AGENDA

1. ROLL CALL

2. ACCEPTANCE OF AGENDA

3. MEETING TRANSCRIPTS:
   Review and Acceptance of Transcript – February 9, 2012

4. ADJOURNMENT
COUNTY OF KAUA'I
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
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
RULES COMMITTEE WORKSHOP

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

MS. SUZUKI: Daryl Kaneshiro.

MR. KANESHIRO: Here.

MS. SUZUKI: Larry Dill.

MR. DILL: Here.

MS. SUZUKI: Clyde Nakaya.

MR. NAKAYA: Here.

MS. SUZUKI: We have people.

MR. DILL: We have three people.

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

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

MR. NAKAYA: Move to accept.

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

MS. SUZUKI: Yeah.

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

MS. SUZUKI: It doesn't have to be so formal.
MR. KANESHIRO: I'm acting as a committee member. So I'll go ahead and second it. I'm just filling in as the chair today for this committee, but I'm actually a committee member. So with that, acceptance of the agenda, I guess, I've also seconded it. So majority rules.

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

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

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

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

A short history on our FRC, the current rule has been in effect since 2004. And prior to that there
was a major change to the FRC rules in 1993, and also a major change in 1979. And then prior to '79 and in particular '76 we have some good documentation. I was looking through the records, and it gets harder to find information earlier than '76. But we believe that the FRC has been in place since the inception of the Department of Water in the early '60s.

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

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

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

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

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

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

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

But most importantly I'd like to go to this No. 10 there, it defines facilities reserve charge. It says
it shall mean the fee paid -- the fee to be paid by
subdividers or, when applicable, new costumers as their proportionate share in improvement to the department's water system.

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

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

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

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

Okay. Let's continue on, and please let me know if you have any questions.
MR. DILL: Mr. Chair. Okay. Just to elaborate on what you spoke on a minute ago. If a 25-acre parcel qualifies for 5 dwelling units, and somebody says, I'm going to serve these five dwelling units with one 5/8s meter, you have the ability to charge FRC for five units, though, according to your current rules.

MR. EDDY: That's right.

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

MR. EDDY: We do, yeah.

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

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

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

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

MR. DILL: Right.

MR. EDDY: Sometimes you see nine meters all lined up. And I think more often than not, it's
individual meters rather than a large master type meter.

MR. DILL: Okay.

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

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

MR. EDDY: Gregg, can I ask you.

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

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

MR. DILL: Right.

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

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

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

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

MR. FUJIKAWA: Yeah, because --

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

MR. FUJIKAWA: Because part -- if you go to
Part 4, that's where the rules schedule for the FRC charges are. You know, Part 4 is the rates.

MR. DILL: Right.

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

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

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

And the more primary one everybody talks about is by meter size. So the bigger the meter, the higher the charge, but it's defined in Part 4.
MR. DILL: Okay. All right. Thank you.

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

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

Okay. Now I'd like to skip all the way to the second stapled sheet. The heading says, Section VII, Facilities Reserve Charge. So this is jumping to Part 4 of the rules, and there's no highlighted things on this sheet. Right here. Right here. Yeah. On the -- I think the front page of this guy. Yeah, right here.
Okay. So now we're in Part 4, which is fixing rates. So you can see that our FRC is scattered throughout our rules right now. It's in Part 2, Part 3, Part 4. And the proposal is to create a Part 5, we'll see later on, and to bring everything into the Part 5 so it's not scattered in different parts.

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

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

MR. DILL: On these numbers, you mentioned at the beginning under Section I definitions the new consumers pay the FRC as their proportionate share in improvements to the department's water system. So am I correct in assuming that the numbers that were going to be given by SCIC will be based on cost of service
essentially or actual costs of their -- of the
improvements, and then it was broken down to their
proportionate share to serve, say, a dwelling unit?

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

MR. EDDY: Right.

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

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

MR. EDDY: Correct, yes.

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

And then second question would be, is this
source, storage and transmission? Does it include distribution?

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

MR. DILL: Okay.

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

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

MR. DILL: Right.

MR. EDDY: The method that's used is projecting the building needs over a period of time, the projected growth and the improvements that will be required to sustain that projected growth. So the growth may be 20,000 people, 20,000 additional people in 20 years. And so we know the size of the water system that we have to build to accommodate the growth in population. And then the cost of the infrastructure, the source, storage and transmission is estimated. The figures are then calculated from that information.
And in this particular study, we've also added the debt service which previously may not have been factored in knowing that to build out this infrastructure we're going to need to borrow money and we need to have those costs included in the study.

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

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

MR. EDDY: For the actual cost.

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

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

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

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

All right. So I'm going to jump back into our PowerPoint here. So the question is, Do we need new rules? And the department is saying, We do need new
rules. And here's some reasons why yes, and then we have a column here of no. And there may be some room for -- not scrapping the new rules but revising the rules and, you know, how much change do we want to see? So I'd like to go over these one by one.

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

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

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

(Larry Dill exited meeting.)

MR. KANESHIRO: I have a question on that.
With the new rules, I'm certain you won't be able to resolve those issues with the past one that's already paid, right? I should be asking that later, yeah. It's okay. Scratch my question.

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

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

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

MR. KANESHIRO: Oh, for the past?

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

MR. KANESHIRO: Okay.

MR. EDDY: So that would encourage the current developers who have paid FRC to apply for the
meter and get it in right away. Otherwise, you'll be faced with paying the higher fee.

MR. KANESHIRO: At the current level.

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

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

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

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

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

MR. KANESHIRO: But you're not only targeting developers, but you're going to have to target every single household, too. Do you know what I mean? Because every single household, if you think about it, some of them in the '70s may have applied for a meter
but currently never built it. So it's not only
developers. If you're going to go all the way across,
you've got to go all the way across.

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

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

MR. EDDY: It's very difficult.

MR. KANESHIRO: '82, '82 possibly.

MR. EDDY: It's very complicated.

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

MR. EDDY: It's tough.

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

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

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

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

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

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

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

And so Kukuiula paid FRC in full for -- I'm not exactly sure how many lots they paid up front. And then at the same time they were building their improvements and they got some -- at some point they got subdivision approval and were allowed to sell. Then they finished their improvements, and now the money that they paid to the Department of Water for the FRC is now due to be
refunded to them. So they paid both. They paid FRC and
paid for the improvements. And they may have been
financially able to do that, but many developers aren't.

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

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

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

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

And the department has really been hammering
for a lot of years into those reasons, and the
developers understand the rules now. And to change them
is going to throw some things into confusion. It's
going to require an educational effort for our staff and
developers as well.

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

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

Our current rules they don't. You want a 5/8s
meter, you pay this amount, and you can build your
addition and put in an irrigation system, and there's no
change to the FRC charge. So that's something we like
now about the rules. And if we make them too complex,
then the department might be faced with having to
monitor that kind of activity, and that's a hard thing
to do. To monitor we may need additional personnel to implement, administer, monitor and enforce the new rules even after the meter version is complete.

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

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

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

So we're proposing to change the rule to say -- to give the state credit for that well that they drilled in Kapaa if they want to build affordable housing in Koloa, and it only works if the water system is adequate
in Koloa. And from what I understand, apparently this is a powerful reason to go -- a powerful way to go to the legislature and say, If you're able to fund this here, then I can help you over there. And it could result in more funding coming out of this -- out of the state legislature.

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

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

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

But the concern is that one developer will come in and in one crack take up the whole 156 meters, a large land owner or such. And we don't think that's
fair, and we want to be able to reserve some of the surplus for smaller developers, for, you know, families that want to do small subdivisions and small building projects.

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

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

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

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

MR. EDDY: Right, that's right.

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

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

MR. NAKAYA: Okay.

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

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

MR. NAKAYA: Okay.

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

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

So if we are to increase our FRC rates substantially above our current $4,600, that may be an
option to, in effect, have the department finance. I think the old rules calls out the schedule, and it calls out the interest rate as well. I think it was seven percent in the '70s. Interest was real high, yeah. So it calls out the seven percent interest that the developer would be paying to the department. And that structure the department is financing now, the FRC.

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

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

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

The FRC is time tested and predictable. Implementing a completely new set of rules may cause unintended effects. So that's a little bit of hesitation and fear over something new with what we cause, because we don't want to create unintended
situations. So we need to be very careful about how we
draft the new rules.

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

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

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

MS. SUZUKI: That we're going to fix.

That's not for discussion, I don't think.

MR. NAKAYA: Is it a major violation?

MS. SUZUKI: I mean, we're not the only
ones that aren't in compliance. I mean, just saying.
But we could be the first that is in compliance, too.

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

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

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

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

Last one on the nos, Existing rules are equitable to all customers with the same size meter. Basing the fee on projected water usage may create a disparity amongst neighbors where there is none now.
You may pay one FRC rate and your neighbor may pay
another one if we go to some kind of sliding scale.

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

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

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

So that's all the yeses and nos. Now here's
some discussion on how the proposed rules are going to
handle issues. So here's one we talked about. The current rules tie up water with unlimited time to use, while others may be told there is no availability of water.

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

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

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

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

Then the department would say, Okay, you're not
required to pay FRC.

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

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

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

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

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

MS. SUZUKI: Areas.

MR. EDDY: Areas. Water service areas. It
would be these lines that would delineate the service area, would be in the essentially the cores of towns.

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

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

No. 5, no allowance for payment over time even though the department may be paying over time.

Solution: Allow payments over time. So it's possible. Other agencies do it. It requires accounting, and it can get messy. But if you are a developer and you have to pay this fee, it may work to help you to build out your development.

Current methodology is for fee to be determined
based on meter size. There's a very long range of meters being used. Next slide.

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

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

MR. NAKAYA: That's the state law?

MS. SUZUKI: Yeah, the state law.

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

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

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

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

MR. EDDY: Yes, yes.

MR. NAKAYA: Just we're contemplating rule changes to accommodate these issues or?
MR. EDDY: Yes, those are the reasons.

MR. NAKAYA: The primary. Okay.

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

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

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

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

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

MR. NAKAYA: Okay.

MS. SUZUKI: It's like a -- it's not like
an SOP but it's like an internal --

MR. NAKAYA: Internal guidance.

MS. SUZUKI: -- guidance.

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

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

MS. SUZUKI: Yes.

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

MR. NAKAYA: Yes, it's consistency.

MS. SUZUKI: And notice to the public.

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

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

MS. SUZUKI: The other boards of water supplies have a separate schedule that the rules refer to the schedule. So they don't go through the rule
making procedure when they change their rate numbers.

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

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

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

MR. KANESHIRO: Right.

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

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

MS. SUZUKI: Yeah.

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

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

MR. NAKAYA: Make a recommendation.

MS. SUZUKI: Yeah

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

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

MR. KANESHIRO: Any effect on numbers?

Okay.

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

MR. KANESHIRO: Yes.

MS. SUZUKI: And yeah.

MR. KANESHIRO: Okay. That's --

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

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

MS. SUZUKI: Right, yes.

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

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

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

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

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

MR. NAKAYA: The method of collection.

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

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

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

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

MR. KANESHIRO: Yeah. I got it. Okay.

Any further questions by members or nonmembers of this committee or non-committee or by staff? Any other input?
MR. NAKAYA: So what's the next step?

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

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

MR. EDDY: Yes.

MR. KANESHIRO: Okay.

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

MR. KANESHIRO: Based on the presentation.

MS. SUZUKI: Yeah.

MR. KANESHIRO: Okay.

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

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

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

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

MR. NAKAYA: Huh?

MR. EDDY: The financial system?

MR. FUJIKAWA: Central Pacific Bank.

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

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

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

MR. NAKAYA: And enforcement and --

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

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

MR. EDDY: What it may do is stretch our water systems a bit where we're giving a meter, we're not getting payment for up front but over time. So we may -- it may stress our water systems a bit more than if it were paid up front. The monies would be available
to build out the new infrastructure right away.

    MR. KANESHIRO: Okay.

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

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

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

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

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

    All right. Any further questions?

    MR. NAKAYA: No.

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

    (Concluded at approximately 10:32 a.m., February 9, 2012.)

    * * * * *
STATE OF HAWAII

COUNTY OF KAUA\n
I, TERRI R. HANSON, RPR, CSR 482, do hereby certify:

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

That the foregoing proceedings were taken down by me in machine shorthand and were thereafter reduced to 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.

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

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

[Signature]

TERRI R. HANSON, CSR 482
Registered Professional Reporter