

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 February 10, 2000.

Reported By: Rachelle Primeaux, CSR #370

ATTENDANCE:

Members Present:

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

Staff Present:

Howard Fukushima, Corp Counsel
David Craddick, Director
Fran Nago, Secretary
Herb Kogasaka, Chief Engineer
Jacky Carroll
Mike Quinn
Miles Fujinaka
Herb Chang

Others Present:

John Rapacz
Elanie Waldo

IWADO COURT REPORTERS, INC.
REGULAR MEETING
FEBRUARY 10, 2000

CHAIRMAN TAKITANI: Good morning. I would like to call the Board of Water Supply County of Maui Regular Meeting to order Thursday, February 10th, the year 2000, 9:05 a.m. The meeting is in the HGEA conference room, David K. Trask Office Building, Room 207. We have in attendance Board Members Mike Nobriga, Clark Hashimoto, Peter Rice, Howard Nakamura, Elmer Cravalho, Adolph Helm, Orlando Tagorda and myself, Bob Takitani. We have Corporation Counsel, Howard Fukushima; Director, David Craddick; Board Secretary, Fran Nago; Jacky Carroll, Administrative Assistant; Rachelle, Recording Secretary; Mike Quinn, Fiscal Officer; Herb Kogasaka, Engineering; Miles Fujinaka, Engineering and Herb Chang from engineering. Elanie Waldo, John Rapacz, Tom Pierce, Harry Eager.

We have a quorum present. The agenda has been properly noticed and filed. No minutes to be approved. Item 4. Do we have any testimony from the public for items that are not on the agenda? If not, we'll move to the agenda. Roman Numeral 5, Director's Report 00-06, request for approval to transfer \$1 million from the operating revenue fund to the capital reserve fund. Mr. Craddick.

MR. CRADDICK: Okay. I will let Mike explain that one there, finance deal there. I think we're just short of money in the replacement fund.

MR. QUINN: As the Board knows, we had originally and still anticipate receiving approximately \$7.5 million from the state revolving loan fund. Much of our CIP for this year is predicated on receiving those funds. We have not received those funds yet. It's my understanding that the paperwork has been forwarded to DAGS from the Department of Health to cut the check. All the requirements and paperwork on our side has been met, and we're just waiting for that check. I don't know exactly when we're going to receive those funds.

This item here on the Board's agenda was requesting to transfer a million dollars into -- from the operating fund into the revenue, into the CIP reserve fund. We currently have more than enough money in the operating fund to cover our monthly cash flow requirements, and this million dollars will supplement the CIP reserve fund until we receive these state revolving loan funds.

And as a matter of fact, we budgeted to transfer \$1

million from the operating fund into the CIP reserve fund on the budget that the Board approved effective July 1. This would be in addition to the million dollars. That's why we're coming to the Board because it's in addition to a million. I anticipate no risk in doing this. It is looked upon by bond rating agencies as a positive measure if we can, in fact, transfer money from our revenues to our CIP reserve fund.

CHAIRMAN TAKITANI: Mr. Cravalho.

MR. CRAVALHO: My understanding is in the previous budget, there was a million dollars provided for this type of an operation and this type of a transfer. This is a million dollars in addition. It's predicated on the idea of the conviction that the funds will be forthcoming through the loan from the state; therefore, I would suggest and I move that the \$1 million be a temporary transfer to be repaid back when the funds from the state are received.

Otherwise, I think we may end up in a situation where we say we have operating funds available, when we look at profit and loss at the end of the year, we may be in a deficit position cash flow-wise. And if we predicate or if we state that this is merely a temporary advance to be paid for and repaid when the state loan is in our hands, then I can go along with it. I so move.

MR. RICE: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Rice that there will be a temporary transfer of \$1 million from the operating fund capital reserve fund to be replenished on the transfer from the state revolving loan fund of approximately \$7.5 million. Any discussion?

MR. CRADDICK: That's fine with us. That's a good idea.

MR. CRAVALHO: Glad to see we're in the same church today so far.

CHAIRMAN TAKITANI: So moved. Any other discussion? If not, all those in favor signify by saying "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. There will be a temporary transfer of \$1 million. Move to Director's Report 00-07, request approval of a budget amendment to allocate funds to replace a section of pipeline along Hana Highway in Paia fronting the Paia parking lot. Mr. Craddick.

MR. CRADDICK: Herb, can you explain that one?

MR. KOGASAKA: The request is for a budget amendment for funds for a section of pipeline along Hana Highway fronting the Paia parking lot project that's ongoing now. This is not anticipated to be disturbed, but with the construction activity, they will be surfacing over the pipeline, and the pipeline, they've experienced some breaks in there.

And after evaluating that, we feel the pipe is pretty old. Anymore activity, it would probably make it worse. Instead of ending up with back work of pipe section, it would be probably be expedient to do this and worthwhile and while the pavement section -- before the pavement section gets replaced over it, we would like to proceed with this project at this time before the Paia parking lot project gets completed.

MR. CRAVALHO: Mr. Chairman.

CHAIRMAN TAKITANI: Mr. Cravalho.

MR. CRAVALHO: Question. Has this project started already?

MR. KOGASAKA: The parking lot construction project, yes. The pipeline, no.

MR. CRAVALHO: Has any funds been expended on this particular pipeline project so far?

MR. CRADDICK: We made a drawing.

MR. CRAVALHO: It would be very helpful if you allow me to question whom I want to question.

MR. KOGASAKA: There was some patch repair work.

MR. CRAVALHO: Not this project per se?

MR. KOGASAKA: No.

MR. CRAVALHO: What I'm concerned about, Mr. Chairman, the last meeting we had was this was the very last authorization for payment for work that was done without prior approval. And I don't want to see a repeat coming back in because I think there are a few more hiding in the woodwork. I so move.

MR. TAGORDA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded my Mr. Tagorda to approve Director's Report 00-07. Any questions? Mr. Rice.

MR. RICE: Yes, Mr. Chairman. The proposed change order that was included in our packet told us \$43,000 and the bid from -- the quote proposal from Fong was \$43,000, but the schedule totals 43 with no labor. I didn't understand how that tied to the following proposal of 43,000.

MR. CRADDICK: That's supplying and installing. The labor is included.

MR. RICE: The labor is included in each one of these line items?

MR. CRADDICK: Yes.

MR. RICE: And Public Works had no -- they didn't contribute to this pipeline breaking during the construction of the parking lot?

MR. KOGASAKA: I'm sorry?

MR. RICE: Well, the pipe worked before they started.

MR. KOGASAKA: The work was all to be done above the pipeline. Excavation of subbase pavement over it with the equipment working over it anticipating that when they compacted the backfill material and the condition the pipe that's under there now, it would be much more expedient to replace it now other than to try to go in and do patchwork later on as they

break. It's in anticipation.

MR. RICE: Thank you, Mr. Chair.

CHAIRMAN TAKITANI: Mr. Nakamura.

MR. NAKAMURA: I just had a quick question, Herb. Procedurally, this is going to be a change order that's implemented by the Public Works, and Water Department is going to reimburse Public Works for the cost of the change order?

MR. KOGASAKA: Yes.

MR. TAGORDA: This is only an estimate of 43,000 that you might be anticipating some more problems on the pipe that would be replaced. Would you think you need a contingency of 10 percent from this 43,000?

MR. KOGASAKA: That may be so.

MR. TAGORDA: Because when I look at that project, I pass by there every time, I think it needs an immediate replacement. There's a water leak there for so long and the timing for a chance for us to replace that pipe. So maybe I was just thinking that to do a correct job, maybe you need to ask for more money to replace what can be foreseen.

MR. KOGASAKA: It's pretty hard to say, but there's a certain amount of exposure that was done, and it's -- there's a possibility, yes. We can expand on that, yeah.

MR. TAGORDA: It's going to be a long one. Thank you, Mr. Chair.

CHAIRMAN TAKITANI: Are you satisfied?

MR. TAGORDA: Yeah.

CHAIRMAN TAKITANI: Moved and seconded Director's Report 00-07 requesting approval of budget amendment allocating funds to replace a section of pipeline on Hana Highway in Paia fronting Paia parking lot to be approved. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. Director's Report 00-07 is approved. Go to old business. A, Director's Report 99-61, request approval of a budget amendment for excavation of a community meter at Ulupalakua and waiver of strict application of subdivision requirements for the meter site. Mr. Craddick.

MR. CRADDICK: There may be some people here from the public.

MR. CRAVALHO: Before we get into that, I'm not in the mood to be subjected to a lot of propaganda. This body and you, Mr. Chairman, has met with Ulupalakua Ranch people, other affected people in the community, the East Maui water situation, and there was a general agreement that we would have a resolution by the ending of February. Now here we come with piecemeal stuff again.

Now, this is not the first time that we have this departure from agreements and departure from what we're supposed to be doing. I may not have any objection to the establishment of a community meter at the time with an overall settlement. And this is piecemeal. We're in the middle, just about the middle of February. I don't see where there is any great consternation or great harm done to the community by waiting until the end of February, which is 16, 18, 19 days from now. And we would be being consistent with what we have said we're going to try to attempt to resolve.

My understanding, Mr. Chairman, is that if any discussions be delayed and postponed, that you have personal contact with Ulupalakua Ranch people and a review towards an overall settlement of the needs there that is approved and will be participated in by Ulupalakua. Therefore, I believe this particular proposal at this time is premature and should be deferred until we have this whole thing reviewed. If there's no objection, I would like to see it done.

CHAIRMAN TAKITANI: Thank you, Mr. Cravalho. Any discussion?

MR. NAKAMURA: Mr. Chair, I agree with Board Member

Cravalho and I think it would be appropriate to defer it until a more comprehensive solution can be arrived at and this may be a part of that solution.

MR. CRAVALHO: It's not for delay. It's for the implementation of a proper kind of a solution.

MR. NOBRIGA: Move to defer.

MR. CRAVALHO: So moved.

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

MR. NOBRIGA: Sounds good.

CHAIRMAN TAKITANI: Any other discussion? Mr. Pierce.

MR. PIERCE: I'm here on behalf today of Peter Stolle. My name is Tom Pierce, and Mr. Chair, Members of the Board, we were here today to request for deferral on the community water tank. But I do just want to place the Board on notice of what has happened since the Board back in October directed the Director to issue a water meter to Peter Stolle.

Since that time, Peter Stolle has provided all of the funds necessary to get the water meter. He's met all of the requirements of the Department of Water Supply, but yet the water meter has not been issued. In addition to meeting all the requirements, Mr. Stolle laid pipe from the sausage tank, which was agreed upon by the Department and by Mr. Takitani, who was at that meeting, where they agreed to put the water in. He has laid the pipeline down to the road. So he's expended a substantial amount of funds in implementing and relying upon the Board's decision back then.

Recently, the Director of Water Supply returned Mr. Stolle's check and told him that his water meter was denied. The reason I'm telling you this information today is that we feel that this community water tank should not be approved until such time as the matter has been resolved with Mr. Stolle. The main reason here is the fact that Mr. Stolle had a right to water pursuant to the seniority list that was established by the Department of Water Supply.

And essentially, the Department through the

Director's report today is giving 13 people seniority automatically without having ever been on a seniority list, and this would essentially be in violation of the rule making requirements. If there is -- if the Board is going to allow and if the Department is going to allow a community water tank and allow folks to get on that tank, then they've first got to address the seniority list because the seniority list has been there, and that's how people have obtained water. And because this community tank would irreparably harm Mr. Stolle, until he has received his water meter, we would object to the installation of that water at the community tank.

So we ask that whatever discussion goes on as a result of this deferral, include a discussion of how it's going to impact the seniority list and how it would impact Mr. Stolle. Thank you.

CHAIRMAN TAKITANI: Thank you, Mr. Pierce. Can you give us your name.

MR. MOMOKE: Aloakakea Earl Momoke. Native Hawaiians now live in Kahikinui on our 22,809 acres. On October 5th, 1999, I would like to say thank you again to all the commissioners that we did meet on our tank visits, Waiohuli, Kamole, Ulupalakua and Kanaio. At that time in Kahikinui, we shared the manao that we have 75 families that's going to be residing on our aina.

And we're here today pretty much and we shared the manao back in October. If we're not stealing water from the people on this side, we would like to be considered for our own tank at Kahikinui. That's our purpose of our being here today because we hear there is a community tank going up in Ulupalakua. And if it's supposed to be for us in Kahikinui, then we would like to have it placed and built in Kahikinui please.

And so I'm not sure if this is the right meeting or if I should be coming to a budget meeting so we can be planning this or if it's going to be fixing up the pipelines that we have now getting our system better, but the manao is we have 75 Native Hawaiian families that will be living in Kahikinui in the very near future. And today we would like to say consider us for our own community tank. And if you're thinking about the size, if an average family of five utilizes about five, 600 gallons a day, then that would be about 45,000 gallons a day for us. Thank you very much. Any questions?

CHAIRMAN TAKITANI: Any other discussion? If not, it's been moved and seconded that Director's Report 99-61 be referred to probably the March 9th meeting. All those in favor, signify by saying "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. The item is deferred. We'll go to item old business B, Director's Report 00-03 request approval of a budget amendment for the amendment to the SEIS for East Maui Water Development Plan. One is communication from Attorney Isaac Hall on behalf of the Coalition to Protect East Maui Water Resources regarding East Maui and Upcountry Water Development Plans; two, hiring of professional legal assistance in the matter of preparing a supplemental EIS in the East Maui Plan.

MR. CRAVALHO: Mr. Chairman.

CHAIRMAN TAKITANI: Mr. Cravalho.

MR. CRAVALHO: I will pick up from where I left off. The communication from Isaac Hall in the matter, I have no disagreement with any of his statements or any of his findings of his recommendations. The very valid point that he makes is, one, we should avoid segmentation at just about all costs. And in that paragraph, as I recall, he gave two illustrations of what segmentation would be: the movement of water from the present study site, which is before the court, move water from there up or move water from up down. And this should be avoided.

Now, I think it's very, very, pertinent that we all say the same thing at the same place at the same time, not make a statement to one group and then go to another group and make the completely opposite statement. Assurance has been given to upcountry at several meetings that go back several years that there was absolutely no anticipation of movement of water from up to down. That was stated and more recently the same statement was made, however, in the written communication from the Director's office with respect to the East Maui settlement and discussion for Wailua ditch, it did indicate that there was

a suggestion that the County Department be free to move water in any and all directions from Wailua ditch.

That's contradictory to begin with. My great fear is that with the inclusion of an upcountry study as part of the existing matter which is before the court can be, from my thinking, flawed from a legal point of view. There is in existence before the court a requirement for the modification of the present East Maui plan, and that is a document that is before the court.

If that East Maui plan is to be amended to include another area, that changes the very nature of the study area and perhaps requires the court's approval in advance before a contract is given for a study group that has not yet been approved by the court. I have seen in the past couple of months that I've been here repeated cases of like this where movement has been made without adequate consideration of any and all legal implications. Secondly, the proposed agreement for the inclusion of the study area in my estimation again is flawed because it deletes any study, any reference to surface water in Wailua ditch and other ditches in the area.

So you are initially segmenting the proposal and the study. The third point, by the inclusion of this area without the court's prior approval, and even if you have the subsequent court's approval on this becoming one inclusive area, then one appeal which is already present and if not agreed to by the appellants and if not agreed to by any future appeal, does it include the entire area under the appeal requirements and the stopping of any and all improvements of the area. I make reference again to Mr. Hall's letter where he makes reference to the need of an EIS or an EA on every single well and every single source before the whole study is approved or EIS approved. Where does it place upcountry potential? That's only part of it.

I think it's very important that the Board be made aware of all of the implications. My understanding, and I'm willing to be corrected, my understanding is the wells that are being proposed and have been put in, H'Poko wells to wit, are not drawing water from an aquifer. It's drawing water from flow. And that flow has it's origin in an area above the study area potentially. Any well in the upper area, any well in the upper area has the potential of tapping into that stream which conceivably could reduce the productivity or the availability of water from any lower well.

I believe mention had been made that this pumping of water would result in less water going out into the ocean and perhaps that is an admirable objective. But it emphasizes the point, Mr. Chairman, that we may not be dealing with an aquifer. We may be dealing with streams, underground streams that may have its origins in areas that may be tapped up above any deep ground well. I don't know.

In the light of these concerns, it appears to be that it is the better part of discretion to proceed to clarify and satisfy the needs of the present study area, which has been going on for six long years without attention, and leave upcountry be for a little while and not go take the risk and see what we do have. The point, Mr. Chairman, that's involved in the very next item in the presentation on the agenda with reference to the hiring of professional legal assistance in the matter I think is absolutely essential. I do not want my comments to be construed to be as demonstrating lack of faith in the Corp Counsel, but the office of Corp Counsel cannot be representing four different entities on the same question.

And we have had matters submitted to this Board which may come up later, which as I understand it, representation by Corp Counsel has made directly to a body, which may or may not be in agreement with this Water Board, but it is that same Corp Counsel. Now, how can the Corp Counsel's office represent the Water Board, represent the Director, represent the County Council, represent the Administration on the same question if there however happens to be any difference of opinion or conflict.

So, in this particular matter, I think your proposal is absolutely right. It's a step in the right direction. End of sermon. And I mentioned the last meeting, I will do everything I know how legally to prevent the uniting of those two areas into one study group at the present time. I don't think it's legal. I think it can be prevented. I think the matter is before the court. And in some other cases where the Department has moved at times contrary to what the court's decision has been, I think this is another case, and I would like to see it prevented. Not eliminated, prevented from some of the pitfalls that I made reference to.

Legal counsel, go ahead with the EIS of the present study group. Upcountry is fraught with great danger that will also affect the farmers knowingly or unknowingly. I think I'm

right. I think I'm dead right on this one. If we need a motion, Mr. Chair, I would move that we -- it would be a duplicitous motion if it's approved by the body. One, we proceed to upgrade and study, yeah, and satisfy the court in the present East Maui situation that is before the court at the present time leaving out the Kula area and upcountry. I am not through. You know, Mr. Chair and Mr. Craddick, I don't want to precipitate anything. Please don't force me to.

MR. CRADDICK: Well, they need to know the truth. Haiku is part of upcountry.

MR. CRAVALHO: Wait a minute. We didn't even talk Haiku. I didn't make a reference to Haiku. Excuse me, Mr. Chairman, may I have a recess.

No mention was made of Haiku. We know that, and I'm not saying that at all. Now, if you wish to talk about Haiku, let's go talk about Haiku. When you say Haiku is part of upcountry, yes, it is part of upcountry, but at the same time, permission was granted to have it supply water to Central Maui. And on that basis, it may become part of the study, and that's part of the truth. That's part of the truth.

CHAIRMAN TAKITANI: Let's take a five-minute break.

(Recess taken.)

CHAIRMAN TAKITANI: We'll reconvene the regular Board of Water Supply meeting. Let's go back to Director's Report 00-03.

MR. CRAVALHO: Mr. Chairman, I believe we have a motion before the Board. It was my understanding, I hope that it is the understanding of all the participants in the informal discussion, that there is an existing contract with Mink for the present site. I have absolutely no problem with that contract. I have absolutely no problem with its continuation to meet the court's requirements and the court's decisions that have been made previously with respect to that. I have no problem with the expansion of work to implement this concept by Mr. Mink. It does not in any way involve upcountry.

That's separate and distinct and not part of this. That's the first part of the motion. As I indicated earlier, the motion would be a duplicitous one and we would proceed with

the hiring of the legal professional assistance who work in this matter and this legal professional assistance would be subject to the jurisdiction authorization of this Board. That's my understanding.

MR. NOBRIGA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Nobriga to utilize the original East Maui EIS plan and not with the inclusion of --

MR. NOBRIGA: Mr. Chairman, I don't think that was the motion. I think the motion was to hire legal assistance for the Board. The first part was not the motion.

CHAIRMAN TAKITANI: Mr. Cravalho, could you --

MR. CRAVALHO: It can be a motion or it can be just a general understanding. I think a general understanding is sufficient as far as I'm concerned, and we can be working on the good faith of all parties concerned. And we're limiting the present to hiring legal counsel, and it's not upcountry.

MR. FUKUSHIMA: If I may make a comment, Mr. Chair. Any counsel hired by or on behalf of the Board would have to be approved by the County Council. In addition, any attorney hired on behalf of the Board will be a specialty deputy corporation counsel ancillary to corporation counsel. I don't want to leave the impression that that attorney will be under the direction of the Board exclusively.

MR. CRAVALHO: Mr. Chairman, this is where we differ with representatives of Counsel's office, Corp Counsel. If we are hiring an attorney to function as the attorney, that may be relevant. If we are hiring a professional person to provide professional services, and in the course of it may be an attorney, we may have slightly different connotation. Now, if we all realize what the objective is, we will all survive. So that's it. And we call it and as of the time required depending on what is done. I don't think there's any prohibition with respect to the hiring of professional services to provide professional assistance to us, which we may approve or disapprove. There is a difference in giving us advice and representing us in any legal proceedings. Now, with respect to going to the County Council, I welcome that.

MR. FUKUSHIMA: The only problem that I have with the previous statements is that with respect to legal advice, legal counsel, Department of Corporation Counsel is under the Charter the legal counsel for all Boards and Commissions for the County. If there is to be another or outside counsel, in effect, representing this Board, it would have to again be through the services of Corporation Counsel. I believe the specific requirements relating to the Charter and Corporation Counsel's duties under that Charter are pertinent.

MR. CRAVALHO: I don't have a problem with that. And when that position is taken, Mr. Chairman, that means that the office or whichever office is responsible for and accountable for currently and previously for all advices given in the implementation in the decision-making process both policy-wise and administratively as well. I have no problem, none at all retroactively, none at all. In fact, I welcome it.

MR. CRADDICK: Bob.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: I would like to hear some discussion about the DBCP, whether you want to include that or not. Because under the current contract, it's not included, and that was the main reason for the injection.

MR. CRAVALHO: Mr. Chairman, with respect to that, I don't have any problem except to reiterate what the Director mentioned in the executive session. And I have some questions about that later, but to wit, that we need to exercise the greatest amount of caution that we're not utilizing the drug question, yeah, or the chemical question for the sake of just developing new sources. I think you mentioned this in the executive session that this is something we have to be very, very careful about.

With respect to the executive session, I know when -- when the Board goes into executive session, it's supposed to be secret. It's not supposed to be discussed. But, doggone, the minutes are passed out to everybody verbatim, so the secrecy is gone.

MR. CRADDICK: Executive session minutes aren't passed out.

MR. CRAVALHO: I got them.

MR. CRADDICK: But you're in the executive session.

MR. CRAVALHO: That is correct. And if it comes to me, it's going to a variety of other places, but be that as it may, it's unimportant to me.

MR. CRADDICK: Unless you give them out, they don't go anywhere else.

MR. NOBRIGA: We're straying away from the motion.

MR. RICE: Mr. Chairman, as it regards the Director's question, there's a bunch of different amendments to the scope of services that have been flowing around and possibly we might get a new scope of services to be sure that we're all are in agreement with them. Anything that is changed to the original contract, DBCP is one example.

MR. CRAVALHO: Mr. Chairman, I have no problem with that again. As long as we do not in a very circuitous manner go and approach up there that we have agreed it's, yeah, not to be touched at the present time and in the scope of this particular thing. I have no problem.

CHAIRMAN TAKITANI: That was part of the context of hiring a legal counsel to try to help us sort through all of these issues as to which is the most beneficial way to proceed through this whole duration. It's been moved and seconded that we hire professional legal assistance in the matter of procuring the supplemental EIS for the east Maui plan.

MR. NAKAMURA: May I ask for some clarifications, Mr. Chairman. I think my understanding is that what we're doing is by mutual consent, we're proceeding with professional services to deal with the issues that were raised in the appeal in the prior preparation of the environmental impact statement of the East Maui Development Plan. And secondly, that the motion is to solicit appropriate professional services to assist the Board in the proper preparation and processing of those environmental documents. I believe that is correct.

MR. CRAVALHO: I have no problem, of course, leaving upcountry alone.

MR. FUKUSHIMA: The particular attorney is at this time unknown, and how would that --

MR. CRADDICK: What are you saying, known?

MR. FUKUSHIMA: Unknown. How would that counsel be selected, would there be a committee to select them or request for a proposal?

CHAIRMAN TAKITANI: Normally what we would do is formulate a list.

MR. CRADDICK: We would put out the request for proposals. A list would be prepared, passed out to the Board and the Board would select one.

CHAIRMAN TAKITANI: If the Board has any attorneys that it knows of that may be appropriate, those can be submitted.

MR. CRAVALHO: Any attorney or any professionally qualified person be considered.

MR. FUKUSHIMA: But the selection will be coming back to the Board.

MR. QUINN: Just for clarification purposes, the Board is not taking action with regard to any monies at this stage?

MR. CRADDICK: Well, if we don't have money appropriated, it's going to be pretty tricky asking people to submit RFP's for a job that no money exists for, so I would expect that if we do this, that the Board is saying that they will put up \$10,000 for it. I believe in the long haul, it may cost more than that. But we need something to go up before the RFP.

MR. CRAVALHO: I would suggest to the Director we proceed with this to follow immediately. I make another motion to provide say \$15,000 for the implementation of this issue. Because if this decision goes down, it's moot. If it goes up, I'm prepared to go with a motion of \$15,000.

CHAIRMAN TAKITANI: It's been moved and seconded that we hire professional legal assistance in the matter of the supplemental EIS East Maui plan in consideration for legal problems that have occurred with the previous EIS, East Maui Development Plan, and secondly, to provide assistance in the

preparation of the supplemental EIS now in consideration.

MR. CRAVALHO: Again, with the understanding there's a sacred ground.

CHAIRMAN TAKITANI: With the understanding of upcountry being --

MR. CRAVALHO: Not part of it.

CHAIRMAN TAKITANI: -- not included in the scope.

MR. TAGORDA: Point of clarification, Mr. Chairman. So this old EIS, which we are going to hire a legal professional assistance, is going to only answer the court requirements that's been appealed in court and a study of upcountry water sources, drilling of wells and so on and so forth, it's not going to be in the scope of service from this legal professional assistance that we're hiring; is that right?

MR. CRAVALHO: That's the intent.

MR. TAGORDA: So the upcountry study -- so the scope -- the SEIS that you mentioned is not there, forget about it.

MR. CRAVALHO: That's right.

MR. FUKUSHIMA: But, if I may, I'm sure the attorney would have an opinion as to whether it should or shouldn't be included.

MR. CRAVALHO: Don't try to provide professional protection and opening the doors for what is not the intent of the maker of the motion. The maker of the motion's intent, me, is upcountry is out at this stage. If at a subsequent time, whether it's one day or two days or two weeks or whatever, the board in its wisdom decides that it wishes to have a study so conducted. It is free to do so, but it does not become part of this present area and this present study and this present EIS that's before the Board. Two different things. Not only do we close the door, Mr. Chairman and Mr. Counselor, we lock it.

CHAIRMAN TAKITANI: Mr. Craddick.

MR. CRADDICK: The present scope of work includes Haiku. Because the pipeline is coming through Haiku, the water

will serve Haiku and that's part of the upcountry system.

MR. CRAVALHO: I don't know why the Director finds it necessary to bring up matters that are not pertinent at the present time, because my understanding is we're going to be asking Mink or whoever to come up with an amended, right, scope of work at the time. Let's take it up at that time, and I have no objection to that.

CHAIRMAN TAKITANI: Any other discussion?

(No response.)

CHAIRMAN TAKITANI: If not, all those in favor signify by saying "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: All those opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it.

MR. CRAVALHO: Mr. Chairman, let's take a short recess. I think we've earned it.

MR. CRADDICK: Yeah, if we would have done this six years ago, we would be done with this EIS by now.

MR. CRAVALHO: Mr. Craddick, you're familiar, and give us, some of us credit for knowing some things. This is off the record.

MR. NOBRIGA: Prior to going to recess, could we take care of budget matter.

CHAIRMAN TAKITANI: And Mr. Rapacz has asked to present his -- he's asking for deferral, but he wanted to insure that his item would be deferred.

MR. CRAVALHO: Mr. Chairman, to follow through with Mr. Nobriga's request, I move that the sum of \$15,000 be appropriated, allocated for the pursuit of what we have previously discussed and decided on.

MR. NOBRIGA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Nobriga \$15,000 will be allocated for the legal assistance in the supplemental EIS for the East Maui plan. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. \$15,000 is approved. We'll move to Item G, Communication 99-31, request from attorney John Rapacz on behalf of the Hoekstra family to exchange a one-and-a-half-inch meter for six five-eighths-inch meters and to amend the modification of subdivision requirements agreement dated November 28, 1995, Eucalyptus Subdivision, Kula, Maui Hawaii. 2-2-9:2 Lot 1C.

MR. RAPACZ: May I ask Mr. Chair, thank you for taking the item out of order, Mr. Chair and Board Members. The reason I asked for it to be taken out of order is we're just requesting a two-week deferral until your next meeting and wanted to see if you folks could approve that before I go.

MR. NOBRIGA: I move to defer.

MR. NAKAMURA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Nakamura to defer communication 99-31. All those in favor say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, nay.

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it to defer.

MR. CRAVALHO: Mr. Chairman, request a recess of five minutes.

CHAIRMAN TAKITANI: Okay. We'll take a recess, five minutes.

(Recess taken.)

CHAIRMAN TAKITANI: Reconvene the regular Board of Water Supply meeting and go to Item C old business. Director's Report 00-05, request to procure services of legislative liaison at the state legislature. Amended report.

MR. CRADDICK: Let's see. What we're doing is we're tagging on what Kauai's request for proposals and the amount they were paying was \$2,100. Last year we paid I believe it was \$2,400, and somehow the contract from the year before that which was \$1,600 was somehow the one that we used to make the proposal to the Board and the actual amount was \$2,100, so if the Board can see their way clear changing that from \$1,600 to \$2,100, it would be appreciated.

CHAIRMAN TAKITANI: She does do an excellent job, this lady, and she'll come and give us an update?

MR. CRADDICK: Well, there is already an update, which is basically from her in there. As part of this contract it doesn't include her coming. We could do that, but she does make a final report. And if the Board wanted her to come in person, we could arrange for something like that at the end of the session.

MR. NOBRIGA: Mr. Chairman, I move that we amend action previously taken by this Board in the sum of \$500 as previously moved by the Board to include the \$2,100 of the contract.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga to amend previous action to include an additional \$500 for the legislative liaison contract.

MR. RICE: Second.

CHAIRMAN TAKITANI: Seconded by Mr. Rice. Any discussion? If not, all those in favor signify by saying "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: Director's Report 00-05 is approved. Let's go to Item D, discussion and possible action regarding the Iao/Waikapu ditch agreement. Mr. Craddick.

MR. CRADDICK: They said they would agree to only charging for the water that we actually used, so there is no problem with that. So if the Board can see their way clear to approve it, it would be 12 cents per thousand for only the water we use, not the backwash water that goes back into the system and they get back.

MR. NOBRIGA: I have a serious problem with us being only able to access the water in the excess of 65 million gallons a day. I talked to my dad, and he said 65 million gallons a day is the top maximum capacity of the ditch. That's when it's still raining.

MR. CRADDICK: That's not the ditch. That's Iao Stream, not what's in the ditch.

MR. NOBRIGA: But still the agreement is flawed in that respect because we need to access that water below the 65 million gallons a day, a clause in the agreement.

MR. NAKAMURA: Mr. Chairman, with regard to Mr. Nobriga's concern, which I think is appropriate, I would like to move that we defer this perhaps until the March 9th meeting when we're considering other related issues.

MR. CRAVALHO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nakamura, seconded by Mr. Cravalho to defer this item to the March 9th meeting at which time the global settlement will be more in place. Any discussion?

(No response.)

CHAIRMAN TAKITANI: If not, all those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. Iao/Waikapu ditch agreement is deferred. Go to Item E, discussion and possible action regarding complaint for declaratory judgment Civil Number 00-1-0001(1).

MR. FUKUSHIMA: If I may, Mr. Chair, early this week our Department was supplied with some further information regarding this case. We have not had an opportunity to adequately review the new material and the consequences of that material. We would request a deferral until next meeting, and we will be presenting a revised recommendation to the Board at that time regarding this case.

MR. NOBRIGA: Move to defer.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga for deferral.

MR. RICE: Second.

CHAIRMAN TAKITANI: 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 matter is deferred. Go to Item F.

MR. NOBRIGA: Move to defer, Mr. Chairman.

MR. CRADDICK: This item I think was already tabled at the last meeting.

MR. CRAVALHO: Which one is that?

CHAIRMAN TAKITANI: This is the matter of the Director's finding.

MR. CRAVALHO: Finding 2000, yeah, we tabled that already.

CHAIRMAN TAKITANI: Mr. Cravalho made a motion to lay it on the table, so it would require a motion to take off the table. Mr. Nobriga is making a motion to defer.

MR. CRAVALHO: No need.

MR. NOBRIGA: I withdraw my deferral motion to wit whatever.

CHAIRMAN TAKITANI: If it is the Board's desire to pursue this matter, the Chairman will request a motion to take from the table.

MR. NOBRIGA: Move on to Item H.

CHAIRMAN TAKITANI: Hearing none, we'll move on to Item H. Item F will continue to be on the table. Item H Communication 99-32, request from Glenn Tadaki for a waiver/deferral of the subdivision requirements for TMK 2-1-008:114, Napili Street, Wailea, Maui, Hawai`i. Do we have a representative from Wailea?

MR. NAKAMURA: Mr. Chairman, let the record reflect I'm recusing myself or this issue.

CHAIRMAN TAKITANI: Mr. Nakamura is recusing himself on this matter. Go ahead.

MR. MURASHIGE: Mr. Chairman, Members of the Commission, my name is Clyde Murashige representing Wailea Resort Company. We have put in a request for deferral of improvements to a subdivision. Essentially, we are carving out one lot out of the larger 23-acre piece, and that lot encompasses our private irrigation well. And we are requesting that services to that site, water services be deferred.

MR. NOBRIGA: Mr. Chairman, I move that we approve the staff recommendation.

MR. HASHIMOTO: Second.

CHAIRMAN TAKITANI: Moved by Mr. Nobriga, seconded by Mr. Hashimoto to approve the staff recommendation for Item Communication 99-32. Any discussion? If not, all those in

favor signify by saying "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. Communication 99-32 is approved. Item I, Communication 99-33 request from David Nihaus. Mr. Nihaus has requested a deferral to March 9th.

MR. NOBRIGA: So moved for that deferral.

MR. RICE: Second.

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

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: No comment. The "aye's" have it. Communication 99-33 is deferred. Item J, Communication 99-35 request for Sheila B. Myhre for a water meter, Olinda, Maui, Hawai'i, TMK 2-4-15:025.

MS. WALDO: My name is Elaine Waldo, and Ms. Myhre has asked me to represent her position of why she believes she should be given a water meter on her lot in Olinda. I did write up what -- I'll read from what was given to you. From numerous conversations and other forms of communication Ms. Myhre has had with the Water Department, there seems to be three major issues affecting her approval of a water meter, at least from what her understanding is.

First is the designation of her lot as an existing lot. Second, are her expectations based on substantial reliance that she is eligible for a water meter, and third is the timing of her request. First the question of existing lot. Ms. Myhre's lot has been in existence since 1913. It has

been owned by her family since -- the Olinda house lots were created out of Territory of Hawai'i Government land. However, according to the Water Department, a lot of this age is not an existing lot at this time.

As of October 4, 1999, an existing lot must be part of an approved subdivision. However, prior to October 4th, this obviously was not the case since a lot in Haiku dating from 1918 was considered an existing lot and was given a water meter. Evidently, the difference between the lot in Haiku and Ms. Myhre's lot, according to a letter from the Director, is simply the date that a request was made for a water meter.

But even if we accept the Department's new definition of existing lot that it be part of an approved subdivision, Ms. Myhre believes that her lot still qualifies as an existing lot. And I brought with me a -- let's see, this is the ocean -- a copy of the subdivision survey map for the Olinda house lots dating from 1913. The areas in black are state forest preserve, and this is almost 50 percent of the subdivision.

The lots in red are privately owned lots in the subdivision that already have water meters. Ms. Myhre's lot is the green one down here. From the subdivision map, you can tell that 71 percent of the lots in the subdivision have received water meters. So it's not just this lot we're talking about, but one that is part of a subdivision that apparently in the past has had 17 out of 24 water meters approved, including those adjoining Ms. Myhre's lot.

So it's her belief then that this is adequate basis for declaring her lot an existing lot. Second was the question of substantial reliance. In Ms. Myhre's communication with the Department, she has been told that a crucial factor underlying decisions is substantial reliance. In other words, there is an expectation that something will happen. In her case, that her application will be approved based on past experience and precedent with the Water Department.

For 23 years, at least as far as she understands, it has been Department policy to give water meters to existing lots from both the point of adequacy with easements and those adjacent to water lines. We've already seen that Ms. Myhre's lot is an existing lot, which is part of a subdivision in which 17 out of 24 lots have received water meters. But even more, the lots adjacent to hers were given meters with easements from the point of adequacy on Olinda Road. So based on this 23-year

precedent or policy, Ms. Myhre had every expectation and reliance that she would be given a meter.

So there is, in other words, a well-documented basis for her reliance on her part, and the Department's past policy of 23 years supports her reliance. The third question is the timing of Ms. Myhre's application. According to a letter dated January 11th of this year, which was over two months after her initial request, it was indicated that the reason the Haiku lot, which I mentioned earlier dating from 1918, received a water meter was because the initial request was dated August 30th, 1999, not October 31st, 1999, as Ms. Myhre's was.

As far as I, Ms. Myhre and anyone else in the public know, there was no public notification that the 23-year policy ended in October. At least she never received any notification. This letter also implied that if the request had been submitted prior to October 4th, 1999, the water meter would have been approved. So Ms. Myhre would like to know how the date of October 4th was picked and why there was no public notification of a change in policy that the public has relied upon for 23 years.

So based on this evidence, Ms. Myhre asks the Board to approve her request for a meter. She realizes that the Department has since told her that there is a rule in the books dating from 1977, but she doesn't believe that's the issue in this situation, that the issue is that for 23 years, the policy different from that set forth in the rule has been what the Department decisions have been based on and what she and the public have relied upon and asks that you grant her a water meter.

CHAIRMAN TAKITANI: Thank you. Mr. Craddick.

MR. CRADDICK: There's an inference here that somehow the Department sets the policy. The Board sets the policy, and, you know, the rules clearly state it has to be adjacent to an adequate line. And in this particular case, it is not next to an adjacent line. And even if they did put the line in, should we be taking them in place of the first-come first-serve, which is also not necessarily policy of the Board, but something that the staff has followed. I think it's mainly because Public Works, that's what they do with building permits and subdivisions and things like that is on a first-come first-serve basis. So we do that with the meters also.

With them just now coming in asking for a meter not

being on the priority list, we would have a difficult time saying that they could jump ahead of everybody else on the list. As far as reliance, I presume you're talking about some reliance under the Kula Rule. This lot was, I guess they're saying here has been in existence since 1913, so if there was some reliance back when the subdivision was created, there's a state statute of limitation of six years. So where that reliance would be now today, you know, 90 years later is -- I don't know where that would be.

MR. WALDO: Am I to tell her and assume then that meters given out prior to October 4 all were on adjacent water lines? I mean obviously, it sounds to me that that's what is being said. And I was just wondering if that is what the case has been.

MR. CRADDICK: Again, that is not policy that was created by the Board. That may have been what the staff did. That's not policy of the Board. So if you're coming to the Board saying that they should do this because it was policy, it, in fact, wasn't policy.

MS. WALDO: But policy means actions that have been taken over an extended period of time. So if these were actions taken by the Board, then that was policy whether it was written or not, or by the Department, whichever one.

MR. CRADDICK: Anyways, it is a concern. I mean she is right, the staff did give out meters away from -- that weren't adjacent to an adequate line. You know, whether the case can be made that the Board has also done that, when people have come in and requested that, I'll leave that up to her. But as far as I know, the policy has been enacted by rule making. The rule says it needs to be next to an adequate line.

MR. CRAVALHO: Mr. Chairman, I would think the request coming into the Board is premature. In the light of the fact that recent rules say the Board has the authority to hear appeals from the Director's actions. However, the process by which this is to be implemented is being advertised right now for public hearing. So while the authority may be there, the procedure is not. So it's slightly premature for this Board to take action.

And it was this Board who had the matter clarified with respect to authority, that this Board did have the authority. But the procedure is being advertised right now,

and I believe it's March 28th or somewhere around there that a public hearing will be held. After that, perhaps an appeal or request of the Board to review would be forthcoming, would be appropriate, so maybe we can take it under advisement or whatever the case may be until such time.

CHAIRMAN TAKITANI: Mr. Fukushima, under the legal terms, would there be substantial reliance? I always thought of substantial reliance as some kind of financial investment.

MR. FUKUSHIMA: If I may, it doesn't necessarily have to be financial, but in this case, whether it was reasonable to, on the part of Ms. Myhre, to assume that a meter would be granted is a question of fact, you know, that I wouldn't be able to answer at this time, the fact it was a substantial reliance, because I believe there would be some differences in how the facts are to be considered and evaluated. So, in other words, it's gray, and I can't say yes or no.

MR. NOBRIGA: I have a question. Currently, the correspondence that you have stipulates that the lot is currently vacant. What is the intent?

MS. WALDO: She would like to sell it because she's an elderly person who needs the money.

MR. NOBRIGA: So there's no current intent to build, in other words?

MS. WALDO: With her, no.

MR. NOBRIGA: Just wanted a clarification.

MS. WALDO: What happens is that the money she might be able to have to live on would be substantially reduced.

MR. NOBRIGA: So she would get more money if she had the meter?

MS. WALDO: Right.

MR. NOBRIGA: Got you.

MR. CRAVALHO: Mr. Chairman, I move we defer action until such time that we have the procedure resolved at the public hearing.

MS. NAGO: Everybody is going to have to speak up.

MR. CRAVALHO: Defer until the public hearing is over and the Board has taken action.

MR. NOBRIGA: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, seconded by Mr. Nobriga to defer action until such time that the public hearing on the proposed rule related to appeals would have been clarified.

MR. CRADDICK: The Board takes action or that process is completed.

MR. CRAVALHO: That's right.

CHAIRMAN TAKITANI: Any discussion? Moved and seconded that this item would be deferred until the public hearing on appeals, appeals proceeding on that rule. All those in favor, say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. Thank you. We'll go to Roman Numeral 7, other business. Report from strategic planning committee.

MR. NAKAMURA: Mr. Chairman, contrary to Mr. Rice's great expectations for this particular report, the purpose of the committees circulating this material was twofold. Number one, was to provide all of the members of the Board with the complete draft of the work that has been done to date by the committee working with the staff.

The last meeting or the meeting prior to that circulated a version which included or which did not include all of the objectives but rather included objectives that had been established by an informal polling of the staff as being priority objectives. What is more important is that at the very last page of this is a draft letter which the committee would like to utilize to circulate this draft to interested parties, interested parties being primarily those on the

Department's mailing list and to solicit comments from interested parties for review by the committee as part of the public review process. So this is basically for information, Mr. Chairman, and we would like to proceed on that basis unless members of the Board have any objections or concerns.

CHAIRMAN TAKITANI: Thank you, Mr. Nakamura. Any discussion by the Board? Seems to be a consensus.

MR. RICE: Mr. Chairman, I've been hearing about the tremendous work done by this committee, and now I can see it firsthand. It does look terrific.

CHAIRMAN TAKITANI: Yes. There's been a lot of hard work. Mr. Nakamura's committee should be congratulated.

MR. CRAVALHO: And take the rest of the Board to lunch.

MR. NAKAMURA: Upon completion, that is a promise, Mr. Chairman.

CHAIRMAN TAKITANI: Okay. We'll move on to Item B, discussion and review of Board of Water Supply 1999-2000 goals and objectives. Page 51.

MR. CRAVALHO: Mr. Chairman, I move that we defer action of this until we get the presentation after we've had a chance to digest because we're not going to take action on that today, I don't think so.

CHAIRMAN TAKITANI: No, this is just informational.

MR. CRADDICK: This is just informational. There's nothing to take action on.

MS. CARROLL: Okay. I'm going to go over the goals and objectives and this you can follow along on Page 51 in your packet. Now, it's broken up into two different lists, and the first one I'm going to cover is the capital improvement projects, the CIP. And most of my information is what we get from Mike Quinn in the fiscal department, the list of projects that have been completed.

The CIP, these are the tangible things, the pipelines, the tanks that you can see and feel. The second part of this presentation are the objectives that are a little

bit more intangible that go for protecting our resources and for providing better service for our customers, and you'll see that a lot of them overlap. Okay. Starting first with the capital improvement projects, last year our total budget was \$18.35 million. Of that, 16.9 million has either been spent or encumbered. Encumbered means already spoken for, so it's not spent yet, but it will be. Okay.

The first goal in our CIP is planning, organizing and controlling activities necessary to insure compliance with the Environmental Protection Agency's Safe Drinking Water Regulations. We've budgeted \$3.1 million and we've either spent or encumbered \$2.8 million. That money went for upgrades for our water treatment facilities, Kamole and Olinda upcountry, and out on the west side, the Lahaina and Mahinahina water treatment plants. Also, the granular activated carbon facility at the Napili A well for the DBCP there and also the Honokohau water system.

The top picture in the corner is the Memcor unit inside the Olinda plant, and the building below is the Lahaina water treatment facility. A beautiful view from there. The next goal, which starts on Page 52 in your packet, that we will plan, organize and control activities necessary to reduce the draw from the Iao Aquifer. Our goal was to spend 4 and a quarter million dollars. We spent 2.1, spent or encumbered, and that money went to North Waihee, also to the drilling of the Waikapu well. And regarding surface water, we're still working on that, as you know. We just deferred that.

That's a picture of North Waihee, the wells there, and there is drill rig that was over there in Waikapu, but that's down now because the drilling is completed. Okay. Number 3, that we will develop and implement plans to reduce the impacts of drought on our customers, especially for upcountry. That one we planned to spend \$2 million, and we actually spent almost four. Now, the reason that we can spend or encumber more than what we had planned in the year is that we carried over money from previous years. There's a lot of projects, especially building tanks, take more than one year. That's why you'll see carry-overs. Hamakuapoko wells are ready for service. We replaced the Waiohuli tank, and also the Lower Kula tank is nearly finished. That's the Waiohuli tank upcountry back in July of this past year. And, as you know, it is in service now.

Okay. Number 4, we'll develop and implement a

storage development plan to upgrade critical areas of Maui, and this one we did quite well. We only planned to spend 1.4 million, but we spent 3.6 for upcountry. We had the Alae tank and the Nagamatsa tank. Here in Central Maui we have the Mokuahau tank, and then in Haiku, the West Kuiaha tank that's starting and Piilani Partners tank above the Research Park in Kihei is nearing completion. Down in the corner is the Nagamatsu tank upcountry, and then the other one is Mokuahau tank looking down from the road that goes into Iao Valley.

Okay. Next, from the storage tanks to the lines, we will formulate and implement a program to replace and construct new transmission and distribution lines. We planned to spend \$5.5 million, and we spent or encumbered 2.7, and that money went for Hana water line project, Kamehame Iki water line and tank project upcountry, Makawao Avenue, South Kihei Road, which we are still working on. Wells Street also is completed, and that's the tank upcountry, the Kamehame Ike tank. That's a pressure tank. That's why it's small. And that's in service.

Okay. Next is our pumps, to repair and replace pumps so that we have reliable service. \$360,000 was budgeted, and we spent or encumbered \$487,000. That money went to Haiku, to the west side, Napili C and Kanaha wells. Also, the Lower Kula booster pump and replacement of the central Maui Waiehu Heights booster pump. And that again was money from previous years carried over. And the bottom half, you see the Lower Kula tank and booster pump station.

That's when they were doing the leak test in December. And in the upper picture is the Haiku well and pump station and tank also in the background. Okay. Also to insure reliable service, we're maintaining, repairing, replacing and installing new system elements as necessary. \$702,000 budgeted, a little bit more than half spent, \$448,000. That went into Hamoa well design, Keanae exploratory well and also the Wakiu backup well in Hana, and also on the west side, the Mahinahina monitor well.

Next goal, effective operations, that's Number 8, that we will insure our system elements, properties and buildings are well maintained and that space, supplies and resources are adequate for effective operations. \$469,000 budgeted and \$136,000 spent or encumbered, and money went to the Lahaina base yard. Also the Puuomalei triangle and also chlorination retrofits. Number 9, that the Department will continue to enhance conservation, automation and other

efficiency efforts. That one we also had money carry over from the prior year. We budgeted \$500,000 and spent \$621,000. That went for the remote computer monitoring, the SCADA, which is the supervisory control and data acquisition, also for conservation and model calibration, which is ongoing. So that's the CIP.

Like I said, we budgeted \$18.3 million and spent or encumbered 16.9, so percent of CIP completed is 92 percent. Now, let's look at the objectives, and that was a list of 11 different items. Now, these objectives are not as tangible as I said as the CIP, so they may not result in actual tanks and lines that you can see and feel. But these are the things that go a long way in protecting our resources and improving our services to our customers. And you will see that a lot of them do overlap, the CIP, but you won't see the dollar amounts like we had in the CIP.

Okay. Our first one is the water use and development plan. We're working on Lahaina and Lanai, and when that's done, we'll be working on Hana and upcountry. And this is Page 54 of your packet if you want to follow along. There's quite a write-up in there. Number two, to reduce the Iao Aquifer draw, to keep it below the sustainable yield for the next three years by developing new sources and conservation techniques. Like I said, we had the North Waihee wells drilled. We had the Iao surface water treatment facility in operation, and that's ready for operation again. We've been having conservation efforts. We still have shower heads and things that we give away to the public. And for the 12 months ending June '99, our moving average was 18 million gallons per day, which is 90 percent of the sustainable yield. And that is North Waihee. That's really helped us reduce the draw at Iao.

Number 3, develop east Maui water sources to provide sources for Central Maui. The EIS could be done in two years. That is now under discussion as we were discussing. Number 4 is to provide additional storage or ground water capacity for upcountry to alleviate drought demands and utilize the resource more judiciously during times of abundance. We have the Hamakuapoko wells Number 1 and 2. They are ready for service, and that was completed before the September 30th deadline. And also, we do try to use the Piiholo water treatment facility whenever possible so we can let the water go downhill instead of having to pump it up from Kamole and that saves us quite a bit from the electric bills.

That's the facility, Hamakuapoko, when it was still under construction. Okay. Number 5, review and revise our rules. To insure proper utilization of the resource, equity to its customers, budgetary priorities, consistency and ease of interpretation to staff and the people of Maui County. We had the Iao water management rule approved. I think that's Chapter 9 in our rules now, and you remember the water system development fee review that we had with Allen Mullins. And we know that we still need to review our distribution line funding, so that's still something we're going to be working on.

Update long term water delivery agreements with east and west Maui water sources. Okay. We are discussing East Maui. And we are working on West Maui with Maui Land and Pineapple. These are some pictures taken two days ago out in west Maui, this week anyway. The bottom picture is in Honokohau valley where the first intake is, the stream there. And the little building you see in the corner is the USGS stream gauge, and that's about as far back in the valley you can get. It's probably one of the most pristine sources we have probably in the state. And in the upper picture is one of the intakes further down in the system, and that's out on the other side of the West Maui Mountains.

Okay. Page 56, Number 7, develop a water reuse strategy. That one I have to pass that onto waste water because they are the ones mainly working on that, but it is being addressed. Okay. Number 8, formulate and implement a plan to improve our image with the public and with other Maui County departments. Our web site, we have an easy name to remember now, "mauiwater.org", although you can still use the old address.

We did a survey last year to determine public opinion and what areas we need too improve on. Last year we had our anniversary, the successful event at the mall. And we're still doing conservation ads. I don't know if you've seen them in the newspaper or heard them on the radio. We're also going to be having them at the movie theaters. I do go to schools, and we do go to the community groups.

Number 9, develop a long range financial plan to fund the five-year operating capital improvement program. We had the rate approval. We had the draft financial plan for our operations and CIP presented last February, and you remember we had the water system development fee reviewed. We're still working with, I think it's Brown and Caldwell, to analyze our

system replacement needs and we want to make sure that the plan that we do approve is consistent with our strategic plan. So those will be two efforts working together.

Number 10, develop an emergency and disaster recovery plan. Our operations divisions, the plant field and the water treatment, they did prepare a plan and it has been presented to the Board last year. So they are ready for emergencies. Now, in our office, the fiscal side does keep their accounting and billing off site, so if there were ever a problem in the County building, we would still be able to access our billing records.

However, the board information, the engineers and water meter information, we are backing that up now and it will take some time before it is completed, but we are still working on it. This will be put into the water use and development plan when it's completed, especially the operations part. Okay. And the last objective Number 11 is to perform all the functions as described in the Charter, and we do perform all those functions.

And we're trying to also perform the recommendations of the American Water Works Association Qualserve Review. So that's the CIP objectives and also the 11 objectives as approved by the Board. Those all go back to our mission of providing clean water efficiently. So I don't know if you want to ask us questions now or defer it until the next meeting, but that's where we are on our goals and objectives. Thanks.

CHAIRMAN TAKITANI: I for one delight in seeing these goals and objectives because I remember when I came on the Board trying to relate a capital expenditures to any objectives, it was an impossibility. To see it now where we can see where we're tracking along, a great achievement.

MS. CARROLL: That's why they're called "Bob's Bullets."

CHAIRMAN TAKITANI: Any discussion from the Board?

MR. CRAVALHO: I move we defer until we have a chance to study and maybe next week come up with suggestions or observations.

MR. RICE: Second.

CHAIRMAN TAKITANI: Moved by Mr. Cravalho, second by Mr. Rice to defer. Those in favor say "aye."

VOICES: Aye.

CHAIRMAN TAKITANI: Opposed, "nay."

(No response.)

CHAIRMAN TAKITANI: The "aye's" have it. The item is deferred. Moving along to Item C, update on Water Department issues discussed at public meetings. Is there any -- we did go to Pukalani.

MR. CRADDICK: I think that was before the last meeting. In the handout here we have bills of interest and State Legislature, and on those, we have submitted testimony on some. Probably two of the more important ones to us are the watershed protection and the proposal to have a 5-cent-per-thousand-gallon charge, that money be turned over to the state. Our testimony is provided in there what we said on that one, and then the other bill that I told you about where the manager becomes the personnel director for the employees of the Board of Water Supply, that one is at least has the support of HGEA. It doesn't necessarily have the support of UPW, but that one is moving along.

And fluoridation I believe, the big meeting on fluoridation will be next week Monday. And the bill on the agricultural infrastructure, the tax credit per storage, that bill is also moving. We've submitted testimony on that.

MR. CRAVALHO: Mr. Chairman, with respect to the excise tax, or what tax are you talking about?

MR. CRADDICK: On which one, the storage for the farmers?

MR. CRAVALHO: Yeah.

MR. CRADDICK: There's actually two of them out there. One is related to that excise tax. The other one I believe was just the tax credit for monies paid for agricultural storage up to \$10,000. The other one is a more general one just relating to agricultural infrastructure, and that one goes up to \$200,000 per taxpayer.

MR. CRAVALHO: Mr. Chairman, I would like to suggest we investigate the feasibility of real property tax credits because usually when reservoirs and things of that nature are constructed, it's considered just like an improvement. It's added onto the tax rule in the same manner to provide a tax credit as the state did in the past with respect to solar energy and things of that nature. And if we tie that in with approval of counsel, et cetera, et cetera, we might be providing some relief to farmers for an encouragement for storage. And at the same time, if we examine our fee structure and our rate structure, some kind of insensitive perhaps during times of when rainfall is plentiful and if we have additional storage on the part of the farmers and ranchers and others, we can sell water to them at a reduced rate rather than them going down to the ocean or some other place provided they put it into storage.

We might be able to, A, sell more water, which is ordinarily going into the ocean; B, provide additional storage to carry us over a rain shortage position or water shortage position and provide the necessary tax insensitive to the small people. A suggestion, that's all.

CHAIRMAN TAKITANI: Thank you. Mr. Fukushima, you wanted to comment?

MR. FUKUSHIMA: Yes, we've come to understand that the Kula Community Association has invited a number of members of this Board to their next association meeting. The question that's arisen is whether this is a meeting of the Board whether an agenda has to be posted. The Office of Information Practices has taken a very conservative view, or you may want to characterize it as a very liberal view of Chapter 92, and it's the opinion of the Office of Information Practices that something like this could be construed as a meeting.

In order to avoid any appearance of impropriety, we would recommend to this Board that if they wish to attend the community meeting, the Kula community meeting, that an investigative committee be formed and that that investigative committee be charged with looking into the concerns of Kula community vis-a-vis water, generally water services in the community, and the authority that the members would have would be to hear concerns of the Kula community association and bring them back to this Board for recommendation and/or a report.

Although this is not on the agenda, a provision in

Chapter 92 do allow for the amendment of an agenda with two-thirds of the members approving the amendment to the agenda. And this is in cases where a matter is being considered that is not of reasonably major importance and would not affect a significant number of people. We do not believe in the appointment of a special investigating committee to attend the Kula association meeting. We believe that something like this is more internal to the Board, that it does not, it is not of reasonably major importance and it does not affect a significant number of people. Just members of this Board attending a community association, listening to their concerns and bringing those concerns back to this body.

This is consistent with the exception to the Sunshine Law which considers that these types of interactions are permitted and do not fall within the median of a meeting. So, therefore, it is our recommendation that the agenda be amended to include an agenda item relating to the appointment of a special committee and that the special committee be authorized to attend the Kula community association meeting, listen and hear the concerns of the association and report back to this Board.

CHAIRMAN TAKITANI: How many Board Members are planning to attend that meeting?

MS. NAGO: They were going to contact Jonathan Starr when he came back, so that would be probably one more.

MR. FUKUSHIMA: The problem that arises that a provision relating to permitted interactions allows two or more members of the Board or less than a quorum, so four would be appropriate. If there were five, then it wouldn't fall within this exception.

MS. NAGO: And Jonathan would make the fifth then.

MR. CRADDICK: This meeting is not before the next Board meeting. There would be another Board meeting, and, you know, not wanting to argue with Howard, it does affect quite a few people, and it's probably better that it's properly noticed at the Board meeting because the meeting is after the next Board meeting.

MS. NAGO: It's the same day.

MR. CRADDICK: It's the same day as the meeting, but

the meeting is in the afternoon.

MR. FUKUSHIMA: Okay. The principles still remain the same.

CHAIRMAN TAKITANI: Thank you for that input.

MR. CRAVALHO: I'm glad that the procedure is correct. I have a question, a serious question.

CHAIRMAN TAKITANI: Go ahead, Mr. Cravalho.

MR. CRAVALHO: Once a person becomes a member of the Board or any Board or commission, a majority of those people who may be invited to any kind of a function which may involve a matter which may coming before them but no decisions are made, they are precluded unless going through the steps. My understanding is I'm invited to that meeting as a member of the community association and as well as maybe a Board of the Water Supply. We're not going to be making any kind of decisions. We're receiving information and opinions. Are we precluded from that? I doubt very seriously whether this was ever the intent of a legislative body.

I think there is a major difference between the invitation given to the Board as such routed through the Chair, made available to all members here that could be considered in my estimation a Board function. When it's individual invitations that go out to individual members, there's an individual relationship, and I don't think it falls within any kind of a prohibition, provided, however, no decisions are being made. We're only receiving information. I think it's a fine line.

MR. FUKUSHIMA: And we do agree to a certain extent, and that's why at the outset I indicated that the office of information practices has taken a very liberal and expansive view as to what a meeting is. While we do not entirely agree with the opinion of the Office of Information Practices, we believe that in the exercise in an abundance of caution, that at least we make an effort to comply with Section 92-2.5 which provides for permitted interactions of the Board members.

CHAIRMAN TAKITANI: Mr. Nakamura.

MR. NAKAMURA: Actually, I was going to say

virtually word for word what my colleague has mentioned. I think, without trying to kill the messenger, I think it's bordering on the ridiculous very honestly to something like this a meeting and for us to have to go through a process of appointing an investigative committee for the purpose of attending a meeting with the community association. I agree that if the request had come to the Chairman of the Board to ask the Board to be represented or the Board to participate with and meet with the association, then I think that's one thing. I'm not complaining that I was not invited to this. In fact, but I raise that as an issue but it's not a Board function. I think Board members were invited individually for whatever reasons. You know, Board Member Cravalho may be invited for one reason. Clark Hashimoto may be invited for other reasons, and to get to the point that as Board Member Cravalho has indicated, if I got an invitation to a ground-breaking, do I have to stop and think am I being invited as an individual, am I invited in my professional capacity, am I invited as a member of the Board of Water Supply? It doesn't indicate that. Do I have to go and call everybody and say, "Are you going, are you going?" Okay, now we've got more than three people. Now we have to have a Board action.

I think this is really bordering on the ridiculous, and personally, I think that if there is no intent, you know, it's a purely informational issue. There's no intent to have a meeting or to make decisions, I think it's up to the individuals as to whether or not they want to attend, and it's up to the individuals if they want to, you know, have this particular Board, you know, come and say, "Hey, you've been bad boys, you can't do that." What are the sanctions?

I think it really is getting to the point we need to say this is overkill, and we're not going to do it.

MR. HASHIMOTO: I think Mr. Cravalho and myself live in Kula, so if we wanted to attend the meeting on our own and we had five members there, then what? We live in Kula.

MR. CRAVALHO: So we just go.

CHAIRMAN TAKITANI: Point very well taken. Mr. Craddick has brought to my attention a communication received from Gordon Stellway, Principal Broker for Maui Island Real Estate, Steve Parker of Classic Island Properties and Tracy Stice from Paradise Found Properties, Inc., submitting written testimony regarding meter reassurances. I think it's in your packet.

MR. CRADDICK: I think we just -- I don't know if we got that this morning. It was just handed out.

MS. NAGO: It was handed out this morning before the meeting, so it's not part of this big packet. It's separate.

CHAIRMAN TAKITANI: I would like to indicate the communication is received. Okay. Any other staff reports?

MR. CRADDICK: No. For public meetings issues discussed, there was the annual informational meeting on Lanai the State Commission on Water Resource Management. We testified there and there was the kickoff with the Mayor of the watershed environmental awareness week where we also spoke.

CHAIRMAN TAKITANI: That's also February 19th. Any other staff reports?

MR. CRADDICK: No. Typically, we have those at the end of the second Board meeting of the month. There's more on the staff report about public information meetings that Ellen attended.

CHAIRMAN TAKITANI: Item 8 is staff reports.

MR. CRADDICK: What's that?

CHAIRMAN TAKITANI: Item 8.

MS. NAGO: Is adjournment.

MR. CRAVALHO: So move.

MR. RICE: Second.

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

VOICES: Aye.

CHAIRMAN TAKITANI: Adjourned.

(The meeting concluded at 12:20 p.m.)

"By Water All Things Find Life"

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