

1 BOARD OF WATER SUPPLY

2 COUNTY OF MAUI

3

4

5

6

7

8

9

10

REGULAR MEETING

11

THURSDAY, SEPTEMBER 24, 2009

12

13

14

15

16 Held at the Department of Liquor Control Conference

17 Room, David Trask Building, Room 105, Wailuku,

18 Maui, Hawaii, commencing at 9:05 a.m.

19

20

21

22

23

24

25

26

27

28 Transcribed from the audio recording by Gaye

29 Hayashida, Commission Support Clerk, Department of

30 Water Supply, County of Maui.

1 A P P E A R A N C E S

2

3 BOARD MEMBERS:

4 Michael Howden, Chair

5 Scott Luck, Vice Chair

6 Patricia Eason

7 Donald Gerbig

8 John Hoxie

9 Kui Lester

10 Kelli Myers

11 Phyllis Robinson

12 Ted Yamamura

13

14 STAFF PRESENT:

15 Jeffrey K. Eng, Director of Water Supply

16 Edward Kushi, Jr., Deputy Corporation Counsel

17 Gaye Hayashida, Commission Support Clerk

18

19 OTHERS:

20 Jane Lovell, Deputy Corporation Counsel

21 Paul Mancini, Attorney for Pulehu Farms, LLC

22 David Goode. Pulehu Farms, LLC

23 Mark Walker, Pulehu Farms, LLC

24 Kaniloa Kamaunu

25 Joyclynn Costa

26 Johanna Kamaunu

27 Wilmont K. Kahaialii

28 Warren Watanabe, Maui Farm Bureau

1 CHAIR HOWDEN: I'd like to call the meeting to
2 order please. Everybody came, wow. Kui's on her
3 way. So I've acknowledged the presence of Patricia
4 Eason, Don Gerbig, Ted Yamamura, Phyllis Robinson,
5 Vice Chair Scott Luck, Kelli Myers and John Hoxie.
6 And Kui's on her way. Also present Director,
7 Department of Water Supply, Jeff Eng.

8 DIRECTOR ENG: Good morning.

9 CHAIR HOWDEN: Our loyal attorney, Ed Kushi.

10 MS. HAYASHIDA: Jane Lovell

11 CHAIR HOWDEN: Jane Lovell, Dep...

12 MS. LOVELL: I'm representing...

13 CHAIR LOVELL: Yeah, but you represent, and Paul
14 Mancini, David Goode, his partner, Warren Watanabe
15 and a bunch of others whose names I don't know.
16 Ok, anyway, we'll learn your names soon. Any
17 announcements? Ok, could we have any motion to
18 change the minutes or approval of the minutes from
19 our last meeting?

20 (silence)

21 CHAIR HOWDEN: Motion to accept?

22 MEMBER ROBINSON: Accept.

23 CHAIR HOWDEN: Second?

24 VICE CHAIR LUCK: Second.

25 CHAIR HOWDEN: Ok. Those in favor, please raise
26 your hand.

27 (several ayes)

1 CHAIR HOWDEN: Good enough. Thank you. Is there
2 any testimony from the public?

3 (silence)

4 CHAIR HOWDEN: Ok. So, we'll begin with the
5 appeals. Pulehu Farms, LLC. May we begin with Mr.
6 Mancini? Yes.

7 (the appeal hearing began at 9:07 a.m. with the
8 closing arguments for the Pulehu Farms, LLC appeal;
9 the regular meeting continued at 9:45 a.m. with
10 Unfinished Business)

11 CHAIR HOWDEN: Ok, ok, boy. I assume there's no
12 Unfinished Business. We'll move to Other Business;
13 A, Discussion regarding Na Wai Eha Contested Cases.
14 Would you like us to move into executive session
15 or...?

16 MS. LOVELL: No, thank you, Chair. I think what I
17 would like to do is just give you a general
18 overview of what's happening in these cases. Then
19 if there are some issues that would trigger the
20 need for an executive session at that point then I
21 think it will be appropriate for the chair to
22 entertain a motion but I think the rules provide
23 that as much of the discussion as possible should
24 be in open session. Let me just try to give you a
25 very quick overview and if I'm, if I'm not being
26 detailed enough then of course just feel free to
27 ask questions. Generally speaking, there are or
28 there have been what I would call 4 different

1 phases going on with respect to water from the 'Iao
2 Aquifer and how it is to be managed and controlled
3 by the State of Hawaii. First, as you probably
4 recall the 'Iao Aquifer was designated as a ground
5 water management area on July 21st, 2003. And from
6 that came 2 separate contested cases. One had to
7 do with water use permits for ground water from the
8 basal portion of the aquifer. Then there was a
9 second contested case with respect to the ground
10 water use permit applications for the higher level
11 or the dike impounded waters. At the same time the
12 Water Commission decided to rule on petitions for
13 resetting of instream flow, interim instream flow
14 standards for the 4 Na Wai Ehu streams, Eha streams
15 and their tributaries. And those would be Waihe'e
16 River, Waiehu, 'Iao and Waikapu streams. And then
17 finally the Water Commission last spring decided to
18 also take over and adopt a management area for
19 surface water. And so that means that all people
20 who are using surface water from those 4 water
21 sources will have to get a permit for the use of
22 surface water. So that's in, in basic summary what
23 the 4 different things are. The basal sources for
24 ground water, the high level sources for ground
25 water, the resetting of the interim instream flow
26 standards for those 4 particular streams and also
27 managing as a surface water area diversions from
28 any of those sources. With respect to the basal

1 sources that is completed. What happened was there
2 was a contested case only on one of the
3 Department's sources, that was Shaft 33 also known
4 as the Wai, uh, the Wailuku Shaft. A contested
5 case on that was heard in April of 2006. And in
6 March, March 21st, 2007 the Commission granted the
7 Department's request for 5.771 million gallons per
8 day from that source. At the same time the Water
9 Commission granted a small amount to the owner of
10 the shaft, that's Kealani, Kehalani Mauka Stanford
11 Carr developers basically. But as of that point in
12 time, March 21st, 2007, the Department of Water
13 Supply got it's water use permits granted in the
14 exact amounts asked for, for all of the basal
15 sources and all together that came up to just under
16 17 million gallons per day, 16.991, ah, 998, thank
17 you. Yes, we should have that number in our
18 brains. Ok, then there followed a contested case
19 on the high level sources. And the Department's
20 high level sources are the Kepaniwai Well and the
21 'Iao Tunnel. And the evidentiary hearing on that
22 contested case started December 3rd 2007 and it's
23 not over yet. But we've already had 77 witnesses,
24 600 plus exhibits and all together 23 or 24 days of
25 testimony. The, we were all finished and then last
26 summer in July, HC&S asked to re-open the record
27 because they had an expert report that didn't get
28 finished in time. So the record was re-opened,

1 that expert or the experts to produce that report
2 had to be cross-examined and so forth. And then
3 the record closed again. So, all of the parties
4 submitted proposed findings of fact, conclusions of
5 law, and a proposed decision and order on December
6 5th 2008. The hearing officer put out a proposed
7 decision on April 9th of this year. Then on May
8 11th all of the parties including the Department of
9 Water Supply submitted briefing on which parts of
10 his order they thought were correct and which ones
11 they thought were incorrect. And in a couple of
12 weeks on October 15th 2009 will be kind of the last
13 chance for the parties to sum up their positions.
14 This time for the full Water Commission,
15 thereafter, they will make a decision and I have to
16 believe that at least one party will not be happy
17 with the decision. And if the Waihole Ditch case
18 over on Oahu is any indication there may very well
19 be appeals of whatever the Commission decides to do
20 to the Hawaii Supreme Court. The hearing officer's
21 proposed decision addresses both the requests for
22 specific allocations of ground water and also
23 addresses the instream flow standards. With
24 respect to the Department of Water Supply the
25 proposed decision of the hearing office is to give
26 the Department the amount that it asked for from
27 Kepaniwai and from the 'Iao Tunnel and also to give
28 the Department enough water from the stream, from

1 'Iao Stream to serve our surface water plant and
2 also a proposed additional surface water treatment
3 plant, the Waiale Plant that's under discussion.
4 However, there is I think concern by all parties
5 about whether the way and the precise numbers that
6 the hearing officer arrived at for the instream
7 flow standards. Whether those numbers are going to
8 be workable in terms of giving the Department
9 exactly what it needs for it's existing surface
10 water treatment plant and for the, it's new
11 proposed surface water treatment plant. The
12 various environmental groups, the Hui O Na Wai Eha
13 and Maui Tomorrow Foundation, asked basically that
14 all of the water presently being diverted be put
15 back into the streams. The agricultural interests,
16 HC&S and Wailuku Water Company, asked in essence
17 that they be allowed to continue business as usual
18 with minor modifications. And the County being in
19 the usual unenviable position, being caught in
20 between the 2 warring factions, tried to take a
21 sort of a reasonable middle approach and, and try,
22 tried to advocate first and foremost for our own
23 needs to serve the public water supply, namely that
24 we get enough for our surface water treatment
25 plant, for the proposed surface water treatment
26 plant and we get all of our ground water
27 applications granted. The Department also then
28 looked at the requests from HC&S and Wailuku Water

1 Company and tried to determine whether those
2 requests met the criteria under the State water
3 code. One of the things that the State water code
4 does not allow is waste. Any water, that's taken
5 water whether it's ground water or surface water,
6 has to be for a reasonable and beneficial purpose.
7 So, in 2 respects the County took the position that
8 water that was being wasted should be returned to
9 the streams. There were 2 sort of egregious areas
10 of, of waste after the close of all of this
11 testimony. One is that the 'Iao stream has a
12 diversion completely across the stream, up above
13 the Nature Center. And the testimony from Wailuku
14 Water Company's witnesses was that any water that
15 is diverted through that diversion that they don't
16 actually need to use is put back into the stream at
17 a point about a thousand feet below. And our
18 position was that that leads to a stretch of 'Iao
19 Stream being de-watered for no particular reason.
20 And therefore, we said that only as much as is
21 going to eventually be used should be diverted in
22 the first place. To my way of thinking it's, it's
23 a little bit like when go to an all-you-can-eat
24 buffet and you put more food on your plate than
25 you're eventually gonna eat. That's the way it
26 looked to us that, that, by taking everything out
27 and then putting some of it back in down below you
28 are creating a stretch of the stream that would be

1 all, that would always, almost always be dry. So
2 we suggested that instead Wailuku Water Company be
3 required to only take out as much as it was
4 actually going to need and use. And that that
5 stretch of the stream that's always dry be restored
6 with the water that wasn't going to be used in a
7 reasonable beneficial way. And as for HC&S the
8 County was certainly supportive of their
9 agricultural operations and the fact that they
10 employ a lot of people and have been farming here
11 for a very long time. But there were some areas
12 that we asked the Commission to take a hard look
13 at. One was leakage from an unlined reservoir
14 which by HC&S's own witness testimony ranged from
15 between 6 to 9 million gallons a day. And we
16 thought that that really was an excessive amount of
17 loss. And the other thing we asked them to take a
18 hard look at was whether HC&S's Well No. 7, which
19 was a brackish well, that had previously been used
20 to provide some of the irrigation for some of the
21 fields at issue, should not be put back into
22 production so that less water could be diverted
23 from the streams. So, in short the County took a
24 kind of a middle position, hard lined against
25 waste, generally supporting legitimate agriculture
26 and of course advocating strongly for our own needs
27 as the, as the Department of Water Supply for
28 Central Maui. The final piece of the puzzle is

1 what the Water Commission will do with the, the
2 surface water allocations. And they had decided at
3 this point to wait and see what they do with the
4 re-setting of the instream flow standards before
5 they address how much each applicant will be able
6 to take out of the streams. All of the paperwork
7 on that has been done, all the applications are in,
8 all of the written objections to each other's
9 applications are in. They're talking about
10 appointing a hearing officer to listen to testimony
11 and evidence about the various objections but I
12 think it's reasonable to expect that they will not
13 go ahead and actually start issuing permits for use
14 of surface water until such time as, as the
15 instream, the interim instream flow standards are
16 adjusted. I think that's it. It's kind of a lot
17 of stuff, it's kinda complicated but I think that's
18 generally where we're at. And you know a really
19 good source to keep up on some this is the Water
20 Commission's website because they from time to time
21 will post legal documents such as the hearing
22 officer's proposed findings of fact and so forth.
23 And they're meeting today, unfortunately. Jeff and
24 I wanted to go over and, and couldn't go over to
25 Honolulu. They're meeting today on the appointment
26 of a hearing officer for the surface water
27 treatment plant, for the surface water
28 applications. They're also meeting today on

1 certain issues having to do with East Maui. And
2 it's kinda unfortunate that they, they set that
3 meeting on the same day as your meeting and on so
4 little notice but that is a good place to, to keep
5 up with with what's happening. Yes?

6 MEMBER GERBIG: The hearings you mentioned is that
7 gonna delay the whole process even more?

8 MS. LOVELL: Um.

9 MEMBER GERBIG: Are they gonna have hearings of
10 some sort? You talked about hearing officer...

11 MS. LOVELL: Oh, right, right, that's...

12 MEMBER GERBIG: Is that gonna delay the whole
13 process?

14 MS. LOVELL: Yes, I'm not sure I would say "will
15 delay the process," but the process requires
16 hearings. So the fact that people have applied for
17 surface water and then various parties have
18 objected to each other's applications means that a
19 hearings officer's gonna have to sit down and sort
20 that out. So it's not gonna be a quick thing.
21 However, until that is sorted out it's kind of
22 status quo. So our, our treatment plant should
23 continue to get what it needs to operate.

24 CHAIR HOWDEN: Other questions? I, I, I have one
25 question. It was my understanding that the
26 appraisal which is the preparatory step for the use
27 of eminent domain was cancelled by the

1 administration. Can, can you explain that? Has
2 that really happened or is that...?

3 MS. LOVELL: Well that, that doesn't really have
4 anything to do with the Na Wai Eha contested cases.
5 There, there was at one time a proposal to buy or
6 to acquire by eminent domain Wailuku Water
7 Company's ditch system, and Mr. Kushi, if I'm going
8 too far off the agenda let me know, because this
9 isn't strictly speaking within the Na Wai Eha
10 contested cases but there was at, at one point a
11 proposal to acquire Wailuku Water Company's ditch
12 system. There were negotiations during the Arakawa
13 administration. There was a proposal that was
14 submitted to the County Council. There was an
15 offer to sell but it had a lot of strings attached.
16 The Council voted a certain sum of money to hire an
17 appraiser to appraise the system so that the
18 Council could then consider whether or not to
19 acquire it. But then what happened was the Water
20 Commission granted a surface water management
21 system. The, the State had never done that before.
22 This is the first time that the State of Hawaii had
23 ever decided that a surface water area would be,
24 would be managed by the State. And then, and then
25 once, once that happened everybody who uses water
26 from that system has to justify their use. Has to
27 prove that it's reasonable and beneficial and has
28 to prove that, that using that amount won't hurt

1 other kuleana users, other legitimate users and so
2 forth. And so that kind of, I mean I don't want to
3 speak for either the Council or the administration
4 but once the surface water area was designated it
5 kind of took the whole purpose of acquiring Wailuku
6 Water Company's system away. Particularly if it
7 was going to cost millions and millions of dollars
8 because basically the, the idea behind it was if we
9 acquire, if the County acquire the system then this
10 public trust resource would be now controlled by a
11 public entity, the County. However, now it's being
12 controlled by a public entity, the State without
13 the taxpayers having to spend money to acquire it.
14 So, I think just in very general terms that that's,
15 that's what happened. It's just that events moved
16 passed where the situation was during the closing
17 days of the Arakawa administration.

18 CHAIR HOWDEN: But presently Wailuku Water Company
19 charges for the delivery of public trust waters as
20 I understand it?

21 MS. LOVELL: Yes, they do. And of course the,
22 there is a proceeding in the, in the public
23 utilities commission to determine how much they
24 should be allowed to charge if anything. Whether
25 they should be allowed to charge. Whether they
26 should be allowed to be a public utility and so
27 forth so that's, that's another thing that's

1 happened in the last several years is the public
2 utility commission has taken jurisdiction.

3 CHAIR HOWDEN: I just wonder if the intent of the
4 public trust doctrine would be better served by the
5 County holding ownership to the ditch system of
6 Wailuku Water Company rather than a private
7 company.

8 MS. LOVELL: Well, I, I think that's a policy
9 question and not a, not a legal question. I think
10 that's something for the, the mayor and the Council
11 to determine with input from the public.

12 CHAIR HOWDEN: Any further questions? Ok. Thank
13 you so much. If there's, if there are any comments
14 from the public at this public testimony on this
15 particular issue we would invite that at the
16 present. Please, come forward. And if you could
17 state your name and any affiliation. We generally
18 hope that your presentation will be like 3 to 5
19 minutes if possible. Thank you.

20 MR. KAMAUNU: My name is Kaniloa Kamaunu. I live
21 in Waihe'e Valley. I got involved originally in
22 this water issue and Na Wai Eha and Kapua Sproat
23 approached us. As I, as time has passed I take an
24 opportunity to educate myself as a kuleana owner,
25 as a kuleana owner and you already have this in
26 your HRS 7-1, which talks about, it's basically
27 taken from the Kuleana Act of 1859 and basically
28 states, "the landlord may obtain or may hereafter

1 obtain allodial titles to their lands." And I've
2 discussed this with the County Council when they
3 looked into doing the kuleana exemption, that they
4 had to understand the law. The law basically talks
5 about my title from my, as a descendent, from my
6 land commission award through Louis Piimaivau, who
7 had the land commission award. Now at that time
8 when they gave us, these are the things that are
9 entailed, that are in my title on land I possess
10 today. "And on their lands they shall not, not be
11 deprived their right to take firewood, house
12 timber, ahukoi, thatch or ti leaf from the land on
13 which they live, for their own private use but they
14 shall not have the right to take such articles to
15 sell for profit. The people shall have all, also
16 have the right to drinking water, running water and
17 the right of way. The springs of water, running
18 water and roadways shall be free to all, on all
19 lands granted in fee simple or allodial provided
20 that this shall not be applicable to the wells and
21 water courses which individuals have made of their
22 own use." So it declares strictly here what my
23 title is. So what I'm here today is to exercise my
24 right in law and say that by right as a kuleana
25 owner and with authority given to me through my
26 land commission title from the monarchy, that any
27 actions taken upon such items mentioned in this law
28 should be discussed with me because it is my vested

1 rights. Whatever happens to these things in this
2 area and we know that Hawaiians claim from the
3 mountain to the ocean that's how the ahupua'a range
4 so is my title. So when we talk about Wailuku
5 Sugar, he actually doesn't have title. He takes
6 the water from my ahupua'a. So in actuality
7 authority comes from me as a kuleana owner and any
8 other kuleana owners that claim this right at this
9 time. So the thing is what I ask or the commission
10 and board that Kaniloa Kamaunu be consulted through
11 to his vested rights given to him by his land
12 commission award to such action because for water,
13 for Wailuku Water Company originally Wailuku Sugar
14 claiming that they have water rights use well,
15 because it comes from my ahupua'a, it comes from my
16 area and this is the battle we're dealing with.
17 Now I'm not trying to be obnoxious, I'm not trying
18 to be apprehensive, I'm just stating what is mine
19 and what is within my control. Now, so for my
20 thing is before action be taken, if you're really
21 looking for who has such to say about these things
22 I put this out to you, that my rights are vested
23 and they can never change, they can never be
24 diminished and they cannot be ignored. Thank you.

25 CHAIR HOWDEN: Thank you. Any questions from the
26 Board?

27 MEMBER HOXIE: I have a question. So you're,
28 you're talking about not only water for your

1 particular kuleana but your talking about all the
2 water?

3 MR. KAMAUNU: I talking from, I'm talking from my
4 area.

5 MEMBER HOXIE: Uh huh.

6 MR. KAMAUNU: I not speaking on behalf of all of
7 Maui because that's not my kuleana. My kuleana is
8 with Waihe'e Valley or Waihe'e in essence, that's
9 my kuleana. I cannot speak for anybody else. But
10 as far as my vested rights is concerned I speak, I
11 speak on behalf of what I have. Thank you.

12 CHAIR HOWDEN: Thank you. Are there any other
13 speakers on this subject?

14 (silence)

15 CHAIR HOWDEN: Ok. We'll move on to Discussion
16 regarding Hamakuapoko Well water for consumption.
17 Any testimony from the public on this?

18 MS. COSTA: This is the H'poko Well?

19 CHAIR HOWDEN: H'poko, yeah.

20 MS. HAYASHIDA: I need you to sign in.

21 MS. COSTA: Ok. Can we do that now?

22 (silence as Ms. Costa signs in)

23 MS. COSTA: Good morning. My name is Joyclynn
24 (pronounced Jocelyn) Costa. I'm a third generation
25 Haiku resident, originally my ohana comes from East
26 Maui, Nahiku. And I've lived amongst that
27 pineapple field all my life. And I think a human
28 rights violation is in order if this H'poko Well

1 becomes utilized. Unless everyone here that going
2 make that decision to open that well will commit to
3 a direct pipe from that well to your house then I
4 would feel confident about drinking that water.
5 There's a reason why that well is capped. And
6 there was an enormous Department that I think you
7 folks all can respect which is the EPA, that got
8 involved. I mean, I hear the stories from my
9 father, who says that when the children were
10 treated for lice before they went to school, they
11 all were sat in, in a row and this poisonous
12 powder, like talcum powder but it was poison, they
13 were all doused with this kind of powder to kill
14 lice and they were subjected to this. And this
15 powder was the same stuff they was putting in the
16 pineapple fields. I know of people who have
17 retired now from the plantation who can somewhat
18 speak up but with reservation because you know they
19 still collect their pension from the plantation.
20 They talk about the tonnage of poison, not by the
21 week, not by the month but by the day. Every
22 single day. And for anyone to have one conscience
23 and say it's ok to open that well and feed the
24 people; wherever the necessity is to open that well
25 take it there. If it's so that you wanna open up
26 more development, open up another hotel, open up
27 something else, then you take that water directly
28 to where it's necessary. But out of, out of just

1 humanity I don't see how anyone could in their
2 right mind unless you can take a pipe directly to
3 you and your family, your children and your
4 grandchildren and feed them the same water. And if
5 you can say yes to that then say yes to open up,
6 opening it up. But if you have reservations then
7 you may need to think twice and say no. This is
8 people you're dealing with. And that's all I got
9 to say.

10 CHAIR HOWDEN: Any questions for Joyclynn?

11 (silence)

12 CHAIR HOWDEN: Thank you for coming to testify.

13 MS. KAMAUNU: Hi.

14 CHAIR HOWDEN: Hi.

15 MS. KAMAUNU: I'm Johanna Kamaunu. I'm from
16 Waihe'e. First time before this Board. Actually
17 it's the first time I knew you had a board, we had
18 a board. But I was really glad to see..

19 CHAIR HOWDEN: You, you're not alone.

20 (laughter)

21 MS. KAMAUNU: Sorry, just coming a, a, aware of
22 some of these things. And I couldn't help feeling
23 important to be here because of the issue of Na Wai
24 Eha and how it affects my family. Through my
25 mother's family we have land in Waiehu. Through my
26 husband's family we have land in Waihe'e. And
27 these are patented land commission award lands.
28 Included in our titles, in our deeds is the

1 reservation for mineral rights. Now, for a long
2 time we let, how shall I say, we let the government
3 run things. We were busy living our lives so we
4 didn't think too much about it. But recently we've
5 become aware of what's happening with the water,
6 what's happening with the land and so now I'm
7 really concerned. For, how long has it been? Na
8 Wai Eha case? We've been having discussions for
9 that for years. Sorry. And only now we're coming
10 to a point where the Commission on Water Resource
11 Management is stepping in and they wanna do
12 something. However, I find that a problem for me,
13 because as much as I appreciate the State's effort
14 to try and manage this it's not their
15 responsibility. We have to look to the word
16 kuleana and I guess more so since the tax exemption
17 law is going through, our County Council and they
18 brought to our attention the laws of 1850 regarding
19 the kuleana land, I have to consider that. In that
20 law is the reservation for our rights to water. So
21 how come I'm not part of the decision making
22 process? You're part of that decision making
23 process but who of you own kuleana lands? See
24 that, that's the problem I have and it's not that I
25 wanna take over your jobs but I'd like to have a
26 say. I'd like to be able to know what's gonna
27 happen and be prepared. I have grandchildren now.
28 That's a new thing for me. But I have

1 grandchildren; it's a wonderful feeling and now I
2 have to look hundred years in the future. Right?
3 Until then we live forever but now I have to look
4 to their future and because of that it doesn't look
5 good if I allow things to continue the way it is.
6 So under your revised statutes 7-1, it talks about
7 Hawaiian water rights. At its inception in 1859,
8 the civil code, almost word for word puts out what
9 the revised statutes carry forth today. And it
10 says right there, I have rights to water. I have
11 rights to water and everyone else who has kuleana
12 land has rights to water. Then recently in
13 Hawaiian Annual by Associate Justice of the Supreme
14 Court Antonio Perry, he writes "for anyone to
15 really understand kuleana water rights you have to
16 go back and read the principles of Quiet Title to
17 understand the water rights." He's saying this in
18 1912. And he thinks that they've come a long way
19 since then. We should've, we, we pretty much
20 defined everything, it's gonna be clear from here
21 on out. It's gotten worse, right? And I think
22 it's because we not looking back at those
23 principles of kuleana, of Quiet Title, what it
24 actually meant. How that, I mean there's this
25 thing about intent. And just to give you an
26 example, look at the Hawaiian word for "patriot."
27 Hawaiian word is "hui aloha aina." "Aloha" you
28 know. But a definition for "aloha" could be a

1 companion. A "hui" you know, a group. And "aina"
2 most think is land. But "aina" means that which
3 feeds. So "patriot" is not the person that is
4 waving the flag for a country or when he puts down
5 his life for a country but a patriot is someone who
6 loves that which produces food, that which feeds.
7 And this is where I come in conflict with what
8 government is doing today, because it's not helping
9 us produce food to feed ourselves. It's helping us
10 produce homes to house outside interests,
11 investors, people who not living here and people
12 who not connected to the land. So, yeah I have a
13 real hard time accepting this. So that's why I'm
14 here. I'm hoping that we can come to some better
15 understanding of how management for water should be
16 handled. I not in support of the Water Commission
17 taking over management use of it. In fact I will
18 try very hard to see that they're not made a part
19 of it. I've written letters to them. Sent an
20 application in, uncompleted, but sent a letter with
21 that application to them stating my rights as a
22 kuleana land holder with water, interest in water
23 and they've not really responded to me. In fact
24 they just sent me form letter that says I think the
25 answer to your question is in numbers 9 and 11. So
26 when I asked them what does a pertinent right mean
27 in reference to kuleana lands? Does this mean
28 kuleana rights as I understand it? They won't

1 answer me. So that tells me they have an answer
2 that they're not willing to recognize. That's all
3 I have to say.

4 CHAIR HOWDEN: Thank you for sharing your mana'o
5 with us. Anyone from the Board, any questions?
6 Thank you. It was very beautifully spoken.
7 Anybody else on Hamakuapoko?

8 MR. KAHAIALII: Can I come forward?

9 CHAIR HOWDEN: Please.

10 MR. KAHAIALII: Ok. Aloha kakahiaka. Aloha
11 kakahiaka.

12 (chorus of aloha)

13 MR. KAHAIALII: Ai, maika'i. Mahalo. My name is
14 Wilmont Kamaunu Kahaialii. I come from Lahaina.
15 I'm actually a, a, I come from a family of 9
16 brothers and 4 sisters. Our more popular sibling
17 is, well-known sibling is Mr. Willie K. In my
18 ohana we strictly maka 'ainana and musicians. But
19 of late I have become very interested in the
20 kanawai or the laws that are, that come into play
21 here in Hawaii, simply because, you've heard
22 testimony from, from the previous people with
23 respect to the kuleana right; that's become an
24 important issue for me. And the kuleana lands and
25 the water rights are all interconnected and so
26 every time there's discussion about water or how
27 issues like Hamakua, the Hamakuapoko wells come
28 into play, we have to question whether or not the

1 laws were consulted. And if they were, were all
2 the parties involved with this particular issue or
3 incident aware of what rights were violated, and if
4 there was any violations or what the penalties for
5 violation of those rights. You know, you guys have
6 a heavy kuleana. Water is so important. Water is
7 so important. When I think of these issues I have,
8 there's a part of me that's the cultural side and
9 there's the other part of me that's also the, the
10 educational side. And I have to weigh the two and
11 for those of you who don't know, when you look at
12 the West Maui mountain, we're talking about water,
13 the name of that mountain is Mauna Kahalewai.
14 There's a reason why it's given that name. Mauna
15 Kahalewai is the house of water. There's a lot of
16 water that is poured into that mountain. And that
17 water flows to all streams. Now according to the
18 kanawai or the laws anyone who's given kuleana
19 land, you heard the term appurtenant, and quite
20 frankly for us who are maka 'aina now, or common
21 people, we don't know what that is. All we know is
22 that there's water running through our kuleana then
23 we have, we have uninhibited rights to that water
24 for the use of watering our kalo, our mai'a, our
25 ulu, any of our plants, agricultural, so that it
26 can help sustain us. Our concern is whenever the
27 water becomes contaminated, now we have to wonder
28 ok, now whose fault is it. And quite frankly we

1 live in a day and age where nobody wants to blame
2 anybody and nobody wants to admit fault because
3 there's just too much hakakao or liability involved
4 with that. But your responsibility or your kuleana
5 is to insure that when you manage or if you're
6 addressing the issues relating to water or managing
7 water, yeah, you need to, you need to hold people
8 accountable. If you're not willing to do that then
9 we, the kuleana owners have no other alternative
10 but to come to you and hold you accountable. And,
11 and not to like was stated earlier, not to make any
12 trouble or pilikia for anybody but we talking about
13 how water sustains the land and how the land in
14 turn sustains us. If you need help, he i na makou,
15 ask us. Let us help you so we can help ourselves
16 in the process and preserve for ourselves and our
17 generations of family to come. Making water pono
18 and good for many generations to come. We have
19 issues like for example even in Ukumehame. Water
20 used to flow through that area. Now there's
21 limited water flow that comes through. And yet
22 we've identified taro patches scattered throughout
23 the area. No more water coming through anymore.
24 And it's easy to see why people would abandon those
25 areas because no more water, no more life in the
26 land. No life in the land means if we stick around
27 we're not gonna live any longer either. There are
28 two, there are two Hawaii Revised Statutes. I

1 would ask this body, governing body to go back and
2 look at and it's HRS 7-1, HRS 174c-101. And you
3 know, just look at it and consider its
4 applicability in relationship to your, your
5 kuleana. You know, how are you applying it and if
6 there's anything in your decision making process or
7 the actions that you take that are either
8 supporting it or, or run contrary to it.

9 (silence)

10 MR. KAHAIALII: Na Wai Eha. On the cultural side
11 of you know just Na Wai Eha; we all born out of
12 water. No water we no born. We no more life. And
13 we have to look at how we manage that. Very, very
14 precious resource. If we allow it to be
15 contaminated then we in turn will be contaminated.
16 If we allow that to be so then we have sold our
17 birthright to life sustaining resource. However
18 on, on, on this side as a citizen, as a kanaka
19 maoli, as someone who has a vested interest in the
20 well being of our people, and I speak of our people
21 in general, not just kanaka maoli, our people,
22 everybody who lives here and breathes in Hawaii; we
23 need to work together to make sure that
24 accountabilities are in place, that we hold all
25 ourselves accountable for making sure that that
26 water free of contamination, free of restriction
27 and if there are any provisions that need to be put
28 in place to govern its, the sale or the commercial

1 aspects of water, how it's being handled today,
2 then we gotta address that and if, and in
3 addressing it I hope you guys make that information
4 available to the public so we know what our
5 responsibility is in response to it. Now how can
6 we response rather react? You know there's a lot I
7 could share with the, with this body today but I
8 really don't want to take up too much of your time.
9 Just understand that I'm a common person just like
10 the rest of you who has a vested interest in the
11 management of water, precious resource water.
12 Probably the most precious of all. Mahalo.

13 CHAIR HOWDEN: Thank you. Any questions from the
14 Board?

15 MS. HAYASHIDA: My pen.

16 MR. KAHAIALII: Good thing you said that I was take
17 'em.

18 (laughter)

19 MS. HAYASHIDA: I need that. It's my only pen.

20 MR. KAHAIALII: Just like gold, yeah? Anybody get
21 questions? No? Mahalo.

22 MEMBER LESTER: Mahalo.

23 CHAIR HOWDEN: Thank you for sharing. Warren?

24 MR. WATANABE: Good morning, members of the Board
25 of Water Supply. My name is Warren Watanabe,
26 Executive Director, Maui County Farm Bureau. Farm
27 Bureau has been on record opposing capping the
28 H'poko Well. We did, when the Council took up that

1 motion, we did oppose it and we still maintain that
2 position. I think one of the things that was
3 brought up is that the safe, the safe use of the
4 water and if the water can be used safely when
5 treated. Oahu, as you are well aware, does,
6 Honolulu Board of Water Supply does use similar
7 waters into their public system. Here on Maui, the
8 Napili Well, your own Department of Water Supply is
9 using it after, after, after being treated. So
10 what is the difference and that is what Farm Bureau
11 has always questioned, why is the H'poko Well
12 different? What makes it different? For us in
13 Upcountry area we are always prone to droughts.
14 Director Eng and I, we're on, we serve on the
15 Drought Counsel. We just had a meeting yesterday
16 afternoon. Kevin Kodama reported that Hawaii is in
17 El Nino. The projection is that in the coming
18 months our, our winter period will be, will have
19 below normal rain, rainfall. So I think that's the
20 kinda things you need to consider. And again, for
21 us at Farm Bureau I think you know it is again
22 another source that we should be utilizing. And
23 for our farmers and ranchers, they can't really
24 continue without a reliable source of water and
25 that's all I have to say.

26 CHAIR HOWDEN: Any questions for Mr. Watanabe?
27 Thank you, Warren.

28 MEMBER GERBIG: Yeah, I have a...

1 CHAIR HOWDEN: Oh, please...

2 MEMBER GERBIG: Where on Oahu is this type of water
3 being used, do you know?

4 MR. WATANABE: Kunia. It's in Kunia.

5 MEMBER GERBIG: Kunia?

6 (silence)

7 CHAIR HOWDEN: Any other comments from the public?
8 Jeff, do you wanna say why you're, why we're
9 looking at using the water from Hamakuapoko?

10 DIRECTOR ENG: Sure. Back in, I think it was
11 August of this year, Water Resources Committee
12 chairman, Mike Victorino, first, I guess,
13 approached, actually corp counsel first to help
14 him, assist him in drafting a bill for an
15 ordinance, amending section 14.01.050 of the Maui
16 County Code, relating to the use of water from
17 H'poko wells. So back in 2006 as some of you may
18 recall, an ordinance was passed by the Council,
19 which basically banned the use of H'poko wells for
20 human consumption and that's where we stand to this
21 day. We did, I think, operate it for a few days
22 last summer briefly when we were undergoing that
23 real severe drought period and that's when Wailoa
24 Ditch was at one of it's all time lows and
25 basically just to serve the Kula Ag Park farmers.
26 So, and I wanted our staff to periodically exercise
27 the pump and motors anyway. I don't like them
28 being idle that, that long a period of time. But

1 with Mr. Victorino's proposal to the committee was
2 basically to, to amend the ordinance, the existing
3 ordinance so that those wells could be used if a
4 drought emergency is declared Upcountry, requiring
5 mandatory water use reductions of at least 10%. So
6 that's basically a pretty severe drought situation
7 Upcountry. And, 'cause currently what's happening
8 is ever since H'poko wells were basically banned
9 from being utilized, when the Pookela well was
10 developed and brought online back in around May of
11 2007, and that was a well that was much anticipated
12 by Upcountry 'cause it's very good high quality
13 water. They had a maximum pump capacity of 1.3
14 million gallons per day. And that's just about the
15 time I came on board and I was experiencing the
16 pressure of the public to get that well completed.
17 'Cause there were a number of delays. There were
18 just too many cooks, you know, in the kitchen,
19 trying to get that well going, which really caused
20 it to probably be delayed a year or two. But we
21 were able to get it going in May of 2007, but when
22 I came on board I realized that's just our back-up.
23 Once the H'poko wells were banned the completion of
24 the Pookela wells only provided Upcountry with a
25 back-up. And that's how we've operated it for the
26 past two and a half years. We run it periodically,
27 in fact we're running it currently. Just recently
28 we started it up again; just to provide back-up

1 source for Upcountry. So, Mr. Victorino's proposal
2 really again, allowed for only an additional back-
3 up. And you know, I'm always under constant
4 pressure to find a way of kind of relieving that
5 priority list Upcountry, which has 1312 applicants.
6 Herb Chang recently provided me with an estimate of
7 how many meters that represents and he thinks it's
8 probably close to 2,900 meters.

9 MEMBER GERBIG: Say that again?

10 CHAIR HOWDEN: 2,900...

11 DIRECTOR ENG: That priority, yeah that priority
12 list, that Upcountry wait list...

13 MEMBER GERBIG: Oh, yeah ok.

14 DIRECTOR ENG: Probably represents about 2,900
15 meter requests or meter upgrades, either new
16 services or upgrades.

17 MEMBER GERBIG: How much, how many meters, not just
18 a round figure, how many meters would this H'poko
19 well affect or free up or whatever?

20 DIRECTOR ENG: Ok, well, looking at what Mr.
21 Victorino was doing was just initiating the
22 discussion on, on revisiting H'poko wells, which I
23 fully support. I, I believe that it, the decision
24 by the Council back in 2006 did not really
25 acknowledge the science, only the emotions of a
26 few. So, I did a little look at what we could get.
27 What, what's another proposal we could look at and
28 this is, I have proposed it to the committee, that

1 why not allow us to use H'poko wells for any kind
2 of emergency situation. Not the most severe
3 drought times but what if we had another problem
4 with one of our other sources Upcountry? Like a,
5 like the Waikamoi Flume went down or something like
6 that. Why not allow us to run H'poko under those
7 conditions, any kind of operational emergency. By
8 doing that I calculated that then therefore we
9 could issue some meters off of Pookela. Pookela
10 would now be a production well, rather than mostly
11 an idle back-up well. And so I looked at what
12 we're familiar with as far as our normal pumping of
13 our production well. You probably heard typically
14 we run it for 45%, two-thirds of two-thirds. That
15 means to meet maximum day demand in 16 hours of
16 pumping. So you're probably looking at operating a
17 well at 45% of its total pump capacity. So looking
18 at that, also realizing back in 2006 the Department
19 issued 200 meters in anticipation of Pookela coming
20 on line. But in crunching some numbers I can, I
21 estimate that we could, could issue over seven
22 hundred $5/8^{\text{th}}$ inch meter, domestic meters for
23 residential purposes. So equivalent of that, that
24 could satisfy $1/4$ of the priority list. So that's
25 what I propose before the committee and that's
26 where it stands to this day. I just heard word
27 yesterday that Mr. Victorino has tentatively
28 scheduled the Upcountry meeting, public meeting for

1 October 5th. Unfortunately, I'm gonna be in
2 California vacation. I was hoping that he could
3 delay it, move it up or whatever. I guess he's
4 pretty much set on October 5th. So he will allow
5 for public testimony and I'm hoping that there will
6 be some, some good balanced discussion this time.
7 Because 3 years ago before the Council it was just
8 so one sided. And again it totally ignored the
9 EPA. It totally ignored the Department of Health
10 and basically good science. And it was just, and
11 at that time I was employed by Kaanapali, running
12 Kaanapali Water System. That was probably the
13 first time I gave a really very short brief
14 testimony, just basically stating my experience.
15 We had, and Kaanapali still has 3 wells that they
16 operate with exactly same contaminants and at
17 probably even higher levels than the H'poko wells
18 and in fact there are 2 wells not one well. We
19 have the state-of-the-art technology, which is
20 granular activated carbon treatment. So Kaanapali
21 uses that. The County, as Warren pointed out, has
22 a well out in Napili, Napili A, that has granular
23 activated carbon treatment. And the 2 H'poko wells
24 have granular activated carbon treatment. It's all
25 the same. It's utilized throughout Oahu,
26 throughout the ag areas of California, throughout
27 San Joaquin Valley. And granular activated carbon
28 can remove 100% of those synthetic organic

1 chemicals. And so really the water coming out of
2 those carbon vessels are probably the most pristine
3 water we have anywhere. It, it's purer than
4 probably than what we can produce off of our
5 surface water treatment plants. The surface water
6 treatment plants primarily have the ability to
7 remove, remove through micro-filtration, you know
8 micro-organisms, particulate matter related to
9 turbidity. It really doesn't treat, remove any of
10 the synthetic organic chemicals. So probably our
11 most high tech water treatment is granular
12 activated carbon. It can remove everything. So.
13 So, I'm just hoping and, and glad to see that
14 there's now gonna, hopefully will be some good open
15 discussion. The Department is in favor of
16 utilizing the wells. We are confident that water
17 quality is gonna be superb, but again that's up to
18 the community. But there's an opportunity to, to
19 be able to satisfy some of that priority list. And
20 that's what I hear every day from the community and
21 I'm hoping that we can, we can help the community
22 up there. Don?

23 MEMBER GERBIG: You know on the, there's a lot of
24 talk about you know, the treatment and all that,
25 can you get data from not only here but from Oahu?
26 I think Watanabe talked Kunia but I think it's
27 Mililani, isn't it? For the treatment...?

1 DIRECTOR ENG: I thought it was Mililani but might,
2 Kunia has some other things too.

3 MEMBER GERBIG: Yeah. But I mean anyway...

4 DIRECTOR ENG: Another kind of issue.

5 MEMBER GERBIG: Can you get data from, from their
6 water to show you know...

7 DIRECTOR ENG: Well, I can, I can contact the Safe
8 Drinking Water Branch...

9 MEMBER GERBIG: Before and after and also our
10 wells, what, what the, what the content was before
11 and after treatment?

12 DIRECTOR ENG: Actually I, I can get some from our,
13 well I know from our...

14 MEMBER GERBIG: I mean just to give us some record..

15 DIRECTOR ENG: Sure, I can, I can get some data
16 from our wells.

17 MEMBER GERBIG: Oh, yeah.

18 DIRECTOR ENG: Lot of private prefer theirs, may
19 not want to release their data but the Department
20 of Health has a lot of data, because they...

21 MEMBER GERBIG: Freedom of information.

22 DIRECTOR ENG: Like at Kaanapali, they can, they
23 monitor accordingly. So the Department of Health
24 actually comes out and takes..

25 MEMBER GERBIG: I mean if we had that data on, on
26 treatment...

27 DIRECTOR ENG: Sure.

1 MEMBER GERBIG: It might give everybody an
2 education that we're not just blowing smoke.

3 DIRECTOR ENG: Well, you know back in 2006, the
4 Department did provide data from the Safe Drinking
5 Water Branch and it was totally ignored. But we
6 will get some updated data. Again, as far as our
7 H'poko wells, I think the last time it was tested
8 was back in 2004 but because it hasn't been
9 utilized we haven't tested but back then the DB,
10 the GAC did remove 100% of the contaminants. But
11 I'll see what I can get from Safe Drinking Water
12 Branch. That is public information.

13 MEMBER GERBIG: And then just for the record
14 probably, detection levels of the lab.

15 DIRECTOR ENG: They're pretty darn low now.

16 MEMBER GERBIG: Do you know what you're analyzing
17 now too.

18 DIRECTOR ENG: The EPA, they're very, very, very,
19 very, very low.

20 MEMBER GERBIG: Yeah, I mean that would be good.

21 DIRECTOR ENG: It's amazing how low.

22 CHAIR HOWDEN: Jeff, what's, what's the production
23 of the H'poko wells at 45%?

24 DIRECTOR ENG: Well, they would be again, well, I
25 was talking about Pookela as a production well...

26 CHAIR HOWDEN: Yeah.

27 DIRECTOR ENG: At 45%. So 45% of 1.3 million
28 gallons per day is what I would target as being

1 able to issue meters. The H'poko wells each have a
2 capacity of 500 gallons per minute.

3 MEMBER YAMAMURA: How much?

4 DIRECTOR ENG: 500 gallons per minute.

5 MEMBER YAMAMURA: Each well?

6 DIRECTOR ENG: That's maximum capacity.

7 MEMBER YAMAMURA: 2, 2 pumps?

8 DIRECTOR ENG: Yeah. So a thousand gallons per
9 minute max.

10 MEMBER HOXIE: 0.15, something like that.

11 DIRECTOR ENG: Yeah. a little bit more 'cause it's
12 694 gallons per minute so, divide one point, I mean
13 1000 by 694 and you got how many million gallons
14 per day of maximum pump capacity.

15 MEMBER GERBIG: So you're taking, you'd only be
16 using 45% of that capacity at H'poko?

17 DIRECTOR ENG: I really don't know, that I don't
18 know. We always like to target that 'cause that's
19 our standards but if we have to run 'em higher we
20 would. But cannot exceed the pump capacity.

21 CHAIR HOWDEN: Well, in the testimony before Water
22 Resources there was some concern that the aquifer
23 for supplying the H'poko wells is a thin aquifer,
24 that it has a limit, there's a limited amount of
25 water.

26 DIRECTOR ENG: I don't recall. Who stated that?

27 CHAIR HOWDEN: Lucienne, Lucienne DeNaie, yeah.

1 DIRECTOR ENG: I don't, I don't know if that's true
2 or not.

3 CHAIR HOWDEN: Ok.

4 DIRECTOR ENG: You know, I, I, we could look into
5 the pump, the drilling records, the well
6 construction permit. That's around, I don't think
7 it's a particularly a thin lens up there.

8 MEMBER HOXIE: But there were pump tests run on
9 those wells?

10 DIRECTOR ENG: I, I'm sure when they developed the
11 wells in fact, I think those wells were developed
12 by the State and obviously when they determined the
13 pump capacity, they do pump tests. That's your
14 basis for deciding how, what size pumps. But
15 again, given that their 500 gallons per minute, you
16 know, it's probably not a very, very thick lens and
17 given the elevation of those well sites too, they
18 wouldn't be as thick a freshwater lens as further
19 inland.

20 CHAIR HOWDEN: I, I would wonder, Phyllis, can I
21 just, just a little bit and then..

22 MEMBER ROBINSON: Of course.

23 CHAIR HOWDEN: I, I would wonder why we're not
24 looking at our memorandum of understanding with
25 HC&S regarding access to the water from Kamole
26 Weir. I mean we're entitled to take several more
27 million gallons a day than we presently take.

1 DIRECTOR ENG: If I may ask, Mr. Chairman, did we
2 want to talk about that, that's not on the agenda,
3 I'm not prepared to..

4 CHAIR HOWDEN: Ok, no, we'll, we can do that, we
5 can do that next time. Phyllis?

6 MEMBER ROBINSON: Oh, I was just wondering if some
7 of the reasons why the well was capped had to do
8 with questioning whether the quality, water quality
9 and the standards set by the EPA, that there were
10 certain other kinds of chemicals, other things that
11 weren't really looked at and, and I don't know
12 whether that is still remaining to be an issue that
13 we're relying entirely on them.

14 DIRECTOR ENG: We do rely on the EPA and we do rely
15 on the Department of Health. Just for everyone's
16 knowledge here, the EPA is the guideline we go by.
17 They establish the maximum contaminant levels for
18 their list of contaminants. The State Department
19 of Health having primacy, in other words having the
20 authority to enforce the EPA'S regulations; they
21 actually, in some contaminants go even further. In
22 fact in this particular contaminant, DBCP the EPA
23 has a maximum contaminant level of 200 parts per
24 trillion. The State and I don't, never quite
25 understand the reason for this, they brought the
26 mcl's and the requirements down even further to 40
27 parts per trillion. So that's what we have to
28 abide by and comply with an even more stringent

1 standard for DBCP. In regard to the other
2 contaminant, TCP, the EPA does not even have an
3 mcl. Does not even have a standard. Whereas State
4 of Hawaii has an mcl established at 600 parts per
5 trillion. Originally, in up to about maybe 4, 5
6 years ago, it was 800 parts per trillion. And so
7 they lowered it even further. So they're even
8 doing much more than the EPA. So that's how
9 stringent our, our standards and our water quality
10 standards are at the state, which we meet with.
11 And you know, we believe in those standards and
12 sometimes I think they're too stringent, but again
13 we will abide and comply with all the standards.
14 To think that we're even gonna go further, it is
15 not necessary. I think they're very, very
16 stringent already.

17 CHAIR HOWDEN: Don, do you have another question?

18 MEMBER GERBIG: I'm afraid I'll die of heart attack
19 from the salt in the Lahaina water. What you gonna
20 do?

21 CHAIR HOWDEN: Ok, that's not on the agenda.

22 (laughter)

23 MEMBER ROBINSON: It's not on the agenda.

24 MEMBER GERBIG: Huh? I'm being salted out in
25 Lahaina. Nobody's doing anything about it.

26 CHAIR HOWDEN: You can handle that.

27 VICE CHAIR LUCK: I, I have a quick question.

28 CHAIR HOWDEN: Scott, you have a question?

1 VICE CHAIR LUCK: I, I think I just missed
2 something. I'm pretty sure I must've because I was
3 understanding that the proposal is for H'poko to be
4 an emergency back-up for emergency drought, right?

5 DIRECTOR ENG: Or any, I, I'm proposing any type of
6 emergency.

7 VICE CHAIR LUCK: Ok. But so if it's just an
8 emergency it won't actually relieve the latent
9 demand that's existing right now. So, it won't
10 provide, so the discussion of potentially 700 or
11 900 meters...

12 DIRECTOR ENG: Ok. Ok, let me clarify that, Scott.
13 Then, what I'm talking about is right now Pookela
14 is our back-up.

15 VICE CHAIR LUCK: Right.

16 DIRECTOR ENG: H'poko is actually, don't even
17 exists...

18 VICE CHAIR LUCK: Oh, ok.

19 DIRECTOR ENG: You know, per the code. But if we
20 can utilize Pookela as a production well then we
21 can issue some meters...

22 VICE CHAIR LUCK: Right. Ok.

23 DIRECTOR ENG: From the meter list.

24 VICE CHAIR LUCK: Ok, I understand that. Thank you
25 for the clarification.

26 DIRECTOR ENG: You're welcome.

27 CHAIR HOWDEN: Any other questions? Comments?

1 MEMBER GERBIG: Well, let me ask, if you give us a,
2 a, an analysis, give us a sheet of the well, the,
3 the detection level and the...
4 DIRECTOR ENG: Sure.
5 MEMBER GERBIG: And the, I mean across the thing,
6 the Hawaii Department of Health standards and the
7 EPA's standards so everybody knows where you're at,
8 what the standards are or the, the mcl's are, so we
9 have that data. Huh?
10 DIRECTOR ENG: Sure.
11 MEMBER GERBIG: For DBCP, that's all we're talking
12 about, yeah?
13 DIRECTOR ENG: I can give it to you right now, Don
14 if you wish. Got a pencil?
15 MEMBER GERBIG: No...
16 DIRECTOR ENG: Ok.
17 MEMBER GERBIG: I wanna see it. I'd like to see
18 something from Mililani too, I really would.
19 DIRECTOR ENG: I'm trying to save some time having
20 to type anything out.
21 MEMBER GERBIG: Or your, your friends on the other
22 side too.
23 DIRECTOR ENG: Well again, you know, they're not
24 going to, the only thing that the Department of
25 Health tests for is they'll test the basically the
26 water at the point of entry and each of the
27 contaminated wells after...

1 MEMBER GERBIG: After treatment? They have that
2 data too?

3 DIRECTOR ENG: They definitely do it after
4 treatment but that might be something that they
5 have public.

6 MEMBER GERBIG: I mean before and after, that's
7 what they'd like to see...

8 DIRECTOR ENG: Yeah. They might have something
9 public.

10 MEMBER GERBIG: They were all, what do we, what did
11 you take out.

12 DIRECTOR ENG: I do know that the Kaanapali wells
13 are several fold but maybe so than, than the H'poko
14 wells.

15 MEMBER GERBIG: Give us as much as you can.

16 DIRECTOR ENG: But again, GAC removed it all. So
17 it almost doesn't matter if it was several fold
18 higher concentration or whatever. It removes it
19 all, it removes it all. You got zero coming out of
20 the GAC vessels so.

21 MEMBER HOXIE: So are you looking for a
22 recommendation from this group or can you make a
23 recommendation for us to do something with?

24 DIRECTOR ENG: No, this was just on the agenda.
25 I'm just responding, hopefully give you folks
26 information. Again, there will be a public
27 hearing, I think October 5th. I'm sure that will be
28 advertised more. And at some point it will go

1 before the Water Resources Committee again. And I
2 imagine Chair Victorino wants to do something with
3 it. At least bring it forward and hopefully out
4 this committee to the full council and that's all I
5 can ask for is that it's properly discussed this
6 time.

7 CHAIR HOWDEN: Ok. Thank you. Let's move on
8 to...Ok, on advice of counsel we'll take a 10 minute
9 break.

10 (meeting recessed)

11 CHAIR HOWDEN: Ok, I'd like to call the meeting
12 back in order. It would be my preference to move
13 to the appeal but we do have two members of the
14 public or one member of the administration, maybe
15 one or two members of the public who wanted to
16 speak on I believe the Dual Line, the Kula Ag Park?
17 Is that...?

18 UNKNOWN VOICE: No, I was just here to hear what
19 you got, you got to say about...

20 CHAIR HOWDEN: Ok. We'll probably defer it. Are
21 you, are you gonna testify? Ok. Warren, are you
22 testifying again?

23 MR. WATANABE: No, I, yeah I just gave one.

24 CHAIR HOWDEN: Ok, we're gonna defer it because we
25 really need to move into the appeal. Mr. Hoxie and
26 Ms. Robinson need to leave so. We, we need to move
27 into our appeal.

1 UNKNOWN VOICE: You're gonna discuss it at the next
2 meeting or today?

3 CHAIR HOWDEN: Yeah, we'll put it back on the...

4 MS. HAYASHIDA: Well, we'll try but next meeting we
5 have a hearing and budget so I'm not sure if we
6 have time.

7 CHAIR HOWDEN: Oh, we're do, doing our budget
8 meeting next.

9 DIRECTOR ENG: You, you're welcome to attend,
10 Clark.

11 MS. HAYASHIDA: You're gonna go into deliberations?

12 DIRECTOR ENG: Gonna go into executive session?

13 CHAIR HOWDEN: Yep.

14 MEMBER HOXIE: So the Waikamoi we're gonna defer
15 that too?

16 MEMBER EASON: I'm sorry I didn't hear what you...

17 CHAIR HOWDEN: We're going into executive session
18 on, on the appeal that we have before us for
19 purposes of deliberations to consult with the
20 Board's attorney.

21 DIRECTOR ENG: Gaye just call me when you guys are
22 free?

23 CHAIR HOWDEN: Oh sure.

24 DIRECROR ENG: Ok.

25 CHAIR HOWDEN: Ok.

26 (deliberations on Pulehu Farms, LLC appeal begin at
27 11:06 a.m.; the regular meeting reconvenes at 11:54
28 a.m.)

1 CHAIR HOWDEN: Ok, very, very quickly there's a
2 letter to Councilman Victorino, Water Resources
3 Committer, water, and you all have that in your
4 file, just for you to be aware of that.

5 MEMBER HOXIE: What do you want us to do with that?

6 MEMBER ROBINSON: You don't want, you don't,
7 nothing has to be done it?

8 CHAIR HOWDEN: Well, you could just read it.

9 MEMBER ROBINSON: It was a letter you wrote to
10 Mike...?

11 MR. KUSHI: Very briefly, Mr. Chair, I drafted this
12 letter and then the revisions, as noted on the
13 right hand side, was done by the mayor's office. I
14 failed to recall that any transmittal from this
15 body to council people has to go through the 9th
16 Floor so, they, they revised my initial draft and,
17 and, and it's for you to decide. But in essence it
18 addresses Council chair Victorino's questions to
19 you, which we discussed last time. And they would
20 need it by next week Tuesday as I understand.

21 MS. HAYASHIDA: And the mayor and managing director
22 is not here to sign off on the transmittal, but
23 Kalbert Young is acting so he can sign off on the
24 transmittals.

25 MEMBER LESTER: There's a spelling mistake.

26 CHAIR HOWDEN: Ok.

27 MEMBER LESTER: "...If so could appeals by thwarted
28 by revising..." Shouldn't it be...

1 MR. KUSHI: Pardon me, you know we had a discussion
2 about what does "thwarted" mean.
3 VICE CHAIR LUCK: Yeah.
4 MEMBER MYERS: No but "by"..
5 MEMBER LESTER: Twisted or taken out of context.
6 MR. KUSHI: Yeah, so you know I, I just took it
7 from the minutes, if you meaning, if you mean by
8 saying "thwarted" means avoided or minimized then
9 possibly yes.
10 VICE CHAIR LUCK: Saying "be" thwarted instead of
11 "by" thwarted.
12 MEMBER LESTER: Instead of "by" thwarted.
13 MEMBER MYERS: "By" thwarted.
14 MS. HAYASHIDA: Be, be thwarted.
15 MEMBER LESTER: Yeah, "be" thwarted instead of "by"
16 thwarted.
17 VICE CHAIR LUCK: B-E instead of B-Y.
18 MR. KUSHI: Oh, I'm not gonna revise his language.
19 (laughter)
20 CHAIR HOWDEN: Is the Board reasonably happy with
21 this letter? Any objections to the letter? Ok.
22 MEMBER ROBINSON: Now, is it all right that we're
23 making this decision without the Department head
24 here and stuff 'cause we're no longer in executive
25 session, right?
26 CHAIR HOWDEN: Oh, Gaye, phoned him to come back.
27 MS. HAYASHIDA: Oh, do I need to, I'm sorry, do I
28 need..

1 CHAIR HOWDEN: No, that's...

2 MR. KUSHI: Not, this is ok.

3 CHAIR HOWDEN: This is fine, it's not a big deal.

4 MEMBER ROBINSON: Not, not, not something that he's
5 privy to...

6 MS. HAYASHIDA: Actually this, this, yeah, because
7 this letter is coming from the Board..

8 MR. KUSHI: The Board, yeah.

9 MS. HAYASHIDA: Not the Director.

10 MEMBER ROBINSON: Not from the Director. Ok.

11 MR. KUSHI: Right.

12 MEMBER ROBINSON: Ok, good.

13 CHAIR HOWDEN: So, I put off Waikamoi Flume,
14 condition of Waikamoi Flume System and Reservoir,
15 Dual Line for the Ag Park, are we gonna have time
16 to go into anything next, other than budgetary...

17 MS. HAYASHIDA: Well, I'm..

18 CHAIR HOWDEN: For next meeting.

19 MS. HAYASHIDA: You may, you may. Because I was
20 assured by both the Department's attorney and the
21 appellant's attorney this Motion to Dismiss will be
22 very short so you may have time but we do have the
23 budget right after that. I mean we can put these
24 in and then go into the budget and the budget
25 should be an hour and a half.

26 CHAIR HOWDEN: Ok, we may have time then.

27 MS. HAYASHIDA: So you wanna defer them until
28 October?

- 1 CHAIR HOWDEN: Defer those two and...for myself,
2 other Board members have issues you'd like to bring
3 up?
- 4 VICE CHAIR LUCK: There was one that came up that
5 in the discussion today, I can't remember what it
6 was now.
- 7 MS. HAYASHIDA: Kamole?
- 8 MEMBER HOXIE: Kamole, yeah.
- 9 CHAIR HOWDEN: Yeah, the 2 things that I want to
10 look at are the Memorandum of Understanding with
11 HC&S on the, on, on access to the water coming
12 through the Wailoa Ditch, Kamole Weir. And also
13 the DBCP settlement, I think that we, it would, it
14 would help us as a Board at least to be familiar
15 with the settlement, in the terms of the
16 settlement, 'cause that does run out.
- 17 MS. HAYASHIDA: It just not, may not go on the
18 October agenda.
- 19 CHAIR HOWDEN: Yeah, we'll just see, you know, what
20 we can humanly do.
- 21 MEMBER ROBINSON: So are you adjourning?
- 22 MS. HAYASHIDA: Division Reports?
- 23 CHAIR HOWDEN: You guys ready to adjourn? We don't
24 have any division people here. No Director's
25 Report, no director.
- 26 MS. HAYASHIDA: I can call him back.
- 27 CHAIR HOWDEN: Oh, that...
- 28 MS. HAYASHIDA: No?

1 CHAIR HOWDEN: Why, why bother. John's leaving...

2 MEMBER HOXIE: I'm leaving.

3 CHAIR HOWDEN: Phyllis is leaving. That was enough
4 for today. Ok. We're adjourned.

5

6 (The meeting adjourned at 11:57 a.m.)

7

8

Prepared and submitted by:

Gaye Hayashida
Commission Support Clerk

Approved on: _____