

July 8, 1987

Mr. John Hirashima, Chair  
Special Charter Commission on  
Dept. of Water Supply  
1119 Manu Street  
Kula, Hawaii 96790

Subject: Rationale for change in status of Water Board by 1975-76  
Charter Commission.

Dear John:

The purpose of this letter is to assist the Special Charter Commission in its review of the past changes in the organizational structure of Maui County's Department of Water Supply. Unfortunately I will not be able to respond to your invitation to give an oral briefing to your Commission on July 15. I hope this letter will provide the information you hoped to receive from me.

As you know, I was a member of the Charter Commission that revised the County Charter in 1976. I have refreshed my memory of that Commission's discussions concerning the Department of Water Supply by reviewing the Minutes of the appropriate meetings. The members of the 1975-76 Charter Commission were clearly trying to improve the accountability, responsiveness and efficiency of Maui County Government with all of the revisions they recommended to the public. Of course it was often the case that it was not at all clear just what organizational structure would best serve these broad goals -- something your Commission will soon discover, if it hasn't already.

I believe you are mainly interested in understanding why the Charter Commission I was on reduced the semi-autonomous status of the Water Board by giving the Mayor the power to appoint the Director, by requiring that the Mayor approve the rules and regulations adopted by the Board, and by requiring that the Department's annual budget become part of the Mayor's annual budget request to the Council. There were two main reasons behind these revisions. One, the Commission felt quite strongly that accountability for the Department's performance should clearly rest with the Mayor -- the one county official who virtually all citizens could identify. Two, the Commission felt that important policies and programs involving long range planning, land use and development would be better coordinated with all the key departments operating under the centralized supervision of the Mayor's Office.

With regard to the latter point it is relevant to note that 1975-76 Commission also eliminated the semi-autonomous status of the Planning Department, and tried to eliminate the semi-autonomous status of the Personnel Department. (The State Supreme Court ruled that county charters could change the organizational structure of water departments, but that state civil service laws dealing with personnel departments were superior to county charters.) Prior to the revisions of the 1975-76 Commission two of the three key departments that dealt with the important issues of planning, zoning, subdivision approvals, building permits and infrastructure developments were semi-autonomous and

relatively free to pursue policies that may or may not agree with those of the elected Mayor. The Commission members felt that in the long run the efforts of these departments would be better coordinated and more efficient if their directors all reported to the Mayor. Incidentally, the Mayor at the time, Elmer Cravalho, and the Planning Director at the time, Howard Nakamura, supported the ending of the semi-autonomous status of the Water Board and Planning Commission. Not surprisingly, prominent members of the Water Board and Planning Commission wanted to keep their semi-autonomous status.

Perhaps it will be helpful if I expand a bit on the reasoning that was ultimately persuasive to the 1975-76 Commission. The problem with accountability with a semi-autonomous Board can be illustrated by trying to imagine an average citizen or group of citizens upset with their water service and trying to register an effective complaint. Most of the time such citizens start with the assumption that the Mayor is in charge and is the best person to communicate with to get some action to fix things. The Mayor can easily "pass the buck" to the semi-autonomous Water Board, pointing out that he is not responsible for the operation of the Water Department. Now our average citizens are confronted with the task of getting their complaint considered by the Director and the Board members, who they probably have never heard of before, and who have no particular reason to worry about pleasing voters. In addition, if a sympathetic Board member is found, he or she may be able to "pass the buck" to the majority of the Board. In other words, accountability and responsiveness to the public can easily become lost in a maze of "buck passing" when the authority is held by a largely invisible appointed Board. Moreover, there is no effective way the public can register its dissatisfaction and promote change through the electoral process. This is not to say that a Director or Board members would not be responsive to citizen complaints. The point is that they would not have the same powerful incentive to be responsive as an elected official would.

The members of the 1975-76 Commission did consider the commonly held view that making the Director answerable to the Mayor would insert too much "politics" into the operation of a crucial public utility. Many people feel that placing an important government service, such as the provision of water, under the direct authority of an elected official will almost certainly "contaminate" the department with inappropriate partisan politics and political favoritism, which will hamper its efficiency. This is the primary rationale for the numerous autonomous and semi-autonomous local government agencies that can be found throughout the country. When considering this argument the Commission agreed that there was much truth in it, but came to feel that there was as much likelihood of inappropriate personal politics and favoritism in a department run by an appointed board and its appointed director. The main difference seemed to be that the political behavior of the appointed board and its director would be more invisible to the public, and the board and director unaccountable to the public through the electoral process.

Another common argument against placing a department such as the Department of Water Supply under the direct supervision of the Mayor is that there is a greater likelihood of attracting more competent professionals to the job of Director when the Department is run by an appointed Board. The idea here is that highly qualified professionals will be less interested in a job that requires them to be "political" and may require them to resign after the next election. In addition, there would be greater continuity of leadership in the department if it is run by an appointed Board, according to this view. Again, the 1976-75 Commission recognized that there was some merit in this argument. We felt; however, that the strength and applicability of the argument was lessened considerably when it was remembered that we had also changed the term of the Mayor to four years, and that Maui Mayors have regularly been re-elected in recent decades.

In summary, while recognizing that no organizational structure could guarantee optimum governmental performance, the 1975-76 Charter Commission concluded that accountability and responsiveness to the public, as well as efficiency of operation, would be best promoted by placing the Department of Water Supply (and the Planning Department) under the direct supervision of the Office of the Mayor.

It should be noted that the Commission I was on did believe that there was real value in having an appointed Water Board that had more than just advisory responsibilities. We felt that the perspectives of appointed citizen Board would be valuable inputs to the Department's policies, rules and regulations and budget preparations. Consequently, our Charter, unlike the 1983 Charter, required that the Board approve rules and regulations, water rates and budget requests before they were sent to the Mayor and Council. Thus, while the Board did not have the final authority, they were guaranteed an important role in the making of Department policy. On rules and regulations the Board had, in effect, a veto power, as well as the power to initiate.

I hope this explanation will help the Special Charter Commission understand the rationale behind the provisions in the 1976 Charter. I wish you well in your deliberations on this issue. I know from my own experience that you and the other Commissioners will learn much as you struggle to find the best solutions to complex problems with no certain or proven answers.

Sincerely,



Allan R. Sparks



MAUI LAND & PINEAPPLE COMPANY, INC. • P.O. Box 187, Kahului, Maui, Hawaii 96732-0187 • (808) 877-3351

September 3, 1987

Mr. John M. Hirashima  
Chairman  
Special Charter Commission  
Department of Water Supply  
P. O. Box 1109  
Wailuku, Hawaii 96793

Dear Mr. Hirashima:

I appreciate the opportunity to comment on possible changes to the organization of the current Department of Water Supply ("DWS"). I have thought about this a great deal since receiving your letter and have talked to a number of people in our company as well.

In many respects, the DWS is currently well-run on a day to day basis. The current director is a good administrator and the department is quite responsive to the public's day to day needs and concerns. If this were the major role of the water department and if orderly growth in future water needs could be accommodated by a similar orderly expansion of the department, as for example is true of such public services as trash pick-up and police protection, then perhaps keeping the DWS in the County administration would be the best solution.

However, in the case of water, one of the most important roles of the water department is long-range planning. Previous studies have indicated that there are ample water sources, both developed and undeveloped, to provide for our current and future agricultural, commercial and residential needs. But given the complexity of our mixed system of private, State, and County development and transmission of water, along with the shift in growth patterns and in uses, such as the current significant reduction in sugar agricultural use, it seems to me that this function is of crucial importance for the well-being of Maui for the next 20 to 30 years or more.

It is constructive to look at the record of the Honolulu Board of Water Supply which, on an island smaller than ours, has coped with tremendous long-term growth and has managed to find and develop good water sources in a timely fashion without having to play "catch-up ball." In large part this stems, I feel, from a continuity which can only be found in an independent department with its own appointed members who in turn select the director. Maui's current director is a good one, but he could be transferred tomorrow, for example, to the Department of Public Works if the Mayor felt he was more needed there. This in turn discourages long-term planning.

My recommendation is that the Special Charter Commission propose an appointed board of members with staggered terms to be appointed by the Mayor and confirmed by the Council. This board in turn would select the director and the deputy director outside of civil service and at salaries that they feel are competitive. Water rates as per our County Charter would be reviewed and approved by the Council. Bonds could either be issued in the form of revenue bonds by the board or, if more advantageous, through the County's general obligation bond process, with the approval of the administration and council at the time. I also feel strongly that the terms of the members should be relatively long; my own recommendation would be for a single eight-year term which, with a seven to nine member board, would provide substantial continuity to the board. I feel that with a structure of this kind we would be getting the dedication of citizens who can focus on water as a critical element in our present and future well-being, plus dedicated professionals to head the department while at the same time with a County review of the water rates to provide whatever check and balance is necessary in this area.

Thank you again for allowing me to comment on this important issue.

Sincerely,



Colin C. Cameron  
Chairman & President

/sjh



Arden G. Henderson  
President

September 21, 1987

Mr. John M. Hirashima, Chairman  
Special Charter Commission  
Department of Water Supply  
P. O. Box 1109  
Wailuku, HI 96793

Dear Mr. Hirashima,

Thank you for the opportunity to respond to your study needs relating to the County Department of Water Supply. Since the operation of a water supply activity has several similarities to that of an electric utility operation, I feel my experience may be of some value.

Rather than try to list in detail my suggestions which may not address the problems, it may be more productive to meet with you to discuss specific problems. I will be happy to do this at a time convenient to you.

Sincerely,

**EXECUTIVE OFFICERS**

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*Maui Contractors Association*

A Hawaii Nonprofit Organization

1124-C LOWER MAIN STREET  
WAILUKU, MAUI, HAWAII 96793  
PH: 244-0021

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September 28, 1987

SPECIAL CHARTER COMMISSION  
Department of Water Supply  
P. O. Box 1109  
Wailuku, Hawaii 96793

ATT: Mr. John M. Hirashima, Chairman

Gentlemen:

In response to your request we are responding by letter to inform you of our opinions regarding to the future of the Water Commission.

The present arrangement is merely a token to convince the public that the Government is acting in concert with public opinion. The present advisory board without authority or responsibility is a perpetual lame duck. Its existence is a waste of Tax Payers money and member's personal time and efforts. It should be eliminated since it serves no useful purpose.

In its stead should be a commission with real duties and responsibility. This commission should be given the job of long range planning, setting reates, approving budgets, making rules and other policy matters. It should not be involved in the daily management of the Department and involve itself in personnel problems.

Due to the change in political directions such a board with staggered terms of at least six (6) years, would give the Water Department stability, some measure of independence and sensibility.

Letter to Special Charter Commission  
September 28th, 1987  
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Water, as a major aspect of our infrastructure must be managed with the best talent available to us. An advisory board does not fit this definition and as such is an insult to the people of Maui. We need a bold, new direction to find and manage our water resources.

Sincerely,

MAUI CONTRACTORS ASSOCIATION



Bernard W. Despina  
President



October 9, 1987

Mr. John Hirashima, Chairman  
Special Charter Commission  
County of Maui  
Department of Water Supply  
P. O. Box 1109  
Wailuku, Hawaii 96793

Dear Mr. Hirashima:

In our administrative role for Amfac Hawaii, Inc.'s land and water assets, your August 26, 1987 letter was forwarded to us by Mr. Dave Gleason of our Kaanapali office.

We appreciate the opportunity to provide the Special Charter Commission with our thoughts on the structure and organization of the County Department of Water Supply. We have been concerned for some time with the direction the Department is headed and see the Commission work to be important and timely.

It is our belief that the efficient management of a municipal water system depends on the ability of its organizational structure to be economically accountable to the costs that are incurred in the development and maintenance of diverse source and distribution systems. This accountability requires a substantial amount of autonomy that will separate sound, long term management practices from short term political "expediency." The impact of this difference is best displayed in the issues of pricing and planning. In both cases, it is difficult to make hard decisions and to maintain a consistent long range departmental direction in an election atmosphere.

Historically, the Department of Water Supply was a fairly autonomous management body. During the intervening period since its creation, the development and maintenance of water infrastructure has not kept pace with public demand and the price of domestic water has not generated adequate revenues to resolve existing shortages. It is time for the pendulum to swing back in the direction of increased autonomy and to allow a Board to manage the municipal system in a more fiscally accountable, business like manner.

Mr. John Hirashima, Chairman  
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We urge the Commission to look closely at the City and County of Honolulu Board of Water Supply as an appropriately autonomous model for the Maui Board. The independent relationship between the Director of the Department and the Board that appoints him is particularly pertinent.

The special charter Commission undoubtedly has much to consider as it reviews County water operations. We hope you take our brief comments into account and wish you the best in your deliberations. If we can be of any future assistance to the Commission, please feel free to call on us.

Thank you for the opportunity to comment.

Very truly yours,



Bert L. Hatton  
Vice President  
Land Administration  
and Planning

BLH:JM/kk

September 15, 1987

Special Charter Commission  
Department of Water Supply  
P.O. Box 1109  
Wailuku, HI 96793

Dear Commissioners:

Thank you for the opportunity to comment on the structure of the Department of Water Supply.

One idea you may want to consider is the possibility of converting the Department of Water Supply into a for-profit corporation. The result would be a publicly-regulated privately-owned utility, similar to Maui Electric Company, Hawaiian Telephone Company and Gasco, Inc. A privately-owned water company would pay the State Franchise Tax and County real property taxes. There would be a significant one-time cash infusion into the County resulting from the sale of the assets of the County's water system to a private corporation. I suspect in the long run the net impact on water consumers will be positive--they will have better quality water service, and the water rate, less taxes paid by the water company to the County and State will be less than the current sum of the water rate and State and County subsidies provided to the water system.

Sincerely,

*Randolph G. Moore*

Randolph G. Moore  
President

RGM:jh

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LIMITED

P. O. BOX 4039 / HONOLULU, HAWAII 96812 / (808) 531-0158

HANNIBAL TAVARES  
Mayor  
PHONE 244-7853



lkt

OFFICE OF THE MAYOR  
COUNTY OF MAUI  
WAILUKU, MAUI, HAWAII 96793

December 16, 1987

Mr. John Hirashima, Chairman  
and Members  
Special Charter Commission  
County of Maui  
Wailuku, Hawaii 96793

Dear Chairman and Members:

Thank you for your recent letter offering to meet with me regarding the preliminary charter amendment proposal by the Special Charter Commission.

I have reviewed the preliminary proposal, together with testimony received at your recent public hearings. I note that the Commission is proposing to revert to a semi-autonomous status for the Department of Water Supply.

I am greatly concerned over this proposal. The absence of testimony at your recent public hearings leads me to believe that the general public is not fully aware of the consequences of your preliminary proposal. I do not believe that the lack of response indicates approval. Rather, I believe that it reflects a general satisfaction with the present organization of the department.

During the term of my administration, I have not received any indication that the present system is in any way inappropriate. The department has moved forward aggressively to secure compliance with the provisions of the Safe Drinking Water Act, a long-overdue activity. The department has prepared master plans for the long range development of water resources in the County and is working toward its systematic implementation. Older water lines have been replaced and upgraded. All of these activities have taken place while maintaining the stability of water rates and charges.

Philosophically, my primary concern is that our democratic system of government is founded on the ultimate accountability of decision makers to the electorate. The County Council is the policy making body of the County of Maui. The members of the Council appear before the electorate every two years to

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and Members  
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December 16, 1987  
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stand or fall on their record. By the same token, the Mayor of the County of Maui as the Chief Administrative Officer is responsible to the people for his actions. Members of boards and commissions are not subject to such a process.

I believe that your preliminary proposal is a step backward, not forward. Water is probably the single most important ingredient affecting future growth policy. To place total responsibility over the development and management of our limited water resources to other than the elected officials of our County is not desirable.

Specifically, I strongly oppose the Board of Water Supply having the following powers:

1. To appoint the director
2. To establish the director's pay
3. To create positions
4. To adopt operating and capital budgets
5. To issue revenue bonds
6. To have eminent domain authority
7. To set rates and charges

I believe that the Mayor should continue to appoint the director. The other functions are more properly the responsibility of the County Council. There is no rationale for a system in which the County Council has policy and financial responsibility for planning, public works and other important functions of County government, and not the Water Department.

I do recognize that the Board of Water Supply can reasonably be granted certain authority to make its role in government more meaningful. I believe that these responsibilities could include the following:

1. To review the annual operating and capital budget and submit said budget to the Mayor for consideration and inclusion in the overall County budget proposal

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and Members  
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2. To adopt rules and regulations, subject to approval by the Mayor, as provided for in the Administrative Procedures Act
3. To hear complaints against departmental employees
4. To hear and determine appeals and requests for variances relative to the adopted rules and regulations
5. To review the organizational structure of the department and make appropriate recommendations to the Mayor and Council

Before the Special Charter Commission finalizes its proposals to the electorate, I believe that further dialogue and input is necessary. I would urge you to proceed with caution in making your final recommendations.

Very truly yours, /

*Hannibal Tavares*

HANNIBAL TAVARES  
Mayor, County of Maui

cc Council Chairman Bob Nakasone  
Vince Bagoyo, Director, Department of Water Supply  
William S. Haines, Executive Assistant

RATIONALE

THE POWERS OF ELECTED AND APPOINTED OFFICIALS SHOULD BE OFFSET BY A SYSTEM OF CHECKS AND BALANCES. PEOPLE IN POSITIONS OF POWER SHOULD BE HELD ACCOUNTABLE FOR THEIR ACTIONS.

The objective of the amendments should provide for flexibility in operations in order to better serve the community as well as protecting the rights of individuals.

The lack of checks and balances in the proposed amendments is a flaw that should be corrected. I have proposed a series of amendments which have been enclosed.



RICK MEDINA

Attachments

PROPOSED AMENDMENTS TO WATER DEPARTMENT:

Section 8-11.1. Organization. There shall be a department of water supply consisting of a board of water supply, a director, and the necessary staff.

Section 8-11.2 Functions of the Department.

No comment

Section 8-11.3. The Board of Water Supply. The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The planning director and the director of the department of public works shall be non-voting ex-officio members of the board. Each community plan region should be represented by a resident from that region, with exception of Kahoolawe which may be represented by a resident of Maui County. No more than a bare majority should belong to the same political party.

Section 8-11.4. Powers and Functions of the Board.

The board of water supply shall:

1. Appoint the director with the approval of the council and may remove the director with the approval of the council.
2. Recommend the creation of and the abolishment of positions within the department to the council.
3. Determine the salary of the director and deputy pursuant to Chapter 2.44, Maui County Code.
4. Set the fees, rates and assessments with the approval of the council.
5. Have the power to create a special fund in assisting the department in its various duties and responsibilities.
6. Help the director prioritize the capital improvement projects.

to  
7. Have the power/transfer funds within its department should 2/3rds of its membership decide that an emergency exists which may threaten the department's ability to fulfill its primary purpose of providing quality water in the quantity needed to sustain the needs of the community. The board shall report within 60 days of action taken under this paragraph. to the council and mayor.

Emergency appropriations or transfers of funds should not exceed department's 2% of the/operating budget for that fiscal year.

8. Meet at least regularly once per month at such times and places as the board may prescribe by rule.

9. Assist the director in the preparation of the department's budget. The estimated revenues, proposed expenditures and total appropriations for the ensuing fiscal year shall be equal in amount.

10. Perform such other duties as may be prescribed by law.

Section 8-11.5. Director of Water Supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both. The director or his deputy shall be a registered engineer.

Section 8-11.6. Duties and Functions of the Director.

The director shall:

1. Recommend rules and regulations for adoption by the board.

2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county.

3. Prepare and maintain long range capital improvement

plans for the adoption by the board.

4. Assist the board in fiscal matters, budget preparation, and present reports to the mayor and the council in accordance with law.

5. Perform such other duties and functions as shall be prescribed by law.

Section 8-11.7. Revenues. The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.