

County of Maui Water
Supply

BOARD OF WATER SUPPLY
COUNTY OF MAUI
REGULAR SESSION

Taken at the HGEA Conference Room, David K. Trask, Jr.
Office Building, 2145 Kaohu Street, Room 207, Wailuku,
Maui, Hawaii, commencing at 9:00 a.m. on April 13, 2000.

REPORTED BY: LYNANN NICELY, RPR/RMR/CSR #354
IWADO COURT REPORTERS, INC.

A P P E A R A N C E S

Members Present:

Elmer Cravalho, Chairman

Peter Rice

Mike Nobriga

Jonathan Starr

Clark Hashimoto

Orlando Tagorda

Adolph Helm

Howard Nakamura

Robert Takitani

Staff Present:

David Craddick, Director

Howard Fukushima, Corporation Counsel

Fran Nago, Secretary

George Tengan, Deputy Director

IWADO COURT REPORTERS, INC.

TRANSCRIPT OF PROCEEDINGS

Regular Session

April 13, 2000, 9:00 a.m.

CHAIRMAN CRAVALHO: The regular meeting of the Board of Water Supply is called to order. It is 9:02 in the morning. This is the David Trask Building in Wailuku, Maui, Hawaii.

Present here with us are the following board members: Mr. Hashimoto, Mr. Nobriga, Mr. Rice, Mr. Starr, my friend from the Philippines who is now at A&B, Mr. Tagorda; and Mr. Helm from Molokai, former chairperson Mr. Takitani, and Howard Nakamura. I'm asking Fran to introduce all of the others including our director of the department, Mr. David Craddick. Fran will introduce others who are here with us.

MS. NAGO: We have Mayor James "Kimo" Apana. We have Council member Michael Davis. We have David Craddick, our director. We have Paul Seitz, our treatment plant. We have Herb Kogasaka from engineering. Also Miles Fujinaka from engineering. Michael Quinn is our fiscal officer. We have Haunani Lemn, Mark Sheehan, Elaine Wender. We have Mr. Pete Pinkerton, Gary Meola, Gerald Britt. We have Kelly and Gene Hughes. We have Mr. John McDonald, Charles and Lorena Freitas, Mr. Al Boteilho, Mr. Dave DeLeon. We have Mr. David Hoekstra, Mr. John Rapacz. We have Mr. Don Fujimoto. We have Mr. Isaac Hall. We have Brian Miskae. We also have Jacky Carroll from staff. Oh, I'm sorry, we have Mr. Stephen Haladay and Mr. John Hoxie.

CHAIRMAN CRAVALHO: And others who may be here and we have failed to recognize them.

Preliminarily, this is my first time as chair. Just to get a few ground rules set, I am a stickler for time. If it says 9:00, it is 9:00. Not 9:05, not 9:10, but 9:00. And I hope that we're going to be able to operate in that particular manner.

I am also a stickler for following the rules and regs and following whatever is necessary. I make a

distinction between rules and regs which maybe have been operated and adopted by the board or other jurisdictions which have not yet had the force and effect of law, meaning they have not been promulgated as ordinances. I think in the past we may have utilized from time to time rules and regs to reach a decision which may not necessarily have the force and effect of law.

This morning I would like to depart from the regular agenda and proceed to the signing of our agreement that has been reached by our negotiators, Chairperson Takitani and Mr. Howard Nakamura and which the board was made aware of at the last meeting with the signing set for today. I would like to have this appear as the first order of business.

If I may be permitted some indulgence on the part of the members here, including the distinguished Mayor of the County of Maui and including Mr. Davis, the chairperson of the County Council Water Committee. The agreement which we will be signing is one in my estimation of extreme significance and extreme importance, not just to the County of Maui, but I think it is of great importance and precedent-setting for the entire State of Hawaii. The future of our well-being and of the cosmopolitan community that we are part of is dependent on a very strong and sound economic base. Those of us who have very grave economic concerns for the well-being of people, we know that the greatest liberal -- at least I think so -- is one who stresses a strong, vibrant economy that provides the means to provide social services. Because without the money, without a strong economic base, we can only talk and end up doing nothing. Squat. We've been through those days. Let's hope that we're going to be entering into a new era. And I believe we are.

Maui County has had the distinction of leading the entire state for quite a number of years and we are very fortunate, I believe, in the membership of

this board. It's one that is vigorous, strong, farsighted, and dedicated to people as contrasted to any other entity. We have the wherewithal, we have the capacity, I believe we have the vision.

And so if I may, members of the board, members of the audience, Mr. Mayor, Mr. Davis, we have a very short recess while we gather up there to go and sign the agreement.

MR. SHEEHAN: Excuse me, Mr. Chairman. Would it be possible for the public to have some input on this subject prior to your signing of the agreement?

CHAIRMAN CRAVALHO: If it is not -- you wish to express thoughts on the agreement?

MR. SHEEHAN: I do, yes. That's why I came here today.

CHAIRMAN CRAVALHO: The Chair will have to deny your request and the reason for that is that it is taken out of order. Your opportunity to express yourself will be given immediately after the signing of the agreement. Because the proper procedure, again, in terms of our agenda, is to have this done -- comments in the early part and we are departing primarily and that is the ruling of the Chair.

MR. HALL: Mr. Chair, with all due respect, I'm here on behalf of the Coalition to Protect the East Maui Water Resources to ask you not to sign this agreement.

CHAIRMAN CRAVALHO: May the record reflect the request of Mr. Hall asking us not to sign the agreement --

MR. HALL: I have a letter -- I suppose if you're not going to allow us to talk about it, I'll just give it to you. But I would like to -- I believe we have a right to speak on this, based on Chapter 92, and request that we be able to do it.

CHAIRMAN CRAVALHO: The Chair recognizes your request and the Chair will allow you to have a right to speak subsequent to the signing. It's not being denied; it's just postponed.

MR. HALL: It will be too late. It's too late then. It's too late after that. I want to convince you not to sign it. I respect --

CHAIRMAN CRAVALHO: Mr. Hall, I thank you for your respecting the position of the Chair.

May the record also reflect that this particular agreement had been submitted to the last Board of Water Supply, had been reviewed and approved. The signing of this agreement is a formality. The approval was expressed earlier, two weeks ago. So I think we should go ahead. And people will be given a chance to be heard.

MR. SHEEHAN: I feel like the public is being gagged, Mr. Chairman, with no input on this subject.

CHAIRMAN CRAVALHO: You're certainly out of order. And let us proceed accordingly. You're entitled to your opinions. You are not being gagged; you'll be given every opportunity to speak at the appropriate time. And you will be given that opportunity, have no fear of that.

MR. STARR: Mr. Chair, I appreciate the movement to try to have brevity at the meeting. However, I do feel that since we're taking the agenda out of order, it would not be harmful in any way to allow the public to give their comments on this one item before we sign it, since the public only received and had the ability to see this subsequent to our last meeting. So I think we should hear the public out if there is any mechanism to do so. So I beg your --

CHAIRMAN CRAVALHO: The Chair appreciates the thoughts expressed by Board Member Starr. The Chair reiterates its position. We shall proceed to the signing; opportunities to be heard thereafter. This is the ruling of the Chair.

The opportunity to appeal the ruling of the Chair is always present. If there is no appeal of the -- appeal of the ruling of the Chair is to come only from board members. That's Robert's Rules of Order.

Hearing none, shall we recess to sign the agreement. So ordered.

(Brief recess.)

CHAIRMAN CRAVALHO: Will the meeting be reconvened. We'll have people who wish to express themselves in the following order. Recognition is granted first to Mayor Apana, followed by Councilman Davis, then Mr. Sheehan, Isaac Hall, Elaine Wender, and Lucienne deNaie.

The Chair recognizes Mayor Apana.

MAYOR APANA: Thank you very much, Chairman Cravalho and Chairman Takitani.

When this memorandum of agreement came to my office when you first came about a few weeks ago, I thought it was one of the greatest things that the Water Board has done since its inception since I became mayor. It gives some guidelines of what you guys are intending to do, some basic agreements with A&B of things that are committed to, and such things as power contracts is very important in keeping the department operating efficiently and in the best price for our customers.

Many parts within the MOU are very loose, it's very similar to our charter. The charter or

constitution was written with broad strokes that we have the parameters of where we work in and many things will be done in the details. And the details will change over time as we adjust with living conditions and other things that change our world daily.

I know there are members here that would like to have things more permanent and binding, but those will come in future agreements. We do not know how much can go back into the streams until we find out what is the current stream flow or what is the use of our ag needs and other things and that will be determined at a later date.

But what you have done today I believe will last past the 25-year stated that it will be in agreement because it has set parameters that has given clear direction that the Department will provide water in the areas that are very lacking. In the past it was -- I wouldn't say hit and miss, but oftentimes we had to decide is it reservoir or is it groundwater. Now you guys have a clear direction that you will work on both fronts. And for that, we say thank you.

But again, like anything else, maybe my mayorship or anything else, time will tell if it was the right move. And I believe, not being a Monday morning quarterback, I believe you are in the right direction and I applaud each and every one of you, especially Chair Takitani and Board Member Nakamura. Thank you.

CHAIRMAN CRAVALHO: Thank you very much, Mr. Mayor.

Council Member Davis is recognized.

COUNCILMAN DAVIS: Thank you, Mr. Chair, Chairman Cravalho, members of the board. I would also like to congratulate all of you in this historic moment and on behalf of the County Council, especially my Committee of Public Works and Water. We look

forward to continue to work closer with you members of the board, Mr. Chairman, and your executive director. Congratulations again. Thank you.

CHAIRMAN CRAVALHO: Thank you. The Chair recognizes Mr. Sheehan at this time, please.

MR. SHEEHAN: Sit over here?

CHAIRMAN CRAVALHO: Anywhere you wish to. If you wish to be out of the room, the Chair would be happy.

MR. SHEEHAN: No doubt. Thank you for the opportunity to be here for this Kodak moment. It is a little anticlimactic to be lecturing on navigation after the Titanic has hit the iceberg. I am far less enthusiastic.

I came here today to ask you not to sign this thing for a lot of reasons -- because of the vagueness of the document, because of the very limited knowledge by the public of the resources, the water resources, and the number of people who have been left out of this document. There is no provision for the Native Hawaiians. I don't know how the upcountry ranches are really going to benefit from this. I don't know how the 700 people who are waiting for water meters upcountry will benefit from it. And it alarms me to see that there is a 25-year agreement when the water leases are on a year-to-year lease. The state water commission I know has had some input. And to take a larger view, I want to just point out to you that all over the world, people have depleted and polluted their surface water resources and turned to groundwater resources. As a result, the neglect of the surface water resources has caused people to deplete very rapidly the groundwater resources.

Groundwater resources, I want to point out, are not replenished within a month or a year. It takes centuries. The average aquifer takes 1,400 years. So we are going to turn to our aquifers now and we're

going to find out the same thing that is happening in other parts of the world; that is, that the groundwater is contaminated as a result of the use of pesticides and petrochemicals that have been used and while we're not paying attention, have leached into the groundwater. So we are tapping a precious resource and we will be depleting that resource and this document has profound implications.

If we were wiser, and if I may be so bold as to make a recommendation to this board, I would urge you in working with the lessee who has so much power and control over the water resources, to require them to maintain those resources with far more care than they have in the past.

As a result of the spread of miconia and the growth of the pig, goat, and deer population in our forest reserves, the forest has degraded.

The story of the history of Hawaii water has been one of diminishing expectations. Whereas we thought -- the geologists thought 80 years ago that there were 80 million gallons of water in the Iao Aquifer, 40 years ago they thought there were 40 million gallons and that's -- or close to it, and that is what the Central Maui Joint Venture was based on. Now we find out that those resources are down to 20 million gallons a day. So were they miscalculations? Or was the resource depleted in some way? I don't think we know. I don't think we have enough information about stream flow because we have neglected to maintain the data. And all along, the public is completely unaware of how the water system works and who the beneficiaries are.

We see that A&B is in transition from being a plantation to a land developer. And it looks like this Memorandum of Understanding will provide for their -- for the needs of the Board of Water Supply in some areas, but also provide for A&B to meet their water requirements in the long term. Meanwhile, other

developers and other people who have been waiting for many years I don't think are provided for in this document.

So I hope at some point there will be a fuller discussion by the public about the ramifications here and I hope that the public will be brought in to have a deeper understanding and more contribution to the issues that are being raised here.

I'm afraid that this will be a signal, as a result of tapping the resources of the groundwater, for other developers to do the same. And I know from working with those developers that everyone is thinking the same way: Let's use the Dowling solution and drill our own wells and we won't have to go through an Environmental Impact Statement and we won't have to deal with the county and -- but what about the resource itself? What about the groundwater? How much is there, how long can we go forward with this particular solution, and how are we going to provide for the people who are neglected and not mentioned in this document, that is the Native Hawaiians, the upcountry ranches, and the people who have been waiting for 15 and 20 years for their water.

So I'm sorry that you rushed to judgment on this thing. It looked like a done deal from the minute I walked in the room, and so it was. Congratulations in terms of your new chairmanship, Mr. Cravalho, but I do hope that you will seriously look at the things that are neglected in this document and that you will much more carefully develop a memorandum of understanding and a way of proceeding that takes good care of the water resources in this county and provides for all the users.

CHAIRMAN CRAVALHO: Thank you very much. I'm sure that the members of the board as well as myself will pay very careful attention to the merits of whatever you have presented to us. And I'm reasonably sure that if the past year and eight months or whatever it may be is any prelude to what this board

is going to be doing, that you will be relatively satisfied that we have taken steps. This is merely the first step in the things we wish to have done. And I believe the record does indicate that as of this time and up to this particular point, this board has provided for greater implementation and greater participation by the general public. We are very, very concerned and interested in that and we look forward to the opportunity of having you participating with us in a very objective manner in considering the needs of this community. Thank you again for your appearance.

MR. SHEEHAN: Thank you.

CHAIRMAN CRAVALHO: Mr. Hall.

MR. HALL: Good morning, Mr. Chairperson, members of the board. I was almost going to walk out. I'm very sorry to even be here at this point in time.

Chapter 92 requires that the public be allowed to speak on any agenda item before action is taken on that agenda item. And all these people -- Mr. Davis, the mayor's here, everybody has watched Chapter 92 be flagrantly violated.

CHAIRMAN CRAVALHO: The Chair wishes to point out to you, with great respect for you, that the representation made with respect to Chapter 92 is not particularly accurate. It is slightly misleading in the sense that Chapter --

MR. HALL: Not at all.

CHAIRMAN CRAVALHO: One moment. In the sense that Chapter 92 does not indicate prior to or subsequent to.

MR. HALL: It certainly does --

CHAIRMAN CRAVALHO: It does not, sir.

MR. HALL: -- and it provides for --

CHAIRMAN CRAVALHO: Mr. Hall.

MR. HALL: Yes, sir.

CHAIRMAN CRAVALHO: I am slightly different than other people.

MR. HALL: Yeah. What it says --

CHAIRMAN CRAVALHO: One moment, sir.

MR. HALL: Excuse me.

CHAIRMAN CRAVALHO: We stick to the proper procedures and we stick to what the facts are. And I have absolutely no objection to hearing what you have to offer. The record will show over a period of years that we have been able to work quite well together.

MR. HALL: Absolutely.

CHAIRMAN CRAVALHO: Okay. So one should not leave any kind of misleadings in the public. And prior to this particular meeting, I didn't want to discuss it in great detail, but I did discuss the agreement with you, we did review some of the areas, and to my recollection at no time did you raise any question and/or objection.

I'm happy if you have some today and offer it to the board for its understanding, its consideration, and its implementation with your active participation in the future. But let us stick to the facts. Proceed.

MR. HALL: What Chapter 92 says is that whatever action you took can be subject to voidance if Chapter 92 was violated and that's what could happen as a

result of this. And I don't want -- I don't see why you folks would want to have this celebration here violating Chapter 92.

On to the merits, as you wished. The MOU constitutes a partnership between a governmental entity, the BWS, and a private corporation, A&B. The problem I have and my clients have is it is exceedingly vague. It's just going to get us into all the same kind of trouble that we got into with the Central Maui Joint Venture. Who is entitled to what amounts of water, where is the water going to come from, and all those problems we've been working through for 10 years, we're going to create the exact same kind of problems here because this agreement is so vague.

What's built into this agreement is the leapfrogging ahead that I would have thought this board had rejected. Dowling was allowed to leapfrog ahead because he made an agreement with the board and get ahead of all the people waiting for water meters just because he entered an agreement with you. A&B had done that several times in the past with subdivisions in Haiku. And now A&B is being allowed to leapfrog again ahead based on the most amorphous terms.

What you've said is if they help you at all in implementing this MOU, that they are entitled to an appropriate amount of water. And not only that, you've obliged yourself to clean that water for them.

It's county expense. They're going to give you water that's not clean and the board is going to have to clean it under this agreement.

The agreements with respect to Wailoa Ditch, Hamakua Poko wells, and EM development plan are troublesome. As somebody else mentioned, you're entering into a 25-year agreement with A&B. A&B does not have 25 years of rights in water from the four licensed areas. It has a month-to-month revokable

permit that gets switched every year -- one year it's A&B, the next year it's EMI -- but there is no established right to that water and that water is subject to a contested case proceeding that was started 19 years ago to make sure that the water rights of the people living below those streams were taken care of. This agreement does not take care of those water rights or the people living below the ditch.

We're also concerned that BWS is agreeing that A&B may drill wells nearby the ditch system anywhere where it extends from Nahiku to Kamole, can drill a well anywhere along there, anywhere in the ditch system, put that water in the ditch, send it out to Kamole where you clean it for them, so you're expanding the scope of the East Maui Development Plan so that wells can be drilled by A&B all the way out to Nahiku if they want and they can drill those wells, put the water in the ditch and deliver it to Kamole. And that's -- the effects of that have been unstudied and unknown.

I appreciate what Chairperson Cravalho said about the stream monitoring program. That's a good idea, but it needs to be done at least a year in advance of any drilling of any well. That term again is so vague it's not really helpful, although I like the direction that it's headed and if it ever became more specific, I might support it.

The notion of having a program to restore the streams in East Maui is an excellent idea and I told the mayor that, I like that and I do like that, but it's a term that is so vague that it is not going to help anybody that relies on that stream water. It says that as the water is no longer needed for ag, that we'll consider having a stream restoration program.

These streams need to be restored now. A&B has illegally diverted those streams for years and years and years. They have taken all the water out of

the streams and that's against the state water code and should have been stopped a long time ago and shouldn't be endorsed by putting a vague provision about it in here. We need this board to commit to having a stream restoration program in place now.

I've got other comments in here, but you have other things to do. Thank you for the opportunity -- oh, lastly, this matter should have gone out to public hearing. The public knows nothing about the terms of this agreement. The public really hasn't had anything to say about it. There is no -- there is nothing that really has a chart even showing what the implications of it are and I was going to ask you to have a public hearing first, but that's too late. So thank you for the opportunity to comment.

CHAIRMAN CRAVALHO: Thank you very much for your presence and your comments. May the record reflect that any vagueness which may be in the agreement is to provide precisely the kind of participation and input that you have made reference to. And because of the tenure of the agreement, it assures the public the opportunity to precisely reduce into writing and precise presentations and requirements as time goes by.

This treatment does not preclude in any way, shape, or form, public participation. It does exactly the opposite. It provides the opportunity for an ongoing, continuous presentation involvement and recommendations and solutions being made by this board and the public at all times.

So when we read this agreement, it needs to be read with reflection, it needs to be read with understanding, it needs to be read also with its application to other requirements of the law. And as I understand it, Mr. Hall, your points are very well taken and we have discussed these matters in the past and we have discussed the opportunities that we can get into joint efforts in implementing this particular agreement. And what I'm saying is not factually

incorrect. It is factually correct.

And I look forward to the opportunity of additional participation with you, with the members of this board with you, and the people you represent. But you have to understand completely the very great significance of this agreement with all of its protective devices contained therein for the public's involvement and participation. And this is a massive step forward, in my opinion.

And I think, Mr. Hall, you know, we don't agree on everything, but I think one thing we do agree on, what I do say, I carry and I do. The public will be protected as long as I'm around. And the public will be involved and you in particular and people you represent will be also heard.

And I believe I have said in the past I have nothing to fear of working with Mr. Hall. I've said this in the past and I repeat it. Because I think both of us, we do have some integrity. And I thank you for your presence.

A recess while the gentlemen go to the other requirements. Just a couple of minutes.

(Brief recess.)

CHAIRMAN CRAVALHO: The meeting is reconvened. At this time we will be happy to have the presentation of Elaine Wender, please.

MS. WENDER: My name is Elaine Wender. I have a small farm in Keanae.

I would like, first of all, to object to testifying after the fact. The people I talked to in Keanae about this said, "When are we going to have the public hearing in Keanae?" This very much affects our water rights. And it is very sad that this board has not had a public hearing and has not talked to the

people who will be affected by this.

We're talking about the largest water diversion in the state, a unique situation where we have over a hundred streams and close to 400 diversions of water in East Maui which yield 60 billion gallons of water a year that are taken out of our area. Ninety-five percent of this goes to cane.

A&B has often said that in their conversion to drip irrigation, they save 30 to 40 percent on water, and yet they have not cut back one drop on the water that they take from East Maui. They continue to take every single drop of water that reaches the ditch. The only water they don't take is what they can't get. The only water we have in the streams is what arises from springs which are below the ditch, except in times of big water when the streams flow.

All of our life in East Maui depends on those streams. Everything from the opai to human beings depends on the water that flows in the streams.

If anybody came to you today -- if this situation did not already exist and A&B or anyone else came to you today and proposed a diversion of this magnitude, even those of you sitting here now would never agree to it. It's only because they have been doing it for over a hundred years that it's allowed to continue.

We've been struggling for 20 years, struggling peacefully to try to get some water back in the streams. When Isaac Hall refers to 19 years, remembering back to 1981 when he went to Kona representing Keanae and Wailua Nui to try to get the Board of Land and Natural Resources to refrain from issuing a new 30-year lease to A&B because they had not allowed intervention by the concerned parties, the downstream users, the Board refused the downstream users to intervene in that process, and it had to go to court. It went to the Hawaii Supreme Court and

they came back and said you have to allow it. Intervention was allowed and a contested case was noticed. Many of us, including myself, intervened in that. There are dozens of people who are intervenors in that, including the County of Maui. The County of Maui is one of the parties to that contested case.

One of the things you're doing in this agreement is precluding the position that the County of Maui might take perhaps on behalf of East Maui downstream users by saying that the Board of Water Supply is going to cooperate with A&B concerning the appropriate permits. What about the rest of us?

You also talk about cooperating with A&B and the development of hydro. Now, if you're talking about the kind of hydroelectric which already exists which runs from ditch to ditch, I have no objection to that as long as the water is not being specially diverted for that hydroelectric. But if you're talking about exploration of the kind of hydroelectric that was proposed back in 1986 and which we had to fight for a year to make sure it didn't happen, and that is hydroelectric which is going to dry up even more of our streams above the ditch, then I take great exception to that.

The real solution to your problems is to do serious water conservation and serious water storage. I don't understand why on an island where much of it is natural desert, people are allowed to irrigate to create rainforests. I don't understand why, when we use so much water flushing toilets, there is not serious discussion about requiring composting toilets. I don't understand why the ditch doesn't get lined so we don't have such a huge loss of water through an unlined ditch and leaks aren't repaired.

What you're doing in this agreement with all of its giveaways to A&B ensures that there is never going to be any water left to restore the streams. We have plenty of studies. The state has done studies, they

have detailed studies on all of the streams in East Maui. The people in East Maui know which streams are priority for restoration. We don't need to study this for another year or even another week. We need to do it now. We need to get water back into the East Maui streams. Thank you.

CHAIRMAN CRAVALHO: Thank you very much. I'm sure that all members of the board are cognizant of the points that you have raised. The Chair merely wishes to reiterate that the length of the agreement provides ample opportunity for involvement, participation, and the members of the board will be part of the general public as well as you.

And with respect to your sentiments, if I may, members of the board, with respect to the restoration of streams, I'm not only in the same church with you, I'm on the same pew and I believe I am reading or singing from the same hymnal. And I agree that it is not necessary for us to wait a year or thereabout. I look forward to the opportunity for rapid implementation.

And just as an aside, ma'am, my personal otherwise involvement in the interests and the programs of Keanae I think are self-evident and I have no reason to see that this board will not participate and enhance its involvement with respect to the people of Keanae and the restoration of the area.

And I wish to again emphasize that the section you made reference to with respect to the stream, it talks about plans, it talks about development, but it also talks about implementation. And that word was inserted at my request for something to be done forthwith.

I look forward to the opportunity of your involvement and positive participation with us in meeting this objective. Thank you very much for coming this morning.

Another lady who is supposed to be with us,
Lucienne. Thank you very much for coming in.

MS. DeNAIE: Aloha, Chairman. Aloha, members of
the board. My name is Luciene deNaie. I am also an
East Maui resident. I live Huelo. I am also a small
farmer. I'm also here representing the Sierra Club
Maui Group and we have commented over the years on
various ideas for water development projects here on Maui.

I would like to just begin by saying that I echo
the sentiments of several other speakers in that we
really shouldn't be spending a resource before we
understand its actual capacity. And it does seem that
our knowledge of such things is not entirely accurate
and it's kind of like having a bank account you're
writing checks on but you don't really know what your
balance is, except in this case it can be more serious
than just some overdraft charges. It could really
mean that our ecosystems are placed in a very
precarious position that we then have to fight and
spend a great deal of time and energy to restore to a
functional nature. And if people think this doesn't
happen, they're naive. It's happening all over the
world. So I would just say a word of caution.

I can appreciate that this board really wants to
do something about water for our future. We have a
system where water is not always available where
people need it, we have a system where water is not
fairly distributed, and we have a system where a lot
of water comes at certain times and we are not able to
capture it or put it to human use.

I would emphasize that we need to go forwards
instead of backwards. We need a modern water policy
and not only a policy that involves public
participation, but that really reexamines the
apportionment of resources. We have had an
agricultural industry here -- not just A&B, but the
other portions of the agricultural industry -- that
has needed to use a very large amount of water in

order to develop an industry a hundred years ago. Those times are gone. We are in a new era. We really need a water policy that reflects that era. And in a way, it seems what we're doing is giving the authority back to the same large concerns that have controlled our water from the beginning.

I'm sure all you board members are aware that this is a public resource and this water comes from public lands, and yet we are entering into agreements with it that place it in private hands and place a lot of the control of it in private hands.

I would even bring up at this time whether this board has a desire to include in any negotiations with A&B, which is a corporation, a desire of the right of first refusal to take over their EMI section should A&B be the object of a hostile takeover, for instance. And this does happen to corporations. In fact, it almost happened to A&B a few years ago. If a large corporation bought out A&B, what happens to EMI? So these are things that I would like to see addressed.

As an East Maui resident, I am very concerned about streams, just as Ms. Wender expressed. We depend on our streams. We have no other source of water. And we like having our streams as a source of water. And some of us depend on wells as well. And we need to know that our well sources are going to be protected. The streams are really integral to our way of life. In Huelo, I know families who can't farm taro like their parents did because there just isn't the water flow in the streams. It's not dependable. And what I hear -- I'm reassured by your remarks, Chairman Cravalho, about stream restoration being important to you. But I see that A&B is getting a commitment. They're getting 25 years, they're getting a commitment of a share of water to come from public lands, et cetera, et cetera, or lands that they hold lease to, and yet I would really like to see that same commitment written in very strongly for our streams where it's not just an afterthought but a real

guarantee.

Also, the cost of pumping -- I'm sure we're all aware that the county I believe it is in 1998 spent about \$4.5 million in electric costs and I believe about half of that was pumping for water. Now, if we can work something out with hydroelectric and all of this changes, it still has an impact because that money was being paid to MECO. So are they going to do pretty well if we drop out of a million dollars a year paying them for pumping? This is a complex thing and I hope people are taking it seriously that maybe pumping is not the only answer to our water problems. It's the most obvious solution, it's where all the developers are going: Hey, let's just drill one well. We don't have to worry about it after that.

And as an environmentalist and as a person who lives in a very rural area, let me tell you, I get worried when people want to take the most obvious solutions because sometimes they are short-term gain and long-term trouble.

The ditches themselves -- pumping this water up, putting it in the ditches, I hope something would be done to make the ditches a little bit more efficient. They are a beautiful system. They are a remarkable engineering feat. I have hiked practically every ditch in the East Maui side and I marvel at the people who constructed these and conceived of them. However, if we're talking about pumping additional waters, right now when it rains, those ditches are full right to the brim. So I assume the pumping would not take place during those times. But if we are pumping during low times, it might be good to look at a way to minimize the evaporation that happens. And I would hope that someone would be analyzing that. I know when it is hot and dry, a lot of evaporation happens just in our streams, so I'm sure it happens in the ditches which are even more narrow.

To conclude, I would say that I certainly would

hope that we will not see this as one more county policy that is convenient for large concerns with money and good access to the local government, but we will see the little people included.

Now, I've heard the promises you've made today because I'm the last speaker so I've heard everybody's comments. But I'm sure you're not so naive, any of you here on this board, as to think that there are not things that go on that are for the benefit of the few and the detriment of the many and they're paid for by public funds. This has happened. So I would say rather than rush in to something like this, I would rather see, personally, the county explore more means of the reservoirs -- I know these are included in the plans -- more means of empowering people locally to store their own water like we all do in Huelo. It is not that inconvenient and it teaches good stewardship when you know how much it takes to wash dishes or flush the toilet, believe me, you're concerned about how many times you take each action. All of Haiku would be likely candidates for this. There is plenty of water that comes through Haiku most of the year. Folks could have their own storage systems. It costs about \$2,000 a person. Probably cheaper than pumping in the long run. And it's something that each person can participate in.

Anyway, I think that the last concern I have is that many of these things that have been developed in the past are to just take water away and fuel more development, which has its own costly problems and then we're left picking up the cost of those problems -- the overburdened roads, schools, simply because it's not the Water Board's problem, they just provide water. We don't know what happens to that water afterwards. We don't know what happens to the implications or the buildings that are built and the golf courses and the condominiums and the hotels. We don't know what happens after that. Well, we all need to work together in order to have an island that's liveable.

So I thank you for your cooperation and I urge caution on this plan.

CHAIRMAN CRAVALHO: Thank you very much. And before recognizing -- before the Chair recognizes Mr. Starr, the Chair would like to offer just a couple of comments.

I thought I heard myself speaking. The very things you make reference to with respect to conservation, storage, reservoirs, cheaper water rates and seasonal -- when rains are heavy, are all items that we have discussed. And I believe that this is the intent and this is the opinion and the thinking of all members of this board. We can look retrospectively at things that may not have met our complete satisfaction and has not always been to the maximum benefit of the general public. I would like to think and I have reason to believe that this is the consensus of the members of this board that we are in a different era now and we are looking forward to different methodologies and different kinds of techniques to be used, and not the least among of these is the involvement of people who make up this community.

I would like to make reference at all times to "local." But I also qualify "local" to be meaningful of a way of life and a set of standards and a set of priorities, rather than the length of a person's residence in any particular area. So when I make reference again to being "local," this is what we're talking about.

And I hope that your involvement here this morning is not the beginning and the end of your involvement, but it will be just the beginning for your continued participation and the participation of your organization as well. Because when -- not if, but when we succeed, we will all benefit. And I think we all have a common objective in mind and I look forward to this opportunity to having you share your

ideas and talents with us. And I thank you for coming here this morning.

Mr. Starr.

MR. STARR: I appreciate a lot of the comments that we've heard and I have definitely heard some new ideas that I hope we are able to bring in to our plans.

But I would like to say I've thought -- I've given a lot of deep thinking to different areas of this agreement and I feel that one of the feelings that some of the testifiers have had is if by mentioning things such as stream gauging and bringing -- long term bringing back some of the stream flow standards with stream restoration, that by putting it in here, we're brushing it off. That's the opposite of the case.

Frankly, to have that in a document that's being signed by the Board of Water Supply and by A&B EMI is groundbreaking and it's something that I'm proud to participate in it and it's something that is there because it's something that we want to deal with and we want to work on over the next years and decades until a more suitable situation has been realized. And that's why it's there.

I'm proud that this board has taken a very strong position as far as resource preservation and watershed management. I was over on Lanai for two days today. The board was taking a lead role in trying to protect the watershed on Lanai. And Lanai, quite frankly, is in danger of becoming a desert island if the fencing is not done to keep the animals out of the hale, the watershed area. And the board is taking the preeminent position there.

This board has taken a lead role in funding miconia and has taken a lead position in other watershed protection. And I'm sure that in its new mode, this board is going to take an even stronger

position because it's something we all believe in, that we have to look to the future. And that's what this document is doing.

This document really brings up a lot of important things that have never been mentioned, that have never been on the table before, and that's why I feel some pride in being a part of this thing. And also, I really have to show some appreciation to A&B who have given up -- they are giving up real water and they're not -- it doesn't put them in a position where they're ahead of the public. There is no place in this agreement where it says that they have a position ahead of any other person when it comes to gaining the water back.

If the system is adequate, they can go and get water from us, just as you can or I can or anyone else who applies for a meter. So in that regard, it's an act of faith on their part that they're actually giving up something that has value to them and they're maybe hoping that it will be available to them when they want it.

So I feel that the public has gained a lot, the environment has gained a lot, and I think overall this is a good thing and I also hope that we can move forward together so that the issues as far as stream flow and as far as watershed protection are really looked at and dealt with in intelligent ways.

This is a framework. This is not something that's going to immediately directly solve problems. But it's going to allow us to work to solve a lot of the upcountry problems that exist. And I really feel that it's -- in all fairness, this is a good package. And it is vague simply because as things play out, it will allow opportunity for public input and for interaction and not -- there is no attempt here to finalize details on something without having the community being able to be involved. I think that there is certainly certain areas where vagueness is

desirable because none of us know what tomorrow will bring and we're going to have to evolve in this, and our relationships are going to have to evolve as well as we learn and as time goes by.

CHAIRMAN CRAVALHO: Thank you very much, Mr. Starr.

The Chair would like to conclude this section of the meeting by having a short recess for five minutes and when we return, we shall proceed to the agenda.

(Brief recess.)

CHAIRMAN CRAVALHO: It's a little over five minutes. Are all board members and others present? The board meeting is reconvened.

The request has been made for some oral testimony to be given on the subject matter that will be coming later on in the agenda, presentation on behalf of the Board of Realtors. The gentleman is recognized.

MR. DELEON: Good morning, Chairman, members.
Dave DeLeon, representing the Board of Realtors.

The Board of Realtors supports the proposed amendments to Subtitle 02, Rules of Practice and Procedure of the Board of Water Supply. While we were not familiar enough with the actual mechanics of this proposed rule to be sure that it will work smoothly, the Board of Realtors nonetheless supports the concept of creating a formal appeals process for the administrative decisions of the Director of Water Supply.

As a public body, the Board of Water Supply must insure that water users are not subjected to unduly lengthy or arbitrary decisions by the department. The proposed rules are an important step towards a fair and timely decision-making process that will insure due process.

The Board of Realtors believes that this proposal, requiring a timely decision-making process, is itself long overdue. We can give you examples of applications for water meters not being answered for long periods of time.

The Board of Realtors is also concerned about a pattern in which the director changes departmental rules, changes which have a heavy impact on some property owners, without notifying the public. One such apparent arbitrary decision was the director's action to change the definition of an existing lot to exclude old lots that existed prior to the department's review of subdivision approvals. Such a change in policy appears to us as arbitrary, capricious, and without a basis in the Board's rules. Such an arbitrary decision will be sure to generate numerous appeals.

The Board of Realtors congratulates the Board of Water Supply on this effort to create a formal process that will assure water users a fair and timely review of their appeals. This effort will assure the public that the Board of Water Supply has the interests of the public as its number one concern.

As an aside, Mr. Chairman and members, as an observer of the board, I would have thought that -- I want to suggest that you might want to consider a subcommittee of the board to handle appeals, maybe a five-member or three-member body would might expedite the matter, you don't have to get all nine members together every time you hold an appeals unit.

The other observation that the Board of Realtors would like to make was we barely got notice of this. If Harry Eager didn't write a newspaper story on it, we wouldn't have known it. I understand from the procedure that the department notices go into a formal document, a public notice document that you have to be a professional public notice reviewer to know it's

there or you have to be following the website. Most of us are earning a living and don't really have time for that and notices in the Maui News would have a better shot at it.

Thank you very much for your time. Appreciate the time to come up early.

CHAIRMAN CRAVALHO: Thank you very much. Are there any questions on the part of members of the board?

The Chair would like to make one observation that deals particularly with your suggestion or recommendation that we consider the organization of committees. While it is slightly premature at this time, it is the intent of the Chair to appoint and to constitute a number of committees and to get into the operational setup for consideration by the committees to report back to the full board.

This will involve all members of the board as chairmen of the various committees. These committees would involve oversight and ombudsman committee to deal specifically with the kind of questions you have -- or recommendations you have made with respect to decisions that have been made by staff and/or the director; the evaluation committee which the board has authorized and reviewed in the last meeting; a finance committee to review the matters dealing with the financial needs of the department, not only contemporary but long-range as well for the implementation of a variety of projects and system upgrading; the committee of the whole, committee set up to handle and coordinate all committee reports; rules and regulations committee; a negotiations committee, which is going to be a very important element in the procedural requirements as well as the substantive requirements for the water department in the future; capital programs and legislative committee; and a coordination liaison committee that will work with the mayor's office, the County Council, whathaveyou. So that every single member of this

board will have a chairmanship and each member will be requested to select their committee members, not more than three additional. And of course, the Chair being the Chair would be a member ex officio of all committees without a vote. If we don't have the power of persuasion, the vote means nothing anyway. This will be -- we hope we're going to be able to implement. I'm looking forward to receiving input from members of the Board of Water Supply as to if they have any particular preference.

If there is no objection from members of the board, shall we proceed according to establish a committee setup to report back to the board at the next meeting, based on what we have listed here as to what the committees will be. Okay.

Thank you very much for being here, Mr. DeLeon.

Ms. Nago, I think you have some written testimony on behalf of Mr. Watanabe? Oh, while we're waiting for the pass out, it is the hope of the Chair that we will be able to dispense with meeting every two weeks and we will meet once a month, but the meetings to be over a period that might encompass two days until we finish the whole agenda. If the members want to finish in one day, be my guest, I would be the most happy person. But if it's necessary to go for two days, then we do any portion of two days. That should be very helpful.

I know the staff and the director have been overwhelmed with paperwork in order to meet the requests of board members for meeting every two weeks as well as meeting the statutory requirement of advertising and disseminating the agenda, et cetera, et cetera. Make sense? Good. Getting back to the right church.

Any comments with respect to the distributed testimony? Ms. Nago, would you want to read the testimony for the members of the board, please?

MS. NAGO: "Testimony for Director's Report
00-16, Participation in the Hawaii State Drought Plan.

"Chairman Cravalho and members of the Maui Board of Water Supply: Maui County Farm Bureau strongly supports the participation the BWS in the planning and implementation of the Hawaii State Drought Plan. I was very pleased with the tremendous interest and support demonstrated by the various public and private agencies and organizations at the recent conference on the Hawaii Drought Plan. Among them were the Maui Fire Department, Maui Civil Defense, Maui Board of Water Supply, State Department of Forestry and Wildlife, Maui Office of Economic Development, Hawaii Association of Conservation Districts for Maui, Wailuku Agribusiness, Hawaiian Commercial & Sugar Company, East Maui Irrigation, Cargill Hybrid Seed Molokai, Cooperative Extension Service Molokai, and Ulupalakua Ranch. Such a united effort is needed to bring solutions to this issue that has long plagued our county.

Maui and Molokai are two of the most severely affected islands in this state in regards to agricultural water storage. The ultimate consistent potential of these islands as contributors to the economy has yet to be realized due to the drought years that occur at regular intervals. This drought plan is but the beginning of the road to solutions. We are actively participating in seeking congressional approval of Hawaii as a reclamation state. We will be approaching Representative Mink and Abercrombie to seek an introduction of a companion bill to Senator Akaka's bill 1694 in the House. This vehicle, along with the state plan, will lay the groundwork for eventual federal funding.

"We appreciate the Board's continued recognition in support of Maui's agriculture. We hope to continue working together for the benefit of all. Sincerely yours, Warren K. Watanabe, President of the Maui

County Farm Bureau."

CHAIRMAN CRAVALHO: Are there any comments, members of the board? Or if not, may the record reflect it has been filed and will be used appropriately by the board at the appropriate time. No objection, so ordered.

Shall we then proceed with the agenda? Shall we proceed to Director's Report 00-12. Mr. Craddick?

MR. CRADDICK: On page one there, we have the Director's Report 12, 13, 14,15 for referral to committees.

CHAIRMAN CRAVALHO: So noted. It will be referred to the committee setup that I have made reference to, so the committees can start working forthwith.

Shall we proceed to the next item?

MR. CRADDICK: This one is regarding the testimony that was just provided by the Farm Bureau, the Hawaii Drought Plan, and it's basically a budget amendment. If we're going to participate in this, we didn't really budget for it this year. It's a small amount, \$1,500.

CHAIRMAN CRAVALHO: Is there a motion for the -- Mr. Starr?

MR. STARR: Mr. Chair, I move that we participate in the drought plan, providing that we can find a source for the \$1,500 -- that is, a legal source of funds.

MR. HASHIMOTO: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded for the participation of this board in this plan and that a sum of \$1,500 be appropriated

therefor. I believe there is a surplus overall, that funds are available. Any discussion? If not, are you ready for the question? All in favor, say aye.

Contrary? Carry.

Shall we proceed to the next one, please.

MR. CRADDICK: This director's report is regarding a family subdivision waiver under Rule No. 2 Section 2-16, where the person goes ahead with the subdivisions, deferring the improvement until they do further -- either asking for building permits or further subdivision of the lands. And it's allowed under the rules and we recommend its approval.

CHAIRMAN CRAVALHO: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I move that we approve the agreement authorizing the waiver.

CHAIRMAN CRAVALHO: Is there a second?

MR. RICE: Second.

CHAIRMAN CRAVALHO: Moved by Mr. Nakamura, seconded by Mr. Rice. Discussion? If not, are you ready for the question? All in favor, say aye. Contrary? Carried.

Old Business. We're finished with A. Item B. Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, if I can just take a short minute and I will circulate the report of the Strategic Planning Committee. We had a meeting earlier this week. The preliminary draft of the long-range strategic plan had been circulated previously to all persons who were on the department's mailing list.

In response to our request for comments, we received comments from the persons or organizations noted on the report which we just circulated. There were fourteen responses which we received. We were quite pleased with that. The staff is in the process of organizing and compiling the comments into categories to make it easier for us to review.

At this point the committee recommends that we -- that the board authorize a public meeting, utilizing an outside facilitator or moderator, to obtain additional public input and comment, such a meeting to be scheduled tentatively in mid May or as soon as we can go through the appropriate process to organize it and make it -- and publicize it. Susequent to that, the committee intends to finalize the draft for public hearing.

So, Mr. Chairman, I would like to move that the board authorize a public meeting on the preliminary draft of the long-range plan.

CHAIRMAN CRAVALHO: Is there a second to the motion?

MR. STARR: Second.

CHAIRMAN CRAVALHO: Seconded by Mr. Starr. The motion is duly made and seconded that they proceed to set up a meeting for public hearing on the proposals. Any discussion? Ready for the question? All in favor, say aye. Contrary? Carried.

Before going to the next item, the Chair, with the unanimous approval of this board, would ask we reconsider action taken on submittal of Director's Report 00-12, submittal of request for approval to extend the deadline. Is that correct? Because of a time problem.

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: If there is no objection, shall we -- let's handle this in an orderly manner. If there is no objection, then we proceed for reconsideration. Is there any objection to the reconsideration? Hearing none, then the matter is before the board again.

So it would be appropriate at this time for a motion to be made for the approval. Mr. Nobriga?

MR. NOBRIGA: Move to request the extension on the deadline of completion of Kaupakulua Well and Reservoir.

CHAIRMAN CRAVALHO: Is there a second?

MR. RICE: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded for the approval of the request for the extension. Moved by Mr. Nobriga and seconded by Mr. Rice. Any discussion on the question?

Mr. Starr?

MR. STARR: Mr. Chair, I would like a clarification of the situation, the dates when this project was originally intended to be completed, the date to which it has been so far extended to, and the reasons why they're requesting further extension.

CHAIRMAN CRAVALHO: Mr. Craddick, please.

MR. CRADDICK: I would like to --

CHAIRMAN CRAVALHO: You want to defer it to the gentleman?

MR. CRADDICK: The applicant, yes. Could I get some clarification? Is this just an extension until the committee hears this or --

CHAIRMAN CRAVALHO: No, no, no, this is approval.

MR. FUJIMOTO: Mr. Chair, Don Fujimoto representing Kulamalu.

Some of the difficulties we've had in the past are we've been rained out. The contractor has been rained out for approximately a month or so. In addition to that, Maui Electric has had some difficulties in bringing power up to the site. In doing their work, they have discovered that a majority of the poles running from Makawao Avenue to the project -- to the well site were rotten and those had to be replaced. Those are the major items for delay.

CHAIRMAN CRAVALHO: Does that satisfy you, Mr. Starr?

MR. STARR: No, it doesn't.

CHAIRMAN CRAVALHO: Proceed.

MR. STARR: What was the original date of completion for this project?

MR. FUJIMOTO: April 15th, I believe.

MR. CRADDICK: You're talking about original from 1996?

MR. STARR: I believe we've already given one extension. That's what I'm trying to get.

MR. FUJIMOTO: Mr. Chair, Tom Welch, our counsel.

MR. CRADDICK: It's three years. I believe it was March '99.

MR. WELCH: I think it's March of 1999.

MR. STARR: And it was extended for only 45 days; is that correct?

MR. WELCH: March of 1999.

MR. STARR: Oh, I'm sorry. So was it extended for one year and one month?

MR. WELCH: It was extended first to December 1999 and then later to April 15, 2000.

MR. STARR: So it's been extended twice already?

MR. WELCH: Correct.

MR. STARR: I think it should be noted that had this been in place the last couple of months, then our last difficulties would have been a lot easier to get through because the school which this is providing water for is using their water, and I don't begrudge them that, but this is a system that's supposed to provide the water for that school. So frankly, it's making the rest of our system that much shorter.

And although I could feel sympathetic and give another short extension, I would not want to see this extension go too far into the summer when we may be facing more dry conditions. So if we do extend this, I think that we should really say that this is going to be a drop-dead extension where we're not going to allow it to just keep going on and prolonging the inconvenience of the rest of our upcountry consumers by having water taken from the system and not replaced by this system that's destined to fix it.

So can you give us a date that you're going to be complete and you will take the responsibility if it's not complete and not blame on it Maui Electric or not blame it on rain or lack of rain or anything else?

MR. FUJIMOTO: Sure, we'll agree to the July 15th date. That's in our request to Mr. Craddick and the board.

MR. STARR: When was our drought last year starting?

MR. CRADDICK: Started about April.

CHAIRMAN CRAVALHO: April.

MR. STARR: I would like to see that date moved up.

CHAIRMAN CRAVALHO: The pending motion is for the approval of the proposal. Mr. Craddick?

MR. CRADDICK: I don't know if Jonathan remembers, but there is a pump in the well right now that can be run. We did start running it. We took a sample. We sent it in for analysis because that was something the health department wanted --

MR. STARR: I'm tired of hearing about how --

CHAIRMAN CRAVALHO: Let's maintain an orderly process. The Chair recognizes -- continues to recognize Mr. Craddick, followed by Mr. Starr.

MR. CRADDICK: Anyways, that's all I had to say. There is a pump in the well, they can supply way more water than what they are using if the board so desires that they want it in the system.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: I'm very tired of hearing that that system is ready for use when in fact not a drop of usable water has come out of it and there always seems to be some reason why not. And I would like to see it completed so we can use it in a normal fashion.

I would like to once again request of Mr. Fujimoto, is it possible to move up your drop-dead date so that we can hopefully get the thing on line before our drought season?

CHAIRMAN CRAVALHO: One moment, please.
Mr. Fujimoto has been asked a question, so courtesy requires that he respond to Mr. Starr before the Chair recognizes Mr. Craddick. Mr. Fujimoto?

MR. FUJIMOTO: Sorry, Mr. Chair, could I discuss this with my project manager?

CHAIRMAN CRAVALHO: Recess so ordered. Two minutes. Make it one.

(Brief recess.)

CHAIRMAN CRAVALHO: The meeting is reconvened.
The Chair recognizes Mr. Welch. Proceed.

MR. WELCH: Thank you, Mr. Chairman. The reasons for the delay are usually -- and I'm sympathetic with the notion that we're always blaming it on somebody else. Unfortunately, a lot of these things are out of our control.

Maui Electric has been slow in getting their work done, we have to rely on Alexander & Baldwin or A&B Properties to complete their part of it, and it's usually third parties. We have an incentive to get it done as quickly as we can and we picked -- we asked for a July 15th deadline only because we don't want to have to come in again. We anticipate it being done much sooner than that; unfortunately, we don't have any control over it. We may just have to come back in.

My concern, though, in having a drop-dead date is always what are the consequences. And I'm not sure what the consequences are because we're all working towards the goal of getting the well done and getting it dedicated to the county as quickly as possible.

Thank you, Mr. Chairman.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: Mr. Chair, I feel that this project has been allowed to lag; that frankly, with Mr. Dowling's brilliant resources and his staff, they could have got this thing done long ago. I for one will be voting "nay" on this if the date is not until July 15th.

CHAIRMAN CRAVALHO: You mean amended to be before July 15th. Because the requested extension is to July, is it not?

MR. WELCH: That's correct.

CHAIRMAN CRAVALHO: Mr. Craddick, do you have anything new to add?

MR. CRADDICK: I just wanted to say that they're kind of in a tight spot because when the board revised the agreement, it was required that they leave the pump, the emergency pump in the hole until they had electricity in there. And when that electricity comes in, that pump has to be removed and the permanent pump put in. And quite frankly, you know, for operational purposes, we -- we will not be able to run the pump, let's put it that way, the pump is a 4100-volt requirement. The pump that is in there right now is only a 460-volt requirement which we have generators to operate that.

So, you know, just in your deliberations here, keep that in mind, there is some stuff that the board and staff are requiring that they maintain that pump in the hole just to solve these problems. If a drought comes up, we want to be able to run that thing right away and we won't be able to do it if that pump is pulled out and the permanent one put in without permanent water power in there.

CHAIRMAN CRAVALHO: The pending motion before the board is for the approval of the extension to July

15th, 2000. Any further discussion on the motion? Ready for the question? All in favor of the motion, say aye. Opposed? Carried. One "no." May the record reflect one "no."

MR. FUJIMOTO: Thank you, Mr. Chair.

CHAIRMAN CRAVALHO: Shall we proceed to the next item. Before we go to the next item, just one addition from the Chair parenthetically, but I think it's pertinent. The attorney made reference to what would the consequences be if the deadline passed. Simple: You'd pay a penalty. That's the consequence. And if you are convinced of it that it will happen, you move.

MR. WELCH: Thank you, Mr. Chairman.

CHAIRMAN CRAVALHO: Shall we proceed to the next item, VI-C. Any testimony on it? Discussion of board's goals -- we finished that just about when we talked about strategic plan because it ties in directly with the strategic plan and the board voted for the public hearing.

MR. STARR: Mr. Chair?

CHAIRMAN CRAVALHO: Yes, my friend, Mr. Starr.

MR. STARR: There is a little bit of confusion because I seem to have seen three different sets of goals and objectives. My feeling is that the goals and objectives we should be looking toward are those that are coming to us in the strategic plan. But there is a set of goals and objectives that the board discussed and passed last year and then there was another set that I had seen and a power point demonstration.

So I would just like to be clear that we're looking at implementing new goals and objections with

the strategic plan and we're working on that process.

CHAIRMAN CRAVALHO: The Chair thought that it was implicit that this is the work that is being done by goals and objectives to integrate all the plans, et cetera, et cetera.

Shall we proceed to the next item, VI-D, communication from Mayor Apana. What's the pleasure of the board? Go to the next item. Mr. Craddick?

MR. CRADDICK: Maybe to help the staff, I don't know if you want to look at this in committee, but we have prepared a response and I guess if the board doesn't want to act on it, we'll give that response to the Chair and the Chair will do with it as it pleases.

CHAIRMAN CRAVALHO: I would prefer that we defer and refer it to committee.

MR. STARR: Mr. Chair, this goes along with the strategic plan. What my concern with this is if you look at the date, this was September 2nd of last year and I do feel that a discourtesy has been committed --

CHAIRMAN CRAVALHO: The Chair recognizes the validity of the observation, but hopefully -- it is the Chair's first exposure as Chair -- that one of the things the Chair had previously requested any item that had not come to the board be placed on the agenda. So in recognition of that, the Chair would like to ask for the greatest forbearance on the part of all members of the board in recognizing some things which may be slightly late in being transmitted to us and it will be worked on by committee. The Chair thanks you very much, Mr. Starr.

Shall we proceed then to the next item, item E, request from Attorney John Rapacz on behalf of the Hoekstra family. The Chair recognizes Mr. Rapacz.

MR. RAPACZ: Thank you, Mr. Chair. Good morning, Mr. Chair and board members and Mr. Director and staff. My name is John Rapacz. I'm here on behalf of the Hoekstra family.

We were here three weeks ago with an amended request for the board. The Hoekstras had originally requested to exchange a 1-1/2 inch water meter for six 5/8ths inch meters.

I did give you some background last time. I would like to just bring you up to date very quickly on what's transpired in the last five years that they have been trying to accomplish this or at least get a clear response.

Five years ago the director agreed to exchange the 1-1/2 inch meter for six 5/8ths inch meters. We all understand that the director denies that. The Hoekstras reconfigured their subdivision in order to accommodate the six meters. Three-and-a-half years ago the director denied agreeing to the exchange and looked at the Hoekstras' six month consumption history and said that it was not enough to do an exchange. Three years ago, the board denied the request, based exclusively on the director's recommendation.

Five months ago the Hoekstras came back to the board because circumstances had changed. Three months ago you have a letter in your file that shows the director was not even going to submit the request to the board if he felt that circumstances hadn't changed.

Two months ago the director provided a report showing the Hoekstras' six-month average consumption is 1940 gallons a day. That is approximately or slightly more than three meters' worth on a typical 600-gallon per day average. On the 1-1/2 inch meter, if we were to convert it to 5/8ths inch meters, they would be entitled to about 3,000 gallons a day. Their consumption is 1940 on a six-month average.

Two months ago the item was about to come before the board. I met with the director and offered to reduce the request from six meters down to three meters in an effort to resolve the issue. The director agreed to do that if we would defer action or request the board to defer action so that the director could determine how the exchanged meters would be connected. We agreed and it was deferred.

I wrote a confirming letter about the agreement and for more than a month the confirming letter was never disputed. One month ago, we were invited to meet with the director, the chief engineer, another engineer, corporation counsel, and the Hoekstra family. We spent more than an hour discussing how the exchanged meters would be connected to the system. And at the end of the hour, we were then told that there was no agreement to exchange meters and that the consumption over the last five year average was not high enough to justify an exchange. And the director asked one of the engineers to please go figure out what our policy is on how far we go back when we're determining an average.

Three weeks ago we came back to the board and said, look, we've given up on this exchange idea, it's been promised and then unpromised, what we would like to do at this point is simply take the existing private water system that's already approved, it's already built, we would simply like to add two lots to that system.

The system is built to capacity beyond what the board required. The board required a 30,000-gallon tank for fire protection and domestic. The Hoekstras have put in the roadways, they have put in the fire protection system, they have put in the standpipes, they have got the county easements, and they have added a 20,000 domestic tank. So it's clear enough that the system is designed and can support the additional two lots that are requested and it can do this while operating the 1-1/2 inch meter at

approximately one-half, maybe even as high as two-thirds of the capacity they're entitled to.

Now, the director has produced a report today for you folks. I don't know if you've had an opportunity to review it, but essentially we couldn't disagree more with the conclusions. And my concern not only is for the fact that the Hoekstras -- or the director is recommending that the Hoekstras not get what they're asking for. My concern is that this report does not even appear to provide objective information to the board so that the board can make a decision on this matter. The report is designed to provide only the information to the board which would result in a denial.

Just looking at the summary and without going through the details, looking at the bottom of page one, the issue about the shortage of water capacity set forth by the director in 1993 is raised as the first objection and even, as it says in that paragraph, not recommending final approval since new water meters are not available.

They're not requesting a new water meter. They have the water meter. They have the right to use the water meter at its full capacity. They're just asking the department to recommend approval of drawing two new lines on the map to create two new lots. That's it. The shortage has nothing to do with this application. In fact, the board is now sitting on a liability. They have a 1-1/2 inch meter sitting out there that could be used at far more than the current capacity. Okay. So this would reduce that.

The water system development fee rule prohibits sharing meters between two or more lots -- that's the second objection raised. Of course that's true if you don't have a private water system. This is a private water system. Private water systems are designed and regularly approved by the board to serve multiple lots. This is thrown up to you as an objection to try

and get you thinking in that direction. It doesn't apply.

Third objection: If the subdivision is allowed to be finalized, the demand will increase. Okay. Once again, we've gone back to a five-year average as a way of determining the demand and whether or not it will increase. There is no board rule on a five-year average. There is no board resolution on a five-year average. There is no written policy by the department on a five-year average, approved by the board or not. As far as I know, the director didn't know what his policy was as little as three weeks ago when he asked the engineer to go find out how far they looked back. If we look back one year, we're at 1940 gallons per day. That's the equivalent of three meters.

Final objection: Maui Ranch Estates and Kula Lani projects are examples of failed private water systems. Okay. So we're now comparing conversion from one lot to three lots on an already existing large meter, we're comparing that to Maui Ranch Estates and Kula Lani projects which are enormous and obviously have far different issues of a different magnitude.

So for each of these objections raised, we don't think that there is a reasonable basis in the facts or in the law or in your rules to use these objections to deny the request and we would once again request that the board permit the additional two lots to be served by amending the existing private water system agreement. Thank you.

CHAIRMAN CRAVALHO: Thank you very much.

MR. WELCH: Also, Mr. Hoekstra is here and would like to say a few words if that's okay.

CHAIRMAN CRAVALHO: Fine.

MR. HOEKSTRA: Mr. Chairman, boards members, thank you very much for the opportunity. We've been

going around with this for many years now and we've been trying not to rock the boat and work this out on a friendly basis. But every time we think we're somewhere, the cord gets pulled back. So we finally reluctantly engaged an attorney to straighten all this out for us. And I think he gave you a nice run down of what we've been through.

We spent a lot of money. Our expectation has been raised many times, only to pull it back. And I'm running out of time to get this done. I am 71 years old. I've had two bypass surgeries. I own the property together with my daughter. Obviously she's younger, she has much different objectives in life than I have, so please give us a break.

And I think Mr. Rapacz has explained to you all our disappointments in working with your staff and I think it's time to put this thing to rest. We're not asking to increase consumption. We're at a crossroads with our large meter which produced millions of gallons. We don't intend to do that. We would much rather voluntarily -- and I've brought this up to your staff and to the director -- voluntarily reduce our consumption or keep it at a minimum just so we can get this done and part this lot and separate parcels so the different parts of the family can do what they want to do. Thank you very much. If you have any questions, I'll be happy to answer them.

CHAIRMAN CRAVALHO: Are there any questions from members of the board?

MR. STARR: I have a motion.

CHAIRMAN CRAVALHO: Mr. Starr.

MR. STARR: I move for denial.

CHAIRMAN CRAVALHO: You've heard the motion made for denial. Is there a second?

MR. TAGORDA: I second.

CHAIRMAN CRAVALHO: The motion is duly made and seconded that the request be denied. Discussions on the motion? Mr. Starr?

MR. STARR: Mr. Chair, I feel very sympathetic with these people. They're good people and they deserve water. I also felt a very good presentation was made that almost convinced me. But in my heart I feel that it's wrong for us to issue meters upcountry where the system is inadequate and I feel that in fairness we have to apply that -- apply that across the board. So I --

CHAIRMAN CRAVALHO: Mr. Fukushima?

MR. FUKUSHIMA: If I may, just to correct the member. They were not asking for any new meters. They are asking for approval of a private water system which would not require new meters and they will continue to use the existing meter that is allowed for their lot.

CHAIRMAN CRAVALHO: Mr. Tagorda?

MR. TAGORDA: The reason why I went along to disapprove your request is I think our water system development rules so clearly and specifically state that there is -- you don't allow one meter in two or three lots. There should be a meter per lot. That's a problem there. And it makes -- it just kind of -- I am not convinced that the private water system that you are planning to create or build, which is not in conformance with department standard, is going to work.

We had a problem with Maui Ranch Estate and we took over that system. It's a mess. So that's my point of view.

CHAIRMAN CRAVALHO: Any further discussion? The

Chair recognizes Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, in trying to go through this material, it seems to be an awful lot of information and I'm having difficulty, frankly, understanding it. I certainly am not in a position to support approval of the request. However, I'm not sure I'm in a position to support denial of the request based upon the volume of information that is provided. And I'm wondering if it might be appropriate to refer this to one of the committees that you are referring to in your organization.

CHAIRMAN CRAVALHO: That is in conformity with the Chair's own opinion that this should be referred to committee for review.

The Chair would like to point out a couple of factors. The Chair took the position -- not the Chair, but the Board took the position with respect to claims coming in for extras on contracts that if a representation had been made by a responsible member of our staff, and that representation was followed in good faith by the person appearing before the board or before the department, then that was a justifiable method or justifiable thing for the board to approve credit and approve payment.

The question I think that needs to be reviewed and by Mr. Nakamura's suggestion I think is quite appropriate, that's to see whether the evidence will support at any time that approval was indicated verbally or otherwise by a responsible member of our staff that led the person to believe that they were acting in good faith. And I think we cannot make that determination now on the basis of all the information that's before us. I think this is a very pertinent thing because there will be, in the subsequent communication that come to this board, something that deals almost precisely with the same kind of a situation. And if we proceed to look at everything, you are going to have a mess on your hands, a first

class mess that doesn't deal only with this. Alleged violations from time immemorial, water and meters given and water being given from one lot to another lot and going over a distance.

So I would think the better part of valor right now is to refer for a complete study, if there is no objection. Mr. Starr.

MR. STARR: Mr. Chair, since some members obviously want to have more time to familiarize themselves with the deeper issues here, I'm willing to withdraw my motion.

MR. TAGORDA: I withdraw my second.

CHAIRMAN CRAVALHO: You're a gentleman. Thank you. We're going to refer it.

MR. RAPACZ: May I comment, Mr. Chair? Thank you. In considering the matter, please consider two important items -- or three, actually. Number one, the reason that we have amended the request, it's a request simply to add some lots under the private water system agreement that exists so that we don't have to deal with this question of who said what. Okay.

If we were pursuing the exchanges and if we were continuing to pursue those exchanges, that's where the issues about the promises come up. Okay. The reason that we changed the request is so that we don't have to deal with those questions, we don't want the board to have to deal with those questions. We simply want to add two lots to the existing private water system. It's a clear issue and doesn't involve the representations.

CHAIRMAN CRAVALHO: If there is no objection on the part of the maker and the seconder, it's been removed and been referred.

Parenthetically, Mr. Rapacz, the Chair can very well understand where there may be a reluctance on the part of some or many to form a review of what might have been said by others, but that review is going to come with or without this particular case. That review is coming. Because we do have a communication on hand that indicates a need for this kind of a review. So that review is coming, sooner rather than later, and it's imperative in the interests of fairness. We know what has been done. And I think you do, too.

MR. RAPACZ: Thank you, Mr. Chair. If I might finish the second part of my remarks. I would refer the board members in their review to page three of the Private Water System Agreement where it says in paragraph two, "The private water system will be privately owned, operated, and maintained and no request will be made upon the department for the operation, maintenance, or repair of the private water system." This is a signed, notarized, recorded agreement. No request will be made. Okay. So that should not be a concern, particularly with a system this small.

CHAIRMAN CRAVALHO: It will be reviewed.

MR. RAPACZ: Thank you.

CHAIRMAN CRAVALHO: Shall we go on to the next item then. Ms. Lemn, thank you, it's good to see you again.

MS. LEMN: Good morning, Chairperson Cravalho, board members, and Director Craddick. As you may recall, I was here before you on August 12th and at that time I was asking for a deferral of fire flow requirements that was made part of an agreement by my predecessor. At that time it was indicated that the board would probably deny it and the whole makeup of the board's working was different, so at that time it was a committee and not the board itself.

When I came back for the actual action on it, there were questions of procedure and it wasn't acted upon that day and I indicated that I would be back to try to find a more workable solution with the board.

As you will recall, this issue came up because in March of 1994, Wailuku Agribusiness, in conjunction with C. Brewer Homes, was in the process of developing the Waiolani subdivision and they were going to try to work to have their traffic flow work through Waiko Road, but that proved to be unworkable so instead they did improvements off of Honoapiilani Highway that essentially cut one of their lots, which is the lot in question, into two parts.

As a result, it created a 6-acre lot and it created a 28-acre lot and the road that services Waiolani subdivision bypasses that 6-acre lot. That street is called by Pilikana.

In June of 1999, my husband and I bought the 6-acre lot and it came to our attention that there was this agreement with the Board of Water Supply. And after buying it in July, we asked to have the fire flow requirements deferred and as you will recall what happened then, you were all here.

So after the meeting, I went to the fire department and I talked to Lt. Scott English because there were concerns made by especially Member Jonathan Starr regarding the safety issues about my request for a deferral to the adjacent Waiolani subdivision.

According to Lt. English, he felt that the Waiolani subdivision was adequately protected by the existing fire flow hydrants already in place. He was concerned, however, with the safety of a dwelling on our lot and had indicated that if a hydrant was put on the northeast corner on Ho'okahewai Street, he felt that that would provide sufficient safety for our dwelling. He also indicated that to put standpipes in

a 4-inch line was not really going to help anybody in the area, and the reason being is that the 6-acre lot that we bought is surrounded by the Waiolani subdivision. So it is an agricultural lot, but it's surrounded by a residential neighborhood that is up to a residential standard.

Given his comments, and he sent a very short letter to you folks, I went to the Board of Water Supply -- I'm sorry, to the Department of Water Supply and talked to Director Craddick and to the engineer. And they revised that and said, well, why don't you go ahead and put two fire hydrants on Ho'okahewai at the southeast and northeast corners of the lots. And we tried to kind of wrestle with how I should be applying back with you folks and instead of a deferral, it was determined that it should be through a modification agreement. So they have written their report to you based on that and I'm here to get the board's -- essentially the board's decision about how we've proceeded so far.

CHAIRMAN CRAVALHO: Mr. Craddick?

MR. CRADDICK: I agree with the comments that she had, except it's northeast -- or northwest and southwest, not northeast.

But anyways, what's going on is that -- on page 77, if you would look on the west side of the project there, the two hydrants will be put up there. And then also on page 3, if the board approves this, we have some requirements that we would like the board to approve along with it, 1 through 5. And item number 2 is that if there is further subdivision of the lot, that an 8" line be put on Pilikana Street, 8" waterline, because we agree with the fire department also that a 4" line there is not going to be of any use and no sense putting it in just to have it in there until it's subdivided and then have to put in an 8" line later on.

MS. LEMN: There is one concern that I have with regards to the terms and that was term 4. It essentially states that we agree to indemnify and hold harmless the department regarding this. When there is just the two fire hydrants, I agree that that makes sense because we have been asking for a modification. But when all of the hydrants are eventually in, if it is further subdivided and it comes up to the residential standard based on the rules and regulations of the department, then I feel that that term should be extinguished because we would have complied with all residential standards.

CHAIRMAN CRAVALHO: If the Chair may interject at this moment, the deletion of a requirement for responsibility and hold the County or the Board of Water Supply harmless I think is an absolute necessity. One never knows what will take place in the future. I would be very much against deleting the requirement. And if you get everything else, ma'am, be happy. Be happy.

MS. LEMN: Well, my concern is that in the event that it does get subdivided and all the requirements are put in, the additional hydrants, and it's all brought up to the residential standard, there would be no way for the lots to be sold because each of the owners who obtain a lot -- we sell a lot to will have this provision in it that says that they are holding the Board of Water Supply harmless from anything that occurs. And so I'm not saying that I want it deleted from this today. I just hope that there is a term that says if we bring it up to complete standard -- residential standards, in the event that it's developed, that at that point we have met the requirements of the board and the board will assume the responsibility thereof.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: I lived in Waiolani right up here, so I'm a little bit familiar with the area. And the

project site is very dry, tall grass, and there is a very strong wind that blows across this. And the wind blows pretty much from the north, so that if a fire were to be caused by construction, it would, you know, in the area near Honoapiilani Highway and Pilikana, it would just rush through there and before anyone could do anything, it would eat up the houses on Keapua Street because there are all these lots that back up to this and right now they're backing up to a lot of dry grass. And that was my concern previously and I still have this concern.

And I know -- I don't think that, you know, an indemnification is enough because I would still think that if we were to allow this to happen and a fire came through and ravaged the houses that back up on to this that are on Keapua Street, then those people will come and -- well, they sue us, but I mean, whether they sue us, if someone dies in the fire, how are we going to be able to sleep at nights?

So I for one would want to see all of the residents of Keapua Street to give -- sign off their approval along with an indemnification before I would be happy with going along with allowing this project to go on without the proper fire protection because it's just too dry, too windy, and there are houses down wind that back up right on to this lot.

CHAIRMAN CRAVALHO: Mr. Craddick?

MR. CRADDICK: If the board members look on page 86, Exhibit E, you see a letter from the fire department. And they are not going to sign off on any building permits without this 100-foot fire break between those houses and this subdivision that Jonathan is talking about.

And after getting a copy of this letter, I further talked to the fire department and they -- whenever they fight a fire, they do not fight it with the wind at their back; they get in front of the fire

to fight it. And that's why they're requiring this break so that they can get in front of the fire to have a chance to put it out. So if the fire department seems to be satisfied with what's being proposed --

CHAIRMAN CRAVALHO: Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, I would like to move that we approve the request for modification of fire protection for the Waikapu North Large Lot Subdivision TMK 3-9-4L95, Lot 3-B, to include the condition outlined in our staff recommendations.

CHAIRMAN CRAVALHO: Is there a second?

MR. RICE: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded. Go to the approval, including all of the requirements as enumerated by the Department of Water Supply. Any discussion? Mr. Tagorda?

MR. TAGORDA: Mr. Chairman, I kind of caught what Mr. Craddick said about that 100-foot fire break. I would like to know who is going to maintain that. Is it the owner or the county or the fire department? And I want that to be on that -- add that to the enumeration.

CHAIRMAN CRAVALHO: The request has been made that an additional modification and/or clarification with respect to the maintenance of that be the responsibility not of the county but of the subdivider.

MS. LEMN: If I may, board members, I recognize that it is the owner's responsibility and if the owner does not maintain that 100-foot break, then the result is that they will be cited by the fire department. I also know that my neighbor immediately adjacent to me

is a fire inspector and we've had discussions regarding the fire break. I know that the -- in the past, the residents have not really enjoyed the fire break because, as Member Jonathan Starr has noted, there is a strong wind and the result is dust in their property, but it is a requirement and we would uphold that 100-foot fire break.

CHAIRMAN CRAVALHO: So there would be no hesitation on your part.

MS. LEMN: To maintain that? No.

CHAIRMAN CRAVALHO: Let the record so reflect. So the pending motion is as made by Mr. Nobriga.

Yes, ma'am.

MS. LEMN: I would once again bring up about the item number 4 and, like I said, I'm happy to have it in the agreement as stated, if we could just add a line that in the event that all fire requirements of the Department of Water Supply are met --

CHAIRMAN CRAVALHO: Excuse me, ma'am. The pending motion before the body is for the approval of the subdivision, together with the recommendations. That's the motion.

MS. LEMN: Yes, sir.

CHAIRMAN CRAVALHO: And that is what we're going to be voting on. I believe this body has been requested in the past to pay attention to your request. We are aware of it. And it would affect the members voting one way or the other. So if there is no objection on the part of members of this board, we shall proceed with the vote.

All those in favor of the motion, indicate by saying aye. Those opposed? One no, Mr. Starr.

Carried.

MS. LEMN: Thank you, board members.

CHAIRMAN CRAVALHO: Thank you very much for coming again. Shall we have a recess?

(Brief recess.)

CHAIRMAN CRAVALHO: The meeting will be reconvened. Item VII of the agenda, Communications, Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, I would like to move that Communication 00-03 be received and that it be deferred to a committee.

MR. RICE: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded. Mr. Craddick?

MR. CRADDICK: We have since found out that they don't want a site. And Brian Miskae may be able to fill you in a little bit more.

CHAIRMAN CRAVALHO: Mr. Miskae?

MR. MISKAE: Mr. Chairman, if I might, in order to alleviate the board from further action on this matter, due to the fact that the Sprint people have indicated that their engineering studies have suggested this site would not be satisfied for their needs, on behalf of the Mayor's office we would ask that this matter be withdrawn from your agenda, Item 00-03.

CHAIRMAN CRAVALHO: Mr. Nobriga?

MR. NOBRIGA: Excuse me, but would they maybe possibly looking at another site of which the board would have jurisdiction?

MR. MISKAE: Mr. Chairman, if Sprint people are looking at another site, we would suggest that they would contact you directly rather than through our office.

CHAIRMAN CRAVALHO: There is great merit to that.

MR. MISKAE: So we're withdrawing from this matter, Mr. Chairman.

MR. NOBRIGA: I will withdraw my motion.

CHAIRMAN CRAVALHO: You've heard the recommendation and the request that such communication be withdrawn. I'm sure there is no opposition to that. So ordered.

Just as an aside, some members of the board at times are a little bit disturbed when they find out about something that happened in the press before they know about it and being called by members of the press for reactions and we don't know what they're asking about.

Next item, Communication 00-04, request from Mr. Charles Freitas III for approval of a building permit application on a condominium property regime. Mr. Freitas?

MR. FREITAS: I have some documents I would like to give to the board members so they can follow me. Board members, I'm not quite sure who you are.

My only concern being upcountry and being a farmer and a rancher and being part Hawaiian, it may be a long time before I get a water meter, after hearing everybody's testimony this morning.

MS. NAGO: Excuse me, Mr. Cravalho, could everybody speaking from the public go over here.

CHAIRMAN CRAVALHO: You are right. Mr. Freitas, will you take your seat up there before entering into discussions.

MR. FREITAS: What I would like to do is read a letter that everyone has that I passed out. There seems to be some confusion, especially on my part, but I'll start it off. It says:

"Dear Board of Water Supply. This letter is in reference to your regularly scheduled meeting on Thursday, April 13, 2000. I've been placed on your agenda, Section VII, Communications. This is in regard to our application request for approval of a building permit. We have followed the permit process and all applicable laws. We have designed and altered our lives to adhere to the rules, regulations and the policies of the State of Hawaii and the County of Maui.

"The Planning Department has told us that we can build our dwelling if it is less than 1,000 square feet. I had to redesign our plans and confirm to their regulations. Okay. Now the Water Department will not sign off on the building permit because they say we are a subdivision. The Planning Department states that we are one lot with one TMK. The two different agencies apparently do not concur. Not uncommon in Maui.

"I have come before the board to plea our request to sign our permit so my wife and 12-year-old son can have a house to live in. We've been living in a temporary mobile home on wheels for several years. It would be nice to have a house as you all do with a bathroom and a shower."

The property in question is a 10-acre lot that we've owned since 1992. Five acres were sold to Mr. and Mrs. Ken Baptist. We both share the existing water meter under which it is called L&L Farms. We both raise horses. And that L&L Farms stands for Lori and Lisa and Lori is my wife. The Baptists have built

a house and began their family. It is understood and acknowledged at the time of the condominium by both parties that the county planning department, including the water department, that with the exception of a secondary farm dwelling, no other construction will be permitted until another water meter is installed and approved by the water department and might not be done in my lifetime and I'm 54 because I'm very realistic.

We are that secondary farm dwelling which is 888 squares, probably the size of most of you folks' garages. All our water lines are in place since 1992. We strictly adhere to the amount of water units specified by the water board. We are water conservationists. I'm also a biologist and a naturalist and a professional counselor, so I'm very solution focused.

I've come to the board where I've seen Alan and David and Eric and we tried to work through this to see if we could get -- what is the solution here. Because one agency states we are one TMK and then the water department says no, you're condominiumized, you're a subdivision, and the only way we can allow you to have water is if you build upon the house that is existing; in other words, called vertical condominiumization rather than horizontal.

I have personally jumped through the hoops that the water department has subjected me to. I do not want to be part of any political or personal process that may be between partners or departments or agencies. All I want to do is provide my family with a small house in which to live as normal human beings. I will do whatever it takes to satisfy the board. I have Finance Factors who has guaranteed our loan, Honsador who has guaranteed our bond, contractors who have signed contracts, my sons who live on Hawaii and are willing to come over to help me build this house, and others are being held up due to the problem with the permit process with the water department. And this has been ongoing.

I'll be leaving my employment in May, previously arranged so I can spend time to build a safe, secure and healthy environment for my family. The place that we live in is disgusting. None of you folks would even leave your dogs in there. This is not where I'm supposed to be at 54 years old. Okay?

All of the following steps were taken in full understanding and that we complied with the law. We continue to remain compliant and will greatly appreciate your consideration and quick response on this matter.

Is there any questions?

CHAIRMAN CRAVALHO: Are there any questions on the part of members of the board?

Mr. Craddick, do you wish to possibly explain the differences?

MR. CRADDICK: Well, under our rules, and I'll read the section for you here, definition of a subdivision, this is on page three in the green rule books. It's Section 1-2, Definitions, under the definition of subdivision, "planned unit development and condominium for purposes of this rule shall be included in this definition."

So by our rules, what he's doing is a subdivision. And if you go to the water development fees, it says each premise shall have a separate meter, then we have been telling him yes, they have a separate meter. And beyond that, the document that he's passed out and things like that, if the board wants a report, we can provide a report to the committee if it's referred to committee.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: Am I clear in understanding that by

our rules, if we give the approval on this then we have to issue a second meter as well because this second house would have to have its own meter?

MR. CRADDICK: I don't want to make interpretation of the rules for you -- how you might interpret your rules.

CHAIRMAN CRAVALHO: What does the rule read? You just read it.

MR. CRADDICK: Well, that's saying that it comes under our subdivision. So under subdivision, if you look under the water system development fee, it says each premise shall have a separate meter.

CHAIRMAN CRAVALHO: To the chair it's clear.

MR. CRADDICK: It's pretty clear to me, too. That's why we couldn't resolve anything.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: Once again I reluctantly move to deny.

CHAIRMAN CRAVALHO: Is there a second?

Hearing none, a motion to deny has not been seconded. So there is really nothing before the board except the communication. If there is to be a motion to approve, the Chair will entertain a motion. If there is no motion to approve, then it's deferred for further study.

Mr. Freitas?

MR. FREITAS: Yes. I want to say one thing, that we've been in compliance with the law and with the water department. When we designed this, we also knew -- and I owned that water meter or paid for it, you know, since 1992 and when we did condominiumize or

sell part of it because of finances. Now, of course, you know, I'm a poor Portugee, right? So I don't have a whole bunch of lawyers that can come and represent me. I can only represent myself. And being here many generations, you know, I've seen what's happening with the community and the development aspects and of course the whole political thing.

My main thing here is -- my main goal here is to have a house for my family and which I'll go to any extent within the law to have that house for my family. Okay? We looked at the water meter and we knew that we were going to make some concessions when we joined that one meter because it's under L&L Farms. We knew also that we could only build two dwellings on this 10-acre lot, not 16, or 8 dwellings on a 2-acre lot which you normally see up in Haiku, but only two. So we're staying within the parameter of the law.

Our water usage and units that are regulated are strictly adhered to what the water board has said, what Mr. Craddick has told me, says you can have 14 and the other guy can have 12 or whatever it is. So we're adhering to everything, you know. So for me to try and sit here to say I can't build a house which I should have done a long time ago because of finances, is really heartbreaking. And also somehow I need to build a small little cottage and put a roof over my family's head. I have a 12-year-old son who can't even have his friends come over because he's ashamed. In fact, you're all invited to come over and see how we live and ask me why. We have spent \$20,000. We have got the septic tank system inside, we've got all the clearing inside. We have done everything that the planning department says you need to do. We follow it. And then all of a sudden get blindsided that, oh, you know what, it doesn't matter if you guys don't use any water, you can't build a house on it. That's basically what the water department is saying, because we're not going to sign on your permit. And yet we use only -- we already have our waterline in. We already have it over to our mobile. We're going to

destroy the mobile, get it out of there and build a house. So there is no change, no change in usage, no change in anything. All it is is signing off the permit that we can have a house. We can't build anything else other than, you know, less than a thousand square foot house. That's all it is. That's all we can build until a water meter comes in. And it's real clear. It's very simple, you know. If we didn't condominiumize, the other guy could build houses -- it's because of the word condominiumize.

In the documents you'll see it says "this is not a subdivision." So apparently if the water department is saying it is a subdivision, the planning department is saying it's not a subdivision, where is everybody on the same page here? You know? I don't understand. Everybody should at least have some clear definition of what the rules, the regulations, and the policies and the law is. It's like one agency is making up their own rules as we move along. And it makes it very hard for especially someone of my age to go ahead and try and figure out, okay, this year what is the law, you know.

All we want to do is provide for our family. We got caught in some kind of loop hole here because I know that a lot of people are buying a lot and they're condominiumizing and then they're selling it, et cetera, et cetera. That's not where we're at and we got kind of caught in this loop. And all I'm suggesting is, you know, please look at this. All I need is a signed permit. If you want to come and turn my water off 10 years from now because of some law, you know, whatever the case. But I need to provide. I need to start building for my family. I mean, this is -- it's just -- I'm getting too old and I'm too worn out. I need to start building, sir.

CHAIRMAN CRAVALHO: Are there any questions by members of the board? If not, in the absence of a second for the first motion and the absence of a motion to approve, the Chair is left with one

alternative, that is to refer to the appropriate committee. And the appropriate committee will be established, which will be the committee rules and regulations and/or oversight and ombudsman. No objection? So ordered. Shall we proceed to the next. Thank you very much for coming and advising us of your requests.

Gary Meola. Communication 00-05. Proceed, sir.

MR. MEOLA: Mr. Cravalho, board members, staff, Mr. Craddick. I bought two properties several years ago, one being 8,500 square feet and the other one being about six acres. I purchased two water meters at the time. The water department granted them freely. I did a consolidation and lot line realignment. I can't create any more lots. I just realigned the lots to make them configure better.

Planning brought me through all the steps and I complied with all the rules. Subsequently, I got a building permit for my home and I sold the other piece. Both had meters.

I get a letter from the water department saying that they want me to do all this infrastructure improvements along the roadway due to fire protection or something, whereas under having a 5/8ths inch meter, I'm allowed 30 points for each meter on each lot and I find it hard to understand how after the fact -- my subdivision was approved, I have my LUCA number, everything was done, and after the fact, the water department wants to impose restrictions on me and wants me to do infrastructure improvements on Mr. Pinkerton and myself. And we have -- there is no more impact on the system other than what was there to begin with.

Before I even attempted to do the consolidation and lot line subdivision, I had applied for building permits for the larger parcel, the almost 6-acre piece. The water department had signed off on two

structures on that initially. And then Mr. Pinkerton wanted to buy that lot from me, so I cancelled the building application and Mr. Pinkerton purchased the property and then he went for a building permit via planned review waiver because he was living on the Mainland and he had someone taking care of it here and he wanted to expedite it quickly. He in turn received another letter from the water department saying that they wanted improvements done, they weren't going to let him issue a final on his building. And both of our buildings are near completed. And I find it -- I don't know where the authority could come after the fact where my buildings -- where my subdivision was done, if you want to call it a subdivision. I haven't impacted the system any more than what the law would require. And I'm here to appeal this and to find out what I can do. And if it's to sign a waiver, if the fire protection is the problem, to sign a waiver saying that you're exempt from -- a hold harmless agreement, or what it is. I just don't understand how I can get a subdivision approved and final and recorded in the Bureau of Conveyance and then the water department coming in after the fact and asking me to do waterline improvements. I would think that would be something that should be done that would precede something of this nature. If you want to ask something of someone, you let them know what it is beforehand and then I make the decision whether I would want to go forward with having to do this lot line adjustment.

There has been several other -- quite a few lot line adjustments in the past where the water department hasn't imposed anything on them. Why am I being singled out? I don't understand it.

The water department has improved the waterline along West Kuiaha as we speak. That -- I believe that Mr. Craddick told me that that was done already. And he was saying it's not a matter of -- he said it's a matter of fire protection. Well, as I had it before, if I just built on the lots the way they were configured, I couldn't use more than 30 points, what

the law would allow, and now -- and I would be able to build two structures on each property. But now he's saying that he wants -- it's inadequate fire protection. So because I realigned my line, now I can't get another building permit and Mr. Pinkerton can't get a final on his building. And I would like to know what to do, whether it's -- I would like these requests for me to have to do any requirements be lifted and I feel that if a waiver is needed to protect the water department in this issue, I would be more than happy to do that.

I know that I'm not impacting the system any more than what it was originally. So I would like some type of understanding in this. And I don't know if you all have this letter that I have written to all of you, I was hoping that you've got a copy. And when I did call Mr. Abe up, he seemed to think that the water department was upset that developers can go in and buy up small pieces of property, consolidate and realign and then get water meters. Well, the fact is that I already had the water meters, I couldn't impact the system any more than it already was, and I'm not a big developer, and I'm just kind of --.

Mr. Pinkerton here, I sold him that property, knowing nothing about this. And then after the fact, this is tried to be imposed upon me. I would like to know how to proceed.

CHAIRMAN CRAVALHO: Any questions? Mr. Starr?

MR. STARR: Mr. Chair, point of order here.

CHAIRMAN CRAVALHO: State your point of order, please.

MR. STARR: These communications are coming to us without any staff report, so I don't know if we -- as our tradition have not been acting on communications but rather sending them back to staff to come back to us with a recommendation. It's up to the Chair how you want to handle it, but I would like

a clarification.

CHAIRMAN CRAVALHO: Relatively simple. Any communication that's addressed to the board comes to the attention of the board. It is then the board's responsibility to make a decision as to its disposition: To send it to committee, to act on it by approving or denying, or lay on the table, or whatever.

The Chair will not arbitrarily and automatically refer anything to a committee without it going through the route of appearing before the board so that it becomes the property of the board and that it cannot be added to or withdrawn without the permission and knowledge of the board. I think it's very, very simple. So that no one is going to have the opportunity to add to or withdraw from the agenda or from being property of the board. It's the board's property.

If you wish to refer it for a staff report, make the necessary motion and it will be done. It's for the board to make that decision as to what it wants to do.

MR. TAKITANI: Move to refer to staff for review and recommendation.

CHAIRMAN CRAVALHO: Is there a second?

MR. NOBRIGA: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded for referral to staff for a review and a recommendation back by the next meeting.

MR. MEOLA: I was wondering if there were any questions that I can answer now relative to this matter and --

CHAIRMAN CRAVALHO: Well, the pending motion is before the board for referral, so any questions should be raised by staff with you. If subsequent to that

and the subsequent receipt of the report by the board and if the board does have questions or whatever observations may have been made, at that time it will be very appropriate to have you respond.

The Chair would like to ask that it be done by next meeting, Mr. Craddick.

MR. CRADDICK: I believe that's all right, if this is -- there is a lot like that.

CHAIRMAN CRAVALHO: If gotta, gotta. Simple as that. Next meeting. Next item?

MS. NAGO: Was there a vote?

CHAIRMAN CRAVALHO: I'm sorry, you are right. Motion is for referral. All in favor, say aye. Opposed? Carried.

Next item. Request of Kelly and Gene Hughes, Communication 00-06. Mr. Hughes.

MR. HUGHES: Good morning, Mr. Chairman, board members, Mr. Director and staff. First of all, we would like to extend our sincere appreciation for allowing us to voice our plea here today.

We are requesting that the fire protection requirements being placed upon us by the Department of Water Supply be waived in part or in full due to the special circumstances inherent in our case. We have detailed most of the pertinent information in our written report to the board along with our 14 exhibits. Therefore, if I may, I will only briefly highlight our reasoning this morning.

We respectfully request that all new fire protection requirements on the building of our two homes in Haiku be waived based on the fact that we fall under the description of exemption of subdivision

requirements as outlined in the Maui County Code. No other departments in Maui County imposes any of the subdivision requirements on families conducting similar lot line adjustments.

In addition, our lot line move request between the two adjacent lots was not reviewed by the Department of Water Supply prior to the completion of our lot line adjustment. The Department of Water Supply gave us no prior warning of these newly imposed fire protection requirements. We would have certainly elected not to proceed with our lot line adjustment had we been duly forewarned during the process.

As Mayor James "Kimo" Apana wrote in a letter to Mr. Robert Takitani, Chairperson, Maui County Board of Water Supply, earlier this year, the DWS definition is inconsistent with the county definition which resulted in substantial conditions being attached to the subdivision by DWS.

Mayor Apana also states, "I see no impact in this situation. Had it not been for the area requirement imposed by the state, DWS would have signed off the building permit."

If the board still feels that an upgraded fire protection be mandated, we respectfully request that the redundant 8" waterline extension and fire hydrant requirement be waived. As expressed by the Maui County Fire Protection Bureau, the installation of an automatic sprinkler system in accordance with NFPA 13D is an acceptable form of fire protection in itself.

We have submitted to the Department of Water Supply documentation and calculations from our sprinkler system engineering company, North Shore Fire Protection, which outlines that our proposed sprinkler system will work properly if connected to the existing 2" waterline.

Please note that we are not requesting new water

service. We already had a water meter on our lot. We are not violating water flow restrictions. The number of fixtures had already been approved by the Department of Water Supply.

We simply moved the line between the two adjacent lots to comply with the state septic requirements and would like the opportunity to affordably build our homes as could have been done prior to the lot line adjustment.

We are pleased to see Mr. Brian Miskae of the Mayor's office present today to assist us with any questions that the board may have and we again thank you for your time and consideration in this matter.

CHAIRPERSON: Are there any questions?

Mr. Starr?

MR. STARR: Move to approve the request.

CHAIRMAN CRAVALHO: The motion has been made to approve. Is there a second?

MR. NOBRIGA: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded for the approval of the request. Any discussion? Mr. Nobriga?

MR. NOBRIGA: I would like to know more about this sprinkler system. Where did this sprinkler system come from?

MR. FUKUSHIMA: Looking for a requirement -- in the board's rules, there is no requirement in the board's rules, but this was an action taken by the applicant as a result of some desire on the part of some board members to find an alternative solution to the problem of fire protection that they were facing.

This was raised at a meeting in Lahaina some months ago.

CHAIRMAN CRAVALHO: You've heard the motion.
Mr. Craddick?

MR. CRADDICK: I would just like to make the board aware of two things. One, if you approve this, you're probably going to be setting a precedent for the guy that was just in here previously.

Number two, I'm not even certain the fire sprinkler will work without improvements to the line. Whether it goes up to 8" or not, that is certainly something for discussion, but I'm not even certain the sprinkler system will work if the line is not --

CHAIRMAN CRAVALHO: Well, the request and the motion is for the deletion of the sprinkler system, if I'm not mistaken.

MR. CRADDICK: No, no.

CHAIRMAN CRAVALHO: Okay. It's to approve. But none of us should give any information which is incomplete and/or misleading, not necessarily intentionally, but misleading.

My understanding is that there is a gray area as it relates to this particular project, if I may, members of the board. What was involved here was, as I understand it again, a consolidation and a resubdivision of two adjoining lots, which under normal circumstances that did not fall under the jurisdiction of the Department of Water Supply. And there is ample evidence of it being handled in the past.

The record also shows that in this particular case, the applicants met all of the requirements and may have been advised that, too bad, you have one word in here that makes you fall under our rules, the word "development." Therefore, this is a development.

My very limited review of the situation indicates that prior to this particular case and maybe one or two others, the Board of Water Supply did not initiate or extend or assume responsibility for reconsolidations of two adjoining lots, that this came about subsequently. And I believe it came about by an opinion by Corp Counsel Mr. Zakian, who indicated that under the authority given to the director which gives him complete jurisdiction and complete authority over the operations of the department, therefore he could proceed to initiate -- he could proceed and say this falls under my jurisdiction.

Now, as I recall, this was a highly questionable type of assumption of power and authority -- forget the word power -- of authority that was not in existence prior to this particular case.

My understanding also is that the ordinances of the county do not require, public works, the jurisdiction being exercised by the Department of Water Supply. I don't know of any ordinance, separate and distinct from the rules and regs, I don't know of any ordinance that places this authority in the hands of the director. And I submit to the members of this board that all rules and regs which have not followed the requirement -- the procedural requirements to have these rules and regs have the force and effect of law, to wit, become ordinances, those rules and regs are just that, rules and regs that do not have the force and effect of law. I've taken this position and I've advised the director of it. And I'm reasonably sure I am right.

Under the circumstances, I believe the motion that has been made is completely appropriate and that we advise the director, or anyone else for that matter, let's not assume authorities we don't have or authorities that are questionable. Come back to the board every time. Mr. Nakamura.

MR. NAKAMURA: Mr. Chairman, I have great sympathy for the Hughes' plight and I agree with what you have said.

When this matter came up in December last year, I had requested that corporation counsel prepare a proposed amendment to the rules which would basically bring the Department of Water Supply into compliance with the ordinance which talks about consolidation and resubdivision. And corporation counsel has advised me that he has done that. And, you know, with your indulgence, Mr. Chairman, and perhaps at the next meeting that can be placed on the agenda.

CHAIRMAN CRAVALHO: No problem.

MR. NAKAMURA: But in the meantime, I have no problem with --

CHAIRMAN CRAVALHO: Yes, I have no problem. Yes, yes.

MR. FUKUSHIMA: If I could make just one comment. The ordinance, which I believe is 18.020.040, which allows for what has been commonly called --

MR. CRADDICK: 18.04.020.

MR. FUKUSHIMA: -- commonly called fast track subdivision, that deals with requirements of the Department of Public Works, not the water department.

The Department of Public Works, when they brought this amendment to the Council for their approval, made no representations that this particular waiver of requirements for subdivision would apply to the Department of Water Supply.

And I believe Mr. Zakian's opinion regarding the applicability of the water department rules and regs didn't say that the department must, but I believe it

said the department may -- may apply water department requirements to these types of subdivisions. So just a little point --

CHAIRMAN CRAVALHO: That is basically correct, Counselor. Let me finish. Under that ruling by Mr. Zakian or advisory by Mr. Zakian, which was not mandatory in nature, which was permissive, the director proceeded in this particular case. And I take the position, and I could be very wrong, what is not specifically in this particular case granted cannot be done.

And Mr. Corp Counsel, maybe this is an item that does warrant review. Does the authority in the charter which gives the director authorization and authority, does that automatically give him unprecedented and uncontrolled authority?

I say the authority given to the director for the operations of the department has to be confined to those items that are allowed by law. Otherwise, an individual can go in and do whatever he wants and say I have total control of the department. And I don't think that was the basic intent.

Perhaps we were -- the board may have been in error in the past, 5, 10, 15 years ago. That doesn't solve this particular problem. And if there is no objection on the part of the board, I would like to suggest that we proceed to the question and the motion that has been made for the granting.

The question has been called for. Mr. Craddick, you're out of order. The question has been called for. All in favor, say aye. Contrary? Carried. One no, Mr. Tagorda. Now talk all you like.

MR. CRADDICK: I just, you know, on page 104 as corp counsel's opinion, all it simply says is that, as Howard mentioned, that ordinance does not waive Department of Water Supply rules. Department of Water

Supply rules require us to require fire improvements. Under 2.12, the board can waive --

CHAIRMAN CRAVALHO: Mr. Craddick, you and I have a very significant difference, okay, on this particular matter, as we have on other matters. And if one wishes to make reference to dependence of Corp Counsel's opinions, I can remember not too many months ago when you deliberately refused to follow the instructions of the opinion that came from Corp Counsel's office. So let's not talk about that. That's part of the past. But that's what the record is. You did deliberately refuse. So let's keep the doggone record straight. And as we're on a new path, we're on a new operation, let's keep it that way. Let's not go hide behind words. Let's not go hide behind and ignore our past actions.

Shall we proceed to the next one? Communication from John Paul Wright. Inability to read meters during drought because of locked meters.

Mr. Craddick, maybe you can explain how that has happened.

MR. CRADDICK: Actually, to tell you the truth, I kind of sympathize with him. But again, we own the meter. Corp counsel has said that if we leave the meter open, somebody stepped in and hurt themselves, we would be liable.

I suppose there are some other things that we can do. We can give a key to him. We suggested that to corp counsel, giving a key to the person and making them responsible if they open it, and that could be worked out. I think that's a workable way to go.

CHAIRMAN CRAVALHO: The problem there --
Mr. Nobriga? Go ahead.

MR. NOBRIGA: Would not the public be able to access personal meters that they could read and install these on their lines so that they could read

the meters?

MR. CRADDICK: They could install personal meters after our meter to do just that. They could do that.

Actually, there are meters available, much bigger boxes than what we have, that have a flip that you could lift up and look in. And my -- in the subdivision that I have, it actually has a meter like that. What I've noticed is when you pick it up, it's all filled with sand and you can't read it anyway. So it almost requires a removal of the cover and when you do that, you've got a hole big enough that somebody could wrench their foot in if they stepped in it. And that is a very real liability concern because Honolulu Board of Water Supply has been sued over something like that.

Our particular meters are on private property but still under the ownership of the board and how we address that liability issue I think is the key thing here. We have no objection and we want to work with the person to figure out how they can read their meter.

CHAIRMAN CRAVALHO: Can we request corp counsel to look into the matter and come up with a middle ground?

MR. FUKUSHIMA: We can have our office work with the department in this fashion.

CHAIRMAN CRAVALHO: Yeah.

MR. NOBRIGA: I would like to move that we receive the Communication 00-07, and the department does acknowledge the consumer, John Paul Wright, and offer some positive suggestions to his request.

CHAIRMAN CRAVALHO: Is it necessary to have a formal motion? I'm sure Mr. Craddick will assist.

MR. NOBRIGA: Okay. Sounds good. Withdraw.

MR. STARR: I would just like some clarification because my meters have never had locks on them. What kind of meters are locked and what kind aren't?

MR. CRADDICK: They're all locked unless either the customer has jimmed the lock and broken it, or we have some occasions where in the past our own meter readers did that. But that's -- they're all locked.

MR. STARR: You mean on the meter itself or on the --

MR. CRADDICK: There is a box and there is a little spring latch and you have to have a special tool. I mean, it won't take a person of any kind of knowledge at all to open it with a screw driver, but --

MR. STARR: Maybe that's why I didn't think they were locked.

MR. CRADDICK: But it's there so kids don't get in there and the cover is removed and somebody gets hurt in it.

CHAIRMAN CRAVALHO: Shall we proceed to the next item, Communication 00-08, communication from Mrs. Dawson regarding water usage at the end of Anuheia Street.

If there is no disagreement from the board, I would like to refer this to committee because this particular item is only one of several in the general area for which I have personally received communications on and the propriety of the practice in that whole area. That deals with also the Lower Kula line and the Dowling connections and whathaveyou. So we'll review it all at one time. No objection? So ordered.

Item VIII, discussion of rules and regulations -- timely decision -- is this one, Mr. Nobriga, you made reference that you wanted to --

MR. NOBRIGA: Mr. Chairman, I would like to defer action on the rules pursuant to the public hearing. I would like to wait until we receive the transcript of all testimony received before we pursue.

CHAIRMAN CRAVALHO: That's under VIII, Item A. Would that also include item B?

MR. NOBRIGA: Yes, Mr. Chairman.

CHAIRMAN CRAVALHO: If there is no objection on the part of the members of the board, so ordered.

MR. STARR: Mr. Chair, I just request a refresher on what the procedure will be on getting these rules --

CHAIRMAN CRAVALHO: The transcript comes back to us and then we take necessary action, whatever we wish to. Mr. Craddick?

MR. CRADDICK: And once the board does that, it then goes on to the Mayor and the Mayor has a chance to act on it for 15 days, can approve, disapprove, do nothing. In either case, it goes on to the Council. Council can agree or disagree with the Mayor, I think with the super majority, and the Council can also do nothing and it would -- if the Council does nothing, it's approved. And they have 45 days to act on it.

MR. STARR: Is there a need for another public hearing after the board has approved it or does it go straight --

MR. CRADDICK: Assuming you make no substantial changes, and I'll leave that up to corp counsel there.

MR. FUKUSHIMA: If there are no substantive changes and substantive changes has been by case law is if the proposal turns into a different proposal,

then it's considered a substantive change. If there is one of those, then it would have to go back to public hearing. Otherwise, it would go to the normal charter procedure.

CHAIRMAN CRAVALHO: Okay. That's with reference to A&B. Mr. Nobriga, followed by Mr. Craddick.

MR. NOBRIGA: I just would recommend that we take a recess for lunch.

(Lunch break.)

CHAIRMAN CRAVALHO: The meeting will be reconvened. VIII, Other Business, Item C, review of applications and appropriate action on the legal advisor selection for the East Maui Plan EIS.

It is the suggestion of the Chair that we deal -- contact -- make an association to provide us with proper legal matters on the contract to provide for this service, with a recommendation that attention be given if necessary to -- what's the attorney's name?

MR. CRADDICK: Well, we have three --

CHAIRMAN CRAVALHO: I know we have three, but I want to talk about only one. Matsubara.

MR. CRADDICK: Well, that's --

CHAIRMAN CRAVALHO: That's the recommendation of the Chair. The other two being -- Martin Luna being one and the other one being Mr. Rapacz. The Chair's recommendation is based on the fact that the other two usually have presentations to come before the board; there might be a conflict of interest. And Mr. Matsubara has never represented anything to the board as far as I know and that's the suggestion, work through Mr. Mink's --

MR. STARR: Mr. Chairman, I'm just not familiar with the name Matsubara. I'm wondering if any of the board members have any experience or we have any recommendations for him.

CHAIRMAN CRAVALHO: Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, I know Mr. Matsubara quite well. He's a former member of the attorney general's staff, represented land use commissions, and I know he's thought of very highly in the planning and environmental field.

MR. TAGORDA: Mr. Chairman, if it's okay to invite the attorney to please the board for --

CHAIRMAN CRAVALHO: Mr. Vice Chairman, under normal circumstances that would be quite correct, but we would be dealing with Mr. Mink and he's at George Yuen, rather than the attorney per se.

MR. CRADDICK: If that's the board's pleasure. You're talking about handling this under the East Maui contract?

CHAIRMAN CRAVALHO: Yeah. That's what you said.

MR. CRADDICK: Okay.

MR. FUKUSHIMA: If I may, Mr. Chair, is he going to be representing the department and board in court also?

CHAIRMAN CRAVALHO: No. He is not representing the board in any way, shape, or form.

MR. FUKUSHIMA: He will be retained by --

CHAIRMAN CRAVALHO: By Mink. That is correct. I'm fully aware that, you know, about his potential problem of representation of the board and corp counsel's office with that responsibility and obligation. Yes.

MR. CRADDICK: On Jonathan's comments here, I had talked with Mr. Matsubara and he had dealt with the geothermal issue on the Big Island and it's a very similar thing to us, a number of wells being drilled in an environmentally sensitive area. So he has some very, very similar experience to this.

MR. STARR: Was he successful?

MR. CRADDICK: The project went ahead.

CHAIRMAN CRAVALHO: Very good. If there is no objection, shall we then proceed accordingly. So ordered.

Item D, discussion and possible action regarding a personnel matter. Is that the one, Mr. Attorney -- I thought so. You wish to speak in open session or shall we go into Executive Session?

MR. RACK: Good afternoon, Mr. Chairman, Deputy Corporation Counsel Tom Rack. Mr. Chair, I think we need to go in Executive Session because it does concern some of the liabilities of the board.

CHAIRMAN CRAVALHO: Fine. Mr. Nobriga?

MR. NOBRIGA: Mr. Chairman, I move that pursuant to HRS 92-5A4, in order to consult with our board's attorney on questions and issues pertaining to the board's power, duties, privileges, immunities and liabilities, we go into Executive Session.

CHAIRMAN CRAVALHO: Is there a second?

MR. RICE: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded that this body go into Executive Session for the purposes as stated by Mr. Nobriga.

All in favor, say aye. Contrary? Carried.

[Executive Session convened.]

CHAIRMAN CRAVALHO: The regular meeting of the board will be reconvened. It is the understanding of the Chair that the recommendation that has been made in Executive Session to the Corp Counsel's office shall be followed. So ordered.

Item E, presentation and discussion of draft fiscal year 2000 budget and table of organization. What's the pleasure of the board inasmuch as we just got it yesterday or today or whatever?

MR. CRADDICK: Actually I don't -- you haven't passed it out, have you, Mike?

MR. QUINN: I'm prepared, Mr. Chairman, to hand that out to the board and then at the board's pleasure they can discuss it later or set up a committee meeting, whatever you desire.

CHAIRMAN CRAVALHO: My suggestion is that we pass it out to the board members, they have a chance to take a look at it, and at the next meeting a decision be made for a timetable or hearing or whatever the case may be, realizing that this has to go to publication and public hearing. The deadline is June 30th.

MR. QUINN: That's correct.

CHAIRMAN CRAVALHO: Midnight. So ordered. Item F, discussion and possible action regarding the Upcountry water situation. Mr. Director?

MR. CRADDICK: I would like to pass out what the current situation is here.

CHAIRMAN CRAVALHO: Mr. Craddick, your CIP

budget is also available?

MR. CRADDICK: Yes. It is passed out. Fine. I have no problem. The understanding is that the board members will take a look at it and come up with modifications and/or whatever is necessary.

CHAIRMAN CRAVALHO: Item F, discussion and possible action regarding the Upcountry water situation.

MR. CRADDICK: In this one here, the Waialoa ditch is at 160 million gallons or 83 percent of capacity. The Kamole Treatment Plant is .1 million gallons, which is down from around seven in March. Hamakua Poko wells have been in use for six of the past eight days. Piiholo Treatment Facility, the reservoir is full, production is at a little over 3 million gallons a day. Waikamoi Reservoirs are full. Kauhakapao reservoir is 98 percent full. The Olinda treatment facility is producing at 1.6 million gallons a day. Total demand for the Upcountry system was 6.2 million gallons yesterday. Average demand for the past 10 days is 5.8 million gallons. And we feel that the above conditions do warrant an action change from the drought emergency declaration that was made previously. And when I say an action change, keep in mind the action is a 10 percent mandatory cutback right now.

CHAIRMAN CRAVALHO: Mr. Takitani?

MR. TAKITANI: What is the forecast for --

MR. CRADDICK: Bob, the long-range forecast I don't have, that El Nino southern oscillation report. What happened is they changed editors and they've changed their format in there and I just don't have it for the next three months at this time. So I don't -- I can't really answer that, what the longer range forecast is.

We are going into summer here, I can say that, and summers would normally be dry.

CHAIRMAN CRAVALHO: Mr. Craddick, would it be possible to divide the question into two parts: One, the elimination of the 10 percent mandatory conservation practice; the second part would be the declaration itself of an emergency situation. Would that be possible? I think anything is possible.

MR. CRADDICK: I believe it's possible, yes.

CHAIRMAN CRAVALHO: Let me do some lobbying. It appears -- and I believe this is historically correct -- from all of the presentations made to the courts and wherever, that the situation upcountry as it relates to a consistent water supply is one of drastic concern as we go along. This was further emphasized by the agreement reached earlier -- signed earlier this morning with respect to the withdrawal rights, with respect to the keeping of our storage supplies at 80 percent of capacity, et cetera. To me, all of these things recognize that there is an existing drought or emergency condition that has not been met in its entirety.

Agreements have been made so that we can reach this position of a current and an absolute supply for the needs up there. In the meantime, this potential of a vacillating storage and/or rainfall is there.

So my suggestion, Mr. Craddick and members of the board, would be that we continue with the declaration of an emergency and a needy situation, eliminating the 10 percent mandatory restriction on utilization based on what we have in storage at the present time. And if we proceed then to implement the storage requirements, the 80 percent, we very well might be in the position in the next month, two months or three months, when we have say the next drought situation on our hands and we can view how well we have been able to implement 80 percent storage. We

can say, well, really we have all items under control. And in the meantime, this would also avoid -- not avoid, but provide us with the continued utilization, if necessary, of the H-Poko wells at the present time. I think it's a very reasonable type of approach. Yes, my friend.

MR. STARR: Mr. Chair, I move that we remove the mandatory 10 percent cutbacks that have been in force.

CHAIRMAN CRAVALHO: Is there a second?

MR. NOBRIGA: Second.

CHAIRMAN CRAVALHO: You've heard the motion duly made and seconded. Any discussion? Hearing none, all in favor, say aye. Carried. Opposed? Carried. Took it for granted nobody would dare say no.

MR. CRADDICK: Can I get some clarification for that? We're still asking for voluntary conservation?

CHAIRMAN CRAVALHO: Oh, that's understood.

MR. CRADDICK: Thank you.

CHAIRMAN CRAVALHO: Voluntary means voluntary.

MR. NOBRIGA: We're still in drought emergency.

CHAIRMAN CRAVALHO: It's in the court case and everything, we do have this continuing situation there. We're working on the remedies. We have a supply of water in storage now which warrants -- which does warrant the removal of 10 percent. It does not eliminate the emergency situation. It does not eliminate the long-term need for water in that area.

Item F, list of violators. I have asked the department to -- and the department really was not made up of a police squad -- but to present us with

information based on their electrical monitoring system, whatever, of violators of the drought situation. I had asked the director in the information presented to this board that no names be used in the compilation, no addresses be used, and at no time should any name or any address be given out to any member of the board, including the Chair. So I can assure you I have not seen and I do not know what people's -- what meters belong to whom. But this is a compilation. And I believe it shows, what, one thousand four hundred and some odd?

MR. CRADDICK: That went down to one percent over the allowable of --

CHAIRMAN CRAVALHO: I understand. But the compilation showed how many?

MR. QUINN: 1,454.

CHAIRMAN CRAVALHO: That's right. And the total number of meters up there? Eight thousand.

MR. QUINN: Approximately 8,800.

CHAIRMAN CRAVALHO: 8,800. And of the farmers, how many? Five hundred?

MR. QUINN: Approximately 500.

CHAIRMAN CRAVALHO: So 1,400-and-some-odd out of 7,000-something. You know, one-fourth almost had some -- some experience of noncomformity. In the short term, this may not be significant. In the long term, it could be. And this does not detract from the problems or challenges we have discussed earlier as it relates to the need for saving water in this central area here because of the conditions with respect to the aquifer, the Iao Aquifer. This is not mandatory, but it is a good practice for conservation for all parties to be aware of the need for this. And if we

have that cooperation, I'm sure everything will be fine. Should be.

Any other matter that should properly come before the board?

MR. CRADDICK: Not regarding the drought.

CHAIRMAN CRAVALHO: Any other matter that should properly come before the board?

MR. CRADDICK: You're talking about the discussion of public meetings there?

CHAIRMAN CRAVALHO: Oh, yeah, go ahead. Public meetings.

MR. CRADDICK: There are a couple. I believe Lahaina -- or not Lahaina -- Lanai Water Use and Development Plan had a meeting and I -- Ellen, if you want to give any presentation of what the status of that is.

MS. KRAFTSOW: We had a meeting on the state of the watershed and what to do about it, specifically about fencing proposals and how that would affect the public and how that would affect hunting. About 40 people attended. There was -- I can't say 100 percent concurrence, but the group seemed pretty calm and amenable, much more so than we were concerned they might be, which was a good sign. And it looks like we'll be proceeding to try to recommend that a fence -- one of the fencing options get constructed. And Jonathan was there, too, so he might have something to say.

I should also mention that the last Friday of this month we have the Lahaina Water Use and Development Plan meeting, the second one.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: Yeah, I was at the meeting -- the meetings on Lanai this week and I have to say I was favorably impressed by the way -- in general the way it was handled and I feel like they're getting to a consensus on protecting the delicate resource over there which is in threat.

There was some comment, though, and some concern, especially brought out by Mr. Hakama that these meetings are not being properly noticed. And I'm not sure if there is a legal requirement or not to notice them. However, there is a feeling that they should be noticed better. And I agree with that. And I do appreciate the fact that the staff is trying to do this on a very limited budget and trying to save where they can, but I really think that a better effort has to be put out toward getting the word out about the meetings.

I know board members weren't informed about it, for one thing. I was informed the day before. It really -- board members and other people, please inform people better. That's all I'm asking. I'll leave it to you how.

CHAIRMAN CRAVALHO: Thank you. Any other -- Mr. Craddick?

MR. CRADDICK: One other item. Last week Wednesday, I believe, there was a hearing at the state legislature over a watershed protection tax. And from the time the bill was introduced, I believe we had put in written testimony basically saying we supported the idea of watershed protection, but had reservations about a taxing scheme. And quite frankly, we thought it was going to die, but the House bill did cross over to the Senate and so they were having their hearing on the Senate side. And I did go in and testify against it because the proposal was to have a one-dollar-per-service charge for all PUC water regulated companies and county water companies, meaning that our ag customers would get a \$2 bill tacked on to their bills, our low end customers would

get \$2 tacked on to their bill, the hotel using half million gallons or quarter million gallons a day would get \$2 tacked on their bill, meanwhile other ag customers got nothing tacked on to their bill, and non-regulated people such as military, private wells, things like that, again, no charge. So I felt comfortable in going to the legislature and talking solely on the basis that our board is in favor of protecting ag and not having the rates go up for them and testified so. And if the board wishes to change that stance, I'm open to whatever discussion the board has. But it will be going I guess to conference committee at this point and I don't believe the committee assignments will be made until next week Monday for this particular bill.

CHAIRMAN CRAVALHO: Any further discussion? If not, earlier in the day the Chair alluded to setting up a committee program for the operations of the Board of Water Supply. And these committees are merely an indication of intent and where people would be serving, we'll work out all of the details.

Oversight and the ombudsman area would be Mr. Nobriga. Evaluation of personnel, the director and the program of the department, Mr. Starr. Finance committee chair, Mr. Rice. Committee of the whole, Mr. Tagorda. Rules and regulations, myself. Negotiations and capital programs, negotiations, former Chair Takitani. Capital improvements and programs, Mr. Nakamura. Legislative matters bracketed with coordination and liaison of government and public agencies and areas, legislature, chairperson, Member Hashimoto. Liaison, Member Helm.

We'll work out the details as to function for the next meeting or there about. Each chair -- the named person shall be authorized -- is authorized as far as the Chair is concerned to go ahead and select two members to serve with you on your committees. Make sure that we don't have an undue over balance, everybody in one place and nobody somewhere else. So

leave it to all parties involved to work it out. The Chair is not going to appoint membership to these committees.

And hopefully we get into the position that this board will meet once a month rather than every two weeks and, if necessary, go to two days. Hopefully it will be all one day. So there is an incentive for cooperation. And if we meet early enough and if we -- if necessary meet late enough, it will be one day. In this manner I believe we can enable staff to do great justice to their normal responsibilities. Right now a tremendous amount of time and effort and labor and materials are being utilized to meet the requirements and requests of the members of this board. It's understandable, we've been through some very hard days, and I think we've come out not bad. Not bad at all. Considering everything.

As alluded earlier, I'm very appreciative of the responsibility that we mutually shared with you and you have given me. I am very pleased and proud to be associated with this board and with specific reference to former chair and to Mr. Nakamura for their very far-reaching and visionary program that has been adopted and signed by every member of this board. I made it a point and made a request of Mr. Craddick and others to make sure that this document would have the signature of every single board member because I think it is an extremely significant document. It's going to prepare the way and provides the guidelines for reasonable partnerships in the growth of this community.

And to all of the people who have helped us and will be helping us in the days ahead, even though we've been through some very interesting and trying times, we've come out I think really, really on the plus side. So I want to thank you.

I also want to express my consideration and thanks to member of the press, Eric. I think the presentations that have been provided to the public have been quite accurate and quite fair. And so to

all parties that are here, I want to thank you. I'll be out of state from tomorrow and I hope I'll return Easter Sunday. I'll be back for battle on the 24th.

Thank you very much.

Our next meeting -- the staff will get it to you. Adjourned.

(WHEREUPON, the meeting was adjourned at 1:55 p.m.)

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