


STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

January 19-20, 2021

TO: Chairman and Members, Hawaiian Homes Commission
FROM: Hokulei Lindsey, Administrative Rules Officer 
SUBJECT: For Information Only - Report of Chapter 91, Hawaii Revised Statutes, Public Hearings for Administrative Rules Related to Management of Water Systems

RECOMMENDED MOTION/ACTION

None. For information only.

DISCUSSION:

The current draft of the proposed administrative rules related to the management of water systems is attached as Exhibit A.

Background

The Department of Hawaiian Home Lands (DHHL or Department) owns four water systems and under section 221(f) of the Hawaiian Homes Commission Act, water systems in the exclusive control of the Department cannot be alienated. Anahola, Hoolehua, and Kawaihae are potable water systems, Puukapu is a non-potable water system. The four systems are small, Hoolehua is the largest with an average of only 600 connections. The Hawaiian Homes Commission Water Policy Plan identified water system management as a goal and provided that DHHL water systems should be managed to break even financially over the long term. The water systems operate at a financial deficit and are subsidized by trust money. Administrative rules are a necessary component to achieving the "break even goal" because they provide the framework to improve operations and efficiency, and provide enforcement authority.

The Hawaiian Homes Commission (HHC) approved beneficiary consultation for proposed administrative rules for the management of water systems at its regular meeting in April 2017 and accepted the beneficiary consultation report in October 2017. Beneficiary consultation meetings were scheduled on all

islands and multiple sessions were held in those communities serviced by DHHL owned water systems. As part of the consultation, attendees were asked several questions intended to initiate conversation and highlight issues from the Department's perspective. The discussion questions were:

1. What are the most important kuleana for consumers? For DHHL?
2. What are reasonable enforcement provisions?
3. How should public water spigots be managed?
4. Water rates are set using operating and maintenance costs. What other criteria should be considered when setting rates?

Several changes were made to the proposal based upon the comments and discussion at the consultation meetings (See Exhibit B).

Water service rates for each Department owned water system are attached to the administrative rules as exhibits. A separate education and consultation process was undertaken that focused on the service rates. Informational meetings about the water systems were held in November 2017 and beneficiary consultation meetings specific to the water service rates were held in 2018 in each affected area. The HHC adopted the water service rates that are attached to the rules during its regular meeting on each affected island in 2018.

Public Hearings

At its January 2018 regular meeting the HHC approved moving forward to public hearings. When administrative rule amendments affect small businesses, a Small Business Impact Statement and review by the Small Business Regulatory Review Board (SBRRB) is required. Several consumers connected to the Hoolehua water system on Molokai likely qualify as small businesses. The Department submitted a Small Business Impact Statement and the SBRRB agreed to pass the proposal on to public hearing (Exhibit C). Approval of the Governor was received and the DHHL held public hearings pursuant to chapter 91, Hawaii Revised Statutes, regarding proposed administrative rules related to the management of Department owned water systems. Public notice was published statewide pursuant to section 91-3, HRS, on October 19, 2020 (Exhibit D) and, pursuant to section 10-5-22, HAR, copies were sent to the homestead associations with valid addresses on file (Exhibit E). A flier was also mailed to all water billing addresses (Exhibit F). Hokulei Lindsey was

designated as the presiding officer for the public hearings pursuant to section 10-5-23, HAR (Exhibit G).

A page on the Department's website was created with information about the public hearings and background information about the proposal such as previous HHC submittals (Exhibit H) and a "refresher" video highlighting the policies underlying the proposal (Exhibit I). In addition to being attached to the posted submittals, the proposal itself is also available on the Department's website on the administrative rules page.

Three public hearings were convened as live online meetings. Before each hearing, an informational briefing consisting of a recorded powerpoint presentation and a question and answer period was held (Exhibit J). Each briefing and hearing could be viewed live or after the fact at the link posted on the Department's website. Although the hearings were organized so that anyone wanting to testify could sign up to testify during the live event, only written comments were received. The hearings are summarized in the following table:

DATE	TIME		Participants	NUMBER OF VIEWS (As of 1/12/21)
	Briefing	Hearing		
11/18/20	5:30 pm	6-7:00 pm	0	39
11/19/20	5:30 pm	6-7:00 pm	1	38
11/20/20	11:30 am	12-1:00 pm	0	57

Written comments were received from three individuals and organizations. The table below summarizes the comments and provides a staff response, if appropriate. The comments are attached in full as Exhibit K.

NAME	COMMENT SUMMARY	STAFF RESPONSE
E. Halealoha Ayau	<u>Support:</u> the rules improve operations by providing authority to manage the systems, including enforcement authority, and lay out uniform processes.	
Kailapa Community Association Executive Board	<u>\$10-4.1-31 Water service rates:</u> Allowing an increase of no more than 10% per thousand gallons once each year is more than county increases.	Each water system is unique with its own source challenges, delivery challenges, and consumer/ connection count. What it takes to run a water system,

	<p><u>Rate setting process:</u> Although the rules state DHHL will conduct a cost-of-service study each year and a water service rates analysis every three years, Oahu's BWS website says they conducted workshops, provided monthly updates to their Board, and held five public hearings, and public comment was given full consideration by the Board.</p> <p>Kawaihae lessees pay a higher rate than the cost of average Hawaii County water consumers.</p>	<p>pumping, maintenance, repair, is unique to each system. This means water service rates cannot be compared across different systems; rates are based on costs to run the system. DHHL's water policy plan clearly states the water systems should break-even. The trust is subsidizing Department owned water systems, even at current rates.</p> <p>All systems – large and small, county or private – face this challenge of balancing system costs/rates and rate affordability to the customer. All systems are constantly looking at both sides of the ledger – making the system more cost efficient and bringing in revenue via rates or other ways.</p> <p>The Kawaihae system is DHHL's most challenging in terms of costs because its source is Kohala Ranch, which charge's the highest rate on island. Additionally, the Kawaihae system serves a very small customer base of approximately 155.</p> <p>Oahu BWS serves over 800,000 customers plus very large water consumers such as</p>
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		<p>commercial businesses, hotels, and industries, so their costs and rates are set at a very different scale than DHHL.</p> <p>In terms of process, DHHL follows best practices on cost studies and rate setting in the water industry and, like all county water systems do, DHHL engaged a process for rate setting which included multiple community educational workshops on island to review what is a water system, water system budget/cost, and water rate options/recommendations.</p> <p>Going forward, the rates are attached to the administrative rules, which means any change to the rate schedule would require beneficiary consultation as part of the administrative rule amendment process.</p>
Marion Kapuniai	<p><u>Communication:</u> consumers should be contacted by phone and written notice sent certified mail; no electronic and no newspaper</p> <p><u>Timeframes to resolve issues:</u> all timeframes should be 10 days; some</p>	<p><u>Communication:</u> The rules provide for written notice by mail, electronic posting, newspaper, and door hanger depending on the situation. Typically, an issue involving an individual requires written notice whereas an emergency situation</p>

	<p>provisions allow 5 days and others allow 10 days</p> <p><u>\$10-4.1-17 Accessing consumer's premises:</u> notice should be given to access a consumer's premises whenever ingress and egress is necessary</p>	<p>impacting larger numbers of consumers allows for multiple options for providing notice.</p> <p><u>Timeframes to resolve issues:</u> the variation in the number of days to resolve an issue after notice is given depends on the situation. However, it may be beneficial to standardize it.</p> <p><u>\$10-4.1-17 Accessing consumer's premises:</u> Access for ingress and egress by department employees for purposes related to the protection of the water system is something that appears in rules and regulations for other water systems, including county systems, because of the necessity of protecting the health and safety of consumers as well as the system and the resource. The rules provide notice that access for the purpose articulated may occur and, therefore, allow for a quicker response to the situation necessitating ingress and egress.</p>
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RECOMMENDATION:

None. For information only.

DEPARTMENT OF HAWAIIAN HOME LANDS

Adoption of Chapter 10-4.1
Hawaii Administrative Rules

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

"HAWAII ADMINISTRATIVE 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 prohibited
§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	Monthly maintenance fee
§10-4.1-43	Conservation measures and emergency conditions
§10-4.1-44	Unauthorized drawing of water

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] (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] (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]

(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] (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 including but not limited to lack of fire department services in the event of a fire.

(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]

(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 be liable for the payment of all charges for water service at the designated location including a meter charge with each billing cycle as provided in section 10-4.1-31 and 10-4.1-42.

(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] (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, however the cost of installation shall be paid by the consumer within thirty days of installation. 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]
(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 10-4.1-10.

(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] (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 of one per cent for each month or fraction thereof against the delinquent balance. When a delinquent account remains unpaid twenty-one days after the second regular billing, water service for the account may be discontinued.

(c) The department may enter into a payment agreement with a consumer to facilitate the payment of delinquent water charges. The terms of a payment agreement between the department and a lessee-consumer may include alternative payment methods and shall not exceed the term of five years. Current charges shall continue to be paid when due. The agreement shall be signed by the department and the consumer, and breach of such an agreement by the consumer shall result in further collection efforts including disconnection.

(1) Alternative payment methods are goods that are grown, caught, or produced by the consumer and donated to the homestead community on island or services provided by

the consumer free of charge to the department. Goods shall be dropped off at the district office at a time determined by the district office supervisor for distribution among beneficiaries. Services shall be provided to the department as determined by the district office supervisor.

- (2) The value of the alternative payment methods rendered shall not exceed five per cent of the delinquent amount. All terms regarding alternative payment methods, including the goods or services or both to be donated, valuation, and dates and times of service or drop off shall be included in the payment agreement. [Eff _____] (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 provided in section 10-4.1-31 and 10-4.1-42.

- (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 written notice at least five business days before shut off. The notice shall specify the reasons for the proposed shut off as well as inform the consumer of the right to dispute the shut off by making appropriate request 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, water service may be restored but only in accordance with section 10-4.1-11.

(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 objectively review the basis for water shut off, 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 request for reinstatement of water service.

- (1) At the billing conference, the consumer shall have the right to submit evidence, present and cross examine witnesses, and bring a 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 if the consumer presents evidence that would demonstrate by a preponderance of the evidence that the consumer is not responsible for conditions leading to the department's decision to shut off service other than non-payment of the water bill. 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 chairman or the chairman's designee. 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. The chairman or the chairman's designee shall review the consumer's written appeal and the billing conference record and decision for compelling factual, legal, or procedural errors, or any combination

thereof, and render a final written decision affirming the district office supervisor's written decision or remanding the matter to the district office supervisor for further handling pursuant to the chairman's or the chairman's designee's written decision and direction on appeal. The decision of the chairman shall be final.

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

§10-4.1-11 Restoration of water service. Water service shall not be resumed until all of the consumer's delinquent accounts, including all charges, fees, and reinstallation costs, including one hour of labor, and materials, transportation, and any other overhead costs for the meter reinstallation and reactivation, have been paid in full or the consumer has entered into and signed an approved payment plan.
[Eff] (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] (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] (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] (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 of twenty-five dollars 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.

(b) If the consumer fails to remove the obstruction, the department may remove the obstruction

and bill the consumer twenty-five dollars for the cost of remediation. [Eff] (Auth: HHC Act §222) (Imp: HHC Act §221)

§10-4.1-16 Tampering prohibited. (a) Any person found tampering with service laterals, water meters, the valve, or stopcock before the meter shall be guilty of a misdemeanor, pursuant to section 701-107(3), HRS, and shall be liable for all costs associated with any repair to the service lateral, water meter, valve, or stopcock.

(b) A late payment charge shall be assessed at the rate of one per cent for each month or fraction thereof against costs associated with repairs for tampering 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] (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]
(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] (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] (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 overhead costs 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] (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]
(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 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]

(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] (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]
(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] (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] (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] (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 department shall conduct a cost of service study annually, based upon enterprise accounting, and a water service rates analysis at least every three years.

(b) Water service rates for each department owned public water system shall be established by the commission and attached to this chapter. Effective July 1, 2019, once each fiscal year the commission may adjust base water service charges by no more than ten per cent per thousand gallons of water delivered. Effective upon approval by the commission, water service rates are set as follows:

- (1) The table entitled, "Hoolehua Water System Service Rates Approved on April 17, 2018", dated April 17, 2018, attached as Exhibit "A" at the end of this chapter and made part of this chapter.
- (2) The table entitled, "Kawaihae Water System Service Rates Approved on May 14, 2018", dated May 14, 2018, attached as Exhibit "B" at the end of this chapter and made part of this chapter.
- (3) The table entitled, "Anahola Water System

Service Rates Approved on August 21, 2018", dated August 21, 2018, attached as Exhibit "C" at the end of this chapter and made part of this chapter. [Eff]
 (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] (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] (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.

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

§10-4.1-42 Monthly maintenance fee. (a) The lease shall provide service conditions and for the assessment of the monthly maintenance fee set as follows: the table entitled, "Puukapu Maintenance Fee" Approved on May 19, 2014 and Extended on May 15, 2018", dated May 15, 2018, attached as Exhibit "D" at the end of this chapter and made part of this chapter. [Eff] (Auth: HHC Act §222) (Imp: HHC Act §221)

§10-4.1-43 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]
(Auth: HHC Act §222) (Imp: HHC Act §221)

§10-4.1-44 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] (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.

WILLIAM J. AILA, JR., Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:



Deputy Attorney General

HOOLEHUA WATER SYSTEM SERVICE RATES
APPROVED ON APRIL 17, 2018

Lessee Service Rates:

Lessee water service delivery (usage) tiers:

	Gallons Bi-Monthly
Tier 1	0 - 10,000
Tier 2	10,001 - 25,000
Tier 3	Over 25,000

Residential lessee meter service (base) fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$6.21	\$6.82	\$7.43	\$8.04	\$8.65	\$9.26	\$9.87	\$10.48	\$11.09	\$11.70
3/4"	\$7.76	\$8.53	\$9.29	\$10.05	\$10.82	\$11.58	\$12.34	\$13.10	\$13.87	\$14.63
1"	\$12.75	\$14.01	\$15.26	\$16.51	\$17.77	\$19.02	\$20.27	\$21.53	\$22.78	\$24.04
1 1/2"	\$24.40	\$26.80	\$29.19	\$31.59	\$33.99	\$36.39	\$38.79	\$41.18	\$43.58	\$45.98
2"	\$33.27	\$36.54	\$39.81	\$43.08	\$46.35	\$49.62	\$52.89	\$56.16	\$59.43	\$62.70
3"	\$66.54	\$73.08	\$79.62	\$86.16	\$92.70	\$99.24	\$105.78	\$112.32	\$118.86	\$125.40
4"	\$121.99	\$133.98	\$145.97	\$157.96	\$169.95	\$181.94	\$193.93	\$205.92	\$217.91	\$229.90
6"	\$216.26	\$237.51	\$258.77	\$280.02	\$301.28	\$322.53	\$343.79	\$365.04	\$386.30	\$407.55
8"	\$332.70	\$365.40	\$398.10	\$430.80	\$463.50	\$496.20	\$528.90	\$561.60	\$594.30	\$627.00

Residential lessee water service delivery (usage) fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$1.53	\$1.65	\$1.76	\$1.87	\$1.99	\$2.10	\$2.22	\$2.33	\$2.44	\$2.56
Tier 2	\$2.06	\$2.22	\$2.37	\$2.52	\$2.67	\$2.83	\$2.98	\$3.13	\$3.29	\$3.44
Tier 3	\$2.43	\$2.61	\$2.79	\$2.97	\$3.15	\$3.33	\$3.51	\$3.69	\$3.87	\$4.05

(CONTINUED)

Exhibit "A"
April 17, 2018

Agriculture lessee meter service (base) fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$6.21	\$6.82	\$7.43	\$8.04	\$8.65	\$9.26	\$9.87	\$10.48	\$11.09	\$11.70
3/4"	\$7.76	\$8.53	\$9.29	\$10.05	\$10.82	\$11.58	\$12.34	\$13.10	\$13.87	\$14.63
1"	\$12.75	\$14.01	\$15.26	\$16.51	\$17.77	\$19.02	\$20.27	\$21.53	\$22.78	\$24.04
1 1/2"	\$24.40	\$26.80	\$29.19	\$31.59	\$33.99	\$36.39	\$38.79	\$41.18	\$43.58	\$45.98
2"	\$33.27	\$36.54	\$39.81	\$43.08	\$46.35	\$49.62	\$52.89	\$56.16	\$59.43	\$62.70
3"	\$66.54	\$73.08	\$79.62	\$86.16	\$92.70	\$99.24	\$105.78	\$112.32	\$118.86	\$125.40
4"	\$121.99	\$133.98	\$145.97	\$157.96	\$169.95	\$181.94	\$193.93	\$205.92	\$217.91	\$229.90
6"	\$216.26	\$237.51	\$258.77	\$280.02	\$301.28	\$322.53	\$343.79	\$365.04	\$386.30	\$407.55
8"	\$332.70	\$365.40	\$398.10	\$430.80	\$463.50	\$496.20	\$528.90	\$561.60	\$594.30	\$627.00

Agriculture lessee water service delivery (usage) fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$1.53	\$1.65	\$1.76	\$1.87	\$1.99	\$2.10	\$2.22	\$2.33	\$2.44	\$2.56
Tier 2	\$2.06	\$2.22	\$2.37	\$2.52	\$2.67	\$2.83	\$2.98	\$3.13	\$3.29	\$3.44
Tier 3	\$0.82	\$0.88	\$0.94	\$1.00	\$1.06	\$1.12	\$1.19	\$1.25	\$1.31	\$1.37

(CONTINUED)

Non-Beneficiary Service Rates:

Non-Beneficiary water service delivery (usage) tiers:

	Gallons Bi-Monthly
Tier 1	0 – 10,000
Tier 2	10,001 – 30,000
Tier 3	Over 30,000

Non-Beneficiary commercial / non-agriculture meter service
(base) fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$40.35	\$50.70	\$61.05	\$71.40	\$81.75	\$92.10	\$102.45	\$112.80	\$123.15	\$133.50
¾"	\$59.18	\$74.36	\$89.54	\$104.72	\$119.90	\$135.08	\$150.26	\$165.44	\$180.62	\$195.80
1"	\$94.15	\$118.30	\$142.45	\$166.60	\$190.75	\$214.90	\$239.05	\$263.20	\$287.35	\$311.50
1 ½"	\$182.92	\$229.84	\$276.76	\$323.68	\$370.60	\$417.52	\$464.44	\$511.36	\$558.28	\$605.20
2"	\$282.45	\$354.90	\$427.35	\$499.80	\$572.25	\$644.70	\$717.15	\$789.60	\$862.05	\$934.50
3"	\$524.55	\$659.10	\$793.65	\$928.20	\$1,062.75	\$1,197.30	\$1,331.85	\$1,466.40	\$1,600.95	\$1,735.50
4"	\$860.80	\$1,081.60	\$1,302.40	\$1,523.20	\$1,744.00	\$1,964.80	\$2,185.60	\$2,406.40	\$2,627.20	\$2,848.00
6"	\$1,708.15	\$2,146.30	\$2,584.45	\$3,022.60	\$3,460.75	\$3,898.90	\$4,337.05	\$4,775.20	\$5,213.35	\$5,651.50
8"	\$2,690.00	\$3,380.00	\$4,070.00	\$4,760.00	\$5,450.00	\$6,140.00	\$6,830.00	\$7,520.00	\$8,210.00	\$8,900.00

Non-Beneficiary commercial / non-agriculture water service
delivery (usage) fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$2.21	\$2.63	\$3.04	\$3.46	\$3.87	\$4.28	\$4.70	\$5.11	\$5.53	\$5.94
Tier 2	\$4.12	\$4.89	\$5.66	\$6.43	\$7.20	\$7.97	\$8.74	\$9.51	\$10.28	\$11.06
Tier 3	\$6.09	\$7.23	\$8.37	\$9.50	\$10.64	\$11.78	\$12.92	\$14.06	\$15.20	\$16.34

(CONTINUED)

Exhibit "A"
April 17, 2018

Non-Beneficiary commercial / agriculture meter service (base)
fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$40.35	\$50.70	\$61.05	\$71.40	\$81.75	\$92.10	\$102.45	\$112.80	\$123.15	\$133.50
3/4"	\$59.18	\$74.36	\$89.54	\$104.72	\$119.90	\$135.08	\$150.26	\$165.44	\$180.62	\$195.80
1"	\$94.15	\$118.30	\$142.45	\$166.60	\$190.75	\$214.90	\$239.05	\$263.20	\$287.35	\$311.50
1 1/2"	\$182.92	\$229.84	\$276.76	\$323.68	\$370.60	\$417.52	\$464.44	\$511.36	\$558.28	\$605.20
2"	\$282.45	\$354.90	\$427.35	\$499.80	\$572.25	\$644.70	\$717.15	\$789.60	\$862.05	\$934.50
3"	\$524.55	\$659.10	\$793.65	\$928.20	\$1,062.75	\$1,197.30	\$1,331.85	\$1,466.40	\$1,600.95	\$1,735.50
4"	\$860.80	\$1,081.60	\$1,302.40	\$1,523.20	\$1,744.00	\$1,964.80	\$2,185.60	\$2,406.40	\$2,627.20	\$2,848.00
6"	\$1,708.15	\$2,146.30	\$2,584.45	\$3,022.60	\$3,460.75	\$3,898.90	\$4,337.05	\$4,775.20	\$5,213.35	\$5,651.50
8"	\$2,690.00	\$3,380.00	\$4,070.00	\$4,760.00	\$5,450.00	\$6,140.00	\$6,830.00	\$7,520.00	\$8,210.00	\$8,900.00

Non-Beneficiary commercial / agriculture water service delivery
(usage) fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$2.21	\$2.63	\$3.04	\$3.46	\$3.87	\$4.28	\$4.70	\$5.11	\$5.53	\$5.94
Tier 2	\$4.12	\$4.89	\$5.66	\$6.43	\$7.20	\$7.97	\$8.74	\$9.51	\$10.28	\$11.06
Tier 3	\$6.09	\$7.23	\$8.37	\$9.50	\$10.64	\$11.78	\$12.92	\$14.06	\$15.20	\$16.34

(END Exhibit "A")

KAWAIHAE WATER SYSTEM SERVICE RATES
APPROVED ON MAY 15, 2018

Residential Lessee Service Rates:

Residential lessee meter service (base) fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$49.07	\$63.37	\$77.70	\$92.06	\$106.46	\$120.90	\$135.37	\$149.88	\$164.42	\$179.01

Residential lessee service delivery (usage) tiers:

	Gallons Bi-Monthly
Tier 1	0 - 10,000
Tier 2	10,001 - 30,000
Tier 3	30,001 - 80,000
Tier 4	Over 80,000

Residential lessee service delivery (usage) fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$3.67	\$4.73	\$5.81	\$6.88	\$7.95	\$9.03	\$10.11	\$11.20	\$12.28	\$13.37
Tier 2	\$4.92	\$6.35	\$7.79	\$9.23	\$10.68	\$12.12	\$13.58	\$15.03	\$16.49	\$17.95
Tier 3	\$6.89	\$8.90	\$10.92	\$12.94	\$14.96	\$16.99	\$19.02	\$21.06	\$23.10	\$25.15
Tier 4	\$8.30	\$10.73	\$13.15	\$15.58	\$18.02	\$20.46	\$22.91	\$25.37	\$27.83	\$30.30

(CONTINUED)

Exhibit "B"
May 15, 2018

Kailapa Community Association Service Rates:

Kailapa Community Association meter service (base) fees:

Meter size (inches) Bi-Monthly	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
5/8"	\$49.07	\$63.37	\$77.70	\$92.06	\$106.46	\$120.90	\$135.37	\$149.88	\$164.42	\$179.01

Kailapa Community Association water service delivery (usage)
tier:

	Gallons Bi-Monthly
Tier 1	9,999,999

Kailapa Community Association water service delivery (usage)
fees:

Per 1,000 gallons	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28
Tier 1	\$11.41	\$14.73	\$18.06	\$21.40	\$24.75	\$28.11	\$31.47	\$34.84	\$38.22	\$41.61

(END Exhibit "B")

ANAHOLA WATER SYSTEM SERVICE RATES
APPROVED ON AUGUST 21, 2018

Residential Lessee Service Rates:

Residential lessee meter service (base) fees:

Meter size (inches)	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	FY 29
5/8"	\$28.08	\$32.16	\$36.24	\$40.32	\$44.40	\$48.48	\$52.56	\$56.64	\$60.72	\$64.80
3/4"	\$37.44	\$42.88	\$48.32	\$53.76	\$59.20	\$64.64	\$70.08	\$75.52	\$80.96	\$86.40
1"	\$58.50	\$67.00	\$75.50	\$84.00	\$92.50	\$101.00	\$109.50	\$118.00	\$126.50	\$135.00
1 1/2"	\$105.30	\$120.60	\$135.90	\$151.20	\$166.50	\$181.80	\$197.10	\$212.40	\$227.70	\$243.00
2"	\$175.50	\$201.00	\$226.50	\$252.00	\$277.50	\$303.00	\$328.50	\$354.00	\$379.50	\$405.00
4"	\$514.80	\$589.60	\$664.40	\$739.20	\$814.00	\$888.80	\$963.60	\$1,038.40	\$1,113.20	\$1,188.00

Residential lessee water service delivery (usage) tiers:

METER SIZE	TIER 1	TIER 2	TIER 3
	Gallons Bi-monthly	Gallons Bi-monthly	Gallons Bi-monthly
5/8"	0 – 20,000	20,001 – 40,000	> 40,000
3/4"	0 – 70,000	70,001 – 140,000	> 140,000
1"	0 – 200,000	200,001 – 400,000	> 400,000
1 1/2"	0 – 600,000	600,001 – 1,200,000	> 1,200,000
2"	0 – 1,200,000	1,200,001 – 2,400,000	> 2,400,000
4"	0 – 6,000,000	6,000,001 – 12,000,000	> 12,000,000

Residential lessee water service delivery (usage) fees:

Per 1,000 gallons	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	FY 29
Tier 1	\$3.23	\$3.70	\$4.17	\$4.64	\$5.11	\$5.58	\$6.04	\$6.51	\$6.98	\$7.45
Tier 2	\$3.74	\$4.29	\$4.83	\$5.38	\$5.92	\$6.46	\$7.01	\$7.55	\$8.10	\$8.64
Tier 3	\$5.27	\$6.03	\$6.80	\$7.56	\$8.33	\$9.09	\$9.86	\$10.62	\$11.39	\$12.15

(CONTINUED)

Agricultural Lessee Service Rates:

Agricultural lessee meter service (base) fees:

Meter size (inches)	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	FY 29
5/8"	\$28.08	\$32.16	\$36.24	\$40.32	\$44.40	\$48.48	\$52.56	\$56.64	\$60.72	\$64.80
3/4"	\$37.44	\$42.88	\$48.32	\$53.76	\$59.20	\$64.64	\$70.08	\$75.52	\$80.96	\$86.40
1"	\$58.50	\$67.00	\$75.50	\$84.00	\$92.50	\$101.00	\$109.50	\$118.00	\$126.50	\$135.00
1 1/2"	\$105.30	\$120.60	\$135.90	\$151.20	\$166.50	\$181.80	\$197.10	\$212.40	\$227.70	\$243.00
2"	\$175.50	\$201.00	\$226.50	\$252.00	\$277.50	\$303.00	\$328.50	\$354.00	\$379.50	\$405.00
4"	\$514.80	\$589.60	\$664.40	\$739.20	\$814.00	\$888.80	\$963.60	\$1,038.40	\$1,113.20	\$1,188.00

Agricultural lessee water service delivery (usage) tiers:

METER SIZE	# of structures	TIER 1	TIER 2
		Gallons Bi-monthly	Gallons Bi-monthly
5/8"	N/A	0 – 25,000	> 25,000
3/4"	1	0 – 25,000	> 25,000
3/4"	2	0 – 50,000	> 50,000
1 1/2"	1	0 – 25,000	> 25,000
1 1/2"	2	0 – 50,000	> 50,000
2"	1	0 – 25,000	> 25,000
2"	2	0 – 50,000	> 50,000

Agricultural lessee water service delivery (usage) fees:

Per 1,000 gallons	FY 20	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	FY 29
Tier 1	\$3.23	\$3.70	\$4.17	\$4.64	\$5.11	\$5.58	\$6.04	\$6.51	\$6.98	\$7.45
Tier 2	\$0.82	\$0.94	\$1.06	\$1.18	\$1.30	\$1.41	\$1.53	\$1.65	\$1.77	\$1.89

(END Exhibit "C")

PUUKAPU MAINTENANCE FEE
APPROVED ON MAY 19, 2014 AND EXTENDED ON MAY 15, 2018

COST COMPONENT	RATE PER MONTH
• Standby Charge: 4-Inch Master Meter \$255.00 per month. \$255.00/184 lots = \$1.39 per lot	\$ 1.39
• Flat Rate Water Charge	\$ 18.00
• Electricity Charge (\$1,692/40 users)	\$ 42.30
• Operations and Maintenance (10,761/184 users)	\$ 58.48
• Potable Water via Spigot (600 gpd/40 users)	\$ 2.24
TOTAL	\$122.41

One-time equipment and installation costs:

EQUIPMENT/INSTALLATION	COST
5/8" Meter	\$114.00
Backflow Preventer	\$675.00
TOTAL	\$789.00


(END Exhibit "D")

STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

January 29, 2018

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:

At the December 2017 meeting of the Hawaiian Homes Commission, the HHC deferred Item C-1, which requested approval of the recommended changes to the draft rules for the Hawaiian Home Lands water systems and requested approval to proceed to Chapter 91, HRS. The HHC requested further consideration of several items. The draft rule text is attached as Exhibit A. Staff continues to work with counsel on §10-4.1-31 water service rates and §10-4.1-42 fees for Puukapu; recommendations for those items will be provided to the HHC on Monday morning, 1/29/18.

Accordingly, staff recommends the following changes:

- a. **§10-4.1-9(b) Payment of bills and delinquency.** Delete language about "alternative payment methods" from this subsection and instead address the details of "alternative payment methods" in Department procedure.

New §10-4.1-9(c): Add a new subsection to provide the framework for the procedure relating to alternative payment methods: "The department may enter into a payment agreement with a consumer to facilitate the

payment of delinquent water charges. The terms of a payment agreement between the department and a lessee-consumer may include alternative payment methods and shall not exceed the term of five years. Current charges shall continue to be paid when due. The agreement shall be signed by the department and the consumer, and breach of such an agreement by the consumer shall result in further collection efforts including disconnection.

- (1) Alternative payment methods are goods that are grown, caught, or produced by the consumer and donated to the homestead community on island or services provided by the consumer free of charge to the department. Goods shall be dropped off at the district office at a time determined by the district office supervisor for distribution among beneficiaries. Services shall be provided to the department as determined by the district office supervisor.
- (2) The value of the alternative payment methods rendered shall not exceed five per cent of the delinquent amount. All terms regarding alternative payment methods, including the goods or services or both to be donated, valuation, and dates and times of service or drop off shall be included in the payment agreement."

b. **§10-4.1-10(c) (2) Discontinuation of service.** Language was changed to resolve any appeal over discontinuation of service through Departmental process only, vesting the chairman with final decision-making authority: "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 chairman. The decision of the chairman shall be final. 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."

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

Item C-2; Exhibit A

EXHIBIT B

\$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	Monthly maintenance fee
\$10-4.1-43	Conservation measures and emergency conditions
\$10-4.1-44	Unauthorized drawing of water

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 be liable 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.

(c) The department may enter into a payment agreement with a consumer to facilitate the payment of delinquent water charges. The terms of a payment agreement between the department and a lessee-consumer may include alternative payment methods and shall not exceed the term of five years. Current charges shall continue to be paid when due. The agreement shall be signed by the department and the consumer, and breach of such an agreement by the consumer shall result in further collection efforts including disconnection.

- (1) Alternative payment methods are goods that are grown, caught, or produced by the consumer and donated to the homestead community on island or services provided by the consumer free of charge to the department. Goods shall be dropped off at the district office at a time determined by the district office supervisor for distribution among beneficiaries. Services shall be provided to the department as determined by the district office supervisor.
- (2) The value of the alternative payment methods rendered shall not exceed five per cent of the delinquent amount. All terms regarding alternative payment methods, including the goods or services or both to be donated, valuation, and dates and times of service or drop off shall be included in the payment agreement. [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 chairman. The decision of the chairman shall be final. 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. 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. [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

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 bill 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 on 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

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 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 department shall conduct a cost of service study annually, based upon enterprise accounting, and a water service rates analysis at least every three years.

(b)

[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

consumer's own method. [Eff and comp]
(Auth: HHC Act §222) (Imp: HHC Act §221)

§10-4.1-42 Monthly maintenance fee. (a) The lease shall provide service conditions and for the assessment of the monthly maintenance fee.

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

§10-4.1-43 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)

§10-4.1-44 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.

JOBIE M. K. MASAGATANI, Chairman
Hawaiian Homes Commission

APPROVED AS TO FORM:

Item C-2; Exhibit A

EXHIBIT B

Deputy Attorney General

Item C-2; Exhibit A

EXHIBIT B



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.SBRRB.info@hawaii.gov
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MEMORANDUM

David Y. Ige
Governor

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DBEDT Director

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O'ahu

James Kimo Lee
Hawaii'i

Director, DBEDT
Voting Ex Officio

TO: William Aila, Jr., Director
Department of Hawaiian Home Lands (DHHL)

FROM: Robert Cundiff, Chair 
Small Business Regulatory Review Board

DATE: May 22, 2020

SUBJECT: Proposed New Hawaii Administrative Rules (HAR) Title 10
Chapter 4.1, Management of Water Systems

The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes.

Please be advised that at the SBRRB's May 21, 2020 board meeting, the members heard from Ms. Hokulei Lindsey, Administrative Rules Officer and Ms. Gigi Cairel, Grant Specialist, from DHHL, regarding the above-captioned proposed new HAR before the public hearings.

Upon review, the members unanimously agreed to pass the amendments onto public hearing.

The SBRRB members want to thank DHHL representatives for attending its remote board meeting. Thank you also for keeping us apprised of the regulatory activity at DHHL that may impact small business.

c: Governor David Y. Ige
Ms. Hokulei Lindsey, Administrative Rules Officer, DHHL
Gigi Cairel, Grants Specialist, DHHL

**PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD**
(Hawaii Revised Statutes §201M-2)

Date: 3 / 6 20 20

Department or Agency: Department of Hawaiian Home Lands

Administrative Rule Title and Chapter: Chapter 10-4 1

Chapter Name: Management of Water Systems

Contact Person/Title: Hokulei Lindsey / Adminstrative Rules Officer

E-mail: Hokulei.Lindsey@hawaii.gov Phone: 620-9280

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☒ Yes ☐ No

If "Yes," provide details: <https://dhhhl.hawaii.gov/hhc/hawaii-administrative-rules/>

I. Rule Description:

☒ New ☐ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No

(If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

* * *

If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.

Any small business that is serviced by Department of Hawaiian Home Lands (DHHL or Department) owned water systems will be required to comply with the proposed rules. According to Department records, there are approximately ten potential small businesses serviced by the DHHL Hoolehua drinking water system (PWS 230) on the island of Molokai. The business types are varied, including several farms, an auto repair shop, a bank, and a real estate business. The proposal could adversely affect the small businesses in three ways: first, thru increased water service rates; second if that business consumer were to be charged additional fees due to delinquency in bill payment, water meter obstruction, or because the consumer caused damage to Department property or equipment; and third, if because of delinquency or other non-compliance the business consumer was subject to water service shut off.

2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

Under the proposal, the most immediate direct cost is the increase of water service rates. The Department bills on a bi-monthly basis using an “increasing block rate” structure under which each succeeding block (e.g., 0-10,000 gallons; 10,001-20,000 gallons; etc.) is charged at a higher rate than the previous blocks. Over a ten-year period, water service rates will increase by 20% each year and meter fees will increase 31.5% each year. The table below is a comparison of the old rates and new rates at years 1, 5, and 10 for the non-beneficiary commercial users on the Hoolehua water system. The rates schedule is attached as Exhibit A.

Monthly Water Bill Projections
For Non-Beneficiary Commercial User Types

User type	Meter size	Average gallons per month per user	FY14 – FY18	FY19	FY23	FY28
Non-Beneficiary/ Commercial	5/8"	11,600	\$26.68	\$34.52	\$71.31	\$106.47
Non-Beneficiary/ Commercial Agriculture	1"	170,000	\$158.00	\$525.62	\$935.75	\$1,457.88

The imposition of fees or fines would be applicable only if there were a delinquency, meter tampering, meter obstruction, or damage to Department property or equipment. The table below lists the additional fees and fines as provided in the proposal:

Additional Circumstance-Based Fines and Fees

§10-4.1-9 Payment of bills and delinquency	§10-4.1-15 Obstructed meter fine	§10-4.1-16 Tampering prohibited
Late payment fee: 1% of outstanding balance per month; Returned check fee: \$25 (HRS §40-35.5)	Obstruction fine: \$25 per billing period; Removal fee: \$25, if the Department clears the obstruction	All costs related to the repair; Late payment fee: 1% per month

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.

The Department has not previously imposed fines for delinquency, meter tampering, or meter obstruction. Fees for installation, repairs, replacements, and labor are charged at cost and the proposal does not change that practice nor does it increase those fees per se.

Water service rates for the Hoolehua system were last set in 2004 and spread a ten percent increase over a ten-year period. The charts below show the fee structures once the 2004 increase was fully in place.

Non-Beneficiary Commercial/Non-Agriculture

Meter service (base) fees

Meter size (inches)	FY 2014 – FY 2018 Base fee
5/8"	\$30.00
3/4"	\$44.00
1"	\$70.00
1 1/2"	\$136.00
2"	\$210.00
3"	\$390.00
4"	\$640.00
6"	\$1,270.00
8"	\$2,000.00

Water service delivery (usage) fees

	Gallons Bi-Monthly	Usage Fee per 1,000 gallons
Tier 1	0 – 10,000	\$1.80
Tier 2	10,001 – 30,000	\$3.35
Tier 3	Over 30,000	\$4.95

Non-Beneficiary Commercial/Agriculture

Meter service (base) fees

Meter size (inches)	FY 2014 – FY 2018 Base fee
5/8"	\$30.00
3/4"	\$44.00
1"	\$70.00
1 1/2"	\$136.00
2"	\$210.00
3"	\$390.00
4"	\$640.00
6"	\$1,270.00
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Water service delivery (usage) fees

	Gallons Bi-Monthly	Usage Fee per 1,000 gallons
Tier 1	0 – 10,000	\$1.80
Tier 2	10,001 – 30,000	\$3.35
Tier 3	Over 30,000	\$1.15

b. Amount of the proposed fee or fine and the percentage increase.

The imposition of fines would be new. In terms of water rates, the percent increase is spread over a ten-year period to mitigate impact. The base delivery rates will increase by 200% and the base meter service fees will increase by 315%. Spread over ten years, this becomes 20% and 31.5%, each year. The water rates schedule is attached as Exhibit A.

c. Reason for the new or increased fee or fine.

The Department is in the process of developing a comprehensive water management program. The purpose of the service rate increase is to decrease the financial shortfall and move towards a self-sustaining or near self-sustaining system. A critical component of comprehensive water management is the legal authority to shut off water service; these rules provide that authority to the Department. The fines are built in for various purposes, one of which is to create intermediate steps before service shut off. Fines are also a standard industry practice imposed to recover costs and encourage conservation.

More specifically, in terms of the increase in water service rates, it has been an extended period, over ten years, since water rates were last set. With an average of only 600 connections, the Hoolehua water system is a very small system. As with most small water systems, the main source of revenue is derived from water rate schedules. Water rates fund daily operations, routine maintenance, repairs, and electricity costs. For the Department, every dollar collected from water rates goes directly to the operation, maintenance, and administration of the system. The service rates set over a decade ago are artificially low and the dollar amount collected falls short of the financial requirements of the system. For example, since 2003, costs for the Hoolehua system have increased by ninety percent while the last rate increase of ten percent was in 2004. The Hoolehua water system was built in the 1930s and will be undergoing several system improvements, expected to be completed by 2021. Although water rates are being increased, the

Department anticipates that the system improvements will achieve significant operational efficiency and ultimately contribute to managing affordability by lowering system costs over the long term.

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).

The new rates are based upon administration, operation, and management costs, and take into account industry standard factors of affordability (determined by the Census median income), equity among consumer classes (e.g., residential, agriculture, commercial), and water system sustainability, to inform how water service rates are adjusted, if at all. The fines and fees other than rates were determined using existing methods and criteria including, HRS section 40-35.5, actual cost, and the benchmark of one percent of the outstanding balance.

3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

The probable monetary benefit to the Department is a reduction of the water system's financial short fall and corresponding decrease in the subsidy paid by the Department to sustain the system. Funds generated from the service rates, fees, and fines go directly to the administration, operation, and maintenance costs of the water system; water billing ideally covers the cost of delivery. A self-sustaining or near self-sustaining water system is the goal. For the Department that would mean the ability to allocate more funding toward homestead development and furtherance of the Hawaiian Homes Commission Act.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.

The methodology for setting service rates is formulated to mitigate impact; the factor of affordability would prevent exorbitant or inflated rates. The rates schedule further mitigates the impact by spreading the increase out over a ten-year period.

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

The rules are required for best management and the service rate increase is part of that effort. That the rates have not been adjusted for an extended period will impact every consumer on the water system. The proposed rules, however, embody the reality of the cost and complexity of administering, maintaining, and operating a public water system that delivers water for human consumption according to both state and federal clean water regulations. This is especially true for small water systems such as the system in Hoolehua, which averages only 600 connections; economies of scale are lost. The

proposed rules are not unique nor are they particularly stringent in this context; they are standard for rules that govern a public water system.

6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.

Under to the Hawaiian Homes Commission Act and the Hawaii State Constitution, the Department's obligation is to the beneficiaries of the Hawaiian Homes Commission Act; this is an obligation governed by trust duties and responsibilities. Flexibility, innovation, and creative compliance methods, therefore, must be considered along with the Department's trust obligations. The proposal provides for some flexibility to all consumers on the Hoolehua water system in the form of a payment agreement for delinquent charges but the most flexible, innovative, and creative compliance methods are available only to beneficiaries of the trust.

Applicable to all consumers on the Hoolehua water system, section 10-4.1-9(c) authorizes a payment agreement between the Department and the consumer to facilitate the payment of delinquent water charges. The section further authorizes that "alternative payment methods" may be included in a payment agreement between the Department and a lessee-consumer. Alternative payment methods are goods that are grown, caught, or produced by the lessee-consumer and donated to the homestead community or services provided to the department free of charge. A lessee-consumer may settle no more than 5% of the delinquent balance by providing subsistence products to the homestead community or in-kind services to the Department. This provision for "alternative payment methods" would apply to a lessee-owned small business.

7. How the agency involved small business in the development of the proposed rules.

The Department reached out six times to small business consumers on the Hoolehua water system. They were contacted directly by letter, dated November 27, 2017 (attached), which provided information about the proposed rules and requested comments. Several meetings were held on Molokai: two beneficiary consultation meetings held on July 25, 2017 and August 24, 2017; and an informational meeting on November 13, 2017. Notices for those meetings were mailed to beneficiaries on Molokai, included with the water bill, and posted on community bulletin boards on island. A meeting specifically related to the proposed rate increase was held on March 12, 2018; notice for this meeting was mailed with the water bill. In addition to the required open meeting notice, it was announced at the March 12 meeting that the Hawaiian Homes Commission would be voting on the water rates for Hoolehua at their regular meeting held on Molokai on April 16-17, 2018.

- a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.

No written recommendations or comments were received from small businesses and no oral comments were received by anyone identifying themselves as a small business owner.

8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

The provisions and standards included in the proposed rules are not more stringent than those of other water systems in the state or nationwide. What is articulated in the proposed rules are, in fact, industry standards. The provisions are either the same or very similar to the provisions found in the rules and regulations for the water utilities run by the various counties of the state as well as those rules that govern irrigation water systems operated by the Department of Agriculture.

The remaining questions are Not Applicable because the Department's response to question 8 is "no".

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

SHAN S. TSUTSUMI
LT. GOVERNOR
STATE OF HAWAII



JOBIE M.K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

WILLIAM J. AHIA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P.O. BOX 1879
HONOLULU, HAWAII 96805

November 27, 2017

Aloha,

The Department of Hawaiian Home Lands is working toward adopting administrative rules that would govern its water systems. You are a consumer on a DHHL owned water system and, as part of the rulemaking process, the DHHL is notifying small businesses who will be impacted by the proposal.

The Department's records indicate that you may be a "small business" under Chapter 201M, Hawaii Revised Statutes. Chapter 201M defines a "small business" as "a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees." When developing rules that would impact small businesses, the DHHL is required to evaluate the impact the rules may have on small businesses.

The water systems rules are intended to improve management and increase efficiencies. These rules would work in tandem with several planned system improvements and upgrades.

While there are several key provisions in the draft, you should be aware that new processes would include fees for delinquent payments and fines for meter tampering and meter obstruction. The draft proposal also provides a process that could result in suspension of water service if your water bill is delinquent for two billing cycles.

The complete draft of the rules and supplemental information is available online at <http://dhhl.hawaii.gov/department-of-hawaiian-home-lands-administrative-rules/>. You can also request a hard copy from the nearest DHHL District Office.

Please provide any comments you have by December 11, 2017. You can submit comments on the website, by email at dhhl.rules@hawaiianhomelands.org; or by mail to P.O. Box 1879, Honolulu, HI 96805. If you have any questions, please contact our Administrative Rules Officer, Hokulei Lindsey, at 808-620-9280.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jobie M.K. Masagatani".

Jobie M.K. Masagatani
Chairman, Hawaiian Homes Commission

Response to 'Disingenuous' Letter

The issues pointed out in the August letter titled "Demands for Removal of Planning Commission Chair" are disingenuous.

As Vice Chair of the Molokai Planning Commission, I have first-hand knowledge of the items referenced. Today, I am speaking as an individual.

Items that are passed by the Commission are passed by a majority vote, not by the Commission's chair. It is disingenuous to implicate one person when a majority vote is needed to pass any rule.

And for the record, this commission consists of the most "Molokai men and raised" commissioners in the past decade. Trust this commission is genuinely considering all things prior to making a decision.

Because of the escalation during recent public testimony, by the advice

of Corporation Council, the meeting was recessed and police were asked to have a presence to ensure the community's safety.

There is a difference between civil discourse and unruly behavior. It is for this reason that setting guidelines for a public meeting are welcomed and needed. It is something I consistently hear from our greater community who feel discouraged to attend, but should have no less a voice.

Through faith, I have served my country, and today I serve my community. The implied assertions are unmerited. I stand in support of the current chair's abilities as well as the rest of the commissioners.

Lawrence Kalamakulanakilaoketur-

laktiekie Lasua

Kalamau'ula, Moloka

Beware of Internet Scams

This letter is to inform fellow Molokai residents that there is grave danger in what appear to be simple offers on the Internet. I am a senior living on Molokai on very limited income and I've been scammed twice. In spite of my own embarrassment, I want to let the public know how easy it is to get yourself into big danger.

The first time I saw an ad for Meryl Streep and how beautiful she looks. The ad was for a sample of face cream for \$4.99, so I thought, cool! I gave them my credit card number and

I received the products in the mail. I wrote to the Better Business Bureau with all of the information I had, and they contacted me saying there is an epidemic of illusive companies under one umbrella in Asia somewhere that they cannot locate. The phone numbers that are given are bogus. There is no visible name of any company.

Here is the scariest part. Once you authorize the cost of the product sample, you have given them permission to enter your bank account at any time and take whatever they want. They

Life is a big, beautiful piece of art every day. Life is beautiful and very special, every day is important. Life is unpredictable, we never know what is going to happen day by day.

Live life to the best and appreciate every day. Do good, respectful, happy things every day. We all sculpt our own life. We also have hope, belief to re-sculpt, rebuild, renew our life, from our mistakes we did today, yesterday, and in the past. Keep learning more about our beautiful gifts and talent that we are born with. Whatever we do, do our very best with a positive happy frame of mind every day, and success will always follow us in our lifetime.

One of our important missions in life is to reach out and help, be part of someone else's life. Now, we all can walk the same happy trail of our rich life together — our community. To me, simple philosophy is the true meaning of the word "rich." Rich with the life that God provides for all the human race to survive and be happy with. The land. The ocean. The rich survival of

our beautiful life in this beautiful earth.

Money is part of our life and society. But it's not everything in our life. Look at the leaders of our beautiful country. They are mentally ill with greed, selfishness, money and power, don't care about the welfare of most citizens in our country. These are the people who represent the true meaning of the words mentally ill. Think about it. We are richer than all of them. We live a very happy, simple life in our own beautiful paradise. We help and support each other.

Molokai, always remember our rich survival of our beautiful life is land, ocean. We must plant and farm the land. We must take good care of the ocean, keep it clean. It's the rich survival of our beautiful life.

Have a wonderful and a very pleasant day, every day, with a beautiful Molokai no ka heke smile.

Saunou Lina

DHHL Consultation on Water and Planning

DHHL News Release

On Aug. 24, Department of Hawaiian Home Lands (DHHL) will conduct a beneficiary consultation meeting to discuss proposed administrative rules for the DHHL Water Systems and DHHL Planning Systems. This is a follow-up to the two meetings held on July 25 on these very same subjects.

These meetings have been held statewide. DHHL wants to ensure that Molokai is provided every opportunity to comment on these proposed rules. The meeting will be held at 6 p.m. at the Kulana 'O'iwi Hallau. For information on the proposed rules and comments received already, please see the DHHL website.

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

NOTICE OF PUBLIC HEARINGS ON PROPOSED HAWAII ADMINISTRATIVE RULES

Pursuant to Hawaii Revised Statutes (HRS) chapter 91, notice is hereby given that the Department of Hawaiian Home Lands (DHHL) will hold statewide online public hearings to afford all interested persons an opportunity to submit data, views, or arguments, orally or in writing on the proposed adoption of Chapter 10-4.1, under Hawaii Administrative Rules (HAR) Title 10, Department of Hawaiian Home Lands, entitled "Management of Water Systems." The proposed chapter provides standardized practices for the management of the DHHL-owned Water Systems. The proposed chapter also provides service rates, meter reading and rendering of bills, and conservation and emergency measures for DHHL-owned public water systems in Anahola, Kauai; Hoolehua, Molokai; and Kawaihae, Hawaii. Provisions for general conditions, monthly maintenance fee, conservation and emergency measures, and unauthorized drawing of water are included for the DHHL-owned non-potable water system in Puukapu, Hawaii. An informational briefing will be held immediately before each public hearing. Due to COVID-19 public health dangers associated with in-person gatherings, the public hearings and informational sessions will be held entirely online via video conferencing technology.

All interested persons may view a pre-recorded presentation describing the proposed rules, which is currently available for viewing on the DHHL website at <https://dhhl.hawaii.gov/hhc/departments-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

There are two ways to participate in the public hearings: online via the internet or by telephone, or by written testimony. All interested persons are urged to participate to present relevant information and individual opinion for the DHHL to consider. Hearings will be held on the following dates and times

Wednesday, November 18, 2020

Informational briefing: 5:30 p.m.

Public hearing: 6:00 to 7:00 p.m.

Thursday, November 19, 2020

Informational briefing: 5:30 p.m.

Public hearing: 6:00 to 7:00 p.m.

Friday, November 20, 2020

Informational briefing: 11:30 a.m.

Public hearing: 12:00 to 1:00 p.m.

Online: Persons may present live video/oral testimony via internet or telephone during the online public hearing. To participate, you will need either a computer with internet access,

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

October 15, 2020

Aloha Homestead Association Leaders,

The Department of Hawaiian Home Lands will be conducting public hearings for the proposed adoption of administrative rules for the Management of Water Systems on November 18, 19, and 20, 2020. The public hearing is required by state law. The notice for the hearings will be published in newspapers statewide and a copy is enclosed for your association. Also enclosed are two copies of the proposed rule amendments. Copies of the proposal are also available for reading at all Department offices and on DHHL's website.

All three hearings will be held using video conferencing technology because of COVID-19 public health dangers associated with in-person gatherings. Even though we will not be gathering in person, there are multiple ways to participate and submit any comments you may have about the proposal; you can even watch the hearings after the fact, if you want. If you cannot attend the hearing but you want to comment on the proposal, the Department is accepting written comments. Please be sure to submit (or postmark) your written comments to the Department no later than December 3, 2020.

You may remember beneficiary consultation meetings were held in 2017 about these proposed rule amendments. The Commission submittals that include beneficiary consultation information as well as the proposed rules are available on the Department's website. We were able to incorporate into the proposal some of the comments offered during beneficiary consultation and believe it is a better proposal thanks to beneficiary input! Your mana'o and participation is much appreciated.

If you have any questions, please contact Hokulei Lindsey at (808) 620-9280 or Hokulei.Lindsey@hawaii.gov.

Mahalo nui loa,

A handwritten signature in black ink, appearing to read "William J. Aila, Jr.", is written over a horizontal line.

William J. Aila, Jr., Chairman
Hawaiian Homes Commission

Enc.

Public Hearings on proposed Administrative Rules related to the management of DHHL water systems



DHHL.HAWAII.GOV/HHC/HAWAII-ADMINISTRATIVE-RULES

Virtual Public Hearings “Management of DHHL Water Systems”

Wednesday, November 18, 2020

Informational briefing: 5:30 p.m.

Public hearing: 6:00 to 7:00 p.m.

Thursday, November 19, 2020

Informational briefing: 5:30 p.m.

Public hearing: 6:00 to 7:00 p.m.

Friday, November 20, 2020

Informational briefing: 11:30 a.m.

Public hearing: 12:00 to 1:00 p.m.

**All interested persons may view a
presentation describing the proposed
rules and get instructions for public
testimony at the link below.**

For more information call 808-620-9500 or

email DHHL.AdminRules@hawaii.gov

DHHL.HAWAII.GOV/HHC/HAWAII-ADMINISTRATIVE-RULES



DEPARTMENT OF HAWAIIAN HOME LANDS
P.O. BOX 1879 HON. HI 96805

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DAVID Y. IGE
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STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

November 13, 2020

Pursuant to section 10-5-23, Hawaii Administrative Rules (HAR), I designate Hokulei Lindsey as the presiding officer in my absence over the public hearings for proposed amendments to Title 10, HAR, related to the management of water systems, held pursuant to Chapter 91, Hawaii Revised Statutes. Due to COVID-19 public health dangers associated with in-person gatherings, the public hearings will be held entirely online via video conferencing technology as follows:

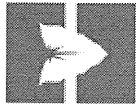
- November 18, 2020
6:00 to 7:00 p.m.
- November 19, 2020
6:00 to 7:00 p.m.
- November 20, 2020
12:00 to 1:00 p.m.



William J. Aila, Jr.
Chairman, Hawaiian Homes Commission

COVID-19 Related Information:

Safe Travels Hawaii Program | Safe Travels Platform Help | COVID-19 Vaccine | Labor FAQs | Human Services | Recovery Navigator



Established by Prince Kūhiō & the U.S. Congress
Department of Hawaiian Home Lands

Home » HHC – Hawaiian Homes Commission » Department of Hawaiian Home Lands Administrative Rules » DHHL Administrative Rules – Management of Water Systems

DHHL ADMINISTRATIVE RULES – MANAGEMENT OF WATER SYSTEMS

The Department of Hawaiian Home Lands is proposing to add Administrative Rules in relation to the Management of Water Systems, including:

- Service rates, meter reading and rendering of bills, and conservation and emergency measures for DHHL-owned public water systems in Anahola, Kauai; Hoolehua, Molokai; and Kawaihae, Hawaii.
- Provisions for general conditions, monthly maintenance fees, conservation, and emergency measures, and unauthorized drawing of water for the DHHL-owned non-potable water system in Puukapu, Hawaii.

Beneficiary Consultation:

The proposed chapter provides standardized practices for the management of DHHL-owned Water Systems. The proposed chapter also provides service rates, meter reading, and rendering of bills, and conservation and emergency measures for DHHL-owned public water systems in Anahola, Kauai; Hoolehua, Molokai; and Kawaihae, Hawaii. Provisions for general conditions, monthly maintenance fees, conservation, and emergency measures, and unauthorized drawings of water are included for the DHHL-owned non-potable water system in Puukapu, Hawaii.

Proposed Action or Issue for Discussion

Notification

Public Notice

Meeting Schedule

An informational briefing will be held immediately before each public hearing. Due to COVID-19 public

EXHIBIT H

health dangers associated with in-person gatherings, public hearings and informational sessions will be held entirely online via video conferencing technology.

All interested persons may view a pre-recorded presentation describing the proposed rules, which is currently available for viewing on the DHHL website, dhhl.hawaii.gov/live.

There are two ways to participate in the public hearings: Online via the internet or by telephone, or by written testimony. All interested persons are urged to participate to present relevant information and individual opinion for the DHHL to consider. Hearings will be held on the following dates and times

Wednesday, November 18, 2020

- **Informational briefing: 5:30 p.m.**
- **Public hearing: 6:00 to 7:00 p.m.**

Thursday, November 19, 2020

- **Informational briefing: 5:30 p.m.**
- **Public hearing: 6:00 to 7:00 p.m.**

Friday, November 20, 2020

- **Informational briefing: 11:30 a.m.**
- **Public hearing: 12:00 to 1:00 p.m.**

Online: Persons may present live video/oral testimony via the internet or telephone during the online public hearing. To participate, you will need either a computer with internet access, a video camera, and a microphone or a telephone.

To sign up please email your request to DHHL.AdminRules@hawaii.gov at least 48 hours in advance. Please include the hearing date you would like to testify, your email, full name, and phone number. A confirmation will be sent to you with instructions and the meeting link and call-in number.

You can view a live stream of the public hearing on the DHHL website: dhhl.hawaii.gov/live. Each hearing will be recorded and will be available for viewing on the DHHL website within 24 hours after the hearing: dhhl.hawaii.gov/live.

Written testimony: Any person may file written testimony to the proposed rulemaking by email or mail postmarked by December 3, 2020.

Mail:

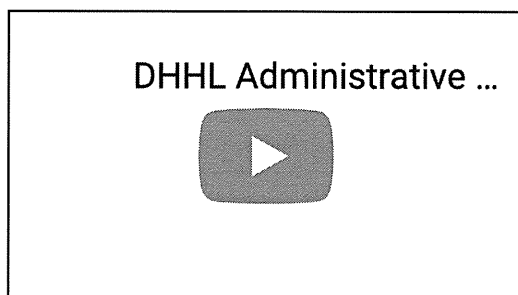
ATTN: Administrative Rules

Department of Hawaiian Home Lands

P.O. Box 1879, Honolulu, HI 96805

Email:DHHL.AdminRules@hawaii.gov.

All oral and written testimony is public information.
Please do not include information in your testimony
that you do not want to be disclosed to the public.

**Presentation Materials**

- [Presentation](#)

Background Information

[Hawaiian Homes Commission Meeting Submittal – April 2019](#)

- Update: Administrative Rules for Management of Water Systems

[Hawaiian Homes Commission Meeting Submittal – January 2018](#)

- HHC Approves Recommended Changes to Draft Administrative Rules for Water Systems and to Proceed to Rulemaking under Chapter 91, Hawaii Revised Statutes

[Hawaiian Homes Commission Meeting Submittal – December 2017](#)

- Recommended Changes to the Draft Administrative Rules for the Water Systems and to Proceed to Rulemaking under Chapter 91, Hawaii Revised Statutes (Deferred)

[Hawaiian Homes Commission Meeting Submittal – September 2017](#)

- Beneficiary Consultation Report on
Department of Hawaiian Home Lands
Proposed Water Systems and Planning
System Amendments to Title 10, Hawaii
Administrative Rules

Meeting Notes

To be posted post-meeting.

The proposed rule amendments are currently available for review through December 3, 2020 online, and in-person.

Online: [Click here](#)

In-Person: Between the hours of 8:00 a.m. and 4:00 p.m.

- DHHL Main Office on [Oahu](#): 91-5420 Kapolei Pkwy, Kapolei, HI 96707
- DHHL District Offices:
 - [East Hawaii](#): 160 Baker Ave., Hilo, HI 96720
 - [West Hawaii](#): 64-756 Mamalahoa Hwy, Kamuela, HI 96743
 - [Maui](#): 655 Kaunualii St., Wailuku, HI 96793
 - [Molokai](#): 600 Mauna Loa Hwy, Kaunakakai, HI 96748
 - [Kauai](#): 3060 Eiwa St, Rm 203, Lihue, HI 96766.
- A copy of the proposed rule amendments will be mailed to any person who requests a copy in writing. The request must state the requestor's name and mailing address, and be delivered to the DHHL Main Office, P.O. Box 1879, Honolulu, HI 96805.

Review Period

Hawaiian Homes Commission Approval

Governor Approval

TBD

Final Version of Hawaii Administrative Rules Title 10 Amendments

TBD



HAWAIIAN HOME LANDS
HAWAIIAN HOMES COMMISSION · DEPARTMENT OF HAWAIIAN HOME LANDS


Background

Proposed Rules: Management of Water Systems

October 2020

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

1




Beneficiary Consultation

- Held statewide from June 22, 2017 to August 25, 2017. Two meetings were held on Kauai and West Hawaii, and three were held on Molokai, where the water systems are located.
- Commission submittals including beneficiary consultation summary and changes to the proposed rules are available on the DHHL website
 - <https://dhhl.hawaii.gov/hhc/department-of-hawaiian-home-lands-administrativerules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

2




Standardize Operations

- It's important to have standard operations because they improve accountability.
- Most provisions are similar to the rules for County-owned drinking water systems.
- There are separate subchapters for the drinking water systems and the Puukapu non-potable system.

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

3




Protection for the Water Systems

- The proposal provides processes to address tampering and water theft.
 - 10-4.1-15 obstructed meter
 - 10-4.1-16 tampering
 - 10-4.1-22 fire hydrants

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

4




Income and Maintenance

- The rules address delinquency including some suggestions from beneficiary consultation.
 - 10-4.1-9 payment and delinquency
 - 10-4.1-10 discontinuation of service
 - 10-4.1-11 restoration of service
- Updated rate schedules are attached to the proposal.

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

5




Public Hearing Schedule

- Online: November 18 & 19, 2020
 - 5:30 p.m. Briefing
 - 6:00 p.m. Public testimony
- Online: November 20, 2020
 - 11:30 a.m. Briefing
 - 12:00 p.m. Public testimony
- Email: DHHL.AdminRules@Hawaii.gov to sign up to provide comments on the proposed rules for Management of Water Systems.

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

6



Review a Copy

- Find the proposal on the DHHL website:
<https://dhhl.hawaii.gov/hhc/hawaii-administrative-rules/>
- Find the proposal at any DHHL office.
 - Review a copy at the office or
 - Ask for your own hard copy; 10¢/page
- Detailed information about the proposal and process:
<https://dhhl.hawaii.gov/hhc/department-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

7



Mahalo





DEPARTMENT OF HAWAIIAN HOME LANDS

www.dhhl.hawaii.gov

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

8

HAWAIIAN HOME LANDS
HAWAIIAN HOMES COMMISSION · DEPARTMENT OF HAWAIIAN HOME LANDS


Management of Water Systems

Proposed HAR 10-4.1

Public Hearings: November 18, 19, & 20, 2020

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

1

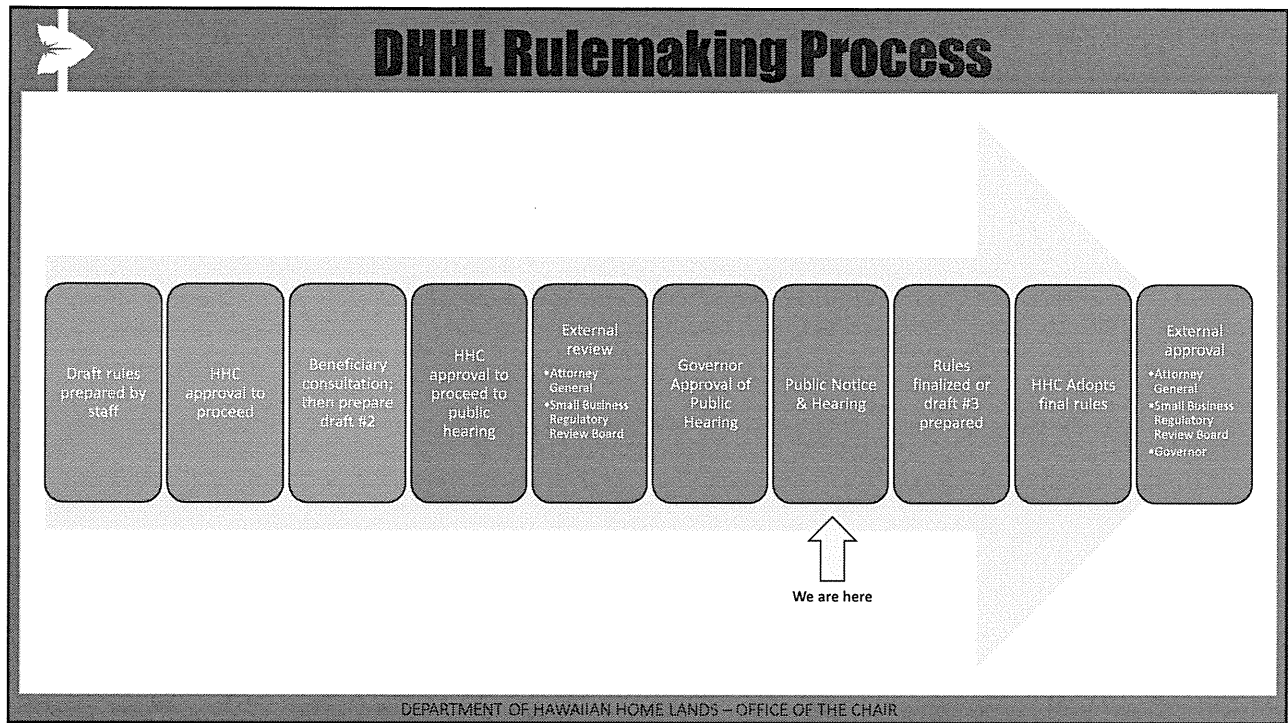


Proposed HAR 10-4.1

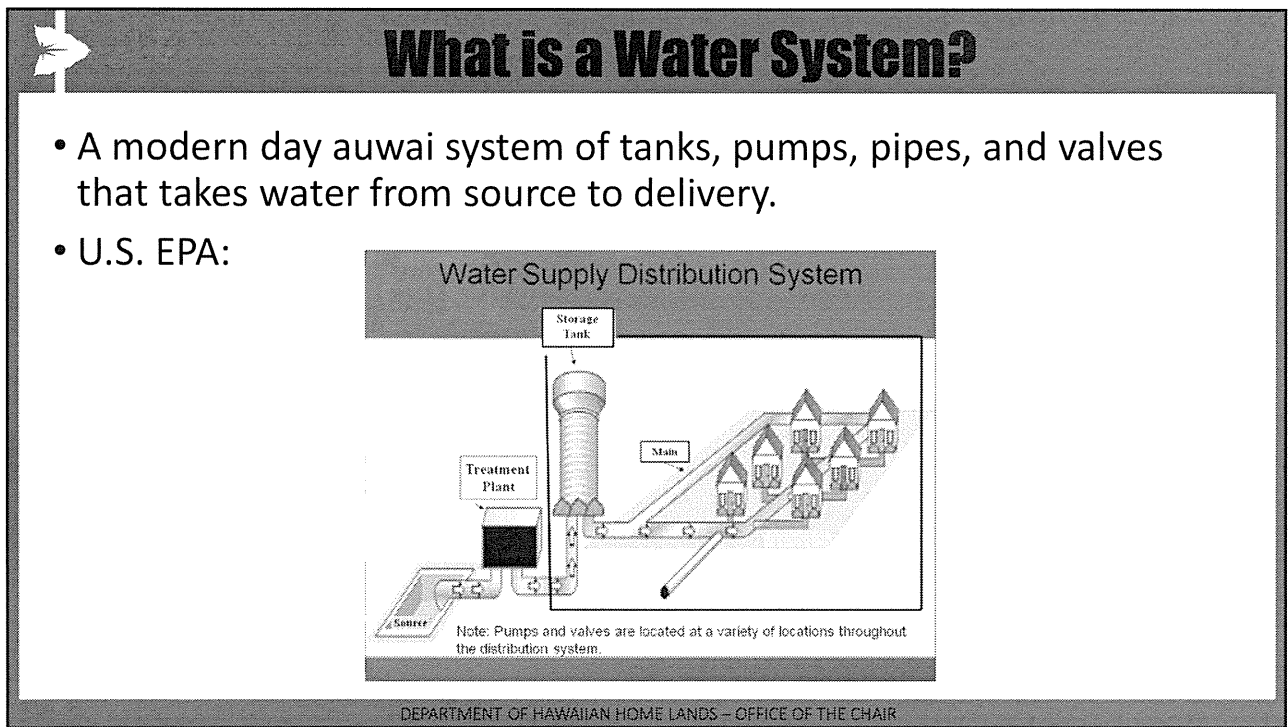
- Background information
- Proposed HAR 10-4.1 purpose and highlight contents
- Hearing schedule
- Where to find copies and information
- Testimony deadline
- Detailed information about the proposal and process:
<https://dhhl.hawaii.gov/hhc/departments-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

2



3



4

DHHL Owns 4 Water Systems

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR


5

Proposed HAR 10-4.1

- New chapter to HAR Title 10, which is DHHL's title of the HAR.
- There are three subchapters within the proposed HAR 10-4.1
 - Subchapter 1: General Provisions
 - Subchapter 2: Hawaiian Home Lands Public Water Systems
 - Subchapter 3: Puukapu Non-Potable Water System
- Attached to the proposal are Exhibits, which contain water system service rates for each system.

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

6




Proposed HAR 10-4.1

- Purpose: “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.” (10-4.1-1)
- Standardize operations
- Protect the water systems from tampering and water theft
- Income and maintenance

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

7




Public Hearing Schedule

- Online: November 18 & 19, 2020
 - 5:30 p.m. Briefing
 - 6:00 p.m. Public testimony
- Online: November 20, 2020
 - 11:30 a.m. Briefing
 - 12:00 p.m. Public testimony
- Email: DHHL.AdminRules@Hawaii.gov to sign up to provide comments on the proposed rules for Management of Water Systems.

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

8




Review a Copy

- Find the proposal on the DHHL website:
<https://dhhl.hawaii.gov/hhc/hawaii-administrative-rules/>
- Find the proposal at any DHHL office.
 - Review a copy at the office or
 - Ask for your own hard copy; 10¢/page
- Detailed information about the proposal and process:
<https://dhhl.hawaii.gov/hhc/department-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

9




Testimony

- Oral: DHHL.AdminRules@Hawaii.gov and we will send you a Teams Meeting link or phone number.
- Written: send/postmark by December 3, 2020
 - Email: DHHL.AdminRules@Hawaii.gov
 - Mail:

ATTN: Administrative Rules
Department of Hawaiian Home Lands
P.O. Box 1879, Honolulu, HI 96805

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

10



Proposed HAR 10-4.1 Management of Water Systems


**Informational Briefing
Q & A**

Public Hearing will begin after the Q & A

If you would like to testify during the public hearing,
email DHHL.AdminRules@Hawaii.gov

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

11



Proposed HAR 10-4.1 Management of Water Systems


**PUBLIC HEARING
NOVEMBER 18, 2020
6:00 – 7:00 P.M.**

To provide oral testimony tonight, email
DHHL.AdminRules@Hawaii.gov

Additional information available
<https://dhhl.hawaii.gov/hhc/department-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

12



Proposed HAR 10-4.1 Management of Water Systems


PUBLIC HEARING
NOVEMBER 19, 2020
6:00 – 7:00 P.M.

To provide oral testimony tonight, email
DHHL.AdminRules@Hawaii.gov

Additional information available
<https://dhhl.hawaii.gov/hhc/department-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

13



Proposed HAR 10-4.1 Management of Water Systems

PUBLIC HEARING
NOVEMBER 20, 2020
12:00 – 1:00 P.M.

To provide oral testimony tonight, email
DHHL.AdminRules@Hawaii.gov

Additional information available
<https://dhhl.hawaii.gov/hhc/department-of-hawaiian-home-lands-administrative-rules/dhhl-administrative-rules-management-of-water-systems/>

DEPARTMENT OF HAWAIIAN HOME LANDS – OFFICE OF THE CHAIR

14



15

Lindsey, Hokulei

From: Edward Halealoha Ayau <[REDACTED]>
Sent: Saturday, November 21, 2020 5:57 AM
To: DHHL.AdminRules
Subject: [EXTERNAL] Testimony in Support of the Promulgation of Proposed, HAR Chapter 10-4.1 Management of Water Systems

Aloha nui,

I write to unequivocally support the adoption of the proposed Chapter 10-4.1, under Hawaii Administrative Rules (HAR) Title 10, Department of Hawaiian Home Lands, entitled "Management of Water Systems." These rules will improve the effective and efficient operations of all four DHHL water systems by providing the DHHL with the requisite authority it needs to manage a system including enforcement authority when a water customer fails to pay their water bill. These rules lay out a uniform process to manage systems in support of DHHL water managers. I completely support their promulgation.

Ola nā iwi,

E Halealoha Ayau
[REDACTED]

*We carry in our hearts the true country
And that cannot be stolen
We follow in the steps of our ancestry
And that cannot be broken
--- The Dead Heart by Midnight Oil (1986)*

Lindsey, Hokulei

From: Kailapa Board <[REDACTED]>
Sent: Thursday, December 3, 2020 5:44 PM
To: DHHL.AdminRules
Cc: Kailapa Board; Keala Drummondo; Pualani Lincoln Maie lua; Liana Aveiro; Cindy Sharp; Gail Noeau; Amoo Kainoa; Tani Waipa
Subject: [EXTERNAL] Proposed Administrative Rule Changes, Water Management System

To: William Aila, David Ka'apu, DHHL Directors and Staff & All Others Concerned

RE: Proposed Administrative Changes to Rules Pertaining to the Water Management System for Kailapa, Hawai'i

Mahalo for taking the time to read this email and for taking the time to seriously consider the comments and concerns the Kailapa community has with regard to the proposed changes. Keeping in mind that DHHL should have, first and foremost, the concern and well being of its beneficiaries in mind we'd like to ask that the department address the following issues:

- Under proposed rule §10-4.1-31(b), water rates can be increased by no more than 10% per thousand gallons once each year. This seems to be much higher than other County water suppliers especially given the fact that DHHL currently possess riparian rights to much of the water that trickles down to our community. Here are some comparisons:
 - Oahu's Board of Water Supply's (BWS) the rate schedule demonstrates a 3-8% raise.
 - **Hawaii county increased its rates at most by about 4%.**
- In terms of it's processes these proposed rule change do not provide a set out process or any parameters to help guide the Department or the Commission in determining how water rates are to be evaluated and raised.
 - §10-4.1-31(b) simply states that water rates will be established by the HHC. The process as outlined by §10-4.1-31(a) states that DHHL will conduct a cost-of-service study each year, based on enterprise accounting and a water service rates analysis every three years.
 - In contrast, according to Oahu's BWS, when increasing rates
 - The BWS Board of Directors conducted an extensive analysis of proposed rate changes, including holding a rates workshop in January 2018, receiving monthly updates from the BWS staff on the rates setting process, and holding five public hearings throughout the island for public input. Public input was given full consideration during the Board's deliberations prior to their approval of the rates.
- The water delivery base fee from Hawai'i County, as of July 2019, was \$20.20 per thousand gallons.
- The water delivery base fee for Kawaiahe during the Fiscal Year 2019 was \$49.07, a \$29.87 difference.
- In 2019, Hawaii County water customers paid a rate of \$0.92 - \$2.01/1,000 gallons
- Kawaiahe beneficiaries paid a rate of \$3.67/1,000 gallons - almost double the cost of average Hawaii County water customers.

At some point the Department must address the disparity between the rates its beneficiaries pay and the rate the average Hawai'i County water customer pays and provide solutions that bring parity to beneficiaries rather than penalization for being a beneficiary.

We look forward to your response and hope that the concerns we've delineated above will be addressed to both the Department's as well as the beneficiaries satisfaction in as timely a manner as possible.

Sincerely,
The Kailapa Community Association Executive Board
(members names and email addresses listed above)

Marion A Kapuniai

December 3, 2020

Department of Hawaiian Home Lands
P. O. Box 1879
Honolulu, Hawaii 96805

SUBJECT: TESTIMONY for Chapter 10-4.1 Hawaii Administrative Rules

MANAGEMENT OF WATER SYSTEMS

- A. **Communication:** Your offices have all the contact information for each Consumer – Emergency and other system matters
1. **Phone AND**
 2. **Written Notice: ALL WRITTEN NOTICES SHALL BE SENT VIA CERTIFIED MAIL WITH A RETURN RECEIPT REQUEST TO BE SIGNED BY THE ADDRESSEE,** which will be returned by the Post Office.

PURPOSE???? To prove that contact has been made and the intended consumer has received the notice.

ONLY DIRECT COMMUNICATION IS ACCEPTABLE!

3. The number of days for resolve/cure **will start the day after** the addressee receives and signs for the notice.
4. **Number of days for resolve will be 10 days, not 5 days** as is mentioned here and there throughout this document.

Please correct all subchapters and subsection s (1) + (a +).

This document is filled with **OPPORTUNITIES FOR NOTICES. ALL REFERENCES TO “NOTICE” SHALL BE CHANGED TO THE PROCESS NOTED.** I would be happy to list them, or verify your changes.

**10-4.1-33 (c) The only written notification shall be as
aforementioned- DIRECT WITH CONSUMER!
NO ELECTRONIC POSTING, NO NEWSPAPER**

B. ACCESS TO CONSUMERS' PROPERTY SHALL ONLY HAPPEN UPON PROPER NOTICE, AND IF REQUESTED BY THE CONSUMER, ACCOMPANIED BY THE CONSUMER. NO ONE SHALL HAVE THE "RIGHT OF INGRESS TO, AND EGRESS FROM, THE CONSUMER'S PREMISES.

UPON EMERGENCY, CALL THE CONSUMER AND TOGETHER RESOLVE THE ISSUE.

The only big emergency which could happen is, someone sees a fountain or Geiser which needs immediate attention. Call the consumer, Identify the Problem and Location, Discuss, and Resolve. SIMPLE! We live it! We Do!

THIS DOCUMENT SHALL NOT VIOLATE ANYONE'S CONSTITUTIONAL RIGHT.

Please correct all related sections & subsections.

I would, again, be very happy to assist you in verifying the necessary changes.

Respectfully submitted,

**Marion MK A Kapuniai
Consumer at Puukapu**

P. S. No time to list every subsection and paragraph – Can do at a later date