

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

THURSDAY, JUNE 28, 2012

10:00 a.m.

or soon thereafter

AGENDA

1. ROLL CALL
2. ACCEPTANCE OF AGENDA
3. MEETING TRANSCRIPTS:
Review and Acceptance of Transcript – February 9, 2012
4. 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.

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COUNTY OF KAUAI
BOARD OF WATER SUPPLY
RULES COMMITTEE WORKSHOP

Thursday, February 9, 2012

9:23 - 10:32 a.m.

Second Floor, Microbiology Lab Building

Kauai County Department of Water

4398 Pua Loke Street

Lihue, Kauai, Hawaii 96766

REPORTED BY:

TERRI R. HANSON, CSR 482

Registered Professional Reporter

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APPEARANCES

BOARD MEMBERS:

Larry Dill

(Exited meeting page 17, 9:50 a.m.)

Daryl Kaneshiro

Clyde Nakaya

STAFF:

Andrea Suzuki, Deputy County Attorney

William Eddy

Marites Yano

Dustin Moises

Gregg Fujikawa

Val Reyna

Keith Aoki

Joy Buccat

1 RULES COMMITTEE WORKSHOP

2 MR. KANESHIRO: Rules Committee Workshop is
3 now called to order. Let the record reflect that it's
4 Thursday, February 9th, roughly about 9:25. With that,
5 can I have a roll call, please.

6 MS. SUZUKI: Daryl Kaneshiro.

7 MR. KANESHIRO: Here.

8 MS. SUZUKI: Larry Dill.

9 MR. DILL: Here.

10 MS. SUZUKI: Clyde Nakaya.

11 MR. NAKAYA: Here.

12 MS. SUZUKI: We have people.

13 MR. DILL: We have three people.

14 MR. KANESHIRO: We have a quorum. Let the
15 record reflect that I'm still on the rules committee as
16 well as Mr. Nakaya. So we do have a quorum.

17 With that I need a motion for acceptance of the
18 agenda.

19 MR. NAKAYA: Move to accept.

20 MR. KANESHIRO: I guess I could second it,
21 right? I have to second it.

22 MS. SUZUKI: Yeah.

23 MR. KANESHIRO: I'm acting as a committee.

24 MS. SUZUKI: It doesn't have to be so
25 formal.

1 MR. KANESHIRO: I'm acting as a committee
2 member. So I'll go ahead and second it. I'm just
3 filling in as the chair today for this committee, but
4 I'm actually a committee member. So with that,
5 acceptance of the agenda, I guess, I've also seconded
6 it. So majority rules.

7 With that, the new business is impact fees and
8 FRC proposed rules. At this time I will have Mr. Eddy
9 make a presentation to us.

10 MR. EDDY: Okay. Thank you, Mr. Chairman
11 and Committee Members.

12 The department is proposing changes to the
13 current rules in regards to our facilities reserve
14 charge. We started a study more than a year ago to
15 study the rates, and we've also -- we're also proposing
16 changes to the rules themselves and the way that we
17 administer the facilities reserve charge and also the
18 way that we impose the requirements of the rules.

19 So today I'm going to try and step back and
20 talk about the basis of the facilities reserve charge,
21 talk about the existing FRC rules, and then in general
22 talk about the main issues and the main reasons that we
23 feel like we need to change the rules.

24 A short history on our FRC, the current rule
25 has been in effect since 2004. And prior to that there

1 was a major change to the FRC rules in 1993, and also a
2 major change in 1979. And then prior to '79 and in
3 particular '76 we have some good documentation. I was
4 looking through the records, and it gets harder to find
5 information earlier than '76. But we believe that the
6 FRC has been in place since the inception of the
7 Department of Water in the early '60s.

8 The authority to impose impact fees in our
9 facilities reserve charge is an impact fee as defined in
10 this, see Hawaii Revised Statutes that we show here.

11 So the statutes say, Any board for any
12 development, or portion thereof, involving water supply
13 or service; provided that the county enacts appropriate
14 impact fee ordinances or the board adopts rules to
15 effectuate the imposition and collection of the fees
16 within their respective jurisdictions.

17 Okay. Then H.R.S. goes further to define what
18 are impact fees. So in that statute it's defined as, it
19 means the charges imposed upon a developer by any county
20 or board to fund all or a portion of the public facility
21 capital improvement costs required by the development
22 from which it is collected, or to recoup the cost of
23 existing public facility capital improvements made in
24 anticipation of the need of the development.

25 So that's kind of a legalese talk, but it

1 really hits all of the reasons that we impose our
2 facilities reserve charges on developments, and it's a
3 little bit broader here in the sense that it can be
4 charged for future developments or for future
5 improvements, let's say, future tanks or future water
6 sources or existing ones is how I read it.

7 So that if a developer wants to build
8 something, this law would allow them to pay us a fee,
9 and we go build a tank or find a source and develop the
10 source or they can pay the fee and utilize an existing
11 tank or source.

12 So this slide says, Do we need new rules? And
13 before we get into that, I'd like, if I may, to just ask
14 you guys to go to the printouts of our existing rules.
15 And I'd like to go through our existing rules so we know
16 where we're at today, and then we'll continue on to this
17 to where we want to go.

18 So the first page here it says a Part 3,
19 establishing standards for subdivision water systems.
20 There are some references also in Part 2 to the
21 facilities reserve charge, but they weren't terribly
22 substantial, so I didn't include those.

23 But most importantly I'd like to go to this No.
24 10 there, it defines facilities reserve charge. It says
25 it shall mean the fee paid -- the fee to be paid by

1 subdividers or, when applicable, new costumers as their
2 proportionate share in improvement to the department's
3 water system.

4 So in a nutshell, that's trying to distinguish
5 itself from water use rates, and it really is
6 independent of water use rates.

7 Okay. So the next page, you see the
8 highlighted Section No. III, and this is Part 3, which
9 is in our rules it's subdivision. So this describes how
10 a subdivider shall pay the department and the
11 requirements of a subdivider.

12 So pretty much every lot that's created is
13 charged FRC, and typically it's for a 5/8s meter, and
14 right now the charges are by meter size. So each lot is
15 charged the FRC during subdivision.

16 Now, that seems pretty straight forward, and
17 things get a little bit more tangled up when we're
18 talking not subdivision, but building permits, CPRs, and
19 so there's -- in general the department's existing rules
20 allow us to charge FRC for every house. So if a lot has
21 five houses, then we can charge FRC five times, or the
22 owner is required to pay FRC five times and one for each
23 dwelling.

24 Okay. Let's continue on, and please let me
25 know if you have any questions.

1 MR. DILL: Mr. Chair. Okay. Just to
2 elaborate on what you spoke on a minute ago. If a
3 25-acre parcel qualifies for 5 dwelling units, and
4 somebody says, I'm going to serve these five dwelling
5 units with one 5/8s meter, you have the ability to
6 charge FRC for five units, though, according to your
7 current rules.

8 MR. EDDY: That's right.

9 MR. DILL: So do you charge them for five
10 5/8s meter equivalent FRCs?

11 MR. EDDY: We do, yeah.

12 MR. DILL: Okay. Has the department done
13 that?

14 MR. EDDY: Yes, yes. I think there's some
15 instances where we may allow five meters to that lot if
16 the owner asks for five meters. In CPRs it's common.

17 MR. DILL: Do you see often that, say, a
18 lot like that they would ask for a 2-inch meter, and you
19 charge them five 5/8s meters FRCs or charge them one
20 2-inch meter FRC? You know, from --

21 MR. EDDY: I think more common is
22 individual meters, and you see a bank of meters:

23 MR. DILL: Right.

24 MR. EDDY: Sometimes you see nine meters
25 all lined up. And I think more often than not, it's

1 individual meters rather than a large master type meter.

2 MR. DILL: Okay.

3 MR. EDDY: And probably homeowners they
4 want an individual meter for billing purposes.
5 Otherwise you're faced with having to divide up the
6 costs.

7 MR. KANESHIRO: Does the current rules
8 allow for one meter to serve more than one home?

9 MR. EDDY: Gregg, can I ask you.

10 MR. FUJIKAWA: Yeah, it does. It does. It
11 specifically does in Part 2.

12 Now, going back to Commissioner Dill's question
13 on the one meter for the big, big parcel.

14 MR. DILL: Right.

15 MR. FUJIKAWA: If somebody wants one meter
16 for a parcel that's zoned for more houses, and say if
17 they wanted it, you know, to grow for taro or use it for
18 agricultural purposes or they want it for one house,
19 maybe even they want it for one guest house or whatever
20 it might be, we'll grant them the one meter as long as
21 the system is adequate. Everything is premised on if we
22 have enough water to cover the requests. It's first
23 come, first served.

24 But we don't assess them FRCs based on water
25 that they're not going to use or they say they're not

1 going to use. In other words, if somebody comes in for
2 one house on a lot that's zoned for 200 houses, if
3 that's his request, we focus on that request. So in a
4 lot that's zoned for 25 acres and if it's ag and it's
5 zoned for, you know, if you like you can put five houses
6 on it. That's based on land use laws. But he only
7 wants a 5/8 meter for that house at that time, this is
8 on the Part 2 and he's not proposing subdivision, we'll
9 grant them. And then we'll charge him FRC for that one
10 house or for that one meter.

11 'Cause people sometimes they want water and
12 they don't need it for houses. Especially in ag.
13 Sometimes they need them for the watering trough for the
14 cows they need a 5/8s meter. We adjust that. You know,
15 we don't -- the rules don't allow us to impose charges
16 and fees for water that people not requesting water for
17 at this time.

18 MR. DILL: So for that example you just
19 mentioned, so you're saying somebody wants water just
20 for a watering trough for animals, and so they get a
21 5/8s meter. You charge them the 5/8s meter rate, right?

22 MR. FUJIKAWA: Yeah, because --

23 MR. DILL: Okay. Because that's all we
24 have.

25 MR. FUJIKAWA: Because part -- if you go to

1 Part 4, that's where the rules schedule for the FRC
2 charges are. You know, Part 4 is the rates.

3 MR. DILL: Right.

4 MR. FUJIKAWA: And in Part 4 FRC is kind of
5 broken down by, assessed by or charged by meter size.
6 But it's also charged by the dwelling units, which
7 includes a hotel room. The rules define a hotel room
8 the same as a dwelling unit.

9 And Part 3, which is what we're talking about
10 now, is for subdivisions. When you create a lot the
11 rule in Part 4 also charges FRC for every lot that's
12 created by a subdivision.

13 Of course, there's exceptions where, you know,
14 you get credit for consolidating lots and resubdividing
15 lots. But the net effect or the net creation of lots,
16 the rules define it as basically we assess FRC three for
17 the three different elements. One is for lots that are
18 created by subdivision. One is dwelling -- well, units,
19 dwelling units, and we assess that at the time of
20 building permit, which is not specified in the law, but
21 it's specified by administrative policy, water
22 department administrative policy.

23 And the more primary one everybody talks about
24 is by meter size. So the bigger the meter, the higher
25 the charge, but it's defined in Part 4.

1 MR. DILL: Okay. All right. Thank you.

2 MR. EDDY: So continuing on these
3 subdivision rules, I'm still on this page here. You've
4 got the highlighted portion there. The fourth item
5 there it talks about the timing of when a subdivider is
6 required to pay. So it says, The subdivider shall pay
7 the facilities reserve charge to the department prior to
8 subdivision approval. Except that the subdivision
9 approval may be given prior to construction of required
10 improvements and prior to the payment of the facilities
11 reserve charge by the posting of a bond.

12 Okay. So the important part that always is
13 very important to the developers and their cash flow and
14 their financing is FRC is due in full prior to
15 subdivision approval. And the option there is to
16 bond -- you are allowed to bond FRC and you're also
17 allowed to bond improvements that are required by the
18 department. So later on in the proposed changes we do
19 talk about changing the timing somewhat.

20 Okay. Now I'd like to skip all the way to the
21 second stapled sheet. The heading says, Section VII,
22 Facilities Reserve Charge. So this is jumping to Part 4
23 of the rules, and there's no highlighted things on this
24 sheet. Right here. Right here. Yeah. On the -- I
25 think the front page of this guy. Yeah, right here.

1 Okay. So now we're in Part 4, which is fixing
2 rates. So you can see that our FRC is scattered
3 throughout our rules right now. It's in Part 2, Part 3,
4 Part 4. And the proposal is to create a Part 5, we'll
5 see later on, and to bring everything into the Part 5 so
6 it's not scattered in different parts.

7 Okay. The main thing I wanted to point out at
8 this time is the schedule, the amount. You see towards
9 the bottom of the page, where you've got the 5/8s meters
10 \$4,600, and then it goes up to 8-inch meters.

11 Now, we have a study underway, a rate study,
12 with our financial consultant. They used to be called
13 RW Beck. It think it's SAIC now, C after -- SIAC or
14 something like that. They're doing their financial
15 study now, and we expect the results of that study to be
16 in shortly. We've kind of been waiting a while for it.
17 So we expect those results, and so we do expect to
18 change these numbers, and we do expect the results will
19 go up substantially from these numbers.

20 MR. DILL: On these numbers, you mentioned
21 at the beginning under Section I definitions the new
22 consumers pay the FRC as their proportionate share in
23 improvements to the department's water system. So am I
24 correct in assuming that the numbers that were going to
25 be given by SCIC will be based on cost of service

1 essentially or actual costs of their -- of the
2 improvements, and then it was broken down to their
3 proportionate share to serve, say, a dwelling unit?

4 And the reason I ask the question is because, I
5 know -- I think it was the prior iteration of FRC prior
6 to this. I read your FRC study that was done to
7 establish the costs.

8 MR. EDDY: Right.

9 MR. DILL: And I believe you could pretty
10 safely say that the basis for all the costs that were
11 determined was a cost-of-service type of determination.
12 But for the 5/8s meters, my recollection is that there
13 was a decision to discount that calculated cost by 5/6s,
14 the 3/4-inch cost was discounted by 50 percent, and then
15 the 1-inch meters where you started charging the actual
16 cost to recover the cost.

17 But I would be in -- you know, when we did the
18 rate analysis, it was based on cost of service, that's
19 what it actually costs to deliver water to the
20 costumers.

21 MR. EDDY: Correct, yes.

22 MR. DILL: So on these numbers here, do you
23 know, are these representative of what the actual cost
24 it is to deliver service to the costumers?

25 And then second question would be, is this

1 source, storage and transmission? Does it include
2 distribution?

3 MR. EDDY: Okay. It says does not include
4 distribution. It includes source, storage and
5 transmission.

6 MR. DILL: Okay.

7 MR. EDDY: And sometimes it's a fine line
8 between transmission and distribution, but officially it
9 does not include distribution.

10 The numbers that we see here they were based on
11 a previous study, and the studies may use the
12 cost-of-service theoretical approach, but it is not
13 based on what we talked about during the rate study as a
14 cost of service.

15 MR. DILL: Right.

16 MR. EDDY: The method that's used is
17 projecting the building needs over a period of time, the
18 projected growth and the improvements that will be
19 required to sustain that projected growth. So the
20 growth may be 20,000 people, 20,000 additional people in
21 20 years. And so we know the size of the water system
22 that we have to build to accommodate the growth in
23 population. And then the cost of the infrastructure,
24 the source, storage and transmission is estimated. The
25 figures are then calculated from that information.

1 And in this particular study, we've also added
2 the debt service which previously may not have been
3 factored in knowing that to build out this
4 infrastructure we're going to need to borrow money and
5 we need to have those costs included in the study.

6 So the figures that we see here, I'm not
7 exactly certain, but I think they are discounted or
8 lowered from --

9 MR. DILL: What the department's actual
10 costs are.

11 MR. EDDY: For the actual cost.

12 MR. DILL: Okay. And that's the answer to
13 my question, I think.

14 MR. EDDY: There was a policy decision by
15 the board to not raise rates too much at one time.

16 MR. DILL: I understand that because we may
17 be faced with the same thing again. Okay. All right.

18 MR. EDDY: And so you'll also notice that
19 the fee is based on meter size. So there are some other
20 options available that are basing the fee not on meter
21 size but on different ways of calculating the fee. And
22 so we're looking into those as well.

23 All right. So I'm going to jump back into our
24 PowerPoint here. So the question is, Do we need new
25 rules? And the department is saying, We do need new

1 rules. And here's some reasons why yes, and then we
2 have a column here of no. And there may be some room
3 for -- not scrapping the new rules but revising the
4 rules and, you know, how much change do we want to see?
5 So I'd like to go over these one by one.

6 So do we need new rules? And we say, Yes, we
7 need new rules, and here's a list of reasons. The
8 current rules tie up water with unlimited time to use
9 while others may be told there is no availability of
10 water.

11 So the case for this is currently somebody
12 could have paid FRC in some years past in 1980, and
13 we're trying to get those numbers together. How many
14 people are like this that have paid FRC in the past for
15 subdivisions or buildings and have not gone to
16 development it, but we're still holding that water
17 available for them.

18 We're still holding an allocation of water for
19 these people, and there may be new developers coming in
20 that are ready to build. And we're forced with telling
21 those people, No, we don't have available water. You'd
22 have to build your own source and storage. And so
23 that's a problem. That's something we want to change.

24 (Larry Dill exited meeting.)

25 MR. KANESHIRO: I have a question on that.

1 With the new rules, I'm certain you won't be able to
2 resolve those issues with the past one that's already
3 paid, right? I should be asking that later, yeah. It's
4 okay. Scratch my question.

5 When does the rule kick in? I don't think we
6 can kick it in to those that have already paid.

7 Let me rephrase it. Probably we could do it
8 when the rules are approved, and from there move on. So
9 I'm still thinking that that's not really going to
10 resolve our situation, present situation we're now
11 facing.

12 MS. SUZUKI: The department is proposing
13 for the past instances where we have this -- they have a
14 graded payment thing. So if you don't drop your meter
15 within the first year, then you're going to get charged
16 25 percent of difference or something. If you don't
17 drop it within two years, you get charged 50 percent of
18 difference. And it gives them a certain amount of time.

19 MR. KANESHIRO: Oh, for the past?

20 MS. SUZUKI: For the past, yeah. I think
21 that's their proposal, but this is just the overview
22 before we get to the details.

23 MR. KANESHIRO: Okay.

24 MR. EDDY: So that would encourage the
25 current developers who have paid FRC to apply for the

1 meter and get it in right away. Otherwise, you'll be
2 faced with paying the higher fee.

3 MR. KANESHIRO: At the current level.

4 MR. EDDY: At the current level, which is
5 substantial. So we think we can clean house, so to
6 speak, to eliminate these old FRC accounts.

7 MR. KANESHIRO: Do we have a record of
8 that?

9 MR. EDDY: We do. And we're working to get
10 a better handle on it.

11 MR. KANESHIRO: There could some in the
12 1980s. There could be in the '70s.

13 MR. EDDY: That's the problem. It goes
14 back so far. We probably won't be able to go back to
15 the '60s. We're just going to have to assume that if
16 somebody paid FRC in the '60s and didn't act on it,
17 we'll have to leave the burden of proof up to those
18 developers that they paid it and they didn't receive the
19 service because I don't think our records will be able
20 to go back that far.

21 MR. KANESHIRO: But you're not only
22 targeting developers, but you're going to have to target
23 every single household, too. Do you know what I mean?
24 Because every single household, if you think about it,
25 some of them in the '70s may have applied for a meter

1 but currently never built it. So it's not only
2 developers. If you're going to go all the way across,
3 you've got to go all the way across.

4 MR. EDDY: It could be somebody applied for
5 a building permit back for a second house.

6 MR. KANESHIRO: I don't think they have
7 building permits records past '92. I'm not sure.

8 MR. EDDY: It's very difficult.

9 MR. KANESHIRO: '82, '82 possibly.

10 MR. EDDY: It's very complicated.

11 MR. KANESHIRO: But I'm just saying it's
12 kind of a complicated issue.

13 MR. EDDY: It's tough.

14 MR. KANESHIRO: I congratulate you guys to
15 try to accomplish that. But I'm not certain -- I don't
16 know. And that's probably why Mike has been asking for
17 some of the numbers. You know, what are some of the
18 numbers? But anyway.

19 MR. EDDY: It's a difficult task, but I
20 think it's something we have to do.

21 MR. KANESHIRO: All right. I will have him
22 ask the questions later.

23 MR. EDDY: Okay. So we'll go to No. 2
24 here.

25 MR. KANESHIRO: Okay.

1 MR. EDDY: The current rules require
2 developers to pay or bond impact fees when they bond
3 water facilities improvements to obtain final
4 subdivision even if the plan is to provide facility
5 improvements. This results in DOW having to return
6 collected fees.

7 It's kind of a mouthful there, but I can give
8 the biggest example was Kukuiula. So they have a 1,500
9 lot subdivision out there. So they planned to build the
10 infrastructure, to put in the tanks and the wells and
11 the transmission lines, and they have since then.

12 Okay. But they also wanted subdivision
13 approval prior to building the tanks and the wells. So
14 when you do that, you can begin to sell your lots. Once
15 you get subdivision approval, you can put your lot on
16 the market for sale. And it's a common strategy for
17 developers to do that to get the cash to build the
18 improvements.

19 And so Kukuiula paid FRC in full for -- I'm not
20 exactly sure how many lots they paid up front. And then
21 at the same time they were building their improvements
22 and they got some -- at some point they got subdivision
23 approval and were allowed to sell. Then they finished
24 their improvements, and now the money that they paid to
25 the Department of Water for the FRC is now due to be

1 refunded to them. So they paid both. They paid FRC and
2 paid for the improvements. And they may have been
3 financially able to do that, but many developers aren't.

4 So now -- they didn't have to do it that way.
5 They could have built a source, storage and
6 transmission, built the improvements and not paid FRC.
7 And then when the facilities are complete, they can
8 apply for offsets to FRC, which would essentially
9 eliminate their FRC liability. But they didn't do so
10 because they wanted to sell their lots earlier.

11 So this is -- this timing thing is something
12 that we're looking to improve on in the rule change to
13 see if we can work out something better.

14 So we've got a couple more slides with these
15 yeses and nos. So we go to the no side, what are some
16 reasons not to change the rules or not to make such a
17 drastic change.

18 So the first words are that staff and
19 developers are familiar with the present rules. And
20 it's kind of a little bit of a difficult concept to
21 explain to people. What is FRC? Why do we have to pay
22 it?

23 And the department has really been hammering
24 for a lot of years into those reasons, and the
25 developers understand the rules now. And to change them

1 is going to throw some things into confusion. It's
2 going to require an educational effort for our staff and
3 developers as well.

4 The current rules are simple to implement. You
5 can see there are only a few pages. And the rules that
6 we're considering now -- that are being drafted now are
7 more complex. And that's what happens when you try to
8 take care of different things. It just gets more
9 complex. So this is a lot simpler to administer. The
10 rules do not require monitoring enforcement after the
11 fee is paid.

12 So there are some agencies, water agencies,
13 that even after you've paid the fee, after you've got
14 the meter, you still may have some FRC liability. If
15 you make changes at your household, you increase your
16 water usage, you build an addition, the department or
17 the water utility then can come back and ask for more,
18 more impact fees or more FRC money.

19 Our current rules they don't. You want a 5/8s
20 meter, you pay this amount, and you can build your
21 addition and put in an irrigation system, and there's no
22 change to the FRC charge. So that's something we like
23 now about the rules. And if we make them too complex,
24 then the department might be faced with having to
25 monitor that kind of activity, and that's a hard thing

1 to do. To monitor we may need additional personnel to
2 implement, administer, monitor and enforce the new rules
3 even after the meter version is complete.

4 Now, we flip flop. The yeses were over here.
5 Now they're over here. Just to keep you on your toes.
6 Let's go to the No. 3 yes. Offsets not available in
7 areas where water is adequate for facilities provided
8 elsewhere.

9 This is a little bit hard to understand, but
10 say there is an abundance of water, if the developer was
11 in control of land in one area and able to provide
12 source and storage in one area, could he get credit to
13 build developments in another area?

14 And it's a little bit hard to think of it that
15 way, but part of the intent on this is with state
16 monies. The state legislature gives the department
17 money or funds some projects and they're site specific.
18 So, for example, the state has drilled a well in Kapaa,
19 down by the Kapaa low income housing, and they drilled
20 the well and they paid for the well, and that's a lot of
21 money. It's, you know, three, four million dollars.

22 So we're proposing to change the rule to say --
23 to give the state credit for that well that they drilled
24 in Kapaa if they want to build affordable housing in
25 Koloa, and it only works if the water system is adequate

1 in Koloa. And from what I understand, apparently this
2 is a powerful reason to go -- a powerful way to go to
3 the legislature and say, If you're able to fund this
4 here, then I can help you over there. And it could
5 result in more funding coming out of this -- out of the
6 state legislature.

7 So we're kind of looking how we can draft
8 something like that. And in the future when we present
9 this rule change to you, there will be some language on
10 that.

11 Now, currently our policy doesn't limit a
12 single developer from taking all of the available water.
13 So now we just lifted the restriction in Lawai/Omao.
14 We've had meter restrictions there for I don't know how
15 many years, quite a few years.

16 And then also Kekaha/Waimea, we lifted meter
17 restrictions. So Kekaha/Waimea I think we built out
18 enough tanks, enough storage that we eliminated our
19 deficit, and now we have a surplus of water that's equal
20 to about 156 single-family dwellings. So if 156 people
21 come in to build new houses, then we can give out that
22 many 5/8s meters.

23 But the concern is that one developer will come
24 in and in one crack take up the whole 156 meters, a
25 large land owner or such. And we don't think that's

1 fair, and we want to be able to reserve some of the
2 surplus for smaller developers, for, you know, families
3 that want to do small subdivisions and small building
4 projects.

5 So we're looking to craft some rules to handle
6 that. And it's a hard thing to do to be fair to
7 everybody, but especially now with our catching up with
8 water systems and getting out of deficits and into
9 surplus, that we want to somehow to have a better handle
10 on that. So we're proposing some new rules there.

11 MR. NAKAYA: For this number, just for
12 clarification, I'm reading it right now there's a rule
13 saying that they're limiting one single developer from
14 taking all the available waters out or there's no rule
15 to that effect?

16 MR. EDDY: There's no rule to that effect.

17 MR. FUJIKAWA: Well, we do have policies
18 that prevent that from happening. The way it reads,
19 it's only the policy.

20 MR. EDDY: Right, that's right.

21 MR. FUJIKAWA: We do have administrative
22 policies right now that sort of this thing will
23 automatically happen so we're not forced to give the one
24 developer the all water.

25 MR. NAKAYA: But it's not in the rule?

1 MR. FUJIKAWA: It's not a rule. But I
2 don't know whether they want to make it a rule and make
3 it so rigid so you would lose your flexibility.

4 MR. NAKAYA: Okay.

5 MR. FUJIKAWA: Yeah, that's why it's a
6 policy right now. The manager gets to say.

7 MR. EDDY: So the policies read something
8 like, in some areas there's five meters to one lot and
9 water is available for no more than five meters to one
10 lot or something to that effect.

11 MR. NAKAYA: Okay.

12 MR. EDDY: No. 5 is allowance for payment
13 over time not in existing rules even though the
14 department may be paying over time. So right now you'd
15 pay in full, you pay FRC in full one time, perhaps
16 during the subdivision process. So it may be possible
17 to extend the payment over time. And, in fact, our
18 rules they still allow that.

19 And I forget which date it changed, but I was
20 reading our 1976 rules, and it allowed, I think it was a
21 five-year time period. And so you sign up for your FRC,
22 and you made it like a payment plan, a five-year payment
23 plan.

24 So if we are to increase our FRC rates
25 substantially above our current \$4,600, that may be an

1. option to, in effect, have the department finance. I
2 think the old rules calls out the schedule, and it calls
3 out the interest rate as well. I think it was seven
4 percent in the '70s. Interest was real high, yeah. So
5 it calls out the seven percent interest that the
6 developer would be paying to the department. And that
7 structure the department is financing now, the FRC.

8 So, no, we have this, Don't throw the baby out
9 with the bath water. The existing rules can be amended
10 as necessary without scrapping them and completely
11 starting over.

12 So it can see it's maybe a little internal
13 struggle amongst the staff, do we want to start anew and
14 bring in a whole new set of rules or can we tweak the
15 rules that we have now?

16 And so we're opening it up right now, you know.
17 Our manager says, Let's open it up. See what's
18 possible. What we can do. You know, the sky is the
19 limit. And we're trying to work with that and figure
20 out what is really best.

21 The FRC is time tested and predictable.
22 Implementing a completely new set of rules may cause
23 unintended effects. So that's a little bit of
24 hesitation and fear over something new with what we
25 cause, because we don't want to create unintended

1 situations. So we need to be very careful about how we
2 draft the new rules.

3 Okay. Now we're back over here to yes. So
4 this is our last slide on yeses and nos.

5 Okay. Yes, we need new rules, fees are based
6 on meter size, not on usage or gallons. So some people
7 might say it's not fair. I have a small house and I
8 have to pay the same fee as the guy that has a big
9 house. And so we're looking to find a way to make it
10 more fair and also make it manageable. And try to find
11 a way, because the people in the small house, they might
12 use as much water as the people in the big house. We
13 don't know. So we're looking for ways to make it fair,
14 to set the schedule by meter size as we do now. It is
15 also up for changes. We're looking at possibly changing
16 that to make it more fair. But we feel it needs to be
17 both fair and manageable and enforceable.

18 Okay. Yes, the existing rules do not comply
19 with state law. And so I'm not sure about this. We're
20 just going to go -- Andrea, why don't you say something.

21 MS. SUZUKI: That we're going to fix.
22 That's not for discussion, I don't think.

23 MR. NAKAYA: Is it a major violation?

24 MS. SUZUKI: I mean, we're not the only
25 ones that aren't in compliance. I mean, just saying.

1 But we could be the first that is in compliance, too.

2 MR. EDDY: And when we say the state law,
3 we're going back to the H.R.S. that we showed in the
4 first couple slides. So those are the laws that we've
5 got to comply with, those H.R.S. laws.

6 MS. SUZUKI: A lot of it is not in
7 compliance in form but in compliance in substance and a
8 little bit of it is both.

9 MR. EDDY: Okay. This last one here, No
10 rule for reinstallation charges. So what we're worried
11 about is if we increase the rates substantially, we
12 could have a flood of people come in and that have
13 already paid the FRC or maybe they're going to come in
14 and pay the FRC, get their meters, and then after the
15 rate goes up, discontinue their water service so that
16 they're no longer paying a service charge.

17 We really want people to pay that service
18 charge because the service charge is helping to cover
19 the cost of the depreciation of the service line and the
20 main line. And so we're looking for some mechanism we
21 can prevent that from happening.

22 Last one on the nos, Existing rules are
23 equitable to all customers with the same size meter.
24 Basing the fee on projected water usage may create a
25 disparity amongst neighbors where there is none now.

1 You may pay one FRC rate and your neighbor may pay
2 another one if we go to some kind of sliding scale.

3 And the key here is, if the meter is -- if the
4 charge is not based on meter size and we try to use it
5 based on estimated usage or protected usage, it's a real
6 hard thing to project what people will be using water.
7 Because they have to pay the fee before they ever get
8 the meter, before they ever use the water.

9 So one of the proposals out there right now is
10 to go to this fixed count. So the FRC could be based on
11 the number of fixtures in your house, which is kind of a
12 standard method for sizing of water meters. You count
13 up all the fixtures, the proposed bids, your sink
14 faucets, showers, bath, laundry machine. And you count
15 them up and you do your calculations, and then you come
16 up with an estimated water usage based on fixture count.
17 So that's trying to project somebody's usage based on,
18 in this case, a fixture count.

19 There's other ways of projecting water usage,
20 too. You can do it on the square footage of the lot,
21 the square footage of the house. In all those you're
22 projecting water usage, which is a hard thing to do
23 'cause things change over years.

24 So that's all the yeses and nos. Now here's
25 some discussion on how the proposed rules are going to

1 handle issues. So here's one we talked about. The
2 current rules tie up water with unlimited time to use,
3 while others may be told there is no availability of
4 water.

5 And so we're going to throw out some solutions,
6 and there may be -- there definitely are other
7 solutions. These are ones that are currently on the
8 table.

9 So to prevent somebody from tying up water, you
10 put a time limit on it. So you pay your FRC on a
11 certain date, and if you don't install your meter within
12 a certain time period, then there's either a penalty or
13 the repayment of charges.

14 The second one, our current rules require a
15 developer to pay the fees even though the plan is to
16 provide the service, resulting in DOW having to return
17 collected fees. So this is like the Kukuiula instance
18 where they paid both the cost of building the
19 infrastructure and the FRC.

20 So one solution would be to stop collecting
21 fees for developers that are going to provide the
22 service. So if we continue to use Kukuiula, they told
23 us, We're going to build the infrastructure. We are
24 building it. Here's our plans and we have a contractor.

25 Then the department would say, Okay, you're not

1 required to pay FRC.

2 Now the question still is, When do they get
3 subdivision approval? Do they have to completely build
4 a new water system or can we grant them subdivision
5 approval prior to that?

6 So a developer could pay the bond, bond the
7 improvements of Kukuiula, could be building their
8 infrastructure and then bond their infrastructure, and
9 we could give them final subdivision approval without
10 any FRC.

11 Okay. No allowance for credits in areas where
12 water is adequate for facilities provided elsewhere.

13 This is the state one, allow credits in areas
14 where system has adequate service for building projects
15 elsewhere. We talked about the state grant funds. So
16 this does require accounting work to track the credits
17 and project values. So this credit thing gets
18 complicated, but that is an option.

19 No. 4 there, no rule limiting single developer
20 from taking all the available water. So one solution is
21 to establish water system service zones. And we do have
22 water system service zones right now. They don't have
23 the effect of rule and effect of law. So we say zones.

24 MS. SUZUKI: Areas.

25 MR. EDDY: Areas. Water service areas. It

1 would be these lines that would delineate the service
2 area, would be in the essentially the cores of towns.

3 If you think of, say, Hanapepe/Eleele, the
4 current lines are drawn essentially around the existing
5 developed areas and exclude the large lots -- the large
6 undeveloped lots on each side of Eleele and Hanapepe.
7 Each side is bordered by very large lots. So the lines
8 would be drawn in between there, and it would encourage
9 infill within the service zone. And that's kind of in
10 concert with today's thinking of sustainability and
11 smart growth, just try to contain the infrastructure in
12 a smaller footprint and is a more cost effective method.

13 So this solution would be to establish and make
14 these service zones more concrete and then define the
15 rules of how it works. And so it does get complicated,
16 though. And so we need to be very careful how we craft
17 that.

18 No. 5, no allowance for payment over time even
19 though the department may be paying over time.
20 Solution: Allow payments over time. So it's possible.
21 Other agencies do it. It requires accounting, and it
22 can get messy. But if you are a developer and you have
23 to pay this fee, it may work to help you to build out
24 your development.

25 Current methodology is for fee to be determined

1 based on meter size. There's a very long range of
2 meters being used. Next slide.

3 I guess it doesn't show a solution here, but
4 the solution is to -- a proposed solution is to not base
5 the FRC on meter size but base it on something else like
6 usage or projected usage. So our new rule, diving into
7 that.

8 MS. SUZUKI: The legal portion that we're
9 going to have to address in the rules.

10 MR. NAKAYA: That's the state law?

11 MS. SUZUKI: Yeah, the state law.

12 MR. EDDY: In the new rules we're going to
13 try to tighten up this stuff.

14 MS. SUZUKI: The next couple things are
15 just a recitation of H.R.S. and what would be required.

16 MR. EDDY: So that's the end of the
17 presentation. I was really hoping to show you some of
18 the work that we've been doing to study and research
19 and try to improve upon our rules.

20 MR. NAKAYA: So, Bill, the primary reason
21 for rule changes are these nine items that was listed in
22 the pack that we just went over?

23 MR. EDDY: Yes, yes.

24 MR. NAKAYA: Just we're contemplating rule
25 changes to accommodate these issues or?

1 MR. EDDY: Yes, those are the reasons.

2 MR. NAKAYA: The primary. Okay.

3 MR. EDDY: Yeah, the rule needs to be
4 either amended or changed entirely.

5 Maybe one other reason is just collecting all
6 of the rules on FRC into one location also. That is a
7 big enough money generator, big enough source of money
8 to the department that it deserves its own part, and it
9 needs to be contained in one part to really
10 differentiate it from the water use rates. Make a, you
11 know, even more clear line in between water use rates
12 and FRC.

13 MR. NAKAYA: I need to be educated here.
14 So going back, there's rules and there's policies.
15 What's the --

16 MS. SUZUKI: So the board -- when the board
17 passes rules that are incorporated into their rules and
18 regulations, under H.R.S. it has the force and effect of
19 law. It's one of the only subagencies that has that
20 ability.

21 When it's policy, it's an internal policy that
22 the public doesn't have notice of and doesn't have that
23 weight that the board's rules and regulations have.

24 MR. NAKAYA: Okay.

25 MS. SUZUKI: It's like a -- it's not like

1 an SOP but it's like an internal --

2 MR. NAKAYA: Internal guidance.

3 MS. SUZUKI: -- guidance.

4 MR. NAKAYA: So some of these, I mean just
5 between us, some of these issues cannot be resolved by
6 just policy instead of being rules or? I mean, are you
7 guys recommending that these things should be rule
8 changes that we actually do?

9 MR. EDDY: Legally a rule is just so much
10 more powerful and it actually holds some weight of law.

11 MS. SUZUKI: Yes.

12 MR. EDDY: Whereas a policy can really be
13 challenged and easier to give exceptions for.

14 MR. NAKAYA: Yes, it's consistency.

15 MS. SUZUKI: And notice to the public.

16 MR. KANESHIRO: So the big question comes,
17 what comes first? FRC rate increase or rule changes?

18 MR. EDDY: Well, we plan to tackle them one
19 time into one rule change. Because our rates are in the
20 rules, but we are looking at maybe even pulling the
21 rates out of the rules. It's how other agencies handled
22 it, in Honolulu and such.

23 MS. SUZUKI: The other boards of water
24 supplies have a separate schedule that the rules refer
25 to the schedule. So they don't go through the rule

1 making procedure when they change their rate numbers.

2 MR. EDDY: Like the Honolulu board in the
3 Sunday paper, they increased their rates by 70 percent
4 or something like that.

5 MR. KANESHIRO: So that the effect of the
6 rules won't have any effect on the changes in the fees
7 then?

8 MS. SUZUKI: I think the reason why it was
9 separated between finance and rules committee, you know,
10 because finance is going to deal with what that number
11 should actually be.

12 MR. KANESHIRO: Right.

13 MS. SUZUKI: And then the rules committee
14 is going to deal with how we're going to operate,
15 especially considering the anticipated proposed increase
16 of the rules.

17 MR. KANESHIRO: But it's coming down to a
18 point where we're going to have to make some movement on
19 the facilities reserve charge because I believe some of
20 that is budgeted.

21 MS. SUZUKI: Yeah.

22 MR. KANESHIRO: In our next budget, you
23 know, fiscal coming up.

24 MS. SUZUKI: Yeah, and I think that's why
25 David's been pushing so hard to try and get the rules

1 committee to, you know.

2 MR. NAKAYA: Make a recommendation.

3 MS. SUZUKI: Yeah

4 MR. KANESHIRO: I see. Okay. But in
5 effect of law, if you look at it, either we can go ahead
6 and charge the facilities reserve charge, whatever it
7 is, if we decide to do that. The rule changes won't
8 really affect that increase or anything we do in the
9 facilities reserve charge?

10 MS. SUZUKI: The rule changes, yes, aren't
11 going to affect the numbers.

12 MR. KANESHIRO: Any effect on numbers?
13 Okay.

14 MS. SUZUKI: Yeah, they're going to affect
15 the process.

16 MR. KANESHIRO: Yes.

17 MS. SUZUKI: And yeah.

18 MR. KANESHIRO: Okay. That's --

19 MR. NAKAYA: But we should have it in
20 place, yeah.

21 MR. KANESHIRO: Okay. And I wanted to ask
22 the question because I wanted to be sure that if we go
23 through this process, we won't have some of the board
24 members say, Well, we need the rules established first
25 before I'm going to vote on the facilities reserve

1 charge.

2 MS. SUZUKI: Right, yes.

3 MR. KANESHIRO: So we're going to have some
4 explanation as to the --

5 MS. SUZUKI: Yeah, so it's, you know --

6 MR. KANESHIRO: It's more of a process than
7 it is comparatively to the real fees --

8 MS. SUZUKI: And it might -- you know, the
9 rule changes could possibly affect, you know -- because
10 it is such an increase in the cost.

11 MR. KANESHIRO: Yeah, if any changes go
12 through, it would be some point --

13 MR. NAKAYA: The method of collection.

14 MR. KANESHIRO: -- about of when you're
15 going to get it and things like that. Correct.

16 MS. SUZUKI: The method of collection could
17 affect your decisions on --

18 MR. KANESHIRO: But it won't really affect
19 the amount --

20 MS. SUZUKI: But other than that, there's
21 no really -- yeah.

22 MR. KANESHIRO: Yeah. I got it. Okay.
23 Any further questions by members or nonmembers of this
24 committee or non-committee or by staff? Any other
25 input?

1 MR. NAKAYA: So what's the next step?

2 MR. EDDY: The next step will be presenting
3 you an amended rule, presenting the committee an amended
4 rule.

5 MR. KANESHIRO: So you guys are going to be
6 doing all the work and present that to the committee?

7 MR. EDDY: Yes.

8 MR. KANESHIRO: Okay.

9 MS. SUZUKI: If you guys have any ideas,
10 you know, or comments, can you jot those down.

11 MR. KANESHIRO: Based on the presentation.

12 MS. SUZUKI: Yeah.

13 MR. KANESHIRO: Okay.

14 MS. SUZUKI: It's a lot to take in.

15 MR. NAKAYA: I'm not sure we're jumping
16 here, but say we go to the payment over time, is our
17 system capable of handling that method?

18 MS. SUZUKI: I think for the payment over
19 time for FRC there's some legal concerns I have on that
20 one, but I need to still work out with the staff before
21 that gets incorporated with what they're drafting.

22 MR. NAKAYA: What I'm more concerned about
23 is say the legality is fine. We go to the system. Can
24 our system handle or do we need to hire a special person
25 to handle that matter?

1 MR. EDDY: The financial system or the
2 water system?

3 MR. NAKAYA: Huh?

4 MR. EDDY: The financial system?

5 MR. FUJIKAWA: Central Pacific Bank.

6 MR. EDDY: We would have to, you know,
7 really --

8 MR. NAKAYA: Yeah, do we have to hire
9 additional staff to and it's more cost, right?

10 MR. KANESHIRO: There's monitoring, too,
11 right?

12 MR. NAKAYA: And enforcement and --

13 MR. EDDY: It would require additional
14 staff beyond what we have.

15 MR. KANESHIRO: Plus it would draw off our
16 current fiscal budget, do you know what I mean? Because
17 I don't think that rules apply to this current fiscal
18 and facility charge proposed on our coming budget year.
19 But anyway, it's a different issue. I had to throw that
20 out.

21 MR. EDDY: What it may do is stretch our
22 water systems a bit where we're giving a meter, we're
23 not getting payment for up front but over time. So we
24 may -- it may stress our water systems a bit more than
25 if it were paid up front. The monies would be available

1 to build out the new infrastructure right away.

2 MR. KANESHIRO: Okay.

3 MR. EDDY: But we figured a five year --
4 say if we go for the five-year payment plan, we think we
5 can handle that. Absorb that in the water system.
6 Additionally --

7 MR. KANESHIRO: I think there's a lot of
8 healthy discussions in the rules committee meetings
9 based on a proposal.

10 MS. SUZUKI: Not as healthy as the ones
11 that we have in the department.

12 MR. EDDY: Yes, there's been some healthy
13 ones.

14 MR. KANESHIRO: Well, the issues should be
15 resolved by then, before they get to us, shouldn't they?

16 All right. Any further questions?

17 MR. NAKAYA: No.

18 MR. KANESHIRO: If not, the rules committee
19 workshop is now adjourned.

20 (Concluded at approximately 10:32 a.m.,

21 February 9, 2012.)

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1 STATE OF HAWAII)
) ss.
 2 COUNTY OF KAUAI)

3 I, TERRI R. HANSON, RPR, CSR 482, do hereby
 4 certify:

5 That on Thursday, February 9, 2012, at 9:23 a.m.
 6 that the foregoing RULES COMMITTEE WORKSHOP, County of
 Kauai, Board of Water Supply, was held;

7 That the foregoing proceedings were taken down by
 8 me in machine shorthand and were thereafter reduced to
 9 typewritten form under my supervision; that the
 foregoing represents to the best of my ability, a true
 and correct transcript of the proceedings had in the
 foregoing matter.

10 I certify that I am not an attorney for any of
 11 the parties hereto, nor in any way concerned with the
 cause.

12 DATED this 22nd day of February, 2012, in Kapaa,
 13 Hawaii.

14 

15 TERRI R. HANSON, CSR 482
 16 Registered Professional Reporter

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