

BOARD OF WATER SUPPLY
COUNTY OF MAUI

REGULAR BOARD MEETING
MINUTES OF NOVEMBER 21, 2019

The regular meeting of the Maui County Board of Water Supply was held at the Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, 96793, on Thursday, November 21, 2019.

CALL TO ORDER

The meeting was called to order by Chair Shay Chan Hodges at 1:34 p.m.

ATTENDANCE

Members present: Shay Chan Hodges, Chair
 Zoltan Milaskey, Vice Chair
 Antonette Eaton
 Dean Frampton
 Norman Franco
 Dr. Hanna Mounce
 Buddy James Nobriga

Members excused: Joseph Aquino

Staff present: Jeffrey Pearson, Director
 Mimi Desjardins, Deputy Corporation Counsel
 Noreen Saito, Commission Support Clerk
 Linda Kimura, Secretary III

APPROVAL OF MINUTES

Minutes of October 17, 2019

Motion: Member Franco moved to approve the minutes of October 17, 2019

Second: Member Milaskey

Discussion: None

Vote: Unanimous. Motion carried. The minutes of October 17, 2019 were approved.

Minutes of November 4, 2019

Motion: Member Franco moved to approve the minutes of November 4, 2019

Second: Member Eaton

Discussion: Chair Chan Hodges thanked Vice Chair Milaskey for running a great meeting. Everyone did an amazing job on the comments.

Vote: Unanimous. Motion carried. The minutes of November 4, 2019 were approved.

TESTIMONY FROM THE PUBLIC

Bobbie Patnode gave public testimony on Chloramines being used in the Upcountry system.

She stated that she testified on October 17th problems with Chloramines on which the Ag working group would like help with. Listed five problems of Chloramines. Fish being killed, destroys microbiota in the soil, causes nitrates and now is concerned due to cesspool studies and regulations. It makes people sick, with asthma, rashes, etc. It leaches lead from pipes. Eats holes in copper pipes causing leaks which then causes mold in your home which also makes people sick.

Alternatives given are to switch back to chlorine disinfection if able, to remove the excess biological material first. It's something being proposed in California. Second, UV treatment. Ozone Nation can create disinfectant byproducts, but which are also bad. There is Berkey Filters, which are expensive.

The Chlorine dioxide system should get a test. This idea was presented at Shane Sinenci's committee meeting couple weeks ago. This test is used in many municipalities and could be an excellent alternative. "Don't treat the water, let the homeowners do it themselves."

Member Franco asked if she has any evidence of actual people being sick. Any historical in other municipalities?

Bobbie Patnode replied that she has a lot of anecdotal evidence from Upcountry people. But has no personal evidence today. There are evidence online for other municipalities on why Chloramines are bad.

Director Pearson stated she is correct with issues on Chloramines on biological issues with the water Upcountry and that he will be at the Mayor's office on December 4th meeting on some of the issues concerning Chloramines.

Theresa Thompson testified against the use of Chloramines.

She stated Chloramines kill's fish, algae in the water troughs, and human. People have itchy skin and breathing it causes respiratory problems. It makes holes in pipelines, pits copper, Driscoll and Sinclair, and galvanized pipes. Could we use an alternative, sign off and receive Ag water?

There were no other testifiers.

V OLD BUSINESS

A. Discussion regarding A&B, Mahi Pono lease.

Chair Chan Hodges requested from Director Pearson a summary of what the current agreement is because there are a series of updates since 1973. It is not clear that the contract requires DWS to advocate on behalf of A&B/EMI if they applied for a lease.

Director Pearson read item V - Due Diligence, of the 1973 agreement. Highlighted, *BWS agrees to request the State board of Natural Land and Resources to include a provision and any replacement license that the licensee makes available to BWS amounts of water consistent with this agreement.* This is in reference to the initial 1973 agreement with the amount of water promised and the rate.

Chair Chan Hodges asked to assign Caleb or someone to create a bullet point of exactly what the contract is about.

Director Pearson said that he could work with Corp Counsel.

Deputy Corp Counsel Desjardins agreed to work on the agreement or agreements before making any decisions.

Member Nobriga asked Director Pearson, if he came upon a time in his position where he advocated for a permit or the department publicly advocated for EMI to acquire a permit, prior to the last Land Board meeting.

Director Pearson had not worked with EMI to acquire a permit prior to the last Land Board meeting, where he testified in favor of A&B's revocable permit application.

B. Discussion of update on Honokohau Valley water situation.

Chair Chan Hodges referenced a letter Director Pearson wrote to Lance Collins.

Director Pearson discussed a part of his letter that discussed an option of placing a potential small treatment facility to the North of Honokohau Valley and will be doing a site visit the week of November 25th, with Water Supply staff to start the field process.

Member Franco added that he recently purchased land and that his neighbor has his own water well. Somehow he tapped into an aquifer and uses it for his swimming pool, etc.

Director Pearson stated it would be difficult to justify drilling a well for the small amount of meters that are there. The option is there but it's the money and cost per meter.

Member Eaton asked how many gallons flows from Honokohau to Mahinahina water treatment plant. And rephrased to ask Director Pearson, how many gallons is diverted from Honokohau stream?

Director Pearson stated that the Honokahau stream has a registered diversion but its ML&P's diversion at about a 800 foot level anywhere from eight to fifteen million gallons a day. They have users of a 7-8 mile ditch system. The last user is DWS at Mahinahina treatment plant. Prior to that there is Kapalua Water which provides a dual system for the residences of Kapalua, Kapalua's two golf courses that uses the raw water, and various agriculture uses which uses a small amount. They are not using the R1. It has been very dry especially on the West side.

C. Sunshine Law Second Opinion Letter from the Chair.

Chair Chan Hodges explained she wrote the letter. And that she called OIP (Office of Information Practices) because at a County Council meeting it was raised whether or not the TIG Report was in violation.

Member Frampton asked if this letter be more appropriate from Chair Chan Hodges or when this goes on board letterhead.

Corp Counsel Desjardins commented that it was not out of line that Chair contacted OIP for a second opinion. They too call OIP if they have a question on how to give advice. She stated a few things. One, is that the OIP is a government agency that oversees the Hawaii Revised Statutes on Sunshine Law. Second, the final authority are the courts. You have the right to call OIP as an individual anytime. She suggested sharing the document letter to OIP so they could understand the parameters of the TIG. She does not think presenting the TIG to the County Council is a violation of the Sunshine Law.

She cautioned that in the future, if you feel like the Counsel wants information, don't feel pressured to give it to them if you're not ready to give it to them. Remember your TIG outline and feel free to reach out to her.

D. Discussion on Mayor's Letter of Approval.

Chair Chan Hodges stated that Sandy Baz mentioned to her that he spoke with the Mayor and that he does not require approval on the letter. Chair asked for a letter from the Mayor, but did not receive it. Director Pearson commented that he too received an email from Corp Council stating the same that the board can send out letters without the Mayor's approval.

E. Presentation of BWS TIG Report.

Chair Chan Hodges reminded the board that they cannot discuss or deliberate. That this is just a presentation.

Member Franco gave a presentation summary of the TIG. Chair Chan Hodges, member Eaton, and member Franco met once every two weeks with assignments and to retrieve data and information.

Member Eaton did some research on historical background of the EMI system. In 1894, Kamehameha III granted 50 year leases and at the end of the lease, the water, land and improvements would revert back to the Kingdom. She wanted to get across that this is not the State's land. Of the 31 thousand acres, 17 thousand acres are still crown land. The leases OHA is applying for may not be valid. Plus they are charging DWS .06 cents per thousand gallons. Water is a public trust and should be maintained as so, not for profit.

Chair Chan Hodges suggested going to the Document Center on the BWS' website. One document is the TIG Report, the other is appendices which includes some of the original contracts that Toni refers too, including various watershed conservation.

Member Franco read the conclusion portion of the TIG on page 84. Chair Chan Hodges referred on page 70 is where the calculations for the initial purchase price and estimated expenses are. The solid number is the 5.4 million agreed on purchase price by Mahi Pono and EMI. Estimated costs to restore the system was based on best practices estimate. The idea was to estimate high. The value of the system based on water delivery rights was based on current charge of \$1.10 per thousand gallons that the Water Department charges Ag users.

Page 72. Twenty-six million which is what the value of the 60 million gallons per day that Mahi Pono requests. There is a grid that gives an example of income expense model and is not to be a recommendation.

Basically, trying to give an example of how the income and expenses could work out to show that it is viable. More research has to be done.

Page 83 explains the steps that are being recommended of additional research in order to determine the exact right way to move forward on it.

Chair Chan Hodges stated in addition, immediate actions is that Maui County should apply for long term water lease itself. That renegotiating current contracts with EMI would be a good idea. And the near term action that Norm spoke about.

Member Franco advised that there be a title search done on the property. They didn't have the opportunity to physically look at the irrigation system.

Chair Chan Hodges stated since they have presented, at the next meeting they can discuss and deliberate and the board as a whole would be voting on the recommendations.

Deputy Corp Counsel Desjardins confirmed, the board can support it, make amendments, and decide what to do. Ultimately make decisions and do deliberations, and vote on it at the next meeting. Advise the department, the Mayor, and the Council.

Chair Chan Hodges questioned, if one of the board members who is not on the TIG agrees with a recommendation in the TIG but wants to add or amend, can they bring that to the meeting?

Deputy Corp Counsel Desjardins stated that the public will give their thoughts and have the opportunity to read the TIG and also add information to it or take information out of it. Whatever happens, the board should vote on each individual amendment to it.

F. Discussion on Chloramine Map

Director Pearson shared a sample map with shaded areas of darker brown that receives chloramine. Page 2, shows the locations that are served with the water that has chloramine in the water. It will take approximately 4-6 months for IT services to do their finalizations on the map. This map will be placed on the DWS website and you will be able to click on a location to determine chloramine in the system.

Member Dr. Mounce asked if the map could be updated since IT services will take 6 months. Given that the first thing she sees on this document is the chloramines page showing Olinda but on the website it only mentions upper Kula.

Director Pearson replied saying he will work with IT on the chloramines and update them on the website as a minimum. And will see if he can get preliminary information prior from the 6 months onto the website.

OTHER BUSINESS

Discussion of Accuracy and Appropriateness of Corporation Counsel Guidance and Approval of Appropriate Action.

Chari Chan Hodges welcomed Ms. Desjardins as the board's Deputy Corp Counsel and feels comfortable and is receiving more clarity. Understanding what it is we are trying to achieve. It would be great that our Deputy Corp Counsel give us accurate advice that helps us achieve that without violating any laws and understanding the laws.

Deputy Corp Counsel Desjardins replied that she wants the board to have confidence and that she is here to support the board.

Member Milaskey requested getting timely advice.

Discussion of Board Members' Conduct during Meetings.

Member Milaskey asked if they could try to have a process in place. Treat each other with respect and present personal issues to the Chair, and have the Chair decide to have it opened for discussion.

Chair Chan Hodges asks that everyone stick to the item on the agenda that is being discussed. State your opinion and move forward, resolve and move on to the next item on the agenda.

Department of Water Supply's correspondence in regards to voluntary water restrictions.

Member Dr. Mounce would like to get the message out on water restrictions. Suggested a document like the Hawaii Energy Bill Saver through the mail especially for those that do not read the newspaper. Chair Chan Hodges asked if there was a budget for flyers.

Director Pearson agrees with a notice of water shortage to be shown on your water bill or an insert. It is complicated to enforce the use of water. And that there was a budget in the past for flyers.

CIP Budget from Director Pearson

Director Pearson introduced Civil Engineer, Tom Ochwat to give a brief presentation.

Tom Ochwat presented the Water Department's CIP 2021 budget, and projects that was handed out. This was put together with input with all of the other divisions, such as Plant Operations and Field Operations. Individual project, Kahului Tank number 2 project is with partnership between a private developer and DWS to increase the capacity to provide for fire flow demands and additional consumer consumption. The West Maui reliable capacity addresses the Launiupoko well development project. Looking into developing two wells to replace the reduction of flow for water treatment plant in Lahaina with regards to the CWRM directive to meet the Kanahā instream flow standards.

Member Frampton does not see anything for new source development for Upcountry. Asked how can we look at a CIP Budget and he does not see anything to increase the source of in the Upcountry area.

Tom Ochwat stated that DWS just had a bid opening to provide a second well called Pookela Well B as a reliable back up for Pookela Well A which will allow additional source for Upcountry.

Director Pearson stated that the State of Hawaii is looking at drilling to the well called Kealoha on Haleakala Ranch lands and is working with them with cost share. There are two additional wells upcountry on Piiholo road. One drilled by MLP and behind the church, called Frank's Well. We are in discussions with MLP on their well.

He also explained that the upcountry meter list is not going to stop due to lack of source.

Member Eaton asked what the sustainable yield is for the Pookela Well A.

Director Pearson replied the pump capacity is approximately a million gallons a day.

Tom Ochwat replied the pump test was done recently at nine hundred gallons per minute, which is close to 1.2 million gallons a day.

Chair Chan Hodges asked how does the Honokohau Valley project fit into this CIP Budget?

Director Pearson replied, it doesn't. He looked at the FY 2019 budget that will end December, and put out a bid for a replacement tank. The bids came in three times as high as what we had budgeted. He does not think this tank replacement can happen, at least in the FY 2019 budget. There maybe 5 years of life or more.

Chair Chan Hodges asked if there are any long term thoughts about renewable energy, reducing the electric cost if this could fall under the CIP budget and what point do we start talking about including this as part of a long term plan.

Director Pearson replied that it would fall on operations, who is working on a solar project now. When pumps take a lot of electricity and solar is somewhat unreliable, then we will have to turn to batteries. He is looking at the proposals that took place on the neighboring TMK and is working with Sharon Suzuki of MECO who is assisting us with this project.

Member Franco stated Tony Linder led the tour and was informative. He commented on the county wide facility improvement item called Kamole Water Treatment Plant, clear water structural repairs. What is a clear well structure?

Tom Ocwhat replied about the clear well that it is the filtered water that gets chlorinated into a storage tank right there at the water treatment plant. This is what we call a clear well tank.

Chair Chan Hodges asked when you formulated this budget, were there other things you'd like to add to it if you had the money. Are there ways to increase the budget if the County would approve it that would be more cost effective long-term?

Director Pearson replied the DWS is an enterprise fund, so the revenue that comes in is the money that we can spend on improvements. It's the useful life of the pumps and motors, electrical motor replacements and electrical upgrades, and if we let them go till it broke, then we get into a panic situation and the cost will be greater.

Member Frampton asked if you had a higher budget, could the County be open in using third party designers putting projects out to bid.

Director Pearson stated that most of the time he does have outside consultants do the designs. The CIP group would manage that consultant.

Member Milaskey asked what does the County do with the expired or replaced motors.

Director Pearson replied usually the disposal is included in the bid and the contract or with the dispose.

Tom Ochwat commented theyt do keep and salvage parts if needed before disposal.

Official Submission of the TIG Report to the Mayor and County Council.

Chair Chan Hodges asked the board if we could submit an official TIG Report to the Mayor and County Council.

Deputy Corp Counsel Desjardins suggested to defer this item until after the vote because you still have to determine, as a body, what you'll be doing with this report.

Member Frampton stated that it's on the last agenda with a link and it's available online. It's been included in the EA document and EIS. He sees no need to have an "official" submission.

Chair Chan Hodges explained about the County Council's meeting that happened and in their discussion among the council members about it where one council member said, "*well we were never even, it was never even submitted to us*". And someone replied, what you just said "*it's on the website*". Chair said, her thoughts were just to keep it clean, submit it and wanted to put it on this agenda to officially submit the report of the TIG to the council and Mayor.

Member Nobriga stated to be clear for the record, the Council was debating whether or not to put an unofficial TIG into their draft EIS. And until we have our next meeting and discuss what we do and do not agree on to submit. It technically is a document that doesn't come from the board.

Deputy Corp Counsel Desjardins confirmed it is a TIG Report that has not been adopted by this board. To not confuse anyone, defer this because right now there isn't a final report that has been sanctioned by this board as whole.

Chair Chan Hodges asked if there are any objections to moving on.

Member Nobriga and Eaton both replied, "no".

Information from County Council Water and Infrastructure Committee Report.

Chair Chan Hodges reached out to Alice Lee via email. This email was passed out to the members. Alice described some things coming up.

Designation of hearing officer duly appointed and designated to preside at hearings; i.e. pre-hearing conferences and pre-hearing motions for contested cases (appeals).

Chair Chan Hodges stated that this was recommended by Mr. Kushi at the last meeting so the board does not have to meet. This designated Chair Chan Hodges and a backup to be Vice Chair Milaskey.

Deputy Corp Counsel Desjardins asked for clarification as to what is being designated and to do what.

Chair Chan Hodges replied that it is to attend pre-hearing motions that are very technical. They had a technical pre-hearing where Caleb came to stipulate something (she can't remember) but it was technical and that it did not make sense to bring the entire board together for.

Linda Kimura added, it was a motion to compel discovery and the parties resolved it prior to the hearing and all the board members appeared therefore they recommend a designated member to hear motions as well as pre-hearing conferences without the full board to be in attendance.

Deputy Corp Counsel Desjardins read Rules 16-102-44, like other rules for planning and other boards allows you to appoint a hearings officer or you all can be the hearings officer or a few of you can conduct a hearing. But did not see in the rule that if everyone on the board is going to be at a contested case as the hearings officers. She did not see in the rules where it would allow just one board member to make a determination on dispositive motion. She went on saying, another option is to appoint a hearings officer and that usually happens in cases where there's interveners. It's complicated, and there are lawyers then, you might want to pass it off to appointed and pay for a retired judge. But it's not clear the authority to have one of you to make some kind of dispositive indication on a motion without the rest of you voting on that. It is not in the rules. She ended as she will be looking more into it.

Director's report on the Molokai Water System

Member Nobriga stated that Moloka'i residents have the highest rates in the state. They were dependent on a private purveyor that is going to continue to providing. Previously they were subject to much higher rates to the private and bring this to the attention of the DWS. Is there a plan for the people who traditionally depended on private and really don't have resources besides going with private.

Director Pearson replied that the rates that DWS customers pay on Moloka'i are the same rates that everyone pays. Usually the private systems are managed under PUC, so the rates are set under the PUC. The rates may be high because it's a higher cost and have their own source they manage. DWS has several sources on Moloka'i but does not manage sources that would be able to provide water to these private people.

If DWS takes over the private system, the cost will go much higher therefore the rates may reflect that. Our rates would reflect their higher cost of providing them water.

Member Nobriga will gather more information from the Moloka'i's community. Asked if we could leave this on the agenda and talk about this on the next meeting.

Director Pearson asked that he and Mr. Nobriga have a meeting to talk more about this and move forward from there and see what is needed to come to the board.

Chair Chan Hodges commented that we should bring back this issue again sometime in the future when there is more space on the agenda as far as the general issue.

Member Franco asked, does the big reservoir belong to the county or Moloka'i Ranch people.

Director Pearson replied that the Moloka'i irrigation system might be managed by the state. It is a billion gallon raw water reservoir.

Member Eaton stated that DHHL has a water system on Moloka'i and provides not only to beneficiaries but also to private fee simple homes.

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

Member Eaton stated in the 1973 agreement, the MOU with EMI mentioned a 1961 agreement. She requested to see the 1961 agreement.

Director Pearson replied that he will get the 1961 agreement.

Member Eaton read page 3 of the 1973 MOU it states, "*At the end of the term of the disagreement or soon, a termination as provide herein EMI should surrender the collection and conveying facilities presently existing on the property together with any and all improvements or additional facilities EMI may have installed to Board of Water Supply in good operational or the condition ordinary wear and tear or damaged due to acts of God or beyond the control of EMI be in expected.*" So, even in 1973 they state that after the lease everything was supposed to revert back to BWS. When did this part of the agreement get voided?

Deputy Corp Counsel Desjardins asked if this is a suggestion to put the first item back on the agenda with some additional information.

Member Eaton stated yes, correct because the 1961 agreement is not in the packet. There are all the MOU's from 1973 to 2018.

Chair Chan Hodges would like to know all of the agreements that the county has with different purveyors and figuring how to get it.

DISCUSSION

Chair Chan Hodges asked if Hanna wants to keep the Voluntary Water Restriction on the next agenda as unfinished business.

Member Dr. Mounce replied yes.

Chair Chan Hodges asked if there were any other agenda items to add. No one replied.

Director Pearson reminded Chair to add the discussion of the TIG Report. And both CIP and Operational Budget on the December agenda.

DIVISION REPORTS

October Division Operation Reports (copies available upon request)

There was no further discussion on this matter.

NEXT MEETING DATE AND TIME

December 19, 2019
1:30 p.m.
Planning Conference Room

ADJORNMENT

Member Dr. Mounce requested we make sure we have a quorum ahead of time.

Chair Chan Hodges asked that Noreen ask members to respond about attending the next meeting.

There being no further business the regular meeting was adjourned at 3:26 p.m.

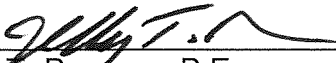
Prepared by:

Board of Water Supply
Minutes of November 21, 2019



Noreen Saito
Commission Support Clerk

Approved for distribution:



Jeffrey T. Pearson, P.E.
Director