

BOARD OF WATER SUPPLY
COUNTY OF MAUI

REGULAR BOARD MEETING
MINUTES OF NOVEMBER 19, 2020

The regular meeting of the Maui County Board of Water Supply was held virtually on BlueJeans, on Thursday, November 19, 2020.

I. CALL TO ORDER

The meeting was called to order by Chair Shay Chan Hodges at 1:32 p.m.

II. ROLL CALL

Members present: Shay Chan Hodges, Chair
Zoli Milaskey, Vice Chair
Joseph Aquino
Antonette Eaton
Dean Frampton
Norman Franco
Nalani Kaninau
Buddy Nobriga

Staff present: Jeffrey Pearson, P.E., Director
Mimi DesJardins, Deputy Corporation Counsel
Sherilyn Otsubo, Commission Support Clerk

Cablecast: Video conferenced via BlueJeans and viewable on AKAKU, Maui
Community Media

III. APPROVAL OF MINUTES

Motion: Member Franco moved to approve the minutes of October 15, 2020.

Second: Vice Chair Milaskey

Vote: The motion passed unanimously.

IV. TESTIMONY FROM THE PUBLIC

Dick Mayer: Mr. Mayer testified that it's unprofessional and improper that Mr. Chumbley won't let the County or anyone who wants to purchase the property to physically look and the property until it is purchased. It's important for the County to investigate the land, the water intakes, the irrigation system, and all aspects of the potential purchase.

V. UNFINISHED BUSINESS

A. Presentation from Avery Chumbley on the Wailuku Water Company (WWC) proposed asset purchase and to clear up numerous misstatements and incorrect facts on the system. Once there is a purchase and sales agreement, which is a document between the two parties that outlines how the parties are going to interact with each other, WWC welcomes a full and complete due diligence process. According to Sandy Baz, there will be some type of letter of intent outlining some of the county's issues which WWC will respond to so that a purchase and sales agreement can be completed.

Four maps were submitted to the Board. The first one is a regional map that gives a perspective of the system layout in the urban areas. It doesn't show the upper watershed lands or the forest reserve lands, but it gives an idea of where the ditches are and where the system lies in the Central Valley area. The second map shows the approximate locations of some for the control valves, the various apparatuses to run the system and intake locations. The third map is the forest reserve map. Maui is 727 square miles in size. The four larger TMKs in the upper mauka watershed land areas encompass 23.4 square miles, or about 3.2% of the total land mass of the whole island. The fourth map is a historical sugar map that shows where the ditches are, where the various stream locations are, where the reservoirs are and location on the ground.

Wailuku Sugar was formed in 1862. Wailuku Sugar Company, Wailuku Agribusiness and now Wailuku Water Company is the succession of the owners of the system in the lands. The Spreckels Ditch was constructed in 1882 and it had a build capacity of about 30 million gallons. The Iao Ditch System was built in 1900 and it had a build capacity of about 100 million gallons. The Waiehu Ditch was also built about the same time in 1900 and it's build capacity was about 10 million gallons. The Waihee Ditch was the largest of all the ditches. Construction started in June 1905 and was completed in May 1907. It's build capacity was about 90 million gallons. Shortly after the Waikapu Ditch System was completed and it had a build capacity of about 26 million gallons. During the sugar days, the objective was to take all the water and use all the water for sugar cane, so the build capacity and the operational capacity were always two different things. Wailuku Sugar Company built Shaft 33 Wells, which was a series of wells that was 720 feet below ground level to a cavern with an additional 700-foot depth, to tap into groundwater. There were three 800 horsepower pumps in that system and it could pump 10 to 15 million gallons of water a day to supplement when there was a drought or low rainfall situations. That asset is now under the control of the Department of Water Supply and they have abandoned the original wells and have drilled new wells and currently pump that groundwater for public use.

(Forest Reserve Map) The Waihee TMK is 5,306 acres. In 1996 Wailuku Agribusiness and the County entered into a purchase and sales agreement to sell 40% of the land area for a sale of the well fields that are located in the Waihee parcel. The total purchase price was \$3.8 million. The scope of work that was

agreed to and entered into between the County, under Mayor Arakawa, and the appraiser was to do a valuation on the fee simple lands and the easements. There was no contract or obligation of the appraiser to do a valuation on the system itself. The remaining 60% of that portion of the Waihee TMK had a valuation of about \$2.4 million.

The Lao North parcel is 2,909 acres and the valuation is about \$2.3 million. The Lao Needle is located on this parcel and is part of the WWC asset.

The Lao South parcel was 3,648 acres. In 2018, WWC entered into a sale agreement to sell a portion of the TMK, 843 acres, along with 100% of the Waikapu parcel, which was 3,425 acres, for the purpose of raising money. That total of 4,268 acres sold for \$3.2 million. There are 12 parcels of record in the appraisal of fee simple lands. All 12 parcels have clear insurable title and preliminary title reports have been provided to the Mayor. There is an exception of 6.4 acres on Lao Valley Road that would be excluded from insurable title and would be quit claim to the County. The appraised values of 8,911.14 acres came in at \$7,814,497, or about \$877 per acre.

The next portion of the appraisal covered the easement areas. From Waihee to the end of the system in Maalaea, there are 61 third party parcels. Most belong to Wailuku Sugar, Wailuku Agribusiness and Wailuku Water, but through the dissolution and sale process, as those lands were sold, perpetual exclusive rights were reserved. The valuation placed on those easements was \$3,677,000. The appraisal came out to \$11.5 million, but was rounded down to \$11.1 million. The agreed upon price is \$9.5 million for the lands, the easements and the entire operating system.

Chair Chan Hodges asked if there is a dollar amount on what the County would need to expend to maintain the system.

Mr. Chumbley replied that the system is reliable and functional and the valuation of repair is determined by how you use the system and how you want to change it. Currently repairs and replacements are done on an as need basis.

Member Eaton asked who the easements belong to.

Mr. Chumbley responded that it belongs to WWC and WWC chooses who they want to assign them to and there are no expirations on those reservations.

Member Franco asked if the easements are recorded.

Mr. Chumbley said that they are all recorded, but maybe not by modern meets and bounds descriptions. Some are recorded by lot designations of a TMK in an urbanized development area. Some are recorded by red line easements attached to deeds or CC and R's that are subject to that property and some are recorded through meets and bounds.

Mr. Chumbley continued with reasons why he felt it's important that the County go forward with the purchase. In the months from June through October this year, WWC has delivered to the Department of Water Supply, 680,376,000 gallons of water. One way the water is delivered is through the Iao Waikapu Ditch which brings water out of the Wailuku River and delivers it to the Alu Road treatment plant. In 2004, the County and Wailuku Agribusiness entered into an agreement to deliver water to the old treatment plant on Alu Road before the new plant was built. In February 2018, the contract expired so there is no binding agreement to continue the delivery of water for treatment to the Alu Road treatment plant. However, it's in WWC's mutual benefit and public's interest to continue to do it. The new treatment plant on Alu Road has a maximum design load of about 4.8 million gallons of treated water and an investment of about \$24 million. The only place that that treatment plant can get water is through WWC's system.

Another way WWC delivers water to the department is through the Iao tunnel. In 1937, the Territory of Hawaii and Wailuku Sugar entered into an agreement to build an inversion high level dike well into the Iao mountain. The County became involved as a third-party public interest through the Board of Water Works and some tunneling was done. So there is a long-standing agreement where the County receives a shared portion on a no cost basis of 1,073,000 gallons per day. That tunnel produced about 244 million gallons of water during that five-month period. If you take out the 1,073,000 gallons of no charge water, there was about 88 million gallons that was paid for through a separate contract between WWC and the County. The water department is paying for water from the Iao Waikapu Ditch and an additional amount through the Iao tunnel. The amount in that period was \$266,000. For that amount, the County would recover its initial investment of \$9.5 million in about 14 years.

The entire system is 100% gravity operated, no electricity is used. The biggest operating expense for the department is electricity. Mr. Chumbley believes this is a beneficial purchase and urges the board's support to the administration that this acquisition should move forward.

Chair Chan Hodges asked about the agreement that expired in 2018 and what would happen if the County doesn't purchase the system.

Mr. Chumbley responded that the Public Utilities Commission will determine the rates and that rate charged would be subject to operating expenses, capital investments and a 7 to 10% rate of return profit for the operating company which would mean the County will be paying a lot more than they currently are.

Member Franco asked how many Hawaiian water right users are able to draw water from the system and at what capacity.

Mr. Chumbley replied that there are historical deliveries from Wailuku Sugar, Wailuku Agribusiness and WWC to kuleana users, but he doesn't know the exact number or volume, but it's around 5 to 6 million gallons a day.

Member Kaninau mentioned that her biggest concern is the maintenance of the system. If the County enters into the sales agreement, who would be involved in the evaluation of the system and how much would it cost?

Mr. Chumbley reiterated that the system is functional and reliable and it probably needs improvements to bring it up to a 21st century standard. Costs associated with the evaluation would be the buyer's expense and it would be the Mayor's choice to hire a civil engineer or structural engineer to do the assessment.

B. Managing Director Sandy Baz gave an update on the status of the Wailuku Water Company purchase. More discussions have taken place with DLNR about their purchase of the watershed and forest reserve area. They are hopeful that it's going to be funded soon so they can move forward with that side of the purchase and the County can move forward with the water system purchase. The department, Corporation Counsel and the Mayor want to work through the different issues they have with the purchase so that they can get to a clear letter of intent.

Chair Chan Hodges asked if this is a normal process that the County is going through with WWC where there is no letter of intent and no examination of the property until there is a purchase of sale.

Managing Director Baz said that it starts with informal discussions and if there's an interest then a letter of offer is written to the owner. Once the council gives approval that they're interested in the purchase then they can do their due diligence, which includes a physical assessment of the property. The next phase is to go back to the council to get their authorization. The Mayor can't execute a purchase and sale agreement without council approval.

VI. OTHER BUSINESS

A. Dr. Jonathan Sheuer, Water Consultant to the Department of Hawaiian Home Lands (DHHL), gave a presentation on DHHL water rights, water reservations, and their relation to county water systems, private purveyors, and future planning. There are a few basis for our rights to water. DHHL is recognized as one of four public trust uses of water in Hawaii, along with the domestic needs of the general public, water used in the exercise of traditional and customary practices, and water left in its natural state for ecological purposes. The water rights in DHHL were described in the Hawaiian Homes Commission Act of 1921 which describes a right to revenue from water licenses issued by the Territory, now the State, as well as rights to develop water for homesteading purposes. There are also critical specific constitutional provisions that govern DHHL's water rights and kuleana. There are three main areas of kuleana; a kuleana to develop water policy and planning and to advocate for the rights of the department, the Hawaiian Homes Commission and our users; a responsibility to develop water sources for the use of our lands; and we have the right to own and operate water systems.

One of the kuleana that is relevant to the work that the Board does has to do with the concept of water reservations. Water reservations are issued under state law, primarily for DHHL, but also in some areas for other users, to kapu water for future use before an entity is ready to use that water. DHHL has been dependent on legislative appropriations and since it takes so long to develop our lands that the easiest, most accessible and cheapest water available to irrigate our lands gets taken up by private developers. There's this idea set up in state law, particularly in the water code, that we can set aside or reserve water for future use. The Code on Hawaiian Rights puts an obligation on the water commission to reserve water for DHHL's future use. A section in Hawaii Law governs how the State licenses or leases water. It specifies that before a lease is done, DHHL has to work with DLNR to reserve a sufficient amount of water from that particular source for DHHL's uses.

DHHL and DLNR are trying to move towards a long-term water lease to Mahi Pono for water from the East Maui Irrigation System. DHHL is seeking a reservation of water as a precondition of any water lease that could be done. DHHL has looked at all of their lands on Maui that could be serviced by the system and focused on lands at Pulehunui, Keokea, and Waiohuli. They conducted beneficiary consultation with their beneficiaries and met with everyone who is an island homesteader or on the waiting list. They are finalizing a request that will go to the water commission that will specify that they are seeking a reservation of water from EMI for 11.5 million gallons.

DHHL has taken over Pu'unani Homestead in Waikapu and they're trying to secure water so lands can be developed. This request to be exempt from the water availability ordinance has not been met favorably by the department.

DHHL is in opposition to the department over a contested case hearing before the State Water Commission over a water permit the department is seeking at Ualapu'e on the east end of Molokai.

The Mahinahina Surface Water Treatment Plant in Lahaina is partially located on DHHL's lands. An agreement with the department provides water credits to DHHL in exchange for the use of the lands.

Member Aquino left the meeting at 3:00 p.m.

Member Franco mentioned that the state and the county have an obligation to meet the letter of the law. How do you address the situation?

Dr. Sheuer responded that talking about their shared interests is the best remedy. When DHHL succeeds, all of Hawaii benefits by the increase in housing by the housing of the people and by the use of the lands that were aside in 1920.

Chair Chan Hodges asked if there was something that the BWS could recommend to the Council to help.

Dr. Sheuer replied that the language in the WUDP is very supportive of DHHL. The challenge is getting those comments translated into actual departmental action.

Member Milaskey asked if he had information about the county wanting to put a treatment tank on DHHL land.

Dr. Sheuer answered that the council is considering purchasing a reservoir from MLP that is mauka of the wastewater treatment plant. It would be one way of delivering water to the lands that would emphasize on agricultural homesteading.

Member Frampton asked if there are additional lands available in the upcountry area. DHHL asked for 11.5 million gallons of water from the EMI. Is that to service new lots or existing lots in the Waiohuli and Keokea area?

Dr. Sheuer said both. Some ag lots don't have ag water and they need water, so this would allow the development of more lots there. DHHL has also been pursuing new source development, including in West Maui.

Member Kaninau asked for clarification on the 30% of water licenses to DHHL.

Dr. Sheuer said that DHHL has 3 distinct interests when the state issues water licenses. One is 30% of the revenue from water license fees is deposited into the Native Hawaiian Rehabilitation Fund. Secondly, beneficiaries have traditional customary practices associated with any water license area. The third interest is the right to reserve water from those sources.

Member Kaninau asked where DHHL gets the money to bring the infrastructure to the developments.

Dr. Sheuer replied that it comes from legislative appropriations and from revenues generated from commercial leasing of certain DHHL lands.

Chair Chan Hodges would like to continue having updates from DHHL, possibly once every 3 months.

Dr. Sheuer said that for many years, DHHL has introduced a bill that recommends that one member of the State Water Commission be an appointee of the Hawaiian Homes Commission or a homesteader. It has also been suggested that the counties could have a homesteader as a member of their water boards.

B. See power point presentation from Ann Hajnosz of Harris & Associates on the draft of the Water Rate Study.

Member Eaton left the meeting at 3:55 p.m.

Member Frampton asked what percentage of our income is from tier three and tier four. Secondly, of money that is going towards capital spending, how does that allocation go toward addressing the shortfalls?

Director Pearson said that they need to look at a different vehicle for increasing the capital spending.

Chair Chan Hodges said that with climate change and COVID, etc., this all impacts water use and cuts to capital, so we need to think about innovations such as renewable energy, hydro pump storage and things that will reduce our electric bill. Since we are in a state of flux, how do we address it?

Ms. Hajnosz replied that you need to have a long-term plan and it's addressed in the strategic plan.

Member Kaninau stated that we need to charge our customers in proportion to the demand that they place on our system.

Member Nobriga asked if a consideration was given to adding charges according to geographical location.

Ms. Hajnosz said that studies that like have been done. You could impose a pumping surcharge to reflect the power cost charge because those are the most specific and attributable to where you live in the system.

Member Franco mentioned that the local people are suffering and we shouldn't assume that rates should increase in the next few years or over a period of time at 3%. We should have a system where the rates are looked at on an annual basis.

Ms. Hajnosz clarified that although this is a 5-year rate study, the County adopts an annual budget so it is determined annually.

Member Nobriga pointed out that there are also multigenerational families living in the same household and their rates may hit the third tier. This system might not point out who is really abusing water.

Corporation Counsel DesJardins read from the Charter that the Board of Water Supply shall recommend the establishment and adjustment of rates and charges for furnishing water. Such rates and charges shall be submitted to the mayor, and if approved, proposed rates and charges shall be submitted to the council for enactment by ordinance.

Member Milaskey mentioned that there aren't any significant changes planned or needed to the current rate structure, rather a roughly 3% inflator is proposed. In looking at the breakdown of the cost structure it looks to favor residential, which is somewhat subsidized while the larger users were over weighted and then the

ag rates were subsidized. We want to be mindful that it is a *just* rate structure. He doesn't see a huge problem that would require a TIG or committee.

Chair Chan Hodges replied that Member Frampton feels that there needs to be more money in capital improvement so you need to do something about the rate structure since that's what is funding that. Member Kaninau feels like people aren't paying their fair share. Chair's biggest concern relates to climate change and building new infrastructure that can save money and deal with requirements to be carbon neutral by 2045 and the cost of electricity is a huge problem.

Member Frampton said that the current budget is the short-term measure and long term is changing the rate structure.

C. Water Department's communications with the public about water restrictions was deferred.

D. Director Pearson reported that Phase I of the strategic plan began in January 2019. Ten key items were considered for the department and those items were analyzed as SWOT (strengths, weaknesses, opportunity and threat). They did a public survey and discussed it with the stakeholders, the council, customers and other public people.

Phase II began in March through November 2020. They tried to narrow down the ten initiatives and looked at the capacity to do the projects. They looked at the key performance indicators, water loss, conservation, cost savings, etc. The ten got narrowed down to four initiatives; workforce sustainability, digital infrastructure, SCADA upgrades and water use and efficiency.

E. Member Frampton moved to approve the 2021 Board of Water Supply Meeting Schedule and Member Milaskey seconded the motion. The motion passed unanimously.

F. Chair Chan Hodges added the development of a DWS Primer video for the community and an overview of WWC contested cases to the Six-Month Priority List.

VII. DIVISION REPORTS

Director Pearson talked about the Stage I water shortage and said we're in a much better place than we were in September when the water shortage was declared. If things keep continuing, we will move off of Stage I in the near future. In West Maui the Mahinahina treatment plant was down for 3 or 4 of the 7 weeks because no water was coming through so there was no water in the reservoir. Now it's at 17 million gallons out of 20 million.

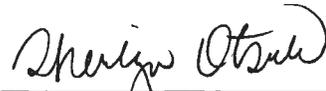
VIII. NEXT MEETING DATE AND TIME

December 17, 2020 at 1:30 p.m.

IX. ADJOURNMENT

There being no further business, the regular meeting was adjourned at 4:56 p.m.

Prepared by:



Sherilyn Otsubo
Commission Support Clerk

Approved for distribution:



Jeffrey T. Pearson, P.E.
Director