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BOARD OF WATER SUPPLY

LANA`I PUBLIC HEARING

AUGUST 11, 2010

Location:

Lana`i High & Elementary School  
555 Fraser Avenue  
Lana`i City, Lana`i, Hawaii

Time:

5:00 p.m. - 8:00 p.m.

1     BOARD MEMBERS PRESENT:

2     Michael Howden, Chair  
3     Phyllis Robinson, Vice Chair  
4     Kevin Boteilho  
5     Donald Gebrig

6     STAFF PRESENT

7     Edward S. Kushi, Jr. Deputy Corporation Counsel  
8     Ellen Kraftsow, Water Resources and Planning Program  
9     Manager  
10    Gaye Hayashida, Commission Support Clerk

11    ALSO PRESENT

12    Videographer Jim Johnson, Castle & Cooke

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1           **THE CHAIR:** Thank you for coming. We have bad  
2 news. I prefer to let Ed Kushi, the corporation counsel  
3 give you that bad news, because we have a point of order  
4 challenge from the audience, and I would like to  
5 acknowledge that, as well. So Ed, do you want to go  
6 ahead and --

7           **MR. KUSHI:** Yes, thanks, Mike, for letting me do  
8 the bad news part. For the record, my name is Ed Kushi.  
9 I'm deputy corporate counsel. I represent the Board of  
10 Water Supply. As things happened, as you know, there's  
11 only four board members before you who are present. The  
12 Board of Water Supply is made of nine members. We need  
13 five of us to have a quorum to hold any sort of meeting.  
14 So that's the case we have tonight, we have four out of  
15 the planned five. That being the case, according to the  
16 Office of Information Practices, State of Hawaii, all we  
17 have to do or all we can do is announce the meeting,  
18 announce the situation, and close the meeting.

19           For purposes of the substance of what we were  
20 here for tonight, the water planning ordinance says that  
21 the update to the Lana`i Water Use Development Plan, once  
22 it comes to the Board of Water Supply, the board shall  
23 hold one or more meetings in the affected area, public  
24 hearings on the plan.

25           Tonight was supposed to be the one on Lana`i, so

1 that being the case, since we can't have a meeting, we  
2 will have to come back.

3 And that's again, folks, for your information,  
4 this past legislature, the Office of Information  
5 Practices did submit a bill that would have remedied this  
6 very situation, that, not reschedule, if you didn't have  
7 a quorum, you could go ahead and take public testimony.  
8 Unfortunately, that bill did not pass. If I understand  
9 it, it is being sent over to the next session. But  
10 again, that being the case, I can only advise the board  
11 to close this meeting.

12 **MR. REILLY:** Mr. Chair, I would like to rise.

13 **THE CHAIR:** Yes, sir.

14 **MR. REILLY:** My name is Fairfax Reilly. I would  
15 like to rise for a point of personal privilege at this  
16 point, if you accept that.

17 **THE CHAIR:** Oh, please make your point.

18 **MR. McOmber:** Thank you. I understand what  
19 Counsel Kushi is determining as to the requirements of  
20 the regulation. I think for us on Lana'i, if we don't  
21 put on the record our grave disappointment, then we would  
22 be amiss to this community. It has taken 15 or 20 years  
23 to get to this point. You have taken the time to come at  
24 taxpayer expense to come to hold this meeting. People  
25 from all aspects of this community have flown over from

1 other islands. And if you're not going to take verbal,  
2 oral testimony, I would hope that you can view our  
3 written testimony prior to your departure.

4 But I want to put on the record, that this is --  
5 I'm sure I'm not the only one in this room who feels this  
6 way, I know you guys feel that way, too, so I respect  
7 your feelings, too, you must be disappointed, but as they  
8 say, it is no pass. It is no pass. Thank you.

9 **MR. KUSHI:** Mr. Chair. Pat, written testimony,  
10 if you would like to submit it, I would say fine. And we  
11 would accept and acknowledge that testimony at the next  
12 hearing, when we come back.

13 **MR. REILLY:** I'd like to give it to you right  
14 now.

15 **MR. KUSHI:** You can give it to us now, but it  
16 won't be in the record, because there is no meeting. And  
17 let me assure you, on behalf of the board, on behalf of  
18 my office, on behalf of the whole administration, we are  
19 not happy. We have planned this over a month ago to come  
20 here. And in terms of the timing, we are on the time  
21 clock. We are -- the board is on the 180-day time clock,  
22 so it won't take 15 years.

23 **MR. McOMBER:** Good afternoon. My name is Ron  
24 McOmbler. I've lived on Lana'i for 40 years. I've been  
25 working on this water report for probably close to 20

1 years, ever since we formed the water committee. This is  
2 very disappointing, folks. This is extremely  
3 disappointing, because we need to get this plan approved  
4 by you, and then send it to the council, so that we need  
5 to get it in to the water -- to the community plan. It  
6 is really important, because all of these things have to  
7 work this way, and if it doesn't work it leaves a big  
8 gap. And we have struggled with this thing, and  
9 struggled through at least five water directors, and try  
10 to get to this point.

11 This is a private water system. And I know I  
12 have heard the comment that, what are we going to Lana'i  
13 for, if it is a private water system. You are mandated  
14 to do this because the quorum said you should do this.  
15 And we did it.

16 And before I go any further, I want to recognize  
17 somebody that has busted their butt for us. Ellen, will  
18 you come up here, please. This lady, through trial and  
19 error, has been a sweetheart.

20 *(Applause.)*

21 Let me give a lei to her. I want to give one to  
22 her now as a special thank you. And this is for the  
23 girls down in Manele. They put a lei together for you,  
24 so they made one for you. Don't break your neck. Thank  
25 you, sweetie.

1           *(Applause.)*

2           **MR. McOMBER:** This lady, through trial and error,  
3 sometimes we wanted to kill her, and sometimes she wanted  
4 to kill us, but this is the hardest working person in  
5 that department. She is a perfectionist, which probably  
6 makes it even worse, but I'm going to tell you something.  
7 We have a water working -- this water report is thorough.  
8 If you have read it and looked through it, the watershed  
9 protection, forest protection, and we need this thing to  
10 go through. So when you come back, please work with us  
11 on this.

12           **VICE CHAIR ROBINSON:** We will.

13           **MR. McOMBER:** Okay? Thank you very much. And  
14 I'm really, again, I'm extremely disappointed because  
15 corporate counsel was outside, I saw him outside when I  
16 drove in, he knew that I was unhappy. And that's  
17 [inaudible] --

18           **THE CHAIR:** Yeah, Ron, I have got to say, it is  
19 really not Ed's fault. He's simply exercising due  
20 diligence, and is accountable to his boss and to the  
21 existing laws.

22           For those of you who came in a little bit later,  
23 we can't do a formal hearing because the water board does  
24 not have a quorum. One of our members is mildly  
25 dyslexic, and she thought it was tomorrow. And so -- and

1 it is awkward, it is embarrassing. And I know how  
2 important this plan is, really, to the survival of your  
3 community. And I think it reflects very poorly on the  
4 board that we don't have a quorum.

5 Ellen has, because she's going to be taking off  
6 at the end of this month, for a vacation long overdue,  
7 she is going to make her presentation. And I would  
8 recommend that those of you who, you know, have the time  
9 to stay, it will be about an hour, I think it would be  
10 very worthwhile.

11 We're not allowed to do the hearing, and we might  
12 be even overstepping accepting comments. Originally, I  
13 was just going to take the point of order. So again, we  
14 apologize, and Ellen will be making a presentation.

15 **MR. McOMBER:** Well, just remember, when you come  
16 back for the official meeting, make sure you have a  
17 quorum next time, folks, because this is really important  
18 for us. And I think you know that. We've worked really  
19 hard on this. It is probably the first water use  
20 planning Maui County has done, even with the community  
21 plan, we were the first one to be done. So thank you for  
22 paying attention.

23 **THE CHAIR:** Well, you know, one of the things  
24 that, just in the time allotted, I know it was not  
25 printed this way in the Maui News and the Lana'i News



1 article on Monday, but it was the Water Use Development  
2 and Protection Plan, which seems foundational for any  
3 intelligent water plan.

4 So did you want to make a brief comment?

5 **MS. KAYE:** Yeah.

6 **MR. KUSHI:** Mr. Chair, I need to advise you to  
7 close the meeting.

8 **THE CHAIR:** I'm sorry. We have to stop.

9 **MS. KAYE:** Just a question on what you said,  
10 Mr. Kushi. Written testimony, if they didn't bring  
11 written testimony, can I ask, is there a formal way to  
12 submit it?

13 **MS. KRAFTSOW:** That will be in my presentation.

14 **THE CHAIR:** On behalf of the department, Gaye can  
15 take it. The board cannot accept it.

16 **MS. KAYE:** And then the process would be that any  
17 communications would be delivered to the board prior to  
18 the meeting, whenever it is scheduled, in October?

19 **THE CHAIR:** Well, you know, we will have a chance  
20 to look at both your testimony, and Castle and Cooke, I  
21 believe, is going to submit stuff. So we will have --  
22 the whole board will have a chance to look at that before  
23 we come back next time, and we'll be slightly better  
24 informed of the different points of view.

25 **MS. KAYE:** So you are saying we can send things

1 through Gaye that will go to the board, starting  
2 tomorrow?

3 **THE CHAIR:** Yeah. We can't accept it, but she  
4 can accept it.

5 **MS. KAYE:** Will you give us information on how to  
6 communicate with them?

7 **THE CHAIR:** Okay.

8 **MR. KUSHI:** So Mr. Chair, for the record, this  
9 meeting is adjourned; is that correct?

10 **THE CHAIR:** Yes.

11 *(The meeting was adjourned at 5:20 p.m.)*

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C E R T I F I C A T E

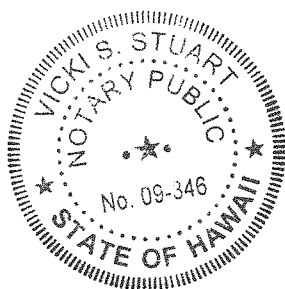
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2 STATE OF HAWAII )  
3 CITY AND COUNTY OF HAWAII ) SS.

4 I, VICKI SUE STUART, Notary Public in  
5 the State of Hawaii, do hereby certify:

6 That on Wednesday, August, 11, 2010, from 5:00  
7 p.m. until 5:20 p.m., the above proceedings were taken  
8 down by me in machine shorthand and were thereafter  
9 reduced to typewritten form under my supervision; that  
10 the foregoing represents, to the best of my ability, a  
11 true and correct transcript of the proceedings had in  
12 the foregoing matter;

13 I further certify that I am not an attorney for any  
14 of the parties hereto, nor in any way concerned with the  
15 cause.

16 This 11-page TRANSCRIPT OF PUBLIC HEARING, dated  
17 August 11, 2010 was subscribed and sworn before me this  
18 16th day of August, 2010, in the First Circuit of the  
19 State of Hawai'i by Vicki Sue Stuart.



*[Handwritten Signature]*

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21  
22 VICKI SUE STUART, CSR 474  
23 Notary Public, State of Hawaii  
24 My Commission Expires 08/02/2013  
25