

BOARD OF WATER SUPPLY
County of Maui
Regular Meeting
Thursday, February 28, 2008
9:00 a.m.
Conference Room
Department of Liquor Control
2145 Kaohu Street, Room 105
Wailuku, Hawaii 96793

CHAIR ALDRIDGE: We'll call the meeting to order. This is um, a regular board meeting of the Board of Water Supply, Thursday, February 28th. Can you hear me Gaye?

MS. HAYASHIDA: Yes.

CHAIR ALDRIDGE: Is it working okay? I'm not used to holding one of these. I feel like a star.

(laughter)

CHAIR ALDRIDGE: Ah, attendance, see board members in attendance include Carl Holmberg, Vice Chair; myself, Chair; Kenneth Okamura, Michael Howden, Marion Haller. Excused from the meeting are Scott Luck and...

MS. HAYASHIDA: Kelli, Kelli.

CHAIR ALDRIDGE: Kelli...

MS. HAYASHIDA: And Myers.

CHAIR ALDRIDGE: And Myers and...

MS. HAYASHIDA: Phyllis, Phyllis Robinson. Kui might be running late, she's having problems with her rent a car.

CHAIR ALDRIDGE: Oh...

MS. HAYASHIDA: So, yeah.

CHAIR ALDRIDGE: So we'll expect Kui then at some point in time.

MS. HAYASHIDA: Yeah.

CHAIR ALDRIDGE: Thank you. And ah, also present is the Director, Jeff Eng, and Corporation Counsel Ed Kushi. Members and staff include Herb Chang in the audience and uh, oh, Jacky Takakura and uh, oh, I'm sorry...

MS. D'ENBEAU: Madelyn D'Enbeau.

CHAIR ALDRIDGE: Madelyn D'Enbeau who represents ah, the ah, Department, counsel for the Department. Um, announcements, ah, I have um, there are three conferences coming up, the um, first one is the Hawaii Section American Water Works Conference, April 30th to May 2nd. I believe that um, the Department has 2 positions for the board members budgeted for attendance, this is, conference will be in Honolulu. And I do intend to attend, I don't know who else does but leaves one other person...

MS. HAYASHIDA: Mike Howden has asked to attend if that's possible, if that's okay with the rest of the board.

CHAIR ALDRIDGE: Fine with me. Hearing no objections that would be fine. Um, we have, we have also the national conference, the American Water Works Association. This year it'll be in Atlanta, Georgia and again there are 2 available positions that the Department has budgeted for the board members. I do not intend to attend. I think last year Carl, you attended that one and also...

MS. HAYASHIDA: Kui.

CHAIR ALDRIDGE: Kui. So I would encourage 2 other board members to step in and attend this year's. I think, when is the, ah, registration, the...

MS. HAYASHIDA: The early bird registration deadline is March 1st.

CHAIR ALDRIDGE: March 1st.

MS. HAYASHIDA: Yeah.

CHAIR ALDRIDGE: Prepare to get your dibs in then, as soon as possible, if you're interested in attending this and we have 2 positions...

MEMBER HALLER: Which this...which were we talking about? B?

MEMBER HOWDEN: This one.

MEMBER HALLER: B?

CHAIR ALDRIDGE: B, B. Yes, the uh, the National Conference in Atlanta.

MEMBER HOWDEN: The big national conference in Atlanta. And that's the ah, that one I'll be here.

CHAIR ALDRIDGE: These are well worth it. I have the announcement if you want a copy of it and uh, I've been an American Water Works Association member since 1969, something like that. And I've been, I've attended a number of these; are very well worth. And you can avoid a lot of the technical sessions if you wish. A lot of latitude in management sessions. Um, finally, item C, the Hawaiian Water Works Association Conference. That's gonna be hosted by the Department of Water Supply here on Maui. I was just talking to the Director; a location hasn't been selected yet but since it's local I would encourage every single board member to attend this as when I attended it was over on Kauai, 2 years ago, it was well worth it. This is strictly just for ah ...

MS. HAYASHIDA: The counties.

CHAIR ALDRIDGE: For the counties, yeah. There are no vendors, no outside people. Let's see, Approval of Minutes. A, December 20th 2007 Executive Session, uh, any uh, comments or corrections to...

MS. HAYASHIDA: I think you sent me your corrections on that one.

CHAIR ALDRIDGE: I did. I e-mailed them to you which I thought they were part of the other group, you have mine.

MS. HAYASHIDA: Yes.

CHAIR ALDRIDGE: Thank you. Any other...Ok. Not hearing any, let's move to the January 24th, um 2008 meeting.

MEMBER HOWDEN: Lee, did we want to vote to approve the minutes then?

CHAIR ALDRIDGE: I guess we could take both of the minutes together on holding...

MEMBER HOWDEN: Ok, great.

CHAIR ALDRIDGE: By the way, if anybody needs the microphone, just ask me and I'll toss it to you. Any comments, corrections on the um, January 24th meeting?

(silence)

CHAIR ALDRIDGE: Why am I the only one that ever does that. I have some.

MEMBER LESTER: If you have the time to read it.

CHAIR ALDRIDGE: Gaye, on page 7, second paragraph; one, two, three, fourth line down. "Want to criminalize the over use" not just "use". O-v-e-r use. Page 8, second paragraph from the bottom. Ah, let's see, one, two, three, fourth line down. Instead of "on" where it says "you do not come up on", it's "with". Page 10. Let's see, third paragraph up from the bottom, first line, "water conservation plan to be effective it depends", I guess there would be a comma after "effective" and "it depends". So insert the word "it". That's it for me. So do we have a motion to approve the minutes?

MEMBER HOWDEN: So moved.

MEMBER HOLMBERG: Seconded.

CHAIR ALDRIDGE: Moved and seconded. All those in favor?

(a chorus of ayes)

CHAIR ALDRIDGE: Unanimously approved. Testimony from the public. Do we have any public testimony?

MS. HAYASHIDA: Not that I know of.

CHAIR ALDRIDGE: Alright. So, we'll move on to the next item, that's the appeals. Next on the agenda we will consider the appeal by Dawn M. Silva, the appellant, of the Director of Water Supply's written decision or order dated April 16th, 2007, which decision or order has denied her request for a water meter even though on March 22nd, 2007, the Board of Water Supply recommended that Ms. Silva apply for a water meter as in compliance with the 60-day rule. This is a Board of Water Supply Appeal No. 07-01. The parties to this, by the way, let me just break for one minute, I will go through the procedures, within about a minute and it'll take about 10 minutes for me to discuss the procedures to all present here. But in the meantime, I just wanted to go through this first part of the procedure and confirm that...uh, Ms. Silva, you do have legal representation? And ah, will you please state your name.

MR. MANCINI: Mr. Chair, my name is ah, Paul Mancini, I represent Ms. Silva here today.

CHAIR ALDRIDGE: Thank you, Mr. Mancini. Um, Director Eng, are you gonna represent the Department or do you have legal representation?

DIRECTOR ENG: Mr. Chair, I have um, Ms. Madelyn D'Enbeau to assist us and she will represent, be our counsel.

CHAIR ALDRIDGE: Thank you. Welcome, Madelyn.

MS. D'ENBEAU: Good morning.

CHAIR ALDRIDGE: Alright, let me just describe briefly, the uh, procedure order that we'll take on this uh, appeal. I will allow the appellant the opportunity to make an opening statement. I'd like to limit that to 5 minutes.

Following that the Department will have the opportunity to make a(n) opening statement. Again, I would like to limit that to 5 minutes. The um, after that the appellant shall proceed with the um, direct examination of witnesses and presentation of evidence. Each witness called shall be sworn in by the chair before testifying including the appellant, if the appellant is given unilateral testimony. After the appellant is done with any individual witness, the Department may cross examine each of the witnesses, which shall be limited to the matters or statements made by such witnesses in the direct testimony. After the Department's cross examination of any witness, board members may ask questions of each witness. After the appellant has concluded its examination of the witnesses and presentation of evidence, any and all documents that the appellant desires to be introduced as evidence shall be described, marked as exhibits 1, 2, 3, and so forth; offered into evidence and accepted or rejected by the chair. The um, Department shall proceed with its direct examination of witnesses and presentation of evidence. As in the case of the appellant's direct examination described previously, all witnesses will be sworn in before testifying. All witnesses shall be subject to cross examination by the appellant. All witnesses shall be subject to questioning from the board members. The Department shall describe, mark and offer into evidence as exhibits its documentary evidence. The appellant then shall proceed with presentation of rebuttal witnesses of the evidence if any. If not already sworn in, any rebuttal witness shall be sworn in. Any rebuttal witness may be cross examined by the Department. Any rebuttal witness may be questioned by board members, and any further documentary evidence produced by rebuttal examination shall be described, marked and offered into evidence. Finally, the appellant shall make its final argument to the board. The Department then shall make its final argument to the board, and in the end, the appellant may make a final argument to the board in rebuttal. In accordance with Section 16-102-68 of our rule, a proceeding such as this appeal shall stand submitted for decision by the board at our next duly noticed meeting, which in this case will be on either on March 27th or April 24th. Any party may file a post-hearing written brief in support of its position, as well as proposed findings of fact, conclusions of law, and decision and order, which documents shall be received by the board's secretary no later than 14 calendar days before the next scheduled board meeting. By rule, the board shall render its decision and order within 60 days from the date this hearing is concluded. In accordance with Section 14-11-040 of the Maui County Code, the standards of appeal that apply to this procedure shall be that the board by a majority vote of its entire voting membership, may affirm the director's decision or order, or may reverse or modify the director's decision or order if the board finds that the substantial rights of the appellant may have been prejudiced because of the director's decision or order is: A, based on clearly erroneous finding of material fact, improper procedure or erroneous application of the law; or B, arbitrary or capricious in its application; or C, a clearly unwarranted abuse of discretion. For you information, as well as members of the public not being parties to this appeal, pursuant to Section 92-6, Hawaii Revised Statutes, this proceeding is not subject to the requirements of the Sunshine Law, the Hawaii Sunshine Law, as this board is exercising an adjudicatory, adjudicatory function in hearing this appeal. Lastly, the board will invoke the exclusionary witness rule and will request all witnesses to wait outside of this hearing room until it is their turn to testify. Before we proceed, are there any questions from the parties specifically concerning the appeal procedure as just described and before I open it to questions, let me just state that it's my intent that we would conduct this hearing until noon today and will recess for lunch. If we have not completed or concluded the hearing by noon I intend to continue it to another date. We have, we have this room only until 2:45 p.m. and we have other agenda items that we have to consider at, at the board and those matters have been continued from previous sessions and so we need to get to them. I'd like to limit the hearing until noon. If we conclude the hearing by noon, we will deliberate on another date and that deliberation will be in closed session and, and the appellant will not be asked to attend that deliberation. However, the results of that deliberation will be tendered at a subsequent regular meeting and the appellant will be notified of that. If we do not conclude by noon we will ask to continue this to another date. We'll look for a mutually acceptable date for that continuance. Are there any questions? Mr. Mancini?

MR. MANCINI: Uh, as part of your discourse that you mentioned that the, there would be a subsequent meeting either March 27th or April 24th, ah, ah to consider post-hearing briefs and findings, proposed findings, ah, I'm gonna be off island on the 27th, so I was hoping that meeting could may be April 24th. I wouldn't be able to be here ah, at that date and I was a little curious, is that the date that final decision be made or it will be subsequent to that day?

CHAIR ALDRIDGE: Can I ask, can I refer that question to Deputy Corporation...

MR. KUSHI: Yes. Mr. Chair, depends, we have a time limit to make a decision within 60 days after the hearing closes, so depends when the hearing closes. We can't finish today, then let's say we schedule it in 2 weeks, the 60 days start from there and then a decision needs to be made at the next board meeting within 60 days.

MS. D'ENBEAU: If I could, my understanding of what the Chair said was that the meeting, the March 27th or the April 24th meeting would not require the presence of counsel or the appellant or appellee because it's a decision making meeting in executive session, but maybe I misunderstood.

MR. KUSHI: Right, but I, I think the question was, I mean the issue is when do you submit your briefs...

MS. D'ENBEAU: I think he was saying he wouldn't be able to be here on the 24th, but...

MR. MANCINI: Right. I thought it would be a hearing where you gonna argue your proposed findings and you were gonna argue your closing brief, but I guess there's no opportunity to argue that. You submit it and then the board makes a decision...

MR. KUSHI: Right.

MR. MANCINI: Without argument...

MR. KUSHI: Right,

MR. MANCINI: Is that...that's correct? Okay, so it would not be relevant that I'm not here as long as I, I got the documents in on time and that be a function of when we end this meeting.

CHAIR ALDRIDGE: Correct.

MR. MANCINI: Yeah, okay. Sorry for the interruption.

CHAIR ALDRIDGE: No problem.

MEMBER OKAMURA: I had a question.

CHAIR ALDRIDGE: Yes.

MEMBER OKAMURA: My term would end at the end of March with this Board. If this, so I don't know what, what the ruling could be or what suggestion could be made by Corporation Counsel what, whether I should, I can participate in it, possibly not, you know, not participate in it um, in case it gets drawn out.

MR. KUSHI: Yeah, if this, if it goes past March you're out. But ah, you know, just...

MEMBER OKAMURA: Is that alright? It still would get enough people here to make a decision...

MR. KUSHI: They need five to make a...

MEMBER OKAMURA: Oh, okay.

CHAIR ALDRIDGE: I guess we have an answer to that.

MEMBER OKAMURA: I think so.

CHAIR ALDRIDGE: Okay.

MS. D'ENBEAU: I have a question as well, if I could. Um, the witness exclusionary rule, I, I am assuming that the parties which I would interpret to be the Director and Ms. Silva can be present throughout the proceeding but only other people...

CHAIR ALDRIDGE: I interpret that as well.

MS. D'ENBEAU: Thank you.

MR. MANCINI: You wanna waive it? You can waive it.

MR. KUSHI: You have a list of witnesses?

CHAIR ALDRIDGE: That was my next question, matter of fact. If you could tell me the witnesses that you wish to call.

MR. MANCINI: I have 2 witnesses, ah, Catherine Silva and Dawn Silva.

CHAIR ALDRIDGE: Okay. And...

MS. D'ENBEAU: Yes, and we'll be calling the Director and Jacky Takakura and Herb Chang. And counsel suggested that we waive the witness exclusion rule, which is fine with me, and let everybody sit and listen, I don't have a problem with that.

MR. MANCINI: Yeah, I'm willing to waive it. I don't think that's a...

CHAIR ALDRIDGE: Well, I'll accept the waiver then. At least it's not raining outside anyway. Alright then um, as I've stated before if we cannot conclude the hearing by noon we will recess it and attempt to continue it to another day. Um, I will try and before we close it, before we end at noon, I'll make an attempt to see if we can at this meeting find another suitable date. If that doesn't work, we'll try and manage that through the commission clerk.

MR. MANCINI: Just one procedural thing. We may be able to stipulate for the introduction of exhibits. I don't have any problems with Exhibits 1 through 12 of the appellee being admitted so we don't have to authenticate and go through each witness etcetera and if Ms. D'Enbeau doesn't have a problem with my Exhibits 1 through 27 and the 2 declarations, that would save us significant period of time ah, on this.

MS. D'ENBEAU: I think with respect, I, I thought about that as well and I think for the most part um, that would be fine. There are a couple of, of counsel's exhibits that are actually statements that Ms. Silva has made and I don't have any problem with them being brought into evidence as long as it's understood that we're not conceding the truth of those particular statements that she's made. It's just that she wrote this and she liked to present it.

MR. MANCINI: Yeah, the idea is she has full cross examination of the statements, but, but by amending the declaration into the evidence in the exhibits we save ourselves an awful lot of time...

MS. D'ENBEAU: Oh yeah.

MR. MANCINI: Through this and I think we want to do this in a concise time efficient manner.

MS. D'ENBEAU: Yeah, that's fine.

CHAIR ALDRIDGE: So you both stipulate?

MS. D'ENBEAU: With that caveat.

CHAIR ALDRIDGE: With that caveat.

MS. D'ENBEAU: Yes.

CHAIR ALDRIDGE: Yes, okay, granted. That's fine, because we're looking for time efficiency here today. Thank you. Alright, let's proceed then um...

MR. KUSHI: Mr. Chair, one, um, before they proceed, ah, if the attorneys would follow me. I noticed on the agenda, the appeal is noted that, it states that "an appeal by Dawn Silva of the Director's decision or order dated April 16th..." which is um, the appellant's exhibit number, I believe it's number 24, the letter from ah, Mr. Eng to Kenneth Okamura. Really, I believe the appeal should be from exhibit number 25, which is the April 27th letter from Director Eng to Dawn Silva.

MR. MANCINI: If I could comment on that ah, in the April 27th letter to, by the Director to Dawn Silva, he indicates the denial was stated in the April 16th letter and that's why I referenced the April 16th letter. He was telling her that that's the denial but by, the easier way is just to combine and say the appeal is a combination of both exhibit 25 and 26. They can both be read together as the denial.

MS. D'ENBEAU: I would agree with, with that the idea that it should be April 27th because I guess the, the question of when a person has noticed, in order to file an appeal with be made into the letter that they themselves get rather than a letter that might be sent to ah, the chair of the Board of Water Supply, so, but I understand sometimes those letters are posted and that's deemed to be noticed. So, I'm not sure how the Board of Water Supply works on that, in that regard, and I don't see any problem with changing, with using the April 16th letter and the April 27th letter together.

MR. KUSHI: So if we use the April 16th letter is there a timing issue from the date she ah, filed her appeal.

MS. D'ENBEAU: I think it should be the April 27th letter because that's the date that she was notified.

MR. KUSHI: Mr. Mancini.

MR. MANCINI: As I said it's really...

MR. KUSHI: Okay.

MR. MANCINI: Combined in one. She didn't, she was asking for clarification and the clarification said "see April 16th for denial", but in any case I don't think there's a timing issue.

MR. KUSHI: Just for the record.

CHAIR ALDRIDGE: Well, for the record, but my clarification, any future reference to this thing would be referencing what, the April 27th date or the April 16th date or both?

MR. MANCINI: I think we would stipulate both for the part...

CHAIR ALDRIDGE: Okay, alright, great.

MS. D'ENBEAU: Maybe we can say the April 16th as clarified by the April 27th letter.

CHAIR ALDRIDGE: Alright.

MR. KUSHI: There's no objections to the timing of the filing of the appeal?

MS. D'ENBEAU: No objections.

CHAIR ALDRIDGE: You have that, Gaye?

(inaudible)

CHAIR ALDRIDGE: Okay. Alright I think we're ready to, are we ready to proceed? Alright, um, with ah, Mr. Mancini, you have 5 minutes to make your opening statement.

MR. MANCINI: I'd better take out my watch. Five minutes, ah, ah, as I said earlier, I'm trying to do this in a concise, time efficient manner, so I'll cover, I, I did submit...

CHAIR ALDRIDGE: Mr. Mancini? If you...

MR. MANCINI: Oh, do I need this.

CHAIR ALDRIDGE: I think so, I don't know.

MS. HAYASHIDA: Yeah, I'm not sure if that...

MR. MANCINI: Sometimes my voice carries better without a microphone on it, but um, ah, I, I'll try to do in 5 minutes. I, I submitted a number of documents to you. I'll just quickly review what's been submitted, I believe so, and agreed to be in the record and how I believe the facts and the law come together in this case. Ah, first, I submitted a memo on the appeal which attempted to trace factually all the things that occurred in this appeal and then the 2 declarations of Ms. ah, Catherine Silva and Dawn Silva which related to all the facts, then a chronology of the events with each exhibit for each element there to try to organize them, the material. Ah, you, you heard this appeal before, in another context so I felt it most time efficient way to do this was to present the material in an organized fashion and with the declarations because I don't believe from reviewing them, memo from the Department that may, the facts are not in dispute here. It is a question of how we apply the law to the facts and this has been, I believe, a 20 year ordeal. It started back in 1989 with a subdivision application by Antone Texeira. And I, I break the factual sequence into five components. Look at them in those components; it might be helpful to look at it. The first component is the subdivision itself which took 3 years, 1989 to 1992. Ah, that subdivision had a number of components to it which had to do with filing it, processing it, creating subdivision improvements, paying for fees and finally, getting final subdivision approval on it. I think the record will show, the exhibits already shown that Mr. Texeira believed he had a water meter at that time. He always believed and indicated to ah, ah, Catherine Texeira, that you can't, you can't get a subdivided lot without having a water access to it, so he thought it was there. Rightly or wrongly, that's, that's the thought. He was blind at the time; he didn't see the improvements going in but he believed that. The next component is Catherine getting title, which was in August of 1992. Ah, the property was in pasture. Ah, she took title with the intent of giving title to her daughter at some point in time. The next chapter is the rules and the charter. The press release was in September 2002, telling the public that there's going to be new rules with regard to the Upcountry system. If you got a right to water meter to your premises, you got 60 days to come in and basically get that done. Ah, and then on October 4th, 2002, what happened was the Board passed the rule. Ah, that rule, ah, stated the same thing, you got to come in within the 60 day period or you're, you're out of luck. That, that rule ah, ah, was basically published, became law and it did have an appeal provision to it. I don't know if you remember, and looked at the rule, you might look at it but there was a criteria that if ah, the situation was harsh or unfair to someone, they could come in and make an exception, appeal to the rule. The Charter of the County of Maui was amended in 2003, and the Charter, was interesting, I hadn't looked at this for awhile; the Charter Commission actually was giving the Board of Water Supply more power at the time. They thought you should have more power. The Council took another view and put on the ballot that the ah, um, the Charter, the Water Board would be advisory. But it did indicate in the, in the ah, in, in the Charter that the Board would still have any authority given unto law. Ah, by ah, I know it's the position of the Department and Corp Counsel's opinions, that the appeal provision became void when the Board became advisory. So the ability to someone, if that's a correct position, legally correct, the ability for someone to make appeal, all of sudden lost itself. It's lost its reality and that which common sense says somewhat that isn't terribly fair. Someone must take the place of the Board, someone must be able to come in and use this criteria but, but from ah, I think the Department's position it disappeared. The next phase, the third phase is Dawn Silva herself. When she got title, she was told by her mother the property had water. She hired a contractor, gets her house ready, sends an excavator down there, excavator says ah, 'looks there's a problem, you got these laterals in the driveway, ask the Water Department if we can move them.' She does that and the Water Department looks in the computer and says "I'm sorry lady, you don't", you know, "have a water meter there", which was a shock to her and she comes back to her mother, "what happened" and the mother says "I don't know, I looked at it and I saw, I thought I saw the water meter." You got attached to Catherine Silva's declaration, I put in what she saw, which looked like a water meter in there, without taking the next step looking under it. So, Dawn then sets out in ah, in a sequence of basically discovering she doesn't have a meter and making requests to Mr. Tengan, making requests to Mr. Eng, coming to the Board in March 27th, getting approval and then getting denial. Ah, that's the 3

phases, the phase we're now in, the fourth ah, the fifth phase is the appeal. An ordinance was passed on May 4th and all it gives the Board some ah, some rights now to ah, to ah, take a look at decisions of the Director. The appeal was filed on May 12th and we're at the hearing. If you look at the sequence it's a 20-year ordeal. Ah, go from 89, ah not quite 20 years, 1989 to ah, 2000 ah, 2008. Ah, ah, its unfortunate thing for someone to go through this and I believe that ah, that when the, when the Council ah, basically made the Board advisory in the Charter or the Charter people did, I don't think there was any intent to delete those rights that someone would have under this rule. If I got one minute, my one minute is there are 2 questions, legal questions, involved with a couple of subsets. One is, should the 60-day rule apply to this property? Is it fair to apply that 60-day rule under these circumstances? Second is, was the decision by the Director to deny the meter based upon appropriate facts, was it based on appropriate procedure, and was it arbitrary capricious? Ah, the law is, if you had time to read the memo, is that, I believe that she had a property right involved in having this meter. You can't subdivide property without having it. She does have the property right because she's number 1117 on the priority list. Everybody agrees she has the right to the meter but its just she doesn't want it when she's in Hale Makua. She wants, she needs it now when she can raise a family on it. I don't believe that the publication, notice by publication is appropriate. If, if you know basically who the people are, I think you have to give them actual notice. Um, I think that's case law, case law says ah, notice by publication doesn't work. Did they have actual notice, it's clear, it's in the records that they're the ones that told, the Department told her that ah, she didn't have the meter. If they had notice they could have given it to her. The question is, seems to me, of dispute with the Department ah, is did she, they feel she had the opportunity. I don't believe that ah, Catherine Silva had the opportunity, she didn't know about it. Second question, is this a property right that's subject to protection? The notice said it was ah, to the public it said this was a right, it was an entitlement, come in and exercise it. Ah, ah, other people came to exercise it. If she had the opportunity or knew about it she would have come in. I think this is the type of situation that the rule was meant to take care of. The situation which is, which is unfair and a harsh result as ah, from all of that. Thank you.

CHAIR ALDRIDGE: Thank you, Mr. Mancini. Before the ah, Department, I just, Gaye, would you just correct the record to indicate that Phyllis Robinson and Kui Lester.

MEMBER HALLER: Your mike's not on.

CHAIR ALDRIDGE: My mike's on or not on? Is it on now? Please correct the record to indicate that Kui Lester and Phyllis Robinson are present...

MS. HAYASHIDA: Yes.

CHAIR ALDRIDGE: At the meeting and present at the beginning of the hearing. Thank you. I'm sorry, go ahead.

(Digital recording abruptly ends. Audio cassette tape recording begins with Mr. Chang's testimony)

CHAIR ALDRIDGE: We're back in session. We'll proceed with the um, Department's testimony.

MS. D'ENBEAU: Thank you very much. The Department will call Herb Chang.

CHAIR ALDRIDGE: Mr. Chang, do you solemnly swear or affirm that the testimony that you are about to give before this Board in connection with this case will be the truth, the whole truth and nothing but the truth.

MR. CHANG: Yes.

MS. D'ENBEAU: Mr. Chang, for the record would state your name and your um, position with the County, please.

MR. CHANG: Okay, my name is Herbert Chang. I'm with the Water Department Engineering Division.

MS. D'ENBEAU: And how long have you been with the Water Department Engineering Division?

MR. CHANG: Ah, see it would be 20, almost 23 years.

MS. D'ENBEAU: Thank you and you, you were sitting in the, in the room this morning and hearing the discussion about storage fee and I'm going to ask you to explain to the Board what the storage fee issue is.

MR. CHANG: Okay, the storage fee um, it's something that we no longer collect, 'cause when we passed the Water Meter Issuance Rule, which created the six thousand dollar, or three thousand dollar fee now it's six thousand dollar, we did away with the storage 'cause the new fee covers the purpose of it, the storage fee which was collected in um, this particular subdivision was in the process back in the um, this is the early 90's, 89. The purpose of that was um, one of the, was a normal subdivision requirement. In order to get the subdivision approved by the Water Department, there were several requirements. One of which is collecting the storage assessment fee and um, the fee varies among, depending on how many lots. In this particular cases was 2 lots. I believe the fee was only a hundred dollars. And the purpose again was, let's try that again, I didn't explain it but the purpose was, is to create a fund within the Department, collect fund for the purpose of constructing new storage tanks, for the purpose of fire protection. Um, so that people have water during periods of peak demands, more of it storage um, operating on water system for um, efficient service. And there was again, just for the purpose of obtaining final subdivision approval it's not again the Department's requirement for getting the subdivision approved and recommended by the Water Department.

MS. D'ENBEAU: And Mr. Chang, if I could just um, I'm gonna try save the process as I understand it for the Board and the subdivision issue and if I'm wrong please correct me but, I, I understand that the, what you're saying is that the subdivision which would be handled by Public Works, is that, is that correct? The Public Works Department?

MR. CHANG: They're, they're the key agency that um, gives the final last approval before the subdivision finalized.

MS. D'ENBEAU: And the Public Works Department before they approve the subdivision will send out to other departments for comments to see if the other departments' requirements have been met. Is that correct?

MR. CHANG: Yes, that's correct.

MS. D'ENBEAU: And I should be, I'm sorry, I'm trying to speak now of that period of time where we know Ms. Silva's family applied for their subdivision in the late 80's, early 90's, is that also the process administered at that time?

MR. CHANG: I believe so, it's the same process.

MS. D'ENBEAU: So when you say, it was necessary for the ah, subdivider to pay the storage fee to get the Water Department approval of the subdivision, you're referring to that process where the documents are sent to you and then, you being the Water Department, and then you sign off on the approval of the subdivision, is that very fair?

MR. CHANG: That's correct. When the um, Public Works sends the Water Department as far as what the Water Department's requirements are we did advise the um, Public Works that storage assessment is one of the requirements for the Water Department.

MS. D'ENBEAU: And, are there also requirements for laterals?

MR. CHANG: Um, there is a minimum, there's some that require storage assessment plus installation of water service laterals.

MS. D'ENBEAU: And what are water service laterals?

MR. CHANG: Water Service laterals is the um, piece of um, portion of the what the um, it consists of a water meter box and for the residential type home project, there is a one-inch line that connects the meter box to the water main which would be 6-inch, 8-inch.

MS. D'ENBEAU: So, when you say the water main you mean what's supplying a lot of houses or the neighborhood.

MR. CHANG: That's the distribution line for more storage tanks. It's the main, main artery for bringing water to properties.

MS. D'ENBEAU: And so these laterals, they would be described I guess then as kind of the hook-up to the main distribution pipe.

MR. CHANG: Yeah, that would be a good description.

MS. D'ENBEAU: But it, it doesn't have anything to do with the water meter, is that correct?

MR. CHANG: Um, as far as installing the meter or the...

MS. D'ENBEAU: Right.

MR. CHANG: It's a separate process. The subdivision just goes as far as installing the lateral, that's it.

MS. D'ENBEAU: And you heard testimony earlier today about a blueprint, have you seen the blueprint? I myself haven't seen it but I understand a number of the Board members have and so I was wanting to **as to file** on that issue of the blueprint.

MR. CHANG: Um, I don't recall the specific blueprint but is either one of two things. It could have been a subdivision plat map which showed the layout of the subdivision or it could be the construction plans, which shows where the water main is and where the service lateral and meter box is to be installed by the contractor.

MS. D'ENBEAU: And if the word "water meter" were to appear on that what would that indicate.

MR. CHANG: It would show where the water meter box and lateral or laterals will be installed.

MS. D'ENBEAU: And there was testimony that there was a signature from someone at the Water Department on this blueprint document. Would that be the Water Department approval of the subdivision, I mean not the approval but recommendation for approval because Water Department requirements had been met?

MR. CHANG: Um, the blueprint would be only the phase of the subdivision requirement involving the construction plans. Ah, that's a separate um, sub, um what you call sub, a part, a small part of what the, to meet the Department's conditions approved.

MS. D'ENBEAU: Okay, now, there's also been some indication um, in the documents that were submitted for this case that um, Ms. Silva had wished that the Department of Water Supply would have notified by mail everyone who had ah, some kind of lateral constructed on their property, these laterals that would connect them to the main distribution line but had not yet applied for a water meter, and my question is do you have any kind of ah, a list that would indicate to you who that category of people would be, what their names would be.

MR. CHANG: No, we don't have the list, of ah, who has existing water meter, doesn't have a meter installed and meter box.

MS. D'ENBEAU: Somebody who has ah, you said existing water meter, you mean existing laterals?

MR. CHANG: Yes, existing laterals but no meter.

MS. D'ENBEAU: So what would you have to do if you were going to find out what the names and addresses of those people would be.

MR. CHANG: Um, if we needed to the point, in case where we can send 'em by um, send, send out information to all these people with an existing lateral but no meter. If we're just sending it to subdivisions um, subdivisions in our files go back to 1960's, so we have to find out each subdivision, up, Upcountry area we would need to find out which ones got final approval and which one has a meter, meter, actually has, actually had a lateral installed and try to find out um, this is a (inaudible), we need find out information and ah, it goes back, records I think at that time may have been half computer and half paper files as far as construction blueprints and some of them may have been filed in our archives. A lot of files to look through.

MS. D'ENBEAU: And once you discovered who had final approval with laterals, how would you then find out whether or not they had applied for water meters?

MR. CHANG: Um, we would try to clarify in our computer system, and frankly, computer system is not complete, maybe not even half the information is there, so we have to probably, after we identified each lot that has a lateral we may have to do a physical field inspection.

MS. D'ENBEAU: You have to go actually look in and see if those meters have been installed?

MR. CHANG: Just to confirm that the list that we create (inaudible) we don't want these people coming back and saying "you missed me", that kind of a problem. (inaudible) We want to make sure we do the list, do the list (inaudible)

MS. D'ENBEAU: The list, is it fair to say this would be a very time consuming expensive process?

MR. CHANG: It would be another additional charge to most all of duties I already have.

MS. D'ENBEAU: We've offered some um, items into evidence and I neglected to do this before your testimony started, I apologize. I think we have a stipulation that the County's Exhibits 1 through 12 can be admitted into evidence. Is that correct, Counselor?

CHAIR ALDRIDGE: I believe we stipulated that...

MR. MANCINI: Yes.

CHAIR ALDRIDGE: Particular (inaudible)...

MR. MANCINI: Yes, I have.

CHAIR ALDRIDGE: You have.

MR. MANCINI: Sure.

MS. D'ENBEAU: When the Water Department um, has a water meter installed um, how does the Department determine the amount of the bill to send out to the customer?

MR. CHANG: The meter readers go out and um, do what we call meter reading and they in turn um, turn that information in to our billing department and they in turn determine whether that actual water was used and they would send a bill out. If there was no water use, they would send out flat, maybe two dollars, now I think up to seven dollars per month to each customers.

MS. D'ENBEAU: You said that flat, what, what were you referring to, the flat rate for having a meter?

MR. CHANG: It's a charge, it's called a service charge where the Department has to pay for meter readers, the lateral maintenance, meter box needs replacement, that's all under the ownership of the Department so we need to repair those things once in awhile.

MS. D'ENBEAU: And so everybody who has a water meter pays at least the flat fee, is that correct, or is charged at least a flat fee.

MR. CHANG: A minimum when they should get billed.

MS. D'ENBEAU: At my request, did you make a list of responses to the 60, during the 60-day grace period that the Water Department allowed people to come in and make a claim that they were entitled to a water meter?

MR. CHANG: I did make a list.

MS. D'ENBEAU: And I'm going to show you what's been marked as Exhibit 11 and...I guess it's all in 11. And for the, the members have that list as well. Can you explain what the first page of Exhibit 11 represents, Mr. Chang?

MR. CHANG: The first page which is a longer list um, what happened was when the water meter issuance rule came into effect, the um, the people that could've come in during the 60-day period um, simply weren't ready for the meter. What I mean by not ready was um, where they need to um, like do a water system improvements or um, things like that in order to get their meter approved. 'Cause um, sometimes um, a meter request may trigger fire protection requirements that require them to install water mains or fire hydrants. These people would have to reserve their water meter (inaudible) pay water meter fees up front. They have 3 years to complete whatever improvements they need to obtain the water meter. Um, so these are not, people that are not ready for water service so they would have to reserve the meters within the 60-day period. The second sheet was those people that didn't have to do any kind of infrastructure improvements. They could get their meter right away. So those people weren't required to reserve the meter or anything. So the second page was the people who can come in apply and have the meter installed.

MS. D'ENBEAU: Thank you very much and as far as exhibit, if you want to turn back to Exhibit um, 9, what does that represent?

MR. CHANG: Is that the service request?

MS. D'ENBEAU: Yes.

MR. CHANG: Um, this particular form is used when a, in this particular case um, the meter has a, what we call a transponder. The meter comes in 2 parts. One part is the um, valve that turns when water is running through the meter and the second part is what we call a transponder. It, it's an electrical device that shoots the electrical activity, shoots radio signal out to our um, meter reader devices. These meters are automatically read by um, electronic device. This stage the transponder which shoots the radio signal out um, failed, so this form is out of the Water Department's um, process to have this thing replace with one that works.

MS. D'ENBEAU: So is the same kind of metering used today that was in use in the early 90's?

MR. CHANG: I don't believe so. I know the meter reading, read, meter device were being changed in the 90's. I don't believe in the early 90's it was changed yet.

MS. D'ENBEAU: And when you say changed, was that to a more ah, higher tech kind of system?

MR. CHANG: Yeah the old, the previous, prior to our automatic meter reads by radio we had manual readings. We had to physically open each meter box to take a reading.

MS. D'ENBEAU: And number um, Exhibit number 7, what does, what does that represent?

MR. CHANG: Um, that's the one that says on top "application of final bill and transfer", yes?

MS. D'ENBEAU: (inaudible) yes it is.

MR. CHANG: This one looks like it was again a fiscal Water Department form which um, when somebody, if you notice new service holder section has been filled out, that means when somebody is taking responsibility of paying water bills and uh, changes, changes form one person to another person.

MS. D'ENBEAU: So does this indicate the name of the person or just the address?

MR. CHANG: Normally you have the name too, but this particular form just has the um, address.

MS. D'ENBEAU: And that would be P. O. Box 445, Haiku?

MR. CHANG: Yes.

MS. D'ENBEAU: And that, would that be the same um, that Ms. Silva uses?

MR. CHANG: I believe so, yes. On my correspondence (inaudible) 445 (inaudible).

MS. D'ENBEAU: So this would indicate that, that someone had requested that the bill for a particular service number be sent to Box 445, is that correct?

MR. CHANG: It could be or could be a new, somebody else is paying the bills (inaudible) not quite but um. Could've been either way.

MS. D'ENBEAU: And if, so you, you can, can you tell from this um, what service, what the service location is?

MR. CHANG: Um, unfortunately, they didn't put tmk for um, not, not, I couldn't be able to um, we, we have to go back to the service number at the top, right hand corner, from there we have to back track and find out where the meter is in the files. From this form alone it doesn't indicate the service location.

MS. D'ENBEAU: And Exhibit 6, can you explain what Exhibit 6 represents? This is the one that's entitled "Department of Water Supply Application for Water Service."

MR. CHANG: This form is used normally when the person is ready to apply for a water meter. In this particular case um, when the subdivision has completed all the Water Department requirements a service lateral is installed undeveloped storage assessment and whatever else was required by the Department. Um, the Department would in turn, after all those requirements are done, make final subdivision recommendations to the Department of Public Works saying, advising them that all the water requirements, requirements for subdivision have been completed. At that point in time, this form can be um, I'm sorry, this is the board subdivision. This is not part of the subdivision. Sorry, I take that back. Um, this one...

MS. D'ENBEAU: This is an application for water service. It's entitled "Department of Water Supply Application for Water Service", Exhibit 6, our Exhibit 6.

MR. CHANG: This one I guess um, not, you know from the top of left hand corner it says "John Estes Subdivision" um, I would assume whatever I said prior would apply because there was a subdivision involved that created this lot 46.

MS. D'ENBEAU: And then who's applying for the, who's the new customer that's gonna be applying for this water service?

MR. CHANG: Would be Walter Silva.

MS. D'ENBEAU: And with a San Jose address, is that correct?

MR. CHANG: Ah, correct, yes.

(Digital recording continues)

MS. D'ENBEAU: And then you mentioned a service number that 934-01425, that, is that the number from the right-hand corner, the service number?

MR. CHANG: It's the 93401425, that's the service number, yeah.

MS. D'ENBEAU: And does that compare to the service number on Exhibit 7, which was the one for the change in mailing address?

MR. CHANG: That's the identical service.

MS. D'ENBEAU: And so from these 2 exhibits would you um, conclude then that at some point this water bill is being sent to Mr. Silva in San Jose, and there was a request that it be changed to a P.O. Box in Haiku?

MR. CHANG: That would make sense that um, 'cause the first one would, Exhibit 6 dated 1990, Exhibit 7 is dated...93? On the bottom?

MS. D'ENBEAU: Yes.

MR. CHANG: Yes, it would make sense that, that the purpose of Exhibit 7 would've been to change the billing address to P. O. Box 445 instead of sending it to um, San Jose.

MS. D'ENBEAU: And, is this the form in this time frame here within, in this form is filled out in 1990, in the early 90's, this is the form that someone would use in order to apply for water service, this type of form?

MR. CHANG: Talking about Exhibit 6?

MS. D'ENBEAU: Yes, I'm sorry, Exhibit 6.

MR. CHANG: Ah um, yeah, we still use this form.

MS. D'ENBEAU: So, it's still used today?

MR. CHANG: Yes.

MS. D'ENBEAU: So, when we talk about applying for water service or making an application for water service this is the type of thing that is filled out.

MR. CHANG: Yes it is.

MS. D'ENBEAU: Thank you very much Mr. Chang. I, I don't have any further questions but the other counsel may and the board members of course may as well.

MR. MANCINI: Good Morning.

MR. CHANG: Morning.

MR. MANCINI: Ah, just a few questions. Um, it's a correct statement that the Department of Water Supply has knowledge of all the subdivisions that it's approved.

MR. CHANG: I think so, yeah. We should know what subdivisions we approved.

MR. MANCINI: Yeah, so you have a record of that as well as the Department of Public Works.

MR. CHANG: Ah, the more recent ones, yes, we have a record but the older ones, say 60's and maybe, I don't know if we were involved in 50's, but those are more hard to locate.

MR. MANCINI: But, if, if there was a period of time you didn't have a record you could go to the Department of Public Works and they would have a record of it, correct?

MR. CHANG: I...would hope so.

MR. MANCINI: So, so somebody knows whether a property has been subdivided or not, that's not...

MR. CHANG: Yeah, I think so.

MR. MANCINI: Ok. And it's a correct statement that you have records that show you what properties on the island have water meters.

MR. CHANG: Not readily available.

MR. MANCINI: But you do bill people every month for having a water meter, you testified to that.

MR. CHANG: There's accounts for...

MR. MANCINI: Yeah, so, there is records of billing every month because there's a service charge, correct?

MR. CHANG: There's a service account service charge.

MR. MANCINI: And that's how it's easy to find out whether you got a meter 'cause you've charged these people a service charge, correct?

MS D'ENBEAU: I have to object to that question, it's putting words in his mouth and it's not.

MR. MANCINI: That's what you do in cross-examination, either affirms my statement or negates it.

MR. CHANG: If somebody gets, gets a, has a bill he has a meter.

MR. MANCINI: Okay. And is it your testimony that it's very difficult to correlate the subdivisions that've been improved and those properties on the island that have a water meter.

MR. CHANG: Correct.

MR. MANCINI: It's difficult. You can't, you're, certainly your computer system can, can push out the records of the properties just subdivided, correct?

MR. CHANG: Not really. Um, shall I explain?

MR. MANCINI: Sure.

MR. CHANG: One simple, one simple sample. When the subdivide, subdivision is, property is subdivided, let's say, it has a certain tmk number. Example, 12 lot subdivision starts with a subdivision like 2-7-12 parcel 45. When it gets subdivided each of these parcels get a new tmk number. Um, the Department does not track from the original subdivision file and then prove what the new tmk numbers are.

MR. MANCINI: So, you would have knowledge if it was subdivided, you would not know the new tax map key number, that's your testimony?

MR. CHANG: As far as computer, computers, yeah.

MR. MANCINI: And if you, for example, Ms. Silva testified that she called the Department to know that they did look up on their computer, computer they had the tax map key number that she had and they pulled up the fact that she didn't have a water meter.

MR. CHANG: I would have to ask um, who she talked to and what file she was referring to, to find the um, data base that, that particular computer is hooked up to and see whether it covers every single tmk on the island. I doubt it very much it does.

MR. MANCINI: The billings you sent out for a water charge on a monthly basis for the meters ah, is that identified under tmk basis?

MR. CHANG: Um, on the billing or...

MR. MANCINI: Yes. You send, you send bills out on a monthly basis, bi-monthly I uh, every 2 months I think ah, to customers. Ah, I get a bill every 2 months and it seems to have my tax map key number on my bill so I'm assuming that, that your computer system ah has the tax map key related to your monthly charges.

MR. CHANG: I have a residence too, and I don't recall having a tmk.

MR. MANCINI: You're saying you don't have a tmk, huh? You just have an address?

MR. CHANG: Ah, probably the, when they sent, must have an address on it, I think, I'm sure you have the account numbers and whether there was water consumed and then the year in summary as far as what your water consumed.

MR. MANCINI: At this point your testimony is the computer system doesn't correlate the properties that have been subdivide to a tax map key?

MR. CHANG: I would have to agree.

MR. MANCINI: But...

MR. CHANG: Yes, yes.

MR. MANCINI: Yes, okay. And ah, when Ms. Silva called the Department they pulled it up in the computer, you don't know why they were able to do that?

MR. CHANG: I think it's kinda like hit and miss. Some tmk's are in the data base, some, some are not so um, whoever she talked to um, I work with properties you know for the Water Department and the degree of confidence or knowledge of what data base she's looking, who created it, may, sometimes it's misleading. Sometimes when you have clerks who are looking at, working in the data bases, they don't know who created it, the integrity, so she may have just relied on saying if it comes within computer data base. So it depends on who's using it and...

MR. MANCINI: Well, can you establish that there are properties where you do have the tmk and that it identifies the property that's been subdivided and there are other properties that you don't have the tmk and it may not show that they're subdivided.

MR. CHANG: The original tmk lot not the subsequent lots created um, we, probably has, I would think we probably have the original lot, tmk lot, but the subsequent ones I don't think so.

MR. MANCINI: You're not sure about it.

MR. CHANG: I'm pretty darn sure its, we not gonna have them all.

MR. MANCINI: Can you explain how then the Water Department told Ms. Silva, by looking at her tmk that she didn't have a water meter?

MR. CHANG: I'm not the person that talked to...

MR. MANCINI: I know and I, I'm just, I know you're aren't, I don't mean to be harsh. I just wanted an...

MR. CHANG: No, no.

MR MANCINI: Explanation for...

MR. CHANG: No, I just, I'm not, was not the person who responded to Ms. Silva.

MR. MANCINI: Ah, let's ah, regard to the water meter ah, fees, the storage assessment is now included in the, in the fee for water meter, correct?

MR. CHANG: It is in the um, water development fee.

MR. MANCINI: Yeah, and that includes the storage assessment, source assessment, ah...

MR. CHANG: Transmission.

MR. MANCINI: And transmission. So, it's all in the six thousand, six thousand dollar fee, is that correct for a 5/8 inch meter?

MR. CHANG: Six thousand thirty dollars.

MR. MANCINI: Okay, then in ah, 19, ah 92, how much was that? Do you recall?

MR. CHANG: Um, looks like from this one was like hundred fifty, hundred fifty dollars plus the thirty dollar rate, roughly hundred eighty bucks.

MS. D'ENBEAU: With this one, are you referring to...

MR. CHANG: Oh.

MS. D'ENBEAU: Exhibit 6?

MR. CHANG: Six yeah.

MS. D'ENBEAU: Excuse me.

MR. MANCINI: Yeah, Exhibit 6, thanks. Um, and was there an additional fee when you apply for the water service in addition to the storage assessment?

MS. D'ENBEAU: This is the application for water service.

MEMBER HALLER: A hundred and eighty dollars.

MR. MANCINI: Okay, so it is. That's, that's the answer...so the total fee at that time was one hundred eighty dollars.

MR. CHANG: Yeah, I believe so.

MR. MANCINI: For water, water service. And ah, 2000 ah, 2002 when the title 16 was passed, what was the fee at that time?

MR. CHANG: Title 16 is what, which is, which rule is that?

MR. MANCINI: Title 16, six, I call it the 60-day rule, where you have to come in within...

MR. CHANG: Oh.

MR. MANCINI: Sixty days of notice to basically to apply for a meter.

MR. CHANG: It was six thousand thirty.

MR. MANCINI: Six thousand thirty at that time, so there was a combination by that time. Ah, ah, on Exhibit 11 you identified a number of properties that came in and either obtained a reservation for water or got the water service, ah, those properties how would they qualify for that ability?

MR. CHANG: Um, they had to, I believe it was main, 2 main categories. One was um, if you had a lot that um, didn't have a water meter. In other words, they could be coming in for their very first water meter on their property. Um, you'd be able to apply. Um, the second one would be if you had a subdivision application going on, where you had a, where you had um, applied to do your subdivision appli, you had to apply for a subdivision prior to 1993, March 6th of 1993. The 60-day period says if you wanna, you will, the Department will allow you to proceed to final subdivision approval if you pay for your meters now.

MR. MANCINI: So the 2 criteria, your lot had been subdivided, it was legal lot, and 2, you were applying, you had preliminary subdivision approval and you were then moving to, to reserve that water capacity. That, am I correct?

MR. CHANG: Um, well the first, where we have an existing lot, some of them may not have been subdivided, the older lots.

MR. MANCINI: I see, some lots exist before the subdivision ordinance?

MR. CHANG: Correct.

MR. MANCINI: So those lots were legal lots and then a subdivision creates a legal lot, so that's one category of legal lots and the other one is a lot to be legal because you applied for subdivision approval, correct?

MR. CHANG: Yes.

MR. MANCINI: And you would agree that this parcel 31, the question here, had the right at that time to apply for a meter because it had been subdivided?

MR. CHANG: Correct.

MR. MANCINI: The ah, lots that came in and obtained water meter service or reservation, they paid the six thousand thirty dollar fee, is that correct?

MR. CHANG: Part of that water meter issuance rule was um, they allowed you to save, its exactly, you had a six lot subdivision that they applied for back in say 1990. The first 3 lots they allowed to um, they allowed the fee of three thousand three hundred fifty and the remaining lots beyond four, six thousand thirty dollars.

MR. MANCINI: I'm sorry I didn't quite understand that, maybe I, that...

MS. D'ENBEAU: Sounds like it's irrelevant 'cause it's for a larger subdivision in any case.

MR. CHANG: Yeah, but for some reason the, when the Board made the Water Meter Issuance Rule, they um, decided to allow the 3 lot subdivision to pay that lower, existing rate 'cause I think, they may, they may have, the

logic may have been that we held them back if they finished the project, they would have gotten the lower rate so, they decided to give the first 3 lots that lower rate.

MR. MANCINI: So if you had a subdivision that was in process but not finalized then you would pay a lower rate if you fell within certain category and a higher rate if you fell within another category?

MR. CHANG: No, just saying that any subdivision that would, would come in, that could come in during the 60-day period um, the first three lots you get the lower rate.

MR. MANCINI: Okay, so there's a benefit if you didn't have your subdivision approved?

MS. D'ENBEAU: Counselor...

MR. CHANG: I don't know.

MS. D'ENBEAU: It's interesting but I think it might be irrelevant given our...

MR. MANCINI: Oh, oh, I apologize for my, my question was, I didn't know whether someone coming in had a additional benefit if they had a lot that existed in 1930...

MR. CHANG: Oh, no, that doesn't mean, meant was this applied only for subdivision applications that were, it was ongoing, that could apply, that could've reserve for the meters during the 60-day period.

MR. MANCINI: Okay, after the passage of Title 16, that's the 60-day rule, that it had ah, subchapter 3, exceptions, waivers, and deferrals, exceptions. Were there any applications filed after that rule was passed that asked for an exception, waiver or deferral?

MR. CHANG: Um, there were some people that came in and asked to um, some consideration.

MR. MANCINI: And did those requests go to the Board of Water Supply?

MR. CHANG: I believe so.

MR. MANCINI: And you recall whether any of them were approved?

MR. CHANG: Um, aside from Dawn Silva's?

MR. MANCINI: Dawn Silva's never went under that provision.

MR. CHANG: Oh, I'm sorry. Oh this is for the um...

MR. MANCINI: This is, this is for the Title 16 rule, chapter, subchapter 3, exceptions to the regulations.

MR. CHANG: So um, again Title 16 was, was the 60, 60-day rule, yeah?

MR. MANCINI: That's correct.

MR. CHANG: I think so. Um, didn't Dawn Silva's went?

MEMBER HALLER: It wasn't.

MR. MANCINI: No, Dawn Silva's was not under chapter, Title 16 because, I don't want to testify but the Department's position was that this, this section was no longer valid after the chart, after the charter was changed so.

MR. CHANG: Yeah, to answer that questions, I don't, I'm not sure whether...

MR. MANCINI: You're not sure. Okay. I don't want you to testify if you're not sure. That's all I have in...

CHAIR ALDRIDGE: Any questions from board members?

MEMBER LESTER: Exhibit 6 from the County. That's an application for water meter, isn't it?

MR. CHANG: Yes.

MEMBER LESTER: Okay. It says a hundred and eighty dollars? Receipt number, they paid a hundred eighty dollars to obtain this water meter?

MR. CHANG: Yes.

MEMBER LESTER: Where is the water meter?

MR. CHANG: Should be in the meter box.

MEMBER LESTER: But it's not.

MR. CHANG: Oh this is for the other, this is for the um, a different property. This is for the property where she's renting.

MEMBER LESTER: Oh, it's for the rental. It's not part of the subdivision?

MR. CHANG: That's why I got confused too when I was first talking...

MEMBER LESTER: Oh, okay.

MR. CHANG: This is actually for her, her mom, where she's renting.

MEMBER LESTER: Why is it part of the...

MEMBER ROBINSON: Why is it in the exhibit?

MEMBER LESTER: Why is it in the exhibit then?

MS. D'ENBEAU: I can explain it in my final statement if that's allowed.

MR. MANCINI: I think that's more for argument than fact.

MEMBER LESTER: Okay.

MEMBER ROBINSON: It's confusing.

MEMBER LESTER: Um, would the County grant a final subdivision if the water meters are not available?

MR. CHANG: During today's um, if you're ask me today, no, the Department...

MEMBER LESTER: Would not have?

MR. CHANG: Would not recommend final subdivision approval, normally. Um, I guess that's procedure.

MEMBER LESTER: Okay. And the cost of a water meter at that time was a hundred and eighty dollars?

MR. CHANG: Back in the early 90's.

MEMBER LESTER: Okay. Okay, I know when I applied for a water meter I had to put my own laterals in but because it was a subdivision the County put, the, they had to get their, the subdivide, the subdivider had to put in their own laterals.

MR. CHANG: That's right.

CHAIR ALDRIDGE: Michael, you have a question?

MEMBER HOWDEN: Yeah, Kenneth does too. So you might want to go first

MEMBER OKAMURA: No, uh, go ahead.

MEMBER HOWDEN: Um, it seems to me, and please correct me, but if Public Works signs off on a final approval, they're only doing that because in the subdiv, I mean when you have a subdivision to get final approval and from ah, Department of Water Supply had to have made a commitment to give water to the subdivision, right? I mean you don't get, you wouldn't sign off, I mean that they can't just subdivide without water, right?

MR. CHANG: Oh, when subdivision is, is processed by the Water Department, the Department has to make sure there's water available for the subdivision, before they will approve the subdivision. Back in 19, I guess early 1990's there was water available.

MEMBER HOWDEN: No, but, but you made a commitment to give water to the subdivision, right? I mean it's not simply that you've approved and you said that there's enough water but that you made a commitment, otherwise what is the meaning of the subdivision.

MR. CHANG: Well there is a provision in our rules and regs where if the situation where water availability, availability is such at a point where it may um, affect the health, safety of the public, the um, Director can make whatever um action necessary to curtail that type of situation that occurred in 1993 when the Director decided to determine that there was source shortage and the Department entered, took some actions to avoid further degradation.

MEMBER HOWDEN: I mean is there, at, at present a source ah, shortage in Lower Kokomo Road?

MR. CHANG: Upcountry Maui there is, which includes Haiku.

MEMBER HOWDEN: Really, Lower Kokomo Road would have a, for 9700 sf lot, would have, residential lot.

MR. CHANG: Unfortunately the um, when there, the um, Haiku system is tied into our um, to our com, to Kula system, Makawao system, when, when we have problems with the system, we have to use the Hai, Makawao system as a back up, which we did just this year and um, Kapakalua Well but um...

MEMBER HOWDEN: But doesn't the um, Kokomo Road, Kokomo, doesn't that come from the Kamole Weir, gravity fed?

MR. CHANG: Um, that particular property comes from the Haiku system and um, that one comes, I believe, maybe from the Haiku Well. That thing is back, that was backed up from our ...

MEMBER HOWDEN: From Kamole, okay. Um, yeah, it just seems a little strange to me that they ended up paying storage assessment fees and they paid for the installation of double service laterals and the installation of a cast iron meter box um, I mean, they're not doing that frivolously, right, they're not just saying oh, I'd like to have all this stuff on my property and I'm gonna help the County out with their transmission lines and storage capacity and I'll just make a donation, I mean, there seems that there, there needs to be a level of reciprocity that there's a mutual, there's an agreement that's created when you receive money from the public, the potential user.

MR. CHANG: Um, working with the subdivision applications um, the subdivider needed to install um, complete certain requirements in order to get final subdivision approval, being that the subdivider's a quote developer. He needs to make sure when he creates new lots there's adequate provisions to hook up to the system and these service laterals are a part of that.

MEMBER HOWDEN: Well, isn't there presumption by approval of a subdivision of which can't happen unless you have access to County water? Um, that County water was committed to this project?

MR. CHANG: I can't say there to cut, there's water can be available to infinity for subdivisions unless you know...

MEMBER HOWDEN: I mean, Herb, one of the things we've been dealing with on this Board for quite awhile is um, long range planning, and, and you know, if you go to the Planning Department you'll see that there are over like 55,000 um, um, meter requests basically and per separate units ah, Central, South and West Maui. Um, I mean, the Water Department, I don't know what they're doing but these were all approved um, by the Planning Department um, and we made commitments for that stuff, you know, and it would seem that if we had coherent planning in, in the County, which obviously we don't um, that you know the Water Department would have to know because you have to know what the future demands are gonna be on the water system. And, and you're saying that you don't really know, you know what, you know what's going on in other departments as far as the commitments are. I mean it seems that, that they have to work coherently with each other to make informed decisions.

MR. CHANG: I think when the Department responds to the um, Department of Planning, there's always that caution that water source capacity is always a question and it is up to the, if the Planning Department wants approve them so the, then they were warned by the Water Department.

MEMBER HOWDEN: And, and you would claim at present that there is a lack of source capacity for low, Lower Kokomo backed up by the Kamole Weir?

MR. CHANG: That was why the Water Meter Issuance Rule was passed for the Upcountry system 'cause is a shortage of source.

MEMBER HOWDEN: Yeah, I, I would, I would venture to say that, you know the Upcountry system is actually several systems. And, and when the Upper system is short of water, that's different than, you know, what's supplied by Kamole Weir, which, you know, has a, has the right to pick up up to 12 million gallons a day, but I don't think we need to go into that now, It's just that for me, like when I look at this you guys committed to giving water to these people and it's not, it's a really manini amount of water for a 9,750 square foot lot. And I'm, I'm surprised that, that um, that you're not capable of doing that.

MEMBER OKAMURA: I had a question, um, Herb, I just wanted to find out, at that time like 1992, how easy or how difficult would it have been to get a water meter. Let's say at that time they applied for water meter, in 1992? Would they have been able to get one without being put on a list or you know, as long as they paid their fees, how easy or how difficult, are you able to say, Herb?

MR CHANG: Yeah, they would just, they, they paid their um, would have been a hundred eighty dollars again when just applied for it, paid for it and we'll have the meter installed.

CHAIR OKAMURA: Herb, um, in Ms. Silva's testimony, she had referred to um, a set of drawings or plan, blueprint that had um, according to her testimony a, the a signature either as approval or as acknowledgement from the um, Department, Water Supply um, what would that have been for?

MR. CHANG: That would have been, been for the subdivision process where um, one, one of the requirements for them to obtain final subdivision approval was to install these service laterals and meter boxes. When these construction plans are reviewed by the Department to assure that um, the laterals, meter boxes are in conformance to our standards for construction.

CHAIR ALDRIDGE: So that would have been a review of the service lateral and meter box to determine the compliance with the Department of Water Supply standards for instance, is that correct?

MR. CHANG: That's correct.

CHAIR ALDRIDGE: Okay. If the applicant did not know that that did not include ah the water meter itself, how would they um come to the knowledge that that did not include an actual water meter?

MR. CHANG: The construction plans does not say um, install water meter. It just says install lateral and meter box.

CHAIR ALDRIDGE: We'll have to see what the actual um, exhibit says on it, but the, in other words, the Department would not after it, or signing acknowledgement or approval of that drawing, does not send out separate notice that to the applicant that says that we've approved the lateral and, and the ah, service location but we have not yet received application for a water meter itself, nothing like that?

MR. CHANG: Um, no, there would be no notice sent out after the um, lateral is installed.

CHAIR ALDRIDGE: I see. Okay. It would be up to the applicant then that they actually submit a request for a water meter.

MR. CHANG: It would be up them.

CHAIR ALDRIDGE: Thank you. Any further questions?

MR. MANCINI: I, I had just wanted ah, re-cross, it was brought by ah, Michael that this, it's a question of ah, is, when you get subdivision approval, is there a commitment ah, it's a correct statement, once you get subdivision approval the Department has agreed at that time that you have water service available to you, would that be a correct statement?

MR. CHANG: Yes, I, I, I believe so, yeah.

MS. D'ENBEAU: Are we talking about in this moment in time or is, or 1990?

MR. MANCINI: I, I, I'm talking about any point in time. Somebody said the Department approves the subdivision it's a consumer protection law that that lot has water available to it, or you cannot approve the subdivision, wouldn't that be correct?

MR. CHANG: Normally, yeah, would we, before we approve the subdivision, before we recommend the final subdivision approval there should be water available for that particular subdivision.

MR. MANCINI: Okay, that's all.

MS. D'ENBEAU: If I might, Mr. Chang, it's true however the availability of water on the Island of Maui has changed as development increased. It put a burden on the existing supply of water, is that, is that correct?

MR. CHANG: Yes, it always does.

MS. D'ENBEAU: And so at some point it was determined that there was a shortage in the Upcountry area, is that correct?

MR. CHANG: That's correct.

MS. D'ENBEAU: And because there's a shortage in the Upcountry area, it was determined that the health, safety and welfare of the existing consumers of water might be put in jeopardy if additional straws were put into the wells

and more water was draw out by additional people, would be less water left for the existing consumers, isn't that correct?

MR. CHANG: That's correct.

MS. D'ENBEAU: And when was this shortage determination made?

MR. CHANG: Declaration was made in March 16, 1993.

MS. D'ENBEAU: Okay, and because of that, new situation where we now are trying to balance the needs of existing consumers of water with the desire of new people coming along to also consume, if you will, the same, the same water, at least from the same source, at that point it was determined that we needed to um, limit the issuance of water meters through this new rule, is that a fair description of what happened?

MR. CHANG: That's correct, yeah. I think I believe so.

MS. D'ENBEAU: And so, but never the less it was a grace period where people could come in and apply and um, assert rights that they might have had before this shortage was declared.

MR. CHANG: Yes.

MS. D'ENBEAU: An you had mentioned that, I think, the health, safety and welfare of the existing customers as being one of the responsibilities of the Department of Water Supply, is that also the responsibility of the Board of Water Supply as far as you know?

MR. CHANG: I believe so.

MS. D'ENBEAU: Thank you very much.

MR. MANCINI: One more question.

CHAIR ALDRIDGE: Mr. Mancini.

MR. MANCINI: Isn't it correct ah, your statement was that the shortage was declare in 1993, isn't it correct that the first moratorium with regard to the Upcountry system was in the 70's?

MR. CHANG: I think you are referring to the Kula Rule.

MR. MANCINI: The Kula Rule.

MR. CHANG: Yeah, that's correct.

MR. MANCINI: That was under , the director was Tats Imada at that time, correct?

MR. CHANG: I'm not sure who the director was.

MR. MANCINI: Were you with the Department in the 70's?

MR. CHANG: No, no I was not.

MR. MANCINI: I'm sorry. Ah, in that Kula Rule which created the moratorium was amended over a period of time, correct?

MR. CHANG: Yes, correct.

MR. MANCINI: And it brought in further properties outside the first uh, Kula Rule, is that correct?

MR. CHANG: I don't recall the specifics, I don't recall that, anything further...

MR. MANCINI: Well, for, for example the Haiku, Haiku system was not initially involved in the Kula Rule, correct?

MR. CHANG: Oh, correct, yeah.

MR. MANCINI: When did the Haiku system get involved in the, in, in the limitation of water service?

MR. CHANG: It would have been the 1993.

MR. MANCINI: So before 93 the Haiku system was not involved.

MR. CHANG: I believe so, was um, wasn't, wasn't, wasn't, there was no restrictions.

MR. MANCINI: Okay, thank you.

CHAIR ALDRIDGE: Any further questions from the Board members?

MEMBER HOWDEN: Can I make one little comment?

MR. KUSHI: Question.

CHAIR ALDRIDGE: Questions only.

MEMBER HOWDEN: Okay, okay.

CHAIR ALDRIDGE: There is time for comment later on.

MEMBER HOWDEN: Okay. Great.

MEMBER HALLER: We're at...

CHAIR ALDRIDGE: We're at noon, we're actually past noon um, and how many more witnesses do you have Ms. D'Ebeau?

MS. D'ENBEAU: Two, the Director and, and Ms. Takakura.

CHAIR ALDRIDGE: Alright, I'm willing to push this a little further on ah, if um, we may and take lunch at a little later, ah, I, unless there's some objection to that? Hearing...

MR. MANCINI: I have no objections, I got another hearing at 1:30, as long as we...

CHAIR ALDRIDGE: Well, I don't, I doubt we can last that long, to tell you the truth. Kui? I tell you what why don't we take another 5 minute break. I certainly need one again for some reason, must be coffee or something, but if we return in five minutes.

MR. KUSHI: What about the tape?

MS. HAYASHIDA: Oh. I got, have this one on.

MR. KUSHI: So, anything? This morning's one is okay?

MS. HAYASHIDA: This morning's one is okay.

MEMBER HOLMBERG: So why is it now, why is it able to record...

MS. HAYASHIDA: I don't know. I just took out the memory card and it's...

MEMBER OKAMURA: It got full?

(several people talking at once)

Recess.

CHAIR ALDRIDGE: Are you ready, Gaye? Have you got both recording devices on now?

(laughter)

MEMBER ROBINSON: Yeah, double duty.

CHAIR ALDRIDGE: In case we ah, anybody didn't know ah, Gaye determined that the morning's minutes were, were recorded on the device though.

MR. MANCINI: We thank Gaye. You'll be rewarded.

CHAIR ALDRIDGE: You need not repeat the performance, Mr. Mancini.

MR. MANCINI: I appreciate that. You did (twelve???? Well????)

MS. D'ENBEAU: Mr. Chair, members, in order to speed things up, Mr. Mancini and I have agreed that um, I'm going to give you a synopsis what, of what Jacky Takakura would testify to were she to come up here and we can accept that as what's called an offer proof, that this is that what she would have testified to and if you look at your packet of County ah, exhibits, Department exhibits, you will see the first one is a very large sheet of paper which is in fact, Ms. Takakura would testify for you, the actual size of the notice that went into the Maui News. We're all familiar with legal notices which sort of appear in the back somewhere in small, instead of doing that, they bought an ad, the Department bought an ad and put in this very large um, looks like the entire maybe the newspaper ah, in order to call more attention to the situation. Um, and then exhibit 2, if called, Ms. Takakura would testify, testify that this was the ah, press release that she um, issued and um, you'll notice that it, it indicates the Department of Water Supply will not be able to notify potential applicants meeting these conditions as information is not available regarding those who are entitled under this provision, part of what the press release which was sent out ah, covered, and she would testify that this was sent to the various news media available on Maui and including one of the Honolulu papers or both Honolulu papers, I believe. And then the next exhibit would be the article that then appeared apparently in response to her um press release, that would be Exhibit 3, that would be ah, Wednesday, September 25th, 2002, in the um, Maui News. And then ah the Maui Free Press, Haleakala Times article would be Exhibit 4 which appeared in October, the October issue and then the Star Bulletin article is Exhibit 5, although it doesn't look like a newspaper article, it's just a reprint from the um, online edition of the, the article, but Gary Kubota also write, wrote an article in the Star Bulletin ah, apparently in response to the um, press release. So that's what Ms. Takakura would testify to ah, unless the Board has questions they might want to ask her, I, we can agree that that's what she'd say but we don't want to foreclose your opportunity to ask her questions and she is here and she's been here all morning.

CHAIR ALDRIDGE: Are there any questions from the Board members?

MEMBER HALLER: I have one.

CHAIR ALDRIDGE: Marion.

MS. TAKAKURA: Good morning

MEMBER HALLER: Good morning, Jacky. Um, who...

MS. D'ENBEAU: Excuse me, I probably, we should swear in the witness before...

CHAIR ALDRIDGE: Oh, I'm sorry. Do you solemnly swear or affirm that the testimony you are about to give before the Board in connection with this case will be the truth, the whole truth, and nothing but the truth?

MS. TAKAKURA: Yes.

MS. D'ENBEAU: And could you state your name and your position with the Department for the record please.

MS. TAKAKURA: Um, my name is Jacky, Jacqueline Takakura and I'm the Administrative Officer with the Department of Water Supply.

MS. D'ENBEAU: And how long have you held that position?

MS. TAKAKURA: I've been in my current position since 2003. I've been with the Department of Water Supply since 1998.

MS. D'ENBEAU: Thank you.

MEMBER HALLER: Hi, Jacky, thank you. I just had a question about, does the Department have today, and I suppose the question is, did it ever have particularly in about 1990 a piece of paper that they give to people who are applying for or have received subdivision approval for water meter that tells them, here's the procedure you have to go through, here's what you have to do to get a water meter, is there such a thing?

MS. TAKAKURA: I don't know. I'm not involved in the process.

MEMBER HALLER: Okay, so you wouldn't know. Thank you.

MR. MANCINI: Just have one question. Um, Michael.

MEMBER HOWDEN: Oh.

MR. MANCINI: Ah, Jacky, in the September 24th, 2002 notice there's a statement ah, the Department of Water Supply will not be able to notify potential...

MS. D'ENBEAU: Let me give her a copy.

MR. MANCINI: I'm sorry.

MS. D'ENBEAU: What exhibit was that?

MEMBER ROBINSON: One.

MR. MANCINI: Share Exhibit 2, I think

MEMBER ROBINSON: Two, not one.

MR. MANCINI: Exhibit 2, page 1, there's a statement that's in bold print on the news release, the Department will not be able to notify potential applicants meeting these conditions as information is not available regarding those who are entitled under this provision, my point is, you had no personal information with regard to this statement, somebody told you that, would that be a correct statement?

MS. TAKAKURA: Right. We had a meeting um, before, before this went out and we just talked about all the possible people, when you pretty much have to notify everybody in the world who possibly have some interest.

MR. MANCINI: Would it be a correct statement that you would know some of them but not all of them?

MS. TAKAKURA: Yeah, probably.

MR. MANCINI: Okay, thank you.

MR. KUSHI: Mr. Chair, if I may, ah, Jacky, can, can you recall, do you recall or can you recall how many um, before the rule was effective, did it go to public hearings in the county, and how many public hearings were there?

MS. TAKAKURA: I believe it did and there's also something, I don't know if it's one of the um, exhibits but um, from the um, from the Acting County Council Chair Dane Kane, I'm not sure if it's in here, you know, this, at the time of the Board rules it had to be approved by the County Council.

MR. KUSHI: So in addition to public hearings by the Department of Water Supply, the rule then went to the Council and the Council and it's committees then reviewed the rule and approved it.

MS. TAKAKURA: Right, right and there's also something that was um, signed by Mayor Kimo Apana at that time.

MR. KUSHI: Correct.

CHAIR ALDRIDGE: Any further questions? Thank you, Jacky.

MS. D'ENBEAU: Ah, we'd like to call the Director now, please.

CHAIR ALDRIDGE: Jeff, do you solemnly, oops. Do you solemnly swear or affirm that the testimony you are about to give before the Board in connection with case will be the truth, whole truth and nothing by the truth?

DIRECTOR ENG: Yes.

MS. D'ENBEAU: Could you state your name and position for the record please?

DIRECTOR ENG: My name is Jeff Eng and I'm the Director of the Department of Water Supply.

MS. D'ENBEAU: And how long have you held that position?

DIRECTOR ENG: I started on January 2nd, 2007.

MS. D'ENBEAU: Mr. Eng, we marked as Exhibit 12 a letter you wrote to the Board of Water Supply dated February 11, 2008. Do you have a copy of that?

DIRECTOR ENG: Yes, I do.

MS. D'ENBEAU: And can you explain to the Board um, the reasons for your decision as set forth in this, the way it's described in here.

DIRECTOR ENG: Let me just take a look at this and um.

MS. D'ENBEAU: I'm sorry I probably confused you with that. I really meant to call you attention to that but then you don't need to refer to it you could just explain what the basis of your decision was.

DIRECTOR ENG: You know um, again um, Ms. Silva at the time um, um, Mrs. Augustine, she did ah, indeed come in and met me very early when I first took the job, maybe on my sixth or seventh day of employment and ah, I was wanting to be very cautious, you know, and because it was certainly new to me um, the job itself but all the um, challenges and issues that we're facing such as this um, Priority List. I, I did understand it's very important and I, I did want to make sure that I evaluated um, her situation on a case by case basis. But I did have to rely on my staff for a lot of the facts and um, that particular exhibit is, does look like um, pretty much the staff

report that we submitted to the Board at the time. And that certainly help educate me to the background to her situation and I also do recall hearing her at the board meeting. I think that was the March board meeting and I think she came with her family and she did come with um, some of the exhibits that she or, or Mr. Mancini has provided. One of which was the I, I think the construction plan which showed the general location I think of the, the laterals and um, and the meter box. I did recall seeing that. And I do recall her emotional plea to the Board and it did involve a lot of discussion with her disappointment in her consultant, ECM um, as she expressed today. And furthermore I, I, was, on top of that was I think she felt that maybe in her contractor, E and B Plumbing, um, was at fault too. And I think I also recall just to get as much information as possible I, asking her if I could see an invoice and that was from E and B Plumbing, to see if the scope of work was showing in, and particularly if a meter installation was included in the scope and as I recall seeing, and I think it is in one of these exhibits, the invoice clearly indicated installation of the laterals and so um, yeah, I, you know I based my decision solely on, on you know what facts I had available and, and, and that's how I, how I did make my decision.

MS. D'ENBEAU: When you make your decision um, Director Eng, do you ah, consider your responsibilities to the entire water consuming community on Maui as well as the individual who has come to you with their problem?

DIRECTOR ENG: Oh, definitely, I, and I know when I took the job in particular with this particular case I, I, I had and immediate sense of the importance of that Upcountry Water Meter Priority List and how sensitive the community was to it and I certainly feel now as then is that, you know, in order to protect the integrity of that list no matter how, what people really feel about the imperfections it may have it is certainly the only system we have. And so, I feel that I, it is my duty to protect the integrity of it. Without it, you know, I think there'd be total chaos up there. We would have no system so it is important for me to, to again if there is a situation I'll certainly look into it as deep as I can but um, you know there will have to be facts for me to overrule like in this particular case. And um, I just didn't have those facts presented to me.

MS. D'ENBEAU: Thank you very much. I don't have any but you might have some.

MR. MANCINI: Good afternoon.

DIRECTOR ENG: Good afternoon.

MR. MANCINI: Ah, just a few questions ah, Jeff. Um, you're letter ah, to the Board, February 11, 2008 on page 2, makes the statement on the director's decision, the property owners had full opportunity to receive meter between September 23rd, 1991 and December 3rd, 2002, which is an 11 year span. And that seems to be the major that your refused the meter, that would be correct? They had the opportunity?

DIRECTOR ENG: No, I, I would say one of the primary reasons is that um, there was no formal application for a water meter.

MR. MANCINI: Ah, the reason was they didn't apply during that period?

DIRECTOR ENG: That's correct.

MR. MANCINI: And ah, of course, if they applied during that period the meter would have issued you guess so.

DIRECTOR ENG: Yes.

MR. MANCINI: But would you agree assuming that the testimony is correct, that they thought they had a water meter and they thought the rule would not apply to them even if they had seen it, that they really didn't have an opportunity based upon their actual knowledge?

DIRECTOR ENG: Yeah, that's a kind of a sad story, you know, that occurred, again, you know, but I, I, my interpretation is, it, it's more of an issue with um, their, their consultants, contractors and themselves, rather than the Department.

MR. MANCINI: Okay, so the point is that you feel that even though they may have known someone else is at fault and therefore they should be held under the 60-day rule because it was another party's fault, is that a correct statement?

DIRECTOR ENG: Well, it's certainly wasn't the Department's fault I felt.

MR. MANCINI: Ah, with regard ah, to ah, ah their ah, ability to come in and ask for the meter as in getting it, it being a bad precedent, you felt it would be a bad precedent under the 60-day rule if you gave them a meter, would that be correct? It might open the flood gates.

DIRECTOR ENG: Well, yes, but particular based on the facts that, that I have available to...

MR. MANCINI: And you did consider the fact that ah, the subdivision was by an uncle who is blind and couldn't see the installation and you had considered the fact that they had been given assurances by a number of people that the meter's there, that those 2 conditions should not be an exception that would let the floodgates in and other people apply?

DIRECTOR ENG: That but you know, again, yeah, I have to have lot of concerns about everyone's situation, I mean there have been other people coming in and requesting a meter or, or inquiring about a meter and, and everyone has situation, you know we'll get calls from time to time and, you know it, it's something again that I have to evaluate but also have to defend you know the system we currently have.

MR. MANCINI: Let me ask you, while you've been director, short period of time, have there been other people asking for exceptions to the 60-day rule?

DIRECTOR ENG: Certainly, I've, I probably had a discussion about a week ago with a gentleman Upcountry.

MR. MANCINI: And did any of those people have a situation similar to the Silva's where they had an uncle that was blind, they were assured the meter was there, they looked on the property, it appeared there's a meter, they looked at the blueprints, did you have situations like that?

DIRECTOR ENG: No.

MR. MANCINI: Ah, you'd agree that the Silva property, this is lot 31, has a right to a meter today?

DIRECTOR ENG: They are on the list.

MR. MANCINI: Yeah, they have a right to get a meter.

DIRECTOR ENG: Yes.

MR. MANCINI: They have a right. It's just a question of whether the 60-day rule should be applied to them.

DIRECTOR ENG: That's right.

MR. MANCINI: And your feeling is they had the opportunity, it would be a bad precedent for the Board.

DIRECTOR ENG: That's correct.

MR. MANCINI: That's all. Thank you.

CHAIR ALDRIDGE: Any questions by Board members? Michael?

MEMBER HOWDEN: Um, Jeff, I'm, I'm curious what you mean by the integrity of the list?

DIRECTOR ENG: Integrity of the list, by integrity I mean that is the only sense of a system or order that we have as far as the future issuance of meters Upcountry.

MEMBER HOWDEN: Um.

DIRECTOR ENG: So the integrity of the system.

MEMBER HOWDEN: Yeah, I think that's kind of a strange word to use for a list that, that, that doesn't seem to have a rationale, I mean, the Upcountry system is really 4 different systems although they're interconnected. And there's tremendously more water, will be more water available of the Kamole Weir system when the new films come on for the screening, yeah?

DIRECTOR ENG: Ah, not necessarily.

MEMBER HOWDEN: Really?

DIRECTOR ENG: That's correct.

MEMBER HOWDEN: But I understood, I mean we've been told, you know on our visits to Kamole Weir, that when the new screens are in place, there'll be considerably more water that can be processed through that plant, am I incorrect?

DIRECTOR ENG: The new filters will allow a greater efficiency, first of all, um, we're hoping that we can have greater, greater production. This is what they call the flux rate, how much water you can push um, through the um, membranes in any given amount of time, but there's a lot of other circumstances involved when we operate that plant. One is, and the levels of water in the ditch um, the turbidity of that water in the ditch. Many times when the levels are high it's way too turbid to process. And also, how much water is available on our upper systems. Obviously if we have water at Piiholo, you know we want to process that because we can even drop it down to the Makawao system. Um, so there's always a lot of factors, you know and even though I think that agreement A&B does, as you have indicated, state that we could take up to 12, 12 million gallons per day, I don't recall that ever happening, I, I, even with the change in filters I kind of doubt if that would happen.

MEMBER HOWDEN: How much more could we take with the new filters?

DIRECTOR ENG: I really don't know at this time. Okay, 'cause there's always other factors as I mentioned, water quality for one thing. Where we have water, again, at the other sources. So in theory, you probably could produce more water but um, that's not necessarily how we're just gonna operate to rely on that one, that one system.

MEMBER HOWDEN: Yeah, as Paul Seitz, who runs that, presented it to the Board, it, it seems a certainty that there would be the possibility of producing considerably more water than what the present gets.

DIRECTOR ENG: Now, there's no certainty.

MEMBER HOWDEN: You know, I think what, what I, what I see personally is the primary factor is the reluctance on the part of the Department and of the administration to really exercise our rights under the um, Memorandum of Understanding with HC&S. But that's a side comment of course, but it seems to me that you know, source capability is there to supply a meter for a 9,750 square foot lot um, in the Haiku region that can be gravity fed by Kamole Weir. I don't think that, that source capacity under these circumstances is really relevant or at all significant, you know for this particular case.

CHAIR ALDRIDGE: Any additional comments, any other, I mean questions by Board members?

MEMBER HOLMBERG: Ah, just to reiterate what I believe Mr. Mancini was asking early, to your knowledge has there, have any of the other applicants for um exceptions to the ah, Upcountry Rule been allegedly defrauded in the way that the Silva's have?

DIRECTOR ENG: I'm not aware.

MEMBER HOLMBERG: Okay, thank you.

CHAIR ALDRIDGE: No further questions from Board members?

MS. D'ENBEAU: I have a little follow-up based on the questions the Board members have asked. Um, Director Eng, when you talk about the integrity of the list and you talk about um, and um, Board Member Howden has brought out that perhaps there's enough water to serve one itty bitty little lot, ordinarily would, if water were to become available it would doled out in the order of the list, is that correct?

DIRECTOR ENG: That is correct.

MS. D'ENBEAU: So, essentially when someone's coming in and saying, what they're really saying is "I wanna jump the line, I'd like to be considered before all these other people on the list."

DIRECTOR ENG: Yes.

MS. D'ENBEAU: And that's what you meant by integrity, that the people that are on the list should they understand then that "oh my goodness, now we've got, I'm number one, well you gave out a meter here, I'm still number one but now you gave out a meter over here, what does it mean to be number one, if, on the list, if the meters are some strange thing that I can't understand..."

MR. MANCINI: Can I object?

MS. D'ENBEAU: Okay.

MR. MANCINI: It's more argument than it is fact.

MS. D'ENBEAU: Okay, thank you. Pardon me. Pardon the speech. But would you say that's an accurate statement of what you meant by integrity of the list.

MR. MANCINI: I'm gonna...objecting that.

DIRECTOR ENG: Yes.

MS. D'ENBEAU: Okay.

MR. MANCINI: I'm being polite. It was a good speech.

MS. D'ENBEAU: Thank you. I don't have any other question.

CHAIR ALDRIDGE: No further questions from the Board members? Ms. D'Enbeau, you may ah, are there any ah, further ah, cross, I mean, any further ah...

MR. MANCINI: Witnesses.

CHAIR ALDRIDGE: Witnesses?

MS. D'ENBEAU: No, there isn't, Mr. Chair.

MR. MANCINI: I just wanted to, I think, Ms. D'Enbeau, wanted to make an offer proof of Dawn Silva and I think it's, there's ah exhibits in the County's exhibit list...

UNKNOWN VOICE: He can have the mike.

MEMBER HALLER: Microphone.

MR. MANCINI: Oh, I'm sorry. Having to do with ah, with the ah, bills going to her father in San Jose on the property. And while and ah, I think it's ah, Exhibit 6 and a few there, and ah, if called to testify she would indicate that she was living on the property at that time when those bills were going, and ah, ultimately those were transferred. Water was being served on that property she was living on.

MS. D'ENBEAU: And to clarify and I believe we, we've confused the Board and I apologize for my part in that ah, this Exhibit 6, refers to the Hanamalia property where um, the family lives at the present time, I believe it's a house and guest house and heard testimony about that. And I can see how it would be confusing this, but this, when Mr. Mancini said property, none of this is referring to the subdivision lot that doesn't have a water meter. This is the property up the street, little further up off Kokomo Road where the family lives at this point.

MR. MANCINI: My offer proof okay?

MS. D'ENBEAU: The offer proof's okay, as long as we understand that what we're talking about. The word property is the Hanamalia property where everybody lives now.

MR. MANCINI: Mr. Chairman um, just making a suggestion 'cause the time is going on and I think we've all had issues, rather than making final arguments now, I don't know if this is permissive, I was talking with the Board's administrative office here, we need to get a transcript before we can propose findings, and I was hoping that we could propose findings, give a brief and then before you meet just have a short period of time to make arguments on those, rather than rushing an argument right now with our limited time.

MS. D'ENBEAU: I was going to make a similar suggestion, however, I think Mr. Mancini said he wasn't going to be here on March 24th, so if that's the next Board meeting that could be a problem unless he can have someone in his office come and make the statement.

MR. MANCINI: Ah, well, ah, do we have to do it on the twenty...let me, anybody have a calendar?

MS. HAYASHIDA: Yeah.

MS. D'ENBEAU: I'm sorry, the date was March 27th or April 24th, I misspoke, I think you said your next meetings were...

MR. MANCINI: Okay, I think I leave the 13th. I'm sorry I, I'll be leaving the 12th, 13th and I'll be returning on Easter Sunday, the 22nd, so I will be here on the 27th.

MS. D'ENBEAU: So as I understand what, what the suggestion is, is that we come back before, before you go into your executive session meeting just to make what we would refer to as our final arguments, our brief closing statements and at the same time present you with um, I guess we have to, we've already presented you with our find, proposed findings of fact conclusions of law but that would be opportunity to explain why we made those proposals and help, help you to understand which is a procedure that's frequently used before commissions and boards, so if it's okay with this board that would be a good way to go.

CHAIR ALDRIDGE: And, and that would be the meeting of...

MS. HAYASHIDA: March 27th.

CHAIR ALDRIDGE: March 27th, our next regular meeting, isn't that correct?

MR. MANCINI: Yeah. One caveat to that is, I'm sorry, one caveat to that is we do need the transcript before we submit our findings. In the likelihood of getting the transcript 14 days before March 27th, might be quite problematic at that time. If we have to submit it 14 days before the 27th, it probably won't happen.

MS. D'ENBEAU: Would it be possible to, for the Board to allow us to submit, say 7 days before the meeting rather than 14 days? I don't know how much time the Board needs to review the proposed findings of fact but that would be, I think this problem's gonna come up over and over for the Board because getting the, the attorneys' need the transcript in order to do the proposed findings and it's going to be a problem of timing, so if the Board possibly doesn't need the findings 14 days but could accept them 7 days before that might resolve some of these problems.

CHAIR ALDRIDGE: I would accept 7 days I, I don't know about the rest of the Board members.

MEMBER HALLER: Sure.

CHAIR ALDRIDGE: I see everybody nodding their heads.

MEMBER OKAMURA: What if um, I had a question though. Let's say they were to submit it 7 days before, it would take, you know, for us to get it maybe 3 days so we'd have 4 days left, 3 or 4 days left to actually look at it.

MEMBER ROBINSON: What about e-mail?

MR. MANCINI: Actually that, e-mail is a very good suggestion, if we could get e-mail addresses of all board members but my, the real limiting factor is when we can get the transcript by. Because in all circumstances, we would need the transcript, see so, I won't be here after the 13th. I need the transcript before the 13th and if that's a possibility that would be helpful, otherwise the 22nd, then I couldn't obviously get back here, get the transcript and get the documents to you 7 days before the 27th, which would be the 20th but I won't be here.

CHAIR ALDRIDGE: Well um, let's address that question with the commission clerk. What's the possibility or the probability that we can get those transcripts out by the ah, 13th of um March?

MS. HAYASHIDA: Um, I can try. Um, I cannot guarantee that but I can try by the 13th.

CHAIR ALDRIDGE: If they're not out by the 13th then we would ah, and you're not going to, let me refresh my memory here. You, you will be here for the meeting of March 27th?

MR. MANCINI: Yeah, I return the 22nd.

CHAIR ALDRIDGE: And you return the 22nd of...

MR. MANCINI: March.

CHAIR ALDRIDGE: March.

MR. MANCINI: Yeah, 7 days, 27th is the hearing.

CHAIR ALDRIDGE: Right.

MR. MANCINI: Would be the hearing date.

CHAIR ALDRIDGE: You will, will you be here on the um, our regular meeting of April...

MR. MANCINI: I should be here in April. I have nothing planned. The problem, the only problem with April is Mr. Okamura, he will not be here.

CHAIR ALDRIDGE: Right, I understand that. Well, let's um, since you're both in agreement that we should ah, wait until the next meeting for closing arguments and on the, on the...

MR. MANCINI: Let, let me just make another suggestion. I, I suggest that the transcript go to Iwado Reporters and we make a request to Iwado Reporters that the transcript be finished no later than March 10th. They can do it on an expedited basis.

MR. KUSHI: Who gonna pay for it?

MR. MANCINI: Pardon?

MR. KUSHI: Who's gonna pay for it?

MR. MANCINI: Well ah, I indicated to Ms. D'Enbeau that I would share in the cost of an expedited report. The normal report would ah, would, would cost the commission whatever it is. So it's the additional price and I'm just trying to be helpful in the process. But I think if we ask for an expedited transcript and get it by the 10th then it all can fit in pretty well.

MR. KUSHI: Mr. Chair, we have 2 situations here, maybe 3. Our rules say that ah, once this hearing is concluded and if you not gonna hear your arguments, the hearing is really not concluded.

MR. MANCINI: I'm sorry, couldn't hear.

MR. KUSHI: If you're not doing your closing arguments the hearing is really not concluded. But our rules say that the decision shall stand submitted to the Board at it's next duly noticed meeting. You can put it on the agenda at next meeting and always defer that. But the other rule says that we shall decide, make a decision within 60 days after the date the hearing is concluded. Now if you want to ponder that and stipulate based on when you get the transcript that's fine with me.

MR. MANCINI: Why, why don't, my suggestion be that we put it on the agenda for the 27th...

MR. KUSHI: For final arguments?

MR. MANCINI: For final arguments and ah can go into, you, you can deliberate on that date and we will file before that time ah, and we would ask consideration to get an expedited transcript. If none of this comes together logistically, then maybe have to ask for deferral.

MS. D'ENBEAU: I think Mr. Kushi raised an addition question, additional point which was the rules say, conclusion next meeting and, I think we're, we're saying we would waive that if it, if it, if it's within our power to waive it, we would say conclusion as in final arguments, same meeting is ok with us for decision making. But I don't know if, if we have, we the attorneys for the parties have the ability to waive that part of the rule. I think the Board can waive its rules under certain circumstances perhaps but...

MR. KUSHI: The Board will not waive, waive its rules unless the parties agree to it.

MS. D'ENBEAU: Right.

MR. KUSHI: That'll be my advice. Unless you guys agree.

MS. D'ENBEAU: No, we were agreeing.

MR. MANCINI: Yeah, we were agreeing.

MR. KUSHI: See, the problem is after you conclude, make your final arguments then this Board will go into executive session and deliberate.

MS. D'ENBEAU: Right.

MR. KUSHI: As part of, to help us deliberate, I'm assuming you want us to submit, review your proposed findings.

MS. D'ENBEAU: And we'll have submitted those.

MR. KUSHI: Right.

MS. D'ENBEAU: Yeah.

MR. KUSHI: So you want to, you know, if, if Gaye can get the transcript out before the next board meeting ah, fine and well. And you do your final arguments and if you have enough time to submit proposed findings conclusions of law at the time of final arguments, fine and well. If not you submit it...

MS. D'ENBEAU: I think what we were thinking of is, excuse me, I think we were thinking we would have them submit it ahead of that meeting and the only, only issue is, as I understand what you raised was, the rules says finish your hearing which would be including the final arguments and then wait to the next meeting to deliberate, and we're saying can we, we'll submit ahead of time the findings of fact, everybody gets them 7 days ahead and then we'll come and make our final arguments and with us it's okay but at that moment in time when we finished we leave, you, the Board goes into executive session and can make its determination despite the rule that says it's the next meeting where you make the determination, if that makes any sense.

MR. MANCINI: I, I understand it. And the only other thing that would have to be waived is the 14-day rule to get the briefs in 14 days and we're not gonna, I mean, doubtful we're gonna get them in by the 13th. So, I think if we can get it in by the 20th, 10 days ahead I think that would be a nice target. And if we can get the e-mail addresses of all the Board members we could e-mail it which would save a lot of time for everyone.

MR. KUSHI: I'm speechless.

(laughter)

CHAIR ALDRIDGE: You've finally done it.

MEMBER ROBINSON: Haaa, you made him speechless.

CHAIR ALDRIDGE: Let's, let's um, recap. We'll assume that Gaye can get those um, transcripts out to you before the 13th. We'll assume that we will meet then on March 27th for your final arguments and that 7 days before that March 27th date we will receive copies of, within 3 to 4 days before that meeting, we'll receive copies of your closing ah, conclusions of law and fact etcetera. In the event that doesn't occur we could defer until the April 24, 27th meeting. I'm confusing the dates we got those 2 schedules...

MEMBER ROBINSON: Twenty-fourth.

CHAIR ALDRIDGE: Twenty-fourth. Um, provided everything goes smoothly, you go into closing arguments on March um, 27th ah, the Board can elect to deliberate in close session on that date or any other date that it chooses to within a 14-day period after...

MEMBER HOWDEN: Oh, if we need, we need, can't before the end of March.

CHAIR ALDRIDGE: March 27th. That's correct.

MEMBER OKAMURA: Cannot, cannot. Enough people, we have six.

CHAIR ALDRIDGE; Well, yeah, we have enough if, If we can deliberate on that day and, and ah, then Corporation Counsel will have until the following meeting to actually produce our record of our decision and that would be heard then on the following board meeting which would be in April. That sound reasonable and feasible?

MR. MANCINI: Sounds reasonable the only ah, other thing to request if it's possible to get e-mail addresses. It's just a lot better than having to get a truckload of material down to ah, the administrator and then on to you. It's just much quicker.

CHAIR ALDRIDGE: Well, I think the only e-mail address you probably would need is Gaye's e-mail address.

MR. MANCINI: Oh, that's true if we could e-mail it to her...

MEMBER ROBINSON: She'll forward it to us.

MR. MANCINI: And she can e-mail it to you.

CHAIR ALDRIDGE: She can forward everything to us.

MR. MANCINI: That's, that's perfect. Yeah, that works good.

CHAIR ALDRIDGE: My only request is that if there, if the briefs are thick it better be in some format like pdf file or something that lends itself to being forwarded.

MS. HAYASHIDA: Ah, county e-mail is restricted to 12mb of ram.

CHAIR ALDRIDGE: Of attachment?

MS. HAYASHIDA: The whole thing. That includes the attachment.

CHAIR ALDRIDGE: At one time, that's all you can attach?

MS. HAYASHIDA: That's all I can, so it may have to go in piecemeal.

CHAIR ALDRIDGE: Right.

MS. HAYASHIDA: If that's...

MR. MANCINI: We, we'll work it out, that' all.

MEMBER HALLER: Make 'em brief.

MR. MANCINI: Excuse me?

MEMBER HALLER: Make 'em brief

(laughter)

MEMBER ROBINSON: Yeah, make your briefs brief.

(laughter)

MR. MANCINI: We were trying to be brief today.

(laughter)

MR. MANCINI: I don't know whether we succeeded or not.

MS. D'ENBEAU: I'm sure you all noticed, we could've made our final arguments in all the time it took to figure out when we gonna make them instead of today but, never mind that.

CHAIR ALDRIDGE: Alright, what I should really, continue the hearing to March 27th?

MR. KUSHI: Okay.

CHAIR ALDRIDGE: Is that require a motion or anything? Or is that...

MR, KUSHI: No, just, just a...

CHAIR ALDRIDGE: Just me stating...

MR. KUSHI: No objections.

MR. MANCINI: I think the record speaks for itself.

CHAIR ALDRIDGE: Okay, good.

MR. MANCINI: Thank you for your time.

CHAIR ALDRIDGE: You're welcome. Thank you very much and we'll recess for lunch. Let's come back in um...

MR. KUSHI: Exhibit number...

MR. MANCINI: Oh, the, the only ah, only other thing...

MR. KUSHI: Wait, wait, wait. Me first. On your Exhibit number 14, did you, a limited warranty deed from Walter and Catherine Silva to Dawn Silva...

MR. MANCINI: Uh huh, Yes.

MR. KUSHI: Seems to be some missing pages.

Mr. MANCINI: Okay, I'll check on that and see if I can, the other thing is I'll submit as Exhibit 30, that blueprint that the Chairman had requested. Thank you.

MEMBER ROBINSON: So, 35 minutes?

CHAIR ALDRIDGE: Thirty-five minutes, is that okay?

(a chorus of yes)

CHAIR ALDRIDGE: Alright, great. That means 1:30, according to that clock, we return.

Recess for lunch.

CHAIR ALDRIDGE: We're back in session and ah, let's see. Where are we?

MEMBER ROBINSON: Water Conservation Plan.

CHAIR ALDRIDGE: Ah, Unfinished Business, discussion/possible action regarding Water Conservation Plan. I believe the Board members saw the letter that I, I wrote ah, Michelle Anderson?

MEMBER HALLER: Is it attached?

MS. HAYASHIDA: No, it's not.

CHAIR ALDRIDGE: Basically, it just says we're not ready to give you comments...

MEMBER HALLER: Oh, yeah.

CHAIR ALDRIDGE: Yeah. Ah, let's begin the discussion on this. Last meeting, I, I indicated I was in favor of enforcement of, some sort of enforcement procedure. I'd like to know from the other board members if this concept is shared and um, whether or not the enforcement should be maintained within civil matters and administered by the Water Department as opposed to some kind of criminal enforcement with an item that I think Ed ah, Corporation Counsel indicated that if it goes to criminal procedure and penalties are collected through the court system and the money goes to the State as opposed to going to the Department. And I just opening this for discussion and in terms of trying to establish some principles that we'd like to state about enforcement. Anybody have comments or thoughts on this?

MEMBER HOWDEN: I'm still in to deputizing the Board.

(laughter)

MR. KUSHI: Sure they would gladly deputizing the Board.

CHAIR ALDRIDGE: Among the other duties.

MEMBER HOLMBERG: Um, I don't know it there's, oh I'm sorry. Um, are we aware of anyplace else in the country that makes it a criminal, I mean obviously poisoning the water supply, anything that actively harms people is a criminal matter, but I mean as far as wasting water, are we aware of anyplace else in the country that makes it criminal matter to waste water?

MR. KUSHI: I, I'm not aware, Mr. Chair, of other jurisdictions.

MEMBER HOLMBERG: So...

MEMBER HOWDEN: I, I bet Tucson or someplace like that, you know where they have absolutely no...

MEMBER HOLMBERG: Well, in that case I, I have some personal experience there and it would've been um, it would have been a civil matter, they would have dinged me in the pocketbook, not haul me off to jail so um, I was just, I'll just say, I'll just kick it off by saying, from my previous experience that something like this would be a civil matter, that they'd just make it, they'd make it cost me as opposed to taking away my freedom. Um, I, I, I think that ah, if we were to um, make it a criminal matter that most people would think that it was um, a huge over step and ah, in addition um, you know if it went to ah, criminal trial, I don't know how many of, of our neighbors would be willing to send somebody to the hoosegow for ah, for pouring water down the drain, however much it's deserved.

CHAIR ALDRIDGE: Any other comments ah, in regards to that? Is this on? Yeah, I agree with you. I, I really um, I'm concern with it being an unlawful act and um, penalizing that fashion, and I think that fines and even up to the point of, and I agree with you, Carl, that I think that the only action that would warrant criminal prosecution um, would be something like stealing a meter or something that's actually already in the existing criminal code or ordinances. We have any other thoughts on this?

MEMBER OKAMURA: But it would be important to have some kind of enforcement on, on conservation ordinances, oh, would be important to have enforcement of some sort for, you know, reporting of um, waste, wasting. It would also be important to tie maybe educational and or something like that, community education with enforcement, so. But it's important, maybe it should be made known where we are comment on any kind of conservation that we rec, or we would if we do recommend that there is ah, enforcement.

CHAIR ALDRIDGE: Yeah, I, I agree with the concept of, of that, in fact I may have stated last that I think that without enforcement you really don't have an effective water conservation plan um, however it's the form of the enforcement that I'm concerned about. Maybe we could ask the Deputy Director what, I'm gonna get you involved whether you want to or not, right; what he feels that the Department is capable of with it's current

workforce, capable of doing in terms of enforcement or what they see as a, an, an effective means of enforcement that is um, you know within the scope of the Water Department's duty or capabilities.

DEPUTY DIRECTOR YAMASHIGE: I really don't like these things.

(laughter)

DEPUTY DIRECTOR YAMASHIGE: As you're probably aware, the ah, the workforce in the Department is quite thin and we don't have anybody dedicated um, you know to enforce or monitor something like this. We do have um, 4 construction inspectors in the engineering division and ah, employees that are on the road constantly doing the work so there is an opportunity for things to be reported um, but that's not their primary responsibilities and then to follow up on any reports um, would be difficult. So at this point we really don't have that enforcement mechanism, that I agree um, you know without enforcement the, the law really doesn't mean a whole lot. That being said, you know once you put something like this on the books um, we normally get calls from neighbors or someone in the community that would tell us that somebody is breaking the law.

MEMBER HALLER: And then what do you do?

DEPUTY DIRECTOR YAMASHIGE: We only, on, on the water wasting side um, if we recognize that there is a substantial increase in consumption um, then we, we would send the letter to that individual. And it's not a slap on the wrist even, it's just a notice you, you gotta do something yeah, what you would do. And that's how a lot of people find out that they have a leak, and then they come back and say...did you have that?

MEMBER HALLER: Uh huh.

DEPUTY DIRECTOR YAMASHIGE: Yeah, it's, it's tough um. And we only read once every 2 months so there's a long period of time that a lot of water can be wasted.

CHAIR ALDRIDGE: And, and one of the reasons I bring this up is I am concerned that, you know without some proactive action on the part of the Department that you may end up, the County Council taking upon themselves to enforce conservation through some measure as for instance, there was a proposed enforcement as a possible additional terms for water conservation legislation that was included in the hand, included the package that we received from the County Council under the draft water conservation plan. Um, I don't know how many of you still have a copy of that but it was attached as um, after the draft legislation or draft ordinance, it said "possible terms for water conservation legislation." And one of those was enforcement and under enforcement it was very clearly stated that it was a matter summons or citation and um, that um, administrative judge of the district court in the 2nd Circuit shall printed on form commensurate, I mean, you know it basically was police action and it just...I mean I'd be on the record to be against something like this ah, in principle and in practice. In principle because I don't think it's right and in practice because as Corporation Counsel already pointed out, the money wouldn't even come back to the Water Department in terms of fines. Besides that, I mean we already know that the police department is short handed and don't have the capability to go after real law-breakers. So, I'm, you know, I'm inclined to try pull together some resolution of this Board to at least if nothing else, say "listen, don't go this route, you know, let's, let's look at administrative fines or civil fines or whatever the, is reasonable for the Water Department to, to implement. Consider meter reading but through snitches like everybody who sees somebody watering their lawn and it's running off into the street, just to handle the number calls, who's gonna call, somebody who's annoyed with their neighbor or some other reason. That's probably what you're gonna get, right? Not just because they're concerned about, well there maybe some, but I think it's ridiculous personally and it's going way overboard. I don't want any state telling me that I can water and when I can't water, I mean, you know, I can pay the fine or I can pay the excess use costs. And if I can't afford to then I won't do it. I'd like to hear from some others regarding this.

MEMBER HOLMBERG: Well, to some degree, you know if we had some kind of fine, whatever, whatever it um, penalty we have should be kind of self, whatever enforcement I think would be self-financing. It seems to me in, in a lot of other government endeavors that you try to make the enforcement mechanism self, self-financing and so that ah, um, you know if the um, Water Department doesn't have a staff currently that can ah, that can handle that, that ah, that whatever enforcement mechanism we come up with would make sure that there was a staff and

ah, or, or that ah, we try to, to work it, we try to work out a business in essence that assumes that ah, that, that there's salaries and that their processes to be paid for by the people they turn up. I realize that gets into a whole ah, Honolulu ah, um camera radar system business but I mean you know to some degree ah, you know like the whole department is self-financing by and large, so I think whatever we do, whatever we propose should be um, I'd be curious for instance the last water conference thing that I went to that I was most impressed with was Redwood City back in the Bay area and how they handled their um, water conservation and in, in, they were doing in from both angles of, both from um, education and from enforcement and ah, and it was really a big part of not just education but also um, almost as if they were, you know, not just education as in getting the message out but training, training the contractors out there and pointing out how to do things right um, or how, you know, how to, how to ah, be most efficient with their water use um, to um, in essence qualifying them or licensing; not so far as to license them but licensing them in some means or another to show that, that they in fact know what they're doing when it comes to putting in any irrigation or putting in plumbing systems in businesses or hotels. Um, and in addition, um, that they, they had some, although the ah, the director of, I think it was one of the ah, um associate directors um, you know made it his business to ah, to, to um, specialize in the ah, water conservation, so you had somebody who's, who's life it was to, to look after that and if you don't, if you don't have somebody like that you know, you've obviously got other things to do, Jeff's got other things to do, gotta prioritize, you need somebody who's going to prioritize that um, otherwise it's going to tend to be, I think it will tend to be in the ah, in the breach rather than as a matter of practice. So I'd be, I'd be tempted to look at it as a model as to what does another um jurisdiction like, for instance that city which doesn't have too many fewer people than we do and even though it's a suburban community it's not a whole island like what we have but I'd be curious to see how they manage that, that process.

CHAIR ALDRIDGE: That brings up a good question. What does um, Eric, what, what, you know what the, the water board in Honolulu or Kauai, how they ah, how they manage a water conservation? Do they have enforcement procedures? Are you aware?

DEPUTY DIRECTOR YAMASHIGE: I'm not aware of um, enforcement procedures but I do know that all of the water departments do have a conservation program.

MEMBER HALLER: Microphone. Lee, do you want to give him your mike?

DEPUTY DIRECTOR YAMASHIGE: That's, I'll use this one. All of the, all of the departments or all 4 of them do have conservation programs and those conservation ah, employees or those groups have been getting together, I think twice over the last 2 years, going over each other's leak detection programs um, working together and helping each other out to, to maximize the benefit of those um, programs. Ah, conservation is, you know of course on everybody's mind um, Honolulu of course gets the most benefit because of the, the population and um, being so close together. They're not spread out like Maui. Um, but we do have ah, you know a Planning Department, a Planning Division staff where um, conservation is part their responsibilities and um, I know that they are doing quite a bit of research on where Maui will go. I'm not sure if we already mentioned this, recently, we installed a rain sensor in the front of the County Building. That little patch of grass around the um, those flag poles. And it's a pretty small area. That little patch uses about 250 gallons a day to irrigate. Now, we, we've coordinated with Public Works and we ah, had a rain sensor installed, 3, you know the first 3 days after we had it installed it rained. So in 3 days we saved 750 gallons and that, you know how small that is. Um, so any, we are trying to you know set the example in working with the Mayor's office and Public Works to show that the County is taking a step for conservation. We're not just asking the public to do that. We're also in quite a bit of discussion with um, the Parks Department. Um, that's a little bit harder nut to crack. A lot of these Central Maui systems like Keopuolani and like Kihei's Kalama Park, they're not on potable water. Keopuolani is on a well system, brackish water. Kalama Park is off reclaimed water from the Kihei Treatment Plant. But most of the public doesn't know that. So when they see the park irrigating when it's raining you know they, why should they conserve? So we are working with the Parks Department trying to help them evaluate their systems and then putting in small measures like that rain sensors, you know everything, every controller should have it. It's like 30 something dollars, maybe \$50 or \$100 installed. And we're also working with irrigation systems. They're, they're taking the step forward and trying to compile information from different weather stations. These are the agricultural weather stations at HC&S and, I'm not sure if Pioneer Mill has any. But because they use those weather stations to determine how much they need to irrigate, it's not continuously all the same, every day. Um, they'll monitor the weather and irrigate as much as they need to irrigate. And so when we do something like that

we're looking at maybe putting it on our website um, what percentage of irrigation you should have based on the weather conditions. These are the things we are working on, we don't have it yet but the Department is trying to get some of these things done.

MR. KUSHI: Mr. Chair, if I may um, I have to leave to go to a meeting um, with the director. That's why he's not here. Just for your information, it's a meeting with our contractors on the Kamole Clearwell project, the \$9 million. It's a major request for change order which we are of course disputing. So, they're here in town and you know they want to meet with us, but anyway, on this thing, Mr. David Galazin, he'll take my place for the balance of your meeting. Um, if there's answers you can, you know he can provide answers, just, he'll ask them to let me know later on. Anyway on this, this matter, conservation, let me just say a couple of things. One, I would suggest that the Board request the Department through it's Planning Division, Ellen and her people, to research other jurisdictions not only within the state but maybe in a place like Nevada or Arizona that may have some enforcement procedures and then, and then kinda look at that. Um, as far as the County's concerned if it's a criminal matter then you're right. The state of course take, take over. The citations can be issued by police department or deputized um, county personnel. If you go on a civil fine issue ah, basis um, then you need to set up "oh what is the fine" or what violation you know, just watering wrong time of day, how much is that, and produce a scale. And all of these things should be done by either administrative rules or by the council ordinance itself. Then the next question is um, concerns what if ah, I'm wrongly accused, I want to appeal, you know, again don't wish too much 'cause the appeal may come to this Board again. Not that you don't have anything else to do but, usually as it is right now, the Board of Variances and Appeal, which is an existing appellate body, hears violations of civil penalties or fines on Title 19, which is zoning, subdivision 18, 16 which is building codes and also 14 which this one would be. So you know, we may be able to have the Council slough it off to them, the Board of Variances and Appeal. Of course they won't like it but ah, and maybe the Council in its wisdom may say "well since we got a Board of Water why don't we let them hear these things", you know. And again, the scenario is this, I get cited ah, and they want, based on the charter violations, my fine is \$1,000 and until it's paid it's continuing, \$100 a day or whatever it is. I appeal it to a board, either this Board or the Board of Variances and Appeals, if the citation is upheld um, and the board concurs with the citator meaning the Department, the Department would also need to have a water police division by the way and they would funding by the Council. Assuming that it is upheld, and the guy still doesn't pay, you can get that, then you can, the County can go to the circuit court and get a civil judgment. And then once you get a judgment, you can file it against their property. And if they don't pay, foreclose on that property. But again, you know um, there's also recourse of, if the Board upholds my fine I can appeal that to the circuit court. So, it's a roundabout system that we're entering into. So you have the good with the bad and the ugly. You know if you just state courts, just let the state judges take care of it, but you won't get the money. You want to get the money I think you have to invest some money and ah create more administrative nightmares. With that, Mr. Chair, I have to go.

CHAIR ALDRIDGE: Thank you for your pearls of wisdom, Mr. Kushi. Well, I think um, based on, on the Corporation Counsel's recommendation I would like to ask, you know ah, Deputy ah Director that we have the ah, Planning staff to prepare just a comparison, a brief comparison of the enforcement part of the water conservation measures and enforcement procedures that the other islands have, the other water boards, other water ah, communities and perhaps, if, if, I don't want to add any more work to Ellen's time that she already has and she may have already done some of this as part of you know developing water conservation plans. So whatever she's already done let's make use of but I'd like to be able to, bring that before the Board at the next meeting so we can take a look at what other reasonable, you know what, what, what are the other ah, agencies doing? We're not stepping way out of line. The other thing I'd like to do is to ask the Board members here to think about something, think about the resolution that we might want to put together to go to County Council. I enunciated at the beginning some of the principles that I'd like to see and that is let's not make this a criminal behavior. Let's make it, you know a matter of civil fines or even ah, of ah, motivating people to conserve through the water rate structure, which we had proposed in fact it didn't get adopted by the County Council the last time around. Um, something a little less draconian, you know water police running around after everybody, but um, I would, I'd like to benefit from your thoughts on this and have you come back. And if anybody willing to even put together a draft resolution I'd really happy to consider that. So, um, any comments?

MEMBER ROBINSON: Ah, actually I think you've already addressed it, which is that as we look at best practices in other communities um, just seeing the difference between when it's about enforcement and when it's about reward. Um, and whether or not, you know what the difference is. And knowing that you know maybe it has to be

both but um, at least we, we actually do research into looking at when it's a reward system where it's really built into the rate structure.

CHAIR ALDRIDGE: Any other comments? Alright um, so we go ahead and have that brought back to us on March 27th? Twenty-seventh right? Ok, let's move on the next ah, agenda item. Um, Other Business, Discussion Regarding the Water Availability Bill and Potential impacts of Private Water Systems. While I'm looking for my copy, does ah, any comments from any of the Board members who may have read this Water Availability Bill?

(silence)

CHAIR ALDRIDGE: Hearing none, let me raise a question. Um, one concern I have with this is, does this encourage large developers to actually develop their own water sources, or does it discourage them?

DEPUTY DIRECTOR YAMASHIGE: It actually would encourage...

MEMBER HALLER: The mike, the mike, the mike.

MEMBER HOLMBERG: No, actually it's the badge, the badge, oh, I'm sorry.

DEPUTY DIRECTOR YAMASHIGE: That's okay. Um, in a way, you could interpret it as encouraging developers to develop their own water because um, the County has not kept up for developing water sources. Um, that was the intent, and we're not, don't want everybody developing their own water source um, although we do have a couple of a agreements that are in the works that would, that will be participating or will be receiving development of water source into the system, developed by a private, developed by a private entity ah, dedicated to the County ah, with, you know reduced allocation than the regular 45%. This, this bill in itself doesn't encourage it, it does require um, that we have a chance to review the engineering report that must be submitted to the state for approval.

CHAIR ALDRIDGE: Yeah, I um, to me I, I wasn't really asking the question whether or not um, the Department enters into some agreement with the developer to develop a source but more, more whether or not this would encourage their development of separate sources. No agreement with the County, no sharing of the sources, no sharing of, of facilities. But the fact of the matter is there's nothing to prevent that now before this bill, right?

DEPUTY DIRECTOR YAMASHIGE: That's right.

CHAIR ALDRIDGE: And in fact, they could do that and not even submit a plan to you, for your review 'cause there's nothing that requires it?

DEPUTY DIRECTOR YAMASHIGE: That's correct.

CHAIR ALDRIDGE: So, in effect, we're not forcing them to go to look to other sources but making them submit plans to have you review it. You, being the Department.

DEPUTY DIRECTOR YAMASHIGE: That's correct. We would review the plan that's submitted to the state. We'll be reviewing the plan that's currently being submitted to the State um, Department of Health, the engineer report that identifies water quality and water quantity considerations. So, we'd just become one of those review agencies which we really already are. But you're right (unintelligible, microphone moved around).

MEMBER HOLMBERG: Um, Mr. Chair, um, along those lines um, given I'm kind of going along the lines that the Waiohuli Ditch decision, the idea that the water belongs to the public, I wonder if there's any, as another method of trying to prevent people from running hog-wild, whether or not we have this law or whether or not this ordinance goes into effect or not um, as the, on the theory that the ah, County is the duly elected representative of the public and the DWS is portion of the County government that's responsible for water supply, can we forbid people from drilling ah, outside of the, the DWS? Or collecting water for that matter, outside of catchment or whatever.

DEPUTY DIRECTOR YAMASHIGE: It's little bit humbug yeah?

(laughter)

DEPUTY DIRECTOR YAMASHIGE: Unless everybody gets one.

MEMBER HALLER: You're gonna be a rock star.

DEPUTY DIRECTOR YAMASHIGE: Don't get me started.

(laughter)

DEPUTY DIRECTOR YAMASHIGE: Could, could clear out this room.

(laughter)

DEPUTY DIRECTOR YAMASHIGE: Um, there is a process of, almost like reservation um, the Department can go to the Water Commission for um, and we've, we've opened that discussion with the Commission, where we would be saying um, "in the public interest, the remaining allocation in the aquifer, the Department is gonna claim it." That doesn't mean we're gonna get it. It's just, there is a process where we're working with the Commission on it now. Um, but you know it's, it's like these kind of cases, your contested case or somebody can appeal it and then it just goes on and on like this um, surface water restoration into the streams. It's a contested case, you know it'll probably be, come up like that also.

MEMBER HALLER: Mr. Chair, so does this bill still ask for "show me the water"?

DEPUTY DIRECTOR YAMASHIGE: Yes.

MEMBER HALLER: And how does it do that? Microphone?

DEPUTY DIRECTOR YAMASHIGE: Sorry. Um, there's really 2 ways, on a public water system um, we the Department have to say that there's water available for the proposed development and really if you look at this bill ah, it's an ordinance, this ordinance, it really addresses subdivisions. That was the focus of this ordinance. So, prior to submitting construction plans for the development of that subdivision um, the developer has to have a letter from us as a department, that water is available for that um, that water is available and that developer will then get a reservation for that water and then develop his subdivision. Right now we don't have any reservation methods or we don't have water to give out anyway. On the other side is the private water system, which was what I thought Lee was asking about. Um, there they develop their own system and in the process of developing...

MEMBER HALLER: What do you mean the private water system? A, you mean stuck...

DEPUTY DIRECTOR YAMASHIGE: A.

MEMBER HALLER: The developer decides to dig his own well?

DEPUTY DIRECTOR YAMASHIGE: Yes.

MEMBER HALLER: Yeah, okay, go ahead.

DEPUTY DIRECTOR YAMASHIGE: Sorry about that. Um, if they, the developer decides to develop their well, their own water source, it does have to go through, of course the Water Commission for your drilling permit, and then the Department of Health for water quality to make it suitable to deliver your water, and um, those we would have an opportunity to review and respond to the Department of Health actually.

MEMBER HALLER: There's no requirement for a private to also say there's enough water here to for the next 20 years that I can dig this private well, isn't that what that bill is about?

DEPUTY DIRECTOR YAMASHIGE: Yes and no. Um, in the, in the Department of Health engineering report, that the requirements are that, it does talk about water quality, quantity and that's the sustainability part. So they have to show to the Department of Health that they have sustainable water. They have no responsibility to prove to us that they do.

MEMBER HALLER: So the public portion that you talked about first was when someone's trying to apply for water meters from the Department?

DEPUTY DIRECTOR YAMASHIGE: That's right.

MEMBER HALLER: Okay. That's disappointing 'cause I thought the whole thing was to prove capacity for these private wells.

CHAIR ALDRIDGE: That's what I thought too.

MEMBER HALLER: Yeah. So, it must've gotten watered down, excuse me.

(laughter)

CHAIR ALDRIDGE: You'll get fined for that with that kind of pun.

(laughter)

MR. GALAZIN: If I may, Mr. Chair, make one quick point of clarification. Ah, it's, it's been a few months since I took a look at this bill and it was in its drafting stages but if I'm not mistaken and the Department correct me if I'm, I'm wrong but the construction plans that we're talking about aren't necessarily for this subdivision itself, it's the improvements. So I was wondering if you would (unintelligible) on the same page them.

DEPUTY DIRECTOR YAMASHIGE: Improvements of the subdivision?

MR. GALAZIN: Yes.

CHAIR ALDRIDGE: Eric, what, what, what...

MEMBER HOWDEN: Lee, Lee, can I comment on...

CHAIR ALDRIDGE: Oh sure. Yeah.

MEMBER HOWDEN: Just one thing. Um, I had the opportunity to talk to Charlie Ice on the State Water Commission and he expressed a concern both personal and for the um, ah Commission, that a lot of wells were being dug and we don't really know what the capacity of the different aquifers are. We don't know for real. That's been a concern for certain members of this Board with um, USGS saying "oh, just do a bunch of serial wells going toward Maalaea, when they really don't know how much water is in the 'lao and Waihe'e aquifers and whether those aquifers are already permanently impaired. So, I just, I just would like to reiterate that, that the Commission itself is concerned that we simply don't know what we're doing, that we don't have accurate assessments of, of, of the capacity of these aquifers.

CHAIR ALDRIDGE: I have a, I have a kind of an additional and related question to that ah, Eric. Um, you know, in, in this ordinance, it cites the director's comments on engineering reports, these are the engineering reports that go to the Health Department, right?

DEPUTY DIRECTOR YAMASHIGE: Yes.

CHAIR ALDRIDGE: On water systems, and among the items that are listed in the director's comments are addressing adverse impacts on other existing, future or planned wells, adverse impacts on Department of Hawaiian Homelands, current reservations for projected future uses, adverse impacts on the water needs of

residents currently being served and number of these, and I'll just ah, USGS studies and so forth um, and we haven't done one of these yet, right? Here's my, my question, without needing an answer um, how much weight will the director's comments have in the Health Department approving a developer's plan for a new water source, if the director says "this has got all sorts of adverse impacts"; will they be denied the ability to drill a new well? We don't know. We'll have to see. But there is that opportunity to say that if in fact the director believes that, to looking at these various impacts.

DEPUTY DIRECTOR YAMASHIGE: That's right.

CHAIR ALDRIDGE: Which doesn't exist now, without this?

DEPUTY DIRECTOR YAMASHIGE: It, it does. Um, I mean we, we can comment to the state on practically anything, yeah. Um, this, this just requires us to look at the report and make comments to the state. I am quite frankly not aware that the Department of Health currently sends us these engineering reports. So, we don't get to see them all the time. But um, we have requested that the Department of Health does that. On the other hand we do get proposed wells from the Commission. So they'll let us know when somebody is proposing to drill and then we'll offer comments.

MEMBER HALLER: I just got confused. Do the applications for a well go both to the Department of Health and the Commission?

DEPUTY DIRECTOR YAMASHIGE: Um, there's, sorry. Um, there's actually, I'll say 2 phases. If you want to drill a well, you need to get a well permit from the Commission. It's really a form that will tell you where the well is, how deep you intend to drill the well and the Commission will send it out and we've responded that ah, it's too close to our wells. A lot times that hasn't stop it. Um, that's the Commission side, and then you have these pump permits that the Commission will eventually approve the whole well. The Department of Health has in the past been more concerned with water quality. Um, you know what kind of water you have and what kind of water you'll be delivering. And that's part of the engineering report that includes all of your applications to the Commission. But it is 2 separate things. The, the report that the director is going to look at or the Department will be reviewing is the reports submitted to the Department of Health. And I'll make a plug that at the Hawaii Section Conference, Mike Miyahira from Safe Drinking Water Branch will be going over the new requirements for engineering reports. There are some new requirements, what's included.

MEMBER HALLER: Basically, it sounds to me like we're trying to get the state to do something that they don't really have any great obligation to do and so, we're trying to get them to involve us in this process.

DEPUTY DIRECTOR YAMASHIGE: Essentially, we, we are trying to get ourselves involved the process.

MEMBER ROBINSON: We're being proactive is that what you're...

DEPUTY DIRECTOR YAMASHIGE: Yeah.

CHAIR ALDRIDGE: So, we'll see.

MEMBER HALLER: So, we'll see

CHAIR ALDRIDGE: Yeah.

MEMBER HALLER: Yeah.

CHAIR ALDRIDGE: Any other comments?

MEMBER ROBINSON: Do we know scientifically how um, how to figure out the viability of an aquifer? I mean, is there anybody who does that? Is there a scientific body of researchers that determine the viability of an aquifer to produce and how it's stronger in some areas and not in others?

CHAIR ALDRIDGE: I think that would be an excellent question to raise at the next meeting when the USGS comes here and presents their findings on the ah, 'lao aquifer, as a general question. I have my own thoughts on it.

MEMBER ROBINSON: You want to share them?

CHAIR ALDRIDGE: No.

(laughter)

CHAIR ALDRIDGE: Any other comments?

MEMBER HOLMBERG: Well, I'll just briefly say that the Dole Company when they were, I think that I was mentioning this ah, before we came back to our meeting, that the Dole Company a number years back paid to have a complete geological and hydrological study done of Lana'i so that they'd have some idea as to the carrying capacity before start throwing resorts and homes in. Um, and I know this because they asked the MHPCC to process the data and ah, help develop the report, so um, I don't know how much it cost them or how long it took to come up with but ah, um, but it, it was done and ah, obviously they needed to do it because they had no idea. If we had no idea then it would seem to behoove us to come with the money to even though we've got a much bigger and more complex island to come up with the, come up with the money to know.

CHAIR ALDRIDGE: Thank you.

DEPUTY DIRECTOR YAMASHIGE: And in fact um, I think that's the report that you'll be getting next month if I understand what you're asking for correctly. We did pay the USGS to do a quite comprehensive study of the 'lao aquifer site. And I think it would be quite, quite interested in what they have to present. It was presented to the Council already. You get to ask the questions this time.

CHAIR ALDRIDGE: Any further questions? Let's move on to the next agenda item. Um, Discussion regarding the Upcountry Water System. We have anything new on the Upcountry Water System? We're not in a drought.

MEMBER HOWDEN: Lee, can I bring up 3 points?

CHAIR ALDRIDGE: Sure ah, please do.

MEMBER HOWDEN: Um, from our discussion this morning with Director Eng um, I think it really makes sense to look at the Upcountry systems which are interconnected, called them like 3 or 4 different tiers of systems and I had asked that, I think the Board had asked, generally the, we get a report I think from Water Resources from Ellen um, in terms of the list where the meter requests are, what parts of the system are they from. For instance, if we get new filters on the Kamole Weir and all of sudden we have capacity for Haiku and for the Lower Kula system or Makawao system um, maybe we could meet those needs but it's silly just because someone is ahead on that list to try to push that water up to the upper most Kula system, so I think it would, it would be more rational um, if, if we were able to break that into area, demand areas, which are really clearly separate in terms of water delivery. Um, the other thing is I, I ran across something really interesting in the Water Use and Development um, meeting up in um, Pukalani, 2 weeks ago. And I was asking Carl Freedman um, why because I had a talk with Dudley Kubo at USDA in Honolulu about the Dual Line. I said, and Dudley said "oh". I asked him why the Kimo Lateral was so long, you know, 'cause it drops down to about where the Lower Kula system is. I said "why is this has to go down that far when it's really meant to serve up farmers in Upper Kula? And he said "oh, well, they, they're gonna connect that to something." And so when I asked the question at Water Use and Development, Doug McClure who is part of the Central Maui, Olinda Water ah, Committee, that got this grant and basically is in charge, I mean 'cause Kubo said "hey, we never wanted this line to go that, that far down." And then Doug McClure said and he's the guy who knows 'cause he's on the inside of this, he said "oh, no, we're gonna take that water and we're gonna bring it down to the Kula Agricultural Park, that's what we want to do with the water." We you there, Eric?

DEPUTY DIRECTOR YAMASHIGE: No.

MEMBER HOWDEN: Okay, I just wondered if I was hallucinating. But um, to me like, to take the water from the upper most Kula system and drop it down below the Lower Kula system to feed an agricultural park just seem almost blasphemous. So I think, and it tells me that I mean we're talking about these private wells and private water systems, this like federal money and state money and we don't even know as a department and as a Board what people intend to do with this. This all kind of like club information if you excuse me. So, I think that's something that we need to look at and for my final point, 'cause I have to run and treat people, stick needles in people as you can well imagine. Um, I have questions about the Piiholo Well Agreement 'cause when I look at page 8 of the MLP/DWS Piiholo Well Number 1 Development and it um, under A, source reservation, it ends up with um, Maui Land & Pine getting 75% of the water that will be taken from that well, which in spite of what our director has told us, doesn't seem like a very good deal to the County and in addition on page 7 when it talks about reservation of capacity allocation of credit transmission line expense refund, it lists the tax map keys um, where we supposed to deliver this water. And, I asked before and I, and I would really appreciate it if you guys could work up something because this is what, this is um, the Lower Kula system, Piiholo? This is the same, the same, yeah. I mean I, I think it'll be disastrous for the Department to commit itself basically to pumping water up. You know not only getting just 25% of the water and using our transmission lines but pumping up to parcels land. So if we could get something from page 7 where they list a number of the tmks, I assume all of them, I think that might be helpful for us to respond intelligently to this. Um, the other request in terms of the Piiholo Well that I made last time was I wanted to, I was asking the director for a history of how this agreement came about and who negotiated it. I assume it was your predecessor, Eric, as deputy director. So um, but it'd be helpful to us just to understand that better. Amen.

DEPUTY DIRECTOR YAMASHIGE: Can I offer a couple comments about that? Especially about the Piiholo Agreement, though first of all, let me say that I agree with you on the Kula Ag Lot thing, the Kimo Lateral. It doesn't make sense. On the Piiholo Well Agreement um, when the, when you read the agreement and it says that um, the developer, Maui Land & Pine in this case, gets 75% of the water and the Department gets 25%. That is after taking out the 2/3 of 2/3 so, you have a well development say 2 million gallons, its, after 2/3 of 2/3 it's 900,000 gallons and then out of that 900,000 gallons, Maui Land & Pine is getting 75% of that and the County is getting the 25%. But then the County really gets more because we don't necessarily have to operate on that 2/3 of 2/3. So, when you look at 75% of 2/3 of 2/3 it's somewhere around 33 or 34%. I didn't figure it out in my head. I kinda knew that before. So, it's like 33% of that 2 million gallons that the developer is trying to develop. So, it is really one of the better agreements that the Department has entered into because in the past it was 33 or 45%, which was the 2/3 of 2/3. So, it is, I won't say a landmark agreement, but it, it will set the pace where some of these agreements go. And yes, there are people that say "that's still not enough." With respect to that um, those tmks that are listed in there, and I'm sorry I don't have the agreement, but I have had to read it recently. Um, those are tmks that are not on the Makawao system. According to the agreement, one hundred, up to 120,000 gallons a day could be allocated out of that Makawao system and actually goes a little bit further up, out of the Maluhia tank um service area. So, it's not like even 30% of the well capacity can be moved out of the Makawao service area. It's limited to 120,000 gallons a day. And I was involved in the ah, negotiation of that agreement. Um there were 2 properties that Maui Land & Pine was considering ah, actually represented that they were supporting and those 2 were affordable housing projects. And if you recall, the last mayor and even this mayor has really supportive of affordable housing so, they made that concession that, okay, now 120,000 gallons can be delivered outside of the Makawao system. Those are 2 of the tmks identified in the agreement. The other tmks were identified or added to the agreement later and just before it was approved. And I think um, it identifies a few of the Maui Land & Pine properties. But again, the, the amount of water that would be allocated outside of that service area would 120,000 gallons. Does that make sense?

MEMBER OKAMURA: How, how would that be, how would that be allocated though, you know like how, how're you gonna keep track of that?

DEPUTY DIRECTOR YAMASHIGE: We would keep, it would be similar to what um, we're doing with, you know all these other agreements that have source credits. They would identify how many ah, meters they're taking and what the, you know at this point residential is 600 um, gallons a day, and by the number of meters that they're using and that would be a reduction in their allocation or their, actually in their source credit.

MEMBER OKAMURA: Thank you.

DEPUTY DIRECTOR YAMASHIGE: Thank you.

CHAIR ALDRIDGE: Any further questions? A point of clarification, Eric? Um, so of the 2 million per day capacity of Piihola Well um, basically the developer has an entitlement to about 700,000 gallons roughly? Is that what it is? Seventy-five percent of the 900,000 gallons, is that correct? Or is that number filling in my head, around 700,000 give or take. The Department can have the rest?

DEPUTY DIRECTOR YAMASHIGE: Yes.

CHAIR ALDRIDGE: One and one point three million gallons per day, if it chooses to take up that much, if it can develop that much. Um, one other comment on, just looking at the water report, it appears, it's very interesting to see that we've already dropped from total storage running at about almost 100% on all the reservoirs, you know, 178 million gallons back around the end of January, the beginning of February. We've already dropped to about 175 million gallons roughly. Even though the, the lower Wailoa Ditch has been running, you know still close to 1/3 of it's capacity. So it's the upper systems that dry up real quickly.

DEPUTY DIRECTOR YAMASHIGE: Yeah. Thank you, Mr. Chair. I'm sure if you all get this report. That's true, the higher number including the Wailoa Ditch flows...

MEMBER ROBINSON: This report?

DEPUTY DIRECTOR YAMASHIGE: Um, no...

CHAIR ALDRIDGE: The one that comes in the e-mail.

MEMBER HALLER: Comes in the e-mail.

CHAIR ALDRIDGE: The one that Gaye e-mails.

MEMBER ROBINSON: Oh, oh yeah, yeah.

DEPUTY DIRECTOR YAMASHIGE: You know Wailoa Ditch has no storage, it's just ditch flow. It can go up to almost 200 million gallons a day. And it is the correct, flowing about 56 million gallons per day. Um, I was kind of looking at the other day too and getting a little bit anxious...

CHAIR ALDRIDGE: Yeah, for getting...

DEPUTY DIRECTOR YAMASHIGE: Ah, Kahakapao is at 92%. It is still quite full. Um, but dropping. Piihola Reservoir is at 40, 40 million gallons, 80%, of course that one is dropping. Um, it is something that the Department is monitoring and at some point we're gonna cut-back on what we're producing at um, the Piihola Treatment Plant and start pumping water up to, to maintain or to try and preserve what's in the reservoir.

CHAIR ALDRIDGE: Uh huh. I was waiting to hear that. So, you do have the provision that, you know pump up from the lower system up.

DEPUTY DIRECTOR YAMASHIGE: Yes.

CHAIR ALDRIDGE: Yeah. 'Cause I remember last year we sort ended up in the same situation, but then the spring turned out to be very dry and so we ended up with calling a drought in early June right before it started raining again. You know, but that was in result of, of a dry spring and the reservoirs were already low. Let's, let's hopefully avoid that situation this year.

MEMBER ROBINSON: Does it cost electricity?

CHAIR ALDRIDGE: Absolutely and that's why they try to avoid pumping from the lower elevations up to the higher elevations, 'cause it is very expensive.

DEPUTY DIRECTOR YAMASHIGE: That's a very good point. 'cause when the reservoirs are really full, I, I'm not sure if you really follow this as closely as we do. We were actually treating very little and, and on some days nothing out of Kamole, because we were dropping everything down. Um, right now we're kind of spreading it out. Olinda will take care of itself ah, Kahakapao and you notice we're not pumping up but Piiholo, you know we're processing about 1-1/2 to 2. We, we don't want to process too much out of that. Um, and we would probably start picking up Kamole at 1.6 and bring that up and reducing how much we treat at Piiholo. But when we have the water high and there's an abundance of it, we will treat it and try and drop it down the hill.

MEMBER ROBINSON: Yeah.

DEPUTY DIRECTOR YAMASHIGE: Yeah. Save that electricity.

MEMBER OKAMURA: Can you explain what dropping down means?

MEMBER HALLER: Gravity, yeah?

MEMBER OKAMURA: Yeah, but in more depth, terms?

DEPUTY DIRECTOR YAMASHIGE: Let me try. Ah, you're all familiar with the 3 primary water systems we have Upcountry, that the Olinda, the Piiholo, and the Makawao where Kamole comes from. Um, we kind of stop, we keep Olinda separate because of the disinfection that we use, the chloramines. So we don't drop from the Upper system down because we don't want to mix the disinfection. But we will drop from Piiholo down the hill um, all the way down to the Pookela Reservoir, which goes all the way out to Makawao and Pukalani. Um, and we've done that a little bit this wet winter um, as you can see we're, we're only in February been in March and some of us squeamish people start getting a little bit worried when we see 80% coming up, yeah?

CHAIR ALDRIDGE: Uh, huh.

DEPUTY DIRECTOR YAMASHIGE: so um, we've been kind of spreading the production right now, but we do have some triggers that we, we're gonna be watching and seeing when we ah, actually start taking more out of Wailoa. We, we're also cognizant of the fact that HC&S and the agriculture community needs that water also. It's not, we just take everything that we can. We, we'll balance it.

CHAIR ALDRIDGE: I've a related, related, did that (unintelligible)...

MEMBER OKAMURA: Yeah, thank you.

CHAIR ALDRIDGE: I have a related question. Um, Eric, is, is it due to a lack of storage of, of, lack of storage capacity at the Waikamoi, Kahakapao areas or in that vicinity collecting from the Waikamoi flumes and streams that, that causes this or um, or is it just that, what, obviously more storage up there would help, but are, is the Waikamoi flume and various collections along the streams, are they actually able to develop as much flow as they're capable of? And they needed, in need of repair or ...

DEPUTY DIRECTOR YAMASHIGE: Thank you. The um, Waikamoi flume that brings the water to Kahakapao, I think we have it in our 09 budget to do quite a bit of repairs to that. Um, we had a study done, it was review and it's a redwood flume, it's a wooden flume. And if I had a better memory I could tell you when it was replaced. Um, there's certainly things that we need to maintain on it. But it is still delivering water. Um, so, you know it is bringing water when there is water. One thing, it, you know it's kind of a joke from the Department that, you know when you look up, up the mountain, you see it raining. Um, it doesn't mean that it's raining high enough to bring water into the Olinda system. It usually doesn't rain that high ah, which is why, you know even 100 million gallons at Kahakapao doesn't last forever. It's funny, you know you read this and you think that there's water coming into, so much rain. Um, Piiholo, we've been getting but Olinda we're not.

CHAIR ALDRIDGE: What, what is the source of Piiholo?

DEPUTY DIRECTOR YAMASHIGE: It is the same rainforest, a little bit lower elevation. Um, there's actually a map. The Waikamoi flume system is, it's not that short but it is relatively short on that side of the mountain way up there. The Piiholo system goes a little bit further. Um, so you get a little bit of a bigger contributing area. And when you look at the Wailoa Ditch um, it goes all the way out to (unintelligible). Yeah, it's miles and some, you know as an engineer it's amazing what, what they did that many years ago and, you know it's still functioning, bringing in a lot of water.

MEMBER ROBINSON: Do we have to be out of here by a quarter of?

CHAIR ALDRIDGE: Yes. Yeah.

DEPUTY DIRECTOR YAMASHIGE: Oh.

CHAIR ALDRIDGE: Oh, thank you. Um, let's move on to the next item, that's Discussion of the Central Maui Water System, West Maui Water Availability. I don't know that there's anything to report on that at this time. Ah, Discussion regarding Public Outreach by Board Members, I put this on specifically at the request of Michael Howden, who had to leave. But never the less, there's something I think that um, I raised before and Marion has raised and that is um, how do, how do board members actually get out and get some interface with the public or get some message across, I mean, you've raised it more than informed, you, you, Marilyn, have raised it in form of education by the Department, but Michael had said suggested that perhaps the board members out to get more involved in public education and getting involved various forums. So, it's food for thought since we're running short on time today. It's something that you probably should think about. Maybe find ways of getting ourselves involved and getting out there with public and um, letting people know, you know more about the, what our function is, what the, what the Water Department does. Anyway um, that was the item. Um, Receipt of Board Member Request for Agenda to be Place on Future Agendas. Any um, any items? Um, Division Reports, January 2008 Division Report, any comments from anyone, on the Division Reports?

MEMBER HALLER: Just a, yeah, I had a question. Um, it was about the...

CHAIR ALDRIDGE: Oh, on the financial report?

MEMBER HALLER: No, sorry wrong document. Division Reports. It was about the um, Pookela Well and just um, looking at, just wondering what your policy is or how you're using that well, I know it went back on line when the Kapakalua Well was down, up Kula's back up, so now Pookela's back down, and what is the, what's your kind of, how do you manage that? How do you do that?

DEPUTY DIRECTOR YAMASHIGE: Ah, thank you. I, how we operate Pookela Well is something that the Department has to really put their head together and ah, decide that. At this point, um we only run Pookela to keep it running. If that makes sense, because it is a mechanical thing. Um, we want to make sure that it, it functions, it works and we want to keep the water fresh. I mean if you leave it alone then you gonna chlorinate it. So we are actually keeping it as a back up. Ah, for times when, you know other part of the system goes down. Ah, when it was pretty much in the drought then um, like you mentioned Kapakalua was down. Right now we have the water ah, so we have not been operating it ah, for production. And there's different opinions, and we're just trying to be a little bit careful before we give away the house.

MEMBER HALLER: So when we're, let's take a down time, weatherwise, rainwise, and when, when we're not producing so much out of Olinda and the reservoirs, and we need to depend more on the wells and ah, um Kamole Treatment Facility; what's our capacity at this point for Upcountry when we depend on those sources? You, you, you have to manage, we have to look at our capacity, right? At a time of drought as, at a time when we're using a lot and we don't have a lot rains, so what is that capacity at this point Upcountry?

DEPUTY DIRECTOR YAMASHIGE: Um, and, and you're right, I don't ah, have an answer because we, we've all seen when Olinda has been down, 'cause there's no water at Kahakapao. We've all seen when Piiholo was down because there was no water in that Piiholo Reservoir. Um, Wailoa Ditch has fortunately, thank god, never been

dry um, so we have quite a bit of treatment capacity or capability at Kamole and the ability to pump quite a bit of water up the hill. Um, but to be dependent on that, you know pumps fail. So anyway, you do have Kamole if everything else fails and you have Pookela as you mentioned and you will have Piiholo probably at the end of 2009, that's the one (unintelligible) is developing ah, Kapakalua...

MEMBER HALLER: Haiku.

DEPUTY DIRECTOR YAMASHIGE: And yes, Haiku.

CHAIR ALDRIDGE: I've a suggestion, for the next board meeting, why don't we have um, the staff review the operational conditions, operational parameters for that upper, Upcountry system again. I don't think it would hurt to have a, just a, another brief review of it, you know like with the...

MEMBER HALLER: Uh huh.

CHAIR ALDRIDGE: System map and sort of review. Would like to question or ust may...

MEMBER HALLER: Capacities of those. Uh huh.

CHAIR ALDRIDGE: Yeah, right. Given that some of the changes have already been made for the plants to... Any other questions? Alright, meeting is adjourned.

Prepared and submitted by:

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Approved on: _____