

STATE OF HAWAII


DEPARTMENT OF HAWAIIAN HOME LANDS

December 18, 2017

TO: Chairman and Members, Hawaiian Homes Commission

FROM: Hokulei Lindsey, Administrative Rules Officer  
Office of the Chairman

SUBJECT: Approval of Recommended Changes to the Draft  
Administrative Rules for the Water Systems and to  
Proceed to Rulemaking under Chapter 91, Hawaii Revised  
Statutes



RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission approve the recommended changes to the draft administrative rules for the Water Systems and to proceed to rulemaking under Chapter 91, Hawaii Revised Statutes.

DISCUSSION:

In accordance with the Administrative Rules Development, Review, and Amendment Process adopted by the Hawaiian Homes Commission in July 2015, the Department of Hawaiian Home Lands conducts Beneficiary Consultation before initiating rulemaking under Ch.91, HRS. The HHC approved the DHHL's request to proceed with beneficiary consultation regarding proposed amendments to Title 10, Hawaii Administrative Rules, including the draft rules for water systems, at its April 2017 meeting. The DHHL conducted beneficiary consultation meetings statewide from June 2017 to August 2017 and later presented the beneficiary consultation report to the HHC. The beneficiary consultation report was accepted by the HHC at its October 2017 meeting.

Recommended Changes to Draft Water Systems Rules

Several significant changes were made to clarify and, where possible, streamline the draft rules by removing language that was better suited for department procedure rather than administrative rule. The document was also reorganized and, in some cases, sections were consolidated. Immediately below is a summary list that highlights the changes with the most

substantive impact; the analysis chart from the Beneficiary Consultation Report is reproduced at the end of the list of recommendations. Attached as Exhibit A is the draft Water Systems rules inclusive of all the recommended changes.

- a. **Create a new Chapter.** Previously numbered to be included in Chapter 4, Management of Hawaiian Home Lands, staff recommends a new chapter dedicated to the water systems. The new chapter, "Chapter 10-4.1, Management of Water Systems," should be organized in three subsections: General Provisions, Hawaiian Home Lands Public Water Systems, and Hawaiian Home Lands Non-Potable Water Systems.
- b. **Create separate subchapters for Public Water Systems and non-potable water systems.** In response to beneficiary comments related to the Puukapu non-potable water system and to provide necessary clarity between the public health and safety requirements of a Public Water System and the management of a water system that does not deliver water for human consumption, staff recommends creating subchapters that are Public Water Systems-specific and non-potable water systems-specific.
- c. **§10-4.1-9(b) Payment of bills and delinquency.** In response to beneficiary comments related to creating different payment plan options, staff recommends adding a provision that would allow for "alternative payment methods" once an account becomes delinquent if special circumstances exist: "The commission may determine a finite set of extenuating circumstances under which a lessee consumer may qualify for alternative payment methods, provided the lessee is also in compliance with all lease conditions."
- d. **§10-4.1-10 Discontinuation of service.** In response to beneficiary comments related to working with beneficiaries, staff recommends adding an appeal process whereby a consumer who wishes to dispute the shut off has a five day period to request a billing conference that would be conducted by a district office supervisor from another district office that manages a department water system. If dissatisfied with the outcome, the consumer may appeal to the deputy to the chairman and, a lessee consumer may then request a contested case hearing with the commission.
- e. **§10-4.1-23 Water spigots.** Based on beneficiary feedback that tended toward a lack of support for the concept, staff recommends narrowing the section that would provide for

water spigots managed by the department. The recommended changes would maintain the provision for the management of those spigots that currently exist.

f. **§10-4.1-31 Water service rates.** Specific to the Public Water Systems, the original draft provided only that the commission would establish water service rates. Staff recommends the following standard be included: "The commission shall establish water service rates based upon administration, operation, and maintenance costs, and may take into consideration industry standards of affordability, equity, and sustainability; the factor of equity notwithstanding any provision or obligation under the act. A copy of the rates and fees schedule shall be publicly posted and available upon request."

g. **§10-4.1-42 Rate schedule.** Specific to the Puukapu system, staff recommends the same standard be applied to rate setting as that used to set rates for the Public Water Systems except that the commission is also required to determine whether the billing will be calculated from meter readings or whether it will be a flat rate.

The chart below, reproduced from the Beneficiary Consultation Report accepted at the October 2017 HHC meeting, summarizes the transcribed consultation meeting notes into patterns or themes and provides a staff response. It also identifies several specific suggestions from beneficiary comments that resulted in a recommendation to change the draft proposals.

Water Systems:

Question	Draft Provision	Beneficiary Comments	Response
What are the most important kuleana for consumers? For DHHL?	<ul style="list-style-type: none"> <li>• Global.</li> </ul>	<ul style="list-style-type: none"> <li>• Consumer kuleana responses almost exclusively revolved around two ideas: 1. <i>Resource stewardship</i>, including to conserve water, not to waste, and to fix leaking pipes and fixtures; and 2. <i>Paying your water bill</i>.</li> <li>• DHHL kuleana responses can be</li> </ul>	<ul style="list-style-type: none"> <li>• The comments to this question are revealing of perspective: consumer kuleana comments are few and limited while DHHL kuleana comments are numerous and expansive. The concept of <i>kuleana</i> is reciprocal; even though not explicitly</li> </ul>

		<p>categorized into three themes: 1. <i>System efficiencies</i>, including the use of alternative energy and technology to keep costs down, and making it easier to make a bill payment by offering electronic bill payment options; 2. <i>Working with the counties</i> on source development and source protection, and to lower rates or provide a subsidy for those on the county water systems; and 3. <i>Resource protection and stewardship</i> to care for the water shed and aquifer.</p>	<p>articulated, there is a corresponding “consumer kuleana” for every “DHHL kuleana.” The comments can be used to inform changes to the draft.</p> <ul style="list-style-type: none"> <li>• The proposed rules are about moving toward long-term sustainability of the resource and of the system. The department is aggressively pursuing system efficiencies. The rules are also about running a water utility and what it takes both fiscally and operationally to keep the systems safe and to deliver water to the consumer.</li> </ul>
<p><b>What are reasonable enforcement provisions?</b></p>	<ul style="list-style-type: none"> <li>• 10-4-78, 10-4-79, 10-4-80, 10-4-81, and 10-4-82 impose fines, require payment of bills, authorize suspension of service where delinquency exists, and provide process for restoration of service.</li> </ul>	<ul style="list-style-type: none"> <li>• Most comments suggested working with a lessee who is delinquent in bill payment and/or provide assistance to those in need like kupuna on a fixed income.</li> <li>• Concerns were expressed about actual enforcement and the staffing levels necessary for effective implementation of the enforcement provisions.</li> <li>• A fair number of comments recognized that the</li> </ul>	<ul style="list-style-type: none"> <li>• Overall, the responses tended to reflect the situation of the commenter. Those on county water systems tended to be less sympathetic regarding delinquencies and suspension of service; however, they also were cognizant that input from those on the DHHL systems should be prioritized over those not on DHHL systems. Those on DHHL water systems tended to be more protective but even</li> </ul>

		<p>draft provisions are similar to the Board of Water Supply or County systems enforcement.</p>	<p>among those voices, opposition to suspension of service was not overwhelming or even a majority opinion.</p> <ul style="list-style-type: none"> <li>• As a practical matter, comments are accurate that implementation and enforcement of water systems rules will require an increase in staffing, technology, and resources.</li> <li>• Staff recommends no substantive change to the enforcement provisions. There are, however, several areas of clarification and technical changes that are required.</li> <li>• Changes could be made to the payment plan provision, which would allow alternative “work-out” methods. What the possibilities are and whether they are actually feasible requires further research and consideration.</li> </ul>
<p><b>How should public water spigots be managed?</b></p>	<ul style="list-style-type: none"> <li>• 10-4-65 provides for “public water spigots”</li> </ul>	<ul style="list-style-type: none"> <li>• Two management concepts were clear: one was that it should not be “public” water spigots, use should be limited to beneficiaries; and the second related to</li> </ul>	<ul style="list-style-type: none"> <li>• Staff recommends further research and discussion about whether the spigots are feasible given the level of management that would be necessary.</li> </ul>

		<p>monitoring access: the consistent theme was technology, whether an electronic key card, credit card swipe, coin machine, access code, or DHHL water app for phones.</p> <ul style="list-style-type: none"> <li>• Some comments were not supportive of the idea, which was a surprising response because the question focused on management; the question of whether or not there should be spigots was secondary. These comments expressed that it would be unfair and that spigots would undermine the enforcement provisions—why enforce if DHHL is offering free water down the street? They also expressed that the systems should operate “in the black” before open spigots are made available.</li> </ul>	<ul style="list-style-type: none"> <li>• Staff, however, recommends that the provision for water spigots remain in the rules because DHHL has existing water spigots that beneficiaries access. At minimum, the rules should address management of the existing spigots.</li> </ul>
<p><b>Water rates are set using operating and maintenance costs. What other criteria should be considered when setting rates?</b></p>	<ul style="list-style-type: none"> <li>• 10-4-76 relates to water rates and rate setting</li> </ul>	<ul style="list-style-type: none"> <li>• Comments centered on ways to bring operating costs down to lower rates, offering subsidies for beneficiaries in economically depressed areas and who are kupuna, and offering credits for low use due to conservation or high</li> </ul>	<ul style="list-style-type: none"> <li>• A rate study is being conducted which will provide the department with data and analysis critical for evaluating rate structure and strategies for affordability.</li> <li>• Staff recommends further research and discussion.</li> </ul>

		efficiency/low flow fixtures.	
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RECOMMENDATION:

Staff respectfully requests approval of the motion as stated above.





DEPARTMENT OF HAWAIIAN HOME LANDS

Adoption of Chapter 10-4.1  
Hawaii Administrative Rules

[ ]

1. Chapter 10-4.1, Hawaii Administrative Rules, entitled "Management of Water Systems", is adopted to read as follows:

"HAWAII ADMINSTRATIVE RULES

TITLE 10

DEPARTMENT OF HAWAIIAN HOME LANDS

CHAPTER 4.1

MANAGEMENT OF WATER SYSTEMS

Subchapter 1 General Provisions

\$10-4.1-1	Purpose
\$10-4.1-2	Applicability
\$10-4.1-3	Definitions
\$10-4.1-4	General conditions for water service
\$10-4.1-5	Water pressure conditions and elevation agreement
\$10-4.1-6	Application for water service
\$10-4.1-7	Installation of water service
\$10-4.1-8	Responsibility for equipment
\$10-4.1-9	Payment of bills and delinquency

§10-4.1-10 Discontinuance of service  
 §10-4.1-11 Restoration of water service  
 §10-4.1-12 Meter test and adjustment of bill  
 §10-4.1-13 Underground leak adjustment  
 §10-4.1-14 Water charge adjustment  
 §10-4.1-15 Obstructed meter fine  
 §10-4.1-16 Tampering fine  
 §10-4.1-17 Accessing the consumer's premises  
 §10-4.1-18 Cross-connection control and  
                   backflow prevention  
 §10-4.1-19 Interruption of water supply  
 §10-4.1-20 Meter disconnection or reconnection  
 §10-4.1-21 Change in service administration fee  
 §10-4.1-22 Department fire hydrants and fire  
                   protection  
 §10-4.1-23 Water spigots  
 §10-4.1-24 Consumer's sale of water  
 §10-4.1-25 Electrical grounding  
 §10-4.1-26 Unscheduled meter replacement  
 §10-4.1-27 Compensation  
 §§10-4.1-28 to 10-4.1-30 (Reserved)

Subchapter 2 Hawaiian Home Lands Public Water  
Systems

§10-4.1-31 Water service rates  
 §10-4.1-32 Meter reading and rendering of bills  
 §10-4.1-33 Conservation and emergency measures  
 §§10-4.1-34 to 10-4.1-40 (Reserved)

Subchapter 3 Puukapu Non-Potable Water System

§10-4.1-41 General conditions  
 §10-4.1-42 Rate schedule  
 §10-4.1-43 Meter reading and rendering of non-  
                   potable water bills  
 §10-4.1-44 Conservation measures and emergency  
                   conditions  
 §10-4.1-45 Unauthorized drawing of water  
 §§10-4.1-46 to 10-4.1-60 (Reserved)

SUBCHAPTER 1

GENERAL PROVISIONS

**§10-4.1-1 Purpose.** The purpose of this subchapter is to promote the health, safety, and general welfare of the community by providing standards for governing water service provided by water systems in the exclusive control of the department. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-2 Applicability.** This subchapter shall apply to all water systems under the exclusive control of the department. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-3 Definitions.** As used in this chapter, unless plainly evident from the context that a different meaning is intended:

"Applicant" means any person who submits an application for water service or additional water service.

"Application" means a written request for water service or additional water service.

"Consumer" means the person, firm, corporation, association, or governmental entity, whether owner or tenant, whose name appears on the records of the department as the party responsible and liable for receiving water service from the department.

"Consumer's water system" means the pipes and plumbing extending from the water service connection.

"Cross-connection" means any actual or potential connection between the public water supply and a source of contamination or pollution.

"County" means the county where the department water service is located.

"Department of health" means the State of Hawaii department of health.

"Governmental entity" means any State of Hawaii or county department or office.

"Main" or "main pipe" means the department's supply or distribution pipe from which service connections are made.

"Non-potable water" means water that has not been certified by the department of health as suitable for cooking, drinking, and bathing purposes.

"Potable water" means water that has been certified by the department of health as suitable for cooking, drinking, and bathing purposes.

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

"Public water system" means a water system which provides water for human consumption as provided by the department of health in title 11, Hawaii administrative rules chapter 20.

"Service lateral" means the main tap and complete installation of pipes, fittings, and appurtenances from the main to and including the meter.

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

"Water service" means the delivery of water to any premises.

"Water spigot" means a water spigot or standpipe that is maintained by the department and connected to a public water system for lessee access to potable water.

"Water system" means a network of pipelines, main taps, storage, facilities, pumps, shut-off valve, and other appurtenances, wells, water filtration treatment facilities, or other sources which furnishes a supply of water to the premises. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-4 General conditions for water service.**

(a) Any applicant whose premises is located within service limits established by the department and adjacent to a distribution main where pressure conditions permit may obtain water service, provided that:

- (1) The existing water system servicing the area has adequate physical and legal capacity, as determined by the department, for such intended use without impairing service to existing consumers or future lessees;
- (2) All applicable fees and deposits for such service have been paid in full;
- (3) The applicant is not delinquent on other services in his or her name; and,
- (4) The applicant agrees to abide by the rules, regulations, and policies of the department relating to water service.

(b) Water service shall be restricted to the property for which the application is made.

(c) All water service supplied by the department shall be measured by means of meters furnished by the department and only the department is authorized to install water meters on department water systems.

(d) The department shall determine the final location and size of the service lateral. Service laterals shall be operated and maintained by the department.

(e) The department shall only be responsible for the operation and maintenance of water systems in its exclusive control, which may include contracted operations and maintenance services. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-5 Water pressure conditions and elevation agreement.** (a) The department shall exercise due diligence and reasonable care to maintain

adequate pressure in its water mains but accepts no responsibility to maintain such pressure.

(b) Where a premise is situated at such an elevation that it cannot be assured of a dependable supply or of adequate service from the department's distribution system, the consumer, in consideration of water service and connection to the department's system:

- (1) Shall agree to accept such service as the department is able to render from its existing facilities;
- (2) Shall agree to install, if necessary, and maintain at the consumer's expense a tank and pump, with an air gap between the consumer's supply pipe and the department's system, of suitable design and of sufficient capacity to furnish an adequate supply of water; and
- (3) Shall execute a written release in favor of the department for all claims due to any inadequacy in the department's system or inadequacy of water supply to the premise.

(c) When the pressure of the department's supply fluctuates or is higher than that for which individual fixtures are designed, the consumer shall protect such fixtures by installing and maintaining pressure reducing, or relief valves, or both. The department shall not be liable for damage due to pressure conditions or for damages caused by or arising from the failure of, or the defective condition of such pressure regulators or relief valves, or for damage that may occur through the installation, maintenance, or use of such equipment. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-6 Application for water service. (a)**

Each prospective consumer shall complete a standard application form for the water service desired. Prospective consumers shall assume responsibility for

the payment of future charges for service at the location identified on the application before water is turned on for any use. The department shall inform the applicant in writing that the application is complete and accepted or if the application is deficient, what specific information is necessary to complete the application. The department shall assign an account number when the application is complete. The person, entity, or organization executing the application form shall liable be for the payment of all charges for water service at the designated location.

(b) Charges for service shall begin when the service lateral and the consumer's water system are physically joined and water is made available to the consumer, and will continue until:

- (1) The consumer makes a written request to discontinue service;
- (2) A judicial order to discontinue service is issued; or
- (3) The department discontinues service for failure of the consumer to comply with the provisions of this subchapter.

(d) When an application for water service is made by a former consumer who was responsible for and failed to pay all bills for water service previously rendered, regardless of location or time incurred, the department may refuse to furnish service to the premises of the applicant until the outstanding bills are paid.

(e) A consumer taking possession of the premises and using water without having made application for the transfer of water service shall be held liable for the water delivered from the date of the last recorded meter reading. If application for transfer is not made, and accumulated bills for water service are not paid upon presentation, the water service may be discontinued ten business days after written notice is sent to the consumer. [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-7 Installation of water service. (a)**

When an application for water service has been approved, water service shall be installed as approved. There shall be one meter for each service, unless the department, because of operating necessity, installs a combination meter, or two or more meters in parallel. All meters shall be tested for accuracy before installation. All meters shall be installed along the property boundary, unless, due to operating necessity or other extenuating situations, the department approves installation of the meter elsewhere.

(b) It is the consumer's responsibility and expense to install their supply pipe and water system, to connect such system to the department's service lateral, and to install an approved backflow prevention device on the consumer's system on the downstream side of the meter. The department may provide backflow prevention devices to lessees as a means to protect the public water system. The consumer's water system shall, at all times, remain the sole property of the consumer, who shall be responsible for its maintenance, repair, and replacement.

(c) A readily accessible shutoff valve controlling all outlets shall be installed by the department on the consumer's water service supply pipe at a location to be determined by the department. In addition, the department may install a shutoff valve before the meter for the use of employees of the department. If a replacement of the shutoff valve is necessary, it shall be installed by the department and paid for by the consumer.

(d) The department may make the connection to the consumer's water service supply pipe once the consumer installs the supply pipe at the approved location.

(e) Only the department may connect or disconnect the water service to or from the department's main.



(f) When the proper size of service lateral for any premises has been determined and the department has made installation at the location specified by the consumer, the department has fulfilled its obligations insofar as the size of the service and the location thereof are concerned. If the consumer desires a change in size of the service lateral or a change in the location thereof, the consumer shall bear all costs of such change.

(g) Whenever a check valve or pressure reducing valve is installed on the consumer's cold water supply line between the meter and the hot water storage tank or heater, there shall be installed on the consumer's hot water distribution system a suitable pressure relief valve.

(h) Once installed, any costs associated with the repair or replacement of damaged or missing meters and services will be charged to the consumer. Such costs include but are not limited to gaskets, meter boxes, lid inserts, meters, pressure regulator valves, related labor, equipment, vehicles, and materials. This does not include replacement of meters that are operating outside of tolerances. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-8 Responsibility for equipment.** (a) At the consumer's own risk and expense, the consumer shall furnish, install, and keep in good, safe, and operating condition all equipment that may be required for receiving, controlling, applying, and utilizing water. The department shall not be responsible for any loss or damage caused by the improper installation of such equipment, or the negligence, want of proper care, or wrongful act of the consumer.

(b) Water service may be discontinued to any consumer whose water system includes plumbing fixtures or water containers in any form, or of any use, which in the opinion of the department may contaminate the department's water supply or may endanger the public

water supply from a public health standpoint. Any such discontinuation of service shall continue until such dangerous fixtures or uses have been corrected, removed or discontinued, and the department is assured that the dangerous fixtures or uses will not be reinstalled or resumed.

(c) The department shall not be responsible for damage to property caused by spigots, faucets, valves, and other equipment that may be open when water is turned on at the meter either when turned on originally or when turned on after temporary shutdown.

(d) All service laterals are the property of the department and shall be operated and maintained by the department.

(e) All equipment belonging to the department and installed upon the consumer's premises for measurement, test, check, or any other purpose, shall continue to be the property of the department, and the department may access the consumer's premises without consent whenever necessary to inspect, maintain, repair, replace, or remove the equipment. The consumer shall exercise reasonable care to prevent damage to meters and other equipment of the department upon the premises and shall in no way interfere with the operation of the same.

(f) Any cost to repair damaged water mains, service laterals, valves, fire hydrants, or other property of the department shall be paid for by the party responsible for the damage. The consumer shall be liable for any damage to a meter or other equipment or property of contractors, licensees or permittees, on the consumer's premises, and the department shall be promptly reimbursed by the consumer for any such damage upon presentation of the bill thereof. In the event settlement for such damage is not made within thirty days, the department may discontinue water service to the premises according to 10-4-81.

(g) When a meter is found to have been damaged by hot water or steam emanating from the premises served, the consumer shall pay for all costs required to repair the meter. [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-9 Payment of bills and delinquency. (a)**

All bills shall be due and payable within twenty-one days from the bill date. Payment shall be made at the office of the department or, at the department's option, to duly authorized collectors of the department. Any bill not paid within thirty days from the bill date, shall be considered delinquent and the water service shall be subject to shut-off. There shall be a service charge for payments made by check or electronic debit which have been dishonored for any reason. The service charge shall be as set in section 40-35.5, HRS. On accounts where payments have been dishonored more than four times in one calendar year, the department may require payment on the account to be made by cash, by certified or cashier's check or by money order, and may require a deposit equal to the highest amount billed in the last twelve months to be held.

(b) An account is delinquent when it is not paid in full within thirty days after the bill date. A late payment charge shall be assessed at an amount established by the commission. When a delinquent account remains unpaid twenty-one days after the second regular billing, water service for the account shall be discontinued. Balances delinquent more than sixty days may be subject to an interest charge as set by the commission but not to exceed one per cent for each month or fraction thereof. The commission may determine a finite set of extenuating circumstances under which a lessee consumer may qualify for alternative payment methods, provided the lessee is also in compliance with all lease conditions. [Eff and comp ] (Auth: HHC Act §222)  
(Imp: HHC Act §221)

**§10-4.1-10 Discontinuation of service.** (a) The department may refuse or discontinue water service for any of the following reasons:

- (1) Non-payment of bills or fees. If the consumer fails to pay any sums due, the department may discontinue service five business days after written notice is given to the consumer.
- (2) Noncompliance with rules and regulations. If the consumer fails to comply with any of the department's rules and regulations and noncompliance is not corrected within five days after written notice is given to the consumer, the department may discontinue service.
- (3) Unauthorized use of water. Without notice, the department may refuse or discontinue water service to any premises or consumer to protect itself against fraud, abuse or unauthorized use of water. For unauthorized use of water, a surcharge may be assessed as established by the commission.
- (4) Wasteful use of water. Where negligent or wasteful use of water exists on any premises and such conditions are not corrected within five business days after written notice is given to the consumer, the department may discontinue service.
- (5) Service detrimental to others. The department may refuse to furnish water and may discontinue the service to any premises where the demands of the consumer will result in inadequate service to others.

(b) Where discontinuation of water service for any of the above reasons is proposed, the department shall, prior to the proposed shut off, give the consumer at least five business days notice. The notice shall specify the reason for the proposed shut off as well as inform the consumer of the right to dispute the shut off by making appropriate inquiry to the department at the address or phone number provided on the notice. The notice shall further inform the

consumer that once water service has been discontinued, a service fee shall be charged for the reinstatement of water service.

(c) If the consumer wishes to dispute the shut off, the consumer shall within five business days from the date of the notice of shut off, request a billing conference. Once requested, the billing conference shall be scheduled at the earliest reasonable opportunity for the consumer and in no case more than ten days from the request and the consumer shall be given the option of having the conference over the phone or in person with a district office supervisor from another district office that manages a department water system. The district office supervisor conducting the billing conference shall not have previously been involved in the case, shall not be swayed or affected in any manner by other department personnel, shall be subject to all state ethics rules on conflicts of interest, and shall exercise impartial judgment in deciding the merits of the consumer's case.

- (1) At the billing conference, the consumer shall have the right to submit evidence, present and cross examine witnesses, and bring an interpreter, or representative to aid in presenting the case. The consumer shall have the right to see the department's records concerning the account and shall have the right to reasonable explanation for any matter concerning the proposed discontinuance of service. The district office supervisor conducting the billing conference shall be empowered to correct any errors in billing and to take whatever remedial action is necessary including a stay to make a just and fair resolution of the matter. The district office supervisor conducting the billing conference shall make a written decision within three working days of the conference.
- (2) If the consumer is dissatisfied with the

decision from the billing conference, the consumer shall have the right within five business days of receipt of the written decision to appeal the matter to the deputy to the chairman. The decision of the deputy to the chairman shall be final for non-lessee consumers. A lessee consumer who is dissatisfied with the decision of the deputy to the chairman may request a contested case hearing before the commission. The amount due shall be paid into an escrow trust account after the billing conference with the district office supervisor and shall not be postponed pending the appeal.

(d) A charge of \$150 shall be added to each account in which service is discontinued if the consumer or other party cuts the lock and turns the meter on without prior approval of the department. The meter shall be removed and the water service capped off. Water service shall not be reconnected until the consumer has paid the past due water charges, water disconnection charges, and the meter disconnection and reconnection charges.

(e) An account that remains disconnected or suspended because of delinquent payment shall continue to accrue monthly base rate service charges as well as late fees.

(f) A consumer about to vacate any premises supplied with water by the department shall give written notice of their intention to vacate, specifying the date service should be discontinued. If the consumer fails to give such notice, the consumer shall be responsible for all water service furnished to such premises until the department has received a notice of discontinuance. Before buildings are demolished, the department shall be notified so the water service can be shut off.

(g) The department may remove a meter for non-use after one year of non-use. A consumer whose meter is removed for non-use forfeits all previous fees and reapplication shall be treated as a new service connection with applicable costs. [Eff and

comp ] (Auth: HHC Act §222) (Imp:  
HHC Act §221)

**§10-4.1-11 Restoration of water service.** (a)

Water service shall not be resumed until all of the consumer's delinquent accounts, including all fines, fees, and reinstallation charges, including the cost of labor, materials, transportation, holiday pay, overtime pay, and any other incidental costs for the meter reinstallation and reactivation, have been paid in full or the consumer has entered into and signed an approved payment plan.

(b) The department may enter into a payment agreement with a consumer to facilitate the payment of delinquent water charges. Such agreements shall not exceed the term of five years, current charges must continue to be paid when due, and the agreement must be signed by the department and the consumer. Breach of such an agreement by the consumer shall result in further collection efforts including disconnection.

[Eff and comp ] (Auth: HHC Act §222)  
(Imp: HHC Act §221)

**§10-4.1-12 Meter test and adjustment of bill.**

(a) Any consumer who has a reasonable doubt of the accuracy of the meter serving his or her premises may request a test of the meter. The consumer may request to be notified as to the time of the test and may witness the test. No charge shall be made for meter tests unless such tests are requested more often than once every twelve months.

(b) If, as a result of the test, the meter is found to register more than five percent fast under conditions of normal operation, the department shall refund to the consumer the overcharge based on past consumption, for a period not exceeding six months, unless it can be proven that the error was due to some cause, the date of which can be fixed, then the

overcharge shall be computed back to, but not beyond, such date.

(c) The consumer has sole control of the water delivered beyond the department's meter and the department is not responsible for the maintenance and repairs to pipes and fixtures beyond the meter.

(d) If the meter fails to register due to any cause except the non-use of water, an average bill may be rendered. Such average bill will be subject to equitable adjustment taking into account all factors before, during, and after the period of said bill.

[Eff and comp ] (Auth: HHC Act \$222)  
(Imp: HHC Act \$221)

**§10-4.1-13 Underground leak adjustment.** (a) If a consumer experiences a leak within their water line, the consumer may request the department provide a leak adjustment for excessive bills provided a leak adjustment was not granted to the consumer within the twelve month period prior to the request and the leak was reported to the department and repaired within thirty days of detection. The adjustment shall be one-half of the excess consumption over a normal bill.

(b) No additional refunds shall be given.

(c) If there is not an existing valve on the consumer side of the meter, there shall be no credit processed on the account until a valve is installed.

(d) Department personnel shall be dispatched to inspect the consumer's meter to verify the leak has been repaired. [Eff and comp ]  
(Auth: HHC Act \$222) (Imp: HHC Act \$221)

**§10-4.1-14 Water charge adjustment.** Errors in billing or collection shall be corrected in a timely manner by the department. Resulting credits on accounts or refunds shall be made as expeditiously as possible. [Eff and comp ] (Auth: HHC Act \$222) (Imp: HHC Act \$221)



**§10-4.1-15 Obstructed meter fine.** (a) The department shall charge the consumer an obstructed meter fine per billing period when access to the water meter is significantly obstructed by landscaping or other barriers and the meter cannot be read. This fine shall be applied only after the property owner has been notified, via a door hanger, that the obstruction exists and that the problem must be corrected by the time of the next meter reading. The obstructed meter fine shall be established by the commission and posted for the public.

(b) If the consumer fails to remove the obstruction, the department may remove the obstruction and fill the consumer for the costs of remediation.  
[Eff and comp ] (Auth: HHC Act §222)  
(Imp: HHC Act §221)

**§10-4.1-16 Tampering fine.** (a) The department shall levy a fine to the consumer for service laterals and water meters which are tampered with and shall further charge the consumer all costs associated with any repair to the service lateral and water meter. Consumers are prohibited from using or tampering with the valve or stopcock before the meter. Meters which are tampered with shall be removed and shall not be reinstalled until the tampering fine is paid. The tampering fine shall be established by the commission and posted for the public.

(b) A late fee shall be charged against tampering fines that go unpaid for thirty days following the date of billing. After sixty days, the delinquency shall be reported to the commission and the amount due turned over to collections. Further legal action may be taken with commission approval.  
[Eff and comp ] (Auth: HHC Act §222)  
(Imp: HHC Act §221)

**§10-4.1-17 Accessing the consumer's premises.**

Any properly identified officer or employee of the department shall have the right of ingress to and egress from the consumer's premises at any reasonable hour, and at any hour during an emergency, for any purpose reasonably connected to the protection of the public drinking water system and furnishing of water to said premises and the exercise of all rights secured to it by law or this subchapter. If the officer or employee is prevented from carrying out the duties, the department may shut off water service to said premises five business days after written notice is given to the consumer. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-18 Cross-connection control and backflow prevention.** (a) No cross-connections shall be made without the written consent of the department.

(b) It is unlawful for any person to make, maintain, or cause temporarily or permanently, any cross-connection that has a potential for backflow between their plumbing pipes or water fixtures and the department's water system. Existing cross-connections between the department's water system and any auxiliary water supply shall be eliminated or protected by means of an approved backflow prevention assembly. Cross-connection control and backflow prevention requirements for facilities and premises shall be in accordance to this subchapter.

(c) The department requires installation of an approved backflow prevention assembly on the consumer's side of the meter at the consumer's expense before service will be provided. The department may provide for the installation of an approved backflow prevention assembly to homestead lots in the service area.

(d) If uninterrupted water service is necessary, an additional backflow prevention assembly may be installed in an approved manner to ensure continued water service whenever inspection, testing and repair procedures is being performed on any one of these assemblies.

(e) The backflow prevention assembly installed in accordance with these rules shall, unless otherwise approved by the department in writing, be located above ground and in a manner safe from flooding or submergence in water or other liquid, properly protected from external damage, freely accessible, and with adequate working room for inspections, testing, and repairing.

(f) All backflow prevention devices shall be tested at least once annually and as often as required by the department where successive tests indicate repeated failure. Repairs, replacement of parts, or any other maintenance shall be made whenever deemed necessary by the department and at the expense of the consumer. The annual test shall be the responsibility of the consumer and shall be made in accordance with methods approved by the department. Upon request by the department, the consumer shall present an affidavit certifying that there are no cross-connections of the type prohibited under this rule on the premises or describing in detail all nonconforming connections or installations.

(g) Records of tests, repairs, parts, and inspections shall be made on forms prescribed by the department and furnished to the department. Failure of the consumer to properly test and submit the records may, at the option of the department, result in termination of service or the department making the tests, repairing and replacing any equipment, and charging the cost to the consumer.

(h) When a backflow prevention assembly fails in service, the consumer shall notify the department. Repairs are the responsibility of the consumer. A certified general tester shall perform the testing. Backflow prevention assembly test forms shall be completed and sent to the department for confirmation

that the device has been properly repaired and functions as required. Inspection and approval by the department shall be conducted before the device is put back into operation.

(i) When the department encounters water uses that represent a clear and immediate hazard to the department's water supply that cannot be immediately abated, the department shall terminate water service at the premises immediately. Written notice shall be given to the consumer after water service termination.

(j) For other situations requiring backflow protection where there is not apparent and immediate hazard to the water supply, the department may terminate water service to a consumer's premises after proper notification has been sent.

(k) Conditions relative to the installation and maintenance of cross-connection control and backflow prevention referred to in this section shall be subject to change to meet changing requirements of federal, state, and county laws, ordinances, and rules. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-19 Interruption of water supply. (a)**

While the department shall exercise reasonable diligence and care to deliver an adequate supply of potable water under reasonable pressure, the department shall not be financially liable for any direct or consequential damages resulting from water supply interruption, shortage, insufficiency of supply, inadequate or excessive water pressure, leakage on the consumer's premises, or temporary colored and turbid water quality conditions caused by emergency repair of water mains. The department further disclaims all warranties, expressed or implied, and reserves the right to shut off water mains for repairs, extensions, or alterations, and to terminate water service as provided herein for conservation measures, during emergency conditions,

and for other reasons deemed by the department to be necessary and proper without notice.

(b) The department may shut off water from the mains without notice for making repairs, extensions, alterations, or for other reason. Consumers depending upon a continuous supply of water shall provide for their own emergency water storage and any check valves or other devices necessary for the protection of plumbing or fixtures against failure of the pressure or supply of water in the department's mains. Repairs or improvements shall be completed as rapidly as practicable. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-20 Meter disconnection or reconnection fees.** (a) The department shall charge a fee equal to one hour of labor and overheads to those consumers requesting disconnection or reconnection of a water meter when not related to an account delinquency. The department shall apply such charges to the consumer's account.

(b) Upon request and payment of a turn off fee the department shall turn off the water at the meter during regular business hours. Upon request and payment of a turn on fee, the department shall turn on the water at the meter during regular business hours. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-21 Change in service administration fee.** (a) The department shall levy a charge when a change in service status requires administrative action or a special meter reading by department personnel.

(b) When a change in account status requires a special water meter reading by the department a fee equal to one hour of labor and costs shall be charged to the consumer. When a change in account status does not require a special water meter reading by the

department the standard change of owner fee shall be charged to the consumer. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-22 Department fire hydrants and fire protection.** (a) Any use of a fire hydrant, fire protection reservoir, or the taking of water from one for purposes other than fire protection by persons other than authorized employees of the fire department or of the department is prohibited without a written permit from the department. The fire department shall have the prior right to use any hydrant at any time and shall have the authority to remove peremptorily, if necessary in case of emergency, any connection approved by the department. The fire department shall notify the department when use of water during non-fire events, including training, is contemplated. Hydrant main line valves shall not be used to control flows. The fire department shall coordinate with the department during a fire emergency to prevent damage to the water system.

(b) The department may provide water to a governmental entity provided the governmental entity first submits a written hydrant permit application and agrees to all of the terms and conditions contained therein including but not limited to notifying the department when any use of water is contemplated, paying a security deposit for a meter assembly and backflow prevention device and utilizing the meter assembly and backflow prevention device. Any failure of the permittee to properly utilize the meter assembly to record water taken through the fire hydrant shall constitute a violation of the hydrant permit and shall immediately terminate the hydrant permit and the permittee's right to draw water. Hydrant permits shall not be issued for a period longer than six months. Renewal shall be allowed on a case by case basis.

(c) Any damage to fire hydrants, and any consequent resulting loss or damage to property, or any injury to persons arising from or out of the damage to fire hydrants shall be paid for by the person or legal entity responsible for the damage. All repairs for any damage to fire hydrants shall be paid by the person or entity responsible for the damage.

(d) Any persons or entities, or both, found to have used, obstructed, or tampered with a department fire hydrant without the express written consent of department shall be assessed fees and charges including the estimated amount of the water taken, water discharged by the department to clear the mains, labor and materials, and administrative costs. Each invoice not paid within ten calendar days of date thereon will accrue a late charge equal to five per cent of the unpaid balance at the time it becomes delinquent and an additional five per cent for each month delinquent thereafter.

(e) The department shall, if it approves the request for a change in location of a hydrant, change such location; provided, that all labor, material, equipment, and all other costs and charges are paid in advance by the consumer. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-23 Water spigots.** (a) The department may provide water spigots connected to public water systems. The water spigot shall be labeled with the appropriate public water system number as issued by the department of health. Each water spigot, and water spigot area, shall be maintained by the department in a manner suitable for lessee access to potable water.

(b) Each spigot shall be metered and the commission shall set the maximum amount that may be drawn from each spigot during a single billing cycle.

(c) The department shall manage access to the spigot by reasonable means.

(d) The department may restrict spigot use during time of water restrictions.

(e) The department guarantees potable water only to the point of withdrawal from the public water system. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-24 Consumer's sale of water.** Subject to civil or criminal prosecution or both, unless specifically agreed upon by the commission, the consumer shall not sell any water received or purchased from the department. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-25 Electrical grounding.** (a) Protective grounding of alternating current secondary distribution circuits made to the water system shall conform in all details with the national electrical code of the national board of fire underwriters and with the county building code where the water system is located.

(b) The department shall not be responsible for any damage or injury caused by any electrical grounding.

(c) No grounding of direct current to any portion of the water system shall be permitted.

(d) No grounding other than as provided in this section shall be made to any portion of the water system without the department's written approval.

(e) The department shall not be responsible for the maintaining of a continuous metallic water piping system and reserves the right, without liability to public utility electric companies, electric consumers, or any other agency, consumer, or individual, to create a physical break in its service laterals and



mains, or to incorporate non-metallic pipes and appurtenances in its system and to make joints of any materials, without regard to their efficiency as conductors of electricity and without giving notice. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-26 Unscheduled meter replacement.** If a consumer requests a meter replacement prior to the scheduled routine replacement, the consumer will be billed for the service call plus the current cost of the meter. As is the case with all new meters, upon installation the meter becomes the property of the department. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-27 Compensation.** Employees of the department are strictly forbidden to demand or accept personal compensation for services rendered. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

§§10-4.1-28 to 10-4.1-30 (Reserved)

## SUBCHAPTER 2

### HAWAIIAN HOME LANDS PUBLIC WATER SYSTEMS

**§10-4.1-31 Water service rates.** (a) The commission shall establish water service rates based upon administration, operation, and maintenance costs, and may take into consideration industry standards of

affordability, equity, and sustainability; the factor of equity notwithstanding any provision or obligation under the act. A copy of the rates and fees schedule shall be publicly posted and available upon request.

(b) Agricultural consumers shall have a separate meter to provide water for agricultural activities. The cost of providing an agricultural meter and backflow prevention device is the responsibility of the consumer. Agricultural consumers on the department's public water systems are those consumers who are actively engaged in agricultural activities as required by their lease and this title and who are not within an agricultural or irrigation water service area.

(c) If the total water supply becomes insufficient to meet all of the needs of the consumers, or in the event there is a shortage of water, the department may prorate the water available among the various consumers on such basis that is deemed equitable by the department, and may also prescribe a schedule of hours covering the use of water and require adherence thereto, provided that if at any time the total water supply shall be insufficient to meet all of the needs of the consumers for domestic and other purposes, the department must first satisfy all of the needs of the consumers for domestic purposes before supplying any water for other purposes. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-32 Meter reading and rendering of bills.**

(a) Meter readings and billings shall be on at least a bi-monthly basis, except for closing of accounts for special conditions with the approval of the department.

(b) Closing bills for a period shorter than the regular billing period shall be determined by the sum of the charges per water meter reading and prorating of the monthly service charge. If a meter cannot be read, an estimated bill shall be rendered following

acceptable practices using the reading, where available, of the same time the previous year.

(c) Bills for metered water service shall be on a per meter basis. If the consumer has more than one metered installation on the premises, each meter shall be billed separately. [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-33 Conservation and emergency measures.**

(a) Whenever, in the department's opinion, special conservation measures are advisable to forestall water shortage or an emergency, the department may restrict the use of water by any means or method of control. The department shall also have the right to limit the quantity of water taken from any of its facilities. In determining the priorities in restricting the use of water, the health and safety of the public shall be given first consideration over other uses.

(b) When the department's water supply usage exceeds the rate of resupply, the commission may declare a water shortage or emergency and further restrict the use of water by any means or method of control.

(c) The department shall notify consumers of emergency conditions by written communication through mailing, electronic posting, or the newspaper, or combination thereof. [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

§§10-4.1-34 to 10-4.1-40 (Reserved)

SUBCHAPTER 3

PUUKAPU NON-POTABLE WATER SYSTEM

**§10-4.1-41 General conditions.** (a) The water supplied by the Puukapu non-potable water system is intended to be used only for pastoral uses consistent with pastoral leases. Consumers may not use water for any other purpose except with the express written consent of the department. The department makes no guarantee, warranty, or representation, expressed or implied, as to the quality, quantity, flow rate, condition, or fitness of the water supplied for any use or purpose. [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

(b) The department shall deliver water to the lot of each consumer at the ground elevation and at the outlet site as the department may establish upon each consumer's land convenient with the operation of the department's irrigation system, and it shall be the responsibility of each consumer to provide for the distribution of water upon the consumer's lot by the consumer's own method. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-42 Rate schedule.** The commission shall establish water service rates based upon administration, operation, and maintenance costs, and may take into consideration industry standards of affordability, equity, and sustainability; the factor of equity notwithstanding any provision or obligation under the act. The commission shall determine whether the non-potable water service rate is a flat rate or calculated by meter reading. A copy of the rates and fees schedule shall be publicly posted and available upon request. [Eff and comp ] (Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-43 Meter reading and rendering of non-potable water bills.** (a) Meter readings and billings

shall be on at least a monthly basis except for closing of accounts for special conditions with the approval of the department.

(b) Closing of bills for a period shorter than the regular billing period shall be determined on a prorated basis. [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

**§10-4.1-44 Conservation measures and emergency conditions.** (a) Whenever, in the department's opinion, special conservation measures are deemed necessary to forestall a water shortage and a consequent emergency, the department may restrict or ration the use of water by any method or means of control. Livestock watering consumers may be required to install an automatic water flow control device to prevent waste or continued overflow from livestock drinking troughs. Each device shall be approved by the department prior to installation and shall be tested periodically to determine its functionality.

(b) The department reserves the right in times of declared emergency to allow the use of water for emergency purposes. Charges for the water used shall be established by the commission based on the nature of the emergency and attendant circumstances.

(c) During periods of special conservation measures, the department shall develop notices and criteria for the manner in which water will be delivered, restricted, and allocated for the duration for the emergency. Violations of the restrictions or allocations may result in the discontinuance of service, additional water toll surcharges, or the removal of the water connection.

(d) Upon declaration of emergency conditions and implementation of mandatory conservation measures (i.e., ten per cent, twenty per cent, or thirty per cent cutbacks), consumers exceeding the level of mandatory cutback shall be assessed a surcharge as established by the commission. [Eff and

comp ] (Auth: HHC Act §222) (Imp:  
HHC Act §221)

**§10-4.1-45 Unauthorized drawing of water.** (a)  
No person or entity shall be permitted to draw water from any part of the system without the written consent of the department. No approval shall be granted in cases where, in the opinion of the department, the drawing of water may adversely affect the water service extended by the department to lessees.

(b) Approvals given by the department under this section are subject to revocation upon thirty days written notice." [Eff and comp ]  
(Auth: HHC Act §222) (Imp: HHC Act §221)

2. The adoption of chapter 10-4.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafter in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on [ ] and filed with the Office of the Lieutenant Governor.

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JOBIE M. K. MASAGATANI, Chairman  
Hawaiian Homes Commission

APPROVED AS TO FORM:

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Deputy Attorney General