

1 BOARD OF WATER SUPPLY

2 COUNTY OF MAUI

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REGULAR MEETING

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THURSDAY, DECEMBER 17, 2009

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16 Held at the Department of Liquor Control Conference

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

18 Maui, Hawaii, commencing at 9:03 a.m.

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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

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3 BOARD MEMBERS:

4 Michael Howden, Chair

5 Scott Luck, Vice Chair

6 Donald Gerbig

7 John Hoxie, Jr.

8 Phyllis Robinson

9 Ted Yamamura

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11 STAFF PRESENT:

12 Eric Yamashige, Deputy Director of Water Supply

13 Edward Kushi, Jr., Deputy Corporation Counsel

14 Gaye Hayashida, Commission Support Clerk

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16 OTHERS:

17 Mary Blaine Johnston, Deputy Corporation
18 Counsel

19 Matthew Pietsch, Attorney for John and Judy
20 Jacintho

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1 CHAIR HOWDEN: Ok. I'd like to call our meeting to
2 order and recognize the folks who are here; members
3 of the board, John Hoxie, Scott Luck, Don Gerbig,
4 Ted Yamamura. Our corporation, Deputy Corporation
5 Counsel Ed Kushi...

6 MR. KUSHI: Good morning.

7 CHAIR HOWDEN: And Deputy Director of the
8 Department of Water Supply Eric Yamashige and Gaye
9 Hayashida. Any announcements? Ok.

10 MS. HAYASHIDA: Oh, sorry. We forgot the court
11 reporter.

12 COURT REPORTER: Did you start?

13 MS. HAYASHIDA: Yeah. Sorry about that. I'll send
14 you the beginning part.

15 COURT REPORTER: Ok.

16 CHAIR HOWDEN: So, might we have a motion to
17 approve the minutes? Unless there are any
18 additions or deletions to the minutes?

19 MEMBER GERBIG: I move that we ah, a motion, make
20 motion to approve, accept the minutes.

21 MEMBER HOXIE: Second.

22 CHAIR HOWDEN: Ok, 2 seconds. Those in favor?

23 (a chorus of ayes)

24 CHAIR HOWDEN: Ok. No public. No testimony.
25 Let's move on to appeals.

26 (Motion to Dismiss Appeal No. 08-05 was presented.
27 Then the Board went into closed session to
28 deliberate the Motion to Dismiss.)

1 CHAIR HOWDEN: Ok, we'll move on to 7, Unfinished
2 Business, Discussion on Proposed Meeting Agenda
3 Guidelines. Mr. Gerbig.
4 MEMBER GERBIG: I don't think this is the time to
5 really get in to it, but I wanted to just kinda
6 summarize my agenda, I have really 2 changes to
7 suggest, that I don't know where they all fit in.
8 But the one agenda, one, one change was to the
9 agenda policy which as I stated in lieu of the
10 Board's legal responsibilities summarized above
11 and, that we should follow, the agenda should be
12 more or less, should be known that our policy will
13 follow the, the code. And all I said is the agenda
14 item will reflect the legal responsibility of the
15 board as stated in Article 8, Chapter 11,
16 Department of Water Supply Title 14, Chapter 14.1,
17 Appeals to the Board of Water Supply. And
18 scheduled agenda items presentations to the Board
19 must list the agenda so the description is subject
20 matter. If it's gonna be, just a better
21 description so we know what's going, my, my, this
22 is my opinion, that, that we would list agenda
23 items with the description of the subject, if the
24 item is Waikamoi Stream, Waikamoi Stream what?
25 Waikamoi Stream, just to ensure that everybody's
26 aware. I'm not saying it's just for us but because
27 outsiders come in and testify when they see
28 Waikamoi Stream. They're testifying on every thing

1 that is within 400 miles of it, you know. And it
2 hasn't, isn't pertinent to the flume so we should
3 be conscience that went it goes on the agenda that
4 so better description that we, it might slow down
5 some of this testimony that we're, it isn't,
6 doesn't pertain to that particular part of it. If
7 it's, I'm just, that's my suggestion. And we
8 should have the presenter's name or affiliate
9 organization, I guess if they, I don't know if we
10 can see that or that, that may be beyond reality, I
11 don't know, I just, I'm just saying this suggestion
12 we should have the presenter's name ahead of time
13 if we can put it on the agenda. In other words,
14 I'm only talking agenda items not testimony
15 necessarily. On the agenda items if we're gonna
16 have a presenter put the name on there then we'll
17 know who it is and what their affiliation is, in
18 that we're not walking blind.

19 CHAIR HOWDEN: Yeah, ok.

20 MEMBER GERBIG: Then the last paragraph, submitted
21 agenda items not meeting requirements of Maui
22 County Charter, Article 8, Chapter 11, Department
23 of Water Supply, Maui County Code Title 14, Chapter
24 14.1, Appeals will not be accepted unless it can be
25 shown how the proposed agenda item would aid the
26 board members in carrying out their
27 responsibilities. In other words, we shouldn't be
28 listening to a bunch of testimony that doesn't

1 pertain to us necessarily, unless it pertains to
2 our responsibilities. In other words, if we can
3 learn from it, I, you know that's basically what
4 I'm saying. If we can learn something that's gonna
5 better us in making better decisions, that, that
6 should be, and it's maybe not absolutely pertinent
7 to the specific item that the over all benefit to
8 the Board. Ok? That's, that's under, that's under
9 my proposed change in agenda policy. The other one
10 was in testimony from the public could change as,
11 top of the page I quoted what we have now as far as
12 testimony from the public. And my change would be
13 that all test, which I just based it, I put the law
14 in there that's every, oh, testimony is based on
15 the law, you know, that we have to, we're, we're
16 the authority under, under the code, Article 8,
17 Chapter 11, etcetera. And then under proposed
18 changes, "Priority should be given testimony," this
19 is all part of it, "appeals and testimony related
20 to the appeal shall take precedent over all agenda
21 items, related testimony. No agenda item testimony
22 will, non-agenda item testimony will not be
23 accepted." But I'm saying, you know, appeals come
24 number one which we all know. Policy on presenting
25 agenda testimony, "the Board shall first receive
26 testimony from those persons whose testimony forms
27 are submitted;" 3 minutes like we do now, granted
28 discretion board chairman, additional 3 minutes.

1 "Additional 3 minutes on each testimony
2 presentation may be granted for those who are
3 unable to conclude," maybe I repeated myself.
4 "Persons whose testimony forms are submitted after
5 the meeting convenes but before the testimony
6 portion ends may be allowed to testimony," which is
7 the same with what we have now. I just wanted to
8 clarify in here that it would be more towards
9 following agenda items are based on what we have
10 responsibility for under the code; that it doesn't
11 get too far out. That's all.

12 CHAIR HOWDEN: Seems reasonable and common sense.

13 MEMBER GERBIG: Yeah, I, I think maybe let the rest
14 of the board and we'll do it again briefly and the
15 question I guess I have on the adoption of the, of
16 the, and maybe Mr. Kushi could evaluate the
17 proposed, these proposed changes; are they legal or
18 how they follow the code or whatever?

19 CHAIR HOWDEN: Who knows, we might need a charter
20 amendment, you know.

21 (laughter)

22 MR. KUSHI: Hopefully, please...

23 CHAIR HOWDEN: Sorry.

24 MEMBER GERBIG: Not that we get into making charter
25 amendments.

26 CHAIR HOWDEN: Nah, I mean.

27 MEMBER GERBIG: That's all I have.

28 CHAIR HOWDEN: Ed?

1 MR. KUSHI: No, all this, these suggestions are,
2 are well taken. As you know, Mr. Chair, before the
3 agenda is posted staff sends you a draft and then
4 they also send me a copy.

5 CHAIR HOWDEN: Yeah.

6 MR. KUSHI: So, you know, your comments will be
7 taken...

8 CHAIR HOWDEN: Ok.

9 MR. KUSHI: I'll, I'll make sure, especially
10 listing the agenda items as to who's gonna testify.

11 MEMBER GERBIG: Yeah.

12 MR. KUSHI: Make it a point to say, you know, for
13 example, today's agenda we could, we could clarify
14 it more like say under Director's Report, Report by
15 the Director on the Current so-and-so. Update by
16 the Director and so the public knows that who's
17 gonna be testifying..

18 MEMBER GERBIG: Yeah, yeah, and then we got a feel
19 is it from the Water Department or did somebody, an
20 engineering firm or who is it, you know.

21 MR. KUSHI: Yeah.

22 MEMBER GERBIG: We can direct our questions a
23 little better and we will be prepared.

24 MR. KUSHI: The only comment I have on your
25 proposed, proposed guidelines on the testimony from
26 the public, I don't think we need to say appeal,
27 testimony on appeals have first priority because
28 the appeals will be taken on a separate issue.

- 1 MEMBER GERBIG: Ok.
- 2 MR. KUSHI: You know like for instance, this
3 Jacintho appeal. If, if we're having the appeal
4 hearing itself and the open testimony section of
5 the agenda, people can come and testify on that
6 appeal but...
- 7 MEMBER GERBIG: Yeah.
- 8 MR. KUSHI: But you should just take it as whatever
9 it's worth because they're not under oath.
- 10 VICE CHAIR LUCK: Right.
- 11 MR. KUSHI: And when we go into an appeal, all
12 testimony we swear 'em in and all that but they can
13 still testify on the appeal. So I think it's
14 assumed that once we take up the appeal there'd be
15 no public testimony.
- 16 MEMBER GERBIG: Ok. I just wanna, I was trying to,
17 trying to clarify...
- 18 MR. KUSHI: Right.
- 19 MEMBER GERBIG: That the appeals are, are priority.
- 20 MR. KUSHI: Right. Of course, yeah. So, I don't
21 think we need to change the..
- 22 MEMBER GERBIG: Ok.
- 23 MR. KUSHI: Testimony section.
- 24 MEMBER YAMAMURA: I think that's why appeals are a
25 separate agenda item.
- 26 MR. KUSHI: Correct, correct.
- 27 MEMBER GERBIG: Ok. Thank you, Mr. Chairman.

1 CHAIR HOWDEN: Thank you. Thank you, very good
2 suggestions. Other Business, Discussion by Board
3 Members regarding our Water Use and Development
4 Plan, how we wanna move forward with that.

5 MEMBER HOXIE: What, what are we required to do?

6 CHAIR HOWDEN: Well, Ed requires us to have a full,
7 a quorum at each of those meetings. And I assume
8 that's in respect of the county charter and things
9 like that or whatever.

10 MR. KUSHI: Quorum.

11 CHAIR HOWDEN: Quorum, yeah.

12 MEMBER HOXIE: Right.

13 CHAIR HOWDEN: Just so that it's a, a regular board
14 meeting or irregular board meeting. And then we
15 have a certain amount of time. Now we have, I
16 don't know what our time limit is moving into
17 recommendations on the Central Maui Water Use and
18 Development Plan but I think the time is running
19 and I imagine we have 60 to 90 days left more or
20 less, to, to begin to make our recommendations. I
21 think it would be wasteful for us to come, to vote
22 on each recommendation. What I would like to
23 encourage in this board is that how, what you got
24 from those meetings that you bring that in, the way
25 Don brought in the revisions to how we conduct our
26 meetings. And then we can look at that. We can
27 look at each other's stuff and try to come to some
28 level of consensus on what our generalized

1 recommendations are and at the same time basically
2 have minority reports or dissenting views so that
3 everyone on this board is heard, 'cause I think
4 that's part of what we're, you know, we're not the
5 county council. And I think that they need to know
6 what our, what our viewpoints are. But they need
7 to be reasonably well articulated and we should all
8 have a chance to look at and have that discussion
9 with each other. But we've given Lana'i, the folks
10 in Lana'i another 30 to 60 days, I guess, to review
11 theirs and then I guess that's our next one. Does
12 anybody know where we are in terms of scheduling?
13 The Upcountry report is due pretty soon.

14 MS. HAYASHIDA: Yeah. As far as I know Lana'i has
15 been transmitted to the water, Lana'i Water
16 Advisory group. I'm not sure when they're gonna
17 meet or if they have met. I'm waiting for the
18 Director to formally transmit the plan to the
19 Board. I think the Director's waiting for the
20 Water Advisory group to meet before he transmits it
21 to the Board, courtesy to the...

22 MR. KUSHI: Is that the big white binder?

23 DEPUTY DIRECTOR YAMASHIGE: Yes.

24 CHAIR HOWDEN: Oh, you mean the 700 page thing?

25 MS. HAYASHIDA: Thousand, the thousand page?

26 DEPUTY DIRECTOR YAMASHIGE: Yes.

27 CHAIR HOWDEN: Ok.

28 DEPUTY DIRECTOR YAMASHIGE: I mean, that the...

1 CHAIR HOWDEN: Please.

2 DEPUTY DIRECTOR YAMASHIGE: That Lana'i plan must
3 be about 3 inches thick. Where the, I think,
4 Central Maui one was about ½ inch. So yeah, I
5 guess you will be getting it soon and I hope you
6 read every page of it. Naw, I'm kidding. But
7 they..

8 CHAIR HOWDEN: Horrible sending it around Christmas
9 time.

10 DEPUTY DIRECTOR YAMASHIGE: Our planning staff did
11 go to Lana'i, I think it was last week Friday for
12 that meeting with the Lana'i Water Advisory
13 Committee. So I anticipate that you'll be getting
14 it shortly.

15 CHAIR HOWDEN: Well, some, something to look,
16 holiday reading evidently. I mean that's pretty
17 massive. Are we anywhere with Moloka'i or those,
18 those hearings are still in process or?

19 DEPUTY DIRECTOR YAMASHIGE: Moloka'i, I think we
20 have just started that plan, so. Upcountry is, I
21 think, in its final draft. That should be coming
22 out shortly. We recently started on Lahaina. So,
23 we're in a middle of the longer process.

24 CHAIR HOWDEN: And then Hana?

25 DEPUTY DIRECTOR YAMASHIGE: Hana one, pretty
26 simple.

27 CHAIR HOWDEN: Oh, ok.

28 DEPUTY DIRECTOR YAMASHIGE: Hopefully.

1 CHAIR HOWDEN: That'll be pretty refreshing.

2 MEMBER HOXIE: I have a question. Lana'i is a
3 private water system?

4 DEPUTY DIRECTOR YAMASHIGE: Yes, it is.

5 MEMBER HOXIE: And their binder's that big?

6 DEPUTY DIRECTOR YAMASHIGE: Yes, it is.

7 MEMBER HOXIE: Somehow, you know, where's the
8 population of Maui?
9 (laughter)

10 DEPUTY DIRECTOR YAMASHIGE: Yes.

11 MEMBER HOXIE: Doesn't make sense.

12 DEPUTY DIRECTOR YAMASHIGE: Yeah. It was the
13 process that we used to try and develop these
14 plans. The Lana'i one was done in-house. So it's,
15 what was expected to be important, you know was
16 maybe over emphasized in Lahaina (Lana'i). Yes, we
17 don't have a water system on Lana'i. Lana'i is a
18 private water system but we are required to perform
19 or to process this Water Use and Development Plan
20 for all the islands, all the islands of Maui
21 County.

22 MEMBER Gerbig: Just, just because it's in Maui
23 County?

24 DEPUTY DIRECTOR YAMASHIGE: Yeah. Yeah, go, go
25 figure.

26 CHAIR HOWDEN: I think one of the concerns, Don, at
27 least from Water Resources is that their use of
28 water may exceed what the sustainable yield is of

1 the aquifer there. So, there may be an obligation
2 on the part of the county to not necessarily
3 intervene but kinda sober folks up in terms of what
4 sustainable yield would be from the sole aquifer on
5 the island, you know short of getting a desal plant
6 there, so.

7 MEMBER YAMAMURA: I'm still a little confused. So,
8 do we need to assimilate and digest the comments
9 made during the public hearings and recommend
10 changes to the draft plan? Is that what we gonna
11 do?

12 VICE CHAIR LUCK: It's...

13 MR. KUSHI: You can.

14 VICE CHAIR LUCK: It doesn't have to be recommended
15 changes but my understanding is we, we are
16 responsible for providing a written reaction to it,
17 which would, you would think would include any
18 changes that we recommend and anything that needs
19 to be incorporated which probably came out in the
20 public hearings. Some of it did, I think. And it
21 seems to me like if we had a position we probably
22 should state our sentiment about which of the
23 candidate strategies make the most sense to us,
24 maybe in a priority order. I don't know if we can
25 get that far or not but we at least have to give
26 them a written response and that's due I believe
27 sometime in May. But it'll be great if we can get
28 it knocked out well before then.

1 CHAIR HOWDEN: Yeah, because we have other Water
2 Use and Development plans to deal with.

3 VICE CHAIR LUCK: Yeah, absolutely.

4 CHAIR HOWDEN: I mean Upcountry's gonna be pretty,
5 pretty serious one. There are a number of
6 disparate points of view within the Board itself
7 and that's why we really liked to give voice to
8 everyone on the Board so that you really feel free
9 to express your mana'o. You know, what you see,
10 what you see is important. I don't, I don't think
11 we're gonna have, in some, in some instances I'm
12 sure we can agree. In other instances I'd really
13 like the different voices to be heard. I think
14 that's imperative.

15 MEMBER YAMAMURA: Yeah, the process just seems to
16 be a little awkward. One would think you would
17 have the public hearings prior to writing up your,
18 your draft but...

19 CHAIR HOWDEN: Well, you, you, yeah, you have all
20 those meetings with the Water Use and Development
21 Advisory committee have been public and everyone's
22 welcome to go to those. They do get a little
23 redundant, repetitive and occasionally boring. But
24 it's been interesting to, to observe that process.
25 And also just to see like with the Upcountry plan
26 for instance, you know the mana'o of the different
27 people who are attending that. So, that you really
28 can see other people's points of view and you're

1 not just, you know on a crusade to see what you
2 want to happen.

3 VICE CHAIR LUCK: Like I'll have a, I have a
4 question now.

5 CHAIR HOWDEN: Please.

6 VICE CHAIR LUCK: I have a feeling that you could
7 probably answer better than anyone here. I was a
8 little bit confused at both meeting but especially
9 the first one where my understanding there had been
10 12 or 13 public meetings already.

11 CHAIR HOWDEN: Yes.

12 VICE CHAIR LUCK: And the kuleana interest that,
13 that showed up in force or at least fairly well,
14 suggested that they hadn't had an opportunity yet
15 to be heard or to cooperate with the, the board.
16 And I was confused by that, that there had been so
17 many public meetings before then what happened
18 during that process where they were left out or
19 they, they did not attend?

20 CHAIR HOWDEN: Well, there was subtle differences
21 in the different drafts that you see and for
22 instance there was one place in here where Carl
23 before, yeah, page 23, Stream Restoration Measures,
24 you know Carl talks in very generalized terms about
25 this, but in a earlier draft, the March 2nd draft,
26 he states that the law provides that priority must
27 be given to in-stream and kuleana public trust
28 issues. So there are little subtle, I don't

1 pretend that I read everything this carefully but I
2 just I just happen to, 'cause I had an earlier
3 draft all marked up. You know that there are,
4 there are changes in that and I'm sure that for a
5 large part of the Native Hawaiian community, at
6 least those involved in this kind of process which
7 of course is not hardly anyone, that people don't
8 really feel heard or honored. I think that's what
9 Uncle Charlie was doing yesterday with the Water
10 Commission. But there is a certain frustration
11 that you're not heard, that your rights are
12 superior to those of, of other parties, other, what
13 we now call competing parties.

14 VICE CHAIR LUCK: But was it, was it that they just
15 didn't go to those previous meetings at all?

16 CHAIR HOWDEN: Well, you can't blame them but no, I
17 think Jocelyn Costa and Johanna...

18 MEMBER HOXIE: Kamaunu.

19 CHAIR HOWDEN: Kamaunu, they generally didn't show
20 up to those.

21 VICE CHAIR LUCK: I see, ok.

22 CHAIR HOWDEN: John?

23 MEMBER HOXIE: Well I, you know, I, I, after
24 hearing those, going to the 2 hearings and, and
25 frankly I get, you know, I, I, I thought that the
26 second hearing would be something new, there was
27 something new but it was again the same people
28 again.

1 CHAIR HOWDEN: Uh huh.

2 MEMBER HOXIE: And I, and I kinda put a, made a
3 summary of some of my thoughts and, and I think
4 those thoughts are gonna be like boiler plate.
5 They're probably gonna be across all plans. So, I
6 think that we should wait until we're done and then
7 put something together because we talk about
8 kuleana rights or whatever in the Central plan; I'm
9 sure they're gonna apply to the...

10 VICE CHAIR LUCK: Right.

11 MEMBER HOXIE: Hana plan and everything else too,
12 so. Anyway, the other, the other thing that I was,
13 I told Carl, the priorities of water use, I wasn't
14 too sure, I thought that needed to be expanded a
15 little bit. And I think maybe as we go through
16 this...

17 CHAIR HOWDEN: Ok.

18 MEMBER HOXIE: I hope this page is not gonna be the
19 same page in all the plans but I have a feeling it
20 will be.

21 CHAIR HOWDEN: Ha ha ha.

22 MEMBER HOXIE: So.

23 CHAIR HOWDEN: Yeah.

24 MEMBER YAMAMURA: If we make changes do we need to
25 go back out to public hearing again?

26 CHAIR HOWDEN: No, we're simply making
27 recommendations.

28 MEMBER YAMAMURA: Oh.

1 MEMBER HOXIE: Yeah.

2 CHAIR HOWDEN: It's the council that will...

3 MEMBER HOXIE: Right.

4 CHAIR HOWDEN: Make the final decision.

5 MEMBER HOXIE: Right.

6 CHAIR HOWDEN: Don?

7 MEMBER GERBIG: Like you say, it's just that a lot
8 of there water issues aren't settled with the Water
9 Commission and all of that. The only thing that we
10 can say something to that affect, in those areas
11 where that's, we talk about kuleana water or
12 whatever that, we should just point that out to the
13 council that some of these things are still open,
14 open ended. I guess that's...

15 VICE CHAIR LUCK: Yeah, that...

16 MEMBER GERBIG: How we, how we state it is what I
17 don't know but that...

18 MEMBER HOXIE: Right.

19 MEMBER GERBIG: They're open ended but they should
20 be considered you know. Maybe it needs more
21 attention, I don't know.

22 VICE CHAIR LUCK: Yeah, it sounded as if there had
23 been an intention all along to include a section or
24 at least something on that they hired outside
25 consultants and it's completely absent from this
26 document right now.

27 CHAIR HOWDEN: Well, there, there are a lot of
28 other issues that are meant to be addressed in the

1 Water Use and Development Plan, which is why the
2 Lana'i Plan is so voluminous that I believe Ellen
3 Kraftsow tried to address those issues which she
4 felt the plan is under mandate to do. You just
5 wonder how much, how much you can address in, in
6 these kind of draft documents and where you're
7 gonna end up with any, and it's like going to Las
8 Vegas, going up to the 9th floor, or not 9th floor,
9 8th floor, excuse me. You don't know where you'll
10 end up. And again there're many, many, many
11 different points of view there. So, I think what
12 we need to do is like just share our
13 recommendations in a, in a very lucid fashion with
14 the council so that they'll have the least problems
15 with them.

16 MEMBER GERBIG: Our recommendations, don't they
17 have to be based on this testimony that we
18 received?

19 VICE CHAIR LUCK: No.

20 CHAIR HOWDEN: No.

21 MEMBER HOXIE: Not really.

22 MEMBER GERBIG: They don't?

23 CHAIR HOWDEN: No, no. Am I right...?

24 MR. KUSHI: Well, I mean you should take into
25 account the testimony but you're independent board.
26 Mr. Chair, if I would suggest there's couple
27 things; one, we, we should get a firm date that, ah
28 deadline and I'm not sure what that is; 180 days

1 from when, so staff can clarify that would, then we
2 can then take into account how many more meetings
3 you have to meet that deadline. Secondly, when is
4 the transcript gonna be ready. I think all of you
5 should have copies of that.

6 VICE CHAIR LUCK: Right.

7 MEMBER HOXIE: When the what?

8 MR. KUSHI: The transcripts of the 2 meetings. So
9 you can refer to testimony. Then maybe when you
10 get down to really discussing this item and your
11 recommendations and any proposed report, get Ellen
12 and Carl at this meeting and you can do a bi-plan
13 with them. Thirdly, I mean maybe fourth of
14 fifthly, this whole thing may go, blow up in the
15 sky because the Water Commission is gonna decide
16 this Na Wai Eha case; probably before your
17 deadline, these stream cases.

18 VICE CHAIR LUCK: Right.

19 MR. KUSHI: That may have a, make this report null
20 and void. So you know, these things may all come
21 into play, unfortunately, maybe by May.

22 CHAIR HOWDEN: Well the, the Na Wai Eha decision is
23 due pretty soon, yeah?

24 MR. KUSHI: Well, they've had the hearings and all
25 that.

26 CHAIR HOWDEN: I mean, the word was January that we
27 might see a...

28 MR. KUSHI: If they finish the East Maui case.

- 1 CHAIR HOWDEN: Ahh, yeah if. Ok.
- 2 VICE CHAIR LUCK: Would that...
- 3 CHAIR HOWDEN: Jeff hasn't text us or anything to
4 let us know?
- 5 VICE CHAIR LUCK: But that could just be part of
6 the, part of our response, right, was you need to
7 take this into account throughout the document?
- 8 MR. KUSHI: Right, right.
- 9 CHAIR HOWDEN: Yeah, subject to...
- 10 VICE CHAIR LUCK: Yeah.
- 11 CHAIR HOWDEN: And, and that may be appealed by
12 whatever, I imagine.
- 13 MR. KUSHI: Yeah. I mean, it's a lifetime job on
14 that.
- 15 VICE CHAIR LUCK: So, transcripts should be
16 available before the next meeting?
- 17 MS. HAYASHIDA: I will try to see if I can get it
18 out the, before the end of this month to the board
19 members.
- 20 VICE CHAIR LUCK: Oh, great.
- 21 MS. HAYASHIDA: I think it should be done by now.
- 22 CHAIR HOWDEN: And Don, did you have a chance to
23 finish Miike's book, Water and the Law in Hawaii?
- 24 MEMBER GERBIG: Yeah, do I have it?
- 25 CHAIR HOWDEN: Oh, I, you had a chance to finish it
26 though?
- 27 MEMBER GERBIG: The book?
- 28 CHAIR HOWDEN: The book, yeah.

1 MEMBER GERBIG: It's my book.
2 CHAIR HOWDEN: Yeah. Yeah. Dr. Miike's...
3 MEMBER GERBIG: Some of it I've read, yeah. Not
4 all of it.
5 CHAIR HOWDEN: Ok. I mean, I was just wondering
6 because I, I think that that would be very useful
7 book for board members to look at. That you would
8 become more conversant with the existing law in
9 Hawaii.
10 VICE CHAIR LUCK: Does it go back...
11 CHAIR HOWDEN: I mean if you can understand Dr.
12 Miike, I mean that is something, yeah. John, have
13 you read that? Have you looked at that at all?
14 MEMBER HOXIE: No. Which book is it?
15 CHAIR HOWDEN: It's called Water...
16 MEMBER GERBIG: It's by Miike.
17 CHAIR HOWDEN: Water and the Law in Hawaii...
18 MEMBER GERBIG: The commission guy.
19 CHAIR HOWDEN: Yeah.
20 MEMBER GERBIG: Miike wrote it.
21 CHAIR HOWDEN: And he's the hearings officer for Na
22 Wai Eha. He's been director of the Department of
23 Health, you know, and on the Water Commission
24 forever. And, but not an easy read. You won't see
25 it on Oprah. Ok. Shall we move on? Ok. Oh,
26 Receipt of agenda items.
27 VICE CHAIR LUCK: I'd like to put this back on for
28 the next meeting.

1 CHAIR HOWDEN: Yeah, we wanna carry over Don's as
2 well, the proposed meeting agenda guidelines.

3 MEMBER GERBIG: And with, with Mr. Kushi's input.

4 CHAIR HOWDEN: Oh, of course.

5 VICE CHAIR LUCK: Where is our appeals agenda
6 looking like?

7 MS. HAYASHIDA: We keep getting more. Two more
8 were filed before I, I went on vacation. I'm
9 sorry, I didn't bring the updated copies but yeah,
10 so, right now I'm giving you guys a break. There's
11 no appeal in January, in anticipation of this
12 motion, the Jacintho case going forward.

13 VICE CHAIR LUCK: Right.

14 MS. HAYASHIDA: But because there's, it's not going
15 forward, you guys got a break in January. We can
16 probably concentrate a lot more on the Water Use
17 and Development Plan. And then February we have an
18 appeal coming and I think it's the Pauwela Farms
19 case.

20 VICE CHAIR LUCK: With an attorney representation,
21 I take it?

22 MS. HAYASHIDA: Yes. Well actually I think Pauwela
23 Farms is being represented by, not an attorney but
24 by Mr. Chris Hart. But we are having an attorney
25 represent us.

26 VICE CHAIR LUCK: Ok.

1 CHAIR HOWDEN: Ok, anything else? You know, we,
2 you can always add agenda items and just phone them
3 into Gaye and then...

4 MS. HAYASHIDA: Or email me.

5 CHAIR HOWDEN: She runs them by me and then...

6 VICE CHAIR LUCK: Yeah, I'm wondering on the, on
7 the development plan if we should be more specific
8 about what we wanna accomplish in the next meeting,
9 if it's just the general discussion part and then
10 we're gonna put on the docket for the next one the
11 draft, do our first draft of the comments or...

12 CHAIR HOWDEN: Yeah, I, I, it'd be great if, if
13 when we see that we have a chance to review the
14 transcripts and go back into the, you know the
15 feeling of the meeting and then write from that.
16 I, I think that we could initiate discussion in
17 January. It'd be nice to have written
18 recommendations by the February meeting, from my
19 point of view. I mean, it, it seems a lot to ask
20 that we don't have the transcripts and then to
21 prepare for the January...

22 VICE CHAIR LUCK: Yeah, I know, I agree.

23 CHAIR HOWDEN: Have those really solid for, but,
24 but hopefully they would be reviewed by all the
25 board members and, and that we would begin our
26 drafting of our comments for the February meeting.
27 And then have a thorough discussion in, in
28 February, even with the appeal.

1 VICE CHAIR LUCK: And then by March perhaps we
2 would have our final.

3 CHAIR HOWDEN: Oh yeah. We should, I would hope
4 that we can have that by March. Because we'll
5 already be in involved in Lana'i...

6 VICE CHAIR LUCK: Right.

7 CHAIR HOWDEN: Which is really something. And,
8 have you read that, Eric? All 732 pages of that?

9 DEPUTY DIRECTOR YAMASHIGE: No, no.

10 CHAIR HOWDEN: Ok, and, and we'll have Upcountry
11 and Upcountry's gonna be very contentious as far as
12 I can see.

13 MEMBER HOXIE: And those aren't scheduled yet?

14 CHAIR HOWDEN: We haven't received the official
15 documents yet but let's try to get this out of the
16 way.

17 VICE CHAIR LUCK: Yeah.

18 CHAIR HOWDEN: In a, 'cause if it is, not specific
19 manner but a timely manner, excuse me. Ok. Any
20 communications, Gaye?

21 MS. HAYASHIDA: No.

22 CHAIR HOWDEN: Ok. So, we'll turn it over to
23 Deputy Director, Eric, Waikamoi Flumes.

24 DEPUTY DIRECTOR YAMASHIGE: First of all, I'd like
25 to apologize for Director Eng not being here. He
26 is out in Haiku for the East Maui hearing by the
27 Water Commission. If you all saw the newspaper
28 this morning, we got a brief overview of what is

1 going on. So, supposedly they'll, they'll render a
2 decision today. The first item is the current
3 condition of the Waikamoi Flume. These photographs
4 that you have before you were taken by a consultant
5 that was doing some work for us out on the flume.
6 It was in anticipation of the installation of a
7 safety line. That project is currently on hold and
8 we may not be following through with that. We are
9 moving forward on the replacement or restoration of
10 the flume.

11 VICE CHAIR LUCK: What's the, what's the rationale
12 on the, holding off on the safety line?

13 DEPUTY DIRECTOR YAMASHIGE: It was determined that
14 it wasn't as...

15 VICE CHAIR LUCK: Safe?

16 DEPUTY DIRECTOR YAMASHIGE: Dangerous as they
17 initially thought. There are some temporary safety
18 measures on there. On the more dangerous sections
19 there are safety lines strung although not to the
20 degree that the consultant was recommending. You
21 can take a look at some of these pictures. I, I
22 personally have not been on the flume.

23 VICE CHAIR LUCK: You've never been there?

24 DEPUTY DIRECTOR YAMASHIGE: No, I have not.

25 VICE CHAIR LUCK: Wow.

26 CHAIR HOWDEN: His angels are looking after him.

27 MEMBER YAMAMURA: Maybe we could do zip lines and
28 make money on it.

1 VICE CHAIR LUCK: I know. That's a good idea.
2 MEMBER YAMAMURA: Yeah.
3 CHAIR HOWDEN: Too scary man.
4 DEPUTY DIRECTOR YAMASHIGE: That was suggested,
5 believe it or not.
6 CHAIR HOWDEN: Oh, good.
7 DEPUTY DIRECTOR YAMASHIGE: Ok, so, can take a look
8 at those pictures when you have more time.
9 CHAIR HOWDEN: So, the, the work that's gonna take
10 place, is it just rebuilding this or is this new
11 materials and different design or...?
12 DEPUTY DIRECTOR YAMASHIGE: That, we are securing
13 the services of a consultant to look at what is
14 available for us to do.
15 CHAIR HOWDEN: Yeah, I, I, I think that, as I said
16 in testimony yesterday, the water from the Waikamoi
17 system is the most valuable water on Maui. And if
18 we can better capture the water that provides for
19 the Upper Kula system and God knows how much we
20 actually get of that 'cause it's any storm event it
21 seems to wash down the hill. But if we had one
22 perhaps out metal of some kind or something that
23 was really, I mean I think it'd be a, a big capital
24 expense but it's a tremendous capital expense for
25 the Department to push water, pump water up to
26 Kamole Weir and like that so. When will we have
27 those recommendations?

1 DEPUTY DIRECTOR YAMASHIGE: I think our consultant
2 selection for that project is going on right now.
3 So, it won't be awhile before you get their
4 recommendations toward the design proposals. I
5 will note though that the Department does regularly
6 go out to the flume to make repairs because we
7 recognize that the water in the upper system is
8 important. After this recent rainfall event our
9 Kahakapao reservoirs are full. We actually, I
10 think a couple days ago I checked and we were about
11 101 million gallons and that's because we have 100
12 million gallons in Kahakapao and the ability for 30
13 million at Waikamoi that feeds the Kahakapao
14 reservoirs. So we actually have...

15 MEMBER GERBIG: Waiakamoi is what, average flow 30
16 million, 30 mgd?

17 DEPUTY DIRECTOR YAMASHIGE: No, there's no, I don't
18 know what the average is.

19 MEMBER HOXIE: Not that high.

20 MEMBER GERBIG: Huh?

21 MEMBER HOXIE: Not that high.

22 MEMBER GERBIG: Not that high.

23 CHAIR HOWDEN: That'll be wonderful if it were that
24 high.

25 MEMBER GERBIG: It's not on, it's not on, looking
26 at this list it's not on here, I mean it's a, who
27 keeps track of that?

1 DEPUTY DIRECTOR YAMASHIGE: We do. We, we don't
2 actually have a flow meter or anything in the
3 streams. It's a number of streams that feed the
4 Waikamoi flume. But we do keep track of how much
5 water gets to our, to the reservoirs.

6 MEMBER GERBIG: At the reservoirs.

7 DEPUTY DIRECTOR YAMASHIGE: At the reservoirs.

8 MEMBER GERBIG: Which is all, after that mixed with
9 anything else or only Waikamoi?

10 DEPUTY DIRECTOR YAMASHIGE: Waikamoi, that area in
11 Waikamoi, yes.

12 MEMBER GERBIG: That area.

13 CHAIR HOWDEN: When you look on the maps,
14 especially the Water Commission's maps it shows
15 that all the gauging stations are not operational
16 at this point.

17 MEMBER GERBIG: Oh, ok.

18 CHAIR HOWDEN: So, and, and then Renee Gansky from,
19 what is that?

20 MEMBER HOXIE: NRCS

21 CHAIR HOWDEN: NRCS, when they were up there
22 looking at a reservoir site they just said
23 tremendous amount of, of water just leaking from
24 the flume itself, besides what's not getting
25 captured. So, I, I, I think it would be ideal for
26 us to see the Department move in a way where you
27 had a more permanent and more efficient flume
28 system. It would, I think eventually save the

1 Department considerable amounts of money and
2 guarantee perhaps even the Dual Line can start
3 moving. I mean, that's, that's a disaster right
4 now. I mean, here's this new line that will
5 probably if, if, if we don't create greater system
6 efficiencies that, that line will probably taken
7 over by the county and be used as the Kula line.
8 But there's federal money involved and considerable
9 amounts of federal money that's millions and
10 millions of dollars over budget. It's 2 or 3 times
11 of our budget. And there's no water moving through
12 it. So.

13 MEMBER HOXIE: I have some comments..

14 CHAIR HOWDEN: John, please.

15 MEMBER HOXIE: On this Waikamoi system, it's a very
16 specialized system and I don't know what you're
17 doing with regard to consultants but they should be
18 people that are used to working systems like this.
19 First people that come to my mind are East Maui
20 Irrigation people and, but there should people like
21 that that are consulted because this is not a, this
22 is not a, a normal system. I think that the
23 system, how it's managed is also very important.
24 It doesn't rain between 8 and 4 Monday through
25 Friday. It rains any time and when it's raining
26 that's when you gotta be in the system. You have
27 to be fixing leaks, you need to be cleaning intakes
28 and, and so the system management is a real big

1 component of how this system is to be maximized. I
2 also think that the reservoirs and the reservoir
3 condition, you know the last time I was up there
4 the reservoirs were full of mud and all kinds
5 things. I don't know whether that condition still
6 exists but it's not only the flume but it's the
7 reservoir system; it's how the system is managed
8 and who you select to do the work. I think those
9 are all very critical issues and I think you
10 mentioned that you do measure the water coming in.
11 And I think that should be somewhere where it's
12 looked at all the time so we know what's, what's
13 happening out there. Anyway those are just some
14 comments I make.

15 CHAIR HOWDEN: Yeah, I, I agree with you, John,
16 especially on the Waikamoi reservoirs. I mean
17 those have so much organic matter in them but, and,
18 and there's no lining. There's no effective lining
19 and so those are used as transient reservoirs now
20 to supply Kahakapu, ah Kahakapao and so..

21 MEMBER HOXIE: Maybe they should be lined.

22 CHAIR HOWDEN: I, I would think it'd be worth the
23 effort if you can get, get them cleaned out
24 properly and then re-lined. I think that would be
25 wonderful. It adds 30 million in storage to our,
26 our system without excessive expense. Will the
27 consultants be looking at the, those 2 reservoirs,
28 the Waikamoi?

1 DEPUTY DIRECTOR YAMASHIGE: I think their primary
2 function would be to look at replacing the flume
3 but can I mention...

4 CHAIR HOWDEN: Of course.

5 DEPUTY DIRECTOR YAMASHIGE: We, we are consulting
6 with EMI constantly, in fact that's why we're
7 looking at them making some repairs on the flume.
8 And whenever it rains we do go out and check if
9 there's any leaks and then try to address them
10 because if the water doesn't get to Kahakapao we do
11 have to pump. And you've noticed in the paper
12 we've had to change disinfection because when we
13 pump up we need to get off chloramines and get back
14 on chlorine. Otherwise we cannot pump up into that
15 system. We are currently on chloramines but we
16 anticipate maybe sometime in late January or
17 February we'll be converting back to chlorine
18 because we will be replacing the roof on the
19 Omaopio Tank. And unless we convert to chlorine we
20 won't have the backup system of pumping up to the
21 system from the lower. That, that's coming up
22 shortly.

23 MEMBER GERBIG: Let me ask you, why are you
24 converting back to chlorine? What are you using
25 now?

26 DEPUTY DIRECTOR YAMASHIGE: Chloramines. It's a...

27 MEMBER GERBIG: Chloramine, ok.

28 DEPUTY DIRECTOR YAMASHIGE: Chlorine and ammonia.

1 MEMBER GERBIG: What's the advantage over one over
2 the other?

3 DEPUTY DIRECTOR YAMASHIGE: The disinfection by-
4 products...

5 MEMBER GERBIG: Oh, the chloramine has more
6 disinfection by-products?

7 DEPUTY DIRECTOR YAMASHIGE: No, the chlorine has
8 more.

9 MEMBER GERBIG: Chlorine does, oh.

10 DEPUTY DIRECTOR YAMASHIGE: There's a lot of
11 organics in the upper system and it gets through
12 the filters and that creates those disinfection by-
13 products that are regulated. Chloramines, the
14 disinfection lasts longer and you don't get those
15 by-products.

16 MEMBER GERBIG: You don't?

17 DEPUTY DIRECTOR YAMASHIGE: You don't. but we're
18 working on that organic carbon reduction program at
19 Piiholo right now. We'll eventually get
20 (inaudible). Ok, with respect to the Waiale
21 Treatment Plant, the final EIS, environmental
22 impact statement, should be coming out shortly. It
23 was prepared by A&B, but of course it's really
24 dependent on what happens at Na Wai Eha. Not sure
25 if we'll be moving anywhere even after the EIS
26 comes out.

27 MEMBER HOXIE: Where, where is the proposed
28 location?

1 DEPUTY DIRECTOR YAMASHIGE: You know where Valle
2 Pond is?
3 MEMBER HOXIE: The what?
4 DEPUTY DIRECTOR YAMASHIGE: Valle Pond.
5 MR. KUSHI: By the prison.
6 MEMBER HOXIE: So the Waiale Reservoir is by the
7 prison?
8 DEPUTY DIRECTOR YAMASHIGE: Yes.
9 MEMBER HOXIE: The reservoir there.
10 DEPUTY DIRECTOR YAMASHIGE: Yes. It's...
11 MS. HAYASHIDA: Can you, can you spell that for the
12 court reporter, what pond?
13 DEPUTY DIRECTOR YAMASHIGE: Oh man...
14 MR. KUSHI: V-A-L-L-E, V-A-L-L-E.
15 MS. HAYASHIDA: V-A-L-L-E? Oh, Valle.
16 MR. KUSHI: Valle.
17 MS. HAYASHIDA: Oh, Valle.
18 DEPUTY DIRECTOR YAMASHIGE: That's what it was
19 called before.
20 MR. KUSHI: Yeah, Valle, Valle.
21 DEPUTY DIRECTOR YAMASHIGE: It's called Waiale
22 Reservoir. I'm sorry.
23 CHAIR HOWDEN: Could we have some sense of what the
24 proposed agreement is with HC&S?
25 DEPUTY DIRECTOR YAMASHIGE: Yeah, there was, I
26 haven't, there is no agreement because nothing was
27 ever drafted.
28 CHAIR HOWDEN: Hmmm.

1 DEPUTY DIRECTOR YAMASHIGE: But it was, I think the
2 90, 9 million gallon capacity treatment plant...

3 CHAIR HOWDEN: Yeah.

4 DEPUTY DIRECTOR YAMASHIGE: And we're looking at
5 splitting the costs. The anticipated costs was 30
6 million and we were gonna come up with 15.

7 CHAIR HOWDEN: So, the, HC&S would have rights to
8 half the water and the county half the water and
9 it'd be a 50/50 split on everything then.

10 DEPUTY DIRECTOR YAMASHIGE: That was the proposal.

11 CHAIR HOWDEN: Ok. Any questions? Hi Phyllis.

12 (Member Robinson arrives)

13 MEMBER ROBINSON: Hi.

14 CHAIR HOWDEN: Nice to see you. I hope you're
15 feeling better.

16 MEMBER ROBINSON: Yeah, the vog is definitely...

17 CHAIR HOWDEN: Yeah, pretty, really scary.

18 MEMBER HOXIE: Yeah, it's really thick.

19 CHAIR HOWDEN: So I guess we have no Division
20 Reports to deal with today. And if there's nothing
21 else I would call for adjournment.

22

23

24 (The meeting adjourned at 10:43 a.m.)

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26

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28

Prepared and submitted by:

Gaye Hayashida
Commission Support Clerk

Approved on: _____