mr. Freedman stated that they didn't look at OTEC. OTEC is Ocean Thermal Energy Conversion, which takes water from the deep part of the ocean and uses the differences in water temperatures with the surface water to generate electricity and also as a source of cooling. But it is salt water and we have been focusing on potable fresh water needs.

Chair Okamura asked how water quality would fit into this. Mr. Freedman stated that if you look at the objectives, water quality is one of these objectives we are trying to attain. You would want to have a resource strategy that addresses all of these things including water quality.

Member Haller asked who does the quality plan in the state water plan. Ms. Kraftsow stated it is the State Department of Health.

Member Parsons stated that at this point it wouldn't be a bad idea to explore the idea of having a consultant like Dr. Ford work with the Department on bio-film since we have a vast amount of surface water.

Member Haller asked what is the county's timing on this? Mr. Freedman stated that they hope to have the Central and Upcountry systems done this year. On the schedule that they gave to council, the West Maui system is also to be mostly done this year.

Mr. Freedman stated that the charter states that this whole process has to happen annually but it just can't happen annually with the rigor that is prescribed by the state.

Ms. Kraftsow added that the charter prior to the charter amendment did not say that the Water Use and Development Plan had to be updated annually.

Director Eng stated that he would like Mr. Freedman give this same presentation to the Water Resources Committee to let them understand the details of this. It is his belief and observation that all the council members and the Mayor want this but don't have a clue as to what this entails.

If we are allowed to do this Water Use and Development Plan correctly it would be a very, very useful tool for this community. Our Department is gearing up for this with more participation from the other division heads to assist Mr. Freedman.

- B. Receipt of Board Member request for agenda items to be placed on future agendas.
1. Discussion on the Dual Line for the March meeting.
  2. Request Robin Knox to give a presentation on water quality.
  3. Dawn Silva's request for a water meter on the March agenda, pending staff report.
  4. Overview of the DWS testing procedures, how, why and where tests are done, and the operations of the department.

5. Overview of the DWS position on the La'au Point Development. How the increased consumption might affect our water supply.
6. Follow-up on Janelle and Michael Fernandez's request for a water meter.

X. Division Reports

There was no discussion on this agenda item.

XI. Adjournment

The February 22, 2007 Board of Water Supply meeting was adjourned at 12:15 p.m.

Prepared and submitted by:

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Gaye Hayashida  
Commission Support Clerk

Approved on: \_\_\_\_\_