

GOVERNMENT OF GUAM
OFFICE OF THE GOVERNOR
AGANA, GUAM

EXECUTIVE ORDER NO. 74-5

ESTABLISHMENT OF DRINKING WATER
ADVISORY BOARD

WHEREAS, the Drinking Water Advisory Board was created by Executive Order 73-17 to advise the Department of Public Health and Social Services on water resource matters; and


WHEREAS, the Guam Environmental Protection Agency has, by law, been given the authority and responsibility for the protection, conservation and development of the water resources of the Territory; and

WHEREAS, the Guam Environmental Protection Agency is now fully funded and operational as an independent agency;

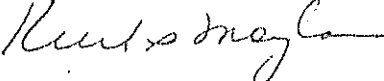
NOW, THEREFORE, by the authority vested in me by the Organic Act of Guam, it is hereby ordered as follows:

Executive Order 73-17 creating a Drinking Water Advisory Board is hereby rescinded and the Drinking Water Advisory Board is hereby abolished.

Dated at Agana, Guam this 7th day of February, 1974.


Governor of Guam

Countersigned:



Lieutenant Governor

2/8/74

SURVEY OF GOVGUAM WATER RESOURCE RESPONSIBILITIES

INTRODUCTION

Water occurs as a natural resource on Guam, and, considering the multiplicity of usage, several agencies are in some way connected with the accumulation, dispersal, and disposal of water.

Recently, there has been controversy and conflict over water-related responsibilities. In some cases, conflicts of authority are developing. These problems may spring from recently enacted legislation creating a Guam Environmental Protection Agency, and from recent executive orders of concerning the GEPA and drinking water (i.e. potable water).

This survey was originally undertaken in an attempt to define the water-related responsibilities of various agencies.

BACKGROUND

There are 5 main legal documents pertaining to Guam's water resources:

1. March 9, 1967 Water Resources Conservation Act, Public Law 9-31
2. July 29, 1967 Water Pollution Control Act, Public Law 9-76
3. November 29, 1972 Guam Environmental Protection Agency Act Public Law 11-191
4. March 7, 1973 Implementation of Public Law 11-191.
Executive Order 73-13

5. Undated Executive Order (73-17) Signed April, 1973. No title (created Drinking Water Advisory Board).

Rather than explaining the above section by section, a short description of each document is provided as background preliminary to the analysis section following.

The Water Resources Conservation Act in early 1967 recognized that it is the duty of the Government of Guam to conserve and control its water resources. The Chief Officer of the Public Utility Agency of Guam was charged with implementing this Act, which dealt mainly with the logistics of the water system such as location, preservation, dispersal and disposal (pipes, walls, etc.).

The Water Pollution Control Act in mid-1967 was concerned with the usage and quality of water. The Law gave this responsibility to the Director of Public Health and (then) Welfare, the Director of Agriculture, and the Chief Officer of PUNG.

In November, 1972 the Guam Environmental Protection Agency Act (PL 11-191) was passed. This has proven to be a very broad piece of legislation both in scope of responsibilities and in power. This Act was in response to federal emphasis on environmental considerations. It gathered various water-related (and air land, and noise related) functions under one new agency, including both of the previously mentioned Acts.

In March 1973, Executive Order 73-13 mandated implementation of the Guam Environmental Protection Agency Act pursuant to PL 11-191, and made the necessary reorganizations, etc.

An unrelated Executive Order 73-17, signed one month later, in April 1973, created a Drinking Water Advisory Board. This Executive Order designated the Department of Public Health and Social Services as an agency responsible for good quality water.

STATEMENT OF PROBLEM

Although there were initial indications that the problem was to define the water-related responsibilities of the various agencies involved, upon analysis, the real problem is the question of who has the highest authority, and ultimate responsibility for the total water resources of the island.

FINDINGS

For purposes of this report, the Bureau has determined that the specific content of the various sections of law are less important than the transfers of authority that have been attempted by Executive Order. Therefore, the conclusions are outlined herein proceeding the analysis so that interested parties need not wade through the entire analysis to get to the pertinent conclusion.

The main finding is that the ultimate responsibility for total water resource planning, protection, conservation, and development rests legally, and completely, with the Guam Environmental Protection Agency.

Other major findings of this report are:

That transfers of certain responsibilities attempted by Executive Order

73-17 (creation of Drinking Water Advisory Board) have been previously clearly defined and assigned by operation of law and, as such, cannot be changed by Executive Order; that the Drinking Water Advisory Board is advisory only, and has no powers of approval or rejection of water-resource-related activities performed in accordance with the law; that in view of the all-encompassing nature of existing legislation, this Board may be unnecessary; that the composition of the Drinking Water Advisory Board is so similar to the GEPA Board as to be unnecessarily duplicative; and that the water-resource-related responsibilities of the various agencies are clearly defined and understood by all concerned parties except possibly by the Department of Public Health and Social Services and the Drinking Water Advisory Board.

JUSTIFICATION FOR FINDINGS

Since this report encompasses 3 Public Laws and 2 Executive Orders, a section by section analysis would have been very lengthy and unnecessary. This section addresses the 6 findings and present the factors leading to the respective conclusions.

1. GEPA is responsible for all water resources.

The question of water-resource responsibilities was initiated when the Drinking Water Advisory Board attempted to undertake development of a Guam Water Resources Plan. An undated memo from the Board Chairman (Director of PH&SS) to the members indicates "the Board decided to undertake the responsibility for developing a Guam Water Resources Plan. Research shows that this undertaking was not delegated to the Board,

nor is it within the "Advisory" capacity of the Board. On the other hand, the Guam Environmental Protection Agency Act, Section 9970.4(c) reads, "The functions vested in the Chief Officer of the Public Utility Agency of Guam and the Director of Public Health and Social Services pursuant to Chapter V of Title XXII (Water Resources Conservation Act), of the Government Code of Guam are hereby transferred to the (GERA) Agency."

The policy statement of the Act (Section 21400) states in part... "That comprehensive planning and regulation be undertaken for the protection, conservation, and development of the water resources of Guam...". Curiously enough, a later law 9-76 (Water Pollution Control Act), repealed a comprehensive section (21414) of the Water Resource Conservation Act assigning overall water resource responsibility to PUAG, and gave the Water Pollution Control Commission (Section 9950.5) broad responsibilities concerning the quality of water. The GERPA Act then transferred this authority to the Guam Environmental Protection Agency.

2. Responsibilities given to the Drinking Water Advisory Board by Executive Order have been previously defined and assigned by operation of law and, as such, cannot be changed by Executive Order.

- a. Executive Order 73-17 states, "responsibility for various aspects of the development, utilization and protection of our drinking water is, at the present time, not clearly defined..."

However, Chapter V of Title XXII (cited above) assigns GEPA responsibility "for the protection, conservation, and development of the water resources of Guam."

- b. The Executive Order (73-17) indicates: "The Department of Public Health and Social Services shall be responsible for assuring that the water served the public is of good quality and free of any conditions which might endanger the health of the people being served."

Public Law 9-76, dealing with the quality of water was transferred to GEPA by PL 11-191. Section 9950.1 of PL 9-76 states in part..." it is hereby declared to be public policy of this territory to conserve its water resources and to protect, maintain, and improve the quality and potability (consumability) thereof for public water supplies..." and 9950.3, "the Director of Public Health and Welfare (now GEPA) shall have responsibility for administration of this Act.

- c. The Executive Order indicates that the Board acts as, "advisory council to PH&SS in all matters relative to the protection, maintenance and improvement of our water sources, water treatment facilities, and water distribution systems." Yet it has been shown that GEPA has responsibility for water resources. The points mentioned above are components of the water delivery system which in turn is part of overall water resource utilization.

3. The Drinking Water Advisory Board cannot approve or disapprove water-related projects. The Board, by name, is advisory. Further, the Executive Order states, "The Board shall serve... as advisory council to the Department of Public Health and Social Services.

4. The Board may be unnecessary. Existing legislation addresses all facets of water resources, including identification, delivery, utilization, quality, protection, conservation, and disposal. An Advisory Board to PH&SS is unnecessary, especially since PH&SS now has no legal authority (or responsibility) for water quality. Such functions were transferred by law to GERA.

5. Drinking Water Advisory Board composition is similar to the GERA Board makeup.

GERA Members

(1) Military
Director, PH&SS
Chief Officer PUAG
Land Management
Agriculture
etc.

Drinking Water Members

(2) Military
Director, PH&SS
Chief Officer, PUAG
Administrator, GERA
Director, Public Works

6. Water-related responsibilities are known and understood by the respective agencies.

AGENCY INVOLVEMENT WATER RELATED LEGISLATION		AGENCY RESPONSIBILITY:	
SECTION	DESCRIPTION	PH&SS	GEPA
9670.3(2)	Extension of sewer connection time period - new sewer	PH&SS	GEPA
9670.3(3)b	Extension of sewer connection time period - existing sewer	PH&SS	GEPA
9670.3(3)c	Inspection of Type 2 facilities when new sewer becomes available	PH&SS	GEPA
9670.3(4)	Inspection of any toilet facilities at any time	PH&SS	GEPA
9670.3(4)c	Type 2 facilities necessary where no sewer, time limit, waiver of type 2	PW	PW
9670.4	Director PH&SS approval required for toilet and sewage facilities	PH&SS	GEPA
9670.5	Cesspool, waste facility locations; variance applicability	PH&SS	GEPA
9670.6	Inspection of waste facility before covering	PH&SS	GEPA
9670.9	Privy standards; authorization for location of new-ones	PH&SS	GEPA
9670.10	Waste facilities, emptying of, orders to, disposition of contents	PH&SS PH&SS	GEPA GEPA
9670.12	Replacement, repair of waste facilities, orders to, time-limit	PW	PW
9950.3	Responsibility for administration of water pollution control act	PH&SS	GEPA
9950.5	Powers and duties of water pollution control commission - (commission dissolved)	WPCC	GEPA
9950.6	Powers and duties of Director Public Health and Welfare	PH&SS	GEPA
9950.7(b)	Permits for discharges of waste	PH&SS	GEPA

SECTION	DESCRIPTION	WAS	IS
9950.8	Inspection and entry	PH&SS WPCC	GEPA
9950.10	Hearings	PH&SS	GEPA
21402	Well driller's license	PUAG	GEPA
21403	Well Drilling permit	PUAG	GEPA
21404(c)	Well operating permit - limitation on amount of water	PUAG	GEPA
21404(d)	Endorsement of well operating permit	PUAG	GEPA
21405	Well completion report	PUAG	GEPA
21408	Water Meter installation	PUAG	GEPA
21409	Sealing of wells	PUAG	GEPA
21411	Make, amend, and rescind water resource rules and regulations; public hearings	PUAG & GOVERNOR	GEPA GOVERNOR
21412	Penalties and powers	PUAG	GEPA
21414	Study of water resources	PUAG	(Hepok)
21606	Power, duty, and responsibility for administration and operation of ... water... services...	PUAG	PUAG

Recommendation:

The Drinking Water Advisory Board may have some merit as a Government of Guam agency coordinator, but its limited scope (Drinking Water), and its lack of authority (Advisory Only), preclude it from attaining substantial accomplishments.

The Bureau recommends dissolution of the Drinking Water Advisory Board, or as an alternative, a memorandum from the appropriate authority (Governor) reminding the Board that its scope and responsibilities are limited and its activities should be confined to those previously mentioned limitations. Further, the Bureau feels that certain portions of the law transferred from PUAG to GEPA should be examined, (water meter installation, etc.).

GENERAL COMMENT

Generally, it can be said that PUAG is responsible for the physical delivery of water as a utility, although many of its previous activities were transferred to GEPA.

Public Health and Social Services, however, has lost all water-related authority. The GEPA law (11-191) dissolved the Water Pollution Control Commission and assigned its responsibilities to GEPA, along with ALL PH&SS water related responsibilities.

The creation of the Drinking Water Advisory Board seemed to be an ill-advised attempt to regain some of the PH&SS lost responsibilities.

It is pertinent to note that DHAOS may still inspect or take samples of anything that may have an adverse effect on community health. Such inspection or sampling could include the water. However, the ultimate responsibility insuring that the drinking water is potable, including regular, systematic monitoring of the supply, now rests with the Guam Environmental Protection Agency.