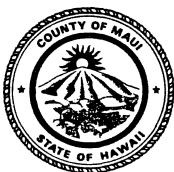


KDV

ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
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February 25, 2004

MEMO TO: Mr. Kent Hiranaga
Chair, Board of Water Supply
Department of Water Supply
County of Maui

F R O M: Ed Kushi, Jr.
Deputy Corporation Counsel

SUBJECT: **RESPONSE TO INQUIRIES FROM JANUARY 29, 2004 BOARD OF WATER SUPPLY MEETING**

As taken from a review of the minutes of the January 29, 2004 Board of Water Supply ("BWS") meeting, you specifically requested responses from this office to the following inquiries:

(1) What are the roles of the BWS, the Maui County Council, and the Mayor's office with respect to a rate increase review ?

(2) What is the proper process for BWS review of the Department of Water Supply's ("DWS") annual operating and capital improvement project ("CIP") budget ?

I. Roles of the BWS, the Maui County Council and the Mayor's office.

The 2003 edition of the Maui County Charter ("Charter"), at Section 8-11.4, states:

Section 8-11.4. Powers, Duties and Functions. The board of water supply shall:

1. Review and submit to the mayor the department of water supply's request for annual appropriation for operations and capital improvements.

2. Recommend the establishment and adjustment of rates and charges for furnishing water; such rates and charges shall be submitted to the mayor for review and approval. If approved by the mayor, proposed rates and

Mr. Kent Hiranaga
February 25, 2004
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charges shall be submitted to the council for enactment by ordinance.

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

The above-referenced section resulted from a 2002 Charter amendment, specifically Charter Amendment No. 9A. In its narrative of Amendment 9A, the Maui County Charter Commission in its Revised Final Report stated:

The Council has put forward its own alternative proposal regarding restructuring the Department and Board of Water Supply, which would have the effect of making the Department a regular County agency subject to the Mayor's executive management and the Council's legislative oversight. The Council's proposal would recast the Board of Water Supply as an advisory body (with power to recommend budget proposals and rate adjustments), would assign the Mayor the power to appoint the Director (with approval of the Council), and would maintain the power of the Mayor and Council to have final approval of rates and regulations....

The Council's role is to legislate rates, fees, assessments, and appropriations for public purposes through its receipt, review and passage of the County's fiscal year budget.¹ All fees, rates, assessments and taxes imposed by the County shall be set in the annual budget.² The Council receives a proposed annual budget from the Mayor by March 15th, and must pass a final budget by ordinance on or before May 31st.³

Lastly, in addition to his direct supervision over the DWS,⁴ with respect to rates, fees and assessments, the Mayor prepares and submits an operating and CIP budget for all County departments to the Council for the Council's review and deliberation as previously described.⁵

For your information, a copy of a memorandum dated March 4, 2003, on the subject of the overview of the operations of the Department of Water Supply, is attached hereto.

¹ Charter, Sections 3-6.1, 3-6.2, 9-5.

² Charter, Section 9-7.3.

³ Charter, Sections 9-2.1, 9-5.2.

⁴ Charter, Section 7-5.1.

⁵ Charter, Section 7-5.6.

II. Process and Procedure for Review and Submittal of DWS Annual Operating and CIP Budget.

The Mayor, not the DWS nor the BWS, has the ultimate responsibility and duty to submit an annual budget to the Council for its review and deliberation.⁶ The Council has the final responsibility and duty to pass an annual budget ordinance or override an executive veto thereof.⁷ In addition to annual appropriations for operating and CIP expenses, all rates, fees and assessments for water service are also included in the annual budget.⁸

Sections 8-11.4(1) and (2) of the Charter do not prohibit the Mayor from submitting the Mayor's budget proposal to the Council where, for whatever reasons, the BWS has not completed its review of the Department's budget, and we do not believe that the Council or the 2001-2002 Maui County Charter Commission intended such a prohibition in setting forth Charter Amendment 9A. A contrary interpretation might give rise to situations where a department might have no budget appropriation for the ensuing fiscal year because an advisory board's review could not be completed and forwarded to the Mayor before the March 15th budget submittal deadline to the Council. Departure from the literal construction of a statute is justified only if such a construction yields an absurd and unjust result obviously inconsistent with the purposes and policies of the statute.⁹ Over-literal reading of the words of a statute may accomplish an absurd result obviously unintended by the legislature.¹⁰

Notwithstanding the above, we submit and advise that the appropriate procedure, in accordance with the annual budgetary process as set forth in the Charter, for the DWS's annual operating and CIP budget, including any proposed rate, fee or assessment changes, would be as follows:

(1) Department submits a draft of its proposed annual budget to the BWS, for the BWS's review.

(2) Department submits its proposed annual budget, together with any BWS comments, suggestions and/or revisions, to the Mayor for his review.

⁶ Charter, Section 7-5.6.

⁷ Charter, Section 9-5.2.

⁸ Charter, Section 9-7.3.

⁹ Beneficial Hawaii, Inc. v. Kida, 96 Hawaii 289 (2001).

¹⁰ State v. Rumbawa, 94 Hawaii 513 (2001).

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(3) Mayor submits Department's proposed annual budget to the Council for its review and deliberation.

Call if further clarification and/or discussion is needed.

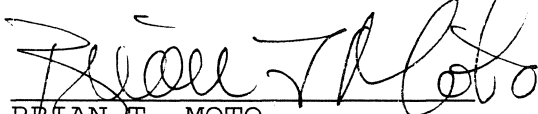
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Enclosure

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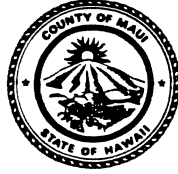
cc: George Y. Tengan, Director, Department of Water Supply
Dudley G. Akama, Deputy Corporation Counsel

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

ALAN M. ARAKAWA
Mayor



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March 4, 2003

MEMO TO: Honorable Danny A. Mateo, Chair
Water Resources Committee

FR O M:: Edward S. Kushi, Jr.
Deputy Corporation Counsel

A handwritten signature in black ink, appearing to read "Edward S. Kushi, Jr.", is written over the typed name and title.

SUBJECT: OVERVIEW OF THE OPERATIONS OF THE DEPARTMENT OF WATER
SUPPLY (WR-7)

Pursuant to your request of February 20, 2003, attached is a copy of my February 18, 2003 "notes" (4 pages) for your file and information, which notes briefly summarize our office's understanding of the changes that resulted from the 2002 Charter Amendment 9A which affected the Board of Water Supply, the Department and Director of Water Supply, the Mayor, and the Council, and further, the resultant roles of the parties.

As to which "policy" issues related to water may be addressed by the Council and how, we submit the following areas in which Council action may affect "policy":

1) The approval of the appointment of the Director of Water Supply, which position is delegated the duty to administer the affairs and day-to-day management of the department.

2) The approval of the appointment of members to the Board of Water Supply, which Board reviews the department's annual budget, recommends the establishment and adjustment of rates and charges for water service, and advises the director, the Mayor and the Council on all matters concerning the county's water system.

3) The review and approval, by ordinance, of long-range capital improvement plans, and water use and development plans, which plans will affect the future and direction of the department that administers and manages the county's water system.

4) The review and approval, by budget ordinance, of the department's annual operating and capital improvement budgets, which budgets set the financial parameters that govern the operation and administration of the department.

5) The review and approval, by ordinance, of the establishment and adjustment of rates and charges for furnishing of water service from the county's water system, which rates and charges influence the use, consumption, distribution and management of water from the county's system.

6) The authority to conduct investigations of the operations of the Department of Water Supply, and require reports from the Department and other county departments, and pass resolutions encouraging administrative action.

7) Pursuant to Chapter 2.90A, Maui County Code, establish use allocations for groundwater, withdrawn or transmitted or both, when groundwater withdrawal for any aquifer reaches seventy percent (70%) of sustainable yield.

8) Enact legislation concerning the duties and procedures of the department (e.g., rule-making) and/or the Board of Water Supply that is not inconsistent with the powers of the administrative branch and with the Maui County Charter, as amended.

9) Authorize, by ordinance, the issuance and sale of general obligation bonds on behalf of the Department of Water Supply.

Please call if further clarification/discussion is needed.

APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel

S:\ALL\ESK\COUNCIL\Memos\water department, council memo to mateo.wpd

2/18/03 notes:

Pursuant to charter amendment 9A, what now are the roles of the Board of Water Supply, Department of Water Supply, Council, and the Mayor.

Charter changes:

I) Affecting **Board**:

1) Delegated to Board the authority to act as advisor to the director, the mayor and the council in all matters concerning the county's water system.

2) Delegated to Board the authority to recommend establishment and adjustment of rates and charges for water service, which would then go to the mayor.

3) Delegated to Board the authority to review and submit to mayor department's request for annual budget appropriations.

4) Deleted:

- power to appoint, evaluate and remove director
- power to create and abolish positions
- power to adopt rules and regulations having the force and effect of law
- power to adopt an annual budget
- power to issue revenue bonds
- power to accept/acquire or convey/sell interest in real property

II) Affecting **Department** and its **Director**:

1) Delegated to department duty to manage and operate all water systems owned by the County.

2) Delegated to department duty to make studies, surveys, and investigations relating to water resources.

3) Delegated to department duty to prepare and update long-range capital improvement and water use and development plans for council approval, and implement said approved plans.

4) Deleted the department's "full and complete" authority to manage, control and operate waters systems and properties used in connection with such water systems.

5) As to the Director of the department, deleted:

- power to recommend rules and regulations for adoption by the Board
- power to appoint a deputy director

III) Affecting the **Council**:

1) Delegated to council authority to approve long-range capital improvement and water use and development plans prepared by the department.

2) If approved and submitted by the Mayor, delegated to council authority to approve Board-recommended proposed rates and charges for water service.

3) In conjunction with its review of all other county departments' annual budget appropriation requests as submitted by the mayor, have the authority to approve the department's annual operating and capital improvement budget request.

4) Delegated to council authority to approve/disapprove mayor's nomination or the removal of the director of the department.

5) Deleted authority of the council to approve or disapprove proposed administrative rules and regulations of the department.

IV) Affecting the **Mayor**:

1) In general, delegated to mayor the over-all administrative and executive management of the department, as in the cases of the Department of Public Works and Environmental Management, and the Department of Parks and Recreation.

2) Delegated to mayor authority to review Board-recommended establishment and adjustment of rates and charges for water services, and to submit said establishment or adjustment to rates and charges to council for its review and approval.

3) Subject to council approval, delegated to mayor authority to appoint or remove the director of the department.

4) Delegated to mayor authority to appoint or remove deputy director of the department.

ROLES

COUNCIL:

- 1) Authority to approve, by ordinance, long-range capital improvement and water use and development plans submitted by department.
- 2) If submitted by mayor, authority to approve, by ordinance, proposed Board-recommended establishment and adjustment to rates and charges for water service.
- 3) Authority to approve department's request, as submitted through mayor, for annual operating and capital improvement budget.
- 4) Authority to approve/disapprove mayor's nomination or removal of director of department of water supply.
- 5) Authority to conduct investigations of (a) the operation of any department or function of the county and (b) any subject upon which the council may legislate.
- 6) Authority to require periodic and special reports from all county departments concerning their functions and operations.

MAYOR:

- 1) General administrative and executive management of the department.
- 2) Authority to initially review Board-recommended establishment or adjustment of rates and charges for water service.
- 3) Subject to council approval, authority to appoint or remove director of water supply.
- 4) Authority to appoint or remove deputy director of water supply.
- 5) Pursuant to Section 91-3(c), HRS, approve or disapprove administrative rules or regulations proposed by the department.

DEPARTMENT:

- 1) Duty to manage and operate all water systems owned by the county.
- 2) Duty to make studies, surveys, and investigations relating to water resources.
- 3) Duty to prepare and update long-range capital improvement and water use and development plans for council approval.
- 4) Perform such other duties and functions as shall be prescribed by law.

BOARD:

1) Authority to act as an advisor to the director, the mayor and the council in all matters concerning the county's water systems.

2) Authority to recommend the establishment and adjustment of rates and charges for water service, and submit same to the mayor.

3) Authority to review the department's request for annual budget appropriations, and submit same to the mayor.

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