

BOARD OF WATER SUPPLY of the COUNTY OF KAUA'I

RULES COMMITTEE MEETING

Second Floor, Microbiology Lab Bldg
Kaua'i County Department of Water
4398 Pua Loke Street, Lihu'e, Kaua'i, Hawai'i 96766

WEDNESDAY, JANUARY 23, 2013

2:00 p.m.

or soon thereafter

AGENDA

1. ROLL CALL
2. ACCEPTANCE OF AGENDA
3. MEETING MINUTES:
Review and approval of:
Rules Committee Meeting Minutes – November 29, 2012
4. OLD BUSINESS:
 - a. Water System Development and FRC Proposed Rules
 - i. Part V Water System Development Fee (*revised 12-19-12, 11:05 p.m.*)
Part V Water System Development Fee (*original 11-23-12, 2:30 p.m.*)
 - b. Manager's Report No. 13 – 7- Board Discussion and Possible Action on Part 2 Section IX of the Rules: Adjustment of Bills for Undetected Leaks and Unforeseen Damages
 - i. DOW Revised Proposed Changes on Part 2 Section IX of the Rules
5. ADJOURNMENT

NOTE: Special Accommodations for persons with disabilities are available upon request five (5) days prior to the meeting date. Please call the Department of Water, County of Kauai, at 245-5408 or drop by at 4398 Pua Loke Street, Lihue, Kauai. Our mailing address is PO Box 1706, Lihue, HI 96766.

Rules Committee Meeting

November 29, 2012
9:10 a.m.

Committee Members Present: Michael Dahilig, *Chair*, Randall Nishimura, Ray McCormick

Board Members Present: Roy Oyama, Daryl Kaneshiro *Board Chair*, (*entered @ 9:12 a.m.*)

Staff Present: David Craddick, William Eddy, Mary-jane Garasi, Val Reyna, Keith Aoki, Dustin Moises, Gregg Fujikawa, Deputy County Attorney Andrea Suzuki, Sandi Nadatani-Mendez

Guests: Mr. Kamuela Cobb-Adams, County of Kaua'i Housing Director

Chair Dahilig called the Rules Committee Meeting to order at 9:10 a.m., quorum was achieved.

AGENDA

Mr. Nishimura moved to accept the agenda as circulated; seconded by Ray McCormick; with no objections, motioned was carried.

MINUTES

Mr. Nishimura moved to approve the Rules Committee meeting minutes of November 5, 2012; seconded by Mr. McCormick; motion was carried with 3 Ayes.

OLD BUSINESS

Re: a. Water System Development and FRC Proposed Rules, i. Part V Water System Development Fee

BACKGROUND

A deferral for action was made by Mr. Nishimura until the Department has a chance to examine how all the parts of the proposed rule will work together. Many changes will affect parts of the Board Rules which is on-going with the Deputy County Attorney and Manager Craddick.

DISCUSSION

Part V, Section I: General Provisions, Page 1

Purpose and Authority

The Purpose and Authority section cites what is required in the Hawai'i Revised Statutes (HRS).

Findings

The Findings section does not encourage growth but implements a community plan. The Board approved to do a Public Hearing regarding the benefit zone issue before Part V is finalized.

The first sentence of the Findings section states, "*In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated population growth rates and corresponding water*

Rules Committee Meeting
November 29, 2012

demands would place additional burdens on the existing water system.” Manager Craddick recommended the word “*recent*” be deleted because there has been a drop in consumption.

The second sentence states, “*The Board further finds that such growth and increased demand would necessitate an excessive expenditure of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare.*” This infers that increased demand would require increased expenditure of funds.

The third sentence states, “*The Board also finds that it is fair and reasonable to require new development and/or additional demand to pay its proportional share of the capital costs necessary to accommodate such development.*” This sentence means the people who are creating growth are going to pay for capital costs. The DOW was not charging appropriately for the growth and will continue to fall behind if nothing is done. Mr. Nishimura recommended this statement needs to be included in the Findings.

Deputy County Attorney Andrea Suzuki stated that if the Water System Development Fee (WSDF) study took into account some of the components of the projects the DOW had already developed then that would come under recoupment and the catch up in funding the growth of the water system can be included. The DOW cannot include the catch up if the current FRC study only looks at the future projects that have not been implemented yet.

Manager Craddick commented that the DOW would like to stay with the current practice which is represented in the draft. There will be a phasing out of the exiting fees. If fees were paid in the past, the customer has six (6) months to act on the payment. One portion was changed regarding if a customer does improvements on a subdivision lot and the customer has approval to put in a meter, the improvements need to be completed within six (6) years. Originally the improvements were to be completed within one (1) year. Currently, six (6) years is equal to the time the state law requires the DOW to refund money back to the payor if it is not spent.

Part V, Section II: Definitions, Page 2

“*Additional Dwelling Unit (ADU)*” – A period is inserted after Section 8 26.1.

“*Additional water service*” - No change to the definition.

“*Allocation*” – Revised to... *Allocation means reserving a quantity of water to meet the anticipated source, storage and transmission demand of a development.*

Mr. Nishimura requested to add a definition for “*Additional Demand.*”

Deputy County Attorney Andrea Suzuki highlighted the following sections:

Part V, Section III: WSDF Fee Schedule, Page 4

This section will be referred to the Finance Committee.

Part V, Section IV: Applicability, Page 4

Rules Committee Meeting
November 29, 2012

The Department took current parts of the Rules which were applied to the Facilities Reserve Charge (FRC). Changes to the Rules include the connection on the water system to provide private fire flow subject to a portion of the storage and transmission components of the WSDF.

Part V, Section V – Water System Development Fee Computation, Page 5

A. General Provisions - The Department requested the Board's direction on the following two items:

1. *Water System Development Fees will be assessed based on meter size as determined by the Department.*
2. *A minimum of 5/8-inch meter shall be assigned for services requested with no existing meter.*

All new subdivision lots and all single family dwellings based on the current Rules will be assessed \$4,600 (equivalent of one 5/8-inch meter). Every multi-family unit and hotel dwelling unit will also be assessed \$4,600. All other types of dwellings will be determined by meter size by the DOW.

If the Department uses fixture unit counts, the inequity needs to be closed before the fixture units are attempted. Currently the commercial meters are sized for fixture units and individual homes are not sized for fixture units. The size of the water meter or the number of units whichever the FRC calculation becomes larger, the Department assists in the larger amount. The meter size is determined by a fixture count method or based on demand which is a hybrid.

The R. W. Beck study has graduated amounts per meter size. If there was a pre-determined discounting under the current Rules, the meter size rates of a 5/8-inch meter size is charged as residential regardless of the number of bedrooms.

If a residential unit is by fixture unit to determine meter size, it would bump customers up to the 3/4-inch meter size and would be cost prohibited for a family trying to put up a single-family home. The fixture count would have timing issues enforcing the FRC charge. Manager Craddick understands that the Board would like to keep this the same for the residential homes even if the language states, "*as determined by the Department.*" Chair Dahilig suggested to defer the fixture unit for residential.

A hotel dwelling unit and affordable housing multi-family units would need to be clarified for the Small Business Review Board (SBRB) to eliminate potential problems.

Mr. Nishimura proposed changes could be done with Standard Operating Procedures (SOP) for the Board to review.

3. *"WSDF shall be paid before completing any items required by the conditional approval of the Water Service Request."* The fee is paid and enforced before the customer does any work to lock in their allocation. This is a current problem with customers having their allocations and not placing their meters in for many years. An administration charge will be added by the Department to process the WSDF for the additional allocation request.

Item B. No Available Water - This section will be eliminated.

Part of the subdivision agreement will include a letter to the customer stating the meter must be dropped in when the subdivision is completed. Chair Dahilig suggested large subdivisions may be

Rules Committee Meeting
November 29, 2012

adjusted based on financial or environmental considerations. The reason the Department is requiring installation of the meter and the infrastructure is because nobody is paying for it. The depreciation will be a challenge to collect. A service charge can be assessed per meter for a development.

One suggestion discussed is to treat the meter as a phantom meter to be assessed. The customer does not have to drop the meter and dig it up later. A different set of numbers can be assigned to the meter.

Manager Craddick stressed if a meter is dropped in, the lateral is also already installed. A letter would be sent to the developer from the Department stating the meter must be put in to prevent the cost from rising.

The Department does not want to have developers put in wasteful infrastructure to adhere to for their project. The additional FRC fee is paid when the meter is in. For the big subdivisions, the developer gives the tank, well and transmission line which depreciates if nobody is paying for this. No charge is given if a meter does not go in. The Department has a mechanism of tracking the demand.

Mr. Nishimura suggested this section should be explained in the Findings.

Chair Dahilig will report to Chair Kaneshiro of the full Board to create a task group of the Rules Committee to work together with the Deputy County Attorney and staff. The task group will consist of Chair Dahilig, Randall Nishimura and Ray McCormick.

At 10:04 a.m. Chair Dahilig suspended the Rules Committee meeting to hear testimony.

Mr. Kamuela Cobb-Adams, County of Kaua'i Housing Director provided his testimony.

Mr. Cobb-Adams' goal in affordable housing is to decrease cost. All costs are going up and applauded the DOW for being responsible in keeping a quality water system going and to increase FRC fees.

Affordable housing receives subsidies through federal home grants, Community Development Block Grants (CDBG) and federal resources. Currently there are two affordable housing projects Līhu'e and Eleele. There is a benefit for affordable housing to go after funds and to gain water needs which will benefit the water system in the community. There is the potential for duplication of water lines or stronger source and storage for the whole water system. Affordable housing needs water for their projects which are lined up to go directly through the DOW. Mr. Cobb-Adams inquired if the Board has a credit system and if the Board receives federal funds.

Mr. Cobb-Adams met with Cody Lynn Hiya from Senator Inouye's office who is interested in supporting the affordable housing projects. Mayor Carvalho will meet with the Kaua'i legislators to support water projects which will go indirectly to support affordable housing.

Fixture unit pricing would directly impact affordable housing versus larger houses which use more water. Mr. Cobb-Adams is in favor of fixture unit pricing.

The Commission Support Clerk will forward a copy of the draft Rule for Part V to Mr. Cobb-Adams to red line for the Board's review.

Rules Committee Meeting
November 29, 2012

At 10:07 a.m. Chair Dahilig called the Rules Committee back to order.

Mr. Nishimura moved to receive and to defer the Draft Rule for Part V, Water System Development Fee dated November 23, 2012, 2:30 p.m., and Section III: WSDF Fee Schedule to the Finance Committee; seconded by Mr. McCormick, motioned carried with 3 Ayes.

Re: *Manager's Report No. 13-7 - Board Discussion and Possible Action on Part 2 Section IX of the Rules: Adjustment of Bills for Undetected Leaks and Unforeseen Damages, i. DOW Revised Proposed Changes on Part 2 Section IX of the Rules*

Mr. McCormick moved to defer *Manager's Report No. 13-7 - Part 2 Section IX of the Rules: Adjustment of Bills for Undetected Leaks and Unforeseen Damages, i. DOW Revised Proposed Changes on Part 2 Section IX of the Rules*; seconded by Mr. Nishimura, motioned carried with 3 Ayes.

With no further business, Chair Dahilig adjourned the Rules Committee Meeting at 10:10 a.m.

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DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

January 23, 2013

Re: Water System Development and FRC Proposed Rules – Report to the Rules Committee

Update from Limtiaco: We have been holding community informational meetings around the island to gather input on the proposed fee structure. Several board members have attended some of them. Turnout was inconsistent, from 9 in Kekaha, 17 in Līhu'e, 2 in Kōloa and Kapa'a, and none in Kalaheo.

We have not seen a strong push-back against the idea of raising the Water System Development fees, although there has been some concern about differentiating between 'ohana units and mansions.

If there is consensus, it is because the costs of expansion should be covered by new users, and that a per-fixture-unit system might be a reasonable way to allocate costs between modest and large houses.

In the Koloa meeting, a realtor testified, "This needs to happen. It should be charged to the people who come in."

The version titled 12/19/12 11:05 AM is the last version worked on by staff. It includes comments made at the last meeting dealing with system depreciation after it is built and who pays for it. This provides an answer when people question why we require meters to be installed once the system is built.

Section V (A) 2 - At the task force meeting, this was discussed at length and the changes to the subdivision rules will address the concern about not requiring meters or for that matter even water lines if it is not known what will be built on the property. This is what I call the large lot waiver. So I believe the concern over installing meters has been addressed when the distribution line is completed so are the service laterals and there is no problem with installing meters. However, this is still the committee's decision. I feel it is a good idea because people will not be able to take water without it being measured and billed and it helps in depreciation costs. Having the meters installed also avoids increasing cost for not completing an installation.

The staff provided some comments on the proposal below:

Section V (A) 1-Part b. This language use to include all condos and hotels charged per unit.

Section V (A) 2 - Past practice allowed the developer to decide when the fees are paid. In this case, we are telling the developer the fee must be paid upfront and before anything is done in reliance on the water system when the fee is not paid. Once a payment is made it is possible to

track the added demand. When a fee is not paid there seems to be no ability of the DOW to track approved potential demand.

Section VI (B) - We do not currently charge for fire lines. As long as this provision is left in, the Schedule covers private fire needs. It does not charge for source. It charges a percentage for the upsized meter for residential and a percentage for gallons required for commercial installations. Percentage comes to about \$7 for indoor sprinkled residential and \$4,500 for commercial needing 2,000 GPM for 2 hour or 240,000 gallons.

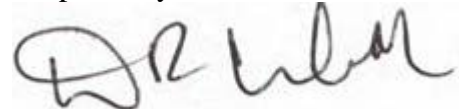
Section VII (A) – This section does not allow reimbursement for meter reduction. There have been cases in the past where multiple meters were given with no additional charge. There does not seem to be any reliable standard used.

Section IX (A) 1 - A request was made to the DOW Deputy Attorney whether we can charge the difference between a developer provided facility that costs less than the fee. I feel this is preposterous to expect something built to standard that is provided at a lower cost than DOW can provide for the same purpose should then have to pay the additional cost. I suppose if we were going to reimburse if it went over cost it would at least be equitable but there is no way the DOW should pay for facilities that go over our cost. There was also a staff comment to leave the language the same as the current rule but the current rule has percentages totaling more than 100%. This is problematic.

Section IX (B) - The proposed language from Housing is okay as far as intent. It does require some staff work tracking the asset. To reduce the value of a tracked project given or funded for offset purposes for administrative work is reasonable. This version does not cover that issue.

In addition sometime an offset request could be needed from a water system with adequate reserve where an improvement is not funded. This version does not cover taking the offset on another water system as long as it is adequate. To do this the value of the project should be dollar tracked.

Respectfully submitted,



David Craddick, P.E., C.E.M.
Manager and Chief Engineer

PART 5
WATER SYSTEM DEVELOPMENT FEE
within the County of Kauai
and Providing Penalties for the Violations Thereof

Section I: General Provisions

A. Purpose and Authority

The following rules shall govern the assessment of impact fees for Board of Water Supply (Board) capital water facilities expansion for source, storage and transmission pipeline capacity. Expansion of capital water facilities is needed in order to accommodate increased demand on the capacity of these facilities due to new development and/or additional demand of existing users. These rules are authorized pursuant to Hawaii Revised Statutes (H.R.S.) §46-142 and other applicable State law. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital water facilities and the impact fees assessed shall be expended for public capital water facilities projects. Prior to this amendment the term Facilities Reserve Charge was used by the Board in its rules and regulations [Eff.: Am] (Auth: HRS 54-33; HRS 46-142) (Imp: HRS 54-33).

B. Findings

In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the anticipated population growth rates and corresponding water demands would place additional burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate an excessive expenditure of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to require new development and/or additional demand to pay its proportional share of the capital costs necessary to accommodate such development. The Board finds that once a system is built it will begin to deteriorate whether used or not and this must be paid for by the operation of the system. *Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46 is not necessary as a reasonable benefit can be otherwise derived.*

Section II: Definitions

"Additional Dwelling Unit (ADU)" is as defined in Kaua'i County Code Section 8-26.1.

"Additional Demand" means an increase in water use or the potential to use water. Chk AWWA definition if any.

"Additional water service" means the need/request for additional water source, storage or transmission resource.

"Allocation" means reserving a quantity of water to meet the anticipated source, storage and transmission demand of a development.

"Applicant" means any person, individual, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

"Board" means the Board of Water Supply of the County of Kaua'i.

"Building permit" means the official document or certificate issued by the County authorizing the construction or alteration of any structure.

"Consumer" has the meaning prescribed to it under Part 2 Section 1 of the Department of Water Rules and Regulations.

"County" means the County of Kaua'i, a political subdivision of the State of Hawaii.

"Dedicated water system improvements" means water system improvements that are accepted by the Board for operation and are privately designed and constructed.

"Distribution system" means the water pipelines, equipment and appurtenances used to bring water from the transmission system or storage tank to and including but not limited to individual service connections and hydrants.

"Developer" means any person(s) causing an increase in demand on the water system.

"Department" means the County of Kaua'i, Department of Water.

"Facilities Reserve Charge" shall mean the name of the fee in effect prior to enactment of this rule.

"Manager" means the Manager and Chief Engineer, Department of Water of the County of Kaua'i.

"Offset" means a reduction in WSDF designed to fairly reflect the value of offsite related public facility capital improvements provided by a developer pursuant to these Rules with the Department of Water for source, storage or transmission capacity.

"Person" means an individual, firm, partnership, company, corporation, association, syndicate, governmental agency, or any legal entity, including but not limited to a trustee, receiver, assignee, or similar representative thereof.

"Premise" means a parcel of real property and any structures thereon which have water service; will require water service; or requires additional water service.

"Recoupment" means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided by DOW in anticipation of the needs of a development.

"Schedule" means the Water System Development Fees as approved by the Board and set out in Part 4 Section VII of these Rules and Regulations.

"Service connection" shall mean the distribution pipe tap, pipe fittings, meter and valve from the water distribution pipe to and including the shut-off valve on the Consumer's side of the meter.

"Source" means any structure and equipment used to capture and/or convey, potable waters; and any fee simple land required for the improvements.

"Storage tank" means an enclosed reservoir to store potable water as required in Water System Standards as amended, and any fee simple land required for the improvements.

"Subdivider" has the meaning ascribed to it under section I of Part III of the Department's Rules and Regulations.

"Subdivision" has the meaning ascribed to it under section I of Part III of the Department's Rules and Regulations.

"Subdivision water system" shall mean the water system, within and adjacent to any subdivision, including distribution lines, valves, hydrants, service connections, and all appurtenances necessary to distribute water and provide for hydrant service for such subdivision in accordance with Water System Standards.

"Temporary meter" means any meter connected to a hydrant or a service connection used less than one (1) year allowed by written agreement with the Manager.

"Transmission pipeline" means a pipeline that delivers potable water from a source development to a storage tank or distribution system, a storage tank to a distribution system, or a storage tank to a storage tank including any applicable equipment and appurtenances and any fee simple land required for the improvements.

"Water meter" means a device that measures the volume of water delivered to any premise.

"Water Meter Application" is the form filled out to request that a meter be placed in service.

"Water Service Request" means the form filled out inquiring into available water system service and requesting an allocation of source, storage and transmission capacity.

"Water System Standards" means the 2002 State of Hawaii Water System Standards as amended.

"Water system" means the waterworks operated by the Board.

"Water System Development Fee (WSDF)" Is a charge designed to recover a portion of the investment required for water system facilities growth that is assessed by the Board of Water Supply on a developer, new customer, or existing customer who increases their demand for water service. The payment of the Water System Development Fee charge runs with the land not with the payor.

Section III: WSDF Fee Schedule

- A. The WSDF imposed shall be as set forth in the WSDF Schedule, in Part 4 of the Department Rules. The WSDF Schedule was created in accordance with a report prepared by an independent consultant as adopted by the Board for the purposes of WSDF assessment. The report calculated the costs associated with water development needs as laid out in the Department of Water facilities needs assessment study entitled "Water Plan 2020" as amended.

Section IV: Applicability

- A. On and after the effective date of this Part 5 Rule, unless exempted pursuant to Section VI, all new developments requiring water supplies from the Department of Water or those requesting additional water supplies from existing water services will be subject to this Chapter of the rules.

1. The above includes but is not limited to, the following:

- a. Single family dwellings and multifamily dwellings.
- b. Resort and hotel developments.
- c. Irrigation or agricultural use water services.
- d. Additional structures, ADUs or additions to structures.
- e. Requests for additional meters with no changes to the premise.
- f. Additional use on combined fire flow and potable flow meters.
- g. Connections to any DOW water system to provide private fire flow will be subject to a portion of the storage and transmission components of the WSDF.
- h. All accounts that have been inactive (meter removed) for more than one year are subject to the WSDF.
- i. Subdivisions of land and/or lots to be subdivided
- j. Initial meter for premises of record that have no water service.

Section V: Water System Development Fee Computation

A. General Provisions

1. Water System Development Fees will be assessed based on meter size.
 - a. For each parcel created by subdivision, including the first lot created; and for every new single family residential dwelling unit not yet metered and a WSDF has not yet been paid, a 5/8" meter will be assessed.
 - b. Single family dwellings shall be assigned a 5/8" meter unless otherwise requested by the Developer and approved by the Department.
 - c. All meters for other than single family dwellings shall be sized by the Department.
2. WSDF shall be paid before completing any items required by the conditional approval of the Water Service Request. However, the applicable WSDF will be the WSDF that is in force and effect at the time a Water Meter Application is submitted and approved or at building permit time, whichever comes first.
 - a. Should the WSDF increase or decrease during the period between when the initial Water Service Request is approved and when the Water Meter Application is approved, the difference in WSDF costs must be paid by the applicant or

reimbursed by the Department before the Department installs the meter, with the following exception:

- i. When the period between the initial Water Service Request is approved and the Water Meter Application is approved is less than one year the Applicant does not need to pay the difference if any in the WSDF.
 - b. If any reimbursement is due from Department the meter installation will not be delayed for reimbursement.
 - c. Upon approval of an Applicants Water Service Request, an Applicant shall have six (6) years to submit and obtain approval of the Water Meter Application.
3. The Department shall assess a non-refundable administrative charge for review of Water Service Requests as laid out in Part 4 of the Rules and Regulations.

Section VI: Exemptions from WSDF payment.

- A. A premise which was serviced by a meter that was removed within one (1) year of the current water meter application is exempt from the WSDF fee up to the current value of the prior meter size.
- B. Detector check meters or other private fire line services to be used solely for fire purposes are exempt from the source percentage as listed in Part 4 of this rule.
- C. In the event a temporary service connection is installed for construction purposes, the WSDF need not be paid provided that such service will be limited to a 6-month period unless extended.

Section VII: Refund or Reimbursement of WSDF

- A. An Applicant that is granted a reduction in the size of water meter shall not be entitled to any WSDF reimbursement.
- B. In the event the WSDF has been paid for lots in a subdivision and subsequently the subdivision is consolidated reducing the number of buildable lots, the WSDF will be returned for the consolidated lots in the amount paid, provided the consolidation is completed within one (1) year following the prior subdivision approval.

- 1) This shall not apply to a premise which has received approval for a building permit on the premise to be consolidated.
- C. Refund of the WSDF shall not be made with the termination of water service.
- D. If the WSDF is not expended or encumbered within six years, as stated above, a refund shall go to the Applicant or the Applicant's successor in title in the amount paid with any accrued interest.
- 1) A WSDF refund request shall be submitted to the Department within one (1) year of the date on which the right to claim arises.
 - 2) Any unclaimed refund shall be retained in special trust fund or interest bearing account and shall be expended according to this Part 5 Rule.
- E. If the WSDF is ever terminated, all unexpended or unencumbered funds shall be refunded as provided in Section VII (D) of this rule.
- 1) The Board shall give public notice of termination and availability of refunds at least two (2) times in a general circulation newspaper with daily distribution.
 - 2) All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to the Board's general fund and expended for any public purpose involving water supply or service as determined by the Board.
- F. Recoupment shall be exempt from this section.

Section VIII: Facilities Reserve Charge Paid Prior to Enactment of Part 5 Rules

- A. This Section applies to those Applicants that have paid what was known as a "Facilities Reserve Charge" prior to enactment of these Part 5 Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
- B. Prior Applicants have six (6) months from the date of enactment of these Part 5 Rules, to install a water meter, hereinafter referred to as the "Grace Period", at no additional cost.
- C. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the WSDF in effect at the time the meter is installed.

Section IX: Offset

- A. When an Applicant is required to construct and dedicate water source, storage facilities or transmission pipe to the Department, the following rules shall apply only to the premises where the facilities are constructed:
1. The applicable WSDF liability of such Applicant shall be offset according to the percent of source, storage or transmission cost compared to the total WSDF shown in Part 4 Section VII Paragraph 2(b) of these Rules which are based on 19 % for source, 35% for storage and 46% for transmission and are subject to change.
 2. The Department, and not the Applicant, shall calculate and determine the total amount of an Applicant's WSDF offset in any given case. The Department may require the Applicant to submit documentation verifying the actual cost of a source or storage improvement or transmission main.
 3. The offsets described in this section shall not apply to water transmission mains constructed by an Applicant which are within or adjacent to a subdivision or lands either 1) owned by the Applicant, or 2) developed by the Applicant for uses such as, but not limited to residential agricultural, commercial, resort, industrial, governmental, religious, or educational uses. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands.

FOLLOWING SUBMITTED by County Housing

- B. An offset shall be available to an Applicant, which is a government department or agency when it;
- i) has developed or constructed to standard a water source, storage facilities, or transmission pipe and turns it over to the water department for operation;
 - ii) provided or facilitates funding for the construction of a water source, storage facilities, or transmission pipe projects that must be built before offsets are allowed,
 - iii) is designated by an Applicant entitled to an offset pursuant to Section IX A, provided:
 - a. Offset shall be applicable only to premises which are served by the source, transmission pipeline, or storage facility which the Applicant or the Applicant's predecessor in interest has developed or constructed, or has participated in developing or constructing unless otherwise specifically provided in a prior agreement.

- b.** An Applicant who is a successor in interest to a premise shall be required to submit evidence supporting any offset claimed.
- c.** Any offset in a source, which by agreement is measured in gallons, which the applicant or the applicant's predecessor in interest has developed or has participated in developing, shall be determined in an amount according to the agreement.

Section X: Records, Accounts Contest Severability and rule changes

A. COLLECTION AND EXPENDITURE of WSDF

- a.** Upon collection of WSDF, WSDFs shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.

B. Contesting the WSDF

- a.** Any person impacted by these rules pertaining to WSDF may contest the amount of the fees assessed by following the requirements of Part I of these rules and regulations.

C. Severability

- a.** If any of these regulations or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can give effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

PART V
WATER SYSTEM DEVELOPMENT FEE
within the County of Kauai
and Providing Penalties for the Violations Thereof

Section I: General Provisions

A. Purpose and Authority

The following rules shall govern the assessment of impact fees for Board of Water Supply (Board) capital water facilities expansion for source, storage and transmission pipeline capacity. Expansion of capital water facilities is needed in order to accommodate increased demand on the capacity of these facilities due to new development and/or additional demand of existing users. These rules are authorized pursuant to Hawaii Revised Statutes (H.R.S.) §46-142 and other applicable State law. New development and/or additional demand shall be assessed impact fees in proportion to its demand on capital water facilities and the impact fees assessed shall be expended for public capital water facilities projects. Prior to this amendment the term Facilities Reserve Charge was used by the Board in its rules and regulations [Eff.: Am] (Auth: HRS 54-33; HRS 46-142) (Imp: HRS 54-33).

B. Findings

In the review of the impact of growth relative to the existing and planned capital water system facilities capacity available to the water system, the Board hereby finds that the recent and anticipated population growth rates and corresponding water demands would place additional burdens on the existing water system. The Board further finds that such growth and increased demand would necessitate an excessive expenditure of public funds in order to create adequate facilities and to promote and protect the public health, safety, and welfare. The Board also finds that it is fair and reasonable to require new development and/or additional demand to pay its proportional share of the capital costs necessary to accommodate such development. *Finally, the Board finds that establishing benefit zones as identified in Hawaii Revised Statutes (H.R.S.) §46 is not necessary as a reasonable benefit can be otherwise derived. (Needs to be done)*

Section II: Definitions

"Additional Dwelling Unit (ADU)" is as defined in Kaua'i County Code Section 8-26.1 and means living quarters attached to a main dwelling or within an accessory building located on the same lot as the main dwelling for use as a separate dwelling.

"Additional water service" means the need/request for additional water source, storage or transmission resource.

"Allocation" means quantity and size of meter(s) identified as those required to serve the water needs of a premise for the purpose of reserving a quantity of water to meet the anticipated source, storage and transmission demand of that service.

"Applicant" means any person, individual, corporation, partnership, business, organization, association, or other entity whatsoever that applies for water service from the Department.

"Board" means the Board of Water Supply of the County of Kaua'i.

"Building permit" means the official document or certificate issued by the County authorizing the construction or alteration of any structure.

"Consumer" has the meaning prescribed to it under Part II section 1 of the Department of Water Rules and Regulations.

"County" means the County of Kaua'i, a political subdivision of the State of Hawaii.

"Dedicated water system improvements" means water system improvements that are accepted by the Board for operation and are privately designed and constructed.

"Distribution system" means the water pipelines used to bring water from the transmission system or storage tank to individual service laterals and hydrants.

"Developer" means any person(s) causing an increase in demand on the water system.

"Department of Water" (DOW) means the County of Kaua'i Department of Water.

"Facilities Reserve Charge" shall mean the name of the fee in effect prior to enactment of this rule.

"Manager" means the Manager and Chief Engineer, Department of Water of the County of Kaua'i.

“Offset” means a reduction in WSDF designed to fairly reflect the value of offsite related public facility capital improvements provided by a developer pursuant to an agreement with the Department of Water for source, storage or transmission capacity.

"Person" means an individual, firm, partnership, company, corporation, association, syndicate, governmental agency, or any legal entity, including but not limited to a trustee, receiver, assignee, or similar representative thereof.

"Premise" means a parcel of real property and any structures thereon which have water service will require water service or requires additional water service.

“Recoupment” means the proportionate share of the public facility capital improvement costs of excess capacity in existing capital facilities where excess capacity has been provided by DOW in anticipation of the needs of a development.

“Schedule” means the Water System Development Fees as approved by the Board set out in Part IV section VII of these rules and regulations.

"Service lateral" means the connection to a distribution pipeline, pipes, fittings, valves, and other appurtenances up to and including the consumer shut-off valve and water-meter box, but not including the water meter.

"Source" means any structure used to capture and/or convey, potable waters; and any fee simple land required for the improvements.

"Storage tank" means an enclosed reservoir to store potable water as required in Water System Standards as amended, and any fee simple land required for the improvements.

“Subdivider” has the meaning ascribed to it under section I of Part III of the Department’s Rules and Regulations.

“Subdivision” has the meaning ascribed to it under section I of Part III of the Department’s Rules and Regulations.

“Subdivision water system” shall mean the water system, within and adjacent to any subdivision, including distribution lines, valves, hydrants, laterals, and all appurtenances necessary to distribute water and provide for hydrant service for such subdivision in accordance with 2002 State of Hawaii Water Standards as amended.

"Temporary meter" means any meter connected to a hydrant or a service lateral used less than one year allowed by agreement with the Manager.

"Transmission pipeline" means a pipeline that delivers potable water from a source development to a storage tank or distribution system, including any booster

pump stations and appurtenances and any fee simple land required for the improvements.

"Water meter" means a device that measures the volume of water delivered to any premise.

"Water Meter Application" is the form filled out to request that a meter be placed in service.

"Water Service Request" means the form filled out inquiring into available water system service and requesting an allocation of source, storage and transmission capacity.

"Water system" means the system operated by the Board.

"Water System Development Fee (WSDF)" Is a charge designed to recover a portion of the investment required for water system facilities growth that is assessed by the Board of Water Supply on a developer, new customer, or existing customer who increases their demand for water service. The payment of the Water System Development Fee charge runs with the land not with the payor.

Section III: WSDF Fee Schedule

- A. The WSDF imposed shall be as set forth in the WSDF Schedule, in Part IV of the Department Rules. The WSDF Schedule was created in accordance with a report prepared by an independent consultant as adopted by the Board for the purposes of WSDF assessment. The report calculated the costs associated with water development needs as laid out in the Department of Water facilities needs assessment study entitled "Water Plan 2020" as amended.

Section IV: Applicability

- A. On and after the effective date of this Part V Rule, unless exempted pursuant to Section VI, all new developments requiring water supplies from the Department of Water or those requesting additional water supplies from existing water services will be subject to this Chapter of the rules.

1. The above includes but is not limited to, the following:

- a. Irrigation or agricultural use water services.
- b. Additional structures, ADUs or additions to structures.
- c. Requests for additional meters with no changes to the premise.
- d. Additional use on combined fire flow and potable flow meters.

- e. Connections to any DOW water system to provide private fire flow will be subject to a portion of the storage and transmission components of the WSDF.
- f. All accounts that have been inactive (meter removed) for more than one year are subject to the WSDF.
- g. Subdivisions of land and/or lots to be subdivided
- h. Existing lots of record that have no water service.

Section VI: Water System Development Fee Computation

A. General Provisions

- 1. Water System Development Fees will be assessed based on meter size as determined by the Department.
- 2. A minimum of a 5/8-inch meter shall be assigned for services requested with no existing meter.
- 3. WSDF shall be paid before completing any items required by the conditional approval of the Water Service Request. However, the applicable WSDF will be the WSDF that is in force and effect at the time a Water Meter Application is submitted and approved or at building permit time, whichever comes first.
 - a. Should the WSDF increase or decrease during the period between when the initial Water Service Request is approved and when the Water Meter Application is approved, the difference in WSDF costs must be paid by the applicant or reimbursed by DOW before DOW installs the meter, with the following exception:
 - i. When the period between the initial Water Service Request is approved and the Water Meter Application is approved is less than one year the Applicant does not need to pay the difference if any in the WSDF.
 - b. If any reimbursement is due from DOW the meter installation will not be delayed for reimbursement.
 - c. Upon approval of an Applicants Water Service Request, an Applicant shall have six (6) years to submit and obtain approval of the Water Meter Application.
- 4. The Department shall assess a non-refundable administrative charge as laid out in Part IV of the Rules and Regulations.

- B. No Available Water: If the Department DOES NOT have a sufficient water system developed for domestic use, and if required by the Department, a sufficient water system for fire protection and the developer is required to construct source, storage and transmission lines, then:
- a. Upon completion and dedication of the required water system, and/or parts thereof, an Applicant shall have six (6) years to submit and obtain approval of the Water Meter Application. If Applicant fails to submit and obtain approval of the Water Meter Application within the above stated time, Applicant could be subject to paying the applicable WSDF fee minus credit applied as determined by the DOW.

Section VI: Exemptions from WSDF payment.

- A. A premise which was serviced by a meter that was removed within one (1) year of the current water meter application is exempt from the WSDF fee up to the current value of the prior meter size.
- B. Detector check meters or other private fire line services to be used solely for fire purposes are exempt from the source percentage as listed in Part IV of this rule.
- C. Temporary meters are exempt from the WSDF provided they are used one year or less.

Section VII: Refund or Reimbursement of WSDF

- A. An Applicant that is granted a reduction in the size of water meter shall not be entitled to any WSDF reimbursement.
- B. In the event the WSDF has been paid for a subdivision and subsequently the subdivision is reconsolidated reducing the number of buildable lots, the WSDF will be returned for the consolidated lots in the amount paid, provided the reconsolidation is completed within one (1) year following the prior subdivision approval.
 - 1) This shall not apply to a premise which has received approval for a building permit on the premise to be reconsolidated.
- C. Refund of the WSDF shall not be made with the termination of water service.

- D. If the WSDF is not expended or encumbered within six years, as stated above, a refund shall go to the Applicant or the Applicant's successor in title in the amount paid with any accrued interest.
 - 1) A WSDF refund request shall be submitted to the Department within one (1) year of the date on which the right to claim arises.
 - 2) Any unclaimed refund shall be retained in special trust fund or interest bearing account and shall be expended according to this Part V Rule.
- E. If the WSDF is ever terminated, all unexpended or unencumbered funds shall be refunded as provided in Section VII (D) of this rule.
 - 1) The Board shall give public notice of termination and availability of refunds at least two (2) times in a general circulation newspaper with daily distribution.
 - 2) All funds available for refund shall be retained for a period of one year at the end of which any remaining funds may be transferred to the Board's general fund and expended for any public purpose involving water supply or service as determined by the Board.
- F. Recoupment shall be exempt from this section.

Section VIII: Facilities Reserve Charge Paid Prior to Enactment of Part V Rules

- A. This Section applies to those Applicants that have paid what was known as a "Facilities Reserve Charge" prior to enactment of these Part V Rules and have failed to install a water meter on the subject property for which the Facilities Reserve Charge was paid, hereinafter referred to as "Prior Applicants".
- B. Prior Applicants have 6 months from the date of enactment of these Part V Rules, to install a water meter, hereinafter referred to as the "Grace Period", at no additional cost.
- C. After expiration of the Grace Period, Prior Applicants must pay the difference of the original Facilities Reserve Charge paid and the WSDF in effect at the time the meter is installed.

Section IX: Offset

- A. When an applicant consumer, or subdivider is required to construct and dedicate water source or water storage facilities, or water transmission mains, to the department, the following rules shall apply:
 - 1. The applicable WSDF liability of such applicants, consumers, or subdividers shall be offset according to the percent of source, storage or

transmission cost compared to the total WSDF shown in Part IV of these rules.

2. The Department, and not the applicant, consumer, or subdivider, shall calculate and determine the total amount of an applicant's, consumers, or subdividers WSDF offset in any given case. The Department may require the applicant, consumer, or subdivider to submit documentation verifying the actual cost of a source or storage improvement or transmission main.
3. The offsets described in this section shall not apply to water transmission mains constructed by a subdivider, applicant or consumer which are within or adjacent to a subdivision or lands either 1) owned by the applicant, subdivider, or consumer, or 2) developed by the applicant or consumer or subdivider for uses such as, but not limited to residential agricultural, commercial, resort, industrial, governmental, religious, or educational uses. Where water transmission mains are constructed within, adjacent to, or outside of such subdivisions or lands, the offsets shall apply only to mains constructed outside of and off-site from such subdivisions or lands.

Section X: Records, Accounts Contest Severability and rule changes

A. COLLECTION AND EXPENDITURE of WSDF

- a. Upon collection of WSDF, WSDFs shall be deposited in a special trust fund or interest-bearing account. The portion that constitutes recoupment may be transferred to any appropriate fund.

B. Contesting the WSDF

- a. Any person impacted by these rules pertaining to WSDF may contest the amount of the fees assessed by following the requirements of Part I of these rules and regulations.

C. Severability

- a. If any of these regulations or the application thereof to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of these regulations which can give effect without the invalid provision or application, and to that end the provisions of these regulations are severable.

DEPARTMENT OF WATER

County of Kaua'i

"Water has no Substitute – Conserve It!"

MANAGER'S REPORT NO. 13-7 revised from 9/20/12 & 11/29/12:

January 23, 2013

Re: Rules Committee Discussion on Part 2 Section IX of the Rules

RECOMMENDATION: It is recommended that the Rules Committee take a look at a revised proposal on Part 2 Section IX ADJUSTMENT OF BILLS FOR UNDETECTED LEAKS AND UNFORESEEN DAMAGES.

BACKGROUND: The leak elimination proposal was expected to be implemented with the rate changes as the changes eliminate lost revenue. It was expected that \$0.4 to \$0.5 million in annual leak rebate revenue would not be lost. It was also expected that this proposal be implemented the same time as the monthly billing, which has been delayed.

Testimony was provided on the rule change proposal. Primarily it was directed toward reducing costs in other areas within the Department where funds were thought to be lost. These include overtime and unaccounted for water.

The concern over unaccounted for water is something the staff is working diligently on. Overtime is now primarily a result of construction connections that are done after hours to limit inconvenience from service disruption, SCADA system call outs, and accounting process changes being implemented. Construction related overtime is capitalized with the construction project and would not reduce operating costs by eliminating that activity. Elimination of night overtime may however disrupt customer water use during the day if connections were done during the day. I do not want to infer that connection overtime cannot be looked at as there is other activity related to the connections that are not capitalized, that is not providing any benefit to the system, and is also a drain on revenues.

Another testimony is from a repairman who benefits from our leak rebate. In the event a customer has a water line break in their property, the Department does not find nor fix leaks after the meter. Customers with leaks typically get plumbers of their choice to find and fix their underground leaks. In order for a leak adjustment request to be submitted to the Department, their underground leak must be substantiated with an invoice from their plumber indicating when the leak was fixed and the cost paid by the customer.

Our guess is that this activity would still go on whether the leak rebate was cancelled or not. There may be some concern customers may try to fix the leaks themselves if an invoice were not required by the department.

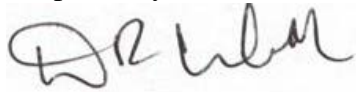
The issues raised do not address the issue that customers with non-leaking service lines are subsidizing leaks that are no cause of their own.

Attached is a revised proposal that was brought up with the full board on its September 20, 2012 board meeting and passed to the Rules Committee for review on November 29, 2012 and again deferred.

Our implementation in the upcoming CC&B project is set for January 22, 2013. HBWS is not accepting any process changes until the new billing system is in place and working accordingly. After department changes are approved by the Board, it will still take some time to adjust the billing system to accept the changes.

Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D.R. Craddick", written over a light blue horizontal line.

David R. Craddick, P.E., C.E.M.
Manager and Chief Engineer

Attached: DOW Revised Proposed Changes on Part 2 Section IX of the Rules

DC:ein

Mgrp/Rules/January 2013/13-7 Board Discussion & Possible Action on Part2 Section IX of the Rules(1-23-13):ein

Administrative rule material to be repealed is bracketed. New material is underscored. Deleted material is ~~stricken through~~ or [bracketed.] In printing this rule amendment, the brackets, bracketed material, underscoring, strikes need not be included.

SECTION IX - ADJUSTMENT OF BILLS FOR UNDETECTED

LEAKS AND UNFORESEEN DAMAGES

1. The Department will reduce high water bills caused by undetected leaks in the consumer's supply pipe by one half of the excess over the consumer's normal bill based on the previous six months' average. Adjustments will also Reduction in water bill shall be allowed where the high water bill was caused by ~~some unforeseen circumstance such as~~ underground leaks, storm damage, flood, explosion, fire and or others.
2. Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make their determination based on the data presented and any other evidence as collected by the Department, if necessary.
2. 3. Adjustment will be allowed only if the consumer exercises diligence in ~~repairing~~ stopping the leak within the period of one week after ~~knowledge~~ they knew or should have known of an underground leak age. Knowledge of the leak can come from a water bill, personal notification from the Department by attaching a notice to the door of the residence, phone or email message from the Department, neighbor notification or other means. For storms, explosions or fires the leak must be stopped within 24 hours unless the service holder is unavailable, then one week will be allowed.
3. 4. No adjustments will be made for leakage due to faulty plumbing fixtures and exposed waterlines within ~~his property~~ the premise.
4. 5. ~~Before adjustment is made under this section, the owner shall first request an adjustment and submit substantiating data to warrant such an adjustment if required by the Department. The Department shall make the determination based on the data presented and any other evidence as collected by the Department, if necessary.~~ The reduction in high water bill from leaks as noted above will be by charging the first block rate for the Departments best estimate of the excess over the consumer's normal bill based on the years monthly average.
6. In cases where the consumer has had the service for less than one year the Managers shall decide on the amount of the reduction.
7. Should the consumer decide they want to contest the Managers decision they must pay fifty percent of the reduced bill before the matter is put on the Boards agenda.
8. Reduction in water bills for underground leaks is allowed only once in ten years for the premise the leak is found on.
9. Payment of the leak amount may be made by monthly payment spread over one year but in no case shall it be less than twenty five percent of the average monthly bill per month of payment.