

County of Maui Water  
Supply

BOARD OF WATER SUPPLY  
COUNTY OF MAUI  
REGULAR MEETING

Held on Thursday, April 27, 2000, at the HGEA Conference Room,  
David K. Trask, Jr. Office Building, Room 207, 2145 Kaohu  
Street, Wailuku, Maui, Hawaii, commencing at 9:00 a.m.

REPORTED BY:

JEANNETTE W. IWADO, RPR/CSR #135  
IWADO COURT REPORTERS, INC.

A T T E N D A N C E

CHAIRPERSON:

ELMER CRAVALHO

BOARD MEMBERS:

CLARK HASHIMOTO  
ADOLPH HELM  
HOWARD NAKAMURA  
MICHAEL NOBRIGA  
PETER RICE  
JONATHAN STARR  
ORLANDO TAGORDA  
ROBERT TAKITANI

DIRECTOR

DAVID CRADDICK

DEPUTY DIRECTOR

GEORGE TENGAN

DEPUTY CORPORATION COUNSEL:

HOWARD FUKUSHIMA

BOARD SECRETARY:

FRAN NAGO

FISCAL OFFICER:

MICHAEL QUINN

ASST. FISCAL OFFICER:

HOLLY PERDIDO

ENGINEERING:

HERB KOGASAKA

EX-OFFICIO:

BRIAN MISKAE

WATER RESOURCES:

ELLEN KRAFTSOW

PERSONNEL:

CINDY GRASSA

WATER TREATMENT PLANTS:

PAUL SEITZ

ALSO PRESENT:

JOHN MIN, JOHN RAPACZ, NATALIE  
POWELL, HUGH STARR, GARY MEOLA,  
DAVID NIEHAUS

TRANSCRIPT OF PROCEEDINGS

BOARD OF WATER SUPPLY, REGULAR MEETING  
APRIL 27, 2000, 9:00 A.M.

CHAIRMAN CRAVALHO: It is 9:00. Will the regular meeting of the Board of Water Supply come to order. Present here this morning is Mr. Hashimoto, board member, Mr. Rice, Mr. Starr, Mr. A&B, Orlando Tagorda, Mr. Helm, Mr. Nakamura here present. Representing the Mayor's office, Mr. Miskae, Corporation Counsel's office, Mr. Fukushima.

Fran, will you introduce all of the other people who

are here, in addition to our director, Mr. Craddick?

MS. NAGO: We have David Craddick, the director, Holly Perdido, the assistant fiscal officer, Herb Kogasaka, chief engineer. In the audience we have Harry Eager, Natalie Powell, John Rapacz, Hugh Star, we have Glenn Jackson, David Niehaus, and Gary Meola.

CHAIRMAN CRAVALHO: Members are asked to make reference to the agenda. We do have a quorum that is present. Approval of minutes of the regular session of March 23rd. What's the pleasure of the board? Mr. Starr?

MR. STARR: Move to accept, and if no one comes up with any changes within the next 30 days, to file.

CHAIRMAN CRAVALHO: Is there a second?

MR. HELM: Second.

CHAIRMAN CRAVALHO: Per the motion duly made and seconded to accept the minutes for the 30 day period for any comments or objections to come in. If not, it shall be filed as approved.

All in favor say "aye."

(Ayes).

Contrary?

(No response).

Carried.

Testimony from the public. Are there any members of the public here who wish to testify on any matter that is on the agenda and is scheduled later, or any testimony written or oral on any other matter at this time that's not on the agenda?

In other words, if somebody wants to say something,

come right on in. If you have something on the agenda dealing with a subject matter that you have, when that time comes we will take that. None? Shall we then proceed?

Mr. Rapacz?

MR. RAPACZ: Mr. Chair, I would like to comment upon the proposed rule amendments. I don't know if it would be best to do that now or when you take up the issue.

CHAIRMAN CRAVALHO: I thought I had just gotten through saying that if it's on the agenda at that time we take it up.

MR. RAPACZ: Okay.

CHAIRMAN CRAVALHO: It's possible I don't speak as clearly as I should. Shall we then proceed to the Director's Reports. Request approval of the report number 00-18.

May the record reflect the presence of and the arrival and the presence of Mr. Nobriga.

MR. NOBRIGA: Thank you.

CHAIRMAN CRAVALHO: Mr. Director?

MR. CRADDICK: On this item here there are probably a lot of issues that the Board needs to be brought up to speed on, and if they wanted to refer it to committee we have no objection to that. We do have an extension for the time of June 30 to September 30. I believe there is somebody here from Maui Ranch Estates, I don't know if they want to say anything on it.

CHAIRMAN CRAVALHO: Let's back up. As a matter of just general procedure, there's one presiding officer here who grants approval for speaking or appearances or what have you.

The Chair would like to have this matter referred to the finance committee of Mr. Rice to report back with their

findings and recommendations no later than the next regular meeting of the board. Now, there's a representative here who may wish to speak on the matter.

MS. POWELL: After my conversation with you yesterday, it seemed like you prefer to have it discussed in the finance committee.

CHAIRMAN CRAVALHO: Yes, that would be really I think expeditious.

MS. POWELL: I'm always available if the finance committee has any questions when they're meeting.

CHAIRMAN CRAVALHO: Thank you.

Director's Report number 19. The referral is to the finance committee on the previous item.

Number 19. Mr. Craddick?

MR. CRADDICK: This item here, last year when the budget was approved, the submittals on the budget were reduced approximately 25 percent by the Board to see if we could get the overtime down. Some have been more successful than others, but the end result is that we do need additional overtime, and this is submitted here to see if we can get the Board to approve it.

CHAIRMAN CRAVALHO: Question. The Chair has a question. Any question on the part of the membership? The Chair has a question. Is the request for overtime to cover the period ending June 30, year 2000, the remainder of this fiscal year?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: And the requested amount will be adequate?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: It's the recommendation of the Chair that this matter be referred to the finance committee to

report back inasmuch as the period of time to be covered by this item is June 30, to report back at the next meeting of the board. No objections? So ordered.

Proceed, Mr. Chairman, I mean Mr. Director, report number 20.

MR. CRADDICK: The next item, Amendment number one, the Upcountry Watershed Project. That's what everybody knows as the dual line. The funds were supposed to or the project was supposed to have covered the funds last year in December, and as you know or may not know, we had not yet gotten the state money encumbered at that time. As a result, the project had to be extended.

There are two amendments, one is until March, and the other one, the next agenda item is until June 8. And the job has been bid, so we expect on June 8 there won't be any need for further extensions.

CHAIRMAN CRAVALHO: Mr. Starr?

MR. STARR: Mr. Chair, I move to approve the request for amendment for the dual line project.

CHAIRMAN CRAVALHO: That motion would be for Amendments one and two?

MR. STARR: Yes, sir.

CHAIRMAN CRAVALHO: Is there a second?

MR. NAKAMURA: Second.

CHAIRMAN CRAVALHO: Motion made by Mr. Starr, seconded by Mr. Nakamura for the approval of both recommendations, both amendments. Any discussion? If not, we're ready for the question. All in favor say "aye."

(Ayes).

Contrary?

(No response).

Carries.

Please note the presence of Mr. Takitani. Note his presence prior to the vote, so his vote will count.

Report number 22.

MR. CRADDICK: On this item here the Board had agreed that they would participate with the Water Commission on the Mahinahina deep monitor well, and they had approved \$150,000 for it, but I believe for some reason when the Board approved that, the funds were not encumbered. And it's not \$150,000 that they need, it's only \$18,000, \$18,300. So we're basically asking for approval of that amount of money for this contract.

CHAIRMAN CRAVALHO: Are there any questions for the motion? Mr. Starr?

MR. STARR: Question. Just to refresh my memory, please tell us what this is. I believe this is just a monitoring well. Where is it located?

MR. CRADDICK: It's located at our Mahinahina treatment plant site. And originally it was planned for Lahaina town, and I felt that in Lahaina town it's not going to serve any useful purpose for our wells out in Napili, and this location is kind of in the middle of the Kaanapali wells and our wells in Napili. It's a better location for it.

MR. STARR: Will this be able to measure the transitions?

MR. CRADDICK: Yes.

CHAIRMAN CRAVALHO: Any further questions or discussion? Mr. Rice?

MR. RICE: A quick question. David, in this contract on the second page of the contract at the very bottom, the last paragraph, "In addition to such payment compensation for extra work if any may be allowed, but shall not exceed \$16,300."

MR. CRADDICK: What page are you looking at?

MR. RICE: Page 33 in your package, the last paragraph. Does that relate to anything? Is that a contingency?

MR. CRADDICK: I am going to make the assumption that that's already part of the total price there.

MR. KOGASAKA: It is, it is a contingency amount. It contains the amount that the state uses. That amount is included in the \$18,300.

MR. RICE: It is?

MR. KOGASAKA: Yes.

CHAIRMAN CRAVALHO: May the record reflect then, based upon the responses we have received, that the sum of \$18,300 does include the \$16,300 listed in the paragraph at the bottom of the page.

MR. FUKUSHIMA: Small correction. \$342,300 is the total package that includes \$16,301.

CHAIRMAN CRAVALHO: That's not what I understood him saying. Is that what you're saying?

MR. KOGASAKA: That is also correct, yes.

CHAIRMAN CRAVALHO: What is correct, that the total bid or the total contract does include that \$16,000, is that correct?

MR. FUKUSHIMA: The total of the contract is \$325,999. If you add the \$16,301 that's how you come up with the total figure of \$342,000.

MR. RICE: So the \$16,300 is prorated across. Thank you, Mr. Chairman.

CHAIRMAN CRAVALHO: Mr. Nobriga?

MR. NOBRIGA: Where would these funds be shifted from?

MR. KOGASAKA: That's a budgeted item, period. It's under liability, budgeted itemized liability.

CHAIRMAN CRAVALHO: Mr. Nobriga?

MR. NOBRIGA: I would therefore move that we approve the \$18,300 sum for participation in these deep monitor wells for Mahinahina.

CHAIRMAN CRAVALHO: You have heard the motion. Is there a second?

MR. RICE: Second.

CHAIRMAN CRAVALHO: Heard the motion duly made and seconded for inclusion as the County's portion \$18,300.

MS. NAGO: Mr. Cravalho, who seconded?

CHAIRMAN CRAVALHO: Mr. Rice. Moved by Mr. Nobriga, seconded by Mr. Rice. Per the motion, any discussion? If not, ready for the question. All in favor say "aye."

(Ayes).

Contrary?

(No response).

Carried. Shall we proceed then to the next item on the agenda. Under Old Business, possible action regarding amendment to the Board of Water Supply's rules of practice and procedure relating to appeals of the Director's decision to the board.

MR. NOBRIGA: Mr. Chairman, I move that the amendments to the practice and procedures relative to appeals be passed and forwarded to the appropriate parties.

CHAIRMAN CRAVALHO: One moment. It is the recommendation of the Chair that this be referred to the committee that I head, rules and regulations. The Chair has reviewed the proposals, there are some ambiguities and I think some undue restrictions that tie up the appeals process, and limits the appeals process to serve some very highly restrictive kind of approaches. I don't think this was the intent when we talked about the appeals process coming to the Board. If there's no objection, Mr. Nobriga.

MR. NOBRIGA: No objection. I will withdraw my motion.

CHAIRMAN CRAVALHO: So ordered. And the Chair is going to make the same recommendation with respect to item B. Referred to the committee headed by the Chair on rules and regs.

MR. STARR: Mr. Chair, I am willing to go along with that, however I do believe that there was some testimony.

CHAIRMAN CRAVALHO: We will receive testimony, no problem, and I think the testimony will basically support my concerns. Do I read you right?

MR. RAPACZ: I am John Rapacz. I will just save my testimony for the rules committee meeting.

CHAIRMAN CRAVALHO: Okay.

MR. RAPACZ: Thank you.

CHAIRMAN CRAVALHO: Okay, thank you. Item C, request from Mr. David Niehaus. You have the floor, Mr. Niehaus.

MR. NIEHAUS: Yes, I have the Chair one more time here. My lawyer, James Krueger, has a wrongful death suit and he won't be able to make it today. He made it clear to me many

times over the last week when we looked up our 19 items where people were treated totally different that I am being treated. He said that we all have to be treated the same as citizens, and I really believe that.

I wanted to start by saying that every time that I have come before you since 1993, and I supposedly signed this agreement of subdivision, where I did not create any new piece of property, I only added on to my farm, and I was denied that fact that that was I said it wasn't a subdivision, it was just a consolidation. And I find in the records many times, here's one from Mr. Kimme to the Board saying that the rules committee felt that it would be incorrect to waive the fire protection requirements since there was no additional lot created. There would be a couple of conditions, and you immediately approved for this man a waiver of fire protection because there was no new lots created.

There were no new lots created when I did what you called a subdivision. I just added onto my farm. There were no new houses, no new lots, same amount of lots as I started with. You treat one person differently than you treat me, and in three minutes he was finished. I have been here for seven years going through this. Somehow it just seems unbelievable to me.

I have asked time and time again that you come and maintain your pipe that you have on my property. I have four foot holes uncovered, grass growing around them. I have asked in this board meeting six times. No one has ever come and helped he out. People have fallen in and hurt themselves. You are treating me like a second class citizen.

I have a quote here from Mr. Craddick saying that We always -- this is December 1997 -- "We always deny waiver of fire protection." Well, if you always deny it, why do you approve it for certain people, like Pollack, like Mancini who came in here? There's documentation of 19 cases that Mr. Krueger and I found where you have approved the waiver of fire protection. I have a 50,000 gallon tank in place at a high altitude on my property at a very big expense. I did your 4-inch water line at a \$40,000 cost to me, as per your exact requirements, to put fire protection into my property. You

changed your rules and I'm out that \$40,000. I'm trying not to whine about it.

I did the new fire tank, 50,000 gallons. You only require 30. You have allowed 19 people to do it. Why is it that I'm being denied? I'm finding it hard to understand how you can treat me one way, especially since you have got your pipe running two acres across my property without compensation. And secondly, because you have allowed John Pollack and I mean I could start naming them all here, Arakawa, man after man that you have allowed.

And Mr. Fukushima, I would really like to ask you, do you know or can you tell the Board here honestly that you have not allowed the waiver of fire protection because of a water tank to a citizen? I have 19 situations where you have. So why is it that I have come here for seven years? I mean this is a pain in the butt for you guys. I mean you don't want to hear me, I know you don't. And I don't blame you, I'm whining. But I deserve the same treatment that you treat the Portugese from Haiku. You have allowed them to waive fire protection.

John Pollack, you allowed him, and he's got six other people on the property. I'm just my own self, Dr. Mathias, my wife, our house, a couple of farm dwellings. We are not asking for too much here. We are asking for what you have given 19 other people that I've found without really spending more than 20 hours doing it. And I just find it hard to believe that you can allow this guy in two minutes to say no new pieces of property are created, therefore he doesn't need fire protection. When I used that same argument for seven years, and it fell on deaf ears.

Now, either you treat me the way you treat everybody else, or all those other people that you have allowed to have fire protection with a water tank you take theirs out and tell them that you no longer allow that. I have followed your rules every time. You gave me specific letters. You denied it later after I have followed them. A 4-inch water line, \$40,000, exactly followed it. You came up four years later and said "Well, we have changed our rules now." Okay, you changed your rules, so I am going with the new rules. So now the new rules don't apply to me.

I know Mr. Cravalho, it has nothing to do with you, you're new here. But it's frustration for a person like me. I mean I have put out \$20,000 for my last lawyer, \$5,000 for this, \$20,000 for the water tank, \$40,000 for the fire protection that you required in writing exactly, which I followed, and I'm still getting this no, no, no. And then you let somebody like John Pollack out on Easy Street do whatever whatever he wants. Can somebody explain to me the double standard, why is it?

I mean if Mr. Fukushima can tell me right here that you guys have never allowed anybody to waiver fire protection with a tank I'll go away. But I already know the answer, and I'd like some kind of explanation why I'm being denied and no one else is. How come you can't cover the holes on my property? They're four feet deep with grass growing around them. I have got little kids, I've asked you six times. Everybody just shines me on. Is it because you have got my two acres and you don't need to give me anything, not even respect? I guess that's it, no respect.

Well, I have been coming in here seven years and I'm tired of it, I know you guys are tired of it. I've got the proof. I am not vague on this, I have the proof. If my lawyer were here he'd be laying it out to you what's going on, and he will be here the next time. But I just require, I mean go into executive session, make a decision, come back and tell me no again, and I guess that's what your MO is, your modus operandi. But you cannot treat one citizen different than another. And Mr. Craddick says right here, "We deny everybody right up front," December, 1997. "We recommend denial of this always." So why it then all of a sudden there's 19 people that I have found that you have made exception for? I'm just having a hard time with this.

I've put in my time, I was the chairman of the Redevelopment Committee in Wailuku, I have put in my five years. I am not asking for anything that's so big. You have given it to a lot of other people. I got my tank in. Your engineer came and inspected my tank and said, "Wow, this is really good." It cost me \$40,000. It's very good. But now it's back to square one to where somehow my tank is very good,

but a 30 thousand gallon tank, 20 thousand less, is somehow better. I'm having a hard time with it.

I'm going to come back until I'm not able to come back any more. And I need some explanation, I need somebody to tell me why I'm being treated different. I want Mr. Fukushima to tell me that you have not allowed anybody else to do what I'm asking. I see in here the first guy that asked we didn't make any new piece of property, we didn't create a subdivision, there's no new piece of property. Immediately you give him no need fire protection. I made that argument 17 times in my statements. You can look them up in my records, 17 times. I have created no new piece of property, I just made my farm a little bit bigger. So now I'm paying for it. Seven years is a long time, \$100,000. I rest my case.

CHAIRMAN CRAVALHO: My questions on the part of the members of the board? Mr. Starr?

MR. STARR: I have a couple of questions. This tank you put in for fire protection, I see on the documentation that it's being fed by the ag line at ag rates, is that correct?

MR. NIEHAUS: Well, it's also catchment. It catches more than I can use, I have to run water off. I have only filled it with catchment for the last six months, and it's overflowing.

MR. STARR: I have a question for the director. Is it normal to use ag rate water for fire protection?

MR. CRADDICK: If the person has ag rates.

MR. NIEHAUS: I have ag rates.

MR. STARR: Is that allowable under the rules? Because ag rate water is not supposed to be for any kind of domestic use, to my understanding.

MR. CRADDICK: No, actually the same water goes to both systems, it's just that in the rates unless you are on a non-potable system you have to pay -- the first 25 thousand

gallons you pay at the normal rates, and then after 25 thousand dollars you drop to the ag rates. So there's a provision in there for that.

MR. NIEHAUS: You have allowed it to John Pollack, the exact same situation in that respect.

MR. CRADDICK: Well, he doesn't have ag rates.

MR. NIEHAUS: Which is worse, right?

CHAIRMAN CRAVALHO: These exchanges are not the most prudent.

MR. STARR: I'd also like to ask the director, I notice also reading in this that there's a concern about backflow, there's no backflow prevention on this system.

MR. NIEHAUS: It's not turned on.

MR. CRADDICK: If you are talking about something within his private water system?

MR. STARR: No, in your report, sir, it says --

MR. CRADDICK: What page are you talking about?

MR. STARR: I think it's on page 58. It says that it requires backflow prevention, which means if there's ever a pressure drop in the line that this tank will pollute the whole system.

MR. NIEHAUS: May I address that?

CHAIRMAN CRAVALHO: Members of the board, it appears to the Chair that -- is there in existence or has there ever been in existence permission given or approval given by the department by any of its employees that have authority for granting permissions, said permissions which were subsequently changed upon the passage of new rules or whatever? If such is the case, then the Chair respectfully points out to the members of this body that precedent by this body was set with respect to acknowledging the validity of a commitment or a statement

made by an employee in a position of authority. If that permission at any time had been given, then I say there is an obligation.

Mr. Starr?

MR. STARR: Mr. Chair, I have a great problem with that philosophy from a practical point of view.

CHAIRMAN CRAVALHO: Mr. Starr, one moment. This isn't a question of the philosophy, it is a question of what this Board did. What this Board did with respect to recognizing the assurances given, the authority given on behalf of the board, and paid a claim for extra work. And the precedent was set at that time. I remember making the motion.

Now, if this Board wishes to change that precedent, fine, so be it. But then this Board I think may be potentially opening itself up to a discriminatory practice or an uneven practice in the application of the law, and in the application of decisions.

Now, we have a couple of cases already and we have members of this Board who have a lawsuit on it dealing in a particular case, Mr. Starr, of which you championed, and that's Ulupalakua and Stohle. The principles are precisely the same, exactly the same. If you want to do litigation, fine, but we are going to lose that one. In my personal opinion, we are going to lose that one. And we are going to be in a position, if we aren't careful, of being held up for damages. Because the record is clear in my estimation, and it's clear also in the estimation taken, in the action taken by the ad hoc committee, of which you and I were privileged to be members of. Well, be that as it may.

Mr. Nakamura?

MR. NAKAMURA: Mr. Chairman, in light of the comments that you have made, which I tend to agree with, as well as Mr. Niehaus' comments that he's been treated unfairly, I wonder if it would be appropriate to refer this to Mr. Nobriga's committee for review of the oversight committee.

CHAIRMAN CRAVALHO: I have no objection to that provided, however, we work on it together with the committee which I am chair, and we come up with a final position no later than the next meeting.

Mr. Niehaus, would that be satisfactory?

MR. NIEHAUS: Thank you. I would like to comment on there's no backflow needed because it's filled by catchment right now.

CHAIRMAN CRAVALHO: I understand.

MR. NIEHAUS: It's not turned on.

CHAIRMAN CRAVALHO: Mr. Starr is doing a tremendous job for us in keeping track of everything.

MR. NIEHAUS: I understand that.

CHAIRMAN CRAVALHO: If there's no objection.

Yes, Mr. Takitani?

MR. TAKITANI: May I ask Mr. Niehaus, on this September 1, 1993 modification of subdivision requirements, this thing was executed, are you saying that you didn't understand the requirements?

MR. NIEHAUS: I'm saying that I made my farm bigger. I took seven acres from above me and attached it to my property. I did not create a new piece of property or an extra piece of property. They said I subdivided, and of course it's a three minute thing. They subdivided and consolidated it, or whatever. It was a consolidation is what they call it. And I see in the record that that's always been treated as not a subdivision, and for everybody it's fine.

And I have asked for four years that that's the way it be created, because I didn't create a new piece of property,

and I felt that I was being penalized unjustly there. And there is no new piece of property. There were two pieces to start with, there are two pieces now. My farm is just a little bigger.

MR. TAKITANI: But each time you come it's with additional dwellings. You have got a fourth one.

CHAIRMAN CRAVALHO: It is not just -- would it be satisfactory --

MR. TAKITANI: I want the record to show every time he comes there are additional dwellings.

MR. NIEHAUS: It hasn't changed a bit.

CHAIRMAN CRAVALHO: Mr. Nakamura?

MR. NAKAMURA: One quick question, Mr. Chairman. Perhaps to Howard Fukushima. This consolidation and resubdivision, was that prior to the enactment of the provision of the County code that had to do with the waivers?

MR. FUKUSHIMA: Yes, it was.

CHAIRMAN CRAVALHO: Okay, referred back to the next meeting. Thank you very much for coming. We appreciate it. Let's hope we don't go another what, seven years?

MR. NIEHAUS: Seven years. Thank you.

CHAIRMAN CRAVALHO: Thank you.

We will go onto the next item then, Gary Meola. The matter before the Board is for the granting, the exceptions, similar to the Hughes case that we handled in the last meeting. Any action on the part of the board?

MR. NOBRIGA: I move that we approve this request, Mr. Chairman.

CHAIRMAN CRAVALHO: Is there a second?

MR. RICE: Second.

CHAIRMAN CRAVALHO: It has been moved and seconded that the request be granted. This is a situation identical to the Hughes, which we handled in the last meeting, and which is being covered by the proposal that's coming up from Mr. Nakamura with respect to consolidations and realignments. Further question? All in favor say "aye."

(Ayes).

Contrary?

Two nays. Mr. Tagorda and Mr. Takitani and Mr. Starr, three nays.

Passed.

MR. TAKITANI: Mr. Chair, can I make one comment? On these escalating claims now for fire protection that are being approved, primarily because of fire controls approval, it seems to me you know we need to get it clarified with the fire control people. They seem to be very lax in the approval area, and they're approving just about everything, and it's almost contrary to our rules and operating regulations.

We are continually in a situation where we're forced to approve things where the infrastructure may not be proper, and according to our rules and regulations, the fire protection is not adequate, yet we seem to be forced into this condition of approval. So I believe we need to look at that very carefully and coordinate more closely with Public Works. I just don't want to be pushed into that condition where we are more and more being forced to approve these things when we know that the fire protection is not adequate.

CHAIRMAN CRAVALHO: The point is very well taken. I'm sure we will receive greater cooperation and help and involvement. Mr. Starr?

MR. STARR: I have a concern with going this route, because there are certain cases where I feel it's correct when we are not creating an additional buildable lot, such as the Hughes case, where it is in our purview to waive fire protection. But once we say that we are going to waive it whenever someone comes to us because it's been waived before, then where is the fairness in us making say a developer who is doing a large subdivision putting in their fire protection, and then whenever someone comes to us and asks us to waive it, we will grant that.

I agree that we shouldn't penalize the small guy where we're giving something to the larger developer. But here I also don't agree with the converse of that either, where we will make a large project do something to certain standards, but then when someone on a smaller level comes in we automatically waive it.

So I do feel that there is the ability on the part of this Board to look at the project and see if it's going to harm the community, the nearby neighbors and all of that by doing it. To my mind, if it doesn't create a new buildable lot that's okay. If it does create the ability to build more houses without adding fire protection, then that's something that we should look very hard at before we automatically approve it.

CHAIRMAN CRAVALHO: Mr. Tagorda?

MR. TAGORDA: Mr. Chairman, I had a few comments too about waving this fire protection. I am totally against it. I think it is our sole responsibility here to make sure the safety and well-being of the community who are building structures on their lots should be keeping adequate fire protection. Even if they don't want to have that safety provided to them by the County, we should be forcing them to have it, because I think that's our sole responsibility to give them adequate fire protection. Even if they do come in and convince us that they will sign an agreement with the County, with us to hold them harmless in case of fire, in case of accidents and all that. That's where I'm coming from.

CHAIRMAN CRAVALHO: Well, Mr. Vice-chairman, your point is well taken. But I think with respect to the case in point, which is what is before us now, the elements, the case in point is completely or substantially different for being solely limited to those areas that you made reference to. I completely agree with you, with respect to the elements that are necessary for fire protection. But I believe in the case before this body, in this particular case there has been ample demonstration that somewhere along the line approval had been given by staff and/or officials of the department. They were given.

MR. TAGORDA: Mr. Craddick is shaking his head.

CHAIRMAN CRAVALHO: Mr. Craddick, I have asked you in the past, and I will ask you again to stick to the facts. There are ample communications from you which indicate that in Mr. Meola's case, while this didn't come before us, go ahead and proceed. Maybe subsequently we may. Those are the records. I do not think it is highly improper for the Chair to ask you to stick to the facts and do not indicate one way or another something that's different.

Maybe not all members of the board read every single thing. I try. And I am aware, very aware of what has happened, not just with respect to this case, but with respect to many others that I can assure you, Mr. Craddick, it's going to surface, much to my regret, but it is going to surface, and you will have ample opportunity at that time.

Fairness is supposed to be precisely that. The equal application of the law is supposed to be precisely that. Shall I go and get cases where water is allegedly being sold from one meter to another parcel? Do I? Let's stick to the facts, please.

In Mr. Meola's case, this particular case, there has been ample evidence of the actions of the department with respect to a tentative approval, saying go ahead, and it is in writing. If we erred, let's recognize that error and let's see that we do not repeat it in the days that are ahead of us. Let's recognize it and not repeat. But let us not penalize any

individual or party who came in and acted in good faith, to borrow the language of some others that were presented in the past, the element of good faith.

I think we have come a long way since we have been here together. Let's not get divided on minuscule items. Let's stick to what the facts are.

MR. NAKAMURA: Mr. Chairman, personally I would not like to get into the position where the Board is granting waivers indiscriminately, if you will. But I do think there were some very good reasons why this particular application was approved, one of which was that it was processed under Section 18.04.202(c). There were existing water meters and there was no enhancement of the development potential of the three lots.

So I wouldn't want anyone to say that this sets a precedent for any situation. I think perhaps for similar situations, but I think it is fair.

CHAIRMAN CRAVALHO: The Chair wishes to be -- again, it was the recommendation of the director to the Chair that this particular thing should be approved if it fell into the same category as Hughes. Remember what you said, just remember what you said. Let's proceed then. I don't think you will find me running away from any position I have taken.

Communications, Mr. Jenkins. Mr. Jenkins?

MR. JENKINS: Good morning, Mr. Chairman, members of the board. I'm the president of the Kula Nani Community Estates Association. Mr. Liu, who is a member of the community association, is also here in the room. We have a 38 lot subdivision, and when it's totally built up there will probably be up to 250 people in our subdivision.

I had a conference with Mr. David Gomes, who was the engineer when he built it, and he told me that when he was with Land and Construction, Frank Munoz's firm, when they built the subdivision in 1978 that the water system was totally up to County code, and yet we have never been able to dedicate it to the County. In the past, members of our community association

have met and were told things like you have standpipes, you need fire hydrants. Mr. Gomes says that's not the law.

So we'd like the Board to reconsider our request and to tell us what needs to be done for the County to take our water system.

CHAIRMAN CRAVALHO: We will refer your communication to staff to review and come back with a recommendation to this Board, and we will try to act on it forthwith, one way or the other.

MR. JENKINS: Thank you, Mr. Chairman.

CHAIRMAN CRAVALHO: Thank you.

Communication from Mr. Pastor Rob Finberg.

Other Business.

MR. CRADDICK: We have the staff reports that were passed out. We have got the surface water, production log, the ground water report. And if you notice, Iao aquifer is 18.8. And then something that we have not put in there before, we have got our production costs for ground water and the booster pumps. And on the booster pumps, well, actually and the ground water, we have included all of last year so that we have a reference there.

And then additionally, we have the surface water treatment plants. We have got a consolidation of East Maui, West Maui, and then each plant individually. And one item that did not get passed out is the reservations in the last month. I will pass that around. There's four reservations totalling about 31,000 gallons at \$97,000.

As far Iao Aquifer goes, we have had -- this is for the end of March, but we have had the Kanoa well going now for a month, and our estimate is that the Iao aquifer draw will drop about .3 million gallons for the month of April.

CHAIRMAN CRAVALHO: Recognize the presence of the

Planning Director, Mr. John Min, who is here as part of our meeting.

Mr. Starr?

MR. STARR: I'm glad that the director mentioned that our draw in Iao is going to drop. I certainly hope it does. I was looking at the staff report and I am a little bit concerned because our moving average is 18.8, and that it's approaching the 95 percent of the sustainable yield number. And that 95 percent of the sustainable yield number, which is 19 million gallons, is the point at which the State Commission on Water Resource Management starts to get very concerned about overpumping and starts to talk about designation and some such.

So I really hope that the staff can do what's necessary to keep the moving average below 19. I prefer to see it blow 18, but certainly blow 19, because we are entering into dangerous territory above 95 percent of the sustainable yield.

I'd also like a report on the wells, whether that one well that the pump had gone down was back in service or not, and what's happening in Waikapu.

CHAIRMAN CRAVALHO: Mr. Craddick?

MR. CRADDICK: That's what I just told you about, that pump has been operating now for a month and that's why we estimate that the Iao aquifer will drop.

MR. STARR: Which pump?

MR. CRADDICK: Are you talking about the Central Maui Joint Venture? On that one there, one of the bidders contested, they didn't submit a proper bid and they contested the bid results, and they were given a letter saying that they did not bid properly but they have seven days, and that started I believe last week about Thursday or so. So I guess today will be the seventh day. They have seven calendar days to make a protest if they want to.

MR. STARR: So in other words, we haven't started replacing that pump yet. How long has it been out?

MR. CRADDICK: Since January.

MR. STARR: Since around the first of the year. So that's four months. So we are missing the largest of the joint venture wells for the last four months, and it will probably be another couple of months before we get it. How about Waikapu?

MR. CRADDICK: The well is finished. It's in the budget next year for doing something more up there.

CHAIRMAN CRAVALHO: What is the potential capacity of the Waikapu well?

MR. CRADDICK: Two million gallons a day.

CHAIRMAN CRAVALHO: What's the capacity and the deliverability of the Waihee well that was recently put into operation?

MR. CRADDICK: One-and-a-half million gallons a day.

CHAIRMAN CRAVALHO: One-and-a-half plus two-and-a-half.

MR. CRADDICK: Two.

CHAIRMAN CRAVALHO: Waikapu is what?

MR. CRADDICK: Two.

CHAIRMAN CRAVALHO: One-and-a-half, so it's three-and-a-half. That's additional capacity?

MR. STARR: No.

MR. CRADDICK: The Waikapu is not additional capacity.

CHAIRMAN CRAVALHO: Careful. Mr. Craddick on some things which he has told me before. Okay, keep going.

MR. CRADDICK: Well, just Waikapu is spreading the pumping out, not additional capacity. It's in Iao aquifer.

CHAIRMAN CRAVALHO: Which would be a plus or a minus in terms of the draw from the Iao aquifer?

MR. CRADDICK: No difference.

CHAIRMAN CRAVALHO: Remember what you say. I am going to remind you of what you told me previously. Half a million Waihee side, right?

MR. CRADDICK: One-and-a-half.

CHAIRMAN CRAVALHO: One-and-a-half, plus two, okay. So three-and-a-half. Now, when we were talking, and I raised this question specifically as it related to the 18.8 draw from the Iao aquifer, and I recall specifically asking that the addition of Waihee and Waikapu, would it alleviate the draw and the demand on the Iao aquifer. The answer was yes.

And in fact, what you did say, Mr. Craddick, if I may remind you, was that the Waikapu one was so strong potentially, and instead of capping it, it should be made available right away so that the problem that we had with respect to the Iao aquifer could be greatly reduced, and that the impact would be reduced.

And I am not through. Also entered into the discussion was that this development would be of a short-term, temporary benefit as we awaited for the final determination of the East Maui wells and the East Maui plan and the water to come into this area.

If what you are saying today is correct, Mr. Craddick, if what you're saying is correct, then the central area here is in a very gravely dangerous position, more so than East Maui, if what you are saying now is correct. We're up to that 95 percent draw. And in addition to that, the addition of

Waihee and Waikapu will not alleviate the total resource of the Iao aquifer. And if again we pursue this to its ultimate, as the emergency element involved and the situation possibly being more critical than the East Maui one, if what you're saying today is correct, then we need to give our immediate attention to this area here.

And I know I'm correct in what I'm saying, that I discussed this with you, and the questions that I raised and the answers that were given to me. And I'm right Mr. Craddick. Mr. Craddick, I suggest that silence is the better part of valor right now, I really do.

MR. CRADDICK: I need to say one more thing.

CHAIRMAN CRAVALHO: At your own risk.

MR. CRADDICK: We also have the second Kanoa well that we are going to start testing tomorrow, the step test and the long term test.

CHAIRMAN CRAVALHO: Mr. Craddick, this is what I don't like about you, frankly. You bring in subsidiary questions that have nothing to do with the question that I have been raising. The discussion has been limited with respect to the impact on the Iao aquifer and the application of Waihee and Waikapu, and the accuracy of what I have been saying. This other element is a subsidiary element, and it may be a temporary type of a relief. It does not alleviate to any great degree the critical nature, the potentially critical nature of the Iao aquifer.

And my earlier statements a month and a half ago about the need for all of us to practice conservation, not placing any restrictions, but to practice conservation because we are in a critical position. And if we don't alleviate this, what will the impact be with respect to a developmental program, which is essential.

Mr. Takitani and Mr. Nakamura have done admirable service for us in the East Maui and the Central Maui area as well, and I think I am only saying what is evident and what is

correct. And the need for us to put all of our hands together to work on this problem, because this Central Maui problem is greater, really greater than the East Maui one. The East Maui one we have it solved, I believe. We have it solved with the agreements. The water was there, the potential was there, we have provided the mechanism. Not because of you, but in spite of you. We need the same kind of help in the central area.

And if I may be as frank as I can be, without being unduly abusive, we will resolve this question, Mr. Craddick, as long as you keep your cotton picking fingers out of it, and you let the planners and you let the negotiators move freely and negotiate settlements so we can move. I don't want to become aware of any possible impediments that may have surfaced or may have become evident during the negotiations of the East Maui one, okay. Keep your cotton picking fingers out, because these are policies.

Mr. Takitani?

MR. TAKITANI: I echo your sentiments on conservation, I do think we are in a critical situation in Iao. However, the strategy up until now has been develop North Waihee, get one-and-a-half, three, four and a half million gallons out of there. When we need Iao stream, the Waihee stream, we can use that and we can get possibly 300,000 gallons, and that pretty much has been the strategy.

I share some concern about any information that goes out that may infer any kind of a linkage between East Maui, Upcountry, and Central Maui, in that my saving one gallon of water in Central Maui is not going to provide any more water Upcountry for them to be using up there. We need to be careful that the connotation is not that saving here is going to save water Upcountry. However, we do recognize there is a grave shortage condition here.

But one thing I want to make sure that before we go off on the conservation issue too heavily we need to look at the financial impact of what we are going to do and count the cost, because two-thirds of the water being consumed is in the central South Maui area. It's in the neighborhood of 10

percent is like the savings if we cut back 10 percent in Central Maui, South Maui, it would be \$155,000 per month revenue lost, which is needed revenue in order to pay for the kinds of operating costs.

And also one of our charges has been from many people, Terril Vencil, people who have served with you on the rate structure committee, to ensure that part of the monies that would be derived from the rate increase would be used for line replacements. And we have only a hundred miles of line replacements that needs attention.

CHAIRMAN CRAVALHO: Mr. Takitani, I think, if I may, open discussion, we are missing the point. The point is this: Not that there is a relationship automatically between here and east, not at all, but that there is in existence a water need here, and that there is a necessity for a conservation program.

Now, whether you get water from East Maui coming this way, and we have discussed this at length, and I have discussed it for many years with respect to east and here, and the answer to here is there. I think we all agree on that. But before we get there to take care of here, we have to take care of up first, which we have finished, which you people have finished.

The East Maui Development Plan, which is with the EIS, and the court's decision was, hey, this is really a developmental program for this area here. Separate and distinct from up there. And we frankly almost lost it when the proposal came for a merger of the districts. Okay, but that's history.

The point that's facing us is, number one, the present supply is inadequate or getting close to being inadequate to meet current needs. Stress that, current needs. If there are going to be any kind of opportunity or requirements for future growth and development, you need additional needs. You have to meet additional supplies. These automatically will cost money. You can't get away from it. What is the alternative if we don't? It's going to cost you more. By deferred growth, deferred property values, deferred

rates, where are you going to be?

I have walked down this road 20 years ago, and listened to the same types of arguments and concerns when we were talking about this joint venture in Central Maui. The cost, the cost. Therefore, we cannot. And I submit to this board and to this community a very simple kind of a question. If we hadn't, where would we be today?

I'm not finished. That's a comma, not a period. That's a comma. And if we don't move as I think we should look at and move, where will we be? We don't have to do anything. Know what the consequences are, okay. And I am not available to sit in the mutual admiration society where we sit and debate and admire our neighbors. I will leave that to somebody else. But things have got to be done.

Costly, yes. And as we have said before, and I am not repeating anything you people don't know or haven't thought or haven't said, this is going to require the very best of people and corporate ventures and risk capital. And recognizing the fact that we do not have by ourselves the capital, we have got to go look for private capital, and therefore there have to be assurances given. And if we don't, tell me then how you are going to meet the housing needs of these friends and neighbors of ours who have two families and three families in one room. Look at everything.

Our job, as I understand it, is to implement the general plan, the community development plan, et cetera. It's to implement it. Let's look at it, and all the expertise that we have in our personnel, Mr. Craddick in particular. These are the areas I think we can be of the greatest benefit to each other and the community. End of sermon. But I think that is what we have got to look at and we have got to be willing to do.

Okay, my friend.

MR. STARR: Mr. Chair, I'm glad we have come this far, and I look forward to going the next step and the next leap, and I think we will be able to do it. I think we have a good opportunity because we have our planning director here,

and we have just come to the conclusion that Iao is right now up to its, kind of up to the top of the neck, and hopefully we will be able to get a little bit of water on line. The director says that there's something going to be coming on line, and I'm also hoping that the 3 hundred thousand gallons from Iao can be implemented, which may give us a bit of breathing room.

But I would really like to ask for a little impromptu presentation from the planning director, if he can give us an idea of what we're looking at in terms of new starts in the next year or two, if that's something that you would be interested in tackling now or at a later time, because I don't really know.

MR. MIN: I would prefer to do this at a later time. Let me just say in general that most of the applications that we get, whether it's a change in zoning, Special Management Area Permit, are for projects that are within Central Maui or within the Central Maui system. This would include Kihei as well as the Wailuku town area. That's a general comment.

And I would be happy to come back later, maybe at another board meeting, and provide you with some maybe more specific information on projects, the scale of these projects, location, so you have an idea of where things are going.

MR. STARR: Well, good. I know that I have been hearing and seeing that there are a lot of new starts and a lot of new projects, and I'm glad to see that things are picking up. I think it would be very good for us to have a better idea of what our needs are going to be over the next few years and then we can try to get what we need or see whether there's a problem, because I do see a lot of starts and I have no idea of the magnitude. Is it hundreds or thousands or tens of thousands, I don't know.

CHAIRMAN CRAVALHO: Anything else to come before this distinguished body? Mr. Nobriga?

MR. NOBRIGA: Would it be necessary for us to begin

creating guidelines for drought emergency in the central system?

CHAIRMAN CRAVALHO: Let's take that matter under advisement. I think at this stage what we need to reiterate is that, hey, let's really take a good look at the problems that are beyond those that we have experienced up in the Upcountry area, which I think we seem to be having resolved quite well.

Yes, sir?

MR. STARR: I think we do have the framework to resolve them, and I'm glad for that. I know I will be pushing to do it as soon as possible, and I do think that our big step is going to be a well somewhere on our existing system Upcountry and I hope that we can move as quickly in that direction as we can.

CHAIRMAN CRAVALHO: Gentlemen, again, just as an aside, I said end of sermon, but that was only the Good Friday sermon, now is the Easter Sunday one. Look, keep our eyes on the target, which is the growth and the development of the area and the necessity for two things, a greater utilization, a better utilization, more efficient utilization of our present supply, and number two, increasing the supply as rapidly as we know how, like yesterday.

And the East Maui agreement, which is coming back for total ratification at our next meeting, and the Upcountry area, is a firm step in that direction. And the contents in that agreement relating to the central area are correct steps, and if we keep our eyes on that target and we move to implement rapidly, knowing it's going to be costly, but it's going to be more costly if we do nothing.

Let us then proceed, and our resources will be very great, and we then can encourage the private sector to participate with us as partners as we have before. And if we don't, they are not going to participate. You know that just as well as I do, and I think even better than I do. And I think in the private sector today there is a glimmer of better days ahead, of a cooperative effort on the part of all parties

concerned. I think there is that glimmer.

And Mr. Starr, you made reference to moving fast on the well and whatever, but I will go one step further. Not just that well, the replenishment of the stream systems there. And I say we can, and we can get on it rapidly, very rapidly. It isn't something nebulous in the future, it can be done forthwith if we look at our resources and we utilize them.

Just as an aside, that well down by the Pulehu side, we can take water from there possibly, pull it to Hamakua Ditch, okay, so you have an increase in supply. And this supply then you have put in there potentially might be available to begin to replenish your streams. Take from one to the other as needed. Not the hundred percent of all, but make a start on one or two, so that all parties are partners with us. What is the opposite if you don't?

Anything else for the next board meeting?

Mr. Craddick, I thought you were going on vacation or something.

MR. CRADDICK: Two weeks maybe. Anyway, we have drought emergency in effect for Upcountry, and I have passed around what the current conditions are. I am not recommending any change in the action. But one item that I think needs to be discussed is the Board never took any implementing actions other than to cut 10 percent and then they cancelled that, so it's voluntary. There are no other implementing actions.

Now, historically we have not issued meters when drought is declared, but the Board has not taken any action to stop that right now. I have not issued any since the Board declared an emergency, but I am getting more and more pressure. People are going to Corp Counsel, and I think this body here needs to take a position on it.

CHAIRMAN CRAVALHO: May that be listed on the agenda for the next meeting?

MR. CRADDICK: Okay.

CHAIRMAN CRAVALHO: I am not prepared to take any position on that today.

MR. CRADDICK: One other very last thing, we have no power in Napili and we have put out a notice there for everybody to cut back consumption over there. I don't know what's wrong with the electric system, but we are able to deliver water from our two treatment plants, but nothing else.

MR. STARR: Just today?

MR. CRADDICK: Yes. I just got a notice here just now. That's it.

CHAIRMAN CRAVALHO: Any further business? If not, the meeting is adjourned.

(Whereupon the meeting was adjourned at 10:15 a.m.)

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