



**BOARD OF WATER SUPPLY
COUNTY OF MAUI**

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**Board of Water Supply
Rules Committee**

Minutes of August 19, 2004 Meeting

Held at the Kahului Shopping Center
65 West Kaahumanu Avenue, Unit 29
Kahului, Maui, Hawaii.

Present: Sally Raisbeck, Ralph Johansen, Kenneth Okamura
Absent: Michele McLean (alternate), Michael Victorino (alternate)

One member of the public present: Elliott Krash

CALL TO ORDER by Sally Raisbeck at 3:07 pm in the BWS meeting room at Kahului Shopping Center. The meeting was audiotaped.

APPROVAL OF MINUTES. No minutes to approve.

PUBLIC TESTIMONY: None at this time.

UNFINISHED BUSINESS:

Continue review of Board functions in present Department Rules. Discussion. Focus on Chapter 106, Water Meter Issuance Rule for Upcountry Water System.

Handout: First three pages are chronology taken from rules and presentation given by Jacky Takakura. After the chronology, there are draft changes to the rule.

The committee discussed a change in the rule where it says, "the purpose of this rule is to provide uniform handling of applications for water service from the priority list." The change would be leaving space for the Water Resources Committee's desire for allocation of water to different priorities instead of on a first come, first served basis.

Sally Raisbeck stated that she wants to leave a place so if the purpose of the rule changes, it can include "establishing additional lists of applications separated by use category in which priority will be established by the County Council's procedures for allocation of the water."

Kenneth Okamura said that he would like to put the wording in as a recommendation, but would not like it added to the draft rule change.

Committee discussed the format of the recommendation draft changes and addition of an explanation for each recommended rule change.

Sally Raisbeck answered Kenneth Okamura's question regarding the rule's sunset date. The rule expires January 1, 2005.

After discussion, Sally stated it will be the original wording up to "priority list" and then it will say, "this purpose should be expanded with the Council changes from first come first served to an allocation of use type."

Sally Raisbeck noted that they may want to move 16-106-06 to the beginning.

§16-106-06 Issuance of water meters. During the period of this rule, additional source for the water system may become available that is not restricted to an applicant providing for additional source development. The director shall process applications for water meters in the order of the priority list up to the average day capacity of any additional source with allowance for operation standards.

Sally Raisbeck stated she wanted to add a clarification of on-site improvements under definitions. Sally would also like to add numeration under definition for potable water. Sally stated the definition for "premises" should be changed so that it did not mean "owner." Discussion of rule that meter runs with the land could be the reason for the definition of "premises."

Sally Raisbeck said that there was another section in which she objected to the language. "Priority list" means the compilation of premises in the order received by the department pursuant to a legal notice published in the Maui News, November 2, 1994, for applicants denied additional water service. Sally wants to extend that to say "Priority list" means the list of premises compiled in the order received by the Department pursuant to a legal notice published in the Maui News, November 2, 1994, for applicants who have been denied additional water service between 1977 and November 2, 1994. Additions were subsequently made to the list in the order received.

Sally Raisbeck stated that under 16-106-04 (b) and (c) were looked at thoroughly, and she thought they would be much clearer if they were able to start each of them with the phrase, "for a 60-day period following the effective date of this rule," making it clear that they don't apply any longer. It was also suggested that "over the last five years" be changed to "the preceding five years."

Sally Raisbeck read: §16-106-05 Procedure for processing applications for water service that are on the priority list. (a) The applicant for a premises shall be notified in writing by certified mail, return receipt requested, at the address submitted on the application. Stated she said that it was unclear because it didn't say what they were notified of, so she suggested adding, "when additional water becomes available to the Upcountry system, the applicant for a premises shall be notified that a meter is available. Notification shall be in writing by certified mail, etc."

Sally Raisbeck read §16-106-05 (b): The applicant shall be given thirty days from the date the certified mail was received to complete and deliver to the department their application—add there "for service." Sally said that it was confusing because they had already applied because they were already on the list, so she thought it would be clearer to add "their application for service"—or reserve an allocation of water service pursuant to subsection 16-106-04(b) of these rules. 16-106-04(b) may be a mistake. She thinks they mean 16-108-09(b) which is why the people on the list have a two-year extension. Sally stated that 04(d) directly contradicts 05(b). The committee and Elliott discussed the unfairness that the people on the list did not get a 2-year extension, but the people who fell under the sixty-day part of the rule were able to get a 2-year extension.

Kenneth Okamura said that they should look at all the different parts of the rule that have to do with procedures and find out where the conflicts are and resolve them. Felt that procedures should be streamlined.

Sally Raisbeck stated she thought the changes that could be made before December are not as extensive as is really needed, and that it really needs a complete overhaul.

Kenneth Okamura said that he is talking about two different issues, the Upcountry meter issuance rule and the procedures throughout all the different rules that need to be unified.

Sally Raisbeck went on to Exceptions, Waivers, and Deferrals; said that she asked George how many situations there were that were still outstanding where someone had an agreement with the Board about developing water source and got meters, therefore, outside of the parameters of this rule, and apparently only Dowling has that kind of situation. Sally said that §16-106-07 said that this section applies to applicants who developed water under an agreement with the Board.

Elliott Krash asked about people who drilled their own wells. Sally stated that her understanding is that the County has no jurisdiction over private wells, only the State has jurisdiction over the private wells. Ralph Johansen asked how they could know how much water is truly available, said that the State Statute says that the owner of the well shall report to the State. The committee discussed the availability of groundwater and surface water.

Sally Raisbeck said that she wanted to add the to 16-106-07, "Following that date, exceptions may only be based on source credits agreements approved by _____." Kenneth Okamura talked about who would have the power to make an agreement after this date, and to make sure that there was public knowledge of the agreement. The committee filled in the blank with "the Mayor, Director, County Council, after public hearing."

Sally Raisbeck spoke on partnerships with the County in source development. Elliott Krash asked if source credits should be added to the definitions. Sally said that "credit" was defined elsewhere in the rule definitions as to source, transmission, or storage.

Kenneth Okamura wanted to know what was stopping the Mayor and the Director from entering into these kinds of agreements. Sally Raisbeck said, "Nothing, they're doing it." Elliott Krash stated that if they are doing it the rule implies they shouldn't be doing it. Sally said that she thought that was why the Council is pursuing their special water attorney, "They want to know exactly what the division is between the powers of the Mayor and the powers of the Council."

Sally Raisbeck went on to cover Waiver or Modification, saying it was fairly standard. The committee discussed who would be the deciding party for making a waiver. Committee members then discussed what was happening with recommendations during regular meetings. They decided to require an answer back in 60 days from the director on what happened with their recommendations.

The committee discussed their function since the Charter change. Sally Raisbeck stated that if they acted as representatives of the people, they have a function, and if they can somehow get more information so that their advice is of use. Kenneth Okamura stated that they should make a note of what they want specifically through a motion and everybody vote on it.

Elliott Krash asked on 106-08 if the Board in its current role could approve, or concur. Kenneth Okamura asked if the Council could approve. Sally Raisbeck wanted to know if the Director could waive a rule, along with concurrence of the Board, keeping the public involved. Decided to change the wording of the rule to the Board may recommend by a two-thirds vote to the Director that he waive...

Sally Raisbeck stated that the Charter gives the Board other duties as they may be assigned under Powers, duties, and functions. "The Board of Water Supply shall review and submit to the Mayor, the Department of Water Supply's request for an annual appropriation for operations and capital improvements." Sally said they're supposed to give the budget report to the Mayor. "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 charges shall be submitted to the Council for enactment by Ordinance." "3. Perform such other duties and functions as shall be prescribed by law." Sally then stated that Ordinances are law, so they can pass an Ordinance, and that Corporation Counsel has told the County Council that they should not try to assign the Board with all the same duties they used to do, because that would be in contravention to the fact that people voted to take the power away from the Board, but there were things that they could assign to the Board as duties that wouldn't necessarily contravene the fact the people wanted the power to be with the Mayor and County Council.

Sally Raisbeck stated she would make the changes they suggested and get them to the Board.

The committee then discussed the information being given to the special counsel to the Council. Were concerned that the amount of the information given to the Council was more than they could get. Sally Raisbeck stated that as a private citizen, she could get more information from the Department easier than she could now as a Board member.

The committee then discussed the Sunshine law. Sally Raisbeck shared her experience with the Board of Variances and how she did not agree with Corporation Counsel's enforcement of the Sunshine Law regarding that Board.

ADJOURN Meeting was adjourned at 5:09.