

Small Business Regulatory Review Board

MEETING MINUTES

August 17, 2023

ZOOM RECORDING

- I. **CALL TO ORDER:** Chair Albitz called the meeting to order at 10:03 a.m., with a quorum present.

MEMBERS PRESENT:

- Mary Albitz, Chair
- Robert Cundiff, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- Sanford Morioka
- Tessa Gomes
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch
- Garth Yamanaka
- William Lydgate
- James (Kimo) Lee

STAFF: DBEDT

Dori Palcovich
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF JULY 20, 2023 MINUTES**

Mr. Mark Ritchie motioned to accept the July 20, 2023 meeting minutes, as presented. Mr. Jonathan Shick seconded the motion and the Board members unanimously agreed.

III. **NEW BUSINESS**

- A. Discussion and Action on Proposed Amendments to BWS Rules and Regulations Chapter I – V, Section 54 – 26 for the Adoption of New Water Rates and Charges, promulgated by the Board of Water Supply, City and County of Honolulu

Mr. Ernie Lau, Manager and Chief Engineer at the City and County of Honolulu Board of Water Supply (BWS), explained that all small businesses receiving water service from the BWS will be affected by the proposed water rate adjustments for all its customer classes – Single-Family and Multi-Unit Residential, Non-Residential, Agricultural, Non-Potable, and Recycled Water. These rate adjustments are part of a 5-year rate proposal. Community presentations and briefings on the rate proposal will be held in August 2023. Proposed rate changes would begin January 1, 2024

Mr. Lau provided the members with a presentation of the proposed updates to BWS Water-Rates and Charges. He discussed the history of BWS, which was created in 1929, stating that it is semi-autonomous and has a separate board that governs the policies and water rates of the department. As BWS is financially self-sufficient due to incoming water fees, it operates essentially as a utility. BWS services approximately 145 million gallons of water per day to one million customers on Oahu with 170,000 active services, 13 treatment facilities, and water sources all over the island.

A rate study was done in 2017 and BWS did not foresee a pandemic in its future projections. In 2023, inflation went up a much higher rate and has decreased BWS purchasing power. BWS has about 8% less purchasing power than projected. Power costs have also trended upward driven by fuel costs and the energy cost factor is 20% over budget than what was projected in the 2017 rate study.

Mr. Lau explained that the 2021 Red Hill response requires large investments in new BWS facilities. Monitoring wells for information on how the contamination is moving and exploratory wells to find new sources outside of its path. As a precaution, BWS had to shut down 3 wells and this caused BWS to lose source capacity.

BWS is proposing rates for 5 ½ - year period beginning January 1, 2024 through June 30, 2029. BWS considered alternative rate structures for non-residential (including small business) customers and determined the uniform rate per 1,000 gallons, regardless of usage, to be the most equitable, easiest to understand, and least expensive to implement. It was also decided to continue to provide substantially discounted rates (60% of cost of service) to agricultural customers.

Increases in the dollar amounts of direct costs experienced by small business customers will vary depending on the size of their water meter and actual water use. The percentage increases are as follows: January 1, 2024, 10%; July 1, 2024, 10%; July 1, 2025, 9%; July 1, 2026, 8.5%; July 1, 2027, 8%; July 1, 2028, 8%. There are no indirect costs to any customers as a result of these proposed changes.

Mr. Lau stated that these increases are necessary to continue to fund the operations and capital improvement program of the BWS at a level necessary to continue to provide safe and dependable water to its customers. The BWS is a self-supporting, semi-autonomous agency that receives no tax revenues. Nearly all of the revenue is from water sales to customers.

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Second Vice Chair Jonathan Shick motioned to move the proposed amended rules to the Mayor for public hearing. Mark Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui, promulgated by Department of Land and Natural Resources (DLNR)

Discussion Leader and Second Vice Chair Shick noted that agenda items III. New Business B., C., and D. will be presented together. Mr. David Sakuda, DAR Fisheries Program Manager confirms and acknowledges that all three rules will be presented together by Mr. Russel Sparks, DAR Maui District Aquatic Biologist.

Mr. Sparks explained that the proposed rule changes would increase permit fees by \$725/year for smaller vessels (<25 passengers), \$1,475/year for mid-sized vessels (25-74 passengers) and \$2,975/year for larger vessels (>75 passengers). There are forty four boats (Snorkel, Dive, or Scuba dive operations) that are currently permitted to take passengers into the Molokini Marine Life Conservation District will be affected by these rule amendments.

These permit fee increases will amount to approximately \$61,500 dollars being collected by the Department per year. Of this sum, \$12,000 will be paid to OHA as revenue from submerged ceded lands, with the additional \$49,500 being used to administer the permits, correspond with and ensure compliance of the permit holders, operate a remote live web camera system within the MLCD, provide for stepped up enforcement of rules in the area, conduct routine resource monitoring and continue to work with permit holders to reduce crowding and potential impacts to marine ecosystem within the MLCD.

Mr. Sparks presented DAR's proposal of development and a timeline of significant events. The proposals moving forward are to reduce crowding, improve user experience and reduce impacts to the Molokini Shoal Ecosystem. DAR worked through various options for regulating the use of Molokini by the commercial tour operators and made significant changes to the day use mooring rules allowing for more flexibility in use of the area, strengthened language that allowed for only permitted operators to take tours to Molokini, and changed early plans on fees from per person to based on passenger capacity to reduce fee amounts and the administrative burden on the companies, etc.

DAR conducted extensive planning and scoping with all permit holders. DAR gathered input and adjusted the fee plan several times over a 3-year planning process. Fees were reduced and changed to a set fee rather than a per person fee to reduce record keeping and compliance requirements on the operators and agreed to reduce fees given other funding options to help cover the maintenance and upkeep of the day use mooring infrastructure within the MLCD.

Discussion Leader and Second Vice Chair Shick had a question relating to the operators that choose not to use a permit for an extended period of time, was there any feedback. Mr. Sparks responded that the department would like to reduce and limit the amount of those permits. Vessels and commercial operators usually sell their permits with the operation. If someone does not use their permit, for example, three operators have lost their vessels in the Lahaina fire, there is no force of operation to maintain their permit.

Mr. Mark Ritchie commented that it is a very comprehensive approach to managing MLCD, and there has been a lot of work done with the stakeholders.

Chair Mary Albitz mentions that the SBRRB received a request from Mr. Tim Lyons of the Ocean Tourism Coalition on Maui to postpone DAR's presentation to the board. Mr. Sparks states that the testimony provided to the board was directly towards the permit conditions and the ability to make changes to the permits as needed. DAR decided to add language of a 90-day advance notice to the permit holders to be transparent. Ms. Albitz adds that given what has happened in Lahaina with the fires, does that also mean that there might be a way to waive or discount the fees to the permit holders that were affected by the Lahaina fire. Mr. Sparks responds that there is language in the draft rules that does give DAR the authority to change, waive or reduce fees if need be.

Discussion Leader and Second Vice Chair Shick motioned to move the proposed amendments to HAR Chapter 13-31 Molokini Shoal Marine Life Conservation District, Maui to public hearing. Sanford Morioka seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on Proposed Amendments to HAR Chapter 13-230, General Provisions, promulgated by DLNR

See discussion and presentation under B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui.

Mr. Mark Ritchie motioned to move the proposed rule to public hearing. Second Chair Shick seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on Proposed Amendments to HAR Chapter 13-257, Day-Use Mooring Rules, promulgated by DLNR

See discussion and presentation under B. Discussion and Action on Proposed Amendments to HAR Chapter 13-31, Molokini Shoal Marine Life Conservation District, Maui.

Second Chair Shick motioned to move the proposed rule to public hearing. Mr. Sanford Morioka seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes (HRS)

1. Discussion and Action on Proposed Changes to Section 201M-5 (a) Small business regulatory review board; powers, HRS

Chair Albitz explained that the SBRRB will need to vote on what bill option will be a part of the Governors administrative package submitted by DBEDT. The reason for the suggested change is because the SBRRB was approached by small businesses to give input on proposed legislation.

Option 1 adds in paragraph (a) line 6; a small business regulatory review board to review any proposed new or amended rule or legislation affecting small businesses. Option 1 clarifies the intent of the SBRRB powers to include the review of legislation affecting small businesses.

Option 2 adds in paragraph (a) line 17; or adopted by a state agency or for review of any legislation affecting small businesses. And paragraph (f) line 10; proposed, amended, or adopted by a state agency or for review of any legislation affecting small businesses. Option 2 clarifies that the SBRRB has the authority to review legislation affecting small businesses in response to a request from a small business owner.

Mr. Ritchie makes a comment that he likes the second option because it is more specific for the situation. Vice Chair Shick adds, from a legal standpoint neither bill restricts the board in any way.

Mr. Ritchie motioned to submit bill option 2 to the legislature to be a part of the Governors administrative package submitted by DBEDT. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

2. Presentations to Industry Associations

Chair Albitz mentioned a follow up letter to those organizations who have not responded to the first letter sent.

Mr. Ritchie mentions the Leeward Community College Small Business Fair, September 16th.

3. Staff's Small Business Outreach

Ms. Ariola continues to perform monthly outreach.

4. Director Letters and Meetings with State Agencies and Counties

Chair Albitz suggests an email be sent to the board members who discussion leader assignment agency was not approached yet.

- V. **NEXT MEETING** - Thursday, September 21, 2023 at 10:00 a.m., in conference room 405 at Leiopapa A Kamehameha Building – State Office Tower – 235 S. Beretania Street, Honolulu, HI 96813.
- VI. **ADJOURNMENT** – The meeting adjourned at 11:37 p.m.