

BOARD OF WATER SUPPLY
COUNTY OF MAUI

REGULAR MEETING
MINUTES OF MARCH 21, 2019

To Provide Clean Water Efficiently

The regular meeting of the Maui County Board of Water Supply was held at the Department of Planning Conference Room, 250 South High Street, Wailuku, Maui, on Thursday, March 21, 2019.

CALL TO ORDER

The meeting was called to order by Chair Lyons at 1:30 p.m.

ATTENDANCE

Members present: Anders Lyons, Chair
Shay Chan Hodges, Vice Chair
Joseph Aquino
R. Raymond Cabebe
Dean Frampton
Zoltan Milaskey
Michael Nakashima

Staff present: Jeffrey T. Pearson, P.E., Director
Eva Blumenstein, Water Resources & Planning Program
Manager
Michael Hopper, Deputy Corporation Counsel
Gaye Hayashida, Commission Support Clerk

APPROVAL OF MINUTES

Minutes of February 21, 2019

Vice Chair Chan Hodges stated the minutes should be corrected on the second paragraph under Discussion regarding Mahi Pono. She said that she was not present at the hearing but watched portions of it on video on Facebook.

Chair Lyons asked that the minutes should be corrected to reflect staff attendance of Mark Walker, Assistant Fiscal Officer. The chair then asked for a motion to approve the minutes of February 21, 2019 with these corrections.

Motion: Member Cabebe moved to approve the minutes of February 21, 2019 with corrections

Second: Member Nakashima

Discussion: There were no further discussion.

Vote: Unanimous. Motion carried. The minutes of February 21, 2019 were approved with corrections.

TESTIMONY FROM THE PUBLIC

Dick Mayer gave public testimony on HB 1326 and the Mahi Pono request to have that bill passed by the legislature. At this time, Mr. Mayer handed out a chart labeled “Sources for Maui County’s Upcountry Water System”. A copy is attached to these minutes.

He stated that he is concerned about the continued use of water from East Maui and wants an Environmental Impact Statement (EIS) done. The legislature is looking to extend another 7 years to the 3 they originally got. He believes Mahi Pono doesn’t need the water at this time because they already mapped out where they plan to plant in the next 2 years. There is plenty of time to get the EIS adopted and he doesn’t think the time has come yet to give them a long term commitment for the use of water from East Maui.

Mr. Mayer said it was very deceiving when the mayor stated in his State of the County address that 80% of the surface water comes from East Maui so they have to make sure Mahi Pono or A&B get the lease. He then referred the board to his hand out and said the information on the chart came from the Water Use and Development Plan. He pointed out that Kamole where the water comes from the ditch, produces 1.8 mgd and that means the Upcountry system gets only 26.9% of water that is dependent on that ditch.

Lucienne de Naie gave public testimony on the county’s concerns on how much East Maui water would be made available. She understands that the county has the constitutional protected right to have water for public lands just like the kalo farmers and Hawaiian Home Lands. She believes this board can advise the department that maybe a new lease or new approach is needed to advocate directly for the water that the county needs. This board has access research staff and can find out what rights the county does have to the waters. It might be a new era in county planning to know what waters belong where, in what quantities and under what authority.

There were no more testifiers.

At this time, Chair Lyons stated that he would like to *“emphasize to the public that this board’s purview is to advise on the collection, processing and distribution of drinking water for this island. And so, items that are outside of that purview are difficult for this board to engage in. Information that is outside of the purview of drinking water maybe important but it is not our role in this instance to take on the entirety of this issue. We have scheduled it as we do think that it’s a vital topic for our community and that it’s important for the board to understand what parameters the department is working under in its fulfillment of its mission.”*

OTHER BUSINESS

Discussion with DWS staff regarding what the department's interactions with Mahi Pono have been and what the department anticipates in terms of potential impacts of HB 1326 and the new ownership

Director Pearson provided a written response to questions by the board. See attached Response to BWS Letter of March 5, 2019.

The director stated that part of what Ms. de Naie and Mr. Mayer testified to is answered in his written response to the board. He agrees that it may appear a little deceiving that 80% of Upcountry water comes from East Maui but it is actually true in another sense. EMI manages the other ditches that feed raw water to both the Olinda and Piihola treatment plants. These are not on state lands so they are not affected by HB 1326 but what is being affected is the 26.9% at Kamole as shown on the table submitted by Mr. Mayer.

Ms. Blumenstein explained that the Upcountry system relies heavily on surface water and that varies daily. We are relying on groundwater primarily as backup sources and not the primary source. Surface water is the most affordable because when we pump water uphill our electric bills go way up. One of the philosophies in the Water Use and Development Plan is the seasonal approach which is to take advantage when surface water is available.

Vice Chair Chan Hodges stated that it is easier for people to understand percentages but it is somewhat deceptive. In the director's response, he wrote that Kamole Water Treatment Plant treated about 376 million gallons of water last year. If we are going to be talking percentages then it is about 15 to 16%. The community needs to understand that the availability of surface water has to do with reliability and drought conditions but it is still not correct that 80% of the water is impacted by this legislation.

Member Milaskey asked, if HB 1326 is not approved and Act 126 does sunset, will the county still have access to surface water from the EMI system?

Director Pearson stated that HRS 171-58 discusses revocable permits and moving a revocable permit to a long term lease within one year but that hasn't happened for many reasons. There are 14 different revocable permits for water within the state, from small coffee farmers in Ka'u to HELCo on the Big Island. So it's just not A&B or Mahi Pono. He added that he is not a lawyer and so he is not clear on what exactly would happen if Act 126 sunsets and nothing else happens and it moves back to HRS 171-58.

Vice Chair Chan Hodges asked, is the Water Department prepared for the possibility that it won't pass and what are the department's preparations?

Director Pearson replied that at this minute they are not totally prepared if HB 1326 doesn't pass.

Vice Chair Chan Hodges stated that there was an article recently where a legislator said that if HB 1326 does not pass there would be immediate water restrictions in Upcountry. She asked if this information came from the Water Department.

The director stated that he did speak to Rep. Hashimoto by phone but he never said anything that drastic.

Member Milaskey asked if the department and the county supports HB 1326.

Director Pearson replied that the department is supporting it, following the mayor's lead. And he believes it is going to provide better options for supplying water to Kamole. He explained that domestic purpose is one of the public trust rights allowed by the constitution so even those who oppose HB 1326 will support domestic water use. He is quite confident that we are still going to have water available at Kamole.

Member Milaskey said basically we are supporting Mahi Pono for the 300 million gallons access to water, so he asked if the department or the county is being pressured to support HB 1326.

Director Pearson explained that is a misconception about what this is about. There was a contested case that took place in East Maui and it was resolved by the Commission on Water Resource Management. It is now law that a certain amount water must be restored to the streams. And no matter what happens with Act 126 or HB 1326, those streams are restored and it is not going to change. This bill is actually a revocable permit for a long term lease which falls under the Land Division of the DLNR. What is taking place is just the process of allowing this revocable permit to be moved to a long term lease.

The director added that he is not going to speak for Mahi Pono and he is neither an opponent nor proponent of Mahi Pono. So when all these streams are restored, the state water commission staff calculated that there will be approximately 70 million gallons of water a day that would be available for off-stream use and not the 300 million gallons as Member Milaskey stated. But as long as these requirements to return water to the streams are met then we can take water.

Discussion regarding Invitation to Mahi Pono Principals

The board authorized the chair to send a letter to Mahi Pono requesting their presence at this meeting or a future meeting. There was no one from Mahi Pono present at this meeting.

Director Pearson stated that he spoke to Shan Tsutsui and he indicated that once the legislative session is over he will come before this board.

Discussion regarding the Upcountry Consent Decree

Member Frampton stated he received the document by email from staff and he is comfortable reviewing it on his own and leave it at that.

Discussion regarding the Department's Policy Prohibiting Issuing Temporary Meters on Fire Hydrants

Chair Lyons stated that we are pushing major expense onto a lot of developments on the island and the board is hoping for some reasonable accommodation for the need for dust control.

Director Pearson said part of the reason is a higher better use would be to use non-potable whether it is stream water, R1 or R2 water. His engineer is off-island so he asked to defer this matter to the next meeting.

Chair Lyons asked to have Ms. Blumenstein present for this matter.

Discussion regarding County of Maui Administrative Rules, Rules Relating to Water Service and the Central Aquifer

Chair Lyons asked if we have a plan for the fact that we hit the 88% threshold of capacity in the Central Aquifer and the various things that would take place.

Director Pearson said that the administrative rules reflect what water source is available and is based on a percentage of the source available by the source being utilized. Source is an issue throughout the island and the Water Use and Development Plan addresses these issues. The department is looking at sources towards the Waihee side and surface water source in Central Maui which is under a contested case. The department submitted a water use permit application (wupa) requesting up to 3.2 mgd for the newly built 'Iao Treatment Plant. He added that we are not panicking today and that's why this administrative rule was written to allow water use but not to allow rampant water use considering the situation we are in right now.

Member Cabebe asked if the director has any idea when the department's WUPA will be approved and if it is approved will it go below the 88%.

The director stated that as he left the state water commission, commissioners had not begun deliberating on this matter. He hopes the commission will come up with a decision in the next 6 months. The document itself 450 pages so it is not going to be an easy task.

Director Pearson said that he is sure it will be approved but he doesn't have all the data. It will definitely change the math in a positive way. The department is able to take reservations up to 5,400 gallons but not beyond that.

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

1. Discussion regarding Kahoma Stream water flow update
2. Mahi Pono
3. Ahupua'a and moku signage
4. Temporary meters for dust control

DIVISION REPORTS

March Division Operational Reports (copies available upon request)

Chair Lyons asked the director to provide information if there were any major issues arising in the January - February time period.

Director Pearson stated that there was a sludge issue at the Olinda Treatment Plant. They stopped production to clean up the sludge. The treatment plant is now up and running.

There will be an on-site generation of chlorine (OSG) at the 'Iao Treatment Plant. The department is moving very vigorously toward ending the use of chlorine gas. It costs more money but it is much safer than transporting the chlorine. They just have to buy salt. They will also be able to do OSG at the well sites too.

Director Pearson said it is possible to set up a tour of the 'Iao Treatment Plant at a later date.

RESOLUTIONS

Resolution 19-01, Commending Anders Lyons for his service and presentation of a koa plaque

Resolution 19-02, Commending R. Raymond Cabebe for his service and presentation of a koa plaque

Resolution 19-03, Commending Sylvia Ho for her service and presentation of a koa plaque

At this time, Vice Chair Chan Hodges read the above resolutions for departing members, Anders Lyons, Ray Cabebe and Sylvia Ho. They were also presented with a koa plaque and a lei for their service.

ADJOURNMENT

There being no further business the regular meeting was adjourned at 2:45 p.m.

Board of Water Supply
Minutes of March 21, 2019

Prepared by:

Gaye Hayashida
Commission Support Clerk

Approved for distribution:

Jeffrey T. Pearson
Director

PUBLIC TESTIMONY - HAND OUT FROM DICK MAYER

Sources for Maui County's Upcountry Water System			
	MGD	%	Source
WELLS	1.230	17.9%	Ground
Olinda	0.922	13.4%	Surface
Pi'iholo	2.863	41.7%	Surface
Kamole	1.847	26.9%	Surface
Total	6.862	100.0%	

**% water from State Leased + EMI Lands
==> 26.9%**

RESPONSE TO BWS LETTER OF MARCH 5, 2019

MICHAEL P. VICTORINO
Mayor

JEFFREY T. PEARSON, P.E.
Director

HELENE KAU
Deputy Director



DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauiwater.org

March 11, 2019

RESPONSE TO BWS LETTER OF March 5, 2019 letter

Clarification of Impacts of HB 1326 Relating to Water Rights

The Board of Water would therefore like the Department of Water Supply to clarify what percentages of water that it currently supplies to Upcountry Maui on an annual basis, if any, is dependent on approval of HB 1326. If the amount is significant, please explain what actions are planned to address lack of access to water if HB 1326 does not pass.

Answer:

The EMI system is located on EMI and State lands. The State lands are where EMI is required to obtain long term leases where they now have four Revocable Permits. Diversions on state lands bring water to Mahi Pono lands and to Kamole Water Treatment Plant. Other diversions on EMI lands also provide water to both Olinda and Piiholo Water Treatment Plants. All these diversions and the surface water treated by our 3 surface water treatment plants constitute approximately 80% of upcountry water. The water impacted by HB 1326 would affect waters diverted to the Wailoa ditch from State lands, and affect water treated by the Kamole Water Treatment Plant.

Kamole Water Treatment Plant treated about 376 million gallons of water last year, an average of over 1 million gallons per day (mgd). This amount is significant, especially in drier periods where rain may fall on the eastern slopes at greater amounts than on the upcountry areas, and the Kamole WTP will produce volumes much greater than the 1 mgd average.

Should HB 1326 fail, I would make great efforts to allow water to be diverted, by amending the legislation, to allow Mahi Pono to divert water for domestic use only, until they can complete their application for the required long term leases. We do have Pookele Well, capable of providing close to 1 mgd, but this is considered a back-up source for better reliability, and would not replace source from Kamole WTP.

The Board of Water Supply would like the Department of Water Supply to clarify whether Act 126 specifically allows for the continued diversion of water regardless of the outcome of HB 1326, as stated by OHA. If Act 126 does allow for the continued diversion, are there any steps that the Department of Water Supply would need to take to ensure adequate water for Upcountry Maui?

"By Water All Things Find Life"

Response to BWS Letter of March 5, 2019
Page 2

Answer:

If Act 126 does sunset, the wording is such that HRS 171-58 returns to the status prior to Act 126. Beyond that, I will defer to our Corporation Counsel to interpret the results of Act 126 after it sunsets. If Act 126 does allow for continued diversion of water, there should be no steps DWS would need to take for adequate water for Upcountry at the present time.

Furthermore, at the February 20, 2019 Finance Committee hearing Maui Representative Tina Wildberger asked whether staff from the Maui Department of Water Supply was present and learned that they were not. She subsequently forwarded the following questions to the Board of Water Supply to request answers from staff:

- 1. Is the Department of Water Supply looking to move away from 80% dependence on East Maui stream waters to develop more Upcountry wells? How many wells would be needed?*

Answer:

As Director, I will assess all sources Upcountry and the reliability of these sources, and work towards a more reliable water system. This would consider storage at Kamole, improving or increasing treatment capacity at the existing water treatment plants, and looking at additional ground water sources.

- 2. Is the County able to contract with EMI to operate the Wailoa ditch system, if EMI's lease is not renewed? Since the county would have an automatic right to waters from public lands for public drinking water supply under the water code?*

Answer:

EMI is currently diverting water under 4 revocable permits. If these are denied they would not be allowed to divert water into their ditches. Water use for domestic purposes is a public trust purpose, DWS or EMI would likely request the diversion of water to continue for the public trust purpose of domestic use.

- 3. Would DWS object to leases being granted with conditions for the lessee to provide more specific data on individual stream flows, amount of diversions and providing adequate stream flows in the East Maui communities who have no access to the County water system?*

Answer:

The stream flow amounts and data collection is under the purview of the Commission on Water Resource Management. The recently resolved contested case for the 27 streams in East Maui addressed stream flows and monitoring concerns.