

BOARD OF WATER SUPPLY
COUNTY OF MAUI

REGULAR MEETING
THURSDAY, JULY 22, 2010

Held at the Department of Liquor Control
Conference Room, David Trask Building, Room 105,
Wailuku, Maui, Hawaii, commencing at 09:07 a.m.

Transcribed from the audio recording by Gaye
Hayashida, Commission Support Clerk, Department
of Water Supply, County of Maui.

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

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3 BOARD MEMBERS:

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5 Michael Howden, Chair

6 Kevin Boteilho

7 Patricia Eason

8 Donald Gerbig

9 John Hoxie, Jr.

10 Kui Lester

11 Kelii Myers

12 Ted Yamamura

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15 STAFF PRESENT:

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17 Jeffrey K. Eng, Director

18 Edward Kushi, Jr, Deputy Corporation

19 Counsel

20 Ellen Kraftsow, Water Resources &

21 Planning Program Manager

22 Gaye Hayashida, Commission Support Clerk

23

24

1 OTHERS:

2 Madelyn D'Enbeau, Deputy Corporation

3 Counsel

4 Isaac Hall, Attorney for Keauhou O

5 Honua'ula

6 Dana Naone Hall, Keauhou O Honua'ula

7 Dick Mayer

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1 CHAIR HOWDEN: Ok, I'd like to call the
2 meeting to order; our Thursday, July 22nd
3 Board of Water Supply meeting, and
4 acknowledge the presence of board members
5 John Hoxie; Kevin Boteilho; Don Gerbig; Ted
6 Yamamura; and myself, Michael Howden; our
7 director, Department of Water Supply,
8 Jeffrey Eng; and our Deputy Corporation
9 Counsel, Ed Kushi; Gaye Hayashida, our board
10 secretary; and other folks from Corp Counsel
11 office; the Halls; and Dick Mayer. Ok. Any
12 announcements? Hi, Kui! And Kui Lester.
13 Well timed. Ok. Have members had a chance
14 to look at the board minutes from last
15 month's meeting? Any corrections? Might we
16 have a motion to approve?

17 MEMBER HOXIE: I move.

18 CHAIR HOWDEN: Second?

19 MEMBER GERBIG: I second.

20 CHAIR HOWDEN: Ok, those in favor please
21 indicate?

22 (several ayes)

23 CHAIR HOWDEN: Aye. Ok, thank you. Ah,
24 Testimony from the Public. With whom do we

1 begin?

2 MS. HAYASHIDA: The board has written
3 testimony from Mr. Mayer.

4 CHAIR HOWDEN: Ah yeah, Mr. Mayer is
5 present as well and, ok. Dick, would you
6 like to come and...?

7 MR. MAYER: Good morning, yeah, board
8 members. My name is Dick Mayer. You have
9 an item on your agenda today dealing with
10 drought and the water situation Upcountry
11 and although this is not directly per se
12 the, the drought situation as it present, it
13 does extend to all the issues Upcountry with
14 water. And I'd like to read into the record
15 the statement you have in front of you with
16 one, I'll make one word change on there.
17 There have been numerous stories being
18 passed around our community regarding the
19 potential acceptance by the Maui Water
20 Department of the recently drilled Piiholo
21 South water well located just above St.
22 Joseph's Church in Makawao. I wish to call
23 attention to the following issues that
24 should be considered by the Board of Water

1 Supply as well as by the Water Department.
2 Number 1. Water allocation must legally
3 follow the provisions contained within the
4 Upcountry Community Plan which clearly
5 designates agriculture and the Hawaiian
6 Homelands as the 2 highest priorities when
7 new sources of water are added to the
8 Upcountry system; and does not specify in
9 which order. They're equally valid
10 priorities. Number 2. Thereafter, the
11 allocation of water meters should follow the
12 long established water meter list maintained
13 by the Water Department. Number 3. The new
14 Piiholo South water well will be very
15 expensive for the Maui County Water
16 Department to operate. First, the water
17 must be pumped up from sea level to the
18 wellhead elevation at approximately 1700
19 feet. Thereafter, the water must be pumped
20 up an additional 2300 feet to the Upper Kula
21 waterline. Pumping will cost the Water
22 Department approximately \$1.50 to lift 1,000
23 gallons up 1,000 feet; that number I got
24 from Carl Freedman, the department's

1 consultant; for a total cost of about \$6.00
2 to lift the 1,000 gallons delivered to the
3 4,000 foot elevation in Upper Kula. There's
4 a project that will be going to the County
5 Council Land Use Committee for fast track
6 approval on Wednesday, August 4th. That date
7 may be changed but that was the date being
8 circulated in the community and the story
9 that I heard. This Kula Ridge project is
10 attempting to utilize water from that
11 Piiholo South water well. It is hoping to
12 have the Water Department pump the water
13 from the Piiholo South water well up to the
14 Upper Kula waterline and then to Kula
15 Ridge's water tank at the top of its project
16 at approximately 4,000 feet elevation. This
17 would be extremely expensive and it would
18 mean that the new source of water would be
19 utilized for homes which are not on the
20 water meter list nor would it satisfy the
21 requirements of the Upcountry Community
22 Plan. Number 5. A further and expensive
23 complication is that this water tank would
24 also be utilized to supply water to the same

1 developer's adjacent large Kula Ridge Mauka,
2 Mauka agricultural subdivision project;
3 that's a 278 acre ag subdivision. In other
4 words, our County Water Department would be
5 asked to pump water from sea level to 4,000
6 feet at an approximate pumping cost of \$6
7 and then it would be selling it at ag water
8 rates, and most of the water in that tank
9 would be going probably to the ag
10 subdivision not for the housing. Finally, I
11 would like to ask the Board of Water and the
12 department to consider the long term
13 viability and reliability of the Piiholo
14 South and I wanna add the word "South" here;
15 Piiholo South well itself, given its close
16 proximity to both Pookela and the Maui Land
17 and Pine Piiholo wells. Also, will Piiholo
18 South negatively affect these other 2 wells?
19 You folks gonna be looking at some
20 restrictions or possible things with, with
21 dealing with drought and probably it will
22 happen year after year after year, consider
23 that even though you may have this water
24 source that's being tempted in front of you,

1 you may be seduced into saying let's, let's
2 utilize that water well. I would urge you
3 to look at the finances of the department
4 and the cost of pumping that water up that
5 considerable elevation. Thank you.

6 CHAIR HOWDEN: Any questions, board
7 members? Jeff, would you like to respond at
8 all?

9 DIRECTOR ENG: Mr. Mayer, right now we
10 don't have, actually, it's next week when we
11 will be meeting with the developer. We
12 haven't met for several months so it'll be
13 kinda interesting to see what he proposes.
14 Just wanna let you know our, not just
15 myself, but my staff, as we review this we
16 are gonna make sure that there are gonna be
17 true benefits to the community. So, we
18 don't accept anything carte blanche.

19 MR. MAYER: Ok.

20 DIRECTOR ENG: I'm sure he will be
21 complaining just on or after our meeting
22 next week but that's fine.

23 MR. MAYER: Ok.

24 DIRECTOR ENG: May I share this with him,

1 so he understands.

2 MR. MAYER: Excuse me?

3 DIRECTOR ENG: May I share your memo with
4 the developer?

5 MR. MAYER: Of course. It's public record.

6 DIRECTOR ENG: Ok, I'd like him to..

7 MR. MAYER: It's public, it's public record
8 now...

9 DIRECTOR ENG: Yeah, I'd like him to
10 understand the sentiments of the community
11 also, ok.

12 MR. MEYER: Yeah, and I mean, I'm not, I'm
13 not speaking on behalf of the Kula Community
14 Association which I'm a board member but
15 it's something has come up and, and they
16 positions and at a future time they may
17 wanna take a formal position on the well
18 and, and they have taken a position on the
19 project itself but I'm making this statement
20 on my own.

21 DIRECTOR ENG: Ok, thank you.

22 CHAIR HOWDEN: Ed?

23 MR. KUSHI: Yeah, Mr. Chair, if I may; Mr.
24 Mayer, your points one and two, just for my

1 information and clarification, you're more
2 familiar with the Upcountry Community Plan;
3 per your point number one is to designate
4 agriculture and Hawaiian Homes as its two
5 highest priorities but then number two says,
6 for new sources, and number two says
7 thereafter the allocation should follow the
8 so-called Priority List. So, is it the
9 position of the Community Plan as it meshes
10 with the department's water system, is that
11 if we have a new source then, and if an ag
12 project needs water or Hawaiian Homes need,
13 need additional water then the new source
14 would go to these two projects before even
15 hitting the Priority List?

16 MR. MAYER: That would be my, I was vice
17 chair of the Upcountry Community Plan
18 Advisory Committee and we put that in as our
19 provisions and it became law. Subsequently
20 or about the same time actually, the water
21 meter list was being established, in the mid
22 90's and it went on and the two never,
23 nobody ever put the two literally together
24 but I think that law, especially a general

1 plan ordinance which is now law by county
2 ordinance, should supersede a departmental
3 meter list of this kind but that would be,
4 obviously an interpretation that the Corp
5 Counsel would have to give to the board and
6 to the department. But that would, my
7 impression that, that law would, as basic as
8 this, as that, which says that all other
9 rules and regulations of all departments
10 have to follow the General Plan and
11 community plans, would supersede. Now how
12 that would be done, because up to now the
13 meter list has been not indicating whether
14 the use is agriculture; it hasn't indicated
15 how many units in the subdivision; it has,
16 the water meter list is a, is a, is up to
17 now doesn't indicate is it the upper line or
18 the lower line? The list is just one number
19 list for all of Haiku, all the way to Kula.

20 MR. KUSHI: Ok.

21 CHAIR HOWDEN: Ok. Any other questions?

22 Hi Kelli. Kelli Myers. Ok, thank you,

23 Dick.

24 MR. MYERS: I would, I would urge the board

1 to, to, to resolve that issue though, 'cause
2 I think everybody's gotta know.

3 CHAIR HOWDEN: Yes. Dana Naone Hall.

4 MS. HALL: Good morning, board members. My
5 name is Dana Naone Hall. I'm here on item
6 6, I believe, roman numeral 6. Back in the
7 late 80's Keauhou o Honua'ula was conveyed a
8 3-acre parcel in the Makena-Honua'ula area,
9 actually it is Mo'oloa, by Seibu as part of
10 a settlement agreement. And the property
11 was conveyed with a deed restriction that we
12 voluntarily agreed to that it would be used
13 for a living cultural center. At that time
14 nobody knew exactly what that living
15 cultural center was going to be. And in
16 fact the land was left as it is, primarily
17 kiawe forest across from Makena State Park
18 for years until about 2 and ½ years ago when
19 we as a group decided that we wanted to
20 bring to fruition this idea of a living
21 cultural center. And as such we submitted
22 permits to the county for a structure about
23 1,000, 1300 feet large and when we were half
24 way through the county permitting process, I

1 mean, it kinda came upon me as a kind of a
2 moment of enlightenment that we were going
3 the wrong way, that we would be expending
4 all our money on a building, having a
5 beautiful building in the middle of a kiawe
6 forest. What were we doing? So we, we re-
7 thought everything, pulled the permits from
8 the county and started all over again. What
9 we submitted after we got our SMA permit was
10 2 small structures; one 380 square feet, the
11 other about 200 square feet, mostly a
12 storage room. And what we decided to do was
13 to put more of the money, in fact the
14 majority of the money into the land itself,
15 restoring it. And that that would be the
16 living cultural center, to restore the land
17 with native plants primarily. And that's in
18 fact what we had done. So we, the, the, we
19 were just about to get final inspection and
20 we have an underground irrigation system
21 throughout the 3 acres and we have started
22 to plant seriously, native trees and shrubs
23 and crops. And our idea is that this living
24 cultural center will serve as a land base

1 for programs with Maui, Maui students and
2 that's our idea of a living cultural thing
3 we're trying to develop now. So we've
4 applied to the department for an
5 agricultural water rate based on this. And
6 also because Hawaiian history is often
7 thought of in terms of the aristocratic or
8 ali'i class and the kahuna and the
9 maka'ainana, the broad base of society, as
10 the commoners but as Handy and Handy, in
11 collaboration with Mary Kawena Pukui stated,
12 really the better way to look at ancient
13 society was through, through looking at who
14 were the productive members of that society
15 and those were the kanaka mahi'ai, which are
16 the farmers and the kanaka lawai'a. And of
17 those two the kanaka mahi'ai or the
18 gardeners and the farmers, were the most
19 important because they produced most of the
20 food for the people. And in addition, the
21 kanaka mahi'ai were peaceful people for the
22 most part because you couldn't be having
23 wars and growing your food at the same time,
24 or at least, ah. So this, this was a, this

1 was a model of Hawaiian manhood that I think
2 needs to be brought forward again. When you
3 look at all of the images of Hawaiian
4 manhood now, nowadays, maleness, it's always
5 the warrior image; always the spears, always
6 the lua, always those kinds of activities.
7 But in truth ancient Hawaii was based a
8 stable society with farmers and fisher
9 people making up the most of the society and
10 making it possible to, to, to be a society
11 in fact. And you know, our by-laws are
12 written very generally as a, because when we
13 first started this non-profit which is also
14 a private foundation, we didn't know quite
15 what direction we would be going in, in the
16 future, y'know you start at one place and
17 then you may end up somewhere else as you
18 develop and evolve as a group and this is in
19 fact is what's happened to us. In the
20 beginning our primary focus had been
21 protection of trails and shoreline access
22 and we still continue to do this work, and
23 burial sites and archeological sites but as
24 time went and as we, as we began to get this

1 vision of the 3-acre parcel, we've expanded
2 that vision to include agricultural
3 activities and a new model for training our
4 children and also what we hope to do in, in
5 growing this food is to be able to give most
6 of it to the Food Bank because that's a way
7 of returning to the community and that,
8 that, that puts the kids in the mind of
9 service to your community. So anyway, the,
10 in broad terms those are, that's what we are
11 about and that's why we applied for an ag
12 water rate. And that's why we hope to have
13 a contested case hearing on this issue; to
14 show that we are indeed worthy of an
15 agricultural water rate. Thank you.

16 CHAIR HOWDEN: Any questions by board
17 members?

18 MEMBER HOXIE: Where, where is it again?
19 Where is this at?

20 MS. HALL: It is in, well, it is, ok,
21 direct, directly on the mauka side of Makena
22 State Park. Makena State Park has 3
23 entrances. It's just past the second
24 entrance, the middle entrance. And it's a,

1 it's a rectangular parcel with frontage
2 along Makena Road and it's 3 acres right
3 there. And you can see it today, I mean, if
4 you look you'll see a dust fence and a kiawe
5 post fence. Oh, and I should add that one
6 of the things is that when we, when we
7 decide to change our plan for how we were
8 going to conceive of this cultural center is
9 that I wanted to make sure that it, it, it,
10 it was developed in sharp contrast to what
11 Wailea and Makena look like today. You know
12 where they're building centric. So these
13 are small hale and if you look you see the
14 kiawe post fence which to me is, is
15 evocative of that early ranching era and
16 also you see the native trees. You see the
17 milo and the kukui spreading their beautiful
18 green leaves above the fence already and we
19 have a lot of yew growing. In fact, we have
20 two, we have, well, samoan yew for, because
21 they're really good nuts for drinking and
22 for eating and they're low growing and we
23 have two lowly palm which are native fan
24 palms that we're growing from seeds brought

1 from Nihoa in the Northwest Hawaiian
2 Islands. So we wanna serve as a, as a kind
3 of nursery for rare plants and also for
4 edible plants. And in Honua'ula the main
5 staple crop was sweet potato, so that's our
6 next, I think, get the sweet potatoes.
7 Thank you.

8 CHAIR HOWDEN: Thank you, Dana. Gosh,
9 everybody's here but Phyllis. Ok, I'd just
10 like to note for the record that first I
11 guess it was Kui, Kui Lester showed up and
12 then Kelli Myers showed up and now Patricia
13 Eason. So we have, thank, and thank you for
14 coming. So our next item, Number 6,
15 Appeals, Keauhou o Honua'ula.

16 MS. D'ENBEAU: Good morning. I'm Madelyn
17 D'Enbeau representing the director.

18 MR. HALL: Good morning, Chairperson
19 Howden, members of the Board of Water
20 Supply. Isaac Hall for appellant Keauhou O
21 Honua'ula, Inc. Keauhou is a Native
22 Hawaiian Hawaii non-profit private
23 foundation; owns 3 acres of land in Mo'oloa
24 across from Makena State Park. It's

1 designated agriculture. Keauhou is working
2 to restore this land from non-native uses by
3 planting trees, shrubs and crops that
4 Hawaiians grew there as a matter of
5 tradition and culture. Keauhou received an
6 SMA permit from the county in major part for
7 a native Hawaiian nursery, listing all the
8 native Hawaiian plants that will be grown
9 there. Keauhou is working with Ho'olawa
10 Farms to implement this plan. Most of the
11 non-native species have been removed from
12 the 3 acres and we have begun planting
13 native trees, plants and crops. This is
14 agriculture. Keauhou applied for
15 agricultural water rates from the DW, from
16 the department on August 14th, 2009; was
17 denied on October 16th, 2009 and appealed to
18 you. We have watched bed and breakfasts get
19 ag water rates. We have watched faked ag
20 lots with swimming pools get ag water rates
21 from the department. Frankly, we feel
22 discriminated against as a Native Hawaiian
23 non-profit entity. We can't even get our
24 contested case heard. The department

1 doesn't want to settle with us. We can't
2 get the discovery that we need and properly
3 requested months ago. We submitted a
4 request for the production of documents on
5 May 10th for the department which needed the
6 director's approval. We don't want to go
7 ahead with a contested case without getting
8 some discovery. We had never heard anything
9 with regard to our discovery request. Now
10 is the department won't give us our
11 discovery and they don't want to settle,
12 they want to give out these ag water rates
13 to fake lots with swimming pools on 'em,
14 they wanna give 'em out to bed and
15 breakfasts but they don't wanna give 'em to
16 Native Hawaiian groups. I'm very angry
17 about this at this point because now we
18 can't even have our contested case because
19 we don't have the discovery. I know you
20 have an August date; I've talked to Ms.
21 D'Enbeau and she's says that even if the
22 chairperson has to approve the discovery,
23 that hasn't happened, she wants 30 days to
24 respond to some of it. That means we can't

1 have it in August. So now we're talking
2 about September. We're not happy about this
3 situation. I don't think we're being
4 treated fairly by the department. I think
5 traditional and customary native Hawaiian
6 uses are protected by the Hawaii
7 Constitution. We're talking about restoring
8 land for traditional and customary
9 agricultural uses. The department wrote us
10 a letter back and said, "ah, we don't think
11 this is agriculture." And yet a bed and
12 breakfast is agriculture? A lot that has a
13 swimming pool on it in Kula 200 that's not
14 doing any ag gets an ag rate with no
15 problem. I don't understand this frankly.
16 Why we have to go through this whole process
17 while they're doling out ag rates to people
18 that aren't entitled to them, plainly, and
19 we are. So, I know the agenda says we're
20 the one's asking for the continuance, we're
21 not really asking for a continuance. We
22 feel like we're compelled, we're forced to
23 because we can't get the, anybody to give us
24 our discovery.

1 MS. D'ENBEAU: In response to what Mr. Hall
2 said, I think initially he misspoke but then
3 he corrected himself, it's the chair's
4 approval is needed. The way your rules
5 read, I'm talking about discovery now; the
6 discovery requests goes to the chair and I
7 don't know where the, the snafu was, where
8 the, where it didn't quite get, but
9 apparently it hasn't been signed yet and
10 that's, that's okay, we're still going, as
11 soon as the, it is signed and we, we, we
12 anticipate that it'll be soon, we are
13 proceeding with providing the discovery
14 that's appropriate for Mr. Hall, for Mr.
15 Hall's client. So, it is true that it'll
16 take about 30 days. I'm sure you'll aware
17 the department is severely understaffed and
18 we've just lost apparently another person in
19 the department so it's very difficult to
20 pull together the records. He's asking for
21 the records from the denial and that's easy
22 enough to do. But he also wants records of
23 all the, everybody who has an ag, get the ag
24 rate. And I understand that's about 800,

1 800 people. Some problem with getting those
2 records to him are two-fold. One is that
3 they contain privileged information; people
4 put in information that apparently is not
5 meant for public consumption, maybe social
6 security numbers or those kind of things.
7 So the department would have to go through
8 and redact, white out if you will, in these
9 800 documents. So that we're gonna be
10 objecting to as burdensome. And there'll
11 have to be some decision made about whether
12 he can get this or whether it's too
13 burdensome for the department to produce.
14 The records are not segregated by profit or
15 non-profit. So, he's only asked for the
16 non-profit but we don't have any way without
17 going through all the records to determine
18 whether the applicant was a non-profit or
19 not. So that's the problem with the
20 discovery. I assume from his remarks today
21 and, and just general information that what
22 he's looking to do is to say, "gee, how come
23 you gave X ag rates and not us," which
24 really is not the relevant issue. The

1 relevant issue is, does this organization
2 qualify for the ag rate. And the ag rate,
3 there's a new ordinance going through, you
4 may be aware it's gone through first
5 reading, I think it does on Friday, that
6 will allow for non-profits to be, to receive
7 ag rates under certain circumstances. As I
8 understand the language of the ordinance,
9 anybody asking for ag rates will have to
10 show \$1,000 in income from their
11 agricultural enterprise under this new
12 ordinance. A non-profit can show that they
13 donated a thousand dollars of produce to, to
14 an organization and from Missus, from Ms.
15 Naone Hall's remarks this morning I gather
16 that they are planning to donate under this
17 new ordinance, they are planning to donate a
18 thousand dollars, I'm assuming she said the
19 Food Bank with some of the native crops that
20 they grow. So it perhaps won't be the
21 problem once this new ordinance comes
22 through; under the present ordinance however
23 it's the director's responsibility to look
24 at the purpose of the present ag rate

1 ordinance and the idea behind it is clearly
2 to support commercial agriculture. And so
3 we're heavily, the water rates that are
4 charged for the ag user do not cover the
5 costs of the ag water; they're not even
6 close. So in a sense we're saying the
7 citizens of the, water users as whole on
8 Maui County have decided we would like to
9 subsidized if you will through our rate
10 paying these lower rates for ag. And so
11 then you have to look at well, who gets that
12 and the idea at this point has been that it
13 will be for, you know, Mr. Hall used the
14 term "fake farms" and then there's the real
15 farm and I guess we kinda all know in our
16 minds what the difference is but we had an
17 extremely difficult time in Maui County ever
18 coming up with some way to distinguish, so
19 now we'll have at least this \$1,000
20 requirement that you're selling something.
21 Up to now it's just been, director can
22 correct me if I'm wrong but as I understand
23 it, you just indicate you got an agriculture
24 plan. Someone goes up and inspects to make

1 sure that you in fact are growing crops that
2 meet the definitions and that you're on land
3 that crops are permitted to be grown on
4 which should be ag and rural as I understand
5 it. So, it's, it, it sounds very harsh to
6 say well a Native Hawaiian group isn't able
7 to get the ag water rates but in fairness
8 we're looking at, at this point in time, is
9 it a commercial farming operation. That's
10 what the present ordinance is calling for.
11 You're growing cabbages up in Kula or
12 whatever. Now Mr. Hall has pointed out that
13 it's difficult. People have and you're all
14 familiar with that, 2-acre lots where maybe
15 they have rows of lime trees. The
16 department goes up and inspects and says
17 well, ok, this, they may not only get ag
18 water rates but they may get special tax
19 rates as well for this type of operation but
20 that's just how it is in Maui County at this
21 point. So there isn't any intention on the
22 part of the department of course to be any
23 kind of discrimination against the Native
24 Hawaiian group. Quite the contrary; it's

1 just to follow the law and say is this a
2 commercial ag operation. And at the point
3 that this application was made it was
4 certainly clear and no one was pretending
5 that this was a commercial ag operation so
6 that's why it was denied. Now under the new
7 ordinance which should take affect in a few,
8 in a month or so I, it may be a different
9 situation because we have a different,
10 different series of requirements that, so
11 it's 2 parts to this; why is the contested
12 case not being heard today because the
13 discovery wasn't produced and for that I
14 take responsibility and I apologize to the
15 board for, I mean, to put this off. And the
16 second one is why was it denied in the first
17 place and think there's a very strong case
18 that the director made the proper decision
19 under the laws that exists today.

20 MR. HALL: Well, I just like to respond.
21 I, I don't think Ms. D'Enbeau can, I don't
22 know why we didn't get our discovery. She
23 can't facilitate the discovery. Anyway we,
24 the main point is we asked for it on May

1 10th, over 2 months ago. That's the main
2 point. And on our other point about the
3 denial was proper, if she cited a bunch of
4 examples, somebody on a fake ag lot with
5 lime trees is getting an ag rate and we're
6 not because we're a non-profit that, that's
7 exactly why we want a contested case. And
8 that's exactly why who they gave these ag
9 rates to is really important because if
10 they've been doling out ag rates to somebody
11 who's not farming and just has some lime
12 trees and they're saying you can't because
13 you're a, a non-profit even though you have
14 the same trees on your lot that we gave them
15 an ag rate for then, then it is
16 discrimination against Native Hawaiians.

17 CHAIR HOWDEN: So, on what level, Ed, are
18 we allowed to respond to this?

19 MR. KUSHI: No, I think the issue on the
20 agenda is the postponement. Counsels are
21 getting into the, into the case.

22 MR. HALL: I agree with that.

23 MR. KUSHI: So, you know, you guys, you
24 either schedule a case now or you guys set a

1 date.

2 CHAIR HOWDEN: What, what about the
3 documents they're, um...

4 MR. KUSHI: I don't know.

5 MR. HALL: Yeah, I'd like to what happened
6 to them, I mean, I, I submitted them...

7 MR. KUSHI: I've never seen 'em.

8 MR. HALL: Properly. I've got a file
9 stamped copy.

10 MR. KUSHI: Never seen 'em, Isaac.

11 MS. HAYASHIDA: I...

12 CHAIR HOWDEN: Gaye.

13 MS. HAYASHIDA: I take full responsibility
14 for that.

15 CHAIR HOWDEN: What?

16 MS. HAYASHIDA: I take full responsibility
17 for that, for the document, that never got
18 to the chair.

19 CHAIR HOWDEN: Ok, so is there something I
20 could sign or sign today and...?

21 MS. HAYASHIDA: Uh huh. I have it here.

22 CHAIR HOWDEN: And we can move forward with
23 it? I apologize for the delay and just, can
24 I ask one, one question? You're saying that

1 the cost of agricultural water in South
2 Maui, the rates of \$1.00 per thousand
3 doesn't cover the cost agricultural water in
4 South Maui?

5 MS. D'ENBEAU: That's my understanding but
6 you'd have to talk to the director.

7 CHAIR HOWDEN: No, the, I think that's only
8 Upcountry, but Jeff...

9 DIRECTOR ENG: No, it, it's a, well, again
10 we have uniform rates throughout the county...

11 CHAIR HOWDEN: Yeah.

12 DIRECTOR ENG: For the ag rate customers
13 and based on information that we gathered
14 for last year, we, the general rate
15 customers subsidize ag rate customers almost
16 \$3 million per year. So just, probably just
17 for the record, I'd like to say as far as
18 this ordinance that's going before council
19 on Friday, the department did not support
20 it. We were, we wanted a tighter definition
21 for those who apply for ag rates. Again,
22 the council and the politicians seem to
23 wanted to be as lenient as possible 'cause
24 this is an election year.

1 CHAIR HOWDEN: Ha ha ha. That'll...

2 DIRECTOR ENG: But, but it's, we, we felt
3 that they, over, overwhelming criteria would
4 be a decent gross income level. Y'know, and
5 I want, 'cause we never really, that'll be
6 really probably the solution between the
7 backyard gentleman farmer and true
8 legitimate commercial producers. I would
9 have liked to have seen it as a high as
10 \$10,000 per year, which is probably on the
11 high side for a lot of small part-time
12 farmers but minimally \$5,000 per year. And
13 even at, at the last committee meeting I, I
14 brought out the point again, for the record,
15 even though I was the only one in the room
16 who was going in that direction, I, I'm
17 kinda, you know they went down, they were
18 looking at 5,000 at one time. They went
19 down to \$2500 momentarily but they all kinda
20 focused at a 1,000, kinda brief, but at
21 least they focused on some kind of income
22 requirement 'cause I think that's a, the
23 biggest criteria to distinguish legitimate
24 commercial ag production and producers so.

1 That's where it stands. I really don't
2 support the ordinance that's before the
3 council but it what it is. It's not worth
4 getting a stroke over I realize.

5 CHAIR HOWDEN: Ha ha, that's true.

6 DIRECTOR ENG: I had realized that finally.

7 CHAIR HOWDEN: So you learned something
8 almost 4 years of working for the county.

9 DIRECTOR ENG: But that's where it stands
10 right now.

11 CHAIR HOWDEN: So, I, I apologize that
12 we've not produced documents. I will sign
13 the, the letter today. And then we can move
14 forward and by then we'll almost be living
15 under a new ordinance that will, god
16 willing, that will address more of the
17 complexity of issues facing a traditional
18 and customary use and so-called commercial
19 agriculture. So, anyway, any comments from
20 board members? I think we should probably
21 leave this be until we facilitate the
22 response for documents...

23 MR. HALL: Will...

24 CHAIR HOWDEN: And then, Isaac, do you

1 have...?

2 MR. HALL: No, I'm sorry, I didn't mean to
3 interrupt.

4 CHAIR HOWDEN: No, that's, that's fine.

5 MR. HALL: I would like to say something..

6 CHAIR HOWDEN: Oh, go ahead, sure.

7 MR. HALL: No, I would like to get another
8 date.

9 CHAIR HOWDEN: Ha ha ha. Ok.

10 MR. HALL: I mean if the 30 days...

11 CHAIR HOWDEN: I mean, if, if I sign today
12 is the, can we do it in August?

13 MS. D'ENBEAU: I, I don't think we'd get
14 the documents to them in August but I doubt
15 if they wanna do a hearing in August, they
16 need time to go over.

17 CHAIR HOWDEN: Well, you know the
18 agricultural, when you apply for an
19 agricultural meter all I think you would
20 have to take off is the perhaps the name,
21 and your estimated income on the form that
22 we fill out. I mean, I'm an agricultural
23 meter rate holder or whatever, and the only,
24 only privileged information that I remember

1 on that besides my name of course, is
2 estimated income. John, do you have ag...?
3 MEMBER HOXIE: Uh huh.
4 CHAIR HOWDEN: You have ag water?
5 MEMBER HOXIE: Yeah, I can't remember but
6 it's very general.
7 CHAIR HOWDEN: Kevin, do you?
8 (Member Boteilho shaking his head no)
9 MR. HALL: But, I, I'd like to clarify, I
10 mean there, there has, there has, one of the
11 problems before is, as the director has
12 mentioned, there was no income requirement
13 in the current law so people didn't have to
14 declare any income in order to get the ag
15 rate. I mean, that's what you're telling
16 me. I mean, I know you didn't like the ten,
17 you didn't like, you don't like the one..
18 DIRECTOR ENG: We require..
19 MR. HALL: And I'm not saying anything
20 about that..
21 DIRECTOR ENG: Yeah.
22 MR. HALL: And you haven't said anything
23 about whether you agree or disagree with
24 non-profits and I'm not asking you to but

1 the fact of the matter is that people can
2 get the ag rate without having any income
3 under the current law. And that's what I
4 was saying too is that...

5 DIRECTOR ENG: And there was a problem I
6 agree with you on that...

7 MR. HALL: I agree it's a problem...

8 DIRECTOR ENG: It, it was ridiculous.

9 MR. HALL: And that's why I, I'm saying
10 what I'm saying, you're saying we're not
11 commercial and yet no, the applicants didn't
12 have to show any income under the current
13 law...

14 DIRECTOR ENG: Well, as we go...

15 MR. HALL: To get the ag rate.

16 DIRECTOR ENG: As we go through the appeal...

17 MS. D'ENBEAU: Yeah.

18 DIRECTOR ENG: You know...

19 MR. HALL: Yeah.

20 DIRECTOR ENG: You'll have opportunity to
21 review...

22 MR. HALL: No, no, that...

23 DIRECTOR ENG: What we reviewed...

24 MR. HALL: I was just trying to clarify

1 that.

2 DIRECTOR ENG: At the time we received the
3 application.

4 MR. HALL: I was just trying to clarify
5 that.

6 DIRECTOR ENG: Yeah, I think it will be
7 clear at that time.

8 CHAIR HOWDEN: Yeah, you, you, you...

9 MS. D'ENBEAU: Yeah, I think what the
10 chair, oh, I'm sorry.

11 CHAIR HOWDEN: Yeah, you used to have to
12 put in a copy of your annual excise tax...

13 DIRECTOR ENG: Yeah.

14 CHAIR HOWDEN: Return.

15 MR. HALL: But I, what I'm trying to say
16 is...

17 CHAIR HOWDEN: And, and now...

18 (Mr. Hall and Chair Howden speaking at the
19 same time)

20 MR. HALL: He couldn't deny it if he said
21 there was no income...

22 CHAIR HOWDEN: You simply sign a waiver
23 that, that they elect.

24 MR. HALL: 'Cause the ordinance didn't

1 require income.

2 MS. D'ENBEAU: I think maybe where the
3 chair is going is to say why is it difficult
4 for us to produce all those 800 applications
5 for you if there's no private information.

6 MR. HALL: Yeah.

7 MS. D'ENBEAU: But there is some private
8 information so somebody has to go through
9 those files and redact it and what we'll be
10 arguing is that it's not enough, the
11 information gained wouldn't be so important
12 to the hearing to justify spend, somebody
13 spending days and days going through these
14 files...

15 MR. HALL: Well...

16 MS. D'ENBEAU: Given how short staffed...

17 MR. HALL: If, if August doesn't work, how
18 about September?

19 MS. D'ENBEAU: September?

20 MS. HAYASHIDA: September 23rd, the next
21 board meeting scheduled.

22 MR. HALL: You only have one...

23 CHAIR HOWDEN: Yeah, we, we only meet once
24 a month so, other than...

- 1 MS. D'ENBEAU: September 23rd.
- 2 MS. HAYASHIDA: Yeah, uh huh.
- 3 MS. D'ENBEAU: Ah, we have couple of
4 appeals already scheduled that day..
- 5 MR. KUSHI: They're not firm.
- 6 MS. HAYASHIDA: Well, they haven't been
7 notified yet.
- 8 MS. D'ENBEAU: Oh, ok.
- 9 MS. HAYASHIDA: So..
- 10 CHAIR HOWDEN: So, you guys would have
11 priority on that. No, but August is out.
12 (Ms. D'Enbeau and Mr. Hall speaking at the
13 same time)
- 14 MS. D'ENBEAU: (inaudible) 'cause you can't
15 (inaudible).
- 16 MR. HALL: I, I don't think it's gonna work
17 for us 'cause we're gonna get, we won't get
18 the documents.
- 19 CHAIR HOWDEN: Cannot, ok. So, so, so
20 September 23rd.
- 21 MR. HALL: Reluctantly. No, I mean, I say
22 reluctantly 'cause we wish this is over..
- 23 CHAIR HOWDEN: Patience, counselor,
24 patience, yeah.

1 MR. HALL: Already.

2 CHAIR HOWDEN: Ok, ok, good. So we're set
3 for September 23rd. Thank, thank you very
4 much, ok.

5 MS. D'ENBEAU: Thank you very much.

6 MR. HALL: Thank you.

7 CHAIR HOWDEN: That was pretty exciting for
8 a non-appeal.
9 (laughter)

10 CHAIR HOWDEN: Well, I need a black pen
11 too; I only have blue.

12 MR. KUSHI: Don't sign it yet.

13 CHAIR HOWDEN: Ooops. Oh, you have to read
14 it. That's right. Ok.
15 (laughter)

16 CHAIR HOWDEN: Ok, well, yeah, I mean
17 there, there's that generic thing about
18 attorneys. Unfinished Business? No
19 Unfinished Business, not on this board.
20 Number 8, Other Business, A, Discussion of
21 Lana'i Water Use, Development and Protection
22 Plan. Ellen Kraftsow. Wow, no need go to
23 the gym with all that stuff, huh?

24 MS. KRAFTSOW: These are some errata. I

1 think that actually Ed's copy, Gaye's copy
2 and Jeff's copy, probably, the corrections
3 are already made in theirs but I wanted to
4 give it to them anyway just in case just for
5 (inaudible). These are...

6 DIRECTOR ENG: The errata alone is...
7 (laughter)

8 MS. KRAFTSOW: You know actually it's not
9 as much as it looks like. I just, I got
10 confused and I just like took the whole
11 Executive Summary and reprinted it for you
12 so that's basically just take your Executive
13 Summary and recycle it and use the new one.
14 And then the rest is just like a page here
15 and page there. And most of these are,
16 they're, they're typos or just correcting
17 late night stupidities, or things that were
18 going off the page. One thing that was
19 important to the LWAC was to add a list of
20 abbreviations and acronyms and I realized I
21 had forgotten to print that so. Sometimes
22 you change one thing and you have to do the
23 next 5 pages just to make it. So it's not
24 really, the, I've listed for you what the

1 changes are, they're mostly not, I don't
2 think there's anything substantive here but
3 a couple bullets that were in one chapter
4 and left out of another chapter so for
5 consistency I've put 'em in both. That's
6 it. Other than that it hasn't changed the
7 flavor or content of the document so if you
8 have any questions on the document that
9 you've gotten so far.

10 CHAIR HOWDEN: I, I'd just like to thank
11 you for your Herculean efforts on behalf of
12 this and I think this is a very complex
13 circumstance and you know hopefully we'll be
14 able to review it thoroughly enough by our
15 August meeting on Lana'i that we can respond
16 intelligently. Who, who, who are the people
17 going to Lana'i? Kevin's going, Kui, me,
18 Don and then we have, I guess Phyllis is the
19 other one. So we have the bare minimum of
20 5. Do we have any alternates? Ted?

21 MS. HAYASHIDA: Um, Kelli said she would be
22 an alternate.

23 CHAIR HOWDEN: And Ted's our...

24 MS. HAYASHIDA: And Patty.

- 1 CHAIR HOWDEN: Standard alternate. Ok,
2 good. Ok, thank you, thank you. Any
3 questions from the board?
- 4 MEMBER YAMAMURA: Has the public hearing
5 been noticed already?
- 6 MS. HAYASHIDA: Yes.
- 7 MEMBER YAMAMURA: Yeah?
- 8 MS. HAYASHIDA: It's been noticed in the
9 Lana'i Times on the, July 15, I mean, not
10 Lana'i Times, Lana'i Today newspaper on July
11 15th. And also in the Maui News on July 11th,
12 the Sunday paper so, yeah, we do need to
13 notify the, the public in, by advertising in
14 the Maui News 30 days prior to the meeting
15 date. So that's the primary source but
16 because it's on Lana'i we advertise on
17 Lana'i also. And unfortunately, there's
18 only one publication right now, it's Lana'i
19 Today.
- 20 MS. KRAFTSOW: There's also that email
21 list...
- 22 MS. HAYASHIDA: Yeah.
- 23 MS. KRAFTSOW: Which we sent it to them.
- 24 MS. HAYASHIDA: Yeah. Yeah. And there's,

1 they do an email.

2 MS. KRAFTSOW: Also, some of them, it was
3 meant to have like an outside cover and an
4 inside cover so I brought some extra punched
5 and un-punched in case anybody didn't get at
6 least one of those.

7 MEMBER HOXIE: Has, has a copy of this gone
8 to that guy that was here last time, David
9 Labasan or...

10 MS. HAYASHIDA: Clay Rumboa?

11 MEMBER HOXIE: Yes.

12 MS. HAYASHIDA: Rumbaoa.

13 MS. KRAFTSOW: Clay Rumbaoa, yes. Yeah,
14 they got everybody in the Lana'i committee
15 and the Lana'i Library have it and we also
16 did, we have it in pdf. And it's just a
17 matter of figuring out some of the chapters
18 that apparently are too big to post.

19 MS. HAYASHIDA: There's also, the
20 department's office, the hard copy...

21 MS. KRAFTSOW: Well, then I should...

22 MS. HAYASHIDA: For the public to view.

23 MS. KRAFTSOW: Did I give you...

24 MS. HAYASHIDA: No.

1 MS. KRAFTSOW: You have one set for that,
2 for that hard copy?

3 MS. HAYASHIDA: The hard copy is correct,
4 remember?

5 MS. KRAFTSOW: Ah, I would still replace
6 the Executive Summary.

7 CHAIR HOWDEN: Ellen, give her another
8 errata then.

9 MS. HAYASHIDA: Oh no.

10 MS. KRAFTSOW: You got 4 there, right?

11 CHAIR HOWDEN: Ok, you have? Ok. Ok, any
12 comments or questions from board members?

13 MS. HAYASHIDA: Anybody got questions on
14 going to Lana'i? The 3, 4 board members are
15 actually going on the ferry. Phyllis is
16 taking an earlier ferry. So she won't be
17 going with the 3 of you.

18 CHAIR HOWDEN: Ok.

19 MS. HAYASHIDA: The 3 of you will be going
20 at the same time. And then Mr. Kushi will
21 be, Mr. Kushi will be flying in and so will
22 I.

23 CHAIR HOWDEN: Private jet?

24 MS. HAYASHIDA: And Kui will be flying in.

- 1 CHAIR HOWDEN: Of course.
- 2 MS. HAYASHIDA: And I will be renting...
- 3 CHAIR HOWDEN: Or paddling.
- 4 MS. HAYASHIDA: A mini-van where either Kui
5 and I, or I could come and pick you guys up
6 at the ferry or Mr. Kushi at the airport.
- 7 CHAIR HOWDEN: Ok.
- 8 MS. HAYASHIDA: So, yeah, otherwise it's
9 like \$10.00 fee, I mean, the department will
10 pay for it. But um, yeah.
- 11 CHAIR HOWDEN: And logistically where do we
12 park in Lahaina to, to...
- 13 MS. HAYASHIDA: There is a county lot
14 across from Kam III School.
- 15 CHAIR HOWDEN: Yeah.
- 16 MS. HAYASHIDA: But I was told that that
17 kinda fills up early and to try to park on
18 the perimeter of the parking, I'm not sure.
19 I, I've never taken the ferry so I really
20 can't tell you.
- 21 CHAIR HOWDEN: Ok.
- 22 MEMBER LESTER: There's parking lots behind
23 the theater.
- 24 DIRECTOR ENG: That, that's affiliated with

1 the...

2 MEMBER LESTER: County?

3 DIRECTOR ENG: Ferry or the ferry.

4 MS. KRAFTSOW: Yeah, I usually pay the
5 money and park at the Prison because I'm
6 usually running late. It's like out of the
7 car and onto the boat. You know the boat's
8 there already so, I just, I figure I save
9 the money, I get a ride. I don't rent a
10 car. Save the county enough money, I'm
11 gonna pay for my parking. Usually I forget
12 to submit my reimbursement anyway. But
13 that's the closest one. But it depends on
14 how much you have to carry too. Like if you
15 don't have much to carry and you're willing
16 to go another half mile away...

17 CHAIR HOWDEN: Just this.

18 MEMBER LESTER: Yeah.

19 MS. KRAFTSOW: Then, then you can even find
20 free parking. Yeah.

21 CHAIR HOWDEN: Ok. Ok, just to, you know,
22 Lahaina's a foreign country to me.

23 MS. HAYASHIDA: I'll, I'll check further on
24 the parking for you, for the board members.

1 MS. KRAFTSOW: Just wanna, are we,
2 nevermind...?

3 MS. HAYASHIDA: And then I'm sure that all
4 of you made your reservations already for
5 the hotel.

6 MR. KUSHI: Gonna have a court reporter
7 there?

8 MS. HAYASHIDA: Yes, we are. And so that's
9 why I'm taking the only room with 2 beds.
10 The court reporter's staying with me.

11 CHAIR HOWDEN: Oh, so you guys can work on
12 it that night? Ok.

13 (laughter)

14 MS. HAYASHIDA: And then the department
15 will reimburse all of you for the excess
16 lodging, anything over \$50. And then also
17 keep track of your mileage to the parking
18 for the ferry, we will put that on, we can
19 reimburse the mileage.

20 CHAIR HOWDEN: Ok. Any other questions on
21 this? Ok. Thank you, Ellen. Discussion
22 regarding Upcountry Drought Policy and
23 whether there is enough redundancy in the
24 system.

1 DIRECTOR ENG: I wasn't quite sure what you
2 meant by redundancy. We do know as far
3 source we have a deficiency in source based
4 on our water availability studies for
5 Upcountry. Is that more like facility
6 redundancy, like booster pumps?

7 CHAIR HOWDEN: No, I think it was more just
8 a, a source capacity and storage so that we
9 don't run through these troughs so often.

10 DIRECTOR ENG: Well, I think a simple
11 response is no, we don't have redundancy.
12 We are looking at right now some potential
13 well sites for more the Kokomo-Haiku area.
14 We, the consultants have come up with some
15 recommendations there. Their report hasn't
16 been finalized but it's given us ideas of
17 some potential sites that we can tie into
18 our existing system. As Mr. Mayer pointed
19 out, we will be meeting with Zach Franks
20 next week. He has a well called Piiholo
21 South. And we'll see how that goes. I'm
22 hoping that the discussions will have a
23 favorable outcome.

24 MEMBER HOXIE: That was the proposed, we

1 got that guy talk to us about that well
2 about a year or so ago.

3 DIRECTOR ENG: Yeah, he's coming in.

4 MEMBER HOXIE: Is that the one, is that the
5 one?

6 DIRECTOR ENG: He's come in before, yeah.

7 MEMBER HOXIE: And the Maui Pine wells, has
8 that stopped or?

9 DIRECTOR ENG: That, that, yeah, that one
10 based on their pump tests. And is very
11 unfortunate 'cause you know I was kinda
12 hoping for that one too but it really did
13 not have the yield. It just one of those
14 geological issues that they just could not,
15 they originally had hoped they could develop
16 a well of up to 2 million gallons capacity.
17 And they got down to maybe they can get 1.5
18 and based on the pump test they, I forget
19 what the number was but I don't think you
20 could've continually pump more than maybe
21 600,000 gallons per day. And Maui Pine
22 themselves needed so much out of that well,
23 let alone given us an allocation.

24 CHAIR HOWDEN: Yeah.

1 DIRECTOR ENG: So, so yeah. So, basically
2 our, we, we even terminated that Piiholo
3 agreement. You know, that site could be re-
4 visited down the road maybe, if we needed
5 very small source but that would only work
6 if we had another nearby source that makes
7 sense to tie it into but it didn't make
8 sense with the amount of investment to, to
9 put in transmission lines, control tanks,
10 the pumps, the controls for anyone to pursue
11 it at this time; so that one is, again, in
12 abeyance. So we'll, yeah, we'll see how it
13 goes with Mr. Franks on his, on his
14 discussions and what he wants out of it and
15 wanna assure you that we're doing all we can
16 to make sure the community benefits.

17 MEMBER HOXIE: So right now we have a
18 voluntary drought watch.

19 DIRECTOR ENG: Yeah, we've had this
20 voluntary 5% reduction since a year ago.
21 And if you just look at our Upcountry report
22 as John and I were kinda looking at it a
23 little bit earlier. The, the reservoir
24 levels and the ditch levels have happily

1 maintained. A month and a half ago they
2 were really concerned as things started
3 dropping down and we started pumping up
4 Phase 6 to serve Upper Kula. Yeah,
5 fortunately you can see in, in the recent
6 days you know, Piiholo Reservoir is at
7 yesterday's reading was 98% full and
8 Kahakapao and those have sufficient levels
9 at this time because again we're not really
10 producing off of that so.

11 CHAIR HOWDEN: You're not, not using
12 Kahakapao at this point or?

13 DIRECTOR ENG: Right, or if we do need to
14 run the plant it's only to serve that small
15 little Olinda area but we have some storage
16 up there, finished water that we're serving
17 them with.

18 CHAIR HOWDEN: Oh, I see, ok.

19 DIRECTOR ENG: But the key reading right
20 now is you know we really were looking as
21 even a month ago was looking at Wailoa
22 Ditch. We had some concerns that as I was
23 telling John earlier, if that Wailoa Ditch
24 was, this was planned even a month ago, that

1 it gets down to about 25 million gallon then
2 you would see that we're gonna start
3 operating Pookela Well.

4 CHAIR HOWDEN: Ok.

5 DIRECTOR ENG: Ok. Fortunately, we, we
6 haven't had to go do it but I think a couple
7 weeks ago they ran it momentarily 'cause it
8 looked like 300,000 gallons were applied but
9 we haven't had to utilize that. That is
10 our, is our drought backup, is the Pookela
11 Well.

12 CHAIR HOWDEN: But, but you keep it, you
13 keep it operational?

14 DIRECTOR ENG: Yes, yeah. We do exercise
15 it and that might've been the reason why
16 they ran it a couple weeks ago.
17 Fortunately, we're maintaining. Now, we do
18 always get kinda worried that whenever we
19 see the total demand, the far right column,
20 at 10 million per day and all last week it
21 seems we were at 10. But if you, but if you
22 look historically actually the month of July
23 is 10 million gallons per day. So, it's
24 nothing unusual. It just caused some

1 concern. I'd say right now we, we don't, we
2 may send out, we should send out probably
3 some kind of press release to reiterate that
4 we have this, what do we call it; Drought
5 Watch and a 5% voluntary cutback in place?
6 You know it's always helpful. I don't think
7 right now there's any urgency except maybe
8 just a reminder to conserve, for us to take
9 any further action.

10 CHAIR HOWDEN: Ok. Ah, and how about
11 Waikamoi? Are we moving forward on the...?

12 DIRECTOR ENG: Yeah, yeah, the designed...

13 CHAIR HOWDEN: I, I, I'm, I'm folding the
14 Director's Report into this 'cause it's...

15 DIRECTOR ENG: No, that's good, that's
16 good.

17 CHAIR HOWDEN: Germane to this, yeah.

18 DIRECTOR ENG: That's gonna be a big one.
19 So, the design consultant has signed off on
20 the proposal; we've come to an agreement.
21 And so they should be initiating their work.

22 MEMBER HOXIE: Is it just to fix what's
23 there or to try and improve on it.

24 DIRECTOR ENG: It's basically to replace,

1 is, is their scope of their contract.

2 CHAIR HOWDEN: Same same or new materials
3 or...?

4 DIRECTOR ENG: I, I'd say totally new
5 materials I imagine.

6 CHAIR HOWDEN: I mean, but not, I mean,
7 we're talking redwood to metal or redwood to
8 redwood?

9 DIRECTOR ENG: I don't think we'll see
10 redwood again up there. Again, we do, we
11 leave it up to the consultant to come up
12 with some recommendations.

13 CHAIR HOWDEN: Ok.

14 DIRECTOR ENG: I imagine though we will see
15 a closed, enclosed plastic type of pipe. As
16 far as the support and trestles obviously
17 won't be redwood, I don't think. I think
18 it'll be some kind of metal, depending on
19 what they, we can afford; aluminum, could be
20 steel. I'm not sure if it'll be stainless
21 steel. 'Cause we gotta look at, again, the
22 longevity of the materials and how we can
23 even get it into those sites, you know, like
24 it is.

1 CHAIR HOWDEN: I think given the precarious
2 logistics of that endeavor that we might do
3 well to look for long lasting, very durable
4 materials so that we don't have to keep
5 repeating this every 30 years or whatever.
6 When was that built originally?

7 DIRECTOR ENG: Gee, I think I read one time
8 in a study it was originally, the original
9 flume was in the 30's I think. And then
10 there was a major rebuilt 'cause there's a
11 little sign there, what is, 1975 or 76?

12 MEMBER HOXIE: Yeah, in the late 60's,
13 early 70's.

14 DIRECTOR ENG: And I think what, maybe the
15 last major repair was, could've been like in
16 the mid-90's. Ellen, do you recall
17 anything?

18 MS. KRAFTSOW: Don't recall the, I know
19 some repair got major...

20 DIRECTOR ENG: Yeah, I, but, redwood is a
21 good material if you maintain it regularly.
22 Yeah, I mean, it kinda works for that
23 environment. But um, but yeah, I would
24 think it's gonna be some kind of pipe.

1 Probably plastic 'cause you're working with
2 the repairs and tie-in all those little
3 collection systems to it readily. Probably
4 have, again, and this is what I just
5 envision, we'll have to see what the
6 consultant comes up with. Whether it'll be
7 an attached catwalk so you can get back
8 there and, but, but we'll see.

9 CHAIR HOWDEN: That'll be the day.

10 DIRECTOR ENG: It'll be nice to get this
11 thing going.

12 MEMBER HOXIE: Another question on that.
13 The Water Commission decision on East Maui,
14 does that affect any of the Waikamoi intakes
15 at all?

16 DIRECTOR ENG: Ok, that decision on, on the
17 IIFS (Interim In-stream Flow Standards) for
18 East Maui was, I think in the, ok, it was
19 wet, ok, they broke it into the wet season,
20 dry season. So dry season I believe in
21 after, go over there, that I believe it was
22 no IIFS...

23 MEMBER HOXIE: Right, dry season.

24 DIRECTOR ENG: For dry season. And wet

1 season was, I think they take the DAR
2 (Division of Aquatic Resources)
3 recommendation, the lower IIFS.
4 MEMBER HOXIE: So overall it shouldn't have
5 much impact.
6 DIRECTOR ENG: Yeah, should be alright, I
7 think. That was quite a, ah, ordeal trying
8 figure out what the Water Commission has,
9 has approved 'cause even the evening of
10 their approval I think they handled, the
11 public was certainly confused. We, we
12 didn't, we weren't privy to all the numbers
13 that they were looking at, but I went back
14 to my office the next day and did some re-
15 calculations and I wanna meet with
16 commission staff because I wanna see how
17 they came up with those numbers and what
18 actually was approved. I think overall it
19 was, we had expected some further
20 restoration which there was. I suspect, I
21 think we can all live with it but it was..
22 CHAIR HOWDEN: Well, is the, the decision
23 is under appeal as I understand it, right?
24 DIRECTOR ENG: I think the Native Hawaiian

1 Legal Corporation is requesting a contested
2 case hearing.

3 CHAIR HOWDEN: Yeah.

4 DIRECTOR ENG: So that's gonna start all
5 over again.

6 CHAIR HOWDEN: So we get to go to all these
7 meetings again? Anyway...

8 DIRECTOR ENG: Well, we can't allow Jane
9 Lovell to retire.

10 CHAIR HOWDEN: Oh no. It'll be a disaster.

11 DIRECTOR ENG: So, she has a lot of work.

12 CHAIR HOWDEN: Ok.

13 DIRECTOR ENG: Which should be a, a high
14 price consultant.

15 CHAIR HOWDEN: Anything else in your
16 Director's Report?

17 DIRECTOR ENG: Um, well, we're gonna start
18 working on our budget for next fiscal year...

19 CHAIR HOWDEN: Oh, lucky you.

20 DIRECTOR ENG: Probably in the next couple
21 weeks and, and the CIP budget will be
22 something that we really wanna focus on.
23 There's a lot of things that we wanna
24 address. One is that Waikamoi Flume. Might

1 be again, premature to come up with a number
2 but I might hound the consultant to give us
3 a ballpark number 'cause we wanna put in,
4 have a number in for next year's CIP budget.
5 And that, therefore that's gonna eat up most
6 of it.

7 CHAIR HOWDEN: Sure.

8 DIRECTOR ENG: You know, or at least half
9 of it and we have other things that Ellen
10 will be working on. She has her list of
11 pipe replacement projects and, y'know we
12 want to redesign the 'Iao Water treatment
13 facility. If we even have a little bit more
14 funding I want to look at that Kamole Low-
15 Level Intake improvements, and as you know
16 whenever the levels are low in the ditch
17 it's kinda inefficient, hydraulically, how
18 it feeds the plant. So we'd like to look at
19 an improvement project for that, a design
20 project.

21 CHAIR HOWDEN: That'll be great, yeah.

22 DIRECTOR ENG: So that's kinda on my mind.
23 That's my wish list and Ellen has hers and
24 then most of our engineers have something as

1 well as our operations people, so, we'll
2 probably begin with a \$50 million CIP
3 project. We'll have to trim it down to
4 probably half and internally we'll trim it
5 down to half and then it goes before the
6 mayor and council, but we, we gotta really
7 fight for it. Maintain a minimal I would
8 think, a \$25 million CIP budget. Whatever
9 it takes, y'know, we need to do that. So,
10 that's what we'll be doing, right, Ellen?
11 Well, I've got, unless you have any
12 questions anyone?

13 MEMBER HOXIE: The article in the paper
14 about the EIS for the Wailuku thing, what's...

15 CHAIR HOWDEN: Waiale Treatment.

16 MEMBER HOXIE: Waiale Treatment, that...

17 DIRECTOR ENG: Yeah.

18 MEMBER HOXIE: What's...

19 DIRECTOR ENG: So, I guess basically that
20 that entails the EIS being withdrawn. You
21 know...

22 MEMBER HOXIE: And that was, that was done
23 by A&B?

24 DIRECTOR ENG: Yeah.

- 1 MEMBER HOXIE: And accepted by you?
- 2 DIRECTOR ENG: It was A&B; we were the
3 accepting authority, agency. Yeah, the
4 question is, if you look at the, the
5 decision and order for the Na Wai Eha, the
6 commission had not allocated any water for
7 the plant anyway. So I guess the question
8 would be is it worthwhile going to court
9 with Earth Justice when we have no water at
10 this time? You know, and I think it needs
11 to be re-visited and the various options.
12 Whether that plant make sense, y'know in the
13 current size that it is being designed at,
14 maybe it needs to be looked at a smaller
15 size plant but overall we need to have some
16 assurances there'll be some water for
17 whatever and we don't have that. So I think
18 it was prudent for the county to take a
19 position and kinda step back.
- 20 CHAIR HOWDEN: Yeah, that was a wise
21 decision. Any other questions? Ok. Ellen,
22 do you have a division report?
- 23 MS. KRAFTSOW: A division report?
- 24 CHAIR HOWDEN: Yeah. Here you are.

1 MS. KRAFTSOW: This is what...

2 CHAIR HOWDEN: No, come on. I was just
3 kidding you.

4 (laughter)

5 DIRECTOR ENG: Everyone take turns reading
6 a page.

7 CHAIR HOWDEN: Ah, ok. Board member
8 requests for agenda items?

9 MEMBER YAMAMURA: Can I go back, excuse me...

10 CHAIR HOWDEN: Of course.

11 MEMBER YAMAMURA: To Unfinished Business
12 first, sorry. Did we decide what we're
13 gonna do or not do or were there any
14 decisions regarding the appeals process
15 because here we go again today. It seems to
16 be an irritation to gosh, everybody. So,
17 are we gonna institute a committee or and
18 those who don't mind going before the
19 committee will have the opportunity to do so
20 or are we, did we decide any thing, I
21 forget.

22 CHAIR HOWDEN: John had some objections
23 last time but up until John's reappearance
24 from Turkey we had kinda of a consensus I

1 think that, that we wanted to have a 3-
2 member board I think which you and Don and
3 Phyllis, I believe to review the things,
4 just to expedite this. And I thought what
5 you wrote was really good. So but we can't
6 bring it to a vote today because it's not an
7 agenda item. And so might we defer to next
8 month and then we'll bring it up in a formal
9 discussion. Would that be ok? Yeah, that's
10 we, and Don.

11 MEMBER GERBIG: On that, I just, I was
12 playing on my computer and I said well, if
13 we, we look at the, these are just a few
14 schedules, use the, wait 'til you get it.
15 It's kind of a scheduling format. It takes
16 60 days to get a hearing all set, right? So
17 I just put down a requested hearing, take a
18 look at, if, on the left column here I just
19 call hearing request number, no names, that
20 would be a name. If somebody requested one
21 in, y'know in August, y'know requestor
22 number one well it'll be in August and
23 requestor number two would be you know the
24 next one, it'll be September and just to run

1 it out to see what it, give ah, yeah, ok.
2 Oh, ok, this is my other one, ok. But this
3 is on his, on appeals, I thought well, just
4 take a look at it for a year if you wanted
5 to put somebody, they came up and it got
6 cancelled or something you put it out to
7 end, well, if we had 10 in process they'd be
8 out to next June, you know, the hearing.
9 But just to, just to illustrate if we do one
10 a meeting, if we do one a meeting, what
11 it'll do and what it'll look like, you know
12 for, and it got postponed, did you get one?
13 Yeah. I, I just threw this out just to see
14 what, you know what it, what the, if we only
15 did one, what would, what it would look
16 like, you know if we got one. Now we didn't
17 get one today so everything is backed up.
18 CHAIR HOWDEN: Yeah.
19 MEMBER GERBIG: (laughing)
20 CHAIR HOWDEN: Seems kind of endless and
21 very frustrating for..
22 MEMBER GERBIG: It is.
23 CHAIR HOWDEN: An already frustrated
24 public. So, that, that was our point, John...

- 1 MEMBER GERBIG: Yeah, that's...
- 2 CHAIR HOWDEN: Really is you know, just
3 trying to address that...
- 4 MEMBER HOXIE: That's fine.
- 5 MEMBER GERBIG: Yeah, so I, yeah, I just,
6 just as an illustration of where we're at
7 kinda, on the hearings you know what it
8 looks like for the next year, you know if
9 you have 10 on the waiting list.
- 10 CHAIR HOWDEN: Amen. So we will...
- 11 MEMBER GERBIG: Alright.
- 12 CHAIR HOWDEN: Add that as an agenda.
- 13 MEMBER HOXIE: Yeah.
- 14 MEMBER GERBIG: The other one, did I give
15 you, how many, how many pages, just one?
- 16 CHAIR HOWDEN: Yes.
- 17 MEMBER GERBIG: I, I just, I thought that
18 on the front page of testimony, if you look
19 at the top, Current Agenda policy statement
20 on testimony. This is what it is. And it
21 says all, it, it says everything that's
22 there. The only thing that I was thinking
23 that maybe we could be more specific, that
24 we held it to agenda items. And we don't

1 use the word agenda items in that testimony
2 as written and the current agenda policy
3 statement there's no, the word agenda is not
4 used. So basically I said well down on the
5 suggested revision the testimony, this is
6 the law and Mr. Kushi can correct me but
7 then I said the priority shall be given to
8 testimony on appeals and, and testimony
9 related to the appeals over all other agenda
10 items. I don't know if we can do that or
11 not but I'm just saying this is a
12 suggestion. Mr. Kushi can verify that. The
13 next item is a, non-agenda items testimony
14 will not be accepted. I don't know if
15 that's too harsh but I'm, I just, I stated
16 that non-agenda items testimony will not be,
17 not be accepted. But policy on presenting
18 agenda item testimony the board shall first
19 receive the testimony the same, the same
20 thing as above. Three minutes are allowed
21 and so on, the discretion of the chair,
22 same, same down to the last, an additional 3
23 minutes after the testimony for additional
24 testimony, same thing. And then persons

1 whose testimony forms are submitted which
2 this is all the same too, so basically, what
3 I'm just saying here is that if it's a non,
4 there's not an agenda item, we don't take
5 testimony on it. Now, if there could be
6 exceptions to that in my, what I suggest is
7 exceptions to that would be if we have the
8 time and the testimony is pertinent to the
9 education of the board or something, y'know
10 something that the board could utilize as,
11 it would help them make better decisions
12 that testimony might, y'know we, we'd hear
13 the other side of the story maybe but, but
14 just that it, it would be the, the
15 chairman's discretion that this would
16 benefit the board for, I'm talking about
17 only non-agenda items, if it would benefit
18 board or y'know, in that respect.

19 MEMBER HOXIE: So, like today we had Dick
20 Mayer talk, how would you, how would you
21 handle that?

22 MEMBER GERBIG: I, I would, I think that's,
23 that's worth it. I, it really is because
24 from the standpoint we had been involved

1 with Piiholo Well, this is the other side of
2 the issue. But I think that, that one,
3 that's an example, that wasn't there but if
4 I was chairman I would've made the decision,
5 like you did, to go ahead with it because we
6 have referred to this in various testimonies
7 and presentations prior so this, this would
8 be an ongoing thing. The only thing I
9 question is do we have any authority over
10 the Piiholo Well, the board? Where do, how
11 do we fit into that? Do we?

12 MEMBER HOXIE: No.

13 CHAIR HOWDEN: That, that's a curious
14 question.

15 MEMBER HOXIE: I don't think so.

16 CHAIR HOWDEN: But I don't think so. Ed?

17 MR. KUSHI: Well, the Piiholo South Well...

18 CHAIR HOWDEN: Yes.

19 MR. KUSHI: Is not a county project or,
20 it's not a county project as of yet. It's
21 only in discussion stages. When and if the
22 county ever considers it, the department
23 considers it, it has to go to the council...

24 CHAIR HOWDEN: Yes.

1 MR. KUSHI: And then if the council says ok
2 then it's a private-public enterprise
3 partnership, then it's a part of the county
4 system. Right now, it's just in discussion.
5 Again, when I saw the email this morning
6 about Dick Mayer then I read his testimony
7 this morning and I think he fitted it in the
8 agenda item, Item 8 B as in boy, discussion
9 of Upcountry Drought policies so it, it's
10 sort of related.

11 MEMBER GERBIG: Yeah, it, it, overall water
12 issue which we...

13 MR. KUSHI: Nah, nah, nah, everything is
14 water on this board but you know, it's
15 related to the agenda item. Again, the
16 thing I had a problem with was Ms. Dana
17 Hall's testimony. She testified in the
18 Public Testimony issue, I mean, proceeding
19 but her appeal is on the same issue. And
20 this is where I disagree with you. On
21 public testimony on any agenda item, if you
22 allow, well, put it this way, you can't
23 disallow. If they wanna testify on an
24 appeal matter but I, I'd advise the board

1 this public testimony, they have an appeal
2 scheduled in, on a contested case issue, as
3 you recall all contested case issues
4 testifiers are put under oath.

5 MEMBER HOXIE: Right.

6 MR. KUSHI: Ok. Public testimony
7 testifiers are not under oath, so you take
8 it as, as it is. But again it's an agenda
9 item but again stuff like this happens.

10 CHAIR HOWDEN: Yeah.

11 MEMBER HOXIE: So...

12 MR. KUSHI: So, just, just advising.

13 MEMBER HOXIE: So you're saying that, that
14 should've been under, that should've been
15 under, under oath.

16 MR. KUSHI: The appeals.

17 MEMBER HOXIE: Yeah, yeah.

18 MR. KUSHI: But again, you know.

19 CHAIR HOWDEN: Yeah, yeah, I agree with
20 you, Ed. Y'know, had that not been Dana
21 whose...

22 MR. KUSHI: Yeah.

23 CHAIR HOWDEN: For whom physical effort to
24 simply be here is extraordinary, I probably

1 would have disallowed that on advice of
2 counsel because that's our contested case
3 hearing.

4 MR. KUSHI: Not gonna say (inaudible).

5 MEMBER HOXIE: Yeah, right.

6 MR. KUSHI: (inaudible).

7 (laughter)

8 CHAIR HOWDEN: Ah, no, you no scared. Ok.

9 MR. KUSHI: Done it before.

10 CHAIR HOWDEN: Oh, I like your haircut.

11 MR. KUSHI: Ah, Mr. Chair, on, on Don's,
12 ah, go ahead.

13 MEMBER GERBIG: So, yeah basic, yeah
14 basically what I did here is I, I broke it
15 down and I, I, I, I cited the you know, the
16 laws or the ordinances that affect us and
17 that, how we're affected you know, we're
18 affected, so somebody says, well, I wanna
19 give this, the chairman could say well,
20 under, under title 14, that doesn't count.
21 Or something that, but I mean that everybody
22 is aware, correct me, Mr. Kushi. But I just
23 said that that these are the laws that
24 we're, are applicable to us. That's the

1 first part of it. Then rest is just
2 priority. So whether we should set a
3 priority or not or we can, I think, I think
4 we should from the standpoint of appeals are
5 priority. If we wanna get those, that's our
6 primary purpose in life is the appeals then
7 we should give them a priority wherever we
8 can, yeah. Even though it doesn't work.

9 CHAIR HOWDEN: The, shall we discuss this
10 as a agenda item for our next meeting? Ok.
11 And John has an agenda item.

12 MEMBER HOXIE: Yeah, I do and this is,
13 y'know this is something that that is a
14 particular interest of mine. It's a very
15 big issue but I think we need to start
16 talking about it. And that has to do with
17 Upcountry water. We don't have enough
18 water. We have 2,000 people waiting on the,
19 on the list for meters. What are we doing
20 about it? I would like to see us and this
21 is a very big, very big issue. It takes,
22 it's a lot work. It's very complicated and
23 maybe the Upcountry water use plan will be
24 part of it but I would like to see an update

1 of, don't have to write it down, I got it
2 for you. Update the water meter waiting
3 list by source because there's all different
4 pieces up there. What is the total water
5 needed? Project the total water needs based
6 on the general plan which will probably even
7 add more to it and then develop a plan to
8 meet this need. And I think it's very
9 timely when you're talking about budgets and
10 capital improvement because we're gonna have
11 to spend money to develop water sources but
12 otherwise we're gonna be continually having
13 appeals. Let's, let's start working to get
14 rid of that list and it may take a lifetime
15 to get it done but I think we gotta start
16 working on it. This is nothing new so I'd
17 like to start us talking about it.

18 MEMBER GERBIG: Yeah. I wanna add just to
19 what he's saying I just, this Upcountry
20 thing is a big balloon y'know and all of our
21 appeals are based primarily on that so
22 every, any, any information that we have on
23 these Upcountry meters, the status and so
24 on, would really be a benefit to our

1 decision-making.

2 CHAIR HOWDEN: Yeah, and also we're gonna
3 be dealing with the Water Use and
4 Development Plan...

5 MEMBER HOXIE: Right, right.

6 CHAIR HOWDEN: Next up is Upcountry. You
7 received that, right, the draft?

8 DIRECTOR ENG: Still a draft, yeah.

9 CHAIR HOWDEN: Still a draft. So any idea
10 when that will be transmitted to the board?

11 DIRECTOR ENG: I don't know. I can check
12 with Carl on that...

13 CHAIR HOWDEN: Ok.

14 DIRECTOR ENG: That, that should be
15 happening relatively soon.

16 CHAIR HOWDEN: Pretty soon, ok. Yeah, ok,
17 good. Good. Seems timely.

18 MR. KUSHI: Mr. Chair, 5 minutes, on,
19 following up on Ted Yamamura's Unfinished
20 Business on Appeals. I had a meeting with
21 my boss, Brian Moto, and Jane Lovell, head
22 of litigation...

23 CHAIR HOWDEN: Yes.

24 MR. KUSHI: Couple days ago. They're

1 concerned about the appeal procedures of
2 this board also. And it was suggested that
3 I speak to the board and you in particular
4 that we start from scratch in terms of your
5 rules and procedure provide for pre-hearing
6 conferences. So you know, outside of the
7 board meeting you designate, do it yourself
8 or delegate to whoever, an individual
9 together with staff to bring the 2 parties
10 together whether they're represented by
11 attorneys or not, as soon as an appeal is
12 filed and tell look, we're gonna set you,
13 your appeal date is 2 months down the line.
14 These are the deadlines that you have to
15 meet, any motions that you file, any
16 requests for discovery, we will set
17 deadlines for that. And then, and issue an
18 order and then they can follow these
19 procedures. So we won't have something like
20 what happened with Mr. Hall or any other
21 attorneys. And even if they're not
22 represented by attorneys we can have it
23 individuals, we can do it by conference
24 calls. And then set you know, and it'll be

1 easier for staff, for Gaye to, to have been
2 known, know, the parties know that these are
3 the deadlines that you have to follow. And
4 if they wanna deviate or not fulfill their
5 obligations for that order then they can't
6 file these things. The Board of Variances
7 and Appeals and the Maui Planning Commission
8 on, on appeal hearings always set these
9 procedures. That being said, it's up to you
10 but I'll recommend if you have the time you
11 can do it, I'll be there, staff will be
12 there; if not you can appoint any one of
13 your fellow board members who have the time
14 and in the unlikely event you don't have
15 anybody else you could appoint me.

16 (laughter)

17 MR. KUSHI: You could delegate that task to
18 your board's attorney...

19 CHAIR HOWDEN: Wow.

20 MR. KUSHI: Gather the parties and set a, a
21 pre-hearing conference schedule.

22 CHAIR HOWDEN: Yeah, I'd like to have a
23 board member there and I think it's
24 certainly between Ted and Don, you know we

1 have likely people and maybe others, who
2 knows, John. You know, so...

3 MR. KUSHI: You don't need a multitude,
4 just bring one every, somebody there to
5 kinda see what we're doing..

6 CHAIR HOWDEN: Yeah, we have a pool of
7 board members for that. Um, ah, do we need
8 a, can you prepare a draft or...?

9 MR. KUSHI: Ok. You have some, more than
10 one can rotate.

11 CHAIR HOWDEN: Yeah, of course, yeah.

12 MEMBER HOXIE: But get it moving. Yeah,
13 yeah.

14 CHAIR HOWDEN: A pool of volunteers. Good.

15 MR. KUSHI: So, I'll bring it up at the
16 next meeting.

17 CHAIR HOWDEN: Great, ok.

18 MR. KUSHI: Send you a draft following
19 proposed procedure for pre-hearing
20 procedures.

21 CHAIR HOWDEN: Ok.

22 MEMBER YAMAMURA: Can I ask a question
23 while we're on the subject?

24 CHAIR HOWDEN: Sure.

1 MEMBER YAMAMURA: When does the board
2 receive the initial, what is it, complaint
3 if you will and then the denial or, or, did
4 I say that correctly? When do we get the,
5 the initial request that was denied and
6 denied, denial documents? We get that the
7 meeting prior to the appeal hearing or when
8 it's appealed.

9 MEMBER HOXIE: We don't get it, right?

10 MS. HAYASHIDA: You don't get it...

11 MEMBER HOXIE: Yeah, we don't get it.

12 MEMBER YAMAMURA: We just don't get it at
13 all?

14 MS. HAYASHIDA: Because you're judges and
15 then the evidence is presented to you at the
16 hearing.

17 CHAIR HOWDEN: So, you, you get it as part
18 of the hearing.

19 MEMBER YAMAMURA: Yeah.

20 MR. KUSHI: Yeah, and again that procedure
21 will kinda expedite that. We would be
22 requesting the, all pre-hearing documents
23 including the complaint, including the staff
24 reports, including their memorandums be

1 submitted at least 2 weeks in advance.

2 Which means the board can have at least a
3 week or 2 before the hearing date.

4 CHAIR HOWDEN: Anything else?

5 MR. KUSHI: Oh, one more thing. I read, I
6 read Ted's memorandum. Your idea about a
7 panel is ok but there're some holes in that.

8 MEMBER HOXIE: But if we come up with the
9 appeal process we're kinda doing the same
10 thing in a different fashion.

11 MR. KUSHI: Right, right, but, but, I mean...

12 MEMBER HOXIE: Yeah, we'd be addressing a
13 pre, ah, appeal.

14 MR. KUSHI: Yeah. I think the attorneys in
15 our office kinda would suggest having the
16 appeal heard by all of you, 'cause it'll
17 save time. And if you can get funding
18 through the department next year maybe we
19 can get into a hearings officer situation.
20 Right now, we don't, I don't think we have
21 money for that.

22 MEMBER HOXIE: I don't think we need a
23 hearings officer.

24 MR. KUSHI: 'Cause if you have a panel, the

1 panel would have to hear it, make a report
2 and then report to all of you.

3 MEMBER HOXIE: Yeah.

4 MR. KUSHI: So it's a, it's a double job.

5 MEMBER HOXIE: But if people meet the
6 deadlines on getting the discovery and
7 everything else, we should be able to deal
8 with those.

9 MR. KUSHI: Yeah, I mean if, if, if it's
10 fairly clean and especially if attorneys
11 involved then you then; if you have non-
12 attorneys then you might mess it.
13 Hopefully, we can, have 2 appeals a day.
14 But you guys have to go past 12. That's it.

15 DIRECTOR ENG: I have a question. I just
16 want confirmation from Gaye, so next
17 meeting, ok, 2 appeals.

18 MS. HAYASHIDA: Michael Perry and Greg
19 Davidge.

20 DIRECTOR ENG: And Greg Davidge. Now, the
21 department and, and Benni, we've had some
22 discussions regarding Perry appeal. Is
23 that, has there been any indication from Mr.
24 Hall that...

- 1 MS. HAYASHIDA: I have received nothing.
- 2 DIRECTOR ENG: Ok.
- 3 MS. HAYASHIDA: I'm gonna assume that he's
4 been in contact with Benni.
- 5 DIRECTOR ENG: Yeah, we talked to her and
6 there's some discussion, trying to settle
7 it.
- 8 CHAIR HOWDEN: Yes, ok.
- 9 DIRECTOR ENG: I'm just need to assign to
10 my staff the preparation of staff report for
11 I think the Davidge one. I'll get them
12 going on that.
- 13 MEMBER HOXIE: So, which are the 2?
- 14 MS. HAYASHIDA: Michael Perry and Mr. Greg
15 Davidge.
- 16 DIRECTOR ENG: Zero nine zero two and zero
17 nine zero four, ok. I'll check with Benni
18 to see if there's any progress because I
19 thought we might able to come to a
20 settlement with Perry. I'm just trying to
21 save my staff the time to prepare.
- 22 MR. KUSHI: I understand Perry's settled.
- 23 DIRECTOR ENG: Is it settled or close to...?
- 24 MS. HAYASHIDA: Well, can I speak?

- 1 DIRECTOR ENG: May, may Gaye comment?
- 2 MS. HAYASHIDA: According to, I spoke to
3 Mr. Hall and they are in the process of, of
4 negotiating with Mr. Dowling.
- 5 DIRECTOR ENG: Ok.
- 6 MR. KUSHI: Yeah.
- 7 DIRECTOR ENG: Ok. Good.
- 8 MEMBER HOXIE: But they're on schedule for
9 next week at this point, for next month?
- 10 MS. HAYASHIDA: Next month.
- 11 MR. KUSHI: But isn't Davidge...?
- 12 MS. HAYASHIDA: And Davidge also.
- 13 MR. KUSHI: I think you should set Davidge
14 firm.
- 15 CHAIR HOWDEN: I thought Davidge filed too
16 late?
- 17 DIRECTOR ENG: Yeah, I, I'm assuming
18 Davidge is on so I'll have my engineers
19 prepare a staff report as soon as possible
20 for that. The Perry one looks kinda
21 favorable.
- 22 CHAIR HOWDEN: Good.
- 23 MS. HAYASHIDA: It's probably gonna be
24 settled..

1 DIRECTOR ENG: I hate to have them put in
2 all those hours preparing a staff report or
3 anything, so.

4 MS. HAYASHIDA: That's why Mr. Davidge is
5 also on because if it's settled then..

6 DIRECTOR ENG: Yeah. Let's assume, for
7 sure Davidge, I'll have them prepare a staff
8 report for Davidge and maybe I'll
9 communicate to Benni 'cause I need to,
10 workload and I hate to assign something and
11 it's not needed.

12 CHAIR HOWDEN: John.

13 MEMBER HOXIE: What about the, 802, and,
14 and 806 and 901? Is there, are they on the
15 horizon anywhere or what? Kalama Hills?

16 MS. HAYASHIDA: I'm sorry. That was to be
17 January 2011.

18 CHAIR HOWDEN: That was 802, Thomas Cole's.

19 MS. HAYASHIDA: Yeah, that should be
20 January 2011.

21 MEMBER HOXIE: And 806?

22 MS. HAYASHIDA: That is still..

23 DIRECTOR ENG: Mr. Blietz's has been
24 working with my engineers. I guess he's

1 just keeping it, moved it back in case he
2 needed to.

3 MS. HAYASHIDA: He doesn't want to withdraw
4 until, I guess he's pretty much satisfied,
5 everything, yeah.

6 DIRECTOR ENG: It seems that they've been
7 working towards a resolution so that's kinda
8 favorable.

9 MS. HAYASHIDA: Pauwela Farms, I think they
10 did a modification agreement.

11 MR. KUSHI: Correct.

12 MS. HAYASHIDA: I'm sure...

13 MR. KUSHI: I signed it.

14 MS. HAYASHIDA: Ok. And I have yet to
15 receive a letter of withdrawal...

16 MEMBER HOXIE: So, that's probably not,
17 yeah.

18 MR. KUSHI: (inaudible).

19 CHAIR HOWDEN: Well, in spite of us
20 progress is being made.

21 DIRECTOR ENG: That's the way to do it,
22 y'know. Just cross 'em all off.

23 (laughter)

24 CHAIR HOWDEN: Good job, board.

1 DIRECTOR ENG: Maybe Michael Perry, maybe
2 we got a chance to cross 'em all off. Ok.

3 CHAIR HOWDEN: Anything else? Ok.
4 Adjourned.

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7 (The meeting adjourned at 10:32 a.m.)

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Prepared and submitted by:

Gaye Hayashida
Commission Support Clerk

Approved on: _____