

## SPECIAL CHARTER COMMISSION REPORT

### BACKGROUND

The Special Charter Commission for the evaluation of the Department of Water Supply, County of Maui, was established by the appointment by the Mayor of the County of Maui and the confirmation by the County Council of its eleven members on the 20th day of February, 1987.

The Commission's initial meeting was held on the 15th day of April, 1987, at which meeting, John Hirashima was appointed the Chairman of the Commission. The Commission adopted Roberts Rules of Order for the conduct of its business and adopted a work schedule for the conduct of its business.

### COMMISSION RECORD

The record of the Commission is as follows:

1. Minutes of Commissions Meetings. Meetings were held on the following dates and the minutes are reflected in the Commission Record as follows:

- a. April 15, 1987,
- b. May 20, 1987,
- c. July 15, 1987,
- d. July 29, 1987,
- e. August 12, 1987,
- f. August 27, 1987,
- g. September 4, 1987,
- h. September 23, 1987,
- i. September 30, 1987,
- j. October 14, 1987,
- k. October 28, 1987,
- l. November 18, 1987,
- m. December 16, 1987,
- n. December 30, 1987,
- o. February 10, 1988.

2. Committee Report from the sub-committee of the Commission concerning the investigation of water systems from other counties, comprised of Milton Howell and Pancho Alcon. This report is found in Commission Record, (Appendix A).

3. Record from public hearings of the Commission held in Molokai on the 2nd day of December, 1987 Commission Record (Appendix B), and Wailuku on the 3rd day of December, 1987, Commission Record, (Appendix C). A public hearing was conducted in Hana on the 2nd day of December, 1987, but no testimony was offered.

4. Letters received by the Commission (independent of public hearing testimony or testimony at the Commission's meetings) Commission Record, (Appendix D) includes the following:

- a. Allan R. Sparks, letter dated July 8, 1987,
- b. Colin C. Cameron, Chairman and President, Maui Land & Pineapple Company, Inc., letter dated September 3, 1987,
- c. Arden G. Henderson, President, Maui Electric Company, letter dated September 9, 1987,
- d. Bernard W. Despina, President, Maui Contractors Association, letter dated September 28, 1987,
- e. Bert L. Hatton, Vice President, Land Administration and Planning, Amfac, letter dated October 9, 1987,
- f. Randolph G. Moore, President, Molokai Ranch Limited, letter dated September 15, 1987,
- g. Hannibal Tavares, Maui, letter dated December 16, 1987,
- h. Rick Medina (undated) submitted in mid December, 1987.

5. The Commission's report of its activities and recommendations.

#### COMMISSION WORK PLAN

The Commission adopted a work plan by which it pursued an investigation of the opinions of County officials concerning the Department of Water Supply and the need, if any, for organizational and structural changes for the department, an investigation of the opinion of community organizations, including professional organizations and major land owners, with regard to the same. The work plan of the Commission also included interviews with parties experienced in water systems, as well as data from other Hawaii Counties concerning their experiences with their own system of water administration. A copy of the work plan is included in the Commission Record as Commission Record, (Appendix E).

#### ANALYSIS OF PAST ADMINISTRATION

The Commission developed an analysis of the various activities of the Department of Water Supply and correlated the same to the different administrative heads of the Department and the structural organization at each time period. The analysis (as shown in Figure 1) reflects the following:

1. Since the 1950's the department has experienced five organizational changes as follows:

- a. Prior to 1955 - semi-autonomous,
- b. From 1955 to 1960 - county department,
- c. From 1960 to 1977 - semi-autonomous,
- d. From 1977 to 1983 - county department with the board of water supply retaining some power,
- e. Since 1983 it has been a county department with the board of water supply retaining no power.

2. Major agreements were enacted during the semi-autonomous organization, including the Central Maui source development and transmission joint ventures and the East Maui Irrigation Wailoa ditch agreement. These agreements have had a profound impact on the development of all Central Maui and have improved the reliability of upcountry water service.

3. Most of the significant development oriented rules were adopted by the Board of Water Supply with the Mayor's signature during the period 1977-1982 when the Board retained power to initiate rules. Such rules include source development fees, short-lived emergency rules limiting development in Central and West Maui and Kula special rules governing the issuance of water meters. Although highly unpopular at the time of enactment, these rules are now seen as generally beneficial to the people of the County of Maui.

4. All of the federal-mandated Safe Drinking Water Act projects were initiated by the Tavares administration. Although the legislation was enacted by Congress in 1974, it was not until August, 1977, that the state adopted its drinking water standards which mirrored the federal standards.

5. Various well projects outside of the Central Maui source development joint venture were completed since 1977.

6. The department has had a relatively high turnover in its directors. The two longest terms were held by Mr. Yoshiharu Tsuji, seven years, spanning a semi-autonomous and county departmental structure and Mr. Koichi Hamada, nearly eight years, all under a semi-autonomous structure.

#### OVERVIEW OF WATER MANAGEMENT SYSTEMS<sup>1</sup>

Presently there are approximately 50,000 water systems serving the population of the U.S. Forty-four are publically owned and serve 80 percent of the population and the remaining 56 percent of the systems are investor owned and serve 20 percent of the population. Although investor owned water utilities are in the minority, their record of accomplishment are models in operations, service and management, according to the Amercian Water Works Association, a 42,000 member organization.

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<sup>1</sup> American Water Works Association, Water Utility Management

Among publically owned systems, the vast majority among medium and larger communities are managed successfully under an "authority" system whereby a board or commission assumes management responsibilities. It appears to be an accepted fact that the more separated the control of the utility from the affairs of general government and politics, the greater probability of achieving maximum efficiency.

Compelling testimony was offered by Mr. Robert Chuck, immediate past president of the American Water Works Association and long-experienced in water resource development and management in Hawaii. In four years as an executive with the organization, he visited all 41 sections of the association, and because of a personal interest in water utility management, he took that opportunity to study the management systems of the communities he visited. He found many small communities having their systems managed by the city administration. These systems are characterized as being small, simple and generally without great capital needs. On the other hand, most larger water systems are managed by authorities. His opinion was that these systems were best served by long-term managers under an "authority" system.

#### ISSUES AND DECISION MAKING CRITERIA

The Commission adopted certain questions and issues upon which it would focus during its deliberations. The questions are contained in the Commission's work plan and can be summarized as follows:

1. Accountability to the general public for actions of the Department. Is direct accountability by election necessary or even appropriate in operating the water utility?
2. Long Range Planning. What system of management would most likely ensure the adequacy of long range planning?
3. The Position of the Water Director is Viewed as Critical in the Affairs of the Department. What system is likely to foster a continuity in management for the department?
4. Responsiveness and Efficiency. What system would enhance the qualities (responsiveness and efficiency) which mark successful utilities?
5. Financing of Current and Future Needs Require Sound Planning and a Commitment to Long-term Goals. What system would consistently provide for departmental financial needs?

The Commission deliberated on the question of the mandate on it posed by the 1982 Charter Commission. Page 24 of the Report of the Charter Commission of the County of Maui, October 18, 1982, states as follows:

As indicated earlier, the Charter Commission spent a great deal of time on this extremely important issue and concluded that a radical change to the present structure of the Department of Water Supply would best serve the interest of the people of the County of Maui. At the same time, however, the Commission was forced to accept the proposition that it might indeed be an error in proposing a shift from a stronger water board to a weak one. Therefore, it has proposed that a special charter commission be appointed to review the finances, operations, and rule making power of the Water Department and determine whether or not further changes are necessary.

The stated mandate appears to be the determination as to whether or not further changes in the financial, operational and rule making power of the department are justified. The mandate also appears to ask whether the 1982 charter commission erred in shifting to a weak water board.

The Commission concluded that the standard for their decision making process should focus upon whether the existing organization structure or alternative organizational structures were in the best interest for the efficient administration of the public water systems of the County of Maui.

#### DECISION OF SPECIAL CHARTER COMMISSION

The Commission has concluded that the 1988 county ballot should include a provision as to whether Chapter 11 of the Revised Charter of the County of Maui should be amended to provide for a semi-autonomous board of water supply. The proposed Chapter 11 would read as follows:

#### CHAPTER 11 DEPARTMENT OF WATER SUPPLY

Section 8-11.1. Organization. There shall be a department of water supply consisting of a board of water supply, a director, a deputy director and the necessary staff.

Section 8-11.2. Functions of the Department.

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems.

3. The department shall implement the county's general plan and community plans in the administration of its affairs. There shall be a long-range plan of the department which shall be subject to the approval of the county council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

Section 8.11.3. Board of Water Supply. The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The planning director and the director of the department of public works shall be non-voting ex-officio members of the board.

Section 8.11.4. Powers, Duties and Functions. The board of water supply shall:

1. Appoint, evaluate and remove the director of the department of water supply and fix the director's salary.

2. Have the authority to create and abolish positions;

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water; such rules and regulations shall be adopted as provided under § 8.11.8 below;

4. Adopt an annual operating and capital budget;

5. Have the authority to issue revenue bonds under the name of the board of water supply;

6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply;

7. Perform such other duties and functions as shall be prescribed by law.

Section 8.11.5. Director of Water Supply. The director of the department of water supply shall be appointed and evaluated by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both. The director or his deputy shall be a registered engineer.

Section 8.11.6. Powers, Duties and Functions. The director shall:

1. Recommend rules and regulations for the adoption of the board;

2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county;

3. Prepare and implement long range capital improvement plans which have been adopted by the board;

4. Appoint a deputy director;

5. Prepare an annual operating and capital budget for the board's review and adoption;

6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.

7. Perform such other duties and functions as shall be prescribed by law.

Section 8.11.7. Revenues. The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

Section 8.11.8. Approval of Rules. The adoption, amendment and repeal of all rules adopted pursuant to Subsection 8.11.4(3) shall be subject to the approval of the mayor. Upon approval by the mayor the proposed rule shall be submitted to the council. Within forty-five (45) days of receipt of a proposed rule, the council may by a two-thirds (2/3) vote of its entire membership disapprove the rule by resolution; in which case the rule shall have no force or effect.

#### TRANSITION PROVISIONS FOR AMENDED CHAPTER 11

1. If the voters of the County of Maui approve the proposed charter amendment, the charter amendment shall take full effect on January 1, 1989.

2. Existing Laws and Conflicting Laws. All laws, ordinances, resolutions and rules enforced at the time the amended chapter 11 takes full effect, and not in conflict or inconsistent with the amended chapter 11, are hereby continued in force until repealed, amended or superceded by proper authority. All laws which are inconsistent with the amended chapter 11 shall be superceded by the provisions of the amended chapter 11 at its effective date. All laws relating to or affecting the county or its departments, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when the amended chapter 11 takes full effect are repealed to the extent that they are inconsistent with or interfere with the effective operation of the amended chapter 11.



The significant changes proposed by this commission include:

1. The appointment and supervision of the director of the Department of Water Supply by the Board of Water Supply rather than the Mayor of the County of Maui;
2. The adoption of rules and regulations relating to the management and control of the waterworks of the county, as well as the establishment and adjustment of water rates by the board of water supply, through the mayor, with a veto power over such rules in the county council (currently the Board of Water Supply has no role in the adoption of rules and regulations);
3. The adoption of annual operating and capital budgets by the Board of Water Supply rather than the council of the County of Maui.

The mandate given to this commission by the 1982 charter commission leads ultimately to the question as to who should make what decisions concerning the operations of the Department of Water Supply of the County of Maui. The matrix is not necessarily complex and can be articulated in a series of four questions:

1. Appointment and Supervision Responsibilities. Who shall appoint, supervise and evaluate the director of the Department of Water Supply?
2. Policy Setting Responsibilities. Who should have the ultimate authority to adopt rules and regulations which have the force and effect of law for the operations of the department and the setting and adjustment of water rates?
3. Adoption of Budget. Who shall have the responsibility in adopting and overseeing operating and capital budgets for the department?
4. Long Range Planning. Who shall have the responsibility to develop, implement and monitor the long range plans of the department?

There was never any question as to who should manage the department. The director of the department must have full powers of management. The real question was: what system of organization is more beneficial for a director of the department to manage the department? The question of operational and financial policy formulation (formulation of rules and regulations and adoption of the budget) was obviously the central focus of the commission's inquiry. Clearly, the

party who creates operational and financial policy should be the party who appoints and oversees the management of the department. No executive should serve more than one master.

The information before the commission became persuasive that operational efficiency is fostered by a separation of the department from the affairs of general government. The commission believes that such a system leads to greater efficiency in decision-making, encourages continuity of management, and fosters the institution and monitoring of long range planning.

The commission has been troubled by questions of accountability. Elected officials logically advocate that the electorate should maintain the final decision with regard to accountability and responsibility. Their position is that a system providing for an independent entity, not responsible to the electorate, lacks the requisite checks and balances which are the corner stone of our government. Much of the private sector spokesmen advocated an independent system -- one step removed from the larger body of governmental affairs. This view point stresses the increased attention and specialization that an independent body can receive if not made a component of the larger web of a bureaucracy. Obviously, each view point has merit and no one system ensures efficiency or operational success.

The commission believes that a system can be developed with adequate independence and with the requisite accountability to serve the best interest of the public. The commission has attempted to maintain features of accountability that exist under the present system and, at the same time, create an independence it believes is productive for the efficiency of the system. The following matrix of the functions shows the shared level of responsibility and the resultant accountability under the commission's proposal:

COMMISSION'S PROPOSAL

<u>Functions</u>	<u>Current System</u>	<u>Levels of Shared Responsibility</u>	<u>Singular Responsibility</u>
Appointment and supervision of Director	Mayor		Board of Water Supply
Adoption of Rules and Regulations	Mayor - Council veto	Board of Water Supply, Mayor, Council veto	

Adoption of Budget	Mayor - Council	Board of Water Supply - Council supplemental capital appropria- tions, general obligation bonds
Long-Range Planning	Mayor - Council	Board of Water Supply, Mayor, Council

The commission was impressed with regard to the accountability in other Hawaii counties. Officers from other Hawaii county water systems expressed their opinions that adequate accountability was provided through the appointment and removal process of board members, the power of persuasion of the mayors and council members, and the correlation between water operations and infrastructure development and each of the county's general plans. The commission found that accountability and responsibility were not issues of concern in the jurisdictions contacted by the commission.

The recommendations of this commission provide a substantial degree of accountability as follows:

1. The department must implement the county's general plan and community plans in the administration of its affairs. It may not proceed on its own agenda, while ignoring the county's land use plans for water source development and distribution.

2. The department must prepare a long range plan which must be approved by the county council, as provided in the state water code.

3. The adoption of rules governing the operations of the department, as well as those setting rates and charges for furnishing water, are subject to the approval of the mayor. The county council has the opportunity to veto such rules within a forty-five (45) day period from the presentation of the rules to the council.

4. The water director must coordinate the affairs of the department with the mayor and the council and submit an annual report concerning the department to the mayor and the council. Such coordination would be especially critical in determining land use policies by the administration and the council.

The commission believes that these features provide the necessary accountability and responsibility and would prevent a "government outside of government," as some have feared.

There is no question that the continuity of management and the quality of the person who will take the position of water director are primary factors in providing an efficient department. The commission has concluded that it is more likely that a semi-autonomous department would attract a greater pool of qualified candidates from both the private and public employment sectors for the position of director. It appeared clear to the commission that a limited appointment (co-terminus with the mayor) would not be an advantage in attracting candidates who seek professional careers in water service administration. Also, because of the importance of continuity of management and its influence in long term planning and the implementation of such plans, it appeared significant to the commission that a system where an executive position would transcend one administration to another would best serve these objectives. The commission was impressed that in other Hawaii counties there have been greater longevity in their executive positions than within the County of Maui. Kazu Hayashida is the fifth manager in the past 58 years of the Honolulu Board of Water Supply. William Sewake is the fourth manager in the past 37 years of the Hawaii County Water Department, and Roy Sato is the 2nd manager in the past 33 years of the Kauai Board of Water Supply. The evidence is impressive that the semi-autonomous nature of the entity results in greater continuity of management and enhances the opportunity for long term professional careers in the field.

It is worthy to note that the commission appointed a special committee, consisting of Dr. Milton Howell and Pancho Alcon, to travel to other counties (Honolulu, Kauai and Hawaii) to determine the attitudes of the mayors and council chairmen concerning a semi-autonomous management of their water systems. Mayor Fasi, Mayor Kunimura and Mayor Carpenter, as well as Council Chairmen Morgado, Kouchi, and Yamashiro, unanimously endorsed the semi-autonomous system of management and were not in favor of any changes to the existing organizational structure concerning the water departments for their counties. It is interesting to note that prior to becoming the chief executives of their counties, Mayors Kunimura and Carpenter had maintained the position that the water department should become a part of county administration. After taking the position as chief executive of their respective counties, both changed their views and now strongly support the semi-autonomous system.

## RECOMMENDATIONS

The Special Charter Commission clearly believes that a semi-autonomous water department would best serve the County of Maui over a long period of time. Actual performance at any point in time would depend on the situation at hand, as well as the individuals involved. The commission did not take lightly testimony supporting the present system, especially testimony relating to accountability to the general public. Democracy is the foundation of American government; however, this does not mean that every individual segment of government is best served by direct management of elected officials.

The commission was concerned by the very close proximity of the next county-wide charter commission which will be appointed in 1991. That commission's work will be performed primarily in 1991 with its ballot measure voted on in the 1992 elections. Whatever is then decided would take effect on January 1, 1993. The commission's concerns deal with the short time between the 1988 ballot measure and the time the 1991 commission initiates its deliberations. Only two and one-half years will have passed between new measure taking effect in 1989, if any, and the start of the new commission's work; clearly an inadequate amount of time to judge the effectiveness of changes proposed by this commission.

There was considerable discussion on whether or not this Special Charter Commission should indeed recommend changes at this time, in light of the close proximity of the next charter commission.

If the measure of the Special Charter Commission is accepted by the voters and takes effect in 1989, the commission strongly recommends that the 1991 commission allow its work to stand. The department has undergone many organizational changes in its history and has not been able to stabilize and operate on a long-term organizational basis for the benefit of the county. The commission did not want to participate in the lack of any stability, yet the commission felt it must recommend those changes which would best serve the people of the County of Maui in the long run.

The Special Charter Commission believes that the 1982 charter commission was justified in its concern that "it might indeed be in error in proposing a shift from a stronger water board to a weak one." The Special Charter Commission recommends a change of the present departmental system to a semi-autonomous system with specific features to ensure sufficient public accountability. We have concluded that this is in the best interest of the people of the County of Maui.

Respectfully submitted,

GARRET S. ABE

Dated: \_\_\_\_\_

*Domingo Alboro Sr.*

DOMINGO ALBORO SR.

Dated: 2/18/88

*Irene Boden*

IRENE BODDEN

Dated: Feb. 18, 1988

*J. H. Franco Jr.*

JOSEPH H. FRANCO JR.

Dated: Feb. 19, 1988.

*John Hirashima*

JOHN HIRASHIMA

Dated: 2/19/88

*Milton M. Howell M.D.*

MILTON M. HOWELL, M.D.

Dated: 12 Feb. 1988

*Shinsō Kato*

SHINSO KATO

Dated: Feb. 17, 1988

*Lokelani Lindsey*

LOKELANI LINDSEY

Dated: 2-19-88

*L. Douglas MacCluer*

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