



BOARD OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
TELEPHONE (808) 270-7816 • FAX (808) 270-7951 • www.mauewater.org

Board of Water Supply
Rules Committee

Minutes of September 30, 2004, Meeting

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

Present: Sally Raisbeck, Kenneth Okamura, Ralph Johansen, and Michele McLean (alternate)
Herb Chang, staff

Absent: Michael Victorino (alternate)

CALL TO ORDER by Sally Raisbeck at 11:06 a.m.

APPROVAL OF MINUTES: Minutes of August 12, 2004, and August 19, 2004, were approved.

PUBLIC TESTIMONY: None.

UNFINISHED BUSINESS:

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

Sally asked to be updated about action on committee report at the September 21st meeting of the Board of Water Supply. Ken suggested there should be a listing of reasons for the rule changes suggested. Michele's email giving a format will be presented to the Board at the next meeting.

Herb Chang reported on the Water Resource Committee meeting, but Herb arrived late, and the Committee went into executive session on liability issues. At the next Council meeting, the Council will proceed with an ordinance extending the present Water Meter Issuance Rule. Sally stated that this would take the time pressure off of the committee. Michele said that the Council is being advised by special counsel what they can and can't do regarding passing the rule. Sally said that she thought the whole point of having the special counsel was to answer the question of what kind of process is necessary and by whom to get new rules that recognize the Charter change. Michele stated that the draft bill that the Council had before them on September 29th stated, "The Water Meter Issuance Rule for the Upcountry water system shall remain in effect notwithstanding the termination provision set forth therein to the extent the rule conforms to the revised Charter."

Herb stated that there had been a second transmittal of information to the Special Counsel. The committee has received the first transmittal but not the second. The second transmittal included the reservation list. Herb said that the reservation list was started in 1994. Sally said that they would ask George for copies of the second transmittal.

Sally went over the packet of information that was sent to the Rules Committee from the Department. She stated that the priority list they received has the number of meters and the amount of water. The packet also contained the memo to BWS Rules Committee from George Tengan, subject Upcountry Priority List as of December 3, 2002. Sally said that it has all the people who are presently on the list, how many meters they've asked for, what size meters, and how much water the Department has estimated will be needed for each request. Sally said that she would add them up. Sally asked Herb if he had a summary list of how many meters overall and which sizes, and how many gallons. Herb answered that he did not.

Sally asked why sometimes a 5/8 inch meter was estimated at 1200 gallons per day and other times it was estimated 390 gallons per day. Herb said that it is due to zoning and the type of request, an "ag" lot would be estimated at 1200 and an ohana would be estimated at 390. Ken asked what the codes meant. Herb explained that "SD" means Subdivision, "A" is building permit application, and "WR" is water service request. Sally said that Exhibits A through H are previous versions of the same list, and said that it is a source of confusion. Herb stated that the criteria changed when they created the lists. Herb said that between 1994 and 2002, the staff did not know who would end up on the priority list, when they were to begin issuing meters, or what the Board would say regarding which categories belonged on the priority list. Herb said that the first list was created in 1997 and everyone was put on the list, because staff was unsure which types of requests would be acknowledged.

Herb explained to the committee that staff was instructed by the former Director, Mr. Craddick, that requests for the first meter on any property could no longer be approved in 1999, so from that time, the staff had to start putting those requests on the list. In 2001, the Director stated that after review of the rule, he decided because of reliance, they could continue to approve the first meter. So the staff went back to the list and removed the names of the requesters of first meters, because they would no longer be denied if they complied with the required system improvements.

Sally wanted to know why the 1999 list had more applications added in 1993 and 1994 request section. Herb explained that if a person from the public came in with evidence of a request to be placed on the list, but had not been placed on the list, they were added at that point. Sally said that in July of 2002, a lot of names dropped off the list. Herb said that it was when they dropped the first meter requests.

The committee discussed the unfairness of the names being dropped from the list without individually contacting each requester. They also discussed moving forward and making changes to the rule so that this matter will be handled fairly in the future. They also discussed the Council setting policy on who gets first priority for water.

Ralph stated that he understood that special counsel had made a request in the form of 5 points. Ralph wanted to know what special counsel would come up with in light of the request that was made.

The committee discussed that some of the other County departments do not have administrative rules. Michele stated that she believed one of the questions special council was going to answer was if under the new Charter these things should be rules or ordinances.

Sally suggested that a written history of procedures be prepared by staff to help special counsel understand the details of what happened.

Kenneth asked Sally about Exhibit J. Sally explained that the exhibit is the Upcountry priority list status, which states the status of the requests on the priority list. Herb explained the details.

Sally asked that they go over the changes that Michele wrote up. Michele explained that the first change was to switch the order of Subsection 05 and Subsection 06 and put them in chronological order. The committee believed that Subsection 09 should be deleted all together. The next page provided handling of applications for the entire system, not just the priority list, because it allowed for exceptions and waivers. There was a change to the definition of onsite improvements to make it clearer. The definition of potable water added letters "a" and "b" to separate the two parts of the definition. The definition of premises was modified to mean land, not owner. The definition of priority list was changed to remove the dates. Sally asked if they should remove "additions that have been subsequently been made and continue to be made to the list in the order received by the Department." Michele said that it could come out. Sally said that they might want to remove "pursuant to a legal notice."

Michele said Sections "b" and "c," the times have all expired, those were both 60-day periods, and will be deleted, and Section "d" was moved to another section in the rule. They discussed switching the order of Subsection 05 and 06. Under new section 05, Issuance of Water Meters, they added a new section "b," "All issuance of meters to be reported to the Board." Herb asked if this would be upon reservation of the meter or actual issuance. The committee members said that they would rather have it upon reservation and issuance, and changed the wording to, "all meters reserved and all meters issued..."

Michele went over 106-06 "Procedure" subsections "a" and "b" adding the wording to "b" "an allocation" after "their application to reserve." Michele also stated that Kent was concerned that 30 days was not a long enough time, so Michele added wording, "if the applicant fails to respond or if the receipt is returned unsigned, the Department shall attempt other reasonable means to notify the applicant." Ralph was concerned about the tax records not being up to date, and what would happen to a person on the list who was not contacted. Herb said that this had happened, and that a new owner of a property stated they were on the list but not contacted. Michele asked if this procedure in the rules would help the staff. Herb asked if a person could use this in an attempt to get a meter later. Ralph said that if they use the terms "reasonable measures" it should not cause any problem. After some discussion, the committee decided to remove the words, "reasonable means" and that the wording should read that after a failed attempt, "the Department shall make a second attempt to notify the applicant." Section "d" was just the section that was moved from the previous section.

Michele went over Exceptions, Waivers, and Deferral, adding a subsection "b," which made the first section "a" and titled it "Prior Source Development Agreements." Sally said that she didn't know who was making these types of agreements since the Charter change. Sally wanted a public notice sent out when this type of agreement was made. Herb said that a developer would be expending monies to go through this type of development, and it would cause a concern as to whether or not the agreement would go through.

Michele stated that as a developer, working on a source development is very complicated, and becoming a part of public controversy, it would be burdensome. Ralph felt that the Charter change came about because people felt that there was too much going on with the water department that was not open to public scrutiny. Sally said that she supported the Charter change because she wanted people who were elected by the public to be held accountable for things that were done with water.

The committee continued discussion regarding when and how best to have the Department notify the Board and the public when considering signing a source development agreement. Sally asked how to word that, "Subsequent Source Development Agreements. At the time an applicant makes a proposal to the Department for source credits, the Board shall be informed so that they may advise the Director about public concerns." The committee further questioned what source credits were and how they were calculated. They also discussed having the Board and public notified when the negotiations were started and the details of the agreement before it was signed as well. The committee added the wording, "Before the agreement is executed by the Department, the Department shall notify the Board of the final amount of source credits agreed upon."

Michele presented the section where the Board previously had authority to waiver/modify requirements, which would now read "the Board will be recommending to the Director that he waiver/modify requirements."

Sally said that the committee felt that they should drop Section 09, and asked Herb's opinion. Herb said that if the Department hadn't gotten to the people on the list with dates prior to the date of October 31, 2001, it wanted to allow them to pay the older rates. Michele said that the customers buying into the system should pay the value now, as it is a newer system. Sally stated that the other point is that the people who come before the Board, people who get their water meter now, they have to meet the infrastructure requirements of now, so she agreed with Michele that they shouldn't get a lower fee.

Herb stated that the rationale was that the Department made the applicants wait and didn't want to penalize them with higher rates. The committee decided they wanted to remove the paragraph.

Sally asked what they should change the effective date to. The committee discussed the sunset date and agreed on 2010.

Michele will be preparing the new copy of the draft with notes of why the changes were made.

ADJOURN: Meeting was adjourned at approximately 1:37 p.m.

Minutes were taken from audiotape by Cathy Howard.