

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR MEETING

Taken at the David Trask Building, HGEA Conference
Room 207, 2145 Kaohu Street, Wailuku, Maui, Hawaii, commencing
at 9:00 a.m. on January 27, 2000.

Reported By: Rachelle Primeaux, CSR #370

ATTENDANCE:

Members Present:

Bob Takitani, Chair
Clark Hashimoto
Peter Rice
Mike Nobriga
Jonathan Starr
Orlando Tagorda
Adolph Helm
Elmer Cravalho

Staff Present:

Howard Fukushima, Corp Counsel
David Craddick, Director
Fran Nago, Secretary
Herb Kogasaka, Chief Engineer
Jacky Carroll
Mike Quinn
Larry Winter

Others Present:

Garrett Hew
Randall Moore
Clayton Suzuki
Harry Eager

Ed Harada
Jim Smith

IWADO COURT REPORTERS, INC.

REGULAR MEETING
JANUARY 27, 2000

CHAIRMAN TAKITANI: Good morning. I would like to call the Board of Water Supply County of Maui Regular Meeting to order. It's Thursday, January 27, 2000, 9:00 a.m. The meeting is in the HGEA Conference Room, David K. Trask, Jr., Building, Room 207. In attendance, we have members Elmer Cravalho, Adolph Helm, Orlando Tagorda, Clark Hashimoto, Mike Nobriga, Peter Rice, Jonathan Starr and myself, Bob Takitani. We have Corporation Counsel, Howard Fukushima; Director, David Craddick; Board Secretary, Fran Nago; Recording Secretary, Rachelle; Fiscal Officer, Mike Quinn; Engineering, Herb Kogasaka. We have Harry Eager from the Maui News, Clayton Suzuki from Wailuku Ag, Garrett Hew from EMI and Randall Moore from HC&S.

We have a quorum present. The agenda has been properly noticed and filed. We go to approval of minutes, Number 3. We have regular minutes for regular meeting December 21st, 1999. Executive session December 21st, 1999, and the reconvened Board of Water Supply Regular Meeting at Pukalani on January 13th, 2000.

MR. NOBRIGA: Chairman, I move that these minutes be received subsequent to 30-day review at which time they will be filed.

MR. HASHIMOTO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Hashimoto. Minutes have been received with a 30-day review period subsequent to which they will be filed. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: Aye's have it. The minutes are received. We'll go to testimony from the public. Is there any public testimony on non-agenda items?

Seeing none, we've had a request from three busy people to include their items up, so we'll go to Old Business Roman Numeral 6, Item B, Discussion and possible action regarding the Iao Waikapu Ditch, Page 15.

MR. CRADDICK: There is a letter that was handed out this morning from the staff, and I would just like to read that over since the Board Members haven't had a chance to get it. The agreement concerning temporary withdrawal from Iao/Waikapu ditch is presented for your approval.

The term is for two years and covers withdrawals during peak flow times when stream flow is 65 MGD or more up to 2 million gallons and that's up to 2 million gallon daily. The cost of delivery is \$120 per million gallons. The price represents the previous price less the loss of water for sugar growth.

The price is double the rate we pay for upcountry water, however, our yearly cost should the water be used 30 percent of the time would be \$29,000 plus tax. The 30 percent time of use is very optimistic in my estimate. The time of use would probably be closer to 15 percent of the time, which would cut the yearly cost in half to \$15,000.

The problems associated with the use of source are many. The benefit is a reduction in Iao aquifer withdrawal of .2 to .4 million gallons a day over the span of one year depending on the amount of use. In addition to Iao reduction, there is some benefit in keeping the units operational as sitting will cause other operational problems when the units are put in service at another location, Awalau or other locations. The staff recommends approval of this agreement as it does not take water that has historically been used for agricultural purposes. We are only taking what is considered

excess water during high flow periods.

CHAIRMAN TAKITANI: Any discussion from the Board?

MR. STARR: Yeah, I don't like this agreement because it only allows us to take water from the ditch when it's running at very heavy surplus capacities, and my own feeling is we should try to work a deal where we can take water year round, and with that, make a real reduction in the draw of Iao aquifer. This is the basis that the previous Board had committed to the State Commission on Water Resource Management when the State was considering designation saying that use of the Iao ditch water, which we did for about 18 months on a steady basis, would be the main reason for being able to take the load off Iao and not having Iao designated.

So I don't see any real benefit from being able to take it 15 percent of time. And I also do not really believe that this is an issue about that water being needed for ag use. To my understanding, the water is available to us but that the entities involved, Wailuku Ag and A&B, are looking for a somewhat higher rate for the water. So I think that it's a function of price and not a function of need for this water. And my feeling is that we should take this opportunity to lock in the use of that water for our customer base. I know that we're definitely going to be called on to issue quite a few new meters and services in central and south Maui in the next year or two before the East Maui Project has a chance to come along and that we desperately need this ditch water. We have the processing plant which would need to be upgraded, but I would much rather see us moving to get a real ability to use this water 100 percent or at least 90 percent of the time.

CHAIRMAN TAKITANI: Would you gentlemen like to respond to Mr. Starr's comments.

MR. CRAVALHO: Just a procedural question again. There was nothing before the Board until such time as there is a motion one way or the other to approve or disapprove. So to provide the opportunity for discussion, I move for the approval of the contract strictly for the purpose of getting the subject on the floor.

MR. NOBRIGA: Second that motion, Mr. Chairman.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Nobriga that we move the agreement to the floor for approval. All those in favor, say "aye."

VOICES: Aye.

MR. STARR: I think we have the opportunity for discussion first.

CHAIRMAN TAKITANI: Any discussion?

MR. CRAVALHO: Mr. Chairman, I believe that in order to bring it to the floor for discussion, a motion is necessary.

CHAIRMAN TAKITANI: Garrett.

MR. HEW: Chairman Takitani, Board Members, we're here today just as resource people. We've been asked by David to come and answer any of your concerns or questions about the Iao/Waikapu ditch. You know, as far as the ag side, we have Clayton and Randall here that can go into more detail if you need more details. I don't know what specific questions. If you have a specific question to ask of us, we'll try to answer it.

CHAIRMAN TAKITANI: I guess the specific question is how necessary is that water for the ag use of Wailuku Ag and A&B?

MR. SUZUKI: That 15 percent is pretty accurate where we have surplus water. It may be less, but other than that, we use all the water that we take into our ditches. All the water is consumed in agriculture operations.

MR. TAGORDA: How do you address the concern of Mr. Starr of trying to utilize that Iao ditch not only when it's on it's peak flow but on a daily basis? Would it really hamper agriculture that much when we take or the County takes, wants to take 2 million gallons daily?

MR. HEW: I think the question to that, Orlando, is yes because of the fact that the source is Iao stream and that source varies daily. And, as you know, during times of low rainfall, the flow is low. Whatever water is in the stream is diverted and used for ag purposes. On a day like today when, you know, there's water going down to the ocean, we can consider that excess.

MR. TAGORDA: To follow up my line of questioning is there was a set level, which is 65 million gallons daily. On average, that Iao ditch, how low it can come and how high it can go up when there is low rainfall and high rainfall?

MR. SUZUKI: At low rainfall, we've seen it drop to 11 million gallons daily, and peak is at 65 million gallons.

MR. TAGORDA: Again, but my concern is the 65 million gallons daily. Once you go below that, there was a penalty imposed on the contract, which is 1,020 per million gallons if I'm correct in my reading of the contract. So there is only a very limited access to the water unless you go for being penalized.

CHAIRMAN TAKITANI: Mr. Craddick, you want to respond?

MR. CRADDICK: I really don't have any comment on that. You know, we wouldn't use it. If we're going to be penalized, we're not going to be using it.

MR. TAGORDA: But the 65 million gallon level is set that you cannot take below 65, so what you can only take is when the peak flow goes up to 65.

MR. CRADDICK: The 65 million is a threshold number. If it is less than 65 million, then their fields are wet enough to where they're not going to be irrigating them. I suspect that we're still going to be able to take water below that. They're just not saying in the agreement that we can do it, and that may be, you know, why they would allow that. That's why I give the range of numbers between 15 and 30 percent, because if they allow that, we may be able to use it a little bit more of the time, but I'm not betting on it.

I think more, you know, for our concerns is the operational consideration that we don't actually flat out shut them down, because when that happens, there's a relatively long period of time to get them back up to operation again. And, you know, if we are going to use them 100 percent of the time, you know, I would say keep them at some -- I think the minimum amount of water that we can run through it is 200 gallons a minute and have the meters and things like that work.

Now, if that's a possibility, that obviously would help us out and keep it operational with some very, very low number when we're not -- when we don't have all this water. That might be some kind of a compromise, but just so you know that that operational comment that I put in there is a very real comment. And we've actually had permission from them to use it to get these operational. It's taken us over a week to do it already since they gave us permission to start using the water to get it operational.

MR. HASHIMOTO: Most of this water goes to HC&S and Maui Pine?

MR. MOORE: Is goes to HC&S.

MR. SUZUKI: We have a share agreement on the percentage of water share. The pineapples grow on our land, yes.

CHAIRMAN TAKITANI: Mr. Starr.

MR. STARR: When we were using this water for that period of about 18 months, how did that affect your ag operation?

MR. HEW: I think, was it 18 months? I thought it was a lesser time.

MR. CRADDICK: Yeah, it was only ten months.

MR. HEW: I thought it was ten months. I think during that period, we were lucky that flows were pretty well up. But as far as the total flows in the ditch, even if you

folks are taking it too, it's still sufficient for us to go on with our ag, but I think some of the fields were short on water because of the taking.

MR. SUZUKI: During most of that ten months, we were short. We couldn't meet the demands of our weekly irrigation schedules.

CHAIRMAN TAKITANI: I think the one problem I have with this is the fee of 12 cents per thousand on water withdrawn from the Iao/Waikapu ditch. Now, correct me if I'm wrong, but there's a backwash operation that returns a substantial amount back to the ditch. So if I'm reading this correctly, the water withdrawn, we're paying for the backwash water also?

MR. CRADDICK: That's correct the way it's worded right now. And over that ten-month time, keep in mind the -- I think average daily draw was about one and a half million even though we didn't go up to 2, but with downtime, backwash, whatever, only one-and-a-half-million a day actually went into the system.

CHAIRMAN TAKITANI: So what's the percentage of backwash?

MR. CRADDICK: It's on the order of 10 to 15 percent because normally we recycle the water back to the head where it's run through the plant again. There's no reservoirs or anything out there, so we don't have that option in this case. And that water goes in their ditch. And from there, I'm not sure where it goes from there.

CHAIRMAN TAKITANI: So would there be any objection to going back and possibly revising that to only the actual amount withdrawn minus the backwash?

MR. HEW: You're talking about just the net usage into the system?

CHAIRMAN TAKITANI: Since the water is being returned to the stream flow anyway, we're not really taking it.

MR. HEW: That can be considered, and we have to get back to you on that.

MR. CRAVALHO: Mr. Chairman, based on your comments to Mr. Hew, I move that we defer action on this until we have that particular question satisfactorily resolved.

MR. NOBRIGA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Nobriga to defer action regarding Iao/Waikapu ditch agreement until we resolve some of these issues, particularly this one about the backwash.

MR. STARR: I would like another piece of information when we do get back to this, which is I would like to know what the annual operating cost of this is going to be. I know we've already spent a million and a half on the equipment, and I just want to know how much manpower and time we're going to have to spend to garner this not very large quantity of water. So I request the Director come back to us with his projected operational cost for the year.

CHAIRMAN TAKITANI: Any other discussion?

(No response.)

CHAIRMAN TAKITANI: If not, it's been moved that we defer this item until we get resolution to some of these matters. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it. The agreement is deferred. During that time though, David, are we attempting to utilize that water?

MR. CRADDICK: They have given us permission to try, but we've had a number of problems trying to get the plant back in operation. There's a flow meter problem, a couple of them. The valve twisted off. The strainer has twisted off a couple of times, so, you know, when it sits, those kind of things happen. So even though we've had this week to try to get it operational during high flow times, we haven't been able to use it.

CHAIRMAN TAKITANI: But if we get those resolved --

MR. CRADDICK: Yeah, I believe the last one was the flow meter coming out of the tank. And what we've found out there was just that the flow going through the meter was not high enough. It wasn't that the meter didn't work. The flow just wasn't high enough, and I guess during wintertime, there's not much demand out there. So the particular line in this one was there wasn't a whole lot of draw on it, so even though we had the water there that we could have put it in the system, the system wasn't taking it. So that's another issue here. When there is high rainfall in the ditch, nobody is using water because it's raining in wintertime. So the system adjustments have to be made to draw that water out, and we're working on that.

CHAIRMAN TAKITANI: The next Board meeting is February 10th. Will we be able to have a resolution by then?

MR. CRADDICK: Yeah, I believe so.

CHAIRMAN TAKITANI: Okay. We'll go back to our regular agenda Roman Numeral 5, Director's Report 00-03, Request approval of a budget amendment for the amendment of the SEIS for East Maui Water Development Plan. Thank you, Garrett, Mr. Moore. Mr. Craddick.

MR. CRADDICK: Herb, can you -- we have Mink & Yuen's proposal in there for \$95,500 plus tax, estimated time of completion is 12 months. And I think to that 12 months is any review time that we have. That's their time. And we've brought in there the amendments that we would make to the contract.

MR. CRAVALHO: Mr. Chairman.

CHAIRMAN TAKITANI: Mr. Cravalho.

MR. CRAVALHO: To appropriately consider it, we should have a motion. I will not make a motion to accept or to approve, but if I may, with the permission of the Board, enumerate a list of questions which I have which I think are very pertinent with respect to the proposal and with respect to the current EIS and the implications and impact of this proposal on the present EIS.

Now, is the proposal intended to cover and update the present EIS to conform with the judge's decision that the current EIS, which was acted on back in 1994 or '95, somewhere around there, that this is to update and review those objections? Is this the limitation on this proposal? A simple yes or no.

MR. CRADDICK: No.

MR. CRAVALHO: Okay. Does this proposal then include by reference or by annexation the entire upcountry area as it relates to Waikamoi, Olinda, Wailua ditch, et cetera, the whole gamut?

MR. CRADDICK: No.

MR. CRAVALHO: If I may ask, Mr. Chairman, what is included?

MR. CRADDICK: What is included is studying the Makawao, Kula and Haiku-Paia community plans, determining projected water needs from those areas.

MR. CRAVALHO: As part of the current EIS?

MR. CRADDICK: No, that's not part of the current EIS.

MR. CRAVALHO: Okay, fine. A separate EIS study?

MR. CRADDICK: That's right.

MR. CRAVALHO: An EIS study for the district as such as contrasted to an EIS study for project by project?

MR. CRADDICK: That's correct.

MR. CRAVALHO: Mr. Chairman, let me point out some of the potential problems based on our experience with the current EIS. When an EIS, my understanding, is done and completed, it is subject to review and it is subject to challenge as to its applicability and its all inclusiveness. Once the challenge is initiated into the court process, we are not able to move on any particular project in that project area.

And once it is entered into the process for the EIS and recognized by the courts, those decisions either for or against is immaterial. The decisions are challengeable and appealable. That's my understanding. With such being the case, are we opening the door, yeah, to an airport situation which is nine long years and still unresolved? Are we opening up the situation with respect to the implications or the experiences of H3 on Oahu which ran how many years and the cost of one billion dollars, okay.

Now, I think we need to look at this before we get into an area of opening ourselves up to a whole variety of challenges and problems. Simultaneously, Mr. Chairman, we are in the process of evaluating and extending or reaching an understanding on that Wailua ditch thing. We have before us proposals that are dealing with the adequacy of water supply, the source for a variety of reasons. But, nevertheless, those proposals are here, and they're going to be handled individually, okay.

The dangers at this stage of including or having a separate EIS study for that area I think is fraught with great danger at this stage and at this time. It would be I think prudent, much more prudent for us to go and update the present EIS statement and get that damn thing off the ground because that has been holding us up for four to five years. And we're saying leave that alone for now and let us go and open the door

upcountry, which may put us in the position of being in an identical place as we are now with the present EIS study and the present EIS matter that's before the court.

The question is one for the Board to make a decision on, and I don't think it would be known by any stretch of the imagination if it comes to that at this particular meeting what my vote is going to be. And I want it also understood that I will then utilize whatever legal resources may be available to me because I think this particular proposal now for implementation now is full of great danger, and it will have a bad effect on what we're trying to do in the area at this stage. Enough said.

MR. CRADDICK: As you recall, we had a proposal from Mink & Yuen to do just what he said, and that was our recommendation to go along with that. And I believe it was the Board's recommendation to stop that process, open it up. I don't believe that this -- what is being proposed here, adding more wells onto the East Maui plan to supplement the upcountry water system would prevent the Board from going into the upcountry system. This is about ground water, not surface water. This is about ground water only.

MR. CRAVALHO: Mr. Chairman --

MR. CRADDICK: Can I finish?

MR. CRAVALHO: I know you're not finished, but I'm going to anticipate you a little. And I think you've observed me for six months to seven. I've observed you. And I know the methodology. I think, included in this study, if we're not careful, are matters this Board did not approve in the past, the request for funds for experimental drill links, drill links in that area for which, Mr. Chairman, the Director did try to go directly to other sources to get this approved. The Director did go to the Mayor to sit on the Mayor's support for this particular question after the Board had taken the position on the policy question and the policy matter.

And all I'm saying, Mr. Chairman, is that at this time, it's a little bit premature. I'm not suggesting that we

reject it in its entirety, but at this meeting without reference to other areas and other plans and other proposals, I think it's a danger. And, if I may, Mr. Chairman, Mr. Craddick, if I may repeat what I've said before. There are many cases and many contracts and many agreements which by and of itself appears to be very good. Put them all together and they have a very completely different effect and a different impact.

And, Mr. Chairman, we went through that today with respect to the Iao and without consideration of the implications of the utilization of that water and the entire central Maui area, the irrigation for pine and the irrigation of sugar for sugar. And all we were saying all this time, Mr. Chairman, is put these things together so we have a complete picture of what we're doing and we're being spoon-fed.

MR. CRADDICK: Can I finish, Bob.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: This study here, there's no question if the Board wants to include wells in the upcountry area such as Pookela, Piiholo, they could do it in here. That is not this proposal. This proposal is to add more wells to the East Maui plan in order to supplement the upcountry area. Now, I myself feel if the Board wanted to proceed with upcountry separate from this, that is certainly their choice, and quite frankly, it would be my recommendation to do just that.

MR. CRAVALHO: Welcome to the church.

MR. CRADDICK: But that is a choice you can make right here today. If you just say you do not want it, we'll go back to Mink & Yuen and say don't include those. At the meeting we held at the Pukalani Community Association, it seemed the general consensus was to do those things.

MR. CRAVALHO: Following Mr. Craddick's statement, it appears to me what has been suggested really is an update and review of the present EIS. And I have no quarrel with that, absolutely none, and if we proceed on that basis, I'm

with you all the way as long as there are absolutely no implications in the upcountry area right now because we're not quite ready for it. We're in the process of reaching some agreements. I think you know that and I know that. So let's limit ourselves.

If we're doing this study to, in effect, look for the East Maui sources of water that is contained in the East Maui plan at the present time, I don't have a problem. I have a problem if you add, okay. And in the process of adding, has it been combined either as a separate total EIS statement or as a combination of the present EIS which may make it subject, yeah, to whatever court appeals that we have at the present time? It becomes part of this, and I think this is a danger.

MR. CRADDICK: There's no question, it's a danger.

MR. STARR: I really feel we're going backwards here. The original EIS called for us to exploit sources in East Maui and toward upcountry and with the sole ability of moving that water to central and south Maui. And the feeling on the Board at previous meetings, and certainly my feeling, is that we should have the ability to take that water and use it upcountry as well as for central and to be able to use that water in East Maui and upcountry to solve the problems up there. And that was the reasoning in adding that to the scope of the SEIS, and that also seems to carry favor with most of that community.

MR. CRAVALHO: Mr. Chairman, with all due respect to Mr. Starr, to the limited community that was present at the meeting that I wasn't present. If I had been, I would have raised these same questions at the time also. Let us, Mr. Chairman, focus our attention on the exact proposal and its implications. Can we accomplish what we want to accomplish in a different manner without becoming involved as a part of the present EIS which is before the court and under appeal? Does this place the entire area as part of that, and does it place the entire question under appeal?

And I think these questions should be resolved first before we enter into a contract with anybody. And I think it's

reasonable, extremely reasonable. And if we go by history, I don't think at any time that I have brought a matter of legal question before this body that I have been in error. Even though it has cost a couple of bucks in the process, I don't think I have been in error.

And I think the possibilities of what I'm talking about are real. And if there is a methodology that we can study, yeah, and review fast, not slow, fast, to eliminate the concerns that I have and solely concentrate what we want to get done so we can proceed together, I think we should, and I don't think we lose very much if we err on the side of caution.

CHAIRMAN TAKITANI: I think Board Member Cravalho's comments are extremely valid and that Mr. Starr's comments are also very good; however, we don't want to be drawn into something that we don't have to be. And upcountry now being drawn into this East Maui EIS situation could cause great harm, because you can see the people, they want a solution to some of their problems upcountry. They want ground water in a much quicker time frame than we're talking, so we need to be very careful how we proceed. Mr. Craddick.

MR. CRADDICK: Can I draw a picture on the board of what I think is being said.

CHAIRMAN TAKITANI: If you can help us picture this better.

MR. CRADDICK: Separate from this in 1991, we had a link between this system and our, let's call this upcountry link, completely separate. We started the EIS on it and stopped it because we ourself and the staff felt that if it wasn't included, we would probably be running into problems. Okay. Now, here you've got this upcountry system that is fed by three sources of water. What we're doing in this or what we were doing in this EIS was studying this area to deliver water to the central Maui water system. I guess actually like this they would become one and the same.

What we are doing right now is looking at some of the demands up here. And if we can expand this to supplement this and include this in this EIS, doing it because one of the

objections were that we're taking this water to bring out and we're not addressing the water concerns in this area. And the people who were at that meeting at Pukalani know that very well. That's what we're trying to address. Now, previously, I had brought up a proposal to develop ground water up here in this water system. This can or does not have to be part of this EIS. That is your choice. I don't recommend that. I believe the Board can go ahead with that on their own. That's why I proposed it back in September. If they want to go ahead with that, that's their choice, and that's something that can supply water to this system in a lot less than a year's time probably, because we would do it at our tank site where there's 50 feet or 100 feet of pipeline to get it into this system. That's a choice that you make here today. Just the fact that we're addressing the concerns and the court challenge to address the water demands in this system with this upcountry link, I myself, I do not believe that the person challenging this is going to say, if the Board separately on their own decides to go ahead with this, is going to say, Oh, this is part of this. I mean this isn't even East Maui anymore.

MR. CRAVALHO: Mr. Chairman, I agree with what the Director is saying, okay. I don't have a quarrel with that, but I want to be absolutely sure that any agreement entered into is limited to the present EIS and it cannot be directly or indirectly linked to the upcountry area because one of the resulting proposals of this study may be the movement of water up into that upper area at this time, that it does not resolve in an automatic inclusion.

Now, you may say that it may not be in the provision, it may not be in the contract. I only present to you, Mr. Chairman, and Director what the courts have said with respect to other questions which may or may not have been the intent of the Board, okay, and what the courts have said, regardless of what your intent may have been, this is it.

And we have a case being presented to us today by you of what the court had decided even though it wasn't the intent of the Board. So, again, I just stress, Mr. Chairman, yeah, if we do err, we err on the side of caution to make sure that what we do do is what we want to do and we spell it out.

CHAIRMAN TAKITANI: Mr. Nobriga.

MR. CRADDICK: Herb has also brought up to me here one other thing that is in this revision. It's also looking at the possibility of raising the elevation of wells up here to cover the DBCP possibility. That is also one of the changes that is in this proposal here.

MR. CRAVALHO: Mr. Chairman, again, that brings in another facet. My understanding is when the funds were made available upon the contamination, it dealt with possibilities, not to be making this as part of the plan. If and when we have to, then we look at it. Now, if we spell out very carefully and very clearly what our objectives are, I don't have a problem. But if it's just a case of a potential relocation of the overall, I have a problem if that relocation has not, in fact, been caused by contamination.

CHAIRMAN TAKITANI: Mr. Nobriga.

MR. NOBRIGA: Thank you. I understand the vision that I guess we had with the project. But looking at the figures and the report from the consultant, I think our vision was just too huge of a chunk for us to bite off in one swallow, so I would side with Mr. Cravalho that we split the darn thing up and we look at one thing first and then the other thing. In Director's Report 00-03, are any of the five tasks specifically related to central Maui?

MR. CRADDICK: No.

MR. NOBRIGA: No?

MR. CRADDICK: No.

MR. NOBRIGA: It's all commingled. So I would urge that we go back to Mink & Yuen and have him submit two separate pricings, if you will, or even three separate pricings because it's like three different jobs.

MR. CRADDICK: When you say a separate price, we already have the thing going for the water going to central Maui. We already have his price to do it for that.

MR. NOBRIGA: Okay.

MR. CRADDICK: That's what was already going and we stopped at the Board's request to address this upcountry issue, which is, quite frankly, it's a part of the case right now. So if you leave it out, you're opening yourself up to challenge right there, automatic challenge.

MR. CRAVALHO: By who?

MR. CRADDICK: The same group that's challenging us right now.

MR. CRAVALHO: You know and I know it ain't so.

MR. CRADDICK: I'll tell you, if you leave out water from upcountry, I guarantee he will challenge it. He has said so.

MR. CRAVALHO: Isaac Hall?

MR. CRADDICK: Yeah.

MR. STARR: The Director is right there and that was part of the thinking in trying to unify this that there was definitely a desire on the part of Mr. Hall and other members -- let me speak. You've had your chance to speak. Out of courtesy, I have my chance to speak.

MR. CRAVALHO: You're missing the point.

CHAIRMAN TAKITANI: Mr. Cravalho, Mr. Starr has the floor.

MR. STARR: You've had your chance. I have the floor.

MR. CRAVALHO: Right after.

MR. STARR: Thank you. We have heard from them that

they want to see this joined together in one plan, and I feel it's the right thing to do. I myself don't feel that it's right to solely solve the upcountry problems and not solve the rest of the problems nor do I feel that it would be right to solely take East Maui water and bring it to central.

However, I think that if we don't move ahead with this, we're taking a very sad step back. I do feel that by the time the thing moves forward, central Maui is going to be in a very precarious position regarding its water supplies.

At present rate, at present rate of growth, if East Maui is not developed in two years or three years from now, we would be looking at having to issue a moratorium, which would not be a pleasant thing to do because there will not be additional sources, especially when we see that the likelihood of constant supplies from the Iao ditch is also in question. So I think that we should move ahead with this thing, and we should not be scared because it may be challenged. Anything may be challenged and probably will be challenged. But that's why we're here to try to go ahead and to operate in the most equitable fashion possible and to answer any questions or challenges when they come up.

I think that we're dealing right now in an open way and trying to invite in as much public comment as possible, and through this EIS process, it will certainly be a very, very large opportunity for the public to weigh in and put their concerns and for us to answer them at a later date. But if we don't start the ball rolling now, it's just the time before we developed these water sources is just going to extend out another week, another month, another year. And it's been too long already. And I see a -- the Board has discussed in the past and said that we do want to integrate the water systems, and this is the step to do that to be able to provide long-term sufficiency for upcountry forever having sufficient water upcountry and this will do that.

It will also provide sufficiency for central and south Maui, and I for one feel we should do that. And I would be very surprised to see the rest of the Board not being willing to proceed at this point and to say let's go and carve

it up or look at it in different ways or maybe not act or whatever. And, in this light, I move that we -- that we accept the Director's report and proceed with the SEIS.

MR. CRAVALHO: The previous speaker obtained the floor to make a presentation not to make a motion, therefore, it's improper, and I thought I yielded so that I could respond to his comments. I previously mentioned that I thought the previous speaker was missing the point, and I repeat that. There has not been, from my part, an opposition to do a study or a review.

My concern is that if there is an automatic linkage of it and it becomes part of the present EIS, it may be filled with a number of dangers along the line. This is what I have said. And to prevent such an occurrence and to make possible our continuing efforts in different projects and problems we have ongoing now, that we do not automatically have a result in our hands that would provide this linkage and if it would also provide then, yeah, the adherence and complicity and compliance with the existing court order.

Let us focus our attention to what the question is and not be guided or misguided into other directions. Let's focus our attention on the question and how we can best do this. And, Mr. Chairman, historically, and I'm not going to make reference to my rightness, I think I'm familiar with the situation. And we need to resolve the needs, okay, and we have said before we move here, we must meet the need upcountry. And if such is the case and with the reemphasis of the action of this body with respect of the Dowlings, et cetera, et cetera, yeah, what I think I am proposing is consistent and will really speed things up, not slow, speed.

CHAIRMAN TAKITANI: I think the Board is really sympathetic on both Mr. Starr and Mr. Cravalho's presentation because we want an upcountry link. The only question Mr. Cravalho is bringing is the fact that we may getting into dangers, and if we can somehow insure that we're taking the proper steps to be sure we don't fall into that trap, then I think all of us will be better served. I think that's all he's saying. Mr. Rice.

MR. RICE: Mr. Chairman, I think I heard Board Member Cravalho say that there were some things that he needed or that needed to be investigated that should be done quickly, and I might ask if quickly means maybe the next meeting?

MR. CRAVALHO: Absolutely.

MR. RICE: Then possibly we should consider a motion to defer this until those items are determined, not to make a motion to go one way or the other at this point.

MR. CRAVALHO: I have no problem with that.

MR. NOBRIGA: I would support that.

CHAIRMAN TAKITANI: The other thing, the February 28th deadline for the Wailua ditch agreement also. So those are the kinds of things Board Member Cravalho is talking about. We need to combine all these, make sure they're all interlocking so we have a unified position.

MR. NOBRIGA: See the whole picture.

MR. TAGORDA: Mr. Chairman.

CHAIRMAN TAKITANI: Yes.

MR. TAGORDA: In addition to what Mr. Rice is asking, I would also like to know more about those summary court orders or challenges that was brought up in court, and I think I would like to understand more about the current EIS or the scope of agreement that was brought up to us amending all the EIS, then this becomes a supplemental EIS, answer some of those court challenges.

MR. CRAVALHO: Again, let's not belabor the point, okay. What Mr. Rice is saying, we have a deferral, yeah. This Board instructed the Chair on that East Maui Wailua ditch. That's a factor that's under consideration, and there is a deadline. It has to -- whatever is done there has to be

consistent. The preparation and the review for assurances of the concerns that I have have been met. I think it's a two-week kind of a thing. Now, my express concern is nothing new.

I expressed this concern at the last meeting informally outside to some of the interested parties because I was aware, and I said take a look at these things before we finalize, and based on what I see, my concerns were not completely addressed and not completely done. I think it's part of our responsibility to not only meet the needs of the community but also to express whatever concerns we have to make sure that those needs are met and not lost in a technicality as we have been losing a couple of things along the line. You know I'm right.

MR. RICE: If a motion is appropriate at this time, Mr. Chairman, I would make the motion that the item be deferred until February 10th.

MR. CRAVALHO: Second the motion.

CHAIRMAN TAKITANI: Moved by Mr. Rice, seconded by Mr. Cravalho to defer Director's Report 00-03 until February 10th, our next meeting date.

MR. STARR: More discussion?

CHAIRMAN TAKITANI: Discussion.

MR. STARR: I don't see how the needs of the community are met by delaying this any further.

CHAIRMAN TAKITANI: Any other discussion? Moved and seconded that Director's Report 00-03 be deferred until February 10th. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

MR. STARR: Nay.

CHAIRMAN TAKITANI: One nay. Mr. Starr. The aye's have it. Director's Report 00-03 is deferred to February 10th. Move to Director's Report 00-04, request for approval of budget amendment for Napili A Well.

MR. NOBRIGA: I would like to move to approve the request.

MR. CRAVALHO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Cravalho to approve Director's Report 00-04. Discussion?

MR. NOBRIGA: Did this request come out of the DBCP settlement?

CHAIRMAN TAKITANI: That was exactly my question, too, Mr. Craddick. I would think this is coverable.

MR. CRADDICK: At some stage, I would expect the Board would do that, but right now the project is funded out of the Bond Fund and we want to draw that Bond Fund down. That's why we're making the proposal we have here, but I would expect at a future time, the Board will do exactly that.

CHAIRMAN TAKITANI: How much is in the Bond Fund?

MR. CRADDICK: I think right now unencumbered is 3.6 million, somewhere in that neighborhood.

MR. QUINN: 2.7 million unencumbered.

CHAIRMAN TAKITANI: So eventually, you think it will be coverable under the DBCP?

MR. CRADDICK: Yeah. It's the Board's choice if they want to take that money. Well, I would expect we would since we got the GAC settlement money. I would expect they would. But right now, unless we go back to the Council and reprogram that bond money, we've got to spend that for the purpose that's intended. And if we go back to them and say we don't want to do that, we're looking at potential arbitrage

charges, so we don't want that either.

CHAIRMAN TAKITANI: Moved and seconded Director's Report 00-04.

MR. NOBRIGA: One more question. We're not using Mr. Soong anyway on this project?

MR. CRADDICK: Not to my knowledge.

MR. NOBRIGA: Okay.

CHAIRMAN TAKITANI: All those in favor, signify by saying "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it. Director's Report 00-04 is approved. Go to director's 00-05, Request to procure services of the Legislative Liaison to State Legislature, Page 6.

MR. NOBRIGA: Move to accept the report -- approve the report, I'm sorry.

MR. HASHIMOTO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Hashimoto to approve Director's Report 00-05 requesting the procurement of services of the Legislative Liaison. Any discussion?

MR. NOBRIGA: Although the Members of this Board can probably deliver a better focus to the Legislature in person, unfortunately, I'm still trying to run a business, so I don't have the time to dedicate. A small fee should be very well

worth our efforts.

CHAIRMAN TAKITANI: She does do a good job of keeping on top of legislation and notifying the Director and the staff of significant items.

MR. CRADDICK: We'll let you know when we need the heavyweight up there.

CHAIRMAN TAKITANI: Any other discussion? If not, moved and seconded to approve Director's Report 00-05. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it. Director's Report 00-05 is approved. Why don't we take a ten-minute break.

(Recess taken.)

CHAIRMAN TAKITANI: I would like to reconvene the Regular Board of Water Supply Meeting. Go to Roman Numeral 6, Old Business, Director's Report 99-55, Request budget amendment to upgrade the Olinda Water Treatment Facility. Mr. Craddick.

MR. CRADDICK: Larry, do you want to explain the new information here that we've provided.

MS. NAGO: Larry, maybe if you come over here, Rachelle can get you better.

MR. WINTER: At the December 21st meeting, the Board approved a portion of our request for a budget amendment, that being for the contractor and some miscellaneous and administration costs, and did not include the other portion, the remaining portion, which would cover the consultant's contract amendment. And they also move to reopen negotiations

with M&E Pacific.

This supplemental report breaks down the various portions of the M&E contract extra work. There's a table at the bottom of the first page you can follow. The requested design changes total is \$6,860. Memcor shop drawing reviews total \$11,440. Assist construction manager with electrical work \$4,700. Consultation on estimates and change orders \$1,600, and meetings and job site visits \$7,100. Our total request is \$31,700.

CHAIRMAN TAKITANI: Mr. Starr.

MR. STARR: Yeah, is there a purchase order for this?

MR. CRADDICK: Jonathan, if you go to the next page, it says, "The above extra work was performed by the consultant during the construction of the project at the request and/or direction of the Department, even though payment for the additional services was not requested by the consultant until after the fact."

So there's no purchase order. This is a change order request and would be processed as such at the time that it is approved.

MR. STARR: Can I see the request for doing this work, can you give us a copy of that?

MR. CRADDICK: Staff request you mean?

MR. STARR: You said it was done at the request and direction of the Department. Could I see a copy of the request and direction?

MR. WINTER: In most cases, those were verbal requests.

MR. STARR: Do you have any certification that this work was done or that it was requested?

MR. WINTER: Our files would have the --

MR. CRADDICK: Larry, who was the person that requested it, you?

MR. WINTER: I would have been the one requesting them.

MR. CRADDICK: That's the only certification. He's the one who requested it, and we know was the work done.

MR. WINTER: Yes, the work was done.

MR. NOBRIGA: For discussion purposes, I would like to move that we accept this proposal.

MR. HASHIMOTO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Hashimoto to approve Director's Report 99-55, Request for budget amendment for the Olinda treatment facility. Discussion?

MR. NOBRIGA: By hook or by crook, I know somebody is going to end up paying for this darn thing. I just have a hard time accepting a lot of these requests. I just feel very uneasy about the entire package. I'm okay until the consultation of estimates and change orders and meetings and job site visits. The last two items is very tough for me to swallow.

CHAIRMAN TAKITANI: Mr. Starr.

MR. STARR: There's no way I could vote for this without having some kind of paper trail to it, and I'm very surprised even to this date the Department hasn't given a purchase order or some kind of certification that on paper that this work was requested and that work was done. I mean there's nothing, and I certainly can't vote for paying for something for which there is not anything on any paper.

This is not the procedure that this Department should be following nor is it one that we should encourage in the future by approving, not until there's some kind of paper, paper trail created on this thing.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: The paper trail would be created when this is approved. What happened here, work was requested, the work was done. We felt it was part of the contract. The consultant did not feel it was part of the contract. If both parties before the fact feel that it's not part of the contract, a written change order has to be processed. That's what the contract says. It has to be in writing. Well, after this work was done, then it came up that, Hey, we want a change order for this.

And, you know, as it shows in there, we did our best to negotiate it down from what was requested. \$72,000 was requested. This is a lot less than \$72,000. Now, the rest of this stuff, we may have the uneasiness that you do also. But the bare facts remain. When we go to court, they're going to ask, Did somebody request for this work? Was the work done? It was.

And I've already brought it up to you before, you know, are we ready to go to court over something like this. This payment is not going to be made until the paperwork that Jonathan is talking about is all made up. But we're not going to make it up if the Board is going to say, Hey, we're not going to pay this, which is your option.

CHAIRMAN TAKITANI: The problems still exist today if this work was done today?

MR. CRADDICK: Yeah, the plant is all operational. This work was done.

CHAIRMAN TAKITANI: My question is do you not have a work order that requests some certification that this work was being requested, et cetera?

MR. CRADDICK: Well, we have the request from the consultant for the money. There's no question we have that. But our paperwork on our side is the change order itself. That

is our paperwork.

CHAIRMAN TAKITANI: We spent an inordinate amount of time on this matter, and it just seems to be a procedural kind of matter regarding the modus operandi of the Department.

MR. CRADDICK: Yeah, what happened was they came out doing the work, us thinking it was part of the contract and I guess them doing the work. And, keep in mind, you know, I guess M&E is kind in the same boat we are because their contractor/subcontractor did not tell them that they thought they should be paid extra for this, you know.

CHAIRMAN TAKITANI: Mr. Harada, could you come up to the table to address this.

MR. HARADA: Mr. Chairman, is it all right if I stand? I have a very bad cold. I'm Ed Harada with M&E Pacific, consultant for the project. I think much of this is the result of the action of the staff. To do the construction management services in-house, traditionally, even on the Big Island, what we do is, once the project is bid, then we hire a consultant to do what we call construction management. And then the construction manager would be staffed with all of the people that would be required to manage the construction.

Now, in this case, because David elected to do it in-house with a big savings to the Board, some of the work traditionally done by the so-called formal construction manager, there was really nobody for David to go to except somebody like us, because, you know, we did the design. We're familiar with the project.

So if you look at the tabulation of costs, those three last items, assist CM with electrical expertise, that's because David's staff is not geared to provide that type of service. If you have a construction manager, then it's his job, it's in his fee to provide that service. So in this case then, Larry came to us. David Soong was our subconsultant that provided that service.

Consultation on estimates and change orders, this is

again a result of the fact that the staff did the CM work. Traditionally, the CM would do that, but because the County elected to do it by themselves, they asked for our help. And same thing with the last item, meeting and job site visits, usually the CM is there, so they would take care of everything related to construction.

Now, in this case, because they were doing the management in-house, they needed some help from our part. So these last three items directly relate to the fact that the department elected to do the CM by themselves resulting in a savings. Now, the first two items, requested design changes are a result of things that came up during the construction that the Department felt that they wanted to implement. And in that case, they came to the designer, which is us, who provided the modification for which there was a charge for that.

The second item, Memcor shop drawing review, now, the Memcor equipment was provided outside of our effort. It was kind of like a package that was provided by the vendor, which was not part of our scope of work for shop drawing review, so consequently, it's a separate pay item. And both ourself and David Soong was party to that review. If you look at all of these items, the majority of it is a result of the fact that they went and did their own CM work; and secondly, the other parts are traditionally things that come up during the construction of a project. This is not unusual at all. This is like the rule rather than the exception.

There's nothing devious about any of our requests. The work was done in good faith on our part. We delivered the service to the Department, and, you know, hopefully then, based on that, we can get compensated for this. It's been a long, long time. You know, the project ended in the early part of 1998, and we've been after this for about almost two years now. And this is a result of really nobody's fault. From our part, our project manager, James Okuzaki, decided to relocate to the mainland right after the job was completed. There was a staff change on the part of David's crew.

Ed Kagehiro retired at the end of 1998 and Herb Kogasaka took over, so there was some transition that resulted

in some delay. So I think both David's staff and our staff, we've been negotiating in good faith all the way along. And, you know, hopefully, you look at this on a favorable basis. If you have any questions, I would be happy to respond to it.

MR. HASHIMOTO: How much would the additional cost be if you had a CM?

MR. HARADA: The CM would be hired by the Board. Usually it runs between 7 to 10 percent of the construction cost. What is the construction cost on this?

MR. WINTER: Three-something million. We were estimating a CM would probably cost about half a million dollars.

MR. HARADA: This is a very complicated, sophisticated project, so it would run about in that neighborhood, yeah.

MR. CRAVALHO: Mr. Chairman, it seems as though we're getting into a discussion of the merits and/or the merits and the appropriateness of the charges. We seem to be, however, also ignoring the requirements that may be statutory or by rule or reg or whatever, but these are requirements such as any change order needs to be preapproved by a variety of agencies. My understanding is this process was not followed. That has very little, if anything, to do with the propriety in terms of the expenditure. If one proceeds to approve this change order, which was supposed to have all these protective devices put in, then we're, in effect, saying here is a contract which means almost nothing. We do not need to follow the legal requirements for change orders, and so a contract price is meaningless. And a price then is presented to us and we've got to pay, because we all operated, quote, in good faith.

I would assume that when a bid is entered, it is entered in good faith and it is entered on the basis of meeting all of the legal requirements. And if there are any necessities for change orders, and there are, there are procedural setups that need to be met. This is a point that Mr. Starr has raised, very valid, and gets to the crux of the problem.

If, for example, or just for the sake of discussion, we would approve such a payment on the basis of a moral obligation, it still does not detract from the legal obligation of any responsible party or parties, yeah, who fail to meet the procedural requirements for change orders. And I think this is what we need to focus on because the alternative to that is that a contract means nothing, squat. No need to file the procedural requirement for a change order, yeah. So anybody, anytime, anyplace, say I talked to him, he talked to me, we did this, now pay. And what if the change order costs come up above the funds available, what you going to do? End of sermon.

MR. TAGORDA: Mr. Chair.

CHAIRMAN TAKITANI: Mr. Tagorda.

MR. TAGORDA: On the moral issue of this request, I am going to approve paying the \$31,000 that's requested because the work has been completed and done. But on the legal issue, the procedural aspect of this request, which a change order was not followed, then I'm really uneasy of saying, yes, take our money. So next time we need to follow procedures strictly.

CHAIRMAN TAKITANI: Thank you, Mr. Tagorda. Mr. Starr.

MR. STARR: What is so shocking to me is even at this late date, the Department is still, in the words of the Director, uncomfortable about this to the extent that they've not been willing to give us a piece of paper, a purchase order even after being prodded. On the previous amount that we approved at the last time we went over this item, there was a freshly cut purchase order for the other portion of it by the Department, and we approved it on the basis of that. But I really don't think we should approve this at this time, and I would be a little bit more sympathetic toward approving it if we had a piece of paper from the Department saying that they asked that this work be done and that it was done as a purchase order or a change order or something which we don't have.

I don't see how we can approve the thing without any proper documentation. I think that's a very, very wrong move to make even though the amount is not all that large and we do

have a verbal -- we have been told verbally that the work was legitimate.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: We do have a contract amendment here. It's not, these kind of things are not done by purchase order. There's a contract here as was mentioned earlier and a contract amendment has to occur. And if you want to look at this, the contract amendment is signed by M&E meeting these points on here. And again, you know, where we -- the consultant was doing these things and asked for the change order afterwards. I believe it was our impression that we thought these were covered under the current contract.

That's why this was not an issue until afterwards when they submitted an invoice for it that wasn't covered under the contract. And, you know, I'm not certain that something like this could have been even caught beforehand. We'll certainly be a lot more careful, you know, asking people to come to meetings and stuff like that unless there is a clear understanding that it's part of the existing contract, and if not, process the contract change order beforehand as required.

But I think this caught us off guard also, and that's why we're a little bit uncomfortable about it. But, nevertheless, I'm not that uncomfortable about it because I know it was work that needed to be done, was done, and I'm certainly not ready to recommend to this Board to go to court over \$30,000. I mean just our fees alone will exceed this. We've probably spent 20 percent of this doing all these presentations to the Board.

CHAIRMAN TAKITANI: Mr. Rice.

MR. RICE: Mr. Harada, you made a comment about this being the rule, not the exception. But the classic case of contractor dispute has to do with work done before change orders are approved. Is that not the case?

MR. HARADA: That's correct. I think the point that Mr. Cravalho made is very valid. I've worked for the

Government for 20 years and we rule by the legal procedures, and that's the way to keep order. You know, in this case, much of this was done on a verbal basis as the project was going on. And some of it, like the last item, I know David and the staff were not aware of our intention to ask for funding for this. But when we inspected the contract and looked very carefully at the provisions of what our requirements were for these services, it was lacking this item that we're asking compensation for.

And the only reason why I think we were involved in doing the work is because the staff did the CM work rather than having it contracted out. You know, we had David Soong here available on this island. It was very convenient for the staff to call and ask for his advice and direction on items that came up during the construction. David kept a very clear and very precise diary on all of those numbers and hours and times that he was involved in job site visitations and meetings that affected the project.

These costs would be more or less implicit in the CM's project, so they would not be flagged out separately, but in this case, since we were not tasked to do any construction management type work, we filled in time to get paid for it.

MR. CRAVALHO: Mr. Chairman, I understand based on the testimony given that the party involved did receive verbal authorizations to proceed on this whole variety of projects or implementation of projects. Such assurances or such requests came from staff or people who had the responsibility and the authority at least in the public eye, yeah, of speaking for the Department. And, therefore, the contractor, yeah, was appropriate, although negligent in a couple of instances, acted appropriately in terms of the authorization to proceed.

And so under those circumstances, even though some of the legal niceties have not been met, the moral responsibility has been because representations were made on behalf of the Department. And so I would extremely reluctantly, extremely, sir, vote to pay with the understanding that, hey, one time enough, yeah. One time enough. We don't have any repeat, and we adhere, yeah.

But again, basing it on the interpretation and the acceptance that whatever approval was given to proceed was made by an employee who had authority to move accordingly and that it could constitute, yeah, obligations on the part of the Department and the Board.

CHAIRMAN TAKITANI: Well stated, Mr. Cravalho. I think that all the Board has been saying, Mr. Craddick, is that we have procedures that should have been in place. We need to ensure that the Department is going to continue in an orderly and legal manner in implementing direction of the Board in doing contracts. So please, we ask you, one time is enough, as Mr. Cravalho is saying, no more. That's all we've been saying. We've spent an inordinate amount of time doing that. I know we all have an obligation to perform. This is a little trip to the woodshed.

Moved and seconded that Director's Report 99-55, Request for budget amendment to update the water treatment facility be approved. All those in favor, signify by saying, "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

MR. STARR: Nay.

CHAIRMAN TAKITANI: One nay. Mr. Starr. The aye's have it. Director's Report 99-55 is approved. Thank you, Mr. Harada.

MR. HARADA: Thank you very much.

CHAIRMAN TAKITANI: We'll move to Item C, Discussion and possible action on an amendment Section 16-202-05 of the Board of Water Supply Rules of Practice and Procedure.

MR. NOBRIGA: Move that this amendment goes to public hearing, Mr. Chairman.

MR. CRAVALHO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Cravalho that --

MR. FUKUSHIMA: If I may, Mr. Chairman, there were a couple of things that I would like to indicate to the Board that perhaps should be changed or noted as a possible change. Number one would be in the definitions, to delete from applicant and subdivider and subdivider as a defined term and subdivider under applicant.

I believe in place already is an opportunity and provisions for subdividers to come before the Board to ask for waiver of subdivision requirements, so it may be unnecessary to include them as part of this particular procedure. Secondly, and perhaps more significantly, under standards of appeal, I was directed by one of the Board Members, and I just wanted to point this out to the Board, with respect to -- and this is on the last page, Section 16-202-79(a)(2), which states arbitrary, capricious or inconsistent. I have a small problem with the language "inconsistent" in that it may give the impression that if the Director or the Department had erred in the past, that that error would have to be perpetuated. And it would appear that including "inconsistent" in standards to be applied by the Board in determining an appeal is, in my opinion, a little shaky.

MR. CRAVALHO: Arbitrary and capricious.

MR. FUKUSHIMA: And just leave it at that?

MR. CRAVALHO: Yeah.

MR. FUKUSHIMA: Another portion would be in Section B. The language would be changed to "in appeal" rather than "in appeals," which would make it a complete sentence. That was left blank. The impetus for this was in application or requests a few meetings ago where an individual had come in, and because there was no provision for adjusting bills, this particular individual was quite put out. In drafting this particular provision, I wasn't sure of what the Board would approve of. There's a blank there. I wanted some direction from the Board as far as -- and what was intended to be placed

in there was some sort of percentage. And what I was hoping for was some kind of direction from the Board as to inserting a particular percentage when a person comes in when there may have been some or there is a repayment plan suggested by the Director which exceeds by a certain percentage the person's billing average. So at least there's a mechanism that's set up so the Board can consider instances where there may be charges unanticipated by the consumer.

CHAIRMAN TAKITANI: Mr. Starr.

MR. STARR: May I suggest 500 percent.

MR. CRAVALHO: Mr. Chair.

CHAIRMAN TAKITANI: Mr. Cravalho.

MR. CRAVALHO: In this public hearing, the document is subject to amendment?

CHAIRMAN TAKITANI: That's correct.

MR. CRAVALHO: So whether we put 500 or 200, whatever, it's subject to review by the public. Whatever, I think it's excessive, but as long as it's amendable based on the hearings we have, fine.

CHAIRMAN TAKITANI: Mr. Quinn, how many instances do we have -- what is a representative figure for that?

MR. QUINN: For this percentage?

MR. CRADDICK: Before you get to that question, what are we talking about, exceeds 500 percent over what period of time, a year?

MR. FUKUSHIMA: The previous 12 months.

MR. CRADDICK: So the repayment plan -- yeah, but what payment, what are we talking about is the 500 percent? You have the previous 12 months' payment, and let's just say,

for example, you're paying \$100 every two months. So that's \$600. Five-hundred percent of that means your bill would go up to \$3,000. And we would repay that over what? You know, what's the repayment time spread over?

If it's spread over five years, then even though it's 500 percent, divided by five, it's still not going to come to more than \$600 a year in payments, which wouldn't meet the threshold. So I think the time is important over which you pay this, because, otherwise, it doesn't mean anything.

MR. FUKUSHIMA: Well, when somebody comes in and requests a repayment plan be instituted, the Department necessarily sets up a plan, and that particular plan has a start and end date.

MR. CRADDICK: Right.

MR. FUKUSHIMA: So it would be measured by the repayment plan that has been proposed by the Department, be it over one year, two year or five years.

MR. CRADDICK: But are you talking about the entire amount they repay so as long as the repayment doesn't exceed 500 percent of the previous 12 months' bills?

MR. FUKUSHIMA: The monthly repayment, monthly repayment exceeds 500 percent of the previous 12 months monthly billing, okay. We'll work with staff to prepare a notice for public hearing so this can go out.

CHAIRMAN TAKITANI: Any other questions for Mr. Fukushima? If not, it's been moved and seconded that discussion or the amendment to Section 16-202-05 as amended has been sent to public hearing. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: Aye's have it.

MR. CRADDICK: Bob, we've been holding up on the other rule that the Board passed on the time when approvals had to be given. That also has to go to public hearing. We were waiting for this so we could go to public hearing on both of them at the same time, so we'll schedule that.

CHAIRMAN TAKITANI: Mr. Nobriga.

MR. NOBRIGA: In light of Other Business A, we don't foresee needing any amendments to Rule 3-1. That's the wrong one. No, that's the one, yeah.

MR. CRAVALHO: You're under Other Business?

MR. NOBRIGA: No, just making one comment. Making confusion. That's all. Sorry.

CHAIRMAN TAKITANI: Move to Item D under Old Business, Discussion regarding audit management letter of fiscal year 1999.

MR. QUINN: For those Board Members who aren't familiar with the audit process, I'll just give you a little background information. The County Council contracts with an outside accounting firm. In this case, it was Deloitte & Touche to perform an audit of all the County Departments including the Water Department, and I might add, we pay for our portion of the audit.

And typically, they contract for a two-year period, and this was the second year for Deloitte & Touche. And I believe they've chosen another auditor for the next coming two years. In addition to the typical financial audit, the auditors typically issue a management letter, and that's the issue that's before you today. The management letter focuses on certain matters of internal control and typically recommends areas that they think might need improvement, and that's what you have for discussion today.

This particular audit, they only found two current year comments, one of which I agree with. The first one, the fixed asset comment, quite frankly, I'm not sure how this comment came about. They have furnished us with no specific instance where we have failed to meet this requirement. It may have come up in conversation with one of our employees. Quite frankly, I don't know, but anyway, we have a procedure in place, when the asset is retired, that particular division is supposed to notify us via a form, and we retire that asset. I don't believe, in my opinion, that we have abused that control and I am still waiting for the auditors to give me any specifics as to why this comment came up.

With respect to the payroll comment, I totally agree with them. We do have a problem with timely submittal of time sheets, and that probably isn't a major problem. But, for us, since it meant, in some cases, we do allocate labor to particular jobs, it becomes an important issue for us because it holds us back in terms of getting our financials together and our ability to present them to the Board on a timely fashion.

The rules regarding that are that all employees are to have time sheets into our payroll area three business days after the close of the pay period. In most cases, employees meet that requirement, but there's a few I would say hard core employees that miss this deadline on a regular basis. So we've just tried to reinforce this, and the Director has at the staff meetings reviewed late time sheets every Monday morning at the staff meeting. Hopefully, that should improve. We have seen some improvement actually. I shouldn't say hopefully.

MR. CRAVALHO: Try hold back the check.

MR. QUINN: Yeah, well, I'm not sure if we can do that.

CHAIRMAN TAKITANI: Why can't you?

MR. QUINN: If we had --

MR. CRADDICK: Let's put it this way. They can

grumble about it, but we can certainly try it.

MR. QUINN: I'm sure we'll have a few grievances on that.

MR. CRADDICK: We will, but at least maybe they'll smarten up. What I've done is told the supervisors that we're going to start with them first because it's actually their job to make sure the employees get those things in. So the disciplinary action probably has to start there first, so if we ever do hold the check back, there's going to be some repercussion on the supervisor.

MR. CRAVALHO: Mr. Chairman, whatever procedures are required or information they're being told, et cetera, it can be enforced, and it's reasonable.

MR. QUINN: We'll take that into consideration and see if we can do that.

MR. CRADDICK: To me what this is is probably indicative of a bigger problem. What happens is the field guys will, I'm going to use randomly for lack of a better description, but what they'll do is randomly call up and say they're on vacation today or sick leave, whatever spirit moves them, that's what they have available to use for a day off that they take.

And that's what causes these things to be late and some of them more, what was the word, hard core cases. And we're also trying to attack that problem also. So we're going at this from not just one front, but this may be another one to try and get to, just say sorry, you didn't get your time sheet in, we don't have a paycheck for you. A grievance may be filed, but I think maybe the next time around they'll be a little bit more aware.

CHAIRMAN TAKITANI: As long as you post a letter notifying them saying that's the ramifications.

MR. CRADDICK: If we notify something like that, there will be a grievance filed immediately without even

waiting for the paycheck to be held up. I don't think it will have the same effect as if they just don't get the paycheck.

MR. QUINN: Those were the only two comments. I don't see them as earth shattering comments. Actually, the audit went fairly smoothly this year.

CHAIRMAN TAKITANI: What about this disaster recovery plan. That seems to be a significant one.

MR. QUINN: That's an area where we've done -- well, the operations end of it, they've already developed somewhat of an emergency recovery plan. This particular comment though, if you'll notice, is geared towards the billing system, and there is somewhat of a backup sense that, as the Board knows, we use the Honolulu Board of Water Supply. They do back up the data on a daily basis and it's stored in another offsite building.

Where we're weak is not in that area, quite frankly, but if in the event we couldn't get into the fifth floor, say there's a fire or whatever, some kind of a disaster, we need to develop a plan that addresses that situation. That can get to be an expensive proposition in the sense that you have to have an alternate site. You have to have phone hookups. You have to have access to the billing system. And we're looking at that, but quite frankly, we haven't looked at it as thoroughly as we should because of lack of manpower to do it and probably a lack of funds, too. But we have to do something in that order. Perhaps maybe look at the baseyard as a minimal area that we might be able to use in the extent of an emergency and have a few phones at least so our customers can call us on an emergency basis, but we do have to address that.

CHAIRMAN TAKITANI: Do we have a plan like tsunami or hurricane?

MR. QUINN: We do, I believe, David, correct me, on the operations in the field.

MR. CRADDICK: Yeah, field operations. This is pertaining more to our electronic data processing systems more than field operational systems.

MR. QUINN: In a way, we're lucky that we do utilize the Honolulu Board, actually that data, not only is it stored here, but it's also stored over there, so there is backup.

CHAIRMAN TAKITANI: David.

MR. CRADDICK: One other thing that's going on, I believe the County is looking at leasing space in Kaahumanu Center, not Kaahumanu, Kahului Mall, to relocate a lot of their collections area for the County. And they're saying that in there, we could also have collections for the Water Department. So perhaps, you know, if we get the computer link down there, we could have more than just one in the event we had to relocate to that area. So there are some things going on that we may be able to tag onto and take care of this issue so we're not totally dependent on the fifth floor.

MR. QUINN: As part of the disaster recovery plan, we've also for the past two years both in the fiscal division and engineering division have been scanning all of our documents. It's a monstrous task. There is no easy way to get around that except for feeding these items into a scanner, and we can store this information off site. We are vulnerable in the sense that our customer files are on the fifth floor and both fiscal and engineering, so we have to continue with that scanning process to store those records off site.

But that's been going on for two years, and it will be an ongoing effort. That's all I had to say basically unless the Board has any further questions. And we do appear before the County Council on these items and are open to any questions that they may ask. And typically, that happens. Actually, it should have happened already. I don't know, they haven't, for some reason, put it on the agenda. It usually happens in January.

MR. RICE: Do we need a motion for accepting?

MR. CRAVALHO: I think he's correct. You so move?

MR. RICE: I so move that we accept the management

letter from the auditors Deloitte & Touche and recommendations for staff to follow up on.

MR. CRAVALHO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Rice, seconded by Mr. Cravalho to accept the management letter from Deloitte & Touche and the recommendations for action by the Department. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it. The audit management letter has been accepted. Move to Item E, Discussion and possible action regarding complaint for declaratory judgment Civil Number 00-1-0001(1).

MR. NOBRIGA: I move we go into executive session to consult with the attorney pursuant to HRS 92-5(a)(4) to consult with the Board's attorney on questions and issues pertaining to Board's powers, duties, privileges, immunities and liabilities.

MR. HASHIMOTO: I second the motion.

CHAIRMAN TAKITANI: Seconded by Mr. Hashimoto. It's been moved and seconded that the Board go into executive session regarding complaint for declaratory judgment. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it.

(Whereupon, the Board went into Executive Session.)

MEETING RESUMES

MR. NOBRIGA: Mr. Chairman, I move that we defer any action on Civil Case Number 001-0001(1) until next week.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga to defer action on claim for declaratory judgment Civil Number 001-0001(1).

MR. HASHIMOTO: Second.

CHAIRMAN TAKITANI: Seconded by Clark Hashimoto. Any discussion? If not, all those in favor, say "Aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: We'll defer Item E to the next meeting. We'll go to item Roman Numeral 7, Other Business. Discussion regarding the Director's finding that the upcountry water system has enough source capacity to meet peak day demands during low rainfall.

MR. CRAVALHO: Mr. Chairman, as this is an informative communication, I suggest that we lay it on the table for further review by the Board if and when it is warranted.

MR. STARR: I second that. I definitely have some questions about this that I would like to look at.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Starr to lay this matter on the table. Mr. Craddick.

MR. CRADDICK: I believe we have somebody here, a member of the public.

MR. CRAVALHO: I have no objection.

CHAIRMAN TAKITANI: Mr. Smith, would you like to come forward.

MR. SMITH: Chairman Takitani, Members of the Board of Water Supply, my name is Jim Smith. I was the Plaintiff in the lawsuit that is referenced in the letter that is now referenced in this letter to you, which is dated January 27th, 2000, from the Director in which several things occur. He announces a finding of fact and he also announces action and he also announces that the action will be taken, and it's inferred without your review or approval. And among the things that he lists as the action are restricting existing meters, upsizing to .2 MGD, also restricting the numbers of services to a total of .2 MGD, and he doesn't reference any process upon which a determination will be made.

He simply says it's going to happen. And he justifies this by stating that the court case concerned the acceptance by the Board of a communication. This is a misrepresentation of what occurred from my perspective. The process of developing a finding in 1993 took place over several meetings with the Board of Water Supply. Concurrently, the intent to allow the Kula Rule to expire, okay, was reached.

At the point of the expiration of the Kula Rule, the Board of Water Supply acted on its word, which was to deliberate on provisions of this document, which is described as the finding of source capacity inadequacy for upcountry or words to that effect.

I filed my lawsuit and there appeared to be a manufacturing of legal arguments. What the defendants did at that time was say that my lawsuit, and I'm not a lawyer so I shouldn't know these things, but I've made myself aware of them. What they said was in this lawsuit, I failed to exhaust administrative remedies. That was the key defense; in other words, I should have come to you. But the court was not

persuaded by that argument. The court looked to the substance of the language, and this is reflected in the transcripts of that.

And, in essence, he said you're affecting the public rights. This is a rule, and you have not held, no matter who you are, you have not held public hearings. This is invalid. Throughout the documentation by corporation counsel, the use of the word "announcement" appears, the use of the word "Director's findings" appears. The use of the word "press release" appears, all of it to minimize the very serious, serious effects of what was about to occur.

You are now given a letter that specifically states that certain things are going to occur regardless of what you do, regardless of what is listed in this, which incidentally is quite shadowy. If you look at the finding, which I submitted to you, you will see that it is based upon a drought circumstance. In other words, during a drought circumstance, there is a deficit, a deficit of source supply of .2 MGD, okay. It says the capacity during drought conditions is 6.7 MGD, and the demand rose to 6.9 MGD. And as a result of this, they found they needed to enact these procedures.

Arguments have been raised regarding the conditions and the attachments that may have occurred after the Board's review means nothing. The substance of the issue was that the finding affected public rights. It was, in fact, a rule. And now you are informed that a new rule is going into effect without your review. And it's submitted to you as a letter. And the Chair isn't even named as the Chair. It's simply a casual little, Hello, by the way, Dear Chairperson and Members, I am going to issue meters to a formula I shall devise to limit to 2.2 MGD, and I'm going to do all these things, and because I have not listed how I am going to do that, it's not a rule.

Well, the court heard of that. And they decided that in our society, the legislative authority and the administrative authority are separate. And the administrative authority is subservient to the legislature. We live by rules in our society, and this is what's vacated currently by Mr. Craddick in this circumstance. And you are entertaining a motion to simply refer it to a committee or defer contemplation

of it. And there is wisdom to that, I suspect. I'm pretty sure there is wisdom to that, but I would say these actions are going on now. They're being taken. And this finding is sad. It tells you that the demand during a drought was 10.3, and that's 3 million gallons more than the demand was when they found the inadequacy and the necessity to implement a finding and the emergency and the urgency to do such a thing.

References to sources of water. Wailua ditch during a drought. What is the water in that, 8.6 million gallons? You don't even need any other resource and you've exceeded the 1993 capacity of 6.7 that was the normal use. So it's a hodgepodge from my perspective of information simply directed to changing the system, the way we govern, the way you protect all of us and keep Mr. Craddick responsible to the people.

So I would ask you based upon the sheer -- I don't want to -- this to me is an insult to you in the sense that it trivializes something very, very, very, very important, and that is the decisions that you make have the force and effect of law that affects individual rights. And if rights mean nothing to you, fine. And if all you're concerned about is the money for a meter, fine. But when you compare this and you compare the finding that I submitted to you, there are going to be serious deficiencies, and all the while Mr. Craddick is going to continue to exercise authority he does not have, authority that on its face belongs to you and a policy enacted by you.

Now, I'm hoping you will condition receiving of the document on the basis that it is not in any way a finding of the sufficiency and also that you would direct Mr. Craddick not to change any practices that he has been doing prior to the time he made his decision, which may have begun three months ago or whenever is referenced in here. I haven't seen any.

Have you guys been brought up to speed on any of the facts? Has there ever been a presentation to you by the Director or the administration that it was, in fact, devising a finding or revising a finding? Has he done any of that yet? No. That's where we need to start. How come? Are you on the same team? Are you on the same Charter? I think you are. I

think you are in the same Charter and you are subservient in policy issues -- I mean you are superior in policy issues. And that is a policy issue as the court declared with its declaratory judgment the Supreme Court incidentally took up twice. Not once, twice. I had to appeal to the Supreme Court twice because corporation counsel entered a flawed final judgment which the Supreme Court bounced back because it was insufficient which made my first appeal, okay, premature, which meant I had to go back around a loop all the way back to the top for them to tell me the lower court was right. It's a rule. There's no damages or anything, but it's a rule. And they did that.

So I would ask you to save someone else's process, request or tell the Director, Look, you cannot proceed as you plan based upon this without you telling people how they can qualify for the 2.2 million gallon a day extra or the .6 million gallon. How can they equate with anyone else and then get their name on? Because missing from this is the operation, but it's going to be done by the courtesy of Mr. Craddick, which is not the way our system should be run. So I would ask you for two things. First of all, direct Mr. Craddick not to implement any changes in any practice, and two, please review this in its broad historical context and find exactly where this track has been left. Thank you very much.

MR. CRAVALHO: Mr. Chairman, there is a pending motion for the matter to be received on the table. And it's my understanding that the Director has indicated prior to the motion that it is also his intention to proceed in a reevaluation and review with respect to upcountry and the farmers and what have you. It has a bearing on this and I think it kind of helps the situation.

MR. CRADDICK: Could I just say that for the record. I know this was said in conversation but not necessarily for the record. We did have a meeting last night with the Farm Bureau, and some issues were brought up that lead me to believe that we need to look at some of the issues in this presentation that was given to you. And aside from that, you know, this presentation right here, Mr. Smith says on its face as to the fact and legal issues involved in the Smith

versus Director Craddick, and what he's presenting to you here may be the facts and legal issues that were presented in the case. But these are not the facts as they were. What is presented in here was not given to the Board other than that the Board may have seen in the press release afterwards. That is not what the Board saw in the Board meeting. I do have all those things here, and I will make them available to the Board.

CHAIRMAN TAKITANI: Mr. Starr.

MR. STARR: Yes, I'm not really enjoying what I'm hearing here. I would like to get a real clear clarification from the Director. On the last page of his memo, he says, Therefore, pertaining to the affected areas, and effective immediately, the Director shall proceed to process applications, process subdivision applications, all of that stuff.

Do you intend to do that at this time?

MR. CRADDICK: No.

MR. STARR: Will you do that before taking it back to the Board irregardless of what discussions you may have with, you know, agricultural discussion groups or anyone else?

MR. CRADDICK: I wouldn't have brought this to the Board now if I was going to do that.

MR. STARR: What?

MR. CRADDICK: I wouldn't have brought this to the Board now if I was going to do that. I believe, for whatever reason I went to the Board in the first place, and let me just read the motion that was made here by the Board, or I'll actually read the suggestion that was made by the Chair. Chairman Jefts suggested that it may be helpful for the Board to validate the Director's action to make it clear the Board is behind his decision. The motion is made. Ms. Kimmey moved that the Board accept the document from the Director dated today, 3/16/93, 3 p.m., and acknowledged that the Director has the authority to proceed in the way he sees fit. Seconded.

Passed. And the Board, you know, for whatever reason the Board wanted to support, I feel it's my obligation to at least inform the Board what we may be contemplating because the Board was made aware of what happened in the first place.

MR. STARR: That's a very long answer. What I'm trying to get at is will you change your procedures without bringing it back to the Board?

MR. CRADDICK: I'm not sure what you're talking about.

MR. STARR: Do you intend to change your procedure regarding upcountry shortage and issuance of meters without coming to the Board before you proceed with any further action?

MR. CRADDICK: No.

MR. STARR: Thank you.

CHAIRMAN TAKITANI: I think the heart of this matter is this matter of definition of source development, water source development. Maybe Mr. Fukushima can clarify that for us because I think this is a pattern that, according to that definition, Mr. Craddick is using that for the basis for saying the Director and the Department --

MR. CRAVALHO: Mr. Chairman, we're getting into the discussion of the merits and demerits of this stage. The purpose of my motion was precisely to avoid that at this particular date because we all have various questions along the line. The Director has given this Board assurances in response to the questions of Mr. Starr that he will not be proceeding to change any of his processes and procedures that he has at the present time until he brings it back to the Board, which is the next board meeting probably. And I think if we proceed on that basis and with that understanding, we will all be in very, very, good shape. We will have a chance to see and reevaluate our positions.

CHAIRMAN TAKITANI: I think that's well stated.

MR. CRAVALHO: I ask for the question, please.

CHAIRMAN TAKITANI: Mr. Smith, whatever you want to ask.

MR. SMITH: Excuse me, it should be very clear that the Board was involved in a legislative matter with the evolution of this finding and the citing of those particular minutes was simply a final point. If you will review the minutes throughout '93, from January through, I sat at meetings in which each item was discussed and battered back and forth, so it's a pretense to project the notion that administrative authority is vested here, the Board is really a casual observer, and I appreciate your input, but that position, okay, conflicts with what occurred with the original finding.

Now I'm not privy to what's going on now, but let's keep that in mind that this was not a rubber stamp issue. This was a process issue, and that's the substance of this finding affecting personal property rights and public rights and was therefore an invasion of the function in rule making and violated administrative procedures. Thank you very much.

CHAIRMAN TAKITANI: Thank you.

MR. NOBRIGA: Moved by Mr. Cravalho, seconded by Mr. Starr that this matter be laid on the table to such time that the director has reconstructed his figures and has sufficient justification to be brought forth. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it. The matter is laid on the table.

MR. CRAVALHO: Mr. Chairman, just as a matter of clarification, our action today does not mean we have directly

or indirectly put the stamp of approval on the contents of the communication.

CHAIRMAN TAKITANI: Thank you. Okay. We'll move to Item B, Update on water development issues discussed at public meetings. Mr. Craddick.

MR. CRADDICK: We had the meeting with the farm group obviously last night, and again, the issue that a number of farmers had cut back. Their consumption would have had an effect on the maximum day usage number that we're having that we had in there. And we need to I guess make an estimate of what would have happened with the consumption had they not cut back and how much water that would have used. And then I believe, let's see, we had our Pukalani Community Association meeting and we went over some of the same issues and listened to their concern about getting an inadequate water supply for the upcountry water system.

CHAIRMAN TAKITANI: Mr. Starr.

MR. STARR: I attended that Pukalani Community Association meeting, and Mike Nobriga did as well, and there was a presentation by the Director and Jacky Carroll. There was certainly a lot of concern by the community desiring to get the system upgraded, and pretty much there was aloha and positive spiritedness. But one thing occurred that I didn't feel very good about, and that was at that meeting the Director said that the whole upcountry shortage situation could have been cured by drilling a well at Pookela tank and that he brought it to the Board and that the Board had denied it and that he couldn't do it at any time without any EIS or EA.

MR. CRADDICK: No, Jonathan, that is not correct.

MR. STARR: And that by now the problem would have been solved but it was the Board had been held back from doing that. And I did not really feel that that was a very fair assessment.

MR. CRADDICK: That is not correct. I did not say we didn't need to follow the environmental process. I think

everybody knows we have to do that.

MR. STARR: You certainly hinted that it could have been done.

MR. CRADDICK: It could have been done, Jonathan, and you know and I know that it could have been challenged, so it could have been done.

CHAIRMAN TAKITANI: But in the spirit of teamwork, I don't know that such a comment should be made advising in public meetings whereby the big bad board is portrayed as the villain that is not able to provide more water upcountry.

MR. CRADDICK: Well, so noted.

CHAIRMAN TAKITANI: Any other public hearings or meetings that we were involved in?

MR. NOBRIGA: How about that guy that had like four pounds pressure?

MR. STARR: Gary Vares.

MR. CRADDICK: Vares. He hasn't come in yet. I told him to come in and see me so we could look at the situation, and he hasn't come in.

CHAIRMAN TAKITANI: Four pounds, not much pressure.

MR. NOBRIGA: How can one take one shower?

MR. CRADDICK: His situation is not unique upcountry. There are many situations like that. The Makalani line, they came to the Board. Some people on Calasa Road, same situation, they came to the Board. His condition is that he is the first service below Pookela tank and his service could be transferred to the line that comes down to Maluhia tank. He does not want to pay to relocate the service line. That's all it takes is him paying to relocate his service line, and he could do it to get the higher pressure line.

Now, why it was put there in the first place, I don't know, you know. I guess to get it attached to the other service line, he's got to run at a much longer distance. And you know, perhaps back when they first put the service line in, they didn't want to pay that money to put it there, I don't know. But that is the problem. He's the first service out of the tank, so if that Pookela tank goes down, there is not much pressure there.

CHAIRMAN TAKITANI: Mr. Hashimoto.

MR. HASHIMOTO: They want to accomplish that -- Warren Watanabe, President of the Farm Bureau, said that they have a problem of, you know, I guess Water Board issuing new meters without taking care of the regular customers first like himself where he doesn't have enough pressure to fully utilize his acreage. And neither does Ulupalukua or people in that range, so I guess his statement was that they have a problem of issuing new water meters without taking care of the present customers that have, you know, meters right now.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: Warren Watanabe's particular situation is one of a service pump off of a transmission line. And as the demand goes up on the line and the velocity increases in the line, the pressure drops in the line. I've brought this up to the Board on a number of occasions. Whether they believe that or not, that is what happens. And he also, I suppose, could ask to relocate his service and pay for relocation of that service off of the transmission line and avoid that problem.

It might be to where that is so far below his farm that they have to pump it back up. I don't know. But his farm is, I mean it's right there below the transmission line, and his service is about the width of my hands off the transmission line. I went and looked at it. And there are a number of people that have been, for whatever reason, they were given service off of transmission lines. It shouldn't be done. We try to avoid it. But people will go to the Mayor, the Council

Member, they will go to individual Board Members. We've got a bunch of them coming up on Dowling's line, people I guess that were told they could hook up to the transmission line there.

And, you know, they may have even been told that by some of the staff. But these are the kind of problems that we have later on when people hook up to transmission lines. And not to, you know, minimize the bigger problem of our distribution system. I mean I'll be the first to admit there's a lot of places in our distribution system where these problems occur. But whether we allow additional source or don't allow additional source, it's not going to change that. If we do allow the meters out, there's the possibility some of these people might fix the system up, which would possibly benefit some of these situations.

But exactly where they are located in relationship to the people that have these problems of low pressure because they're too close to where the source of either the transmission line or storage tank, I can't really say. But those are admittedly problems when there's an inadequate distribution system.

MR. STARR: Mr. Craddick, are you going to allow for the people to connect up to these transmission lines?

MR. CRADDICK: We try not to.

MR. STARR: What do you mean you try not to? You either do or you don't.

MR. CRADDICK: Well, all I can say is we try not to.

MR. STARR: You seem to be alluding that you're under pressure from the Mayor or Board Members or whoever to do that, is that the case?

MR. CRADDICK: I'm not certain any Board Members have, but I know Council Members have.

MR. STARR: Do you give special favor to people

after being requested by Council Members to do so?

MR. CRADDICK: I try not to, but it does create some friction.

MR. HELM: Yeah, Dave, in regards to that pressure problem, you know, I managed a system before where the high elevated lots had similar problems when the tank has a low drawdown. We kind of advised the property owners to use a small in-line bladder prompt that was really cheap, maybe \$150. And it solved that problem, you know, so I don't know if the Department is trying to help or assist them in that way to encourage ways to try to increase the in-line pressure in the system.

MR. CRADDICK: Usually a lot of these people that have these problems, we dig into it and we actually find out they have elevation agreements that says they must put exactly that in. But when they've been, you know, when there's low demand on the line and they've been going 20 years and having adequate pressure, you know, suddenly, it may not even be the same person we're dealing with anymore. There may have been two or three exchanges of the property before it comes to us, and Nihaus is a perfect example of this.

We had an elevation agreement. We got a meter off the transmission line. When the Lower Kula Treatment Plant was put in and we dropped the pressure, and plus we've been having much higher peaks lately, no pressure in the line. Suddenly, it was our responsibility to relocate them. We would have had about 15 requests coming to the Board to I guess get rid of the treatment plant or something. I don't know what they intended to do. But to avoid that, we relocated the service and didn't charge them, even though, you know, they had the agreement saying they would put exactly these pumps in. They don't care. They don't care what the agreements say when the pressure drops after it's been adequate for many years.

MR. HELM: A lot of these pumps are very affordable now and it's very efficient and it doesn't cost very much. I think maybe if the Department comes up with some problem solving issue and tries to assist them. That's all.

CHAIRMAN TAKITANI: I think it's a very good point.

MR. CRADDICK: We certainly can and do.

CHAIRMAN TAKITANI: Move then to Roman Numeral 8, Staff Reports.

MR. CRADDICK: I think we have a report on the water pumpage, surface water and ground water. For December there was a drop in the Iao Aquifer 12-month average. We've got our CIP projects here and the plant operations and field operations. A number of contracts that were issued, nine of them. And we are now getting the reservations on there that we were remiss in getting to you before.

And then two easements there. For Iao aquifer, too, just we know right now that we'll probably have another .1 drop in the Iao aquifer. Even though we don't quite have North Waihee on, nor are we using the surface water plant, just because of rainfall. The North Waihee project has been delayed somewhat because of the heavy rain, but we would still expect that to be probably complete here sometime in the first couple of weeks in February. I thought it would be done by the end of the month.

CHAIRMAN TAKITANI: What's the joint venture status of the well and that pump?

MR. CRADDICK: We're looking at trying to get a set of specs where they supply the pump, and it's sitting there so when the existing pump is fished out, they don't have to remobilize because they're wanting a \$20,000 charge to mobilize to the site and I don't want to pay that twice.

CHAIRMAN TAKITANI: You want to comment about the flume problem?

MR. CRADDICK: Let's see here. About 70 feet of the flume I understand collapsed last night, and we have people out there right now. That's where I need to go myself right now, but we're looking into that what we can do there.

MR. STARR: The top or the bottom?

MR. CRADDICK: I'm not sure what you mean.

MR. STARR: The supports?

MR. CRADDICK: I don't know, Jonathan. It's right in the area where EMI was working to fix up the supports. That's all I know.

MR. STARR: Is there flow?

MR. CRADDICK: No.

MR. STARR: So we'll drawing on Kahakapao until it's --

MR. CRADDICK: And Waikamoi.

MR. STARR: I have two questions regarding stuff I heard from the news media and I would like some clarification. One is we did an Iao aquifer test where we tried to stop pumping for I think 12 hours and it had to be curtailed after 2-1/2 hours I believe. What happened?

MR. CRADDICK: Actually, we had to start one pump after about four hours. At 2 o'clock, we stopped at 10, and we had to start North Waihee -- not North Waihee, Waiehu Heights and run it for about an hour at 2 o'clock. And then we went until 5 before we had to start the central Maui joint venture wells.

And in that process, we noticed that a number of the tanks out in Kihei, there had been no drawdown of them, so we're looking at waiting until the Piilani tank is finished and we will get people out in the field to actually adjust the transmission lines. We cut the test off and it looked like our transmission lines were going to start drawing air. We didn't want to get air in there. And in the meetings we held before, we knew that's where we were going to end the test, when we thought the transmissions were going to go empty. We will try again when that tank is complete, and we will definitely do a little more work on adjusting the transmission lines to force

the tanks to draw down out of the Kihei area, which should allow us to extend the time of the test.

As far as the test results, we do have some preliminary numbers back. But mainly, they confirm what we already know is that Iao is a confined aquifer, because the responses were immediate and very quick, which is indicative of a confined aquifer.

MR. STARR: So, in any case, it's interesting that we have about four hours between the time when our pumps stop and the time when our transmission lines start to suck air. So that was an interesting fact for me. Also I read in the newspaper that there was a problem with a chemical, some kind of chemical in the Lahaina system, or could you tell us what that is about.

MR. CRADDICK: Anytime any source of water is used that has regulated contaminants, we're required to put a public notice in the paper. And because of all the rainfall, the Lahaina treatment plant was not able to produce the normal amount of water that it produces. And the system drew down to a level where we didn't think we would be able -- again, transmission lines would have started to go empty, so we got the Health Department approval to start it up. They said put the notice in. As it turned out, we only had to run it for seven hours. But rather we run it for one minute or one hour or seven days, that notice has to go in the paper.

MR. STARR: And that's because we were pumping water with more than the MCL of DBCP into the system?

MR. CRADDICK: No, just any amount, we have to notify.

MR. STARR: Were we pumping more than the MCL into the system?

MR. CRADDICK: No.

MR. HELM: Just in regards, how are we doing with our operators being up to snuff with certification? Are we in compliance now?

MR. CRADDICK: No. Classes will start next month. There will be some classes to train them, and I'm not exactly positive when the exams are being given, but they'll be given sometime this year.

MS. CARROLL: Adolph, to answer that, the Department of Health with the Rural Community Assistance Corporation will be teaching classes I think three times this year here on Maui and probably two times on Molokai. And it's about a week long class just half-day so they can work after that. And the exam is at the end of that time, so there will be classes on Molokai, too, on every island.

MR. NOBRIGA: I just wanted to compliment Jacky. Her presentation at the Pukalani Association Meeting I thought was the most pertinent report we ever gave in a public setting I ever saw.

MR. STARR: I agree. It was very, very good. I really feel that our public presentation has come up many, many times.

MR. HASHIMOTO: She also did the presentation last night.

MR. NOBRIGA: Same one?

MS. CARROLL: Different.

MR. HASHIMOTO: But she stayed late, too.

MR. STARR: I have one other question. There's a lot of talk about MEDB pollution in the water supplies, and are we testing for MEDB? Isn't that what it's called? MTBE, yeah.

MR. CRADDICK: Jonathan is talking about an additive that's put in gasoline. None of our wells are downstream of any service station, so the likelihood of ever picking that up is extremely remote. We do test for it because it's a regulated contaminate. And nothing, no measure of that --

CHAIRMAN TAKITANI: Do you want to comment on fluoride?

MR. CRADDICK: Well, let's put it this way. The State is saying that they talked about using tobacco money more. They're expecting \$12 million in capital costs. They say that there is a 80 to 1, or actually, 1 to 80 cost to benefit ratio in treating for that. I will say some comment on that, and I think that number is being promoted by the Center for Disease Control, and it's based on normal use on the mainland and normal treatment procedures on the mainland where the example is the City of San Francisco that fluoridates. They fluoridate I believe at three sites to treat the entire city of San Francisco. We have to treat at every single pump station that we have.

I think they're using the number that there's five systems that have to be treated. They're saying 1,000 or more in the population would have to be treated. And to do that, we have about probably 20 sites of \$50,000 a pop, which would be a million dollars in capital costs plus about 2 cents per 1,000 gallons operating costs. And I think a lot of the problem with the State is that they normally reduce the level that these toxins can be in the system from the federal level. And the State has set the regulated maximum contaminate level at two times the level that has to be in the system in order to do any good for your teeth.

So, you know, they're talking about putting 50 percent of the regulated level into the water, and I guess that's what a lot of people are concerned about. And other than that, it doesn't look like, if it was funded out of the tobacco fund, that there would be heavy cost implications for us.

But that's kind of the debate. And my interpretation of the Board's action at the last meeting was they wanted to kind of keep out of that, so that is what I'm doing. We do have some people going over to Kauai tomorrow to meet with some of the technical people from the Center for Disease Controls in the event this comes anyway, but, you know, just to educate ourselves a little bit more on the technical problems of putting this into the system. But it doesn't, you know, at least from the talk, it doesn't look like it may ever get to a hearing before any committee.

CHAIRMAN TAKITANI: We've done the staff reports.
Go to Item Roman Numeral 9.

MR. STARR: Move for adjournment.

MR. RICE: Is that a test, Mr. Chairman? Second.

CHAIRMAN TAKITANI: Moved by Mr. Starr, seconded by
Mr. Rice. All in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The aye's have it.
(The meeting adjourned at 12:30 p.m.)

"By Water All Things Find Life"

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[\[Back\]](#)