

BOARD OF WATER SUPPLY  
COUNTY OF MAUI

REGULAR MEETING  
MINUTES OF JULY 26, 2012

The regular meeting of the Maui County Board of Water Supply was held at the Department of Liquor Control office conference room, 2145 Kaohu Street, Room 108, Wailuku, Maui, on Thursday, July 26, 2012.

CALL TO ORDER

The meeting was called to order by Chair Kevin Boteilho at 9:05 a.m.

ATTENDANCE

Members present: Kevin Boteilho, Chair  
John Hoxie, Vice Chair  
Patricia Eason  
Donald Gerbig  
Robert Joslin  
Cyrus Kodani  
Michael Suzuki

Excused: William Kamai  
James Rust

Staff present: Dave Taylor, Director  
James Giroux, Deputy Corporation Counsel  
Gaye Hayashida, Commission Support Clerk

Others: Mary Blaine Johnston, Deputy Corporation Counsel  
Thomas Kolbe, Deputy Corporation Counsel  
Roseliann P. Say, Appellant  
Kerwin Say  
Curtis Protacio  
Tonya McDade, Court Reporter

ANNOUNCEMENTS

New Board Member - Cyrus Kodani

Chair Boteilho announced that a new member, Cyrus Kodani, has joined the Board. He asked Mr. Kodani to say a few words about himself.

Mr. Kodani stated that he works at the Hyatt Regency Maui in the banquet department and has been there since 1980 and he is also involved in the ILWU. He said he is looking forward to being a member of this Board.

## APPROVAL OF MINUTES

### Minutes of June 28, 2012

At this time, Chair Boteilho called for a short 5-minute recess to review the transcripts of the appeal hearing at the last meeting.

After coming back into session, Chair Boteilho stated that changes needed to be made on both the June 28, 2012 Transcripts Executive Session and the Transcripts of the Proceedings. For both transcripts, the corrections are on page 2, line 6, under Board Members Present, "William Kamai, Member" should be deleted and "John W. Hoxie, Jr., Vice Chair" should be added.

Moving on to the Summary Minutes of June 28, 2012, the chair asked if there were any changes or corrections.

Member Joslin said that at the last meeting there was a discussion on 5/8ths and 3/4ths meters that had to do with the top 6 or 7 percent, and a discussion about zoning versus the amount of people on a piece of property and a map displaying usage. He pointed out that these are not in the minutes.

Mr. Giroux stated just for the record, if that is what happened at the meeting and you want this added on to the minutes this is a good time to do so. The Board can do this by making a motion.

Director Taylor stated if there are any specific items the members want they can request that for a later meeting.

He explained that more than a year ago he instructed staff to do summary minutes except for appeals which require verbatim transcripts. Staff was instructed to summarize the discussion since there are no votes and no action taken. If the board members feel there was something substantive that would really change what was written he recommends that they add that, but if it was just a couple of words that was said and it didn't lead to any decision then that's the kind of thing he directed staff not to worry about.

Since he was not present at that meeting he is not sure what this issue is. If there is a document the members want they can certainly make that request later under Other Business to the Department.

Member Joslin explained that it was clarifications that were going back and forth about meter sizes versus zoning. In reading this over, apparently there is some belief that this top tier using 20% of the water with residential 5/8ths inch meters is estate size properties in Wailea that are dry and so he questioned that. If you have a 5/8ths meter that allows 3 houses in R-3 zoning, it seems like a couple big families could be at risk. That was what that discussion was and that's not in here. He asked who summarizes the minutes for the board.

Director Taylor replied that it is the board secretary.

Ms. Hayashida added that the minutes are approved by either the deputy or director. She said if the board wants a summary discussion added into the minutes she could do that.

Member Joslin replied that it would be nice to have it in the minutes and he would like to approve that.

Member Hoxie asked where exactly would this discussion be on the minutes?

Member Joslin stated that he believes it was somewhere on page 5. He just wanted to make sure that the issue over occupancy size and using a 5/8ths meter should be included, not just that it's big estates in Wailea which is sort of what this is saying.

Director Taylor recommended to the board that rather than changing the minutes because it was just part of a larger discussion, if any member of the board wants more information on a topic to discuss at a future meeting they should add it as requests to the Department. Then you can have a discussion in more detail on this matter at another time.

Chair Boteilho suggested adding this as a future agenda item for discussion.

Member Joslin replied that he has said his peace.

The chair asked if there were any further discussion on the minutes.

Motion: Member Hoxie moved to approve the minutes as circulated and the transcripts of the proceedings and the executive session with the chair's changes.

Second: Member Kodani

Discussion: None.

Vote: 6 ayes, 1 nay. Motion carried. The June 28, 2012 summary minutes as circulated and the June 28, 2012 transcripts of proceedings and executive session with changes were approved.

#### TESTIMONY FROM THE PUBLIC

There being no public testifiers the chair closed public testimony.

## APPEALS

Appeal No. 11-01, an appeal by David and Patricia Chevalier, Decision in the matter of the Appeal Fee.

The board ruled to deny the refund of the appeal fee.

Appeal No. 12-01, an appeal by Roseliann P. Say on the Director of Water Supply's decision denying her request for a waiver of the subdivision agreement to build a dwelling with a private water system.

The appellant was coming from another island and had not yet arrived so this matter was placed at the "bottom" of the agenda.

## UNFINISHED BUSINESS

None.

## OTHER BUSINESS

Report from Investigative Committee on the ICAP Workshop on July 12, 2012 entitled, "Water Resources and Climate Change Adaptation in Hawai'i: Adaptive Tools in the Current Law and Policy Framework"

Kevin Boteilho, Patricia Eason, and Donald Gerbig attended the ICAP Workshop as the investigative committee for the Board of Water Supply.

Chair Boteilho called it an interesting workshop dealing with current water policies, procedures and possibly the formulation of new policies in the future pertaining to climate change. He stated that the board got a copy of the slide presentation that they received at the workshop. A copy of this is attached and made a part of the minutes.

Member Gerbig stated that it seems to be just a review of all water situations within the state; different systems on different islands were mentioned. The only thing he got out of it was that they seem to think that the government should be more active in enforcing the various laws. In his opinion, it was not very enlightening. There were no set parameters, just a shotgun approach. To him it was not very informative.

Chair Boteilho agreed and said it was a very broad discussion.

Member Eason said she felt the same way. She believes that what they wanted to do was pick the brains of those in attendance and took copious notes so they could use it for their benefit. She also said it was nice to see several young women at the workshop.

The chair noted that there was a packet of notes that were not given out because they were very opinionated. He asked Director Taylor what the Department's recommendation is on these notes.

Director Taylor replied that he saw the notes and it doesn't say who took them; it wasn't on letterhead and it wasn't done by county personnel.

Two examples he read from the notes were, "Maui grey water policy could be improved" and "State must do a better job in enforcing water regulations." He stated that these are opinions and other people may have opposite opinions and he was concerned that by putting it into the record someone may think, incorrectly, that this is either the County Department of Water Supply's policy or opinion, or the Board's opinion.

He just wanted to make sure that no one thinks this is the Department of Water Supply's written document of their opinion. It may be right, it may be wrong, but the Department did not write it. These notes do not express the Department's opinions.

The director stated that their goal, rather than make precise predictions of population, water demand and source demand, is to continue doing the process that they are working on which is saying what's next? What is the next thing we have to do? What's after that? And after that? And be ready using real world triggers to do the next one. We want to focus on being ready to react, knowing what the next thing is and starting it in time.

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

1. Request information from the Department relating to water use by area and or demographics. Specifically, referring to paragraph 7, page 5 of the June summary minutes, how the general conclusion was made that the 7% was from higher value homes in the resort area of the drier parts of the island.

#### APPEALS (continued)

Appeal No. 12-01, an appeal by Roseliann P. Say on the Director of Water Supply's decision denying her request for a waiver of the subdivision agreement to build a dwelling with a private water system.

The Board proceeded with this appeal hearing and the Appellant and the Department of Water Supply gave their testimony at this time.

The hearing on this matter was continued to the September meeting.

#### COMMUNICATIONS

There were no board communications.

A motion was made to defer the Director's Report and the Division Reports to the next meeting.

Motion: Member Hoxie to defer the Director's Report and the Division Reports to the next meeting.

Second: Member Joslin

Discussion: None.

Vote: Unanimous. Motion carried. The Director's Report and the Division Reports for June were deferred to the next meeting.

### DIRECTOR'S REPORT

This matter was deferred to the next meeting.

### DIVISION REPORT

#### June Division Reports

This matter was deferred to the next meeting.

### ADJOURNMENT

There being no further business the meeting was adjourned at 1:41 p.m.

Prepared by:

---

Gaye Hayashida  
Commission Support Clerk

Approved by:

---

Dave Taylor  
Director

ICAP WORKSHOP  
PRESENTATION SLIDES

**Water Resources and Climate Change Adaptation in Hawai'i:**  
Adaptive Tools in the Current Law and Policy Framework  
2012

CENTER FOR ISLAND CLIMATE ADAPTATION & POLICY Pacific RISA

1

*"Prudent water resource planning should consider the long-term impacts of global climate change and how this could affect Hawaii's water supplies . . ."*

State of Hawai'i Commission on Water Resource Management, 2008

*"Investing in the protection of fresh water sources must be the highest priority for Hawaii's public leaders and the Department of Land and Natural Resources."*

Gov. Neil Abercrombie, 2011

2

**What Is "Adaptation"?**

(1) Do laws, policies, and procedures account for climate trends, variability, and uncertainty?

(2) In the future, will we have the flexibility to act on new information from climate scientists?

(3) Do we routinely consider how the future climate may affect the outcomes of decisions, and use that understanding to make more informed decisions?

3

**Four Adaptive Elements**

Adaptation recognizes uncertainty, and addresses it with these elements:

- 1 Forward-looking
- 2 Flexible
- 3 Integrated
- 4 Iterative

4

CENTER FOR ISLAND CLIMATE ADAPTATION & POLICY

Hawai'i Constitution

Public Trust Doctrine

Precautionary Principle

Water Code and Water Commission

Haw. Water Plan | Land Use Regulation and Planning | Watershed Protection | Recycling and Conservation

County Water Supply | Haw. Dep't of Health | Haw. Dep't of Agric. | Individual, Business, and Gov't Water Users

5

**Sample Adaptive Mandates**

- 1 "Protect" water resources for the benefit of "present and future generations."
- 2 "Establish procedures for regulating all uses of Hawaii's water resources."
- 3 "Must conform to changing needs and conditions."
- 4 "Continuing study" of salt-water intrusion.

Legend: 1 Forward-looking, 2 Flexible, 3 Integrated, 4 Iterative

6

ICAP WORKSHOP  
PRESENTATION SLIDES

### Implementation Tools?

The Water Commission is empowered to "consider, protect, and advance public rights at every stage of the planning and decisionmaking process."

● Forward-looking ● Flexible ● Integrated ● Iterative

7

### Policy & Planning Tools

#### Hawai'i Water Plan

- (1) Climate scenario planning
- (2) Update regularly (5-year interval / 40-year planning horizon)
- (3) Integrate land use planning with water availability (e.g. Maui WAP)
- (4) O'ahu watershed management planning
- (5) Conservation and recycling plans

● Forward-looking ● Flexible ● Integrated ● Iterative

8

### 1 Climate scenario planning

Figure 3-6 Change in future sustainable water demand by scenario

Water Demand Changes and Climate Change Variability

The graph shows water demand changes due to different climate change scenarios (Baseline, 2050, 2070, 2090). The change is most significant in the 2090 scenario.

● Forward-looking ● Flexible ● Integrated ● Iterative

9

### 2 Regular updates

California Water Plan Update 2013

Scoping & Deliverables

1990 WATER QUALITY PLAN

● Forward-looking ● Flexible ● Integrated ● Iterative

10

### 3 Adaptive Land Use Planning

Sustainable Yield (mgd)

Max. Projected Demand (General Plan) (mgd)

Max. Projected Demand (Zoning) (mgd)

Hualalai Kohala W. Mauna Kea N.W. Mauna Loa

11

### 3 Adaptive Land Use Planning

#### Maui Water Availability Policy?

M.C.C. § 14.12.040

"No subdivision shall be approved, unless . . . the director shall provide written verification of a **long term, reliable** supply of water."

● Forward-looking ● Flexible ● Integrated ● Iterative

12



ICAP WORKSHOP  
PRESENTATION SLIDES

### 8 Expand Designated Water Management Areas

Hawai'i Supreme Court:

Irrespective of "how many or how few of the criteria are applicable, the Commission shall designate an area as a WMA *'when it can be reasonably determined...that the water resources in an area may be threatened by existing or proposed withdrawals or diversions of water.'*"

Legend: Forward-looking (blue), Flexible (green), Integrated (orange), Iterative (purple)

19

### 9 Adaptive Permitting

For example:

- Gauges as a standard permit condition?
- Compliance inspections and fee?
- "Living permit" model?
- Deep monitor wells?

Legend: Forward-looking (blue), Flexible (green), Integrated (orange), Iterative (purple)

20

### Market-Based Tools

- (10) Green building / Hawai'i Energy Plan model
- (11) Tie Water Commission fees more closely to the cost of regulation
- (12) Public goods charge / property tax model

Legend: Forward-looking (blue), Flexible (green), Integrated (orange), Iterative (purple)

21

### 10 Promote Water-Conscious Infrastructure

Legend: Forward-looking (blue), Flexible (green), Integrated (orange), Iterative (purple)

22

### 11 Water Commission Fees

Flat \$25 application fee

vs.

Tiered fees, tied to quantity of water impacted, and cost of watershed protection necessary to protect the resource

Legend: Forward-looking (blue), Flexible (green), Integrated (orange), Iterative (purple)

23

### 12 Public Goods Charge

U.C. Berkeley / California PUC

Legend: Forward-looking (blue), Flexible (green), Integrated (orange), Iterative (purple)

24

ICAP WORKSHOP  
PRESENTATION SLIDES

Let's get started . . .

25

### Hawai'i Constitution

**"Protect"** water resources for the benefit of **"present and future generations."**

Establish procedures for regulating **all uses of Hawaii's water resources."**

● Forward-looking 
 ● Flexible 
 ● Integrated 
 ● Iterative

26

### Public Trust Doctrine

The policy of **comprehensive resource planning** [is] intrinsic to the public trust concept.  
Applies to **all water resources** without exception or distinction."

Requires planning and decisionmaking from a **global, long-term perspective."**

**"Must conform to changing needs and conditions."**

● Forward-looking 
 ● Flexible 
 ● Integrated 
 ● Iterative

27

### Precautionary Principle

"[W]here there are **present or potential threats** of serious damage, lack of full scientific certainty should not be a basis for postponing effective measures to prevent environmental degradation. **Awaiting certainty will often allow for only reactive, not preventative, regulatory action."**

**"Regulators such as the Commission must be accorded flexibility** [to take] regulatory action to prevent harm, even if the regulator is less than certain that harm is otherwise inevitable."

● Forward-looking 
 ● Flexible 
 ● Integrated 
 ● Iterative

28

### Water Code

**"Program of comprehensive water resources planning** to address the problems of supply and conservation of water."

(a) Promote **"maximum beneficial use."**  
(b) Ensure adequate **"preservation and enhancement"** of water resources.

**"Continuing study"** of salt-water intrusion

● Forward-looking 
 ● Flexible 
 ● Integrated 
 ● Iterative

29

### 3 Adaptive Land Use Planning

Aquifer	SY (mgd)	Max. Projected Demand (Gen. Plan) (mgd)	Max. Projected Demand (Zoning) (mgd)
W Mauna Kea	24	151	187
Kohala	154	174	208
SW Mauna Loa	130	143	123
NW Mauna Loa	30	89	18
Hualalai	56	282	115

● Forward-looking 
 ● Flexible 
 ● Integrated 
 ● Iterative

30

### ICAP WORKSHOP PRESENTATION SLIDES

